

IN THE COURT OF APPEAL OF THE S'

CASE #: D074587

FOURTH APPELLATE DISTRICT – DIVISION ONE

DARRYL COTTON,
Defendant/Petitioner/Appellant,

v.

THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO,

Respondent.

LARRY GERACI, an individual; REBECCA BERRY, an individual; MICHAEL R. WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; FERRIS & BRITTON APC, a California corporation; GINA M. AUSTIN an individual; AUSTIN LEGAL GROUP APC, a California corporation; JIM BARTELL, an individual; BARTELL & ASSOCIATES, INC., a California corporation; ABHAY SCHWEITZER, an individual and dba TECHNE; AARON MAGAGNA, an individual; THE CITY OF SAN DIEGO, a public entity; M. TRAVIS PHELPS, MICHELLE SOKOLOWSKI, FIROUZEH TIRANDAZI, CHERLYN CAC, as individuals and as employees of THE CITY OF SAN DIEGO,

Real Parties in Interest.

Court of Appeal Case No. _____
(San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL)

and

Court of Appeal Case No. D073766
(San Diego Superior Court Case No. 37-2017-00037675-CU-WM-CTL)

EXHIBITS – VOLUME 1 of 3
[EXHIBITS 1-8, Pages 001 – 339]

**TO PETITION FOR WRIT OF MANDATE, SUPERSEDEAS
AND/OR OTHER APPROPRIATE RELIEF**

JACOB P. AUSTIN [SBN 290303]
Law Office of Jacob Austin
1455 Frazee Road, #500, San Diego, CA 92108
Telephone: (619) 357-6850; Facsimile: (888) 357-8501; JPA@JacobAustinEsq.com
Attorney for Defendant/Petitioner/Appellant DARRYL COTTON

**INDEX OF EXHIBITS TO
PETITION FOR WRIT OF MANDATE, WRIT OF SUPERSEDEAS
AND/OR OTHER APPROPRIATE RELIEF
VOLUME 1 [EXHIBITS 1 – 8, PAGES 001–339]**

EXH.	DATE	DESCRIPTION	PAGE RANGE
1	06/14/18	Minute Order Denying Motion for Appointment of Receiver [ROA 240]	001 – 002
2	07/13/18	Minute Order Denying Motion for Judgment on the Pleadings [ROA 256]	003 – 004
3	03/14/18	Notice of Entry of Judgment or Order denying Motion to Expunge <i>Lis Pendens</i> ; Proof of Service by Mail [ROA 74]	005 – 009
4	07/13/18	Certified Copy of Reporter's Transcript of Hearing July 13, 2018	010 – 015
5	07/26/18	Amended Notice of Appeal of June 14, 2018 Order Denying Motion for Appointment of Receiver [ROA 281]	016 – 017
6	12/11/17	Declaration of Darryl Cotton's <i>Ex Parte</i> Application for an Order Granting Motion for Reconsideration re Application for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction;	018 – 020
		Memorandum of Points and Authorities in Support of Darryl Cotton's <i>Ex Parte</i> Application for an Order Granting Motion for Reconsideration re Application for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction;	021 – 049
		Request for Judicial Notice in Support of Darryl Cotton's <i>Ex Parte</i> Application for an Order Granting Motion for Reconsideration re Application for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction [ROA 77]	050 – 187

**INDEX OF EXHIBITS TO
PETITION FOR WRIT OF MANDATE, WRIT OF SUPERSEDEAS
AND/OR OTHER APPROPRIATE RELIEF
VOLUME 1 [EXHIBITS 1 – 8, PAGES 001–339]**

EXH.	DATE	DESCRIPTION	PAGE RANGE
7	08/01/18	Darryl Cotton's <i>Ex Parte</i> Application for an Order (1) Continuing Trial Scheduled for August 17, 2018, and (2) a Stay of This Proceeding [ROA 264];	188 – 190
		Memorandum of Points and Authorities [ROA 264];	191 – 196
		Declaration of Jacob P. Austin in Support of Darryl Cotton's <i>Ex Parte</i> Application for an Order (1) Continuing Trial Scheduled for August 17, 2018, and (2) a Stay of This Proceeding [ROA 264];	197 – 223
		Declaration Regarding Notice of Darryl Cotton's <i>Ex Parte</i> Application for an Order (1) Continuing Trial Scheduled for August 17, 2018, and (2) a Stay of This Proceeding [ROA 264]	224 – 225
8	04/04/18	Notice of Motion and Motion to Expunge Notice of Pendency of Action (<i>Lis Pendens</i>) [ROA 161]	226 – 228
		Darryl Cotton's Memorandum of Points and Authorities in Support of Motion to Expunge Notice of Pendency of Action (<i>Lis Pendens</i>) [ROA 161]	229 – 249
		Darryl Cotton's Declaration in Support of Motion to Expunge Notice of Pendency of Action (<i>Lis Pendens</i>) [ROA 161]	250 - 339

EXHIBIT 1 [ROA 240]

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

MINUTE ORDER

DATE: 06/14/2018

TIME: 08:30:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: David Rhoads CSR# 13508

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).

Andrew Flores, specially appearing for counsel Jacob Austin, present for Defendant, Cross - Complainant, Appellant(s).

Ex-parte application for appointment of Receiver and for other relief requested by Defendant.

The ex-parte request is denied without prejudice.

Counsel to call calendaring clerk to schedule noticed motion.

EXHIBIT 2 [ROA 256]

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

MINUTE ORDER

DATE: 07/13/2018

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Patricia Ashworth

REPORTER/ERM: Darla Kmety CSR# 12956

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: Darryl Cotton

CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings, 06/20/2018

APPEARANCES

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

Michael R. Weinstein, specially appearing for counsel Scott H Toothacre, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Jacob Austin, counsel, present for Defendant, Cross - Complainant, Appellant(s).

The Court hears oral argument and confirms the tentative ruling as follows: The Motion (ROA # 247) of Defendant / Cross-Complainant DARRYL COTTON ("Defendant") for entry of a judgment in this case on the Complaint of Plaintiff LARRY GERACI ("Plaintiff"), is DENIED.

Defendant's Request (ROA # 246) for judicial notice is GRANTED IN PART and DENIED IN PART. The Court takes judicial notice of Exh's "1 - limited to the date on which Plaintiff's Complaint was filed, 3 and 4," and the Court declines to take judicial notice of the balance of the Request.

Even assuming judicial notice of the facts stated within Plaintiff's previous declaration (ROA # 180) is permissible (see, e.g., Arce v. Kaiser Foundation Health Plan, Inc. (2010) 181 Cal. App. 4th 471, 485), these facts do not necessarily negate all four of the causes of action set forth within the Complain. Resolution of this matter is dependent on extrinsic facts that cannot be determined via this Motion.

Clerk's note: Counsel for Plaintiff to serve notice.



Judge Joel R. Wohlfeil

EXHIBIT 3 [ROA 74]

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael R. Weinstein (106464) /Scott H. Toothacre (146530) Ferris & Britton, APC 501 West Broadway, Suite 1450 San Diego, California 92101 TELEPHONE NO: (619) 233-3131 FAX NO. (Optional) (619) 232-9316 E-MAIL ADDRESS (Optional): mweinstein@ferrisbritton.com ATTORNEY FOR (Name): Larry Geraci and Rebecca Berry	BUSINESS OFFICE 11 FOR COURT USE ONLY 2018 MAR 14 P 2:20 SUPERIOR COURT SAN DIEGO COUNTY, CA FILED Clerk of the Superior Court MAR 14 2018
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Hall of Justice	
PLAINTIFF/PETITIONER: Darryl Cotton DEFENDANT/RESPONDENT: City of San Diego	
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeded \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded was \$25,000 or less)	CASE NUMBER: 37-2017-37675-CU-WM-CTL

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): March 7, 2018
2. A copy of the judgment, decree, or order is attached to this notice.

Date: March 13, 2018

Michael R. Weinstein

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

Michael R. Weinstein
 (SIGNATURE)

FILED
Clerk of the Superior Court

MAR -7 2018

By: J. CERDA

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,

Respondents/Defendants.

REBECCA BERRY, an individual; LARRY
GERACE, an individual, and ROES 1 through
25,

Real Parties in Interest.

Case No. 37-2017-00037675-CU-WM-CTL

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

**[PROPOSED] JUDGMENT AFTER
ORDER DENYING MOTION FOR
ISSUANCE OF PEREMPTORY WRIT OF
MANDATE**

[IMAGED FILE]

DATE: January 25, 2018
TIME: 8:30 a.m.
DEPT: C-73

Petition Filed: October 6, 2017

On October 6, 2017, Plaintiff/Petitioner initiated this action by filing his Verified Petition for Alternative Writ of Mandate (Code Civ. Proc. § 1085).

On November 30, 2017, Real Party in Interest, Larry Geraci, answered the petition by the filing of Real Party in Interest Larry Geraci's Verified Answer to Petition for Writ of Mandate.

On November 30, 2017, Real Party in Interest, Rebecca Berry, answered the petition by the filing of Real Party in Interest Rebecca Berry's Verified Answer to Petition for Writ of Mandate.

On or about December 28, 2017, Respondent/Defendant, City of San Diego, answered the petition by the filing of Respondent/Defendant City of San Diego's Answer to Petitioner's Verified Petition for Alternative Writ of Mandate.

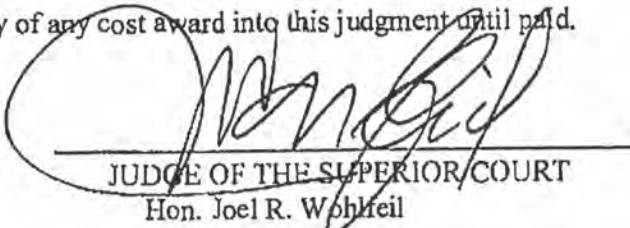
1 On January 25, 2018, the noticed motion by Petitioner/Plaintiff, Darryl Cotton, for issuance of a
2 peremptory writ of mandate came on for hearing. Petitioner/Plaintiff, Darryl Cotton, was represented
3 by Darryl Cotton, pro se. Respondent/Defendant, City of San Diego, was represented by M. Travis
4 Phelps, Chief Deputy City Attorney with the Office of the City Attorney. Real Parties in Interest, Larry
5 Geraci and Rebecca Berry, were represented by attorney Michael R. Weinstein of the law firm Ferris &
6 Britton, APC. After review of the written pleadings submitted by the parties and hearing oral
7 argument, the Court issued its order DENYING Petitioner/Plaintiff's motion for issuance of a
8 peremptory writ of mandate.

9 Based on the order denying Petitioner/Plaintiff's motion for issuance of a peremptory writ of
10 mandate, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

11 (1) Judgment be entered in favor of Respondent/Defendant, City of San Diego, and Real
12 Parties in Interest, Larry Geraci and Rebecca Berry, and against Petitioner/Plaintiff, Darryl
13 Cotton; and

14 (2) Respondent/Defendant, City of San Diego, and Real Parties in Interest, Larry Geraci and
15 Rebecca Berry, have and recover from Petitioner/Plaintiff costs of suit in the sums of
16 \$ TBD (City of San Diego), \$ TBD (Larry Geraci), and \$ TBD
17 (Rebecca Berry), respectively, with interest thereon at the rate of ten percent (10%) per
18 annum from the date of entry of any cost award into this judgment until paid.

19
20 Dated: 3-7, 2018


JUDGE OF THE SUPERIOR COURT
Hon. Joel R. Wohlfeil

PLAINTIFF/PETITIONER: Darryl Cotton	CASE NUMBER: 37-2017-00037675-CU-WM-CTL
DEFENDANT/RESPONDENT: City of San Diego	

**PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER**

(NOTE: You cannot serve the Notice of Entry of Judgment or Order if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):

501 W. Broadway, Suite 1450
San Diego, CA 92101

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and (*check one*):
- a. ☐ deposited the sealed envelope with the United States Postal Service.
 - b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
3. The *Notice of Entry of Judgment or Order* was mailed:
- a. on (*date*): March 13, 2018
 - b. from (*city and state*): San Diego, California

4. The envelope was addressed and mailed as follows:

a. Name of person served:
Darryl Cotton
Street address: 6176 Federal Boulevard
City: San Diego
State and zip code: CA, 92114

c. Name of person served:
Gina Austin, Esq.
Street address: 3990 Old Town Ave., Suite A112
City: San Diego
State and zip code: CA, 92110

b. Name of person served:
M. Travis Phelps, Esq.
Street address: 1200 Third Avenue, Suite 1100
City: San Diego
State and zip code: CA, 92101

d. Name of person served:

Street address:
City:
State and zip code:

☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

5. Number of pages attached 0

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

Date: March 13, 2018

Anna K. Lizano

(TYPE OR PRINT NAME OF DECLARANT)



(SIGNATURE OF DECLARANT)

EXHIBIT 4
[CLERK'S TRANSCRIPT]

In The Superior Court Of The State Of California
In And For The County Of San Diego
Department 73 Hon; 5. JOEL WOHLFEIL, Judge

LARRY GERACI,)
)
Plaintiff,)
)
vs.) Case No.
)
DARRYL COTTON)
)
Defendants.)
_____)

Reporter's Transcript
JULY 13, 2018

Appearances:

For the Plaintiff: Michael Weinstein, Esq.
Ferris & Britton
501 W. Broadway, #1450
San Diego, California 92101

For the Defendant: Jacob Austin, Esq.
1455 Frazee Road, #500
San Diego, California 92108

Darla Kmety, RPR, CSR 12956
Official Court Reporter
San Diego Superior Court
San Diego, California 92101



Corporate Headquarters
530 B Street
Suite 350
San Diego, CA 92101

800 649 6353 toll free
619 260 1069 tel
619 688 1733 fax
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Complex Cases
Accurate, Fast

1 JULY 13, 2018; San Diego, California; 9:15 A.M.

2 -- 00o --

3 THE COURT: Item 7. Geraci versus Cotton.
4 Ending 10073.

5 MR. WEINSTEIN: Good morning, your Honor.
6 Michael Weinstein for plaintiff, Larry Geraci. We're
7 submitting. Just time to reply.

8 MR. AUSTIN: Good morning, your Honor. Jacob
9 Austin on behalf of Mr. Cotton.

10 THE COURT: Good morning to each of you two.
11 Interesting motion, particularly combined with your
12 request for judicial notice. Is there anything else that
13 you'd like to add?

14 MR. AUSTIN: Well, I would like an explanation.
15 So Mr. Geraci, the plaintiff in this case, he submitted
16 the declaration admitting essentially that --

17 THE COURT: It's the "essentially" part that I
18 don't agree with. You make those same comments in your
19 paper. There's four separate causes of action.

20 MR. AUSTIN: Right.

21 THE COURT: The court wasn't persuaded that even
22 if I were to grant the request to take judicial notice of
23 a declaration granted of a party opponent, it's still not
24 dispositive of the entire complaint. And that's what your
25 motion is directed to, isn't it --

26 MR. AUSTIN: Well --

27 THE COURT: -- in it's entirety?

28 MR. AUSTIN: Because all four causes of action

1 are premised on a breach of contract, so if there's not an
2 integrated contract, according to plaintiff himself, I
3 feel that all four causes of actions fail.

4 THE COURT: Not so sure if I agree with that
5 entire analysis.

6 Anything else, counsel?

7 MR. AUSTIN: Well, I was just wondering if you
8 could explain to me, if you believe as a matter of law,
9 the three-sentence contracts that plaintiff claims is an
10 integrated contract. If you believe that to actually be a
11 fully integrated contract.

12 THE COURT: You know, we've been down this road
13 so many times, counsel. I've explained and reexplained
14 the court's interpretation of your position. I don't know
15 what more to say.

16 Is there anything else, counsel?

17 CO COUNSEL: Your Honor, if I may, I'm co
18 counsel on behalf of Mr. Cotton.

19 Your Honor, the only thing we really want
20 clarification is the matter whether or not the court deems
21 the contract an integrated contract or not.

22 THE COURT: Again, we've addressed that in
23 multiple motions. I'm not going to go back over it again
24 at this point in time.

25 Anything else, counsel?

26 CO COUNSEL: That's it.

27 THE COURT: All right. So the court confirms
28 the court's tentative ruling. Makes it an order of the

1 court and directs that plaintiff's counsel serve notice.
2 Thank you very much.

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5 [End of proceeding.]

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1 STATE OF CALIFORNIA

2 COUNTY OF SAN DIEGO

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5 I, Darla Kmety, Court-Approved Official Pro Tem
6 Reporter for the Superior Court of the State of
7 California, in and for the County of San Diego, do hereby
8 certify:

9

10 That as such reporter, I reported in machine
11 shorthand the proceedings held in the foregoing case;

12

13 That my notes were transcribed into typewriting
14 under my direction and the proceedings held on
15 July 13, 2018, contained within pages 1 through 4, are a
16 true and correct transcription.

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19 This Day 2nd of August 2018

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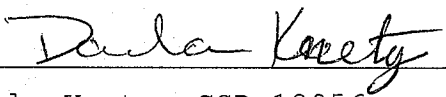

Darla Kmety, CSR 12956

EXHIBIT 5 [ROA 281]

ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NO.: 290303	<small>END COURT USE ONLY</small> ELECTRONICALLY FILED Superior Court of California, County of San Diego 07/26/2018 at 03:07:00 PM Clerk of the Superior Court By Leticia Romo, Deputy Clerk
NAME:	JACOB P. AUSTIN		
FIRM NAME:	Law Office of Jacob Austin		
STREET ADDRESS:	1455 Frazee Road, #500		
CITY:	San Diego	STATE: CA ZIP CODE: 92108	
TELEPHONE NO.:	(619) 357-6850	FAX NO.: (888) 357-8501	
E-MAIL ADDRESS:	JPA@JacobPAustinEsq.com		
ATTORNEY FOR (name): Attorney for Defendant/Appellant			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO			
STREET ADDRESS: 330 West Broadway			
MAILING ADDRESS: 330 West Broadway			
CITY AND ZIP CODE: San Diego, CA 92101-2994			
BRANCH NAME: Central Division - Civil			
PLAINTIFF/PETITIONER: DARRYL COTTON			
DEFENDANT/RESPONDENT: LARRY GERACI and REBECCA BERRY, individuals, et al.			
<input checked="" type="checkbox"/> NOTICE OF APPEAL <input type="checkbox"/> CROSS-APPEAL AMENDED (UNLIMITED CIVIL CASE)			CASE NUMBER: 37-2017-00010073-CU-BC-CTL

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that (name): Defendant/Cross-Complainant DARRYL COTTON
appeals from the following judgment or order in this case, which was entered on (date): June 14, 2018
- ☐ Judgment after jury trial
☐ Judgment after court trial
☐ Default judgment
☐ Judgment after an order granting a summary judgment motion
☐ Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
☐ Judgment of dismissal after an order sustaining a demurrer
☐ An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
☐ An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
☒ Other (describe and specify code section that authorizes this appeal):
 Appeal from Order denying Ex Parte Application for Appointment of Receiver and Other Relief - CCP §904.1(6)
2. For cross-appeals only:
- a. Date notice of appeal was filed in original appeal:
 b. Date superior court clerk mailed notice of original appeal:
 c. Court of Appeal case number (if known):

Date: July 26, 2018

JACOB P. AUSTIN
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

EXHIBIT 6 [ROA 77]

1 Darryl Cotton (in pro per)
2 6176 Federal Avenue
3 San Diego, CA 92114
619-266-4004 (phone)
619-229-9387 (fax)

F I L E D
Clerk of the Superior Court

DEC 11 2017

By: A. SEAMONS, Deputy

4 DEFENDANT AND CROSS-COMPLAINANT

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7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO - CENTRAL DIVISION
10

11 LARRY GERACI, an individual,

12 Plaintiff,

13 v.

14 DARRYL COTTON, an individual, and
15 DOES 1-10, inclusive,

16 Defendants.

17
18 Case No. 37-201¹⁷₁₃-00010073-CU-BC-CTL

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**DEFENDANT DARRYL COTTON'S EX
PARTE APPLICATION FOR AN ORDER
GRANTING MOTION FOR
RECONSIDERATION RE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION**

Date: December 12, 2017

Dept: 8:30 a.m.

Judge: Hon. Joel R. Wohlfeil

Dept: C-73

21
22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on Tuesday, December 12, 2017, at 8:30 a.m. in
24 Department C-73 of the Superior Court of California, San Diego County, located in the Hall of
25 Justice Courthouse, 330 W. Broadway, San Diego, CA 92101, or as soon thereafter as the matter
26 may be heard, Defendant and Cross-Complainant Darryl Cotton will, and hereby does, apply ex
27 parte, pursuant to California Code of Civil Procedure Section 1008 and California Rules of Court
28 3.1200 to 3.1206, for an order granting Defendant's Motion for Reconsideration re Application

-1-

DEFENDANT'S EX PARTE APPLICATION FOR ORDER GRANTING MOTION FOR
RECONSIDERATION

1 for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction
2 ("TRO"). On December 7, 2017, this Court denied Defendant's TRO and this ex parte
3 application seeks a Court Order granting Defendant's Motion for Reconsideration on the TRO.

4 Pursuant to CCP 1008(a), when an application for an order has been made to a judge, or
5 to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any
6 party affected by the order may, within 10 days after service upon the party of written notice of
7 entry of the order and based upon new or different facts, circumstances, or law, make application
8 to the same judge or court that made the order, to reconsider the matter and modify, amend, or
9 revoke the prior order. Accordingly, Defendant's Motion for Reconsideration is timely.

10 Defendant is now representing himself. Concurrently with this ex parte, Defendant is
11 filing a Substitution of Attorney. This ex parte application is based on this application, the
12 memorandum of points and authorities, and the declaration of Norah Rafiei.

13
14 Dated: December 11, 2017

15 By:


DARRYL COTTON

1 Darryl Cotton (in pro per)
2 6176 Federal Avenue
3 San Diego, CA 92114
619-266-4004 (phone)
619-229-9387 (fax)

F I L E D
Clerk of the Superior Court

DEC 11 2017

By: A. SEAMONS, Deputy

17 DEC 11 AM 11:56

4 DEFENDANT AND CROSS-COMPLAINANT

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO – CENTRAL DIVISION

11 LARRY GERACI, an individual,

12 Plaintiff,

13 v.

14 DARRYL COTTON, an individual, and
15 DOES 1-10, inclusive,

16 Defendants.

Case No. 37-20¹⁷~~13~~-00010073-CU-BC-CTL
⁰¹

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT DARRYL COTTON'S *EX*
PARTE APPLICATION FOR AN ORDER
GRANTING MOTION FOR
RECONSIDERATION RE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION

Date: December 12, 2017

Time: 8:30 a.m.

Judge: Hon. Joel R. Wohlfeil

Dept.: C-73

22 I, Darryl Cotton, Defendant and Cross-Complainant in this matter, respectfully request
23 the Court reconsider its Order denying my *Ex Parte* Application for a Temporary Restraining
24 Order and Order to Show Cause Regarding Preliminary Injunction ("TRO Motion").

25 On December 7, 2017, the Court heard and denied the relief Defendant requested in the
26 TRO Motion. Defendant now beseeches the Court to reconsider the TRO Motion on the basis
27 that Defendant's now former counsel was not prepared for the hearing and failed to raise in oral
28

-1-

DEFENDANT'S *EX PARTE* APPLICATION FOR ORDER GRANTING MOTION FOR
RECONSIDERATION

1 argument four of the five points in the moving papers that are material, critical and dispositive on
2 the issues that the Court ruled on. Counsel explicitly admitted to Defendant that at the hearing he
3 failed to raise with the Court the most critical and materials points of fact and law necessary for
4 the Court to make reasonable and just findings. Defendant terminated his counsel's
5 representation because of his unprofessional conduct - failing to prepare for a critical hearing.¹

6 I am now compelled to come before the Court *ex parte* and *pro se* because the Court has
7 not been made aware of two absolutely critical deadlines, one of which is taking place this week,
8 that, without immediate judicial injunctive relief, will undisputedly cause me unlawful and
9 unconscionable irreparable harm that monetary damages will not be able to address at some
10 future point in time.

