

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 IV – EXHIBITS 16-22

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

EXH.	DATE	DESCRIPTION	PAGE RANGE
16	04/04/18	Notice of Motion and Motion to Expunge Notice of Pendency of Action (<i>Lis Pendens</i>) [SDSC ROA 161, 189]	
17	04/05/18	Minute Order on <i>Ex Parte</i> Application by Defendant Darryl Cotton to Shorten Time for Hearing on Motion to Expunge <i>Lis Pendens</i> and Oral Request to Stay Case Due to Appeal [SDSC ROA 12]	
18	04/10/18	Plaintiff Larry Geraci's Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens [SDSC ROA179-186]	
19	04/11/18	Tentative Ruling on Motion by Darryl Cotton to Expunge Notice of Pendency of Action (<i>Lis Pendens</i>) [SDSC ROA-191]	
20	04/25/18	<i>Ex Parte</i> Application for Order Extending Time Within Which Defendant/Cross-Complainant Darryl Cotton May File a Petition for Writ of Mandate Regarding this Court's April 13, 2018 Order Denying His Motion to Expunge <i>Lis Pendens</i> (Notice of Pendency of Action); Memorandum of Points and Authorities, and Declaration of Darryl Cotton in Support [SDSC ROA 212]	

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F 1 L E D
Clerk of the Superior Court

APR 04 2018

By: A. SEAMONS, Deputy

Attorney for Defendant and Cross-Complainant Darryl Cotton

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

LARRY GERACI, an individual,
Plaintiff,

vs.

DARRYL COTTON, an individual; REBECCA
BERRY, an individual; and DOES 1-10,
INCLUDE, inclusive,

Defendants.

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

NOTICE OF MOTION AND MOTION TO
EXPUNGE NOTICE OF PENDENCY OF
ACTION (*LIS PENDENS*)

DATE: April 13, 2018
TIME: 9:00 a.m.
DEPT: C-73
JUDGE: The Honorable Joel R. Wohlfeil

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

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

Defendants.

TO EACH PARTY AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 13, 2018 at 9:00 a.m. or as soon thereafter as the matter
may be heard in Department C-73 of the above-entitled Court located at 110 Union Street, San Diego,

1 California, Defendant/Cross-Complainant Darryl Cotton, by and through his counsel Jacob P. Austin,
2 will move for an order expunging the */is pendens* recorded in the office of the Recorder of San Diego
3 County as Instrument Number 2017-0129756 and filed in the above-referenced action on March 22,
4 2017, and an order awarding Defendant/Cross-Complainant reasonable attorneys' fees and costs.

5 The motion is made upon the grounds that the Complaint lacks "probable validity" which can be
6 established by a preponderance of the evidence in light of the evidence presented by Plaintiff.

7 The motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of
8 Points and Authorities, Declaration of Darryl Cotton and Request for Judicial Notice, the pleadings and
9 records on file in this action, and upon such other and further oral and documentary evidence which may
10 be presented at the hearing on this Motion.

11
12 DATED: April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

13
14 By

15 ~~---C-OB P---~~ ~~f: #~~ ~~STIN~~ ~~..~~ ~~-~~ ~~-~~ ~~-~~
Attorney for Defendant and Cross-Complainant
16 DARRYL COTTON
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F I L E D
Clerk of the Superior Court

APR 04 2018

By: A. SEAMONS, Deputy

Attorney for Defendant and Cross Complainant: Darryl Cotton
(Representation limited to Motion to Expunge *Lis Pendens*)

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

LARRY GERACI, an individual,
Plaintiff,

vs.

DARRYL COTTON, an individual; REBECCA
BERRY, an individual; and DOES 1-10,
INCLUSIVE,
Defendants.

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

DARRYL COTTON'S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO EXPUNGE NOTICE OF
PENDENCY OF ACTION (*LISPENDENS*)

DATE: April 13, 2018
TIME: 9:00a.m.
DEPT: C-73
JUDGE: Honorable Joel R. Wohfeil

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

LARRY GERACI, and individual, REBECCA
BERRY, an individual; and DOES 1 THROUGH
10, INCLUSIVE,
Cross-Defendants.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant and Cross-Complainant Darryl Corton ("Corton") hereby moves this Court to expunge
3 the *Lis Pendens* (the "LE.") recorded by Plaintiff Larry Geraci ("Geraci") on his real property located at
4 6176 Federal Blvd., San Diego (the "Property") pursuant to CCP §405.32 for the following reasons.

5 As stated by the California Supreme Court, "[T]he lis pendens procedure [is] susceptible to
6 serious abuse, providing unscrupulous plaintiffs with a powerful lever to force the settlement of
7 groundless or malicious suits."; *Malcolm v. Superior Court* (1981) 29 Cal.3d 518, 524. "Once a lis
8 pendens is filed, it clouds the title and effectively prevents the property's transfer until the litigation is
9 resolved or the lis pendens is expunged." *BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th
10 952, 967. "Because of the potential for abuse and injustice to the property owner, the Legislature has
11 provided statutory procedures (CCP §405.30 *et seq.*) by which a lis pendens may be removed
12 ('expunged')." Weil & Brown, Cal. Practice Guide, *Civ. Pro. Before Trial* (The Rutter Group 2017)
13 ("Rutter Guide") 9:422 (citing *Shah v. McMahon* (2007) 148 Cal.App.4th 526, 529). "[T]he lis pendens
14 procedure provides a means by which a court may dispose of meritless real estate claims at the
15 *preliminary stage of a case.*" *Shah, supra*, at 529 (emphasis added).

16 CCP §405.30 *et seq.* was enacted to require proactive action by the trial court in the form of a
17 "minitrial" on the merits in the *preliminary stage of a case*. As explained by the Court in *Amalgamated*
18 *Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, in analyzing the Legislature's intent in revising
19 the *LP* laws in 1992 and enacting CCP §405.32:

20 The financial pressure created by a recorded lis pendens provided the opportunity for
21 abuse, permitting parties with meritless cases to use it as a bullying tactic to extract unfair
22 settlements. [r] The Code Comment thus states that section 405.32 "is intended to
23 disapprove *Malcolm*. . . and other cases which have held that the court on a motion to
24 expunge may not conduct a 'minitrial' on the merits of the case. *This section is intended to*
25 *change California law and to require judicial evaluation of the merits.*" (Code Com., 14A
26 West's Ann. Code Civ. Proc., foll. §405.32, par. 3, p. 346, italics added.)
27 *Amalgamated, supra*, at 1012 (emphasis in original).

28 In *Hi/berg v. Superior Court* (1989) 215 Cal.App.3d 539, 542, the Court stated: "We cannot
ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made not to
prevent conveyance of property that is the subject of the lawsuit, but to coerce an opponent to settle
regardless of the merits." (Citing *Malcolm, supra*, at 678.) Here, this action represents the very evil
which CCP §405.30 *et seq.* was enacted to prevent. This action was filed with no probable cause to

maliciously (i) prevent Cotton's sale of the Property to a third-party *bonafide* purchaser and (ii) exert undue financial, emotional and psychological pressure on Cotton to coerce him into settling with Geraci.

I. FACTUAL BACKGROUND

Cotton is the sole owner of record of the Property.¹ In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it met certain requirements of the City of San Diego ("City") to apply for and obtain a conditional use permit ("CUP")² that would allow the operation of a Marijuana Outlet ("MO")³ at the Property. Over the ensuing months, the parties extensively negotiated the terms of a potential sale of the Property. (DC Decl.12; VP, 113, 114.)

During these negotiations, Geraci made the following representations to Cotton: (i) he could be trusted as reflected by the fact that he operated in a fiduciary capacity as an IRS Enrolled Agent for many powerful and high-net-worth-individuals ("HNWI"); (ii) he is the owner and operator of Tax and Financial Center, Inc., an accounting and financial advisory services company, servicing HNWI and large businesses in a fiduciary capacity; (iii) he was a California Licensed Real Estate Broker, bound by professional and ethical obligations, to be truthful in real-estate deals; (iv) through his experts, who had conducted preliminary due diligence, he had uncovered a critical zoning issue that unless *first* resolved would prevent the City from even accepting a CUP application on the Property (the "Critical Zoning Issue"); (v) through his professional relationships, which included his HNWI clients that were politically influential, and through powerful hired lobbyists (some of whom used to work for the City in senior positions), he was in a unique position to have the Critical Zoning Issue resolved; (vi) he was highly qualified to operate a MO because he owned and operated multiple cannabis dispensaries in San Diego; and (vii) his employee, Rebecca Berry ("Rebecca"), was a trustworthy individual who could be trusted to be the applicant on the CUP application because she (a) managed his marijuana dispensaries, (b) held a senior position at a church and came across as a "nice old lady that had nothing to do with marijuana,"

¹ Declaration of Daryl Cotton ("DC Decl.") 11; Request for Judicial Notice ("RJN") Exhibit ("Ex.") 1; (Verified Petition for Alternative Writ of Mandate) ("VP"), rt; RJN Ex. 2 (Complaint(" .") 14.

² A conditional use permit is administrative permission for uses not allowed as a matter of right in a zone, but subject to approval. (Cal. Zoning Practice, *Types of Zoning Relief* §1.64, p.299 (Cont Ed. Bar 1996.) The issuance of a conditional use permit may be subject to conditions. (*J-Marion Company, Inc. v. County of Sacramento* (1977) 76 Cal.App.3d 517, 522.)

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

1 and (c), consequently, would pass the stringent City and State of California background checks required
2 to have the CUP approved (collectively, the "Qualification Representations"). (DC Deel. i3.)

3 On or around October 31, 2016, Geraci asked Cotton to execute Form DS-318 (Ownership
4 Disclosure Statement) ("Ownership Statement") - a required component of all CUP applications.
5 (RJN 4.) Geraci told Cotton that he needed the executed Ownership Statement to show that he had access
6 to the Property in connection with his planning and lobbying efforts to resolve the Critical Zoning Issue.
7 (DC Deel. i34.)

8 On November 2, 2016, Geraci and Cotton met at Geraci's office to negotiate the final terms of the
9 sale of the Property. At the meeting, the parties reached an oral agreement on the material terms for the
10 sale of the Property (the "November Agreement"). The November Agreement consisted of the following:
11 If the CUP was approved, then Geraci would, *inter alia*, provide: (i) a total purchase price of \$800,000;
12 (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of \$10,000. If the
13 CUP was denied, Cotton would keep an agreed upon \$50,000 non-refundable deposit ("NRD") and the
14 transaction would not close. In other words, the issuance of the CUP at the Property was a condition
15 precedent for closing on the sale of the Property and, if the CUP was denied, Cotton would keep his
16 Property and the \$50,000 NRD. (DC Deel. ,rs.)

17 At the November 2, 2016 meeting, after the parties reached the November Agreement, Geraci: (i)
18 provided Cotton with \$10,000 in cash towards the NRD of \$50,000, for which Cotton executed a
19 document to record his receipt thereof (the "Receipt"); (ii) promised to have his attorney, Gina Austin
20 ("Austin"), promptly reduce the oral November Agreement to written agreements for execution; and (iii)
21 promised to not submit the CUP to the City until he paid the balance on the NRD. (DC Deel. ,r6.)

22 After Geraci and Cotton met on November 2, 2016, reached the November Agreement, executed
23 the Receipt and separated - the following email communications took place that same day:

24 At 3:11 p.m. Geraci emailed Cotton a scanned copy of the Receipt which states:

25 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd. CA for a
26 sum of \$800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary.
27 (CUP for a dispensary) [11 Ten Thousand dollars (cash) has been given in good faith
28 earnest money to be applied to the sales price of \$800,000 and to remain in effect until
license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic]
on this property. [DC Deel. Ex. 1, pp. 4-8.]

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

1 Thank you for meeting today. Since we executed the Purchase Agreement in your office
2 for the sale price of the property I just noticed the 10% equity position in the dispensary
3 was not language added into that document. I just want to make sure that we're **!!!J**
4 missing that language in any final agreement as it is a factored element in my decision
5 to sell the property. I'll be fine if you would simply acknowledge that here in a reply.
6 [DC Decl. Ex. I, p.9 (emphasis added).]

7 At 9:13 p.m., Geraci replied: "**No no [sic] problem at all**" [Id. (emphasis added).]

8 In other words, the very same day on which the Receipt was executed, Cotton received a copy of the
9 Receipt from Geraci and realized it could be misconstrued as a final agreement for the Property. Because
10 Cotton was concerned, and wanted there to be no W1 certainty, he requested Geraci confirm in writing the
11 Receipt was not a final agreement. Geraci replied to Cotton's request for written confirmation; thereby
12 clearly. W1 ambiguously and indisputably confirming the Receipt is not a final agreement for Cotton's
13 Property. Thus, Cotton refers to this email from Geraci as the "Confirmation Email." (DC Decl. 18.)

14 Thereafter, over the course of almost five months, the parties exchanged numerous emails, texts
15 and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of
16 the final written agreements for the Property.⁴ However, Geraci continuously failed to make actual,
17 substantive progress. Most notably, he failed to provide the final written agreements, pay the balance of
18 the NRD, and to provide facts regarding the progress being made on the Critical Zoning Issue. (DC Decl.
19 19.) Regarding the Critical Zoning Issue, and also reflecting Geraci's general non-substantive replies and
20 avoidance, the following text exchanges took place between Geraci and Cotton from January 6, 2017 and
21 February 7, 2017:

22 Cotton: Can you call me. If for any reason you're not moving forward I need to know.

23 Geraci: I'm at the doctor now everything is going fine the meeting went great yesterday
24 supposed to sign off on the zoning on the 24th of this month I'll try to call you later
25 today still very sick

26 Cotton: Are you available for a call?

27 Geraci: I'm in a meeting I'll call you when I'm done

28 Cotton: Thx

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

Cotton: This resolves the zoning issue?

Geraci: Yes

Cotton: Excellent

Geraci: On phone.. Call you back shortly..

Cotton: Ok

⁴ See DC Decl. Ex. I. (Fifteen (15) emails with attachments sent between Cotton and Geraci prior to the commencement of the instant suit between 10/24/16--03/21/17 containing all email communications between them.)

1 Cotton: How goes it?

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

3 Cotton: What's *[sic]* new?

4 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

5 Geraci: I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork [Cotton Deel. Ex. 2; pp.1-4.]

6 These text communications were meant to and did induce Cotton into believing, relying and acting on
7 Geraci's representations he was making progress on the Critical Zoning Issue (the "Text
8 Communications."). (DC Deel. Ex. 1, pp.9-11.)

9 On February 27, 2017, Geraci emailed Cotton: "*Attached is the draft purchase of the property*
10 *for 400k. The additional contract/or the 400k should be in today and I will forward it to you as well.*"

11 (DC Deel. Ex. 1, p.13.) The cover email clearly states Geraci's intent of effectuating the oral November
12 Agreement via two separate written documents (each for \$400,000). Notably, Section 18(i) states:

13 The parties shall be legally bound with respect to the purchase and sale of the Property
14 pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully
15 executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile
transmission). [DC Deel. Ex. 1, p.29.]

16 Thus, the language clearly reflects the parties were yet to be "legally bound" to "the purchase and sale of
17 the Property" in February of 2017 and had yet to execute a final, legally binding agreement. *Id.*

18 On March 2, 2017, Geraci emailed Cotton a draft of the additional contract, the Side Agreement,
19 that was supposed to provide for, *inter alia*, Cotton's 10% equity stake. (DC Deel. Ex. 1, pp.41-48.) The
20 next day, Cotton replied:

21 Larry, I read the Side Agreement in your attachment and I see that no reference is made to
22 the **10% equity position** as per my Inda-Oro GERL Services Agreement (see attached) in
23 the new store. In fact para 3.11 [stating we are not partners] looks to avoid our agreement
completely. It looks like counsel did not get a copy of that document. Can you explain? [5]

24 Geraci did not reply to Cotton's email. Geraci did not pick up when Cotton called later. Exasperated,
25 Cotton followed up with Geraci via text wanting to confirm that Geraci had received the email and
26 understood his concern - that the Side Agreement did not provide for his "**10% equity position**" in the
27 MO. Cotton texted: "*Did you get my email?*" (DC Deel. Ex. 2, p.4.) Geraci replied one minute later: "*Yes*
28 *I did I'm having to rewrite it now. As soon as I get it I will forward it to you.*" (DC Deel. Ex. 2, p.4)

5 DC Deel. Ex. 1, pp.49-50 (email) (emphasis added); pp.51-52 (Inda-Gro GERL Services Agreement (attachment)).

1 (the "Confirmation Text").) The Confirmation Text proves that on March 3, 2017 Geraci (i) was going
2 to have Austin revise the Side A_greement to contain Cotton's "10% equity position" in the MO and (ii)
3 had previously *received*, *acknowledged* and *consented* to the terms contained in the "Inda-Gro GERL
4 Services A_greement." Notably, Geraci does not refuse, refute, argue or so much as question Cotton's
5 requests or statements as would be logical if the Receipt were the full agreement as **now** alleged.

6 On March 6, 2017, Geraci and Cotton spoke regarding revisions required to have the drafts
7 accurately reflect the November Agreement. Cotton communicated his frustration with the delays and
8 Geraci again promised to have Austin *promptly* correct the mistakes in the drafts. During that
9 conversation, Cotton let Geraci know he would be attending a local cannabis event at which Austin was
10 scheduled to be the headnote speaker. (DC Deel. -JD.) Geraci later texted Cotton he could speak with
11 Austin directly at the event: "*Gina Austin is there size has a red jacket on if you want to have a*
12 *conversation wit/, her.*" (DC Deel. Ex. 2, p.4.)

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

14 Hi D_arryl, I have not reviewed this yet but wanted you to look at it and give me your
15 thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth
16 month. . . can we do 5k, and on the seven month start 10k? [DC Deel. Ex. 1, pp.53-54
(email), pp.55-58 (draft Side Agreement).]

17 The *facts* that are demonstrated by the March Request Email are clear: Geraci had an established
18 obligation *to* Cotton, requiring him to pay a minimum of \$10,000 a month, and is requesting *of* Cotton a
19 concession from that obligation - specifically, that for the first six months of the operations of the MO,
20 he be allowed to pay Cotton \$5,000 instead of the \$10,000 per month base as required per the November
21 Agreement (the "March Request Email").

22 Attached to Geraci's email was a revised draft of the Side Agreement in Word format. This draft
23 provides for, *inter alia*, Cotton receiving (i) 10% of the net profits of the MO and (ii) a minimum monthly
24 payment of \$10,000. (DC Deel. at Ex. 1, p.55.) Furthermore, Attorney Gina Austin (who for several
25 months represented Geraci - a Real Party in Interest to the related Writ Action against the City), was
26 responsible for, and did draft versions of the contracts months after the November agreement indicating
27 her awareness that no final agreement had been executed. The attachment of the last draft provided was
28 dated "**March 3, 2017**" (the "Metadata Evidence"). (DC Deel. -J15, Ex. 3 (screen-shot of the Metadata
Evidence).)

1 On March 16, 2017, after having reviewed the revised agreement forwarded by Geraci on
2 March 7, 2017, and discovering that it again did not accurately reflect the November Agreement, Cotton
3 decided to follow up with the City regarding the Critical Zoning Issue personally. It was at this point that
4 Cotton discovered that Geraci had been lying from the very beginning - Geraci had submitted a CUP for
5 the Property on October 31 2016, before the parties even reached the November Agreement. (DC Deel.
6 i116.) Geraci's submission was a direct contra iction of his (i) representation that a CUP could not be
7 submitted until the Critical Zoning Issue was resolved and (ii) promise to not submit the CUP until he
8 had paid Cotton the balance of the NRD. A Parcel Information Report provided by the City of San Diego,
9 Development Services Department ("City Parcel Report") states the zoning of the Property was changed
10 to "C0-2-1" (MO qualifying zone) on January 14, 2016. (RJN 5, p.2.) In other words, the City Parcel
11 Report makes clear the entire Critical Zoning Issue was a fraudulent scheme to (i) induce Cotton into
12 executing the Ownership Statement - no zoning change was required to submit the CUP for an MO to
13 the City on the Property - and (ii) to deceive Cotton into thinking that he required Geraci's unique and
14 powerful political influence to resolve the alleged Critical Zoning Issue.

