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F ¹ **L** ^E **D**
Clerk of the Superior Court

APR 04 2018

By: A. SEAMONS, Deputy

**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,
INCLUDE, inclusive,
Defendants.

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

NOTICE OF MOTION AND MOTION TO
EXPUNGE NOTICE OF PENDENCY OF
ACTION (*LIS PENDENS*)

DATE: April 13, 2018
TIME: 9:00 a.m.
DEPT: C-73
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,
Defendants.

TO EACH PARTY AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 13, 2018 at 9:00 a.m. or as soon thereafter as the matter
may be heard in Department C-73 of the above-entitled Court located at 110 Union Street, San Diego,


1 California, Defendant/Cross-Complainant Darryl Cotton, by and through his counsel Jacob P. Austin,
2 will move for an order expunging the *lis pendens* recorded in the office of the Recorder of San Diego
3 County as Instrument Number 2017-0129756 and filed in the above-referenced action on March 22,
4 2017, and an order awarding Defendant/Cross-Complainant reasonable attorneys' fees and costs.

5 The motion is made upon the grounds that the Complaint lacks "probable validity" which can be
6 established by a preponderance of the evidence in light of the evidence presented by Plaintiff.

7 The motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of
8 Points and Authorities, Declaration of Darryl Cotton and Request for Judicial Notice, the pleadings and
9 records on file in this action, and upon such other and further oral and documentary evidence which may
10 be presented at the hearing on this Motion.

11
12 DATED: April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

13
14 By 
15 JACOB P. AUSTIN
16 Attorney for Defendant and Cross-Complainant
17 DARRYL COTTON
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F I L E D
Clerk of the Superior Court

APR 04 2018

By: A. SEAMONS, Deputy

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 MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO EXPUNGE NOTICE OF
PENDENCY OF ACTION (*LIS PENDENS*)

DATE: April 13, 2018
TIME: 9:00 a.m.
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JUDGE: Honorable Joel R. Wohfeil

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

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

Cross-Defendants.

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1 **MEMORANDUM OF POINTS AND AUTHORITES**

2 Defendant and Cross-Complainant Darryl Cotton ("Cotton") hereby moves this Court to expunge
3 the *Lis Pendens* (the "LP") recorded by Plaintiff Larry Geraci ("Geraci") on his real property located at
4 6176 Federal Blvd., San Diego (the "Property") pursuant to CCP §405.32 for the following reasons.

5 As stated by the California Supreme Court, "[T]he lis pendens procedure [is] susceptible to
6 serious abuse, providing unscrupulous plaintiffs with a powerful lever to force the settlement of
7 groundless or malicious suits." *Malcolm v. Superior Court* (1981) 29 Cal.3d 518, 524. "Once a lis
8 pendens is filed, it clouds the title and effectively prevents the property's transfer until the litigation is
9 resolved or the lis pendens is expunged." *BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th
10 952, 967. "Because of the potential for abuse and injustice to the property owner, the Legislature has
11 provided statutory procedures (CCP §405.30 *et seq.*) by which a lis pendens may be removed
12 ('expunged')." Weil & Brown, Cal. Practice Guide, *Civ. Pro. Before Trial* (The Rutter Group 2017)
13 ("Rutter Guide") ¶9:422 (citing *Shah v. McMahon* (2007) 148 Cal.App.4th 526, 529). "[T]he lis pendens
14 procedure provides a means by which a court may dispose of meritless real estate claims at the
preliminary stage of a case." *Shah, supra*, at 529 (emphasis added).

15 CCP §405.30 *et seq.* was enacted to require proactive action by the trial court in the form of a
16 "minitrial" on the merits in the *preliminary stage of a case*. As explained by the Court in *Amalgamated*
17 *Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, in analyzing the Legislature's intent in revising
18 the *LP* laws in 1992 and enacting CCP §405.32:

19 The financial pressure created by a recorded lis pendens provided the opportunity for
20 abuse, permitting parties with meritless cases to use it as a bullying tactic to extract unfair
21 settlements. [¶] The Code Comment thus states that section 405.32 "is intended to
22 disapprove *Malcolm*. . . and other cases which have held that the court on a motion to
23 expunge may not conduct a 'minitrial' on the merits of the case. *This section is intended to*
change California law and to require judicial evaluation of the merits." (Code Com., 14A
West's Ann. Code Civ. Proc., foll. §405.32, par. 3, p. 346, italics added.)
Amalgamated, supra, at 1012 (emphasis in original).

24 In *Hilberg v. Superior Court* (1989) 215 Cal.App.3d 539, 542, the Court stated: "We cannot
25 ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made not to
26 prevent conveyance of property that is the subject of the lawsuit, but to coerce an opponent to settle
27 regardless of the merits." (Citing *Malcolm, supra*, at 678.) Here, this action represents the very evil
28 which CCP §405.30 *et seq.* was enacted to prevent. This action was filed with no probable cause to

1 maliciously (i) prevent Cotton's sale of the Property to a third-party *bona fide* purchaser and (ii) exert
2 undue financial, emotional and psychological pressure on Cotton to coerce him into settling with Geraci.

3 **I. FACTUAL BACKGROUND**

4 Cotton is the sole owner of record of the Property.¹ In or around August 2016, Geraci first
5 contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton
6 because it met certain requirements of the City of San Diego ("City") to apply for and obtain a conditional
7 use permit ("CUP")² that would allow the operation of a Marijuana Outlet ("MO")³ at the Property. Over
8 the ensuing months, the parties extensively negotiated the terms of a potential sale of the Property. (DC
9 Decl. ¶2; VP ¶13, ¶14.)

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

25
26 ¹ Declaration of Darryl Cotton ("DC Decl.") ¶1; Request for Judicial Notice ("RJN") Exhibit ("Ex.") 1; (Verified Petition for
Alternative Writ of Mandate) ("VP") ¶1; RJN Ex. 2 (Complaint ("Comp.") ¶4.

27 ² A conditional use permit is administrative permission for uses not allowed as a matter of right in a zone, but subject to
approval. (Cal. Zoning Practice, *Types of Zoning Relief* §7.64, p.299 (Cont. Ed. Bar 1996.) The issuance of a conditional use
28 permit may be subject to conditions. (*J-Marion Company, Inc. v. County of Sacramento* (1977) 76 Cal.App.3d 517, 522.)

³ RJN 3 (City of San Diego, Development Services Department Information Bulletin 170 (October 2017) (City Information
Bulletin describing "the application process for a Marijuana Outlet")).

1 and (c), consequently, would pass the stringent City and State of California background checks required
2 to have the CUP approved (collectively, the "Qualification Representations"). (DC Decl. ¶3.)

3 On or around October 31, 2016, Geraci asked Cotton to execute Form DS-318 (Ownership
4 Disclosure Statement) ("Ownership Statement") – a required component of all CUP applications.
5 (RJN 4.) Geraci told Cotton that he needed the executed Ownership Statement to show that he had access
6 to the Property in connection with his planning and lobbying efforts to resolve the Critical Zoning Issue.
7 (DC Decl. ¶4.)

8 On November 2, 2016, Geraci and Cotton met at Geraci's office to negotiate the final terms of the
9 sale of the Property. At the meeting, the parties reached an oral agreement on the material terms for the
10 sale of the Property (the "November Agreement"). The November Agreement consisted of the following:
11 If the CUP was approved, then Geraci would, *inter alia*, provide: (i) a total purchase price of \$800,000;
12 (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of \$10,000. If the
13 CUP was denied, Cotton would keep an agreed upon \$50,000 non-refundable deposit ("NRD") and the
14 transaction would not close. In other words, the issuance of the CUP at the Property was a condition
15 precedent for closing on the sale of the Property and, if the CUP was denied, Cotton would keep his
16 Property and the \$50,000 NRD. (DC Decl. ¶5.)

17 At the November 2, 2016 meeting, after the parties reached the November Agreement, Geraci: (i)
18 provided Cotton with \$10,000 in cash towards the NRD of \$50,000, for which Cotton executed a
19 document to record his receipt thereof (the "Receipt"); (ii) promised to have his attorney, Gina Austin
20 ("Austin"), *promptly* reduce the oral November Agreement to written agreements for execution; and (iii)
21 promised to not submit the CUP to the City until he paid the balance on the NRD. (DC Decl. ¶6.)

22 After Geraci and Cotton met on November 2, 2016, reached the November Agreement, executed
23 the Receipt and separated – the following email communications took place that same day:

24 At 3:11 p.m., Geraci emailed Cotton a scanned copy of the Receipt which states:

25 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd. CA for a
26 sum of \$800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary.
27 (CUP for a dispensary) [¶] Ten Thousand dollars (cash) has been given in good faith
28 earnest money to be applied to the sales price of \$800,000 and to remain in effect until
license is approved. Darryl Cotton has agreed to not enter into any other contacts [*sic*]
on this property. [DC Decl. Ex. 1, pp. 4-8.]

At 6:55 p.m., Cotton replied:

1 Thank you for meeting today. Since we executed the Purchase Agreement in your office
2 for the sale price of the property I just noticed the 10% equity position in the dispensary
3 was not language added into that document. I just want to make sure that we're not
4 missing that language in any final agreement as it is a factored element in my decision
5 to sell the property. I'll be fine if you would simply acknowledge that here in a reply.
6 [DC Decl. Ex. 1, p.9 (emphasis added).]

7 At 9:13 p.m., Geraci replied: "*No no [sic] problem at all*" [*Id.* (emphasis added).]

8 In other words, the very same day on which the Receipt was executed, Cotton received a copy of the
9 Receipt from Geraci and realized it could be misconstrued as a final agreement for the Property. Because
10 Cotton was concerned, and wanted there to be no uncertainty, he requested Geraci confirm in writing the
11 Receipt was not a final agreement. Geraci replied to Cotton's request for written confirmation; thereby
12 clearly, unambiguously and indisputably confirming the Receipt is not a final agreement for Cotton's
13 Property. Thus, Cotton refers to this email from Geraci as the "Confirmation Email." (DC Decl. ¶8.)

