

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
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

**PLAINTIFF LARRY GERACI'S
MEMORANDUM OF POINTS AND
AUTHORITIES 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

TABLE OF CONTENTS

	Page
I. INTRODUCTION	4
II. LEGAL PRINCIPLES	5
III. FACTUAL BACKGROUND	5
IV. GERACI HAS ESTABLISHED THE PROBABLE VALIDITY OF HIS CLAIMS	13
V. CONCLUSION	15

TABLE OF AUTHORITIES

Page

Cases

<i>Blackburn v. Charnley</i> (2004) 117 Cal.App.4th 758	13
<i>Castro v. Superior Court</i> (2004) 116 Cal.App.4th 1010	5
<i>Hilberg v. Superior Court</i> (1989) 215 Cal.App.3d 539	4
<i>Howard S. Wright Cons. Co. v. Superior Court</i> (2003) 106 Cal.App.4th 314	5
<i>Mason v. Superior Court</i> (1985) 163 Cal.App.3d 989	4
<i>Palmer v. Zaklama</i> (2003) 109 Cal.App.4th 1367	5
<i>Real Estate Analytics, LLC v. Vallas</i> (2008) 160 Cal.App.4th 463	14

Statutes

Code Civ. Proc., § 1062.5	14
Code Civ. Proc., § 405.3	5
Code Civ. Proc., § 405.30	4, 5
Code Civ. Proc., § 405.31	5
Code Civ. Proc., § 405.32	5

1 Plaintiff and Cross-Defendant, LARRY GERACI (“Geraci”), submits these points and
2 authorities in opposition to the motion by Defendant and Cross-Complainant, DARRYL COTTON
3 (“Cotton”), to expunge the *lis pendens* recorded more than one year ago at the outset of this action.

4 **I. INTRODUCTION**

5 After having failed to comply with this court’s prior orders directing Mr. Cotton to submit to his
6 deposition and to respond to written discovery requests, Cotton moves this Court, on 8 days’ notice, to
7 expunge the *lis pendens*. Cotton’s refusal to participate in discovery has substantially prejudiced
8 Geraci and Berry in preparation of this case. Code of Civil Procedure, section 405.30, provides: “The
9 court . . . may make any orders it deems just to provide for discovery by any party affected by a motion
10 to expunge the notice.” The court should continue this hearing until after Cotton submits to his
11 deposition and answers the written discovery.

12 Despite the lack of discovery, based on the documentary evidence and the declarations of
13 Geraci and Abhay Schweitzer, Geraci has met his burden of establishing the probable validity of the
14 real property claims for: (1) specific performance; and (2) declaratory relief.¹

15 The simple matter is that Geraci and Cotton had an agreement for the purchase and sale of real
16 property that they reduced to writing and signed before a Notary Public. That contract, which expressly
17 states all the terms necessary for enforceability, is valid and binding on the parties and supports causes
18 of action for specific performance and declaratory relief. That Cotton has subsequently found a buyer
19 willing to pay \$1.2 million above Geraci’s purchase price is certainly motive for Mr. Cotton to attempt
20 to wiggle out of his commitment, but it is not a legal defense to Geraci’s specific performance,
21 declaratory relief, or contract claims. Moreover, Geraci’s willingness to discuss other proposals from
22 Mr. Cotton over the ensuing several months in an attempt to appease Cotton who was threatening to
23 interfere with the contract is not evidence that the November 2, 2016 written agreement (hereafter,

24 _____
25 ¹ The only claims Geraci has brought which “affect title or possession” of real property for *lis pendens* purposes are his
26 claims for (1) specific performance, and (2) declaratory relief. A buyer’s suit to compel specific performance of a contract
27 for sale of real property affects title or possession of real property. (*Hilberg v. Superior Court* (1989) 215 Cal.App.3d 539,
28 542.) A suit for declaratory relief as to rights in real property affects title or possession to real property. (*Mason v. Superior Court* (1985) 163 Cal.App.3d 989, 996.) Geraci’s claims for breach of contract and breach of the covenant of good faith and fair dealing do not “affect title or possession” of real property for *lis pendens* purposes. Therefore, although Geraci has established a probable validity of prevailing on those claims, they need not be addressed in this opposition to Cotton’s motion to expunge the *lis pendens*.

1 “Nov 2nd Written Agreement”) is anything other than a valid, binding, enforceable contract. None of
2 the negotiations or proposals after the Nov 2nd Written Agreement ever came to fruition; the parties
3 simply could not agree on different or additional terms which were mutually satisfactory to both
4 parties.

5 **II. LEGAL PRINCIPLES**

6 Parties and nonparties with an interest in the real property affected by a notice of pendency may
7 apply to the court in which the action is pending to expunge the *lis pendens*. (Code Civ. Proc.,
8 § 405.30.) Courts “shall order the notice expunged if the court finds that the pleading on which the
9 notice is based does not contain a real property claim.” (Code Civ. Proc., § 405.31.) Further, even
10 where the plaintiff properly pleads a real property claim, the *lis pendens* must be expunged if the real
11 property claim lacks evidentiary merit. (*Palmer v. Zaklama* (2003) 109 Cal.App.4th 1367, 1377-1378.)
12 Code of Civil Procedure, section 405.32 states “the court shall order that the notice be expunged if the
13 court finds that the claimant has not established by a preponderance of the evidence the ‘probable
14 validity’ of the real property claim.”

15 Thus, a *lis pendens* must be ordered expunged if it is improper because (a) the pleading on
16 which it is based does not contain a “real property claim,” (Code Civ. Proc., § 405.31) or (b) the party
17 who recorded the *lis pendens* cannot establish the “probably validity” of the real property claim by a
18 preponderance of the evidence (Code Civ. Proc., § 405.32). (See *Castro v. Superior Court* (2004)
19 116 Cal.App.4th 1010, 1017.) “Probable validity” of the claim for purposes of avoiding expungement
20 means that it is more likely than not that the party who asserted the real property claim will obtain a
21 judgment on the claim in his or her favor. (Code Civ. Proc., § 405.3; *Howard S. Wright Cons. Co. v.*
22 *Superior Court* (2003) 106 Cal.App.4th 314, 319 fn. 5.) Although the defendant is the moving party,
23 the burden is on the plaintiff/claimant opposing the expungement motion to establish the probable
24 validity of the underlying real property claim by a preponderance of the evidence. (Code Civ. Proc.,
25 §§ 405.30, 405.32; *Howard S. Wright Const. Co. v. Superior Court, supra*, 106 Cal.App.4th at p. 319.)

26 **III. FACTUAL BACKGROUND**

27 In approximately September of 2015, Geraci began lining up a team to assist in his efforts to
28 develop and operate a Medical Marijuana Consumer Cooperative (“MMCC”) business (a.k.a. a medical

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

6 The search to identify potential locations for the business was lengthy due to the restrictions and
7 requirements to satisfy in order to comply with various ordinances. In approximately June 2016, the
8 consultant told Geraci he had found a potential site for acquisition and development for use and
9 operation as an MMCC. The site was located at 6176 Federal Blvd., City of San Diego, San Diego
10 County, California, Assessor's Parcel No. 543-020-02-00 (the "Property"). The consultant put
11 Mr. Geraci in contact with Mr. Cotton (who owned the property), and Mr. Geraci expressed his interest
12 to Mr. Cotton in acquiring his Property if further investigation satisfied him that the Property might
13 meet the requirements for a MMCC site. (Geraci Decl. ¶ 3.)

14 Mr. Geraci, through his consultants, spent months investigating issues related to whether the
15 location might meet the requirements for a MMCC site. Although many issues were not resolved to a
16 certainty, Mr. Geraci determined that he was still interested in acquiring the Property. (Geraci Decl.
17 ¶ 4.)

18 Thereafter, Mr. Geraci approached Mr. Cotton to discuss the possibility of purchasing the
19 Property. Specifically, Mr. Geraci was interested in purchasing the Property from Mr. Cotton
20 contingent upon Mr. Geraci's obtaining approval of a Conditional Use Permit ("CUP") for use as a
21 MMCC. As the purchaser, Mr. Geraci was willing to bear the substantial expense of applying for and
22 obtaining CUP approval and understood that if he did not obtain CUP approval then he would not close
23 the purchase and he would lose his investment. (Geraci Decl. ¶ 5; Exh. 2 to the Notice of Lodgment in
24 Support of Plaintiff Larry Geraci's Opposition to Defendant Darryl Cotton's Motion to Expunge Lis
25 Pendens (hereafter, "Geraci NOL").)

26 Mr. Cotton was willing to make the purchase and sale conditional upon CUP approval because
27 if the condition were satisfied he would be receiving a much higher price than the Property's value in
28 the absence of its approval for use as a medical marijuana dispensary. Mr. Geraci and Mr. Cotton

1 agreed on a down payment of \$10,000.00 and a purchase price of \$800,000.00. On November 2, 2016,
2 Mr. Cotton and Mr. Geraci executed a written purchase and sale agreement before a Notary Public for
3 the purchase of the Property by Geraci from Cotton on the terms and conditions stated in the written
4 agreement (hereafter the "Nov 2nd Written Agreement"). Geraci tendered the \$10,000 deposit to
5 Mr. Cotton as acknowledged in the Nov 2nd Written Agreement. (Geraci Decl. ¶ 5)

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

7 "On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final
8 terms of the sale of the Property. At the meeting, we reached an oral agreement
9 on the material terms for the sale of the Property (the "November Agreement").
10 The November Agreement consisted of the following: If the CUP was approved,
11 then Geraci would, inter alia, provide me: (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 CUP was denied, I would keep an agreed upon
\$50,000 non-refundable deposit ("NRD") and the transaction would not close. In
other words, the issuance of a CUP at the Property was a condition precedent for
closing on the sale of the Property and, if the CUP was denied, I would keep my
Property and the \$50,000 NRD."

13 Mr. Cotton and Mr. Geraci did meet at Mr. Geraci's office on November 2, 2016, to negotiate
14 the final terms of the sale of the Property and they reached an agreement on the final terms of the sale
15 of the Property. That agreement was not oral. The parties put their agreement in writing in a simple
16 and straightforward written agreement that they both signed before a Notary Public. (See Nov 2nd
17 Written Agreement, Exh. 2 to Geraci NOL; Geraci Decl. ¶ 6.)

18 The Nov 2nd Written Agreement states in its entirety:

19 **11/02/2016**

20 **Agreement between Larry Geraci or assignee and Darryl Cotton:**

21 **Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd.,**
22 **CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a**
Marijuana Dispensary. (CUP for a dispensary.)