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

16 [W]e started these negotiations 4 months ago and the drafts and our communications have
17 not reflected what we agreed upon and are still far from reflecting our original agreement.
18 Here is my proposal, please have your attorney Gina revise the Purchase Agreement and
19 Side Agreement to incorporate all the terms we have agreed upon so that we can execute
20 final versions and get this closed. [r] I really want to finalize this as soon as possible - /
21 *found out today that a CUP application for my property was submitted in October, which*
22 *I am assuming is from someone connected to you.* Although, I note that you told me that
23 the \$40,000 deposit balance would be paid once the CUP was submitted and that you were
24 waiting on certain zoning issues to be resolved. Which is not the case. [r] Please confirm
25 by Monday 12:00 PM whether we are on the same page and you plan to continue with our
26 agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If,
27 hopefully, we can work through this, please confirm that revised final drafts that
28 incorporate the terms above will be provided by Wednesday at 12:00 PM. [DC Deel. Ex.
I, pp.59-60]

25 The next day, Geraci texted Cotton: "***Can we meet tomorrow*** [?]" (DC Deel. Ex. 2, p.4.) Of note,
26 Geraci, did not refute or dispute Cotton's factual assertions that Geraci had lied and submitted the CUP
27 without, *inter alia*, paying Cotton the balance of the NRD and reducing the November Agreement to
28 writing. Cotton replied via email:

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we

1 have final agreements, that we converse exclusively via email... To be frank, I feel that
2 you are not dealing with me in good faith, you told me repeatedly that you could not submit
3 a CUP application until certain zoning issues had been resolved and that you had spent
4 hundreds of thousands of dollars on getting them resolved. You lied to me, I found out
5 yesterday from the City of San Diego that you submitted a CUP application on October 31,
6 2016 BEFORE we even signed our agreement on the 2nd of November. There is no
7 situation where an oral agreement will convince me that you are dealing with me in good
8 faith and will honor our agreement. We need a final written, legal, binding agreement.

9 Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement
10 and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.
11 [DC Deel. Ex. 1, p.61 (emphasis added).]

12 On March 18, 2017, Geraci replied to Cotton as follows: *"Darryl, I have an attorney working on
13 the situation now. I will follow up by Wednesday with the response as their timing will play a factor."*

14 (DC Deel. Ex. 1, pp.62-63.) Cotton, now understanding Geraci's deceitful nature, replied:

15 Larry, I understand that drafting the agreements will take time, but you don't need to consult
16 with your attorneys to tell me whether or not you are going to honor our agreement. / need
17 written confirmation that you will honor our agreement so that I know that you are not
18 just playing for time - hoping to get a response from the City before you put down in
19 writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.
20 [DC Deel. Ex. 1, p.64.) (emphasis added).]

21 Geraci's response to Cotton's three (3) written requests for assurance of performance was nebulous,
22 and there was no finalization of the written agreements or confirmation of his intent to do so by Cotton's
23 oofu

24 Thus, Cotton, having been true to his word and waiting until March 20 had passed (without receipt
25 of adequate assurance nor performance by Geraci *ie.*, Geraci's breach of the November agreement)
26 terminated the deal with Geraci on March 21, 2017 for breach: "To be clear, as of now, you have no
27 interest in my property, contingent or otherwise." (DC Deel. Ex. 1, p.67.) Having anticipated Geraci's
28 breach, Cotton had already lined up another buyer and then executed a written purchase agreement for
the sale of the Property to Mr. Martin (the "Martin Sale Agreement"). (RJN 6, pp.182-196.) The next
day, Geraci's coWise, Michael Weinstein ("Weinstein"), emailed Cotton the Complaint and the **LP** filed
on the Property. (DC Deel. Ex. 18,19.) The Complaint is premised solely on the allegation the Receipt is
the final written agreement for the Property (Comp. 17).

29 II. DISCUSSION

30 A. GERACI HAS THE BURDEN OF PROOF IN OPPOSING COTTON'S MOTION TO EXPUNGE A LIS PENDENS PURSUANT TO CCP §405.32.

CCP §405.30 provides, in relevant part, as follows:

At any time after notice of pendency of action has been recorded, any party ... may apply to the court in which the action is pending to expunge the notice ... Evidence or declarations may be filed with the motion to expunge the notice. The court may permit evidence to be received in the form of oral testimony, and may make any orders it deems just to provide for discovery by any party affected by a motion to expunge the notice. The claimant shall have the burden of proof under Sections 405.31 and 405.32.

Thus, to avoid a motion to expunge under CCP §405.32, the burden is on the LP claimant - here, Geraci - to establish the "probable validity" of the real property claim "by a preponderance of the evidence." *Id.* "If conflicting evidence is presented, the judge must weigh the evidence in deciding whether plaintiff has sustained its burden." Rutter Guide §9:436.2. As summarized and explained by Miller & Starr, *California Real Estate*, Chapter 10, Section D.8 (December 2017 Update):

When expungement is sought on the basis that the real property claim lacks probable validity, the claimant who filed the lis pendens has the burden of proof by a preponderance of the evidence that the claim has probable validity. The resolution of this issue, unlike the "failure to plead" grounds for expungement, requires the court to examine the factual merits of the claim. Written evidence or declarations may be filed, and the court may permit oral testimony; the court also may authorize discovery by the party moving to expunge. It is not sufficient for the claimant merely to make a prima facie showing of probable validity; the demonstration of "probable validity" requires a determination that it is more likely than not that the claimant will obtain a judgment against the Cotton on the claim. The court is required to weigh the evidence and make a preliminary determination based on the evidence submitted, of whether it is more probable than not, that the claimant will prevail on its real property claim. This determination must be made based on a preponderance of evidence, with the claimant bearing the burden of proof. ***Thus, the current statute deliberately rejects former law that the trial court is not required to conduct a "mini-trial" of the action on the merits and cannot resolve conflicts in the evidence, and requires a hearing on the merits, of the same nature as an attachment proceeding or a claim and delivery proceeding.*** [Emphasis added; internal citations omitted.]

Expungement of an improper LP is mandatory, not discretionary - "the court shall order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim." CCP §405.32 (emphasis added). Geraci cannot meet his burden of proof, thus, the LP must be expunged.

B. GERACI CANNOT ESTABLISH PROBABLE VALIDITY THAT THE RECEIPT IS THE FINAL AGREEMENT FOR COTTON'S PROPERTY.

In his Complaint, pursuant to which the LP was filed, Geraci alleges the following four causes of action: (1) Breach of Contract ("BOC"); (2) Breach of the Covenant of Good Faith and Fair Dealing; (3) Specific Performance; and (4) Declaratory Relief. (RJN 2.) The primary cause of action is the BOC (with

the other causes arising therefrom), which is predicated on the allegation the Receipt is the final written agreement for the purchase of the Property by Geraci. As alleged by Geraci in his Complaint:

(i) "On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement for the purchase and sale of the [Property] on the terms and conditions stated therein." (Comp. ,17.);

(ii) "On or about November 2, 2016, [Geraci] paid to [Cotton] \$10,000 good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license, known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and conditions of the written agreement." (Comp. ,18.); and

(iii) "[Cotton] has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, [Cotton] has stated that, contrary to the written terms, the parties agreed to a down payment. . . of \$50,000 ... [and] he is entitled to a 10% ownership interest in the [Property.]" (Comp. ,11.)

Materially summarized, Geraci and Cotton are in accord that on November 2, 2016: (i) an agreement was reached for the sale of the Property;; (ii) Cotton received \$10,000 from Geraci; and (iii) a document was executed by both parties on that day. However, the parties dispute what that executed document is. Cotton alleges the document, the Receipt, is just a "receipt" meant to memorialize his receipt of the \$10,000. Geraci, on the other hand, alleges the Receipt is the "final written agreement" for his purchase of the Property and that Cotton is lying about being entitled to a total \$50,000 NRD and a 10% equity stake in the Property - terms not contained in the Receipt.

Thus, the sole and case-dispositive issue in this action is a determination of whether the Receipt is a "receipt" as Cotton alleges or a "final written agreement" for the Property as Geraci alleges. The evidence is simple and clear. Geraci fraudulently induced Cotton into executing the Receipt; promising to have Austin promptly reduce the November Agreement to writing for execution. Geraci schemed to acquire the Property by misrepresenting the Receipt as the final agreement for the Property if the CUP is *approved*.⁶ Alternatively, if the CUP is *denied*, Geraci can simply breach his promise to pay the \$40,000

⁶ Cotton notes that for what Geraci alleges is a simple 3-sentence breach of contract suit, he has what appears to be, based on pleadings filed, at least three full-time attorneys from two separate and sizeable law firms - Ferris & Britton and Austin Legal Group - representing him and engaging in litigation and discovery tactics that are demonstratively oppressive. "Oppression means the ultimate effect of the burden of responding to the discovery is incommensurate with the result sought. In considering whether the discovery is unduly burdensome or expensive, the court takes into account 'the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.'" (Code Civ. Proc., §2019.030, subd. (a)(2).) *People v. Sarpas* (2014) 225 Cal.App.4th 1539, 1552 (case citations omitted). As proven herein, this case lacks probable cause. Thus, given Cotton is financially destitute and with no legal background, traveling to and from a deposition and responding to even basic interrogatories and requests for admissions (while doing so *prose*) is oppressive because (i) the "discovery sought is unreasonably cumulative or duplicative" (CCP §2019.030) as all material evidence is already in the record and (ii) "unduly burdensome [and] expensive, taking into account the needs of the case" (CCP §2019.030).

1 balance due on the NRD. But-for Cotton calling the City (discovering a CUP had been submitted in
2 October of 2016), confronting Geraci about his lies ^{and} demanding him to perform or provide assurance
3 of performance, Geraci's fraudulent scheme would have been successful.

4 "Fraud is a *defense* to breach of contract ... and the elements of contractual fraud are very similar
5 to those of deceit. Courts analyzing tort cases often rely on contract cases (and vice versa), and may
6 interchangeably cite the tortious deceit statutes (Civ.C. §§1709-1710) and contractual fraud statutes
7 (Civ.C. §§1572-1573)." Rutter Guide, *Civil Procedure Before Trial, Claims & Defenses* 15:3 (citing
8 *Pacesetter Homes, Inc. v. Brodtkin* (1970) 5 Cal.App.3d 206, 210-211; *Bily v. Arthur Young & Co.* (1992)
9 3 Cal.4th 370, 415; and 5 Witkin, *Summary of California Law*, Torts §767 (11th ed. 2017)).

10 Cotton, to prevail on this motion, must provide sufficient evidence to prove that Geraci will "more
11 likely than not" fail to "obtain a judgment against [Cotton] on the [BOC] claim." CCP §405.30. He can
12 do so by proving any one of the *contractual fraud* statutes for (i) Misrepresentation, (ii) Concealment,
13 (iii) False Promise or (iv) Other Deceptive Acts.⁷ However, to not just prevail on this motion, but to
14 demonstrate the complete lack of probable cause underlying this suit and the intentional malicious filing
15 of the *LP*, Cotton establishes and proves the more difficult elements for the fraudulent *tort of deceit* and
16 *promissory fraud* as defined by the California Supreme Court. In *Lazar v. Superior Court* (1996) 12
17 Cal.4th 631, 638 (internal citations and quotations omitted) the Court stated:

18 The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation
19 (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or
20 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e)
21 resulting damage.

22 "Promissory fraud" is a subspecies of the action for fraud and deceit. A promise to do
23 something necessarily implies the intention to perform; hence, where a promise is made
24 without such intention, there is an implied misrepresentation of fact that may be actionable
25 fraud. [An action for promissory fraud may lie where a [plaintiff] fraudulently induces
26 the [defendant] to enter into a contract

27 *Misrepresentations.* Geraci made, *inter alia*, the following misrepresentations: (1) Cotton's
28 execution of the Ownership Statement was required to resolve the Critical Zoning Issue; (2) the alleged

⁷ Civ.C. §1572(1) (Misrepresentation: "The suggestion, as a fact, of that which is not true, by one who does not believe it to be true."); Civ.C. §1572(3) (Concealment: "The suppression of that which is true, by one having knowledge or belief of the fact"); Civ.C. §1572(4) (False Promise: "A promise made without any intention of performing it"); Civ.C. §1572(5) (Other Deceptive Act: "Any other act fitted to deceive."; see *Wells v. Zenz* (1927) 83 Cal.App. 137, 140 (Describing this catchall provision as covering "all the multifarious means which human ingenuity can devise" and including deception by "surprise, trick, cunning, dissembling and unfairness.")).

1 Critical Zoning Issue, unless first resolved with Geraci's unique and powerful political connections,
2 prevented the submission of a CUP to the City; (3) he would pay Cotton the balance of the \$50,000 NRD
3 before submitting the CUP to the City; (4) the Receipt would not be represented as the "final agreement"
4 for the Property; (5) he would have his attorney, Austin, *promptly* reduce the November Agreement to
5 writing; (6) he would provide Cotton a 10% equity stake in the MO; and (7) he would provide Cotton a
6 minimum \$10,000 a month payment throughout the life of the MO (the "Seven Primary
7 Misrepresentations").

8 **Knowledge of Falsity.** The (i) *undisputed* written admissions and communications *by* Geraci
9 (most notably the Confirmation Email, the Confirmation Text, the Text Communications, and the March
10 guest Email); (ii) the City Parcel Report; (iii) the fact the CUP was submitted by Geraci's agent, Berry,
11 and accepted by the City in October 2016; and (iv) the language in the multiple drafts of the Purchase
12 and Side Agreements prepared by Geraci's attorney, Austin, *after* November 2, 2016 clearly prove
13 beyond any reasonable doubt that Geraci knew each of the Seven Primary Misrepresentations were false.

14 **Intent to Defraud** Prior to the execution of any documents, Geraci provided his Qualification
15 Representations and thereby characterized himself as a trustworthy, ethical, knowledgeable and
16 politically influential individual that was uniquely positioned to help Cotton with resolving the Critical
17 Zoning Issue and, consequently, getting a CUP approved on the Property. Thus, Geraci's Qualification
18 Representations were material and had the intent and effect of deceiving Cotton into believing, relying
19 and acting on Geraci's Seven Primary Misrepresentations.⁸

20 **Justifiable Reliance.** Based on Geraci's representations, it was reasonable and justifiable for
21 Cotton to act as if Geraci was being truthful. "No rational party would enter into a contract anticipating
22 that they are or will be lied to." *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993.
23 Prior to discovering in March of 2017 that Geraci had submitted a CUP in October of 2016, Cotton,
24 although upset at the lack of progress, had no reason to believe that Geraci was an unscrupulous
25 individual. Thus, it was reasonable for Cotton to be induced by Geraci's representations into (i) executing
26 the Ownership Statement, (ii) executing the Receipt, (iii) believing Geraci was diligently working on the

27
28 ⁸ See *Whiteley v. Philip Morris, Inc.* (2004) 17 Cal.App.4th 635, 678; 5 Witkin, *Summary of California Law, Torts* §808
(11th ed. 2017) (actual reliance is shown if the misrepresentation substantially influences a party's decision to act).

1 Critical Zoning Issue; (iv) believing Austin was working on reducing the November Agreement to writing
2 for execution; and (v) forbearing from entering into a contract for the Property with a third-party⁹. It was
3 not until Geraci refused to perform or even respond to Cotton's repeated requests for assurance of
4 performance that Cotton justifiably terminated the November Agreement¹⁰

5 **Damage.** It is impossible to convey in this action and motion the full scope of the irreparable and
6 unconscionable physical and psychological damage Geraci has caused Cotton.¹¹ However, at a
7 minimum, Cotton is entitled to compensation for all harm caused by Geraci's breach of contract that was
8 foreseeable. Civ.C. §3300. Some of Cotton's lost profits are recoverable as they were certain, under both
9 the November Agreement and the original Martin Sale Agreement, he was guaranteed a monthly
10 minimum of \$10,000. Civ.C. §3301. Furthermore, "once a person willfully deceives another with intent
11 to induce him to alter his position to his injury, he is liable for any damage which he thereby suffers."
12 (Civ.C. §1709.)" ***Fowler v. Fowler*** (1964) 227 Cal.App.2d 741, 748. Here, to finance this meritless
13 litigation, Cotton was forced to unconditionally sell his Property for a flat \$500,000 and he no longer has
14 any equity or monthly payments even if the CUP is approved. (RJN 6, p.194.)

15 C. **ALL OF GERACI'S ARGUMENTS ARE MEANT TO DISTRACT THIS COURT FROM**
16 **THE UNDISPUTED AND CASE-DISPOSITIVE NATURE OF THE CONFIRMATION**
17 **EMAIL AND OTHER EVIDENCE PROVING THE RECEIPT IS JUST A RECEIPT.**

18 A review of the record of this action, and the related Petition for Writ of Mandate action Cotton filed
19 against the City of San Diego¹² reveals that Weinstein devotes the vast and overwhelming majority of his
20 arguments to describing in painstaking detail, and proving with voluminous supporting evidence, the

21 ⁹ "Forbearance - the decision not to exercise a right or power - is sufficient consideration to support a contract and to
22 overcome the statute of frauds. [Citation.] It is also sufficient to fulfill the element of reliance necessary to sustain a cause of
23 action for fraud or negligent misrepresentation." *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 174.

24 ¹⁰ Civ.C. § 1440; "[I]f a party to a contract expressly or by implication repudiates the contract before the time for his or her
25 performance has arrived, an anticipatory breach is said to have occurred." *Romanov. Rockwell Internal, Inc.* (1996) 14 Cal.4th
26 479, 489; see I Witkin, Summary of California Law, Contracts §§861-868; *Restatement (Second) Contracts* §§250-257
27 (Anticipatory breach-also called "anticipatory repudiation" and "prospective nonperformance"-occurs when a party whose
28 performance is not yet due makes clear that it does not intend to perform.).

29 ¹¹ Cotton has filed a complaint in the United States District Court, Southern District of California which currently is pending
30 before The Honorable Gonzalo Curiel (Case No. 3:18-cv-00325). The federal action is stayed pending resolution of this state
31 action. Cotton has alleged causes of action against Mr. Geraci, Ms. Berry, Ms. Austin, Messrs. Weinstein and Toothacre, and
32 their respective law firms, Ferris & Britton and Austin Legal Group, for, *inter alia*, Civil Conspiracy and RICO. One of the
33 primary issues in that suit will focus on whether Geraci had probable cause, in light of the Confirmation Email and the other
34 evidence presented herein, to bring forth this suit; see, generally, RJN 6 (Cotton's attempt, in a submission that was
35 procedurally an opposition to compel certain discovery requests, describe the challenges he has faced in this litigation and his
36 relationship with counsel. His submission was supported by numerous declarations of individuals who interacted with him
37 during the negotiations phase with Geraci and this litigation.).

38 ¹² *Darryl Cotton v. City of San Diego* (Case No. 37-2017-00037675-CU-WM-CTL).

1 significant amount of time, energy, resources and capital that Geraci has invested in seeking to have the CUP
2 approved. *This is meant to distract the Court from the undisputed and case-dispositive nature of the*
3 *Confirmation Email, the Confirmation Text, the March Request Email, the Metadata Evidence and testimony*
4 *presented herein that completely remove all probable cause to support Geraci's allegation that the Receipt*
5 *is the final agreement/or the Property.* Geraci's lengthy descriptions of his self-serving performance cannot
6 be the basis of granting him a right of ownership to Cotton's Property. But, it *does* serve to distract the Court
7 by creating the illusion - because he has invested "more than \$300,000.00 on the CUP process" - that he
8 would only do so if he had a legal right of ownership to the Property. (Comp. 19.)