14 Thereafter, over the course of almost five months, the parties exchanged numerous emails, texts
15 and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of
16 the final written agreements for the Property.⁴ However, Geraci continuously failed to make actual,
17 substantive progress. Most notably, he failed to provide the final written agreements, pay the balance of
18 the NRD, and to provide facts regarding the progress being made on the Critical Zoning Issue. (DC Decl.
19 ¶9.) Regarding the Critical Zoning Issue, and also reflecting Geraci's general non-substantive replies and
20 avoidance, the following text exchanges took place between Geraci and Cotton from January 6, 2017 and
21 February 7, 2017:

22 Cotton: Can you call me. If for any reason you're not moving forward I need to know.

23 Geraci: I'm at the doctor now everything is going fine the meeting went great yesterday
24 supposed to sign off on the zoning on the 24th of this month I'll try to call you later
25 today still very sick

26 Cotton: Are you available for a call?

27 Geraci: I'm in a meeting I'll call you when I'm done

28 Cotton: Thx

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

Cotton: This resolves the zoning issue?

Geraci: Yes

Cotton: Excellent

Geraci: On phone.. Call you back shortly..

Cotton: Ok

⁴ See DC Decl. Ex. 1. (Fifteen (15) emails with attachments sent between Cotton and Geraci prior to the commencement of the instant suit between 10/24/16–03/21/17 containing all email communications between them.)

1 Cotton: How goes it?

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

3 Cotton: Whats *[sic]* new?

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

6 Geraci: I'm just walking in with clients they resolved it its fine we're just waiting for final
7 paperwork [Cotton Decl. Ex. 2, pp.1-4.]

8 These text communications were meant to and did induce Cotton into believing, relying and acting on
9 Geraci's representations he was making progress on the Critical Zoning Issue (the "Text
10 Communications"). (DC Decl. ¶¶9-11.)

11 On February 27, 2017, Geraci emailed Cotton: "*Attached is the draft purchase of the property*
12 *for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.*"

13 (DC Decl. Ex. 1, p.13.) The cover email clearly states Geraci's intent of effectuating the oral November
14 Agreement via two separate written documents (each for \$400,000). Notably, Section 18(i) states:

15 The parties shall be legally bound with respect to the purchase and sale of the Property
16 pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully
17 executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile
18 transmission). [DC Decl. Ex. 1, p.29.]

19 Thus, the language clearly reflects the parties were yet to be "legally bound" to "the purchase and sale of
20 the Property" in February of 2017 and had yet to execute a final, legally binding agreement. *Id.*

21 On March 2, 2017, Geraci emailed Cotton a draft of the additional contract, the Side Agreement,
22 that was supposed to provide for, *inter alia*, Cotton's 10% equity stake. (DC Decl. Ex. 1, pp.41-48.) The
23 next day, Cotton replied:

24 Larry, I read the Side Agreement in your attachment and I see that no reference is made to
25 the **10% equity position** as per my Inda-Gro GERL Services Agreement (see attached) in
26 the new store. In fact para 3.11 [stating we are not partners] looks to avoid our agreement
27 completely. It looks like counsel did not get a copy of that document. Can you explain? [5]

28 Geraci did not reply to Cotton's email. Geraci did not pick up when Cotton called later. Exasperated,
Cotton followed up with Geraci via text wanting to confirm that Geraci had received the email and
understood his concern – that the Side Agreement did not provide for his "**10% equity position**" in the
MO. Cotton texted: "**Did you get my email?**" (DC Decl. Ex. 2, p.4.) Geraci replied one minute later: "**Yes**
I did I'm having her rewrite it now[.] As soon as I get it I will forward it to you[.]" (DC Decl. Ex. 2, p.4

⁵ DC Decl. Ex. 1, pp.49-50 (email) (emphasis added); pp.51-52 (Inda-Gro GERL Services Agreement (attachment)).

1 (the "Confirmation Text").) The Confirmation Text proves that on March 3, 2017 Geraci (i) was going
2 to have Austin revise the Side Agreement to contain Cotton's "10% equity position" in the MO and (ii)
3 had previously *received, acknowledged and consented* to the terms contained in the "Inda-Gro GERL
4 Services Agreement." Notably, Geraci does not refuse, refute, argue or so much as question Cotton's
5 requests or statements as would be logical if the Receipt were the full agreement as **now** alleged.

6 On March 6, 2017, Geraci and Cotton spoke regarding revisions required to have the drafts
7 accurately reflect the November Agreement. Cotton communicated his frustration with the delays and
8 Geraci again promised to have Austin *promptly* correct the mistakes in the drafts. During that
9 conversation, Cotton let Geraci know he would be attending a local cannabis event at which Austin was
10 scheduled to be the headnote speaker. (DC Decl. ¶13.) Geraci later texted Cotton he could speak with
11 Austin directly at the event: "*Gina Austin is there she has a red jacket on if you want to have a*
12 *conversation with her.*" (DC Decl. Ex. 2, p.4.)

13 The next day, March 7, 2017, Geraci sent the following email to Cotton:

14 Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your
15 thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth
16 month. . . . can we do 5k, and on the seventh month start 10k? [DC Decl. Ex. 1, pp.53-54
(email), pp.55-58 (draft Side Agreement).]

17 The *facts* that are demonstrated by the March Request Email are clear: Geraci had an established
18 obligation *to* Cotton, requiring him to pay a minimum of \$10,000 a month, and is requesting *of* Cotton a
19 concession from that obligation - specifically, that for the first six months of the operations of the MO,
20 he be allowed to pay Cotton \$5,000 instead of the \$10,000 per month base as required per the November
21 Agreement (the "March Request Email").

22 Attached to Geraci's email was a revised draft of the Side Agreement in Word format. This draft
23 provides for, *inter alia*, Cotton receiving (i) 10% of the net profits of the MO and (ii) a minimum monthly
24 payment of \$10,000. (DC Decl. at Ex. 1, p.55.) Furthermore, Attorney Gina Austin (who for several
25 months represented Geraci – a Real Party in Interest to the related Writ Action against the City), was
26 responsible for, and did draft versions of the contracts months after the November agreement indicating
27 her awareness that no final agreement had been executed. The attachment of the last draft provided was
28 dated "**March 3, 2017**" (the "Metadata Evidence"). (DC Decl. ¶15, Ex. 3 (screen-shot of the Metadata
Evidence).)

1 On March 16, 2017, after having reviewed the revised agreement forwarded by Geraci on
2 March 7, 2017, and discovering that it again did not accurately reflect the November Agreement, Cotton
3 decided to follow up with the City regarding the Critical Zoning Issue personally. It was at this point that
4 Cotton discovered that Geraci had been lying from the very beginning – Geraci had submitted a CUP for
5 the Property on October 31 2016, before the parties even reached the November Agreement. (DC Decl.
6 ¶16.) Geraci's submission was a direct contradiction of his (i) representation that a CUP could not be
7 submitted until the Critical Zoning Issue was resolved and (ii) promise to not submit the CUP until he
8 had paid Cotton the balance of the NRD. A Parcel Information Report provided by the City of San Diego,
9 Development Services Department ("City Parcel Report") states the zoning of the Property was changed
10 to "CO-2-1" (MO qualifying zone) on January 14, 2016. (RJN 5, p.2.) In other words, the City Parcel
11 Report makes clear the entire Critical Zoning Issue was a fraudulent scheme to (i) induce Cotton into
12 executing the Ownership Statement – no zoning change was required to submit the CUP for an MO to
13 the City on the Property – and (ii) to deceive Cotton into thinking that he required Geraci's unique and
14 powerful political influence to resolve the alleged Critical Zoning Issue.

15 Later that same day, March 16, 2017, Cotton emailed Geraci, in relevant part, the following:

16 [W]e started these negotiations 4 months ago and the drafts and our communications have
17 not reflected what we agreed upon and are still far from reflecting our original agreement.
18 Here is my proposal, please have your attorney Gina revise the Purchase Agreement and
19 Side Agreement to incorporate all the terms we have agreed upon so that we can execute
20 final versions and get this closed. [¶] I really want to finalize this as soon as possible - *I*
21 *found out today that a CUP application for my property was submitted in October, which*
22 *I am assuming is from someone connected to you.* Although, I note that you told me that
23 the \$40,000 deposit balance would be paid once the CUP was submitted and that you were
24 waiting on certain zoning issues to be resolved. Which is not the case. [¶] Please confirm
25 by Monday 12:00 PM whether we are on the same page and you plan to continue with our
26 agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If,
27 hopefully, we can work through this, please confirm that revised final drafts that
28 incorporate the terms above will be provided by Wednesday at 12:00 PM. [DC Decl. Ex.
1, pp.59-60]

25 The next day, Geraci texted Cotton: "*Can we meet tomorrow [?]*" (DC Decl. Ex. 2, p.4.) Of note,
26 Geraci, did not refute or dispute Cotton's factual assertions that Geraci had lied and submitted the CUP
27 without, *inter alia*, paying Cotton the balance of the NRD and reducing the November Agreement to
28 writing. Cotton replied via email:

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we

1 have final agreements, that we converse exclusively via email.... To be frank, I feel that
2 you are not dealing with me in good faith, you told me repeatedly that you could not submit
3 a CUP application until certain zoning issues had been resolved and that you had spent
4 hundreds of thousands of dollars on getting them resolved. You lied to me, I found out
5 yesterday from the City of San Diego that you submitted a CUP application on October 31,
6 2016 BEFORE we even signed our agreement on the 2nd of November. There is no
7 situation where an oral agreement will convince me that you are dealing with me in good
8 faith and will honor our agreement. We need a final written, legal, binding agreement.

9 Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement
10 and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.
11 [DC Decl. Ex. 1, p.61 (emphasis added).]