11 I implore the Court to grant this Motion for Reconsideration on an *ex parte* basis based
12 on ineffective assistance of counsel and, due to said ineffective assistance of counsel, incorrect
13 findings of fact and law, as well as new facts and circumstances because they were not presented
14 to the Court at oral argument and any and all other applicable legal grounds. "It is also well
15 established that courts have fundamental inherent equity, supervisory, and administrative
16 powers, as well as inherent power to control litigation before them." (*Cottle v. Superior*
17 *Court* (1992) 3 Cal.App.4th 1367, 1377 [5 Cal.Rptr.2d 882].)² "Courts are not powerless to
18 formulate rules of procedure where justice demands it." (*emphasis added*) (*Adamson v.*
19 *Superior Court* (1980) 113 Cal.App.3d 505, 509 [169 Cal.Rptr. 866], citing *Addison v. State of*
20 *California* (1978) 21 Cal.3d 313, 318-319 [146 Cal.Rptr. 224, 578 P.2d 941].)³

21 Alternatively, if the Court decides to deny my motion for reconsideration and not
22 substantively address the issues of fact and law raised, I BEG the Court at the hearing to please
23 articulate to me (i) which fact in the record and (ii) on what legal authority it was persuaded
24

25 ¹ See Exhibit A ("David...you were not familiar with the points in the P&A for the TRO Motion [and] you did not
26 raise them before the Court when they were directly on point and necessary to be raised as a response to Weinstein's
27 arguments. Further [...] the attorney for the City explicitly told you right after you walked out of the hearing that we
28 should have won based on the moving papers! Our relationship is terminated, but I need it to be clear that it is based
on your performance today at the hearing...")

² *Rutherford v. Owens-Illinois, Inc.*, 16 Cal. 4th 953, 967, 941 P.2d 1203 (1997), as modified on denial of reh'g (Oct.
22, 1997)

³ *Id.*

1 that I am not going to prevail on the merits of my cause of action for breach of contract.

2 Defendant is facing extreme personal, professional, mental and financial anguish on a
3 daily basis under the belief that - solely because of my former counsel's failure to prepare for the
4 hearing - a gross miscarriage of justice occurred at the hearing when the Court denied my TRO
5 Motion.

6 FACTUAL BACKGROUND

7 On November 2, 2016, Plaintiff Larry Geraci ("Plaintiff" or "Geraci") and I came to an
8 agreement for the sale of my property at 6176 Federal Blvd. (the "Property"). The sale of the
9 Property was contingent upon the successful issuance of a conditional use permit ("CUP") at the
10 Property for a medical cannabis dispensary. See Declaration of Darryl Cotton filed in support of
11 the TRO Motion, a true and correct copy of which is filed with the Request for Judicial Notice
12 ("Cotton Decl."), ¶ 10. The three most material terms of the agreement agreed upon by Geraci
13 and me were: (a) \$50,000 non-refundable deposit in the event the CUP application was denied
14 and; if the CUP was approved, (b) an \$800,000 purchase price and (c) a 10% equity stake in the
15 CUP business with a guaranteed minimum monthly equity distribution of \$10,000. See *id.*

16 On that day, Geraci and I executed an agreement at his request that was a receipt of the
17 \$10,000 I received that day towards the \$50,000 non-refundable deposit (the "November
18 Receipt"). See Exhibit B; Cotton Decl., ¶ 11. Later that same day, Geraci emailed me a scanned
19 copy of the executed November Receipt. See *id.*

20 Approximately 2 hours later, at 6:55 PM, I replied to that email to Geraci as follows:

21 Thank you for meeting today. Since we executed the Purchase Agreement in
22 your office for the sale price of the property I just noticed the 10% equity
23 position in the dispensary was not language added into that document. I just
24 want to make sure we're not missing that language in any final agreement as it
25 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. (*emphasis added.*) See Exhibit
B; Cotton Decl., ¶ 12.

26 Approximately two hours later, Geraci acknowledged the November Receipt was not the
27 "final agreement" for the purchase of my property, stating "No no problem at all". See Exhibit
28 B; Cotton Decl., ¶ 12.

1 On March 7, 2017, Geraci emailed me a draft agreement and in the cover email, he stated
2 the following: "Talking to Matt, the 10k a month might be difficult to hit until the sixth month....
3 can we do 5k, and on the seventh month start the 10K?" See Exhibit 1 to RJN; Cotton Decl., ¶
4 13. Attached to the same email was a draft Side Agreement that contained a provision providing
5 for my 10% equity stake, specifically, it stated: "Buyer hereby agrees to pay to Seller 10% of the
6 net revenues of Buyer's Business after all expenses and liabilities have been paid." See Exhibit 1
7 to RJN; Cotton Decl., ¶ 13.

8 On March 21, 2017, after having spent months pleading with Geraci that he forward
9 full, final binding legal agreements that contained ALL of the terms we had agreed upon at our
10 November 2nd, 2016 meeting, and not received them, I terminated my agreement with him. See
11 Cotton Decl., ¶ 16.

12 On March 21, 2017, AFTER terminating my agreement with Geraci and having given
13 him multiple opportunities to honor our agreement, I entered into a new purchase agreement with
14 a new buyer. See Cotton Decl., ¶ 17.

15 On March 22, 2017, in an effort to prevent the sale of the Property to the new buyer,
16 Geraci, through counsel, Mr. Weinstein, served me with this lawsuit alleging that the November
17 Receipt was full and final agreement for the Property between Geraci and I and that it contained
18 all of the "terms and conditions stated therein." See Cotton Decl., ¶ 18.

19 LEGAL STANDARD

20 California Code of Civil Procedure § 527(b)-(c) empowers the Court to issue emergency
21 injunctive relief. In deciding whether Cotton should be provided relief in form of a TRO, the
22 Court considers two interrelated factors. "The first is the likelihood that the plaintiff will prevail
23 on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the
24 [restraining order] were denied as compared to the harm that the defendant is likely to suffer if
25 the [order] were issued." (*Church of Christ in Hollywood v. Superior Court* (2002) 99
26 Cal.App.4th 1244, 1251 [citing *IT Corp v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.])
27 Moreover, the Court examines these factors in a sliding-scale fashion so that "the greater the
28

1 [party's] showing on one, the less must be shown on the other to support [a restraining order]."
2 (*Ibid* at p. 1252 [quoting *Bull v. State of California* (1992) 4 Cal.4th 668, 678].)

3 ARGUMENT

4 A. Cotton Will Prevail In His Breach of Contract Cause of Action

5 "[T]he elements of a cause of action for breach of contract are (1) the existence of the
6 contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and
7 (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th
8 811, 821 (2011))

9 a. Geraci Breached The Agreement Reached on November 2, 2016

10 Neither party disputes an agreement was reached on November 2, 2016. However, as
11 described above, Geraci's contention that the November Receipt is the full and final agreement
12 between the parties for the purchase of the Property is completely contradicted by his own
13 admission on the same day the November Receipt was executed. *See* Exhibit B.

14 Furthermore, in addition to the two emails referenced above in which Geraci confirms
15 Defendant's 10% equity stake and his \$10,000 minimum payment, there are dozens of emails
16 and texts in the record that span over four (4) months that further prove that the November
17 Receipt is not the final agreement. Notably, over the course of 4+ months, in which I repeatedly
18 requested Geraci put in writing his promise to me to pay me the balance of the \$50,000 non-
19 refundable deposit, a 10% equity stake in the Medical Marijuana Consumer Cooperative
20 ("MMCC"), and at least \$10,000 of monthly profits, Geraci, never once rejected my
21 representations or otherwise claimed a misunderstanding of the terms. (Cotton Decl., ¶ 14,
22 Ex.7-9) Thus, Geraci's subsequent silence show that he admits the existence of those terms.
23 (*See, e.g., Keller v. Key System Transit Lines* (1954) 129 Cal.App.2d 593, 596 ["The basis of
24 the rule on admissions made in response to accusations is the fact that human experience has
25 shown that generally it is natural to deny an accusation if a party considers himself innocent of
26 negligence or wrongdoing."].

27 Geraci does not have a single piece of evidence to support his contention that the
28

1 November Receipt is the final agreement between us, much less any evidence that could
2 contradict the overwhelming factual evidence in this case that makes it clear Geraci is trying to
3 defraud me of my property.

4 b. Geraci And Berry's Reliance On The Statute of Frauds and the Parole
5 Evidence Rule Is Misplaced

6 It appears that Geraci's complaint and his entire defense to my cross-complaint is
7 premised on the Statute of Frauds. As discussed above, Geraci's admission that the November
8 Receipt is not the final agreement is damning and dispositive. His attempt to cling to a five-
9 sentence one page document as the be-all end-all for our deal is not credible under any
10 reasonable interpretation of the evidence. The fact is, the five-sentence one page document is, on
11 its face, ambiguous and the terms we actually agreed upon are reflected in our emails and texts,
12 which are reliable, credible, and controlling. Indeed, the Court previously ruled as such on
13 November 6, 2017, when it ruled against Geraci's statute-of-frauds-and-parole-evidence-rule-
14 based demurrer. Thus, with the Court's ruling, there is no legal basis at all on which Geraci can
15 prevail in this action.

16 Moreover, the statute of frauds does not apply and is not permitted to be used for an
17 unconscionable fraud or to unjustly enrich a third party, which would be the result if the Court
18 were now to cancel its previous determination that the Statute of Frauds is no bar to Cotton. The
19 California Supreme Court is clear on this point – the doctrine of promissory estoppel has been
20 “consistently applied by the courts of this state to prevent fraud that would result from refusal to
21 enforce oral contracts in certain circumstances.” (*Monarco v. Lo Greco* (1950) 35 Cal.2d 621,
22 623.) Per the agreement reached by the parties in November, Geraci was to pay \$800,000 and
23 ensure I received at least \$10,000 a month from operations of the MMCC which would last for
24 an estimated 10-year period at minimum. This is an obligation of approximately \$2,000,000.
25 Thus, Geraci is estopped from asserting the statute in this case as it is both an unconscionable act
26 and it would result in an unjust enrichment to Geraci of \$1,200,000 – minimum.

1 B. Cotton Will Be Irreparably Harmed if the Court Does Not Grant the Injunction

2 *The single most critical, important and urgent matter in this entire case is taking place*
3 *this week – the resolution of the only issue that is preventing the issuance of the CUP. And,*
4 *because of the Court's ruling on Geraci's demurrer, Geraci has every incentive to sabotage the*
5 *CUP application and absolutely no reason to have it actually approved. This point cannot be*
6 *overemphasized and is the basis of my urgency and the cause of my daily physical, mental and*
7 *emotional anguish.*

8 Ahbay Schweitzer is an architect, a building designer and the owner of Techne, a local
9 design firm that was engaged by Larry Geraci to acquire the CUP at the Property. Schweitzer is
10 Geraci's exclusive agent. Per Schweitzer's declaration regarding the issuance of the CUP at the
11 Property, he has:

12 "Been engaged in the application process for this CUP application for
13 approximately twelve (12) months so far...[and] [t]here is one major issue left to
14 resolve regarding a street dedication. I expect this issue to be resolved within the
next six (6) weeks."⁴

15 Schweitzer executed his declaration on October 20, 2017. This week will be the sixth
16 week.

17 Further, per Mr. Schweitzer's declaration, the second most important and final item that
18 will be required to issue the CUP is a public hearing which he estimates to take place in March.
19 In other words, Geraci has the ability to sabotage the CUP application at two critical junctures
20 and both of them take place before this matter is even scheduled for trial.

21 Let's be clear about what this means – based on the evidence and arguments above, there
22 are no facts or theory of law that can lead any reasonable person to conclude that I will fail to
23 prevail on my cause of action for breach of contract. Consequently, Geraci is liable to me for
24 damages:

25 "Plaintiff is entitled to compensation for all harm caused by the breach that in the
26 ordinary course could be expected to result from it. This limits plaintiff's recovery to
27 those damages that were within the contemplation of the parties when the contract was

28 ⁴ See attached Exhibit C ¶ 8.

1 entered into or reasonably foreseeable by them at that time. [Civ.C. § 3300; see *Ash v.*
2 *North American Title Co.* (2014) 223 CA4th 1258, 1268, 168 CR3d 499, 506]⁵

3 As noted above and the evidence makes clear, Geraci, among other things, recognizes
4 that he owes \$10,000 a month and in one communication even requested, recognizing his
5 obligation, that I take less than the \$10,000 a month he promised me for several months. At a
6 minimum, putting aside consequential and special damages under my tort causes of action,
7 Geraci owes me \$10,000 a month for an estimated 10 years (the current length of time that a
8 CUP can be valid for under existing regulations in San Diego) for a total of \$1,200,000.

9 However, there is a condition precedent for the scope of Geraci's liability – and that
10 condition precedent is the successful issuance of the CUP. In other words, there is only one
11 major issue left to be resolved that will determine the damages that Geraci is liable for, and
12 that sole issue is being resolved by Geraci's agent!

13 I note that at oral arguments last week, Mr. Weinstein argued profusely and extensively
14 about how Geraci is strongly motivated to have the CUP application approved. However, that is
15 ONLY true when it is assumed that Geraci will prevail in this matter. As discussed above, Geraci
16 has zero chance of prevailing on the merits of this case as a matter of fact and law, consequently,
17 all of Mr. Weinstein's arguments on this point are simply inapplicable.

18 The value of the CUP is estimated to be at least \$16,000,000. I have already been forced
19 to sell a portion of my remaining interest in the Property to finance this litigation. If Geraci is
20 allowed to remain in control of the CUP application and sabotage it, my remaining interests will
21 be worthless as the legal fees, which are a lien on my Property, will have taken up the little
22 equity I have left if the CUP is not approved.

23 Additionally, absent intervention by the Court, I ask the Court to understand that I am
24 also facing irreparable harm in the following ways:

25 First, I cannot enter into long term contracts with the lis pendens on title on my property
26 – the commercial location from which I have operated my businesses for over twenty years!

27
28 ⁵ Cal. Prac. Guide Civ. Pro. Trial Claims and Def. Ch. 9(I)-E

1 How can I in good faith enter into contracts with other parties and represent to them that I can
2 uphold my end of the bargain when, because of Geraci's unfounded lawsuit, I am at risk of
3 losing my property through potentially some miscarriage of justice (even with the facts of my
4 case). The California Court of Appeals has stated that the "[l]osing a job, and the income it
5 entails, amounts to irreparable injury for purposes of a preliminary injunction." Costa Mesa City
6 Employees Ass'n v City of Costa Mesa (2012) 209 CA4th 298, 308, 146 CR3d 677.

7 Second, "*Money damages may not be an adequate remedy in a case involving real*
8 *property, unique personal property, goodwill of a business, or an individual's reputation.*"
9 (*emphasis added*) (See, e.g., Fonteno v Wells Fargo Bank, N.A. (2014) 228 CA4th 1358, 1380,
10 176 CR3d 676 (preliminary injunction regarding plaintiffs' wrongful trustee sale claim); Huong
11 Que, Inc. v Luu (2007) 150 CA4th 400, 58 CR3d 527.⁶ The Property at issue here is real
12 property and it is undeniably unique! If the CUP is issued, the value of the Property will be at
13 least \$16,000,000! Money damages at a later point in time cannot repair the irreparable harm that
14 will occur without injunctive relief if Geraci is allowed to sabotage the CUP. There is no reason
15 to believe that Geraci can cover damages in excess of \$16,000,000, even if monetary damages
16 were capable of addressing the irreparable harm here.

17 Third, "*Money damages may not be an adequate remedy in a case involving real*
18 *property, unique personal property, goodwill of a business, or an individual's reputation.*"
19 (*emphasis added*) (See, e.g., Fonteno v Wells Fargo Bank, N.A. (2014) 228 CA4th 1358, 1380,
20 176 CR3d 676 (preliminary injunction regarding plaintiffs' wrongful trustee sale claim); Huong
21 Que, Inc. v Luu (2007) 150 CA4th 400, 58 CR3d 527 (judge properly enjoined defendants from
22 doing business with individuals named in plaintiffs' customer list).) Inadequacy of Legal
23 Remedies:, Cal. Judges Benchbook Civ. Proc. Before Trial § 14.15

24 The Property at issue here is undeniably unique! If the CUP is issued, the value of the
25 Property will be at least \$16,000,000! Money damages at a later point in time cannot repair the
26 irreparable harm that will occur without injunctive relief.

27 ⁶ Inadequacy of Legal Remedies:, Cal. Judges Benchbook Civ. Proc. Before Trial § 14.15
28

1 For the reasons described above, Cotton will incur irreparable injury if the City does not
2 intervene.

3 C. The Balance of the Equities Weigh in Favor of Cotton

4 "The likelihood of the plaintiff's ultimate success on the merits affects the showing
5 necessary to a balancing-of-hardships analysis. The more likely it is that the plaintiff will
6 ultimately prevail, the less severe must be the harm the plaintiff alleges will occur if the
7 injunction is not issued. This is particularly true when the requested injunction maintains, rather
8 than alters, the status quo." *Take Me Home Rescue v Luri* (2012) 208 CA4th 1342, 1350, 146
9 CR3d 461; *Right Site Coalitlon v Los Angeles Unified Sch. Dist.*, supra, 160 CA4th at 345-346.

10 The evidence and law above make clear that I will prevail in this action, at least as to my
11 breach of contract claim. The showing of harm need not be high, but as discussed above, I am
12 suffering a high degree of irreparable harm and will continue to do so without immediate judicial
13 intervention.

14 The balance of harms factor weighs solely in favor of the Court granting my request. I am
15 simply asking that my rights be protected until ultimate resolution of this matter. The risk that I
16 am facing is imminent and is likely to place immediately if the Court does not grant the
17 injunctive relief I seek – which is that Geraci simply not be allowed to sabotage the CUP
18 application. If Geraci is a good-faith actor as he alleges to be and desires to have the CUP
19 issued, then there is absolutely no harm to Geraci if the Court ensures that he cannot sabotage the
20 CUP and the status quo is maintained pending resolution of this matter.

21 CONCLUSION

22 I implore the Court to approve my proposed order that includes a request the Court
23 appoint a receiver to supervise the CUP application⁷ until final resolution of this case. Second,
24 that Geraci be enjoined from withdrawing or sabotaging the CUP application in any way because
25

26 ⁷ "Court's inherent power to appoint a receiver: The court has power to appoint a receiver on
27 its own motion, where necessary to accomplish some other judicial objective; e.g., to hold and
28 manage trust assets when trustee declines to act. [*McCarthy v. Poulsen* (1985) 173 CA3d 1212,
1219, 219 CR 375, 380]" Receiverships, Cal. Prac. Guide Civ. Pro. Before Trial Ch. 9(II)-B.

1 by doing so, although he will be mitigating his damages, he will be causing me irreparable harm.
2 Lastly, that Geraci continue to fund the CUP application as he promised to do so – it was the
3 benefit I bargained for when we came to a meeting of the minds and made our agreement. I ask
4 the Court to note that in his declaration submitted to this Court, he stated: “As the purchaser, I
5 was willing to bear the substantial expense of applying for and obtaining CUP approval and
6 understood that if CUP approval was not obtained the purchase would not be consummated and I
7 would lose my investment.” He agreed to pay for the CUP and it is only just that he continue to
8 do so pending final resolution of this matter and especially in light of the fact that because of his
9 unfounded lis pendens I am unable to operate my business in good faith with third-parties and I
10 am now facing severe financial hardship.

11
12 Dated: December 11, 2017

13
14 By: 
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DARRYL COTTON



Withdrawal

Darryl Cotton <indagrodarryl@gmail.com>
To: "David S. Demian" <ddemian@ftblaw.com>
Cc: [REDACTED]

Thu, Dec 7, 2017 at 12:32 PM

David,

I spoke with Joe and he informed me that you were not familiar with the points in the P&A for the TRO motion and that you did not raise them before the Court when they were directly on point and necessary to be raised as a response to Weinstein's arguments. Further, that the attorney for the City explicitly told you right after you walked out of the hearing that we should have won based on the moving papers!

Our relationship is terminated, but I need it to be clear that it is based on your performance today at the hearing. Joe is already looking for new counsel to represent me and we will be submitting a motion for reconsideration with the Court.

- Darryl

On Thu, Dec 7, 2017 at 11:33 AM, David S. Demian <ddemian@ftblaw.com> wrote:

Gentlemen: Per my discussion with Joe post-hearing and my voice mail to Darryl it is apparent our withdrawal from the case is the next step. I will be sending the consent form and filing and preparing the file for your delivery. You should immediately seek advice of new counsel.

Please call at any time with questions.

David

David S. Demian *Partner*

Finch, Thornton & Baird, LLP Attorneys At Law

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Darryl Cotton <indagroedarryl@gmail.com>

Agreement

Larry Geracl <Larry@tfcad.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 9:13 PM

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: 877.462.2244
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San Diego, CA. 92114
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[Quoted text hidden]

<https://mail.google.com/mail/u/0/?ui=2&ik=505cb0f73f&view=pt&msg=1582864ae4d4e9...> 4/26/2017

GIER0204

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10 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

11
12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN DIEGO, CENTRAL DIVISION

14 DARRYL COTTON, an individual,
15 Petitioner/Plaintiff,

16 v.

17 CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,

18 Respondents/Defendants.
19

20 REBECCA BERRY, an individual; LARRY
GERACE, an individual, and ROES 1 through
21 25,

22 Real Parties In Interest.
23
24
25

Case No. 37-2017-00037675-CU-WM-CTL

Judge: Hon. Eddie Sturgeon

DECLARATION OF ABHAY
SCHWEITZER IN SUPPORT OF
OPPOSITION TO EX PARTE
APPLICATION FOR ISSUANCE OF AN
ALTERNATIVE WRIT OF MANDATE
OR FOR AN ORDER SETTING AN
EXPEDITED HEARING AND BRIEFING
SCHEDULE

[IMAGED FILE]

DATE: October 31, 2017
TIME: 8:30 a.m.
DEPT: C-67

Petition Filed: October 6, 2017
Trial Date: None

DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO PETITION FOR
ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING EXPEDITED
HEARING AND BRIEFING SCHEDULE

1 I, Abhay Schweitzer, declare:

2 1. I am over the age of 18 and am not a party to this action. I have personal knowledge of
3 the facts stated in this declaration. If called as a witness, I would testify competently thereto. I
4 provide this declaration in support of Real Parties in Interest Rebecca Berry and Larry Geraci's ("Real-
5 Parties") opposition to Petitioner/Plaintiff's request for the ex parte issuance of a writ of mandate or
6 for an order setting an expedited hearing and briefing schedule.

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

14 3. On or about October 4, 2016, Rebecca Berry hired my firm to provide design services
15 in connection with the application for a MMCC to be developed and built at the Property (the
16 "Project"). Those services included, but are not limited to, services in connection with the design of
17 the Project and application for a Conditional Use Permit (the "CUP").]

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

23 5. On or after October 31, 2016, I submitted the application to the City for a CUP for a
24 medical marijuana consumer cooperative to be located on the Property. The CUP application for the
25 Project was submitted under the name of applicant, Rebecca Berry, whom I was informed and believe
26 was and is an employee and agent of Larry Geraci. The submittal of the CUP application required the
27 submission of several forms to the City, including Form DS-318, that I am informed and believe was

1 signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and
2 correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 3 to Real Parties in
3 Interest Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of
4 Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing Schedule
5 (hereafter "RPI NOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6 6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the
7 form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from
8 which to choose when checking - "Owner", "Tenant/Lessee" and "Redevelopment Agency". The
9 purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and*
10 *must be signed by all persons with an interest in the property.*

11 7. The CUP application process generally involves several rounds of comments from the
12 City in which the applicant is required to respond in order to "clear" the comment. This processing
13 involved substantial communication back and forth with the City, with the City asking for additional
14 information, or asking for changes, and our responding to those requests for additional information and
15 making any necessary changes to the plans. I have been the principal person involved in dealings with
16 the City of San Diego in connection with the application for a CUP. My primary contact at the City
17 during the process is and has been Firouzdeh Tirandazi, Development Project Manager, City of San
18 Diego Development Services Department, tele (619) 446-5325, the person whom the City assigned to
19 be the project manager for our CUP application.