9 Previously, Geraci filed a Demurrer to Cotton's Cross-Complaint arguing, *inter alia*, the Statute
10 of Frauds ("SOF") and the Parol Evidence Rule ("PER") should prevent admission of some of the written
11 communications, especially the Confirmation Email, between the parties referenced above. This Court
12 properly denied Geraci's Demurrer. However, even assuming, *arguendo*, the Court had ruled otherwise
13 in the first instance, Geraci's reliance on the SOF and the PER is misplaced. First, "The doctrine of
14 estoppel to plead the statute of frauds may be applied where necessary to prevent either unconscionable
15 injury or unjust enrichment" *Tenzer v Superscope, Inc.* (1985) 39 Cal.3d 18, 27. Here, as described
16 above, both unconscionable injury and unjust enrichment will occur if Geraci can misrepresent the
17 Receipt as the final agreement for the Property. Second, the PER does not bar evidence *of fraudulent*
18 *promises* at variance with terms of the writing: "[I]t was never intended that the parol evidence rule
19 should be used as a shield to prevent the proof of fraud." *Riverisland Cold Storage, Inc. v Fresno-Madera*
20 *Production Credit Ass'n* (2013) 55 Cal.4th 1169, 1182 (quoting *Ferguson v Koch* (1928) 204 Cal. 342,
21 347).

22 Notably, the California Supreme Court in *Riverisland* referenced *Tenzer, supra*, in reaching its
23 holding: "*Tenzer* disapproved a 44-year-old line of cases to bring California law into accord with the
24 Restatement Second of Torts, holding that a fraud action is not barred when the allegedly fraudulent
25 promise is unenforceable under the statute of frauds. Considerations that were persuasive in *Tenzer* also
26 support our conclusion here. The *Tenzer* court decided the Restatement view was better as a matter of
27 policy. [Citation.] *It noted the principle that a rule intended to prevent fraud, in that case the statute*
28 *of frauds, should not be applied so as to facilitate fraud.* [Citation.]" *Riverisland, supra*, at 1183

1 (emphasis added).

2 Litigation-hyperbole aside, it would be truly outrageous and violate all notions of justice, fairness
3 and simple decency if Geraci could invoke the SOF or the PER to prevent his own written admissions
4 proving his own fraud. Cotton has continuously sold and collateralized his remaining interest in the
5 Property to finance this meritless litigation. If he loses - it is not an exaggeration, but a fact - Cotton will
6 be destitute and homeless.¹³

7 IV. CONCLUSION

8 The Receipt is the *only* piece of evidence Geraci has *ever* produced which APPEARS to grant
9 him a right of ownership to the Property. Setting aside the other evidence referenced above (Geraci's
10 anticipatory breach of the November Agreement and the fraud), the Confirmation Email alone is
11 indisputably dispositive on this issue ***the Receipt is just a "receipt" and not a "final written***
12 ***agreement" for the Property.*** Geraci had no probable cause to file this action and "recorded [the]
13 lis pendens... to coerce [Cotton] to settle regardless of the merits." *Hi/berg, supra*, at 542 ("We cannot
14 ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made ... to
15 coerce an opponent to settle regardless of the merits.").

16 For the reasons forth above, Geraci cannot meet his burden and establish the probable validity
17 that the Receipt is the final written agreement for the Property. Thus, respectfully, Cotton requests the
18 Court order the *LP* be expunged, award Cotton his attorneys' fees and costs¹⁴ (to be submitted by way of
19 noticed motion upon this Court's ruling on this motion), and such other relief as this Court may find just
20 and proper based on its factual findings at the hearing on this motion.

21
22 DATED: April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

23
24 By / JACOB AUSTIN
25 Attorney for Defendant and Cross-Complainant
DARRYL COTTON

26 ¹³ DC Deel. 21; RJN 6, p.194 (Amendment to Martin Sale Agreement).

27 ¹⁴ *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1018 ("Under section 405.38, a prevailing party on a motion to
28 expunge a lis pendens is *entitled* to recover attorney fees. The statute provides: 'The court *shall* direct that the *party prevailing*
on any motion under this chapter be awarded the reasonable attorney's fees and costs of making or opposing the motion unless
the court finds that the other party acted with substantial justification or that other circumstances make the imposition of
attorney's fees and costs unjust.' (§405.38, italics added.)"). [Emphasis in original.]

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F. I. Clerk of the Superior Court E. D.

APR 04 2018

By: A. SEAMONS, Deputy

2018 APR 04 11:48

Attorney for Defendant and Cross-Complainant Darryl Cotton
[Representation Limited to Motion to Expunge *Lis Pendens*]

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

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

vs.

DARRYL COTTON'S DECLARATION IN
SUPPORT OF MOTION FOR EXPUNGEMENT
OF NOTICE OF PENDENCY OF ACTION
(*LISPENDENS*)

DARRYL COTTON, an individual; REBECCA
BERRY, an individual; and DOES 1 to 10, Inclusive,
Defendants.

DATE: April 13, 2018
TIME: 9:00 a.m.
DePT: C-72
JUDGE: The Honorable Joel R. Wohlfeil

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

LARRY GERACI, and individual, REBECCA
BERRY, an individual; and DOES 1 through 10,
Inclusive,

Cross-Defendants.

I, Darryl Cotton ("Cotton" or "Defendant"), declare:

1. I am the owner of record of the real property located at 6176 Federal Blvd., San Diego
(the "Property").

2. In or around August 2016, Geraci first contacted Cotton seeking to purchase the

1 Property. Geraci desired to buy the Property from Cotton because it met certain requirements of the
2 City of San Diego ("City") to apply for and obtain a conditional use permit ("CUP") that would allow
3 the operation of a Marijuana Outlet ("MO") at the Property. Over the ensuing months, we extensively
4 negotiated the terms of a potential sale of the Property.

5 3. --owing these negotiations, Geraci made the following representations to me: (i) he could
6 be trusted as reflected by the fact that he operated in a fiduciary capacity as an IRS Enrolled Agent for
7 many powerful and high-net-worth individuals ("HNWI"); (ii) he is the owner and operator of Tax and
8 Financial Center, Inc., an accounting and financial advisory services company, servicing HNWI and
9 large businesses in a fiduciary capacity; (iii) he was a California Licensed Real Estate Broker, bound by
10 professional and ethical obligations, to be truthful in real-estate deals; (iv) through his experts, who had
11 conducted preliminary due diligence, he had uncovered a critical zoning issue that *unless, first* resolved
12 would prevent the City from even accepting a CUP application on the Property (the "Critical Zoning
13 Issue"); (v) through his professional relationships, which included his HNWI clients that were
14 politically influential, and through powerful hired lobbyists (some of whom used to work for the City in
15 senior positions), he was in a unique position to have the Critical Zoning Issue resolved; (vi) he was
16 highly qualified to operate a MO because he owned and operated multiple cannabis dispensaries in San
17 Diego; and (vii) his employee, Rebecca Berry (" "), was a trustworthy individual that could be
18 trusted to be the applicant on the CUP application because she (a) managed his marijuana dispensaries,
19 (b) held a senior position at a church and came across as a "nice old lady that had nothing to do with
20 marijuana," and (c), consequently, would pass the stringent City and State of California background
21 checks required to have the CUP approved (collectively, the "Qualification Representations").

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

26 5. On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of
27 the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale
28 of the Property (the "November Agreement"). The November Agreement consisted of the following: If
the CUP was approved, then Geraci would, *inter alia*, provide me: (i) a total purchase price of
\$800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of
\$10,000. If the CUP was denied, I would keep an agreed upon \$50,000 non-refundable deposit

1 ("NRD") and the transaction would not close. In other words, the issuance of the CUP at the Property.
2 was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would
3 keep my Property and the \$50,000 NRD.

4 6. At the November 2, 2016 meeting, we reached the November Agreement, Geraci: (i)
5 provided me with \$10,000 in cash towards the NRD of \$50,000, for which I executed a document to
6 record my receipt thereof (the "Receipt"); (ii) promised to have his attorney, Gina Austin ("Austin"),
7 promptly reduce the oral November Agreement to written agreements for execution; and (iii) promised
8 to not submit the CUP to the City until he paid the balance on the NRD.

9 7. After Geraci and I met on November 2, 2016, reached the November Agreement,
10 executed the Receipt and separated we had a series of email communications that took place that same
11 day. Attached hereto as Exhibit 1 is a true and correct copy of all emails between Geraci and I.

12 8. The day I received a copy of the Receipt from Geraci, I realized it could be misconstrued,
13 as a final agreement for the Property. Because I was concerned, and wanted there to be no uncertainty, I
14 requested Geraci confirm in writing the Receipt was not a final agreement. Geraci replied and I refer to
15 this email from him as the "Confirmation Email."

16 9. Thereafter, over the course of almost five months, we exchanged numerous emails, texts
17 and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of
18 the final written agreements for the Property (included in Exhibit 1). However, Geraci continuously
19 failed to make actual, substantive progress. Most notably, he failed to provide me the final written
20 agreements, pay the balance of the NRD, and to provide facts regarding the progress being made on the
21 Critical Zoning Issue.

22 10. Regarding the Critical Zoning Issue, Geraci and I exchanged a series of texts. Attached
23 hereto as Exhibit 2 is a true and correct copy of text messages between Geraci and I from January 6,
24 2017 and February 7, 2017.

25 11. These text communications make me think, among other things, that Geraci was being
26 truthful about working on and making progress on the Critical Zoning Issue (the "Text
27 Communications").

28 12. On March 3, 2017, I emailed Geraci regarding a draft agreement that was supposed to
contain, *inter alia*, my 10% equity stake in the MO. Geraci did not reply to my email. Geraci did not
pick up when I called later. I grew exasperated, and later followed-up with Geraci via text wanting to
confirm that Geraci had received my email and understood my concern - that the Side Agreement did

1 not provide for my "10% equity position^H in the MO.

2 13. On March 6, 2017, Geraci and I spoke regarding revisions required to have the drafts
3 accurately reflect the November Agreement. I communicated my frustration with the delays and Geraci
4 again promised to have Austin *promptly* correct the mistakes in the drafts. During that conversation, I
5 let Geraci know that I would be attending a local cannabis event at which Austin was scheduled to be
6 the headnote speaker. Geraci later texted me that I could speak with her directly at the event.

7 14. I was unable to attend the event that night. However, I had grown suspicious of Geraci
8 because of his continuous failure to accurately ave Austin reduce the November Agreement to writing.
9 So, I had already set in place a contingency plan. I requested the help of Mr. Joe Hurtado, a financial
10 transaction adviser, and asked him to help me locate a new buyer for the Property. I asked him to
11 attend the event so that he could tell Austin I would not attend to discuss the revisions to the agreement
12 and so he could confirm with her directly that Geraci and I had not executed a final written agreement
13 yet.

14 15. On March 7, 2017, Geraci sent me an email. Attached to Geraci's email was a revised
15 draft of the Side Agreement in Word format. The embedded metadata to the Word file of the agreement
16 states the file was created ••March 3, 2017" and the author of the document is "Gina Austin (the
17 "Metadata Evidence"). Attached hereto as Exhibit 3 is a true and correct copy of screen shot of that
18 Metadata Evidence.

19 16. On March 16, 2017, after having reviewed the revised agreement forwarded by Geraci
20 on March 7, 2017, and discovering that it again did not accurately reflect the November Agreement, I
21 decided to follow up with the City regarding the ritical Zoning Issue personally. It was at this point
22 that I discovered that Geraci had been lying from the very beginning - Geraci had submitted a CUP for
23 the Property on October 31 2016, before we even reached the November Agreement. Submitted
24 herewith with the accompanying Request for Judicial Notice is a copy of a Parcel Information Report
25 provided by the City of San Diego, Development Services Department ("City Parcel Report") that
26 states the zoning of the Property was changed to "C0 2 1" (MO qualifying zone) on January 14, 2016.

27 17. On March 21, 2017, because Geraci neither responded to my requests for assurance of
28 performance, provide the November Agreement reduced to writing as required per the November
Agreement, and I had found out that he had lied to me about numerous matters, I terminated the
contract with Geraci via email.

18. Because I had already anticipated Geraci's breach from his evasive language and failure

1 to confirm he would honor his end of the bargain, I had already lined up another buyer and I entered
2 into a written purchase agreement for the sale of the Property to Mr. Martin (the "Martin Sale
3 Agreement").

4 19. The next day, Geraci's counsel, Michael Weinstein ("Weinstein"), emailed me the
5 Complaint and the *Uspendens* filed on my Property.

6 20. On January 25, 2018, I attended a hearing before Judge Wohlfeil on a motion to compel
7 me to respond to certain discovery requests by Geraci. In my opposition to that motion, I described
8 what I believed were the unethical actions by, *inter-alia*, Austin and Weinstein. At the beginning of the
9 hearing, Judge Wohlfeil told me that he knew them well and that he did not believe they would engage
10 in the unethical actions I described in my opposition.

11 21. I have no other assets other than my Property. I have borrowed against the sale of the
12 Property. If I lose this litigation, even assuming I do not have to pay Geraci's legal fees, the equity I
13 would receive does not cover the debt that I owe. I have long ago exhausted all personal and
14 professional sources of capital. I am facing daily financial hardship. If I lose this property, I will have
15 no means by which to subsist

16 22. I underwent an Independent Psychiatric Assessment (the "IPA") with Dr. Markus
17 Ploesser. Attached hereto as Exhibit 4 is a true and correct copy of the IPA.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct, and that this declaration was executed on April 4, 2018 at San Diego, California.

20 *tlflk*
21 *inroN*

EXHIBIT 1

657

E-MAILS BETWEEN COTTON AND GERACI 10/24/16 - 03/21/17

NO.	DATE	TIME	FROM	TO	SUBJECT	ATTACHMENT	PAGE#/ RANGE
1	10/24/16	12:38 pm	Geraci	Cotton	Drawing	Yes	1-2
						A102 Site Plan - Proposed Scheme B.pdf	3
2	11/02/16	03:11 pm	Geraci	Cotton	Agreement	Yes	4-5
						Cotton & Geraci Contract.pdf	6-8
3	11/02/16	06:55 pm 09:13 pm	Cotton Geraci	Geraci Cotton	Agreement Agreement	No	9
4	11/14/16	10:26 pm	Geraci	Cotton	Federal Blvd needs sig ASAP	Yes	10-11
						Authorization to view and copy Building Records from the County of San Diego Tax Assessor.pdf	12
5	02/27/17	08:49 pm	Geraci	Cotton	Federal Blvd Property	Yes	13-14
						17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf	15-40
6	03/02/17	08:51 am	Geraci	Cotton	Statement	Yes	41-42
						17-0227 Side Agreement-unsigned.docx	43-48
7	03/03/17	08:22 am	Cotton	Geraci	Re: Statement	Yes	49-50
						IndaGro-GERL Service Contract.doc	51-52
8	03/07/17	12:05 pm	Geraci	Cotton	Contract Review	Yes	53-54
						17-0306 Side Agreement unsigned.docx	55-58
9	03/16/17	08:23 am	Cotton	Geraci	Re: Contract Review	No	59-60
10	03/17/17	02:15 pm	Cotton	Geraci	Re: Contract Review	No	61
11	03/18/17	01:43 pm	Geraci	Cotton	RE: Contract Review	No	62-63
12	03/19/17	09:02 am	Cotton	Geraci	Re: Contract Review	No	64
13	03/19/17	03:11 pm	Geraci	Cotton	RE: Contract Review	No	65
14	03/19/17	06:47 pm	Cotton	Geraci	Re: Contract Review	No	66
15	03/21/17	03:18 pm	Cotton	Geraci	Re: Contract Review	No	67

II Gmail

Darryl Cotton <indagroddarryl@gmail.com>

Drawing

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

Mon, Oct 24, 2016 at 12:38 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

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From: **darryl@dalbercia.us** (mailto:**darryl@dalbercia.us**) On Behalf Of Darryl Cotton
Sent: Monday, October 24, 2016 12:37 PM
To: Larry Geraci <**Larry@tfcSD.net**>
Subject: Test Send

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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A102 Site Plan -Proposed -Scheme B.pdf
399K

IBIGmail

Darryl Cotton <indagrodarryl@gmail.com>

Agreement

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

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Lany E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*

Web: Lanygeraci.com

Bus: 858.576.1040

Fax: 858. 630. 3900

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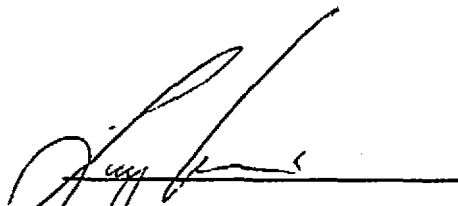
◆ **Cotton & Geraci Contract.pdf**
71K

11/02/2016

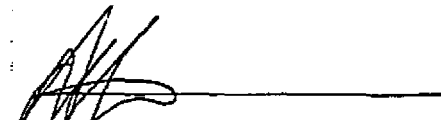
Agreement between Larry Geraci or assignee and Darryl Cotton:

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 bt-elao

On N01!fyn\ x(dt oDUo before me, iSI I'l-- NtUH, V Noke, \ / i/u(d
(insert name and title of the officer)

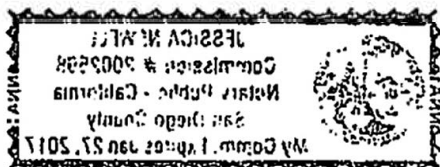
personally appeared Darryl C. ... and utr'v Ceyao
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within Instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their 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.



Signatu ♦ (Seal)



BIGmail

Darryl Cotton <indagroddarryl@gmail.com>

Re: Agreement

1 message

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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Darryl Cotton <indagrodarryl@gmail.com>

Federal Blvd need sig ASAP

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

Mon, Nov 14, 2016 at 10:26 AM

Hi Darryl,

Can you sign and email back to me asap?

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*

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Authorization to view and copy Building Records from the County of San Diego.pdf

IICJ 35 K

Authorization to view and copy Building Records from the County of San Diego Tax Assessor

I, Darryl Cotton, owner of the property located at 6176 Federal Blvd, San Diego, CA (APN 543-020-02-00) authorize Abhay Schweitzer, Benjamin Peterson, and/or Carlos Gonzalez ofTECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

Signature

_____/_____/_____

Date

IndaGro, Inc.

Darryl Cotton <Indagrodarryl@gmail.com>

Federal Blvd Property

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

Mon, Feb 27, 2017 at 8:49 AM

Hi Daryl,

Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.

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

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Gmail- Federal Blvd Proper!;

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17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf
M7K

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made and entered into this ____ day of _____ 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("Seller"), and 6176 FEDERAL BLVD TRUST dated --- . 2017, or its assignee ("Buyer").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

I. DEFINITIONS. For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property":** That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. **"Date of Agreement":** The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. **"Purchase Price":** The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars (\$400,000.00).

d. **"Due Diligence Period":** The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. **"Escrow Agent":** The Escrow Agent is: [NAME]

f. **"Title Company":** The Title Company is: [NAME]

g. **"Title Approval Date":** The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. **"Closing", "Closing Date" and "Close of Escrow":** These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. **"Notices"** will be sent as follows to:

Buyer:	6176 Federal Blvd. Trust
	6176 Federal Blvd.

San Diego, California 92114

Attn:

Fax No.:

Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110,

Seller:

Darryl Cotton
Address:
City, State, Zip
Attn:
Fax No.:
Phone No.:

Escrow Agent:

[NAME]
[ADDRESS]

2. PURCHASE AND SALE. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "Improvements"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "**Intangibles**"). (Reference herein to the "**Property**" shall include the Real Property, Improvements, and Intangibles).

3. PURCHASE PRICE AND PAYMENT: DEPOSIT. The Purchase Price will be paid as follows:

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

b. Cash Balance. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (!) business day prior to the Close of Escrow.

4. ESCROW.

a. Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "**Escrow**") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section I, above.

c. Failure to Receive CUP. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "**Buyer's Indemnity**" (as detailed in Section 8 below).

5. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "Preliminary Title Report"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section I. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. Permitted Exceptions. The following exceptions shown on the Preliminary Title Report (the "**Permitted Exceptions**") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("Mandatory Cure Items").

c. Title Policy. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. Title and Survey Costs. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("**Property Information**"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. DUE DILIGENCE. Buyer shall have through the last day of the Due Diligence Period, as defined in Section I, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "**Due Diligence Termination Notice**") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

8. PHYSICAL INSPECTION: BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. COVENANTS OF SELLER. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exist any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "**Buyer's Representatives**") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. DAMAGE. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. CONDEMNATION. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Seller's loss of income prior to closing.

14. CLOSING

a. Closing Date. The consummation of the transaction contemplated herein ("**Closing**") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "Deed").