12 On March 18, 2017, Geraci replied to Cotton as follows: "*Darryl, I have an attorney working on
13 the situation now. I will follow up by Wednesday with the response as their timing will play a factor.*"

14 (DC Decl. Ex. 1, pp.62-63.) Cotton, now understanding Geraci's deceitful nature, replied:

15 Larry, I understand that drafting the agreements will take time, but you don't need to consult
16 with your attorneys to tell me whether or not you are going to honor our agreement. *I need
17 written confirmation that you will honor our agreement* so that I know that you are not
18 just playing for time – hoping to get a response from the City before you put down in
19 writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.
20 [DC Decl. Ex. 1, p.64.) (emphasis added).]

21 Geraci's response to Cotton's three (3) written requests for assurance of performance was nebulous,
22 and there was no finalization of the written agreements or confirmation of his intent to do so by Cotton's
23 deadline.

24 Thus, Cotton, having been true to his word and waiting until March 20 had passed (without receipt
25 of adequate assurance nor performance by Geraci, *i.e.*, Geraci's breach of the November agreement)
26 terminated the deal with Geraci on March 21, 2017 for breach: "To be clear, as of now, you have no
27 interest in my property, contingent or otherwise." (DC Decl. Ex. 1, p.67.) Having anticipated Geraci's
28 breach, Cotton had already lined up another buyer and then executed a written purchase agreement for
the sale of the Property to Mr. Martin (the "Martin Sale Agreement"). (RJN 6, pp.182-196.) The next
day, Geraci's counsel, Michael Weinstein ("Weinstein"), emailed Cotton the Complaint and the LP filed
on the Property. (DC Decl. ¶¶ 18,19.) The Complaint is premised solely on the allegation the Receipt is
the final written agreement for the Property (Comp. ¶7).

29 II. DISCUSSION

30 A. GERACI HAS THE BURDEN OF PROOF IN OPPOSING COTTON'S MOTION TO EXPUNGE A LIS PENDENS PURSUANT TO CCP §405.32.

1 CCP §405.30 provides, in relevant part, as follows:

2 At any time after notice of pendency of action has been recorded, any party . . . may apply
3 to the court in which the action is pending to expunge the notice . . . Evidence or
4 declarations may be filed with the motion to expunge the notice. The court may permit
5 evidence to be received in the form of oral testimony, and may make any orders it deems
6 just to provide for discovery by any party affected by a motion to expunge the notice. The
7 claimant shall have the burden of proof under Sections 405.31 and 405.32.

8 Thus, to avoid a motion to expunge under CCP §405.32, the burden is on the *LP* claimant – here,
9 Geraci – to establish the “probable validity” of the real property claim “by a preponderance of the
10 evidence.” *Id.* “If conflicting evidence is presented, the judge must weigh the evidence in deciding
11 whether plaintiff has sustained its burden.” Rutter Guide §9:436.2. As summarized and explained by
12 Miller & Starr, *California Real Estate*, Chapter 10, Section D.8 (December 2017 Update):

13 When expungement is sought on the basis that the real property claim lacks probable
14 validity, the claimant who filed the *lis pendens* has the burden of proof by a preponderance
15 of the evidence that the claim has probable validity. The resolution of this issue, unlike the
16 “failure to plead” grounds for expungement, requires the court to examine the factual
17 merits of the claim. Written evidence or declarations may be filed, and the court may permit
18 oral testimony; the court also may authorize discovery by the party moving to expunge. It
19 is not sufficient for the claimant merely to make a *prima facie* showing of probable validity;
20 the demonstration of “probable validity” requires a determination that it is more likely than
21 not that the claimant will obtain a judgment against the Cotton on the claim. The court is
22 required to weigh the evidence and make a preliminary determination based on the
23 evidence submitted, of whether it is more probable than not, that the claimant will prevail
24 on its real property claim. This determination must be made based on a preponderance of
25 evidence, with the claimant bearing the burden of proof. *Thus, the current statute
26 deliberately rejects former law that the trial court is not required to conduct a “mini-
27 trial” of the action on the merits and cannot resolve conflicts in the evidence, and
28 requires a hearing on the merits of the same nature as an attachment proceeding or a
claim and delivery proceeding.* [Emphasis added; internal citations omitted.]

21 Expungement of an improper *LP* is mandatory, not discretionary - “the court shall order that the
22 notice be expunged if the court finds that the claimant has not established by a preponderance of the
23 evidence the probable validity of the real property claim.” CCP §405.32 (emphasis added). Geraci cannot
24 meet his burden of proof, thus, the *LP* must be expunged.

25 **B. GERACI CANNOT ESTABLISH PROBABLE VALIDITY THAT THE RECEIPT IS THE**
26 **FINAL AGREEMENT FOR COTTON’S PROPERTY.**

27 In his Complaint, pursuant to which the *LP* was filed, Geraci alleges the following four causes of
28 action: (1) Breach of Contract (“BOC”); (2) Breach of the Covenant of Good Faith and Fair Dealing; (3)
Specific Performance; and (4) Declaratory Relief. (RJN 2.) The primary cause of action is the BOC (with

1 the other causes arising therefrom), which is predicated solely on the allegation the Receipt is the final
2 written agreement for the purchase of the Property by Geraci. As alleged by Geraci in his Complaint:

3 (i) "On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement for the
4 purchase and sale of the [Property] on the terms and conditions stated therein." (Comp. ¶7.);

5 (ii) "On or about November 2, 2016, [Geraci] paid to [Cotton] \$10,000 good faith earnest
6 money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
conditions of the written agreement." (Comp. ¶8.); and

7 (iii) "[Cotton] has anticipatorily breached the contract by stating that he will not perform the
8 written agreement according to its terms. Among other things, [Cotton] has stated that,
9 contrary to the written terms, the parties agreed to a down payment... of \$50,000... [and] he
is entitled to a 10% ownership interest in the [Property.]" (Comp. ¶11.)

10 Materially summarized, Geraci and Cotton are in accord that on November 2, 2016: (i) an
11 agreement was reached for the sale of the Property; (ii) Cotton received \$10,000 from Geraci; and (iii) a
12 document was executed by both parties on that day. However, the parties dispute what that executed
13 document is. Cotton alleges the document, the Receipt, is just a "receipt" meant to memorialize his receipt
14 of the \$10,000. Geraci, on the other hand, alleges the Receipt is the "final written agreement" for his
15 purchase of the Property and that Cotton is lying about being entitled to a total \$50,000 NRD and a 10%
16 equity stake in the Property – terms not contained in the Receipt.

17 Thus, the sole and case-dispositive issue in this action is a determination of whether the Receipt
18 is a "receipt" as Cotton alleges or a "final written agreement" for the Property as Geraci alleges. The
19 evidence is simple and clear. Geraci fraudulently induced Cotton into executing the Receipt; promising
20 to have Austin promptly reduce the November Agreement to writing for execution. Geraci schemed to
21 acquire the Property by misrepresenting the Receipt as the final agreement for the Property if the CUP is
22 *approved*.⁶ Alternatively, if the CUP is *denied*, Geraci can simply breach his promise to pay the \$40,000

23
24 ⁶ Cotton notes that for what Geraci alleges is a simple 3-sentence breach of contract suit, he has what appears to be, based on
25 pleadings filed, at least three full-time attorneys from two separate and sizeable law firms – Ferris & Britton and Austin Legal
26 Group – representing him and engaging in litigation and discovery tactics that are demonstratively oppressive. "Oppression
27 means the ultimate effect of the burden of responding to the discovery is incommensurate with the result sought. In considering
28 whether the discovery is unduly burdensome or expensive, the court takes into account 'the needs of the case, the amount in
controversy, and the importance of the issues at stake in the litigation.' (Code Civ. Proc., §2019.030, subd. (a)(2).)" *People v. Sarpas* (2014) 225 Cal.App.4th 1539, 1552 (case citations omitted). As proven herein, this case lacks probable cause. Thus, given Cotton is financially destitute and with no legal background, traveling to and from a deposition and responding to even basic interrogatories and requests for admissions (while doing so *pro se*) is oppressive because (i) the "discovery sought is unreasonably cumulative or duplicative" (CCP §2019.030) as all material evidence is already in the record and (ii) "unduly burdensome [and] expensive, taking into account the needs of the case" (CCP §2019.030).

1 balance due on the NRD. But-for Cotton calling the City (discovering a CUP had been submitted in
2 October of 2016), confronting Geraci about his lies and demanding him to perform or provide assurance
3 of performance, Geraci's fraudulent scheme would have been successful.

4 "Fraud is a *defense* to breach of contract ... and the elements of contractual fraud are very similar
5 to those of deceit. Courts analyzing tort cases often rely on contract cases (and vice versa), and may
6 interchangeably cite the tortious deceit statutes (Civ.C. §§1709-1710) and contractual fraud statutes
7 (Civ.C. §§1572-1573)." Rutter Guide, *Civil Procedure Before Trial, Claims & Defenses* ¶5:3 (citing
8 *Pacesetter Homes, Inc. v. Brodtkin* (1970) 5 Cal.App.3d 206, 210-211; *Bily v. Arthur Young & Co.* (1992)
9 3 Cal.4th 370, 415; and 5 Witkin, *Summary of California Law, Torts* §767 (11th ed. 2017)).

10 Cotton, to prevail on this motion, must provide sufficient evidence to prove that Geraci will "more
11 likely than not" fail to "obtain a judgment against [Cotton] on the [BOC] claim." CCP §405.30. He can
12 do so by proving any one of the *contractual fraud* statutes for (i) Misrepresentation, (ii) Concealment,
13 (iii) False Promise or (iv) Other Deceptive Acts.⁷ However, to not just prevail on this motion, but to
14 demonstrate the complete lack of probable cause underlying this suit and the intentional malicious filing
15 of the *LP*, Cotton establishes and proves the more difficult elements for the fraudulent *tort of deceit* and
16 *promissory fraud* as defined by the California Supreme Court. In *Lazar v. Superior Court* (1996) 12
17 Cal.4th 631, 638 (internal citations and quotations omitted) the Court stated:

18 The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation
19 (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or
20 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e)
21 resulting damage.

