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Cross-Defendant REBECCA BERRY

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**DECLARATION OF ABHAY  
SCHWEITZER IN SUPPORT OF  
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

I, Abhay Schweitzer, declare:

1. I am over the age of 18 and am not a party to this action. I have personal knowledge of the facts stated in this declaration. If called as a witness, I would testify competently thereto. I provide this declaration in support of the opposition by Plaintiff and Cross-Defendant, Larry Geraci, to the motion to expunge the lis pendens.

2. I am a building designer in the state of California and a Principal with Techne, a design

1 firm I founded in approximately December 2010. Techne provides design services to clients  
2 throughout California. Our offices are located at 3956 30<sup>th</sup> Street, San Diego, CA 92104. Our firm  
3 has worked on approximately 30 medical marijuana projects over the past 5 years, including a number  
4 of Conditional Use Permits for Medical Marijuana Consumer Cooperatives (MMCC) in the City of  
5 San Diego ("City"). One of these projects was and is an application for a MMCC to be located at 6176  
6 Federal Ave., San Diego, CA 92105 (the "Property").

7 3. On or about October 4, 2016, Rebecca Berry, whom I was and am informed was acting  
8 as the agent of Larry Geraci, hired my firm to provide design services in connection with the  
9 application for a MMCC to be developed and built at the Property (the "Project"). Those services  
10 included, but are not limited to, services in connection with the design of the Project and application  
11 for a Conditional Use Permit (the "CUP").]

12 4. The first step in obtaining a CUP is to submit an application to the City of San Diego.  
13 My firm along with other consultants (a Surveyor, a Landscape Architect, and a consultant responsible  
14 for preparing the noticing package and radius maps) prepared the CUP application for the client as  
15 well as prepared the supporting plans and documentation. My firm coordinated their work and  
16 incorporated it into the submittal.

17 5. On or after October 31, 2016, I submitted the application to the City for a CUP for a  
18 medical marijuana consumer cooperative to be located on the Property. The CUP application for the  
19 Project was submitted under the name of applicant, Rebecca Berry. The submittal of the CUP  
20 application required the submission of several forms to the City, including Form DS-318 signed by the  
21 property owner, Darryl Cotton, authorizing/consenting to the application. A true and correct copy of  
22 Form DS-318 that I submitted to the City is attached as Exhibit 1 to the Notice of Lodgment in  
23 Support of Plaintiff Larry Geraci's Opposition to Defendant Darryl Cotton's Motion to Expunge Lis  
24 Pendens (hereinafter the "Geraci NOL"). Mr. Cotton's signed consent can be found on Form DS-318.

25 6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the  
26 form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from  
27 which to choose when checking – "Owner", "Tenant/Lessee" and "Redevelopment Agency". The  
28 purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and*



1 *must be signed by all persons with an interest in the property.*

2         7.       The CUP application process generally involves several rounds of comments from the  
3 City in which the applicant is required to respond in order to “clear” the comment. This processing  
4 involved substantial communication back and forth with the City, with the City asking for additional  
5 information, or asking for changes, and our responding to those requests for additional information and  
6 making any necessary changes to the plans. I have been the principal person involved in dealings with  
7 the City of San Diego regarding the CUP application. My primary contact during the process had been  
8 Firouzeh Tirandazi, Development Project Manager, City of San Diego Development Services  
9 Department, tele (619) 446-5325, whom the City initially assigned to be the project manager for the  
10 CUP application. Recently the Project Manager has changed from Firouzeh Tirandazi to Cherlyn Cac.

11         8.       We have been engaged in the application process for this CUP application for  
12 approximately seventeen (17) months so far.

13         9.       At the outset of the review process a difficulty was encountered that delayed the  
14 processing of the application. The Project was located in an area zoned “CO” which supposedly  
15 included medical marijuana dispensary as a permitted use, but the City’s zoning ordinance did not  
16 specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the  
17 City passed a new regulation that amended the zoning ordinance to clarify that operating a medical  
18 marijuana dispensary was a permitted use in areas zoned “CO.” I am informed and believe this  
19 regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and  
20 the City resumed its processing of the CUP application.

21         10.       The CUP application for this Project has completed the initial phase of the process.  
22 This initial phase was completed when the City deemed the CUP application complete (although not  
23 yet approved) and determined the Project was located in an area with proper zoning. When this  
24 occurred, as required, notice of the proposed project was given to the public as follows: First, on  
25 March 27, 2017, the City posted a Notice of Application (or “NOA”) for the Project on its website for  
26 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second,  
27 the City mailed the Notice of Application to all properties within 300 feet of the subject property.  
28 Third, as applicant we posted the Notice of Application at the property line as was required.

1           11.     Since the completion of the initial phase of the process we have been engaged in  
2 successive submissions and reviews and are presently engaged still in that submission and review  
3 process. The most recent comments from the City were received on October 20, 2017.

