

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.

**EXHIBITS IN SUPPORT OF
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION
OR OTHER APPROPRIATE RELIEF
AND REQUEST FOR IMMEDIATE STAY

VOLUME I - EXHIBITS 1-7**

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Petitioner, Self-Represented

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PETITION FOR WRIT OF MANDATE
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SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

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

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

LARRY GERACI, an individual.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Diego Superior Court
330 W Broadway
San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Michael Weinstein, Ferris & Britton, 501 W. Broadway, Ste. 1450, San Diego, CA 92101; (619) 233-3131

DATE:
(Fecha)

Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

1 FERRIS & BRITTON
2 A Professional Corporation
3 Michael R. Weinstein (SBN 106464)
4 Scott H. Toothacre (SBN 146530)
5 501 West Broadway, Suite 1450
6 San Diego, California 92101
7 Telephone: (619) 233-3131
8 Fax: (619) 232-9316
9 mweinstein@ferrisbritton.com
10 stoothacre@ferrisbritton.com

11 Attorneys for Plaintiff
12 LARRY GERACI

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

15 LARRY GERACI, an individual,

16 Plaintiff,

17 v.

18 DARRYL COTTON, an individual; and
19 DOES 1 through 10, inclusive,
20 Defendants.

Case No.

PLAINTIFF'S COMPLAINT FOR:

1. **BREACH OF CONTRACT;**
2. **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;**
3. **SPECIFIC PERFORMANCE; and**
4. **DECLARATORY RELIEF.**

21 Plaintiff, LARRY GERACI, alleges as follows:

22 1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an
23 individual residing within the County of San Diego, State of California.

24 2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an
25 individual residing within the County of San Diego, State of California.

26 3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and
27 Defendant COTTON that is the subject of this action was entered into in San Diego County, California,
28 and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County,
California (the "PROPERTY").

1. Currently, and at all times since approximately 1998, Defendant COTTON owned the
PROPERTY.

2. Plaintiff GERACI does not know the true names or capacities of the defendants sued
herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

1 informed and believe and based thereon allege that each of the fictitiously-named defendants is in some
2 way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as
3 herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend
4 this complaint to state the true names and/or capacities of such fictitiously-named defendants when the
5 same are ascertained.

6 6. Plaintiff alleges on information and belief that at all times mentioned herein, each and
7 every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in
8 interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged,
9 were acting, whether individually or through their duly authorized agents and/or representatives, within
10 the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate
11 structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge,
12 permission, and consent of the remaining defendants, and each of them, and that said defendants
13 ratified and approved the acts of all of the other defendants.

14 GENERAL ALLEGATIONS

15 7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a
16 written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated
17 therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

18 8. On or about November 2, 2016, GERACI paid to COTTON \$10,000.00 good faith
19 earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
20 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
21 conditions of the written agreement.

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
28 \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

3 **(For Breach of Contract against Defendant COTTON and DOES 1-5)**

4 10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
5 paragraphs 1 through 9 above.

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

17 12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer
18 damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI
19 in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended
20 to date on the CUP process for the PROPERTY.

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**
23 **against Defendant COTTON and DOES 1-5)**

24 13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
25 paragraphs 1 through 12 above.

26 14. Each contract has implied in it a covenant of good faith and fair dealing that neither
27 party will undertake actions that, even if not a material breach, will deprive the other of the benefits of
28 the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

1 withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the
2 PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON
3 has breached the implied covenant of good faith and fair dealing.

4 15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair
5 dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for
6 return of all sums expended by GERACI in reliance on the agreement, including but not limited to the
7 estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

8 THIRD CAUSE OF ACTION

9 **(For Specific Performance against Defendants COTTON and DOES 1-5)**

10 16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
11 paragraphs 1 through 15 above.

12 17. The aforementioned written agreement for the sale of the PROPERTY is a valid and
13 binding contract between Plaintiff GERACI and Defendant COTTON.

14 18. The aforementioned written agreement for the sale of the PROPERTY states the terms
15 and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible
16 to specific performance.

17 19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a
18 writing that satisfies the statute of frauds.

19 20. The aforementioned written agreement for the purchase and sale of the PROPERTY is
20 fair and equitable and is supported by adequate consideration.

21 21. Plaintiff GERACI has duly performed all of his obligations for which performance has
22 been required to date under the agreement. GERACI is ready and willing to perform his remaining
23 obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for
24 a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary
25 thus satisfying that condition precedent, then to pay the remaining \$790,000.00 balance of the purchase
26 price.

27 22. Defendant COTTON is able to specifically perform his obligations under the contract,
28 namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

1 Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that
2 condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for
3 receipt of payment from GERACI or assignee of the remaining \$790,000.00 balance of the purchase
4 price.

5 23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions
6 that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary
7 and to specifically perform the contract upon satisfaction of the condition that such approval is in fact
8 obtained.

9 24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's
10 attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not
11 intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon
12 satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana
13 dispensary and tender the remaining balance of the purchase price.

14 25. The aforementioned written agreement for the purchase and sale of the PROPERTY
15 constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy,
16 and adequate legal remedy is presumed.

17 26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon
18 specifically enforcing the written agreement for the purchase and sale of the PROPERTY from
19 Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

20 FOURTH CAUSE OF ACTION

21 **(For Declaratory Relief against Defendants COTTON and DOES 1-5)**

22 27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
23 paragraphs 1 through 14 above.

24 28. An actual controversy has arisen and now exists between Defendant COTTON, on the
25 one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written
26 agreement contains terms and condition that conflict with or are in addition to the terms stated in the
27 written agreement. GERACI disputes those conflicting or additional contract terms.

1 29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the
2 written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants
3 thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or
4 his assignee. Such a declaration is necessary and appropriate at this time so that each party may
5 ascertain their rights, duties, and obligations thereunder.

6 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

7 **On the First and Second Causes of Action:**

8 1. For compensatory damages in an amount in excess of \$300,000.00 according to proof at
9 trial.

10 **On the Third Cause of Action:**

11 2. For specific performance of the written agreement for the purchase and sale of the
12 PROPERTY according to its terms and conditions; and

13 3. If specific performance cannot be granted, then damages in an amount in excess of
14 \$300,000.00 according to proof at trial.

15 **On the Fourth Cause of Action:**

16 4. For declaratory relief in the form of a judicial determination of the terms and conditions
17 of the written agreement and the duties, rights and obligations of each party under the written
18 agreement.

19 **On all Causes of Action:**

20 5. For temporary and permanent injunctive relief as follows: that Defendants, and each of
21 them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and
22 all persons acting in concert with or participating with them, directly or indirectly, be enjoined and
23 restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a
24 Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

25 6. For costs of suit incurred herein; and

26 ///

27 ///

28 ///

1 7. For such other and further relief as the Court may deem just and proper.

2
3 Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

4
5
6 By: Michael R. Weinstein
 Michael R. Weinstein
 Scott H. Toothacre

7
8 Attorneys for Plaintiff
 LARRY GERACI

EXHIBIT A

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jessica Newell (Seal)



ORIGINAL

FILED
CIVIL BUSINESS OFFICE 18
CENTRAL DIVISION

2017 MAY -8 10:42

CLERK SUPERIOR COURT
SAN DIEGO COUNTY CA

MAY 17 11:01

Darryl Cotton, *In pro se*
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Defendant

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.

CASE NO.: 37-2017-00010073-CU-BC-CTL

Judge: The Honorable Joel Wohlfeil
Dept. C-73

DEFENDANT'S ANSWER TO PLAINTIFF'S
COMPLAINT

Defendant Darryl Cotton ("Defendant" or "Cotton") hereby answers the unverified Complaint filed by Larry Geraci ("Plaintiff" or "Geraci") as follows:

GENERAL DENIAL

1. Under and pursuant to the provisions of California Code of Civil Procedure, specifically, Section 431.30 thereof, Defendant generally denies each and every allegation of said unverified Complaint, and the whole thereof, and each and every allegation of each and every cause of action alleged therein. Defendant further denies that as a direct or proximate result of any acts or omissions on the part of Defendant, Plaintiff sustained or suffered injury or damage in any amount, or in any form whatsoever, as stated in the Complaint.

//

AFFIRMATIVE DEFENSES

2. Defendant denies that he has breached any legal, equitable or contractual obligation owed to Plaintiff and asserts that at all times material hereto he acted in good faith and in compliance with all applicable laws.

3. Plaintiff's claims are barred in whole or in part because there was no mutuality of assent and/or a meeting of the minds to form the agreement as alleged in Plaintiff's Complaint.

4. Plaintiff's claims are barred in whole or in part because Defendant is the sole and rightful owner of the Property.

5. Plaintiff's claims are barred in whole or in part by Plaintiff's failure to comply with the actual terms and conditions of their agreement reached on November 2nd, 2016.

6. Defendant denies that he has caused Plaintiff to suffer any damages and affirmatively alleges that any alleged damages incurred by Plaintiff were directly and/or proximately caused by Plaintiff's and/or his agents own willful, reckless, intentional and/or negligent acts.

7. Plaintiff's damages, if any, were caused in whole or in part by his failure to mitigate his damages.

8. Any and all damages purportedly sustained by Plaintiff arising out of the subject matter of the Complaint are offset, in whole or in part, by the damages sustained by Defendant as a result of Plaintiff's actions and/or omissions.

9. Circumstances under which Plaintiff requests injunctive relief do not entitle him to any relief.

10. Plaintiff's claims are barred in whole or in part because any agreement the parties reached is excused by one or more of the following: unjust enrichment, lack of consideration, failure of consideration, failure of performance, breach of condition precedent, prior breach by Plaintiff, prevention, unilateral mistake, hindrance and/or frustration of purpose.

1 11. Plaintiff's claims are barred in whole or in part on the grounds of common law
2 fraud/fraudulent misrepresentation by Plaintiff's actions.

3 12. Plaintiff's claims are barred in whole or in part because any alleged agreement the parties may
4 have had may be avoided by Defendant on the grounds of fraud in the inducement.

5 13. Plaintiff's allegations in the Complaint are barred to the extent that there are contractual or
6 statutory pre-prerequisites and/or conditions that were not satisfied by Plaintiff prior to bringing this
7 action.
8

9 14. Defendant alleges that the purported agreement at issue between Plaintiff and Defendant
10 contains vague, overbroad, unclear and/or ambiguous terms or conditions.

11 15. Plaintiff's claims are barred in whole or in part by the doctrine(s) of unclean hands, waiver,
12 estoppel, breach of implied covenant of good faith and fair dealing and/or laches.

13 16. Defendant reserves the right to assert additional affirmative defenses upon the discovery and
14 the determination of the applicability thereof.
15

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Defendant, having fully answered Plaintiff's Complaint, respectfully requests
19 of the Court judgment in his favor as follows:

20 a. That Plaintiff take nothing by his Complaint and that the same be dismissed with
21 prejudice;

22 b. For a judicial determination and declaration that Plaintiff is not the rightful owner of
23 the Property and does not have any valid and enforceable right, title or interest in Defendant's
24 property at issue herein;

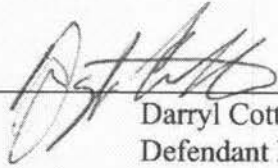
25 c. For an award of general, compensatory and/or special damages in favor of Defendant
26 to be proven at trial;

27 d. For cost of suit incurred herein, including reasonable legal fees; and
28

1 e. For such other and further relief as the Court deems just and proper.

2
3 RESPECTFULLY SUBMITTED

4 Dated: May 8, 2017.

5
6 
7

Darryl Cotton,
Defendant Pro Se

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Darryl Cotton 3176 Federal Blvd. San Diego, CA 92114		FOR COURT USE ONLY FILED CIVIL BUSINESS OFFICE 9 CENTRAL DIVISION 2017 MAY 10 P 1:30 CLERK SUPERIOR COURT SAN DIEGO COUNTY, CA
TELEPHONE NO.: 619-954-4447	FAX NO. (Optional): 619-229-9387	
E-MAIL ADDRESS (Optional): Indagrodarryl@gmail.com		
ATTORNEY FOR (Name): in Pro se		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		
STREET ADDRESS: 330 West Broadway		
MAILING ADDRESS:		
CITY AND ZIP CODE: San Diego, CA 92101		
BRANCH NAME: Central Division		
PETITIONER/PLAINTIFF: Larry Geraci		
RESPONDENT/DEFENDANT: Darryl Cotton		
PROOF OF PERSONAL SERVICE—CIVIL		CASE NUMBER: 37-2017-00010073-CU-BC-CTL

(Do not use this Proof of Service to show service of a Summons and Complaint.)

- I am over 18 years of age and not a party to this action.
- I served the following documents (specify):

Answer

☐ The documents are listed in the Attachment to Proof of Personal Service—Civil (Documents Served) (form POS-020(D)).

- I personally served the following persons at the address, date, and time stated:

- Name: **Deborah Barker**
- Address: **Ferris & Britton, 501 West Broadway, Suite 1450, San Diego, CA 92101**
- Date: **5/9/2017**
- Time: **2:35 p.m.**

☐ The persons are listed in the Attachment to Proof of Personal Service—Civil (Persons Served) (form POS-020(P)).

- I am

- ☒ not a registered California process server.
- ☐ a registered California process server.
- ☐ an employee or independent contractor of a registered California process server.
- ☐ exempt from registration under Business & Professions Code section 22350(b).

- My name, address, telephone number, and, if applicable, county of registration and number are (specify):

Kim Marugg
10303 Loma Rancho Drive
Spring Valley, CA 91978
619-573-0642

- ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☐ I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date: **May 9, 2017**

Kim Marugg

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)

(SIGNATURE OF PERSON WHO SERVED THE PAPERS)

ORIGINAL

FILED
CIVIL BUSINESS OFFICE 18
CENTRAL DIVISION

2017 MAY 12 P 3:49

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Darryl Cotton, *In pro se*
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387
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
operating on the Property."

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

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

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

23 ii. As a sign of good-faith by Cotton as they had not reached a final
24 agreement and he wanted something in writing to prove Cotton's support of the CUP
25 application at the Property as he needed to immediately spend large amounts of
26 cash to continue with the preparation of the CUP application and the Critical Zoning
27 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 2nd, 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 2nd, 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 2nd 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 2nd, 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 2nd, 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 2nd Agreement.

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

4 91. Geraci failed to perform the promises he made on November 2nd, 2016,
5 notably, his delivery of the balance of the Non-Refundable Deposit and his promise
6 to treat the November 2nd 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 2nd, 2016 is a valid and binding
21 agreement between Cotton and Geraci and the November 2nd 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 2nd 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 2nd 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.

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

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

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

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

Count Eight

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

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

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

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

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

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

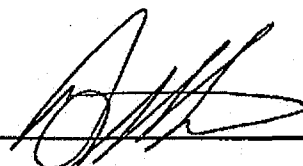
22 
23 _____
24 Darryl Cotton, Defendant in Pro Per

Exhibit 1

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



Darryl Cotton <indagroddarryl@gmail.com>

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 <darryl@inda-gro.com> 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

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

[Quoted text hidden]

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

Attorneys for Cross-Defendant
REBECCA BERRY

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**CROSS-DEFENDANT REBECCA
BERRY'S NOTICE OF DEMURRER AND
DEMURRER TO DEFENDANT'S
CROSS-COMPLAINT**

[IMAGED FILE]

Hearing Date: July 14, 2017
Hearing Time: 9:00 a.m.

Complaint Filed: March 21, 2017
Trial Date: Not Yet Set

TO EACH PARTY AND TO THE ATTORNEY OF THE RECORD FOR EACH PARTY:

PLEASE TAKE NOTICE that, on July 14, 2017, at 9:00 a.m. or as soon thereafter as the matter may be heard in Department C-73 of this Court, located at 330 West Broadway, San Diego, California, 92101, Cross-Defendant, REBECCA BERRY (hereafter "Berry"), will and hereby does move the Court to sustain her demurrer to the Cross-Complaint filed on May 12, 2017, by Defendant and Cross-Complainant, DARRYL COTTON (hereafter "Cotton" or "Cross-Complainant"), on each of

1 the grounds set forth below.

2 **DEMURRER**

3 The Cross-Complaint's alleged first, second, eighth, ninth, tenth, and eleventh causes of action,
4 and each of them, fail to state facts sufficient to constitute a cause of action against Cross-Defendant
5 Berry (Cal. Code Civ. Proc. § 430.10(e)) on the grounds and for the reasons set forth below:

6 **FIRST CAUSE OF ACTION**

7 1. The first cause of action for quiet title does not state a cause of action against Berry
8 because the allegations of the first cause of action are not verified under oath and an action to quiet title
9 must be verified. (Cal. Code Civ. Proc. § 761.020).

10 2. The first cause of action for quiet title does not state a cause of action against Berry
11 because it fails to allege she took actions which created a legally adverse interest in the subject
12 property. The Cross-Complaint alleges Berry signed a CUP application stating she was the property
13 owner; however, there is no allegation (and there can be no allegation) that the CUP application was
14 recorded or otherwise created a lien against or cloud on title to the property so as to create a legally
15 adverse interest.

16 **SECOND CAUSE OF ACTION**

17 3. The second cause of action for slander of title does not state a cause of action because it
18 is based on allegations of wrongful acts that are privileged as a matter of law. The elements of a
19 slander of title cause of action are: (1) a publication; (2) which is without privilege or justification;
20 (3) which is false; and (4) which causes direct and immediate pecuniary loss. (*Alpha and Omega*
21 *Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 664.) The wrongful acts
22 alleged in support of his claim are the filing of the instant Complaint and the attendant filing and
23 recording of a Lis Penden; however, the filing of a Complaint and the filing and recording of a Lis
24 Pendens are each absolutely privileged pursuant to California Civil Code section 47, subdivision (b)
25 and subdivision (b)(4) respectively. Moreover, Cross-Defendant Berry did not file the instant
26 Complaint or the accompanying Lis Pendens, both of which were filed by the sole plaintiff, Larry
27 Geraci.

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 4. The eighth cause of action for breach of the implied covenant of good faith and fair
3 dealing does not state a cause of action because Cross-Complainant fails to allege he entered into a
4 contract with Berry. The first element of a breach of the covenant of good faith and fair dealing claim
5 is the existence of a contract between the parties from which the covenant can be implied. Cross-
6 Complainant's allegation admitting that he never had any contract or agreement of any kind with Berry
7 is fatal to his claim.

8 **NINTH CAUSE OF ACTION**

9 5. The ninth cause of action for trespass does not state a cause of action against because it
10 fails to allege that Berry intentionally or negligently entered Cross-Complainant's property. A trespass
11 claim requires that the person intentionally or negligently enter onto the real property. (See
12 CACI 2000.) Cross-Complainant has failed to allege that Berry either intentionally or negligently
13 entered upon land owned by him. Rather, Cross-Complainant alleges only that "Larry Geraci or an
14 agent under his direction" entered onto his real property.

15 **TENTH CAUSE OF ACTION**

16 6. The tenth cause of action for civil conspiracy fails to state a cause of action because
17 there is no such cause of action in California. (*Moran v. Endres* (2006) 135 Cal.App.4th 952, 954.)
18 Rather, conspiracy is "a legal doctrine that imposes liability on persons who, although not actually
19 committing a tort themselves, share with the immediate tortfeasors a common plan or design in its
20 preparation.' ... 'A conspiracy cannot be alleged as a tort separate from the underlying wrong it is
21 organized to achieve.' (Citation.)" (*Id.* at 954-955.)