22 "Promissory fraud" is a subspecies of the action for fraud and deceit. A promise to do
23 something necessarily implies the intention to perform; hence, where a promise is made
24 without such intention, there is an implied misrepresentation of fact that may be actionable
25 fraud. [¶] An action for promissory fraud may lie where a [plaintiff] fraudulently induces
26 the [defendant] to enter into a contract.

27 Misrepresentations. Geraci made, *inter alia*, the following misrepresentations: (1) Cotton's
28 execution of the Ownership Statement was required to resolve the Critical Zoning Issue; (2) the alleged

7 Civ.C. §1572(1) (Misrepresentation: "The suggestion, as a fact, of that which is not true, by one who does not believe it to be true."); Civ.C. §1572(3) (Concealment: "The suppression of that which is true, by one having knowledge or belief of the fact"); Civ.C. § 1572(4) (False Promise: "A promise made without any intention of performing it"); Civ.C. §1572(5) (Other Deceptive Act: "Any other act fitted to deceive."; *see Wells v. Zenz* (1927) 83 Cal.App. 137, 140 (Describing this catchall provision as covering "all the multifarious means which human ingenuity can devise" and including deception by "surprise, trick, cunning, dissembling and unfairness.")).

1 Critical Zoning Issue, unless first resolved with Geraci's unique and powerful political connections,
2 prevented the submission of a CUP to the City; (3) he would pay Cotton the balance of the \$50,000 NRD
3 before submitting the CUP to the City; (4) the Receipt would not be represented as the "final agreement"
4 for the Property; (5) he would have his attorney, Austin, *promptly* reduce the November Agreement to
5 writing; (6) he would provide Cotton a 10% equity stake in the MO; and (7) he would provide Cotton a
6 minimum \$10,000 a month payment throughout the life of the MO (the "Seven Primary
7 Misrepresentations").

8 Knowledge of Falsity. The (i) *undisputed* written admissions and communications *by* Geraci
9 (most notably the Confirmation Email, the Confirmation Text, the Text Communications, and the March
10 Request Email); (ii) the City Parcel Report; (iii) the fact the CUP was submitted by Geraci's agent, Berry,
11 and accepted by the City in October 2016; and (iv) the language in the multiple drafts of the Purchase
12 and Side Agreements prepared by Geraci's attorney, Austin, *after* November 2, 2016 clearly prove
13 beyond any reasonable doubt that Geraci knew each of the Seven Primary Misrepresentations were false.

14 Intent to Defraud. Prior to the execution of any documents, Geraci provided his Qualification
15 Representations and thereby characterized himself as a trustworthy, ethical, knowledgeable and
16 politically influential individual that was uniquely positioned to help Cotton with resolving the Critical
17 Zoning Issue and, consequently, getting a CUP approved on the Property. Thus, Geraci's Qualification
18 Representations were material and had the intent and effect of deceiving Cotton into believing, relying
19 and acting on Geraci's Seven Primary Misrepresentations.⁸

20 Justifiable Reliance. Based on Geraci's representations, it was reasonable and justifiable for
21 Cotton to act as if Geraci was being truthful. "No rational party would enter into a contract anticipating
22 that they are or will be lied to." *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993.
23 Prior to discovering in March of 2017 that Geraci had submitted a CUP in October of 2016, Cotton,
24 although upset at the lack of progress, had no reason to believe that Geraci was an unscrupulous
25 individual. Thus, it was reasonable for Cotton to be induced by Geraci's representations into (i) executing
26 the Ownership Statement, (ii) executing the Receipt, (iii) believing Geraci was diligently working on the
27

28 ⁸ See *Whiteley v. Philip Morris, Inc.* (2004) 117 Cal.App.4th 635, 678; 5 Witkin, Summary of California Law, Torts §808
(11th ed. 2017) (actual reliance is shown if the misrepresentation substantially influences a party's decision to act).

1 Critical Zoning Issue; (iv) believing Austin was working on reducing the November Agreement to writing
2 for execution; and (v) forbearing from entering into a contract for the Property with a third-party⁹. It was
3 not until Geraci refused to perform or even respond to Cotton's repeated requests for assurance of
4 performance that Cotton justifiably terminated the November Agreement.¹⁰

5 Damage. It is impossible to convey in this action and motion the full scope of the irreparable and
6 unconscionable physical and psychological damage Geraci has caused Cotton.¹¹ However, at a
7 minimum, Cotton is entitled to compensation for all harm caused by Geraci's breach of contract that was
8 foreseeable. Civ.C. §3300. Some of Cotton's lost profits are recoverable as they were certain, under both
9 the November Agreement and the original Martin Sale Agreement, he was guaranteed a monthly
10 minimum of \$10,000. Civ.C. §3301. Furthermore, "once a person willfully deceives another with intent
11 to induce him to alter his position to his injury, he 'is liable for any damage which he thereby suffers.'
12 (Civ.C. §1709.)" *Fowler v. Fowler* (1964) 227 Cal.App.2d 741, 748. Here, to finance this meritless
13 litigation, Cotton was forced to unconditionally sell his Property for a flat \$500,000 and he no longer has
14 any equity or monthly payments even if the CUP is approved. (RJN 6, p.194.)

15 C. **ALL OF GERACI'S ARGUMENTS ARE MEANT TO DISTRACT THIS COURT FROM**
16 **THE UNDISPUTED AND CASE-DISPOSITIVE NATURE OF THE CONFIRMATION**
17 **EMAIL AND OTHER EVIDENCE PROVING THE RECEIPT IS JUST A RECEIPT.**

18 A review of the record of this action, and the related Petition for Writ of Mandate action Cotton filed
19 against the City of San Diego¹² reveals that Weinstein devotes the vast and overwhelming majority of his
20 arguments to describing in painstaking detail, and proving with voluminous supporting evidence, the

21 ⁹ "Forbearance – the decision not to exercise a right or power – is sufficient consideration to support a contract and to
22 overcome the statute of frauds. [Citation.] It is also sufficient to fulfill the element of reliance necessary to sustain a cause of
23 action for fraud or negligent misrepresentation." *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 174.

24 ¹⁰ Civ.C. § 1440; "[I]f a party to a contract expressly or by implication repudiates the contract before the time for his or her
25 performance has arrived, an anticipatory breach is said to have occurred." *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th
26 479, 489; see 1 Witkin, Summary of California Law, Contracts §§861-868; *Restatement (Second) Contracts* §§250-257
27 (Anticipatory breach—also called "anticipatory repudiation" and "prospective nonperformance"—occurs when a party whose
28 performance is not yet due makes clear that it does not intend to perform.).

¹¹ Cotton has filed a complaint in the United States District Court, Southern District of California which currently is pending
25 before The Honorable Gonzalo Curiel (Case No. 3:18-cv-00325). The federal action is stayed pending resolution of this state
26 action. Cotton has alleged causes of action against Mr. Geraci, Ms. Berry, Ms. Austin, Messrs. Weinstein and Toothacre, and
27 their respective law firms, Ferris & Britton and Austin Legal Group, for, *inter alia*, Civil Conspiracy and RICO. One of the
28 primary issues in that suit will focus on whether Geraci had probable cause, in light of the Confirmation Email and the other
evidence presented herein, to bring forth this suit; see, generally, RJN 6 (Cotton's attempt, in a submission that was
procedurally an opposition to compel certain discovery requests, describe the challenges he has faced in this litigation and his
relationship with counsel. His submission was supported by numerous declarations of individuals who interacted with him
during the negotiations phase with Geraci and this litigation.).

¹² *Darryl Cotton v. City of San Diego* (Case No. 37-2017-00037675-CU-WM-CTL).

1 significant amount of time, energy, resources and capital that Geraci has invested in seeking to have the CUP
2 approved. *This is meant to distract the Court from the undisputed and case-dispositive nature of the*
3 *Confirmation Email, the Confirmation Text, the March Request Email, the Metadata Evidence and testimony*
4 *presented herein that completely remove all probable cause to support Geraci's allegation that the Receipt*
5 *is the final agreement for the Property.* Geraci's lengthy descriptions of his self-serving performance cannot
6 be the basis of granting him a right of ownership to Cotton's Property. But, it *does* serve to distract the Court
7 by creating the illusion – because he has invested “more than \$300,000.00 on the CUP process” – that he
8 would only do so if he had a legal right of ownership to the Property. (Comp. ¶9.)

9 Previously, Geraci filed a Demurrer to Cotton's Cross-Complaint arguing, *inter alia*, the Statute
10 of Frauds (“SOF”) and the Parol Evidence Rule (“PER”) should prevent admission of some of the written
11 communications, especially the Confirmation Email, between the parties referenced above. This Court
12 properly denied Geraci's Demurrer. However, even assuming, *arguendo*, the Court had ruled otherwise
13 in the first instance, Geraci's reliance on the SOF and the PER is misplaced. First, “The doctrine of
14 estoppel to plead the statute of frauds may be applied where necessary to prevent either unconscionable
15 injury or unjust enrichment.” *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 27. Here, as described
16 above, both unconscionable injury and unjust enrichment will occur if Geraci can misrepresent the
17 Receipt as the final agreement for the Property. Second, the PER does not bar evidence of *fraudulent*
18 *promises* at variance with terms of the writing: “[I]t was never intended that the parol evidence rule
19 should be used as a shield to prevent the proof of fraud.” *Riverisland Cold Storage, Inc. v. Fresno-Madera*
20 *Production Credit Ass'n* (2013) 55 Cal.4th 1169, 1182 (quoting *Ferguson v. Koch* (1928) 204 Cal. 342,
21 347).