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

26 /s/
Larry Geraci

/s/
Darryl Cotton

27 (Geraci Decl. ¶ 6)

28 Mr. Geraci never agreed to pay Mr. Cotton a \$50,000.00 non-refundable deposit. At the

1 meeting, Mr. Cotton stated he would like a \$50,000 non-refundable deposit. Mr. Geraci said “no.”
2 Mr. Cotton then asked for a \$10,000 non-refundable deposit, Mr. Geraci agreed, and that amount was
3 put into the written agreement. After he signed the written agreement, Mr. Geraci paid Mr. Cotton the
4 \$10,000 cash as agreed. Had Mr. Geraci agreed to pay Mr. Cotton a \$50,000 deposit, it would have
5 been a very simple thing to change “\$10,000” to \$50,000” in the agreement before the parties signed it.
6 (Geraci Decl. ¶ 6.)

7 Mr. Geraci also never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary
8 or to pay Mr. Cotton a minimum monthly equity distribution of \$10,000 as contended by Mr. Cotton.
9 If Mr. Geraci had agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary and a
10 minimum monthly equity distribution of \$10,000, then it would have also been a simple thing to add a
11 sentence or two to the agreement to say so. (Geraci Decl. ¶ 6.)

12 What Mr. Geraci did agree to was to pay Mr. Cotton a total purchase price of \$800,000, with the
13 balance of \$790,000 due upon approval of a CUP. If the CUP was not approved, then Mr. Cotton
14 would keep the Property and the \$10,000; and that is how the agreement was written. (Geraci Decl.
15 ¶ 6.)

16 Mr. Cotton refers to the Nov 2nd Written Agreement as a “Receipt.” Calling the signed written
17 agreement a “Receipt” was never discussed. There would have been no need for a written agreement
18 signed before a Notary Public simply to document Geraci’s payment to Cotton of a \$10,000 down
19 payment. In addition, had the intention been merely to document a written “Receipt” for the \$10,000
20 payment, then the parties would have identified on the document that it was a “Receipt” and there
21 would have been no need to put in all the material terms and conditions of the deal. Instead, the
22 document is expressly called an “Agreement” because that is what the parties intended. (Geraci Decl.
23 ¶ 7.)

24 As for Mr. Cotton’s assertions regarding Gina Austin, Mr. Geraci did not promise to have
25 attorney Gina Austin reduce the oral agreement to written agreements for execution. Instead,
26 Mr. Cotton wanted to categorize or allocate the \$800,000 into two different payments. At Mr. Cotton’s
27 request, Mr. Geraci agreed to pay him for the property into two parts: \$400,000 as payment for the
28 property and \$400,000 as payment for the relocation of his business. As this would benefit Cotton for

1 tax purposes but would not affect the total purchase price or any other terms and conditions of the
2 purchase, Mr. Geraci stated a willingness to later amend the agreement in that way. (Geraci Decl. ¶ 7.)

3 Prior to entering into the Nov 2nd Written Agreement, the parties discussed the CUP
4 application and approval process and that Cotton's consent as property owner would be needed to
5 submit with the CUP application. Mr. Geraci specifically advised Mr. Cotton that his assistant,
6 Rebecca Berry, would act as his authorized agent to apply for the CUP on his behalf. Mr. Cotton
7 agreed to Ms. Berry serving as the applicant on Mr. Geraci's behalf to attempt to obtain approval of a
8 CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as
9 owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement, for a
10 Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be
11 filed with the City of San Diego on the subject Property with the intent to record an encumbrance
12 against the property. The Ownership Disclosure Statement was also signed Rebecca Berry, who was
13 serving as the CUP applicant on Mr. Geraci's behalf. Mr. Cotton provided consent and authorization as
14 the parties had discussed that approval of a CUP would be a condition of the purchase and sale of the
15 Property. (Geraci Decl. ¶ 8; Ownership Disclosure Statement signed October 31, 2016, Exh. 1 to Geraci
16 NOL.)²

17 As noted above, Mr. Cotton had already put together a team for the MMCC project. The design
18 professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of
19 the Project and the CUP application and approval process. Mr. Schweitzer was responsible for
20 coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property
21 and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San
22 Diego in connection with the CUP application approval process. Mr. Schweitzer's declaration
23 (Declaration of Abhay Schweitzer in Support of Plaintiff Larry Geraci's Opposition to Motion to
24

25 ² Cotton has asserted from the outset of his lawsuit and, again, in paragraph 16 of his supporting declaration, that he did not
26 discover until March 16, 2017, that Geraci had submitted the CUP Application back on October 31, 2016. That assertion is
27 false and is belied by a November 16, 2016, text message Cotton sent to Geraci in which he asked Geraci, "Did they accept
28 the CUP application?" Cotton was well aware at that time that Geraci (via Berry) submitted a CUP application and was
awaiting the City's completion of its initial review of the completeness of the application. Until the City deems the CUP
application complete it does not proceed to the next step—the review of the CUP application. Geraci kept Cotton apprised
of the status of the CUP application and the problems being encountered (e.g., an initial zoning issue) from the outset.
(Geraci Decl. ¶ 23; Exh. 7 to NOL.)

1 Expunge *Lis Pendens*) has been submitted concurrently herewith and describes in greater detail the
2 CUP application submitted to the City of San Diego, which submission included the Ownership
3 Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

4 After the parties signed the Nov 2nd Written Agreement for Geraci's purchase of the Property,
5 almost immediately Mr. Cotton began attempts to renegotiate the deal for the purchase of the Property.
6 This literally occurred the evening of the day he signed the Nov 2nd Written Agreement. On
7 November 2, 2016, at approximately 6:55 p.m., Cotton sent Geraci an email, which stated:

8 Hi Larry,

9 Thank you for meeting today. Since we examined the Purchase Agreement in
10 your office for the sale price of the property I just noticed the 10% equity position
11 in the dispensary was not language added into that document. I just want to make
12 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 simply
acknowledge that here in a reply.

13 Mr. Geraci receives emails on his phone. It was after 9:00 p.m. in the evening that he glanced
14 at his phone and read the first sentence, "Thank you for meeting with me today." Mr. Geraci responded
15 from his phone "No no problem at all." Mr. Geraci was responding to Mr. Cotton's thanking him for
16 the meeting. (Geraci Dec. ¶ 10.)

17 The next day, November 3, 2016, Mr. Geraci read the entire email and phoned Mr. Cotton
18 because the total purchase price Mr. Geraci agreed to pay for the subject property was \$800,000 and he
19 never agreed to provide Mr. Cotton with a 10% equity position in the dispensary as part of the purchase
20 of the property. Mr. Geraci spoke with Mr. Cotton at approximately 12:40 p.m. for approximately
21 3 minutes. (Geraci Decl. ¶ 10; Call Detail from Geraci's firm's telephone provider, Exh. 3 to the
22 Geraci NOL.) During that telephone call, Mr. Geraci told Mr. Cotton that a 10% equity position in the
23 dispensary was not part of the agreement as he had never agreed to pay him any other amounts above
24 the \$800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect
25 of "well, you don't get what you don't ask for." Mr. Cotton did not seem upset and he commented
26 further to the effect that things are "looking pretty good—we all should make some money here." That
27 was the end of the discussion. (Geraci Decl. ¶ 10.)

28 To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to

1 participate in different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton
2 is a hydroponic grower and purported to have useful experience he could provide regarding the
3 operation of such a business. Prior to signing the Nov 2nd Written Agreement, the parties had
4 preliminary discussions related to Cotton's desire to be involved in the *operation* of the business (not
5 related to the purchase of the Property) and the parties discussed the *possibility* of compensation to
6 Cotton (e.g., a percentage of the net profits) in exchange for his providing various services to the
7 business—but an agreement was never reached as to the operation of the MMCC business. Those
8 discussions were unrelated to the purchase and sale of the Property, which the parties never agreed to
9 amend or modify. (Geraci Decl. ¶ 11.)

10 Beginning in or about mid-February 2017, and after the zoning issues had been resolved,
11 Mr. Cotton began making increasing demands for compensation in connection with the sale.
12 Mr. Geraci was several months into the CUP application process which could potentially take many
13 more months to successfully complete (if it could be successfully completed and approval obtained)
14 and he had already committed substantial resources to the project. Mr. Geraci became increasingly
15 concerned that Mr. Cotton was going to interfere with the completion of that process to Mr. Geraci's
16 detriment now that the zoning issues were resolved. To appease Mr. Cotton, Mr. Geraci tried his best
17 to discuss and work out with Cotton some further compensation arrangement that was reasonable and
18 avoid the risk that Mr. Cotton might try to "torpedo" the project and find another buyer. For example,
19 on several successive occasions, Mr. Geraci had attorney Gina Austin draft written agreements that
20 contained terms that Mr. Geraci could live with and hoped would be sufficient to satisfy Mr. Cotton's
21 ever-increasing demands for additional compensation, but Mr. Cotton would reject them as
22 unsatisfactory. Mr. Cotton continued to insist on, among other things, a 10% equity position, to which
23 Geraci was not willing to agree, as well as minimum monthly distributions in amounts that Geraci
24 thought were unreasonable and to which he was unwilling to agree. Despite the back and forth
25 communications during the period of approximately mid-February 2017 through approximately mid-
26 March 2017, the parties were unable to re-negotiate terms for the purchase of the property to which
27 they both agreed. The Nov 2nd Written Agreement was never amended or modified. Mr. Cotton
28 emailed Mr. Geraci that Mr. Cotton felt that Mr. Geraci was not living up to his agreement and

1 Mr. Geraci responded that Mr. Cotton kept trying to change the deal. As a result, no re-negotiated
2 written agreement regarding the purchase and sale of the property was ever signed by Mr. Geraci or
3 Mr. Cotton after they had signed and agreed to the terms and conditions in the Nov 2nd Written
4 Agreement. (Geraci Decl. ¶ 12.)

5 Ultimately, Mr. Cotton was extremely unhappy with Mr. Geraci's refusal to accede to
6 Mr. Cotton's demands and the failure to reach agreement regarding his possible involvement with the
7 *operation* of the business to be operated at the Property and Mr. Geraci's refusal to modify or amend
8 the terms and conditions agreed to in the Nov 2nd Written Agreement. Eventually, Mr. Cotton made it
9 clear that he had no intention of living up to and performing his obligations under the Nov 2nd Written
10 Agreement and affirmatively threatened to take action to halt the CUP application process. (Geraci
11 Decl. ¶ 13.)

12 Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr. Cotton
13 had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing
14 the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application. That
15 discussion was confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc: to
16 Rebecca Berry. (Geraci Decl. ¶ 14; Exh. 4 to Geraci NOL.)

17 That same day, March 21, 2017 at 3:18 p.m., Mr. Cotton emailed Mr. Geraci reinforcing that he
18 would not honor the Nov 2nd Written Agreement. In that email Mr. Cotton stated that Mr. Geraci had
19 no interest in the property and that "I will be entering into an agreement with a third party to sell my
20 property and they will be taking on the potential costs associated with any litigation arising from this
21 failed agreement with you." (Geraci Decl. ¶ 15; Exh. 5 to Geraci NOL.)

