

Geraci vs. Cotton, et al.

**Reporter's Transcript of Proceedings
July 15, 2019**



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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

Department 73

Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)

Plaintiff,)

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

DARRYL COTTON, an individual;)

and DOES 1 through 10,)

inclusive,)

Defendants.)

_____)

AND RELATED CROSS-ACTION.)

_____)

Reporter's Transcript of Proceedings

JULY 15, 2019

Reported By:

Margaret A. Smith,

CSR 9733, RPR, CRR

Certified Shorthand Reporter

Job No. 10057778

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I N D E X

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1 July 15, 2019; San Diego, California; 8:49 a.m.

2 Hon. Joel R. Wohlfeil

3 -- o0o --

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

6 MR. WEINSTEIN: Good morning, your Honor.

7 MR. TOOTHACRE: Good morning, your Honor.

8 MR. AUSTIN: Good morning, your Honor.

9 THE COURT: All right. We're on the home
10 stretch.

11 Let me make sure, though, there's nothing that
12 came up that is inconsistent with what we reviewed and
13 discussed late last week.

14 Let me go first to plaintiff's counsel. Did
15 you catch anything over the weekend that we missed last
16 week?

17 MR. WEINSTEIN: No.

18 THE COURT: All right. Defense counsel?

19 MR. AUSTIN: No, your Honor.

20 THE COURT: Okay. So that's a relief. We were
21 pretty careful. Maybe even more so than we normally
22 are. So I would have been a little surprised if you
23 said you had something.

24 So when the jury gets in -- just give me one
25 moment here -- the Court will instruct. And, as
26 mentioned late last week when we met -- met first, if it
27 takes me something closer to 9:30, other than the few
28 moments it takes for plaintiff's counsel to set up to

1 move to your opening closing. If it's closer to 9:45,
2 then we'll take our first morning break.

3 And then when we're done with plaintiff's
4 counsel's opening argument, if it's before the break,
5 we'll take our break. If it's after the break, then
6 we'll move into defense counsel's opening argument. And
7 then after we will take our either first or second
8 morning break. And then depending upon where we sit for
9 time, time permitting, we'll get one or both of the
10 second rebuttal closing arguments before we break for
11 noon.

12 Once we break for noon and the jury comes back,
13 we'll finish whatever we've got left to do and then get
14 the case to the jury so they can begin their
15 deliberations.

16 Assuming that one or more of our alternate
17 jurors show up -- and I expect them to -- they have been
18 awfully conscientious, all of them. What I would expect
19 to do is to allow them to leave the courthouse, not
20 discharge them as jurors, but to allow them to go about
21 the rest of their lives unless and until we call them to
22 tell them to come down and we substitute in and replace
23 one of our regular jurors or the jury returns a verdict,
24 at which time everyone will be discharged. That's my
25 expectation.

26 Let me go to plaintiff's counsel. Any
27 questions about any of the process?

28 MR. WEINSTEIN: No, your Honor.

1 THE COURT: Defense counsel?

2 MR. AUSTIN: No, your Honor.

3 THE COURT: All right. We'll have more time to
4 talk about this between now and when the jury gets the
5 verdict. But once the jury does come back with their
6 verdict and we take -- one or both of you ask me to poll
7 the jury or not, as soon as I discharge the jury, so too
8 will counsel be discharged. You're under no obligation
9 to remain behind to chat with the Court. And I'll
10 remind you of that. But oftentimes, the only
11 opportunity to catch up with the jurors, should you wish
12 to catch up with them to talk to them, is when they're
13 still out in the hallway.

14 So as soon as I let the jurors go, Counsel are
15 free to go. What I do do, though, is direct that -- the
16 side that based upon the verdict form has prevailed will
17 be directed to prepare the judgment.

18 It's conceivable we could have a split decision
19 here with a complaint and a cross-complaint, in which
20 case, if not, after -- the same day as the jury returns
21 a verdict, at some later time, we might have to have
22 another discussion.

23 Usually, it's pretty obvious which side has
24 prevailed, and that side will be directed to prepare a
25 judgment in accordance with the findings reflected on
26 the verdict form.

27 So in any event, after I have -- after you all
28 have had a chance to talk to the jury or otherwise, if

1 you want me to retake the bench after the jury has
2 returned a verdict, assuming there's still some time
3 left in the day, whether it be today, tomorrow, or
4 otherwise, I'm more than happy to do so. But I just
5 want to make clear that counsel will not be expected to
6 sit around here while the jurors go on about their way.

7 I think we've already arranged for the exhibits
8 to be organized so that my deputy can bring them in as
9 quickly as possible when you're done with your closings.
10 Is that correct?

11 THE CLERK: Yes, they're already to go, your
12 Honor.

13 THE COURT: Counsel, what I want to make sure
14 is you all have gone through the volume. If you haven't
15 already done so, make sure you've gone through them to
16 make sure that you're satisfied. The last thing we want
17 to do is to let something slip by all of us that gets
18 before the jury that they shouldn't have seen. So
19 counsel are directed -- and you'll have some time
20 between now and when the jury gets the case to begin
21 deliberations and before my deputy brings those exhibits
22 in.

23 I think I've told you previously that we'll
24 arrange for every member of the jury to get a copy of
25 their own set of the instructions, including the
26 pre-instructions, as well as each get a copy of their
27 own verdict form. And I'll explain why I do that
28 practice when we get to that point in the admonitions.

1 So if there's nothing else, stand down. Maybe
2 I can invite -- we need to use the projector while I'm
3 reading and displaying the instructions. But other than
4 that, if there's anything else you can begin to get
5 ready now.

6 MR. WEINSTEIN: We're ready.

7 THE COURT: Are you ready?

8 So, Madam Deputy, where do we stand with the
9 jurors?

10 THE BAILIFF: We are at 13.

11 THE COURT: All right. We can all breath a big
12 sigh of relief. We have at least 12.

13 THE REPORTER: And your Honor, would there be
14 waiving of the reporting of the jury instructions since
15 they were deliberated with counsel?

16 THE COURT: Counsel, now, the record will
17 include all of the instructions that I provide -- or
18 present to the jury will be filed with the Court. They
19 will be filed with the case file. So it's not like
20 there isn't a record of what's being presented to the
21 jury.

22 So let me go first to plaintiff's counsel.
23 Waive reading (sic) of the instructions, or not?

24 MR. WEINSTEIN: Waived.

25 MR. AUSTIN: Waived.

26 THE COURT: All right. Thank you, Madam
27 Reporter.

28 So Counsel, as soon as we get all of our jurors

1 here, we will move forward.

2 THE REPORTER: And your Honor said waive
3 reading and meant to say waive reporting?

4

5 THE COURT: Waive recording, right. Or waive
6 reporting. Yes.

7 (Discussion off the record.)

8 THE COURT: Good morning, everybody.

9 So we're going to move into most but not quite
10 all of the instructions in a few moments. And then --
11 Madam Deputy, you can turn the projector on, please.
12 And then proceed with closing arguments. And you'll
13 have the case early in the day if we can possibly get it
14 for you.

15 By the way, for what it's worth, I was meeting
16 with counsel until after 11 o'clock on Thursday morning
17 and then had another hearing on another matter at 1:30.
18 So we would not have had nearly enough time to get you
19 the case last week. Again, for what it's worth.

20 You may recall that we're going to get you a
21 copy of all the instructions. So if you miss something
22 as I'm going through it -- although, you will see it on
23 the overhead -- don't be concerned. You'll have that to
24 look at as much as you like once you get the case and
25 begin your deliberations.

26 Madam Clerk, can I ask that you dim one row of
27 the lights, please. Thank you.

28 (Reporting of jury instructions waived.)

1 THE COURT: All right. Madam Clerk, if you can
2 turn the lights on.

3 Madam Deputy, if you can turn the projector on.

4 What we're going to do now is go into plaintiff
5 counsel's opening argument because each has a claim and
6 a cross-claim. Each bears a burden on their responsive
7 claim. Each is going to be allowed to give two
8 arguments. However, they each have time limitations.
9 And I'm keeping track of them.

10 So we're going to start now with plaintiff's
11 counsel's opening argument. You recall what the lawyers
12 say is not evidence, but it may help you evaluate the
13 evidence and what you have heard from the witnesses and
14 the law that I have given to you.

15 Counsel, whenever you're ready, please.

16 MR. WEINSTEIN: Thank you, your Honor.

17 (Closing argument on behalf of the
18 plaintiff/cross-defendant.)

19 MR. WEINSTEIN: Ladies and gentlemen of the
20 jury, good morning. My client and I and my colleagues
21 thank you for your patience in listening to the
22 testimony. I know it's been over a couple of weeks. So
23 thank you.

24 This case involves a dispute between Larry
25 Geraci and Darryl Cotton involving the personal sale of
26 Mr. Cotton's property at 6176 Federal Boulevard. The
27 crux of the dispute is evident from both the jury
28 instructions just read to you and the special verdict

1 forms you will receive.

2 My client, Mr. Geraci, contends that the two of
3 them entered into a November 2nd, 2016 written
4 agreement. That's the document that you've seen as
5 Exhibit 38. And you'll be shown that again during the
6 closing argument.

7 Mr. Cotton, on the other hand, contends that
8 the two of them entered into an oral contract to form a
9 joint venture. I'll discuss at length the evidence
10 presented by the parties as it relates to those
11 contentions.

12 But before I do, please be reminded that what I
13 say or what Mr. Cotton's counsel says is not evidence.
14 The evidence is the testimony you heard from the
15 witnesses and the documents that were admitted into
16 evidence.

17 At the end of closing argument, and as the
18 judge has told you, you will get two special verdict
19 forms, each of which contains specific questions that
20 you must -- that relate to the legal claims of the
21 parties that you must answer.

22 You'll also be able to be given a complete set
23 of jury instructions given to you, which are
24 instructions regarding the law. I'll refer to some of
25 those jury instructions during my argument to guide you
26 through the factual questions you're going to be
27 answering on those special verdict forms.

28 Now, the judge mentioned in his instructions

1 the standard more likely true than not true. That's the
2 burden of proof that each party is required to prove
3 something must -- must prove to. And, obviously, it's
4 not reasonable doubt like in a criminal case. It's more
5 like a scale of justice. If they're exactly even, the
6 burden hasn't been sustained. But they're slightly
7 tipped in favor of the party that has the burden of
8 proof, then they have met their burden of proof.

9 Now, as I go through the questions on the
10 special verdict form, I will actually be reminding you
11 who has the burden of proof with respect to the various
12 questions you have to answer.

13 So I'm going to give you a sneak preview of the
14 special verdict forms. So if you'll put up Special
15 Verdict Form No. 1.

16 So that's the first page. Each special verdict
17 form will be multiple pages, and it will have each
18 party's claims and a list of questions. I'm not going
19 to go through each of those questions now. We'll do
20 that later. But just understand that you're going to
21 get one form that relates to Mr. Geraci's claims that
22 asks you all the questions that you need to answer to
23 determine his claims and one form that talks about all
24 the claims of Mr. Cotton.

25 Now, the Special Verdict Form No. 1 involving
26 Mr. Geraci's claims will be the ones where you decide
27 his two claims: Breach of contract, breach of the
28 implied covenant of good faith and fair dealing.

1 Special verdict Form No. 2, Mr. Cotton's claims
2 for breach of contract, intentional misrepresentation,
3 false promise, and negligent misrepresentation.

4 Now, near the end of my closing argument, I
5 will actually put up on the screen the special verdict
6 form and go through with you the answers that I think
7 the evidence compels you to make after you have heard
8 all the evidence in this case.

9 So it's a little confusing at first, certainly
10 in the abstract. When you see the verdict form, you
11 will understand that you just go one question at a time
12 to follow the instructions until you get to the end of
13 the form.

14 So let's start with the breach of contract
15 claims of Mr. Geraci.

16 Would you put up Jury Instruction 303.
17 Highlight, please.

18 So you read Jury Instruction No. 303. The top
19 half of the form are what Mr. Geraci has to prove with
20 respect to his claim that there was a breach of the --
21 that they entered into the November 2nd written contract
22 and that that contract was breached.

23 Would you go to Special Verdict Form No. 1.

24 The reason I put this up at the outset of my
25 closing argument is that you sort of see the logic in
26 all of this. The jury instructions tell you what must
27 be proved, and the special verdict forms mirror the
28 elements that you must -- must prove, as stated in the

1 jury instructions.

2 So you see with respect to Mr. Geraci, breach
3 of contract claim, he has to prove that Geraci and
4 Cotton entered into the November 2nd, 2016 written
5 contract.

6 And the first question on the verdict form
7 you'll be answering is did Plaintiff Larry Geraci and
8 Defendant Darryl Cotton enter into the November 2nd,
9 2016 written contract?

10 So that's how the logic works. If you go to
11 the second half of the CACI Instruction 303, where it
12 talks about what Mr. Cotton has to prove, you'll see --
13 and I'll have them both highlighted. You will see in
14 the bottom half of the jury instruction, Mr. Cotton has
15 to prove that they entered into an oral agreement to
16 form a joint venture.

17 And then in the special verdict form, you'll be
18 asked that question.

19 So as you go through the special verdict form
20 at the end, you'll see how they mirror the jury
21 instructions.

22 Now, what's important at this point in my
23 closing is that you understand that what we're really
24 talking about here are competing contract claims. One
25 party says the written November 2nd, 2016 contract was
26 entered into in connection with the purchase and sale of
27 the property. Another says, no, there was an oral
28 agreement to form a joint venture.

1 And much of the evidence in the case that was
2 presented relates to those competing contract claims.
3 You're going to be evaluating those competing contract
4 claims both together because the evidence may go to both
5 issues, but also evaluating those claims for purposes of
6 the verdict separately because they are separate
7 contract claims: One by Mr. Geraci, one by Mr. Cotton.

8 So let's turn now to review the evidence, which
9 I submit will support the following conclusions.

10 I think the evidence will show that Mr. Geraci
11 proved it was more likely true than not true that the
12 parties entered into the written November 2nd, 2016
13 contract for the purchase and sale of the property.

