

ORIGINAL

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CENTRAL DIVISION

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

Darryl Cotton, *In pro se*  
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San Diego, CA 92114  
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Defendant and Cross-Complainant

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

LARRY GERACI, an individual,  
Plaintiff,

vs.

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

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: The Honorable Joel Wohlfeil  
Dept.: C-73

COTTON'S CROSS-COMPLAINT FOR:

1. QUIET TITLE
2. SLANDER OF TITLE
3. FRAUD / FRAUDULENT  
MISREPRESENTATION
4. FRAUD IN THE INDUCEMENT
5. BREACH OF CONTRACT
6. BREACH OF ORAL CONTRACT
7. BREACH OF IMPLIED CONTRACT
8. BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND  
FAIR DEALING
9. TRESPASS
10. CONSPIRACY
11. DECLARATORY AND INJUNCTIVE  
RELIEF

Defendant and Cross-complainant Darryl Cotton ("Cotton") alleges as follows:

1. Cotton is, and at all times mentioned was, an individual residing within the County of San Diego, California.

2. Plaintiff and Cross-defendant Larry Geraci ("Geraci") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

1 3. Cross-defendant Rebecca Berry ("Berry") is, and at all times mentioned was,  
2 an individual residing within the County of San Diego, California.

3 4. Cotton, at all times material to this action, was the sole owner of the  
4 commercial property located at 6176 Federal Boulevard in San Diego, California  
5 92114 (the "Property"), the subject of this dispute.

6 5. Cotton is the President of Inda-Gro, a manufacturer of environmentally  
7 sustainable products, primarily induction lighting systems, that help enhance crop  
8 production while conserving energy and water resources.

9 6. Cotton is the President of 151 Farms, a not-for-profit organization he founded  
10 in that is focused on providing ecologically sustainable cultivation practices for the  
11 food and medical needs of urban communities.

12 7. Cotton, at the Property, operates both his Inda-Gro business and his 151  
13 Farms not-for-profit.

14 8. Cotton does not know the true names and capacities of the defendants named  
15 DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed  
16 and believes that DOES 1 through 10 are in some way responsible for the events  
17 described in this Cross-complaint and are liable to Cotton based on the causes of  
18 action below. Cotton will seek leave to amend this Cross-complaint when the true  
19 names and capacities of these parties have been ascertained.

20 9. Based on the foregoing, jurisdiction is proper in this Court and venue in San  
21 Diego County, California.

### 22 GENERAL ALLEGATIONS

23 10. Geraci contacted Cotton in August of 2016 seeking to purchase the  
24 Property from Cotton. Geraci desired to buy the Property because it meets certain  
25 requirements by the City of San Diego (the "City") that would allow Geraci to apply  
26 for a Conditional Use Permit ("CUP"). If granted, the CUP would permit the operation  
27 of a Medical Marijuana Consumer Cooperative ("MMCC") at the Property.

28 11. Subsequent to the initial conversation in August between Geraci and  
Cotton, over the course of approximately two months, the parties entered into

1 intense negotiations regarding the sale of the Property. During this period of time, in  
2 good-faith anticipation of finalizing the sale of the Property, the parties  
3 simultaneously engaged in preliminary due diligence and preparation of the CUP  
4 application.

5 12. During the course of the negotiations and preparation of the CUP  
6 application, Geraci represented to Cotton, among other things, the following:

7 a. That his due diligence uncovered a critical zoning issue that would  
8 prevent the Property from being issued a CUP permit unless he lobbied with the City  
9 to have the issue resolved (the "Critical Zoning Issue");

10 b. That he, through his personal and professional relationships, was in a  
11 unique position to lobby and influence key City political figures to (i) have the Critical  
12 Zoning Issue favorably resolved and (ii) have the CUP application approved once  
13 submitted.

14 c. That he was in a position to successfully operate a MMCC because, at  
15 that point in time, he owned and was managing several other marijuana dispensaries  
16 in the San Diego County area.

17 d. That as an Enrolled Agent for the IRS, and the owner-manager of Tax  
18 and Financial Center, Inc. (a tax-related business), he was an individual that Cotton  
19 could trust because he operated in a fiduciary capacity on a daily-basis for many  
20 high-net worth individuals and businesses.

21 13. On November 2, 2016, after months of negotiations, Geraci and Cotton  
22 met at Geraci's office to negotiate the unsettled terms and finalize their agreement  
23 for the sale of the Property. The parties agreed to over thirty different terms for the  
24 sale of the Property and their intention was to reduce those terms to a writing.