22 Four minutes later at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc: to
23 both Geraci and Rebecca Berry, stating falsely to Ms. Tirandazi: "... the potential buyer, Larry Geraci
24 [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no
25 third-parties that have any direct, indirect or contingent interests in my property. The application
26 currently pending on my property should be denied because the applicants have no legal access to my
27 property." Mr. Cotton's email was false as the parties had a signed agreement for the purchase and sale
28 of the Property – the Nov 2nd Written Agreement. (Geraci Decl. ¶ 15; Exh. 6 to Geraci NOL.)

1 Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the CUP
2 application without the consent of the applicant (Rebecca Berry, Geraci's authorized agent). (Geraci
3 Decl. ¶ 17.)

4 Due to Mr. Cotton's clearly stated intention to not perform his obligations under the written
5 Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application,
6 Mr. Geraci went forward on March 21, 2017, with the filing of his lawsuit against Mr. Cotton to
7 enforce the Nov 2nd Written Agreement. (Geraci Decl. ¶ 18.)

8 Since the March 21, 2017 filing of the lawsuit, Mr. Geraci has continued to diligently pursue the
9 CUP application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP
10 application, Mr. Geraci and his team have completed the initial phase of the CUP process whereby the
11 City deemed the CUP application complete (although not yet approved) and determined it was located
12 in an area with proper zoning. The CUP application process has not yet reached the stage of a formal
13 City hearing and there has been no final determination to approve the CUP. The status of the CUP
14 application is set forth in the Declaration of Abhay Schweitzer. (Geraci Decl. ¶ 19.)

15 Mr. Cotton also has made good on the statement in his March 21, 2017 at 3:18 p.m. email that
16 he would be "entering into an agreement with a third party to sell my property and they will be taking
17 on the potential costs associated with any litigation arising from this failed agreement with you." (See
18 Geraci Decl. ¶ 15; Exh. 5 to the Geraci NOL.) Documents produced early in the lawsuit by Mr. Cotton
19 revealed that Mr. Cotton had been negotiating with other potential buyers of the Property to see if he
20 could get a better deal than he had agreed to with Geraci. As of March 21, 2017, Mr. Cotton had
21 already entered into a real estate purchase and sale agreement to sell the Property to another person,
22 Richard John Martin II. (Geraci Decl. ¶ 20.) Mr. Cotton has admitted in his moving papers to selling
23 the property to another buyer. (Def. Memo. Of P's & A's, p. 8, lines 18-23)

24 **IV. GERACI HAS ESTABLISHED THE PROBABLE VALIDITY OF HIS CLAIMS**

25 As previously noted, the two claims that "affect title to property" are the specific performance
26 and the declaratory relief causes of actions.

27 Specific performance of a contract may be decreed whenever: 1) its terms are sufficiently
28 definite; 2) consideration is adequate; 3) there is substantial similarity of the requested performance to

1 the contractual terms; 4) there is mutuality of remedies; and 5) plaintiff's legal remedy is inadequate.
2 (*Blackburn v. Charnley* (2004) 117 Cal.App.4th 758, 766.)

3 Declaratory relief may be sought by any person under a contract, who desires a declaration of
4 his rights or duties with respect to property in cases of actual controversy relating to the legal rights and
5 duties of the respective parties, and may bring an original action or cross-complaint in the superior
6 court for a declaration of his rights and duties in the premises, including a determination of any
7 question of construction or validity arising under the instrument or contract. (See Code Civ. Proc.,
8 § 1062.5.)

9 Geraci has proffered evidence sufficient to sustain his burden to establish the "probable
10 validity" of his claim. The factual basis of the two claims is identical, i.e., the parties signed a Nov 2
11 Written Agreement, which provided:

12 **11/02/2016**

13 **Agreement between Larry Geraci or assignee and Darryl Cotton:**

14 **Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd.,**
15 **CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a**
Marijuana Dispensary. (CUP for a dispensary.)

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

19 /s/
Larry Geraci

/s/
Darryl Cotton

20 The parties even went so far as to have the document signed before a Notary Public. There is
21 no question that the above-recited agreement constitutes a valid and enforceable agreement under
22 California law. Each of the requisite elements is clearly met: 1) its terms are sufficiently definite, (the
23 parties are identified; the property identified; the condition precedent identified; the down payment is
24 identified; and the total purchase price is identified); 2) consideration is adequate (the has been no
25 argument advanced by Mr. Cotton that \$800,000.00 is inadequate consideration); 3) there is substantial
26 similarity of the requested performance to the contractual terms; 4) there is mutuality of remedies
27 (i.e., each party could have sued for breach of contract, specific performance and declaratory relief);
28 and 5) plaintiff's legal remedy is inadequate (with regard to property claims, the legal remedy is

1 presumed inadequate; see *Real Estate Analytics, LLC v. Vallas* (2008) 160 Cal.App.4th 463.).

2 The facts also support the declaratory relief action under Code of Civil Procedure,
3 section 1062.5, as there is a valid written contract to which Mr. Geraci is a party. He is clearly entitled
4 to seek declaratory relief with regard to his rights under that contract.

5 **V. CONCLUSION**

6 Based on the foregoing argument and the evidence presented, this Court should deny the motion
7 to expunge the *lis pendens*.

8
9 Dated: April 10, 2018

FERRIS & BRITTON,
A Professional Corporation

10
11 By: 
12 Michael R. Weinstein
13 Scott H. Toothacre

14 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI
and Cross-Defendant REBECCA BERRY
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FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
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

**PLAINTIFF LARRY GERACI'S
OBJECTIONS TO REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
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

Plaintiff, LARRY GERACI, hereby objects to Defendant Darryl Cotton's Request for Judicial Notice in Support of his Motion to Expunge Notice of Pendency of Action ("Request for Judicial Notice").

Specifically, it is noted that Cotton fails to cite any evidence code section whatsoever in support of his Request for Judicial Notice. Nor does he cite any case law to support his Request for Judicial

1 Notice. As such, the Request for Judicial Notice should be denied outright.

2 Notwithstanding this general objection to the entirety of the Request For Judicial Notice,
3 specific documents for which Cotton requests judicial notice are not relevant to the instant proceeding
4 to expunge *lis pendens*, nor are they the proper subject of judicial notice.

5 Cotton requests judicial notice of the following documents:

6 1. Verified Petition for Alternative Writ of Mandate (Code Civ. Proc., § 1085) filed by
7 Plaintiff on October 6, 2017;

8 2. Plaintiff Larry Geraci's Complaint for: 1) Breach of Contract; 2) Breach of the Covenant
9 of Good Faith and Fair Dealing; 3) Specific Performance; and 4) Declaratory Relief filed March 21,
10 2017;

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

13 4. Ownership Disclosure Statement – Form DS-318;

14 5. City of San Diego Development Services Department Parcel Information Report -
15 Report Number 101, dated March 20, 2018; and

16 6. Verified Memorandum of Points and Authorities in Support of Darryl Cotton's
17 Response to (1) Motion by Plaintiff/Cross-Defendant Larry Geraci and Cross-Defendant Rebecca Berry
18 to Compel the Deposition of Darryl Cotton, and (2) Motion by Real Parties in Interest, Larry Geraci
19 and Rebecca Berry, to Compel the Deposition of Darryl Cotton, filed January 22, 2018.

20 I. **JUDICIAL NOTICE SHOULD BE DENIED BECAUSE COTTON HAS PROVIDED NO**
21 **INFORMATION FOR THE COURT TO EVALUATE THE PROPRIETY OF**
22 **JUDICIAL NOTICE**

23 Judicial notice should be denied because Cotton has provided no information to support his
24 request. Section 453(b) of the California Evidence Code states that a court shall take judicial notice
25 only when the requesting party "[f]urnishes the court with sufficient information to enable it to take
26 judicial notice of the matter. (Cal. Evid. Code, § 453(b).) A court may deny a request for judicial
27 notice made without support. (*Willis v. State of California* (1994) 223 Cal.App.4th 291 [denying a
28 request for judicial notice where request was made 'without appending any information whatsoever'].)

///

1 Here, Cotton's Request for Judicial Notice fails to include any supporting documentation or
2 citation to any Evidence Code sections. Cotton also fails to indicate the relevance or purpose for taking
3 judicial notice of these documents. He simply provides no indication as to the nature or scope of
4 judicial notice being requested. Likewise, Cotton provides no legal justification for the Court to base
5 its decision on the Request. As in *Willis*, Cotton's request is so deficient in supporting information that
6 it must be denied. (See *Willis, supra*, 22 Cal.App.4th at p. 291.)

7 **II. JUDICIAL NOTICE SHOULD BE DENIED BECAUSE THE PROFFERED**
8 **DOCUMENTS CONTAIN INADMISSIBLE HEARSAY**

9 Judicial notice should be denied because the proffered documents contain inadmissible hearsay
10 if they are offered for the truth of the matters asserted therein. A "court cannot take judicial notice of
11 hearsay allegations as being true, just because they are part of a court record or file." (*Bach v. McNelis*
12 (1989) 207 Cal.App.3d 852, 865; *Mangini v. R.J. Reynolds* (1994) 7 Cal.4th 1057, 1063 ["While courts
13 may notice official acts and public records, we do not take judicial notice of the truth of all matters
14 stated therein."].)

15 Here, because Cotton does not specify his purpose for the Request, Plaintiff's must assume he
16 intends to offer the exhibits for the truth of the matters stated therein. If so, the matters are
17 inadmissible hearsay. "Although the *existence* of a document may be judicially noticeable, the truth of
18 the statements contained in the document and its proper interpretation are not subject to judicial notice
19 if those matters are reasonably disputable." (*Fremont Indemnity Co. v. Fremont General Corp.* (2001)
20 148 Cal.App. 4th 97, 113.)

21 Further, out-of-court statements may not be admitted in a request for judicial notice simply
22 because these statements have been previously filed with the court: "What is meant by taking judicial
23 notice of Court records? There exists a mistaken notion that this means taking judicial notice of the
24 existence of facts asserted in *every document* of a court file, including *pleadings* and *affidavits*.
25 However, a court *cannot* take judicial notice of *hearsay allegations* as being true, just because they are
26 part of a court record or file. A court may take judicial notice of the *truth* of facts asserted in
27 documents such as order, findings of fact and conclusions of law, and judgments." (*Sosinsky v. Grant*
28 (1992) 6 Cal.App.4th 1548, 1568, emphasis in original [quoting 2 *Jefferson's California Evidence*

1 *Benchbook* (2d ed. 1982) § 47.2, p. 1757].) Because Cotton has submitted these hearsay statements for
2 no purpose other than to take judicial notice of the truth of the facts stated in the documents, then
3 judicial notice should be denied.