14 I think the evidence will show that Mr. Cotton
15 failed to show that it was more likely true than not
16 true that the parties entered into the oral -- entered
17 into an agreement -- an oral agreement to form a joint
18 venture.

19 The only third possibility, which I hope is
20 obvious, is no agreement was entered into between
21 anybody of any kind. That's really the only other
22 alternative.

23 Now, Mr. Geraci, as you heard, was interested
24 in purchasing a property for which it might be feasible
25 to obtain a conditional use permit to develop a medical
26 marijuana -- to develop a marijuana dispensary.

27 He assembled a team to assist him. He hired
28 Mr. Bartell. He later hired Schweitzer, the project

1 designer, who was really the main person that was in
2 contact with the City with respect to the CUP
3 application. And he hired Gina Austin, among other
4 people.

5 Each of these persons has substantial
6 experience in applying and obtaining CUP permits for
7 marijuana principals. And they each talked about their
8 experience. They talked about their experience and
9 qualifications and the extensive number of applications
10 they worked on previously.

11 Mr. Cotton has presented no testimony
12 challenging that team's qualifications or experience.

13 Now, Mr. Cotton's property was identified as a
14 potentially feasible property. So in July 2016,
15 Mr. Geraci contacted him to acquire about buying this
16 property.

17 Now, both Mr. Cotton and Mr. Geraci agreed that
18 the first contract occurred in approximately July of
19 2016. That's actually corroborated by the text messages
20 that were admitted as Exhibit 5. Those are all the text
21 messages between Mr. Geraci and Mr. Cotton. The very
22 first one is dated July 21st, 2016, which would have
23 been after they had their initial telephone call.

24 Mr. Geraci told Mr. Cotton he was interested in
25 buying or looking to purchase the property for which he
26 could obtain an additional use permit to operate an MMCC
27 or medical marijuana consumer cooperative and to develop
28 that on the property. He asked Mr. Cotton if he'd be

1 willing to sell and at what price.

2 Mr. Geraci told Mr. Cotton that he had
3 assembled a team of qualified, experienced persons to
4 handle the CUP application process. They discussed that
5 zoning was a problem, but Mr. Geraci told him that he
6 had hired Jim Bartell to handle that issue.

7 Now, you'll recall -- and we won't go into
8 detail about it, but Mr. Cotton actually denied having
9 heard of Mr. Bartell in the first meeting, but then he
10 was impeached by his deposition testimony in which he
11 actually testified earlier at his deposition that he had
12 met him at the outset, not two to three months later,
13 which is what he told you while he was on the witness
14 stand.

15 Anyway, back to this initial contact with the
16 initial conversations. Mr. Cotton told Mr. Geraci he
17 was interested in selling, and the price was 800,000.
18 And Mr. Geraci told him that was within his budget.

19 Mr. Geraci told Mr. Cotton that he or his team
20 needed to do some more -- work on the feasibility of the
21 project. And from that -- at that point, Mr. Cotton
22 allowed Mr. Geraci's civil engineers and other folks to
23 come onto the property to begin that feasibility work.

24 Now, Mr. Cotton did not deny that these things
25 were discussed in the initial conversations. He
26 confirmed they talked about potential zoning problems
27 because he knew already that there was a conflict
28 between the zoning that was allowed in the medical

1 marijuana consumer cooperative information bulletin put
2 out by the City and that it was in conflict with the
3 zoning ordinance.

4 He was also already aware that he needed a
5 conditional use permit to operate a dispensary. And he
6 knew that because he had also been previously sued by
7 one of his tenants for an illegal medical marijuana
8 dispensary that was operated on his property. And
9 you'll hear Mr. Cotton telling you that he had a
10 discussion -- and this would have been before he met
11 Mr. Geraci. He had a discussion with his tenant in
12 which the tenant told him that he was qualified to
13 obtain -- or had the ability to obtain a conditional use
14 permit. But as Mr. Cotton said, his tenant never
15 followed through.

16 So the notion that you needed a conditional use
17 permit, Mr. Cotton knew at the time of his first
18 conversation with Mr. Geraci.

19 Now, some of the initial feasibility work went
20 on. You saw a survey, a topographical survey was done.
21 You saw some emails about people going onto the
22 property.

23 And then the parties met face-to-face for the
24 first time on September 20th, 2016, at Mr. Geraci's
25 office.

26 Mr. Geraci updated Mr. Cotton regarding the
27 feasibility issues, including the zoning status. And at
28 that meeting, Mr. Cotton asked if he could provide a

1 written proposal to Mr. Geraci for the purchase and sale
2 of the property. And Mr. Geraci told him go ahead and
3 do so.

4 Would you put up Exhibit 9, please. On
5 September 26th, following that initial face-to-face
6 meeting, you saw that Mr. Cotton emailed Mr. Geraci and
7 included two documents with that email, one called a
8 services agreement, which is Exhibit 10 -- go to that --
9 and one called a memorandum of understanding, which was
10 Exhibit 11.

11 It's undisputed that Mr. Geraci did not respond
12 in writing to these proposed written agreements. He
13 didn't text or email any suggested edits or comments to
14 the proposed documents. And it's undisputed he never
15 signed the proposed documents.

16 Mr. Geraci testified that he followed up that
17 email and spoke to Mr. Cotton by telephone and told him
18 he had reviewed the agreement and noticed it had a
19 provision that he provide Mr. Cotton with a 10-percent
20 equity interest in the dispensary. Of course, we're
21 talking, assuming the dispensary ever -- a CUP was ever
22 approved and the dispensary was ever opened. But in any
23 event, it mentions that in the agreement.

24 Mr. Geraci testified he told Mr. Cotton the
25 purchase price was 800,000. He was not going to agree
26 to give him the 10-percent equity interest in the
27 dispensary, and he didn't want a partner.

28 Mr. Geraci told Mr. Cotton that he was not

1 going to sign the proposed agreements.

2 Mr. Cotton, I believe, denied that this
3 telephone conversation took place. Mr. Cotton
4 interestingly also denied that he wanted to be a partner
5 in the dispensary. He testified he wanted nothing to do
6 with the operation of the dispensary. He was just
7 looking for an additional revenue stream. And we're
8 going to talk about that testimony a little later.

9 So what happens after these documents are
10 signed? They just move forward. On October 31st, 2016,
11 if you put up Exhibit 30, Mr. Cotton comes into the
12 office and signs the ownership disclosure statement,
13 which is one of the things that needs to be submitted
14 with the CUP application.

15 Mr. Cotton testified it had already been filled
16 out by Rebecca Berry. And when he signed it, he had
17 already been informed by Mr. Geraci that Rebecca Berry
18 was going to be the applicant acting in her capacity as
19 his agent. And he testified he had no problem with
20 Ms. Berry applying for the CUP as an agent for
21 Mr. Geraci.

22 So I'm moving quickly. I realize that. But
23 I'm trying to set out sort of the timeline.

24 And then the next face-to-face meeting that
25 they have, if anybody can recall, Mr. Cotton, I think
26 testified that he recalled several face-to-face
27 meetings, but he didn't recall any specifics except the
28 September 20th meeting and the November 2nd meeting.

1 Mr. Cotton comes to Mr. Geraci's office on
2 November 2nd, 2016 -- would you put up Exhibit 38,
3 please -- and he signs this agreement.

4 Now, it's undisputed that this document was
5 signed before a notary just after 3 o'clock p.m. on
6 November 2nd, 2016. We know that because Exhibit 39,
7 which you have seen, is the notary acknowledgment that
8 shows that Mr. Cotton signed it at 3:05 p.m., Mr. Geraci
9 at 3:03 p.m.

10 Now, Mr. Geraci and Mr. Cotton have told you
11 conflicting versions of how the document was drafted.
12 I'm going to go through that. And I'm going to submit
13 to you that Mr. Geraci's testimony was more believable
14 and more credible.

15 Mr. Geraci told you the meeting took 20
16 minutes. Mr. Geraci told you he typed the agreement at
17 his computer, and Mr. Cotton watched, because he has a
18 65-inch monitor, computer monitor on the wall at his
19 office, watched, and they went through and drafted each
20 sentence one at a time while Mr. Geraci was at his desk
21 typing and Mr. Cotton was standing. And they were going
22 through it together in his office.

23 He testified that they -- after each sentence
24 was typed and any changes that were necessary that were
25 made, they agreed that that was an appropriate sentence
26 for their -- for their document. And they went through
27 it one by one.

28 Mr. Geraci then told you they signed the final

1 document. He gave him the \$10,000 in cash, which was
2 the earnest money deposit. And six minutes later after
3 it had been signed, you saw an email, Exhibit 40, in
4 which Mr. Geraci emailed a copy, a PDF of that, to
5 Mr. Cotton.

6 Now, as I said, Mr. Cotton's version of events
7 is different than Mr. Geraci's, and it's up to you to
8 decide who to believe. In determining who to believe,
9 you must keep in mind that Mr. Cotton testified about a
10 number of details regarding the meeting that were
11 contrary to what he testified to in his deposition on
12 May 14th, 2018, nearly 14 months before this trial.

13 The judge read you the Jury Instruction No. 208
14 that tells you you must consider deposition testimony in
15 the same way as you consider testimony at trial. During
16 my examination, I confronted Mr. Geraci -- Mr. Cotton
17 with the deposition testimony when he changed his story
18 from what he had said at trial -- at trial from what he
19 had said at deposition.

20 Now, why is that important? First, presumably,
21 Mr. Cotton's memory was better 14 months ago than it was
22 today -- you know, today or last week at trial. But
23 more importantly, I submit that you should conclude that
24 these changes to his stories were intentional as opposed
25 to honest mistakes or simply misremembering, and that
26 these false statements should cause you seriously to
27 question his credibility concerning all his testimony,
28 not just his testimony as to the events of November 2nd.

1 And I invite you to look at Pre-instruction 107, which
2 gives you the discretion, as the jury, if you believe
3 somebody has falsely testified about something, you're
4 entitled if you choose to consider that, that person has
5 testified falsely about other things.

6 Now, why do I say that you should consider
7 Mr. Cotton's changes in his stories as falsehoods rather
8 than honest mistakes or misremembering? Because I will
9 show you each of those changes were obvious attempts to
10 minimize his familiarity with the November 2nd written
11 contract that he signed. He wants you to believe that
12 when he said he thought the November 2nd contract was
13 merely a receipt for the \$10,000 he received as a
14 deposit and not a signed contract for the purchase of
15 the property. It helps if you believe -- in his case if
16 you believe that he wasn't familiar with the contract
17 and didn't pay much attention to it.

18 To the extent that he can convince you that he
19 did not pay attention to that document and thus minimize
20 his familiarity, it helps him with his argument that it
21 was merely a receipt.

22 But let's examine that testimony. He testified
23 the document was already prepared when he arrived. I
24 asked him was -- did the meeting last 30 minutes. And
25 he denied that. He described the meeting as -- he
26 described the meeting as -- and we'll show you the
27 testimony -- short and sweet. I came in, signed, got my
28 money, and left.

1 Now, Mr. Cotton was then impeached with his
2 earlier deposition testimony from 14 months earlier when
3 he had said in deposition that it was actually a
4 30-minute meeting.

5 Not coincidentally, that's the same length of
6 the meeting that Mr. Geraci testified to, 30 minutes.

7 Even when confronted with that deposition
8 testimony that it was 30 minutes, you heard Mr. Cotton
9 insist that he really recalled it was only half that
10 time.

11 Now, why did Mr. Cotton change his story to
12 minimize the length of that meeting? Because if as
13 Mr. Cotton says the agreement had already been prepared
14 and he just came in, signed, and got the money, that
15 would be consistent with the short and sweet meeting in
16 which he didn't give much attention to the document and
17 thus thought it was merely a receipt.

18 If, on the other hand, as Mr. Geraci testified,
19 the agreement was testified (sic) by the two of them,
20 sitting in his office, while they went through it line
21 by line, even though it's not a long -- Exhibit 38 --
22 it's not a long document, going through it line by line
23 and agreeing to each of the sentences and then having it
24 signed before a notary and he gave him the money, that
25 would be consistent with a meeting that took 30 minutes,
26 not just somebody dropping by short and sweet and
27 signing something.

28 What Mr. Geraci described, as short as the

1 document is, is consistent with that 30-minute meeting,
2 which isn't a particularly long meeting. But it's
3 certainly not 15 minutes or a drop-in.

4 Now, Mr. Cotton has testified he's not
5 questioning the use of the words in the first line of
6 agreement. He did testify when I asked him in the
7 second paragraph, which says Darryl Cotton has agreed to
8 sell, I actually asked him specifically if that
9 statement was a true statement at the time that document
10 was signed, and he said it was.

11 Now, even though he admitted he read the
12 agreement, he testified at that time he did not notice
13 that there was no mention of his 10-percent equity
14 interest in the dispensary. And this is important.
15 When I asked him if he had discussed the 10-percent
16 equity interest at that November 2nd meeting, you recall
17 his answer was, no, that they had discussed it prior to
18 that meeting.

19 I then impeached him again with his deposition
20 testimony in which he testified 14 months earlier that
21 he did discuss the 10-percent equity interest at the
22 November 2nd meeting. That was another falsehood that
23 he was caught in.

24 Now, why would Mr. Cotton change his testimony
25 at trial to say that the 10-percent equity interest was
26 not discussed at the November 2nd meeting? I suggest to
27 you the answer is fairly obvious. How incongruous would
28 it be for Mr. Cotton to say, on the one hand, that they

1 literally discussed that provision while he was in
2 Mr. Cotton's -- Mr. Geraci's office, and then say on the
3 other hand he did not notice that it wasn't included in
4 that document.

5 It was important at trial for Mr. Cotton to
6 attempt to mislead you by falsely stating they had not
7 discussed it at the meeting. Fortunately, he had not
8 thought that through at the time he testified at his
9 deposition, and he got caught at trial for that
10 misstatement.

11 Having now been impeached several times during
12 his testimony, Mr. Cotton had to admit the following
13 when he was questioned. He read the November 2nd
14 written contract. Even though it says that they
15 discussed and agreed with -- he said they discussed and
16 agreed to a 50,000-dollar nonrefundable deposit at the
17 meeting, he never asked Mr. Geraci to put that in the
18 written document.