22 **ELEVENTH CAUSE OF ACTION**

23 7. The eleventh cause of action for an injunction fails to state a cause of action because
24 there is no such cause of action in California. "Injunctive relief is a remedy and not, in itself, a cause of
25 action, and a cause of action must exist before injunctive relief may be granted. (Citation.)" (*Shell*
26 *Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168; see also *County of Del Norte v. City of Crescent City*
27 (1999) 71 Cal.App.4th 965, 973 (a permanent injunction is attendant to an underlying cause of action).)

28 For each of such reasons, Cross-Defendant Berry moves for an order of this Court sustaining the


1 demurrers to the first, second, eighth, ninth, tenth and eleventh causes of action without leave to amend
2 unless Plaintiff can make a sufficient offer of proof that he can cure the pleading deficiencies.

3 The demurrers are based upon this Notice of Demurrer and Demurrer, the attached supporting
4 Request for Judicial Notice, the attached supporting Memorandum of Points and Authorities, the
5 records and files in this action, and such further matters that may be properly presented prior to or at the
6 time of hearing on the motion.

7 **NOTICE IS FURTHER GIVEN** that a tentative ruling is issued the day before the date set
8 forth for hearing, this court follows rule 3.1308(a)(2) and no notice of intent to appear is required to
9 appear for argument. The tentative ruling shall be made available at 3:30 p.m. on the court day prior to
10 the scheduled hearing. The tentative ruling may direct the parties to appear for oral argument, and may
11 specify the issues on which the court wishes the parties to provide further argument. The tentative
12 ruling may be obtained by calling the court tentative ruling number at (619) 450-7381 or by navigating
13 to the court's website www.sandiego.courts.ca.gov.

14
15 Dated: June 9, 2017

FERRIS & BRITTON,
A Professional Corporation

16
17 By: 
18 Michael R. Weinstein
19 Scott H. Toothacre

20 Attorneys for Cross-Defendant
21 REBECCA BERRY
22
23
24
25
26
27
28

1 FERRIS & BRITTON
A Professional Corporation
2 Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
3 501 West Broadway, Suite 1450
San Diego, California 92101
4 Telephone: (619) 233-3131
Fax: (619) 232-9316
5 mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
6

7 Attorneys for Cross-Defendant
REBECCA BERRY

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 LARRY GERACI, an individual,

11 Plaintiff,

12 v.

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

14 Defendants.
15

16 DARRYL COTTON, an individual,

17 Cross-Complainant,

18 v.

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

21 Cross-Defendants.
22
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Case No. 37-2017-00010073-CU-BC-CTL

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF CROSS-
DEFENDANT REBECCA BERRY'S
DEMURRER TO DEFENDANT'S
CROSS-COMPLAINT**

[IMAGED FILE]

Hearing Date: July 14, 2017
Hearing Time: 9:00 a.m.

Complaint Filed: March 21, 2017
Trial Date: Not Yet Set

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1 Cross-Defendant, REBECCA BERRY (hereafter "Berry"), respectfully submits these points
2 and authorities in support of her Demurrer.

3 **I. RELIEF REQUESTED AND SUMMARY OF THE ARGUMENTS**

4 Defendant and Cross-Complainant, DARRYL COTTON (hereafter "Cotton" or "Cross-
5 Complainant"), has filed a Cross-Complaint in the instant action, naming Rebecca Berry as a Cross-
6 Defendant. Mr. Cotton alleges six causes of action against Berry: the First Cause of Action for Quiet
7 Title; the Second Cause of Action for Slander of Title; the Eighth Cause of Action for Breach of the
8 Covenant of Good Faith and Fair Dealing; the Ninth Cause of Action for Trespass; the Tenth Cause of
9 Action for Conspiracy; and the Eleventh Cause of Action for Declaratory and Injunctive Relief.

10 Most of the facts alleged in the Cross-Complaint arise out of or relate to a dispute concerning an
11 agreement for the purchase and sale of property between Plaintiff and Cross-Defendant, LARRY
12 GERACI (hereafter "Geraci"), and Defendant and Cross-Complainant, Cotton. Berry was not a party
13 to the agreement and no one has alleged otherwise. Berry demurs each of the six claims asserted
14 against her upon the following grounds:

15 1. The first cause of action for quiet title does not state a cause of action against Cross-
16 Defendant Berry because an action to quiet title must be verified. (Code Civ. Proc., § 761.020.) The
17 Cross-Complaint's allegations comprising the first cause of action are not verified.

18 2. The first cause of action for quiet title does not state a cause of action against Cross-
19 Defendant Berry because it fails to allege that she took actions which created a legally adverse interest
20 in the subject property. The Cross-Complaint alleges that Berry signed a CUP application stating she
21 was the property owner; however, there is no allegation (and there can be no allegation) that the CUP
22 application was recorded or otherwise created a lien against or cloud on title to the property so as to
23 create a legally adverse interest.

24 3. The second cause of action for slander of title does not state a cause of action because it
25 is based on allegations of wrongful acts that are privileged as a matter of law. The elements of a
26 slander of title cause of action are: (1) a publication; (2) which is without privilege or justification;
27 (3) which is false; and (4) which causes direct and immediate pecuniary loss. (*Alpha and Omega*
28 *Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 664.) The wrongful acts

1 alleged in support of his claim are the filing of the instant Complaint and the attendant filing and
2 recording of a Lis Pendens; however, the filing of a Complaint and the filing and recording of a Lis
3 Pendens are each absolutely privileged pursuant to California Civil Code section 47, subdivision (b)
4 and subdivision (b)(4) respectively. Moreover, Cross-Defendant Berry did not file the instant
5 Complaint or the accompanying Lis Pendens, both of which were filed by the sole plaintiff, Larry
6 Geraci. Cotton also alleges that Berry submitted a CUP application to the City stating she was an
7 owner of the property, but there is no allegation that such action impacted the vendibility or saleability
8 of the property or has caused any pecuniary loss.

9 4. The eighth cause of action for breach of the implied covenant of good faith and fair
10 dealing does not state a cause of action because Cross-Complainant fails to allege he entered into a
11 contract with Berry upon which a breach of the covenant of good faith and fair dealing could rest. The
12 first element of a breach of the covenant of good faith and fair dealing claim is the existence of a
13 contract between the parties. Cross-Complainant's allegation admitting that he never had any contract
14 or agreement of any kind with Cross-Defendant Berry is fatal to this claim.

15 5. The ninth cause of action for trespass does not state a cause of action against because it
16 fails to allege that Cross-Defendant Berry intentionally or negligently entered Cross-Complainant's
17 property. A trespass claim requires that the person intentionally or negligently enter onto the real
18 property. (CACI 2000.) Cross-Complainant has failed to allege that Berry either intentionally or
19 negligently entered upon land owned by him. Rather, Cross-Complainant alleges only that "Larry
20 Geraci or an agent under his direction entered onto his real property."

21 6. The tenth cause of action for civil conspiracy fails to state a cause of action because
22 there is no such cause of action in California. (*Moran v. Endres* (2006) 135 Cal.App.4th 952, 954.)
23 Rather, conspiracy is "'a legal doctrine that imposes liability on persons who, although not actually
24 committing a tort themselves, share with the immediate tortfeasors a common plan or design in its
25 preparation.' ... 'A conspiracy cannot be alleged as a tort separate from the underlying wrong it is
26 organized to achieve.' (Citation.)" (*Id.* at 954-955.)

27 7. The eleventh cause of action for an injunction fails to state a cause of action because
28 there is no such cause of action in California. "Injunctive relief is a remedy and not, in itself, a cause of

1 action, and a cause of action must exist before injunctive relief may be granted. (Citation.)” (*Shell Oil*
2 *Co. v. Richter* (1942) 52 Cal.App.2d 164, 168; see also *County of Del Norte v. City of Crescent City*
3 (1999) 71 Cal.App.4th 965, 973 (a permanent injunction is attendant to an underlying cause of action).)

4 **II. RELEVANT FACTUAL ALLEGATIONS**

5 The relevant factual allegations against Berry are found in the Cross-Complaint, as follows:

6 42. On March 16, 2017, having grown increasingly tired of Geraci’s failures
7 to respond to his requests for substantive updates on the Critical Zoning issue, Cotton
8 reached out directly to the Development Project Manager for the City of San Diego that
9 is responsible for CUP applications. Cotton discovered from the Development Project
10 Manager that a CUP application had been submitted on his Property on October 31,
11 2016.

12 (a) Cotton specifically recalled that day, October 31, 2016, as it was
13 the day that Geraci had asked Cotton to execute an Ownership Disclosure Statement
14 reflecting that Cotton had leased the Property to an individual named Rebecca Berry. ...

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

18 50. Later that day, the Development Project Manager emailed Cotton stating
19 that she could not withdraw the CUP application on Cotton’s Property as he requested
20 because Rebecca Berry is the “financial responsible party” on the CUP application and
21 not Cotton.

22 54. On April 28, 2017, Cotton emailed and provided Geraci and Rebecca
23 Berry with drafts of his Answer to Plaintiff’s Complaint and his Cross-Complaint.
24 Cotton noted that notwithstanding Geraci’s unethical behavior that led to this needless
25 dispute and the overwhelming evidence making clear Geraci’s culpability, that he would
26 like to resolve the dispute as quickly and fairly as possible.

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

28 59. This [first] cause of action (Quiet Title) is directed against plaintiff Larry
Geraci and Cross defendant Rebecca Berry.

61. Based on the allegation 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.

64. This [second] cause of action (slander of title) is 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.

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

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

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

18 120. This cause of action (Trespass) is directed against Plaintiff Larry Geraci
19 and cross defendant Rebecca Berry.

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

23 126. (b) The posting give the appearance that Ms. Berry is the only owner
24 of the CUP application for the Property, thereby damaging Mr. Cotton's interest in the
25 CUP application.

26 129. This cause of action (conspiracy) is directed against plaintiff Larry Geraci
27 and cross defendant Rebecca Berry.

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

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

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

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

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

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

137. This cause of action (Injunctive Relief) is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

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

III. LEGAL STANDARD ON DEMURRER

When a complaint, or any cause of action in a complaint, fails to state facts sufficient to constitute a cause of action, the court may grant a demurrer. (Code Civ. Proc., § 430.30.) The court considers the allegations on the face of the complaint and any matter of which it must or may take judicial notice under the Code of Civil Procedure section 430.30(a). (*Groves v. Peterson* (2002) 100 Cal.App.4th 659; Code Civ. Proc., § 430.30(a).) In reviewing the sufficiency of a complaint against a demurrer, the court treats the demurrer as admitting all material facts properly pleaded. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (citing to *Serrano v. Priest* (1971) 5 Cal.3d 584, 591); *Adelman v. Associated Ins. Co.* (2001) 90 Cal.App.4th 352, 359.) However, contentions, deductions, or conclusions of fact or law are insufficient to constitute a cause of action. (*Id.*)

The court may grant a demurrer with or without leave to amend when it is obvious from the facts alleged that the plaintiffs could not state a cause of action. (See *Hillman v. Hillman Land Co.* (1947) 81 Cal.App.2d 174, 181; see generally *Carney v. Simmonds* (1957) 49 Cal.2d 84, 97; see *Smiley v. Citibank* (1995) 11 Cal.4th 138, 164; Code Civ. Proc., § 430.30 (j).) The party seeking leave to amend their pleading bears the burden of establishing that there is a reasonable possibility that the defect can be cured by amendment. (See *Blank v. Kirwan, supra*, 39 Cal.3d at 318; *Gould v. Maryland Sound Industries* (1995) 31 Cal.App.4th 1137, 1153.)

IV. LEGAL ARGUMENT

A. **The First Cause of Action for Quiet Title Fails to State a Cause of Action Because the Allegations are Not Verified**

Quiet title actions must be verified. (Code Civ. Proc., § 761.020 [stating in part: "The complaint shall be verified . . ."].) The Cross-Complaint is not verified. As Cross-Complainant has not filed a verification under penalty of perjury of the allegations in the first cause of action for quiet

1 title that claim is subject to demurrer. This defect is usually curable by amendment. (See *Natkin v.*
2 *California Unemployment Insurance Appeals Board* (2013) 219 Cal.App.4th 997.)

3 **B. The First Cause of Action for Quiet Title Fails to State a Cause of Action Because**
4 **the Cross-Complaint Fails to Allege any Act by Cross-Defendant Berry which**
5 **Created an Adverse Claim Against Title**

6 The basic procedures, parties, and pleading requirements for quiet title actions are found in
7 Code of Civil Procedure sections 760.010 to 764.080. The purpose of a quiet title action is to establish
8 title against adverse claims to real property or any interest in the property. (Code Civ. Proc.,
9 § 760.020.) In other words, a quiet title action under Code of Civil Procedure section 760.010 is used
10 to remove any adverse claim against title to real property. It is brought against persons having adverse
11 claims to plaintiff's title, including all persons unknown, claiming any legal or equitable right, title,
12 estate, lien, easement, or interest in the property described in the complaint adverse to plaintiff's title,
13 claims or rights, or any cloud on plaintiff's title, claims or rights thereto.

14 The quiet title claim against Cross-Defendant Berry rests entirely on the allegation that Berry
15 has filed a Conditional Use Permit or CUP application claiming to be the sole owner of the Property.
16 (Cross-Complaint, ¶ 61.) Ms. Berry's the written statement in a CUP application claiming that she is
17 the sole owner of the property is not sufficient to create an adverse claim against title for purposes of a
18 quiet title claim.

19 A cloud on title is any potential outstanding claim on a piece of real property that could put the
20 existing title into question and possibly invalidate complete ownership. Berry has not recorded any
21 deed or lien or any other document which would affect title. As noted above, the Cross-Complaint
22 merely alleges that Berry filed a Conditional Use Permit or CUP application claiming to be the sole
23 owner of the Property. (*Id.*) Certainly the application for the CUP, which is not a recorded document,
24 does not call into question proper title. This allegation does not support a quiet title claim against Berry
25 any more than if it was alleged she wrote a letter to someone claiming ownership or stood on a street
26 corner shouting that she owned the property.

27 ///

28 ///

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1 C. The Second Cause of Action for Slander of Title Fails to State a Cause of Action
2 Because: (1) as to the Complaint and Lis Pendens, the Complained of Conduct Is
3 Privileged; (2) as to the CUP Application it was not Foreseeable that such
4 Application Would, or Did, Have an Adverse Effect on Vendibility of the Property;
5 and (3) Cross-Complainant has Failed to Plead Pecuniary Loss

6 1. Filing of the Complaint and Lis Pendens is Privileged Conduct

7 Slander of title is an unprivileged or malicious publication of a false statement that disparages
8 plaintiff's title to real property and causes pecuniary loss. (*Gudger v. Manton*, (1943) 21 Cal.2d 537,
9 disapproved on other grounds in *Albertson v. Raboff*, (1956) 46 Cal.2d 375; *Stalberg v. Western Title*
10 *Ins. Co.*, (1994) 27 Cal.App.4th 925, 929.) A statement is disparaging to the title if it is reasonably
11 understood to cast doubt upon the existence or extent of another's interest in land. (*Gudger, supra*,
12 21 Cal.2d at 542-543.) The gravamen of a cause of action for slander of title is the reasonably
13 foreseeable effect on prospective purchasers or lessees, not the strictly legal effect on the title of a
14 recorded instrument. (*Seeley v. Seymour*, (1987) 190 Cal.App.3d 844, 859.) Slander of title invades an
15 interest in the *vendibility* of the property by reducing the value of property, making the property more
16 difficult to sell or lease, or otherwise producing economic loss. Harm to personal reputation is not
17 protected by slander of title. (*Truck Exch. v. Bennett*, (1997) 53 Cal.App.4th 75, 90.)

18 The slander of title claim against Cross-Defendant Berry rests entirely on the allegation that
19 Berry disparaged Cotton's exclusive valid title by and through the preparing, posting, publishing, and
20 recording of the documents previously described herein, including, but not limited to, the instant
21 Complaint, the Lis Pendens filed on the Property, and the CUP application. (Cross-Complaint, ¶ 65.)
22 This cause of action fails because it is based on allegations of wrongful acts that are privileged as a
23 matter of law or do not disparage title as a matter of law.

24 As an initial matter it should be noted that the allegations that Berry filed a Complaint and filed
25 and recorded a Lis Pendens are false from the face of those documents, which are in the court file and
26 of which the Court has been requested to take judicial notice. Berry is not a party to the Complaint.
27 The sole plaintiff is Larry Geraci. Geraci filed the Complaint and had the Lis Pendens filed and
28 recorded. On its face, that Complaint asserts a claim by Geraci, not Berry, alleging that Cotton has
breached a written agreement to sell the subject property to Geraci, and a copy of the written agreement
is attached to Geraci's Complaint. Berry is not mentioned in the Complaint or in the attached written

1 agreement. Simply put, Berry is not a party to the underlying Complaint and, therefore, those actions
2 could not be a basis for a claim against Cross-Defendant Berry.

3 In addition, even if Berry had filed the Complaint and Lis Pendens, doing so would be
4 absolutely privileged pursuant to California Civil Code section 47(b), the so-called litigation privilege.
5 As the California Supreme Court noted in *Albertson v. Raboff*, (1956) 46 Cal.2d 375, "It is our opinion
6 that the privilege applies to any publication, such as the recordation of a notice of lis pendens, that is
7 required, e. g., Code Civ. Proc. § 749, or permitted, e. g., Code Civ. Proc. § 409, by law in the course of
8 a judicial proceeding to achieve the objects of the litigation, even though the publication is made
9 outside the courtroom and no function of the court or its officers is involved."

10 The holding in *Albertson* has been limited or "partially abrogated" by a 1992 amendment to
11 Civil Code section 47. (*Park 100 Investment Group II, LLC v. Ryan* (2009) 180 Cal.App.4th 795, 813,
12 fn. 5.) That amendment added the provision currently set forth at Civil Code section 47(b)(4), which
13 states: "A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with
14 a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or
15 required by law." Thus, "the litigation privilege...applies if the lis pendens (1) identifies an action 'previously
16 filed' in a court of competent jurisdiction that (2) affects title or right to possession of real property." (Citations.)
17 (*La Jolla Group II et al. v. Bruce*, (2012) 211 Cal.App.4th 461, 473.)

18 Nevertheless, here, the Lis Pendens does provide a legal description identifying the real property and
19 expressly identifying Geraci's previously filed Complaint by case number and by cause of action. The
20 Complaint asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing,
21 specific performance, and declaratory relief, which claims all arise under and relate to a written purchase and
22 sale agreement between Geraci and Cotton concerning the subject property, a copy of which is attached to the
23 Complaint. On its face the Complaint is clearly an action that affects title and/or possession to the real property
24 in question. Thus, the statutory conditions for application of the privilege to a recorded lis pendens, as set forth
25 in Civil Code section 47(b)(4), have been satisfied in this case. It follows that the privilege of Civil Code
26 section 47(b) applies to the subject Lis Pendens, thereby precluding liability for slander of title based on the
27 filing of the Complaint and/or the filing and recording of the Lis Pendens.

28 ///

1 **2. The Cross-Complaint is Devoid of Allegations that the Application for CUP**
2 **Affected the Vendibility of the Property**

3 As to the alleged CUP application in which Berry claims to be sole owner of the property, that
4 document is not recorded, has no effect on title to the property, and cannot itself support a slander of
5 title claim as it does not have any foreseeable effect on third parties as related to the vendibility of the
6 subject Property and therefor did not cause any pecuniary damage. Absent Cross-Complainant
7 pleading facts to demonstrate the effect the CUP application had or potentially had as to the vendibility
8 of the subject property, the demurrer should be sustained.