20 8. We have been engaged in the application process for this CUP application for
21 approximately twelve (12) months so far.

22 9. At the outset of the review process a difficulty was encountered that delayed the
23 processing of the application. The Project was located in an area zoned "CO" which supposedly
24 included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not
25 specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the
26 City passed a new regulation that amended the zoning ordinance to clarify that operating a medical
27 marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this

1 regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and
2 the City resumed its processing of the CUP application.

3 10. The CUP application for this Project has completed the initial phase of the process.
4 This initial phase was completed when the City deemed the CUP application complete (although not
5 yet approved) and determined the Project was located in an area with proper zoning. When this
6 occurred, as required, notice of the proposed project was given to the public as follows: First, on
7 March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for
8 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second,
9 the City mailed the Notice of Application to all properties within 300 feet of the subject property.
10 Third, as applicant we posted the Notice of Application at the property line as was required.

11 11. Since the completion of the initial phase of the process we have been engaged in
12 successive submissions and reviews and are presently engaged still in that submission and review
13 process. The most recent comments from the City were received on October 20, 2017. There is one
14 major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the
15 next six (6) weeks.

16 12. Once the City has cleared all the outstanding issues it will issue an environmental
17 determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination
18 ("NORA"). I expect the NORA to be issued sometime in late December 2017 or January 2018.

19 13. 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 in late January or
24 February 2018.

25 14. If the NORA is appealed it will be set for hearing before the City Council. It is my
26 opinion that the earliest an appeal of the NORA could be heard before the City Council would be mid-
27 January 2018. In all but one instance, the City Council has denied a NORA appeal related to a medical

1
2 marijuana CUP application. The one NORA appeal that was upheld is a project located in a flood
3 zone.

4 15. If there is a NORA appeal and such appeal is denied by the City Council, then the
5 earliest I would expect the CUP application to be heard by a hearing officer would be March 2018.

6 16. If there is a NORA appeal and it is upheld by the City Council, the City Council would
7 retain jurisdiction and the CUP application would be heard by the City Council for a final
8 determination at some point after the NORA appeal. In that case the earliest I would expect this to
9 occur would also be March 2018.

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

12 18. I have been notified by the City of San Diego that as of October 30, 2017, there has been
13 no other CUP Application submitted concerning on the property.

14
15 I declare under penalty of perjury under the laws of the State of California, that the foregoing is
16 true and correct. Executed this 30th day of October, 2017.

17
18 Dated: 10/30/2017


19 ABHAY SCHWEITZER
20
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28

1 FERRIS & BRITTON
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10 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY
11

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN DIEGO, CENTRAL DIVISION

14 DARRYL COTTON, an individual,

15 Petitioner/Plaintiff,

16 v.

17 CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,

18 Respondents/Defendants.
19

20 REBECCA BERRY, an individual; LARRY
GERACE, an individual, and ROES 1 through
21 25,

22 Real Parties In Interest.
23
24
25
26
27
28

Case No. 37-2017-00037675-CU-WM-CTL

Judge: Hon. Eddie Sturgeon

DECLARATION OF LARRY GERACI IN
SUPPORT OF OPPOSITION TO EX
PARTE APPLICATION FOR ISSUANCE
OF AN ALTERNATIVE WRIT OF
MANDATE OR FOR AN ORDER
SETTING EXPEDITED HEARING DATE
AND BRIEFING SCHEDULE

[IMAGED FILE]

DATE: October 31, 2017
TIME: 8:30 a.m.
DEPT: C-67

Petition Filed: October 6, 2017
Trial Date: None

DECLARATION OF LARRY GERACI IN SUPPORT OF OPPOSITION TO EX PARTE APPLICATION FOR
ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING AN EXPEDITED
HEARING DATE AND BRIEFING SCHEDULE

1 I, Larry Geraci, declare:

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

5 2. In approximately September of 2015, I began lining up a team to assist in my efforts to
6 develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical
7 marijuana dispensary) in San Diego County. At the time I had not yet identified a property for the
8 MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify
9 potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE.
10 I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of
11 Bartell & Associates. And I hired a land use attorney, Gina Austin of Austin Legal Group.

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

24 4. For several months after the initial contact, my consultant, Jim Bartell, investigated
25 issues related to whether the location might meet the requirements for an MMCC site, including zoning
26 issues and issues related to meeting the required distances from certain types of facilities and residential
27 areas. For example, the City had plans for street widening in the area that potentially impacted the

1 ability of the Property to meet the required distances. Although none of these issues were resolved to a
2 certainty, I determined that I was still interested in acquiring the Property.

3 5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the
4 Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon
5 my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I
6 was willing to bear the substantial expense of applying for and obtaining CUP approval and understood
7 that if CUP approval was not obtained the purchase would not be consummated and I would lose my
8 investment. And I was willing to pay a price for the Property based on what I anticipated it might be
9 worth if such approval was obtained. Mr. Cotton told me that he was willing to make the purchase and
10 sale conditional upon CUP approval because if the condition was satisfied he would be receiving a
11 much higher price than the Property would be worth in the absence of its approval for use as a medical
12 marijuana dispensary. We agreed on a down payment of \$10,000.00 and a purchase price of
13 \$800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement
14 for my purchase of the Property from him on the terms and conditions stated in the agreement
15 (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written
16 Agreement, which was executed before a notary, is attached as Exhibit 2 to Real Parties in Interest
17 Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of an Alternative
18 Writ of Mandate or for an Order Setting an Expedited Hearing Date and Briefing Schedule (hereafter
19 the "RPI NOL"). I tendered the \$10,000 deposit to Mr. Cotton the receipt of which he acknowledged
20 in the Nov 2nd Written Agreement.

21 6. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the
22 CUP application and approval process and that his consent as property owner would be needed to
23 submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as
24 my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as the
25 Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or
26 marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton
27 signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he
28

1 acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the
2 subject Property with the intent to record an encumbrance against the property. The Ownership
3 Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was
4 serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure
5 Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 3 to
6 the RPI NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of
7 a CUP would be a condition of the purchase and sale of the Property.

8 7. As noted above, I had already put together my team for the MMCC project. My design
9 professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of
10 the Project and the CUP application and approval process. Mr. Schweitzer was responsible for
11 coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property
12 and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San
13 Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration
14 (Declaration of Abhay Schweitzer in Support of Opposition to Ex Parte Application for Issuance of
15 Alternative Writ of Mandate, Etc.) has been submitted concurrently herewith and describes in greater
16 detail the CUP Application submitted to the City of San Diego, which submission included the
17 Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

18 8. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr.
19 Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. To be
20 clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to participate in
21 different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a
22 hydroponic grower and purported to have useful experience he could provide regarding the operation of
23 such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary discussions
24 related to his desire to be involved in the *operation* of the business (not related to the purchase of the
25 Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits)
26 in exchange for his providing various services to the business—but we never reached an
27 agreement as to those matters related to the operation of my future MMCC business. Those discussions
28

1 were not related to the purchase and sale of the Property, which we never agreed to amend or modify.
2 After the November 2nd Written Agreement was signed, we had further discussions about this but
3 those discussions broke down because Mr. Cotton made what I believe were demands for excessive
4 compensation and even ownership of the business. I did not want to pay what he demanded for the
5 services he might offer. He kept demanding more and more and I decided that I did not want him to
6 have any involvement in the future business to be operated at the Property, let alone as a partner or
7 owner. I told him I did not want him as a partner in my business and we never reached any agreement
8 on his involvement in the marijuana dispensary business to be operated at the Property.

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

15 10. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr.
16 Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of
17 processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application.
18 That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to
19 Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as
20 Exhibit 5 to the RPI NOL.

21 11. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he
22 would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his
23 property and that "I will be entering into an agreement with a third party to sell my property and they
24 will be taking on the potential costs associated with any litigation arising from this failed agreement
25 with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 6
26 to the RPI NOL,

27 12. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the
28

1 City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "... the potential buyer,
2 Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today,
3 there are no third-parties that have any direct, indirect or contingent interests in my property. The
4 application currently pending on my property should be denied because the applicants have no legal
5 access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached
6 as Exhibit 7 to the RPI NOL. Mr. Cotton's email was false as we had a signed agreement for the
7 purchase and sale of the Property – the Nov 2nd Written Agreement.

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

10 14. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the
11 written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP
12 application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to
13 enforce the Nov 2nd Written Agreement. A true and correct copy of that Complaint, filed March 21,
14 2017, is attached as Exhibit 1 to the RPI NOL.

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

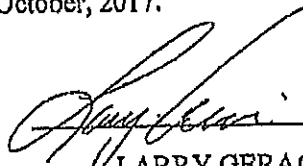
22 16. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m.
23 email (referenced in paragraph 10 above - see Exhibit 6 to RPI NOL) stating that he would be
24 "entering into an agreement with a third party to sell my property and they will be taking on the
25 potential costs associated with any litigation arising from this failed agreement with you. We have
26 learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had
27 been negotiating with other potential buyers of the Property to see if he could get a better deal than he

1 had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase
2 and sale agreement to sell the Property to another person, Richard John Martin II.

3 17. Although he entered into this alternate purchase agreement with Mr. Martin as early as
4 March 21, 2017, to our knowledge in the seven (7) months since neither Mr. Cotton nor Mr. Martin or
5 other agent has submitted a separate CUP Application to the City for processing. During that time, we
6 continued to process our CUP Application at great effort and expense.

7 18. In the last 15 months or so I have incurred substantial expenses to date in excess of
8 \$150,000 in pursuing the MMCC project and the related CUP application.

9
10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct. Executed this 30 day of October, 2017.

12
13  10-30-17.
14 LARRY GERACI

1 Darryl Cotton (in pro per)
2 6176 Federal Avenue
3 San Diego, CA 92114
4 619-266-4004 (phone)
5 619-229-9387 (fax)

F I L E D
Clerk of the Superior Court

DEC 11 2017

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DEFENDANT AND CROSS-COMPLAINANT

By: A. SEAMONS, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual, and
DOES 1-10, inclusive,

Defendants.

Case No. 37-201¹⁷₃-00010073-CU-BC-CTL

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT DARRYL
COTTON'S *EX PARTE* APPLICATION
FOR AN ORDER GRANTING MOTION
FOR RECONSIDERATION RE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION**

Date: December 12, 2017

Dept: 8:30 a.m.

Judge: Hon. Joel R. Wohlfeil

Dept: C-73

Pursuant to California Evidence Code Sections 450 through 455, Defendant and Cross-Complainant Darryl Cotton respectfully requests that this Court take judicial notice of the following documents on file with the Court herein:

1. Defendant Darryl Cotton's Ex Parte Application for Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction filed on December 6, 2017 in the above-entitled action.

-1-


DEFENDANT'S *EX PARTE* APPLICATION FOR ORDER GRANTING MOTION FOR
RECONSIDERATION – REQUEST FOR JUDICIAL NOTICE

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2. Email to David S. Demian dated December 7, 2017 regarding substitution of Attorney.
3. Email from Larry Geraci dated November 2, 2016.
4. Declaration of Ahbay Schweitzer in Support of Opposition to Ex Parte Application.

Dated: December 11, 2017

By:


DARRYL COTTON

-2-

DEFENDANT'S *EX PARTE* APPLICATION FOR ORDER GRANTING MOTION FOR
RECONSIDERATION – REQUEST FOR JUDICIAL NOTICE

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Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

DARRYL COTTON'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING PRELIMINARY
INJUNCTION

[IMAGED FILE]

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

Date: December 7, 2017
Time: 8:30 a.m.
Dept.: C-73

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

AND RELATED CROSS-ACTION.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on December 7, 2017, at 8:30 a.m., or as soon
thereafter as the matter may be heard in Department C-73 of the above-entitled Court, located
at 330 West Broadway, San Diego, California 92101, defendant and cross-complainant Darryl
Cotton ("Cotton") will appear ex parte to seek a temporary restraining order and an order to
show cause why a preliminary injunction should not be issued against Larry Geraci and

DARRYL COTTON'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

1 Rebecca Berry on the Conditional Use Permit Application – Project No. 520606 currently
2 pending before the City.

3 Pursuant to California Rules of Court, Rule 3.1202(a), so far as is known to Cotton, the
4 names, addresses, and telephone numbers of attorneys and parties in this case are as follows:

Parties	Attorneys
Darryl Cotton	David S. Demian Adam C. Witt Rishi S. Bhatt Finch, Thornton & Baird, LLP 4747 Executive Drive, Suite 700 San Diego, California 92121 Telephone: (858) 737-3100
Rebecca Berry	Michael R. Weinstein Ferris & Britton 501 West Broadway, Suite 1450 San Diego, California 92101 Telephone: (619) 233-3131
Larry Geraci	Michael R. Weinstein Ferris & Britton 501 West Broadway, Suite 1450 San Diego, California 92101 Telephone: (619) 233-3131

17 This application is made pursuant to California Code of Civil Procedure § 527,
18 California Rules of Court 3.1150, and California Rules of Court Rule 3.1200 to Rule 3.1206.

19 This application is based on the concurrently filed memorandum, declarations of David
20 S. Demian and Darryl Cotton, all pleadings papers and records in this action, and/or such
21 further oral or documentary evidence or argument presented before or at the hearing on this
22 application.

23 // // // //

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1 Timely notice for this application was given by counsel for Cotton to all parties
2 pursuant to California Rules of Court, rule 3.1203(a). (Declaration of David S. Demian, ¶ 6.)

3 DATED: December 6, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: 

DAVID S. DEMIAN
ADAM C. WITT
RISHI S. BHATT

Attorneys for Defendant and Cross-Complainant
Darryl Cotton

27 2403.004/3C88910.amq

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Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

MEMORANDUM IN SUPPORT OF DARRYL
COTTON'S EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION

[IMAGED FILE]

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

Date: December 7, 2017
Time: 8:30 a.m.
Dept.: C-73

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

AND RELATED CROSS-ACTION.

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MEMORANDUM IN SUPPORT OF DARRYL COTTON'S EX PARTE APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

INTRODUCTION

Cross-complainant/Defendant Darryl Cotton respectfully requests this Court take immediate action to protect Cotton's interest in the application for conditional use permit to operate a Medical Marijuana Consumer Cooperative or MMCC ("Cotton CUP") on Cotton's property at 6176 Federal Boulevard ("Property"). Cotton is the sole record owner of and interest holder in the real property to which the Cotton CUP will attach. (Declaration of Darryl Cotton ("Cotton Decl.") ¶¶ 3-5.) Cotton and Plaintiff/Cross-defendant Geraci reached an agreement regarding the sale of the Property in or around November 2, 2016, ("November Agreement") which included, among other things, an agreement for Geraci to pursue the Cotton CUP. (Cotton Decl. ¶¶ 9-10.) However, Geraci: (1) breached the November Agreement, (2) persuaded Cotton into signing a writing on November 2, 2016, that Geraci now disingenuously holds out as a completely integrated and binding agreement, and (3) along with Geraci's agent, Cross-defendant Ms. Berry, continues to wrongfully refuse to release the Cotton CUP to Cotton's sole control. (Cotton Decl. ¶¶ 11-18.)

The urgency of this Court's intervention in this Action is precipitated, in large part, by the City of San Diego's change in its handling of the Cotton CUP. On September 29, 2017, the City emailed that the Cotton CUP was in the unilateral control of Ms. Berry (and therefore by extension Mr. Geraci), and moreover, that to protect Mr. Cotton's interest in obtaining a CUP he would need to file a separate CUP Application and complete the processing of that application prior to the processing of the Cotton CUP. (Declaration of David Demian ("Demian Decl.") ¶¶ 3, Ex. 2.) This email from the City was a shocking and dramatic shift in the City's approach to the Cotton CUP as previously communicated and in conflict with the proper process for handling CUPs. This approach by the City causes Cotton irreparable harm as it infringes on his constitutional right of use of his property. The Municipal Code provides that only a person with a "right to use" the property has standing to maintain a CUP application. Cotton is the sole person with a "right to use" the Property. Since September 29,

1 2017, Cotton has diligently pursued all avenues at his disposal to protect and preserve his
2 interest in the Cotton CUP. Specifically, on October 6, 2017, Cotton filed a lawsuit against the
3 City of San Diego seeking to recover control of the Cotton CUP ("City Action"). Cotton
4 pursued the first available ex parte date on October 31, 2017, which was available with Judge
5 Sturgeon. (Demian Decl. ¶ 4.) Judge Sturgeon denied the ex parte request for alternative writ,
6 and rather than have the peremptory writ request heard before Judge Sturgeon, the parties
7 agreed to the reassignment of the City Action to this Court. (Id.) Hearing on the peremptory
8 writ is currently set for January 26, 2017, although Cotton has requested an earlier hearing
9 date. Cotton also sought a stipulation with Geraci and Berry to govern joint handling of the
10 CUP in good faith. This offer was refused. (Demian Decl., ¶5.) Accordingly, pursuant to
11 Code of Civil procedure section 527 and Rules of Court, rule 3.1150, Mr. Cotton respectfully
12 requests issuance of a Temporary Restraining Order ("TRO") against Geraci and Berry to
13 recognize Mr. Cotton as a co-applicant on the Cotton CUP and issuance of an order to show
14 cause why a preliminary injunction should not be granted.

15 II

16 FACTUAL BACKGROUND

17 Cotton has at all relevant times been the sole record owner of and interest holder in the
18 Property, which is located at 6176 Federal Boulevard San Diego, California 92114. (Cotton
19 Decl. ¶ 3.) In or around August 2016, Geraci first approached Cotton and expressed interest in
20 purchasing the Property because it was potentially eligible to be used for the operation of a
21 Medical Marijuana Consumer Cooperative or MMCC (Cotton Decl., ¶ 4-5.) A CUP must be
22 issued by the City as a condition to operation of a MMCC – a process that takes several
23 months. (Cotton Decl., ¶¶ 5-6.) However, Geraci represented that there was a zoning issue at
24 the Property that must be resolved before the Cotton Application could be filed. (Cotton Decl.,
25 ¶ 6.)

26 Over the next several months, Cotton and Geraci engaged in lengthy negotiations over
27 the terms for potential sale of the Property. (Cotton Decl., ¶¶ 7-9.) On or about October 31,
28

1 2016, Geraci asked Cotton to execute an Ownership Disclosure Statement, which is a required
2 part of all CUP applications. (Cotton Decl., ¶ 9.) Geraci said that Cotton had to sign the form
3 in order to provide Geraci with the ability to prepare the Cotton Application for the Property.
4 (Cotton Decl., ¶ 9.) The Ownership Disclosure Statement form that Geraci induced Cotton to
5 sign inaccurately stated that Cotton had leased the Property to Berry. (Cotton Decl., ¶ 9.) In
6 fact, Cotton and Berry have never entered into any agreement, written or otherwise, with
7 respect to the Property and Cotton has never met Berry personally. (Cotton Decl., ¶ 9.) Geraci
8 represented that Berry was his agent and would act on his behalf. (Cotton Decl., ¶ 9.) Based
9 on Geraci's representations, Cotton executed the Ownership Disclosure Statement. (Cotton
10 Decl., ¶ 9.)

11 Over the weeks and months that followed, Cotton repeatedly reached out to Geraci for
12 information regarding the resolution of the zoning issue, the CUP application, and the status of
13 the agreement documents Geraci was supposed to have prepared to evidence the parties'
14 agreement. (Cotton Decl., ¶¶ 11-13.) Geraci failed to act in good-faith. (Cotton Decl., ¶¶ 11-
15 13.) For instance, on or about March 16, 2017, Cotton first discovered that Geraci had filed
16 the Cotton Application back on October 31, 2016, before the parties had finalized their
17 agreement regarding the Property and in direct contravention of Geraci's express
18 representations to Cotton that the zoning issued needed to be resolved before the Cotton
19 Application could be filed. (Cotton Decl., ¶ 15.)

20 Due to Geraci's bad faith actions and breaches, terminated the November Agreement
21 on March 21, 2017. (Cotton Decl., ¶ 16.) On May 19, 2017, the City wrote that the
22 application would not continue to process until ownership was resolved (Cotton Decl., ¶ 21).
23 As a result, Cotton believed that the CUP application was effectively stayed and that he need
24 not do anything more to protect his rights. (Cotton Decl., ¶ 21). On September 22, 2017,
25 Cotton, through his attorneys, demanded the City allow Cotton to control the CUP application
26 (Cotton Decl., ¶ 22; Demian Decl., ¶ 3, Ex. 1.) On September 29, 2017, the City responded by
27 email to Cotton's letter and refused Cotton's request. (Cotton Decl., ¶ 23; Demian Decl., ¶ 3,
28

1 Ex. 2.) Actually, the City did more than just refuse Cotton's request: It announced that it
2 effectively changed the way it was going to process the CUP application. (Cotton Decl., ¶23).
3 The City—for the very first time—directed Cotton to begin a new CUP application in his own
4 name and informed him that it would award the CUP application to the party whose
5 application was first approved. (Cotton Decl., ¶ 23.) The City's revised application procedure
6 meant that Cotton was in an untenable position. The Berry/Geraci controlled Cotton CUP had
7 been pending a year or so before Cotton was informed that he needed to file a second CUP
8 application in his own name to protect his rights. Until this time, Cotton reasonably believed
9 he controlled the CUP application as the record owner of the Property.

10 III

11 LEGAL STANDARD

12 California Code of Civil Procedure § 527(b)-(c) empowers the Court to issue
13 emergency injunctive relief. In deciding whether Cotton should be provided relief in form of a
14 TRO, the Court considers two interrelated factors. "The first is the likelihood that the plaintiff
15 will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to
16 sustain if the [restraining order] were denied as compared to the harm that the defendant is
17 likely to suffer if the [order] were issued." (*Church of Christ in Hollywood v. Superior Court*
18 (2002) 99 Cal.App.4th 1244, 1251 [citing *IT Corp v. County of Imperial* (1983) 35 Cal.3d 63,
19 69-70.]) Moreover, the Court examines these factors in a sliding-scale fashion so that "the
20 greater the [party's] showing on one, the less must be shown on the other to support [a
21 restraining order]." (*Ibid* at p. 1252 [quoting *Butt v. State of California* (1992) 4 Cal.4th 668,
22 678].)

23 IV

24 ARGUMENT

25 A. Cotton Will More Likely Than Not Prevail on the Merits in the Action

26 Cotton has a high probability of prevailing on the merits of his breach of contract cause
27 of action against Geraci and his declaratory relief cause of action against Geraci and Berry.

1 1. Cotton Will Prevail On His Breach of Contract Cause of Action

2 "[T]he elements of a cause of action for breach of contract are (1) the existence of the
3 contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and
4 (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman*, 51 Cal.4th
5 811, 821 (2011)).