19 Even though he says and said that they had
20 discussed a 10-percent equity interest at the
21 November 2nd meeting, he never asked Mr. Geraci to
22 correct the document to say that he was having
23 a 10-percent equity interest.

24 Even though he says that they had agreed as of
25 the date of that meeting that he would get minimum
26 guaranteed payments of \$10,000 a month once the
27 dispensary opened, he had to admit he never asked
28 Mr. Geraci at that meeting to correct the document to

1 include that.

2 And although -- and this is very important --
3 you'll recall what he's alleging is that he had an oral
4 agreement with Mr. Geraci that and the terms and
5 conditions of the oral agreement were the terms and
6 conditions that were set forth in those two documents
7 dated September 24th, 2016, the ones he sent to him more
8 than a month previously. And his testimony was we
9 orally agreed to all those things I put into those two
10 prior documents, even though it was never signed. Yet,
11 he doesn't ask at that meeting to add any of those
12 provisions or ask Mr. Geraci to correct the November 2nd
13 document to add any of those provisions.

14 Now, based on Mr. Austin's opening agreement, I
15 expect Mr. Cotton to argue that the November 2nd, 2016
16 agreement was so short, a half page, that it could not
17 reasonably have been intended to be a complete purchase
18 and sale agreement. But that, ladies and gentlemen, is
19 nonsense. There is no requirement that a real estate
20 contract -- purchase agreement must be of a particular
21 length to be binding. Ms. Berry, a real estate agent,
22 testified that in her experience, contracts for purchase
23 of real estate between owners not involving agents had
24 often, in her experience, been short.

25 But more importantly than what Ms. Berry said,
26 none of the jury instructions that the Court has
27 provided would set forth a law you are to follow say any
28 such thing.

1 Instead, what you will see is the jury
2 instruction read to you this morning called Special
3 No. 1 labeled the statute of frauds. And it tells you
4 that a contract for the purchase and sale of real
5 property is invalid unless it is in writing, signed by
6 the parties and contains all the essential terms. And
7 then it tells you what the essential terms of a
8 real estate purchase agreement generally are. It
9 includes the parties, the time, the manner of payment,
10 and a description of the property to be sold so that it
11 could be identified. Only the essential terms must be
12 stated. It says not the particulars.

13 Well, when you look at Exhibit 38 -- well,
14 first, before you look at Exhibit 38, what it tells you
15 is agreements to sell real property have to be in
16 writing.

17 And then when you look at the written contract,
18 it has all of those essential terms. It identifies the
19 parties, Mr. Cotton and Mr. Geraci or his assignee. It
20 lists the price, 800,000. It lists the matter of
21 payment, 10,000-dollar deposit with the balance due upon
22 approval of the CUP dispensary. And it includes a
23 description of the property, 6176 Federal Boulevard.
24 Those are all the essential terms that are required and
25 that are listed in the jury instructions that are
26 required for a written agreement to purchase and sell
27 real property.

28 And equally important, the instruction tells

1 you only the essential terms must be stated, not the
2 particulars. In other words, it wasn't necessary for
3 the parties to specify whether in that agreement the
4 deposit was refundable or not refundable. That's just a
5 particular.

6 It was also not necessary that the contract
7 spell out who was responsible for obtaining the CUP.
8 That too was a detail that's not particular. And in
9 this case, there was no dispute that the parties had
10 discussed those particulars. There was no dispute that
11 it was a nonrefundable deposit. And there's no dispute
12 that Mr. Geraci had the obligation to go ahead and
13 obtain the CUP. But all the essential terms were
14 included in that document.

15 Now, what should jump out from you at this
16 instruction is that the law provides that all
17 real estate purchase agreements must be in writing and
18 signed by the parties. Why do you think that Mr. Cotton
19 is attempting to characterize his agreement with
20 Mr. Geraci as an oral agreement to form a joint venture?
21 I'll tell you why. It's because he's alleged an oral
22 agreement. He couldn't have been more clear. We had an
23 oral agreement. As a result, if you mischaracterize --
24 or if he characterizes it as an oral agreement to sell
25 real property, that alleged agreement is invalid. So he
26 has to concoct this notion of a joint venture.

27 Now, fortunately, ladies and gentlemen, you've
28 gotten the instruction about what a joint venture is.

1 Would you show 3712, which was provided to you
2 by the Court?

3 And it's -- a joint venture exists. We'll have
4 it to you in a minute. A joint venture exists when two
5 or more persons combine their property, skill, or
6 knowledge to carry out a single business undertaking and
7 agree to share the control, the profits, and the losses.

8 Here, the evidence is uncontrovertible that the
9 oral agreement Mr. Cotton alleged is not an agreement to
10 bind their property, skill, or knowledge to carry out a
11 single business undertaking and agree to share the
12 control, profits, and losses, he merely alleges that an
13 the parties orally agreed that a payment for the sale of
14 this property, he would receive \$800,000 plus
15 a 10-percent equity interest, plus guaranteed minimum
16 payments, plus all the other things he says were agreed
17 to that were in the September 24th, 2016 unsigned
18 documents that he gave him a month before the
19 November 2nd agreement was signed.

20 Mr. Cotton didn't testify that this alleged
21 oral agreement involved the combining of his and
22 Mr. Geraci's business efforts to form a single business
23 enterprise. In fact, he testified to exactly the
24 opposite. He categorically denied that that oral
25 agreement he's alleging included -- gave him any
26 involvement in the operation of the dispensary or any
27 interest in operating the dispensary.

28 Would you put up this next.

1 I'm going to show you just a couple pieces of
2 his testimony. I asked him: "So when you talk about
3 this joint venture, you're not talking about any
4 involvement in the operation of the dispensary itself,
5 are you?"

6 "Answer: I wanted nothing to do with retail
7 cannabis.

8 "Question: Right. You wanted nothing to do
9 with the operation of the business?"

10 "Answer: Correct."

11 Go to the next one.

12 And then later in his questioning, just to be
13 sure, I asked him, okay. So he was going to be --
14 "Mr. Geraci, was going to operate the business.
15 Correct?"

16 "Answer: Correct.

17 "Question: And you were going to get a revenue
18 stream based on what that understanding was. Correct?"

19 "Correct" is his answer.

20 And then I asked him: "And you had no interest
21 in operating the business. Correct?"

22 And he answered: "None whatsoever."

23 So his alleged oral agreement contains no
24 obligation, created no obligation on his part of any
25 kind in connection with running the dispensary business.
26 It did not give him any control in the operation of the
27 business. His alleged oral agreement did not require
28 him to share in the dispensary's profits and losses. He

1 admitted he was merely receiving a revenue stream and he
2 would be guaranteed \$10,000 irrespective -- a month,
3 irrespective of whether there were profits and losses.
4 If there were losses, he still got \$10,000. So there is
5 not a combining for a single business. There was no
6 control in any of those documents on September 24th,
7 2016 that he says were orally agreed to. There's no
8 provision in there for any control. And there was no
9 sharing of profits and losses. And he said that himself
10 on the witness stand.

11 What he did tell you was, well, we had
12 discussions about potential co-branding opportunities
13 for his cannabis-based products and potential selling
14 opportunities to sell his cannabis products in a
15 dispensary. But there was no obligation. He admitted
16 if the dispensary did not purchase product from him,
17 they could get the product from another vendor.

18 So what Mr. Cotton has described to you, what
19 he claims is the alleged oral agreement, isn't a joint
20 venture.

21 Now, there's simply no mention -- he tells you
22 he uses the word "joint venture" in his communications
23 with Mr. Geraci, but there's no mention of joint venture
24 in any of those September 24th, 2016 agreements. I
25 challenge you to find those words anywhere in any
26 discussions between them in text or email in which they
27 were discussing the business transaction that they were
28 going to be entering into.

1 Finally -- and this is almost so obvious it's
2 easy to miss -- the instruction tells you that a joint
3 venture requires an agreement. You have to have an
4 agreement. Mr. Cotton's alleged oral agreement, what
5 he's trying to -- he's trying to convince you that he
6 had an oral agreement to form a joint venture. His
7 testimony on at least four occasions was we never had a
8 binding agreement. In fact, the parties intended that
9 no agreement be binding. My -- the alleged oral
10 agreement that I'm telling you, even though Mr. Geraci,
11 he says, agreed to those various terms and conditions in
12 the unsigned September 24th, 2016 documents, he says
13 that it was never intended to be binding unless and
14 until it was put down in writing and signed. And he was
15 unequivocal that he never entered into an agreement with
16 Mr. Cotton -- with Mr. Geraci, not the written contract
17 that we claim he entered into, and not this alleged oral
18 agreement that he now is going to try to convince you he
19 entered into when his testimony completely contradicted
20 that.

21 Let me now return back to the sort of
22 chronology of events.

23 So we have the meeting on November 2nd.
24 Mr. Cotton receives Mr. Geraci's email that attaches a
25 copy of the agreement.

26 Six months after -- but Mr. Cotton doesn't see
27 it until that evening.

28 Now, somewhat, I think preposterously, given

1 the fact of the document itself, which he admitted he
2 read, was called an agreement, Mr. Cotton first became
3 concerned that Mr. Geraci thought the -- the signed
4 document was an agreement when he read that email.
5 Because when Mr. Geraci attached a copy as a PDF, he
6 labeled the PDF Cotton and Geraci contract. So,
7 apparently, that triggered this epiphany by Mr. Cotton.

8 So it's not disputed. Exhibit 41. Would you
9 put it up? Mr. Cotton that night responds by email and
10 tells him thank you -- thank you for the meeting today.

11 And then he goes on and says, hi, Larry. Thank
12 you for the meeting today. Since we executed the
13 purchase agreement in your office for the sale price of
14 the property, I just noticed the 10-percent equity
15 position in the dispensary was not language added into
16 the document. I just wanted to make sure that we're not
17 missing any language in the agreement, as it is a
18 factored element in my decision to sell the property.

19 You'll note in this email that Mr. Cotton
20 refers to the November 2nd document as a purchase
21 agreement, which is what it states in the document. And
22 he refers to the sale price of the property in the email
23 and his decision to sell the property in his email.
24 Thus, twice characterizing the transaction as one for
25 the sale of property.

26 Now, it's also undisputed -- and this is
27 Exhibit 43, if you could put it up -- that Mr. Geraci
28 responded at 9:11 that night by email, Exhibit 43, and

1 wrote, no, no problem.

2 Now, Mr. Cotton would have you believe, at
3 least now at trial, that Mr. Geraci intended and that
4 Mr. Cotton understood at the time that that no, no
5 problem response was a confirmation by Mr. Geraci that
6 he agreed to provide Mr. Cotton with a 10-percent equity
7 interest in the dispensary. Well, the evidence doesn't
8 support that inference. First, Mr. Geraci testified
9 that he didn't see Mr. Cotton's email until around
10 9:00 p.m. and that he only read the first sentence,
11 thank you for the meeting. And so when he responded no,
12 no problem, he testified he was responding to only that
13 first sentence.

14 Mr. Geraci is not claiming he sent the email by
15 mistake or action, only that he responded to the first
16 sentence, which is the only part of the email that he
17 read.

18 On cross-examination by Mr. Austin, Mr. Geraci
19 said that when an email is received on his phone, it
20 displays only the first two lines, and he actually
21 offered to show his phone to Mr. Austin, who declined.

22 Third, Mr. Geraci himself -- Mr. Geraci
23 testified he read the entire email that morning and had
24 a telephone call the next day, November 3rd, with
25 Mr. Cotton and told him that he never agreed to
26 a 10-percent equity interest, that was not part of their
27 agreement, and that Mr. Cotton responded lightheartedly
28 well, you can't blame a guy for trying. And they moved

1 on.

2 Fourth, the evidence shows that at the time,
3 Mr. Cotton didn't understand, even though he says he
4 does now, at the time, he didn't understand that that
5 was a confirmation of an agreement to pay him
6 a 10-percent equity interest. In fact, quite the
7 opposite. I showed you Exhibit 69, which is an email
8 from March 16th, 2016, and I confronted him with it
9 because he went through his recitation of what was
10 happening in their communications back and forth.

11 And if you go to the second email -- I realize
12 I'm going fast. I apologize -- he literally says in the
13 last sentence from the second paragraph -- he actually
14 says in that response, "I asked you to please respond
15 and confirm via email that a condition of the sale was
16 my 10-percent equity stake. You did not respond and
17 confirm the 10 percent as I requested," because he
18 didn't feel at the time that response was any
19 confirmation. He didn't affirmatively say he was going
20 to get the 10-percent equity interest. And he testified
21 on the stand when I asked him about it that he didn't
22 feel he had gotten a confirmation of the 10-percent
23 equity interest. He -- he -- there was going to be no
24 confirmation until it was put down in an agreement and
25 signed by the parties.

26 Now, Mr. Cotton testified, I think I've
27 mentioned, that it was merely a receipt and nothing was
28 to be binding until there was a signed agreement between

1 them containing all the terms and conditions in the
2 September 24th, 2016 documents. There was -- and that
3 never happened. And his view is there's never been an
4 agreement, not in the November 2nd agreement, and not in
5 his alleged oral agreement.

6 Now, what happened after that November 3rd
7 telephone call in which Mr. Geraci told Mr. Cotton he
8 would not agree to the 10-percent equity interest? The
9 answer is nothing much more for the three months. After
10 the November 3rd telephone call described by Mr. Geraci,
11 more than three months passed without any texts or
12 emails between them regarding the terms and conditions
13 of their purchase and sale agreement. And this is very
14 telling. Yes, there were no texts and emails exchanged
15 during that period. And you have Exhibit 5, which are
16 all of the texts. And you've seen a number of emails.
17 But they all had to do with updates regarding zoning or
18 the status of the CUP application. They were unrelated
19 matters. None of had to do with the terms and
20 conditions of any agreement. And that's not surprising
21 because they had a written agreement back on
22 November 2nd.

23 And if -- and, in fact -- this is a quick
24 point -- Mr. Cotton told you he didn't even know a CUP
25 application had been filed until I think he said -- it
26 was certainly after March of 2017. And we showed you --
27 and I'm not going to put it up at this time. It's
28 short.