25 14. The consideration for the purchase of the Property consisted of  
26 monetary and non-monetary components. Under the terms of the agreement  
27 reached, Geraci agreed to provide Cotton, among other things, the following  
28 consideration for the Property:

a. The sum of \$800,000;

1 b. A 10% equity stake in the MMCC upon the City's approval of the CUP at  
2 the Property (the "Business"); and

3 c. On a monthly basis, 10% of the profits of the Business for the preceding  
4 month or \$10,000, whichever was greater.

5 15. A condition precedent to closing the sale of the Property was the City's  
6 approval of the CUP application.

7 16. Further, Geraci would pay Cotton a non-refundable deposit in the  
8 amount of \$50,000 (the "Non-Refundable Deposit"). Geraci was then to submit a  
9 CUP application to the City. If the City granted the application, the sale and transfer  
10 of title to the Property to Geraci would be consummated upon Geraci's payment of  
11 the \$750,000 balance. However, if the City rejected the CUP application, the sale  
12 and transfer of the Property would not proceed and Cotton would be entitled to retain  
13 the \$50,000 Non-Refundable Deposit.

14 17. The transaction was to be effectuated via two agreements: (i) a Real  
15 Estate Purchase Agreement and (ii) a Side Agreement. The Real Estate Purchase  
16 Agreement was to specify the payment of \$400,000 from Geraci to Cotton for the  
17 purchase of the Property.

18 18. The Side Agreement was to include the additional, remaining \$400,000  
19 payment obligation (such that, in aggregate, the monetary components of the Real  
20 Estate Purchase Agreement and the Side Agreement totaled \$800,000). The Side  
21 Agreement was also to include various other material terms, including, without  
22 limitation, the 10% equity stake and monthly profit sharing (i.e., 10% of profits or a  
23 minimum monthly payment of \$10,000).

24 19. After the parties finalized consideration for the Property, Geraci  
25 requested of Cotton that he be given time to put together the \$50,000 Non-  
26 Refundable Deposit. Geraci alleged that he needed time as he had limited cash and  
27 he would require the cash he did have to immediately fund the costly preparation of  
28 the CUP application and lobbying efforts needed to resolve the Critical Zoning Issue.

1 20. Geraci offered to provide Cotton on that day \$10,000 as a show of  
2 "good-faith" towards the \$50,000 Non-Refundable Deposit even though the parties  
3 did not have a final legal agreement for the sale of the Property. Cotton raised his  
4 concern, that he would not receive the balance of the Non-Refundable Deposit if the  
5 City denied the CUP application. Geraci promised to pay the balance of the Non-  
6 Refundable Deposit prior to submission of the CUP application with the City and  
7 stressed the need to immediately resolve the Critical Zoning Issue.

8 21. Cotton agreed and Geraci offered to incur the cost of having his  
9 attorney, Gina Austin, "quickly" draft the Real Estate Purchase Agreement and the  
10 Side agreement.

11 22. At Geraci's request, the parties executed a three-sentence agreement  
12 that Geraci stated was for there to be a record of Cotton's receipt of the \$10,000  
13 "good-faith" deposit (the "November 2nd Agreement").

14 23. That same day at 3:11 PM, Geraci emailed Cotton a scanned copy of  
15 the notarized November 2nd Agreement.

16 24. Later that day at 6:55 PM, Cotton replied to Geraci, noting:  
17 "I just noticed the 10% equity position in the dispensary was  
18 not language added into that document. I just want to make  
19 sure that we're not missing that language in any final  
20 agreement as it is a factored element in my decision to sell the  
21 property. I'll be fine if you would simply acknowledge that here  
22 in a reply."

23 25. Approximately 2 hours later at 9:13 PM, Geraci replied, stating "No no  
24 problem at all." (Exhibit 1.)

25 26. Cotton, having received written confirmation from Geraci regarding the  
26 10% equity stake, continued to operate in good-faith under the assumption that  
27 Geraci's attorney would draft the appropriate legal agreements reflecting the deal the  
28 parties reached.

27 27. Thereafter, over the course of the next four months, Cotton continuously  
28 reached out to Geraci regarding the following three issues:

- a. The progress of the Critical Zoning Issue that precluded the submission of the CUP application;
- b. The balance of the Non-Refundable Deposit; and
- c. The status of the drafts of the Real Estate Purchase Agreement and the Side Agreement.

28. During this four-month period Geraci was predominantly unresponsive and failed to make substantive progress on any of his promises.

29. On January 6, 2017, Cotton, exasperated with Geraci for failing to provide any substantive updates on the Critical Zoning Issue or drafts of the legal agreements, texted him "Can you call me. If for any reason you're not moving forward I need to know."

30. That same day Geraci replied via text, stating "I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to call you later today still very sick."

31. Between January 18, 2017 and February 7, 2017, the following text conversation took place between Geraci and Cotton:

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

Cotton: "This resolves the zoning issue?"

