Case No.: D073979

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

DARRYL COTTON
Defendant and Petitioner,

v.

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

PETITIONER'S OPENING BRIEF

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF AND REQUEST FOR IMMEDIATE STAY

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Petitioner, Self-Represented

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I. INTRODUCTION

Petitioner Darryl Cotton ("Petitioner") is the owner-of-record of real property (the "Property") that, fortuitously, as a result of its geographic location and the so-called Green Rush (cannabis industry boom), has become worth no less than $10,000,000. Petitioner is the target of a fraudulent scheme by Real Party in Interest Larry Geraci ("Geraci") seeking to deprive him of his Property via the judiciary system. Petitioner has a blue-collar background; is not wealthy; and has received his *pro se* legal education over the last six-months by Baptism by Fire. Geraci is a high-net worth individual who is being represented by three senior partners from two different law firms.

Petitioner is before this Court procedurally on a Petition for a Writ of Mandate following Respondent San Diego County Superior Court's order denying (the "Expungement Order") Petitioner's Motion to Expunge Notice of Pendency of Action (*Lis Pendens*) (the "LP Motion"). As clearly evidenced below, Respondent's Expungement Order represents a clear abuse of discretion and a Writ of Mandate is proper to compel Respondent's discretion as it could only be exercised in one way – the granting of the LP Motion on the undisputed facts presented therein.

Petitioner's case represents issues of great public importance. Though this Court will obviously find it impossible to initially believe, the undisputed evidence clearly and unequivocally makes clear how blatantly and unethically Geraci and his counsel have acted in this case. This case is a stereotype of a malicious prosecution action in which a wealthy individual hires unethical attorneys to prosecute a meritless action against an individual with limited financial means. This Court can view this introduction skeptically, as did Respondent, but, unlike Respondent, this Court has the time to actually review 15 undisputed emails and text messages – Petitioner's case is straightforward and clear.

A. Factual Synopsis

The *origin* of this action is a simple contract dispute regarding the sale of the Property from Petitioner to Geraci. Around July of 2016, Geraci was one of several individuals who reached out to Petitioner seeking to purchase the Property with the goal of applying for a conditional use permit ("CUP")[1]

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

with the City of San Diego ("City") that would allow the operation of a Marijuana Outlet ("MO") at the Property. After months of negotiations, on November 2, 2016, the parties reached an oral agreement for the sale of the Property pursuant to which, subject to approval of the CUP, they would become equity partners in the MO (the "Joint Venture Agreement"). Geraci promised to have his attorney quickly reduce the Joint Venture Agreement to writing. The most material terms of the Joint Venture Agreement, bargained-for by Petitioner, were (i) a 10% equity position in the MO and (ii) the greater of $10,000 a month or 10% of the net profits on a monthly basis. At the meeting at which the parties reached the Joint Venture Agreement, Geraci provided $10,000 in cash towards an agreed upon non-refundable deposit and had Petitioner execute a three-sentence document to memorialize his receipt of the $10,000 (the "November Document"). Ex. 1 at pg. 13-14.

Geraci kept the original November Document and emailed a copy to Petitioner later that day. Upon review, that same day, Petitioner realized that the November Document could be misconstrued as being a final agreement for the purchase of his Property and emailed Geraci to request that he confirm, in writing, that a "final agreement" would contain the agreed upon

"10% equity position in the dispensary." (Ex. 3, pg. 43.) Geraci replied: "***No no problem at all***." (*Id*.) (the "Confirmation Email"). Thereafter, Geraci breached the Joint Venture Agreement by, *inter alia*, (i) failing to accurately reduce the Joint Venture Agreement to writing (e.g., the last draft sent by Geraci provides for Petitioner to receive "10% of the net profits" of the MO and not a "10% equity position") and (ii) refusing to provide written confirmation of assurance of performance (i.e., that he would honor the Joint Venture Agreement and provide Petitioner, *inter alia*, a 10% equity position in the MO). Thus, Petitioner terminated the Joint Venture Agreement for breach and entered into a written agreement for the sale of the Property with a third-party (the "Third-Party Sale"). Ex. 16, pgs. 644.

The next day, Geraci served Petitioner with the underlying lawsuit alleging the November Document is the final written agreement for the purchase of the Property and seeking specific performance thereon. (Ex. 1.) Petitioner filed, and amended, a cross-complaint alleging, *inter alia*, fraud. (Exs. 3, 6, 7.) Geraci and Real Party in Interest Rebecca Berry ("Berry") demurred arguing, *inter alia*, the Statute of Frauds ("SOF") and the Parol Evidence Rule ("PER") barred the admission of parol evidence, including

Geraci's Confirmation Email, establishing the validity of the oral Joint Venture Agreement. (Exs. 4,5.)

The record reveals that for over a year, Geraci and his counsel have done only one of two things in regards to Geraci's Confirmation Email: (i) they have argued that it is barred by the SOF/PER or (ii) they have completely ignored the Confirmation Email in their pleadings and focused on describing in detail the great cost of Geraci's self-serving performance in seeking to have the CUP application approved. On April 4, 2018, Petitioner filed the LP Motion prepared by an actual adept attorney representing him on a limited basis. (Ex. 16.) The LP Motion argued principles of law and cited controlling case law that Petitioner was previously not aware of. Notably, the LP Motion argued the following:

> Geraci's reliance on the SOF and the PER is misplaced. First, "The doctrine of estoppel to plead the statute of frauds may be applied where necessary to prevent either unconscionable injury or unjust enrichment." Tenzer v. Superscope, Inc. (1985) 39 Cal.3d 18, 27. Here, as described above, both unconscionable injury and unjust enrichment will occur if Geraci can misrepresent the [November Document] as the final agreement for the Property. Second, the PER does not bar evidence of *fraudulent promises* at variance with terms of the writing: "***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.***" Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass'n (2013) 55 Cal.4th 1169, 1182 (quoting Ferguson v. Koch (1928) 204 Cal. 342, 347). (emphasis added.)

(Ex. 16, pg. 650.)

On April 19, 2018, in his Opposition to the LP Motion from which this Petition arises, Geraci, for the ***first*** time explicitly admitted he sent the Confirmation Email in response to Petitioner's request for assurance of performance (i.e., that a "final agreement" would contain the agreed upon "10% equity position in the dispensary"), but he alleges that when he sent it he meant to only reply to the first sentence of Petitioner's email and not the second, the third or the fourth. As stated in his supporting declaration to his Opposition to the LP Motion:

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

(Ex. 18, pgs. 769-770.)

Further, Geraci also alleged for the ***first*** time in his Opposition to the LP Motion, that the day after the November Document was executed, November 3, 2016, he called Petitioner to state the November Document is the final agreement and that Petitioner ***orally agreed*** that he was not entitled to an equity position in the dispensary (the "Phone Call Allegation"). (Ex. 18, pg. 770.) Again, 1-year and 5-months later, after being confronted with

clear legal authority demonstrating he would not be able to prevent the admission of the Confirmation Email and other parol evidence, Geraci seeks to introduce alleged parol evidence to create factual dispute between himself and Petitioner.

It is undisputed that Geraci is an Enrolled Agent with the IRS; was a real estate agent at the time of the execution of the November Document; and is the owner-manager of a business called Tax and Financial Center, Inc. (Ex. 16, pgs. 638-639.) Thus, setting aside the fact that Geraci's Phone Call Allegation is a blatant fabricated allegation in an attempt to create a material factual dispute in response to the principles set forth in *Riverisland* and *Tenzer*, the Phone Call Allegation, even if true, which it is not, is barred by the SOF and the PER. Thus, as fully described below, as a matter of law - given the parties' fiduciary duties to each other as equity partners in a joint venture and the SOF and the PER - this action should be adjudicated in Petitioner's favor.

B. The Property: CUP for a For-Profit Marijuana Outlet

The motive for Geraci's high-risk and unreasonable actions, exposing him to legal liability, is simple: greed. Although Petitioner cannot find a case to cite to, it is apparent that the cannabis sector is developing and is already

a multi-billion dollar industry. In California, although up until recently storefront cannabis businesses were not allowed[2], non-profit dispensaries have operated under Proposition 215. Some non-profits are sincere in their passion and advocacy for the medical use of cannabis, especially as an alternative to prescription medicines. Some are not, and are driven by profit. In 2016, California voters approved Proposition 64, allowing for recreational use of marijuana for those 21 years old or older. (Health & Saf. Code, § 11362.1 et seq.) The passage of Prop 64 reflects that overall the medical and recreational use of cannabis is becoming continuously more socially and legally acceptable. Consequently, in economic terms, it can be understood that there is an ever-increasing demand for cannabis that is driving the so-called Green Rush.