6 a. Geraci Breached The November Agreement

7 Cotton and Geraci reached final terms for a binding agreement for sale of the Property
8 in or around November 2, 2017. (Cotton Decl., ¶ 10-11.) Cotton's terms for sale of the
9 Property have been constant and unwavering. Starting with his communication to Geraci by
10 letter dated September 24, 2016, (Cotton Decl., ¶ 8, Ex. "1") continuing at the parties
11 November 2, 2016, meeting where Geraci agreed to those terms of sale subject to immaterial
12 changes, (Cotton Decl., ¶ 10) and continuing through the final communications between Geraci
13 and Cotton in March of 2017. (Cotton Decl., ¶ 16.) These terms are a nonrefundable deposit
14 of \$50,000, a promise by the purchaser to pursue the CUP in good faith and at the cost of the
15 purchaser, a promise by the purchaser to develop the Property and operate a CUP, for Cotton to
16 receive 10 percent equity interest in the MMCC operation and a minimum of \$10,000 per
17 month, and the agreement to negotiate in good faith for execution of an agreement comprising
18 all the foregoing binding provisions as well as provisions reasonable and customary for such an
19 agreement ("November Agreement"). (Cotton Decl., ¶ 10, Exs. 2-7)

20 Geraci's acceptance of these terms, forming a binding contract, is evident from
21 Cotton's testimony, the conduct of the parties, and the writings exchanged by the parties after
22 the November 2, 2017, meeting, all of which confirm the formation and terms of the November
23 Agreement. (Cotton Decl., ¶¶ 12-14, Exs. 2-9.) Most notably, Cotton repeatedly sent emails
24 to Geraci in which Cotton reiterated the fact that Geraci promised to pay Cotton a \$50,000
25 non-refundable deposit, a 10% equity stake in the MMCC, and at least \$10,000 of monthly
26 profits. Geraci, however, never once rejected Cotton's representations or otherwise claimed a
27 misunderstanding of the terms. (Cotton Decl., ¶ 14, Ex. 7-9.) Thus, Cotton's writing and
28

1 Geraci's subsequent silence show that Geraci admits the existence of those terms. (See, e.g.,
2 *Keller v. Key System Transit Lines* (1954) 129 Cal.App.2d 593, 596 ["The basis of the rule on
3 admissions made in response to accusations is the fact that human experience has shown that
4 generally it is natural to deny an accusation if a party considers himself innocent of negligence
5 or wrongdoing."]) Similarly, in numerous texts exchanged by the parties Geraci did not
6 disavow the materials terms of the November Agreement. (Cotton Decl., ¶ 14, Ex. 9.)

7 Cotton fully performed the terms of the November Agreement. He allowed the
8 Property to be used as the basis for the Cotton CUP application. He repeatedly asked Mr.
9 Geraci to deliver on his promises of presenting a final written agreement and paying the
10 remaining \$40,000 deposit. However, Mr. Geraci, instead, first delayed in delivering draft
11 agreements, and then ultimately delivered draft agreements that did not match the binding
12 terms of the November Agreement. On February 27, 2017, Geraci delivered a draft agreement
13 for the purchase. (Cotton Decl., ¶ 13, Ex. 4.) On March 2, 2017, Geraci delivered a draft
14 agreement for the side agreement. (Cotton Decl., ¶ 14, Ex. 5.) None of these agreements were
15 consistent with the binding terms of the November Agreement. On March 21, 2017, Cotton
16 terminated the November Agreement for Geraci's breaches. (Cotton Decl., ¶ 16).

17 Finally, Cotton will be able to show he suffered damages. He has not received the
18 nonrefundable deposit of \$50,000 as he only received a \$10,000 payment. (Cotton Decl., ¶
19 24.) While Geraci commenced the Cotton CUP, he has refused to restore the CUP to Cotton's
20 sole name, thus causing Cotton damages in an amount to be proven at trial.

21 b. Geraci And Berry's Reliance On The
22 Statute of Frauds and the Parole Evidence Rule Is Misplaced

23 It appears that the Geraci's complaint and his entire defense to the claims of Cotton, is
24 premised on the Statute of Frauds. As discussed above, Geraci's admissions as to the existence
25 of the full binding terms of the November Agreement are damning. His attempt to cling to a
26 five-sentence one-page document as the be-all end-all for the parties' deal is not persuasive.
27 The fact is, the five-sentence one-page document is, on its face, ambiguous and the terms
28

1 actually agreed upon by the parties that fill out the November Agreement are reliable, credible,
2 and controlling. Indeed, the Court previously ruled as such on November 6, 2017, when it
3 ruled against Geraci's statute-of-frauds-and-parole-evidence-rule-based demurrer.

4 Moreover, the statute of frauds does not apply and is not permitted to be used for an
5 unconscionable fraud or to unjustly enrich a third party, which would be the result if the Court
6 were now to cancel its previous determination that the Statute of Frauds is no bar to Cotton.
7 (E.g., *Monarco v. Lo Greco* (1950) 35 Cal.2d 621, 623 [saying that estoppel has been
8 "consistently applied by the courts of this state to prevent fraud that would result from refusal
9 to enforce oral contracts in certain circumstances."]) Per the November Agreement Geraci was
10 to pay \$800,000 and ensure Cotton received at least \$10,000 a month from operations of the
11 MMCC which would last for an estimated 10-year period at minimum. This is an obligation of
12 approximately \$2,000,000. Thus, Geraci is estopped from asserting the statute in this case
13 where it would result in a windfall to Geraci of \$1,200,000 – minimum. (Cotton Decl., ¶ 24.)

14 2. Cotton Will Prevail On His Declaratory Relief Cause of Action

15 Cotton seeks declaratory relief against Berry and Geraci. Specifically, Cotton requests
16 a judicial declaration that (a) defendants have no right or interest whatsoever in the Property,
17 (b) Cotton is the sole interest-holder in the CUP application for the Property submitted on or
18 around October 31, 2016, (c) defendant have no interest in the CUP application for the
19 Property submitted on or around October 31, 2016, and (d) the Lis Pendens filed by Geraci be
20 released." (*Id.*) Under California Code of Civil Procedure Section 1060, a party to a contract
21 may ask the Court to declare "his or her rights or duties with respect to under . . . in cases of
22 actual controversy relating to the legal rights and duties of the respective parties."

23 For the reasons argued above, Cotton's will meet these requirements. Cotton is, and at
24 all times material to this action was, the sole record owner of the real property that is the
25 subject of this dispute ("Property"). (Cotton Decl., ¶ 3.) Neither Berry nor Geraci have any
26 interest in the Property as an owner, licensee, agent, or lessee (Cotton Decl., ¶ 3.) Absent
27 Cotton's approval at the outset of the application process, neither Berry nor Geraci would have
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1 been permitted to file an application for a CUP on the Property. Absent Cotton's approval at
2 the end of the application process, neither Berry nor Geraci should be permitted to obtain a
3 CUP on the Property. Further, following issuance of a CUP, it runs with the land and may be
4 controlled unilaterally by the land's owner. This rule was affirmed by the California Supreme
5 Court in *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th,
6 362, 370. In *Malibu*, the Court held that a CUP runs with the owner's land, and such a
7 landowner may compel a public entity to recognize assignment of the CUP to a new lessee.

8 As a consequence, applied here, Cotton is and always has been in control of whose
9 name his application is processed and in whose name the permit must be issued. The
10 Municipal Code at section 113.0103 provides:

11 Applicant means any person who has filed an application for a permit, map or
12 other matter and that is the record owner of the real property that is the subject
13 of the permit, map, or other matter; the record owner's authorized agent; or any
14 other person who can demonstrate a legal right, interest, or entitlement to the
15 use of the real property subject to the application.

16 (Bold added.) Cotton, the sole record owner of the Property, is the only person who
17 qualifies as the applicant on the Cotton Application under this standard. Accordingly, Cotton
18 is likely to prevail on his cause of action for declaratory relief.

19 B. Cotton Will Be Irreparably Harmed if the Court Does Not Grant the Injunction

20 Absent intervention by the Court, Cotton will suffer irreparable harm in the following
21 ways:

22 First, Cotton will continue to suffer from the City's arbitrary and capricious decision to
23 process the Cotton CUP application without reference to Cotton. The City's September 2017
24 email is driving the urgency of this request for the Court to intervene as it creates an untenable
25 situation because it virtually assures that Cotton's "new" CUP application (which bears his
26 name alone) would not be approved before the City approves Cotton's "original" CUP
27 application, which also bears Berry's name. That is because the already-pending Cotton CUP
28 Application was filed 12 months before Cotton could file his new CUP application. If Cotton
fails to file a new application and win the "horse race" to the finish line of the already pending

1 Cotton CUP application that is unjustly under the sole control of Geraci, Berry and the City, he
2 will be irreparably harmed.

3 Second, the City's approach to this CUP improperly endows Berry and Geraci with
4 power to sabotage the application efforts of Cotton as to his Property. Simply put, the City
5 should not accept information from Berry and Geraci as to a Property in which they have no
6 right to use. Berry and Geraci, at any time, could provide misinformation as to the Property
7 and or mislead the City in order to sabotage the CUP. Cotton should not be subjected to this
8 risk for a day let alone for the many months it will take to resolve the contract and fraud
9 lawsuit pending in the related action. This is a significant concern here where Geraci seeks the
10 clever application of the statute of frauds to justify his use of a five-sentence one-page
11 document, alleged by Cotton to have been procured by fraud, to allow him to obtain a
12 \$2,000,000 property for \$800,000.

13 Third, the City is pursuing a dedication of a portion of the Property and that this
14 dedication is supposed to occur any day now. (Cotton Decl., ¶ 27, see Schweitzer Decl., ¶ 15
15 attached as Exhibit 11 to Cotton Decl.) Geraci has not paid a \$6,000 invoice necessary to the
16 CUP processing (Cotton Decl., ¶ 27, Ex. 12.). In fact, the CUP issuance is to occur "no later
17 than March 2018." (Schweitzer Decl. ¶¶ 12-13, attached as Ex. 11 to Cotton Decl.) The
18 exclusion of Cotton, the only person with an interest in the property, from these events—
19 learned only as part of this lawsuit—is unreasonable and unacceptable.

20 Fourth, Cotton, as owner of the Property, will be further forced to abdicate his
21 constitutional right as a property owner to determine who may use his property as he sees fit.
22 (See *Loretto v. Teleprompter Manhattan* (1982) 458 U.S. 419, 435 [saying that a landowner's
23 right to exclude others from the use and possession of the property is "one of the most essential
24 sticks in the bundle of rights that are commonly characterized as property."]; see also *Fretz v.*
25 *Burke* (1967) 247 Cal.App.2d 741, 746 [holding that an irreparable harm occurs where one's
26 behavior "constitutes an overbearing assumption by one person of superiority and domination
27 over the rights and property of others."])

1 As such, Cotton will incur irreparable injury if the City does not intervene.

2 C. The Balance of the Equities Weigh in Favor of Cotton

3 The balance of harms factor starkly weighs in favor of the Court granting Cotton's
4 request. In contrast to the harm that Cotton would suffer absent an injunction, Geraci will not
5 suffer harm at all if an injunction were imposed. Cotton simply seeks assurance that the CUP
6 will not be derailed by Geraci's malfeasance.

7 V

8 CONCLUSION

9 Based on the foregoing, this Court should issue the temporary restraining order and
10 order to show cause as requested. Moreover, the Court should expedite the hearing for a
11 preliminary injunction to the nearest date available – and certainly well before March 2018,
12 when the City, according to Geraci's own witness, will rule on the CUP application.

13 DATED: December 6, 2017

Respectfully submitted,

14 FINCH, THORNTON & BAIRD, LLP

15
16 By: _____

DAVID S. DEMIAN
ADAM C. WITT
RISHI S. BHATT

Attorneys for Defendant and Cross-Complainant
Darryl Cotton

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Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

DECLARATION OF DAVID S. DEMIAN IN
SUPPORT OF DARRYL COTTON'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING PRELIMINARY
INJUNCTION

[IMAGED FILE]

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

Date: December 7, 2017
Time: 8:30 a.m.
Dept.: C-73

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

AND RELATED CROSS-ACTION.

I, David S. Demian, declare as follows:

1. I am an attorney admitted to practice before this Court and all courts in the State of California and a partner in the law firm of Finch, Thornton & Baird, LLP, counsel of record for petitioner/plaintiff Darryl Cotton ("Cotton"). I make this declaration in support of Cotton's ex parte application for a temporary restraining order and an order to show cause why a

DECLARATION OF DAVID S. DEMIAN IN SUPPORT OF DARRYL COTTON'S EX PARTE
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE
REGARDING PRELIMINARY INJUNCTION

1 preliminary injunction should not be issued against Larry Geraci and Rebecca Berry on the
2 Conditional Use Permit Application -- Project No. 520606 currently pending before the City.

3 2. I have personal knowledge of the facts stated herein and, if called as a witness, I
4 could and would competently testify to them.

5 3. On September 22, 2017, I wrote to Firouzeh Tirandazi, Development Project
6 Manager, for the City of San Diego, and informed her that the CUP application at issue in this
7 action should be processed solely in Cotton's name. A true and correct copy of this letter is
8 attached as Exhibit 1. Ms. Tirandazi replied, however, by saying that Cotton should file a new
9 CUP application in his name alone but that the City would award the application to the party
10 whose application the City processes first. A true and correct copy of this email is attached as
11 Exhibit 2 to this declaration.

12 4. On October 31, 2017, I appeared before Judge Sturgeon and represented Cotton
13 on an ex parte application for alternative writ, Case No. 37-2017-00037675-CU-WM-CTL.
14 Judge Sturgeon ordered the matter to be reassigned with the related action Case Number 37-
15 2017-00010073-CU-BC-CTL pending before this Court. Judge Sturgeon denied the request
16 for issuance of the alternative writ. Cotton agreed to withdraw his request for a hearing on the
17 peremptory writ before Judge Sturgeon in light of the reassignment of the case with the related
18 civil action.

19 5. On December 4, 2017, I proposed a stipulation whereby (1) parties agree to
20 work together in good faith to pursue the prompt issuance of the CUP; (2) parties agree to
21 instruct City to communicate with both parties as applicants; (3) the parties to agree that
22 neither will take any action to withdraw or terminate the application without the other party's
23 prior written consent; (4) parties agree the parties will share all communications relating to the
24 CUP process made with the City or any third-party consultant of a party, whether oral or
25 written; (5) parties agree to split 50/50 the costs incurred to the City for pursuing the CUP from
26 the date of this order, provided the costs are reasonably incurred and approved in advance in
27 writing by Geraci and Cotton; (6) the parties reserve the right to recover all such costs in
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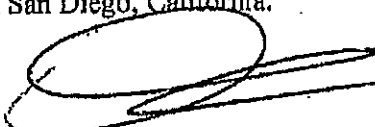
1 connection with the Geraci v. Cotton Action; (7) Geraci and Berry to deliver to Cotton copies
2 of all documents relating to the CUP application process from the date of CUP submission
3 through today's date, including communications, reports and analyses prepared by consultants
4 retained by Geraci in connection with the CUP (such as Abby Schweitzer); and (8) the Court
5 appoints a referee to resolve disputes as to the enforcement of the stipulated order. Geraci and
6 Berry, however, rejected this proposed stipulation.

7 6. Pursuant to California Rules of Court, rules 3.1203 and 3.1204, I provided
8 timely ex parte notice of this application to all parties, including the date, time, and relief
9 sought. On December 5, 2017, I sent written notice of this ex parte application to Jana
10 Mickova Will, Deputy City Attorney for respondent/defendant City of San Diego, and Michael
11 R. Weinstein, counsel for real parties in interest Rebecca Berry and Larry Geraci. A true and
12 correct copy of this written notice is attached as Exhibit 3 to this declaration.

13 7. The notice provided stated that Cotton's application would be filed in
14 Department C-73 of the captioned court and would proceed at 8:30 a.m. or as soon thereafter
15 as the Court would hear it. As of this drafting, I have not received response stating whether the
16 City, Berry, or Geraci will oppose.

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

19 Executed this 6th day of December 2017, in San Diego, California.

20 
21 _____
22 DAVID S. DEMIAN
23
24
25
26

27 2403.004/3C88976.amq

Exhibit 1

FINCH • THORNTON • BAIRD^{LLP}

ATTORNEYS AT LAW

David S. Domlan
ddomlan@fblaw.com

File 2403.002

September 22, 2017

VIA U.S. AND ELECTRONIC MAIL

Ms. Firoozeh Tirandazi
Development Project Manager II
Development Services Department
1222 First Avenue, MS 301
San Diego, California 92101-4101
ftirandazi@sandiego.gov

Re: 6176 Federal Boulevard - Project 520606 Conditional Use Permit

Dear Ms. Tirandazi:

We represent Darryl Cotton, the record owner of 6176 Federal Boulevard ("Property") that is the subject of the application ("Project 520606") to obtain a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC").

As set forth below, Rebecca Berry has no legal basis to be listed in any capacity on Project 520606. Therefore, we demand the City either: (1) remove Ms. Berry from Project 520606 and process the application for Mr. Cotton; or (2) commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner.

1. Remove Ms. Berry From Project 520606

- a. Mr. Cotton is the record owner of the Property.¹
- b. Ms. Berry submitted the General Application (Form DS-3032) for Project 520606 as "an other person having a legal right, interest, or entitlement to the use of the property" pursuant to Municipal Code section 112.0102. She further submitted the Ownership Disclosure Statement (DS-318) as "Tenant/Lessee."
- c. Ms. Berry is not currently, and never has been, a Tenant/Lessee of the Property nor does she have any other legal right, interest, or entitlement to the use of the Property.
- d. Until reviewing a recently obtained copy of the application via a Public Records Act Request, Mr. Cotton had no knowledge that the Ownership Disclosure Statement (DS-318) contained a statement that Ms. Berry claimed an interest in the Property as a Tenant/Lessee.
- e. Municipal Code section 126.0302 provides that the privileges and conditions of a CUP are a covenant that runs with the land and, in addition to binding the permittee, bind each successor in interest. Further, a variance for the use of property in a particular manner is not personal to the owner at the time of the grant, but is available to any subsequent owner, until it expires according to its terms or is effectively revoked, and this is true, even though the original owner did not act on it. (See *Cohn v. County Bd. of Sup'rs of Los Angeles County* (1955) 135 Cal.App.2d 180, 184.)

¹ Record owner means the owner of real property as shown on the latest equalized property tax assessment rolls of the San Diego County Assessor (SDMC § 113.0103).

Ms. Firouzeh Tirandazi
September 22, 2017
Page 2 of 2

In sum, Ms. Berry cannot produce any evidence of a legal right, interest, or entitlement to the use of the Property confirming her interest in the Property. Therefore, she must be removed from Project 520606 and replaced by Mr. Cotton as record owner.

2. Accept Second Application

If the City nevertheless continues to recognize Ms. Berry as the Applicant for Project 520606 in her capacity as Tenant/Lessee, then we demand the City commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner. We understand the City recently refused Mr. Cotton's request to process a separate, parallel CUP application on the Property. This refusal is not supported by any provision of the Municipal Code.

An application may be filed by any person that can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application. (SDMC § 112.0102.) Where there is a dispute over who has a right to the use of the property, the City must necessarily allow for multiple, separate applications from those parties to the dispute until the dispute has been resolved.

Indeed, the City's refusal to accept a separate, parallel CUP application directly conflicts with our own experience with Project 370687 and Project 421373, the second of which was submitted upon the City's advice and accepted for review while the first had already been approved by the Hearing Officer. In Project 370687, the property owner's authorized agent submitted a CUP application on behalf of the property owner. A dispute arose between the property owner and the authorized agent over who had the right to the CUP application. The property owner was forced to file a petition for writ of mandate against the City to replace the authorized agent with the property owner, and the property owner prevailed. (See *Ehgebretsen v. City of San Diego* (2015) 37-2015-00017734-CU-WM-CTL.) While the lawsuit to determine who had the right over the CUP application was pending, the City allowed the property owner to submit his own CUP application for the same property in his capacity as property owner.

3. Conclusion

We demand the City either: (1) remove Ms. Berry from Project 520606 and process the application for Mr. Cotton; or (2) commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner. We demand a response in writing by September 28, 2017. If we do not hear from you we will deem both of these requests to have been denied and will file a petition for writ of mandate with the Superior Court.

Very truly yours,


David S. Demian,
Partner

DSD:dad/3BU080502

Exhibit 2

David S. Demian

From: Tirandazi, Frouzeh <FTirandazi@sandiego.gov>
Sent: Friday, September 29, 2017 4:23 PM
To: Holly J. Glavinic
Cc: David S. Demian; Abhay Schweitzer; becky@lifesd.net; FilzGerald, PJ
Subject: RE: 6176 Federal Boulevard - Project 620606 Conditional Use Permit

Good Afternoon Mr. Demian,

Development Services Department (DSD) is in receipt of your correspondence dated September 22, 2017. You may submit an application for a CUP for a Marijuana Outlet.


As you've acknowledged in your letter, DSD is currently processing an application, submitted by Ms. Rebecca Berry on March 13, 2017, for a Conditional Use Permit for a proposed Medical Marijuana Consumer Cooperative at 6176 Federal Boulevard. Ms. Berry and her consultant processing the application on her behalf, Mr. Abhay Schweitzer, are also copied on this email.

Please be advised that the City is only able to make a decision on one of these applications; the first project deemed ready for a decision by the Hearing Officer will be scheduled for a public hearing. Following any final decision on one of the CUP applications submitted for the above referenced address, the CUP application still in process would be obsolete and would need to be withdrawn.

Regards,

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

(619)446-5325
sandiego.gov

 **Now: Pay Invoices and Deposits Online**

CONFIDENTIAL COMMUNICATION

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From: Holly J. Glavinic [mailto:hglavinic@ftblaw.com]
Sent: Friday, September 22, 2017 11:27 AM
To: Tirandazi, Frouzeh <FTirandazi@sandiego.gov>
Cc: David S. Demian <d-demian@ftblaw.com>
Subject: 6176 Federal Boulevard - Project 620606 Conditional Use Permit

Ms. Tirandazi,

Please see the attached letter of today's date sent on behalf of David Demian regarding the above-referenced Conditional Use Permit.

Holly J. Glavinio *Legal Secretary*

Finch, Thornton & Baird, LLP Attorneys At Law
4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 F 858.737.3101 Rblaw.com

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Exhibit 3

David S. Demian

From: David S. Demian
Sent: Tuesday, December 05, 2017 7:20 PM
To: Michael Weinstein
Subject: Ex Parte Notice - Geraci v. Cotton, et al. (Case No. 37-2017-00037675-CU-WM-CTL)

Dear Counsel:

This is to provide notice we have set an ex parte hearing in the referenced action before Judge Wohlfell in Department C-73 on Thursday, December 7, 2017, at 8:30 a.m., at which we will seek a temporary restraining order and order to show cause regarding preliminary injunction. We are preparing moving papers and will serve them on you as soon as they are available.

Regards,

David

David S. Demian *Partner*

Finch, Thornton & Baird, LLP Attorneys At Law
4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 D 858.737.3118 M 858.245.2451 F 858.737.3101

fblaw.com [Bio](#) [LinkedIn](#)

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DAVID S. DEMIAN, SBN 220620
E-MAIL: ddemian@fblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@fblaw.com
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E-MAIL: rbhatt@fblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (666) 737-3100
FACSIMILE: (666) 737-3101

Attorneys for Defendant and Cross-Complainant Darryl Cotton

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

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

DECLARATION OF DARRYL COTTON IN
SUPPORT OF DARRYL COTTON'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING PRELIMINARY
INJUNCTION

[IMAGED FILE]

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

Date: December 7, 2017
Time: 8:30 a.m.
Dept.: C-73

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

AND RELATED CROSS-ACTION.

I, Darryl Cotton, declare as follows:

1. I make this declaration in support of my application for temporary restraining order and order to show cause why a preliminary injunction should not be issued against Larry Geraci and Rebecca Berry on the Conditional Use Permit Application - Project No. 520606 currently pending before the City.

DECLARATION OF DARRYL COTTON IN SUPPORT OF DARRYL COTTON'S EX PARTE
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE
REGARDING PRELIMINARY INJUNCTION

2. All facts stated in this declaration are made on the basis of personal knowledge, and if called as a witness, I could and would competently testify to them.

3. I am, and have been at all relevant times, the sole record owner of the real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property"). Neither Rebecca Berry nor Larry Geraci have an interest in the Property, whether as owner, agent, licensee, lessee or any other capacity.

4. In or about August 2016, Geraci approached me and expressed interest in purchasing the Property.

5. Geraci said he was interested in the Property because it was potentially eligible to be awarded a conditional use permit ("CUP") by the City of San Diego for the operation of a Medical Marijuana Consumer Cooperative ("MMCC").