(14) Assignment of Intangible Property. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) FIRPTA. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. Buyer's Deliveries in Escrow. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) Purchase Price. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. Transfer of Title. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

15. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. At the Closing, Seller shall be charged the following:

- (1) All premiums for an ALTA Standard Coverage Title Policy;
- (2) One-half of all escrow fees and costs;
- (3) Seller's share of prorations; and
- (4) One-half of all transfer taxes.

b. Buyer Will Pay. At the Closing, Buyer shall pay:

- (1) All document recording charges;
- (2) One-half of all escrow fees and costs;
- (3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;
- (4) One-half of all transfer taxes; and
- (5) Buyer's share of prorations.

c. Prorations.

(1) Taxes. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. CLOSING DELIVERIES.

a Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) Funds. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and proration charges chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) Recording. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed after recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a Seller's Default. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

Seller's Initials

Buyer's Initials

c. Escrow Cancellation Following a Termination Notice. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "Escrow Cancellation Charges"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half(½) of any Escrow Cancellation Charges.

18. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

h. Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "**Exchange**") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. Legal Advice. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. Memorandum of Agreement. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first set forth above.

BUYER:

6176 FEDERAL BLVD TRUST

By: _____

Printed: - - - - -

Its: Trustee

SELLER:

DARRYL COTTON.

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

Date: _____, 2017

By: _____

Escrow Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY
(to be provided by the Title Company)

EXHIBIT "B"

PROPERTY INFORMATION

EXHIBIT "C"
I
SERVICE CONTRACTS

EXHIBIT "D"

THREATENED OR PENDING LAWSUITS

EXHIBIT "E"

MEMORANDUM OF AGREEMENT

rilJGmail

Darryl Cotton <indagroddarryl@gmail.com>

Statement

1 message

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

Thu, Mar 2, 2017 at 8:51 AM

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:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication

Gmail - Statement

and is intended for the person or firm identified above, If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

ii 17-0227 Side Agreement unsigned.docx
35K

SIDE AGREEMENT

Dated as of March __, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the __ day of ___, 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars (\$400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I

1. Terms of the Side Agreement

1.1. Buyer shall pay Four Hundred Thousand Dollars (\$400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. Buyer shall transmit Payment Price via wire transfer to the following account: ----- " . with the routing number or swift code of: ----- , located at the following bank and address: -----

3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

3.6. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

3.11. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. Invalidity and Waiver. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
6176 Federal Blvd.
San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 921 10

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON:

ti'.IGmaU

Darryl Cotton <Indagrodarryl@gmail.com>

Re: Statement

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcSD.net>

Fri, Mar 3, 2017 at 8:22 AM

Larry,

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

On Thu, Mar 2, 2017 at 8:51 AM, Larry Geraci <Larry@tfcSD.net> wrote:

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.

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by *any* taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858) 576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

IndaGro-GERL Service Contract.doc
691K



SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments
5402 Ruffin Road, Ste. 200
San Diego, CA 92103

Attn: Mr. Larry Geraci
Ph: 858.956.4040
E-mail: Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

- 1) The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for \$400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.
- 2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.
- 3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.
- 4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of \$400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro \$200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, \$200,000.00 would become payable and due.
- 5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and

Inda-Gro

6176 Federal Blvd., San Diego, CA 92114-1401
Toll Free: 877.452.2244 Local: 619.266.4004
www.inda-gro.com

51709



GERL to identify ongoing Investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from Interested parties having toured our facilities and wishing to establish similar operations.

- 6) GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

TOTAL PRICE: Four Hundred Thousand and 00/100 (\$400,000.00)

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

Sign: _____
Darryl Cotton, President

Print Name: _____

Date: ____ - ____ - ____

Sign: _____
Larry Geraci

Print Name: _____

Date: ____ - ____ - ____

Gma,"I

Darryl Cotton <indagroddarryl@gmail.com>

Contract Review

Larry Geraci <Lany@tfcisd.net>
To: Oanyl Cotton <darryl@inda gro.com>

Tue, Mar 7, 2017 at 12:05 PM

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k₁ and on the seventh month start 10k?

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:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

 **17-0306 Side Agreement unsigned v2.docx**
 **38K**

SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the ____ day of _____, 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated _____, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller \$400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I SIDE AGREEMENT

1.1. Within 10 days from the closing of the purchase of the Property pursuant to the Purchase Agreement, and conditioned upon Seller being fully vacated from the Property prior to such closing, Buyer shall pay to Seller in cash or cash equivalent, the sum of Four Hundred Thousand Dollars (\$400,000.00) to an account to be designated by Seller in writing.

1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the 10th day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than \$5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and \$10,000.00 a month for each month thereafter the Business is operating on the Property.

ARTICLE II GENERAL TERMS

2. Entire Agreement. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. Tennination. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

2.10. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. Incorporation of Recitals/Exhibits. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER: SELLER:

6176 FEDERAL BLVD. TRUST

DARRYL COTTON:

By: _____

Printed: _____

Its: Trustee

Gma;

Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcscd.net>

Thu, Mar 16, 2017 at 8:23 PM

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/17, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held *off* until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms Incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with

suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."

- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

InGmail

Darryl Cotton <Indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcisd.net>

Fri, Mar 17, 2017 at 2:15 PM

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will 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. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, 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.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

IIGmail

Darryl Cotton <indagroddarryl@gmail.com>

RE: Contract Review

1 message

Larry Geraci <Lany@tfcisd.net>
To: Darryl Cotton <indagroddarryl@gmail.com>

Sat, Mar 18, 2017 at 1:43 PM

Darryl,

I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor.

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:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

tBI Gma,

Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcfsd.net>

Sun, Mar 19, 2017 at 9:02 AM

Larry,

I understand that drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the \$50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.

IBI Gmail

Darryl Cotton <indagrodarryl@gmail.com>

RE: Contract Review

1 message

Larry Geraci <Larry@tfcSD.net>
To: Darryl Cotton <indagrodarryl@gmail.com>

Sun, Mar 19, 2017 at 3:11 PM

Darryl,

At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

As to lying about the status, read the comment below from the city on Wednesday 3/15/2017. We are addressing this currently with the city. I have been forthright with you this entire process.

To: 'Abhay Schweitzer' <abhay@techne-us.com>
Subject: PTS 520606 - Federal Boulevard MMCC
Importance: High

Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the C0-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.

Please advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.

Please notify me at your earliest convenience of your preference.

Regards,

R1Gmail

Darryl Cotton <Indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcSD.net>

Sun, Mar 19, 2017 at 6:47 PM

Larry,

I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that ITT/ interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.

It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.

ri3Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcSD.net>

Tue, Mar 21, 2017 at 3:18 PM

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete" phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

EXHIBIT2

726

Friday, March 3, 2017

12:16 PM Did you get my email?

(L) Yes I did I'm having her
Jewrite it now

As soon as I get it I will
forward it to you

12:17 PM

Monday, March 6, 2017

(L) Gina Austin is there she has
a red jacket on if you want to
have a conversation with her

4:30PM

Tuesday, March 7, 2017

(L) Just sent the contract over

12:05 PM

2:00 PM I'll look it over tonight

Thursday, March 16, 2017

(L) How's it going with the
contract?

4:47PM

Friday, March 17, 2017

(L) Can we meet tomorrow

11:44AM

& fnter message

©

That sounds good. Can we
speak later?

10:15AM

L Not done intel 1030 tonight ...
am tomorrow

11:27 AM

12:16 PM K

Wednesday, February 15, 2017

L Good morning Darrell... We
are preparing the documents
with the attor

ney and hopefully will have
them by the end of this week

8:25AM

1:00 PM Sounds good

Wednesday, February 22, 2017

L Contract should be ready in a
couple days

11:38 AM

Thursday, February 23, 2017

L Can you call me when you get
a chance thanks

2:38 PM

Monday, February 27, 2017

L Good morning Darrell I
emailed you the contract
for the purchase of the
property ...the relocation
contract will come sometime
today

8:50AM

Hi Larry I'm traveling today
I will have a chance to look
at that tomorrow and I will
forward it to my attorney
thank you

10:04AM

Wednesday, January 18, 2017

(L) Th "ill off date. they said it's.
going to be the 30th

10:27 AM

This resolves the zoning
10:34 AM issue?

(L) Yes 10:36 AM

11:03 AM Excellent

Monday, January 30, 2017

(i) : On phone.. Call you bad<
: shortly..

3:50 PM

3:50 PM .Ok

Tuesday, January 31, 2017

2:47 PM How goes it?

([) : We're waiting for
: confirmation today at about 4
: o'clock

2:48 PM

Monday, February 6, 2017

12:15 PM What's new?

Tuesday, February 7, 2017

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.

8:19 AM

) I'm just walking in 'Nth clients
: they resolved it it's fine ;
: we're just waiting for final
: paperwork

8:20 AM

G (J 0 日 • 11 P' 00 '9 @ 00 . A 67% il 5:43 PM

< Larry Geraci

8589564040



SMS/MMS

Wednesday, January 4, 2017



Hi. Daryl I have the extreme.
case of the flu and I'm in bed
I'll try to call you tomorrow or
the next day

12:20 PM

12:20 PM Got ♦♦♦et and ttyp

Thursday, January 5, 2017

a.s2 AM Any better?

Friday, January 6, 2017

Can you call me. If for any
reason you're not moving
forward I need to know.

7:00 AM



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

9:51 AM

Friday, January 13, 2017

Are you. available for a call?

10:46AM



I'm in a meeting I'll call you
when I'm done

10:47 AM

10:47 AM Thx i

c 17-0306 Side Agreement unsigned v2 Properties



General Security Details

Property Value

Description

Title

Subject

Tags

Categories

Comments

Quick

Authors Gina Austin

Last saved by AEA

Revision number 4

Version number

Program name Microsoft Office Word

Company HP

Manager

Content created 3/6/2017 3:43 PM

Date last saved 3/6/2017 5:05 PM

Last printed

Total editing time 01:22:00

Content

Remove Properties and Personal Information

OK

Cancel

EXHIBIT 4

732

Case No.:

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

DARRYL COTTON
Defendant and Appellant,

v.

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

Appeal from Orders of the Superior Court, County of San Diego

37-2017-00010073-CU-BC-CTL
37-2017-00037675-CU-WM-CTL

Honorable Joel R. Wohlfeil, Judge Presiding

**INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON;
DECLARATION OF DR. MARKUS PLOESSER
IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION
FOR EXTRAORDINARY WRIT, WRIT OF MANDATE,
OR OTHER APPROPRIATE RELIEF**

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

1 I, Markus Ploesser, MD, LLM, DABPN, FRCP(C), declare:

2 I. On March 4, 2018, I interviewed Mr. Darryl Cotton for an Independent
3 Psychiatric Assessment. At the beginning of the assessment, I informed Mr. Cotton
4 that the assessment was being prepared to assist the Court and not to act as an advocate
5 on his behalf. Mr. Cotton expressed his understanding, agreement and proceeded with
6 the interview and assessment.
7

8
9 **DUTY TO COURT**

10 2. I certify that I am aware of my duty as an expert to assist the Court and
11 not to be an advocate for any party. I have prepared this report in conformity with that
12 duty. I will provide testimony in conformity with that duty if I am called upon to
13 provide oral or written testimony.
14

15 3. I am solely responsible for the opinions provided in this report. I reserve
16 the right to amend or alter my opinions should additional relevant information become
17 available after the report completion.
18

19 **QUALIFICATIONS**

20
21 4. I am a psychiatrist licensed in the State of California, Physician and
22 Surgeon License No. A101564 and the Province of British Columbia, License No.
23 31564.
24

25 5. I am Board certified by the American Board of Psychiatry and Neurology
26 in the area of Psychiatry (Certificate No. 60630) and the subspecialty of Forensic
27

Psychiatry (Certificate No. 1903).

6. I am a Fellow of the Royal College of Physicians and Surgeons of Canada, with certifications in Psychiatry and Forensic Psychiatry.

7. I am on the clinical faculty at the University of British Columbia (UBC) in the division of Forensic Psychiatry.

8. My prior work experience has included forensic psychiatric evaluation work for the Forensic Psychiatric Hospital and the Forensic Psychiatric Services Commission in Coquitlam, British Columbia. I have written numerous forensic psychiatric assessment reports and testified as an expert witness before the British Columbia Review Board and the Provincial Courts of British Columbia.

9. I currently work as a psychiatrist for the Department of Corrections for the State of California.

10. In addition to my medical qualifications, I am also a graduate of Columbia University School of Law in the LLM program.

11. In preparation for my assessment of Mr. Cotton, I consulted with Dr. Carolyn Candido regarding her medical diagnosis of Mr. Cotton on December 13, 2017. Additionally, I reviewed the declaration previously provided by Dr. Candido regarding her diagnosis of Mr. Cotton prepared on January 22, 2018. (Attached hereto as Exhibit 1.)

12. Prior to my interview with Mr. Cotton, I also discussed the fact and

28 11--

1 background regarding Mr; Cotton's need for a psychiatric assessment with his legal
2 consultant, Mr. Jacob Austin. Mr. Austin, I was told, is representing Mr. Cotton on a
3 limited basis due to Mr. Cotton's inability to pay for his full legal representation by
4 Mr. Austin.
5

6 CLIENT INTERVIEW

7
8 13. Mr. Cotton related the following: He is 57 years old. He was born and
9 raised in the Chicago area and has lived in San Diego since 1980. He owns a lighting
10 manufacturing company but reports that over the past approximately 9-12 months he
11 has experienced financial hardship, stress and anxiety originating from a lawsuit
12 against him.
13

14 14. Mr. Cotton denies any history of mental health symptoms predating the
15 current lawsuit. He is taking Keppra 500mg twice daily for a seizure disorder, which
16 he started suffering from around the age of 26. He usually suffers from approximately
17 3 Grand Mal seizures per year. He used to take Dilantin, another anticonvulsant
18 medication. He reports having obtained significant medical benefit from the use of
19 medical cannabis, particularly a high CBD strain which he says has helped to reduce
20 the frequency of his seizures.
21
22

23 15. Mr. Cotton represents he owns a property meeting certain requirements
24 by the City of San Diego and the State of California that would allow the creation and
25 operation of a Medical Marijuana Consumer Collective.
26
27

1 16. Mr. Cotton reports that he has and is being subjected to a variety of threats
2 and harassing behaviors that he believes have been directed against him by the plaintiff
3 in the lawsuit.
4

5 17. Mr. Cotton believes that an armed robbery on June 10th, 2017 on his
6 property may have been directed by the plaintiff. He was present at his property at the
7 time of the armed robbery, ~~skill?~~ opening the door and thereby escaping the robbers inside
8 a building on his property. while he called 911. The armed individuals who committed
9 the robbery threatened Mr. Cotton at gun-point before fleeing from the premises. (Mr.
10 Cotton stated the armed-robbery is still unresolved by the police and it was the subject
11 of local news coverage that is still available online.)
12
13

14 18. Mr. Cotton states he followed the armed individuals in his vehicle as they
15 fled from the scene while he was on the phone with 911. He was told by 911 to cease
16 his pursuit due to safety reasons as Mr. Cotton was chasing the armed robbers at high-
17 speed. Mr. Cotton believes he recognized the driver of the getaway vehicle as an
18 employee of the plaintiff.
19
20

21 19. Mr. Cotton appeared particularly intense during his narration regarding
22 one of his employees who was duct-taped and laying face down at gun-point on the
23 ground. Mr. Cotton states that this long-time employee, an electrical-engineer who Mr.
24 Cotton relied upon heavily, quit the next day because of this incident.
25

26 20. Mr. Cotton describes starting to experience increased symptoms of stress
27
28

1 and anxiety since the robbery, above that which was caused by the litigation. He had
2 been in his usual state of health prior. He reports that he is now unable to sleep at night,
3 experiences "mood swings" and episodes of explosive rage without apparent triggers.
4 He experiences nightmares around themes of feeling powerless. The nightmares occur
5 in slight variations, and at times he "sees the robbers in his dreams."

7 21. Furthermore, his description of his nightmares include vivid scenes of
8 violence towards the attorneys for plaintiff that he believes are not acting in a
9 professional manner. Mr. Cotton believes that the attorneys representing plaintiff are
10 "in it together" with the plaintiff to use the lawsuit to "defraud" him of his property.
11 This point is one of the main foci of his expressed mental distress.
12

14 22. Mr. Cotton's distress due to his perception of a conspiracy against him by
15 attorneys is amplified by what he believes is the Court's disregard for the evidence and
16 arguments he has presented. He states he has never been provided the reasoning for the
17 denial of any relief he sought. Mr. Cotton expressed that at certain points during the
18 course of the litigation he believed the trial court judge was part of the perceived
19 conspiracy against him.
20

22 23. Mr. Cotton is also under the belief that his former law firm could have
23 resolved this matter at an early stage in the proceedings but chose not to in order to
24 continue billing legal fees.
25

26 24. Mr. Cotton reports no improvement in his mental health symptoms since
27

1 the robbery. He describes that since the robbery there have been additional threats made
2 against him by "agents" of the plaintiff. Specifically, he describes that two associates
3 of plaintiff went to his property on February 3, 2017 under the pretense of discussing
4 potenti-1 business opportunities, but when they arrived they were there to indirectly
5 threaten him by informing him that it would be "good" for him to "settle With Geraci."

7 25. Mr. Cotton now feels hopeless, helpless, unable to sleep, with decreased
8 appetite, but either no or only minimal changes in weight.

10 26. Mr. Cotton states that on December 12, 2017, immediately after a court
11 hearing, he was evaluated in the emergency department of a hospital for a TIA
12 (transitory ischemic attack, a frequent precursor of a stroke).

14 27. The day after his emergency department discharge, Mr. Cotton states he
15 assaulted a third-party and that is also the day he was diagnosed with Acute Stress
16 Disorder by Dr. Candido.

18 28. Mr. Cotton expressed having experienced suicidal ideation, most recently
19 on December 13th, 2017. He denied symptoms of psychosis, specifically
20 hallucinations.

22 OPINIONS AND RECOMMENDATIONS

23 29. It is my professional opinion that Mr. Cotton currently meets criteria of
24 PostwTraumatic Stress Disorder (F43.10), Intennittent Explosive Disorder (F63.81) and
25 Major Depression (F32.2). He does not present with any objective, observable signs
27

1 and symptoms of psychosis.

2 30. Given the absence of a prior mental health history of psychotic disorder
3 {and the physical symptoms that led to a diagnosis of a TIA and Acute Stress Disorder
4 by separate medical doctors), I have no reason to believe that Mr. Cotton's reports of
5 harassment by the plaintiff would be of delusional quality. It is my professional opinion
6 that Mr. Cotton sincerely believes that the plaintiff and his counsel are in a conspiracy
7 against him and that they represent a threat to his life.
8

9 31. It is my medical opinion that Mr. Cotton's symptoms are unlikely to
10 improve as long as current stressors (pending litigation, and what Mr. Cotton believes
11 to be threatening behaviors by plaintiff or his "agents") persist. His symptoms are also
12 likely to be significantly reduced if he believes the Court was not ignoring and
13 disregarding him.
14

15 32. It is my medical opinion that Mr. Cotton's mental health condition would
16 likely benefit from a rapid resolution of current legal proceedings. In my professional
17 opinion, the level of emotional and physical distress faced by Mr. Cotton at this time
18 is above and beyond the usual stress on any defendant being exposed to litigation. If
19 causative triggers and threats against Mr. Cotton persist, there is a substantial
20 likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental
21 health.
22

23 *III*
24
25
26
27

33. Besides a removal of current stressors, his mental health condition would likely benefit from Cognitive Behavioral Therapy for PTSD and depression, as well as a trial of antidepressant medication.