9 **3. Cross-Complainant has Failed to Plead Facts Showing Pecuniary Loss, and**
10 **that Such Loss was Caused by any act of Cross-Defendant Berry**

11 The damages in an action for slander of title are the loss caused by the impairment of
12 vendibility and the cost of clearing title. (*Davis v. Wood*, (1943) 61 Cal.App.2d 788, 798.)

13 The allegations in the Cross-Complaint related to damages from slander of title state only that:
14 “As a direct and proximate result of Geraci and Berry’s conduct in publishing these documents,
15 Cotton’s title to the Property has been disparaged and slandered, and there is a cloud on Cotton’s title,
16 and Cotton has suffered and continues to suffer damages, including, but not limited to, lost future
17 profits, in an amount to be proved at trial, but in an amount of no less than \$2,000,000.” [Cross-
18 Complaint ¶ 67] Nowhere does Cross-Complainant allege that due to the actions of Berry the property
19 has become unsaleable or that vendibility has decreased or how it is even possible that the Application
20 for a CUP could or would have such an effect on the subject property and caused damage.

21 Inasmuch as these deficiencies cannot be cured, the demurrer to this cause of action should be
22 sustained without leave to amend absent an offer of proof from Cross-Complainant on how a good faith
23 amendment is possible.

24 **D. The Eighth Cause of Action for Breach of the Implied Covenant of Good Faith and**
25 **Fair Dealing Does Not State a Cause of Action Because Cross-Complainant Admits**
26 **He has Never Entered into a Contract with Cross-Defendant Berry**

27 “The implied covenant of good faith and fair dealing rests upon the existence of some specific
28 contractual obligation. ‘The covenant of good faith is read into contracts in order to protect the express
covenants or promises of the contract, not to protect some general public policy interest not direct tied

1 to the contract's purpose.' . . . 'In essence, the covenant is implied as a supplement to the express
2 contractual covenants, to prevent a contracting party from engaging in conduct which (while not
3 technically transgressing the express covenants) frustrates the other party's rights to the benefits of the
4 contract.'" (*Racine v. Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026,
5 1031-1032.)

6 It is self-evident that there must be a contract in order to have a breach of the covenant of good
7 faith and fair dealing implied in that contract. Indeed, it is the first element of the cause of action. (See
8 CACI 325.) Although this cause of action is directed against both Geraci and Berry (Cross-Complaint,
9 ¶ 114), Cross-Complainant admits that "Cotton has never met or directly entered into any type of
10 agreement with Rebecca Berry. Insofar as she is involved with Cotton, she has always been an agent of
11 Geraci and has been effectuating his plans, either in concert with him or at his direction." (See Cross-
12 Complaint, ¶ 44; see also Cross-Complaint, ¶ 131, where Cross-Complainant admits that "Cotton has
13 never met or entered into a direct agreement with Berry....")

14 Having admitted that he never entered into a contract with Berry, Cross-Complainant's cause of
15 action against Berry for breach of the covenant of good faith and fair dealing implied in this non-
16 existent contract should be sustained. Because on demurrer a court may take judicial notice of
17 inconsistent statements by a party in a prior pleading, the demurrer to this cause of action should be
18 sustained without leave to amend because the only way to save this cause of action as to Cross-
19 Defendant Berry would be for Cross-Complainant to allege that, in direct conflict with the instant
20 pleading, he had contracted with her. (*Del E. Webb Corp. v. Structural Materials Co.* (1981)
21 123 Cal.App.3d 593, 604; *Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 344.)

22 **E. The Ninth Cause of Action for Trespass Does Not State a Cause of Action Because**
23 **Cross-Complainant has Not Alleged That Cross-Defendant Berry Entered His**
24 **Property**

25 "As a general rule, landowners and tenants have a right to exclude persons from trespassing on
26 private property; the right to exclude persons is a fundamental aspect of private property ownership."
27 (*Allred v. Harris* (1993) 14 Cal.App.4th 1386, 1390 .) "Trespass may be "by personal intrusion of the
28 wrongdoer or by his failure to leave; by throwing or placing something on the land; or by causing the
entry of some other person." (*Martin Marietta Corp. v. Insurance Co. of North America* (1995)

1 40 Cal.App.4th 1113, 1132.)

2 The second element required to establish a trespass is that the defendant intentionally or
3 negligently entered someone's property. (See CACI 2000.) Here, the Cross-Complaint alleges that
4 "Geraci, or an agent acting on his behalf, illegally entered the subject Property on or about March 27,
5 2017, and posted two NOTICES OF APPLICATION on the Property." (Cross-Complaint, ¶ 122.)
6 Cross-Complainant has failed to allege that Cross-Defendant Berry either intentionally or negligently
7 entered upon land owned by him. As such, Berry's demurrer to this cause of action should be
8 sustained.

9 **F. The Tenth Cause of Action for Conspiracy Does Not State a Cause of Action**
10 **Because as a Matter of Law There is No Separate Cause of Action for Conspiracy**

11 The Tenth Cause of Action for civil conspiracy fails as a matter of law because there is no such
12 cause of action. (*Moran v. Endres, supra*, 135 Cal.App.4th at 954.) Rather, conspiracy is " 'a legal
13 doctrine that imposes liability on persons who, although not actually committing a tort themselves,
14 share with the immediate tortfeasors a common plan or design in its preparation.' ... 'A conspiracy
15 cannot be alleged as a tort separate from the underlying wrong it is organized to achieve.' (Citation.)"
16 (*Id.* at 954-955.) Inasmuch as civil conspiracy is not a separate cause of action, Berry's demurrer to
17 this "cause of action" should be sustained without leave to amend.

18 **G. The Eleventh Cause of Action for Injunctive Relief Does Not State a Cause of**
19 **Action Because as a Matter of Law Injunctive Relief is a Remedy, Not a Basis for**
20 **Imposition of Liability**

21 A cause of action for an injunction is not cognizable as a matter of law. "Injunctive relief is a
22 remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may
23 be granted. (Citation.)" (*Shell Oil Co. v. Richter, supra*, 52 Cal.App.2d at 168; see also *County of Del*
24 *Norte v. City of Crescent City, supra*, 71 Cal.App.4th at 973 (a permanent injunction is attendant to an
25 underlying cause of action).) Inasmuch as injunctive relief is not a separate cause of action, Berry's
demurrer to this "cause of action" should be sustained without leave to amend.

26 **V. LEAVE TO AMEND**

27 The court may grant a demurrer with or without leave to amend, and the burden is on the party
28 seeking leave to amend their pleading to establish that the pleading is capable of amendment. (See

1 *Hillman v. Hillman Land Co.*, *supra*, 81 Cal.App.2d at 181; see generally *Carney v. Simmonds*, *supra*,
2 49 Cal.2d at 97; see *Smiley v. Citibank*, *supra*, 11 Cal.4th at 164; see *Blank v. Kirwan*, *supra*, 39 Cal.3d
3 at 318; *Gould v. Maryland Sound Industries*, *supra*, 31 Cal.App.4th at 1153; Code Civ. Proc., § 430.30;
4 Cal. Rules of Court, rule 3.1320(g).) A plaintiff does not meet its burden unless it advises the trial
5 court of new information that would contribute to a meaningful amendment. (See e.g. *Ross v. Creel*
6 *Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 749.)

7 This Court should grant the motion *without leave to amend* as to each of the causes of action for
8 conspiracy, injunctive relief, and slander of title as Cross-Complainant cannot amend to remedy the
9 infirmities with these causes of action. As to the other causes of action, they should be sustained
10 without leave to amend, *unless* Cross-Complainant makes an offer of proof that he can in good faith
11 allege facts establishing the elements of each of the remaining claims.

12 **VI. CONCLUSION**

13 For the foregoing reasons the Court should sustain the demurrers to each of the afore-mentioned
14 causes of action.

15 The demurrer to the First Cause of Action for Quiet Title should be sustained with leave to
16 amend to give Cross-Complainant the opportunity to verify the allegations of the First Cause of Action.

17 The demurrers to the Second, Eighth, Tenth and Eleventh causes of action should each be
18 sustained without leave to amend as the deficiencies cannot be cured.

19 The demurrer to the Ninth Cause of Action for Trespass should also be sustained without leave
20 to amend *unless* Plaintiff makes a sufficient offer of proof that he can allege Berry made entry on
21 Cross-Complainant's property. In that regard, Cross-Defendant submits that offer of proof cannot be
22 made as Berry never entered the property and posted the Notices of Application which Cross-
23 Defendant presently alleges was done on March 27, 2017, by "Geraci, or an agent acting on his behalf."

24 Dated: June 9, 2017

FERRIS & BRITTON,
A Professional Corporation

By: 

Michael R. Weinstein
Scott H. Toothacre

Attorneys for Cross-Defendant
REBECCA BERRY

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

Attorneys for Cross-Defendant
REBECCA BERRY

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF CROSS-DEFENDANT
REBECCA BERRY'S DEMURRER TO
PLAINTIFF'S CROSS-COMPLAINT**

[IMAGED FILE]

Hearing Date: July 14, 2017
Hearing Time: 9:00 a.m.

Filed: March 21, 2017
Trial Date: Not Yet Set

TO EACH PARTY AND TO THE ATTORNEY OF THE RECORD FOR EACH PARTY:

Cross-Defendant, REBECCA BERRY, hereby requests that this Court take judicial notice of the following documents pursuant to Evidence Code sections 452 and 453 in support of her demurrer to Plaintiff's Cross-Complaint:

///

///

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

3 Exhibit 2 – Notice of Lis Pendens, recorded on March 22, 2017.
4

5 Dated: June 9, 2017

FERRIS & BRITTON,
A Professional Corporation

7
8 By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

9
10 Attorneys for Cross-Defendant
REBECCA BERRY
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EXHIBIT 1

03/21/2017 at 10:11:00 AM

Clerk of the Superior Court
By Carla Brennan, Deputy Clerk

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

Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

v.

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

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

PLAINTIFF'S COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;
3. SPECIFIC PERFORMANCE; and
4. DECLARATORY RELIEF.

Plaintiff, LARRY GERACI, alleges as follows:

1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and Defendant COTTON that is the subject of this action was entered into in San Diego County, California, and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County, California (the "PROPERTY").

4. Currently, and at all times since approximately 1998, Defendant COTTON owned the PROPERTY.

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

1 informed and believe and based thereon allege that each of the fictitiously-named defendants is in some
2 way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as
3 herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend
4 this complaint to state the true names and/or capacities of such fictitiously-named defendants when the
5 same are ascertained.

6 6. Plaintiff alleges on information and belief that at all times mentioned herein, each and
7 every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in
8 interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged,
9 were acting, whether individually or through their duly authorized agents and/or representatives, within
10 the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate
11 structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge,
12 permission, and consent of the remaining defendants, and each of them, and that said defendants
13 ratified and approved the acts of all of the other defendants.

14 GENERAL ALLEGATIONS

15 7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a
16 written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated
17 therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

18 8. On or about November 2, 2016, GERACI paid to COTTON \$10,000.00 good faith
19 earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
20 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
21 conditions of the written agreement.

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
28 \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

3 **(For Breach of Contract against Defendant COTTON and DOES 1-5)**

4 10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
5 paragraphs 1 through 9 above.

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

17 12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer
18 damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI
19 in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended
20 to date on the CUP process for the PROPERTY.

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**
23 **against Defendant COTTON and DOES 1-5)**

24 13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
25 paragraphs 1 through 12 above.

26 14. Each contract has implied in it a covenant of good faith and fair dealing that neither
27 party will undertake actions that, even if not a material breach, will deprive the other of the benefits of
28 the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

1 withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the
2 PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON
3 has breached the implied covenant of good faith and fair dealing.

4 15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair
5 dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for
6 return of all sums expended by GERACI in reliance on the agreement, including but not limited to the
7 estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

8 THIRD CAUSE OF ACTION

9 (For Specific Performance against Defendants COTTON and DOES 1-5)

10 16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
11 paragraphs 1 through 15 above.

12 17. The aforementioned written agreement for the sale of the PROPERTY is a valid and
13 binding contract between Plaintiff GERACI and Defendant COTTON.

14 18. The aforementioned written agreement for the sale of the PROPERTY states the terms
15 and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible
16 to specific performance.

17 19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a
18 writing that satisfies the statute of frauds.

19 20. The aforementioned written agreement for the purchase and sale of the PROPERTY is
20 fair and equitable and is supported by adequate consideration.

21 21. Plaintiff GERACI has duly performed all of his obligations for which performance has
22 been required to date under the agreement. GERACI is ready and willing to perform his remaining
23 obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for
24 a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary
25 thus satisfying that condition precedent, then to pay the remaining \$790,000.00 balance of the purchase
26 price.

27 22. Defendant COTTON is able to specifically perform his obligations under the contract,
28 namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

1 Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that
2 condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for
3 receipt of payment from GERACI or assignee of the remaining \$790,000.00 balance of the purchase
4 price.

5 23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions
6 that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary
7 and to specifically perform the contract upon satisfaction of the condition that such approval is in fact
8 obtained.

9 24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's
10 attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not
11 intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon
12 satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana
13 dispensary and tender the remaining balance of the purchase price.

14 25. The aforementioned written agreement for the purchase and sale of the PROPERTY
15 constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy,
16 and adequate legal remedy is presumed.

17 26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon
18 specifically enforcing the written agreement for the purchase and sale of the PROPERTY from
19 Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

20 **FOURTH CAUSE OF ACTION**

21 **(For Declaratory Relief against Defendants COTTON and DOES 1-5)**

22 27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
23 paragraphs 1 through 14 above.

24 28. An actual controversy has arisen and now exists between Defendant COTTON, on the
25 one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written
26 agreement contains terms and condition that conflict with or are in addition to the terms stated in the
27 written agreement. GERACI disputes those conflicting or additional contract terms.

1 29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the
2 written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants
3 thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or
4 his assignee. Such a declaration is necessary and appropriate at this time so that each party may
5 ascertain their rights, duties, and obligations thereunder.

6 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

7 **On the First and Second Causes of Action:**

8 1. For compensatory damages in an amount in excess of \$300,000.00 according to proof at
9 trial.

10 **On the Third Cause of Action:**

11 2. For specific performance of the written agreement for the purchase and sale of the
12 PROPERTY according to its terms and conditions; and

13 3. If specific performance cannot be granted, then damages in an amount in excess of
14 \$300,000.00 according to proof at trial.

15 **On the Fourth Cause of Action:**

16 4. For declaratory relief in the form of a judicial determination of the terms and conditions
17 of the written agreement and the duties, rights and obligations of each party under the written
18 agreement.

19 **On all Causes of Action:**

20 5. For temporary and permanent injunctive relief as follows: that Defendants, and each of
21 them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and
22 all persons acting in concert with or participating with them, directly or indirectly, be enjoined and
23 restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a
24 Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

25 6. For costs of suit incurred herein; and

26 ///

27 ///

28 ///

1 7. For such other and further relief as the Court may deem just and proper.
2

3 Dated: March 21, 2017
4

FERRIS & BRITTON,
A Professional Corporation

5 By: Michael R. Weinstein
6 Michael R. Weinstein
7 Scott H. Toothacre

8 Attorneys for Plaintiff
9 LARRY GERACI
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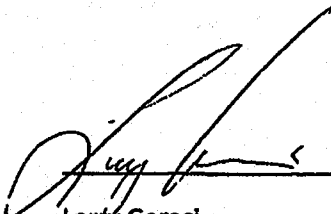
EXHIBIT A


11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

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



Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Cerao
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Jessica Newell

(Seal)



EXHIBIT 2

ORIGINAL

FILED
CIVIL BUSINESS OFFICE 18
CENTRAL DIVISION

2017 MAY 12 P 3:49

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Darryl Cotton, *In pro se*
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387
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
operating on the Property."

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

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

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

23 ii. As a sign of good-faith by Cotton as they had not reached a final
24 agreement and he wanted something in writing to prove Cotton's support of the CUP
25 application at the Property as he needed to immediately spend large amounts of
26 cash to continue with the preparation of the CUP application and the Critical Zoning
27 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 2nd, 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 2nd, 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 2nd 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 2nd, 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 2nd, 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 2nd Agreement.

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

4 91. Geraci failed to perform the promises he made on November 2nd, 2016,
5 notably, his delivery of the balance of the Non-Refundable Deposit and his promise
6 to treat the November 2nd 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 2nd, 2016 is a valid and binding
21 agreement between Cotton and Geraci and the November 2nd 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 2nd 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 2nd 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.

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

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

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

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

Count Eight

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

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

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

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

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

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

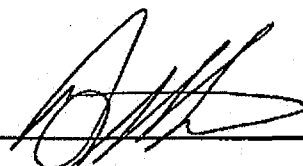
22 
23 _____
24 Darryl Cotton, Defendant in Pro Per

Exhibit 1

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



Darryl Cotton <indagroddarryl@gmail.com>

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 <darryl@inda-gro.com> 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

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

[Quoted text hidden]

ORIGINAL

SUM-110

SUMMONS
Cross-Complaint
(CITACION JUDICIAL-CONTRADEMANDA)

NOTICE TO CROSS-DEFENDANT:
(AVISO AL CONTRA-DEMANDADO):

Larry Geraci, an individual; Rebecca Berry, an individual; and, DOES
 1-10.

YOU ARE BEING SUED BY CROSS-COMPLAINANT:
(LO ESTÁ DEMANDANDO EL CONTRADEMANDANTE):

Darryl Cotton, an individual.

FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)

FILED
 CIVIL BUSINESS OFFICE 18
 CENTRAL DIVISION

2017 MAY 12 3:49

CLERK-SUPERIOR COURT
 SAN DIEGO COUNTY, CA

MAY 17 2017

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the cross-complainant. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al contrademandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), o onlándose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
 (El nombre y dirección de la corte es): **SAN DIEGO COUNTY**
330 West Broadway
San Diego, CA 92101

SHORT NAME OF CASE (from Complaint): (Nombre de Caso):

Geraci v. Cotton

CASE NUMBER: (Número del Caso):

37-2017-00010073-CU-BC-CTL

The name, address, and telephone number of cross-complainant's attorney, or cross-complainant without an attorney, is:
 (El nombre, la dirección y el número de teléfono del abogado del contrademandante, o del contrademandante que no tiene abogado, es):

Michael Weinstein, Ferris & Britton, 501 West Broadway, Suite 1450, San Diego, CA 92101

DATE:
 (Fecha) **MAY 15 2017**

Clerk, by
 (Secretario) *[Signature]*

Deputy
 (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)

P. Gonzaga

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual cross-defendant.
 2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

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

Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**CROSS-DEFENDANT LARRY GERACI'S
NOTICE OF DEMURRER AND
DEMURRER TO CROSS-COMPLAINT
BY DARRYL COTTON**

[IMAGED FILE]

Hearing Date: July 14, 2017
Hearing Time: 9:00 a.m.