1 But if you look at the text messages,
2 Exhibit 5, on page 19, we confronted him at trial with a
3 text he sent on November 14th, 2016, in which he asked
4 Mr. Geraci did they accept the CUP application? This is
5 the CUP application he claimed he knew nothing about.
6 His testimony is not believable. How can something be
7 accepted until it has been submitted. He knew it had
8 been submitted.

9 Now, the zoning issues I'm going to cover very
10 quickly, but they're important because of when the
11 parties knew the zoning would resolve. You heard
12 Mr. Bartell testify about he got involved in a general
13 planning code amendment update. He was able to get an
14 errata sheet submitted to the City that got this
15 particular zoning change they needed for the dispensary
16 at this location to get on the City Council agenda. He
17 was successful at doing that. And then the zoning
18 ordinance was issued on January 31st, 2017. Although,
19 it wasn't passed by the City Council until
20 February 22nd, and it wasn't effective until March 12th,
21 it was a done deal as of January 31st because it had
22 already been prepared and issued as a proposed change to
23 the Municipal Code.

24 You've got a copy of the zoning ordinance. If
25 you go to the last page, it gives you those three dates,
26 when it was issued, when it was passed, and when it was
27 effective.

28 And Ms. Austin testified and Mr. Bartell

1 testified he knew that it was highly likely it was going
2 to be passed in that form once it got put in the
3 Municipal Code of the proposed amendment. Ms. Austin
4 told that you that whole zoning change had to go through
5 an entire code amendment process and planning commission
6 hearing before it ever got put and issued on the -- as
7 it changed -- the potential change to the Municipal
8 Code.

9 So essentially it was a done deal. And
10 Mr. Bartell was apprising Mr. Geraci of the status of
11 the zoning. And you'll see in the text messages that
12 Mr. Geraci was apprising Mr. Cotton of the zoning
13 changes.

14 So then on February 7th, 2017, by which date it
15 was known that the zoning problem had been resolved,
16 Mr. Geraci receives what he recalls the disturbing phone
17 call in which Mr. Cotton demanded -- this is almost more
18 than three months after November 2nd, 2016, after the
19 November 3rd telephone call, he demanded minimum
20 guaranteed payments.

21 He told Mr. Geraci he talked to other people
22 who could give him \$10,000 a month. Mr. Geraci told him
23 he couldn't afford it and explained why and it occurred
24 to Mr. Geraci he told you that he was being extorted
25 because right after -- because it occurred right after
26 the zoning was a done deal. Now, all of a sudden, the
27 property is potentially valuable because you can't get a
28 CUP without the zoning being changed. And now he's

1 getting a demand to do something that was not in the
2 signed agreement.

3 But we don't have to rely on Mr. Geraci's
4 discussion -- or testimony about that. He also
5 testified he told this to Gina Austin because he decided
6 that he couldn't afford to lose his investment. So even
7 though he had an existing agreement, he needed to
8 attempt to renegotiate a new deal that would save the
9 investment.

10 Ms. Austin testified that in February of 2017
11 she got a call from Mr. Geraci in which he explained
12 what was happening. He told her, and he used the word
13 "extort," that he thought Mr. Cotton was attempting to
14 extort him. And he asked her to draft up some
15 agreements that he could attempt to renegotiate the
16 deal. And she did. She told you she put in those
17 drafts agreements what he asked her to. Didn't include
18 the 10-percent equity interest and didn't include
19 guaranteed monthly payments because he had no intention
20 of changing the existing agreement to agree to that.

21 Then the process moves on. Provides drafts
22 of -- Gina Austin's firm creates drafts of these
23 potential new agreements. Exhibit 59 is the
24 February 27th, 2017, the first draft purchase agreement.

25 A few days later on March 2nd, it is Exhibit
26 62, they set a side agreement. These are all documents
27 they signed. But -- and thereafter, they had calls
28 about it, and they exchanged texts and emails.

1 But the long and short of it is they never were
2 able to come to an agreement, either a new agreement or
3 any renegotiation of the existing agreement. In fact,
4 Mr. Cotton continued to insist on receiving a 10-percent
5 equity interest and these guaranteed monthly payments.
6 And then if you'll look at Exhibit 69, and you'll
7 remember his testimony. He then on March 16th, 2017
8 actually asked for some additional things. He asked for
9 minority consent rights and those kind of things, but
10 things that he even admitted had never been discussed.
11 So the renegotiation attempts went nowhere, and they
12 failed.

13 Mr. Geraci wasn't willing to agree to change
14 the agreement to renegotiate a new one on those terms.
15 So they never reached an agreement.

16 And on March 19th, Mr. Geraci sent him an email
17 to -- to Mr. Cotton, pointing out to him that he kept
18 changing his mind and that he was done. Essentially, he
19 was going to go forward on the existing agreement. And
20 that's what happened. And on March 21st, 2017, the
21 lawsuit was filed.

22 On March 21st, Mr. Cotton terminated the
23 agreement by an email. He contacted -- you heard he
24 contacted Firouzeh Tirandazi at the City to try to get
25 the CUP application withdrawn. You saw emails that he
26 sent to her shortly thereafter in which he said he never
27 finalized the deal with Mr. Geraci and he has no right
28 to have access to the property and they should deny the

1 CUP application.

2 And he entered into another contract to sell
3 the property to somebody else on March 21st, Mr. Richard
4 John Martin.

5 All these things were things he started to do
6 to interfere with the CUP process once that lawsuit was
7 filed and once they were unable to come to an agreement
8 to renegotiate the existing agreement.

9 And I'm sure you'll remember the email that he
10 responded to from me when I explained -- when he was
11 asked to provide access to the property because
12 Mr. Geraci intended to move forward to get the CUP
13 application approved. And he basically said in that
14 email -- and it's Exhibit 85 on March 29. He says you
15 come on my property, I'm going to call the police and
16 have you arrested. And he admitted that he meant it
17 when he said it. And he admitted on the witness stand
18 that after March 21st, 2017, he was refusing access to
19 his property for Mr. Geraci for purposes of a CUP
20 application process.

21 And last but not least, of course, the soils
22 testing. Mr. Cotton has suggested, I think, why wasn't
23 the soils testing done earlier, was known about earlier.
24 But the reality is that CUP application was deemed
25 complete on March 12th, 2017 when the zoning
26 application -- or the zoning amendment took effect.
27 There's an e-mail from Mr. Schweitzer in there to that
28 effect. And I believe actually Firouzeh Tirandazi

1 testified to that as well. And up until that point in
2 time, the City wouldn't allow the application to go
3 through the completeness review and begin to go into the
4 review process.

5 So on March 12th, that was the first time that
6 that changed because the zoning amendment had been
7 approved. In -- eight days later, the lawsuit was
8 filed, and Mr. Cotton is refusing access to his
9 property.

10 So you heard Mr. Schweitzer and Mr. Bartell --
11 I think Mr. Schweitzer primarily testify about a meeting
12 with the City and attempting to get them to accept soils
13 reports on nearby properties in exchange because -- to
14 satisfy requirements because they didn't have access.
15 The City said they would consider it. Then there was a
16 meeting. Then ultimately, the City said they weren't
17 going to do it and they needed site-specific testing.

18 Then you heard about the two court orders that
19 had to be obtained in order to literally force access to
20 the property. You were provided with those exhibits,
21 118 and 119. But essentially, Mr. Geraci had to go to
22 Court to get access to the property so his geotechnical
23 engineers could go on the property and complete the
24 soils testing so then they would continue through with
25 the CUP application.

26 Now -- and I realize I'm moving quickly. But
27 you heard a lot of evidence about the CUP process and
28 all the work that went into it. It's kind of dull and

1 boring, lots of maps. But the whole purpose of that was
2 to show you the way that Mr. Geraci and his team
3 diligently pursued that CUP application from the get-go
4 and even after the lawsuit was filed. In fact, the
5 evidence is overwhelming that they did so.
6 Mr. Schweitzer testified his staff spent over 681 hours
7 on that CUP application. They spent a lot of money,
8 which we'll come to. And they did everything they could
9 to get that CUP application passed. Mr. Schweitzer has
10 testified -- in fact, not only did they include efforts
11 to pursue their own CUP application in December 2018,
12 they actually appeared in front of the planning
13 commission to appeal a decision to grant a competing CUP
14 application to a neighboring property.

15 Now, we all heard about this competing CUP
16 application. It beat the application for 6176 to the
17 finish line. You've heard testimony uncontradicted. I
18 shouldn't say uncontradicted.

19 Mr. Cotton, surprisingly, when he testified,
20 said there was no delay, even though we showed you court
21 orders and delay and refusal to allow access to the
22 property. But putting aside this incredible statement
23 by Mr. Cotton that there was no delay, the testimony is
24 uncontroverted. Mr. Bartell said he thought the delay
25 was up to six months.

26 Mr. Bartell stated throughout the process, we
27 were tracking ahead of them, the 6220 application, the
28 competing process. They passed up 6176 during the

1 geotechnical study process. That was his testimony.
2 Abhay Schweitzer testified the chances would have been
3 significantly better. I think it would have been very
4 likely we would have gotten that approved first. That's
5 uncontroverted testimony.

6 Now, Mr. Geraci also has a claim for breach of
7 the implied covenant for good faith and fair dealing.
8 And CACI 325 is the jury instruction that tells you the
9 elements of Mr. Geraci's second claim. What's important
10 and what you'll see on the verdict form is that really
11 the same elements you've got to prove for the first
12 number of them are the same as for the breach of
13 contract claim. Really, the question that's different
14 is it asks whether Mr. Geraci has to prove that
15 Mr. Cotton interfered -- unfairly interfered with the
16 CUP application process -- or unfairly interfered with
17 his right to obtain the benefits of the contract.

18 But what I'm going to argue to you is it's the
19 same evidence. Mr. Geraci -- Mr. Cotton's attempt to
20 interfere with the CUP application process and delay and
21 interfere with the soils testing and cause them to lose
22 out to the 6220 application, both excuse, we'll argue,
23 Mr. Geraci's performance of the contract condition in
24 the breach of contract claim, and also constitutes
25 unfair interference by Mr. Cotton in depriving the
26 benefits of the contract.

27 Now, I'll move quickly on his damages. Then
28 I'm going to show you the verdict forms.

1 You've been instructed that Mr. Cotton --
2 Mr. Geraci if he proves his claim can recover what we
3 call reliance damages. He can recover them on both the
4 breach of contract and breach of implied covenant
5 claims. There's a jury instruction, 361, on reliance
6 damages. Importantly, the evidence is uncontradicted
7 that a reliance on that agreement, Mr. Geraci, through
8 his team, diligently pursued that CUP application and
9 spent lots of money invested in trying to get that CUP
10 application approved.

11 You saw Exhibit 137, which is a -- would you
12 put that up -- which is the chart, if you will, the
13 calculation of the expenses that were paid in pursuing
14 this CUP application. And that's uncontradicted. In
15 fact, I don't believe that Mr. Cotton's attorney is even
16 going to make an argument that those weren't expended.
17 There's been no witnesses that testified otherwise.
18 Mr. Geraci testified to those expenditures and that he
19 review the supporting documentation.

20 And so his damage, quite frankly, in reliance
21 is the \$260,109.58 that he spent trying to pursue this
22 CUP. That's the combination of what he pays and what he
23 still owes Mr. Bartell that are shown on this document.

24 I've got about six minutes. Your Honor, I'm
25 going to reserve on the tort claims.

26 THE COURT: It's up to you.

27 MR. WEINSTEIN: I want to show you Special
28 Verdict Form No. 1 and part of Special Verdict Form

1 No. 2. So let's start with 1. We're going to go
2 through the questions. I'm going to essentially suggest
3 to you how these should be answered based on the
4 evidence presented.

5 The first question is: Did Geraci and Cotton
6 enter into the November 2nd, 2016 contract?

7 Go to the next page. I conveniently filled
8 this in for you.

9 The answer is, yes, I believe we've proven
10 that.

11 The next question you will be asked to answer
12 if you answer yes on that -- go to the next question.

13 Did Mr. Geraci do all of the things that the
14 contract required him to do?

15 The answer is no. He didn't get the CUP. That
16 was clearly a condition of the contract. However,
17 that's not the end of the story.

18 If your answer to Question No. 2 is no, you go
19 to Question 3.

20 Question 3 says: Was plaintiff excused from
21 having to do all or substantially all of the significant
22 things that the contract required him to do?

23 The only significant thing that the contract
24 required him to do was obtain the CUP, and he was
25 excused from doing that because of all the interference
26 from Mr. Cotton in trying to obtain the CUP application.
27 And so you should answer that question yes.

28 Go to the next question. It talks about the

1 conditions that were required for performance. They
2 didn't occur because the CUP wasn't obtained. It's a
3 literal condition.

4 But that's not the end of it. Because if you
5 answer no, you go to Question 5.

6 It asks you if that was excused. Again, it was
7 excused by virtue of Mr. Cotton's interference with the
8 CUP application process. So answer yes to that.

9 Did defendant fail to do something that the
10 contract required him to do?

11 That's Mr. Cotton. Yes. He terminated the
12 contract. He anticipatorily breached it. You can see
13 the jury instruction on that. He signed a contract --
14 we're talking about the November 2nd agreement. He
15 signed a contract to sell to somebody else, and the
16 November 2nd agreement specifically says he can't enter
17 into any other contracts.

18 He also did something the contract prohibited
19 him from doing, and that is it prohibited him from his
20 implied good faith obligation to interfere with the CUP
21 application. So I think you should answer yes to both
22 of those.

23 Then you move on to the breach of the implied
24 covenant claim. All right. So we need to go a little
25 before that. And this is not as tricky as it seems
26 because the questions on the breach of contract claim
27 are the same as the questions you would answer on the
28 breach of the implied covenant claim. It merely says at

1 the very beginning, right there -- go ahead -- it really
2 says if you answered yes to Question 4 or Question 5 on
3 the breach of contract claim, which takes you through
4 all those basic questions, then you go and answer the
5 claims that deal with the breach of the implied covenant
6 claim. So that's Question 8.