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

DATED:

Maikus Ploesser, MD LLM, DABPN, FRCP(C)

**M. PLOESSER, M.O.
; PSYCHIATRIST**

1. I am at least 18 years old.
 - a. My residence or business address is *(specify)*:
1510 Front Street
San Diego, CA 92101
 - b. My electronic service address is *(specify)*:
ServeThePapersFasl@gmail.com
2. I electronically served the following documents *(exact titles)*:

IT] The documents served are listed in an attachment. *(Form POS-050(O)/EFS-050(O) may be used for this purpose.)*

3. I electronically served the documents listed in 2 as follows:
- a. Name of person served: Michael R. Weinstein
- On behalf of *(name or names of parties represented, if person served is an attorney)*:
Plaintiff LARRY GERACI and Cross-Defendant REBECCA BERRY
- b. Electronic service address of person served :
mweinstein@ferrisbritton.com
- c. On *(date)*: April 4, 2018

IT] The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.
(Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: April 4, 2018

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

ZOE KERSEY
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

ATTACHMENT TO PROOF OF ELECTRONIC SERVICE

Documents Served:

1. *EX PARTE* APPLICATION BY COTTON FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*) [CCP 405.30 et seq.]; AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI
2. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DARRYL COTTON'S *EX PARTE* APPLICATION FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF LARRY GERACI;
3. DECLARATION OF JACOB P. AUSTIN IN SUPPORT OF DARRYL COTTON'S *EX PARTE* APPLICATION FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF LARRY GERACI;
4. NOTICE OF MOTION AND MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);
5. DARRYL COTTON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);
6. DARRYL COTTON'S DECLARATION IN SUPPORT OF MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);
7. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF: DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); **AND** *EX PARTE* APPLICATION BY COTTON FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*) [CCP 405.30 et seq.]; AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI
8. [PROPOSED] ORDER EXPUNGING NOTICE OF PENDENCY OF ACTION AND AWARDING ATTORNEYS' FEES AND COSTS TO DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON;
9. SUBSTITUTION OF ATTORNEY – CIVIL (Without Court Order); and
10. NOTICE OF LIMITED SCOPE OF REPRESENTATION

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

MINUTE ORDER

DATE: 04/05/2018

TIME: 08:30:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM:

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017

CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Ex Parte

APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Scott H Toothacre, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Darryl Cotton, self represented Defendant, present.

Attorney Jacob Austin specially appears on behalf of Darry Cotton.

Ex-parte application for order shortening time for hearing on motion to expunge notice of pendency of action and compel attendance and testimony of Plaintiff requested by Defendant.

Court finds good cause to grant in part. Court will allow order shortening time to hear motion on 4/13/18. Plaintiff is granted leave to file opposition papers by noon on 4/10/18. No reply.

All other requests are denied without prejudice.

Attorney Austin's oral request to stay case due to appeal is denied.

Attorney Austin to give notice of ruling.

FERRIS & BRITTON
A Professional Corporation
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Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
Cross-Defendant REBECCA BERRY

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**PLAINTIFF LARRY GERACI'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANT DARRYL COTTON'S
MOTION TO EXPUNGE LIS PENDENS**

[IMAGED FILE]

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

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

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

I. INTRODUCTION

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

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

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

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

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

II. LEGAL PRINCIPLES

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

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

III. FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

“On November 2, 2016, Geraci and I met at Geraci’s office to negotiate the final terms of the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale of the Property (the “November Agreement”). The November Agreement consisted of the following: If the CUP was approved, then Geraci would, inter alia, provide me: (i) a total purchase price of \$800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of \$10,000. If the CUP was denied, I would keep an agreed upon \$50,000 non-refundable deposit (“NRD”) and the transaction would not close. In other words, the issuance of a CUP at the Property was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would keep my Property and the \$50,000 NRD.”

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

The Nov 2nd Written Agreement states in its entirety:

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 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 the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.

**/s/ _____
Larry Geraci**

**/s/ _____
Darryl Cotton**

(Geraci Decl. ¶ 6)

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

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

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

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

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

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

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

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

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

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

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

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

Hi Larry,

Thank you for meeting today. Since we examined 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 simply acknowledge that here in a reply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. GERACI HAS ESTABLISHED THE PROBABLE VALIDITY OF HIS CLAIMS

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

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

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

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

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

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 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 the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.

/s/
Larry Geraci

/s/
Darryl Cotton

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

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

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

5 V. **CONCLUSION**

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

8
9 Dated: April 10, 2018

FERRIS & BRITTON,
A Professional Corporation

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

14 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI
and Cross-Defendant REBECCA BERRY
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**PLAINTIFF LARRY GERACI'S
OBJECTIONS TO REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
DEFENDANT DARRYL COTTON'S
MOTION TO EXPUNGE LIS PENDENS**

[IMAGED FILE]

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

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

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

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

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

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

5 Cotton requests judicial notice of the following documents:

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

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

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

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

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

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

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

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

III

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

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

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

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

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

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

4 **III. CONCLUSION**

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

9 Dated: April 10, 2018

f. IRRJS & BRITTON
A Professional Corporation

11
12 By: Michael R. Weinstein

Michael R. Weinstein

Scott H. Toothacre

13 Attorneys for Plaintiff and Cross-Defendant LARRY GERACI
14 and Cross-Defendant REBECCA BERRY
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**DECLARATION OF LARRY GERACI IN
OPPOSITION TO DEFENDANT DARRYL
COTTON'S MOTION TO EXPUNGE LIS
PENDENS**

[IMAGED FILE]

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

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

I, Larry Geraci, declare:

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

2. In approximately September of 2015, I began lining up a team to assist in my efforts to develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical

marijuana dispensary) in San Diego County. At the time, I had not yet identified a property for the MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE. I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. In addition, I hired a land use attorney, Gina Austin of Austin Legal Group.

3. The search to identify potential locations for the business took some time, as there are a number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities, or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a potential site for acquisition and development for use and operation as a MMCC. And in approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might meet the requirements for an MMCC site.

4. For several months after the initial contact, my consultant, Jim Bartell, investigated issues related to whether the location might meet the requirements for an MMCC site, including zoning issues and issues related to meeting the required distances from certain types of facilities and residential areas. For example, the City had plans for street widening in the area that potentially impacted the ability of the Property to meet the required distances. Although none of these issues were resolved to a certainty, I determined that I was still interested in acquiring the Property.

5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I was willing to bear the substantial expense of applying for and obtaining CUP approval and understood that if I did not obtain CUP approval then I would not close the purchase and I would lose my

investment. I was willing to pay a price for the Property based on what I anticipated it might be worth if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale conditional upon CUP approval because if the condition was satisfied he would be receiving a much higher price than the Property would be worth in the absence of its approval for use as a medical marijuana dispensary. We agreed on a down payment of \$10,000.00 and a purchase price of \$800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement (hereafter the “Nov 2nd Written Agreement”). A true and correct copy of the Nov 2nd Written Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-Defendant, Larry Geraci’s Notice of Lodgment in Support of Opposition to Motion to Expunge Lis Pendens (hereafter the “Geraci NOL”). I tendered the \$10,000 deposit to Mr. Cotton as acknowledged in the Nov 2nd Written Agreement.

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

“On November 2, 2016, Geraci and I met at Geraci’s office to negotiate the final terms of the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale of the Property (the “November Agreement”). The November Agreement consisted of the following: If the CUP was approved, then Geraci would, inter alia, provide me: (i) a total purchase price of \$800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of \$10,000. If the CUP was denied, I would keep an agreed upon \$50,000 non-refundable deposit (“NRD”) and the transaction would not close. In other words, the issuance of a CUP at the Property was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would keep my Property and the \$50,000 NRD.”

Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of the sale of the Property and we reached an agreement on the final terms of the sale of the Property. That agreement was not oral. We put our agreement in writing in a simple and straightforward written

agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement, Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

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 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 the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.

/s/
Larry Geraci

/s/
Darryl Cotton

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

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

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

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

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

promised to have his attorney, Gina Austin (“Austin”), *promptly* reduce the oral November Agreement to written agreements for execution; and (iii) promised to not submit the CUP to the City until he paid me the balance of the NRD.”

I did pay Mr. Cotton the \$10,000 cash after we signed the Nov 2nd Written Agreement. As stated above, I never agreed to a \$50,000 deposit and, if I had, it would have been a simple thing to state that in our written agreement.

Mr. Cotton refers to the written agreement (i.e., the Nov 2nd Written Agreement) as a “Receipt.” Calling the Agreement a “Receipt” was never discussed. There would have been no need for a written agreement before a notary simply to document my payment to him of \$10,000. In addition, had the intention been merely to document a written “Receipt” for the \$10,000 payment, then we could have identified on the document that it was a “Receipt” and there would have been no need to put in all the material terms and conditions of the deal. Instead, the document is expressly called an “Agreement” because that is what we intended.

I did not promise to have attorney Gina Austin reduce the oral agreement to written agreements for execution. What we did discuss was that Mr. Cotton wanted to categorize or allocate the \$800,000. At his request, I agreed to pay him for the property into two parts: \$400,000 as payment for the property and \$400,000 as payment for the relocation of his business. As this would benefit him for tax purposes but would not affect the total purchase price or any other terms and conditions of the purchase, I stated a willingness to later amend the agreement in that way.

I did not promise to delay submitting the CUP to the City until I paid the alleged \$40,000 balance of the deposit. I agreed to pay a \$10,000 deposit only. Also, we had previously discussed the long lead-time to obtain CUP approval and that we had already begun the application submittal process as discussed in paragraph 8 below.

8. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the CUP application and approval process and that his consent as property owner would be needed to submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as

the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the subject Property with the intent to record an encumbrance against the property. The Ownership Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of a CUP would be a condition of the purchase and sale of the Property.

9. As noted above, I had already put together my team for the MMCC project. My design professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of the Project and the CUP application and approval process. Mr. Schweitzer was responsible for coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration (Declaration of Abhay Schweitzer in Support of Opposition to Motion to Expunge Lis Pendens) has been submitted concurrently herewith and describes in greater detail the CUP Application submitted to the City of San Diego, which submission included the Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

10. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr. Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. This literally occurred the evening of the day he signed the Nov 2nd Written Agreement.

On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated:

Hi Larry,

Thank you for meeting today. Since we examined 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

1 element in my decision to sell the property. I'll be fine if you simply
2 acknowledge that here in a reply.

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

6 The next day I read the entire email and I telephoned Mr. Cotton because the total purchase
7 price I agreed to pay for the subject property was \$800,000 and I had never agreed to provide him a
8 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton
9 by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the
10 Call Detail from my firm's telephone provider showing those two telephone calls is attached as
11 Exhibit 3 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in
12 the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above
13 the \$800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect
14 of "well, you don't get what you don't ask for." He was not upset and he commented further to the
15 effect that things are "looking pretty good—we all should make some money here." And that was the
16 end of the discussion.

17 11. To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a
18 desire to participate in different ways in the *operation* of the future MMCC business at the Property.
19 Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding
20 the operation of such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary
21 discussions related to his desire to be involved in the *operation* of the business (not related to the
22 purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of
23 the net profits) in exchange for his providing various services to the business—but we never reached an
24 agreement as to those matters related to the operation of my future MMCC business. Those discussions
25 were not related to the purchase and sale of the Property, which we never agreed to amend or modify.

26 12. Beginning in or about mid-February 2017, and after the zoning issues had been resolved,
27 Mr. Cotton began making increasing demands for compensation in connection with the sale. We were
28 several months into the CUP application process which could potentially take many more months to

successfully complete (if it could be successfully completed and approval obtained) and I had already committed substantial resources to the project. I was very concerned that Mr. Cotton was going to interfere with the completion of that process to my detriment now that the zoning issues were resolved. I tried my best to discuss and work out with him some further compensation arrangement that was reasonable and avoid the risk he might try to “torpedo” the project and find another buyer. For example, on several successive occasions I had my attorney draft written agreements that contained terms that I that I believed I could live with and hoped would be sufficient to satisfy his demands for additional compensation, but Mr. Cotton would reject them as not satisfactory. Mr. Cotton continued to insist on, among other things, a 10% equity position, to which I was not willing to agree, as well as on minimum monthly distributions in amounts that I thought were unreasonable and to which I was unwilling to agree. Despite our back and forth communications during the period of approximately mid-February 2017 through approximately mid-March 2017, we were not able to re-negotiate terms for the purchase of the property to which we were both willing to agree. The Nov. 2nd Written Agreement was never amended or modified. Mr. Cotton emailed me that I was not living up to my agreement and I responded to him that he kept trying to change the deal. As a result, no re-negotiated written agreement regarding the purchase and sale of the property was ever signed by Mr. Cotton or me after we signed and agreed to the terms and conditions in the Nov 2d Written Agreement.

13. Ultimately, Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the failure to reach agreement regarding his possible involvement with the *operation* of the business to be operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr. Cotton made clear that he had no intention of living up to and performing his obligations under the Agreement and affirmatively threatened to take action to halt the CUP application process.

14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr. Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing the CUP Application, regarding Mr. Cotton’s interest in withdrawing the CUP Application. That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to

Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as Exhibit 4 to the Geraci NOL.

15. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his property and that “I will be entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 5 to the Geraci NOL.

16. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: “... the potential buyer, Larry Gerasi [sic] (cc’ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached as Exhibit 6 to the Geraci NOL. Mr. Cotton’s email was false as we had a signed agreement for the purchase and sale of the Property – the Nov 2nd Written Agreement.

17. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

18. Due to Mr. Cotton’s clearly stated intention to not perform his obligations under the written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to enforce the Nov 2nd Written Agreement.

19. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue our CUP Application and approval of the CUP. Despite Mr. Cotton’s attempts to withdraw the CUP application, we have completed the initial phase of the CUP process whereby the City deemed the CUP application complete (although not yet approved) and determined it was located in an area with proper zoning. We have not yet reached the stage of a formal City hearing and there has been no final determination to approve the CUP. The current status of the CUP Application is set forth in the

Declaration of Abhay Schweitzer.

20. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m. email (referenced in paragraph 15 above - see Exhibit 5 to the Geraci NOL) stating that he would be “entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. We have learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, Richard John Martin II.

21. Although he entered into this alternate purchase agreement with Mr. Martin as early as March 21, 2017, to our knowledge in the nine (9) months since, neither Mr. Cotton nor Mr. Martin or other agent has submitted a separate CUP Application to the City for processing. During that time, we continued to process our CUP Application at great effort and expense.

22. During approximately the last 17 months, I have incurred substantial expenses in excess of \$150,000 in pursuing the MMCC project and the related CUP application.

23. Finally, Mr. Cotton has asserted from the outset of his lawsuit and, again, in paragraph 16 of his supporting declaration, that he did not discover until March 16, 2017, that I had submitted the CUP Application back on October 31, 2016. That is a blatant lie. I kept Mr. Cotton apprised of the status of the CUP application and the problems we were encountering (e.g., an initial zoning issue) from the outset. Attached as Exhibit 7 is a true and correct copy of a text message Mr. Cotton sent me on November 16, 2016, in which he asks me, “Did they accept the CUP application?” Mr. Cotton was well aware at that time that we had already submitted the CUP application and were awaiting the City’s completion of its initial review of the completeness of the application. Until the City deems the CUP application complete it does not proceed to the next step—the review of the CUP application.

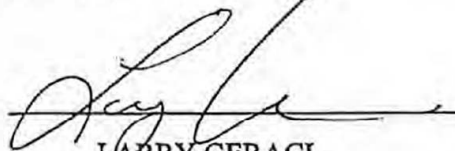
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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 4 day of April, 2018.

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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
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stoothacre@ferrisbritton.com

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**DECLARATION OF ABBAY
SCHWEITZER IN SUPPORT OF
OPPOSITION TO DEFENDANT DARRYL
COTTON'S MOTION TO EXPUNGE LIS
PENDENS**

[IMAGED FILE]

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

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

I, Abhay Schweitzer, declare:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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15 Dated: 04/19/2018

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17 ABHAY SCHWEITZER
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1 FERRIS & BRITTON
A Professional Corporation
2 Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
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San Diego, California 92101
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Fax: (619) 232-9316
5 mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
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7 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
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
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, INCLUSNE,

21 Cross-Defendants.
22

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

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

DECLARATION OF MICHAEL R.
WEINSTEIN IN OPPOSITION TO
DEFENDANT DARRYL COTTON'S
MOTION TO EXPUNGE LIS PENDENS

[IMAGED FILE]

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

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

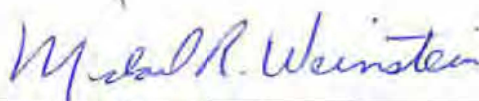
23 I, Michael R. Weinstein, declare:

24 1. I am an attorney with Ferris & Britton, APC, the attorneys for Plaintiff and Cross-
25 Defendant, LARRY GERACI, and Cross-Defendant, REBECCA BERRY, in this action. I have
26 personal knowledge of the facts stated in this declaration. If called as a witness, I would testify
27 competently thereto. I provide this declaration in support of Mr. Geraci's opposition to Mr. Cotton's
28 Motion to Expunge Lis Pendens.

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

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

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MICHAEL R. WEINSTEIN

FERRIS & BRITTON
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Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**NOTICE OF LODGMENT IN SUPPORT
OF PLAINTIFF LARRY GERACI'S
OPPOSITION TO DEFENDANT DARRYL
COTTON'S MOTION TO EXPUNGE LIS
PENDENS**

[IMAGED FILE]

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

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

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

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

Dated: April 10, 2018

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Scott H. Toothacre
Attorneys for Plaintiff and Cross-Defendant LARRY GERACI
and Cross-Defendant REBECCA BERRY

EXHIBIT 1



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

Ownership Disclosure Statement

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

Project Title

Project No. *For City Use Only*

federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

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

If signing this Ownership Disclosure Statement, the owner(s) of the property, with the intent to record an encumbrance against the property, will be required to disclose the ownership of the property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). It is the responsibility of the owner(s) to provide accurate and current ownership information. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (ODA) has been approved and executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☒ Yes ☐ No

Name of Individual (type or print):
Darryl Collon
☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
6176 Federal Blvd
City/State/Zip:
San Diego CA 92114
Phone No: 619/954-1447 Fax No: _____
Signature: *[Signature]* Date: 10-31-2016
Name of Individual (type or print):

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
City/State/Zip:
Phone No: _____ Fax No: _____
Signature: _____ Date: _____

Name of Individual (type or print):
Rebecca Ikrry
☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
5982 Gullstrand St
City/State/Zip:
San Diego CA 92122
Phone No: 858/999-6882 Fax No: _____
Signature: *[Signature]* Date: 10-31-2016
Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
City/State/Zip:
Phone No: _____ Fax No: _____
Signature: _____ Date: _____


EXHIBIT 2

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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


Larry Geraci
Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of _____ 'Dl-e'aD _____)

On 11/10/2011 before me, Sest S' N. tllH, II Ntbt, f At l
(insert name and title of the officer)

personally appeared Darryl Cottori and Lar'ly Cerrao, 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 Callfomla that the foregoing paragraph is true and correct

WITNESS my hand and official seal.