Against the backdrop of the Green Rush, a few factors are combining to make Petitioner's Property incredibly valuable. First, pursuant to Prop 64, MOs – for-profit storefront marijuana businesses - will be allowed. Second, non-profits will cease to have the legal protection of Prop 215 and there will

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[2] *See People v. Hochanadel* (2009) 176 Cal.App.4th 997, 1005-1006 ("In California, there is no authority for the existence of storefront marijuana businesses.").

be strict enforcement seeking to ensure only licensed, regulated MOs are operating. Third, because the City is generally anti-cannabis,[3] it is limiting the number of MOs to four per district for a total of thirty-six. In other words, although demand can reasonably be expected to increase exponentially on a national and state level, the supply side for cannabis in the City is expected to be severely limited. Increased demand; decreased supply; a CUP in San Diego is valuable.

The CUP has already cleared all the potential milestones that can lead to a denial of the CUP. The only discretionary milestone left is the public hearing, but the local community is very supportive of Petitioner's 151 Farms[4] that operates at the Property and the public hearing is not expected to result in a denial. Once the CUP issues, the Property itself will be worth exponentially more - at the very least in excess of $5,000,000. And significantly more than that to a party that has the resources to develop and operate the MO.

C. The Expungement Order - Legal and Procedural Errors

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3 *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 489.

4 See www.151farms.org.

This Court may wonder how, on these alleged facts, if accurately described above, this action has reached such a state. Simply stated, Petitioner's case reflects the reality of our justice system, which can be summarized by Justice Kennard's dissent in *Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 287 (emphasis added): ***"[T]he quality of justice a litigant can expect is proportional to the financial means at the litigant's disposal***." Although the preceding statement is decontextualized, it does not mean it is not true. Petitioner has defended himself *pro se* before Respondent for months and made numerous ex parte motions that were substantively and procedurally flawed (Petitioner has no legal background or experience). Furthermore, Petitioner discredited himself before Respondent by raising issues regarding Geraci that were not the subject of the Complaint or Cross-complaint before Respondent. In short, Petitioner came across as legally unsophisticated and a "conspiracy nut" - Respondent, understandably so, did not credit those motions brought forth by Petitioner.

The truth of the preceding belief stated by Petitioner is supported by the language in the Expungement Order and a procedural error by Respondent at the hearing on the LP Motion. The Expungement Order, on its face, makes two factually incorrect statements. First, it incorrectly states

"the documents [Petitioner] offers in support of his Motion were created after November 2, 2016…" Ex.17. This is factually incorrect. The most important and dispositive piece of undisputed evidence in this action is Geraci's Confirmation Email. Ex. 3, p. 43. The Confirmation Email was created on November 2, 2016, within hours of the execution of the November Document. Second, the order states that the documents provided by Petitioner "appear to be unsuccessful attempts to negotiate changes to the original agreement." This is also factually incorrect. Assuming, *arguendo*, the November Document was a contract, the proffered documents would have to contain some form of additional consideration to support a change from the original agreement - there is none. *See Holmes v. Holmes* (1950) 98 Cal.App.2d 536, 538 ("consideration is essential to the existence of a valid agreement"). Thus, although Respondent notes that the documents "appear" to be revisions to the "original agreement," it does not, nor can it, point to a single sentence in any of the documents that would factually or legally support such a conclusion. The language contained therein actually provides direct support for the contrary conclusion – the parties negotiated for months and exchanged numerous drafts regarding the sale of the Property, but never

reached a final written agreement that accurately reflected the Joint Venture Agreement.

Lastly, at the hearing, Respondent denied Petitioner's Counsel's request for material oral testimony in support of Petitioner's position. The request for oral testimony was denied by Respondent explicitly on the grounds that it was made on Respondent's "law and motion" calendar. Consequently, reflecting Respondent's misunderstanding that the proffered testimony was specifically permitted on a law and motion calendar for motions brought pursuant to CCP §405.32 and "is one of the few motions on which oral evidence is normally received." Weil & Brown, Cal. Practice Guide, *Civ. Pro. Before Trial* (The Rutter Group 2017) ("Rutter Guide") ¶9:436. The denial of the proffered testimony on the stated basis was error, prejudicial and supports Petitioner's contention that Respondent views Petitioner as a "crazy pro se" whose motions Respondent does not find credible.[5]

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[5] Petitioner wants to note the following: the trial court judge is a good judge. The LP Motion was prepared and submitted by counsel whose representation at the time was limited to the LP Motion. Petitioner believes that the arguments and evidence in the LP Motion, and here, are so overwhelmingly in Petitioner's favor, that it will reflect negatively upon the trial court. However, such should not be the case. Petitioner has represented

D. Legislative Intent and Public Policy Concerns Require Immediate Relief

1. CCP §405.30 *et seq.*

As stated by the California Supreme Court, "[T]he lis pendens procedure [is] susceptible to serious abuse, providing unscrupulous plaintiffs with a powerful lever to force the settlement of groundless or malicious suits." *Malcolm v. Superior Court of Santa Clara County* (1981) 29 Cal.3d 518, 524. "Once a lis pendens is filed, it clouds the title and effectively prevents the property's transfer until the litigation is resolved or the lis

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himself *pro se* before the judge on numerous *ex parte* motions over the last five months. Driven by emotion, Petitioner's *pro se* motions and oral arguments at hearings were so substantively and procedurally lacking and unfocused, that it is not unreasonable for the trial court to have developed a negative view of Petitioner's case. Petitioner, not understanding the importance of procedure in law, has for months not taken part in discovery believing, *inter alia,* that if he could get the trial court to focus on the undisputed evidence, specifically the Confirmation Email and its import, Respondent would realize the action is meritless and that discovery is an oppressive instrument against Petitioner. Petitioner now understands he was wrong to think so and is grateful Respondent did not grant terminating sanctions against Petitioner for failing to take part in discovery. On April 2, 2018, at a hearing on terminating sanctions brought by Geraci, Respondent signaled his intent to grant the terminating motions, stating they are sometimes necessary, albeit a "draconian" measure. *But-for* counsel Jacob Austin at that oral hearing representing to the trial court that (i) he would substitute in as attorney-of-record and (ii) would represent Petitioner with his discovery obligations on a *pro bono* basis, Respondent would have granted the terminating sanctions, striking Petitioner's Answer and Cross-complaint.

pendens is expunged." *BGJ Associates v. Superior Court* (1999) 75 Cal.App.4th 952, 967. "Because of the potential for abuse and injustice to the property owner, the Legislature has provided statutory procedures (CCP §405.30 *et seq.*) by which a lis pendens may be removed ('expunged')." Rutter Guide ¶9:422 (*citing Shah v. McMahon* (2007) 148 Cal.App.4th 526, 529). "[T]he lis pendens procedure provides a means by which a court may dispose of meritless real estate claims at the preliminary stage of a case." *Shah,* 148 Cal.App.4th at 529.

As noted by the Court of Appeal in *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, 1012 "the financial pressure created by a recorded *lis pendens* provide(s) the opportunity for abuse, permitting parties with meritless cases to use it as a bullying tactic to extract unfair settlements." Moreover, by enacting the 1992 amendments, the Legislature declared that its preferences for the free transferability of property following an expungement. Therefore, "'given a choice between two systems, (1) where property can be readily freed up for sale after trial court litigation or (2) where property will continue to be tied up for a long period pending an appeal if a claimant can come up with some nonfrivolous argument on which to base that appeal, it is apparent that the Legislature chose free transferability of the

property by the prevailing property owner as the preferred option.'" *Amalgamated Bank v. Superior Court*, *supra*, 149 Cal.App.4th at p. 1020, quoting *Mix v. Superior Court* (2004) 124 Cal.App.4th 987, 994.

Petitioner's action is a textbook case of a meritless lawsuit filed to abuse the *lis pendens* process and has resulted in Petitioner suffering irreparable psychological, emotional and financial harm. Respectfully, Petitioner notes that if Geraci and his counsel are allowed to prevail with their actions, it represents a public policy concern as it directly contradicts the intent of the Legislature in enacting CCP 405.30 *et seq*.

2. The CUP Application

The CUP application was submitted by Geraci's agent, Berry. Petitioner respectfully requests of this Court that if the evidence and arguments in the record are as summarized by Petitioner, that it please ensure Geraci is not allowed to sabotage the CUP application with the City. As Geraci is aware via discovery, when Petitioner first entered into the Third-Party Sale, his consideration was: $2,000,000; a 20% equity position in the dispensary; and the greater of $10,000 a month or 20% of the net profits on a monthly basis. (Ex. 15, pgs. 474-488.) Petitioner has been forced to continuously renegotiate the sale terms and sell off his remaining interest in

the Property to subsist. If the CUP issues, Geraci is liable for, *inter alia*, the lost profits that Petitioner would have received – a minimum of $1,200,000 (the guaranteed minimum monthly payments for the life of the CUP, 10 years). If the CUP is denied, Geraci is liable for the balance of the non-refundable deposit that he promised Petitioner, $40,000.