22 Notably, the California Supreme Court in *Riverisland* referenced *Tenzer*, *supra*, in reaching its
23 holding: “*Tenzer* disapproved a 44-year-old line of cases to bring California law into accord with the
24 Restatement Second of Torts, holding that a fraud action is not barred when the allegedly fraudulent
25 promise is unenforceable under the statute of frauds. Considerations that were persuasive in *Tenzer* also
26 support our conclusion here. The *Tenzer* court decided the Restatement view was better as a matter of
27 policy. [Citation.] *It noted the principle that a rule intended to prevent fraud, in that case the statute*
28 *of frauds, should not be applied so as to facilitate fraud.* [Citation.]” *Riverisland*, *supra*, at 1183

1 (emphasis added).

2 Litigation-hyperbole aside, it would be truly outrageous and violate all notions of justice, fairness
3 and simple decency if Geraci could invoke the SOF or the PER to prevent his own written admissions
4 proving his own fraud. Cotton has continuously sold and collateralized his remaining interest in the
5 Property to finance this meritless litigation. If he loses – it is not an exaggeration, but a fact – Cotton will
6 be destitute and homeless.¹³

7 **IV. CONCLUSION**


8 The Receipt is the *only* piece of evidence Geraci has *ever* produced which APPEARS to grant
9 him a right of ownership to the Property. Setting aside the other evidence referenced above (Geraci's
10 anticipatory breach of the November Agreement and the fraud), the Confirmation Email alone is
11 indisputably dispositive on this issue – *the Receipt is just a "receipt" and not a "final written*
12 *agreement" for the Property*. Geraci had no probable cause to file this action and "recorded [the]
13 lis pendens... to coerce [Cotton] to settle regardless of the merits." *Hilberg, supra*, at 542 ("We cannot
14 ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made ... to
15 coerce an opponent to settle regardless of the merits.").

16 For the reasons forth above, Geraci cannot meet his burden and establish the probable validity
17 that the Receipt is the final written agreement for the Property. Thus, respectfully, Cotton requests the
18 Court order the *LP* be expunged, award Cotton his attorneys' fees and costs¹⁴ (to be submitted by way of
19 noticed motion upon this Court's ruling on this motion), and such other relief as this Court may find just
20 and proper based on its factual findings at the hearing on this motion.

21
22 DATED: April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

23
24 By



JACOB P. AUSTIN

Attorney for Defendant and Cross-Complainant
DARRYL COTTON

25
26 ¹³ DC Decl. ¶21; RJN 6, p.194 (Amendment to Martin Sale Agreement).

27 ¹⁴ *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1018 ("Under section 405.38, a prevailing party on a motion to
28 expunge a lis pendens is *entitled* to recover attorney fees. The statute provides: 'The court *shall* direct that the *party prevailing*
on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless
the court finds that the other party acted with substantial justification or that other circumstances make the imposition of
attorney's fees and costs unjust.' (§405.38, italics added.)). [Emphasis in original.]

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F I L E D
Clerk of the Superior Court

APR 04 2018

By: A. SEAMONS, Deputy

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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 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
Agreement, and I had found out that he had lied to me about numerous matters, I terminated the
contract with Geraci via email.

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.

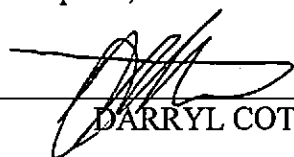
20 
21 DARRYL COTTON
22
23
24
25
26
27
28

EXHIBIT 1

E-MAILS BETWEEN COTTON AND GERACI 10/24/16 – 03/21/17

NO.	DATE	TIME	FROM	TO	SUBJECT	ATTACHMENT	PAGE #/ RANGE
1	10/24/16	12:38 pm	Geraci	Cotton	Drawing	Yes	1-2
						A102 Site Plan – Proposed Scheme B.pdf	3
2	11/02/16	03:11 pm	Geraci	Cotton	Agreement	Yes	4-5
						Cotton & Geraci Contract.pdf	6-8
3	11/02/16	06:55 pm 09:13 pm	Cotton Geraci	Geraci Cotton	Agreement Agreement	No	9
4	11/14/16	10:26 pm	Geraci	Cotton	Federal Blvd needs sig ASAP	Yes	10-11
						Authorization to view and copy Building Records from the County of San Diego Tax Assessor.pdf	12
5	02/27/17	08:49 pm	Geraci	Cotton	Federal Blvd Property	Yes	13-14
						17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf	15-40
6	03/02/17	08:51 am	Geraci	Cotton	Statement	Yes	41-42
						17-0227 Side Agreement unsigned.docx	43-48
7	03/03/17	08:22 am	Cotton	Geraci	Re: Statement	Yes	49-50
						IndaGro-GERL Service Contract.doc	51-52
8	03/07/17	12:05 pm	Geraci	Cotton	Contract Review	Yes	53-54
						17-0306 Side Agreement unsigned.docx	55-58
9	03/16/17	08:23 am	Cotton	Geraci	Re: Contract Review	No	59-60
10	03/17/17	02:15 pm	Cotton	Geraci	Re: Contract Review	No	61
11	03/18/17	01:43 pm	Geraci	Cotton	RE: Contract Review	No	62-63
12	03/19/17	09:02 am	Cotton	Geraci	Re: Contract Review	No	64
13	03/19/17	03:11 pm	Geraci	Cotton	RE: Contract Review	No	65
14	03/19/17	06:47 pm	Cotton	Geraci	Re: Contract Review	No	66
15	03/21/17	03:18 pm	Cotton	Geraci	Re: Contract Review	No	67



Darryl Cotton <indagrodarryl@gmail.com>

Drawing

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

Mon, Oct 24, 2016 at 12:38 PM

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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From: darryl@dalbercia.us [mailto:darryl@dalbercia.us] **On Behalf Of** Darryl Cotton
Sent: Monday, October 24, 2016 12:37 PM
To: Larry Geraci <Larry@tfcisd.net>
Subject: Test Send

Darryl Cotton, President



darryl@inda-gro.com

www.inda-gro.com

Ph: 877.452.2244

Cell: 619.954.4447

Skype: dc.dalbercia

6176 Federal Blvd.

San Diego, CA. 92114

USA

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 A102 Site Plan - Proposed - Scheme B.pdf
399K



Federal Blvd, MMACC
6376 Federal Blvd,
San Diego CA 92114

Owner:
Architect:
City, CA Zip Code

DATE	02/01/2009
BY	TECHNE
PROJECT NO.	MMACC
CAD FILE	MMACC.dwg
DATE	02/01/2009
BY	TECHNE
PROJECT NO.	MMACC
CAD FILE	MMACC.dwg
DATE	02/01/2009
BY	TECHNE

**SITE PLAN -
PROPOSED -
Scheme B**

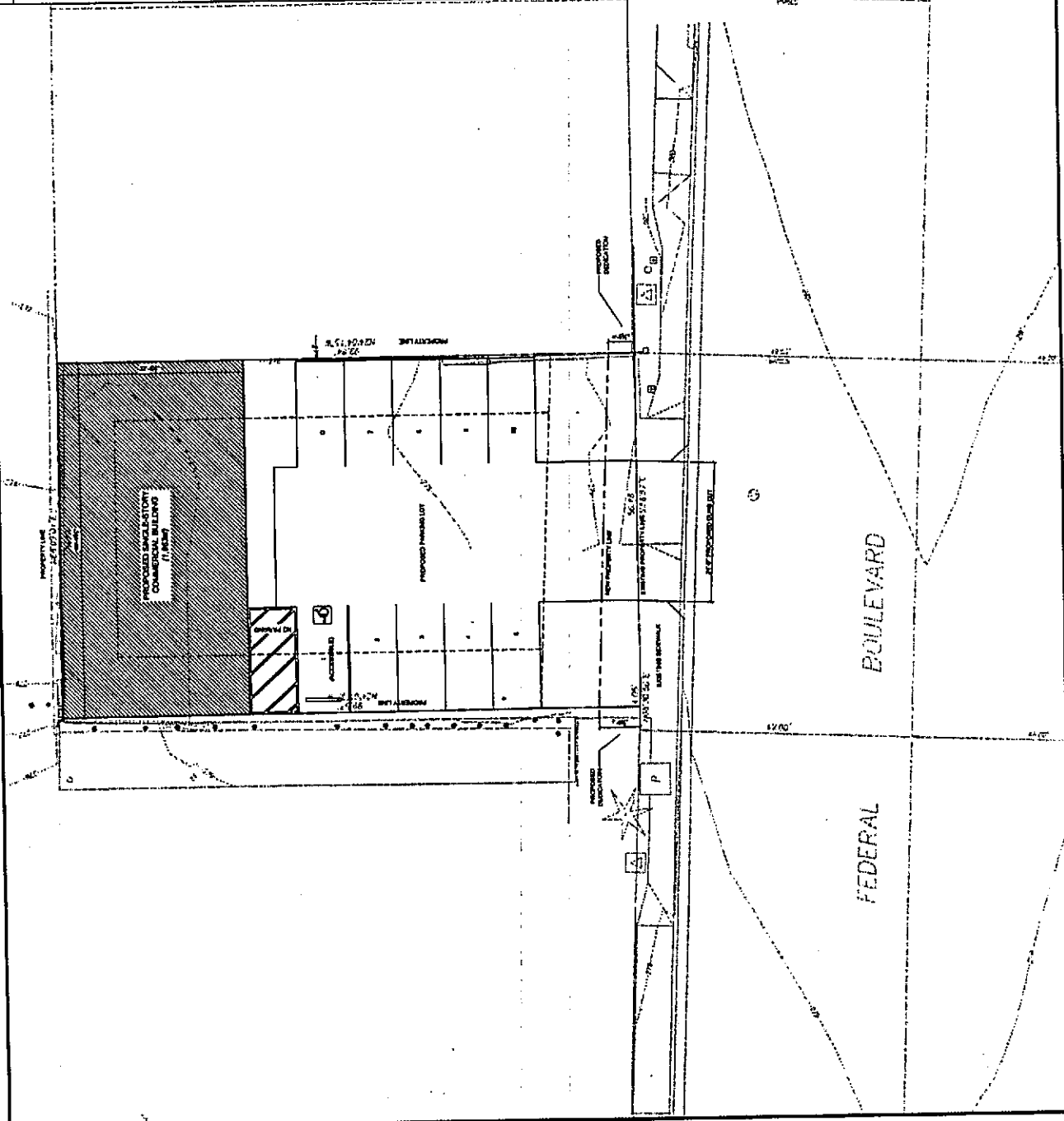
A102

SITE PLAN LEGEND

- PROPERTY LINE
- OUTLINE OF PROPOSED STRUCTURES
- AREA OF EXISTING LANDSCAPE
- AREA OF EASEMENT
- AREA OF EXISTING Hardscape
- SITE DRAINAGE PATTERN