Signature   **(Seal)**

EXHIBIT 3



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

Page: A-87 of 181
Bill Cycle Date: 11/02/16 - 12/01/16
Account: 835642301
Foundation Account: FAN 02761582
Invoice: 8J5642301X12092016

Visit us online at www.att.com/business

ASS esa:4040
TAX AND FINANCIAL CENTER

Call Detail

Time	Place Called	Number Called	Rate Code	feature Code	Alt rate	U>H Addl
00	called	Number Called	Code	Code	am	lirMl
Wednesday, 11/02						
08: Ba	SIX S CA	619	SOOV		2	0.00
00:01a	LA JIL CA	858	SOOV		4	0.00
09:04a	LA JIL CA	858	SOOV		2	0.00
09:08a	SDG SCA	619	SOOV		2	0.00
09:09a	SDG SCA	619	SOOV		15	0.00
01: 12p	DG "CA	858	SOOV		6	0.00
01:18p	ARONA CA	619	SOOV		12	0.00
01:30p	INCOH CL	619	SOOV		11	0.00
01:50p	SDG SCA	619	SOOV		2	0.00
01:52p	SDG SCA	619	SOOV		2	0.00
01:55p	INCOH CL	858	SOOV		2	0.00
02: 12p	SDG SCA	619	SOOV		2	0.00
02: 15p	LA JIL CA	858	SOOV		3	0.00
02:17p	SDG SCA	619	SOOV		1	0.00
02:24p	INCOH CL	858	SOOV		3	0.00
02:27p	SDG SCA	619	SOOV		1	0.00
02:36p	INCOH CL	619	SOOV		t	0.00
02:45p	ARONA CA	619	SOOV		3	0.00
02:47p	SDG SCA	858	SOOV		3	0.00
03: 15p	INCOH CL	858	SOOV		5	0.00
03:20p	ARONA CA	619	SOOV		2	0.00
03:21p	INCOH CL	619	SOOV		2	0.00
03: 23p	ARONA CA	619	SOOV		2	0.00
03:24p	SDG SCA	858	SOOV		7	0.00
03:31p	SDG SCA	760	SOOV		1	0.00
03:32p	INCOH CL	619	SOOV		9	0.00
03:41p	SDG SCA	858	SOOV		1	0.00
03:45p	BLOCKED	000	SOOV		1	0.00
04:08p	INCOH CL	619	SOOV		2	0.00
04:15p	INCOH CL	619	SOOV		2	0.00
04: 16p	LA JIL CA	858	SOOV		1	0.09
04:17p	SDG SCA	619	SOOV		5	0.00
04:28p	INCOH CL	619	SOOV		9	0.00
04:39p	INCOH CL	702	SOOV		1	0.00
04:44p	INCOH CL	917	SOOV		1	0.00
07:09p	LA JIL CA	858	SOOV		6	0.00
Thursday, 11/03						
08: 59a	INCOH CL	858	SOOV		4	0.00
09:34a	SDG SCA	858	SOOV		14	0.00
09:48a	SDG SCA	858	SOOV		10	0.00
11:09a	SDG SCA	658	SOOV		3	0.00
12:40p	SDG SCA	819	SOOV		j	0.00
12: 3p	LA JIL CA	858	SOOV		6	0.00
01:25p	INCOH CL	619	SOOV		j	0.00
01:92p	ARONA CA	619	SOOV		1	0.00
01:93p	ARONA CA	619	SOOV		2	0.00
01:47p	SDG SCA	819	SOOV		1	0.00
01:55p	INCOH CL	858	SOOV		2	0.00
02:22p	CORONA CA	619	SOOV		1	0.00

Time	Place Called	Number Called	Rate Code	feature Code	Alt rate	U>H Addl
Thursday, 11/03						
02:27p	INCOH CL	619	SOOV		t	0.00
02:29p	LA JIL CA	858	SOOV		3	0.00
02:38p	LA JIL CA	858	SOOV		2	0.00
02:41p	SDG SCA	760	SOOV		1	0.00
03:01p	INCOH CL	MB	SOOV		1	0.00
00:11p	INCOH CL	619	SOOV		1	0.00
04:19p	SDG SCA	619	SOOV		1	0.00
05:21p	Jw:old CA	619	SOOV		1	0.00
05: 1p	INCOH CL	619	SOOV		3	0.00
05:48p	INCOH CL	619	SOOV		1	0.00
05:52p	SDG SCA	858	SOOV		1	0.00
05:55p	INCOH CL	819	SOOV		2	0.00
06:06p	INCOH CL	858	SOOV		1	0.00
06:48p	INCOH CL	858	SOOV		2	0.00
07:19p	INCOH CL	658	SOOV		1	0.00
07:28p	INCOH CL	858	SOOV		2	0.00
08:00p	LA JIL CA	858	SOOV		1	0.00
08:01p	LA JIL CA	658	SOOV		2	0.00
08:27p	LA JIL CA	658	SOOV		1	0.00
00:48p	ARONA CA	619	SOOV		3	0.00
10:03p	INCOH CL	619	SOOV		13	0.00
10:16p	SDG SCA	819	SOOV		3	0.00
Friday, 11/04						
09: 14a	SDG SCA	858	SOOV		1	0.00
09:38a	LA JIL CA	658	SOOV		15	0.00
09:51a	SDG SCA	619	SOOV		4	0.00
10:52a	LA JIL CA	658	SOOV		1	0.00
10:53a	INCOH CL	858	SOOV		2	0.00
11:02a	INCOH CL	619	SOOV		1	0.00
12:06p	SDG SCA	760	SOOV		8	0.00
12: 14p	SDG SCA	858	SOOV		6	0.00
12:20p	ARONA CA	619	SOOV		2	0.00
12:36p	INCOH CL	405	SOOV		1	0.00
12:37p	SDG SCA	619	SOOV		1	0.00
12:37p	INCOH CL	619	SOOV		1	0.00
12:53p	INCOH CL	714	SOOV		2	0.00
12:58p	INCOH CL	714	SOOV		4	0.00
01:08p	LA JIL CA	858	SOOV		2	0.00
01: 10p	EL CALIF CA	619	SOOV		8	0.00
01:22p	INCOH CL	714	SOOV		9	0.00
02:39p	INCOH CL	619	SOOV		3	0.00
02:42p	QIA C Q	405	SOOV		2	0.00
03:06p	SDG SCA	858	SOOV		2	0.00
03:06p	QIA C Q	405	SOOV		1	0.00
03:09p	CORONA CA	619	SOOV		2	0.00
03:11p	INCOH CL	619	SOOV		8	0.00
00:33p	INCOH CL	619	SDJY		10	0.00
04:01p	LA JIL CA	858	SOOV		9	0.00
05:05p	INCOH CL	619	SOOV		1	0.00
07:35p	SDG SCA	760	SOOV		1	0.00
07:36p	(X)RQIA CA	619	SOOV		1	0.00
07:37p	SDG SCA	760	SOOV		1	0.00

EXHIBIT 4

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

Good Morning Mr. Cotton,

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

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

Regards,

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

(619)446-5325
sandiego.gov

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EXHIBIT 5



Darryl Cotton <indagrodarryl@gmail.com>

Contract Review

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcisd.net>

Tue, Mar 21, 2017 at 3:18 PM

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete" phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

[Quoted text hidden]

EXHIBIT 6

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

Hello Firouzeh,

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

Thank you again for your help.

Best,

Darryl Cotton

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

Hello Mr. Cotton,

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

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

Regards,

Firouzeh Tirandazi

Development Project Manager

City of San Diego

Development Services Department

(619)446-5325

sandiego.gov

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EXHIBIT 7

Sent To:
Daryl Fed 6(161995d4d..17)

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

Nov 14, 2016 10:26:47

Nov 16, 2016 16:20

From:
Daryl Fed B(1619951d4'17)

How goes it?

Nov 16, 2016 16:20:21

Sent To:
Daryl Fed 6(161995444471)

No news yet

Nov 16, 2016 16:25:47

from:
C.11N ;e! BIC:14195 : dJ..I?)

Did they accept the CUP application?

Nov 16, 2016 16:26:37

Sent To:
Daryl Fed 6(161995dd 447)

We're still getting through them excepting the property

Nov 16, 2016 16:30:19

Sent To:
Daryl Fed 6(16199544447)

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

Nov 16, 2016 16:30:33

Nov 18, 2016 11:53

From:
Daryl Fed B(1619954ddd7)

Did you talk with matt on the av dispensary?

Nov 18, 2016 11:58:05

Nov 18, 2016 12:26

Sent To:
Daryl Fed 6(16199544447)

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

Nov 18, 2016 12:26:07

Sent To:
Daryl Fed 6(161995444471)

All those places are gonna be close down

Nov 18, 2016 12:26:13

Nov 30, 2016 19:26

From:
Daryl Fed 6(1619954d4471)

Greetings.

Nov 30, 2016 19:26:18

EXHIBIT 8

**COMMERCIAL PROPERTY PURCHASE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**
NON-RESIDENTIAL
cc A.R. Form, C.F.A. Revised 2/11/11

Oare Prepared: 03121nor7

1. OFFER:

- A. THIS IS AN OFFER FROM Richard John Martin II
 X1nd11dt1a(5) 7A Corpor:ft, on -, PilMCrs: . n, LLC. /...ILLF-C, JU!h r
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 C. THE PURCHASE PRICE OFTHM i r Million

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2 AGENCY:

- A. DISCLOSURE: n,,, Patt c. Jh t10r. Lt<J9 11:11.1 c a X-o, Jusu-rt Rw1.v:li"9 R-ll l:st:ite A e.r.r Ret:il>"t p Q, \ R
Form A01
- B. CONFIRMATION: ho 'okk,11<J JU<"L"r r:laJOnsh,s ftt r,ctf-Z/ :;r,l,'11,eJ lu , , :runsutr:."
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So1 g Olt ----- N/A ----- (Pn11 r1:n N:1145) 1* :;:; W1. S:tf,
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- C. POTENTIALLY COMMITTING BUYERS AND SELLERS: The Paws: f:1-J d:~>~Ne-1): r1:c: ;; or a X s:r:~J , , rk:~,,111:1:cr
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I. FINANCE TERMS: Buy

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0. LOAH(S):

(1) FIRST LOAN: 111°C :mc1:n d. S_____ 1,500, 100.00

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(*) FIRST LOGIN:
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(2) SECOND LOAN The amount of _____
 This loan will be covered by the _____
 (CAP). For AFAJ, the _____
 The _____
 The _____
 The _____

E. ADDITIONAL FINANCING TERMS: oo attached ddu.f1. 1 _____

IF ADDITIONAL COMMENTS ARE NEEDED, PLEASE CONTINUE ON REVERSE SIDE OF CARD

F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE, in a-e- ttttUU'll d

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c. PURCH>\$11; rrucu (TOTAL): • • • • •

H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: E?,,,C 10(0.:; f ? 1loCUJ : l.c.s r.ro..cr ;,,

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PROPER FY PURCHASE AGREEMENT (CPA PAGE 1 OF 11)

J. LOAN TERMSi

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4. SALE OF BUYER'S PROPERTY :

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-1-e N"GHUU ad♦t:lloV" ♦;C♦.lt r:im- COP;

A Λr, O♦N♦Λ.

6. BUYER AND SELLER ADVISORIES:

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

[illegible]

(2) 81.01 et seq.; Seller shall deliver 1M 1d0NinJ RP♦:I

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131 j8uyc: - 5. - h.ill PiY tor ;l,u :!low.n♦ ki:;x"

8. GOVERNMENT REQUIREMENTS AND RETORTS:

(1) a. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836.

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CPA REVISED 1V'ff'(PAGE 2 OF 11)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 2 of 11)

As a condition of this purchase agreement, the buyer shall pay the seller the sum of \$100,000.00 (one hundred thousand dollars) in cash, or the equivalent thereof, by wire transfer of funds, to the seller's bank account, within ten (10) business days of the date of this agreement.

Date: March 11, 2017

C ~~ESCROW AND~~ TITLE:

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(2) Su \diamond c Sol:or 11n1 p.ir Ci:y tr:m,ror 11: cr 1c

(3) Δ 5uyci.r. Sdl1:r s.1.1i o:iy C.wn♦s. As♦>c.. 101 \ ciA:1 lldn.181 t 6

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8. ITEMS INCLUDED IN AND OBTAINED FROM SALE:

A. NOTE TO BUYER AND SELLER: This is a bill of sale for the vehicle described above. It is not a warranty or a guarantee of any kind. The seller warrants only that the vehicle is as described and that the title is clear. The buyer accepts the vehicle as is, with all faults and defects, and agrees to pay the purchase price in full. The seller agrees to provide a bill of sale and a title transfer document to the buyer. The buyer agrees to pay the purchase price in full and to provide a bill of sale and a title transfer document to the seller. The seller agrees to provide a bill of sale and a title transfer document to the buyer. The buyer agrees to pay the purchase price in full and to provide a bill of sale and a title transfer document to the seller.

0. ITEMS INCLUDED IN S/ILE:

(1) *A* EXHIBITING f, t, l, j, r, s a-i:: H1 TUS :A-V . 'tfc' . IIJC♦C x o r:n P₀-1(T).

[illegible]

(3) A co.,n,◆in "■,r,11,n, j 1J pQ1:⇒tll t,r,c,lJl j fl 5L-1 c n:r,tit uQc J tu. ut:,g,10f. d W: p,- 1fl) - t,j, .lv:-ll • s
:JldSv p:Kill si11 bt. (d,'urod LJ 61ym Wlhh 1c bffl sn-ttl-CI J fl'3Gr,1:n tel

(4) Strla; re; rætəŋg f' m m iom u:c:lcd m, d, ru:u: d < c v * , , , , il < hcv. z: t-J : ; l;l;l 1 . . . u e
r:n o by Stlll Vlllll hl: hl:j t... u i l am:t: : ♦♦ Sc:u ♦U ♦lu (l:vul). Th :lf: ll nul u:c: ♦♦ ♦

(5) 5-ilor sɔʃl dʊt-vr ʌb ɿ l! porional :roo'ly t: GU r: st! t: JI ct: ʒ; ! it totol .VJ ,r: m'te-1-,,: 3;- , p,-.

(i) 1d;id:1;;or,V ♦♦curf7: lor ony rote,,, 1nw,, o so11,, ♦, 0-1 Dtlil 1' :tv, p1,r¢t1<r **cc. Eluya ,1,m " ">(;',° , |,|: •
F nur,ng S state=nl t; 1; f ° , 1; S,etr:Y , r k11 w,,,,,tt: wbo1 il ;,; ♦ v , , , j l , , , c11 ♦♦
rel1:enl lh<1cof i:V r♦ra.cc c¢t1:V

(.) L.FASEO CR LIENE0 ITEMS AND SYSTEMS: L...uor tcll, ffffff "; M t sec: loc t nll, n... 1... .., " B1.1...
f...Y tlll, or >...om spocf-n tll C0lu:up: 03 Jr O:-cm:.. "dlv:od ... 110 ... r, WSCd ,r n... nll,r,t t0 S:1fz...
sCJf,callu sub: la j lth r clche er...:no, and l: O:1ar D l.f.,r rf v.1.,11111,crth (1.1z d eo:c j.,fd...
ex.) rrr,em:tl j... Ch ilcm. 3uy:t s ,tj: to J.S\$. 03 iff: "Lase ... ,Jni:n: 11 p...:1 r... Pre: l.; ...cl-
tj) wvd hon u. 0f Culltr:flA: s 1l:l-j: nqenry ln f... 11 8.1% GM wvd ...:u. 11n ...11h ... 1/c

C. ITEMS EXCLUDED FROM SALE. Use 11 rows to describe items excluded from sale. Use 11 rows to describe items excluded from sale.

0. OTHERiYEMS:

(1, exst, o 11-1-Q"10d ...;A(I 1=1 J-?..JhtHt ♦:st;..s. "ClcIn: "IL'cr:(jry ...pe=4... u=11Wf ...; ...
c:1-P:lf... 1ndYnr♦ nr, e. I...: "trol ; fil t...♦, h, h r♦u=ednalC mo;♦ ...ct...; n, w ♦, J ...♦; ...♦
a1, r, a, l, sct, i-are. p1rr, ♦si, r.s. r...♦;♦. co;♦♦; 1; J(1S 11, un-inl :- , r♦ "o 1, ♦; i: 1V1♦♦♦1, 1, ...

9. CLOSING AND POSSESSION:

A. SeUor-ou.uplcl Of v,cin1 i,,opcrty: F...0s... n11..a drilc>ro t' h r,,,r (" JI o O.:e "... L." .. : ... ,.,, ◆, > ;
("Jnr.eOf (:◆♦w.r. (lll r ",01ati; r..lin j,l or .1- llay s,jlor c:csl1 ot r d:r:w: o' ,,,,,, - ,,,," : "': y'

(b) (7)(F), (b) (7)(G)

8. Sollor Rem:11n1t0 inPossession Ancr Clo-o Of Eoetuw: 1)
 V, ttn PN'tee ar1111t1v.rd J; dnn a se0,r.1V: W'1v,1v x1'-0tt1c, t z;1, a
 on5c1 voh lohr rs:mnco ord joqal vlt'joc

C Ten3nt Oc-cuptXf Unlb. P♦w◆♦♦
to Suver on C/c Of E. 11W

[illegible]

a., *flf*⁺, *lrf*⁺, *lrf*⁺ (C) | ---
CPA RCMSCC 1000 GE 3 OF 11)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 11 OF 11)

$$\{ \equiv \}$$

E .u tlo:ie Oi Cs-ov- u. "es= ocr.,11 r ce u v' tui. Sckr s Lt ,110, d: lu:13 Ctt,h'1'1", "t-Cf L1.1,-, octrt. t-:);n-:,lf u h Uj, 110 L10v. :Cv-tr :y un's rtirr.it. tO-Uj ur-tu-o system, : "tj-x,1 nrd lr.,r,r,t Wf'<1.1. cr:,cl-, m'P ;u,chi:- pi.(l Wt 0, **v U1sf U1t1:1f, t (hl Pt:Jf'11 : " :-cc-11r,n o ltt1(UC i1 ii -nnrr:l'1' ,lHPll 11r.1/(lt b.v.; :-uy Le ru,u,ctj tu j;ly 11:sepoi: to 1hl <ma* Ass:ou:;;)11 (QA'1 o cotam .C'11 o J-t1s1;1i; 0, \ 1 :bes

10. SECURITY DEPOSITS: \$~~60,000~~ cc:o t-t c cce : holl "u<c rti u...> b f S... .. W... jn, ft l... :t:t11"
j;d n mml Ljw shRI bel i:r!"Jmco o buyt1- ri C>ll" O- tsr111, S9Oo, Jm; nbl "l:l) :Cunt d -:: incc -it : m Cr' CN:- .

11. SELLER DISCLOSURES:

A. NATURAL AND ENVIRONMENTAL DISCLOSURES: S;llrr s1UD :llm- 1-c 7c ,cc,loc- , Qmrr e-ol a d t r q11 r J; J; L;st
(i) Octobr te BwJcr carlinu:1M: 9JdCll {11c 4111:UOf181(1) Jnc l,nNOJWC-ODI "LJJIJIS l11DMP1 (II) 0V(! : t,Ilhrjp: 'rc"l UN
obi Jato: tn nr,Jk10 n- NHO r11 ltt: f 'kr P-CB)' l- lCJ,JJ: " " Sre-cv1 rñqU l1JLr,11lr;J, Pc:11;1J t :oc-r9 1-u :llM11
u;:s; VCI/ "191 rñQ Hozirc Z1r v: Silt F-C R1;c p1151b1f1y f,vJ, l11c1a> F;u1l Z-JrJ, ooc-r c Ru:urn: Lo'o- ,,,,; (111
urs:lo, B"/ onr1: />"e as lC-WJd by l aw ,1'0 rrom1" ñg Q-nccr,1lcmrat n :Q, rre: fll 'nols' ,ll'le.

6. ADDITIONAL DISCLOSURES: I, 111, r n the Hr. Of Cifl-o in par11, r, <A e. Scjr. 1111 Cb,lv:1 e tLyc. r e 111, _ e it bb,, rrt;

(1) RENTAL SERVICE AGREEMENTS: (i) c.m.m.l. 1un:l jgroomino:%. tr-1 ri :one:,:s. nli: .l't. l) r, o- , r, ?PrU "WU to tie cp+atJCl o' the ,or,etty jro (ii) ; x-11 t:j-m1J1 , lewint n, r. u. u' , n, re>f. JI , , l". Int.o. 4l num.11. datf :l lI " "" f-CllC 3!C.n) ai: , , s. "Oh:l tG": , , :. rcbn\$. , , u" \t >M") (1, j , -I , :t: ii :l 4l dum11.cn1 rec and j t1110 <l-r.vion. S1tur r; , w11:l. t: nn !>:"lt \$ Cht:K j , y r,f: ss... :tld-a, , c11r run. ; ljl-Olll , fcl :>ln t ttw: o c-r.vio!r:l. r.1.

(2) INCOME AND EXPENSE STATEMENTS: T1;c t1:r1:l ariel r.c.: "l. mlllj; g; .-.,,,,,,,,- q vn,11, ;er, -o i'0 " :.,, 10 :
r. th.s ;)fc")dng A:ooptn.C." Sl:c;r rc>"C"fl nr, ljt lht:t o:oc. nr t:'(0": cil ll>"t nt, flml+IC = ! u :.,. :-., , tl
11oml co.l.r,j: d t.i.; Inll!! ann JS&c => a :er f tl'll c;m:u1,11c, nl q,r,c:rl, lno :lk- ric:i!l, ;lx ,,ll,....