4 **III. CONCLUSION**

5 Cotton's request for judicial notice should be denied. He has failed to provide any information
6 to support his request as required by section 453(b) of the Evidence Code. Additionally, Cotton's use
7 of these documents indicates that judicial notice would be improper because the subject matter
8 constitutes inadmissible hearsay.

9 Dated: April 10, 2018

FERRIS & BRITTON
A Professional Corporation

11
12 By: Michael R. Weinstein

13 Michael R. Weinstein
Scott H. Toothacre

14 Attorneys for Plaintiff and Cross-Defendant LARRY GERACI
15 and Cross-Defendant REBECCA BERRY
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FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
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 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

I, Larry Geraci, declare:

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

2. In approximately September of 2015, I began lining up a team to assist in my efforts to 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 agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement,
2 Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

3 **11/02/2016**

4 **Agreement between Larry Geraci or assignee and Darryl Cotton:**

5 **Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd.,**
6 **CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a**
Marijuana Dispensary. (CUP for a dispensary.)

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

10 /s/
Larry Geraci

/s/
Darryl Cotton

11 I never agreed to pay Mr. Cotton a \$50,000.00 non-refundable deposit. At the meeting, Mr.
12 Cotton stated he would like a \$50,000 non-refundable deposit. I said “no.” Mr. Cotton then asked for a
13 \$10,000 non-refundable deposit and I said “ok” and that amount was put into the written agreement.
14 After he signed the written agreement, I paid him the \$10,000 cash as we had agreed. If I had agreed to
15 pay Mr. Cotton a \$50,000 deposit, it would have been a very simple thing to change “\$10,000” to
16 \$50,000” in the agreement before we signed it.

17 I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never
18 agreed to pay Mr. Cotton a minimum monthly equity distribution of \$10,000. If I had agreed to pay
19 Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution
20 of \$10,000, then it would have also been a simple thing to add a sentence or two to the agreement to
21 say so.

22 What I did agree to was to pay Mr. Cotton a total purchase price of \$800,000, with the balance
23 of \$790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the
24 Property and the \$10,000. So that is how the agreement was written.

25 7. In paragraph 6 of his supporting declaration, Darryl Cotton states:

26 “At the November 2, 2016, meeting we reached the November Agreement,
27 Geraci: (i) provided me with \$10,000 in cash towards the NRD of \$50,000, for
28 which I executed a document to record my receipt thereof (the “Receipt”); (ii)

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 2nd 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.

25 ///

26 ///

27 ///

28 ///

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

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5 LARRY GERACI
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FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
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 30th 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 9th day of April, 2018.

14
15 Dated: 04/09/18

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17 ABHAY SCHWEITZER
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FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
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 MICHAEL R.
WEINSTEIN 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

I, Michael R. Weinstein, declare:

1. I am an attorney with Ferris & Britton, APC, the attorneys for Plaintiff and Cross-Defendant, LARRY GERACI, and Cross-Defendant, REBECCA BERRY, in 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 Mr. Geraci's opposition to Mr. Cotton's Motion to Expunge Lis Pendens.

2. We have learned through documents produced in this lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with Geraci. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, a Richard John Martin II. A true and correct copy of the Purchase and Sale Agreement between Darryl Cotton and Richard John Martin II, dated March 21, 2017, produced by Darryl Cotton, is attached as Exhibit 8 to the Notice of Lodgment in Support of Plaintiff Larry Geraci's Opposition to Motion to Expunge Lis Pendens (hereafter the "Geraci NOL").

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of April, 2018, in San Diego, California.

Michael R. Weinstein
MICHAEL R. WEINSTEIN

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
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

**NOTICE OF LODGMENT IN SUPPORT
OF PLAINTIFF LARRY GERACI'S
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

Plaintiff, LARRY GERACI, hereby lodges the following documents as exhibits to this Notice of Lodgment ("NOL") in support of his Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens:

Ex. No.	Exhibit Description	Evidentiary Foundation
1.	Ownership Disclosure Statement (Form DS-318) signed by Darryl Cotton and Rebecca Berry, dated October 31, 2016,	Declaration of Larry Geraci, ¶ 8; Declaration of Abhay Schweitzer, ¶ 5
2.	Written real estate purchase and sale agreement between Larry Geraci and Darryl Cotton dated November 2, 2016 (the "Nov 2nd Written Agreement")	Declaration of Larry Geraci, ¶ 5
3.	Geraci's AT&T Call Detail	Declaration of Larry Geraci, ¶ 10
4.	Email to Darryl Cotton from Firouzeh Tirandazi, dated March 21, 2017 at 8:54 a.m.	Declaration of Larry Geraci, ¶ 14
5.	Email to Larry Geraci from Darryl Cotton, dated March 21, 2017 at 3:18 p.m.	Declaration of Larry Geraci, ¶ 15
6.	Email to Firouzeh Tirandazi from Darryl Cotton, dated March 21, 2017 at 3:25 p.m.	Declaration of Larry Geraci, ¶ 16
7.	Text Message to Larry Geraci from Darryl Cotton, dated November 16, 2016	Declaration of Larry Geraci, ¶ 23
8.	Purchase and Sale Agreement between Darryl Cotton and Richard John Martin II, dated March 21, 2017	Declaration of Michael R. Weinstein, ¶ 2

Dated: April 10, 2018

FERRIS & BRITTON,
A Professional Corporation

By: 

Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff and Cross-Defendant LARRY GERACI
and Cross-Defendant REBECCA BERRY

EXHIBIT 1



City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment ☐ Other _____

Project Title

Project No. For City Use Only

Federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

(619) 954-4447

Fax No:

Signature:

Date:

10-31-2016

Name of Individual (type or print):

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:

Signature:

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

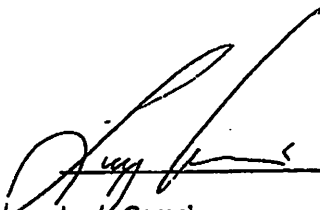
EXHIBIT 2


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 Gerasi
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)

EXHIBIT 3



at&t

TAX AND FINANCIAL CENTER
5402 RUFFIN RD STE 200
SAN DIEGO, CA 92123-1301

Page: A-87 of 181
Bill Cycle Date: 11/02/16 - 12/01/16
Account: 835642301
Foundation Account: FAN 02761582
Invoice: 835642301X12092016

Visit us online at: www.att.com/business



858 956-4040

TAX AND FINANCIAL CENTER

Call Detail

Time	Place Called	Number Called	Rate Code	Feature Code	Min	Airtime Charges	LD/Addl Charges
Wednesday, 11/02							
08:48a	SNRG S CA	619-REDACTED	SDDV		2	0.00	0.00
09:01a	LA JOL CA	858-REDACTED	SDDV		4	0.00	0.00
09:04a	LA JOL CA	858-REDACTED	SDDV		2	0.00	0.00
09:06a	SNRG S CA	619-REDACTED	SDDV		2	0.00	0.00
09:09a	SNRG M CA	858-REDACTED	SDDV		15	0.00	0.00
01:12p	SNRG M CA	858-REDACTED	SDDV		6	0.00	0.00
01:18p	CORONA CA	619-REDACTED	SDDV		12	0.00	0.00
01:30p	INCOMI CL	619-954-4447	SDDV		11	0.00	0.00
01:50p	SNRG S CA	619-REDACTED	SDDV		2	0.00	0.00
01:52p	SNRG S CA	619-954-4447	SDDV		2	0.00	0.00
01:55p	INCOMI CL	858-REDACTED	SDDV		2	0.00	0.00
02:12p	SNRG S CA	619-REDACTED	SDDV		2	0.00	0.00
02:15p	LA JOL CA	858-REDACTED	SDDV		3	0.00	0.00
02:17p	SNRG S CA	619-REDACTED	SDDV		1	0.00	0.00
02:24p	INCOMI CL	858-REDACTED	SDDV		3	0.00	0.00
02:27p	SNRG S CA	619-REDACTED	SDDV		1	0.00	0.00
02:36p	INCOMI CL	619-REDACTED	SDDV		1	0.00	0.00
02:45p	CORONA CA	619-REDACTED	SDDV		3	0.00	0.00
02:47p	SNRG L CA	858-REDACTED	SDDV		3	0.00	0.00
03:15p	INCOMI CL	858-REDACTED	SDDV		5	0.00	0.00
03:20p	CORONA CA	619-REDACTED	SDDV		2	0.00	0.00
03:21p	INCOMI CL	619-REDACTED	SDDV		2	0.00	0.00
03:23p	CORONA CA	619-REDACTED	SDDV		2	0.00	0.00
03:24p	SNRG M CA	858-REDACTED	SDDV		7	0.00	0.00
03:31p	ESCOND CA	760-REDACTED	SDDV		1	0.00	0.00
03:32p	INCOMI CL	619-REDACTED	SDDV		9	0.00	0.00
03:41p	SNRG M CA	858-REDACTED	SDDV		1	0.00	0.00
03:45p	BLOCKED	000-REDACTED	SDDV		1	0.00	0.00
04:05p	INCOMI CL	619-REDACTED	SDDV		2	0.00	0.00
04:16p	INCOMI CL	619-REDACTED	SDDV		2	0.00	0.00
04:16p	LA JOL CA	858-REDACTED	SDDV		1	0.00	0.00
04:17p	SNRG S CA	619-REDACTED	SDDV		5	0.00	0.00
04:28p	INCOMI CL	619-REDACTED	SDDV		9	0.00	0.00
04:39p	INCOMI CL	702-REDACTED	SDDV		1	0.00	0.00
04:44p	INCOMI CL	917-REDACTED	SDDV		1	0.00	0.00
07:09p	LA JOL CA	858-REDACTED	SDDV		6	0.00	0.00
Thursday, 11/03							
08:59a	INCOMI CL	858-REDACTED	SDDV		4	0.00	0.00
09:34a	SNRG M CA	858-REDACTED	SDDV		14	0.00	0.00
09:48a	SNRG L CA	858-REDACTED	SDDV		10	0.00	0.00
11:09a	SNRG M CA	858-REDACTED	SDDV		3	0.00	0.00
12:40p	SNRG S CA	619-954-4447	SDDV		3	0.00	0.00
12:43p	LA JOL CA	858-REDACTED	SDDV		6	0.00	0.00
01:25p	INCOMI CL	619-REDACTED	SDDV		1	0.00	0.00
01:32p	CORONA CA	619-REDACTED	SDDV		1	0.00	0.00
01:33p	CORONA CA	619-REDACTED	SDDV		8	0.00	0.00
01:47p	SNRG S CA	619-REDACTED	SDDV		1	0.00	0.00
01:55p	INCOMI CL	858-REDACTED	SDDV		2	0.00	0.00
02:22p	CORONA CA	619-REDACTED	SDDV		1	0.00	0.00