6. Geraci indicated that the permitting process would take several months but that he had special skills in obtaining the CUP that would benefit our application. Specifically, he represented there was a zoning issue that needed to be resolved before the CUP application could be filed and that he was uniquely qualified to resolve it. I believed him because Geraci told me he has successfully run other marijuana dispensaries in San Diego County.

7. Over the course of the following weeks and months, Geraci and I continued to discuss the CUP application process and negotiated the terms of the possible sale of the Property.

8. On September 24, 2016, for instance, I sent Geraci a proposed agreement. This proposal provides, in part, that Geraci would pay me a total of \$800,000.00 in consideration for the sale of my Property. This proposal was not executed. A true and correct copy of the proposed agreement is attached as Exhibit 1 to this declaration.

9. On or around October 31, 2016, Geraci told me that that I had to sign a "Ownership Disclosure Statement" in order to allow Geraci to prepare the CUP application. The form had Berry listed as a tenant, even though I have never met her and have never rented my Property to her. Geraci explained that Berry was his trusted employee who was

1 knowledgeable and involved in the MMCC CUP process and procedure. I believed Geraci and
2 executed the application based on Geraci's representations.

3 10. On or around November 2, 2016, Geraci and I spoke at his office about our
4 CUP arrangement and the sale of the Property. We reached final agreement on the terms for
5 the sale of the Property which included, but without limitation, the following key deal points:

6 (a) Geraci agreed to pay \$800,000.00 in cash consideration for the purchase of the
7 Property, with a \$50,000.00 non-refundable deposit payable to me immediately and the
8 remaining \$750,000.00 payable to me upon the City's approval of the CUP application for the
9 Property;

10 (b) The parties agreed that the City's approval of a CUP application to operate a
11 MMCC at the Property would be a condition precedent to closing the sale of the (i.e.: the sale
12 of the Property would be completed and title transferred to Geraci only upon the City's
13 approval of the CUP application and Geraci's payment of the \$750,000.00 balance of the
14 purchase price to Cotton. If the City denied the CUP application, the parties agreed the sale of
15 the Property would be automatically terminated and Cotton would be entitled to retain the
16 entire \$50,000.00 deposit.)

17 (c) Geraci promised to give me a 10% equity stake in the MMCC that would
18 operate at the Property following the City's approval of the CUP application;

19 (d) Geraci agreed that, after the MMCC started operations at the Property, Geraci
20 would pay me 10% profits of the MMCC's monthly profits and that Geraci would guarantee
21 that such payments would be at least \$10,000.00 per month; and

22 (e) The parties agreed to negotiate in good faith for execution of an agreement
23 comprising all the foregoing binding provisions as well as provisions reasonable and
24 customary for such an agreement.

25 11. Although Geraci and I came to a final agreement on the purchase price and
26 deposit, Geraci asked me if he could pay me a partial deposit of \$10,000.00 towards the total,
27 \$50,000.00 amount, as he needed some extra time to pay me the full \$50,000.00 deposit.

1 Geraci paid me the \$10,000.00, and we executed a receipt for that payment that very day,
2 November 2, 2016 ("November Writing"). Attached at Exhibit 2 is a true and correct copy of
3 the November Writing.

4 12. Later the same day that we executed the November Writing, I emailed Geraci
5 and told him that, after further review, our November Writing failed to reflect a key term
6 regarding my equity stake in the MMCC to be operated at the Property. In my email, I
7 reminded Geraci that my ten percent equity in the MMCC was vitally important to me. I also
8 told Geraci to confirm that my equity stake was a term of our agreement. He replied by saying
9 "no problem." A true and correct copy of this email is attached as Exhibit 3 to this declaration.

10 13. In the weeks and months after our November meeting, Geraci provided me
11 writings that materially differed the terms of our agreement. On February 27, 2017, Geraci
12 sent me a draft Purchase Agreement. A true and correct copy of this Purchase Agreement is
13 attached as Exhibit 4. On March 2, 2017, Geraci mailed me a draft "side agreement" that was
14 supposed to reflect my 10 percent equity interest in the MMCC. A true and correct copy of
15 this agreement is attached as Exhibit 5 to this declaration. I expressed my displeasure at this
16 non-conformity and brought this fact to Geraci's attention. A true and correct copy of this
17 statement is attached as Exhibit 6 to this declaration.

18 14. Nonetheless, over the months, I continually reiterated the terms of our contract
19 by emailing Geraci a summary of the key terms of our agreement. In the numerous emails that I
20 sent Geraci, I reaffirmed the fact that he promised to pay me a \$50,000.00 non-refundable
21 deposit; that he promised to pay me a 10 percent profit in the MMCC and a minimum of
22 \$10,000.00 per month; and that he promised to negotiate with me to execute an agreement to
23 contain all the foregoing bid's terms. Never once did Geraci deny the terms of our agreement
24 or aver that I misunderstood him. A true and correct copy of this email exchange is attached as
25 Exhibit 7 to this declaration. Geraci also texted with me as to his progress on the project and
26 the final deal documents and never disavowed the agreed terms. A true and correct copy of
27 text exchanges is attached as Exhibit 9 to this declaration.

1 15. On or about March 16, 2017, I first discovered that Geraci had filed the CUP
2 application for the Property back on October 31, 2016—even though he had previously
3 promised he would not do so until after we finalized our purchase agreement (as we had agreed
4 that the remaining \$40,000.00 of his deposit would be payable upon filing the CUP
5 application).

6 16. On March 21, 2017, I sent him notice via email that our agreement with respect
7 to the Property was terminated.

8 17. Because of Geraci's bad faith actions and breaches of the November Writing, I
9 entered into a real-estate purchase-agreement with another buyer, RJ, for the subject property.
10 This purchase-agreement originally provided that I would hold a 20% interest in any MMCC
11 operated on the Property. In an effort to stymie this transaction, Geraci filed a lawsuit (Case
12 No. 37-2017-00010073-CU-BC-CTL) against me.

13 18. On March 22, 2017, Geraci's attorney, Michael R. Weinstein ("Weinstein"),
14 emailed me a copy of a lawsuit Geraci intended to file against me. On March 28, 2017,
15 Weinstein emailed me and told me that Geraci was moving forward with the CUP process and
16 that Geraci intended to post notices on the Property.

17 19. I responded to Weinstein's email and stated that Geraci is not allowed on the
18 Property and that Geraci has no rights to the Property because our agreement had been
19 terminated.

20 20. I desire to have Geraci's associate, Berry, immediately removed from my CUP
21 application on my Property because she was never a tenant of the Property and never had any
22 rights to the Property whatsoever and her refusal to cede control of the CUP application is
23 impairing my property rights with respect to my Property.

24 21. On May 19, 2017, the City sent a letter that stated, among other things: "In
25 order to continue processing of your application, with your project resubmittal, please provide
26 a new Grant Deed, updated Ownership Disclosure Statement, and a Change of Financial
27 Responsible Party Form if the Financial Party has also changed." Based on the City's email, I
28

1 assumed that I need not take any affirmative steps to protect my rights. A true and correct
2 copy of this letter is attached at Exhibit 8 to this declaration.

3 22. On September 22, 2017, my attorney, David S. Demian, sent a letter to the City
4 of San Diego demanding that the City remove Berry from the CUP application and process the
5 CUP in my name alone. A true and correct copy of this letter is attached as Exhibit 10 to this
6 declaration.

7 23. On September 29, 2017, the City of San Diego responded to my attorney and
8 indicated they would not remove Berry from the CUP. The City continues to refuse my
9 request to remove Berry from my CUP on my Property even though I have provided evidence
10 that I am the sole record owner of the Property and confirmed that Berry has no rights to the
11 Property. Actually, the City did more than just refuse my request: It told me that it changed the
12 way it was going to process the CUP application. For the very first time, the City told me to
13 begin a new CUP application in my name alone and informed me that it would award the CUP
14 application to the party whose application was first approved. This revision means that I
15 would be unlikely ever to be awarded the CUP application because my original application,
16 bearing Berry/Geraci name, had been pending a year or so before I ever was informed that I
17 needed to file a CUP application in my own name. Until this time, I assumed I had control
18 over the CUP application as owner.

19 24. To date, Geraci has never paid me the balance of the \$40,000.00 deposit that I
20 am due. I am also concerned that the City's failure to honor my request will cause me to lose
21 the competitive advantage that I will otherwise have in the marketplace because I will be
22 forced to abandon my year-old application and resubmit under a new, entirely different, and
23 potentially longer regulatory scheme beginning January 1, 2018. Per the November
24 Agreement Geraci was to pay me \$800,000 and ensure I received at least \$10,000 a month
25 from operations of the MMCC which would last for an estimated 10 year period at minimum.
26 This is an obligation of approximately \$2,000,000. Were Geraci to acquire the Property for
27 \$800,000 he would receive a windfall of at least \$1,200,000.

1 25. I seek the Court's intervention now to help me protect my property rights and
2 prevent the waste of my Property's business potential.

3 26. I seek the Court's intervention not out of animus, jealousy, or ill-will towards
4 Geraci or Berry. I simply want to vindicate my rights as the owner of my property.

5 27. It is my understanding that Geraci is pursuing a dedication to the City of a
6 portion of the Property and that this dedication is supposed to occur any day now, per Geraci's
7 CUP consultant Abby Schweitzer. Attached at Exhibit 11 is a true and correct copy of the
8 declaration of Mr. Schweitzer. Additionally, it is my understanding that Geraci has not paid a
9 \$6,000 invoice necessary to the dedication. Attached at Exhibit 12 is a true and correct copy of
10 the most recent invoice of the City in connection to the dedication. Although these matters
11 affect the Property, I am not notified by Mr. Geraci or the City of these matters.

12 /////

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

3 Executed this 5 day of December 2017 in San Diego, California.

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5 
6 DARRYL COTTON

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Exhibit 1



SERVICES AGREEMENT CONTRACT

Date: 09/24/16

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

Attn: Mr. Larry Geraci
Ph: 858.958.4040
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

GER036Z



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: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci

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

GER0363

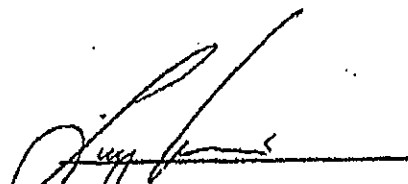
Exhibit 2

11/02/2016

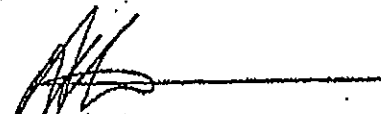
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

GER0200

ACKNOWLEDGMENT

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

State of California

County of San Diego

On November 2, 2010 before me, Jessica Newell Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature

Jessica Newell

(Seal)

GER0201

Exhibit 3



Darryl Cotton <indagroddarryl@gmail.com>

Agreement

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

Wed, Nov 2, 2016 at 8:13 PM

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: 877.462.2244
Cell: 619.954.4447
Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA 92114
USA

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[Quoted text hidden]

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbc73f&view=pt&msg=1582864acad4c9...> 4/26/2017

GER0204

Exhibit 4



Darryl Cotton <indagrodarryl@gmail.com>

Federal Blvd Property

Larry Geraci <Larry@lfcsl.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

Circular 230 Disclaimer:

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15a8079e39521b...> 4/26/2017

GER0214

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 (866)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.

 17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf
347K

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15a8079e39521b...> 4/26/2017

GER0215

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:

1. **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.

1.

6176 Federal Blvd. Purchase Agreement

GER0216

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 (1) 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 1, 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 1. 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 1, 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 Buyer's 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; BUYER'S 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 took 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 prorations 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 (1/2) 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

Exhibit 5



Darryl Cotton <indagrodarryl@gmail.com>

Statement

Larry Geraci <Larry@tfcisd.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 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

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15a8fceb8924dfa...> 4/26/2017

GER0234

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.

 17-0227 Side Agreement unsigned.docx
35K

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15a8feeb8924dfa...> 4/26/2017

GER0235

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).

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

SELLER:

DARRYL COTTON:

By: _____

Printed: _____

Its: Trustee

Exhibit 6



Darryl Cotton <indagroddarryl@gmail.com>

Statement

Fri, Mar 3, 2017 at 8:22 AM


Darryl Cotton <indagroddarryl@gmail.com>

To: Larry Geracl <Larry@tfcsl.net>

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?

[Quoted text hidden]

 IndaGro-GERL Service Contract.doc
691K

<https://mail.google.com/mail/u/0/?ui=2&ik=15a94f804e8ac65&q=larry%40tfcsl.net&qs=true&search=query&siml=15a94f804e8ac65> [4/28/2017 11:42:17 PM]

GER0243

Exhibit 7

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.

From: Darryl Cotton [<mailto:indagrodarryl@gmail.com>]

Sent: Friday, March 17, 2017 2:16 PM

To: Larry Geraci <Larry@tfcsl.net>

Subject: Re: Contract Review

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

GER0010

(reflecting completely the below) c, 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

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

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 3/7, 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.

GER0011

- 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

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <Larry@tffsd.net> wrote:

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 5k, and on the seventh month start 10k?

Best Regards,

GER0012

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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To: Larry Geracl[Larry@tfcad.net]
From: Darryl Colton
Sent: Thur 3/16/2017 8:23:52 PM
Importance: Normal
Subject: Re: Contract Review
Received: Thur 3/16/2017 8:23:57 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 3/7, 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

GER0021

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

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <Larry@lfcsl.net> wrote:

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 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

GER0022

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) 670-1040~~ 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.

GER0023



Darryl Cotton <Indagrodarryl@gmail.com>

Contract Review

Darryl Cotton <Indagrodarryl@gmail.com>
To: Larry Geracl <Larry@lfcad.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

[Quoted text hidden]

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15ade2068a6f4f1...> 4/26/2017

GER0259

To: Larry Geraci [Larry@tfcsd.net]
From: Darryl Cotton
Sent: Sun 3/19/2017 9:02:18 AM
Importance: Normal
Subject: Re: Contract Review
Received: Sun 3/19/2017 9:02:22 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 be 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.

On Sat, Mar 18, 2017 at 1:43 PM, Larry Geraci <Larry@tfcsd.net> wrote:

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

GER0024

To: Larry Geraci[Larry@tfcisd.net]
From: Darryl Cotton
Sent: Tue 3/21/2017 3:18:36 PM
Importance: Normal
Subject: Re: Contract Review
Received: Tue 3/21/2017 3:18:41 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

On Sun, Mar 19, 2017 at 6:47 PM, Darryl Cotton <indagroddarryl@gmail.com> wrote:

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 my 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.

On Sun, Mar 19, 2017 at 3:11 PM, Larry Geraci <Larry@tfcisd.net> wrote:

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>

GER0007

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 CO-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,

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

GER0008

Exhibit 8

May 19, 2017

SENT VIA EMAIL TO: abhay@techne-us.com

Abhay Schweltzer
Techne
3956 30th Street
San Diego, CA 92104

Subject: Federal Blvd MMCC Assessment Letter; Project No. 520606; Internal Order No. 24007070; Encanto Neighborhoods

Dear Mr. Schweltzer:

The Development Services Department has completed the initial review of the project referenced above, and described as:

- A Process Three Conditional Use Permit to demolish an existing structure and construct a new, 1,955-square-foot, building for the operation of a Medical Marijuana Consumer Cooperative (MMCC) on a site located at 6176 Federal Boulevard in the CO-2-1 Zone within the Encanto Neighborhoods Community Plan Area.

City staff has been informed that the project site has been sold. In order to continue the processing of your application, with your project resubmittal, please provide a new Grant Deed, updated Ownership Disclosure Statement, and a Change of Financial Responsible Party Form if the Financial Responsible Party has also changed.

Enclosed is a Cycle Issues Report (Enclosure 1), which contains review comments from staff representing various disciplines. The purpose of this assessment letter is to summarize the significant project issues and identify a course of action for the processing of your project.

If any additional requirements should arise during the subsequent review of your project, we will identify the issue and the reason for the additional requirement. To resolve any outstanding issues, please provide the information that is requested in the Cycle Issues Report. If you choose not to provide the requested additional information or make the requested revisions, processing may

continue. However, the project may be recommended for denial if the remaining issues cannot be satisfactorily resolved and the appropriate findings for approval cannot be made.

The Development Services Department will generally formulate a formal recommendation for your project subsequent to completion of the following milestones: 1) After the City Council recognized Community Planning Group has provided a formal project recommendation; 2) After all City staff project-review comments have been adequately addressed; and 3) During the final stages of the environmental review process.

As your Development Project Manager, I will coordinate all correspondence, emails, phone calls, and meetings directly with the applicants assigned "Point of Contact." You have been designated as the Point of Contact for this project. Please notify me should the Point of Contact change while I am managing this project.

I. REQUIRED APPROVAL/FINDINGS:

Required Approval: Your project as currently proposed requires a Process Three, Conditional Use Permit (CUP) for the proposed Medical Marijuana Consumer Cooperative pursuant to San Diego Municipal Code Section 126.0303(a). The decision to approve, conditionally approve, or deny the project will be made by the Hearing Officer with appeal rights to the Planning Commission.

Please be advised that on February 22, 2017, City Council adopted Ordinance No. O-20793 approving amendments to the Land Development Code and the Local Coastal Program, replacing the MMCC use with a new retail sales use, Marijuana Outlet. The Ordinance adopted by City Council also allows this use in the CO-2-1 Zone. Your project was deemed complete on March 13, 2017, prior to April 12, 2017, the effective date of the Ordinance. With your resubmittal, please provide written confirmation that you wish to process this application under the current regulations, and your request is for a CUP for Marijuana Outlet.

Required Findings: In order to recommend approval of your project, certain findings as outlined below must be substantiated in the record. Consider each finding as a question and provide the responses to each by answering each question specifically. Please provide your draft findings on a CD-ROM diskette in a word.docx format with your next submittal.

Conditional Use Permit - Section 126.0305

- (a) The proposed development will not adversely affect the applicable land use plan;
- (b) The proposed development will not be detrimental to the public health, safety, and welfare;

been posted on the account; however, our latest data indicates you have approximately \$3,076.00 remaining in your deposit account.

During the processing of your project, your application's Financially Responsible Party will continue to receive monthly statements with the break-down of staff charges to your account. The minimum balance required for your application is \$5,000.00, <https://www.sandiego.gov/sites/default/files/dsdlb503.pdf>. To avoid project delays due to insufficient account funds, please ensure that your deposit account maintains the minimum account balance at all times.

For your convenience, deposits can be made anytime online through Open DSD, <http://www.sandiego.gov/development-services/opendsd/>, and by entering your project number in the "Project ID" field, <http://opendsd.sandiego.gov/web/approvals/>. Also, any invoices can be paid online by searching for the invoice number, <http://opendsd.sandiego.gov/web/invoices/> or in person at the Cashier, located on the 3rd floor of the Development Services Center.

- V. **TIMELINE:** Upon your review of the attached Cycle Issues Report, you may wish to schedule a meeting with staff and your consultants prior to resubmitting the project. Please contact me if you wish to schedule a meeting with staff. During the meeting, we will also focus on key milestones that must be met in order to facilitate the review of your proposal and to project a potential timeline for a hearing date. Your next review cycle should take approximately 18 business days to process.
- VI. **RESUBMITTALS/NEXT STEPS:** Resubmittals are done on a walk-in basis. Please check in on the third floor of the Development Service Center (1222 First Avenue). Please be prepared to provide the following:
- A. **Plans and Reports:** Provide the number of sets of plans and reports as shown on the attached Submittal Requirements Report. The plans should be folded to an approximate 8 1/2 x 11 inch size.
- B. **Response to Cycle Issues Report:** Prepare a cover letter that specifically describes how you have addressed each of the issues identified in the Cycle Issues Report and any issues identified in this cover letter; if applicable. Or, you may choose to simply submit the Cycle Issues Report, identifying within the margins how you have addressed the issue. If the issue is addressed on one or more sheets of the plans or the reports, please reference the plan, sheet number, report or page number as appropriate. If it is not feasible to address a particular issue, please indicate the reason. Include a copy of this Assessment Letter, Cycle Issues Report and your response letter if applicable, with each set of plans.
- C. **California Environmental Quality Act (CEQA) Fees:**
- San Diego County Clerk Fee:** The San Diego County Clerk now requires \$50.00 to post the required public notice informing the public that a draft environmental document has been

prepared. A check made out to the San Diego County Clerk for this amount will be required prior to the distribution of the draft environmental document for public review.

If your project is determined to be Exempt from the provisions of the California Environmental Quality Act (CEQA); a Notice of Exemption (NOE) will be filed with the County Clerk after your project approval and all appeal periods have been exhausted. The County requires a \$50 documentary handling fee to file a CEQA NOE. Prior to scheduling your project for a decision, a check payable to the "San Diego County Clerk" in the amount of \$50 must be forwarded to my attention. Please include your project number on the check. A receipt for this fee and a copy of the NOE will be forwarded to you after the 30-day posting requirement by the County Clerk.

NOTE: New California Environmental Quality Act (CEQA) document filing fees, effective Jan. 1, 2017, can be accessed via the following link:
<https://www.wildlife.ca.gov/Conservation/CEQA/Fees>

- VII. COMMUNITY PLANNING GROUP:** Staff provides the decision maker with the recommendation from your locally recognized community planning group. If you have not already done so, please contact Kenneth Malbrough, Chairperson of the Encanto Neighborhoods Community Planning Group, at (619) 843-6721 to schedule your project for a recommendation from the group. If you have already obtained a recommendation from the community planning group, in your resubmittal, if applicable, please indicate how your project incorporates any input suggested to you by the community planning group.

Information Bulletin 620, "Coordination of Project Management with Community Planning Committees" (available at <http://www.sandiego.gov/development-services>), provides some valuable information about the advisory role the Community Planning Group. Council Policy 600-24 provides standard operating procedures and responsibilities of recognized Community Planning Committees and is available at <http://www.sandiego.gov/city-clerk/officialdocs/index.shtml>.

- VIII. STAFF REVIEW TEAM:** Should you require clarification about specific comments from the staff reviewing team, please contact me, or feel free to contact the reviewer directly. The names and telephone numbers of each reviewer can be found on the enclosed Cycle Issues Report.

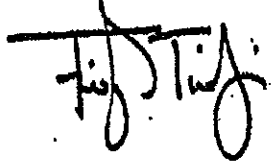
In conclusion, please note that information forms and bulletins, project submittal requirements, and the Land Development Code may be accessed online at <http://www.sandiego.gov/development-services>. Many land use plans for the various communities throughout the City of San Diego are now available online at <http://www.sandiego.gov/planning/community/profiles/index.shtml>.

To view project details online, visit: <http://www.sandiego.gov/development-services/opensd/>.

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Abhay Schweitzer
May 19, 2017

For modifications to the project scope, submittal requirements or questions regarding any of the above, please contact me prior to resubmittal. I may be reached by telephone at (619) 446-5325 or via e-mail at FTirandazi@sandiego.gov.

Sincerely,



Frouzeh Tirandazi
Development Project Manager

Enclosures:

1. Cycle Issues Report
2. Submittal Requirements Report

cc: File
Kenneth Malbrough, Chairperson, Encanto Neighborhoods Community Planning Group
Reviewing Staff (Assessment letter only)
Bernie Turgeon, Planning Department

Cycle Issues



THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

5/10/17 5:14 pm

Page 1 of 10

L64A-003A

Project Information

Project Nbr: 520606 Title: Federal Blvd MMCC
Project Mgr: Tirandazi, Firouzeh (619) 448-5325 ftirandaz@sandiego.gov

Review Information

Cycle Type: 3 Submitted (Multi-Discipline) Submitted: 03/10/2017 Doomed Complete on 03/13/2017
Reviewing Discipline: LDR-Planning Review Cycle Distributed: 03/13/2017
Reviewer: Barreras, Margaret Assigned: 03/16/2017
(619) 448-5430 Started: 04/06/2017
mbarreras@sandiego.gov Review Due: 05/17/2017
Completed: 05/16/2017 COMPLETED ON TIME
Closed: 05/18/2017
Hours of Review: 5.60
Next Review Method: Submitted (Multi-Discipline)

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Planning Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 41 outstanding review issues with LDR-Planning Review (all of which are new).
- Last month LDR-Planning Review performed 87 reviews, 62.8% were on-time, and 50.0% were on projects at less than < 3 complete submittals.