Petitioner respectfully notes that if he is correct in his analysis that the instant Petition leads, as a matter of law, to Petitioner prevailing in this action, then Geraci will reasonably be motivated to immediately seek to have the CUP denied. Thus, above all else, although Petitioner does not know the specific form of relief to request herein or how it would be effectuated, he asks that this Court please protect the benefit of the bargain that he reached in the Joint Venture Agreement and not allow Geraci to mitigate his damages to Petitioner by covertly sabotaging the CUP application with the City while it is his control via Berry.

II. PROCEDURAL ISSUES

A. Grounds and Timeliness of Petition

Under California Code of Civil Procedure § 405.39, any party aggrieved by an order under a motion to expunge a lis pendens may petition the proper court for a writ of mandate within twenty days of service of written

notice by Respondent. Respondent may also grant one time a ten-day extension. On April 13, 2018 Respondent denied Petitioner's LP Motion. On April 26, 2018 Respondent granted a 10-day extension for the filing of this Petition. Attached hereto as Exhibit 19 is Respondent's order.

B. Verification

I, Darryl Cotton, declare as follows:

I am the Petitioner herein and the owner-of-record of the Property, the main subject matter of the underlying action. The facts alleged in this Petition are within my own knowledge, and I know these facts to be true. All Exhibits accompanying this Petition are true copies of original documents on file with Respondent Superior Court. The Exhibits are incorporated herein by reference as though fully set forth in this Petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on May 21, 2018.

/s/ Darryl Cotton
Darryl Cotton

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III. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner is the sole owner of record of the Property. (Ex. 16, pg. 638.) As noted, around July 2016 Geraci first contacted Petitioner seeking to purchase the Property. The parties negotiated for months before reaching the Joint Venture Agreement. One of the primary reasons for Petitioner deciding to enter into a joint venture with Geraci, as opposed to other offers he had, was that Geraci made the following representations to Petitioner: (i) he could be trusted as reflected by the fact that he operated in a fiduciary capacity as an Enrolled Agent for many powerful and high-net-worth-individuals ("HNWI"); (ii) he is the owner and operator of Tax and Financial Center, Inc., an accounting and financial advisory services company, servicing HNWI and large businesses in a fiduciary capacity; (iii) he was a California Licensed Real Estate Agent, bound by professional and ethical obligations to be truthful in real-estate deals; (iv) through his experts, who had conducted preliminary due diligence, he had uncovered a critical zoning issue that unless *first* resolved would prevent the City from even accepting a CUP application on the Property (the "Critical Zoning Issue"); (v) through his professional relationships and through powerful hired lobbyists, he was in a unique position to have the Critical Zoning Issue resolved; (vi) he was

highly qualified to operate a MO because he owned and operated multiple cannabis dispensaries in the City; and (vii) his employee, Berry, was a trustworthy individual who could be trusted to be the applicant on the CUP because she (a) managed his marijuana dispensaries, (b) held a senior position at a church and came across as a "nice old lady that had nothing to do with marijuana," and (c), consequently, would pass the stringent City and State of California background checks required to have the CUP approved (collectively, the "Qualification Representations"). (Ex. 16, pgs. 638-639.)

On or around October 31, 2016, Geraci asked Petitioner to execute Form DS-318 ("Ownership Disclosure Statement") – a required component of all CUP applications. Geraci told Petitioner that he needed the executed Ownership Disclosure Statement to show that he had access to the Property in connection with his planning and lobbying efforts to resolve the Critical Zoning Issue. (Ex. 16, 639.)

On November 2, 2016, Geraci and Petitioner met at Geraci's office and reached the Joint Venture Agreement, which consisted of: If the CUP was approved, then Geraci would, *inter alia,* provide: (i) a total purchase price of $800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of $10,000. If the CUP was denied, Petitioner

would keep an agreed upon $50,000 non-refundable deposit ("NRD") and the transaction would not close. In other words, the issuance of the CUP at the Property was a condition precedent for closing on the sale of the Property and, if the CUP was denied, Petitioner would keep his Property and the $50,000 NRD. As noted, the parties executed the November Document and Geraci promised to (i) have his attorney, Gina Austin ("Ms. Austin"), *promptly* reduce the oral Joint Venture Agreement to writing and (ii) to not submit the CUP application to the City until he paid the balance of the NRD. (Ex. 16, 639.)

Later that same day, the following communications took place:

At 3:11 p.m., Geraci emailed Petitioner a scanned copy of the November Document which states:

> [Petitioner] has agreed to sell the property located at 6176 Federal Blvd. CA for a sum of $800,000 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 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts [*sic*] on this property.

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

> 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. [DC Decl. Ex. 1, p.9 (emphasis added).]

At 9:13 p.m., Geraci sent the requested Confirmation Email. Id. ("***No no problem at all***") (emphasis added). (Ex. 16, pgs. 639-340.) Thereafter, over the course of over four months, the parties exchanged numerous emails, texts and calls regarding various issues related to the Critical Zoning Issue, the CUP and drafts of the Joint Venture Agreement providing for the sale of the Property and Petitioner's equity stake in the MO.[6] However, Geraci continuously failed to make actual, substantive progress. Most notably, he failed to accurately reduce the Joint Venture Agreement to writing, pay the balance of the NRD, and to provide facts regarding the progress being made on the Critical Zoning Issue. (Ex. 16, 641.)

On November 9, 2016, Petitioner texted Geraci that Lemon Grove, the City which borders the Property, had failed to pass a measure that would

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

have allowed marijuana outlets: "***Lemon Grove shot down measure v. No to dispensaries to*** [*sic.*]" (Ex. 23) Geraci replied: "***Good for us***[.]" (Id.)

Regarding the Critical Zoning Issue and Petitioner's requests for updates on progress on the written agreements, the following text exchanges took place between Geraci and Petitioner from January 6, 2017 and February 7, 2017:

> Petitioner: Can you call me. If for any reason you're not moving forward I need to know.
> Geraci: 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
> Petitioner: Are you available for a call?
> Geraci: I'm in a meeting I'll call you when I'm done
> Petitioner: Thx
> Geraci: The sign off date they said it's going to be the 30th
> Petitioner: This resolves the zoning issue?
> Geraci: Yes
> Petitioner: Excellent
> Geraci: On phone.. Call you back shortly..
> Petitioner: Ok
> Petitioner: How goes it?
> Geraci: We're waiting for confirmation today at about 4 o'clock
> Petitioner: Whats *[sic]* new?
> Petitioner: 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 [Cotton Decl. Ex. 2, pp.1-4.]

These text communications were meant to and did induce Petitioner into

believing, relying and acting on Geraci's representations he was making progress on the Critical Zoning Issue (the "Zoning Text Communications"). (Ex. 16, pg. 640-641.)

On February 27, 2017, Geraci emailed Petitioner: "***Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well***." (DC Decl. Ex. 1, p.13.) The cover email clearly states Geraci's intent of effectuating the Joint Venture Agreement via two separate written documents (each for $400,000). Additionally, Section 3(a) of the forwarded document, titled "Agreement of Purchase and Sale of Real Property," states:

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

If the November Document was the final agreement as Geraci alleges, why did he provide Petitioner "alternative consideration"? What was this consideration for? It strains reasonableness to believe that Geraci provided Petitioner any consideration for anything other than the Property. The most logical conclusion is the truth – the $10,000 received by Petitioner is the "alternative consideration" referenced here and the November Document is not a final agreement for the Property.

Additionally, Section 18(i) states:

> The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

This language clearly reflects the parties were yet to be "legally bound" to "the purchase and sale of the Property" in February of 2017 and had yet to execute a final, legally binding agreement. (Ex. 15, pgs. 355-381.)

On March 2, 2017, Geraci emailed Petitioner a draft of the additional contract, the Side Agreement, that was supposed to provide for, *inter alia*, Petitioner's 10% equity stake. (Ex. 15, pgs. 408-420.) The next day, March 3, 2017 at 8:22 AM Petitioner replied:

> Larry, I read the Side Agreement in your attachment and I see that no reference is made to the ***10% equity position*** as per my Inda-Gro GERL Services Agreement (see attached) in the new store. In fact para 3.11 [stating we are not partners] looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?[7]

(Ex. 15, pg. 421.)

Petitioner followed up with Geraci via text at 12:16 PM wanting to confirm that Geraci had received the email and understood his concern – that

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7 Ex. 15, pg. 421(email); pgs. 421-426 (Inda-Gro GERL Services Agreement (attachment)).

the Side Agreement did not provide for his "***10% equity position***" in the MO. Petitioner texted: "***Did you get my email?***" Geraci replied one minute later: "***Yes I did I'm having her rewrite it now[.] As soon as I get it I will forward it to you[.]***" (the "Partnership Confirmation Text").) (Ex. 15, pg. 517.) The Partnership Confirmation Text proves that on March 3, 2017 Geraci (i) was going to have Ms. Austin revise the Side Agreement to contain Petitioner's "10% equity position" in the MO and (ii) had previously *received*, *acknowledged* and *consented* to the terms contained in the "Inda-Gro GERL Services Agreement."