7 Then it asks you did he un- -- did he take
8 action that unfairly interfered with Mr. Geraci
9 receiving the benefits of the contract?

10 And the answer is yes for all the reasons that
11 I've told you, in terms of his interference with the CUP
12 application process, in particular, the soils testing,
13 that caused him to lose out to the competing CUP
14 application.

15 Then go to 9.

16 Yes, he was harmed. The answer is, yes, he was
17 harmed. How was he harmed? He spent all that money on
18 reliance and didn't get any benefit from them. So yes
19 to that question.

20 And then the last question is: What are the
21 damages?

22 They're the same for both claims. We'd ask
23 that you write in the amount of his actual out-of-pocket
24 expenses, the \$260,109.58.

25 That's the entirety of Special Verdict Form
26 No. 1. I'm going to go to just the first part of
27 Special Verdict Form No. 2 and then save the remainder
28 for my rebuttal.

1 We just talked about his first claim, the
2 breach of contract claim. Did cross complainant -- this
3 is Mr. Cotton's claims. Did cross complainant Darryl
4 Cotton and cross-defendant Larry Geraci enter into an
5 oral contract to form a joint venture?

6 The answer is no for all the reasons I've
7 argued with you this morning. First of all, his alleged
8 agreement -- remember, we're talking about his alleged
9 agreement that they orally agreed to what was in those
10 September 24th, 2016 documents, but they were not going
11 to have an agreement unless and until that was written
12 down into another agreement that was signed by the
13 parties. So there was no agreement, number one. That's
14 one reason to answer no.

15 The other reason is, as I described, nothing
16 described in those documents, nothing in the testimony
17 is a joint venture. They tried to characterize it as
18 that to try to avoid the invalidity of the contract
19 under the statute of frauds because it really is a
20 contract to enter into the purchase of sale of property.
21 But it's not a joint venture to your -- by the
22 definition of joint venture that you've been asked to
23 apply to this case.

24 The answer to that question is no. If you
25 answer the question no, as I believe you should, that
26 ends the breach of contract claim, and you should be
27 going on to his other claim, which I will discuss with
28 you when I return for my rebuttal argument. Thank you.

1 THE COURT: All right. Folks, we're going to
2 take our first morning break. We're going to be in
3 recess for about 15 minutes. And when you return,
4 you'll hear defense counsel's opening and closing
5 argument. We'll be in recess now for about 15 minutes.

6 (Discussion off the record.)

7 THE COURT: All right. The jury has left the
8 courtroom. Counsel, one hour precisely. You've still
9 got 15 minutes left in your rebuttal. We'll be in
10 recess now for about 15 minutes.

11 MR. WEINSTEIN: Sorry, Maggie.

12 (Recess from 10:33 a.m. to 10:48 a.m.)

13 THE COURT: All right. We've got all our
14 jurors. Now it's time for defense counsel's closing
15 argument.

16 Counsel, whenever you're ready, please begin
17 your argument.

18 (Closing argument on behalf of the
19 defendant/cross-complainant)

20 MR. AUSTIN: Good morning, ladies and gentlemen
21 of the jury. Again, thank you for being here and thanks
22 for being my first jury. You guys have been very
23 pleasant and patient, and we all appreciate that.

24 I want to jump to the chase here. This case
25 only comes down to one or two issues. Basically, if you
26 look at the actual intentions of each party, I told you
27 during opening that this was a case about greed. And it
28 is. A CUP application for marijuana dispensary is worth

1 potentially millions of dollars. And you've heard all
2 the testimony from all the players involved on
3 Mr. Geraci's team trying to acquire one of the CUPs.
4 You see how much actually goes into it. And for some
5 reason, it took them almost two years to get close to
6 the finish line, and in this competing CUP application,
7 6220 just jumps right in. That gets completed in less
8 than six months.

9 You've heard testimony from Tirandazi, from
10 Schweitzer, from Bartell that it didn't make sense that
11 that got pushed through so fast or how they were able to
12 jump ahead, which essentially eviscerated the condition
13 precedent of acquiring the CUP for Mr. Geraci's alleged
14 version of the contract.

15 Both sides, to be clear, did want a CUP
16 application to be approved of on that property.
17 Mr. Geraci led Mr. Cotton to believe that due to his
18 superior qualifications, his knowledge of tax law, of
19 real estate, the team he had with lobbyists and
20 attorneys, he assured them that together, they could
21 form somewhat of a team, if you will, almost a
22 partnership. Essentially, you'll go through the joint
23 venture agreement language again, and you'll see that
24 Mr. Geraci led Mr. Cotton to believe he would have a
25 piece of this CUP, he would get money for the
26 property, 10-percent equity stake, 10-percent -- or a
27 minimum of \$10,000 a month for presumably a period of a
28 five-year CUP. He thought he was going to be able to

1 work with Mr. Geraci in some of his medical cannabis as
2 he testified.

3 He did testify that he didn't want to deal with
4 any operations for a retail marijuana facility. He
5 didn't want to manage it. Mr. Geraci had someone he
6 already proposed was going to be his manager, someone
7 named Matt who said that Mr. Cotton maybe for the first
8 six months of the business should only get
9 paid 10,000 -- or \$5,000 a month, not \$10,000 a month.

10 Mr. Cotton knew that Mr. Geraci had already
11 been involved in three other principals, and he
12 purported to be an expert on having these operations and
13 businesses managed and successful. Mr. Cotton had no
14 reason not to rely on these assertions. He had no
15 reason to believe that Mr. Geraci would not give him the
16 full 50,000-dollar retainer or down deposit.

17 These are all things that Mr. Cotton
18 anticipated would be going forward in due time.
19 Mr. Geraci testified that he thought from July, on, they
20 had developed a special friendship. And then when
21 Mr. Cotton was insisting on new terms, it just broke his
22 heart. And you saw the crocodile tears up there. They
23 weren't friends. Friends would have been able to come
24 together with actual written agreements specifying their
25 terms.

26 Mr. Cotton submitted Exhibits 10 and 11 as just
27 baseline recommendations on what the --

28 THE REPORTER: I'm sorry, Counsel. May I hear

1 again. Baseline recommendations on what the --

2 MR. AUSTIN: On what their final agreement
3 should be.

4 On November 2nd, Mr. Cotton did come into
5 Mr. Geraci's office, and there's conflicting evidence of
6 how long he says he was there. It's also unclear how
7 much time of that 30 minutes that he was there. Was he
8 in the office? Was he talking to someone else in the
9 office? These are just minor details. And opposing
10 counsel has to bring up every tiny little inconsistency
11 he can possibly point out because this is all a smoke
12 screen.

13 The reality is you look at the intentions of
14 the parties. Was there mutual consent between the
15 parties? Was there a meeting of the minds? Did
16 Mr. Cotton have a belief of what the contract was going
17 to be that coincided with Mr. Geraci's belief?

18 And in Jury Instruction CACI 302, you'll notice
19 it says you're not to take into consideration the hidden
20 intentions of a party. And, here, Mr. Geraci did have
21 hidden intentions. He didn't want to outlay anymore
22 money or to have to meet the responsibilities of
23 Mr. Cotton in case the CUP application were not
24 approved. His intention was to not give an extra
25 \$40,000 in a deposit. His intention was to see how this
26 would go along and if he could just string Darryl along
27 and not have to make any real commitments.

28 You'll see everything in writing. If you look

1 through all of Exhibit 5, 25 pages of text messages, and
2 you can see from July to March -- so we have July,
3 August, September, October, November, December, January,
4 February, March, Mr. Cotton's conversation is consistent
5 the entire time. If you look through all of their
6 emails, Exhibit 69, you can see where Cotton lays out
7 everything that was expected from his part. He never
8 contradicted himself. Mr. Geraci says these are all
9 extras that he had wanted.

10 But in none of the conversations does
11 Mr. Geraci deny anything. He does not mention the
12 November 2nd agreement until two days before this
13 lawsuit was filed.

14 Read between the lines, folks. He went back
15 through all their communications, and he found the one
16 thing that looked as if it were close enough to a
17 contract that he could try and force Mr. Cotton's hand
18 and force him to give up his right to the property.
19 Going through all the emails, looking at that
20 November 2nd document, there's a few essential terms.
21 But you also heard Mr. Geraci testify as they were in
22 that office discussing that document, he was typing it
23 up and he -- and Mr. Geraci's counsel said, oh, there's
24 a few details that were just a particular here or there
25 that Mr. Geraci didn't talk about. But if you're to
26 believe that this November 2nd document is intended to
27 be the final expression of what their agreement was, it
28 doesn't make sense for him to leave out certain details

1 of, like, who was responsible for acquiring the CUP,
2 timing of payments, and -- and other matters like that,
3 and the deposit.

4 If they were taking the time to actually draft
5 out a contract, keep in mind, Mr. Geraci at the time was
6 a real estate agent, his secretary, Rebecca Berry, a
7 real estate broker. They could have come up with a much
8 more inclusive, extensive, and well thought out contract
9 than that three-sentence document.

10 You have to look at the intention of the
11 parties. You should look at their particular skill
12 sets, and you should understand why it was reasonable
13 for Mr. Cotton to rely on signing a receipt for
14 a 10,000-dollar cash deposit. I don't know if any of
15 you would ever anticipate receiving \$10,000 in cash and
16 not signing off on it. And, yes, it had a couple of
17 terms.

18 But keep in mind, within hours, Mr. Cotton
19 receives the email of that document, and he immediately
20 shoots off a response. And it's rather lengthy. And
21 they only want you to focus in on the it was a pleasure
22 meeting you today section, not everything else where he
23 says, like, I want to ensure that any other terms,
24 especially the 10-percent equity stake, is included in
25 any final agreement between us.

26 Mr. Cotton had no idea that that receipt would
27 ever take him into the courthouse and he would have to
28 defend against that, pretending that -- having

1 Mr. Geraci pretending that that was a full expression of
2 their agreement.

3 Mr. Cotton gave Mr. Geraci ample opportunity
4 over the course of several months to give him a final
5 written contract. Mr. Geraci, in those text messages
6 and in Exhibit 5, tells Mr. Cotton go see my attorney,
7 Gina Austin. She will be at this event. She will be
8 wearing a red jacket.

9 You heard testimony from a litigation investor
10 named Joe Hurtado, who at Darryl's suggestion, went in
11 Darryl's place to that --

12 THE COURT: Counsel, no first names, please.

13 MR. AUSTIN: Oh. I apologize.

14 So Mr. Hurtado goes in Mr. Cotton's stead and
15 has a conversation with this attorney, and she says
16 contracts are forthcoming.

17 The very next day, on March 7th, Mr. Cotton
18 does receive draft contracts from the Austin Law Group.
19 So for several months, Mr. Geraci never says anything
20 disputing what Mr. Cotton is asking for.

21 And, in fact, when you look through all their
22 text messages, there's consistently wording about this
23 will be good for us, and we can do this together. This
24 whole time, he's stringing Mr. Cotton along, trying to
25 prevent him from entering into a contract with a more
26 serious buyer.

27 And Mr. Cotton had no reason to believe that a
28 better opportunity would come along because of the

1 hidden intentions of Mr. Geraci to have him rely on his
2 expertise, his experience, his team.

3 Mr. Cotton had no reason not to rely on
4 Mr. Geraci.

5 But what we're really here for today is to
6 determine whether that three-sentence agreement on
7 November 2nd with Mr. Cotton and Mr. Geraci is an actual
8 contract to sell his property or whether they came to a
9 discussion that ended up in the oral agreement to be in
10 a joint venture together.

11 It's clear Mr. Cotton did not intend for that
12 three-sentence document to be a contract in and of
13 itself. And going through every email response back and
14 forth, if you look at Exhibits 40, 41, and 42
15 specifically, you can see that Mr. Geraci says, no, no
16 problem at all to Mr. Cotton's request that
17 the 10-percent equity stake be included in any final
18 document. Their intention is clear from their own
19 words. Every denial that Mr. Geraci has said refers to
20 an oral statement. These things need to be in writing
21 for a reason. It's not fair for one party to say, oh, I
22 told him over the phone that that wasn't going to be a
23 term or I told him that's not true. This was over three
24 years -- this started over three years ago, July 2016.

25 Yes, my client may have made some minor
26 inconsistent statements about timing or this or that or
27 his understanding of things, but overall, all the
28 evidence is in writing. We have all the text messages

1 in Exhibit 5. We have his memorandum of understanding,
2 services agreement, Exhibits 10 and 11. We have the
3 emails 40, 41, 42 and 69 where he more fully lays out
4 all of their expectations. And it is not until two days
5 before filing the lawsuit on March 19th that Mr. Geraci
6 and his counsel are able to concoct this version of
7 events that November 2nd is a final agreement.

8 You've heard a lot of testimony on the CUP on
9 6176 getting denied, and they try to shift all blame on
10 that to Mr. Cotton. And the reason they're trying to do
11 that is because they know this is a sham cause of action
12 saying this is a breach of contract. They had no
13 expectation of having to take this all the way to trial.
14 They thought Mr. Cotton was going to give in a long time
15 ago and they had no expectation of that November 2nd
16 document ever being held up in front of a court of law.
17 So the only way they could limit their liability to
18 Mr. Cotton would be for the CUP not to go through.

19 Mr. Cotton wanted that CUP to go through on his
20 property. And you heard him testify that he even
21 offered to split the cost of the application. He was
22 still willing to try to work something out.

23 But, now, look at who is really the loser here.
24 Mr. Cotton can never have a CUP on his property. He's
25 losing out at a very minimum \$10,000 a month for a
26 period of time, 10 years, under the deal that he had
27 worked out with Mr. Geraci.

28 MR. WEINSTEIN: Objection. your Honor.

1 THE COURT: Sustained, Counsel. Limit the time
2 frame.

3 MR. AUSTIN: Presumably from the time the CUP
4 application could have been passed and the business
5 started, Mr. Cotton would start collecting a minimum
6 of \$10,000 a month. That was his assumption.

7 So if we could cut straight to it we've got to
8 determine was there a meeting of the minds, who was
9 being the reasonable party here, and was Mr. Geraci
10 trying to pull something over on my client?