Time	Place Called	Number Called	Rate Code	Feature Code	Min	Airtime Charges	LD/Addl Charges
Thursday, 11/03							
02:27p	INCOMI CL	619-REDACTED	SDDV		1	0.00	0.00
02:29p	LA JOL CA	858-REDACTED	SDDV		3	0.00	0.00
02:38p	LA JOL CA	858-REDACTED	SDDV		2	0.00	0.00
02:43p	ESCOND CA	760-REDACTED	SDDV		1	0.00	0.00
03:03p	INCOMI CL	858-REDACTED	SDDV		1	0.00	0.00
03:11p	INCOMI CL	619-REDACTED	SDDV		1	0.00	0.00
04:19p	CORONA CA	619-REDACTED	SDDV		1	0.00	0.00
05:21p	INCOMI CL	619-REDACTED	SDDV		1	0.00	0.00
05:42p	INCOMI CL	619-REDACTED	SDDV		3	0.00	0.00
05:44p	INCOMI CL	619-REDACTED	SDDV		1	0.00	0.00
05:45p	INCOMI CL	858-REDACTED	SDDV		3	0.00	0.00
05:49p	SNRG M CA	858-REDACTED	SDDV		1	0.00	0.00
05:52p	CORONA CA	619-REDACTED	SDDV		2	0.00	0.00
05:55p	CORONA CA	619-REDACTED	SDDV		1	0.00	0.00
06:06p	INCOMI CL	858-REDACTED	SDDV		3	0.00	0.00
06:44p	INCOMI CL	858-REDACTED	SDDV		2	0.00	0.00
07:19p	INCOMI CL	858-REDACTED	SDDV		1	0.00	0.00
07:28p	INCOMI CL	858-REDACTED	SDDV		2	0.00	0.00
08:00p	LA JOL CA	858-REDACTED	SDDV		1	0.00	0.00
08:01p	LA JOL CA	858-REDACTED	SDDV		2	0.00	0.00
08:27p	LA JOL CA	858-REDACTED	SDDV		1	0.00	0.00
08:48p	CORONA CA	619-REDACTED	SDDV		3	0.00	0.00
10:03p	INCOMI CL	619-REDACTED	SDDV		13	0.00	0.00
10:16p	SNRG M CA	858-REDACTED	SDDV		3	0.00	0.00
Friday, 11/04							
09:14a	SNRG M CA	858-REDACTED	SDDV		1	0.00	0.00
09:38a	LA JOL CA	858-REDACTED	SDDV		15	0.00	0.00
09:53a	SNRG S CA	619-REDACTED	SDDV		4	0.00	0.00
10:52a	LA JOL CA	858-REDACTED	SDDV		1	0.00	0.00
10:53a	INCOMI CL	858-REDACTED	SDDV		2	0.00	0.00
11:02a	INCOMI CL	619-REDACTED	SDDV		1	0.00	0.00
12:06p	ESCOND CA	760-REDACTED	SDDV		8	0.00	0.00
12:14p	SNRG M CA	858-REDACTED	SDDV		6	0.00	0.00
12:20p	CORONA CA	619-REDACTED	SDDV		2	0.00	0.00
12:36p	INCOMI CL	405-REDACTED	SDDV		1	0.00	0.00
12:37p	SNRG S CA	619-REDACTED	SDDV		1	0.00	0.00
12:37p	INCOMI CL	619-REDACTED	SDDV		1	0.00	0.00
12:53p	INCOMI CL	714-REDACTED	SDDV		2	0.00	0.00
12:58p	INCOMI CL	714-REDACTED	SDDV		4	0.00	0.00
01:08p	LA JOL CA	858-REDACTED	SDDV		2	0.00	0.00
01:10p	EL CAJ CA	619-REDACTED	SDDV		8	0.00	0.00
01:22p	INCOMI CL	714-REDACTED	SDDV		3	0.00	0.00
02:39p	INCOMI CL	619-REDACTED	SDDV		3	0.00	0.00
02:42p	OKLA C OK	405-REDACTED	SDDV		2	0.00	0.00
03:06p	SNRG M CA	858-REDACTED	SDDV		2	0.00	0.00
03:08p	OKLA C OK	405-REDACTED	SDDV		1	0.00	0.00
03:09p	CORONA CA	619-REDACTED	SDDV		2	0.00	0.00
03:11p	INCOMI CL	619-REDACTED	SDDV		8	0.00	0.00
03:33p	INCOMI CL	619-REDACTED	SDDV		10	0.00	0.00
04:04p	LA JOL CA	858-REDACTED	SDDV		9	0.00	0.00
05:06p	INCOMI CL	619-REDACTED	SDDV		1	0.00	0.00
07:35p	OCSO C CA	760-REDACTED	SDDV		1	0.00	0.00
07:36p	CORONA CA	619-REDACTED	SDDV		1	0.00	0.00
07:37p	OCSO C CA	760-REDACTED	SDDV		1	0.00	0.00

EXHIBIT 4

To: dcotton@fleetsystems.net[dcotton@fleetsystems.net]
Cc: Becky Berry[Becky@tfcisd.net]; brianna@bhpsonline.com[brianna@bhpsonline.com]
From: Tirandazi, Firouzeh
Sent: Tue 3/21/2017 8:54:01 AM
Importance: Normal
Subject: Federal Boulevard MMCC
Received: Tue 3/21/2017 8:54:07 AM

Good Morning Mr. Cotton,

As a follow-up to our conversation this morning regarding your potential interest as property owner in withdrawing the above referenced CUP application, I just noticed that you are not the financial responsible party for the subject application. As such, I will also need written acknowledgement from Ms. Rebecca Berry, the applicant, who is the financial responsible party, to withdraw the subject CUP application.

As requested, here is a link to the 2/14 Council docket and supporting material - Item No. 51:
<http://dockets.sandiego.gov/sirepub/pubmtgframe.aspx?meetid=3410&doctype=Agenda>

Regards,

Firouzeh Tirandazi
Development Project Manager
City of San Diego
Development Services Department

(619)446-5325
sandiego.gov

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EXHIBIT 5



Darryl Cotton <indagrodarryl@gmail.com>

Contract Review

Darryl Cotton <indagrodarryl@gmail.com>

Tue, Mar 21, 2017 at 3:18 PM

To: Larry Geraci <Larry@tfcscd.net>

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

[Quoted text hidden]

EXHIBIT 6

To: Tirandazi, Firouzeh[FTirandazi@san Diego.gov]
Cc: Becky Berry[Becky@tfc sd.net]; brianna@bhpsonline.com[brianna@bhpsonline.com]; Larry Geraci[Larry@tfc sd.net]
From: Darryl Cotton
Sent: Tue 3/21/2017 3:25:24 PM
Importance: Normal
Subject: Re: PTS 520606 - Federal Blvd MMCC
Received: Tue 3/21/2017 3:25:29 PM

Hello Firouzeh,

As a follow-up to our recent conversations, the potential buyer, Larry Geraci (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property.

Thank you again for your help.

Best,

Darryl Cotton

On Thu, Mar 16, 2017 at 4:55 PM, Tirandazi, Firouzeh <FTirandazi@san Diego.gov> wrote:

Hello Mr. Cotton,

As requested, please find attached the Ownership Disclosure Statement signed by you (property owner), and Rebecca Berry (tenant/lessee) on October 31, 2016, submitted with the above referenced project application. I have copied Ms. Berry and the project Point of Contact (Bree Harris) on this email as well.

The project was deemed complete March 13, 2017 and is currently in the first review cycle. As property owner, if you wish to withdraw this application, please notify me in writing.

Regards,

Firouzeh Tirandazi


Development Project Manager

City of San Diego

Development Services Department

(619)446-5325

san Diego.gov

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EXHIBIT 7

Sent To:
Daryl Fed B(16199544447)

I just sent you an email they just need a quick signature and send back to me if you can get that back ASAP I'd appreciate it thank you

Nov 14, 2016 10:26:47

Nov 16, 2016 16:20

From:
Daryl Fed B(16199544447)

How goes it?

Nov 16, 2016 16:20:21

Sent To:
Daryl Fed B(16199544447)

No news yet

Nov 16, 2016 16:25:47

From:
Daryl Fed B(16199544447)

Did they accept the CUP application?

Nov 16, 2016 16:26:37

Sent To:
Daryl Fed B(16199544447)

We're still getting through them excepting the property

Nov 16, 2016 16:30:19

Sent To:
Daryl Fed B(16199544447)

Once the property is approved then I believe we're set to go

Nov 16, 2016 16:30:33

Nov 18, 2016 11:58

From:
Daryl Fed B(16199544447)

Did you talk with matt on the cv dispensary?

Nov 18, 2016 11:58:05

Nov 18, 2016 12:26

Sent To:
Daryl Fed B(16199544447)

Yeah I did but he seriously didn't have any interest because he met with the Chula Vista city attorney

Nov 18, 2016 12:26:07

Sent To:
Daryl Fed B(16199544447)

All those places are gonna be close down

Nov 18, 2016 12:26:13

Nov 30, 2016 19:26

From:
Daryl Fed B(16199544447)

Greetings.

Nov 30, 2016 19:26:18

GER0516

EXHIBIT 8



CALIFORNIA
ASSOCIATION
OF REALTORS®

**COMMERCIAL PROPERTY PURCHASE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**
(NON-RESIDENTIAL)
(C.A.R. Form CPA, Revised 12/15)

Date Prepared: 03/21/2017

1. OFFER:

- A. **THIS IS AN OFFER FROM** Richard John Martin II ("Buyer")
☒ Individual(s), ☐ A Corporation, ☐ A Partnership, ☐ An LLC, ☐ An LLP, or ☐ Other
- B. **THE REAL PROPERTY** to be acquired is 6176 Federal Blvd, situated in
San Diego (City), San Diego (County), California, 92114-1401 (Zip Code), Assessor's Parcel No. 543-020-02-01 (Property)
- C. **THE PURCHASE PRICE** offered is Two Million Dollars \$ 2,000,000.00
- D. **CLOSE OF ESCROW** shall occur on ☒ see Addendum 1 (date) (or Days After Acceptance)
- E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

- A. **DISCLOSURE:** The Parties each acknowledge receipt of a ☒ "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD)
- B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:
Listing Agent: N/A (Print Firm Name) is the agent of (check one):
☐ the Seller exclusively, or ☐ both the Buyer and Seller.
Selling Agent: N/A (Print Firm Name) if not the same as the Listing Agent is the agent of (check one):
☐ the Buyer exclusively, or ☐ the Seller exclusively, or ☐ both the Buyer and Seller
- C. **POTENTIALLY COMPETING BUYERS AND SELLERS:** The Parties each acknowledge receipt of a ☒ "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRDS)

3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.