Project Information

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	The subject project is located at 6176 Federal Boulevard within the CO-2-1 Zone in the Encanto Neighborhood: Southeastern Community Plan area. The .14 acre site is legally described as Tract #2001100, Blk 25, Lot 20 Per Map 2121. Existing on site is a one-story commercial office building. [Information Item - No Response Required] (New Issue)
<input type="checkbox"/>	2	The project is an application for a Conditional Use Permit to establish a Medical Marijuana Consumer Cooperative dispensary within a newly constructed 1955 square-foot commercial building with the proposed demolition of an existing one-story 2088.0 square-foot commercial building on the premises. [Information Item - No Response Required] (New Issue)
<input type="checkbox"/>	3	The existing structure was built in 1951 and therefore has been submitted to and is undergoing a Plan Historic review to determine potential/historic significance. (Info Only, No Response Required). Preliminary Plan Historic; please refer to this discipline review for more information. (New Issue)
<input type="checkbox"/>	4	The premises is identified within the Commercial Office zone. The purpose and intent of development within this zone is to provide employment uses with limited, complementary retail uses. The zone is intended to apply in large-scale activity centers or in specialized areas where a full range of commercial activities is not desirable. Specifically, the CO-2-1 is intended to accommodate office uses with a neighborhood scale and orientation. Residential development within this zone is prohibited. (New Issue)
<input type="checkbox"/>	5	The land use plan within the Encanto Community Plan, Figure 2-1, identifies Community Commercial-Residential Prohibited land use which is consistent with the City-Wide base zone regulating the premises. (New Issue)
<input type="checkbox"/>	6	Planning determines that the project is not located within 1000 linear feet of a Resource or Population-based park typically located within close proximity to residential areas intended to serve the daily recreational and leisure needs of neighborhoods and communities. Utilizing the graphic scale found on Figure 7-1 of the Encanto Community Plan (ECP), staff verifies that a distance between the Emerald Hills Neighborhood Park to Federal Blvd MMCC is greater than 1500 linear feet measured between property lines. Reference Separately Regulated Uses, SDMC Section 141.0504(a). (New Issue)

Permits

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	7	Medical Marijuana Consumer Cooperatives may be permitted with a Conditional Use Permit decided in accordance with Process Three. [Information Item - No Response Required] (New Issue)
<input type="checkbox"/>	8	A decision on an application for a Conditional Use Permit for the uses listed in Section 126.0303(a) shall be made in accordance with Process Three with the Hearing Officer as the decision maker. The Hearing Officer's decision may be appealed to the Planning Commission in accordance with SDMC 112.0608. [Information Item - No Response Required] (New Issue)

For questions regarding the LDR-Planning Review, please call Margaret Barreras at (619) 448-5430. Project Nbr: 520606 / Cycle: 3
Firouzeh Tirandazi 448-5325

p2k v 02.03.38

Cycle Issues



THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

5/19/17 5:14 pm

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L64A-003A

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	9	CUP Findings: Reference SDMC §126.0305 (a) through (d). An application for a Conditional Use Permit may be approved or conditionally approved only if the decision maker makes the findings for this permit. At the next submittal, provide project support by addressing how the Federal Blvd MMCC makes each CUP finding. (New Issue)

MMCC Review

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	10	In accordance with MMCC requirements, the CO-2-1 zone meets the restriction requirement for zones permitted to operate a Medical Marijuana Consumer Cooperative. The effective date for MM Outlets within the CO-2-1 zone with a CUP decided in accordance with Process Three was April 13, 2017 by Ordinance 2017-93. (Information Item - No Response Required) (New Issue)
<input type="checkbox"/>	11	The applicant has provided the required "Affidavit for Medical Marijuana Consumer Cooperatives for CUP." (Information Item - No Response Required) (New Issue)
<input type="checkbox"/>	12	Provide a 1000 foot radius map spreadsheet for those businesses within 1000 linear feet of Federal Blvd MMCC to verify prohibited uses as specified within SDMC 141.0504. (New Issue)
<input type="checkbox"/>	13	The subject site is within the boundaries of City Council District 4. Only four Medical Marijuana Consumer Cooperatives are permitted per City Council District. Currently, there are no approved MMCCs within Council District 4. With no approved MMCCs in the vicinity, the 1000 linear foot prohibition is currently not an issue. (Information Item - No Response Required) (New Issue)
<input type="checkbox"/>	14	Residential Zone: Federal Blvd is the PROW between the subject site and the residential zone RS-1-7. Federal Blvd is not considered a barrier impeding direct physical access between MMCC and residential zone. The applicant submit a Sheet A103, a Site Plan showing a proposed "Irrevocable Offer of Dedication" which Planning determines may satisfy the code requirement for a separation of 100' if supported by LDR Engineering. Without the 10' or greater dedication, Planning will not support this project. (Continued) (New Issue)
<input type="checkbox"/>	15	Major Issue: LDR Engineering requires a ROW dedication to create a 10 ft curb to PL distance. Additional dedication by Transportation may also be requested but has not yet been determined. In accordance with Section 113.0225(a)(2) a 100 ft separation distance from the RS-1-7 zone to the pre-dedication PL for Federal MMCC does not exist. Also, a ROW dedication > than the 10' C to PL reqmt is shown (Ref: A102). Planning defers to Engineering & Transportation for dedication requirements after which the separation distance can be determined. (New Issue)
<input type="checkbox"/>	16	MMCC Conditions: The architect has incorporated SDMC Conditions. The following conditions are also taken from SDMC, however, Planning could not locate on the Exhibit (include): (j) Deliveries shall be permitted as an accessory use only from marijuana outlets with a valid Conditional Use Permit unless otherwise allowed pursuant to the Compassionate Use Act of 1996. (New Issue)
<input type="checkbox"/>	17	(k) The marijuana outlet, adjacent public sidewalks, and areas under the control of the marijuana outlet, shall be maintained free of litter and graffiti at all times. (New Issue)
<input type="checkbox"/>	18	(l) The marijuana outlet shall provide daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours. (New Issue)
<input type="checkbox"/>	19	(m) Consultations by medical professionals shall not be a permitted accessory use at a marijuana outlet. (New Issue)
<input type="checkbox"/>	20	Additional Planning Commission Conditions for Incorporation into Permit: The following are optional security conditions in accordance with requirements of Planning Commission. Please advise Planning should you object to any of these conditions. (New Issue)
<input type="checkbox"/>	21	Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This facility shall also include alarms and two armed security guards to the extent the possession of a firearm is not in conflict with 18 U.S.C. § 922(g) and 27 C.F.R. § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws. The security guards shall be licensed by the State of California. (Continued) (New Issue)
<input type="checkbox"/>	22	One security guard must be on the premises 24 hours a day, seven days a week, the other must be present during business hours. The security guards should only be engaged in activities related to providing security for the facility, except on an incidental basis. The cameras shall have and use a recording device that maintains the records for a minimum of 30 days. (New Issue)
<input type="checkbox"/>	23	The Owner/Permittee shall install bullet resistant glass, plastic, or laminate shield at the reception area to protect employees. (New Issue)
<input type="checkbox"/>	24	The Owner/Permittee shall install bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, in common areas with other tenants, reception area, and vault room. (New Issue)
<input type="checkbox"/>	25	Other Correction: See G002 and revise issue 14 zone from IS-1-1 to CO-2-1. (New Issue)

CO-2-1 Dev Reg Review

Cleared?	Issue Num	Issue Text
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For questions regarding the Planning Review Review Process, call Margaret Barajas at (619) 448-5430 or email mbarajas@cityofsandiego.gov. Flouze Tirandazi 448-5325

p2k v 02.03.38

Cycle Issues



THE CITY OF SAN DIEGO
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Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	26	Reference Table 131-05D Development Regulation Review for the CO Zones Front Setback: 10' Minimum with a 25' Maximum Front Setback. Two code sections apply which are provided as: 1. (See Section 131.0543(a)); 2. Footnote 2: See section 131.0543(a)(2). The front setback is incorrectly applied. See Diagram 131-05B which illustrates how this code section shall be applied. Revise your design to demonstrate the maximum setback applied to 70 percent of the street frontage with the remaining 30 percent not required to observe the maximum setback (New Issue)
<input type="checkbox"/>	27	Required Side Yard: To be reviewed following the revision of the project required by issue above (#26). Shown correctly under Zoning Information. (New Issue)
<input type="checkbox"/>	28	Rear Yard Setback: To be reviewed following the revision of the project required by issue above (#26). Shown correctly under Zoning Information, Sheet G001. (New Issue)
<input type="checkbox"/>	29	Structure Height: 45'. Proposal: 13'. No Issues. (New Issue)
<input type="checkbox"/>	30	Coverage: N/A. (New Issue)
<input type="checkbox"/>	31	F.A.R.: .75. Incorrectly provided at .80. Make all necessary calculation changes and apply as necessary. (New Issue)
<input type="checkbox"/>	32	Ground Floor Height: Applies. Reference SDMC 131.0548 and demonstrate compliance on elevations per code and cite this code section. (New Issue)
<input type="checkbox"/>	33	Building Articulation: Applies: Planning unable to verify compliance, Reference SDMC 131.0554. Clarify conformance with notes on plans or revise to demonstrate conformance. (New Issue)
<input type="checkbox"/>	34	Street Yard Restriction: N/A. (New Issue)
<input type="checkbox"/>	35	Refuse and Recyclable Storage: Demonstrated on Sheet A102. The location of refuse/recyclables may change with revisions to the location of the structural footprint as requested under issue #26. (New Issue)
<input type="checkbox"/>	36	Transparency: Applies. See Section 131.0552 and demonstrate compliance. (New Issue)
<input type="checkbox"/>	37	Loading Dock and Overhead Door Screening Regulations: Applies. See Section 142.1030 and apply after revisions to structural footprint have been performed. (New Issue)

General Plan and Community Plan

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	38	Policy guidance is provided by the GP and CP for commercial uses. Please consider the following elements in your next submittal: 1. Development of new Infill buildings should take into account green building practices and sustainability; 2. Designing for defensible space; 3. Incorporate Urban Design policy as it relates to character and identity of the existing urban form, including public spaces and village design, neighborhood and community gateways and linkages, building types and massing, streetscape and pedestrian orientation, and other unique aspects of the Encanto community. (New Issue)
<input type="checkbox"/>	39	Staff delays review of land use based upon incomplete information provided within this first review. (New Issue)

Signs

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	40	See SDMC 141.0814 MMCO signage requirements under permit Conditions. (Information Item - No Response Required) (New Issue)
<input type="checkbox"/>	41	Signage shall be in conformance with Land Development Code Chapter 12, Article 9, Division 8 (Sign Permit Procedures) and Chapter 14, Article 2, Division 12 (Sign Regulations). (Information Item - No Response Required) (New Issue)

For questions regarding the LUP Planning Review, please call Margaret Barreras at (619) 746-5430. Project Number: 5206067, Cycle: 03-2017

Firoozeh Tirandazi 448-5325

p2k v 02.03.38

Cycle Issues



THE CITY OF SAN DIEGO
Development Services Department
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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on:** 03/13/2017
Reviewing Discipline: LDR-Environmental
Cycle Distributed: 03/13/2017
Reviewer: McPherson, Anna
Assigned: 03/14/2017
(619) 446-5276
Started: 04/07/2017
amcpherson@sandiego.gov
Review Due: 04/14/2017
Completed: 04/14/2017 **COMPLETED ON TIME**
Hours of Review: 1.00
Closed: 05/19/2017
Next Review Method: Submitted (Multi-Discipline)

- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Environmental on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 9 outstanding review issues with LDR-Environmental (all of which are new).
- Last month LDR-Environmental performed 100 reviews, 90.0% were on-time, and 44.3% were on projects at less than < 3 complete submittals.

Project Scope

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	The proposed project is a Conditional Use Permit (CUP) for a Medical Marijuana Consumer Cooperative (MMCC) at 6176 Federal Boulevard. The applicant is proposing to demolish the existing approximately 2,087 square foot building and construct and operate a proposed MMCC within a new 1,955 square-foot building on a 6,049 square-foot lot. The project is designated for commercial office uses in the Encanto Community Plan. It is zoned CO-2-1. (New Issue)

Project Issues

Engineering

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	2	LDR- Engineering has requested delineation of the pedestrian access to the front entrance and is requiring the project to replace the driveway consistent with City standards. The project will also require a Preliminary Drainage Study and a Water Quality Study. (New Issue)

GHG

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	3	EAS received a CAP-Consistency Checklist for the project. It is filled out incorrectly. All questions must be answered Yes or N/A with an explanation provided regarding why a measure is non applicable. Also, the CAP Checklist was updated as of February 2017. Please submit a revised checklist with the next cycle. If you have questions or require assistance completing the checklist, please contact Anna McPherson at 619-446-5276. (New Issue)

Cultural Resources

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	4	Plan-Historic has requested additional information to assist in a determination regarding the potential for the existing structure to be a historic resource. EAS will coordinate with staff upon receipt of this information. (New Issue)

Geology

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	5	Geology staff has requested submittal of a Geotechnical Report with the next review cycle. (New Issue)

Paleontological Resources

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	6	Please clarify the total amount of excavation for the entire project including the maximum depth of cut on the Grading Plan. If no grading is proposed, please state so. Until this information is clarified on the grading plan, EAS cannot address paleontological resources. (New Issue)

LDR-Planning

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	7	EAS will coordinate with LDR-Planning regarding MMCC Ordinance issues and project community plan consistency. (New Issue)

For questions regarding the LDR-Environmental review, please call Anna McPherson at (619) 446-5276. Project Number: 1520806 / Cycle 3

Firouzeh Tirandazi 446-5325

p2k v 02.03.38



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LDR- Landscape

Cleared?	Num	Issue Text
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8 Landscape staff has requested additional information regarding amount and type of landscaping. (New Issue)

Determination

Cleared?	Num	Issue Text
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9 All disciplines have also requested plan revisions. Until all requested information is submitted and all issues are cleared, EAS is unable to make an environmental determination. Please be aware that the environmental review may change in response to any project changes and/or new information. Additionally, the new information may lead to the requirement of new and/or additional technical studies. (New Issue)

For questions regarding this LDR-Environmental Review, please call Anna McElrath at (619) 446-5277 or email Anna.McElrath@cityofsandiego.gov

Firouzeh Tirandazi 446-6325

p2k v 02.03.38

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on** 03/13/2017
Reviewing Discipline: LDR-Engineering Review **Cycle Distributed:** 03/13/2017
Reviewer: Tamares, Jpfl **Assigned:** 03/13/2017
(619) 446-5118 **Started:** 04/05/2017
jtamares@sandiego.gov **Review Due:** 05/17/2017
Hours of Review: 8.00 **Completed:** 05/15/2017 **COMPLETED ON TIME**
Next Review Method: Submitted (Multi-Discipline) **Closed:** 05/19/2017

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Engineering Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 24 outstanding review issues with LDR-Engineering Review (all of which are new).
- Last month LDR-Engineering Review performed 60 reviews, 93.8% were on-time, and 42.1% were on projects at less than < 3 complete submittals.

1st Review

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	The Engineering Review Section has reviewed the subject development and have the following comments that need to be addressed prior to a Public Hearing. Upon resubmittal, we will complete our review of the Conditional Use Permit.
<input type="checkbox"/>	2	(New Issue) The San Diego Water Board adopted Order No. R9-2013-0001, NPDES No. CAS0109266, National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region. This project will be required to adhere to the City of San Diego Storm Water Standards in effect at the time of approval of ministerial permit. The current Storm Water Development Regulations became effective on February 16, 2016 and this project will be subject to those regulations.
<input type="checkbox"/>	3	(New Issue) Revise the Site Plan. Show the existing and proposed grading contours and spot elevations. Add a Grading Data Table with cut/fill and import/export quantities, plus the depths of cut and fill. If the quantity is ZERO, add that value to the required Data Table. Add surface drainage flow patterns and slope gradient, and the collection and discharge points for all site and roof drains.
<input type="checkbox"/>	4	(New Issue) Revise the Site Plan Sheet A102. Add the source, date and MSL datum of the required topography.
<input type="checkbox"/>	5	(New Issue) Revise the Site Plan Sheet A102 and Topographic Survey sheet 1. Add a Bench Mark per the City of San Diego Vertical Control Book. Include the elevation and required MSL Datum.
<input type="checkbox"/>	6	(New Issue) On the plan view of the Site Plan Sheet A102 and Topographic Survey sheet 1, please call out the onsite legal description and the legal descriptions of all adjacent properties.
<input type="checkbox"/>	7	(New Issue) Show the public right-of-way for all existing streets adjacent the project and the street names. Show full limits including both sides of the street and include right-of-way widths. Show all proposed or existing improvements including curb and gutter, sidewalks, street lights, utilities, medians, centerline of right-of-way, and all driveways within the property boundary. Please label and/or include in legend.
<input type="checkbox"/>	8	(New Issue) Please revise the Site Plan, sheet A102, to show the curb to property line, curb to centerline, property line to property line distances, and width of sidewalk for Federal Blvd.
<input type="checkbox"/>	9	(New Issue) Show existing and proposed finished pad and floor elevations on the site plan A102.
		(New Issue)

For questions regarding the LDR-Engineering Review review, please call Jpfl Tamares at (619) 446-5118 or Email at jtamares@sdgea.com

Firouzeh Tirandazi 446-5325

p2k v 02.03.38

Cycle Issues



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Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	10	The current layout shows drainage lines confluence to the middle of the parking area. Please revise the site plan sheet A102 to show how the runoff is collected, conveyed and discharged offsite. Identify public and private systems and show the point of connection to any system, public or private.
<input type="checkbox"/>	11	(New Issue) Submit a Preliminary Drainage Study which addresses the existing and proposed storm water run-off and discharge locations for the project site.
<input type="checkbox"/>	12	(New Issue) The applicant did not submit the current Storm Water Requirements Applicability Checklist dated October 2016. Submit a revised checklist on the next submittal.
<input type="checkbox"/>	13	(New Issue) The project is a Standard Development Project subject to Site Design and Source Control BMPs. Submit a Water Quality Study that identifies Pollutants from the Project Area and addresses how the 8 possible Low Impact Development (LID) BMPs and 8 possible Source Control BMPs have been incorporated into the project.
<input type="checkbox"/>	14	(New Issue) If any of the 14 possible BMPs have not been used in the project design, add a discussion in the report why the omitted BMPs are not feasible or not applicable. Please Note: A Water Quality Study is required, not a SWQMP. For an example of a Water Quality Study - 2016, contact my office at tamaros@sandiego.gov
<input type="checkbox"/>	15	(New Issue) City's Storm Water Standards are available online at: https://www.sandiego.gov/stormwater/regulations
<input type="checkbox"/>	16	(New Issue) Revise the site plans to show the dedication necessary to create a 10 foot curb to property line distance on Federal Boulevard. Engineering Review will not support additional right of way dedication that is more than City standard requires. Transportation Development will determine if additional right of way is required. (New Issue)
<input type="checkbox"/>	17	Revise the Site Plan A102, if the existing water service and sewer lateral will be used, add a note that states: The existing water and sewer services will remain. If new services are required: Show the Water and Sewer Mains, including the new laterals that serve the project. Call out the City Improvement Plan numbers. A search of City Records by your office may be required.
<input type="checkbox"/>	18	(New Issue) Please show the pedestrian path of travel from the public sidewalk to the project entrance.
<input type="checkbox"/>	19	(New Issue) Revise the Site Plan A102 to call out the new 24' wide driveway will be constructed to current City standards. Please show the sidewalk transitions per SDG-159.
<input type="checkbox"/>	20	(New Issue) Revise the Site Plan A102 to show new City standard curb, gutter, and sidewalk where the existing driveway is located.
<input type="checkbox"/>	21	(New Issue) Add the visibility area triangles, per San Diego Municipal Code Diagram 113-02SS, at the driveway on Federal Blvd. For the driveway, show the visibility areas on private property which shall extend 10 feet inward along the driveway and along the property line. Add a note that states: No obstruction including solid walls in the visibility area shall exceed 3 feet in height. Plant material, other than trees, within the public right-of-way that is located within visibility areas shall not exceed 24 inches in height, measured from the top of the adjacent curb.
<input type="checkbox"/>	22	(New Issue) Revise the Site Plan Sheet A1. Add a note that states: Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.
<input type="checkbox"/>	23	(New Issue) Revise the cover sheet G001. In lieu of the Storm water notes for construction BMPs, Add a note that states: Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.
		(New Issue)

For questions regarding the LID Report or Review, please call Tamaros at (619) 445-1101. Project Nbr: 520805 / G70033

Firouzeh Tirandazi 446-5325

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<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	24	Additional comments may be recommended pending further review of any redesign of this project. These comments are not exclusive. Should you have any questions or comments, please call Jeff Tamaras at 619 448-5119.

(New Issue)

For questions regarding the DR Engineering Review, please call Jeff Tamaras at (619) 448-5119. Project Nbr: 620608 / Cycle: 31

Flrouzeh Tirandazi 448-5325

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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Reviewing Discipline: LDR-Transportation Dev
Reviewer: Kheigh, Kamran
(619) 446-5357
kheighk@sandiego.gov
Hours of Review: 5.00
Next Review Method: Submitted (Multi-Discipline)

Submitted: 03/10/2017
Cycle Distributed: 03/13/2017
Assigned: 03/14/2017
Started: 04/11/2017
Review Due: 04/11/2017
Completed: 04/11/2017
Closed: 05/19/2017

Deemed Complete on 03/13/2017
COMPLETED ON TIME

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Transportation Dev on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 5 outstanding review issues with LDR-Transportation Dev (all of which are new).
- Last month LDR-Transportation Dev performed 47 reviews, 91.5% were on-time, and 39.0% were on projects at less than < 3 complete submittals.

4/17 Review:

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	PROJECT-The proposed project is a Conditional Use Permit (CUP) for a Medical Marijuana Consumer Cooperative (MMCC) at 6176 Federal Boulevard. Applicant is proposing to demolish the existing approximately 2,067 sq. ft. building and operate the proposed MMCC within a new 1,955 sq. ft. building on a 6,049 sq. ft. lot in CO-2-1 zone within Encanto Community Plan Area based on the submitted plans. (New Issue)
<input type="checkbox"/>	2	TRIP GENERATION-The proposed 1,955 sq. ft. MMCC is expected to generate approximately 78 average weekday trips (ADT), with 2 AM peak hour trips and 7 PM peak hour trips based on the rate of 40 ADT/1000 sq. ft. A transportation impact analysis is not required. To estimate the existing trips to this site, please identify all the existing uses, their size, and occupancy on the plans. (New Issue)
<input type="checkbox"/>	3	PARKING EXEMPTION ON LOTS LESS THAN 10,000 SQ. FT.-Section 142.0540(a) and Table 142.05H of SDMC allow exemptions to the parking regulations for commercial uses on lots less than 10,000 sq. ft. in size that existed prior to January 1, 2000. This section has two provisions for small lots with and without alley access. Such lots without alley access would not have any parking requirements. Accordingly, based on current regulations, there is no parking requirement for commercial uses on the 7,361 sq. ft. lot. (New Issue)
<input type="checkbox"/>	4	PLANS/PARKING- The minimum parking stall dimensions and aisle width should comply with the SDMC section 142.0560. Parking aisles that do not provide through circulation shall provide a turnaround area at the end of the aisle that is clearly marked to prohibit parking and that has a minimum area equivalent to a parking space per SDMC 142.0560(d)(3). Please revise plans to provide and call out this requirement. (New Issue)
<input type="checkbox"/>	5	FRONTAGE-Plans should show and dimension the existing versus the proposed property lines to curb lines distances, sidewalk and its width on the fronting street. A typical street cross-section drawing with dimensions should also be included on the plans. (New Issue)

For questions regarding the LDR-Transportation Dev review, please call Kamran Kheigh at (619) 446-5357 or Project No. 9205087.04.1018
Firouzeh Tirandazi 446-5325

p2k v 02.03.38

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Reviewing Discipline: Community Planning Group
Reviewer: Tirandazi, Firouzeh
(619) 446-5325
ftirandazi@aandiego.gov
Hours of Review: 0.20
Next Review Method: Submitted (Multi-Discipline)

Submitted: 03/10/2017
Cycle Distributed: 03/13/2017
Assigned: 04/19/2017
Started: 04/19/2017
Review Due: 04/11/2017
Completed: 04/19/2017
Closed: 05/19/2017

Doomed Complete on 03/13/2017
COMPLETED LATE

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for Community Planning Group on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 2 outstanding review issues with Community Planning Group (all of which are new).
- Last month Community Planning Group performed 55 reviews, 45.5% were on-time, and 45.5% were on projects at less than < 3 complete submittals.