11 Almost all discussion on the CUP was just more
12 of a smoke screen to distract you. Yes, of course,
13 Mr. Geraci wanted a CUP in his name. That's why he had
14 all the agents and all the team assembled. So,
15 hopefully, he would have the CUP under his name. But
16 the reality is he just didn't want Mr. Cotton to have
17 his fair share of what they had agreed upon in the very
18 beginning and what he had strung him along and led him
19 to believe.

20 Mr. Cotton validly terminated their agreement.
21 He realized he could sell this to someone who was
22 actually going to treat him fairly, and that's what he
23 wanted to do, as is his right.

24 So there's no need for me to go through all the
25 verdict forms or the jury instructions and suggest the
26 answers for you. I think you've heard enough testimony,
27 and it's up to you to come up with, you know, your
28 decision and who you feel is more credible and what is

1 more likely.

2 Mr. Geraci might be a sophisticated party, but
3 Mr. Cotton is an intelligent person. And he's not going
4 to -- he's not going to just give away his property
5 without putting up a fight for the terms that they had
6 agreed upon. He's not going to sign away his property
7 on a three-sentence document without any of the
8 essential terms entered. That's why he sent that email
9 asking that any final version contain the 10-percent
10 equity stake.

11 He wanted to have a back-and-forth exchange of
12 information. Look at September 24th, that email where
13 he gives Mr. Geraci those shared documents, he
14 specifically lays out, like, I would like for you to
15 make edits and suggestions. He wanted a back-and-forth
16 exchange.

17 On November 2nd, assurances were made to
18 Mr. Cotton by Mr. Geraci and he simply wanted those
19 assurances to be alleviated. He wanted those terms to
20 be in writing and he wanted to move forward with this as
21 quick as possible. And as soon as Mr. Geraci filed this
22 lawsuit, everything fell apart.

23 Keep in mind, Mr. Geraci had this lawsuit at
24 the ready, and the second Mr. Cotton tried to sell his
25 property is when he was sued, preventing him from the
26 value of his own property.

27 Thank you.

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

1 All right. Plaintiff's rebuttal closing
2 argument?

3 MR. WEINSTEIN: Yes. Thank you, your Honor.
4 (Rebuttal closing argument on behalf of the
5 plaintiff/cross-defendant)

6 MR. WEINSTEIN: So, ladies and gentlemen, in
7 listening to the closing, I'm really not sure whether
8 Mr. Cotton is contending he had an agreement or he
9 didn't. September 24th, 2016 agreements that were
10 emailed on September 26th -- those were Exhibits 10 and
11 11 -- in closing, Counsel called those -- and the words
12 I think he used were baseline recommendations on what
13 their final agreement should be.

14 So the argument is, on that date, Mr. Cotton
15 sent baseline recommendation on what their agreement
16 should be to Mr. Geraci. And then supposedly on
17 November 2nd, 2016, in the 30-second meeting, which
18 should be characterized initially at trial by Mr. Cotton
19 as in and out -- or short and sweet, rather, I came in,
20 signed the agreement, got the money, and left, or words
21 to that effect, he was supposedly, I guess based on this
22 argument I just heard, given assurances that -- oral
23 assurances that Mr. Geraci had and was agreeing to all
24 of the terms and conditions in this unsigned written
25 agreement from September 24th.

26 That makes no sense and the argument is
27 contradictory. What I think I really heard -- and what
28 I heard from the testimony, which is what -- and I

1 believe what you heard the testimony was that
2 Mr. Cotton's position is they have never had a binding
3 agreement of any kind, not the written agreement on
4 November 2nd and not this oral agreement for a joint
5 venture.

6 It's a bit baffling the -- if you look at
7 counsel argued that there's no evidence -- well, there
8 is -- that things should be in writing. If you're going
9 to agree to something, things should be in writing.
10 There's no evidence of Mr. Cotton's oral agreement to
11 any of these terms and conditions to the unsigned
12 documents, other than Mr. Cotton's testimony to that.
13 And he's arguing that not only did Mr. Geraci give him
14 assurances on November 2nd that he was agreeing to all
15 of these other things, that's the same day that he
16 signed a written agreement that had specific terms and
17 conditions under which the law establishes are these
18 necessary essential terms for an agreement to sell the
19 property.

20 So it makes no sense that Mr. Cotton comes in
21 and says to you I came in, it was short and sweet, I
22 signed the document. And, by the way, Mr. Geraci also
23 gave me written -- gave me oral assurances that I was
24 going to -- that he was going to agree to all these
25 terms and conditions in these previously submitted
26 baseline recommendations. And, by the way, we signed a
27 written agreement that says something else the same day.

28 The only signed written document in evidence,

1 as the parties contend, is the signed November 2nd, 2016
2 written agreement. So if we're talking about hidden
3 intentions, the intentions in a written agreement are
4 not hidden. It spells out clearly what the terms were.
5 And if you look at CACI 302, which counsel referred you
6 to, it talks about the agreement has to be clear.
7 There's nothing unclear about the November 2nd written
8 agreement. And it has to be agreed to. And the
9 signature on it is an agreement to it.

10 And it doesn't -- it does not make sense that
11 the parties signed a document indicating all the
12 essential terms and conditions of a real estate purchase
13 agreement in a 30-minute meeting in which my client
14 testified they went through everything or in a very
15 short and sweet meeting, which Mr. Cotton tried to
16 characterize it as. And, yet, he went through and tried
17 to assure him that he was agreeing to not what was in
18 the written agreement, but what was in this oral
19 agreement that compasses these baseline recommendations.

20 So, quite frankly, I don't understand what's
21 being argued is not inherently consistent.

22 Mr. -- counsel argued -- talked about this case
23 was about greed. My client has nothing except the money
24 he expended on the CUP. He didn't have a backup offer
25 to sell the property. So I'm not sure how the argument
26 washes that this case was about greed, unless it's the
27 greed of Mr. Cotton, because my client got nothing out
28 of it unless the CUP was approved for the property,

1 because that was a condition of the sale.

2 In fact, talking about the CUP, let's not
3 forget that the CUP -- approval of the CUP is a
4 condition of the written agreement that we contend the
5 parties entered into, but it's also a condition of the
6 oral agreement that's being alleged by Mr. Cotton. And
7 Mr. Cotton is saying he had nothing to do -- he didn't
8 interfere, didn't cause any delay, he's just trying to
9 be blamed for the competing CUP application. He's
10 offered no evidence that that competing CUP application
11 that -- anything that happened with that CUP application
12 was under the control of Mr. Geraci. He has to prove
13 under his contract that the CUP would have been
14 obtained. And if he's now telling you there were no
15 delays in it, I guess he's admitting that the condition
16 for his agreement could never even have occurred because
17 the CUP was never approved. And he can't recover
18 anything on his agreement unless he can satisfy that
19 condition.

20 He also can't argue, I would submit to you,
21 that, well, I would have gotten the CUP if I hadn't
22 delayed the process, because, you remember our
23 contention is he unfairly interfered with the CUP
24 process. And we gave you -- we presented evidence of
25 that and that caused the CUP to be beaten out by the
26 competing CUP application. And as a result of the
27 delays caused by Mr. Cotton.

28 Mr. Cotton can't argue that, well, gee, I would

1 have satisfied that condition when he's the one that
2 caused the delay. He's offering no explanation other
3 than what we have offered in terms of his interference
4 as to why the CUP wasn't approved. So no evidence that
5 it would have been approved under his theory of the
6 case.

7 Now, he's -- counsel argued that the
8 November 2nd written contract had a couple of terms. It
9 had all the essential terms that you need for a
10 real estate agreement, not just a couple of terms.

11 He also mentioned this meeting between Gina
12 Austin, the attorney, and Joe Hurtado, a very brief
13 conversation. I think Mr. Hurtado testified that she
14 told him that the contracts were forthcoming. But,
15 remember, that was in February of 2017 at a point in
16 time after which Mr. Cotton had made demands for
17 the 10,000-dollar minimum guaranteed payments and at the
18 time that Mr. Geraci had instructed Ms. Austin to
19 prepare documents in an attempt to renegotiate the deal
20 because of a demand and because he feared losing his
21 investment. There's nothing inconsistent with what
22 Ms. Austin told Mr. Hurtado and what has been testified
23 to by Mr. Geraci and Ms. Austin. They were trying to
24 renegotiate an agreement and save an investment. And
25 that renegotiation happened.

26 Would you put up the verdict forms --

27 So I'm going to show you the rest of Verdict
28 Form 2, which contains Mr. Geraci's claims for

1 intentional misrepresentation, false promise, and
2 negligent misrepresentation. I'm trying to ascertain
3 from the argument, because I didn't hear it in the
4 evidence, as to what was that was falsely represented to
5 Mr. Cotton that he relied on.

6 The argument was he was told that the team was
7 well qualified and had experience in obtaining a CUP
8 application. Did you hear any evidence that that wasn't
9 true? And he talked extensively about their
10 applications. That was a true representation, not a
11 false representation.

12 I suppose what's being argued is that he was
13 alleged -- allegedly falsely told that Mr. Geraci would
14 not rely on this written agreement on November 2nd but
15 would put down this oral agreement that somehow is
16 created from these two written documents that were never
17 signed and somehow Mr. Cotton -- Mr. Geraci falsely
18 represented that he was going to put down what they had
19 agreed to in writing. And that's what Mr. Cotton relied
20 on.

21 But I don't believe there's evidence that that
22 representation was made, except the oral testimony of
23 Mr. Cotton, which Mr. Geraci denied. He's not carried
24 his burden on that. And it makes literally no sense
25 that that representation would have been made at the
26 same date that a written agreement was signed. If
27 you --

28 So I believe you should answer no to all the

1 first questions of the -- of what I call the tort
2 claims. There's going to be -- they're going to be
3 similar. The potential misrepresentation claim, the
4 false promise claim, and the negligent misrepresentation
5 claim are all claims that rely on there having been a
6 false representation having been made and relied upon
7 Mr. Cotton to take some action adverse to himself.

8 If you get past the question and you answer yes
9 as opposed to no -- and I'm not sure how you do that.
10 But if you do, you have to answer questions about actual
11 reliance and reasonable reliance by Mr. Cotton on those
12 representations. There are questions that will ask you
13 did he actually rely on that false representation? Did
14 he reasonably rely on that false representation?

15 But his testimony is that he never had a
16 binding agreement, ever. So how -- what did he -- you
17 know, what was his basis for reliance? He was relying
18 not on the representation -- he knew that there had been
19 no agreement signed that was binding for them. There
20 was no surprise. He knew that until an agreement was
21 signed under his version of events, there's no
22 agreement. So he's not relying on -- on anything. He
23 knows the situation based on his version of the events.

24 Then you get to -- you have to -- the question
25 you get to if you get past those questions, which I
26 don't believe you should -- you have to ask how was his
27 reasonable and actual reliance on those alleged false
28 representations? How did that harm him? It only harmed

1 him if he can also show that he would have gotten the
2 CUP because he was relying, he says, on this agreement
3 to reduce all of this other stuff to writing. But if
4 that had been done, in other words, that representation
5 that he alleges with me was in fact not false, which
6 means they would have signed, you know, he assumes he
7 would have signed a written agreement that had all of
8 the terms of these oral agreements, there's no dispute
9 that one of the terms of that agreement was sale of the
10 property was going to be conditional upon the CUP being
11 issued.

12 There's no evidence that he's presented that
13 the CUP would have been -- would have issued, which --
14 so how could he have been caused damage by reliance? He
15 still would have had to -- the CUP still would have had
16 to have been approved. He's presented no evidence other
17 than to say we can't figure out how the 6220 application
18 beat us. But the evidence that's overwhelmingly been
19 presented is of the efforts of Mr. Geraci and his team
20 to get a CUP application.

21 And he can't say he's been caused harm by
22 reliance and representation when, as we contend, he was
23 the one that unfairly interfered with obtaining the CUP
24 application, that the cause of his damages, that the
25 reliance, even under his theory, it's his own bad acts
26 that delayed the CUP from being approved.

27 So either way, he has no damages. If -- if he
28 says there was no delay, then there's no proof that the

1 CUP would have ever been obtained in the first place.
2 And if he says, well, I would have gotten the CUP
3 because I guess I wouldn't have interfered with the
4 process, which is the only other alternative you have,
5 he can't claim that we're the cause -- the false
6 representation for the cause of that harm. It would
7 have been the fact that he interfered with getting the
8 CUP. So I don't believe you should get to any of those
9 questions.

10 But when you go through the verdict form, if
11 you do get to those questions, that's what you should be
12 thinking about, what was relied upon, and if it hadn't
13 been relied -- was it false? Was it a reasonable act
14 for him to rely on those things? And how was he harmed?
15 And I don't think you can answer any of those questions
16 with a yes, no reliance, actual reliance, no reasonable
17 reliance, no false misrepresentation in the first place,
18 and no harm caused by anything to do with his
19 interference of the CUP application. And I'm done.

20 THE COURT: Counsel?

21 MR. WEINSTEIN: I'm done.

22 THE COURT: Thank you.

23 MR. WEINSTEIN: I appreciate your time. Thank
24 you very much.

25 THE COURT: Mr. Austin, final closing argument?
26 (Rebuttal closing argument on behalf of the
27 defendant/cross-complainant)

28 MR. AUSTIN: When it comes to the CUP and

1 establishing damages, Mr. Cotton testified that he
2 wanted to have a third-party receiver overseeing the
3 soils sample, and the reason is he wanted to see this go
4 through. They could have worked something out. He
5 wanted the CUP to go through, and Mr. Geraci had a
6 benefit to be gained if the CUP did not go through.
7 Here, he had a crack team, Jim Bartell, 19 out of 20
8 CUPs approved, Attorney Austin, 20 or 30 CUPs approved,
9 Mr. Schweitzer, 20 or 30 CUPs approved, and you also
10 heard testimony that although they don't understand the
11 reasoning, Mr. Schweitzer's employee, one Carlos
12 Gonzales, was listed on the competing CUP as an agent
13 for that property. So there were a lot of suspicious
14 circumstances wherein it would seem as if the CUP was
15 not being pursued fully.