(1) -TENANT F.STOPPEL CERIFICATE: lif chtte od -...sL)Pu cort, l11M !C.h. l lrrr Tr :i jrr,o ;;y :inro, Qr S 111r. UJ;111 111) !U"U"J Jy l1n1t1. Jd<"Ow<...f; (lj :; (Vn.1.> ror.tn l e !r; uijrcer.t ls nrc 1.r,m;cr... J1C , a 1/fC1 "< e'dCl o: f m;dlil(O, tn!nr, all !U:"l m o-lc;icn ; (hi t1,i o; ""<,(J ,b c !t, -e!- 3;J (ff) r...l" 1.1. 1M01:-1uf u1i i:1,ip0td cr1 (l :1:c;:y es;

(4) SURVEYS, PLANS AND ENGINEERING DOCUMENTS: 100% of city plans; particularly those relating to the city's water supply system.

(5) PERMITS: ll, r ScJclcr! pol.St' : Of, C: >ics cl :l OCllf; : :rJ a;l :c'a'; pcr:l'mrro; lhc ?r: or,; ; :c : : >tr ;
'l'.Ivermcnl,ill oHff: iur:l'l, 'f. b. :u: hll' lod n : : llrr, :cl ol :l:r.u;:ir>rt r,rc: or,;ll us, pr;m; d :; or o'cl: l.Ltn : : :
llono;X :;n Pt:lm'i port:l,n'9 b vft upvltur. c' :hr P:c1r :l.

(6) STRUCTURAL MODIFICATIONS: \rightarrow LVC, v₁ 5VCIJrtt1 Ik1 1nn n₁ 4,rtlin1; in, 17 tolt n₁; 414 df.en; 11 i,t 1 Cl 1001.comon1 1 Sll,nific.in1 (1)MpOnC'S vfh1: S:t.lu1(s, l)011 t'e rF: 1111/.

(7) **GOVERNMENTAL COMPLIANCE:** Any 1-800-xxx-xxxx, Fed. Id. #, EIN or...; , EIN of... & c. o. n/1/ t/cn rt. ldu. /ilthCJt r/111w/ UJM.tfm(l/1/1/ (INI o. fu. ul:rec:1 lfr: 111J ppr:)l

(SI VIOLATION NOTICES. Any r.ouco cl., 01.;;n t c,y L1.v 111: σ =,111J ,19: 111 ! " ' l'Y"pert) nr.; -1-v,111f • 11; • .

(9) MISCELLANEOUS ITEMS. tvj- 1 lte trlylw-, f ic11lly , lV:, c S""""r (l) ir; Cjwv' and lmy-1t> m,,,..., #f1
r,jry,l:l. j,t,r:ls1 or ?m< pr:ecuu.ng1 ilfh;11r.9 ir. Prc<n: L , njrl b ,e ,,,,d,covp; : M1 ill' ,n-,,; l.:
ml"-Yic11 o: 1r,1er,11man- IM1 1 or:rct-to ul r>m:1ry :nr (ill) :ml wv :n1,11 ul u:- J111-1 < tv- luh, c: cf); !,".,,;,;

C. WTHH10LDING TAXES WfHh tft, Lrt' s; ,Xifi j 4 :ra:irun Hll, Q ;j:.;, m,qHCU w:111,lg Seller :h'lt r,.;,M l; 6 :o? c;./hf.d SJMU' O, an a'l.oav l sdfc:ltrt b 'Alp; w'h le:;iral ffrIPT.;p":l C-llomt,1 J11v'ok1r; Llv. tC.A : 111 A: 01 C.

[illegible]

F. CONDOMINIUM/PLANNED 01:11:LOPMENT DISCLOSURES:

(1) SELLER IAS: 7 (or JOOys AHU Acco;,,ncr p :l:Jit: : , 31 1r ,,,nill,r : : fri;:erly * J:orl;m ,;- n * :,,n, r a ut o-l'Q dill'4pm-:l er :l:ef cct'l'mon ,ntc:c: : M """)

1. The POC:fl 1: 4 consonant-wr = " ...At& . n o pr<1. Cic-L>11c: ul 1 e ur<:nuo J u l i a . . . O . . . n . . . Ut- .
 3(or) O j i . . . r . . . ce/pl VO' t . . . s1rc'1 l h . . . J . . . h . . . T l . . . l l . . . 1 (i C O P . . . t ; J i . . . C - m . . . U . . . : . . . O U . . . l . . . l . . .)
 dal>ekW r d l t n y p t : 111 (i . . . i O l p . i l (' d c l . 1 : n . . . g a i l . . . c y c a : . . . J . . . l . . . (i l l . . . 1 . . . 1 . . . o t w r . 1 : 1 . . . l . . . : . . . n u r . . .
 . . . J . . . l . . . p d l . l . . . t t r . . . s t r . . . i n A C i . . . (i v) C < n i . . . 0 11 t . . . < C n i . . .
 . . . M o i s . . . o O A m n s . . . p r . . . g . . . k . . . l : . . . l . . . l t t . . .
 . . . p d l . l . . . t t r . . . s t r . . . i n A C i . . . (i v) C < n i . . . 0 11 t . . . < C n i . . .
 . . . M o i s . . . o O A m n s . . . p r . . . g . . . k . . . l : . . . l . . . l t t . . .
 . . . p d l . l . . . t t r . . . s t r . . . i n A C i . . . (i v) C < n i . . . 0 11 t . . . < C n i . . .
 . . . M o i s . . . o O A m n s . . . p r . . . g . . . k . . . l : . . . l . . . l t t . . .

J1 C = lino Delvcr p gny., ill Cl Cis iv., n.:. ,., c.:t- l-:n it., ,., w:l jiry C. n, C., ,cs n Cl- , it.:., ,
 J1 C ovill Cl O sc.: u: s B 3 corrl' jCf Qy CStr.: f., jJCc:tr. ,., ,., ,., r:l jJj:lf: i:mJ' .-o Pn'V r, K t:z r p;r:., ,
 J1 Jee: = b e.rJcn .1dV Mf(f'f' r.r-s ,na c-r,w r, ,e>f:l 1- , 1:je:, 1:mc-r:0-r,du1t', ,., ,c:j, ,., p .-.-"

1, SUTS SEQUC:N1 DISCLOSURES: h :+ t; u-1: Sovr. f i l r ! G O L f e : H i n i n e s ; J ; m d : o l . N S . * : U y . * : m d ,
Aff'dir'lli dia 0:nr:ny c M: ILL)ri Ir:at'all they T I A.O.cJrl: ,eITLo: * rn:itson:,is, :dL1 ;::,ch_u t, U, B
/ASC(T' P_+, v, -se u_n.vall, :-Vt: isull gtt,tllUQ' Ot:lilc, . ♦♦♦♦♦♦♦♦ qf -r,Mt,l f -stetl Jr " r.:; \) * : , . n-
rn:1 NOH However, ; SUB)CJUOIH or ,m ndcd dtCLOUIC <htjll not bu rcurred lor Con<MION and mlLatll tl\TCCurictos
diltclosed in reportl ordard,Ind paid for by Buy.-r.

A. PrCt ~~Q~~ Q; SO₃... St'V J... y y l p'wV 1 P₀ f'u:1Jti, a...; ,ru:efhJ C...;... J':f'u: ; 5...ru: ct: J(EAQAPT) ss fl rt < JutL J'y; ,cunt uilt ft l'K' oal J'...;... (fl) n'l'... <ly l' t'xt'>C... <u...; ...l'L' > o...; ...l'L'> (fl) ...; ... nlu l'ltl rxt:r... <Alp'g N' (ln... l'w l'J 1.13;) (tvI c'p'... l'...) Wt.s; fl r'n l'... o, d l'l =:it:l-.

B. (1) 7 (o r; _ I 0,1) l' p'z:l o fls; ,ro -ncd Cn.l-i;...; (0- o...; ... w...ll -V)CC l' Gv;c; o.../ On;...; c... C.)nee. (2) VJ'p' 5 (or _ J 0...; /h't riet:r l' J' ...;... t'ut-cu C'w...; ...m l'; ,ry a... Ser' (t'...;... l'wOT'. C- <C...;... u r'...;... Cr oCJ l' ...;... h'u: f'u: l' t'l' d'u- tnt f...;... p;AeJ l'wQ'ell

A s:or th-rl, with: /f/ lim, l-ooi, 'l m pln<ran- :/l, OIS,:OIJ: 'l(')N '':Tt=PIAL t=,:T; ,,:-,: 1-(t'S :o,,-,o,,: 1,, p,,tx;ry lji:l('l kf/vwn OI,u'dn(O rLi: Ndlr ,,, Pd-t f,n %o'tfr, ,,,, u-u : :Jrf :,,J: ,,:J: 'l) I 1L-o . . l\)

C. Buyer is eligible to conduct investigations of the Intero Property in order to determine the present status of the 'title' and not be aware of all defects affecting the Property or other factors. "Buyer consider, in person, the 'property' and the 'title' may not be, according to the law, or the 'title' is used.

*. /f s a; i: e r; t; n, . . J Ott :r, nu' l; -n n' 7X <ll> ott·c· r-Att? Il ° , , f s u; ; ; o.) ? • ! " :) ' , A . : n : (" - f l . . ! · d > ; ; ; F .

[illegible]

O. Buyctr lodomnlyt and s:ilor protcljon lor ontry upon p,opc,rty. S-ic'd' s: . (I) kll p' l'tl r'og, d'l, r'ss, l J -l- : * _-_- (II) T,s; , ' -
 E "Y'Y' Q_ (F; fcd") B/t/: lr'es; ;;tn, l_ a;e; ,u) "Yk-"l'd' u; hi--! S;- 'nttt... ..in st rc ...; u... i - -

[illegible]

A. "it's in the line of duty" ... the ... 3L ... ns ... f.e. U ... t ... nt r ... rnu ... t ... rct ... p ... in ... R ... l ... 1

8. Lir- \\c P \\ :rt:m c-r[sl0l titlec; j G' l-y'r d n... .. ut,

LrJtfs \\hclcc : tocord . nn. n :-e clj] rf : ... ll mc:c; u rcn ; ; t

rutji!Qlt.CJ!>>rcMl,1..IIWI,1!1!j

0. yer-i, lll, l x *MAI* 5 cr", ... nit, r ♦ 1...

COMMERCIAL ROYALTY PURCHASE AGREEMENT (SIX FIG

E S110 rhid roe-o f \$1.1nLHl covetCJC r,r,r,h t:L1A 1,oky rj :11, "M,VJ"- A1, 111A p1,p1 ♦ Ub ,d,r,c" t1110:u, rrrr-1, may pro-"1c grouher mror,rJO l,r buylr :11, <u>:J-J, t11 Su,♦♦ <u>:u-1 ,d,r r:r-nar. '10<m, n oo, t11 11,11-1m, JCV:0h1,' <u>:110L Jt(J c:s1 nl VYU0 LBJ ms11r11-♦ <u>:1,a-yes 3-d e01,r♦<u>:"tS l' EU,N l'♦♦(♦, '110 c,11-1c" Jk:1 t11 1111 ,r,r,r1) u, Ott k1r119D1r Cl,yo S1U1 ,♦♦Jc Ec-nw ♦1dC1'l W1WJ r1r1 /1, N;1 Jrt/ <u>:c11se "1/1A

A. SELUR HAS: 7 (or 10-r, 1Aker Aet-p:1r,6 tu O:Jve lo fl1)C' fl Fteor.J, cpl,1r,6m. Jfl: 1r,1m:Jun c: c:et fl: 1
 /SPOT/ bfl lndol >flUr>J' Sr. 6 7, e3,1) IF.. 8 c. 0 lttt: (. 12 lSi /Te- 11; Bur,or ,,,,,, (-1 r,...,1n; 5,fo, 1
 to ♦Der te no.cdt', (CA A ♦v n t:SP; ma) cancl t.. A,qJ,OM1 f ♦rt%,♦ -di Oet,uro: t ♦rtA ,♦1, t , ,nc .>cctvid

the Pro_i, 116 CCAR. Fo_n RR/ S₁₁ r_i S₁₁ IJ co_j, 1100j D : l_i l_i m_i ♦ σ : s_i - n_i D C_i; 11 = T₁ R ♦ { B_j; 11 ♦ - u_j; ,

11en Suter las 5 (or _) OJ's. 11fr D₀vry ,, 11 : (11 111111 IF I! 1-1: ◆11◆11 11 11r7,11-1 Id9;1 1 : 11111111 .
Lutor. lo U:1,ver t: S<11for, romo0a ol Eu aq: ;1:, 1 cD-11?Oncy ,, crn:011,7r r d 1n, ,,(J1t)tnwrl

C SELLER RIGHT TO CANCEL:

[illegible][illegible]

G. EFFECT OF CANCELLATION ON DEPOSITS.

J yll ♦ so,c vvl♦ W tcl nolc.c el c-ct(1 tv... " o,d ... 100
vrlk♦ M tmt\$ ▽ ♦ As;rcMeN' .M Pw: IA ag;r; to Sjti Nl)..... r,vn:♦ \$ C tlir: x PC), ♦ :tO VdJOW IIA! ♦ OIK♦ p: s;
flany b ttt fl"r 6L l'd ID h/f fuf k- i/S) i/M arr. QIL♦ wrld♦ v:k1: OM 1 Fuos Jm COM uuy Le qUUII' W ♦:tlc ♦ zlc

[illegible]

◆le: *MJr1.:r.211w.1*

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P., oo, l, Aic.,; 61-76 dcr, l)h, SIM Diego, CA 9?14-140t :Jic: ff ch 12, 20, 7
B . COPI d ti- fl, r, lll nt ir, c, ud" <llv ::CLIN >h-re are ,j, 11: "S'uf m llll..MT (C: Curr... John... yun I o.,; \$ 75.
tccpt, 66 (or

C. Bml(ers u u patty b Uw scr... for lIC k: ptyok d cmication r...UJt b pta-teth 2k Jc pcrvirapt : JI t't
1ftto b-kJ Rojt ru... Bol-ir, on i,JC 1 8Jel 1, i \$wJ 10... ti ... ym'itrlr,fyn nlytro
;mgri: 22f. 1ftJ 11101ly n1ld c,tow H>: , to ds-uKl # lurcl. G-IA<, i: Cl:tH 01 E-yJn w iurJ1n:
oq! vner .1111, <sk-Uho =r... m a) ttJnnr C npent.w;r, r-r,r,clo, cm =,ilr:rJ : t-OY110
w;er. consent f Brcc-3, Suter "" S-wJ snll ric ind 1dQ t-r,l-es> e .c.) H... t...
CoGN Huldur. 11vntm to 61 nr() d r: G'l'l'ton r11p Mt 10 e Ar-dM-l'11

E , \ Cop/ d ,ny JTC%:4 enl 121 jff,;:; ildl' ua ,T,1,;t; o' Jrl. 191ulrr.11t t:l v; 1 E, I,N 101<: : 't',L: ,ur,, F , 1, dhy-111! p tsemw Hlldc wWln J Oivr. jter mfmQ 140C: an d xcc Mll:n;intl

A Any elau c added by the Parties specifying i) remedy (such as rescission or forfeiture of deposit or making of UCI; or s) non-10ftm d l l b l c) for failure of Buyer to comply with the purchase in 11101) in of this Agreement; n, 11 to do mea hv, i, u ur l, St, th el 1 uo inc J c ndontty fi, il, "fic. Uo St;) U tory l l q u d; tod d D m g o s r e q u i t o m u n t s v o t f o r t h i n t h e C v t l C o o o .

Buyur' h1. •ll p...

A MEDICATION: T₀, PuJtJ, 3U/X: ti "Yu<ti 8+ Q5Ptt:7 kJl... Kt;1K<t-m ... jtl.vW". y y =... b,tore r?A'Y9 to z">"llor. " :,,vj,"Qg- LVOS" l>l : \< Co,,,JT-C Mc :tio- Crite, twwy con:iuncmeduroon.org) u :~L:11
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B. ARBITRATION OF DISPUTES: The Parties agree that any dispute or claim in law or equity arising out of this Agreement or my resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to submit any dispute or claim to, who, in writing, agree to submit arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired Judge or justice, or an attorney with at least 5 years of professional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure, judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

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

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- CPA RI:VISC0 f2:5 PAGE 9 OF 11

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(Do not include if making 3 column error.) CONFIRMATION OF ACCEPTANCE. The undersigned hereby certifies that the above copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent, and that the same is intended to constitute confirmation of the purchase of the goods described herein.

CPA REVISED UIIS (PAGE 10 OF 11)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE: 10 Of 11)

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PRESENTATION OF OFFER: () Listing Broker presented this offer to Seller on _____ : PM.
 Broker or Co-broker Initials _____

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Buyer's Initials: X MP () _____
 Seller's Initials: X MP () _____

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 675 South West Avenue, Los Angeles, California 90005

Reviewed by:
 Broker or Designee _____

 EQUAL OPPORTUNITY

CPA REVIS:0 1215 IPAOE 11 OF 11) COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 11 OF 11)

ADDENDUM

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

Dato *MJrch* 21, 2017

Date March 21, 2017

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Seller/Landlord X

Barry Cotton

Buyer/Tenant:

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ADDENDUM (ADM PAGE 1 Of 1)



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ADDENDUM

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

No. L

The following terms and conditions shall be a part of the purchase agreement between the Buyer and the Seller, and shall be a part of the deed of trust, mortgage, or other instrument securing the purchase of the property. The Buyer and Seller agree to the following terms and conditions:

1. The Seller represents and warrants that the property is being sold "AS IS" and the Seller makes no representation or warranty as to the condition of the property.

2. The Buyer acknowledges that the property is being sold "AS IS" and the Buyer makes no representation or warranty as to the condition of the property.

3. The Buyer acknowledges that the property is being sold "AS IS" and the Buyer makes no representation or warranty as to the condition of the property.

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62. The Buyer acknowledges that the property is being sold "AS IS" and the Buyer makes no representation or warranty as to the condition of the property.

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

Date May 12, 2017

Date May 12, 2017

Buyer/Tenant X

Seller/Landlord X

Richard John Martin II

Darryl Cotton

Buyer's Agent

Seller's Agent

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Reviewed by _____ Date _____



ADM REVISED 12/15 /PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

PROOF OF SERVICE

[IMAGED FILE]

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

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

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

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

1. **PLAINTIFF LARRY GERACI'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS;**
2. **DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS;**
3. **DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS;**
4. **MICHAEL R. WEINSTEIN SCHWEITZER IN SUPPORT OF OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS; and**
5. **NOTICE OF LODGMENT IN SUPPORT OF PLAINTIFF LARRY GERACI'S OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS.**

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

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

*Defendant and Cross-Complainant
In Pro Per*

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

(Courtesy Copy only)

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

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

Dated: April 10, 2018

Anna K. Lizano

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DISTRICT

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

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

[IMAGED FILE]

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

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

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

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

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTIONS
	evidence. (Cal. Evid. Code, § 350.)
Cotton Declaration, ¶4 in its entirety.	Irrelevant to the motion to expunge <i>/is pendens</i> . No evidence is admissible except relevant evidence. (Cal. Evid. Code, § 350.)
Cotton Declaration, ¶ 6 to the extent it mischaracterizes the written agreement as a "receipt".	Nowhere on the document does it reference that it is a "receipt". To the extent this is Cotton's opinion, it is inadmissible lay opinion evidence. (Cal. Evid. Code, § 800.) To the extent Cotton is offering his lay opinion, the Declaration fails to lay proper foundation for the opinion. (Cal. Evid. Code, § 702.)
Cotton Declaration, ¶ 7 to the extent it mischaracterizes the written agreement as a "receipt".	Nowhere on the document does it reference that it is a "receipt". To the extent this is Cotton's opinion, it is inadmissible lay opinion evidence. (Cal. Evid. Code, § 800.) To the extent Cotton is offering his lay opinion, the Declaration fails to lay proper foundation for the opinion. (Cal. Evid. Code, § 702.)
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Cotton Declaration, ¶ 12 to the extent it references the "Text Communications".	Lack of Foundation (Cal. Evid. Code, § 702); Hearsay (Cal. Evid. Code § 1200).
Cotton Declaration, 1115 to the extent it refers to the "Metadata Evidence."	This is improper lay opinion in violation of California Evidence Code, section 800. It also lacks foundation in violation of California Evidence Code, section 702. Additionally, this evidence is irrelevant. (Cal. Evid. Code, § 350.)
Cotton Declaration, ¶ 16 to the extent it refers to the "Parcel Information Report" provided by the City of San Diego, Development Services	Hearsay (Cal. Evid. Code, § 1200); Lack of Foundation (Cal. Evid. Code, § 702).