Geraci: "Yes"

Cotton: "Excellent"

Cotton: "How goes it?"

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

Cotton: "Whats new?"

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

Geraci: "I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork."

32. Thus, Geraci's communications to Cotton regarding final resolution of the Critical Zoning Issue (the prerequisite to the submission of the CUP application and the latest point at which Cotton would receive the remaining \$40,000 of the Non-Refundable Deposit) was that although imminent, it had not yet been completed.

1 33. On February 15, 2017, Geraci texted Cotton "we are preparing the  
2 documents with the attorney and hopefully will have them by the end of this week."

3 34. On February 22, 2017, Geraci texted Cotton "Contract should be ready  
4 in a couple days."

5 35. On February 27, 2017, Geraci emailed Cotton a draft Agreement of  
6 Purchase and Sale of Real Property for the Property (the "First Draft Real Estate  
7 Agreement"). The First Draft Real Estate Agreement completely failed to reflect the  
8 agreement that Geraci and Cotton had reached on November 2, 2016. Cotton called  
9 Geraci who said it was a miscommunication between him and his attorney Gina  
10 Austin and he promised to have her revise the First Draft Real Estate Agreement.

11 36. On March 2, 2017, Geraci emailed Cotton a draft Side Agreement (the  
12 "First Draft Side Agreement").

13 37. On March 3, 2017, having reviewed the First Draft Side Agreement,  
14 Cotton emailed Geraci stating: "I see no reference is made to the 10% equity position  
15 [and] para 3.11 looks to avoid our agreement completely." Paragraph 3.11 of the  
16 First Draft Side Agreement states that the parties have no joint venture or  
17 partnership agreement of any kind, in complete contradiction of the deal reached  
18 between the parties.

19 38. Thereafter, Cotton became increasingly frustrated by Geraci's lack of  
20 progress on the outstanding issues. He noted to Geraci during a conversation that he  
21 would be looking to get an attorney to revise the inaccurate drafts of the legal  
22 agreements provided. Geraci assuaged Cotton by telling him it was a  
23 misunderstanding on his attorney's part and that Cotton could speak with her directly  
24 regarding any comments to the drafts.

25 39. On March 6, 2017, Geraci, having spoken with Cotton and knowing he  
26 contemplated attending a social event at which his attorney Gina Austin would be,  
27 texted "Gina Austin is there she has a red jacket on if you want to have a  
28 conversation with her."

1 40. On March 7, 2017, Geraci emailed Cotton a revised draft of the Side  
2 Agreement (the "Second Draft Side Agreement"). The cover email contained the  
3 following language: "... the 10k a month might be difficult to hit until the sixth month...  
4 can we do 5k, and on the seventh month start 10k?"

5 41. The Second Draft Side Agreement contained the following language:  
6 "Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business  
7 after all expenses and liabilities have been paid... Further, Buyer hereby guarantees  
8 a profits payment of not less than \$5,000 per month for the first three months the  
9 Business is open... and \$10,000 a month for each month thereafter the Business is  
10 operating on the Property."

11 42. On or about March 16, 2017, having grown increasingly tired of Geraci's  
12 failures to respond to his requests for substantive updates on the Critical Zoning  
13 Issue, Cotton reached out directly to the Development Project Manager for the City  
14 that is responsible for CUP applications. Cotton discovered from the Development  
15 Project Manager that a CUP application had been submitted on his Property on  
16 October 31, 2016.

17 a. Cotton specifically recalled that day, October 31, 2016, as it was the day  
18 that Geraci had asked Cotton to execute an Ownership Disclosure Statement  
19 reflecting that Cotton had leased the Property to an individual named Rebecca Berry.  
20 Geraci told Cotton he required the Ownership Disclosure Statement because:

21 i. As the parties did not have a final agreement in place at that time,  
22 he needed it to show other professionals involved in the preparation of the CUP  
23 application and the lobbying efforts to prove that he had access to the Property; and

24 ii. As a sign of good-faith by Cotton as they had not reached a final  
25 agreement and he wanted something in writing to prove Cotton's support of the CUP  
26 application at the Property as he needed to immediately spend large amounts of  
27 cash to continue with the preparation of the CUP application and the Critical Zoning  
28 Issue lobbying efforts.



1 43. Geraci told Cotton that Rebecca Berry is very familiar with medical  
2 marijuana operations, is a trusted employee and is involved in his other medical  
3 marijuana dispensaries.

4 44. Cotton has never met or directly entered into any type of agreement with  
5 Rebecca Berry. Insofar as she is involved with Cotton, she has always been an  
6 agent of Geraci and has been effectuating his plans, either in concert with him or at  
7 his direction.