SITE PLAN NOTES

- A. The site plan is for informational and general site reference only. Refer to other construction documents for complete details.
- B. Before commencing any site foundation or site testing or excavation, the contractor shall verify and mark locations of all existing utilities, easements and other features shown on this plan. If any discrepancy is found, the contractor shall immediately notify the architect in writing, including the location, including owner, owner's address, and other information. The contractor shall not proceed with any work until the discrepancy is resolved.
- C. The contractor or subcontractor shall modify the site plan if any conflict or discrepancy occurs between the information on this plan and the actual site conditions. The contractor shall notify the architect in writing of any such conflict or discrepancy. The architect shall be responsible for resolving any such conflict or discrepancy.
- D. The contractor shall not start any building structure including walls, foundations, or other structures until the architect has approved the site plan. The contractor shall not start any building structure until the architect has approved the site plan.
- E. Coordinate with other licensed professionals for any site utilities.
- F. Refer to Topographic Survey for additional information.





Darryl Cotton <indagrodarryl@gmail.com>

Agreement

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

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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Gmail - Agreement

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Cotton & Geraci Contract.pdf

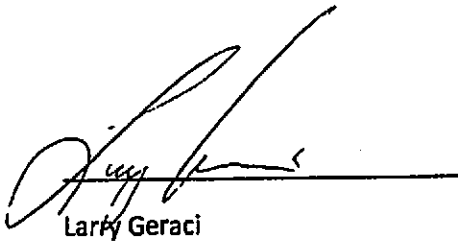
71K

11/02/2016

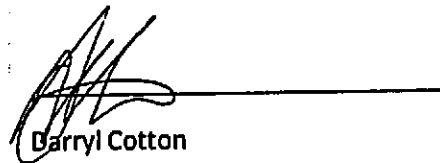
Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 2, 2010 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Gerao,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

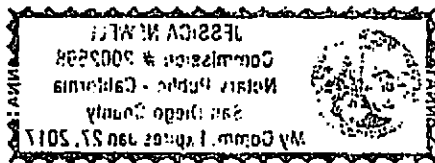
WITNESS my hand and official seal.

Signature

Jessica Newell

(Seal)







Darryl Cotton <indagroddarryl@gmail.com>

Re: Agreement

1 message

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President



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

6176 Federal Blvd.
San Diego, CA. 92114
USA

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Darryl Cotton <indagrodarryl@gmail.com>

Federal Blvd need sig ASAP

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

Mon, Nov 14, 2016 at 10:26 AM

Hi Darryl,

Can you sign and email back to me asap?

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*


Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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 **Authorization to view and copy Building Records from the County of San D....pdf**
35K

Authorization to view and copy Building Records from the County of San Diego Tax Assessor

I, Darryl Cotton, owner of the property located at 6176 Federal Blvd, San Diego, CA (APN 543-020-02-00) authorize Abhay Schweitzer, Benjamin Peterson, and/or Carlos Gonzalez of TECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

Signature

____/____/____

Date



Darryl Cotton <indagrodarryl@gmail.com>

Federal Blvd Property

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

Mon, Feb 27, 2017 at 8:49 AM

Hi Daryl,

Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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 **17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf**
347K

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made and entered into this ____ day of _____, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("Seller"), and 6176 FEDERAL BLVD TRUST dated _____, 2017, or its assignee ("Buyer").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. **DEFINITIONS.** For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property":** That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. **"Date of Agreement":** The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. **"Purchase Price":** The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars (\$400,000.00).

d. **"Due Diligence Period":** The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. **"Escrow Agent":** The Escrow Agent is: [NAME]

f. **"Title Company":** The Title Company is: [NAME]

g. **"Title Approval Date":** The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. **"Closing", "Closing Date" and "Close of Escrow":** These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. **"Notices" will be sent as follows to:**

Buyer:

6176 Federal Blvd. Trust
6176 Federal Blvd.

San Diego, California 92114

Attn:

Fax No.:

Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110,

Seller:

Darryl Cotton
Address:
City, State, Zip
Attn:
Fax No.:
Phone No.:

Escrow Agent:

[NAME]
[ADDRESS]

2. PURCHASE AND SALE. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "Improvements"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "Intangibles"). (Reference herein to the "Property" shall include the Real Property, Improvements, and Intangibles).

3. PURCHASE PRICE AND PAYMENT; DEPOSIT. The Purchase Price will be paid as follows:

a. Deposit. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. Cash Balance. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

4. ESCROW.

a. Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "Escrow") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. Failure to Receive CUP. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "Buyer's Indemnity" (as detailed in Section 8 below).

5. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "Preliminary Title Report"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. Permitted Exceptions. The following exceptions shown on the Preliminary Title Report (the "Permitted Exceptions") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("Mandatory Cure Items").

c. Title Policy. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. Title and Survey Costs. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("Property Information"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. DUE DILIGENCE. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyer's sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "Due Diligence Termination Notice") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. COVENANTS OF SELLER. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exist any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "Buyer's Representatives") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. DAMAGE. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. CONDEMNATION. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Seller's loss of income prior to closing.

14. CLOSING

a. Closing Date. The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "Deed").

(14) Assignment of Intangible Property. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) FIRPTA. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. Buyer's Deliveries in Escrow. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) Purchase Price. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. Transfer of Title. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

15. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. At the Closing, Seller shall be charged the following:

- (1) All premiums for an ALTA Standard Coverage Title Policy;
- (2) One-half of all escrow fees and costs;
- (3) Seller's share of prorations; and
- (4) One-half of all transfer taxes.

b. Buyer Will Pay. At the Closing, Buyer shall pay:

- (1) All document recording charges;
- (2) One-half of all escrow fees and costs;
- (3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;
- (4) One-half of all transfer taxes; and
- (5) Buyer's share of prorations.

c. Prorations.

(1) Taxes. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. CLOSING DELIVERIES.

a. Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) Funds. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorrations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) Recording. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed after recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. Seller's Default. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

Seller's Initials

Buyer's Initials

c. Escrow Cancellation Following a Termination Notice. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "**Escrow Cancellation Charges**"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (½) of any Escrow Cancellation Charges.

18. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

h. Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. Legal Advice. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. Memorandum of Agreement. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first set forth above.

BUYER:

6176 FEDERAL BLVD TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON.

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

Date: _____, 2017

By: _____

Escrow Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY
(to be provided by the Title Company)

EXHIBIT "B"

PROPERTY INFORMATION

EXHIBIT "C"

SERVICE CONTRACTS

EXHIBIT "D"

THREATENED OR PENDING LAWSUITS

EXHIBIT "E"

MEMORANDUM OF AGREEMENT



Darryl Cotton <indagrodarryl@gmail.com>

Statement

1 message

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

Thu, Mar 2, 2017 at 8:51 AM

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication

Gmail - Statement

and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.



17-0227 Side Agreement unsigned.docx

35K

SIDE AGREEMENT

Dated as of March __, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the __ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars (\$400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I

1. Terms of the Side Agreement

1.1. Buyer shall pay Four Hundred Thousand Dollars (\$400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. Buyer shall transmit Payment Price via wire transfer to the following account: _____, with the routing number or swift code of: _____, located at the following bank and address: _____.

3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

3.6. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

3.11. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. Invalidity and Waiver. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
6176 Federal Blvd.
San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON:



Darryl Cotton <Indagrodarryl@gmail.com>

Re: Statement

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcfsd.net>

Fri, Mar 3, 2017 at 8:22 AM

Larry,

I read the Side Agreement in your attachment and I see that no reference is made to the 10% equity position as per my Inda-Gro GERL Service Agreement (see attached) in the new store. In fact para 3.11 looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?

On Thu, Mar 2, 2017 at 8:51 AM, Larry Geraci <Larry@tfcfsd.net> wrote:

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

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

 **IndaGro-GERL Service Contract.doc**
691K



SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments
5402 Ruffin Road, Ste. 200
San Diego, CA 92103

Attn: Mr. Larry Geraci
Ph: 858.956.4040
E-mail: Larry@TFCSD.net

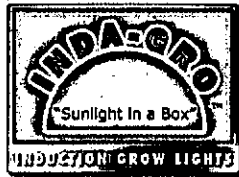
Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

- 1) The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for \$400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.
- 2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.
- 3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.
- 4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of \$400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro \$200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, \$200,000.00 would become payable and due.
- 5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and

Inda-Gro

6176 Federal Blvd., San Diego, CA 92114-1401
Toll Free: 877.452.2244 Local: 619.266.4004
www.inda-gro.com



GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

- 6) GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

TOTAL PRICE: Four Hundred Thousand and 00/100 (\$ 400,000.00)

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

Sign: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci



Darryl Cotton <indagroddarryl@gmail.com>

Contract Review

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

Tue, Mar 7, 2017 at 12:05 PM

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Gmail - Contract Review

Circular 230 Disclaimer:

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



17-0306 Side Agreement unsigned v2.docx
38K

SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the ____ day of _____, 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated _____, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller \$400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I SIDE AGREEMENT

1.1. Within 10 days from the closing of the purchase of the Property pursuant to the Purchase Agreement, and conditioned upon Seller being fully vacated from the Property prior to such closing, Buyer shall pay to Seller in cash or cash equivalent, the sum of Four Hundred Thousand Dollars (\$400,000.00) to an account to be designated by Seller in writing.