The Inda-Gro GERL Services Agreement is dated September 24, 2016 and was provided to Geraci around October of 2016 and reflected some of the terms Petitioner wanted in a final agreement. Notably, it already provided for the effectuation of the sale of the Property via two agreements, each for $400,000. Further, the Inda-Gro GERL Services Agreement clearly states that Petitioner would receive a "10% equity position in the new licensed cannabis business." Geraci did not refuse, refute, argue or so much as question Petitioner's explicit request for the agreement to be revised to reflect that they are equity partners in the MO as confirmed in the Confirmation Email and again in the Inda-Gro GERL Services Agreement

received by Geraci. Instead, he sent the Partnership Confirmation Text. When Petitioner followed-up with Geraci, Geraci did not seek to clarify a misunderstanding – his response was to acknowledge his obligation to Petitioner and state he would have his attorney revise the agreement to reflect that they are partners.

On March 6, 2017, Geraci and Petitioner spoke regarding revisions required to have the drafts accurately reflect the Joint Venture Agreement. Petitioner communicated his frustration with the delays and Geraci again promised to have Ms. Austin *promptly* correct the mistakes in the drafts. During that conversation, Petitioner let Geraci know he would be attending a local cannabis event at which Ms. Austin was scheduled to be the headnote speaker. Geraci later texted Petitioner he could speak with Ms. Austin directly at the event: "***Gina Austin is there she has a red jacket on if you want to have a conversation with her.***" (Id.)

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

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

(Ex. 15, pg. 427- 435.) (the "March Request Email.")

The ***facts*** that are demonstrated by the March Request Email are clear: Geraci had an established obligation ***to*** Petitioner, requiring him to pay a minimum of $10,000 a month, and is requesting ***of*** Petitioner a concession from an established and existing obligation - specifically, that for the first six months of the operations of the MO, that Geraci be allowed to pay Petitioner $5,000 instead of the $10,000 minimum per month as required per the Joint Venture Agreement.

Attached to Geraci's email was a revised draft of the Side Agreement in Word format. This draft provides for, *inter alia*, Petitioner receiving (i) 10% of the net profits of the MO and (ii) a minimum monthly payment of $10,000. (Id.)

On March 16, 2017, after having reviewed the revised agreement forwarded by Geraci on March 7, 2017, and discovering that it again did not accurately reflect the Joint Venture Agreement, Petitioner decided to follow up with the City regarding the Critical Zoning Issue personally. It was at this point that Petitioner discovered that Geraci had been lying from the very beginning – Geraci had submitted a CUP on the Property on October 31 2016, before the parties even reached the Joint Venture Agreement. Geraci's submission was a direct contradiction of (i) his representation that a CUP

could not be submitted until the Critical Zoning Issue was resolved and (ii) his promise to not submit the CUP until he had paid Petitioner the balance of the NRD. In other words, the alleged Critical Zoning Issue was a fraudulent scheme to (i) induce Petitioner into executing the Ownership Disclosure Statement – nothing was required to submit the CUP application on the Property – and (ii) to deceive Petitioner into thinking that he required Geraci's unique and powerful political influence to resolve the alleged Critical Zoning Issue.

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

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

> that incorporate the terms above will be provided by Wednesday at 12:00 PM.

(Ex. 15, pg. 439.)

The next day, Geraci texted Petitioner: "***Can we meet tomorrow* [?]**" (Ex. 15, pg. 517.) Of note, Geraci, **DID NOT** refute or dispute Petitioner's factual assertions that Geraci had lied and submitted the CUP without, *inter alia*, paying Petitioner the balance of the NRD and reducing the Joint Venture Agreement to writing. Petitioner replied via email:

> Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email.... To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. ***You lied to me***, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. ***We need a final written, legal, binding agreement***.
>
> Please *confirm, as requested… that you are honoring our agreement and will have final drafts…* by Wednesday at 12:00 PM.

(Ex. 15, pg. 439 (emphasis added).]

On March 18, 2017, Geraci replied to Petitioner as follows: "*Darryl, I have an attorney working on the situation now. I will follow up by*

Wednesday with the response as their timing will play a factor." (Ex. 15, pg. 443.) Petitioner, now understanding Geraci's deceitful nature, replied:

> Larry, I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement. ***I need written confirmation that you will honor our agreement*** so that I know that you are not just playing for time – hoping to get a response from the City before you put down in writing that you owe me the remainder of the $50,000 nonrefundable deposit we agreed to.

(Ex. 15, pg.447.) (emphasis added.)

Geraci's failed to respond to Petitioner's three (3) written requests for assurance of performance. Thus, Petitioner, having been true to his word and waiting until March 20 had passed (without receipt of adequate assurance of performance or actual performance by Geraci, *i.e.*, Geraci's breach of their agreement) terminated the Joint Venture Agreement with Geraci on March 21, 2017 for breach: "To be clear, as of now, you have no interest in my property, contingent or otherwise." (Ex. 15, pg. 464.) Having anticipated Geraci's breach, Petitioner had already lined up another buyer and entered into the Third-Party Sale. The next day, Geraci's counsel, Michael Weinstein ("Weinstein"), emailed Petitioner the Complaint and the *LP* filed on the Property. The Complaint is premised solely on the allegation the November Document is the final written agreement for the Property. (Ex. 1.)

The Complaint alleges four causes of action against Petitioner: (1) Breach of Contract ("BOC"); (2) Breach of the Covenant of Good Faith and Fair Dealing; (3) Specific Performance; and (4) Declaratory Relief. (RJN 2.) The primary cause of action is the BOC (with the other causes arising therefrom), which is predicated solely on the allegation the November Document is the final written agreement for the purchase of the Property by Geraci. As alleged by Geraci in his Complaint:

> (i) "On November 2, 2016, [Geraci] and [Petitioner] entered into a written agreement for the purchase and sale of the [Property] on the terms and conditions stated therein." (Comp. ¶7.);
>
> (ii) "On or about November 2, 2016, [Geraci] paid to [Petitioner] $10,000 good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until the license, known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and conditions of the written agreement." (Comp. ¶8.); and
>
> (iii) "[Petitioner] has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, [Petitioner] has stated that, contrary to the written terms, the parties agreed to a down payment… of $50,000… [and] he is entitled to a 10% ownership interest in the [Property.]" (Comp. ¶11.)

On April 4, 2018, Petitioner filed the LP Motion, arguing for the first time the principles articulated in *Riverisland* and *Tenzer*. (Ex. 16.)

On April 10, 2018, Geraci filed his Opposition setting forth, for the

first time since the inception of this suit, the Phone Call Allegation – specifically, that Petitioner, on November 3, 2016, had spoken with Geraci and orally agreed that he was not entitled to an equity position in the MO or any other further amounts towards a nonrefundable deposit. (Ex. 18.)

IV. STANDARD OF REVIEW

The appellate court reviews a trial court's decision granting or denying an expungement motion for abuse of discretion; but factual determinations are reviewed for substantial evidence and questions of law on undisputed facts are reviewed de novo. *See* Howard S. Wright Const. Co. v. Super.Ct. (BBIC Investors, LLC) (2003) 106 CA4th 314, 320.

V. LEGAL ARGUMENT

A. The trial court abused its discretion in finding that Geraci met his burden of proof in opposing Petitioner's LP Motion brought pursuant to CCP §405.32.

CCP 405.32 mandates that a lis pendens be expunged "if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim." The burden of proof in such a proceeding is placed on the claimant (here, Geraci), who "must show it is more likely than not that it will obtain a judgment against the defendant." CCP § 405.30; *see* Blastrac, N.A. v. Concrete Solutions & Supply

("Blastrac") (C.D. Cal. 2010) 678 F.Supp.2d 1001, 1005 (discussing the "probable validity" standard under attachment law). "[I]t is not enough for the plaintiff to make out a prima facie case for breach of contract; rather, the plaintiff must also show that the defenses raised are less than fifty percent likely to succeed." Id., at 1005 (internal quotations and citation omitted). "If an applicant fails to rebut a factually-supported defense that would defeat its claims, the applicant has not established probable validity." Id. (emphasis added).

The dispositive issue in this Petition, and the underlying action, is a legal determination of whether the November Document is a "receipt" as Petitioner alleges or a "final written agreement" for the purchase of the Property as Geraci alleges. The Expungement Order on its face makes clear that Respondent was unengaged. Its factual findings, explicit and implied, are either directly contradicted by the evidence or, at best, unsupported by any evidence. Additionally, and more importantly, Geraci's Phone Call Allegation raised for the first time in his Opposition to the LP Motion (i) "fails to rebut a factually-supported defense that would defeat [his] claims" (Id.); and (ii) establishes, as a matter of law, that that his breach of contract

claim is meritless because, *inter alia*, the SOF and the PER bar him from introducing it as parol evidence.