8 45. On March 16, 2017, Cotton, after having discovered that Geraci had  
9 submitted a CUP application on the Property and, therefore, had been deceiving him  
10 for months, emailed Geraci stating:

11 "we started these negotiations 4 months ago and the drafts and our  
12 communications have not reflected what agreed upon and are still far from  
13 reflecting our original agreement. Here is my proposal, please have your attorney  
14 Gina revise the Purchase Agreement and the Side Agreement to incorporate all  
15 the terms we have agreed upon so that we can execute final versions and get this  
16 closed... Please confirm by Monday 12:00 PM whether we are on the same page  
17 and you plan to continue with our agreement ... If, hopefully, we can work through  
18 this, please confirm that revised final drafts that incorporate the terms [we agreed  
19 to] will be provided by Wednesday at 12:00 PM. I promise to review and provide  
20 comments that same day so we can execute the same or next day."

21 46. In response to this email, on the same day, Geraci texted Cotton asking  
22 "Can we meet tomorrow[?]"

23 47. On March 17, 2017, Cotton replied via email to Geraci's text request for  
24 an in-person meeting stating that:

25 "I would prefer that until we have final agreements that we converse exclusively  
26 via email. My greatest concern is that you get a denial on the CUP application  
27 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel  
28 that you are not dealing with me in good faith, you told me repeatedly that you  
could not submit a CUP application until certain zoning issues had been resolved  
and that you had spent hundreds of thousands of dollars on getting them  
resolved. You lied to me, I found out yesterday from the City of San Diego that  
you submitted a CUP application on October 31 2016 BEFORE we even signed  
our agreement on the 2nd of November."

1 48. Thereafter, communications increasingly devolved between Geraci and  
2 Cotton as Geraci refused to confirm in writing, at Cotton's repeated requests, the  
3 original terms of their agreement.

4 49. On March 21, 2017, it being apparent to Cotton that Geraci had no  
5 intention of confirming or honoring the agreement they had reached on November  
6 2nd, 2016, Cotton called the Development Project Manager and asked her to  
7 withdraw the CUP application pending on his Property.

8 50. Later that day, the Development Project Manager emailed Cotton stating  
9 that she could not withdraw the CUP application on Cotton's Property as he  
10 requested because Rebecca Berry is the "financial responsible party" on the CUP  
11 application and not Cotton.

12 51. Also, on March 21, 2017, Cotton emailed Geraci letting him know that  
13 he had spoken with

14 "the Development Project Manager for the City of San Diego who is handling CUP  
15 applications. She made it 100% clear that there are no restrictions on my property  
16 and that there is no recommendation that a CUP application on my property be  
17 denied. In fact, she told me that the application had just passed the 'Deemed  
18 Complete' phase and was entering the review process. She also confirmed that  
19 the application was paid for in October, before we even signed our  
20 agreement...[t]his is our last communication, you have failed to live up to your  
21 agreement and have continuously lied to me and kept pushing off creating final  
22 legal agreements because you wanted to push it off to get a response from the  
23 City without taking the risk of losing the non-refundable deposit in the event the  
24 CUP application is denied. **To be clear, as of now, you have no interest in my  
25 property...**" (emphasis added.)

26 52. After terminating his agreement with Geraci, Cotton entered into an  
27 agreement with a third-party for the sale of the Property on the same day.

28 53. On March 22, 2017, Cotton was emailed the instant Complaint by  
Geraci's attorney, Michael Weinstein, claiming that

"[t]he November 2, 2016, written agreement is a valid, binding and enforceable  
agreement between Larry Geraci and [me] for the purchase and sale of the  
Property according to its terms and conditions... You have been paid \$10,000.00  
and, in the event the condition precedent of obtaining CUP approval is satisfied,  
then the remaining balance of \$790,000.00 will be due to you from Larry Geraci

and you will be obligated to transfer title to Larry Geraci or his assignee."

54. On April 29, 2017, Cotton emailed and provided Geraci and Rebecca Berry with drafts of his Answer to Plaintiff's Complaint and his Cross-Complaint. Cotton noted that notwithstanding Geraci's unethical behavior that led to this needless dispute and the overwhelming evidence making clear Geraci's culpability, that he would like to resolve the dispute as quickly and fairly as possible.

55. Neither Geraci or Berry replied to Cotton's request to settle the dispute.

56. On May 5, 2017, the Court notified Cotton that his Answer & Cross-complaint were rejected because he submitted both pleadings in a single document. Realizing that some time had passed for Geraci, Geraci's attorney and Berry to further review and think about the evidence against them, Cotton emailed Geraci and Berry again seeking to reach a settlement and "work out something reasonable."