1st Review

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	Please contact the Chair for the Encanto Neighborhoods Community Planning Group, (as identified in the assessment letter) to make arrangements to present your project for review at their next available meeting. This Community Planning Group is officially recognized by the City as a representative of the community, and an advisor to the City in actions that would affect the community. The Development Services Department has notified the group of your request and has sent them a copy of your project plans and documents. (New Issue)

Encanto

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	2	Please contact the Chair for the Encanto Neighborhoods Community Planning Group, (as identified in the assessment letter) to make arrangements to present your project for review at their next available meeting. This Community Planning Group is officially recognized by the City as a representative of the community, and an advisor to the City in actions that would affect the community. The Development Services Department has notified the group of your request and has sent them a copy of your project plans and documents. (New Issue)

For questions regarding the Community Planning Group review, please call Firouzeh Tirandazi at (619) 446-5325. Request Number: 6206067/070113
Firouzeh Tirandazi 446-5325

p2k v 02.03.36

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on** 03/13/2017
Reviewing Discipline: BDR-Structural
Cycle Distributed: 03/13/2017
Reviewer: Shadyab, Mohd
Assigned: 03/22/2017
(619) 446-5087
Started: 03/30/2017
mshadyab@sandiego.gov
Review Due: 04/11/2017
Completed: 03/30/2017 **COMPLETED ON TIME**
Closed: 05/19/2017
Hours of Review: 2.00
Next Review Method: Submitted (Multi-Discipline)

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- We request a 2nd complete submittal for BDR-Structural on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 12 outstanding review issues with BDR-Structural (all of which are new).
- Last month BDR-Structural performed 1251 reviews, 93.4% were on-time, and 85.8% were on projects at less than < 3 complete submittals.

Preliminary Review Comments

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	City of San Diego Building Code: Construction permit applications submitted and Deemed Complete on or after January 1, 2017 are required to comply with the new 2016 edition of State of California building codes, as well as adopted local amendments published in the San Diego Municipal Code. (New Issue)
<input type="checkbox"/>	2	Info Bulletin 513: Preliminary Review is not a comprehensive plan review, nor is it intended to replace the services provided by design professionals (architects, engineers, land use attorneys, code consultants, etc.). Through preliminary review, you can obtain general information on the regulations with which your project must comply and obtain interpretations on how the City will apply code provisions to specific situations. For detailed information please refer to Information Bulletin 513. (New Issue)
<input type="checkbox"/>	3	The following comments are only a partial list of issues discovered as a result of this discretionary review and responses to the specific questions asked. They are NOT to be construed as a complete list of corrections or a complete list of issues. Plans for recheck and responses to issues under this preliminary review need not be submitted and recheck will not be performed. (New Issue)
<input type="checkbox"/>	4	Sheet G001: Project Information: Proposed occupancy classification specified as "B" is not correct. The display, sale, and stock of marijuana, a merchandise, is classified as M-occupancy. Please see Section 309. The aggregate areas of "Storage" and "Processing" is greater than 10% x 1955 = 195.5 sq ft. Therefore not considered as incidental use as per CBC, Sec. 509. These spaces shall be classified as S-occupancy. Aggregate Office + Safe floor areas is less than 195.5 sq ft. therefore incidental use. This building shall be analyzed as a M/S mixed occupancy classification. Revise plan. (New Issue)
<input type="checkbox"/>	5	Site Accessibility: The accessible parking space shall be van-accessible complying with Sec. 11B-208.2.4. (New Issue)
<input type="checkbox"/>	6	Site Accessibility: Site arrival point: An accessible route from public street and side walk to the primary entry of the facility shall be provided. CBC, Section 11B-208. Plan as shown does not provide this required accessible route and therefore is not code compliant. Revise plan. (New Issue)
<input type="checkbox"/>	7	Site Accessibility: Show width, running slope, cross-slope, and surface finish of accessible routes on plan complying with applicable provisions of Sec. 11B-Division 4. Plans as shown do not specify these required information. (New Issue)
<input type="checkbox"/>	8	EV-Charging Stations: Construction shall comply with Section 5.108.5.3.1 or Section 5.108.5.3.2 of the 2016 California Green Building Standards Code (CGBSC) to facilitate future installation of Electric Vehicle Supply Equipment (EVSE). When EVSE(s) is/are installed, it shall be in accordance with the governing California Building Code, and the California Electrical Code as specified in Section 5.108.5.3 of Chapter 6 of the CGBSC (Nonresidential Mandatory Measures). This information must be shown and identified on plans. (New Issue)
<input type="checkbox"/>	9	Accessible EVCS: Provide one van-accessible parking space with loading/unloading access also for EVCS. Please see Section 11B-228.3 and 11B-812. Note that, this van-accessible EVCS is required in addition to the required van-accessible parking space. Show this required accessible EVCS parking space with its access also and other associated specifications on plans. (New Issue)
<input type="checkbox"/>	10	Site Accessibility: Sheet A102: Show detectable warning along the entire length of the "Entry Walkway" complying with Section 11B-247.1.2.5. The "Entry Walkway" adjoins the parking vehicular way. (New Issue)
<input type="checkbox"/>	11	Parapets: Sheet A201: Provide 30 inches high parapets on the exterior walls of the building located on or adjacent to property lines on three-sides complying with the applicable provisions of Sec. 705.11. Plan as shown is not code compliant. Revise plan. (New Issue)
<input type="checkbox"/>	12	/// End of Preliminary Review Comments. (New Issue)

For questions regarding the BDR-Structural review, please call Mohd Shadyab at (619) 446-5087. Project No: 5208087/06/16/17
Frouzeh Tirandazi 446-5325

p2k v 02.03.38

Cycle Issues



THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

5/19/17 5:14 pm

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L64A-003A

Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on** 03/13/2017
Reviewing Discipline: Fire-Plan Review
Cycle Distributed: 03/13/2017
Reviewer: Sylvester, Bronda
Assigned: 03/16/2017
(619) 446-5449
Started: 04/13/2017
bsylvester@sandiego.gov
Review Due: 04/11/2017
Completed: 04/13/2017 **COMPLETED LATE**
Hours of Review: 0.50
Closed: 05/19/2017
Next Review Method: Submitted (Multi-Discipline)

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- We request a 2nd complete submittal for Fire-Plan Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Last month Fire-Plan Review performed 25 reviews, 40.0% were on-time, and 77.3% were on projects at less than < 3 complete submittals.

Fire Department Issues

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	1	No corrections or issues based on this submittal. (New Issue)

For questions regarding the Fire-Plan Review, please call Brenda Sylvester at (619) 446-5449. Project ID: L64A-003A / Cycle 3

Flrouzah Tirandazi 446-5325

p2k v 02.03.38

Cycle Issues



THE CITY OF SAN DIEGO
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L64A-003A

Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Reviewing Discipline: LDR-Geology
Reviewer: Mills, Krog
(619) 446-5295
Krmills@sandiego.gov

Submitted: 03/10/2017 Deemed Complete on 03/13/2017
Cycle Distributed: 03/13/2017
Assigned: 03/15/2017
Started: 04/08/2017
Review Due: 04/11/2017
Completed: 04/08/2017 COMPLETED ON TIME
Closed: 05/19/2017

Hours of Review: 2.00

Next Review Method: Submitted (Multi-Discipline)

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for LDR-Geology on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 7 outstanding review issues with LDR-Geology (all of which are new).
- Last month LDR-Geology performed 87 reviews, 82.8% were on-time, and 77.0% were on projects at less than < 3 complete submittals.

520606-3 (4/8/2017)

REFERENCES:

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	Development Plans, 6178 Federal Boulevard, San Diego, California 92114, prepared by Techna, dated February 22, 2017 (their project no. 1626); Topographic Survey prepared by Lundstrom Engineering and Surveying, Inc., dated October 18, 2016 (their file no. L222-02)

(New Issue)

COMMENTS:

- | Cleared? | Issue Num | Issue Text |
|--------------------------|-----------|---|
| <input type="checkbox"/> | 2 | The project site is located in geologic hazard category (GHC) 32 as shown on the City's Seismic Safety Study Geologic Hazard Maps. GHC 32 is characterized by a potential for liquefaction and ground failure. Submit a geotechnical investigation report that addresses liquefaction potential of the site and potential consequences of soil liquefaction on the proposed project. For information regarding geotechnical reports, consider reviewing the City's Guidelines for Geotechnical Reports (https://www.sandiego.gov/sites/default/files/legacy/development-services/pdf/industry/geoguidelines.pdf). |
| <input type="checkbox"/> | 3 | (New Issue)
The geotechnical investigation report must contain a site-specific geologic/geotechnical map that shows the distribution of fill and geologic units, location of exploratory excavations, location of cross-sections, and proposed construction. Circumscribe the limits of anticipated remedial grading on the geologic/geotechnical map to delineate the proposed footprint of the project. |
| <input type="checkbox"/> | 4 | (New Issue)
The geotechnical investigation report should contain representative geologic/geotechnical cross sections that show the existing and proposed grades, distribution of fill and geologic units, groundwater conditions, and proposed construction. |
| <input type="checkbox"/> | 5 | (New Issue)
The project's geotechnical consultant should provide a conclusion regarding if the proposed development will destabilize or result in settlement of adjacent property or the right of way. |
| <input type="checkbox"/> | 6 | (New Issue)
The project's geotechnical consultant should provide a statement as to whether or not the site is suitable for the intended use. |
| <input type="checkbox"/> | 7 | (New Issue)
Storm Water Requirements for the proposed conceptual development will be evaluated by LDR-Engineering review. Priority Development Projects (PDPs) may require an investigation of storm water infiltration feasibility in accordance with the Storm Water Standards (including Appendix C and D). Check with your LDR-Engineering reviewer for requirements. LDR-Engineering may determine that LDR-Geology review of a storm water infiltration evaluation is required. |

(New Issue)

For questions regarding LDR-Geology review, please call KRMills at (619) 446-5295 or Project No: 520606 / GY01037

Flrouzah Tirandazi 446-5325

p2k v 02.03.38

Cycle Issues



THE CITY OF SAN DIEGO
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1222 First Avenue, San Diego, CA 92101-4154

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L64A-003A

Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on:** 03/13/2017
Reviewing Discipline: Plan-Historic
Cycle Distributed: 03/13/2017
Reviewer: Pekarek, Camille
Assigned: 03/13/2017
(619) 236-7173
Started: 04/11/2017
CLPekarak@sandiego.gov
Review Due: 04/11/2017
Completed: 04/11/2017 **COMPLETED ON TIME**
Hours of Review: 0.50
Closed: 05/19/2017
Next Review Method: Submitted (Multi-Discipline)

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for Plan-Historic on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 5 outstanding review issues with Plan-Historic (all of which are new).
- Last month Plan-Historic performed 322 reviews, 98.6% were on-time, and 98.4% were on projects at less than < 3 complete submittals.

4-11-2017

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	1	The property located at 6176 Federal Boulevard is not an individually designated resource and is not located within a designated historic district. However, San Diego Municipal Code Section 143.0212 requires City staff to review all projects impacting a parcel that contains a structure 45 years old or older to determine whether a potentially significant historical resource exists on site prior to issuance of a permit. (Info Only, No Response Required) (New Issue)
<input checked="" type="checkbox"/>	2	During this review buildings are evaluated for eligibility under local designation criteria. The designation criteria and guidelines for their application can be found on the City's website: http://www.sandiego.gov/planning/programs/historical/pdf/201102criteriaguidelines.pdf (Informational Only; No Response or Action Required) (New Issue)
<input checked="" type="checkbox"/>	3	More information regarding this review process can be found in Information Bulletin 580: http://www.sandiego.gov/development-services/pdf/industry/infobulletin/b580.pdf (Informational Only; No Response or Action Required) (New Issue)
<input checked="" type="checkbox"/>	4	If City staff determines after review of these documents that no potentially significant historical resource exists on site, the parcel will be exempt from further historical review for five years from this date unless new information is provided that speaks to the building's eligibility for designation. (Informational Only; No Response or Action Required) (New Issue)
<input checked="" type="checkbox"/>	5	If City staff determines that a potentially significant historical resource exists on the site, all modifications and additions will be evaluated to determine consistency with the Secretary of the Interior's Standards for Treatment of Historic Properties (Standards). If the proposed project is consistent with the Standards, the permit process may proceed and the parcel will require additional review for all future modifications. (continued...) (New Issue)
<input checked="" type="checkbox"/>	6	(...continued) If the proposed project is not consistent with the Standards, the applicant may redesign the project or prepare a historic report that evaluates the building's integrity and eligibility under all designation criteria. (Informational Only; No Response or Action Required) (New Issue)
<input checked="" type="checkbox"/>	7	Staff has reviewed the photos; Assessor's Building Record; water and sewer records; written description of the property and alterations; as well as any available historic photographs; and Sanborn maps. In addition, staff has considered any input received through applicable public notice and outreach and have made the following determination: (New Issue)
<input type="checkbox"/>	8	Staff cannot make a determination with the information provided please provide the following documents: (New Issue)
<input type="checkbox"/>	9	Discretionary projects are required to submit all documentation identified in Information Bulletin 580, Section II.D. Please review the Bulletin and provide all documentation not provided with this submittal, including: (New Issue)

For questions regarding the Plan-Historic review, please call Camille Pekarek at (619) 236-7173. Project No: L64A-003A/Cycle: 3

Flouze Tkrandazi 446-5325

p2k v 02.03.38



Cycle Issues

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Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	10	Notice of Completion - typically provided as part of a chain of title search. It can also be found at the County Administration Center, 1600 Pacific Highway, Room 103, San Diego CA 92101. Please provide a written statement if a Notice of Completion cannot be located. (New Issue)
<input type="checkbox"/>	11	Chain of Title - available through title search companies or by conducting research at the County Administration Center. The Chain of Title must be in tabular format, listing the property's conveyance from seller to buyer (with date) since construction (1951) through the present day. Please note that deed copies do not satisfy this requirement. (New Issue)
<input type="checkbox"/>	12	City Directory listing of occupants - available in the City Directories at the San Diego Public Library, or San Diego Historical Society Archives. The tabular listing of occupants must account for all years from the time of construction to the present. If the property is vacant or not listed for a particular year(s), please note it as such. Please note that copies of directory pages does not satisfy this requirement. (New Issue)

For questions regarding the Plan History Review, please call Camille Pekar at (619) 236-7173. Project No. 1520606 / Cycle 8

Firouzeh Tirandazi 446-5325

p2k v 02.03.38



Cycle Issues

THE CITY OF SAN DIEGO
Development Services Department
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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)	Submitted: 03/10/2017	Deemed Complete on: 03/13/2017
Reviewing Discipline: Plan-Facilities Financing	Cycle Distributed: 03/13/2017	
Reviewer: Sheffield, Megan	Assigned: 03/16/2017	
(619) 533-3672	Started: 03/22/2017	
MShoffield@eandiego.gov	Review Due: 04/11/2017	
Hours of Review: 2.50	Completed: 05/09/2017	COMPLETED LATE
Next Review Method: Submitted (Multi-Discipline)	Closed: 05/19/2017	

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- We request a 2nd complete submittal for Plan-Facilities Financing on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Last month Plan-Facilities Financing performed 130 reviews, 96.9% were on-time, and 85.3% were on projects at less than < 3 complete submittals.

New Issue Group (2770523)

Cleared?	Num	Issue Text
<input checked="" type="checkbox"/>	1	Impact fees are not assessed on Conditional Use Permits. (New Issue)

For questions regarding the Plan-Facilities Financing review, please call Megan Sheffield at (619) 533-3672 or email at MShoffield@eandiego.gov. Project ID: 620606/Cycle 16

Firouzeh Tirandazi 448-5326

p2k v 02.03.38

Cycle Issues



THE CITY OF SAN DIEGO
Development Services Department
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L64A-003A

Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on:** 03/13/2017
Reviewing Discipline: PUD-Water & Sewer Dev
Cycle Distributed: 03/13/2017
Reviewer: Purdy, Jay
Assigned: 03/13/2017
(619) 446-5458
Started: 03/16/2017
JPurdy@sandiego.gov
Review Due: 04/11/2017
Completed: 03/16/2017 **COMPLETED ON TIME**
Hours of Review: 3.00
Closed: 05/19/2017
Next Review Method: Submitted (Multi-Discipline)

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submittal for PUD-Water & Sewer Dev on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 4 outstanding review issues with PUD-Water & Sewer Dev (all of which are new).
- Last month PUD-Water & Sewer Dev performed 167 reviews, 95.2% were on-time, and 71.3% were on projects at less than < 3 complete submittals.

New Issue Group (2765140)

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	1	Water and sewer capacity charges will be calculated at the time of building permit issuance. Capacity charges, as well as service and meter size, are determined by the Water Meter Data Card which is completed during the building plan review process. Any questions regarding water and sewer capacity fees should be addressed to Information and Application Services (619-446-5000).
<input checked="" type="checkbox"/>	2	(New Issue) [Recommended] All water services to the site (excepting single family domestic service lines, and single family domestic/fire combined service lines where the residential fire sprinkler system utilizes passive purge design) must pass through a private above ground back flow prevention device (BFPD).
<input checked="" type="checkbox"/>	3	(New Issue) [Recommended] Please direct any questions you may have regarding the information, comments or conditions contained in this review to Jay Purdy via email at jpurdy@sandiego.gov.

(New Issue) [Recommended]

New Issue Group (2765166)

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	4	On the Site Plan (EXHIBIT A), please locate and label all existing and proposed public ROWs, water, sewer, and general utility easements which lie on or adjacent to the property under review. If there are no water, sewer, or general utility easements associated with the property under review, please so state in the Water & Sewer Notes on the Site Plan. If the development will include the abandonment of an existing easement, please make this clear in the easement's label on the Site Plan.
<input type="checkbox"/>	5	(New Issue) On the Site Plan (EXHIBIT A), within that portion of any public ROW or public easement which lies on or adjacent to the property under review, please locate and label all existing and proposed water and sewer facilities both public and private (e.g. mains, meters, services, BFPD's, FH's, CO's, MH's, etc...). Please ensure that labels for existing public water and sewer mains include the City const. dwg. ref. #, pipe dia., and pipe material. BFPDs are to be located above ground, on private property, in line with the service, and immediately adjacent to the right-of-way.
<input type="checkbox"/>	6	(New Issue) On the Site Plan (EXHIBIT A), please show and label the existing water service(s) as "TO BE KILLED AT THE MAIN" or "TO BE RETAINED AND REUSED", please also show and label the existing sewer service(s) as "TO BE ABANDONED AT THE PROPERTY LINE" or "TO BE RETAINED AND REUSED".
<input type="checkbox"/>	7	(New Issue) On both the Site Plan (EXHIBIT A) and Landscape Plan, please include the following note: NO TREES OR SHRUBS WHOSE HEIGHT WILL 3' AT MATURITY SHALL BE INSTALLED OR RETAINED WITHIN 6' OF ANY PUBLICLY MAINTAINED WATER FACILITIES OR WITHIN 10' OF ANY PUBLICLY MAINTAINED SEWER FACILITIES.

(New Issue)

For more information regarding the PUD-Water & Sewer Dev review, please call Jay Purdy at (619) 446-5456. Project ID: 1620606 / Cycle 013

Flouzeh Tirandazi 446-5325

p2k v 02.03.38

Cycle Issues



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Review Information

Cycle Type: 3 Submitted (Multi-Discipline)
Submitted: 03/10/2017 **Deemed Complete on:** 03/13/2017
Reviewing Discipline: LDR-Landscaping
Cycle Distributed: 03/13/2017
Reviewer: Nerl, Daniel
Assigned: 03/15/2017
(619) 687-5967
Started: 04/11/2017
Dnerl@sandiego.gov
Review Due: 04/11/2017
Completed: 04/11/2017 **COMPLETED ON TIME**
Hours of Review: 8.00
Closed: 05/19/2017
Next Review Method: Submitted (Multi-Discipline)

- The review due date was changed to 05/17/2017 from 04/14/2017 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 2nd complete submitted for LDR-Landscaping on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 12 outstanding review issues with LDR-Landscaping (all of which are new).
- Last month LDR-Landscaping performed 45 reviews, 87.0% were on-time, and 45.2% were on projects at less than < 3 complete submittals.

1st Review - 4/11/2017

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	1	Street Trees [142.0409]: Tree species shall be selected from the Neighborhood Street Tree list as shown in the Encanto Community Plan. Acceptable species include: Platanus racemosa, Jacaranda mimosifolia, Callistemon citrinus, and Olea europaea "Swan Hill". (New Issue)
<input type="checkbox"/>	2	Street Yard - Planting Area Provided (Sht. LDP-1): Street Yard planting area required is 923-s.f. and planting area provided is 791-s.f. for a planting area deficit. Applicant has provided a note indicating that the grasscrete area in spaces 7-10 will make up the balance, however it is unclear what the square footage of the grasscrete area is. Please address. Furthermore, the excess planting points provided is only 5-pts which would only allow a 5-sq.ft. reduction in provided planting area. Please clarify.
<input type="checkbox"/>	3	(New Issue) Street Yard - Planting Points Required (Sht. LDP-1): Street Yard calculations for planting points required should read "185": (3690-s.f. x .05-pts/s.f. = 185 pts).
<input type="checkbox"/>	4	(New Issue) Street Yard - Excess Points Provided (Sht. LDP-1): Excess points provided is 8 pts. (190 pts. - 185 pts. = 5 pts.). Please correct.
<input type="checkbox"/>	5	(New Issue) Remaining Yard Calculations (Sht. LDP-1): Please remove "Remaining Yard" header under "Summary of Landscape Calculations." As demonstrated in the diagram, the project provides no Remaining Yard.
<input type="checkbox"/>	6	(New Issue) Remaining Yard Legend (Sht. LDP-1): Due to project observing Zero setback along the North/West/East facades, there is not Remaining Yard (as stated in the Landscape Area Diagram). Under the Planting Legend, please remove the heading for "Remaining Yard Area" and incorporate the plant material counts into the "Street Yard" heading.
<input type="checkbox"/>	7	(New Issue) Utilities (Sht. LDP-1): Please show and label sewer/water/storm drain lateral lines in ROW and through site.
<input type="checkbox"/>	8	(New Issue) Vehicular Use Area Protection [142.0406(b)]: All VUA planting areas shall be protected from vehicular damage by providing a raised curb or wheel stop of at least 6-inches. Please show on plans.
<input type="checkbox"/>	9	(New Issue) VUA Screening [142.0406(c)]: In the planting area adjacent to the ROW, project shall provide shrubs that achieve a minimum height of 30-inches to screen the VUA. Please provide such shrub plantings between the ROW and the VUA.
<input type="checkbox"/>	10	(New Issue) VUA Points provided (Sht. LDP-1): The VUA Planting Points Provided is inconsistent between the Planting Legend Totals and the Calculation Totals. Please address.
		(New Issue)

For questions regarding the LDR-Landscaping review, please call: Daniel Nerl (619) 687-5967. Project Number: 520606 / Cycle: 3
Firouzeh Tirandazi 448-5325

p2k v 02.03.38



5/19/17 5:11 pm

Submittal Requirements

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

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L64A-001

Project Information

Project Nbr: 520606 Title: Federal Blvd MMCC
Project Mgr: Tirandazi, Firouzeh (619)448-5325 tlrandazi@sanidago.gov

Review Cycle Information

Review Cycle: 8 Submitted (Multi-Discipline)

Opened: 05/19/2017 5:05 pm
Due:Submitted:
Closed:

Required Documents:

Package Type

Drainage/Hydrology Study
Climate Action Plan Consistency Checklist
Development Plans
Storm Water

Historic Resource Information

Geotechnical Reports

Medical Marijuana Radius Map/Spreadsheet

Water Quality Study

Pkg Qty Document Type

2	Drainage Study
2	Climate Action Plan Consistency Checklist
10	Site Development Plans
3	Storm Water Req. Applicability Checklist (DS-580)
1	Historic Resource Information
2	Geotechnical Investigation Report
2	Medical Marijuana Radius Map/Spreadsheet
2	Water Quality Study

Qty Needed

2

2

10

3

1

2

2

2

Firouzeh Tirandazi 448-5326

p2k v02.03.38

Exhibit 9

< Larry Geraci
8589564040



SMS/MMS

Wednesday, January 4, 2017

L

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 Get better and ttyl

Thursday, January 5, 2017

8:52 AM Any better?