1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the 10th day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than \$5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and \$10,000.00 a month for each month thereafter the Business is operating on the Property.

ARTICLE II GENERAL TERMS

2. Entire Agreement. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. Termination. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

2.10. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. Incorporation of Recitals/Exhibits. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER: SELLER:

6176 FEDERAL BLVD. TRUST

DARRYL COTTON:

By: _____

Printed: _____

Its: Trustee



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcscd.net>

Thu, Mar 16, 2017 at 8:23 PM

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with

suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."

- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcisd.net>

Fri, Mar 17, 2017 at 2:15 PM

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl



Darryl Cotton <indagroddarryl@gmail.com>

RE: Contract Review

1 message

Larry Geraci <Larry@tfcisd.net>
To: Darryl Cotton <indagroddarryl@gmail.com>

Sat, Mar 18, 2017 at 1:43 PM

Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

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



Darryl Cotton <indagroddarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagroddarryl@gmail.com>
To: Larry Geraci <Larry@tfcscd.net>

Sun, Mar 19, 2017 at 9:02 AM

Larry,

I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will be contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.



Darryl Cotton <indagrodarryl@gmail.com>

RE: Contract Review

1 message

Larry Geraci <Larry@tfcSD.net>
To: Darryl Cotton <indagrodarryl@gmail.com>

Sun, Mar 19, 2017 at 3:11 PM

Darryl,

At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

As to lying about the status, read the comment below from the city on Wednesday 3/15/2017. We are addressing this currently with the city. I have been forthright with you this entire process.

To: 'Abhay Schweitzer' <abhay@techne-us.com>
Subject: PTS 520606 - Federal Boulevard MMCC
Importance: High

Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.

Please advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.

Please notify me at your earliest convenience of your preference.

Regards,



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcisd.net>

Sun, Mar 19, 2017 at 6:47 PM

Larry,

I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.

It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcisd.net>

Tue, Mar 21, 2017 at 3:18 PM

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete" phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

EXHIBIT 2

Friday, March 3, 2017

12:16 PM Did you get my email?

(L) Yes I did I'm having her
rewrite it now

As soon as I get it I will
forward it to you

12:17 PM

Monday, March 6, 2017

(L) Gina Austin is there she has
a red jacket on if you want to
have a conversation with her

4:30 PM

Tuesday, March 7, 2017

(L) Just sent the contract over

12:05 PM

12:10 PM Ill look it over tonight

Thursday, March 16, 2017


(L) How's it going with the
contract?

4:47 PM

Friday, March 17, 2017

(L) Can we meet tomorrow

11:44 AM

 Enter message



10:15 AM That sounds good. Can we
speak later?

(L) Not done intel 1030 tonight ...
am tomorrow

11:27 AM

12:16 PM

K

Wednesday, February 15, 2017

(L) Good morning Darrell... We
are preparing the documents
with the attor

ney and hopefully will have
them by the end of this week

8:25 AM

1:00 PM Sounds good

Wednesday, February 22, 2017

(L) Contract should be ready in a
couple days

11:38 AM

Thursday, February 23, 2017

(L) Can you call me when you get
a chance thanks

2:38 PM

Monday, February 27, 2017

(L) Good morning Darrell I
emailed you the contract
for the purchase of the
property ...the relocation
contract will come sometime
today

8:50 AM

10:04 AM Hi Larry I'm traveling today
I will have a chance to look
at that tomorrow and I will
forward it to my attorney
thank you

Wednesday, January 18, 2017

(L) The sign off date they said it's
going to be the 30th 10:27 AM

10:34 AM This resolves the zoning
issue?

(L) Yes 10:36 AM

11:03 AM Excellent

- Monday, January 30, 2017

(L) On phone.. Call you back
shortly.. 3:50 PM

3:50 PM Ok

Tuesday, January 31, 2017

2:47 PM How goes it?

(L) We're waiting for
confirmation today at about 4
o'clock 2:48 PM

Monday, February 6, 2017

12:15 PM Whats new?

Tuesday, February 7, 2017

8:19 AM Based on your last text I
thought you'd have some
information on the zoning by
now. Your lack of response
suggests no resolution as of
yet.

(L) I'm just walking in with clients
they resolved it it's fine
we're just waiting for final
paperwork 8:20 AM

< **Larry Geraci**

8589564040



SMS/MMS

Wednesday, January 4, 2017

L

Hi Daryl I have the extreme case of the flu and I'm in bed I'll try to call you tomorrow or the next day

12:20 PM

12:20 PM

Get better and try!

Thursday, January 5, 2017

8:52 AM

Any better?

Friday, January 6, 2017

Can you call me. If for any reason you're not moving forward I need to know.

8:40 AM

L

I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to

call you later today still very sick

9:51 AM

Friday, January 13, 2017

Are you available for a call?

10:46 AM

L

I'm in a meeting I'll call you when I'm done

10:47 AM

10:47 AM

Thx

17-0306 Side Agreement unsigned v2 Properties



General Security Details

Property	Value
Description	
Title	
Subject	
Tags	
Categories	
Comments	
Origin	
Authors	Gina Austin
Last saved by	AEA
Revision number	4
Version number	
Program name	Microsoft Office Word
Company	HP
Manager	
Content created	3/6/2017 3:48 PM
Date last saved	3/6/2017 5:05 PM
Last printed	
Total editing time	01:22:00
Content	

[Remove Properties and Personal Information](#)

OK

Cancel

Apply

EXHIBIT 3

EXHIBIT 4

Case No.:

**IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

DARRYL COTTON
Defendant and Appellant,

v.

The Superior Court of California, County of San Diego, Respondent.
LARRY GERACI, an individual, REBECCA BERRY, an individual,
CITY OF SAN DIEGO, a public entity,
Real Parties in Interest.

Appeal from Orders of the Superior Court, County of San Diego

37-2017-00010073-CU-BC-CTL
37-2017-00037675-CU-WM-CTL

Honorable Joel R. Wohlfeil, Judge Presiding

**INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON;
DECLARATION OF DR. MARKUS PLOESSER
IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION
FOR EXTRAORDINARY WRIT, WRIT OF MANDATE,
OR OTHER APPROPRIATE RELIEF**

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Appellant, Self-Represented

1 I, Markus Ploesser, MD, LLM, DABPN, FRCP(C), declare:

2 1. On March 4, 2018, I interviewed Mr. Darryl Cotton for an Independent
3 Psychiatric Assessment. At the beginning of the assessment, I informed Mr. Cotton
4 that the assessment was being prepared to assist the Court and not to act as an advocate
5 on his behalf. Mr. Cotton expressed his understanding, agreement and proceeded with
6 the interview and assessment.
7

8 DUTY TO COURT

9
10 2. I certify that I am aware of my duty as an expert to assist the Court and
11 not to be an advocate for any party. I have prepared this report in conformity with that
12 duty. I will provide testimony in conformity with that duty if I am called upon to
13 provide oral or written testimony.
14

15 3. I am solely responsible for the opinions provided in this report. I reserve
16 the right to amend or alter my opinions should additional relevant information become
17 available after the report completion.
18

19 QUALIFICATIONS

20
21 4. I am a psychiatrist licensed in the State of California, Physician and
22 Surgeon License No. A101564 and the Province of British Columbia, License No.
23 31564.
24

25 5. I am Board certified by the American Board of Psychiatry and Neurology
26 in the area of Psychiatry (Certificate No. 60630) and the subspecialty of Forensic
27

1 Psychiatry (Certificate No. 1903).

2 6. I am a Fellow of the Royal College of Physicians and Surgeons of Canada,
3 with certifications in Psychiatry and Forensic Psychiatry.
4

5 7. I am on the clinical faculty at the University of British Columbia (UBC)
6 in the division of Forensic Psychiatry.
7

8 8. My prior work experience has included forensic psychiatric evaluation
9 work for the Forensic Psychiatric Hospital and the Forensic Psychiatric Services
10 Commission in Coquitlam, British Columbia. I have written numerous forensic
11 psychiatric assessment reports and testified as an expert witness before the British
12 Columbia Review Board and the Provincial Courts of British Columbia.
13

14 9. I currently work as a psychiatrist for the Department of Corrections for
15 the State of California.
16

17 10. In addition to my medical qualifications, I am also a graduate of Columbia
18 University School of Law in the LLM program.
19

20 11. In preparation for my assessment of Mr. Cotton, I consulted with Dr.
21 Carolyn Candido regarding her medical diagnosis of Mr. Cotton on December 13,
22 2017. Additionally, I reviewed the declaration previously provided by Dr. Candido
23 regarding her diagnosis of Mr. Cotton prepared on January 22, 2018. (Attached hereto
24 as Exhibit 1.)
25

26 12. Prior to my interview with Mr. Cotton, I also discussed the factual
27

1 background regarding Mr. Cotton's need for a psychiatric assessment with his legal
2 consultant, Mr. Jacob Austin. Mr. Austin, I was told, is representing Mr. Cotton on a
3 limited basis due to Mr. Cotton's inability to pay for his full legal representation by
4 Mr. Austin.
5

6 CLIENT INTERVIEW

7 13. Mr. Cotton related the following: He is 57 years old. He was born and
8 raised in the Chicago area and has lived in San Diego since 1980. He owns a lighting
9 manufacturing company but reports that over the past approximately 9-12 months he
10 has experienced financial hardship, stress and anxiety originating from a lawsuit
11 against him.
12