Complaint Filed: March 21, 2017
Trial Date: Not Yet Set

TO EACH PARTY AND TO THE ATTORNEY OF THE RECORD FOR EACH PARTY:

PLEASE TAKE NOTICE that, on July 14, 2017, at 9:00 a.m. or as soon thereafter as the matter may be heard in Department C-73 of this Court, located at 330 West Broadway, San Diego, California, 92101, Cross-Defendant, LARRY GERACI (hereafter "Geraci"), will and hereby does move the Court to sustain his demurrer to the Cross-Complaint filed on May 12, 2017, by Defendant and Cross-Complainant, DARRYL COTTON (hereafter "Cotton" or "Cross-Complainant"), on each of

1 the grounds set forth below.

2 **DEMURRER**

3 The Cross-Complaint's alleged first, second, eighth, fifth, sixth, seventh, eighth, ninth, tenth,
4 and eleventh causes of action, and each of them, fail to state facts sufficient to constitute a cause of
5 action against Cross-Defendant Geraci (Code Civ. Proc., § 430.10(e)) on the grounds and for the
6 reasons set forth below:

7 **FIRST CAUSE OF ACTION**

8 1. The first cause of action for quiet title does not state a cause of action against Geraci
9 because the allegations of the first cause of action are not verified under oath and an action to quiet title
10 must be verified. (Code Civ. Proc., § 761.020).

11 2. The first cause of action for quiet title does not state a cause of action against Geraci
12 because it fails to allege he took actions which created a legally adverse interest in the subject property.
13 The Cross-Complaint alleges that Geraci's filing of his Complaint and the related Lis Pendens created
14 the legally adverse interest. (Cross-Complaint ¶ 61) But such actions are absolutely privileged under
15 Civil Code section 47, subdivision (b) and subdivision (b)(4) respectively.

16 **SECOND CAUSE OF ACTION**

17 3. The second cause of action for slander of title does not state a cause of action because it
18 is based on allegations of wrongful acts that are privileged as a matter of law. The elements of a
19 slander of title cause of action are: (1) a publication; (2) which is without privilege or justification;
20 (3) which is false; and (4) which causes direct and immediate pecuniary loss. (*Alpha and Omega*
21 *Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 664.) The wrongful acts
22 alleged in support of his claim are the filing of the instant Complaint and the attendant filing and
23 recording of a Lis Penden; however, the filing of a Complaint and the filing and recording of a Lis
24 Pendens are each absolutely privileged pursuant to Civil Code section 47, subdivision (b) and
25 subdivision (b)(4) respectively.

26 **FIFTH CAUSE OF ACTION**

27 4. The fifth cause of action for breach of contract does not state a cause of action because
28 Cross-Complainant has failed to allege conduct which would be an actual breach. As the "breach,"

1 Cross-Complainant merely alleges Geraci asserts the written November 2nd Agreement (a copy of
2 which is attached to the Complaint) is the final agreement between the parties for the purchase and sale
3 of the real property. (Cross-Complaint ¶ 98) However, Geraci's assertion that the written
4 November 2nd Agreement is the final agreement between the parties for the purchase and sale of the
5 subject real property cannot by itself be a breach of the differing agreement alleged by Cross-
6 Complainant.

7 SIXTH CAUSE OF ACTION

8 The sixth cause of action for breach of oral contract does not state a cause of action because:
9 a) Cross-Complainant has failed to allege conduct which would be an actual breach; b) there cannot be
10 an oral contract which contradicts a written contract; and c) the alleged oral contract for the purchase
11 and sale of the subject real property violates the Statute of Frauds. A contract coming within the statute
12 of frauds is invalid unless it is memorialized by a writing subscribed by the party to be charged or by
13 the party's agent. (Civ. Code, § 1624; *Secrest v. Security National Mortgage Loan Trust* (2008)
14 167 Cal.App.4th 544) An agreement for the sale of real property or an interest in real property comes
15 within the statute of frauds. (Civ. Code, § 1624(a)(3).)

16 SEVENTH CAUSE OF ACTION

17 The seventh cause of action for breach of the implied contract does not state a cause of action
18 because Cross-Complainant has failed to allege conduct which would be an actual breach; there cannot
19 be an implied contract which contradicts a written contract; and the alleged implied oral contract for the
20 purchase and sale of the subject real property violates the Statute of Frauds. A contract coming within
21 the statute of frauds is invalid unless it is memorialized by a writing subscribed by the party to be
22 charged or by the party's agent. (Civ. Code, § 1624; *Secrest, supra*, 167 Cal.App.4th 544) An
23 agreement for the sale of real property or an interest in real property comes within the statute of frauds.
24 (Civ. Code, § 1624(a)(3).)

25 EIGHTH CAUSE OF ACTION

26 The eighth cause of action for breach of the implied covenant of good faith and fair dealing does
27 not state a cause of action because it must be based on a contract. This claim appears to be based on
28 Cross-Complainant's alleged oral and/or implied-in-fact contract claims which in-and-of-themselves

1 are invalid for reasons stated herein, and therefore, cannot support the covenant claim. Additionally, if
2 the covenant claim alleges nothing more than a breach of contract it is merely superfluous and may be
3 disregarded. Additionally, this cause of action does not support an award of punitive damages as
4 claimed in ¶ 118 of the Cross-Complaint.

5 TENTH CAUSE OF ACTION

6 The tenth cause of action for civil conspiracy fails to state a cause of action because there is no
7 such cause of action in California. (*Moran v. Endres*, (2006) 135 Cal.App.4th 952, 954.) Rather,
8 conspiracy is “‘a legal doctrine that imposes liability on persons who, although not actually committing
9 a tort themselves, share with the immediate tortfeasors a common plan or design in its preparation.’ ...
10 ‘A conspiracy cannot be alleged as a tort separate from the underlying wrong it is organized to
11 achieve.’ (Citation.)” (*Id.* at 954-955.)

12 ELEVENTH CAUSE OF ACTION

13 The eleventh cause of action for an injunction fails to state a cause of action because there is no
14 such cause of action in California. “Injunctive relief is a remedy and not, in itself, a cause of action,
15 and a cause of action must exist before injunctive relief may be granted. (Citation.)” (*Shell Oil Co. v.*
16 *Richter* (1942) 52 Cal.App.2d 164, 168; see also *County of Del Norte v. City of Crescent City* (1999)
17 71 Cal.App.4th 965, 973 (a permanent injunction is attendant to an underlying cause of action).)

18 For each of such reasons, Cross-Defendant Geraci moves for an order of this Court sustaining
19 the demurrers to the first, second, fifth, sixth, seventh, eighth, tenth and eleventh causes of action
20 without leave to amend unless Plaintiff can make a sufficient offer of proof that he can cure the
21 pleading deficiencies.

22 The demurrers are based upon this Notice of Demurrer and Demurrer, the attached supporting
23 Request for Judicial Notice, the attached supporting Memorandum of Points and Authorities, the
24 records and files in this action, and such further matters that may be properly presented prior to or at the
25 time of hearing on the motion.

26 **NOTICE IS FURTHER GIVEN** that a tentative ruling is issued the day before the date set
27 forth for hearing, this court follows rule 3.1308(a)(2) and no notice of intent to appear is required to
28 appear for argument. The tentative ruling shall be made available at 3:30 p.m. on the court day prior to

1 the scheduled hearing. The tentative ruling may direct the parties to appear for oral argument, and may
2 specify the issues on which the court wishes the parties to provide further argument. The tentative
3 ruling may be obtained by calling the court tentative ruling number at (619) 450-7381 or by navigating
4 to the court's website www.sandiego.courts.ca.gov.

5
6 Dated: June 16, 2017

FERRIS & BRITTON,
A Professional Corporation

7
8 By: 
9 Michael R. Weinstein
10 Scott H. Toothacre

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

Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF CROSS-DEFENDANT
LARRY GERACI'S DEMURRER TO
CROSS-COMPLAINT BY DARRYL
COTTON**

[IMAGED FILE]

Hearing Date: July 14, 2017
Hearing Time: 9:00 a.m.

Complaint Filed: March 21, 2017
Trial Date: Not Yet Set

TO EACH PARTY AND TO THE ATTORNEY OF THE RECORD FOR EACH PARTY:

Cross-Defendant, LARRY GERACI, hereby requests that this Court take judicial notice of the following documents pursuant to Evidence Code sections 452(d) and 453 in support of his demurrer to Plaintiff's Cross-Complaint:

///

///

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

3 Exhibit 2 – Notice of Lis Pendens, recorded on March 22, 2017.
4

5 Dated: June 16, 2017

FERRIS & BRITTON,
A Professional Corporation

7
8 By: Michael R. Weinstein
Michael R. Weinstein
9 Scott H. Toothacre

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

Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

v.

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

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

PLAINTIFF'S COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;
3. SPECIFIC PERFORMANCE; and
4. DECLARATORY RELIEF.

Plaintiff, LARRY GERACI, alleges as follows:

1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and Defendant COTTON that is the subject of this action was entered into in San Diego County, California, and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County, California (the "PROPERTY").

4. Currently, and at all times since approximately 1998, Defendant COTTON owned the PROPERTY.

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

EXHIBIT 1

1 informed and believe and based thereon allege that each of the fictitiously-named defendants is in some
2 way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as
3 herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend
4 this complaint to state the true names and/or capacities of such fictitiously-named defendants when the
5 same are ascertained.

6 6. Plaintiff alleges on information and belief that at all times mentioned herein, each and
7 every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in
8 interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged,
9 were acting, whether individually or through their duly authorized agents and/or representatives, within
10 the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate
11 structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge,
12 permission, and consent of the remaining defendants, and each of them, and that said defendants
13 ratified and approved the acts of all of the other defendants.

14 GENERAL ALLEGATIONS

15 7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a
16 written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated
17 therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

18 8. On or about November 2, 2016, GERACI paid to COTTON \$10,000.00 good faith
19 earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
20 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
21 conditions of the written agreement.

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
28 \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

3 **(For Breach of Contract against Defendant COTTON and DOES 1-5)**

4 10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
5 paragraphs 1 through 9 above.

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

17 12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer
18 damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI
19 in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended
20 to date on the CUP process for the PROPERTY.

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**
23 **against Defendant COTTON and DOES 1-5)**

24 13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
25 paragraphs 1 through 12 above.

26 14. Each contract has implied in it a covenant of good faith and fair dealing that neither
27 party will undertake actions that, even if not a material breach, will deprive the other of the benefits of
28 the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

1 withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the
2 PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON
3 has breached the implied covenant of good faith and fair dealing.

4 15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair
5 dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for
6 return of all sums expended by GERACI in reliance on the agreement, including but not limited to the
7 estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

8 **THIRD CAUSE OF ACTION**

9 **(For Specific Performance against Defendants COTTON and DOES 1-5)**

10 16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
11 paragraphs 1 through 15 above.

12 17. The aforementioned written agreement for the sale of the PROPERTY is a valid and
13 binding contract between Plaintiff GERACI and Defendant COTTON.

14 18. The aforementioned written agreement for the sale of the PROPERTY states the terms
15 and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible
16 to specific performance.

17 19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a
18 writing that satisfies the statute of frauds.

19 20. The aforementioned written agreement for the purchase and sale of the PROPERTY is
20 fair and equitable and is supported by adequate consideration.

21 21. Plaintiff GERACI has duly performed all of his obligations for which performance has
22 been required to date under the agreement. GERACI is ready and willing to perform his remaining
23 obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for
24 a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary
25 thus satisfying that condition precedent, then to pay the remaining \$790,000.00 balance of the purchase
26 price.

27 22. Defendant COTTON is able to specifically perform his obligations under the contract,
28 namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

1 Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that
2 condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for
3 receipt of payment from GERACI or assignee of the remaining \$790,000.00 balance of the purchase
4 price.

5 23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions
6 that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary
7 and to specifically perform the contract upon satisfaction of the condition that such approval is in fact
8 obtained.

9 24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's
10 attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not
11 intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon
12 satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana
13 dispensary and tender the remaining balance of the purchase price.

14 25. The aforementioned written agreement for the purchase and sale of the PROPERTY
15 constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy,
16 and adequate legal remedy is presumed.

17 26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon
18 specifically enforcing the written agreement for the purchase and sale of the PROPERTY from
19 Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

20 FOURTH CAUSE OF ACTION

21 **(For Declaratory Relief against Defendants COTTON and DOES 1-5)**

22 27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
23 paragraphs 1 through 14 above.

24 28. An actual controversy has arisen and now exists between Defendant COTTON, on the
25 one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written
26 agreement contains terms and condition that conflict with or are in addition to the terms stated in the
27 written agreement. GERACI disputes those conflicting or additional contract terms.

1 29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the
2 written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants
3 thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or
4 his assignee. Such a declaration is necessary and appropriate at this time so that each party may
5 ascertain their rights, duties, and obligations thereunder.

6 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

7 **On the First and Second Causes of Action:**

8 1. For compensatory damages in an amount in excess of \$300,000.00 according to proof at
9 trial.

10 **On the Third Cause of Action:**

11 2. For specific performance of the written agreement for the purchase and sale of the
12 PROPERTY according to its terms and conditions; and

13 3. If specific performance cannot be granted, then damages in an amount in excess of
14 \$300,000.00 according to proof at trial.

15 **On the Fourth Cause of Action:**

16 4. For declaratory relief in the form of a judicial determination of the terms and conditions
17 of the written agreement and the duties, rights and obligations of each party under the written
18 agreement.

19 **On all Causes of Action:**

20 5. For temporary and permanent injunctive relief as follows: that Defendants, and each of
21 them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and
22 all persons acting in concert with or participating with them, directly or indirectly, be enjoined and
23 restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a
24 Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

25 6. For costs of suit incurred herein; and

26 ///

27 ///

28 ///

7. For such other and further relief as the Court may deem just and proper.

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

EXHIBIT A

11/02/2016

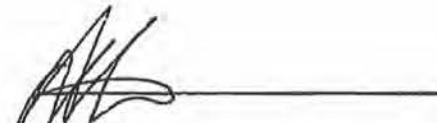
Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Jessica Newell

(Seal)



EXHIBIT 2



Mar 22, 2017 01:32 PM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$24.00

PAGES: 4

ELECTRONICALLY FILED

Superior Court of California,

County of San Diego

03/22/2017 at 03:07:00 PM

Clerk of the Superior Court

By Delia Velma, Deputy Clerk

Recorded and Requested By:

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

Attorneys for Plaintiff
LARRY GERACI

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

NOTICE OF LIS PENDENS**IMAGED FILE**

Dept: C-73

Judge: Hon. Joel Wohlfeil

Complaint filed: March 21, 2017

NOTICE IS HEREBY GIVEN that the above-entitled action was filed on March 21, 2017, in the Superior Court of the State of California for the County of San Diego, Central Division, as Case No. 37-2017-00010073-CU-BC-CTL, by LARRY GERACI, an individual, Plaintiff, and against DARRYL COTTON, an individual, and DOES 1 through 10, inclusive, Defendants.

This action states a real property claim in that it affects title or a claim of title to specific real property which is located at 6176 Federal Blvd., in the City of San Diego, County of San Diego, State of California, Assessor's Parcel No. 543-020-02-00, and more particularly described in the following legal description (the "PROPERTY"):

THAT PORTION OF BLOCK 25, TRACT NO. 2 OF ENCANTO HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1100, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 5, 1907, AS SHOWN ON MAP NO. 2121 OF JOFAINA VISTA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 20, 1928, NOW ABANDONED AND DESCRIBED AS LOT 20.

1 This action states causes of action for, among other things, (a) specific performance of a
2 written agreement for the purchase and sale of the PROPERTY from DARRYL COTTON to
3 LARRY GERACI or assignee; and (b) declaratory relief seeking a determination regarding the
4 terms and conditions of said written agreement and the rights, duties, and obligations of the
5 parties thereunder.
6

7 Dated: March 22, 2017

FERRIS & BRITTON,
A Professional Corporation

8 By: Michael R. Weinstein
9 Michael R. Weinstein
10 Scott H. Toothacre


11 Attorneys for Plaintiff
12 LARRY GERACI
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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document. Cal.Civ.Code § 1189

COUNTY OF SAN DIEGO) ss.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

 ANNA KRISTINE LIZANO
Notary Public - California
San Diego County
Commission # 2175219
My Comm. Expires Dec 11, 2020

Gemma Krüger
NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

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**PROOF OF SERVICE
BY MAIL**

I declare: I am over 18 years of age, employed in the County of San Diego, State of California, and not a party to this action. My business address is 501 West Broadway, Suite 1450, San Diego, CA 92101.

I served the following documents:

Notice of Lis Pendens

on each of the following persons and entities at their respective addresses as follows:

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114

____ (BY MAIL) By placing a true copy in a sealed envelope addressed to each party and placing said envelopes for collection and mailing on the date hereof following our ordinary business practices. I am readily familiar with our firm's practice for collection and processing of correspondence for mailing; correspondence is deposited on the same day with the U.S. Postal Service at San Diego, California, in the ordinary course of business.

XX (BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED) By placing a true copy in a sealed envelope addressed to each party and mailing each envelope by Certified Mail, Return Receipt Requested, with the United States Postal Service at San Diego, California, on the date set forth below.

____ (BY FACSIMILE) Per written agreement between counsel, by sending said documents by facsimile transmission from telephone no. (619) 232-9316 to the above facsimile machine telephone number(s), on this date and at the time(s) set forth above. The transmission was reported as complete and without error, as stated in the transmission report properly issued by the transmitting facsimile machine and attached hereto.

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

____ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 22, 2017, at San Diego, California.


ANNA LIZANO

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

Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF CROSS-
DEFENDANT LARRY GERACI'S
DEMURRER TO CROSS-COMPLAINT
BY DARRYL COTTON**

[IMAGED FILE]

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1 Plaintiff and Cross-Defendant, LARRY GERACI (hereinafter "Geraci"), respectfully submits
2 these points and authorities in support of his Demurrer to the Cross-Complaint by DARRYL COTTON
3 (hereafter "Cotton" or "Cross-Complainant").

4 **I. RELIEF REQUESTED AND SUMMARY OF THE ARGUMENTS**

5 The Cross-Complaint by Cotton names Geraci as a Cross-Defendant. Cotton alleges eleven
6 causes of action against Geraci: the First Cause of Action for Quiet Title; the Second Cause of Action
7 for Slander of Title; the Third Cause of Action for Fraud/Fraudulent Misrepresentation; the Fourth
8 Cause of Action for Fraud in the Inducement; the Fifth Cause of Action for Breach of Contract; the
9 Sixth Cause of Action for Breach of Oral Contract; the Seventh Cause of Action for Breach of Implied
10 Contract; the Eighth Cause of Action for Breach of the Implied Covenant of Good Faith and Fair
11 Dealing; the Ninth Cause of Action for Trespass; the Tenth Cause of Action for Conspiracy; and the
12 Eleventh Cause of Action for Declaratory and Injunctive Relief.

13 Each of the eleven causes of action against Geraci arises out of, or relates to, a dispute
14 concerning a contract for the purchase and sale of real property between Geraci and Cotton. Geraci
15 demurs to the first, second, fifth, sixth, seventh, eighth, tenth, and eleventh causes of action asserted
16 against him upon the following grounds:

17 1. The first cause of action for quiet title does not state a cause of action against Geraci
18 because an action to quiet title must be verified. (Code Civ. Proc., § 761.020.) The Cross-Complaint's
19 allegations comprising the first cause of action are not verified.

20 2. The first cause of action for quiet title does not state a cause of action against Geraci
21 because it fails to allege that he took actions which created a legally adverse interest in the subject
22 property. The Cross-Complaint alleges that Geraci's filing of his Complaint and the related Lis
23 Pendens created the legally adverse interest. (Cross-Complaint ¶ 61) But such actions are absolutely
24 privileged under Civil Code sections 47(b) and (b)(4).