57. Neither Geraci nor Berry replied to his request to settle the dispute.

### Count One

#### (Quiet Title)

58. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

59. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

60. Cotton is the sole and rightful owner of record of the Property.

61. Based on the allegations contained in Geraci's Complaint and the Lis Pendens filed by Geraci on the Property, Geraci has made a claim for title to the Property adverse to Cotton. Further, Ms. Berry has filed a CUP application claiming to be the sole owner of the Property.

62. Cotton is entitled to an order barring and forever estopping Geraci and Berry from having or claiming any right or title to the Property.

**Count Two**  
**(Slander of Title)**

63. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

64. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

65. Geraci and Berry disparaged Cotton's exclusive valid title by and through the preparing, posting, publishing, and recording of the documents previously described herein, including, but not limited to, the instant Complaint, the Lis Pendens filed on the Property and the CUP application.

66. Geraci knew that such documents were improper in that at the time of the execution and delivery of the documents, Geraci had no right, title, or interest in the Property. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Cotton's legal title to the Property. By posting, publishing and recording documents, Geraci's disparagement of Cotton's legal title was made to the world at large.

67. As a direct and proximate result of Geraci and Berry's conduct in publishing these documents, Cotton's title to the Property has been disparaged and slandered, and there is a cloud on Cotton's title, and Cotton has suffered and continues to suffer damages, including, but not limited to, lost future profits, in an amount to be proved at trial, but in an amount of no less than \$2,000,000.

68. As a further and proximate result of Geraci's conduct, Cotton has incurred expenses in order to clear title to the Property. Moreover, these expenses are continuing and Cotton will incur additional charges for such purpose until the cloud on Cotton's title to the Property has been removed. The amounts of future expenses are not ascertainable at this time, but will be proven at trial.

69. As a further and proximate result of Geraci's conduct, Cotton has suffered humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to his health and

1 well-being, and continues to suffer such injuries on an ongoing basis. The amount of  
2 such damages shall be proven at trial.

3 a. By fortuitous happenstance, the Property qualifies to apply for a CUP,  
4 which represents a significant windfall for Cotton and has the potential to be a life-  
5 changing opportunity for him. Unfortunately, Geraci and Berry have sought to first  
6 fraudulently deprive Cotton of the benefits that he bargained for and to which Geraci  
7 agreed to on November 2<sup>nd</sup>, 2016, and, second, Geraci continues to harm Cotton by  
8 proceeding with this action when he absolutely knows that the evidence is  
9 unequivocal and he will not prevail if this action is seen through.

10 b. Geraci's continuation of this action causes ever increasing damage to  
11 Cotton on a daily basis because, simply put, he is indescribably tormented  
12 emotionally and physically as he sees a once in a lifetime opportunity, that could put  
13 him in a position to provide for his loved ones and support him into retirement, being  
14 destroyed by Geraci and Berry's greed and malicious behavior.

15 70. At the time that the false and disparaging documents were created and  
16 published by Geraci, Geraci knew the documents were false and created and  
17 published them with the malicious intent to injure Cotton and deprive him of his right,  
18 title, and interest in the Property, and to obtain the Property for his own use by  
19 unlawful means.

20 71. The conduct of Geraci in publishing the documents described above  
21 was fraudulent, oppressive, and malicious. Therefore, Cotton is entitled to an award  
22 of punitive damages in an amount sufficient to punish Geraci for his malicious  
23 conduct and to deter such outrageous misconduct in the future.

### 24 Count Three

#### 25 (Fraud / Fraudulent Misrepresentation)

26 72. Cotton hereby incorporates by reference all of his allegations contained  
27 above as if fully set forth herein.

28 73. This cause of action is directed against plaintiff Larry Geraci.

1 74. On November 2, 2016, Geraci represented to Cotton, among other  
2 things, that:

3 a. He would honor the agreement reached on November 2<sup>nd</sup>, 2016, which  
4 included a 10% equity stake in the Business and a guaranteed monthly equity  
5 distribution of \$10,000 a month.

6 b. He would pay the balance of the non-refundable deposit as soon as  
7 possible, but at the latest when the alleged critical zoning issue was resolved, which,  
8 in turn, he alleged was a necessary prerequisite for submission of the CUP  
9 application.

10 c. He understood and confirmed the November 2<sup>nd</sup> Agreement was not the  
11 final agreement for the purchase of the Property.

12 d. That he, Geraci, as an Enrolled Agent by the IRS was someone who  
13 was held to a high degree of ethical standards and could be trusted effectuate the  
14 agreement reached.

15 75. That the preparation of the CUP application would be very time  
16 consuming and take hundreds of thousands of dollars in lobbying efforts.