13 14. Mr. Cotton denies any history of mental health symptoms predating the
14 current lawsuit. He is taking Keppra 500mg twice daily for a seizure disorder, which
15 he started suffering from around the age of 26. He usually suffers from approximately
16 3 Grand Mal seizures per year. He used to take Dilantin, another anticonvulsant
17 medication. He reports having obtained significant medical benefit from the use of
18 medical cannabis, particularly a high CBD strain which he says has helped to reduce
19 the frequency of his seizures.
20

21 15. Mr. Cotton represents he owns a property meeting certain requirements
22 by the City of San Diego and the State of California that would allow the creation and
23 operation of a Medical Marijuana Consumer Collective.
24
25
26
27
28

1 16. Mr. Cotton reports that he has and is being subjected to a variety of threats
2 and harassing behaviors that he believes have been directed against him by the plaintiff
3 in the lawsuit.
4

5 17. Mr. Cotton believes that an armed robbery on June 10th, 2017 on his
6 property may have been directed by the plaintiff. He was present at his property at the
7 time of the armed robbery, slamming the door and thereby escaping the robbers inside
8 a building on his property while he called 911. The armed individuals who committed
9 the robbery threatened Mr. Cotton at gun-point before fleeing from the premises. (Mr.
10 Cotton stated the armed-robbery is still unresolved by the police and it was the subject
11 of local news coverage that is still available online.)
12
13

14 18. Mr. Cotton states he followed the armed individuals in his vehicle as they
15 fled from the scene while he was on the phone with 911. He was told by 911 to cease
16 his pursuit due to safety reasons as Mr. Cotton was chasing the armed robbers at high-
17 speed. Mr. Cotton believes he recognized the driver of the getaway vehicle as an
18 employee of the plaintiff.
19
20

21 19. Mr. Cotton appeared particularly intense during his narration regarding
22 one of his employees who was duct-taped and laying face down at gun-point on the
23 ground. Mr. Cotton states that this long-time employee, an electrical-engineer who Mr.
24 Cotton relied upon heavily, quit the next day because of this incident.
25

26 20. Mr. Cotton describes starting to experience increased symptoms of stress
27
28

1 and anxiety since the robbery, above that which was caused by the litigation. He had
2 been in his usual state of health prior. He reports that he is now unable to sleep at night,
3 experiences "mood swings" and episodes of explosive rage without apparent triggers.
4 He experiences nightmares around themes of feeling powerless. The nightmares occur
5 in slight variations, and at times he "sees the robbers in his dreams."
6

7 21. Furthermore, his description of his nightmares include vivid scenes of
8 violence towards the attorneys for plaintiff that he believes are not acting in a
9 professional manner. Mr. Cotton believes that the attorneys representing plaintiff are
10 "in it together" with the plaintiff to use the lawsuit to "defraud" him of his property.
11 This point is one of the main foci of his expressed mental distress.
12

13 22. Mr. Cotton's distress due to his perception of a conspiracy against him by
14 attorneys is amplified by what he believes is the Court's disregard for the evidence and
15 arguments he has presented. He states he has never been provided the reasoning for the
16 denial of any relief he sought. Mr. Cotton expressed that at certain points during the
17 course of the litigation he believed the trial court judge was part of the perceived
18 conspiracy against him.
19

20 23. Mr. Cotton is also under the belief that his former law firm could have
21 resolved this matter at an early stage in the proceedings but chose not to in order to
22 continue billing legal fees.
23

24 24. Mr. Cotton reports no improvement in his mental health symptoms since
25

1 the robbery. He describes that since the robbery there have been additional threats made
2 against him by "agents" of the plaintiff. Specifically, he describes that two associates
3 of plaintiff went to his property on February 3, 2017 under the pretense of discussing
4 potential business opportunities, but when they arrived they were there to indirectly
5 threaten him by informing him that it would be "good" for him to "settle with Geraci."
6

7 25. Mr. Cotton now feels hopeless, helpless, unable to sleep, with decreased
8 appetite, but either no or only minimal changes in weight.
9

10 26. Mr. Cotton states that on December 12, 2017, immediately after a court
11 hearing, he was evaluated in the emergency department of a hospital for a TIA
12 (transitory ischemic attack, a frequent precursor of a stroke).
13

14 27. The day after his emergency department discharge, Mr. Cotton states he
15 assaulted a third-party and that is also the day he was diagnosed with Acute Stress
16 Disorder by Dr. Candido.
17

18 28. Mr. Cotton expressed having experienced suicidal ideation, most recently
19 on December 13th, 2017. He denied symptoms of psychosis, specifically
20 hallucinations.
21

22 OPINIONS AND RECOMMENDATIONS

23 29. It is my professional opinion that Mr. Cotton currently meets criteria of
24 Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and
25 Major Depression (F32.2). He does not present with any objective, observable signs
26
27

1 and symptoms of psychosis.

2 30. Given the absence of a prior mental health history of psychotic disorder
3 (and the physical symptoms that led to a diagnosis of a TIA and Acute Stress Disorder
4 by separate medical doctors), I have no reason to believe that Mr. Cotton's reports of
5 harassment by the plaintiff would be of delusional quality. It is my professional opinion
6 that Mr. Cotton sincerely believes that the plaintiff and his counsel are in a conspiracy
7 against him and that they represent a threat to his life.
8
9

10 31. It is my medical opinion that Mr. Cotton's symptoms are unlikely to
11 improve as long as current stressors (pending litigation, and what Mr. Cotton believes
12 to be threatening behaviors by plaintiff or his "agents") persist. His symptoms are also
13 likely to be significantly reduced if he believes the Court was not ignoring and
14 disregarding him.
15
16

17 32. It is my medical opinion that Mr. Cotton's mental health condition would
18 likely benefit from a rapid resolution of current legal proceedings. In my professional
19 opinion, the level of emotional and physical distress faced by Mr. Cotton at this time
20 is above and beyond the usual stress on any defendant being exposed to litigation. If
21 causative triggers and threats against Mr. Cotton persist, there is a substantial
22 likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental
23 health.
24
25

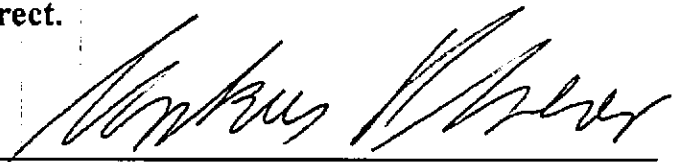
26 ///

1 33. Besides a removal of current stressors, his mental health condition would
2 likely benefit from Cognitive Behavioral Therapy for PTSD and depression, as well as
3 a trial of antidepressant medication.
4

5 **I declare under penalty of perjury under the laws of the State of California**
6 **that the foregoing is true and correct.**
7

8 DATED:

9 3/4/2018


Markus Ploesser, MD, LLM, DABPN, FRCP(C)

11 M. PLOESSER, M.D.
12 PSYCHIATRIST
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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: JACOB P. AUSTIN [SBN 290303] FIRM NAME: The Law Office of Jacob Austin STREET ADDRESS: 1455 Frazee Road, #500 CITY: San Diego STATE: CA ZIP CODE: 92108 TELEPHONE NO.: (619) 357-6850 FAX NO.: (888) 357-8501 E-MAIL ADDRESS: JPA@JacobAustinEsq.com ATTORNEY FOR (name): Defendant/X-Complainant DARRYL COTTON (Ltd Scope of Rep)	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 04/05/2018 at 08:27:00 AM Clerk of the Superior Court By Vanessa Bahena, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101-2994 BRANCH NAME: Central Division - Civil	CASE NUMBER: 37-2017-0010073-CU-BC-CTL
PLAINTIFF/PETITIONER: LARRY GERACI DEFENDANT/RESPONDENT: DARRYL COTTON, et al.	JUDICIAL OFFICER: The Honorable Joel R. Wholfeil
PROOF OF ELECTRONIC SERVICE	DEPARTMENT: C-73

1. I am at least 18 years old.
 - a. My residence or business address is (*specify*):
 1510 Front Street
 San Diego, CA 92101
 - b. My electronic service address is (*specify*):
 ServeThePapersFast@gmail.com
2. I electronically served the following documents (*exact titles*):

☒ The documents served are listed in an attachment. (*Form POS-050(D)/EFS-050(D) may be used for this purpose.*)

3. I electronically served the documents listed in 2 as follows:
 - a. Name of person served: Michael R. Weinstein
 On behalf of (*name or names of parties represented, if person served is an attorney*):
 Plaintiff LARRY GERACI and Cross-Defendant REBECCA BERRY
 - b. Electronic service address of person served :
 mweinstein@ferrisbritton.com
 - c. On (*date*): April 4, 2018

☒ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.
 (*Form POS-050(P)/EFS-050(P) may be used for this purpose.*)

Date: April 4, 2018

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

ZOE KERSEY

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

ATTACHMENT TO PROOF OF ELECTRONIC SERVICE**Documents Served:**

1. *EX PARTE* APPLICATION BY COTTON FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*) [CCP 405.30 et seq.]; AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI
2. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DARRYL COTTON'S *EX PARTE* APPLICATION FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF LARRY GERACI;
3. DECLARATION OF JACOB P. AUSTIN IN SUPPORT OF DARRYL COTTON'S *EX PARTE* APPLICATION FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF LARRY GERACI;
4. NOTICE OF MOTION AND MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);
5. DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);
6. DARRYL COTTON'S DECLARATION IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);
7. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF: DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); **AND** *EX PARTE* APPLICATION BY COTTON FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*) [CCP 405.30 et seq.]; AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI
8. [PROPOSED] ORDER EXPUNGING NOTICE OF PENDENCY OF ACTION AND AWARDED ATTORNEYS' FEES AND COSTS TO DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON;
9. SUBSTITUTION OF ATTORNEY – CIVIL (Without Court Order); and
10. NOTICE OF LIMITED SCOPE OF REPRESENTATION