Set forth below first is Petitioner's Actual Fraud argument raised below with the Court. However, with Geraci's direct admission that he sent the Confirmation Email and his Phone Call Allegation first set forth in his Opposition to the LP Motion, to which Petitioner did not have an opportunity to Reply, or, realistically, actually brief the issues, he believes Geraci's violations of his fiduciary duty to Petitioner and the PER serve, as a matter of law, to decide this action in his favor.

B. Actual Fraud

"Fraud is a *defense* to breach of contract … and the elements of contractual fraud are very similar to those of deceit. Courts analyzing tort cases often rely on contract cases (and vice versa), and may interchangeably cite the tortious deceit statutes (Civ.C. §§1709-1710) and contractual fraud statutes (Civ.C. §§1572-1573)." Rutter Guide, *Civil Procedure Before Trial, Claims & Defenses* ¶5:3 (*citing Pacesetter Homes, Inc. v. Brodkin* (1970) 5 Cal.App.3d 206, 210-211; *Bily v. Arthur Young & Co. (199*2) 3 Cal.4th 370, 415; and 5 Witkin, *Summary of California Law*, Torts §767 (11th ed. 2017)). "The *elements* of fraud… are [1] misrepresentation (false

representation, concealment, or nondisclosure); [2] knowledge of falsity (or 'scienter'); [3] intent to defraud, i.e., to induce reliance; [4] justifiable reliance; and [5] resulting damage." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.

1. Misrepresentation

Geraci made, *inter alia*, the following misrepresentations: (1) Cotton's execution of the Ownership Disclosure Statement was required to resolve the Critical Zoning Issue; (2) via Berry, his agent, he failed to disclose in the Ownership Disclosure Statement that he has an interest in the CUP application in violation of applicable disclosure laws[8]; (3) the alleged

[8] As matter of public record, Geraci has been a named defendant in numerous lawsuits by the City for the owning/managing of unlicensed marijuana dispensaries. Petitioner believes that Geraci used his employee as a proxy for his ownership in the MO because once the CUP application is permitted with the City, at some point down the road, pursuant to Prop 64, all marijuana related businesses will have to qualify with the appropriate State of California regulatory agencies that will license and govern cannabis related businesses. Cal. Bus. & Prof. Code § 26057 states in relevant part: "(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:... (7) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date the application is filed with the licensing authority."

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

2. Knowledge of Falsity

"A misrepresentation of facts cannot be justified by an alleged belief wholly unwarranted by the facts." *Klutts v. Rupley* (1943) 58 Cal.App.2d 560, 564. Geraci's Phone Call Allegation is wholly unwarranted by the facts: (i) the ***undisputed*** written admissions and communications ***by*** Geraci up to the days before the filing of his Complaint (most notably the Confirmation Email, the Partnership Confirmation Text, the Text Communications, the March Request Email, his failure to rebut Petitioner's assertions, his actions in continuing to seek to have the CUP approved at material expense and time); (ii) the fact the CUP was submitted by Geraci's agent, Berry, and

accepted by the City in October of 2016 before the parties even executed the November Document; and (iii) the timing in Geraci raising the Phone Call Allegation, clearly in response to the principles set forth in *Riverisland* and *Tenzer*. Geraci's alleged belief that Petitioner disavowed the equity position promised by Geraci in the Joint Venture Agreement, as reflected in the Confirmation Email, is "wholly unwarranted by the facts." Geraci knew each of the Seven Primary Misrepresentations were false.

3. Intent to Induce Reliance

Prior to the execution of any documents, Geraci provided his Qualification Representations and thereby characterized himself as a trustworthy, ethical, knowledgeable and politically influential individual that was uniquely positioned to help Cotton with resolving the Critical Zoning Issue and, consequently, getting a CUP approved on the Property. Thus, Geraci's Qualification Representations were material and had the intent and effect of deceiving Cotton into believing, relying and acting on Geraci's Seven Primary Misrepresentations.[9] After the execution of the November

[9] (*See Whiteley v. Philip Morris, Inc.* (2004) 117 Cal.App.4th 635, 678; 5 Witkin, Summary of California Law, Torts §808 (11th ed. 2017) (actual

Document, Geraci's communications clearly prove he intended to induce Petitioner to believe that he was working on reducing the Joint Venture Agreement to writing and would honor his end of the bargain. Continental Airlines, Inc. v. McDonnell Douglas Corp. (1989) 216 Cal. App. 3d 388, 411–412 (intent permissibly established by inference from acts of parties, because direct proof of fraudulent intent often impossible); *Santoro v. Carbone* (1972) 22 Cal.App.3d 721, 728 (intent to induce reliance allowed to be established from conduct of parties).

4. Justifiable Reliance

"Justifiable reliance is an essential element of a claim for fraudulent misrepresentation, and the reasonableness of the reliance is ordinarily a question of fact. However, whether a party's reliance was justified may be decided as a matter of law if reasonable minds can come to only one conclusion based on the facts." *Guido v. Koopman* (1991) 1 Cal.App.4th 837, 843 (internal citations and quotations omitted). Based on Geraci's representations, it was reasonable and justifiable for Cotton to act as if Geraci

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reliance is shown if the misrepresentation substantially influences a party's decision to act).

was being truthful. Prior to discovering in March of 2017 that Geraci had submitted a CUP in October of 2016, Cotton, although upset at the lack of progress, had no reason to believe that Geraci was an unscrupulous individual. Thus, it was reasonable for Cotton to be induced by Geraci's representations into (i) executing the Ownership Disclosure Statement, (ii) executing the November Document, (iii) believing Geraci was diligently working on the Critical Zoning Issue; (iv) believing Ms. Austin was working on reducing the Joint Venture Agreement to writing for execution; and (v) forbearing from entering into a contract for the Property with a third-party[10]. It was not until Geraci refused to perform or even respond to Cotton's repeated requests for assurance of performance that Cotton justifiably terminated the Joint Venture Agreement.[11]

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

[11] Civ.C. § 1440; "[I]f a party to a contract expressly or by implication repudiates the contract before the time for his or her performance has arrived, an anticipatory breach is said to have occurred." *Romano v. Rockwell Internat., Inc.*, *supra*, 14 Cal.4th at p. 489; see 1 Witkin, Summary of California Law, Contracts §§861-868; *Restatement (Second) Contacts*

In *Ron Greenspan Volkswagen, Inc. v. Ford Motor Land Development Corp.* (1995) 32 Cal.App.4th 985, 987–989 it was held that reliance by a party to a commercial contract on oral representations, despite a clause in the written agreement stating that all representations had been included in written agreement, was not unreasonable as matter of law. In this case, there is no provision or clause in the November Document that all representations were included in the contract. Nor is there any evidence to reach such a conclusion. Thus, given the Confirmation Email – a written confirmation of a material term – Petitioner's reliance was justifiable.

In *Guido v. Koopman* (1991) 1 Cal.App.4th 837 the court found it was not reasonable for an attorney who uses releases in her practice to rely on equestrian instructor's representation that a release was meaningless. Here, Geraci is a sophisticated businessman and a real estate agent. Applying the *Guido* line of reasoning here, the lack of merit of Geraci's suit is reflected by his Phone Call Allegation that lacks factual credibility and is legally barred by the SOF and the PER.

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§§250-257 (Anticipatory breach—also called "anticipatory repudiation" and "prospective nonperformance"—occurs when a party whose performance is not yet due makes clear that it does not intend to perform.).

5. Resulting Damage

It is impossible to convey in this action and motion the full scope of the irreparable and unconscionable physical, emotional, psychological and financial damage Geraci has caused Petitioner.[12] At a minimum, Petitioner is entitled to compensation for all harm caused by Geraci's breach of contract that was foreseeable. Civ.C. §3300. Some of Petitioner's lost profits are recoverable as they were certain - under both the Joint Venture Agreement and the original Third-Party Sale - he was guaranteed a monthly minimum of $10,000 for 10 years. Civ.C. §3301. Furthermore, "once a person willfully deceives another with intent to induce him to alter his position to his injury, he 'is liable for any damage which he thereby suffers.' (Civ.C. §1709.)" *Fowler v. Fowler* (1964) 227 Cal.App.2d 741, 748. Here, to finance this meritless litigation, Petitioner has been forced to unconditionally sell his Property for a flat $500,000 and he no longer has any equity or monthly

[12] See, e.g., Independent Psychiatric Assessment of Darryl Cotton by Dr. Markus Ploesser stating Petitioner is suffering from Post-Traumatic Stress Disorder, Intermittent Explosive Disorder and Major Depression - "In my professional opinion, the level of emotional and physical distress faced by Mr. Cotton at this time is above and beyond the usual stress on any defendant being exposed to litigation. If causative triggers and threats against Mr. Cotton persist, there is a substantial likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental health."

payments even if the CUP is approved. He has also had to sell off a portion of any special damages he may receive in exchange for funds to pay pressing debts and make ends meet.