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTIONS
Department	
Cotton Declaration, ¶ 20 to the extent it references that Judge Wohlfeil told Cotton that he knew Austin and Weinstein well and that he did not believe the would engaged in unethical actions.	!!Televant (Cal. Evid. Code, § 350).
Cotton Declaration, ¶ 21 in its entirety.	Completely il:relevant to any issue in This case. (Cal. Evid. Code, § 350).
Cotton Declaration, ¶ 22 to the extent it references an Independent Psychiatric Assessment of Mr. Cotton.	11Televant (Cal. Evid. Code, § 350).
Exhibit 1- Summary of Emails.	Lacks foundation (Cal. Evid. Code, § 720); Hearsay (Cal. Evid. Code, § 1200).
Exhibit 3 - To the extent this has been identified as Meta.data.	Lacks foundation (Cal. Evid. Code § 720); Hearsay (Cal. Evid. Code, § 1200); Irrelevant (Cal. Evid. Code, § 350.)
Exhibit 4.	Irrelevant (Cal. Evid. Code, § 350); Improper Expert Opinion as Cotton has failed to designate an expert witness in this case; Hearsay (Cal. Evid. Code, § 1200).

Dated: April 10, 2018

fERRIS & BRITTON
A Professional Corporation

By: 111 ?Lt

Michael R Weinstein
Scott H. Toothacre

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

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DISTRICT

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

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

[IMAGED FILE]

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

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

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

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	evidence. (Cal. Evid. Code, § 350.)
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Dated: April 10, 2018

fERRIS & BRITTON
A Professional Corporation

By: 111 ?Lt

Michael R Weinstein
Scott H. Toothacre

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

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - April 11, 2018

EVENT DATE: 04/13/2018

EVENT TIME: 09:00:00 AM

DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

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

CASE TITLE: LARRY GERACI VS DARRYL COTTON [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion to Expunge Lis Pendens, 04/04/2018

The Motion (ROA # 161) of Defendant / Cross-Complainant Darryl Cotton ("Defendant") for an order expunging the *lis pendens* recorded in the office of the Recorder of San Diego County as Instrument Number 2017-0129756 and filed in the above-referenced action on March 22, 2017, and an order awarding Defendant reasonable attorneys' fees and costs, on the grounds that the Complaint lacks "probable validity" which can be established by a preponderance of the evidence in light of the evidence presented by Plaintiff LARRY GERACI ("Plaintiff"), is DENIED.

The Court must expunge a lis pendens where: (a) the action does not involve a "real property claim" (Code Civ. Proc. 405.31); or (b) the claimant has not demonstrated the "probable validity" of the claim (Code Civ. Proc. 405.32). Code Civ. Proc. 405.30. "Real property claim" means a cause of action "which would, if meritorious, affect ... title to, or the right to possession of, specific real property" Code Civ. Proc. 405.4. The question of whether pleadings state a real property claim is tested by a demurrer-like analysis that centers on the adequacy of the pleading. Gale v. Superior Court (2004) 122 Cal. App. 4th 1388, 1395. It is strictly a binary process: If you properly plead a real property claim, you can file a notice of lis pendens; if you don't, you can't. Id.

"Probable validity" means that it is more likely than not that the claimant will obtain a judgment against the defendant on the claim. Code Civ. Proc. 405.3. To avoid a motion to expunge, the burden is on the lis pendens claimant (Plaintiff) to establish the "probable validity" of the real property claim "by a preponderance of the evidence." Code Civ. Proc. 405.32. If conflicting evidence is presented, the Court must weigh the evidence in deciding whether Plaintiff has sustained its burden. Edmon & Karnow, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2017) at ¶ 9:436.2.

It is undisputed this action involves a real property claim, and this Motion is limited to the issue of probable validity regarding each cause of action within the Complaint. Specifically, Defendant contends that the November 2, 2016 writing does not evidence the complete agreement between the parties. Instead, an oral agreement existed that the parties agreed would be reduced to writing in the near future. Defendant contends Plaintiff has not complied with the terms of the expanded oral agreement, and that he (Defendant) did not breach the existing oral agreement. The subject November 2, 2016 agreement is notarized, and reads as follows:

"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."

This document appears to set forth all essential terms for an agreement, and the fact that it is notarized supports Plaintiff's contention that it is a complete agreement between the parties. On the other hand, the documents Defendant offers in support of this Motion were created after November 2, 2016, and appear to be unsuccessful attempts to negotiate changes to the original agreement. It is possible that Plaintiff fraudulently induced Defendant to enter into the November 2nd agreement with the false promise of a future agreement regarding a \$50,000.00 non-refundable deposit and a 10 percent equity stake in the marijuana dispensary. However, the combined evidence presented in support and opposition to this Motion results in the conclusion that it is more likely than not that the November 2, 2016 writing contains the terms of the agreement between the parties.

Defendant's Request for judicial notice is DENIED. Plaintiff's objections (ROA # 186) are SUSTAINED.

Plaintiff's evidentiary objections (ROA # 185) are OVERRULED.

Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114
Telephone: (619) 954-4447
Facsimile: (619) 229-9387

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/25/2018 at 01:52:00 PM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

Defendant/Cross-Complainant *In Propria Persona*

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

vs.

DARRYL COTTON, an individual;
and DOES 1-10, INCLUSIVE,
Defendants.

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA
BERRY, an individual; and DOES 1 through 10,
Inclusive,
Cross-Defendants.

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

**EX PARTE APPLICATION FOR AN ORDER
EXTENDING THE TIME WITHIN WHICH
DEFENDANT/CROSS-COMPLAINANT
DARRYL COTTON MAY FILE A PETITION
FOR WRIT OF MANDATE REGARDING
THIS COURT'S APRIL 13, 2018 ORDER
DENYING HIS MOTION TO EXPUNGE
LIS PENDENS (NOTICE OF PENDENCY
OF ACTION); MEMORANDUM OF POINTS
AND AUTHORITIES, AND DECLARATION
OF DARRYL COTTON IN SUPPORT
THEREOF**

DATE: April 26, 2018

TIME: 8:30 a.m.

DEPT: C-73

JUDGE: The Honorable Joel R. Wohfeil

[CIVIL IMAGED FILE]

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on April 26, 2018 at 8:30 a.m. or as soon thereafter as the matter may be heard in Department C-73 of the above-entitled Court, Defendant and Cross-Complainant DARRYL COTTON ("Cotton") will move this Court *ex parte* for an Order extending his time to file a

1 Petition for Writ of Mandate regarding this Court’s April 13, 2018 Order denying his Motion to Expunge
2 *Lis Pendens* (Notice of Pendency of Action) (“LP Motion”).

3 This Motion brought pursuant to the provisions of Code of Civil Procedure section 405.39 which
4 empowers this Court to extend the time within which a Petition for Writ of Mandate may be filed by an
5 additional ten (10) days upon the timely application by a party requesting such extension.

6 This Motion is made on the grounds that good cause exists to extend Cotton’s time to file his
7 Petition for Writ of Mandate given that he is a self-represented litigant who may suffer serious and
8 potentially irreversible financial losses, physical and emotional stress and other damages if his time is
9 not extended to enable him to properly prepare and file a Petition for Writ of Mandate, and the requested
10 extension will not operate to prejudice any other party to this litigation.

11 This *ex parte* motion is based upon this this Application and the accompanying Memorandum of
12 Points and Authorities and Declaration of Darryl Cotton in support hereof, the records and papers on file
13 in this action, and such oral testimony and documentary evidence which may be presented on this hearing
14 of this Motion.

15 DATED: April 25, 2018

/s/

DARRYL COTTON

Defendant/Cross-Complainant *In Propria Persona*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **A. Factual Background**

3 This dispute forming the bases of this litigation arises out of negotiations which began in or
4 around August 2016 between Cotton and Plaintiff in connection with Plaintiff's desire to purchase the
5 real property owned by Cotton located at 6176 Federal Boulevard, San Diego, California ("Property").

6 Over the course of the ensuing months, the parties extensively negotiated the terms of Plaintiff's
7 potential purchase of the Property. Plaintiff alleges that the parties entered into a final agreement for his
8 purchase of the Property. Cotton contends that the parties never entered into any such final agreement
9 for Plaintiff's purchase of the Property.

10 On March 22, 2018, Plaintiff recorded a *lis pendens* on Cotton's property. On April 4, 2018,
11 Cotton filed a motion to expunge Plaintiff's *Lis Pendens* ("LP Motion") which was heard before this
12 Court on April 13, 2018. The Court denied Cotton's LP Motion (the "April 13, 2018 Order"). The denial
13 of a motion to expunge a *lis pendens* is not appealable, Cotton's only remedy is to file a Petition for Writ
14 of Mandate ("PWM") challenging that Order. On April 13, 2018, Plaintiff's counsel served notice of
15 that Order by mail in the form of a Notice of Ruling After Hearing re Defendant Darryl Cotton's Motion
16 to Expunge *Lis Pendens*.

17 **B. This Court Is Empowered and Has the Discretion to Extend the Time Within Which a**
18 **Petition for Writ of Mandate Must Be Filed by Ten Days, and Good Cause Exists to Grant**
19 **Cotton the Maximum Ten-Day Extension Provided by Statute.**

20 Code of Civil Procedure section 405.39 provides as follows:

21 Any party aggrieved by an order [granting or denying] ... a motion
22 [regarding a *lis pendens*] under this chapter may petition the proper
23 reviewing court to review the order by writ of mandate. The petition for
24 writ of mandate shall be filed and served within 20 days of service of
25 written notice of the order by the court or any party. The court which
26 issued the order may, within the initial 20-day period, extend the initial
20-day period for one additional period not to exceed 10 days. A copy of
the petition for writ of mandate shall be delivered to the clerk of the court
which issued the order with a request that it be placed in the court file.

27 ///

28 ///

1 As the aggrieved party pursuant to the April 13, 2018 Order, Cotton is entitled to – and hereby
2 does – make application to this Court to obtain a ten-day extension to file his PWM, and Cotton
3 respectfully submits that good cause exists for this Court to grant his request.

4 As the record in this matter clearly reflects, since the inception of this case, the majority of issues
5 and disputes which have arisen primarily have been adjudicated through numerous law and motion
6 proceedings. Despite the virtual break-neck speed at which this litigation has progressed, Cotton has
7 done the best he can to represent himself in all proceedings, with the only exception being his LP Motion
8 for which Attorney Jacob Austin specially appeared and represented him on a limited basis.

9 As the record also clearly reflects, attempting to keep up with the filing deadlines associated with
10 both the flurry of motions and other matters, filing appeals regarding several Orders in this case and, in
11 particular, the potential looming threat of losing his Property, have been extremely stressful for Cotton
12 such that they have dramatically affected his already compromised physical and mental health to such an
13 extent that some of his maladies have become exacerbated.

14 In addition, since entry of the April 13, 2018 Order, Cotton also has been tasked with drafting and
15 filing his opposition to Plaintiff's recent sanctions motion scheduled for hearing in two days on April 27,
16 2018 seeking termination of this case in the favor of Plaintiff and Cross-Defendant Rebecca Berry. Given
17 the fact that the motion was filed and is being heard on shortened time, and the gravity of that motion
18 and the resulting severe consequences to Cotton if this Court was to grant the motion imposing the
19 sanctions requested by Plaintiff, it was both prudent and necessary for Cotton to devote a considerable
20 amount of his time and effort (which he otherwise could and would have devoted to drafting the PWM)
21 to oppose that motion which ultimately could prove to be the final death knell to this litigation.

22 **C. Granting Cotton's Request for a 10-Day Extension to File His Petition for Writ of Mandate**
23 **Will Not Operate to Prejudice Any Party to This Litigation; Instead, it Only Will Operate**
24 **to Further Justice by Protecting Cotton's Right to Due Process to Obtain a Fair and Proper**
25 **Adjudication of This and All Other Issues in this Litigation, and a Final Disposition of this**
26 **Case on its Merits.**

27 California law strongly favors the disposition of cases on their merits. (*Mink v. Superior Court*
28 (1992 2 Cal.App.4th 1338, 1343.) The job of the court is to allow disputes to be fairly and properly

1 adjudicated, protecting the rights *of all litigants*. (Emphasis added.) (*Palomar Mortgage Co. v. Lister*
2 (1963) 212 Cal.App.2d 237, 240.)

3 Cotton believes that the *lis pendens* Plaintiff recorded on his Property should be expunged because
4 he has demonstrated – based upon the evidence and argument presented by *both parties* in the LP Motion
5 – that the parties never entered into any final agreement by which Plaintiff was or is entitled to purchase
6 the Property; notwithstanding, however, this Court disagreed with Cotton and ruled against him, thus
7 leaving him no other remedy but to seek appellate review. In order to do so, being a pro per litigant,
8 Cotton is in need of additional time beyond the statutory 20 days to enable him to properly, thoughtfully
9 and fully brief the matter for filing with the Court of Appeals.

10 Extending the time for Cotton to file and serve his PWM by a mere ten days will not operate to
11 prejudice or create a hardship to any of the other parties to this case. To the contrary, granting Cotton
12 the relief he requests would further the legislative intent of providing litigants the opportunity to obtain
13 an extension of time to facilitate a resolution of this and other issues in this case on their merits, rather
14 than adjudication “by ambush.” (*Greyhound Corp v. Superior Court* (1961) 56 Cal.2d 355, 376.)

15 CONCLUSION

16 In light of the foregoing, Cotton respectfully submits that good cause exists for this Court to grant
17 this motion, and hereby requests that this Court Order that his time to file his PWM be extended for a
18 period of ten days.

19 DATED: April 25, 2018

/s/

20 DARRYL COTTON

21 Defendant/Cross-Complainant *In Propria Persona*

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1. I am over the age of eighteen years, the Plaintiff and Cross-Defendant in the above-entitled case, and I submit this declaration in support of my foregoing *Ex Parte* Application for an order compelling my time to file a Petition for Writ of Mandate in connection with the April 13, 2018 Order.
2. This dispute forming the bases of this litigation arises out of negotiations which began in January and August 2016 between myself and Plaintiff in connection with his desire to purchase the real property I own located at 6176 Federal Boulevard, San Diego, California (“Property”).
3. Over the course of the ensuing months, the Plaintiff and I parties extensively negotiated the terms of his potential purchase of my Property. Plaintiff alleges that we entered into a final agreement for the purchase of my Property. I contends that we never entered into any such final agreement for Plaintiff’s purchase of my Property.
4. On March 22, 2018, Plaintiff recorded a *lis pendens* on my property.
5. On April 4, 2018, I filed the “LP Motion” which was heard before this Court on April 13, 2018. The Court denied my LP Motion.
6. Because the denial of my motion to expunge a *lis pendens* is not appealable, my only recourse is to file a Petition for Writ of Mandate challenging the April 13, 2018 Order.
7. On April 13, 2018, Plaintiff’s counsel served notice of the April 13, 2018 Order by mail in the form of a Notice of Ruling After Hearing re Defendant Darryl Cotton’s Motion to Expunge *Lis Pendens*.
8. As the record in this matter clearly reflects, since the inception of this case, the majority of issues and disputes which have arisen primarily have been adjudicated through numerous law and motion proceedings. Despite the virtual break-neck speed at which this litigation has progressed, I have done my best to represent myself in all proceedings, with the only exception being my LP Motion for which Attorney Jacob Austin specially appeared and represented me on a limited basis.
9. As the record also clearly reflects, attempting to keep up with the filing deadlines associated with both the flurry of motions and other matters, filing appeals regarding several Orders in this case and, in particular, the potential looming threat of losing my Property, have been extremely

1 stressful for me such that they have dramatically affected my already compromised physical and mental
2 health to such an extent that some of my maladies have become exacerbated.

3 10. In addition, since entry of the April 13, 2018 Order, I also was tasked with drafting and
4 filing my opposition to Plaintiff's recent sanctions motion scheduled for hearing in two days on April 27,
5 2018 seeking termination of this case in the favor of Plaintiff and Cross-Defendant Rebecca Berry.
6 Given the fact that the motion was filed and is being heard on shortened time, and the gravity of that
7 motion and the resulting severe consequences to me if this Court was to grant the motion imposing the
8 sanctions requested by Plaintiff, it was both prudent and necessary for me to devote a considerable
9 amount of my time and effort (which I otherwise could and would have devoted to drafting the PWM)
10 to oppose that motion which ultimately could prove to be the final death knell to this litigation.

11 11. It is my belief that the *lis pendens* recorded by Plaintiff on my Property should be
12 expunged because Plaintiff has demonstrated – based upon the evidence and argument presented by *both*
13 *parties* in the LP Motion – that we never entered into any final agreement by which Plaintiff was or
14 is entitled to purchase my Property; notwithstanding, however, this Court disagreed with me and ruled
15 against me, thus leaving me no other remedy but to seek appellate review. In order to do so, being a pro
16 per litigant, I am in need of additional time beyond the statutory 20 days to enable me to properly,
17 thoughtfully and fully brief the matter for filing with the Court of Appeals.

18 12. Extending the time for me to file and serve my PWM by a mere ten days will not prejudice
19 or create a hardship to any of the other parties to this case.

20 I declare under penalty of perjury according to the law of the State of California that the foregoing
21 is true and correct and that this declaration was executed on April 25, 2018 at San Diego, California.

22
23 /s/

24 DARRYL COTTON

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

MINUTE ORDER

DATE: 04/26/2018

TIME: 08:30:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017

CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Ex Parte

APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Darryl Cotton, self represented Defendant, present.

Ex-parte application for application seeking 10 day extension to file Petition with Court of Appeal requested by Defendant.

The Court finds good cause and grants the request. The parties stipulate to the extension.

Notice is waived.

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

MINUTE ORDER

DATE: 04/27/2018

TIME: 10:45:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Ryan A Willis, Andrea Taylor

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017

CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion Hearing (Civil)

MOVING PARTY: Larry Geraci, Rebecca Berry

CAUSAL DOCUMENT/DATE FILED: Motion - Other Notice of Hearing on Motion for Monetary and Escalating/Terminating Sanctions, 04/09/2018

APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).

Darryl Cotton, self represented Defendant, present.

The Court modifies the tentative ruling as follows:

The Motion (ROA # 169, 177, 194) of Plaintiff / Cross - Defendant LARRY GERACI ("Plaintiff" or "Geraci") and Cross - Defendant REBECCA BERRY ("Berry") for orders 1. Imposing monetary sanctions against Defendant and Cross - Complainant DARRYL COTTON ("Cotton") to compensate for the attorneys' fees and costs associated with Cotton's non-appearance at his April 5, 2018, deposition, and with the preparation and hearing of this Motion for sanctions; and 2. Imposing escalating / terminating sanctions (a) for an order striking Cotton's Answer to the Complaint; and (b) for an order striking Cotton's operative Second Amended Cross-Complaint; or 3. Alternatively, as a possible lesser but escalating sanctions, for an order continuing the Trial date for 60 days to permit Cotton one final chance to provide the written discovery responses and make himself available for deposition on a date certain within 10 days, and at the same time extending the discovery cutoff by 60 days for Plaintiff and Berry so that Plaintiff and Berry are given opportunity to conduct follow up discovery, including depositions that they deem necessary in light of the information provided in those responses and deposition testimony, is GRANTED IN PART and will be HEARD IN PART.

The Motion to continue the May 11, 2018 trial and related dates is GRANTED. The trial is continued to July 13, 2018 at 8:30 am. The balance of the dates will be assigned at the hearing of this Motion.

The Court will HEAR why Cotton's Answer and Second Amended Cross-Complaint should not be stricken for Cotton's non-compliance with the Court's order to submit to a deposition.

All Motions and Discovery are to be completed 7/20/18.

Trial Readiness Conference (Civil) is continued pursuant to party's motion to 08/03/2018 at 10:45AM before Judge Joel R. Wohlfeil.

Civil Jury Trial is continued pursuant to party's motion to 08/17/2018 at 08:30AM before Judge Joel R. Wohlfeil.

Attorney Weinstein to serve notice of Court's modified ruling.