25 3. The second cause of action for slander of title does not state a cause of action because it
26 is based on allegations of wrongful acts that are privileged as a matter of law. The elements of a
27 slander of title cause of action are: (1) a publication; (2) which is without privilege or justification;
28 (3) which is false; and (4) which causes direct and immediate pecuniary loss. (*Alpha and Omega*

1 *Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 664.) The wrongful acts
2 alleged in support of this claim are the filing of the underlying Complaint and the attendant filing and
3 recording of a Lis Pendens; however, the filing of a Complaint and the filing and recording of a Lis
4 Pendens are each absolutely privileged pursuant to Civil Code section 47, subdivision (b) and
5 subdivision (b)(4) respectively.

6 4. The fifth cause of action for breach of contract does not state a cause of action because
7 Cross-Complainant has failed to allege conduct which would be an actual breach. As the “breach,”
8 Cross-Complainant merely alleges Geraci asserts the written November 2nd Agreement (a copy of
9 which is attached to the Complaint) is the final agreement between the parties for the purchase and sale
10 of the real property. (Cross-Complaint ¶ 98) However, Geraci’s assertion that the written
11 November 2nd Agreement is the final agreement between the parties for the purchase and sale of the
12 subject real property cannot by itself be a breach of the differing agreement alleged by Cross-
13 Complainant.

14 5. The sixth cause of action for breach of oral contract does not state a cause of action
15 because: a) Cross-Complainant has failed to allege conduct which would be an actual breach; b) there
16 cannot be an oral contract which contradicts a written contract; and c) the alleged oral contract for the
17 purchase and sale of the subject real property violates the Statute of Frauds. A contract coming within
18 the statute of frauds is invalid unless it is memorialized by a writing subscribed by the party to be
19 charged or by the party’s agent. (Civ. Code, § 1624; *Secrest v. Security National Mortgage Loan Trust*,
20 (2008) 167 Cal.App.4th 544) An agreement for the sale of real property or an interest in real property
21 comes within the statute of frauds. (Civ. Code, § 1624(a)(3).)

22 6. The seventh cause of action for breach of the implied contract does not state a cause of
23 action because Cross-Complainant has failed to allege conduct which would be an actual breach; there
24 cannot be an implied contract which contradicts a written contract; and the alleged implied contract for
25 the purchase and sale of the subject real property violates the Statute of Frauds. A contract coming
26 within the statute of frauds is invalid unless it is memorialized by a writing subscribed by the party to
27 be charged or by the party’s agent. (Civ. Code, § 1624; *Secrest, supra*, 167 Cal.App.4th 544) An
28 agreement for the sale of real property or an interest in real property comes within the statute of frauds.

1 (Civ. Code, § 1624(a)(3).)

2 7. The eighth cause of action for breach of the implied covenant of good faith and fair
3 dealing does not state a cause of action because it must be based on a contract. This claim appears to
4 be based on Cross-Complainant's alleged oral and/or implied-in-fact contract claims which in-and-of
5 themselves are invalid for reasons stated herein, and therefore, cannot support the covenant claim.
6 Additionally, if the covenant claim alleges nothing more than a breach of contract it is merely
7 superfluous and may be disregarded. Additionally, this cause of action does not support an award of
8 punitive damages as claimed in ¶ 118 of the Cross-Complaint.

9 8. The tenth cause of action for civil conspiracy fails to state a cause of action because
10 there is no such cause of action in California. (*Moran v. Endres* (2006) 135 Cal.App.4th 952, 954.)
11 Rather, conspiracy is "a legal doctrine that imposes liability on persons who, although not actually
12 committing a tort themselves, share with the immediate tortfeasors a common plan or design in its
13 preparation.' ... 'A conspiracy cannot be alleged as a tort separate from the underlying wrong it is
14 organized to achieve.' (Citation.)" (*Id.* at 954-955.)

15 9. The eleventh cause of action for an injunction fails to state a cause of action because
16 there is no such cause of action in California. "Injunctive relief is a remedy and not, in itself, a cause of
17 action, and a cause of action must exist before injunctive relief may be granted. (Citation.)" (*Shell Oil*
18 *Co. v. Richter* (1942) 52 Cal.App.2d 164, 168; see also *County of Del Norte v. City of Crescent City*
19 (1999) 71 Cal.App.4th 965, 973 (a permanent injunction is attendant to an underlying cause of action).)

20 **II. RELEVANT FACTUAL ALLEGATIONS**

21 The factual allegations supporting Cotton's Sixth Cause of action for Breach of Oral Contract
22 are found in the Cross-Complaint as follows:

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

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

28 (a) The sum of \$800,000;

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

2 (c) On a monthly bases, 10% of the profits of the Business for the preceding month
3 or \$10,000, whichever was greater.

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

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

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

11 18. The Side Agreement was to include the additional, remaining \$400,000 payment
obligation (such that, in aggregate, the monetary components of the Real Estate Purchase Agreement
12 and the Side Agreement totaled \$800,000). The Side Agreement was also to include various other
material terms, including, without limitation, the 10% equity stake and monthly profit sharing (i.e.,
13 10% of profits or a minimum monthly payment of \$10,000).

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

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

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

22 22. At Geraci's request, the parties executed a three-sentence agreement that Geraci stated
was for there to be a record of Cotton's receipt of the \$10,000 "good-faith" deposit (the "November
23 2nd Agreement").

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

25 24. Later that day at 6:55 PM, Cotton replied to Gereaci, noting: "I just noticed the 10%
26 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
27 sell the property. I'll be fine if you would simply acknowledge that here in a reply."

28 25. Approximately 2 hours later at 9:13 PM, Geraci replied, stating "No no problem at all."

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

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

6 (a) The progress of the Critical Zoning Issue that precluded the submission of the CUP
7 application;

8 (b) The balance of the non-Refundable Deposit; and

9 (c) The status of the drafts of the Real Estate Purchase Agreement and the Side
10 Agreement.

11 35. On February 27, 2017, Geraci emailed Cotton a draft Agreement of Purchase and Sale of
12 Real Property for the Property (the "First Draft Real Estate Agreement"). The First Draft Real Estate
13 Agreement completely failed to reflect the agreement that Geraci and Cotton had reach on November 2,
14 2016. Cotton called Geraci who said it was a miscommunication between him and his attorney Gina
15 Austin and he promised to have her revise the First Draft Real Estate Agreement.

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

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

23 40. On March 7, 2017, Geraci emailed Cotton a revised draft of the Side Agreement (the
24 "Second Draft Side Agreement"). The cover email contained the following language: "... the 10k a
25 month might be difficult to hit until the sixth month... can we do 5k, and on the seventh month start
26 10k?"

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

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

98. Geraci breached the contract by, among other reasons, alleging the November 2nd
Agreement is the final agreement between the parties for the purchase of the Property.

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

103. Geraci has breached the agreement by, and among other actions described herein,
alleging the written November 2nd Agreement is the final and entire agreement for the property.

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

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

3 **III. LEGAL STANDARD ON DEMURRER**

4 When a complaint, or any cause of action in a complaint, fails to state facts sufficient to
5 constitute a cause of action, the court may grant a demurrer. (Code Civ. Proc., § 430.30.) The court
6 considers the allegations on the face of the complaint and any matter of which it must or may take
7 judicial notice under the Code of Civil Procedure section 430.30(a). (*Groves v. Peterson* (2002) 100
8 Cal.App.4th 659; Code Civ. Proc., § 430.30(a).) In reviewing the sufficiency of a complaint against a
9 demurrer, the court treats the demurrer as admitting all material facts properly pleaded. (*Blank v.*
10 *Kirwan* (1985) 39 Cal.3d 311, 318 (citing to *Serrano v. Priest* (1971) 5 Cal.3d 584, 591); *Adelman v.*
11 *Associated Ins. Co.* (2001) 90 Cal.App.4th 352, 359.) However, contentions, deductions, or
12 conclusions of fact or law are insufficient to constitute a cause of action. (*Id.*)

13 The court may grant a demurrer with or without leave to amend when it is obvious from the
14 facts alleged that the plaintiff could not state a cause of action. (See *Hillman v. Hillman Land Co.*
15 (1947) 81 Cal.App.2d 174, 181; see generally *Carney v. Simmonds* (1957) 49 Cal.2d 84, 97; see
16 *Smiley v. Citibank* (1995) 11 Cal.4th 138, 164; Code Civ. Proc., § 430.30(j).) The party seeking leave
17 to amend their pleading bears the burden of establishing that there is a reasonable possibility that the
18 defect can be cured by amendment. (See *Blank v. Kirwan, supra*, 39 Cal.3d at 318; *Gould v. Maryland*
19 *Sound Industries* (1995) 31 Cal.App.4th 1137, 1153.)

20 **IV. LEGAL ARGUMENT**

21 **A. The First Cause of Action for Quiet Title Fails to State a Cause of Action Because** 22 **the Allegations are Not Verified**

23 Quiet title actions must be verified. (Code Civ. Proc., § 761.020 (stating in part: "The
24 complaint shall be verified . . .").) The Cross-Complaint is not verified. As Cross-Complainant has
25 not filed a verification under penalty of perjury of the allegations in the first cause of action for quiet
26 title, that claim is subject to demurrer. This defect is usually curable by amendment. (See *Natkin v.*
27 *California Unemployment Insurance Appeals Board* (2013) 219 Cal.App.4th 997.)

28 ///

1 **B. The First Cause of Action for Quiet Title Fails to State a Cause of Action Because**
2 **the Cross-Complaint Fails to Allege any Act by Cross-Defendant Geraci which**
3 **Created an Adverse Claim Against Title**

4 The basic procedures, parties, and pleading requirements for quiet title actions are found in
5 Code of Civil Procedure sections 760.010 to 764.080. The purpose of a quiet title action is to establish
6 title against adverse claims to real property or any interest in the property. (Code Civ. Proc.,
7 § 760.020.) In other words, a quiet title action under Code of Civil Procedure section 760.010 is used
8 to remove any adverse claim against title to real property. It is brought against persons having adverse
9 claims to plaintiff's title, including all persons unknown, claiming any legal or equitable right, title,
10 estate, lien, easement, or interest in the property described in the complaint adverse to plaintiff's title,
11 claims or rights, or any cloud on plaintiff's title, claims or rights thereto.

12 The first cause of action for quiet title does not state a cause of action against Geraci because it
13 fails to allege that he took actions which created a legally adverse interest in the subject property. The
14 Cross-Complaint alleges that Geraci's filing of his Complaint and the related Lis Pendens created the
15 legally adverse interest. (Cross-Complaint ¶ 61.) But such actions are absolutely privileged under
16 Civil Code section 47, subdivisions (b) and (b)(4).

17 Geraci's filing the Complaint and Lis Pendens are absolutely privileged pursuant to Civil Code
18 section 47(b), the so-called litigation privilege. As the California Supreme Court noted in *Albertson v.*
19 *Raboff*, (1956) 46 Cal.2d 375, "It is our opinion that the privilege applies to any publication, such as the
20 recordation of a notice of lis pendens, that is required, e. g., Code Civ. Proc. § 749, or permitted, e. g.,
21 Code Civ. Proc. § 409, by law in the course of a judicial proceeding to achieve the objects of the
22 litigation, even though the publication is made outside the courtroom and no function of the court or its
23 officers is involved."

24 The holding in *Albertson* has been limited or "partially abrogated" by a 1992 amendment to
25 Civil Code section 47. (*Park 100 Investment Group II, LLC v. Ryan* (2009) 180 Cal.App.4th 795, 813,
26 fn. 5.) That amendment added the provision currently set forth at Civil Code section 47(b)(4), which
27 states: "A recorded lis pendens is not a privileged publication unless it identifies an action previously
28 filed with a court of competent jurisdiction which affects the title or right of possession of real property,
as authorized or required by law." Thus, "the litigation privilege...applies *if* the lis pendens

1 (1) identifies an action 'previously filed' in a court of competent jurisdiction that (2) affects title or
2 right to possession of real property." (Citations.) (*La Jolla Group II et al. v. Bruce*, (2012) 211
3 Cal.App.4th 461, 473.)

4 Nevertheless, here, the Lis Pendens does provide a legal description identifying the real
5 property and expressly identifying Geraci's previously filed Complaint by case number and by cause of
6 action. The Complaint asserts claims for breach of contract, breach of the implied covenant of good
7 faith and fair dealing, specific performance, and declaratory relief, which claims all arise under and
8 relate to a written purchase and sale agreement between Geraci and Cotton concerning the subject
9 property, a copy of which is attached to the Complaint. On its face the Complaint is clearly an action
10 that affects title and/or possession to the real property in question. Thus, the statutory conditions for
11 application of the privilege to a recorded lis pendens, as set forth in Civil Code section 47(b)(4), have
12 been satisfied in this case. It follows that the privilege of Civil Code section 47(b) applies to the
13 subject Lis Pendens, thereby precluding liability for slander of title based on the filing of the Complaint
14 and/or the filing and recording of the Lis Pendens.

15 The demurrer to the first cause of action for quiet title must be sustained without leave to amend
16 as it is based exclusively on conduct which is absolutely privileged. This fatal defect cannot be cured
17 by an amended pleading.

18 **C. The Second Cause of Action for Slander of Title Fails to State a Cause of Action**
19 **Because the Complained of Conduct Is Privileged**

20 The elements of a cause of action for slander of title are: (1) a publication; (2) which is without
21 privilege or justification; (3) which is false; and (4) which causes direct and immediate pecuniary loss.
22 (*Alpha and Omega Development, LP v. Whillock Contracting, Inc.*, *supra*, 200 Cal.App.4th at 664.)

23 This cause of action fails for the same reasons the quiet title action fails (see Section B above)
24 because it is based on allegations of wrongful acts that are absolutely privileged as a matter of law or
25 do not disparage title as a matter of law. Inasmuch as these deficiencies cannot be cured the demurrer
26 to this cause of action should be sustained without leave to amend.

27 ///

28 ///

1 **D. The Fifth Cause of Action for Breach of Contract Fails as a Matter of Law as It**
2 **Does Not Plead Whether the Agreement is Written, Oral or Implied**

3 To state a claim for breach of an oral or written contract, a plaintiff must allege (1) the existence
4 of a contract, (2) its own performance or a valid excuse for not performing, (3) the defendant's breach,
5 and (4) resulting damage. (*Oasis West Realty, LLC v. Goldman*, (2011) 51 Cal.4th 811, 821 (listing
6 elements); *Stockton Mortgage, Inc. v. Tope*, (2014) 233 Cal.App.4th 437, 453 ("The elements of a
7 breach of oral contract claim are the same as those for breach of written contract.")) "To prevail on a
8 cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) plaintiff's
9 performance of the contract or excuse for nonperformance, (3) defendant's breach, and (4) resulting
10 damage to the plaintiff." (*Richman v. Hartley*, (2014) 224 Cal.App.4th 1182, 1186.)

11 The pertinent allegations regarding this breach of contract cause of action are found in the
12 Cross-Complaint as follows:

13 96. The agreement reached on November 2nd, 2016 is a valid and binding agreement
14 between Cotton and Geraci and the November 2nd Agreement was meant to be the written instrument
15 that solely memorialized the partial receipt of the Non-Refundable Deposit and was not representative
of the entirety of the agreement.

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

17 98. Geraci breached the contract by, among other reasons, alleging the November 2nd
18 Agreement is the final agreement between the parties for the purchase of the Property.

19 It is basic contract law that a breach of contract occurs when a party to a contract deliberately
20 refuses to do that which he or she has agreed and is required to under the contract. (*Spangenberg v.*
21 *Spangenberg*, (1912) 19 Cal.App. 439.) A contract may be breached by "nonperformance," meaning
22 an unjustified failure to perform a material contractual obligation when performance is due, it may be
23 breached by repudiation, or it may be breached by a combination of the two. (*Central Valley General*
24 *Hosp. v. Smith*, (2009) 162 Cal.App.4th 501.)

25 Cross-Complainant has alleged that Geraci breached the contract by merely asserting that the
26 written November 2nd Agreement is the final agreement between the parties for the purchase and sale
27 of the subject real property. (Cross-Complaint ¶ 98.) Geraci's assertion that the agreement governing
28 the purchase and sale transaction is different than the agreement alleged by Cross-Complainant is not a

breach of that different agreement. In other words, Geraci claiming that the written November 2nd Agreement is the operative agreement does not breach any alleged obligations under the differing agreement alleged by Cross-Complainant. Cross-Complainant is required to plead facts which, if true, would constitute a breach of Geraci's obligations under the agreement alleged by Cross-Complainant.

E. The Sixth Cause of Action for Breach of Oral Contract Fails as a Matter of Law as it Fails to Allege Actionable Breach; It Contradicts the Written Agreement; and It is Barred by the Statute of Frauds

To state a claim for breach of an oral or written contract, a plaintiff must allege (1) the existence of contract, (2) its own performance or a valid excuse for not performing, (3) the defendant's breach, and (4) resulting damage. (*Oasis West Realty, LLC v. Goldman, supra*, 51 Cal.4th at 821 (listing elements); *Stockton Mortgage, Inc. v. Tope, supra*, 233 Cal.App. 4th at 453 ("The elements of a breach of oral contract claim are the same as those for breach of written contract.").)

1. Cross-Complaint Fails to Allege Actionable Breach

The pertinent allegations with regard to the cause of action for breach of oral contract are as follows:

103. Geraci has breached the agreement by, among other actions described herein, alleging the written November 2nd Agreement is the final and entire Agreement.

Again, as with the Fifth Cause of Action for Breach of Contract, the Sixth Cause of Action for Breach of Oral Contract suffers from the same infirmity, i.e., it does not allege that Geraci breached any promise made in the oral contract but merely alleges that Geraci asserts the written November 2nd Agreement is the operative contract. Asserting a different contract is the operative agreement does not breach any of Geraci's obligations under Cross-Complainant's alleged oral contract.

2. An Agreement in Writing May Not be Modified By An Oral Agreement Unless the Oral Agreement is Executed by the Parties

Cross-Complainant acknowledges the parties entered into a written agreement, i.e., "At Geraci's request, the parties executed a three-sentence agreement..." (Complaint ¶ 22); "The agreement reached on November 2nd, 2016 is a valid and binding Agreement was meant to be the written instrument that solely memorialized the partial receipt of the Non-Refundable Deposit and was not representative of the entirety of the agreement." (Cross-Complaint ¶ 96.)

Civil Code section 1698 provides:

- (a) A contract in writing may be modified by a contract in writing.
- (b) A contract in writing may be modified by an oral agreement to the extent that the oral agreement is executed by the parties.
- (c) Unless the contract otherwise expressly provides, a contract in writing may be modified by an oral agreement supported by new consideration. The statute of Frauds (Section 1624) is required to be satisfied if the contract is within its provisions.
- (d) Nothing in this section precludes in an appropriate case the application of the rules of law concerning estoppel novation and substitution of a new agreement, rescission of a written contract by an oral agreement, waiver of a provision of a written contract, or oral independent collateral contracts.

Section 1698 has a dual operation. On one hand it invalidates oral contracts of modification that are unexecuted, and on the other hand, it validates executed agreements that might otherwise fail for lack of consideration. (*D. L. Godbey & Sons Const. Co. v. Deane et al.*, (1952) 39 Cal.2d 429.)

