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**F I L E D**  
Clerk of the Superior Court

APR 04 2018

By: A. SEAMONS, Deputy

2018 APR 4 11:43

Attorney for Defendant and Cross-Complainant Darryl Cotton  
[Representation Limited to Motion to Expunge *Lis Pendens*]

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO – CENTRAL DIVISION**

LARRY GERACI, an individual,  
Plaintiff,

vs.

DARRYL COTTON, an individual; REBECCA  
BERRY, an individual; and DOES 1-10, Inclusive,  
Defendants.

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

DARRYL COTTON'S DECLARATION IN  
SUPPORT OF MOTION FOR EXPUNGEMENT  
OF NOTICE OF PENDENCY OF ACTION  
(*LIS PENDENS*)

DATE: April 13, 2018  
TIME: 9:00 a.m.  
DEPT: C-72  
JUDGE: The Honorable Joel R. Wohlfeil

DARRYL COTTON, an individual,  
Cross-Complainant,

vs.

LARRY GERACI, and individual, REBECCA  
BERRY, an individual; and DOES 1 through 10,  
Inclusive,  
Cross-Defendants.

I, Darryl Cotton ("Cotton" or "Defendant"), declare:

1. I am the owner of record of the real property located at 6176 Federal Blvd., San Diego  
(the "Property").

2. In or around August 2016, Geraci first contacted Cotton seeking to purchase the

1 Property. Geraci desired to buy the Property from Cotton because it met certain requirements of the  
2 City of San Diego ("City") to apply for and obtain a conditional use permit ("CUP") that would allow  
3 the operation of a Marijuana Outlet ("MO") at the Property. Over the ensuing months, we extensively  
4 negotiated the terms of a potential sale of the Property.

5 3. During these negotiations, Geraci made the following representations to me: (i) he could  
6 be trusted as reflected by the fact that he operated in a fiduciary capacity as an IRS Enrolled Agent for  
7 many powerful and high-net-worth-individuals ("HNWI"); (ii) he is the owner and operator of Tax and  
8 Financial Center, Inc., an accounting and financial advisory services company, servicing HNWI and  
9 large businesses in a fiduciary capacity; (iii) he was a California Licensed Real Estate Broker, bound by  
10 professional and ethical obligations, to be truthful in real-estate deals; (iv) through his experts, who had  
11 conducted preliminary due diligence, he had uncovered a critical zoning issue that unless *first* resolved  
12 would prevent the City from even accepting a CUP application on the Property (the "Critical Zoning  
13 Issue"); (v) through his professional relationships, which included his HNWI clients that were  
14 politically influential, and through powerful hired lobbyists (some of whom used to work for the City in  
15 senior positions), he was in a unique position to have the Critical Zoning Issue resolved; (vi) he was  
16 highly qualified to operate a MO because he owned and operated multiple cannabis dispensaries in San  
17 Diego; and (vii) his employee, Rebecca Berry ("Berry"), was a trustworthy individual that could be  
18 trusted to be the applicant on the CUP application because she (a) managed his marijuana dispensaries,  
19 (b) held a senior position at a church and came across as a "nice old lady that had nothing to do with  
20 marijuana," and (c), consequently, would pass the stringent City and State of California background  
21 checks required to have the CUP approved (collectively, the "Qualification Representations").

22 4. On or around October 31, 2016, Geraci asked me to execute Form DS-318 (Ownership  
23 Disclosure Statement) ("Ownership Statement") — a required component of all CUP applications.  
24 Geraci told me that he needed the executed Ownership Statement to show that he had access to the  
25 Property in connection with his planning and lobbying efforts to resolve the Critical Zoning Issue.

26 5. On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of  
27 the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale  
28 of the Property (the "November Agreement"). The November Agreement consisted of the following: If  
the CUP was approved, then Geraci would, *inter alia*, provide me: (i) a total purchase price of  
\$800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of  
\$10,000. If the CUP was denied, I would keep an agreed upon \$50,000 non-refundable deposit

1 ("NRD") and the transaction would not close. In other words, the issuance of the CUP at the Property  
2 was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would  
3 keep my Property and the \$50,000 NRD.

4 6. At the November 2, 2016 meeting, we reached the November Agreement, Geraci: (i)  
5 provided me with \$10,000 in cash towards the NRD of \$50,000, for which I executed a document to  
6 record my receipt thereof (the "Receipt"); (ii) promised to have his attorney, Gina Austin ("Austin"),  
7 promptly reduce the oral November Agreement to written agreements for execution; and (iii) promised  
8 to not submit the CUP to the City until he paid me the balance on the NRD.

9 7. After Geraci and I met on November 2, 2016, reached the November Agreement,  
10 executed the Receipt and separated we had a series of email communications that took place that same  
11 day. Attached hereto as Exhibit 1 is a true and correct copy of all emails between Geraci and I.

12 8. The day I received a copy of the Receipt from Geraci, I realized it could be misconstrued  
13 as a final agreement for the Property. Because I was concerned, and wanted there to be no uncertainty, I  
14 requested Geraci confirm in writing the Receipt was not a final agreement. Geraci replied and I refer to  
15 this email from him as the "Confirmation Email."