17 76. Geraci knew that these representations were false because, among  
18 other things, Geraci had already filed a CUP application with the City of San Diego  
19 prior to that day. His subsequent communications via email and text messages make  
20 clear that he continued to represent to Cotton that the preliminary work of preparing  
21 the CUP application was underway, when, in fact, he was just stalling for time.  
22 Presumably, to get an acceptance or denial from the City and, assuming he got a  
23 denial, to be able to deprive Cotton of the \$40,000 balance due on the Non-  
24 Refundable Deposit.

25 77. Geraci intended for Cotton to rely on his representations and,  
26 consequently, not engage in efforts to sell his Property.

27 78. Cotton did not know that Geraci's representations were false.

28 79. Cotton relied on Geraci's representations.

1 80. Cotton's reliance on Geraci's representations were reasonable and  
2 justified.

3 81. As a result of Geraci's representations to Cotton, Cotton was induced  
4 into executing the November 2nd Agreement, giving Geraci the only basis of his  
5 Complaint and, consequently, among other unfavorable results, allowing Geraci to  
6 unlawfully create a cloud on title on the Property. Thus, Cotton has been forced to  
7 sell his Property at far from favorable terms.

8 82. Cotton has been damaged in an amount of no less than \$2,000,000.  
9 Additional damages from potential future profit distributions and other damages will  
10 be proven at trial.

11 83. Geraci's representations were intentional, willful, malicious, outrageous,  
12 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with  
13 the intent to deprive Cotton of his interest in the Property.

14 84. This intentional, willful, malicious, outrageous and unjustified conduct  
15 entitles Cotton to an award of general, compensatory, special, exemplary and/or  
16 punitive damages.

17 **Count Four**

18 **(Fraud in the Inducement)**

19 85. Cotton hereby incorporates by reference all of his allegations contained  
20 above as if fully set forth herein.

21 86. This cause of action is directed against plaintiff Larry Geraci.

22 87. Geraci made promises to Cotton on November 2<sup>nd</sup>, 2016, promising to  
23 effectuate the agreement reached on that day, but he did so without any intention of  
24 performing or honoring his promises.

25 88. Geraci had no intent to perform the promises he made to Cotton on  
26 November 2<sup>nd</sup>, 2016 when he made them, as is clear from his actions described  
27 herein, that he represented he would be preparing a CUP application, when, in fact,  
28 he had already deceived Cotton and submitted a CUP application.

1 89. Geraci intended to deceive Cotton in order to, among things, execute  
2 the November 2<sup>nd</sup> Agreement.

3 90. Cotton reasonably relied on Geraci's promises.

4 91. Geraci failed to perform the promises he made on November 2<sup>nd</sup>, 2016,  
5 notably, his delivery of the balance of the Non-Refundable Deposit and his promise  
6 to treat the November 2<sup>nd</sup> Agreement as a memorialization of the \$10,000 received  
7 towards the Non-Refundable Deposit and not the final legal agreement for the  
8 purchase of the Property.

9 92. Cotton has suffered and continues to suffer damages because he relied  
10 on Geraci's representations and promises in an amount to be determined at trial, but  
11 which is no less than \$2,000,000.

12 93. This intentional, willful, malicious, outrageous, and unjustified conduct  
13 entitles Cotton to an award of general, compensatory, special, exemplary and/or  
14 punitive damages.

15 **Count Five**  
16 **(Breach of Contract)**

17 94. Cotton hereby incorporates by reference all of his allegations contained  
18 above as if fully set forth herein.

19 95. This cause of action is directed against plaintiff Larry Geraci.

20 96. The agreement reached on November 2<sup>nd</sup>, 2016 is a valid and binding  
21 agreement between Cotton and Geraci and the November 2<sup>nd</sup> Agreement was meant  
22 to be the written instrument that solely memorialized the partial receipt of the Non-  
23 Refundable Deposit and was not representative of the entirety of the agreement.

24 97. Cotton upheld his end of the bargain, by, among other things, not selling  
25 his Property and helping with the preparation of the CUP application.

26 98. Geraci breached the contract by, among other reasons, alleging the  
27 November 2<sup>nd</sup> Agreement is the final agreement between the parties for the  
28 purchase of the Property.



1 99. Cotton has suffered and continues to suffer damages because of  
2 Geraci's actions that constitute a breach of contract in an amount to be determined  
3 at trial, but which is no less than \$2,000,000.

4 **Count Six**

5 **(Breach of Oral Contract)**

6 100. Cotton hereby incorporates by reference all of his allegations contained  
7 above as if fully set forth herein.

8 101. This cause of action is directed against plaintiff Larry Geraci.

9 102. The agreement reached on November 2nd, 2016 is a valid and binding  
10 oral agreement between Cotton and Geraci.