C. Constructive Fraud

"A cause of action for constructive trust is not based on the establishment of a trust, but consists of fraud, breach of fiduciary duty or other act which entitles the plaintiff to some relief. Relief, in a proper case, may be to make the defendant a constructive trustee with a duty to transfer to the plaintiff. Pleading requirements are: (1) facts constituting the underlying cause of action, and (2) specific identifiable property to which defendant has title." *Michaelian v. State Comp. Ins. Fund* (1996) 50 Cal.App.4th 1093, 1114 (internal citations and quotations omitted).

Here, (1) Geraci's actions are blatantly fraudulent and violate his various fiduciary duties to Petitioner; and (2) Geraci, via his agent, Berry, has title to the CUP application on Petitioner's Property to which Petitioner is entitled to pursuant to the Joint Venture Agreement as a result of Geraci's breach; further, the lis pendens interferes with Petitioner's right to do as he sees fit with property and consummate the Third-Party Sale. *See* Loretto v. Teleprompter Manhattan (1982) 458 U.S. 419, 435 (saying that a

landowner's right to exclude others from the use and possession of the property is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."); *see* also *Fretz v. Burke* (1967) 247 Cal.App.2d 741, 746 (holding that an irreparable harm occurs where one's behavior "constitutes an overbearing assumption by one person of superiority and domination over the rights and property of others.").

1. Joint Venture Fiduciary Duty

"A joint venture or partnership may be formed orally [Citation], or 'assumed to have been organized from a reasonable deduction from the acts and declarations of the parties.' (*Swanson v. Siem* (1932) 124 Cal.App. 519, 524.)" *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 482-483. The written communications and actions by both parties are clear and it can indisputably be established that they intended to be equity partners in the MO. Geraci's Qualification Representations, Seven Primary Representations, March Request Email, Partnership Confirmation Text, Zoning Text Communications, the alleged Critical Zoning Issue he was ostensibly working on, all, cumulatively, can only reasonably lead to the deduction the parties intended to equity partners in the MO – a joint venture.

Most importantly, "[u]pon the formation [of a joint venture], the co-

adventurers assume the status of fiduciaries and neither group has the right to acquire the property to the exclusion of the other. Further, in every contract there is an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, which means that in every contract there exists an implied covenant of good faith and fair dealing." *Davis v. Kahn (Davis)* (1970) 7 Cal.App.3d 868, 877-878 (internal citations and quotations omitted). Again, the communications and actions referenced above, make clear that they agreed to "jointly to carry out a single business enterprise for profit." Id. Thus, they "assume[d] the status of fiduciaries" to each other. Id. Consequently, as evidenced by the filing of the underlying action seeking to misrepresent the November Document to deprive Petitioner of the fruits of what he bargained for – a 10% equity position in the MO to be developed at the Property – Geraci has violated his fiduciary duties to Petitioner.

Putting aside the direct evidence of the parties' understanding that they would be equity partners in the MO (e.g., the Confirmation Email, the Partnership Confirmation Text, the draft agreements providing for "10% of net profits"), Geraci's indirect communications also signaled his intent to have Petitioner believe they were partners with the goal of sharing the profits

from the MO. When Petitioner texted Geraci regarding the fact that Lemon Grove had failed to pass a ballot permitting dispensaries on November 9, 2016, Geraci responded by saying that it would be "Good for **us**" – if Petitioner's consideration was set at a flat $800,000, as alleged now by Geraci, why would it be "good" for Petitioner if there was less competition nearby? It would not. Geraci's communication reflects that he thought of Petitioner as a partner who would share in the profits, so, less competition would mean that Petitioner would share in the benefits of a business in a less competitive market environment. *Universal Sales Corp. v. California Press Mfg. Co.* (1942) 20 Cal.2d 751, 764-765 ("Whether the parties to a particular contract have thereby created, as between themselves, the strict relation of joint adventurers or some other relation involving cooperative effort, depends upon their actual intention, which is determined in accordance with the ordinary rules governing the interpretation and construction of contracts. Such a contract need not be express; it may be implied from the conduct of the parties.").

The record is perfectly clear - Geraci attempted to deprive Petitioner of "the fruits of the contract" that they had reached in the Joint Venture Agreement and, by doing so, he violated his fiduciary duty to Petitioner.

Davis, supra, at 877. When Geraci failed to coerce Petitioner to accept something less than what Petitioner bargained for in the Joint Venture Agreement (i.e., 10% net profits vs. 10% equity position), Geraci undertook a course of action that has tortuously led to this action in which he is fraudulently misrepresenting the November Document as the final agreement for the Property. Thus, clearly violating his fiduciary duties to Petitioner and the implied covenant of good faith and fair dealing.

"[D]uring the existence of the fiduciary relationship any transaction by which one of the co-adventurers secures an advantage over the other is presumptively fraudulent and casts a burden on such party gaining the advantage to show fairness and good faith in all respects. Such presumption is evidence and is sufficient to sustain a finding of fraud even though there may be direct evidence contrary to it." Id. at 878. Geraci's Phone Call Allegation shows not only a lack of fairness and good faith to Petitioner, but a willingness to fabricate evidence in front of the judiciary to rebut the presumption of a finding of fraud against him.

Although the Joint Venture Agreement was never fully reduced to writing, "[w]here the writing at issue shows 'no more than an intent to further reduce the informal writing to a more formal one' the failure to follow it with

a more formal writing does not negate the existence of the prior contract." *Harris v. Rudin, Richman & Appel (1999)* 74 Cal.App.4th 299, 307, citing Smiss*aert v. Chiodo (1958)* 163 Cal.App.2d 827, 831. The parties intended for Petitioner to be an equity partner in the MO, albeit a minority one, and the evidence is clear they had already come to agreement on the material terms. Id.; Webber v. Smith (Cal. App. 1914), 24 Cal. App. 51 (fact that parties intended to reduce parol agreement for sale of goodwill to writing, but failed to do so, does not affect the validity of the agreement nor place it in the light of an incomplete transaction).

Summarily, Petitioner and Geraci were joint-adventurers and Geraci violated the trust that Petitioner placed in him. At the risk of discrediting himself before this Court, Petitioner will make one simple statement regarding his state of mind: trusting Geraci has been the most disastrous decision Petitioner has ever made.

2. Real Estate Law: Real Estate Agent

Setting aside the fiduciary duties imposed on Geraci as a joint-venturer with Petitioner, as a real estate agent, Geraci was obligated to be forthright with Petitioner and he cannot rely on his Phone Call Allegation to justify alleged detrimental reliance on his part or credibly ascribe to

Petitioner knowledge that the November Document was a final agreement for the Property. His position is absurdly fraudulent. In *Holmes v. Summer* (2010) 188 Cal.App.4th 1510, 1519, "the buyers [said] that they sold their existing home in order to purchase the seller's property and were damaged when the seller failed to convey title. Whether or not the brokers knew the buyers would need to sell their existing home in order to complete the transaction, it should be perfectly foreseeable to an experienced real estate agent or broker that one who is purchasing a $749,000 residence may need to sell an existing residence in order to make the move."

Similarly, here, it can be settled as a matter of law that Geraci knew as "an experienced real estate agent" that making an oral modification that contradicts a written term related to the purchase of real property would need to be executed by Petitioner.

D. The Judicial Admission Doctrine

As described above, not until Geraci was faced with a motion brought forth by an actual competent attorney who raised the principles in *Riverisland* and *Tenzer*, did Geraci declare his Phone Call Allegation. " 'Under the doctrine of "conclusiveness of pleadings," **a pleader is bound** by well pleaded material allegations or **by failure to deny well pleaded material**

allegations . . . . ' . . . [¶] The law on this topic is well settled by venerable authority. Because an admission in the pleadings forbids the consideration of contrary evidence, any discussion of such evidence is irrelevant and immaterial." *Valerio v. Andrew Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271 (emphasis added).

Petitioner has consistently set forth his material allegations for over a year in numerous pleadings and the factual allegations in the LP Motion have already been presented near verbatim in Petitioner's first attempt to file a Cross-Complaint as a *pro se* (which was rejected for not meeting procedural requirements). Thus, " '[u]nder the doctrine of "conclusiveness of pleadings," [Geraci] **is bound**… **by failure to deny well pleaded material allegations** . . . . '" Id. Petitioner notes that he could not find a case in which the doctrine of "conclusiveness of pleadings" was applied for failure to deny a material allegation that is analogous to Geraci's failure herein. Petitioner believes that is because no other party has ever before been so flippant in asserting – over a year and five months after the fact - that they intended to respond to the first sentence of an email, and not the rest.