- A. **INITIAL DEPOSIT:** Deposit shall be in the amount of \$
(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer ☐ cashier's check, ☐ personal check, ☐ other within 3 business days after Acceptance (or).
- OR (2) ☐ Buyer Deposit with Agent: Buyer has given the deposit by personal check (or) to the agent submitting the offer (or to), made payable to . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or).
Deposit checks given to agent shall be an original signed check and not a copy.
(Note: Initial and increased deposit checks received by agent shall be recorded in Broker's trust fund log.)
- B. **INCREASED DEPOSIT:** Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ within Days After Acceptance (or).
If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.
- C. **ALL CASH OFFER:** No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or ☐ Buyer shall, within 3 (or) Days After Acceptance, Deliver to Seller such verification.
- D. **LOAN(S):**
(1) **FIRST LOAN:** in the amount of \$ 1,800,000.00
This loan will be conventional financing or ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing, ☐ Other . This loan shall be at a fixed rate not to exceed % or, ☐ an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.
- (2) **SECOND LOAN** in the amount of \$
This loan will be conventional financing or ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing, ☐ Other . This loan shall be at a fixed rate not to exceed % or ☐ an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.
- E. **ADDITIONAL FINANCING TERMS:** see attached Addendum 1

- F. **BALANCE OF DOWN PAYMENT OR PURCHASE PRICE** in the amount of \$ 200,000.00
to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- G. **PURCHASE PRICE (TOTAL):** \$ 2,000,000.00
- H. **VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to paragraph 3.D(1)) shall, within 3 (or) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs.
(☐ Verification attached.)

Buyer's Initials (X) RM
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CPA REVISED 12/15 (PAGE 1 OF 11)

Seller's Initials (X)



Property Address: 6176 Federal Blvd, San Diego, CA 92114-1401

Date: March 21, 2017

I. **APPRAISAL CONTINGENCY AND REMOVAL.** This Agreement is (or ☒ is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or _____) Days After Acceptance.

J. **LOAN TERMS:**

(1) **LOAN APPLICATIONS:** Within 3 (or _____) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. ☒ Letter attached.

(2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) **LOAN CONTINGENCY REMOVAL:**

Within 21 (or _____) Days After Acceptance, Buyer shall, as specified in paragraph 18, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

(4) ☒ **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

(5) **LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

K. **BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. **SALE OF BUYER'S PROPERTY:**

A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.

OR B. ☐ This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. **ADDENDA AND ADVISORIES:**

A. **ADDENDA:**

<input type="checkbox"/> Back Up Offer Addendum (C.A.R. Form BUO)	<input checked="" type="checkbox"/> Addendum # <u>1</u> (C.A.R. Form ADM)
<input type="checkbox"/> Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)	<input type="checkbox"/> Court Confirmation Addendum (C.A.R. Form CCA)
<input type="checkbox"/> Short Sale Addendum (C.A.R. Form SSA)	<input type="checkbox"/> Other _____

B. **BUYER AND SELLER ADVISORIES:**

<input type="checkbox"/> Probate Advisory (C.A.R. Form PA)	<input checked="" type="checkbox"/> Buyer's Inspection Advisory (C.A.R. Form BIA)
<input type="checkbox"/> Trust Advisory (C.A.R. Form TA)	<input type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
<input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSI/A)	<input type="checkbox"/> REO Advisory (C.A.R. Form REO)
	<input type="checkbox"/> Other _____

6. **OTHER TERMS:** see attached Addendum 1, is incorporated as part of contract

7. **ALLOCATION OF COSTS**

A. **INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.

(1) ☐ Buyer ☐ Seller shall pay for a natural hazard zone disclosure report, including tax ☒ Environmental ☐ Other _____

prepared by _____

(2) ☐ Buyer ☐ Seller shall pay for the following Report _____

prepared by _____

(3) ☐ Buyer ☐ Seller shall pay for the following Report _____

prepared by _____

B. **GOVERNMENT REQUIREMENTS AND RETROFIT:**

(1) ☐ Buyer ☐ Seller shall pay for smoke alarm and carbon monoxide device installation and water heater draining, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.

Buyer's Initials (X MM) (_____)

Seller's Initials (X PL) (_____)

CPA REVISED 12/16 (PAGE 2 OF 11)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 2 OF 11)

Produced with software by eScribe, 16000 E. 10th Mile Road, Frisco, Michigan 48430

10/16/2016



Property Address: **5176 Federal Blvd, San Diego, CA 92114-1401**

Date: **March 21, 2017**

- (2) (i) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.
(ii) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.
(iii) Buyer shall be provided, within the time specified in paragraph 18A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of the sale of the Property.

C. ESCROW AND TITLE:

- (1) (a) ☐ Buyer ☐ Seller shall pay escrow fee _____
(b) Escrow Holder shall be _____
(c) The Parties shall, within 5 (or _____) Days After receipt, sign and return Escrow Holder's general provisions.
(2) (a) ☐ Buyer ☐ Seller shall pay for owner's title insurance policy specified in paragraph 17E.
(b) Owner's title policy to be issued by _____
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. OTHER COSTS:

- (1) ☐ Buyer ☐ Seller shall pay County transfer tax or fee _____
(2) ☐ Buyer ☐ Seller shall pay City transfer tax or fee _____
(3) ☐ Buyer ☐ Seller shall pay Owners' Association ("OA") transfer fee _____
(4) Seller shall pay OA fees for preparing all documents required to be delivered by Civil Code §4525.
(5) ☐ Buyer ☐ Seller shall pay OA fees for preparing all documents other than those required by Civil Code §4525.
(6) Buyer to pay for any HOA certification fee.
(7) ☐ Buyer ☐ Seller shall pay for any private transfer fee _____
(8) ☐ Buyer ☐ Seller shall pay for _____
(9) ☐ Buyer ☐ Seller shall pay for _____

8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph 8 B, C or D.

B. ITEMS INCLUDED IN SALE:

- (1) All EXISTING fixtures and fittings that are attached to the Property;
(2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air conditioners/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms.
(3) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 18A.
(4) Seller represents that all items included in the purchase price are, unless otherwise specified or identified pursuant to 8B, owned by Seller. Within the time specified in paragraph 18A, Seller shall give Buyer a list of fixtures not owned by Seller.
(5) Seller shall deliver title to the personal property by Bill of Sale, free and clear of all liens and encumbrances, and without seller warranty of condition regardless of value.
(6) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.
(7) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 18A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance; and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 18B and C.

C. ITEMS EXCLUDED FROM SALE: Unless otherwise specified, the following items are excluded from sale _____

D. OTHER ITEMS:

- (1) Existing integrated phone and automation systems, including necessary components such as internet and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers, and applicable software, permissions, passwords, codes and access information, are ☐ are NOT included in the sale.

9. CLOSING AND POSSESSION:

- A. Seller-occupied or vacant property:** Possession shall be delivered to Buyer (i) ☐ at 6 PM or ☐ AM ☐ PM on the date of Close Of Escrow; (ii) ☐ no later than _____ calendar days After Close Of Escrow; or (iii) ☐ at _____ AM ☐ PM on _____.
B. Seller Remaining in Possession After Close Of Escrow: If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as C.I.A.R. Form CL, and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.
C. Tenant Occupied Units: Possession and occupancy subject to the rights of tenants under existing leases, shall be delivered to Buyer on Close Of Escrow.
D. At Close Of Escrow: (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller will Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.

Buyer's Initials: **TS**
CPA REVISED 12/15 (PAGE 3 OF 11)

Seller's Initials: **TS**

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 3 OF 11)

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12. ☐ **ENVIRONMENTAL SURVEY** (If checked): Within _____ Days After Acceptance, Buyer shall be provided a phase one environmental survey report paid for and obtained by [Buyer/Seller]. Buyer shall then, as specified in paragraph 16, remove this contingency or cancel this Agreement.
13. **SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly deliver a subsequent or amended disclosure or notice in writing covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.
14. **CHANGES DURING ESCROW:**
- Prior to Close Of Escrow, Seller may only engage in the following acts ("Proposed Changes"), subject to Buyer's rights in paragraph 14B: (i) rent or lease any vacant unit or other part of the premises, (ii) alter, modify, or extend any existing rental or lease agreement, (iii) enter into, alter, modify or extend any service contract(s), or (iv) change the status of the condition of the Property.
 - (1) 7 (or _____) Days prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of any Proposed Changes.
(2) Within 5 (or _____) Days After receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.
15. **CONDITION OF PROPERTY:** Unless otherwise agreed in writing (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's investigation rights, (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance and (iii) all defects and personal property not included in the sale shall be removed by Close Of Escrow.
- Seller shall, within the time specified in paragraph 18A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
 - Buyer has the right to conduct Buyer Investigations of the property and, as specified in paragraph 18B, based upon materials disclosed in those investigations: (i) cancel this Agreement, or (ii) request that Seller make repairs or take other action.
 - Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.
16. **BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 12B. Within the time specified in paragraph 18B(i), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations") including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards, (ii) inspect for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures, may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas and shall include a report ("Pest Control Report") showing the findings of the company, which shall be separated into sections for: (i) vermin infestation, (ii) infections (Section 4) and for conditions likely to lead to infestation or infection (Section 5), (iii) view the registered sex offender database, (iv) contain the insurability of Buyer and the Property including the availability and cost of flood and fire insurance, (v) review and seek approval of leases that may need to be assumed by Buyer, and (vi) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing required to prepare a Pest Control Report, or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
 - Seller shall make the Property available for all Buyer Investigations. Buyer shall: (i) as specified in paragraph 18B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete copies of all such investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
 - Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.
 - Buyer indemnity and seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens, (ii) repair all damage arising from Buyer Investigations, and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.
17. **TITLE AND VESTING:**
- Within the time specified in paragraph 13, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of the Agreement as specified in paragraph 18B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (PFDs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
 - Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations, and (ii) those matters which Seller has agreed to remove in writing.
 - Within the time specified in paragraph 18A, Seller has a duty to disclose to Buyer all matters known to Seller affecting the whether of record or not.