11 103. Geraci has breached the agreement by, among other actions described  
12 herein, alleging the written November 2<sup>nd</sup> Agreement is the final and entire  
13 agreement for the Property.

14 104. Cotton performed his obligations as agreed on November 2nd, 2016;  
15 among other things, he did not sell his property and, as a consequence of Geraci's  
16 breach of the agreement, is excused from having done so, but, Geraci, is still liable  
17 for the remainder of the balance due on the Non-Refundable Deposit.

18 105. Cotton has suffered and continues to suffer damages because of  
19 Geraci's actions that constitute a breach of oral contract in an amount to be  
20 determined at trial, but which is no less than \$2,000,000.

21 **Count Seven**

22 **(Breach of Implied Contract)**

23 106. Cotton hereby incorporates by reference all of his allegations contained  
24 above as if fully set forth herein.

25 107. This cause of action is directed against plaintiff Larry Geraci.

26 108. A cause of action for breach of implied contract has the same elements  
27 as does a cause of action for breach of contract, except that the promise is not  
28 expressed in words but is implied from the promisor's conduct.

1 109. The agreement reached on November 2nd, 2016 is a valid and binding  
2 agreement between Cotton and Geraci.

3 110. Geraci fraudulently induced Cotton into executing the November 2<sup>nd</sup>  
4 Agreement, which Geraci now purports is the final agreement between the parties for  
5 the purchase of the Property. However, the emails, texts and actions taken by and  
6 between Geraci and Cotton make indisputably clear that there was an implied  
7 contract that is not the November 2<sup>nd</sup> Agreement.

8 111. Geraci has breached the implied contract by, among other actions  
9 described herein, alleging the November 2<sup>nd</sup> Agreement is the final agreement  
10 between the parties for the purchase of the Property.

11 112. Cotton has suffered and continues to suffer damages because of  
12 Geraci's actions that constitute a breach of implied contract in an amount to be  
13 determined at trial, but which is no less than \$2,000,000.

14 **Count Eight**

15 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

16 113. Cotton hereby incorporates by reference all of his allegations contained  
17 above as if fully set forth herein.

18 114. This cause of action is directed against plaintiff Larry Geraci and cross  
19 defendant Rebecca Berry.

20 115. There is an implied covenant of good faith and fair dealing in every  
21 contract that neither party will do anything which will injure the right of the other to  
22 receive the benefits of the agreement.

23 116. Geraci breached the implied covenant of good faith and fair dealing  
24 when, among other actions described herein, he alleged that the November 2<sup>nd</sup>  
25 Agreement is the final purchase agreement between the parties for the Property.

26 117. Cotton has suffered and continues to suffer damages because of  
27 Geraci's actions that constitute a breach of the implied covenant of good faith and  
28 fair dealing.

1 118. This intentional, willful, malicious, outrageous, and unjustified conduct  
2 entitles Cotton to an award of general, compensatory, special, exemplary and/or  
3 punitive damages in an amount to be determined at trial, but which is no less than  
4 \$2,000,000.

5 **Count Nine**

6 **(Trespass)**

7 119. Cotton hereby incorporates by reference all of his allegations contained  
8 above as if fully set forth herein.

9 120. This cause of action is directed against plaintiff Larry Geraci and cross  
10 defendant Rebecca Berry.

11 121. At relevant times, the Property was owned solely by Cotton and,  
12 currently, is still in his sole possession.

13 122. Geraci, or an agent acting on his behalf, illegally entered the subject  
14 Property on or about March 27, 2017, and posted two NOTICES OF APPLICATION  
15 on the Property.

16 123. Geraci's attorney, Michael Weinstein, emailed Cotton on March 22, 2017  
17 stating that Geraci or his agents would be placing the aforementioned Notices upon  
18 Cotton's property.

19 124. Geraci knew that he had fraudulently induced Cotton into executing the  
20 November 2nd Agreement and, consequently, he had no valid legal basis to trespass  
21 unto Cotton's Property.

22 125. On March 21, 2017 Cotton emailed Geraci stating that he no longer had  
23 any interests in the Property and should not trespass on his Property, yet he  
24 continued to do despite being warned not to.

25 126. Geraci's Notices of Application posted on his Property has caused and  
26 continues to damage to Cotton because:

27 a. It is a trespass upon Cotton's Property by Geraci who has no right to the  
28 Property.

1 b. The posting gives the appearance that Ms. Berry is the only owner of  
2 the CUP application for the Property, thereby damaging Mr. Cotton's interest in the  
3 CUP application.

4 c. Cotton has no adequate remedy at law for the injuries currently being  
5 suffered in that it will be impossible for Cotton to determine the precise amount of  
6 damages that he will suffer if Geraci and/or his agents conduct is not restrained.