Here, Cross-Complainant is barred by Civil Code section 1698 from alleging a modification of the written contract because there is no modification in writing and no oral agreement has been executed by the parties.

3. The Alleged Oral Contract is Barred by the Statute of Frauds

The Statute of Frauds requires that contracts for the sale of real property must be in writing containing the signatures of both parties as well as details regarding the exact terms of the agreement to which both parties may be held in a dispute. (See Civ. Code, § 1624.) A contract coming within the statute of frauds is invalid unless it is memorialized by a writing subscribed by the party to be charged or by the party's agent. (*Id.*; *Secrest, supra*, 167 Cal.App.4th 544) An agreement for the sale of real property or an interest in real property comes within the statute of frauds. (Civ. Code, § 1624(a)(3).)

The only written contract between the parties is the written November 2nd Agreement executed by both Cotton and Geraci and which is the subject of, and attached to, the underlying Complaint in this case, and for which Cotton does not allege breach of contract. The oral contract alleged by Cross-Complaint for the purchase and sale of the subject real property is not in writing and thus violates the Statute of Frauds and is therefore invalid.

///

1 **F. The Seventh Cause of Action for Breach of Implied Contract Fails as a Matter of**
2 **Law Because There Cannot be an Implied Contract Which Contradicts a Written**
3 **Contract, Additionally, the Alleged Implied Contract Violates the Statute of Frauds**

4 **1. The Alleged Implied Contract is Barred by the Statute of Frauds**

5 The Statute of Frauds requires contracts for the sale of real property to be in writing and contain
6 the signatures of both parties as well as details regarding the exact terms of the agreement to which
7 both parties may be held in a dispute. (See Civ. Code, § 1624.) A contract coming within the statute of
8 frauds is invalid unless it is memorialized by a writing subscribed by the party to be charged or by the
9 party's agent. (*Id.*; *Secrest, supra*, 167 Cal.App.4th 544) An agreement for the sale of real property or
10 an interest in real property comes within the statute of frauds. (Civ. Code, § 1624(a)(3).)

11 The contract itself need not be in writing, but there must be some note in writing signed by the
12 party to be charged, in order for the agreement to be valid. If such does not exist, the contract is
13 invalid. The only written contract between the parties is the written November 2nd Agreement
14 executed by both Cotton and Geraci and which is the subject of and attached to underlying Complaint
15 in this case, and for which Cotton does not allege breach of contract. The implied contract alleged by
16 Cross-Complainant for the purchase and sale of the subject real property is not in writing and thus
17 violates the Statute of Frauds and is, therefore, invalid.

18 **2. There Cannot be an Implied Contract Which Contradicts a Written**
19 **Contract**

20 It is well-settled in California that there cannot be both an express (written or oral) contract and
21 an implied contract that cover the same subject, but require different results. (*Haggard v. Kimberly*
22 *Quality Care, Inc.*, (1995) 39 Cal.App.4th 508, 521.) “[A]n action based on an implied-in-fact or
23 quasi-contract cannot lie where there exists between the parties a valid express contract covering the
24 same subject matter.” (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.*, (1996)
25 44 Cal.App.4th 194, 203.) In other words, there can be no implied contract separate or different from
26 the Contract. (*Haggard, supra*, 39 Cal.App.4th at 521; *Lance Camper, supra*, 44 Cal.App.4th at 203.)

27 The written November 2nd Agreement between the parties states:

28 Agreement between Larry Geraci or assignee and Darryl Cotton:

1 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA
2 for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana
3 Dispensary. (CUP for a dispensary)

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

8 Cotton alleges that the Agreement actually should have contained a 10% equity stake and a non-
9 refundable \$50,000 deposit. (Cross-Complaint ¶¶ 14b and 16) These allegedly implied provisions are
10 directly contrary to the written agreement which (1) makes no reference to a 10% equity share
11 whatsoever and (2) requires a \$10,000 deposit instead of the alleged \$50,000 deposit.

12 As the alleged implied-in-fact contract contradicts the written November 2nd Agreement, the
13 demurrer to this cause of action should be sustained without leave to amend.

14 **G. The Eighth Cause of Action for Breach of the Implied Covenant of Good Faith and**
15 **Fair Dealing Does Not State a Cause of Action Because It is Merely Superfluous,**
16 **And In Any Event It Cannot Support A Prayer For Punitive Damages**

17 "The implied covenant of good faith and fair dealing rests upon the existence of some specific
18 contractual obligation. 'The covenant of good faith is read into contracts in order to protect the express
19 covenants or promises of the contract, not to protect some general public policy interest not direct tied
20 to the contract's purpose.' . . . 'In essence, the covenant is implied as a supplement to the express
21 contractual covenants, to prevent a contracting party from engaging in conduct which (while not
22 technically transgressing the express covenants) frustrates the other party's rights to the benefits of the
23 contract.'" (*Racine v. Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026,
24 1031-1032.)

25 It is self-evident that there must be a contract in order to have a breach of the covenant of good
26 faith and fair dealing implied in that contract. Indeed, it is the first element of the cause of action. (See
27 CACI 325.) Here, there is a written agreement (the written November 2nd Agreement); however, it
28 does not appear that Cotton is claiming a breach of the covenant of good faith and fair dealing as to that
contract but instead is claiming breach of the implied covenant of good faith and fair dealing in the oral
and/or implied-in-fact contracts that he has alleged. For the reasons stated above, those contracts are
invalid. It follows then that this cause of action too, is invalid.

Moreover, if a claim for the breach of the implied covenant of good faith and fair dealing does

nothing more than allege a mere contract breach and, relying on the same alleged acts, simply seeks the same damages or other relief already claimed in a contract cause of action, it may be disregarded as superfluous because no additional claim is actually stated. (*Careau & Co. v. Security Pacific Business Credit, Inc.*, (1990) 222 Cal.App.3d 1371, 1395.)

In any event, Cross-Complainant's allegation in ¶ 118 that he is entitled to "exemplary and/or punitive damages" for breach of the covenant of good faith and fair dealing is impermissible. The California punitive damages statute provides that the plaintiff may only recover punitive damages "[i]n an action for the breach of an obligation not arising from contract." (Civ. Code, § 3294(a).) Thus, a breach of contract action will not support a punitive damage award no matter how egregious the defendant's conduct. (*Cates Const., Inc. v. Talbot Partners*, (1999) 21 Cal.4th 28, 61) (punitive damages may not be awarded for breach of contract even where the defendants' conduct was "willful, fraudulent, or malicious"). Further, compensation for a breach of the implied covenant of good faith and fair dealing is limited to contract rather than tort remedies and may not include punitive damages. (*Id.* at 43-44.)

H. The Tenth Cause of Action for Conspiracy Does Not State a Cause of Action Because as a Matter of Law There is No Separate Cause of Action for Conspiracy.

The Tenth Cause of Action for civil conspiracy fails as a matter of law because there is no such cause of action. (*Moran v. Endres, supra*, 135 Cal.App.4th at 954.) Rather, conspiracy is " 'a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its preparation.' ... 'A conspiracy cannot be alleged as a tort separate from the underlying wrong it is organized to achieve.' (Citation.)" (*Id.* at 954-955.) Inasmuch as civil conspiracy is not a separate cause of action, Geraci's demurrer to this "cause of action" should be sustained without leave to amend.

I. The Eleventh Cause of Action for Injunctive Relief Does Not State a Cause of Action Because as a Matter of Law Injunctive Relief is a Remedy, Not a Basis for Imposition of Liability.

A cause of action for an injunction is not cognizable as a matter of law. "Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted. (Citation.)" (*Shell Oil Co. v. Richter, supra*, 52 Cal.App.2d at 168; see also *County of Del*

1 *Norte v. City of Crescent City, supra*, 71 Cal.App.4th at 973 (a permanent injunction is attendant to an
2 underlying cause of action.) Inasmuch as injunctive relief is not a separate cause of action, Berry's
3 demurrer to this "cause of action" should be sustained without leave to amend.

4 **V. LEAVE TO AMEND**

5 The court may grant a demurrer with or without leave to amend, and the burden is on the party
6 seeking leave to amend their pleading to establish that the pleading is capable of amendment. (See
7 *Hillman v. Hillman Land Co., supra*, 81 Cal.App.2d at 181; see generally *Carney v. Simmonds, supra*,
8 49 Cal.2d at 97; see *Smiley v. Citibank, supra*, 11 Cal.4th at 164; see *Blank v. Kirwan, supra*, 39 Cal.3d
9 at 318; *Gould v. Maryland Sound Industries, supra*, 31 Cal.App.4th at 1153; Code Civ. Proc., § 430.30;
10 Cal. Rules of Court, rule 3.1320(g).) A plaintiff does not meet its burden unless it advises the trial
11 court of new information that would contribute to a meaningful amendment. (See e.g. *Ross v. Creel*
12 *Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 749.)

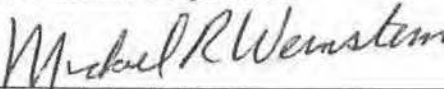
13 This Court should grant the motion *without leave to amend* as to each of the causes of action for
14 conspiracy, injunctive relief, and slander of title as Cross-Complainant cannot amend to remedy the
15 infirmities with these causes of action. As to the other causes of action, they should be sustained
16 without leave to amend, *unless* Cross-Complainant makes an offer of proof that he can in good faith
17 allege facts establishing the elements of each of the remaining claims.

18 **VI. CONCLUSION**

19 For the foregoing reasons and subject to a sufficient offer of proof, Geraci's demurrers to each
20 of the causes of action should each be sustained without leave to amend.

21
22 Dated: June 16, 2017

FERRIS & BRITTON,
A Professional Corporation

23
24 By: 

25 Michael R. Weinstein
26 Scott H. Toothacre

27 Attorneys for Plaintiff and Cross-Defendant
28 LARRY GERACI

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

Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**DECLARATION OF MICHAEL R.
WEINSTEIN IN SUPPORT OF CROSS-
DEFENDANT LARRY GERACI'S
DEMURRER TO CROSS-COMPLAINT
BY DARRYL COTTON**

[IMAGED FILE]

Hearing Date: July 14, 2017
Hearing Time: 9:00 a.m.

Complaint Filed: March 21, 2017
Trial Date: Not Yet Set

I, Michael R. Weinstein, declare:

1. I am an adult individual residing in the County of San Diego, State of California, and I am the attorney in this action for Plaintiff and Cross-Defendant, LARRY GERACI. I have personal knowledge of the foregoing facts and if called as a witness could and would so testify.

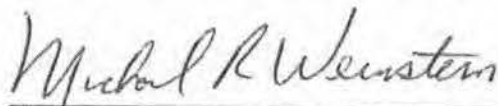
2. The purpose of this declaration is to satisfy the requirements of Code of Civil Procedure section 430.41(a)(3).

1 3. On June 9, 2017, I emailed plaintiff, DARRYL COTTON, who is acting as his own
2 attorney, advising him that Mr. Geraci has objections to the Cross-Complaint and intended to file a
3 demurrer objecting to some, but not all, of the alleged causes of action asserted in the Cross-Complaint.
4 I further advised him that section 430.41(a) requires me to meet and confer with him in person or by
5 telephone for the purpose of determining whether an agreement can be reached that would resolve
6 Mr. Geraci's objections to be raised in the demurrer. To satisfy the requirements of
7 section 430.41(a)(1), I attached a draft Memorandum of Points and Authorities in support of the
8 intended demurrer which set forth the grounds for demurrer and the supporting legal reasons. The draft
9 Memorandum identified all of the specific causes of action that we believe are subject to demurrer and
10 identified with legal support the basis of the deficiencies. I further advised him that under section
11 430.41(a), as the party who filed the Cross-Complaint, he should provide me with his legal support for
12 his position that his Cross-Complaint was legally sufficient or, in the alternative, how it might be
13 amended to cure any legal insufficiency. Finally, I advised him that I was available the following week
14 on most dates/times to meet and confer by telephone or in person to discuss the issues raised by
15 Geraci's intended demurrer to the Cross-Complaint and asked that he let me know the date/time when
16 he would be available to do so.

17 4. Mr. Cotton responded immediately (later that evening) and thereafter we exchanged
18 emails attempting to set up a time for a meet and confer telephone call on Monday, June 12, 2017.
19 However, on Saturday, June 10, 2017, I received a further email from Mr. Cotton stating, "After
20 reading your draft of the Memorandum of Points and Authorities I believe I will retain counsel going
21 forward. I'll have my attorney contact you next week to discuss these points." On Sunday, June 11,
22 2017, I emailed back Mr. Cotton thanking him for letting me know and telling him I looked forward to
23 speaking with this counsel. I have not yet been contacted by his counsel so have not been able to meet
24 and confer regarding the demurrer.

25 I declare under penalty of perjury under the laws of the State of California, that the foregoing is
26 true and correct of my personal knowledge.

27 Dated: June 16, 2017


MICHAEL R. WEINSTEIN

1 FERRIS & BRITTON
A Professional Corporation
2 Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
3 501 West Broadway, Suite 1450
San Diego, California 92101
4 Telephone: (619) 233-3131
Fax: (619) 232-9316
5 mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

6
7 Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

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

10 LARRY GERACI, an individual,

11 Plaintiff,

12 v.

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

15 Defendants.

16 DARRYL COTTON, an individual,

17 Cross-Complainant,

18 v.

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

21 Cross-Defendants.
22
23
24
25
26
27
28

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

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

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

4 On, June 16, 2017, I served the following documents:

- 5 1. **CROSS-DEFENDANT LARRY GERACI'S NOTICE OF DEMURRER AND**
6 **DEMURRER TO CROSS-COMPLAINT BY DARRYL COTTON;**
- 7 2. **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CROSS-DEFENDANT**
8 **LARRY GERACI'S DEMURRER TO CROSS-COMPLAINT BY DARRYL**
9 **COTTON;**
- 10 3. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CROSS-**
11 **DEFENDANT LARRY GERACI'S DEMURRER TO CROSS-COMPLAINT BY**
12 **DARRYL COTTON; and**
- 13 4. **DECLARATION OF MICHAEL R. WEINSTEIN IN SUPPORT OF CROSS-**
14 **DEFENDANT LARRY GERACI'S DEMURRER TO CROSS-COMPLAINT BY**
15 **DARRYL COTTON.**

16 **[X] MAIL.** I placed a true copy of each document in a separate envelope addressed to each addressee,
17 respectively, and then sealed each envelope and, with postage thereon fully prepaid, I placed each for
18 deposit in the United States Postal Service, this same day, at my business address shown above,
19 following ordinary business practices:

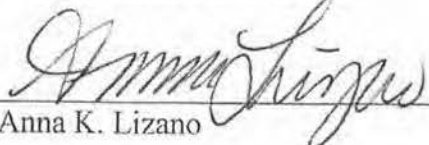
20 Darryl Cotton
21 6176 Federal Boulevard
22 San Diego, CA 92114
23 Tel: (619) 954-4447
24 Fax: (619) 229-9387

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

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

Dated: June 16, 2017

FERRIS & BRITTON,
A Professional Corporation


Anna K. Lizano

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

Attorneys for Defendant and Cross-Complainant Darryl Cotton

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

FIRST AMENDED CROSS-COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FALSE PROMISE;
- (5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
- (6) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS; AND
- (7) DECLARATORY RELIEF.

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

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

2 1. Venue is proper in this Court because the events described below took place in
3 this judicial district and the real property at issue is located in this judicial district.

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

6 3. Cotton was at all times material to this action the sole record owner of the
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114
8 ("Property") which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci
10 ("Geraci") is, and at all times mentioned was, an individual residing within the County of San
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is,
13 and at all times mentioned was, an individual residing within the County of San Diego,
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed
17 and believes that ROES 1 through 50 are in some way responsible for the events described in
18 this First Amended Cross-Complaint ("FACC"). Cotton will seek leave to amend this FACC
19 when the true names and capacities of these cross-defendants have been ascertained.

20 7. At all times mentioned, each cross-defendant was an agent, principal,
21 representative, employee, or partner of the other cross-defendants, and acted within the course
22 and scope of such agency, representation, employment, and/or partnership, and with
23 permission of the other cross-defendants.

24 GENERAL ALLEGATIONS

25 8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the
26 Property. Geraci desired to buy the Property from Cotton because it meets certain
27 requirements of the City of San Diego ("City") for obtaining a Conditional Use Permit
28 ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the Property.

1 The Property is one of a very limited number of properties located in San Diego City Council
2 District 4 that potentially satisfy the CUP requirements for a MMCC.

3 9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively
4 regarding the terms of a potential sale of the Property. During these negotiations, Geraci
5 represented to Cotton, among other things, that:

6 (a) Geraci was a trustworthy individual because Geraci operated in a
7 fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for
8 the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial
9 advisory business;

10 (b) Geraci, through his due diligence, had uncovered a critical zoning issue
11 that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci
12 lobbied with the City to have the zoning issue resolved first;

13 (c) Geraci, through his personal and professional relationships, was in a
14 unique position to lobby and influence key City political figures to have the zoning issue
15 favorably resolved and obtain approval of the CUP application once submitted; and

16 (d) Geraci was qualified to successfully operate a MMCC because he owned
17 and operated several other marijuana dispensaries in the San Diego County area.

18 10. Cotton, acting in good faith based upon Geraci's representations during the sale
19 negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a
20 CUP application at the Property while the parties negotiated the terms of a possible deal.
21 However, despite the parties' work on a CUP application, Geraci represented to Cotton that a
22 CUP application for the Property could not actually be submitted until after the zoning issue
23 was resolved or the application would be summarily rejected by the City.

24 11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership
25 Disclosure Statement, which is a required component of all CUP applications. Geraci told
26 Cotton that he needed the signed document to show that Geraci had access to the Property in
27 connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of
28 a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement

1 as an indication of good-faith while the parties negotiated on the sale terms. At no time did
2 Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering
3 into a final written agreement for the sale of the Property. In fact, Geraci repeatedly
4 maintained to Cotton that the zoning issue needed to be resolved before a CUP application
5 could even be submitted.

6 12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in
7 October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However,
8 Cotton has never met Berry personally and never entered into a lease or any other type of
9 agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who
10 was very familiar with MMCC operations and who was involved with his other MMCC
11 dispensaries. Cotton's understanding was that Geraci was unable to list himself on the
12 application because of Geraci's other legal issues but that Berry was Geraci's agent and was
13 working in concert with him and at his direction. Based upon Geraci's assurances that listing
14 Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton
15 executed the Ownership Disclosure Statement that Geraci provided to him.

16 13. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to
17 negotiate the final terms of their deal for the sale of the Property. At that meeting, the parties
18 reached an oral agreement on the material terms for the sale of the Property. The parties
19 further agreed to cooperate in good faith to promptly reduce the agreed-upon terms to writing.

20 14. The material terms of the agreement reached by the parties at the November 2,
21 2016 meeting included, without limitation, the following key deal points:

22 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the
23 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton
24 immediately upon the parties' execution of final integrated written agreements and the
25 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the
26 Property;

27 / / / /

28 / / / /

1 (b) The parties agreed that the City's approval of a CUP application to
2 operate a MMCC at the Property would be a condition precedent to closing of the sale (In other
3 words, the sale of the Property would be completed and title transferred to Geraci only upon
4 the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of
5 the purchase price to Cotton. If the City denied the CUP application, the parties agreed the
6 sale of the Property would be automatically terminated and Cotton would be entitled to retain
7 the entire \$50,000 non-refundable deposit);

8 (c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the
9 MMCC that would operate at the Property following the City's approval of the CUP
10 application; and

11 (d) In addition, Geraci agreed that, after the MMCC commenced operations
12 at the Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits
13 and Geraci would guarantee that such payments would amount to at least \$10,000 per month.