Buyer's Initials (X) _____
CPA REVISED 12-15 (PAGE 5 OF 11)

Seller's Initials (X) _____



COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 5 OF 11)

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- D. At Close of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- E. Buyer shall receive a standard coverage owners CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.
- 18. TIME PERIODS; REMOVAL OF CONTINGENCIES, CANCELLATION RIGHTS:** The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).
- A. **SELLER HAS: 7 (or ___) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5A, 6, 7, 8B(7), 11A, B, C, D and E, 12, 15A and 17A.** Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.
- B. (1) **BUYER HAS: 17 (or ___) Days After Acceptance, unless otherwise agreed in writing, to:**
(i) complete all Buyer Investigations, review all disclosures, reports, loose documents to be assumed by Buyer pursuant to paragraph 8B(7) and other applicable information, which Buyer receives from Seller, and approve all matters affecting the Property;
(2) Within the time specified in paragraph 18B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to C.A.R. Form RRRR. Buyer's requests;
(3) By the end of the time specified in paragraph 18B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 18A, then Buyer has 5 (or ___) Days After Delivery of any such items, or the time specified in paragraph 18B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement;
(4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 18B(1) and before Seller cancels, if at all, pursuant to paragraph 18C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 18C(1).
- C. **SELLER RIGHT TO CANCEL:**
(1) **Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
(2) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first Delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a letter as required by paragraph 3J(1); (iii) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves, (iv) the verification provided by paragraph 3C or 3H, or (iv) in writing assume or accept leases or liens specified in 8B(7); (v) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 25b; or (vi) Provide evidence of authority to sign in a representative capacity as specified in paragraph 23. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.
- D. **NOTICE TO BUYER OR SELLER TO PERFORM:** The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 (or ___) Days After Delivery, or until the time specified in the applicable paragraph, whichever occurs last, to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 18.
- E. **EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation right, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Reports or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.
- F. **CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 (or ___) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.
- G. **EFFECT OF CANCELLATION ON DEPOSITS:** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs, incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDR or BDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).



- 19. REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skilful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance of cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
- 20. FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within 5 (or ___) Days Prior to Close Of Escrow. NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 15; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
- 21. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, OA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
- 22. BROKERS:**
- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify, defend, and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representations in this paragraph.
- C. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others, or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agreed to seek legal, tax, insurance, life and other desired assistance from appropriate professionals.
- 23. REPRESENTATIVE CAPACITY:** If one or more Parties is signing the Agreement in a representative capacity and not for himself or as an individual then that Party shall so indicate in paragraph 40 or 41 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days After Acceptance, evidence of authority to act in that capacity (such as, but not limited to, applicable portion of the trust or Certification Of Trust (Probate Code 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).
- 24. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A.** The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5A, 6, 7, 10, 11D, 17, 18G, 21, 22A, 23, 24, 30, 38, 39, 41, 42, and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 22A, or paragraph D of the section titled Real Estate Brokers on page 11 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or ___) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 11, or elsewhere in this Agreement.

Buyer's Initials (X) _____
CPA REVISED 12/15/16 PAGE 7 OF 11

Seller's Initials (X) _____



Property Address: **6176 Federal Blvd, San Diego, CA 92114-1401**

Date: **March 21, 2017**

- B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or _____) Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 100, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.
- C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 22A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 22A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- D. Upon receipt Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

25. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).**

Buyer's Initials

Seller's Initials

26. DISPUTE RESOLUTION:

- A. **MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.** Exclusions from this mediation agreement are specified in paragraph 26C.
- B. **ARBITRATION OF DISPUTES:** The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1263.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials

Seller's Initials

Buyer's Initials
CPA REVISED 12/15 (PAGE 8 OF 11)

Seller's Initials

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 8 OF 11)

Produced with the help of the following: 16077-11-01-02-03-04-05-06-07-08-09-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-1047-1048-1049-1050-1051-1052-1053-1054-1055-1056-1057-1058-1059-1060-1061-1062-1063-1064-1065-1066-1067-1068-1069-1070-1071-1072-1073-1074-1075-1076-1077-1078-1079-1080-1081-1082-1083-1084-1085-1086-1087-1088-1089-1090-1091-1092-1093-1094-1095-1096-1097-1098-1099-1100-1101-1102-1103-1104-1105-1106-1107-1108-1109-1110-1111-1112-1113-1114-1115-1116-1117-1118-1119-1120-1121-1122-1123-1124-1125-1126-1127-1128-1129-1130-1131-1132-1133-1134-1135-1136-1137-1138-1139-1140-1141-1142-1143-1144-1145-1146-1147-1148-1149-1150-1151-1152-1153-1154-1155-1156-1157-1158-1159-1160-1161-1162-1163-1164-1165-1166-1167-1168-1169-1170-1171-1172-1173-1174-1175-1176-1177-1178-1179-1180-1181-1182-1183-1184-1185-1186-1187-1188-1189-1190-1191-1192-1193-1194-1195-1196-1197-1198-1199-1200-1201-1202-1203-1204-1205-1206-1207-1208-1209-1210-1211-1212-1213-1214-1215-1216-1217-1218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-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-225

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.
- 27. SELECTION OF SERVICE PROVIDERS:** Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.
- 28. MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM:** If Broker is a participant of a Multiple Listing Service ("MLS") or Property Data System ("PDS"), Broker is authorized to report to the MLS or PDS a pending sale and, upon Close Of Escrow, the terms of this transaction to be published and disseminated to persons and entities authorized to use the information or terms approved by the MLS or PDS.
- 29. ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 25A.
- 30. ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AQAA).
- 31. SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and more to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
- 32. ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.
- 33. AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against and imposes obligations on individuals. The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and non-monetary remedies may be incurred if the Property is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer's or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
- 34. COPIES:** Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals and other documents to be relied on by the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
- 35. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 36. GOVERNING LAW:** This Agreement shall be governed by the Laws of the State of California.
- 37. TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement. Initiated by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
- 38. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.
- 39. DEFINITIONS:** As used in this Agreement:
- A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
- B. "Agreement" means this document and any counter offers and any incorporated addenda collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.

Buyer's Initials (X) [Signature]
CPA REVISED 12/15 (PAGE 9 OF 11)Seller's Initials (X) [Signature]

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 9 OF 11)

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AT 11-001-001

- C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
- D. "Close Of Escrow" or "COE" means the date the grant deed, or other evidence of transfer of title, is recorded.
- E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
- F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
- G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
- H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
- I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 11, regardless of the method used (i.e., messenger, mail, email, fax, other).
- J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
- K. "Law" means any law, code, statute, ordinance, regulation, rule or order which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
- L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
- M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.
40. **AUTHORITY:** Any person or persons signing this Agreement represent(s) that such person has full power and authority to bind that person's principal, and that the designated Buyer and Seller has full authority to enter into and perform this Agreement. Entering into this Agreement and the completion of the obligations pursuant to this contract, does not violate any Articles of Incorporation, Articles of Organization, By Laws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.
41. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer or by see Addendum 1 AM PM on _____ (date), who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by _____ (date)).

One or more Buyers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 3-21-17 BUYER [Signature]

(Print name) Richard John Martin II

Date _____ BUYER _____

(Print name) _____

☐ Additional Signature Addendum attached (C.A.R. Form ASA)

42. **ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

☐ (if checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMC0) DATED _____

One or more Sellers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date 3-21-17 SELLER [Signature]

(Print name) Darryl Cotton

Date _____ SELLER _____

(Print name) _____

☐ Additional Signature Addendum attached (C.A.R. Form ASA)

 / (Do not initial if making a counter offer.) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) _____ at _____ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

REAL ESTATE BROKERS:**A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.****B. Agency relationships are confirmed as stated in paragraph 2.****C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.****D. COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC), Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.Real Estate Broker (Selling Firm) N/A

By _____

CalBRE Lic # _____

CalBRE Lic # _____

Date _____

By _____

CalBRE Lic # _____

Date _____

Address _____

City _____

State _____

Zip _____

Telephone _____

Fax _____

E-mail _____

Real Estate Broker (Listing Firm) N/A

By _____

CalBRE Lic # _____

Date _____

By _____

CalBRE Lic # _____

Date _____

Address _____

City _____

State _____

Zip _____

Telephone _____

Fax _____

E-mail _____

ESCROW HOLDER ACKNOWLEDGMENT:Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of \$ _____ counter offer numbers _____ Seller's Statement of Information and _____

and agrees to act as Escrow Holder subject to paragraph 24 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is _____

Escrow Holder _____

Escrow # _____

By _____

Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

☐ Department of Business Oversight, ☐ Department of Insurance, ☐ Bureau of Real Estate**PRESENTATION OF OFFER:** (_____) Listing Broker presented this offer to Seller on _____ (date)
Broker or Designee Initials _____**REJECTION OF OFFER:** (☒) No counter offer is being made. This offer was rejected by Seller on _____ (date)
Seller's Initials _____Buyer's Initials (☒) _____Seller's Initials (☒) _____

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525 South West Avenue, Los Angeles, California 90040

Reviewed by
Broker or Designee _____



CPA REVISED 12/15 (PAGE 11 OF 11)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 11 OF 11)

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NAR Form 1001



CALIFORNIA
ASSOCIATION
OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other _____

dated March 21, 2017 on property known as 6176 Federal Blvd

San Diego, CA 92114-1401

in which Richard John Martin II is referred to as "Buyer/Tenant"

and Darryl Cotton is referred to as "Seller/Landlord"

Memorandum of Understanding

This Memorandum of Understanding ("MOU") is fully incorporated into this purchase agreement.

Seller shall receive a 20% equity stake in the business / MMCC upon approval and completion.

Seller shall receive on a monthly basis, 20% of the profits of the business / MMCC or \$10,000, whichever is greater

The \$100,000 earnest money deposit is non-refundable and shall be Seller's to keep even if the CUP application is denied.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document

Date March 21, 2017

Date March 21, 2017

Buyer/Tenant X Richard John Martin II

Seller/Landlord X Darryl Cotton

Buyer/Tenant _____

Seller/Landlord _____

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ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)



CALIFORNIA
ASSOCIATION
OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 2

The following terms and conditions are hereby incorporated in and made a part of the: ☒ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind). ☐ Other

dated March 21, 2017 on property known as 6176 Federal Blvd
San Diego, CA 92114-1401
in which Richard John Martin II is referred to as "Buyer/Tenant"
and Darryl Cotton is referred to as "Seller/Landlord"

Memorandum of Understanding and Agreement

- 1) This Memorandum of Understanding and Agreement ("MOUA") amends the agreement reached by Buyer and Seller on March 21, 2017.
- 2) Notwithstanding any language in this purchase agreement to the contrary, the provisions within this MOUA shall be given effect and supersede any conflicting or ambiguous language within this purchase agreement.
- 3) Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities, his ownership, rights and interests in the property and the associated CUP application pending before the City of San Diego for \$500,000.
- 4) Buyer shall immediately provide seller with a \$50,000 non-refundable deposit.
- 5) The closing of this sale, including the payment of the balance of the purchase price and all the requirements stated herein, shall be completed upon the favorable resolution of the Larry Geraci lawsuit against Seller for the property.
- 6) In addition, should a CUP application be approved at the property, Buyer shall pay Seller a one-time payment of \$1,500,000. Seller's previous agreement for an equity stake in the business is voided and Seller has no interest in the property or the CUP.
- 7) CONFIDENTIALITY CLAUSE: SELLER WILL NOT DISCLOSE BUYER'S IDENTITY OR THIS AGREEMENT IN ANY FORM, DIRECTLY OR INDIRECTLY, UNTIL HE HAS RESOLVED THE LEGAL ACTION WITH GERACI. FOR THE AVOIDANCE OF DOUBT, THIS MEANS THAT SELLER WILL NOT INVOLVE OR MENTION BUYER IN ANY FORM TO ANY THIRD-PARTIES, IN ANY LITIGATION PROCEEDINGS OR IN ANY MATTERS REGARDING ALLEGATIONS OF CRIMINAL OR UNLAWFUL ACTIONS. SHOULD SELLER BREACH THIS PROVISION, SELLER HEREBY EXPRESSLY AGREES TO PAY TO BUYER \$200,000 FOR BREACH OF THIS PROVISION.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date April 15, 2017

Date April 15, 2017

Buyer/Tenant X

Richard John Martin II

Seller/Landlord X

Darryl Cotton

Buyer/Tenant

Seller/Landlord

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Reviewed by _____ Date _____





CALIFORNIA
ASSOCIATION
OF REALTORS

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 3

The following terms and conditions are hereby incorporated in and made a part of the ☐ Purchase Agreement ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind). ☐ Other

dated March 21, 2017, on property known as 6176 Federal Blvd

in which San Diego, CA 92114-1401
and Richard John Martin II is referred to as "Buyer/Tenant"
Darryl Cotton is referred to as "Seller/Landlord"

This addendum is fully incorporated into this purchase agreement and amends the agreement reached between the parties on March 21, 2017, as amended by addendum 2 on April 15th, 2017.

