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Cross-Defendant REBECCA BERRY

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 LARRY GERACI, an individual,  
11 Plaintiff,

12 v.

13 DARRYL COTTON, an individual; and  
14 DOES 1 through 10, inclusive,  
15 Defendants.

16 DARRYL COTTON, an individual,  
17 Cross-Complainant,

18 v.

19 LARRY GERACI, an individual, REBECCA  
20 BERRY, an individual, and DOES 1  
THROUGH 10, INCLUSIVE,  
21 Cross-Defendants.

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

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

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

**[IMAGED FILE]**

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

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

22  
23 I, Larry Geraci, declare:

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

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

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

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

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

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

1 investment. I was willing to pay a price for the Property based on what I anticipated it might be worth  
2 if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale  
3 conditional upon CUP approval because if the condition was satisfied he would be receiving a much  
4 higher price than the Property would be worth in the absence of its approval for use as a medical  
5 marijuana dispensary. We agreed on a down payment of \$10,000.00 and a purchase price of  
6 \$800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement  
7 for my purchase of the Property from him on the terms and conditions stated in the agreement  
8 (hereafter the “Nov 2nd Written Agreement”). A true and correct copy of the Nov 2nd Written  
9 Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-  
10 Defendant, Larry Geraci’s Notice of Lodgment in Support of Opposition to Motion to Expunge Lis  
11 Pendens (hereafter the “Geraci NOL”). I tendered the \$10,000 deposit to Mr. Cotton as acknowledged  
12 in the Nov 2nd Written Agreement.

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

14 “On November 2, 2016, Geraci and I met at Geraci’s office to negotiate the final  
15 terms of the sale of the Property. At the meeting, we reached an oral agreement  
16 on the material terms for the sale of the Property (the “November Agreement”).  
17 The November Agreement consisted of the following: If the CUP was approved,  
18 then Geraci would, inter alia, provide me: (i) a total purchase price of \$800,000;  
19 (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity  
20 distribution of \$10,000. If the CUP was denied, I would keep an agreed upon  
21 \$50,000 non-refundable deposit (“NRD”) and the transaction would not close. In  
22 other words, the issuance of a CUP at the Property was a condition precedent for  
23 closing on the sale of the Property and, if the CUP was denied, I would keep my  
24 Property and the \$50,000 NRD.”

25 Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of  
26 the sale of the Property and we reached an agreement on the final terms of the sale of the Property.  
27 That agreement was not oral. We put our agreement in writing in a simple and straightforward written  
28



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

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

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

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

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

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

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

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

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

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

25 Hi Larry,

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

1 Declaration of Abhay Schweitzer.

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

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

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

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

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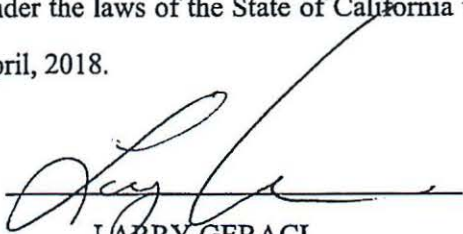
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9<sup>th</sup> day of April, 2018.



LARRY GERACI