14 15. At Geraci's request, the sale was to be documented in two written agreements, a
15 real estate purchase agreement and a separate side agreement, which together would contain all
16 the agreed-upon terms from the November 2, 2016 meeting. At that meeting, Geraci also
17 offered to have his attorney "quickly" draft the final integrated agreements and Cotton agreed.

18 16. Although the parties came to a final agreement on the purchase price and
19 deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come
20 up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he
21 had limited cashflow and would require the cash he did have to fund the lobbying efforts
22 needed to resolve the zoning issue at the Property and to prepare the CUP application.

23 17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit
24 but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of
25 "good-faith," even though the parties had not reduced their final agreement to writing. Cotton
26 was understandably concerned that Geraci would file the CUP application before paying the
27 balance of the non-refundable deposit and Cotton would never receive the remainder of the
28 non-refundable deposit if the City denied the CUP application before Geraci paid the

1 remaining \$40,000 (thereby avoiding the parties' agreement that the \$50,000 non-refundable
2 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).
3 Despite his reservations, Cotton agreed to Geraci's request and accepted the lesser \$10,000
4 initial deposit amount based upon Geraci's express promise to pay the \$40,000 balance of the
5 non-refundable deposit no later than prior to submission of the CUP application.

6 18. At the November 2, 2016 meeting, the parties executed a three-sentence
7 document related to their agreement at Geraci's request, which read as follows:

8 Darryl Cotton has agreed to sell the property located at 6176
9 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or
10 assignee on the approval of a Marijuana Dispensary. (CUP for a
dispensary)

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

13 Geraci assured Cotton that the document was intended to merely create a record of Cotton's
14 receipt of the \$10,000 "good-faith" deposit and provide evidence of the parties' agreement to
15 enter into final integrated agreement documents related to the sale of the Property. That same
16 day, Geraci emailed Cotton a scanned copy of the executed document. In an email to Geraci
17 several hours later following closer review of the document, Cotton wrote:

18 I just noticed the 10% equity position in the dispensary was not
19 language added into that document. I just want to make sure that
20 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.

21 Approximately two hours later, Geraci replied via email, "No no problem at all."

22 19. Thereafter, Cotton continued to operate in good faith under the assumption that
23 Geraci's attorney would promptly draft the fully integrated agreement documents as the parties
24 had agreed and the parties would shortly execute the written agreements to document their
25 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive
26 and continuously failed to make substantive progress on his promises, including his promises
27 to promptly deliver the draft agreement documents, pay the balance of the non-refundable
28 deposit, and keep Cotton apprised of the status of the zoning issue.

1 20. Over the weeks and months that followed, Cotton repeatedly reached out to
2 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the
3 non-refundable deposit, and the status of the draft documents. For example, on January 6,
4 2017, after Cotton became exasperated with Geraci's failure to provide any substantive
5 updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I
6 need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine
7 the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month
8 I'll try to call you later today still very sick."

9 21. Between January 18, 2017 and February 7, 2017, the following exchange took
10 place between Geraci and Cotton via text message:

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

12 Cotton: "This resolves the zoning issue?"

13 Geraci: "Yes"

14 Cotton: "Excellent"...

15 Cotton: "How goes it?"

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

17 Cotton: "Whats new?"

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

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

23 The above communications between Geraci and Cotton regarding the zoning issue conveyed to
24 Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had
25 previously represented to Cotton that the CUP application could not be submitted until the
26 zoning issue was resolved, which was key as Geraci's submission of the CUP application was
27 the outside date the parties had agreed upon for payment of the \$40,000 balance of the non-
28 refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he
29 knew they were untrue as he had in fact already submitted the CUP application months prior.

30 22. With respect to the promised final agreement documents, Geraci continuously
31 failed to timely deliver the documents as agreed. On February 15, 2017, more than two
32 months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the

1 documents with the attorney and hopefully will have them by the end of this week.” On
2 February 22, 2017, Geraci again texted Cotton, “Contract should be ready in a couple days.”

3 23. On February 27, 2017, nearly three months after the parties reached an
4 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase
5 agreement and stated: “Attached is the draft purchase of the property for 400k. The additional
6 contract for the 400k should be in today and I will forward it to you as well.” However, upon
7 review, the draft purchase agreement was missing many of the key deal points agreed upon by
8 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,
9 Geraci claimed it was simply due to miscommunication with his attorney and promised to have
10 her revise the agreement to accurately reflect their deal points.

11 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side
12 agreement that was to incorporate other terms of the parties’ deal. Cotton immediately
13 reviewed the draft side agreement and emailed Geraci the next day stating: “I see that no
14 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement
15 completely.” Paragraph 3.11 of the draft side agreement stated that the parties had no joint
16 venture or partnership agreement of any kind, which contradicted the parties’ express
17 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a
18 condition of the sale of the Property.

19 25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an
20 attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci
21 dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a
22 misunderstanding with his attorney and that Cotton could speak with her directly regarding any
23 comments on the drafts.

24 26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement
25 along with a cover email that stated: “... the 10k a month might be difficult to hit until the
26 sixth month... can we do 5k, and on the seventh month start 10k?”. Cotton, increasingly
27 frustrated with Geraci’s failure to abide by the parties’ agreement, responded to Geraci on
28 March 16, 2017 in an email which included the following:

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

13 27. On the same day, Cotton contacted the City's Development Project Manager
14 responsible for CUP applications. At that time, Cotton discovered for the first time that Geraci
15 had submitted a CUP application for the Property way back on October 31, 2016, before the
16 parties even agreed upon the final terms of their deal and contrary to Geraci's express
17 representations over the previous five months. Cotton expressed his disappointment and
18 frustration in the same March 16, 2017 email to Geraci:

19 I found out today that a CUP application for my property was
20 submitted in October, which I am assuming is from someone
21 connected to you. Although, I note that you told me that the
22 \$40,000 deposit balance would be paid once the CUP was
23 submitted and that you were waiting on certain zoning issues to be
24 resolved. Which is not the case.

25 28. On March 17, 2017, after Geraci requested an in-person meeting via text
26 message, Cotton replied in an email to Geraci which including the following:

27 I would prefer that until we have final agreements that we converse
28 exclusively via email. My greatest concern is that you get a denial
on the CUP application and not provide the remaining \$40,000
non-refundable deposit. 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... Please confirm by 12:00 PM Monday that
you are honoring our agreement and will have final drafts
(reflecting completely the below) by Wednesday at 12:00 PM.

Geraci did not provide the requested confirmation that he would honor their agreement or
proffer the requested agreements prior to Cotton's deadlines.

1 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to
2 execute the document Geraci now alleges is the fully integrated agreement between the parties
3 by representing that (i) the CUP application would not be filed until the zoning issue was
4 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at
5 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000
6 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci
7 understood and agreed the document was not intended to be the final agreement between the
8 parties for the purchase of the Property and did not contain all material terms of the parties'
9 agreement;

10 (c) On multiple occasions, Geraci represented to Cotton that a CUP
11 application for the Property could not be submitted until after the zoning issue was resolved;

12 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
13 yet filed a CUP application with respect to the Property when the CUP application had already
14 been filed; and

15 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
16 work of preparing a CUP application was merely underway, when, in fact, the CUP application
17 had already been filed.

18 41. Defendants, through their intentional misrepresentations and the actions taken in
19 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
20 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
21 attorneys' fees to protect his interest in his Property. As a further result of the intentional
22 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
23 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

24 42. The misrepresentations were intentional, willful, malicious, outrageous,
25 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent
26 to deprive Cotton of his interest in the Property. This intentional, willful, malicious,
27 outrageous and unjustified conduct entitles Cotton to an award of general, compensatory,
28 special, exemplary and/or punitive damages under Civil Code section 3294.

1 THIRD CAUSE OF ACTION

2 (Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

3 43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above,
4 as though set forth in full at this point.

5 44. Defendants made statements to Cotton that: (a) were false representations of
6 material facts; (b) defendants had no reasonable grounds for believing were true when the
7 statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and
8 justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in
9 causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and
10 proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

11 45. The negligent misrepresentations by defendants include at least the following:

12 (a) On or about October 31, 2016, Geraci fraudulently induced Cotton to
13 execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to
14 show he had access to the Property in connection with his lobbying efforts to resolve the
15 zoning issue and in connection with the preparation of a CUP application; and (ii) by
16 indicating the document would only be used as a show of good-faith while the parties
17 negotiated on the sale terms;

18 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to
19 execute the document Geraci now alleges is the fully integrated agreement between the parties
20 by representing that (i) the CUP application would not be filed until the zoning issue was
21 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at
22 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000
23 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci
24 understood and agreed the document was not intended to be the final agreement between the
25 parties for the purchase of the Property and did not contain all material terms of the parties'
26 agreement;

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1 (c) On multiple occasions, Geraci represented to Cotton that a CUP
2 application for the Property could not be submitted until after the zoning issue was resolved;

3 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
4 yet filed a CUP application with respect to the Property when the CUP application had already
5 been filed; and

6 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
7 work of preparing a CUP application was merely underway, when, in fact, the CUP application
8 had already been filed.

9 46. Defendants, through their negligent misrepresentations and the actions taken in
10 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
11 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
12 attorneys' fees to protect his interest in his Property. As a further result of the negligent
13 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
14 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

15 FOURTH CAUSE OF ACTION

16 (False Promise – Against Geraci and ROES 1 through 50)

17 47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above,
18 as though set forth in full at this point.

19 48. On November 2, 2016, among other things, Geraci falsely promised the
20 following to Cotton without any intent of fulfilling the promises:

21 (a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable
22 deposit prior to filing a CUP application;

23 (b) Geraci would cause his attorney to promptly draft the final integrated
24 agreements to document the agreed-upon deal between the parties;

25 (c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the
26 monthly profits for the MMCC at the Property if the CUP was granted; and

27 (d) Cotton would be a 10% owner of the MMCC business operating at
28 Property if the CUP was granted.

1 would have resulted, in an economic benefit to Cotton based on and in connection with the sale
2 of the Property.

3 57. Defendants knew of Cotton's ongoing and prospective business relationship
4 with the City arising from and related to the CUP Application and defendants knew of Cotton's
5 ongoing and prospective business relationship with the new buyer for the Property.

6 58. Defendants intentionally engaged in acts designed to interfere, and which have
7 interfered and are likely to continue to interfere, with Cotton's relationship with the City, the
8 CUP application, and the new buyer, including without limitation, their refusal to acknowledge
9 they have no interest in the Property and/or the CUP application.

10 59. As a direct and proximate result of the defendants' conduct, Cotton has suffered
11 and will continue to suffer damages in an amount not yet fully ascertainable and to be
12 determined according to proof at trial.

13 60. The aforementioned conduct by defendants was despicable, willful, malicious,
14 fraudulent, and oppressive conduct which subjected Cotton to cruel and unjust hardship in
15 conscious disregard of Cotton's rights, so as to justify an award of exemplary and punitive
16 damages in an amount to be determined according to proof at trial, including pursuant to Civil
17 Code section 3294.

18 SIXTH CAUSE OF ACTION

19 (Negligent Interference with Prospective
20 Economic Relations – Against Geraci and ROES 1 through 50)

21 61. Cotton realleges and incorporates by reference paragraphs 1 through 60, above,
22 as though set forth in full at this point.

23 62. Cotton has an ongoing prospective business relationship with the City that was
24 resulting, and would have resulted, in an economic benefit to Cotton based on and in
25 connection with the approval of the CUP application. In addition, Cotton has an ongoing
26 prospective business relationship with the new buyer of the Property that was resulting, and
27 would have resulted, in an economic benefit to Cotton based on and in connection with the sale
28 of the Property.

1 PRAYER FOR RELIEF

2 WHEREFORE, Cotton prays for relief as follows:

3 ON THE FIRST CAUSE OF ACTION:

4 1. For general, special, and consequential damages in an amount not yet fully
5 ascertained and according to proof at trial, but at least \$40,000; and

6 2. For compensatory and reliance damages in an amount not yet fully ascertained
7 and according to proof at trial.

8 ON THE SECOND CAUSE OF ACTION

9 1. For general, special, and consequential damages in an amount not yet fully
10 ascertained but at least \$40,000;

11 2. For compensatory and reliance damages in an amount not yet fully ascertained
12 and according to proof at trial; and

13 3. For punitive and exemplary damages in an amount just and reasonable to punish
14 and deter defendants.

15 ON THE THIRD CAUSE OF ACTION

16 1. For general, special, and consequential damages in an amount not yet fully
17 ascertained but at least \$40,000; and

18 2. For compensatory and reliance damages in an amount not yet fully ascertained
19 and according to proof at trial.

20 ON THE FOURTH CAUSE OF ACTION

21 1. For general, special, and consequential damages in an amount not yet fully
22 ascertained but at least \$40,000;

23 2. For compensatory and reliance damages in an amount not yet fully ascertained
24 and according to proof at trial; and

25 3. For punitive and exemplary damages in an amount just and reasonable to punish
26 and deter defendants.

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1 ON THE FIFTH CAUSE OF ACTION

- 2 1. For general, special, and consequential damages in an amount not yet fully
3 ascertained but at least \$40,000;
- 4 2. For compensatory and reliance damages in an amount not yet fully ascertained
5 and according to proof at trial; and
- 6 3. For punitive and exemplary damages in an amount just and reasonable to punish
7 and deter defendants.

8 ON THE SIXTH CAUSE OF ACTION

- 9 1. For general, special, and consequential damages in an amount not yet fully
10 ascertained but at least \$40,000; and
- 11 2. For compensatory and reliance damages in an amount not yet fully ascertained
12 and according to proof at trial.

13 ON THE SEVENTH CAUSE OF ACTION

- 14 1. For a judicial declaration that defendants have no right or interest whatsoever in
15 the Property;
- 16 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP
17 application for the Property submitted on or around October 31, 2016, defendants have no right
18 or interest in said CUP application, and that defendants are enjoined from further pursuing
19 such CUP application for the Property; and
- 20 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be
21 released.

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1 ON ALL CAUSES OF ACTION

- 2 1. For interest on all sums at the maximum legal rates from dates according to
3 proof;
4 2. For costs of suit; and
5 3. For such other relief as the Court deems just.

6 DATED: June 30, 2017

Respectfully submitted,

7 FINCH, THORNTON & BAIRD, LLP

8
9 By: 

DAVID S. DEMIAN

ADAM C. WITT

Attorneys for Defendant and Cross-Complainant
Darryl Cotton

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DAVID S. DEMIAN, SBN 220628
E-MAIL: ddemian@ftblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: owitt@ftblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

Attorneys for Defendant Darryl Cotton

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CENTRAL DIVISION

2017 JUL -7 A 9:33

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

I, Holly J. Glavinic, declare that:

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California, where the mailing occurred; and my business address is 4747 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I caused to be served the following document(s): FIRST AMENDED CROSS-COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as follows:

/////

/////

1 Michael R. Weinstein, Esq.
2 Scott H. Toothacre, Esq.
3 Ferris & Britton
4 A Professional Corporation
5 501 West Broadway, Suite 1450
6 San Diego, California 92101
7 Telephone: (619) 233-3131
8 Facsimile: (619) 232-9316
9 Email: mweinstein@ferrisbritton.com
10 stoothacre@ferrisbritton.com
11

ATTORNEYS FOR PLAINTIFF AND
CROSS-DEFENDANT LARRY GERACI

7 Michael R. Weinstein, Esq.
8 Scott H. Toothacre, Esq.
9 Ferris & Britton
10 A Professional Corporation
11 501 West Broadway, Suite 1450
12 San Diego, California 92101
13 Telephone: (619) 233-3131
14 Facsimile: (619) 232-9316
15 Email: mweinstein@ferrisbritton.com
16 stoothacre@ferrisbritton.com
17

ATTORNEYS FOR CROSS-DEFENDANT
REBECCA BERRY

13 I then sealed the envelope(s) and, with the postage thereon fully prepaid, either
14 deposited it/each in the United States Postal Service or placed it/each for collection and
15 mailing on July 6, 2017, at San Diego, California, following ordinary business practices.

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

18 Executed on July 6, 2017.

19 
20 Holly J. Glavinic
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26
27

28 2403.004/POS.hjg

DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@fblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@fblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

SECOND AMENDED CROSS-COMPLAINT
FOR:

- (1) BREACH OF CONTRACT;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FALSE PROMISE; AND
- (5) DECLARATORY RELIEF.

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

/////

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

2 1. Venue is proper in this Court because the events described below took place in
3 this judicial district and the real property at issue is located in this judicial district.

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

6 3. Cotton was at all times material to this action the sole record owner of the
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114
8 ("Property") which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci
10 ("Geraci") is, and at all times mentioned was, an individual residing within the County of San
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is,
13 and at all times mentioned was, an individual residing within the County of San Diego,
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed
17 and believes that ROES 1 through 50 are in some way responsible for the events described in
18 this Second Amended Cross-Complaint. Cotton will seek leave to amend this Second
19 Amended Cross-Complaint when the true names and capacities of these cross-defendants have
20 been ascertained.

21 7. At all times mentioned, each cross-defendant was an agent, principal,
22 representative, employee, or partner of the other cross-defendants, and acted within the course
23 and scope of such agency, representation, employment, and/or partnership, and with
24 permission of the other cross-defendants.

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GENERAL ALLEGATIONS

8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it meets certain requirements of the City of San Diego ("City") for obtaining a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the Property. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. During these negotiations, Geraci represented to Cotton, among other things, that:

(a) Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;

(b) Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci lobbied with the City to have the zoning issue resolved first;

(c) Geraci, through his personal and professional relationships, was in a unique position to lobby and influence key City political figures to have the zoning issue favorably resolved and obtain approval of the CUP application once submitted; and

(d) Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area.

10. Cotton, acting in good faith based upon Geraci's representations during the sale negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a CUP application at the Property while the parties negotiated the terms of a possible deal. However, despite the parties' work on a CUP application, Geraci represented to Cotton that a CUP application for the Property could not actually be submitted until after the critical zoning issue was resolved or the application would be summarily rejected by the City.

11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership Disclosure Statement, which is a required component of all CUP applications. Geraci told Cotton that he needed the signed document to show that Geraci had access to the Property in connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement as an indication of good-faith while the parties negotiated on the sale terms. At no time did Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering into a final written agreement for the sale of the Property. In fact, Geraci repeatedly maintained to Cotton that the critical zoning issue needed to be resolved before a CUP application could even be submitted.

12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However, Cotton has never met Berry personally and never entered into a lease or any other type of agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who was very familiar with MMCC operations and who was involved with his other MMCC dispensaries. Cotton's understanding was that Geraci was unable to list himself on the application because of Geraci's other legal issues but that Berry was Geraci's agent and was working in concert with him and at his direction. Based upon Geraci's assurances that listing Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton executed the Ownership Disclosure Statement that Geraci provided to him.

13. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to negotiate the final terms of their deal for the sale of the Property. The parties reached an agreement on the material terms for the sale of the Property. The parties further agreed to cooperate in good faith to promptly reduce the complete agreement, including all of the agreed-upon terms, to writing.