4           12.     In connection with the CUP application there is an issue left to resolve regarding a  
5 street dedication. In my previous declaration submitted October 30, 2017, I stated that at that time I  
6 expected this issue to be resolved within the next six (6) weeks. The issue has not yet been resolved.  
7 A medical marijuana dispensary cannot be located within 100 feet of a residential zoned lot and the  
8 Property is located within 100 feet of a residential zoned lot. To overcome this barrier, we previously  
9 suggested to the City the following solution: that we make an irrevocable offer of dedication of 7-feet  
10 of the Property to the City of San Diego which, when accepted, would mean the Property would be  
11 more than 100 feet from a residential neighborhood and thereby satisfy the requirement. Previously  
12 Jim Bartell met with the City's reviewer responsible for this issue, who indicated a tentative agreement  
13 with our proposed solution. However, the most recent comments issued by the City regarding the  
14 project still listed as "not cleared" the issue of the Property location being within 100 feet of a  
15 residential zoned lot. Thus, the City's reviewer has still not formally recommended approval of our  
16 proposed solution of an offer of dedication and that issue still needs to be "cleared". Nevertheless, I  
17 still expect the City's reviewer to ultimately "clear" the issue based on our suggested solution of an  
18 offer of dedication as there is no basis in the San Diego Municipal Code to deny our proposed offer of  
19 dedication. Currently, my best estimate of when I expect this issue to be "cleared" or resolved is on or  
20 about late June or early July 2018. What I mean by resolved is that point in time when the City staff  
21 responsible for this correction formally accepts our proposed solution and "clears" the comments from  
22 their review. However, the irrevocable offer of dedication is not effective until the proposed  
23 Conditional Use Permit is approved at the final instance and the irrevocable offer of dedication is  
24 properly recorded.

25           13.     In connection with the CUP application another issue recently arose in that we have  
26 been required by the City to provide a geotechnical investigation for the Subject Property. The  
27 required geotechnical investigation will be performed by SCST, Inc. a professional engineering firm  
28 headquartered in San Diego, with whom I have contracted on behalf of Mr. Geraci and Ms. Berry.

1 SCST is comprised of over 130 professionals who provide geotechnical engineering, environmental  
2 science & engineering, special inspection & materials testing, and facilities consulting service. SCST  
3 is comprised of skilled geotechnical engineers, civil and environmental engineers, environmental  
4 scientists, engineering geologists, multi-credential inspectors and technicians. To conduct the  
5 necessary soils testing we are required to file a permit with the San Diego County Department of  
6 Environmental Health because the exploratory borings exceed 20 feet below ground surface. To  
7 obtain the permit we must include a signed Property Owner Consent form evidencing consent by the  
8 property owner, Darryl Cotton. I am informed and believe that the Court has issued an order  
9 permitting access to the Subject Property for soils testing and requiring Mr. Cotton to sign the Property  
10 Owner Consent form. As a result, we are proceeding to have the geotechnical investigation performed.

11 14. Once the City has cleared all the outstanding issues it will issue an environmental  
12 determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination  
13 (“NORA”).

14 15. In my previous declaration submitted October 30, 2017, I stated that at that time I  
15 expected the NORA to be issued sometime in late December 2017 or January 2018. The NORA has  
16 not yet been issued. Currently, my best estimate is that the NORA will be issued a week or so after the  
17 City has cleared all cycle issues. My best estimate is about one week after the dedication issue is  
18 cleared, so sometime in July 2018.

19 16. The NORA must be published for 10 business days. If no interested party appeals the  
20 NORA, City staff will present the CUP for a determination on the merits by a Hearing Officer. The  
21 hearing is usually set on at least 30 days’ notice so the City’s Staff has time to prepare a report with its  
22 recommendations regarding the issues on which the hearing officer must make findings. If there is no  
23 appeal of the NORA, I expect the hearing before the hearing officer to be held on or about mid-to-late  
24 August 2018 or afterwards.

25 17. If the NORA is appealed it will be set for hearing before the City Council. Currently, it  
26 is my opinion that the earliest an appeal of the NORA could be heard before the City Council would be  
27 on or about mid-to-late August 2018 or afterwards. In all but one instance, the City Council has  
28 denied a NORA appeal related to a medical marijuana CUP application. The one NORA appeal that



1 was upheld is a project located in a flood zone.

2 18. If there is a NORA appeal and such appeal is denied by the City Council, then the  
3 earliest I would expect the CUP application to be heard by a hearing officer would be on or about mid-  
4 to-late September 2018.

5 19. If there is a NORA appeal and it is upheld by the City Council, the City Council would  
6 retain jurisdiction and the CUP application would be heard by the City Council for a final  
7 determination at some point after the NORA appeal. In that case the earliest I would expect this to  
8 occur would also be on or about mid-to-late September 2018.

9 20. To date we have not yet reached the stage of a City Council hearing and there has been  
10 no final determination to approve the CUP.

11  
12 I declare under penalty of perjury under the laws of the State of California, that the foregoing is  
13 true and correct. Executed this 9<sup>th</sup> day of April, 2018.

14  
15 Dated: 04/09/18

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17 ABHAY SCHWEITZER  
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