The Phone Call Allegation, at least if Petitioner is understanding it correctly, means that Geraci and his counsel have now positioned themselves

to argue that the principles articulated in *Riverisland* and *Tenzer* should now be used as a sword against Petitioner. Petitioner assumes Geraci will now do a 180 and argue that Petitioner should be estopped from seeking to bar the Phone Call Allegation via the SOF/PER. Ironic, given he fought so vigorously to exclude the Confirmation Email in his demurrers on those same grounds.

However, *arguendo*, any alleged detrimental and/or justifiable reliance by Geraci premised on the Phone Call Allegation is meritless as a matter of law. "Testimony concerning one's own reliance is ***legally insufficient*** evidence if such reliance is without justification… 'If the conduct of the plaintiff in the light of his own intelligence and information was manifestly unreasonable, . . . he will be denied a recovery.' [Citations.]" *Kruse v. Bank of America* (1988) 202 Cal.App.3d 38, 54-55. It is manifestly unreasonable for Geraci to bring forth the Phone Call Allegation – it violates the SOF and the PER and he is a real estate agent.

E. The Parol Evidence Rule

Assuming this Court is not persuaded by the evidence and arguments above as to Geraci's fraud, or that the November Document is not a "receipt" and should be construed as a contract, then even under the application of

contract construction principles, the end result can still only lead to one logical conclusion - Geraci did not cannot meet his burden in opposing Petitioner's LP Motion.

The paramount consideration in the interpretation of contracts is the mutual intention of the parties at the time of the contracting, as far as it is ascertainable and lawful. *Western Camps, Inc. v. Riverway Ranch Enterprises* (1977) 70 Cal.App.3d 714, 723. The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether the instrument appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language is reasonably susceptible. *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 955–956, 961.

The court must ascertain and give effect to this intention by determining what the parties meant by the words they used. The meaning of particular words or groups of words varies with the verbal context and surrounding circumstances and purposes in view of the linguistic education and experience of the users and hearers or readers. A word has no meaning apart from these factors. *Pacific Gas & E. Co. v. G.W. Thomas Drayage etc.*

*Co. (196*8) 69 Cal.2d 33, 38. Even if one assumes that words standing alone mean one thing, when the parties have demonstrated by their actions that to them those words mean something different, the court must enforce the meaning and intention of the parties. *Corwin v. Los Angeles Newspaper Service Bureau, Inc.* (1978) 22 Cal.3d 302, 314.

Extrinsic evidence is admissible to explain the meaning of a written instrument when the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible in the light of all of the circumstances that reveal the sense in which the writer used the words. Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co. (1968) 69 Cal. 2d 33, 40. Here, the November Document is three-sentences long and has spelling and grammar mistakes (e.g., "contacts" instead of "contracts"). Geraci is a sophisticated businessman, was a licensed real estate agent at the time, and he provided drafts of multiple professional written contracts. Against this backdrop, it is reasonable for the Court to construe the November Document as Petitioner urges – it was an impromptu drafted document to reflect Petitioner's receipt of $10,000.

Further, the communications and actions between the parties unilaterally and reasonably support Petitioner's contention that the

November Document was meant to be just a receipt. Geraci brought forth the underlying suit premised exclusively on the allegation that the November Document is the final "written agreement for the purchase and sale of the [Property] on the terms and conditions stated therein." (Ex. 1, p.6 ¶7.)

However, in opposing Petitioner's LP Motion, Geraci specifically confirms he sent the Confirmation Email – a written confirmation that he would provide Petitioner an equity position in the MO. However, he alleges, for the first time in opposing the LP Motion, in **April of 2018**, that in **November of 2016** he called Petitioner who orally agreed to forego the equity position in the MO – his Phone Call Allegation he seeks to introduce as parol evidence.

Integration may be partial. The parties may intend a writing as a final expression of their agreement with respect to a particular subject matter or term, but not as a final expression of their entire agreement. Founding Members of Newport Beach Country Club v. Newport Beach Country Club, Inc. (2003) 109 Cal. App. 4th 944, 953–954 (concluding that part of contract regarding right of first offer of sale was integrated); see Banning Ranch Conservancy v. Superior Court (City of Newport Beach) (2011) 193 Cal. App. 4th 903, 914–916 (so-called framework retainer agreement for

attorney's services could be construed independently based on contract language because competent extrinsic evidence was not in conflict); Wallis v. Farmers Group, Inc. (1990) 220 Cal. App. 3d 718, 730, disapproved on other grounds, Dore v. Arnold Worldwide, Inc. (2006) 39 Cal. 4th 384, 394 n.2; Wagner v. Glendale Adventist Medical Center (1989) 216 Cal. App. 3d 1379, 1385. ***If only part of the agreement is integrated, the parol evidence rule applies to that part of the agreement***; the parties may use extrinsic evidence to prove nonintegrated elements. Wallis v. Farmers Group, Inc. (1990) 220 Cal. App. 3d 718, 730, disapproved on other grounds, Dore v. Arnold Worldwide, Inc. (2006) 39 Cal. 4th 384, 394 n.2.

While the parties dispute the nature of the agreement reached on November 2, 2016, what is absolutely clear, is that if nothing else, the parties reached an agreement that would be memorialized later in writing in a "final agreement" and that agreement would contain a term for a 10% equity position for Petitioner. Geraci is estopped by the PER in seeking to introduce the Phone Call Allegation to disprove his obligation to Petitioner.

"When the parties to a written contract have agreed to it as an 'integration' -- a complete and final embodiment of the terms of an agreement -- parol evidence cannot be used to add to or vary its terms.

[Citations.]. **When only part of the agreement is integrated, the same rule applies to that part**, but parol evidence may be used to prove elements of the agreement not reduced to writing. (*Hulse v. Juillard Fancy Foods Co.* (1964) 61 Cal.2d 571, 573; *Schwartz v. Shapiro* (1964) 229 Cal.App.2d 238, 250; *Mangini v. Wolfschmidt, Ltd.* (1958) 165 Cal.App.2d 192, 200-201; Rest., Contracts (1932) § 239.) The crucial issue in determining whether there has been an integration is whether the parties intended their writing to serve as the exclusive embodiment of their agreement." Masterson v. Sine (1968) 68 Cal.2d 222, 225. Thus, again, setting aside Geraci's Phone Call Allegation and whatever other fabrications he will come up with, they are all barred by the PER which establishes that as a matter of law, he cannot disclaim the ownership position that he promised to Petitioner to induce him into entering into Joint Venture Agreement.

As proof in support of his Phone Call Allegation, Geraci provides his phone records to prove that he called Petitioner the next day. What Geraci does not state, is that there were ***five*** calls between them on November 2, 2016. Attached hereto as (Ex. 24) is a summary of the phone call records between Geraci and Petitioner – between 8/16/2016 and 3/25/0217, the parties placed 87 calls between them for a total talk time of 258 minutes.

Geraci would have the Court believe that his call on November 2, 2016 to Petitioner was unique and prompted by his desire to make it clear to Petitioner that he was not entitled to an equity position after "realizing" that he made a mistake by sending Petitioner the Confirmation Email. Such is clearly not the case.

To plainly summarize, as best as Petitioner can in trying to apply the PER, an agreement - an oral contract - was reached on November 2, 2016. But the November Document was not it. The Confirmation Email provides factually and legally indisputable evidence that a term of the agreement reached on November 2, 2016 between the parties included an equity position for Petitioner. *Masterson v. Sine* (1968) 68 Cal.2d 222, 225 ("When only part of the agreement is integrated, the same rule applies to that part, but parol evidence may be used to prove elements of the agreement not reduced to writing."). Thus, the application of the PER leads to the conclusion that the Confirmation Email states a material integrated term intended by Petitioner and Geraci of an agreement reached. And Geraci is barred from seeking to introduce parol evidence to contradict that term. Lastly, in further support of barring the Phone Call Allegation, "[e]vidence of oral collateral agreements should be excluded only when the fact finder is likely to be

misled. The rule must therefore be based on the credibility of the evidence." Masterson v. Sine (1968) 68 Cal.2d 222, 227. Geraci's Phone Call Allegation is not credible and neither is his evidence.

F. Evidence Code Section 623

"Evidence Code section 623 provides: 'Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.' The principle is well established that once a party has gained an advantage on the basis of specific representations to the trial court, it is not thereafter permitted to disavow its previous representations. [Citations.]" Alling v. Universal Manufacturing Corp., supra, 5 Cal.App.4th at pp. 1442-1443.