16 That project took over two years, and as I've
17 already described, no one could understand why. And
18 Mr. Bartell's only explanation is that it should have
19 went through, but we kind of blame Darryl.

20 And you heard Mr. Schweitzer say between one
21 and 100 cycle issues had not yet been taken care of.
22 It's a wide range. And they also said that those were
23 probably just really insignificant issues that could
24 have been resolved quickly.

25 Mr. Bartell also said he did receive notice of
26 inactivity for a 90-day period. So when it comes to
27 whether the CUP would be approved or not, we can really
28 only speculate. But it seems as if a good faith effort

1 was not truly being made by Mr. Geraci.

2 And as far as the clarity of what Mr. Cotton
3 expected on November 2nd, he expected what they had been
4 on and off discussing for a long time. And Mr. Geraci
5 assured Mr. Cotton all of the terms that would
6 constitute the joint venture agreement. Mr. Geraci was
7 always very clear in all of their text messages, all of
8 Exhibit 5, that they were going to have some involvement
9 together.

10 He was asking Mr. Cotton about marijuana
11 things, Mr. Cotton was explaining to him things about,
12 like, the new law that was passed, the Proposition 64,
13 Adult Marijuana User Act.

14 Mr. Cotton is very interested in the medical
15 side of cannabis. And he was under the impression from
16 Mr. Geraci that they could pursue some branding of his
17 151 Farms.

18 Mr. Geraci induced Mr. Cotton's reliance to
19 believe that they would have a joint venture agreement.
20 He would get a 10-percent equity stake, \$10,000 a month,
21 and the remainder of the 50,000-dollar deposit. That
22 was Mr. Cotton's understanding on November 2nd, and he
23 was given \$10,000 cash. There has been discussion. He
24 signed off on that document, but it's clear that the
25 intention of Mr. Cotton was to have the joint venture
26 agreement and that they would pursue this together. And
27 he knew he wasn't going to be in every single aspect,
28 but Mr. Geraci very clearly kept him updated over the

1 course of those months.

2 If you look at all of their text messages and
3 all their emails, there is only one logical conclusion.
4 And that is everything that Mr. Cotton has asserted. He
5 never contradicted himself at all.

6 Opposing counsel says all terms of the
7 real estate contract were met on that November 2nd
8 agreement. This wasn't just like an empty lot. This
9 was a property that was going to be -- was set up to be
10 a marijuana outlet. It's worth potentially tens of
11 millions of dollars over the course of its life. There
12 is no way that we should believe this three-sentence
13 document is supposed to entail and encompass all of
14 their agreements that they had come to that day.
15 Mr. Geraci made promises. Mr. Cotton relied on them.

16 And when he requested that everything be
17 reduced to a final writing, that's for the common sense
18 reason of you want to have all your rights and
19 liabilities laid out. That's why the draft agreements
20 that were received from the Austin Law Group had dozens
21 of terms, to try to specify everything that was expected
22 from each side. So although they had the oral
23 agreement, Mr. Cotton would have felt more comfortable
24 knowing that everything was actually reduced to writing.
25 But that doesn't mean they didn't have an agreement at
26 that time.

27 And, again, it goes back to the hidden
28 intentions of Mr. Geraci. He intended Mr. Cotton to go

1 along with him and allow him to pursue getting the CUP
2 and owning that property. But he did not intend to give
3 Mr. Cotton everything that he had promised.

4 Thank you.

5 THE COURT: Thank you, Counsel.

6 All right. That completes the closing
7 arguments, folks.

8 Madam Deputy, may I ask that you turn on our
9 projector.

10 I've got a couple of instructions, a few
11 admonitions, the jury will get the case, and then I've
12 got some additional admonitions for our alternate
13 jurors. We're almost there. We'll have the case to you
14 before the noon recess.

15 And Madam Clerk, there you are. If you could
16 turn off one row of the light, please.

17 (Reporting of jury instructions waived.)

18 THE COURT: Madam Deputy, if you could off the
19 projector.

20 Madam Clerk, if you could turn on all of the
21 lights.

22 All right. As mentioned, each of you will get
23 your own copy of the verdict forms -- I'm sorry -- set
24 of the jury instructions. And each of you will get a
25 copy of your own verdict form.

26 The foreperson or presiding juror will be
27 responsible for completing the official verdict form.
28 However, when you present your verdict in the courtroom,

1 either or both sides can ask that I poll you or ask each
2 of you how you answered those questions on the verdict
3 form.

4 The first verdict form is four pages in length
5 and contains 10 questions.

6 The second verdict form is nine pages in length
7 and contains 25 questions.

8 So what I'm going to urge each of you to do on
9 your copy of the verdict form, please make note of how
10 you answered each of those questions. Rather than
11 relying upon your memory, when asked how you answered,
12 if you do so accurately, you'll then be able to refer to
13 your own answers on your copy of the verdict form.

14 In addition, my deputy will be bringing in the
15 exhibits in to you as quickly as is possible.

16 Once you begin your deliberations, you'll need
17 to stop for the noon hour, between 12:00 and 1:30. But
18 once you get past that, how often you stop for breaks,
19 whether you do stop or not, how long you take breaks
20 will be entirely up to you. If you don't return a
21 verdict by 4:30 this afternoon, we'll have to stop you
22 at that time and then return tomorrow morning at
23 9 o'clock.

24 But in between those blocks of times, 9 to 12
25 and 1:30 to 4:30, you'll have all the discretion in the
26 world to decide whether or not you take a break, and if
27 so, how long.

28 Your point of contact from here on out, though,

1 at all times will be my deputy.

2 Madam Clerk, may I ask you to swear in Madam
3 Deputy.

4 (The deputy was duly sworn.)

5 THE COURT: Folks, one final admonition. I
6 have colleagues that at this point in the proceedings
7 confiscate all the cell phones or other electronic
8 devices that each of you have in your possession. I
9 don't do it. As far as I am concerned, we're all adults
10 in the courtroom.

11 What I am going to direct that you do, though,
12 is when you are in deliberations, turn your cell phones
13 off. These folks, the parties, and the lawyers have
14 spent a ton of money, they have put in a lot of time.
15 It's an important case to them. Give them your
16 undivided attention when you're deliberating. If you're
17 not deliberating and you're on a break, feel free to
18 turn them on and communicate with people so long as it's
19 not about the case. So, please, turn the cell phones
20 off when you're deliberating.

21 So at this point in time, the 12 of you,
22 excluding our alternates, please pick up all your
23 belongings, your notebooks, if you would like, and
24 follow our deputy, please.

25 All right. Our jurors have left the courtroom.
26 We have four alternates. Mr. Fitzgerald, Ms. Frye,
27 Ms. McKnight, and Mr. Dunbar, I never expected that we
28 would not lose any of the first 12. I truly didn't. In

1 my experience, it's unusual that we haven't lost one or
2 more. But nonetheless, you all are here. I cannot
3 begin to tell you how much I appreciate everything
4 you've done. It's still possible that you could become
5 a part of the jury. But I'm not going to make you
6 remain around the courtroom.

7 So here's what we're going to do. In just a
8 few minutes when I let you go, you're not being
9 discharged from your jury service, and you're not
10 allowed to talk about the case with anyone just in case
11 one or more of you become members of the jury. My
12 courtroom clerk is going to meet each of you in the
13 hallway or somewhere outside the department. And what
14 I'm going to ask that you do is to give her or confirm
15 that you have given her a telephone number that we can
16 reach you and communicate to you that we need you to
17 come back down to become a part of the jury.

18 Now, with that in mind, let's start with
19 Mr. Fitzgerald. Approximately -- if we give you a call
20 and ask you to come back downtown -- and I don't know if
21 that would be this afternoon or sometime this morning,
22 any idea how long it might take you to get downtown if
23 we give that call to you?

24 JUROR FITZGERALD: 30 to 40 minutes.

25 THE COURT: All right. How about Ms. Frye? I
26 hope I'm pronouncing that correctly.

27 JUROR FRYE: Yes. Hmm-mm.

28 THE COURT: Your best estimate.

1 JUROR FRYE: One hour today, and if it was
2 tomorrow, maybe two.

3 THE COURT: Okay. Now, that begins to present
4 a problem in that we only call you if we need to have
5 you become a part of the jury. And while we're waiting
6 for you to arrive, everyone is standing down.

7 Let me go to Ms. McKnight. How about you?
8 Your estimate?

9 JUROR McKNIGHT: 45 minutes.

10 THE COURT: And Mr. Dunbar?

11 JURORY DUNBAR: About an hour.

12 THE COURT: I'm sorry?

13 JURORY DUNBAR: About an hour.

14 THE COURT: Okay. So, Ms. Frye, I understand
15 the hour part. And I don't recall which part of town
16 you're coming from, but why the possibly two hours?

17 JUROR FRYE: It would be one hour. I was just
18 thinking if I could go to work tomorrow. So it's an
19 hour.

20 THE COURT: I understand we're asking a lot,
21 folks. And your guess is as good as mine as to whether
22 we'll need to make that phone call to you. Once they
23 get going, my suspicion is all 12 are going to be
24 heavily invested to be a part of the ultimate decision.
25 But, as you know, things can come up.

26 All right. So we've got that. So, again,
27 thank you for everything. Now, one other thing that
28 might -- what we'll do -- all of you are telling me that

1 it would take you 40 minutes or longer to come down
2 here. Even if we don't call you to ask you to come down
3 to become a part of the jury, what my clerk will do is
4 advise you of what the ultimate verdict is. We will
5 call you. We'll be proactive about that. You don't
6 need to call and say whatever happened. We'll make sure
7 as soon as reasonably possible we contact you to let you
8 know what happened. We won't be able to call you and
9 wait around long enough, which could be an hour or so
10 for you to all come down and be a part of the verdict
11 even if you wanted to do so. That wouldn't be fair to
12 those other 12. Once they get to their verdict, you can
13 imagine how motivated they are to present it in the
14 courtroom and then go on with other things. But we will
15 advise you proactively of what the verdict resulted in.

16 Now, before I let you go, Mr. Fitzgerald, any
17 questions about the process at all?

18 JUROR FITZGERALD: No.

19 THE COURT: Okay. Ms. Frye, any questions?

20 JUROR FRYE: No.

21 THE COURT: Ms. McKnight, any questions?

22 JUROR McKNIGHT: No.

23 THE COURT: And then Mr. Dunbar, any questions?

24 JURORY DUNBAR: No.

25 THE COURT: I am still thinking about when I
26 thought you weren't in the department, you know. My
27 apologies.

28 JURORY DUNBAR: That's all right.

1 THE COURT: So, please, my clerk will catch up.
2 Leave your notebooks behind. Thank you very much,
3 folks.

4 Okay. The alternates and my clerk have left
5 the department.

6 Counsel, how far -- in case we have a question
7 or we get word of a verdict, how far will you be from
8 the courtroom?

9 MR. WEINSTEIN: We're across the street.

10 THE COURT: Oh, you are?

11 MR. WEINSTEIN: Yeah. In the Koll Center.

12 THE COURT: I got you.

13 And then, Counsel, how far are you away?

14 MR. AUSTIN: I don't have an office down here.
15 So we'll just find somewhere within a short walk.

16 THE COURT: Okay. That's fine. You don't have
17 to be in the courtroom -- or courthouse, per se. Now,
18 make sure if you haven't already done so, that you give
19 my clerk a number that we can reach you at.

20 When it comes to jury questions, I don't insist
21 that counsel be present as we go through it. I
22 encourage it. What we'll do is the first opportunity
23 that we have, we'll give you a copy of the question.
24 And then after we've consulted, we'll ultimately give
25 you a copy of the answer that we develop. It's kind of
26 hard to do some of that right away if you happen to be
27 on the phone. And occasionally we get questions that
28 it's just easier to confer when we're in the same room.

1 But I don't insist that you be present for jury
2 questions.

3 Whether you want to be present for the verdict
4 is entirely up to you. But we will notify you of
5 everything.

6 I take it that you all have gone through the
7 exhibit volumes and are satisfied?

8 THE CLERK: No. They haven't had time.

9 THE COURT: Haven't had time yet?

10 THE CLERK: They're still here.

11 THE COURT: So we're going to adjourn in a few
12 minutes. You're have a few minutes before noon. My
13 guess is my deputy would like to bring them in before
14 they recess for the noon hour. But, if not, we'll bring
15 them in first thing after they resume at 1:30.

16 I think I've given you all the admonitions.
17 Counsel, any questions about anything?

18 MR. WEINSTEIN: No, your Honor.

19 THE COURT: Okay. Counsel?

20 MR. AUSTIN: No, your Honor.

21 THE COURT: All right. Now, I do have another
22 trial starting first thing tomorrow morning. Whether
23 they return -- whether your jury has returned a verdict
24 or not. So what I'm going to do is ask you to begin
25 clearing out your volumes from counsel's table so that
26 other folks will be able to find room when they come in
27 tomorrow morning. I guess we have an ex parte at 8:30,
28 and then the trial starts at 9:00. So there will be

1 other people coming into the department.

2 My clerk may want to talk to you about other
3 things too involving exhibit notebooks and stuff. I'll
4 let you do that off the record. All right, Counsel,
5 we're in recess. Thank you.

6 (Lunch recess from 11:47 a.m. to 2:44 p.m.)

7 THE COURT: All right. Counsel, we got our
8 first jury note since deliberations began.

9 The question reads as follows, a hard copy of
10 which we've provided to you:

11 Does Question No. 5 in Special Verdict Form
12 No. 1 refer to only the defendant's condition, or to
13 both the plaintiff and the defendant's condition?

14 It's signed by the foreperson, 7/15/19.

15 Since this is plaintiff's verdict form, we'll
16 start with plaintiff. And then I'll get comments from
17 defense counsel.

18 Counsel, your comments?

19 MR. WEINSTEIN: Yeah. It refers to the
20 plaintiff's condition, I believe. I'm not going to try
21 to interpret it, but the conditions I think they're
22 referring to is the condition that the CUP approval be
23 obtained. And so that's talking -- that question talks
24 about whether or not the -- the condition that the
25 plaintiff was to obtain approval of the CUP, was that
26 condition the plaintiff had to satisfy excused?