Buyer hereby agrees to permit Seller to disclose this agreement in his response to Geraci's lawsuit.

For the avoidance of doubt, Seller will not have to pay the \$200,000 fine for breach of the Confidentiality provision previously agreed to.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document

Date May 12, 2017

Date May 12, 2017

Buyer/Tenant X Richard John Martin II

Seller/Landlord X Darryl Cotton

Buyer/Tenant _____

Seller/Landlord _____

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Reviewed by _____ Date _____



FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI
and 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

PROOF OF SERVICE

[IMAGED FILE]

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

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

1 I, Anna K. Lizano, declare that: I am over the age of 18 years and not a party to the case; I am
2 employed in, or am a resident of, the County of San Diego, California; and my business address is:
3 501 West Broadway, Suite 1450, San Diego, California 92101.

4 On, April 10, 2018, I served the following documents:

- 5 1. **PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES**
6 **IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE**
7 **LIS PENDENS;**
- 8 2. **DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL**
9 **COTTON'S MOTION TO EXPUNGE LIS PENDENS;**
- 10 3. **DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO**
11 **DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS;**
- 12 4. **MICHAEL R. WEINSTEIN SCHWEITZER IN SUPPORT OF OPPOSITION TO**
13 **DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS; and**
- 14 5. **NOTICE OF LODGMENT IN SUPPORT OF PLAINTIFF LARRY GERACI'S**
15 **OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS**
16 **PENDENS.**

17 **[X] EMAIL.** Based on an agreement of the parties to accept service by email, I caused the documents
18 to be sent to the person at approximately 11:15 a.m. on the date above, to the following email
19 addresses:

20 Darryl Cotton
21 6176 Federal Boulevard
22 San Diego, CA 92114
23 Tel: (619) 954-4447
24 Fax: (619) 229-9387
25 indagrodarryl@gmail.com

26 *Defendant and Cross-Complainant*
27 *In Pro Per*

Jacob Austin, Esq.
LAW OFFICE OF JACOB AUSTIN
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Tel: (619) 357-6850
Fax: (888)357-8501
jpa@jacobaustinesq.com

(Courtesy Copy only)

28 I did not receive, within a reasonable time after the transmission, any electronic message or other
indication that the transmission was not successful.

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

Dated: April 10, 2018

Anna K. Lizano

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
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.

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

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

**PLAINTIFF LARRY GERACI'S
OBJECTIONS TO EVIDENCE LODGED
BY DEFENDANT DARRYL COTTON IN
SUPPORT OF HIS 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

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

Plaintiff, LARRY GERACI, hereby objects to evidence lodged by Defendant, DARRYL COTTON, in support of his Motion to Expunge Notice of Pendency of Action (*Lis Pendens*).

MATERIAL OBJECTED TO	GROUND FOR OBJECTIONS
Cotton Declaration, ¶ 3 in its entirety.	Irrelevant to the motion to expunge <i>lis pendens</i> . No evidence is admissible except relevant

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTIONS
	evidence. (Cal. Evid. Code, § 350.)
Cotton Declaration, ¶ 4 in its entirety.	Irrelevant to the motion to expunge <i>lis pendens</i> . No evidence is admissible except relevant evidence. (Cal. Evid. Code, § 350.)
Cotton Declaration, ¶ 6 to the extent it mischaracterizes the written agreement as a "receipt".	Nowhere on the document does it reference that it is a "receipt". To the extent this is Cotton's opinion, it is inadmissible lay opinion evidence. (Cal. Evid. Code, § 800.) To the extent Cotton is offering his lay opinion, the Declaration fails to lay proper foundation for the opinion. (Cal. Evid. Code, § 702.)
Cotton Declaration, ¶ 7 to the extent it mischaracterizes the written agreement as a "receipt".	Nowhere on the document does it reference that it is a "receipt". To the extent this is Cotton's opinion, it is inadmissible lay opinion evidence. (Cal. Evid. Code, § 800.) To the extent Cotton is offering his lay opinion, the Declaration fails to lay proper foundation for the opinion. (Cal. Evid. Code, § 702.)
Cotton Declaration, ¶ 8 to the extent it mischaracterizes the written agreement as a "receipt".	Nowhere on the document does it reference that it is a "receipt". To the extent this is Cotton's opinion, it is inadmissible lay opinion evidence. (Cal. Evid. Code, § 800.) To the extent Cotton is offering his lay opinion, the Declaration fails to lay proper foundation for the opinion. (Cal. Evid. Code, § 702.)
Cotton Declaration, ¶ 12 to the extent it references the "Text Communications".	Lack of Foundation (Cal. Evid. Code, § 702); Hearsay (Cal. Evid. Code § 1200).
Cotton Declaration, ¶ 15 to the extent it refers to the "Metadata Evidence."	This is improper lay opinion in violation of California Evidence Code, section 800. It also lacks foundation in violation of California Evidence Code, section 702. Additionally, this evidence is irrelevant. (Cal. Evid. Code, § 350.)
Cotton Declaration, ¶ 16 to the extent it refers to the "Parcel Information Report" provided by the City of San Diego, Development Services	Hearsay (Cal. Evid. Code, § 1200); Lack of Foundation (Cal. Evid. Code, § 702).

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTIONS
Department.	
Cotton Declaration, ¶ 20 to the extent it references that Judge Wohlfeil told Cotton that he knew Austin and Weinstein well and that he did not believe the would engaged in unethical actions.	Irrelevant (Cal. Evid. Code, § 350).
Cotton Declaration, ¶ 21 in its entirety.	Completely irrelevant to any issue in this case. (Cal. Evid. Code, § 350).
Cotton Declaration, ¶ 22 to the extent it references an Independent Psychiatric Assessment of Mr. Cotton.	Irrelevant (Cal. Evid. Code, § 350).
Exhibit 1 – Summary of Emails.	Lacks foundation (Cal. Evid. Code, § 720); Hearsay (Cal. Evid. Code, § 1200).
Exhibit 3 – To the extent this has been identified as Metadata.	Lacks foundation (Cal. Evid. Code § 720); Hearsay (Cal. Evid. Code, § 1200); Irrelevant (Cal. Evid. Code, § 350.)
Exhibit 4.	Irrelevant (Cal. Evid. Code, § 350); Improper Expert Opinion as Cotton has failed to designate an expert witness in this case; Hearsay (Cal. Evid. Code, § 1200).

Dated: April 10, 2018

FERRIS & BRITTON
A Professional Corporation

By: 

Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff and Cross-Defendant LARRY GERACI
and Cross-Defendant REBECCA BERRY

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
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.

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

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

**PLAINTIFF LARRY GERACI'S
OBJECTIONS TO EVIDENCE LODGED
BY DEFENDANT DARRYL COTTON IN
SUPPORT OF HIS 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

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

Plaintiff, LARRY GERACI, hereby objects to evidence lodged by Defendant, DARRYL COTTON, in support of his Motion to Expunge Notice of Pendency of Action (*Lis Pendens*).

MATERIAL OBJECTED TO	GROUND FOR OBJECTIONS
Cotton Declaration, ¶ 3 in its entirety.	Irrelevant to the motion to expunge <i>lis pendens</i> . No evidence is admissible except relevant

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTIONS
	evidence. (Cal. Evid. Code, § 350.)
Cotton Declaration, ¶ 4 in its entirety.	Irrelevant to the motion to expunge <i>lis pendens</i> . No evidence is admissible except relevant evidence. (Cal. Evid. Code, § 350.)
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Cotton Declaration, ¶ 12 to the extent it references the "Text Communications".	Lack of Foundation (Cal. Evid. Code, § 702); Hearsay (Cal. Evid. Code § 1200).
Cotton Declaration, ¶ 15 to the extent it refers to the "Metadata Evidence."	This is improper lay opinion in violation of California Evidence Code, section 800. It also lacks foundation in violation of California Evidence Code, section 702. Additionally, this evidence is irrelevant. (Cal. Evid. Code, § 350.)
Cotton Declaration, ¶ 16 to the extent it refers to the "Parcel Information Report" provided by the City of San Diego, Development Services	Hearsay (Cal. Evid. Code, § 1200); Lack of Foundation (Cal. Evid. Code, § 702).

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTIONS
Department.	
Cotton Declaration, ¶ 20 to the extent it references that Judge Wohlfeil told Cotton that he knew Austin and Weinstein well and that he did not believe the would engaged in unethical actions.	Irrelevant (Cal. Evid. Code, § 350).
Cotton Declaration, ¶ 21 in its entirety.	Completely irrelevant to any issue in this case. (Cal. Evid. Code, § 350).
Cotton Declaration, ¶ 22 to the extent it references an Independent Psychiatric Assessment of Mr. Cotton.	Irrelevant (Cal. Evid. Code, § 350).
Exhibit 1 – Summary of Emails.	Lacks foundation (Cal. Evid. Code, § 720); Hearsay (Cal. Evid. Code, § 1200).
Exhibit 3 – To the extent this has been identified as Metadata.	Lacks foundation (Cal. Evid. Code § 720); Hearsay (Cal. Evid. Code, § 1200); Irrelevant (Cal. Evid. Code, § 350.)
Exhibit 4.	Irrelevant (Cal. Evid. Code, § 350); Improper Expert Opinion as Cotton has failed to designate an expert witness in this case; Hearsay (Cal. Evid. Code, § 1200).

Dated: April 10, 2018

FERRIS & BRITTON
A Professional Corporation

By: 

Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff and Cross-Defendant LARRY GERACI
and Cross-Defendant REBECCA BERRY