Here, for the reasons already fully described above, Geraci by his own "by his own statements [and] conduct, intentionally and deliberately led [Petitioner] to believe [that Petitioner would have an equity position in the MO] and to act upon such belief." Id. Geraci's statements and actions proving such include the Confirmation Email, the March Request Email, the Partnership Confirmation Text, and his continued efforts to have the CUP application approved while receiving communications from Petitioner

expressing his belief they were partners.

G. Geraci's Arguments in Opposing the LP Motion are Factually and Legally Unsupported.

In the Opposition to the LP Motion, Geraci argues the following:

1. "That Cotton has subsequently found a buyer willing to pay $1.2 million above Geraci's purchase price is certainly motive for Mr. Cotton to attempt to wiggle out of his commitment, but it is not a legal defense to Geraci's specific performance, declaratory relief, or contract claims." Opp. at 4, lns. 18-21. Prior to Petitioner terminating the Joint Venture Agreement, Petitioner provided Geraci numerous opportunities to live up to his end of the bargain. (e.g., Petitioner email on March 17, 2017 ("Please confirm, as requested… that you are honoring our agreement and will have final drafts… by Wednesday at 12:00 PM."). It is deceitful, given the undisputed communications between the parties, to allege that Petitioner sought to breach the Joint Venture Agreement because he found another buyer. Petitioner in good faith waited for almost four months for a written agreement that accurately reflected the Joint Venture Agreement that Geraci promised to deliver, but he never did.

2. "Moreover, Geraci's willingness to discuss other proposals

from Mr. Cotton over the ensuing months several months in an attempt to appease Cotton who was threatening to interfere with the contract is not evidence that the [November Document] is anything other than a valid, binding, enforceable contract." Opp. at pg. 4, ln. 21 – pg. 5, ln. 1. This is an incredulous position. First, Geraci is a real estate agent. If the Joint Venture Agreement was a final agreement, then Geraci more than most, as evidenced by this action, understands he could seek legal redress to protect his rights under a valid agreement. Second, Geraci is a sophisticated businessman with a history of involvement in the marijuana industry, the idea that he is "appeasing" Petitioner and having attorneys draft additional contracts, with the associated cost and time, is not credible and simply nonsensical.

3. "At Mr. Cotton's request, Mr. Geraci agreed to pay him for the property in two parts: $400,000 as payment for property and $400,000 as payment for the relocation of the business." Opp. at pg. 8, lns. 26-28. Geraci is an Enrolled Agent with the IRS, at the time of the execution of the November Agreement was a real estate agent, and his every day job is ostensibly managing his company – Tax and Financial Center, Inc. It was Geraci who proposed to Petitioner how to structure the sale of the Property so as to minimize the tax liability. Petitioner did not understand why, until

recently, Geraci has made this a point of contention throughout the course of the litigation, thinking it inconsequential. As an attorney recently told Petitioner, structuring the sale of the Property in such a way violates applicable tax codes and regulations. It is Geraci as an Enrolled Agent that has to be concerned with being exposed in public litigation with a charge of unethical tax practices – not Petitioner. Although this point can never be dispositively proven, common sense should lead to the most reasonable conclusion.

4. Argued throughout the Opposition to the LP Motion is the allegation that Geraci and Petitioner engaged in negotiations for Petitioner to somehow work with Geraci and be employed in the operations of the MO. On March 3, 2017, Petitioner emailed Geraci challenging the draft provided by Geraci that stated they were not partners in a provision: "[it] looks to avoid our agreement completely… Can you explain?" Geraci DID NOT refute the assertion by Petitioner that they were partners. Instead, when pressed by Petitioner, he provided the Partnership Confirmation Text stating "… I'm having her rewrite it now[.] As soon as I get it I will forward it to you[.]" Thereafter, Petitioner received a draft that provided for Petitioner to receive 10% of the net profits. Although, this was not what was agreed to in the Joint

Venture Agreement, it is an admission by Geraci that Petitioner and him ***were*** partners in a joint venture.

VI. CONCLUSION

Petitioner wonders how counsel for Geraci can make factual allegations that are completely devoid of any evidentiary support and, in fact, are contradicted by undisputed evidence. Petitioner can understand Geraci, an intelligent individual driven by greed. However, Petitioner loathes Geraci's counsel – Weinstein – more than he does Geraci. The number of times Petitioner has had to see Weinstein in front of Respondent arguing principles of justice and being deferred to as an "officer of the court," has created an intense sense of ill will for him and attorneys in general. Petitioner believes that it is because of attorneys like Weinstein and Ms. Austin that the trial courts are over-flooded and judges, while doing the best they can, it is impossible to not let some cases fall between the cracks.

Petitioner has sincerely been shocked to discover how hard it is to access justice in our judicial system. Petitioner's case is simple – approximately 15 emails, 550 texts and 7 documents (setting aside the CUP

application itself which only has 2 material pages to this action[13]). The overwhelming amount of documents produced by Weinstein have been to distract the Court and keep it from honing in on the small amount of documents that clearly reflect what the parties intended and the agreement reached on November 2, 2016. However, notwithstanding the simplicity of Petitioner's case, he has been struggling for over a year and barely managed to get past a terminating sanctions motion. And, now, must immediately turn to respond to additional vexatious litigation discovery requests or risk further terminating and financial sanctions motions by Weinstein.

Petitioner's facts are clear. And even if he is incorrect in his legal reasoning that application of legal principles mandate summary adjudication in his favor, at a minimum, his LP Motion based upon a preponderance of the evidence standard required Respondent to grant his motion.

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[13] Berry, Geraci's agent, has executed at least two documents in the CUP application with knowing and willful false representations. In one, the Ownership Disclosure Statement, she omits listing Geraci as a party with an interest in the CUP application and she is listed as a lessee of the Property. In the second document, she states that she is the "owner" of the Property. Petitioner has never met Berry - she is neither the lessee of nor the owner of the Property. Under no scenario are her statements anything other than what they appear to be: lies meant to allow her employer/principal to circumvent applicable disclosure laws. Further, her behavior is vicariously representative of Geraci's willingness to have third-parties make or engage in unethical behavior on his behalf.

VII. PRAYER

WHEREFORE, Petitioner prays for relief as follows:

1. Issue an immediate stay of the trial court proceedings pending final resolution of this Petition.

2. Issue a peremptory writ of mandate and/or prohibition in the first instance (CCP 1088, 1105), directing:

a. Respondent to vacate its order denying the LP Motion.

b. Respondent to issue a new order granting the LP Motion.

c. Geraci to have his agent, Berry, transfer the CUP application to Petitioner. Alternatively, transfer the CUP application to a third-party receiver pending the ultimate resolution of this case or, by any means it finds just, to ensure Geraci is unable to covertly sabotage the CUP application.

4. Award petitioner his costs pursuant to rule 8.493 of the California Rules of Court.

5. Grant such other relief as may be just and proper.

Dated: May 21, 2018.

/s/Darryl Cotton
Darryl Cotton, *Pro Se*

CERTIFICATE OF WORD COUNT

[California Rules of Court, Rule 8.204(c)]

By execution of this pleading, Petitioner hereby certifies that the length of this computer generated pleading is 13,716 excluding the title page, table of contents, table of authorities, and this certificate, as calculated by the computer program used to produce the documents.

DATED: March 21, 2018

/s/Darryl Cotton
DARRYL COTTON, PRO SE PETITIONER

STATE OF CALIFORNIA
Court of Appeal, Fourth Appellate District Division 1

PROOF OF SERVICE

(Court of Appeal)

Case Name: **Cotton v. The Superior Court of San Diego County/Geraci et al.**
Court of Appeal Case Number: **D073979**
Superior Court Case Number: **37-2017-00010073-CU-BC-CTL**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **zoe.g.villaroman@gmail.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
PETITION - PETITION FOR WRIT OF MANDATE/PROHIBITION	Petitioner for Writ of Mandate

PERSON SERVED	EMAIL ADDRESS	Type	DATE / TIME
Darryl Cotton Court Added PRO PER	indagrodarryl@gmail.com	e-Service	5/21/2018 11:56:29 PM
Darryl Cotton Darryl Cotton - Pro Se Pro Per	indagrodarryl@gmail.com	e-Service	5/21/2018 11:56:29 PM
Jana Will San Diego City Attorney 00211064	jwill@sandiego.gov	e-Service	5/21/2018 11:56:29 PM
Michael Weinstein Ferris & Britton 00106464	mweinstein@ferrisbritton.com	e-Service	5/21/2018 11:56:29 PM
Michael Phelps Office of the City Attorney 00258246	mphelps@sandiego.gov	e-Service	5/21/2018 11:56:29 PM
Scott Toothacre Ferris & Britton 00146530	stoothacre@ferrisbritton.com	e-Service	5/21/2018 11:56:29 PM

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through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

--

Date

/s/Zoe Villaroman

Signature

Villaroman, Zoe (Pro Per)

Last Name, First Name (PNum)

Darryl Cotton - Pro Se

Law Firm