27 That's I think --

28 THE COURT: All right. Now --

1 MR. WEINSTEIN: I'm concerned about how it's
2 answered for them, because I don't know how they're
3 interpreting it. But that's what I think it means.

4 THE COURT: Well, let's fall back to Question
5 No. 4, which reads: Did all of the conditions that were
6 required for defendant's performance occur? If your
7 answer to Question 4 is yes, do not answer Question 5
8 and answer Question 6.

9 If your answer to Question 4 is no, answer
10 Question 5.

11 The operative Question 5 reads: Was the
12 required conditions that did not occur excused?

13 So it seems to the Court that the party
14 responsible for the -- to perform the condition, if one
15 was to be performed or not excused was defendant?

16 Now, I have an additional comment, but five
17 seems to logically track a question directed to
18 defendant's performance, not plaintiff's.

19 MR. WEINSTEIN: Give me a moment.

20 THE COURT: Now, Counsel, before you strain
21 your brain any further, and before I hear from defense
22 counsel, these questions were taken from the proposed
23 verdict form. I don't know if there were any conditions
24 that needed to have been performed or excused by
25 defendant before plaintiff's performance was required.

26 The CUP that needed to have been obtained
27 needed to have been obtained -- was a condition that
28 needed to have been satisfied before defendant was

1 required to sell plaintiff the property.

2 So there may be some question as to whether
3 these two questions should have been on the form at all,
4 given the way the contract was formed -- or the -- given
5 the way the contract is worded.

6 Well, let me go to defense counsel. Do you
7 have any comments?

8 MR. AUSTIN: I agree with your assessment so
9 far. The only conditions we would be talking about
10 would be basically getting the CUP approved or selling
11 the property. And Number 4 does say defendant's
12 performance. So 5 kind of only makes sense that it
13 would be talking about defendant.

14 THE COURT: Let's just walk through this real
15 slowly.

16 Question No. 4, did all of the conditions that
17 were required for Mr. Cotton's performance occur?
18 Defendant in the first verdict form is Mr. Cotton. It's
19 not Mr. Geraci.

20 MR. TOOTHACRE: Correct.

21 THE COURT: So this is plaintiff's, in effect,
22 verdict form. It's your cause of action.

23 What conditions, if any, did Mr. Cotton need to
24 have performed or be excused before he was required to
25 perform?

26 MR. WEINSTEIN: I have an answer, but I want to
27 look at the CACI because I'm also mindful of the Court's
28 statement of whether the question should have been asked

1 at all.

2 I guess, whether it's right or wrong, the way I
3 read the verdict form is that first you deal with
4 plaintiff's obligations, and then Question 3 was what
5 plaintiff had to do excused. Okay. And now what
6 defendant's obligation to do in the next two questions
7 is to deliver the property. But he's only required to
8 deliver the property if the CUP is approved. That
9 didn't occur.

10 So the next question is that required condition
11 that was necessary -- was the required condition excused
12 that would have required him to perform? That's how I
13 read it.

14 THE COURT: So let me just think through this
15 for just a moment.

16 MR. WEINSTEIN: Because you only get to the --
17 you only get to the breach of the implied covenant
18 question if either 4 is yes or 5 is yes.

19 THE COURT: So let me just think through this
20 for just a minute.

21 MR. WEINSTEIN: So, in other words, the -- my
22 argument is the condition that was required to be --
23 to -- that was required to be satisfied to cause
24 defendant to have to perform was approval of the CUP.
25 So that didn't occur. But the happening of that
26 condition was excused. That way, you get to -- that
27 way, the question either yes to 4 or yes to five gets
28 you -- boy. You only get to 6 if 5 is yes. That

1 condition had to have been excused or defendant wouldn't
2 have been required to perform.

3 I still think it's referring to the excuse of
4 the condition that plaintiff would have to perform,
5 which is get approval of the CUP.

6 THE COURT: So let me back up to Question 4.
7 Did all of the conditions that were required for
8 defendant performance occur?

9 The one condition that needed to have occurred
10 before defendant, Mr. Cotton, was obligated to sell the
11 property was Mr. Geraci needed to have obtained the CUP.

12 MR. WEINSTEIN: Correct.

13 THE COURT: Okay. Five, was the required
14 conditions -- let's call it condition --

15 MR. WEINSTEIN: Okay.

16 THE COURT: -- mainly that Mr. Geraci had
17 obtained 1 CUP excused?

18 MR. WEINSTEIN: That's 1 way I believe it
19 should read.

20 THE COURT: All right. Let me give you a
21 proposed answer. And we might shorten it just a bit.

22 1 condition referred to in Question No. 5
23 refers to -- refers to a condition which had occurred or
24 was excused before defendant was obligated to perform.

25 Now, they're already past 1 occurrence part.
26 They're wondering whether Mr. Geraci's obligation to get
27 1 CUP was excused.

28 MR. WEINSTEIN: Right. So when they ask

1 whether it's 1 plaintiff's condition or 1 defendant's
2 condition, 1 required condition referred to there is the
3 condition that plaintiff obtain approval of the CUP.

4 THE COURT: Well, I'm not inclined to become
5 that specific in answering 1 question. Folks, that's
6 how we get ourselves into trouble. It's a big
7 presumption, but it is a presumption. But the
8 presumption that you're making, Counsel, may be entirely
9 reasonable and logical. But that's not what they're --
10 they aren't that specific.

11 So let me -- I've modified what I just gave you
12 a little bit more. So let me throw this one at you.

13 1 condition referred to in Question No. 5
14 refers to a condition -- so we're now focusing on a
15 condition. I think we can all agree that there was one
16 condition -- or there is one condition at issue. I
17 think I hear plaintiff saying yes.

18 Does 1 defense agree with that?

19 MR. AUSTIN: Can you restate that last part?

20 So if four --

21 THE COURT: 1 condition at issue in this case
22 is limited to Mr. Geraci's obligation to obtain 1 CUP or
23 that it was -- or he was excused from doing so. But we
24 are talking about a single condition, namely, 1 CUP.

25 Do you agree with that, Counsel?

26 MR. AUSTIN: Well, No. 4, it does say
27 defendant's performance, and I think his only
28 condition -- well, he just had to sell 1 property.

1 THE COURT: Right.

2 MR. AUSTIN: So the condition --

3 THE COURT: He didn't have to do -- meaning,
4 Mr. Cotton, didn't have to do anything unless and until
5 Mr. Geraci got 1 CUP or Mr. Geraci's obligation to
6 obtain 1 CUP was excused. But, again, we keep coming
7 back, 1 condition refers to the CUP application.

8 Do you agree with that?

9 MR. AUSTIN: Yes, your Honor.

10 THE COURT: All right. So let me back up and
11 read this to you as a proposed answer.

12 1 condition referred to in Question No. 5
13 refers to a condition which was excused, if at all,
14 before defendant was obligated to perform. Now, we can
15 even go Defendant Cotton was obligated to perform.

16 And if you want me to recite it again, I'd be
17 happy to do so.

18 1 condition referred to in Question No. 5
19 refers to a condition which was excused, if at all,
20 before Defendant was obligated to perform.

21 Let me go to the plaintiff's side.

22 MR. WEINSTEIN: One moment.

23 May I try something else out on you?

24 THE COURT: Sure.

25 MR. WEINSTEIN: I would -- I would say 1
26 condition referred to in Question 5 refers to a
27 condition that, unless excused, would have to be
28 satisfied by plaintiff in order for defendant's

1 performance to be required.

2 THE COURT: All right. Let me make -- I
3 better -- why don't you give that to me again very
4 slowly.

5 MR. WEINSTEIN: Right. 1 condition referred to
6 in Question 5 refers to a condition that, comma --

7 THE COURT: One moment. Okay.

8 MR. WEINSTEIN: That, comma, unless excused,
9 comma, would have to be satisfied by plaintiff in order
10 for defendant's performance to be required.

11 THE COURT: Would have to be satisfied by
12 plaintiff in order --

13 MR. WEINSTEIN: For defendant's performance to
14 be required.

15 THE COURT: Let me go to defense counsel.

16 MR. AUSTIN: I mean, they look pretty similar
17 to me. Yours is a little bit shorter, which might be
18 easier to understand.

19 THE COURT: Well, let me just say I take no
20 pride in authorship. I can assure all of you of that.
21 I am open-minded to a better-word proposal. It is true
22 that mine is more concise, which I always prefer. But
23 if you two agree to plaintiff's proposal, I don't see
24 that that's inaccurate. It seems to convey 1 correct
25 response. And if there's a stipulation, I'll give it.

26 If not, I'll fall back on what I propose.

27 MR. WEINSTEIN: 1 reason that I prefer mine,
28 your Honor, is that it makes reference to the fact that

1 the condition has to be satisfied by 1 plaintiff in
2 order for defendant's performance to be incurred. Their
3 question seems to be based on a confusion about whose
4 condition and whose performance.

5 THE COURT: Well, now, be careful what you wish
6 for, because if you go back to Question 3, which they
7 wouldn't have gotten to 5 if they hadn't asked about 3,
8 in favor of plaintiff, talks about plaintiff having been
9 excused from having to do all or substantially all of
10 the significant things that the contract requires him to
11 do.

12 So they have already gotten past -- in some
13 way, shape, or form, they have already gotten past what
14 you're now trying to build in your answer, Counsel.

15 MR. WEINSTEIN: Understood. But the -- that
16 takes us full circle to the original comment, which is
17 whether the question should be in there at all.

18 If they answer Question 3 yes and determine
19 that plaintiff's obligation to substantially perform all
20 1 things that the contract required them to do was
21 excused and they answer yes but they don't answer yes to
22 4 or 5, they stop answering.

23 THE COURT: 1 verdict could be internally
24 inconsistent.

25 MR. WEINSTEIN: Yes. So they --

26 THE COURT: Could be.

27 MR. WEINSTEIN: Could be.

28 So what -- I think that's 1 confusion. And why

1 I used 1 language I did is that both 3 and 5 deal with
2 getting approval of the CUP. One is in terms of an
3 affirmative obligation to get it. 1 other one is in
4 terms of assessing a condition to require 1 defendant to
5 perform.

6 And so they are essentially ask/answering 1
7 same question.

8 THE COURT: All right. Let me go to defense
9 counsel. Your comments?

10 MR. AUSTIN: I still feel like either answer, I
11 mean, gets 1 main point across. I think it's just
12 important that they -- that they know 1 --

13 THE COURT: Counsel, one thing that, I guess,
14 your side can be assured of, if I thought there was
15 anything inaccurate or inappropriate about the proposal,
16 I would not grant it. I'm not seeing that it's
17 inaccurate or inappropriate. It is wordier than what I
18 propose, but maybe those extra words are necessary to
19 convey 1 correct response.

20 So your comments?

21 MR. AUSTIN: I'm willing to stipulate to
22 Mr. Weinstein's proposal.

23 THE COURT: All right. So let me just develop
24 what I understand to be 1 complete answer, adopting
25 plaintiff's proposal. And then we'll finalize it and
26 give it to the jury.

27 All right. Counsel, can you read me your
28 proposal one more time. And I think I tracked it.

1 Before I read what I think you said, I want to hear it
2 one more time.

3 MR. WEINSTEIN: I would add I think it should
4 say in Special Verdict Form No. 1, comma.

5 THE COURT: We'll get there.

6 MR. WEINSTEIN: Okay. 1 condition referred to
7 in Question 5 refers to a condition that, comma, unless
8 excused, comma, would have to be satisfied by plaintiff
9 in order for defendant's performance to be required.

10 THE COURT: Okay. The Court accepts, as
11 modified -- and there's one word I'm going to modify --
12 1 proposed answer from plaintiff, which I understand 1
13 defense agrees with.

14 1 condition referred to in Question No. 5 in
15 Special Verdict Form No. 1 refers to a condition
16 which -- I'm going to change the word "that" to
17 "which" -- unless excused, would have to be satisfied by
18 plaintiff in order for defendant's performance to be
19 required.

20 Any objection from plaintiff?

21 MR. WEINSTEIN: No, your Honor.

22 THE COURT: Defense?

23 MR. AUSTIN: No, your Honor.

24 THE COURT: All right. So I'll provide this to
25 my clerk. She will reduce it to a written answer, which
26 my deputy will then bring it into 1 jury -- 1 jury room.
27 And we'll get you a copy of the answer.

28 It looks like they're making some progress on

1 the Verdict Form No. 1, but they have got a longer
2 Verdict Form No. 2. Your guess is as good as mine as to
3 whether they're going to finish their business and
4 return a verdict today.

5 Counsel, because we're so late in the
6 afternoon, I'm going to ask you to stick closer to the
7 courthouse.

8 MR. WEINSTEIN: Okay.

9 THE COURT: What we usually do is at or about
10 4:15, without putting any pressure on the jury, my
11 deputy will pop her head into 1 room just to see how
12 they're coming along.

13 I think in all 1 years I've been doing this,
14 I've agreed to take a verdict as late at 4:30, which
15 means that we're not done until 5:00 or later. So gets
16 to be an awfully long day on everyone. If they're that
17 close at or about 4:15, we'll give them until 4:30 to
18 give a verdict. If not, we'll tell them to come back
19 tomorrow morning, just so you know 1 way we usually
20 handle it.

21 And then you will not be required to stick
22 around tomorrow morning. We'll call you if need be.
23 But just in case, I'd hate to make them wait any longer
24 than necessary. I do appreciate you coming over here.
25 It's so much easier to develop this answer when you're
26 here rather than me trying to bounce back and forth on
27 the phone. You don't have to be in the courtroom now.
28 Just be close to the courthouse.

1 We'll get that to you, Counsel.
2 (The proceedings concluded at 3:14 p.m.)
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I, Margaret A. Smith, a Certified Shorthand Reporter, No. 9733, State of California, RPR, CRR, do hereby certify:

That I reported stenographically the proceedings held in the above-entitled cause; that my notes were thereafter transcribed with Computer-Aided Transcription; and the foregoing transcript, consisting of pages number from 1 to 94, inclusive, is a full, true and correct transcription of my shorthand notes taken during the proceeding had on July 15, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of July 2019.



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

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