7 127. Cotton has suffered and continues to suffer damages because of  
8 Geraci's actions in an amount to be determined at trial, but which is no less than  
9 \$2,000,000.

10 **Count Ten**  
11 **(Conspiracy)**

12 128. Cotton hereby incorporates by reference all of his allegations contained  
13 above as if fully set forth herein.

14 129. This cause of action is directed against plaintiff Larry Geraci and cross  
15 defendant Rebecca Berry.

16 a. Geraci fraudulently induced Cotton to execute the Ownership Disclosure  
17 Statement on October 31st, 2016, alleging that the Ownership Disclosure Statement  
18 was necessary because the parties did not have a final agreement in place at that  
19 time, he needed it to show other professionals involved in the preparation of the CUP  
20 application and the lobbying efforts to prove that he, Geraci, had access to the  
21 Property.

22 b. Geraci wanted something in writing proving Cotton's support of the CUP  
23 application at his Property.

24 c. The Ownership Disclosure Statement is also executed by Berry and  
25 denotes Berry is the "Tenant/Lessee." Further, Berry filed a separate document with  
26 the City claiming she is the "Owner" of the Property.

27 130. Geraci represented to Cotton that Berry could be trusted, is a trusted  
28 employee, and is familiar with the medical marijuana industry.

1 131. Cotton has never met or entered into a direct agreement with Berry.  
2 Berry knew that she had not entered into a lease of any form with Cotton for the  
3 Property and knew that she had no ownership interest in the Property.

4 132. Upon information and belief, Berry submitted the CUP application in her  
5 name on behalf of Geraci because Geraci has been a named defendant in numerous  
6 lawsuits brought by the City of San Diego against him for the operation and  
7 management of unlicensed, unlawful and illegal marijuana dispensaries. These  
8 lawsuits would ruin Geraci's ability to obtain a CUP himself.

9 133. Berry knew that she was filing a document with the City of San Diego  
10 that contained false statements, specifically that she was a lessee of the Property  
11 and owner of the property.

12 134. Berry, at Geraci's instruction or her own desire, submitted the CUP  
13 application as Geraci's agent, and thereby participated in Geraci's scheme to deprive  
14 Cotton of his Property and his ownership interest in the CUP application.

15 135. Cotton has suffered and continues to suffer damages because of Geraci  
16 and Berrys' actions in an amount to be determined at trial, but which is no less than  
17 \$2,000,000.

18 136. This intentional, willful, malicious, outrageous, and unjustified conduct  
19 entitles Cotton to an award of general, compensatory, special, exemplary and/or  
20 punitive damages.

21 **Count 11**

22 **(Injunctive Relief)**

23 137. Cotton hereby incorporates by reference all of his allegations contained  
24 above as if fully set forth herein.

25 138. This cause of action is directed against plaintiff Larry Geraci and cross  
26 defendant Rebecca Berry.

27 139. Geraci and Berry have continued to act as owners or parties of interest  
28 in the Property, even though both parties know they have no interest in the Property.

1 140. These actions, including applying for the CUP without making clear  
2 Cotton's ownership interest in the CUP application, trespassing on the Property to  
3 post notices, and filing the lis pendens, has caused Cotton to lose and continue to  
4 lose profits, the benefits of his bargain and the Property if their actions are permitted  
5 to continue.

6 141. Defendant Cotton does not have a plain, speedy, and adequate remedy  
7 in the ordinary course of law as the CUP application is currently under review before  
8 the City.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Cotton prays for relief as follows:

- 11 1. That the Court order the Lis Pendens on the Property be released;  
12 2. That the Court order, by way of declaratory relief, that there is no purchase  
13 agreement between the parties and that Cotton and his successors-in-interest  
14 are the owners of the Property;  
15 3. That the Court order that Geraci and Berry have no interest in the CUP  
16 application;  
17 4. That Cotton be awarded damages in the amount of \$2,000,000;  
18 5. That Cotton be awarded damages for a loss of profits and other damages in  
19 an amount to be proven at trial; and  
20 6. That other relief is awarded as the Court determines is in the interest of justice.

21 Dated: May 12, 2017.

22   
23 \_\_\_\_\_  
24 Darryl Cotton, Defendant in Pro Per  
25  
26  
27  
28

## **Exhibit 1**

11/2/16 Email from Geraci to Cotton acknowledging additional terms



Darryl Cotton &lt;indagroddarryl@gmail.com&gt;

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**Agreement**

---

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

Wed, Nov 2, 2016 at 9:13 PM

**No no problem at all**

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton &lt;darryl@inda-gro.com&gt; wrote:

Hi Larry,

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

Regards.

Darryl Cotton, President



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

6176 Federal Blvd.  
San Diego, CA. 92114  
USA

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[Quoted text hidden]