16 9. Thereafter, over the course of almost five months, we exchanged numerous emails, texts  
17 and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of  
18 the final written agreements for the Property (included in Exhibit 1). However, Geraci continuously  
19 failed to make actual, substantive progress. Most notably, he failed to provide me the final written  
20 agreements, pay the balance of the NRD, and to provide facts regarding the progress being made on the  
21 Critical Zoning Issue.

22 10. Regarding the Critical Zoning Issue, Geraci and I exchanged a series of texts. Attached  
23 hereto as Exhibit 2 is a true and correct copy of text messages between Geraci and I from January 6,  
24 2017 and February 7, 2017.

25 11. These text communications made me think, among other things, that Geraci was being  
26 truthful about working on and making progress on the Critical Zoning Issue (the "Text  
27 Communications").

28 12. On March 3, 2017, I emailed Geraci regarding a draft agreement that was supposed to  
contain, *inter alia*, my 10% equity stake in the MO. Geraci did not reply to my email. Geraci did not  
pick up when I called later. I grew exasperated, and later followed-up with Geraci via text wanting to  
confirm that Geraci had received my email and understood my concern - that the Side Agreement did



1 not provide for my "10% equity position" in the MO.

2 13. On March 6, 2017, Geraci and I spoke regarding revisions required to have the drafts  
3 accurately reflect the November Agreement. I communicated my frustration with the delays and Geraci  
4 again promised to have Austin *promptly* correct the mistakes in the drafts. During that conversation, I  
5 let Geraci know that I would be attending a local cannabis event at which Austin was scheduled to be  
6 the headnote speaker. Geraci later texted me that I could speak with her directly at the event.

7 14. I was unable to attend the event that night. However, I had grown suspicious of Geraci  
8 because of his continuous failure to accurately have Austin reduce the November Agreement to writing.  
9 So, I had already set in place a contingency plan. I requested the help of Mr. Joe Hurtado, a financial  
10 transaction adviser, and asked him to help me locate a new buyer for the Property. I asked him to  
11 attend the event so that he could tell Austin I would not attend to discuss the revisions to the agreement  
12 and so he could confirm with her directly that Geraci and I had not executed a final written agreement  
13 yet.

14 15. On March 7, 2017, Geraci sent me an email. Attached to Geraci's email was a revised  
15 draft of the Side Agreement in Word format. The embedded metadata to the Word file of the agreement  
16 states the file was created "March 3, 2017" and the author of the document is "Gina Austin (the  
17 "Metadata Evidence"). Attached hereto as Exhibit 3 is a true and correct copy of screen shot of that  
18 Metadata Evidence.

19 16. On March 16, 2017, after having reviewed the revised agreement forwarded by Geraci  
20 on March 7, 2017, and discovering that it again did not accurately reflect the November Agreement, I  
21 decided to follow up with the City regarding the Critical Zoning Issue personally. It was at this point  
22 that I discovered that Geraci had been lying from the very beginning – Geraci had submitted a CUP for  
23 the Property on October 31 2016, before we even reached the November Agreement. Submitted  
24 herewith with the accompanying Request for Judicial Notice is a copy of a Parcel Information Report  
25 provided by the City of San Diego, Development Services Department ("City Parcel Report") that  
26 states the zoning of the Property was changed to "CO-2-1" (MO qualifying zone) on January 14, 2016.

27 17. On March 21, 2017, because Geraci neither responded to my requests for assurance of  
28 performance, provide the November Agreement reduced to writing as required per the November  
29 Agreement, and I had found out that he had lied to me about numerous matters, I terminated the  
30 contract with Geraci via email.

31 18. Because I had already anticipated Geraci's breach from his evasive language and failure

1 to confirm he would honor his end of the bargain, I had already lined up another buyer and I entered  
2 into a written purchase agreement for the sale of the Property to Mr. Martin (the "Martin Sale  
3 Agreement").


4 19. The next day, Geraci's counsel, Michael Weinstein ("Weinstein"), emailed me the  
5 Complaint and the *lis pendens* filed on my Property.

6 20. On January 25, 2018, I attended a hearing before Judge Wohlfeil on a motion to compel  
7 me to respond to certain discovery requests by Geraci. In my opposition to that motion, I described  
8 what I believed were the unethical actions by, *inter alia*, Austin and Weinstein. At the beginning of the  
9 hearing, Judge Wohlfeil told me that he knew them well and that he did not believe they would engage  
10 in the unethical actions I described in my opposition.

11 21. I have no other assets other than my Property. I have borrowed against the sale of the  
12 Property. If I lose this litigation, even assuming I do not have to pay Geraci's legal fees, the equity I  
13 would receive does not cover the debt that I owe. I have long ago exhausted all personal and  
14 professional sources of capital. I am facing daily financial hardship. If I lose this property, I will have  
15 no means by which to subsist.

16 22. I underwent an Independent Psychiatric Assessment (the "IPA") with Dr. Markus  
17 Ploesser. Attached hereto as Exhibit 4 is a true and correct copy of the IPA.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
19 true and correct, and that this declaration was executed on April 4, 2018 at San Diego, California.

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21 DARRYL COTTON  
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