14. The material terms of the agreement reached by the parties at the November 2, 2016 meeting included, without limitation, the following key deal points:

/ / / / /

1 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the
2 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton
3 immediately upon the parties' execution of final integrated written agreements and the
4 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the
5 Property;

6 (b) The parties agreed that the City's approval of a CUP application to
7 operate a MMCC at the Property would be a condition precedent to closing of the sale (in other
8 words, the sale of the Property would be completed and title transferred to Geraci only upon
9 the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of
10 the purchase price to Cotton; if the City denied the CUP application, the parties agreed the sale
11 of the Property would be automatically terminated and Cotton would be entitled to retain the
12 entire \$50,000 non-refundable deposit);

13 (c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the
14 MMCC that would operate at the Property following the City's approval of the CUP
15 application; and

16 (d) Geraci agreed that, after the MMCC commenced operations at the
17 Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and
18 Geraci would guarantee that such payments would amount to at least \$10,000 per month.

19 15. At Geraci's request, the sale was to be documented in two final written
20 agreements, a real estate purchase agreement and a separate side agreement, which together
21 would contain all the agreed-upon terms from the November 2, 2016 meeting. At that meeting,
22 Geraci also offered to have his attorney "quickly" draft the final integrated agreements and
23 Cotton agreed.

24 16. Although the parties came to a final agreement on the purchase price and
25 deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come
26 up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he
27 had limited cashflow and would require the cash he did have to fund the lobbying efforts
28 needed to resolve the zoning issue at the Property and to prepare the CUP application.

1 17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit
2 but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of
3 "good-faith," even though the parties had not reduced their final agreement to writing. Cotton
4 was understandably concerned that Geraci would file the CUP application before paying the
5 balance of the non-refundable deposit and Cotton would never receive the remainder of the
6 non-refundable deposit if the City denied the CUP application before Geraci paid the
7 remaining \$40,000 (thereby avoiding the parties' agreement that the \$50,000 non-refundable
8 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).
9 Despite his reservations, Cotton agreed to Geraci's request and accepted the lesser \$10,000
10 initial deposit amount based upon Geraci's express promise to pay the \$40,000 balance of the
11 non-refundable deposit prior to submission of the CUP application, at the latest.

12 18. At the November 2, 2016 meeting, the parties executed a three-sentence
13 document related to their agreement on the purchase price for the Property at Geraci's request,
14 which read as follows:

15 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA
16 for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a
Marijuana Dispensary. (CUP for a dispensary)

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

20 Geraci assured Cotton that the document was intended to merely create a record of Cotton's
21 receipt of the \$10,000 "good-faith" deposit and provide evidence of the parties' agreement on
22 the purchase price and good-faith agreement to enter into final integrated agreement documents
23 related to the sale of the Property. Geraci emailed Cotton a scanned copy of the executed
24 document the same day. Following closer review of the executed document, Cotton wrote in
25 an email to Geraci several hours later (still on the same day):

26 I just noticed the 10% equity position in the dispensary was not language added
27 into that document. I just want to make sure that we're not missing that
28 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.

1 Approximately two hours later, Geraci replied via email, "No no problem at all."

2 19. Thereafter, Cotton continued to operate in good faith under the assumption that
3 Geraci's attorney would promptly draft the fully integrated agreement documents as the parties
4 had agreed and the parties would shortly execute the written agreements to document their
5 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive
6 and continuously failed to make substantive progress on his promises, including his promises
7 to promptly deliver the draft final agreement documents, pay the balance of the non-refundable
8 deposit, and keep Cotton apprised of the status of the zoning issue.

9 20. Over the weeks and months that followed, Cotton repeatedly reached out to
10 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the
11 non-refundable deposit, and the status of the draft documents. For example, on January 6,
12 2017, after Cotton became exasperated with Geraci's failure to provide any substantive
13 updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I
14 need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine
15 the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month
16 I'll try to call you later today still very sick."

17 21. Between January 18, 2017 and February 7, 2017, the following exchange took
18 place between Geraci and Cotton via text message:

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

20 Cotton: "This resolves the zoning issue?"

21 Geraci: "Yes"

22 Cotton: "Excellent"...

23 Cotton: "How goes it?"

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

25 Cotton: "Whats new?"

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

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

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1 The above communications between Geraci and Cotton regarding the zoning issue conveyed to
2 Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had
3 previously represented to Cotton that the CUP application could not be submitted until the
4 zoning issue was resolved, which was key because Geraci's submission of the CUP application
5 was the outside date the parties had agreed upon for payment of the \$40,000 balance of the
6 non-refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he
7 knew they were untrue as he had already submitted the CUP application months prior.

8 22. With respect to the promised final agreement documents, Geraci continuously
9 failed to timely deliver the documents as agreed. On February 15, 2017, more than two
10 months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the
11 documents with the attorney and hopefully will have them by the end of this week." On
12 February 22, 2017, Geraci again texted Cotton, "Contract should be ready in a couple days."

13 23. On February 27, 2017, nearly three months after the parties reached an
14 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase
15 agreement and stated: "Attached is the draft purchase of the property for 400k. The additional
16 contract for the 400k should be in today and I will forward it to you as well." However, upon
17 review, the draft purchase agreement was missing many of the key deal points agreed upon by
18 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,
19 Geraci claimed it was simply due to miscommunication with his attorney and promised to have
20 her revise the agreement to accurately reflect their deal points.

21 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side
22 agreement that was to incorporate other terms of the parties' deal. Cotton immediately
23 reviewed the draft side agreement and emailed Geraci the next day stating: "I see that no
24 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement
25 completely." Paragraph 3.11 of the draft side agreement stated that the parties had no joint
26 venture or partnership agreement of any kind, which contradicted the parties' express
27 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a
28 condition of the sale of the Property.

1 25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an
2 attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci
3 dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a
4 misunderstanding with his attorney and that Cotton could speak with her directly regarding any
5 comments on the drafts.

6 26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement
7 along with a cover email that stated: "... the 10k a month might be difficult to hit until the
8 sixth month... can we do 5k, and on the seventh month start 10k?". Cotton, increasingly
9 frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on
10 March 16, 2017 in an email which included the following:

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
14 attorney Gina revise the Purchase Agreement and the Side Agreement to
15 incorporate all the terms we have agreed upon so that we can execute final
16 versions and get this closed... Please confirm by Monday 12:00 PM whether we
17 are on the same page and you plan to continue with our agreement ... If,
18 hopefully, we can work through this, please confirm that revised final drafts that
19 incorporate the terms will be provided by Wednesday at 12:00 PM. I promise to
20 review and provide comments that same day so we can execute the same or next
21 day.

22 27. On the same day, Cotton contacted the City's Development Project Manager
23 responsible for CUP applications. At that time, Cotton discovered for the first time that
24 Geraci had submitted a CUP application for the Property way back on October 31, 2016,
25 before the parties even agreed upon the final terms of their deal and contrary to Geraci's
26 express representations over the previous five months. Cotton expressed his
27 disappointment and frustration in the same March 16, 2017 email to Geraci:

28 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.

29 28. On March 17, 2017, after Geraci requested an in-person meeting via text
message, Cotton replied in an email to Geraci which including the following:

1 I would prefer that until we have final agreements that we converse exclusively
2 via email. My greatest concern is that you get a denial on the CUP application
3 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I
4 feel that you are not dealing with me in good faith, you told me repeatedly that
5 you could not submit a CUP application until certain zoning issues had been
6 resolved and that you had spent hundreds of thousands of dollars on getting
7 them resolved. You lied to me, I found out yesterday from the City of San
8 Diego that you submitted a CUP application on October 31 2016 BEFORE we
9 even signed our agreement on the 2nd of November... Please confirm by 12:00
10 PM Monday that you are honoring our agreement and will have final drafts
11 (reflecting completely the below) by Wednesday at 12:00 PM.

12 Geraci did not provide the requested confirmation that he would honor their agreement or
13 proffer the requested agreements prior to Cotton's deadlines.

14 29. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was
15 terminated and that Geraci no longer had any interest in the Property. Cotton also notified
16 Geraci that he intended to move forward with a new buyer for the Property.

17 30. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"),
18 emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first
19 time that the three-sentence document signed by the parties on November 2, 2016 constituted
20 the parties' complete agreement regarding the Property, contrary to the parties' further
21 agreement the same day, the entire course of dealings between the parties, and Geraci's own
22 statements and actions.

23 31. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci
24 intended to continue to pursue the CUP application and would be posting notices on Cotton's
25 property. Cotton responded via email the same day and objected to Geraci or his agents
26 entering the Property and reiterated the fact that Geraci has no rights to the Property.

27 32. The defendants' refusal to acknowledge they have no interest in the Property
28 and to step aside from the CUP application has diminished the value of the Property, reduced
the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
attorneys' fees to protect his interest in his Property.

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FIRST CAUSE OF ACTION

(Breach of Contract – Against Geraci and ROES 1 through 50)

33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above, as though set forth in full at this point.

34. Geraci and Cotton entered into an agreement to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting the terms for a purchase and sale of the Property and a side agreement for Cotton to obtain an equity position in the MMCC to operate at the Property. This agreement is comprised of (a) the November 2, 2016 document signed by Geraci and Cotton, and (b) the November 2, 2016 email exchange between Geraci and Cotton including other agreed-upon terms and the parties' agreement to negotiate and collaborate in good faith on final deal documents. True and correct copies of the agreement are attached hereto as Exhibits 1 and 2, respectively.

35. Cotton performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions of the contract between the parties or has been excused from performance.

36. Under the parties' contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable final purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

37. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

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1 SECOND CAUSE OF ACTION

2 (Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

3 38. Cotton realleges and incorporates by reference paragraphs 1 through 37, above,
4 as though set forth in full at this point.

5 39. Defendants made statements to Cotton that: (a) were false representations of
6 material facts; (b) defendants knew to be false or were made recklessly and without regard for
7 their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably
8 relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and
9 damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such
10 fraudulent statements as described in paragraphs 1 through 32 above.

11 40. The intentional misrepresentations by defendants include at least the following:

12 (a) On or about October 31, 2016, Geraci fraudulently induced Cotton to
13 execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to
14 show he had access to the Property in connection with his lobbying efforts to resolve the
15 zoning issue and in connection with the preparation of a CUP application; and (ii) by
16 indicating the document would only be used as a show of good-faith while the parties
17 negotiated on the sale terms;

18 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to
19 execute the document Geraci now alleges is the fully integrated agreement between the parties
20 by representing that (i) the CUP application would not be filed until the zoning issue was
21 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at
22 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000
23 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci
24 understood and agreed the document was not intended to be the final agreement between the
25 parties for the purchase of the Property and did not contain all material terms of the parties'
26 agreement;

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1 (c) On multiple occasions, Geraci represented to Cotton that a CUP
2 application for the Property could not be submitted until after the zoning issue was resolved;

3 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
4 yet filed a CUP application with respect to the Property when the CUP application had already
5 been filed; and

6 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
7 work of preparing a CUP application was merely underway, when, in fact, the CUP application
8 had already been filed.

9 41. Defendants, through their intentional misrepresentations and the actions taken in
10 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
11 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
12 attorneys' fees to protect his interest in his Property. As a further result of the intentional
13 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
14 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

15 42. The misrepresentations were intentional, willful, malicious, outrageous,
16 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent
17 to deprive Cotton of his interest in the Property. This intentional, willful, malicious,
18 outrageous and unjustified conduct entitles Cotton to an award of general, compensatory,
19 special, exemplary and/or punitive damages under Civil Code section 3294.

20 THIRD CAUSE OF ACTION

21 (Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

22 43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above,
23 as though set forth in full at this point.

24 44. Defendants made statements to Cotton that: (a) were false representations of
25 material facts; (b) defendants had no reasonable grounds for believing were true when the
26 statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and
27 justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in
28 causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and

1 proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

2 45. The negligent misrepresentations by defendants include at least the following:

3 (a) On or about October 31, 2016, Geraci fraudulently induced Cotton to
4 execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to
5 show he had access to the Property in connection with his lobbying efforts to resolve the
6 zoning issue and in connection with the preparation of a CUP application; and (ii) by
7 indicating the document would only be used as a show of good-faith while the parties
8 negotiated on the sale terms;

9 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to
10 execute the document Geraci now alleges is the fully integrated agreement between the parties
11 by representing that (i) the CUP application would not be filed until the zoning issue was
12 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at
13 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000
14 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci
15 understood and agreed the document was not intended to be the final agreement between the
16 parties for the purchase of the Property and did not contain all material terms of the parties'
17 agreement;

18 (c) On multiple occasions, Geraci represented to Cotton that a CUP
19 application for the Property could not be submitted until after the zoning issue was resolved;

20 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
21 yet filed a CUP application with respect to the Property when the CUP application had already
22 been filed; and

23 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
24 work of preparing a CUP application was merely underway, when, in fact, the CUP application
25 had already been filed.

26 46. Defendants, through their negligent misrepresentations and the actions taken in
27 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
28 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and

attorneys' fees to protect his interest in his Property. As a further result of the negligent misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

FOURTH CAUSE OF ACTION

(False Promise – Against Geraci and ROES 1 through 50)

47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above, as though set forth in full at this point.

48. On November 2, 2016, among other things, Geraci falsely promised the following to Cotton without any intent of fulfilling the promises:

(a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable deposit prior to filing a CUP application;

(b) Geraci would cause his attorney to promptly draft the final integrated agreements to document the agreed-upon deal between the parties;

(c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the monthly profits for the MMCC at the Property if the CUP was granted; and

(d) Cotton would be a 10% owner of the MMCC business operating at Property if the CUP was granted.

49. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016 when he made them.

50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to rely on the false promises and execute the document signed by the parties at their November 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire agreement.

51. Cotton reasonably relied on Geraci's promises.

52. Geraci failed to perform the promises he made on November 2, 2016.

53. Defendants, through their false promises and the actions taken in reliance upon such false promises, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to

1 protect his interest in his Property. As a further result of the false promises, Cotton has been
2 deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay
3 prior to filing a CUP application for the Property.

4 54. The false promises were intentional, willful, malicious, outrageous, unjustified,
5 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive
6 Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and
7 unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary
8 and/or punitive damages under Civil Code section 3294.

9 FIFTH CAUSE OF ACTION

10 (Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

11 55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above,
12 as though set forth in full at this point.

13 56. An actual controversy has arisen and now exists between Cotton and all
14 defendants concerning their respective rights, liabilities, obligations and duties with respect to
15 the Property and the CUP application for the Property filed on or around October 31, 2016.

16 57. A declaration of rights is necessary and appropriate at this time in order for the
17 parties to ascertain their respective rights, liabilities, and obligations because no adequate
18 remedy other than as prayed for exists by which the rights of the parties may be ascertained.

19 58. Accordingly, Cotton respectfully requests a judicial declaration of rights,
20 liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration
21 that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole
22 interest-holder in the CUP application for the Property submitted on or around October 31,
23 2016, (c) defendants have no interest in the CUP application for the Property submitted on or
24 around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Cotton prays for relief as follows:

3 ON THE FIRST CAUSE OF ACTION:

4 1. For general, special, and consequential damages in an amount not yet fully
5 ascertained and according to proof at trial, but at least \$40,000; and

6 2. For compensatory and reliance damages in an amount not yet fully ascertained
7 and according to proof at trial.

8 ON THE SECOND CAUSE OF ACTION

9 1. For general, special, and consequential damages in an amount not yet fully
10 ascertained but at least \$40,000;

11 2. For compensatory and reliance damages in an amount not yet fully ascertained
12 and according to proof at trial; and

13 3. For punitive and exemplary damages in an amount just and reasonable to punish
14 and deter defendants.

15 ON THE THIRD CAUSE OF ACTION

16 1. For general, special, and consequential damages in an amount not yet fully
17 ascertained but at least \$40,000; and

18 2. For compensatory and reliance damages in an amount not yet fully ascertained
19 and according to proof at trial.

20 ON THE FOURTH CAUSE OF ACTION

21 1. For general, special, and consequential damages in an amount not yet fully
22 ascertained but at least \$40,000;

23 2. For compensatory and reliance damages in an amount not yet fully ascertained
24 and according to proof at trial; and

25 3. For punitive and exemplary damages in an amount just and reasonable to punish
26 and deter defendants.

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1 ON THE FIFTH CAUSE OF ACTION

2 1. For a judicial declaration that defendants have no right or interest whatsoever in
3 the Property;

4 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP
5 application for the Property submitted on or around October 31, 2016, defendants have no right
6 or interest in said CUP application, and that defendants are enjoined from further pursuing
7 such CUP application for the Property; and

8 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be
9 released.

10 ON ALL CAUSES OF ACTION

11 1. For interest on all sums at the maximum legal rates from dates according to
12 proof;

13 2. For costs of suit; and

14 3. For such other relief as the Court deems just.

15 DATED: August 25, 2017

Respectfully submitted,

16 FINCH, THORNTON & BAIRD, LLP

17
18 By: 

DAVID S. DEMIAN

ADAM C. WITT

Attorneys for Defendant and Cross-Complainant
Darryl Cotton

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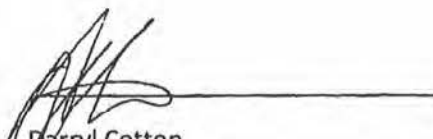
Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Cerao,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

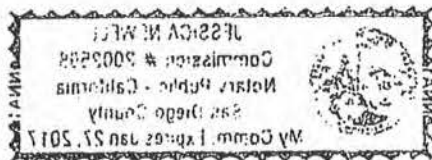
WITNESS my hand and official seal.

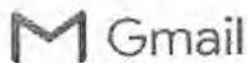
Signature

Jessica Newell

(Seal)







Darryl Cotton <indagrodarryl@gmail.com>

Agreement

2 messages

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

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*


Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

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 Cotton & Geraci Contract.pdf
71K

Larry Geraci <Larry@tfcSD.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 <darryl@inda-gro.com> 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]

DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@fblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@fblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

I, Heidi Runge, declare that:

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California, where the mailing occurred; and my business address is 4747 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence

1 will be deposited with the United States Postal Service this same day in the ordinary course of
2 business. I caused to be served the following document(s): SECOND AMENDED CROSS-
3 COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as
4 follows:

5 Michael R. Weinstein, Esq.
6 Scott H. Toothacre, Esq.
7 Ferris & Britton
8 A Professional Corporation
9 501 West Broadway, Suite 1450
10 San Diego, California 92101
11 Telephone: (619) 233-3131
12 Facsimile: (619) 232-9316
13 Email: mweinstein@ferrisbritton.com
14 stoothacre@ferrisbritton.com

ATTORNEYS FOR PLAINTIFF AND
CROSS-DEFENDANT LARRY GERACI

11 Michael R. Weinstein, Esq.
12 Scott H. Toothacre, Esq.
13 Ferris & Britton
14 A Professional Corporation
15 501 West Broadway, Suite 1450
16 San Diego, California 92101
17 Telephone: (619) 233-3131
18 Facsimile: (619) 232-9316
19 Email: mweinstein@ferrisbritton.com
20 stoothacre@ferrisbritton.com

ATTORNEYS FOR CROSS-DEFENDANT
REBECCA BERRY

16 I then sealed the envelope(s) and, with the postage thereon fully prepaid, either
17 deposited it/each in the United States Postal Service or placed it/each for collection and
18 mailing on August 25, 2017, at San Diego, California, following ordinary business practices.

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

21 Executed on August 25, 2017.

22 
23 Heidi Runge
24
25
26
27

28 2403.004/Proof.hr