Friday, January 6, 2017

8:40 AM Can you call me. If for any
reason you're not moving
forward I need to know.

L

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?

10:46 AM

L

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

10:47 AM

10:47 AM Thx

That sounds good. Can we
10:16 AM speak later?

(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

8:25 AM

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

8:50 AM

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

10:04 AM

Friday, March 3, 2017

12:16 PM Did you get my email?

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

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

12:17 PM

Monday, March 6, 2017

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

4:30 PM

Tuesday, March 7, 2017

(L) Just sent the contract over

12:05 PM

12:10 PM Ill look it over tonight

Thursday, March 16, 2017

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

4:47 PM

Friday, March 17, 2017

(L) Can we meet tomorrow

11:44 AM

Enter message



Exhibit 10

September 22, 2017

VIA U.S. AND ELECTRONIC MAIL

Ms. Firouzeh Tirandazi
Development Project Manager II
Development Services Department
1222 First Avenue, MS 301
San Diego, California 92101-4101
ftirandazi@sandiego.gov

Re: 6176 Federal Boulevard - Project 520606 Conditional Use Permit

Dear Ms. Tirandazi:

We represent Darryl Cotton, the record owner of 6176 Federal Boulevard ("Property") that is the subject of the application ("Project 520606") to obtain a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC").

As set forth below, Rebecca Berry has no legal basis to be listed in any capacity on Project 520606. Therefore, we demand the City either: (1) remove Ms. Berry from Project 520606 and process the application for Mr. Cotton; or (2) commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner.

I. Remove Ms. Berry From Project 520606

- a. Mr. Cotton is the record owner of the Property.¹
- b. Ms. Berry submitted the General Application (Form DS-3032) for Project 520606 as "an other person having a legal right, interest, or entitlement to the use of the property" pursuant to Municipal Code section 112.0102. She further submitted the Ownership Disclosure Statement (DS-318) as "Tenant/Lessee."
- c. Ms. Berry is not currently, and never has been, a Tenant/Lessee of the Property nor does she have any other legal right, interest, or entitlement to the use of the Property.
- d. Until reviewing a recently obtained copy of the application via a Public Records Act Request, Mr. Cotton had no knowledge that the Ownership Disclosure Statement (DS-318) contained a statement that Ms. Berry claimed an interest in the Property as a Tenant/Lessee.
- e. Municipal Code section 126.0302 provides that the privileges and conditions of a CUP are a covenant that runs with the land and, in addition to binding the permittee, bind each successor in interest. Further, a variance for the use of property in a particular manner is not personal to the owner at the time of the grant, but is available to any subsequent owner, until it expires according to its terms or is effectively revoked, and this is true, even though the original owner did not act on it. (See *Cohn v. County Bd. of Sup'rs of Los Angeles County* (1955) 135 Cal.App.2d 180, 184.)

¹ Record owner means the owner of real property as shown on the latest equalized property tax assessment rolls of the San Diego County Assessor (SDMC § 113.0103).

In sum, Ms. Berry cannot produce any evidence of a legal right, interest, or entitlement to the use of the Property confirming her interest in the Property. Therefore, she must be removed from Project 520606 and replaced by Mr. Cotton as record owner.

2. Accept Second Application

If the City nevertheless continues to recognize Ms. Berry as the Applicant for Project 520606 in her capacity as Tenant/Lessee, then we demand the City commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner. We understand the City recently refused Mr. Cotton's request to process a separate, parallel CUP application on the Property. This refusal is not supported by any provision of the Municipal Code.

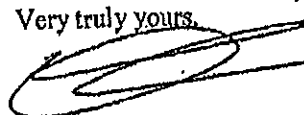
An application may be filed by any person that can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application. (SDMC § 112.0102.) Where there is a dispute over who has a right to the use of the property, the City must necessarily allow for multiple, separate applications from those parties to the dispute until the dispute has been resolved.

Indeed, the City's refusal to accept a separate, parallel CUP application directly conflicts with our own experience with Project 370687 and Project 421373, the second of which was submitted upon the City's advice and accepted for review while the first had already been approved by the Hearing Officer. In Project 370687, the property owner's authorized agent submitted a CUP application on behalf of the property owner. A dispute arose between the property owner and the authorized agent over who had the right to the CUP application. The property owner was forced to file a petition for writ of mandate against the City to replace the authorized agent with the property owner, and the property owner prevailed. (See *Engelbreisen v. City of San Diego* (2015) 37-2015-00017734-CU-WM-CTL.) While the lawsuit to determine who had the right over the CUP application was pending, the City allowed the property owner to submit his own CUP application for the same property in his capacity as property owner.

3. Conclusion

We demand the City either: (1) remove Ms. Berry from Project 520606 and process the application for Mr. Cotton; or (2) commit to accepting Mr. Cotton's separate, parallel application for a CUP on the Property in his capacity as record owner. We demand a response in writing by September 28, 2017. If we do not hear from you we will deem both of these requests to have been denied and will file a petition for writ of mandate with the Superior Court.

Very truly yours,



David S. Demian,
Partner

DSD:dsd/3BU080502

Exhibit 11

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

7 AUSTIN LEGAL GROUP, APC
3990 Old Town Ave., Ste. A112
San Diego, CA 92110
8 Telephone: (619) 924-9600
Fax: (619) 881-0045
9 gaustin@austinlegalgroup.com

10 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY
11

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN DIEGO, CENTRAL DIVISION

14 DARRYL COTTON, an individual,

15 Petitioner/Plaintiff,

16 v.

17 CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,

18 Respondents/Defendants.
19

20 REBECCA BERRY, an individual; LARRY
GERACE, an individual, and ROES 1 through
21 25,

22 Real Parties In Interest.
23
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25
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27
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Case No. 37-2017-00037675-CU-WM-CTL

Judge: Hon. Eddie Sturgeon

DECLARATION OF ABHAY
SCHWEITZER IN SUPPORT OF
OPPOSITION TO EX PARTE
APPLICATION FOR ISSUANCE OF AN
ALTERNATIVE WRIT OF MANDATE
OR FOR AN ORDER SETTING AN
EXPEDITED HEARING AND BRIEFING
SCHEDULE

[IMAGED FILE]

DATE: October 31, 2017
TIME: 8:30 a.m.
DEPT: C-67

Petition Filed: October 6, 2017
Trial Date: None

DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO PETITION FOR
ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING EXPEDITED
HEARING AND BRIEFING SCHEDULE

1 I, Abhay Schweitzer, declare:

2 1. I am over the age of 18 and am not a party to this action. I have personal knowledge of
3 the facts stated in this declaration. If called as a witness, I would testify competently thereto. I
4 provide this declaration in support of Real Parties in Interest Rebecca Berry and Larry Geraci's ("Real-
5 Parties") opposition to Petitioner/Plaintiff's request for the ex parte issuance of a writ of mandate or
6 for an order setting an expedited hearing and briefing schedule.

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

14 3. On or about October 4, 2016, Rebecca Berry hired my firm to provide design services
15 in connection with the application for a MMCC to be developed and built at the Property (the
16 "Project"). Those services included, but are not limited to, services in connection with the design of
17 the Project and application for a Conditional Use Permit (the "CUP").]

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

23 5. On or after October 31, 2016, I submitted the application to the City for a CUP for a
24 medical marijuana consumer cooperative to be located on the Property. The CUP application for the
25 Project was submitted under the name of applicant, Rebecca Berry, whom I was informed and believe
26 was and is an employee and agent of Larry Geraci. The submittal of the CUP application required the
27 submission of several forms to the City, including Form DS-318, that I am informed and believe was

1 signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and
2 correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 3 to Real Parties in
3 Interest Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of
4 Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing Schedule
5 (hereafter "RPINOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6 6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the
7 form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from
8 which to choose when checking - "Owner", "Tenant/Lessee" and "Redevelopment Agency". The
9 purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and*
10 *must be signed by all persons with an interest in the property.*

11 7. The CUP application process generally involves several rounds of comments from the
12 City in which the applicant is required to respond in order to "clear" the comment. This processing
13 involved substantial communication back and forth with the City, with the City asking for additional
14 information, or asking for changes, and our responding to those requests for additional information and
15 making any necessary changes to the plans. I have been the principal person involved in dealings with
16 the City of San Diego in connection with the application for a CUP. My primary contact at the City
17 during the process is and has been Flrouzdeh Tirandazi, Development Project Manager, City of San
18 Diego Development Services Department, tele (619) 446-5325, the person whom the City assigned to
19 be the project manager for our CUP application.

20 8. We have been engaged in the application process for this CUP application for
21 approximately twelve (12) months so far.

22 9. At the outset of the review process a difficulty was encountered that delayed the
23 processing of the application. The Project was located in an area zoned "CO" which supposedly
24 included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not
25 specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the
26 City passed a new regulation that amended the zoning ordinance to clarify that operating a medical
27 marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this

1 regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and
2 the City resumed its processing of the CUP application.

3 10. The CUP application for this Project has completed the initial phase of the process.
4 This initial phase was completed when the City deemed the CUP application complete (although not
5 yet approved) and determined the Project was located in an area with proper zoning. When this
6 occurred, as required, notice of the proposed project was given to the public as follows: First, on
7 March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for
8 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second,
9 the City mailed the Notice of Application to all properties within 300 feet of the subject property.
10 Third, as applicant we posted the Notice of Application at the property line as was required.

11 11. Since the completion of the initial phase of the process we have been engaged in
12 successive submissions and reviews and are presently engaged still in that submission and review
13 process. The most recent comments from the City were received on October 20, 2017. There is one
14 major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the
15 next six (6) weeks.

16 12. Once the City has cleared all the outstanding issues it will issue an environmental
17 determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination
18 ("NORA"). I expect the NORA to be issued sometime in late December 2017 or January 2018.

19 13. 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 in late January or
24 February 2018.

25 14. If the NORA is appealed it will be set for hearing before the City Council. It is my
26 opinion that the earliest an appeal of the NORA could be heard before the City Council would be mid-
27 January 2018. In all but one instance, the City Council has denied a NORA appeal related to a medical
28

1
2 marijuana CUP application. The one NORA appeal that was upheld is a project located in a flood
3 zone.

4 15. If there is a NORA appeal and such appeal is denied by the City Council, then the
5 earliest I would expect the CUP application to be heard by a hearing officer would be March 2018.

6 16. If there is a NORA appeal and it is upheld by the City Council, the City Council would
7 retain jurisdiction and the CUP application would be heard by the City Council for a final
8 determination at some point after the NORA appeal. In that case the earliest I would expect this to
9 occur would also be March 2018.

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

12 18. I have been notified by the City of San Diego that as of October 30, 2017, there has been
13 no other CUP Application submitted concerning on the property.

14
15 I declare under penalty of perjury under the laws of the State of California, that the foregoing is
16 true and correct. Executed this 30th day of October, 2017.

17
18 Dated: 10/30/2017


19 ABHAY SCHWEITZER
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DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO PETITION FOR
ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING EXPEDITED
HEARING AND BRIEFING SCHEDULE

Exhibit 12

Development Services Department

Invoice #806763

Invoice Information

Status	Involved
Issued on	10/20/2017
Issued by	Tirandazi, Firouzeh
Customer	Berry, Rebecca
Firm	
Paid	

Invoice Details

Project #520606 (/Web/Projects/Details/520606) – Federal Blvd MMCC	Project Subtotal \$6,000.00
---	---------------------------------------

Cac, Cherlyn (619)236-6327

Project Fees

Project Fees Subtotal	\$6,000.00
-----------------------	-------------------

Deposit Account	14245 Dollars	\$14,245.00
Deposit Account	8245 Dollars	(\$8,245.00)

Invoice Total	\$6,000.00
---------------	-------------------

Pay Now

Invoice Revenue

Fund	Revenue Account	Amount
DEPOSITS	PLANNING SUBDIVISION DPST	\$6,000.00

Upon payment of any Development Impact Fees (DIF), Regional Transportation Congestion Improvement Program (RTCIP), or Facilities Benefit Assessment (FBA) fees, the 90-day protest period in which you may protest these fees under Government Code section 66020 will begin. A written protest must be filed with the City Clerk pursuant to Government Code section 66020. The protest procedures under section 66020 are additional to other procedures authorized or required under the San Diego Municipal Code. Please contact Facilities Financing at 619-633-3670 to request additional information.

Data TimeStamp: 12/05/2017 19:34:47

Invoice FAQ (<https://www.sandiego.gov/development-services/opensd/invoices.shtml>)



Withdrawal

Darryl Cotton <indagrodarryl@gmail.com>
To: "David S. Demian" <ddemian@ftblaw.com>
Cc: [REDACTED]

Thu, Dec 7, 2017 at 12:32 PM

David,

I spoke with Joe and he informed me that you were not familiar with the points in the P&A for the TRO motion and that you did not raise them before the Court when they were directly on point and necessary to be raised as a response to Weinstein's arguments. Further, that the attorney for the City explicitly told you right after you walked out of the hearing that we should have won based on the moving papers!

Our relationship is terminated, but I need it to be clear that it is based on your performance today at the hearing. Joe is already looking for new counsel to represent me and we will be submitting a motion for reconsideration with the Court.

- Darryl

On Thu, Dec 7, 2017 at 11:33 AM, David S. Demian <ddemian@ftblaw.com> wrote:

Gentlemen: Per my discussion with Joe post-hearing and my voice mail to Darryl it is apparent our withdrawal from the case is the next step. I will be sending the consent form and filing and preparing the file for your delivery. You should immediately seek advice of new counsel.

Please call at any time with questions.

David

David S. Demian *Partner*

Finch, Thornton & Baird, LLP Attorneys At Law

4747 Executive Drive, Suite 700 San Diego, CA 92121

T 858.737.3100 D 858.737.3118 M 858.245.2451 F 858.737.3101

ftblaw.com Bio LinkedIn

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Darryl Cotton <indagroddarryl@gmail.com>

Agreement

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

Wed, Nov 2, 2016 at 8:13 PM

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: 619.462.2244
Cell: 619.954.4447
Skype: dc.dalbercia6176 Federal Blvd.
San Diego, CA. 92114
USA

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[Quoted text hidden]

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbef73f&view=pt&msg=1582864ae4d4e9...> 4/26/2017

GER0204

1 FERRIS & BRITTON
A Professional Corporation
2 Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
3 501 West Broadway, Suite 1450
San Diego, California 92101
4 Telephone: (619) 233-3131
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14 DARRYL COTTON, an individual,
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18 Respondents/Defendants.

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21 25,

22 Real Parties In Interest.

Case No. 37-2017-00037675-CU-WM-CTL

Judge: Hon. Eddie Sturgeon

DECLARATION OF ABHAY
SCHWEITZER IN SUPPORT OF
OPPOSITION TO EX PARTE
APPLICATION FOR ISSUANCE OF AN
ALTERNATIVE WRIT OF MANDATE
OR FOR AN ORDER SETTING AN
EXPEDITED HEARING AND BRIEFING
SCHEDULE

[IMAGED FILE]

DATE: October 31, 2017
TIME: 8:30 a.m.
DEPT: C-67

Petition Filed: October 6, 2017
Trial Date: None

DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO PETITION FOR
ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING EXPEDITED
HEARING AND BRIEFING SCHEDULE

1 I, Abhay Schweitzer, declare:

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15 next six (6) weeks.

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17 determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination
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22 recommendations regarding the issues on which the hearing officer must make findings. If there is no
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12 18. I have been notified by the City of San Diego that as of October 30, 2017, there has been
13 no other CUP Application submitted concerning on the property.

14
15 I declare under penalty of perjury under the laws of the State of California, that the foregoing is
16 true and correct. Executed this 30th day of October, 2017.

17
18 Dated: 10/30/2017


19 ABHAY SCHWEITZER
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EXHIBIT 7 [ROAs 264-266]

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/01/2018 at 01:18:00 PM
Clerk of the Superior Court
By Richard Day, Deputy Clerk

Attorney for Defendant/Cross-Complainant DARRYL COTTON

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

LARRY GERACI, an individual,
Plaintiff,
vs.

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

AND RELATED CROSS-ACTION.

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

**DARRYL COTTON'S *EX PARTE*
APPLICATION FOR AN ORDER (1)
CONTINUING TRIAL SCHEDULED
FOR AUGUST 17, 2018, AND (2) A STAY
OF THIS PROCEEDING**

Date: August 2, 2018
Time: 8:30 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on August 2, 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/Cross-Complainant DARRYL COTTON ("Defendant") will move this Court *ex parte* for an Order continuing the trial in this matter presently scheduled for August 17, 2018.

///

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1 This motion is brought by way of an *ex parte* application pursuant to California Rules of Court
2 (“CRC”) Rule 3.1332(b), and on the grounds that continuance of this is necessary and appropriate due
3 to (1) Defendant’s excused inability to conduct discovery and obtain other relevant material evidence
4 necessary for him to prepare for trial (CRC 3.1332(c)(6)), and a recent unanticipated events which have
5 operated to significantly change in the status of this case such that it is not, nor can it be, ready for trial
6 (CRC 3.1332(c)(7)).

7 This motion is based upon this *Ex Parte* Application, the accompanying Memorandum of Points
8 and Authorities, Declaration Jacob P. Austin, the pleadings and papers on file in this action, and upon
9 such other written and/or oral evidence as may be presented at the hearing of this *Ex Parte* Application.

10 DATED: August 1, 2018

THE LAW OFFICE OF JACOB AUSTIN

11
12
13 By 
14 JACOB P. AUSTIN
15 Attorney for Defendant/Cross-Complainant
16 DARRYL COTTON
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 A simple single question of law - whether or not a three-sentence document is a complete
4 integrated agreement pursuant to the parole evidence rule ("PER") - determines whether this Petition is
5 meritorious and warrants the issuance of a writ. That single question of law is not only dispositive of
6 both orders Petitioner is seeking review of, it is also the case-dispositive issue in the underlying suit.

7 Trial is scheduled for August 17, 2018. "Where there is no direct appeal from a trial court's
8 adverse ruling, and the aggrieved party would be compelled to go through a trial and appeal from a final
9 judgment, a petition for writ of mandate is allowed. (*Fogarty v. Superior Court* (1981) 117 Cal. App.
10 3d 316, 320.)" *Fair Employment & Housing Com. v. Superior Court* (2004) 115 Cal.App.4th 629, 633.

11 That single question of law based on undisputed facts determines whether the trial court has
12 consistently abused its discretion in finding whether a three-sentence document is or is not a completely
13 integrated agreement. This Court has repeatedly and continuously concluded that it is completely
14 integrated, despite directly contradicting and undisputed evidence. However, this Court has NEVER
15 provided its *reasoning* for doing so in contravention of directly applicable and well-established case
16 law.

17 On July 13, 2018, counsel for Defendant asked this Court to explain its reasoning for reaching
18 the conclusion the document is a completely integrated statement. The Court replied:

19 "You know, we've been down this road so many times, counsel. I've
20 explained and reexplained the Court's interpretation of your position. I
21 don't know what more to say."

22 This is a false statement. *The trial court has never provided its reasoning in any written order or at any*
23 *hearing at which oral argument has been held.* This Court is clearly exasperated with defendant and,
24 apparently now, counsel for defendant as well. If this Court would simply provide its reasoning for its
25 rulings, then this action could end now as Defendant would even be motivated to settle with Plaintiff if
26 the trial court's order were based on facts and law.

27 However, the last time this trial court mentioned the three-sentence document at issue here as a
28 basis for denying the relief Defendant requested, the trial court incorrectly stated in its order that the

1 single most crucial piece of evidence was created after the November 2 document. This is factually
2 untrue. It is untrue because in every moving paper with the Court Mr. Cotton has made it plain and clear
3 by bolding and/ or highlighting that the email sent to Geraci, where he asks for assurances that his
4 bargained for equity position would be included in a final agreement was sent and replied to on that very
5 day, **only hours after the signing of the November 2 document, was not** "created after November 2,
6 2016" as the Court states in its minute order. (See [ROA 222] Minute order April 13, 2018)

7 In *King v. Andersen*, 242 Cal. App. 2d 606 (1966), the plaintiff in an assault case admitted at
8 deposition that defendant used "no force." *Id.* at 609. When defendant moved for summary judgment
9 based on plaintiff's deposition concession, plaintiff submitted an affidavit in support of his opposition
10 saying, in fact, defendant had applied unnecessary force. *Id.* at 610. Plaintiff disputed the meaning
11 attributed to his deposition testimony by defendant and argued that the dispute must be submitted to the
12 jury. *Id.* at 609-10. The trial court disagreed and dismissed the case. The Court of Appeal affirmed. *Id.*
13 at 610. Plaintiff could not manufacture a dispute of fact by submitting additional affidavits. "Where, as
14 here, however, there is a clear and unequivocal admission by the plaintiff, himself, in his deposition . .
15 . we are forced to conclude there is no substantial evidence of the existence of a triable issue of fact."
16 *Id.* at 610 (emphasis in original).

17 Here, Geraci is attempting to do the same. Geraci sent a clear and unequivocal admission that
18 the November Document is not a final agreement on **November 2, 2016**. The procedural history of this
19 action shows that Geraci was relying on the PER/SOF to bar the admission of the Confirmation Email.
20 When confronted with *Riverisland* and *Tenzer*, in **April of 2018**, he submits a declaration saying he sent
21 the Confirmation Email by mistake, that Petitioner orally agreed the November Document is a final
22 agreement and that such dispute should be submitted to the jury. See Declaration of Larry Geraci in
23 Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens [ROA180]). Identical to
24 *King*, ***Geraci's self-serving declaration should not be considered substantial evidence and he should***
25 ***not be allowed to blatantly fabricate a material factual dispute to continue to prosecute a frivolous***
26 ***action.***

27 The Court may not agree with these facts or the application of law, but if this Court will not
28 provide its reasoning for its decision, it should at least, in the interest of justice, allow the Court of

1 Appeals to decide the writ to determine its merit. If this Court is wrong, the forced trial of this action
2 constitutes a miscarriage of justice. In *Fair Employment and Housing Commission v. Superior Court*
3 (2004) 115 Cal.App.4th 629, 633 the Court of Appeals stated that "Where there is no direct appeal from
4 a trial court's adverse ruling, and the aggrieved party would be compelled to go through a trial and appeal
5 from a final judgment, a petition for writ of mandate is allowed. Such a situation arises where the trial
6 court has improperly overruled a demurrer." This Court denied Defendant's motion for judgment on the
7 pleadings and, similar to *Fair Employment*, which recognizes extraordinary relief is required when the
8 trial court erred on a case-dispositive issue, the Court of Appeals will grant the appropriate relief if
9 this trial court has abused its discretion in continuously finding the three-sentence document is a
10 completely integrated agreement.

11 Again, this Court has never provided its reasoning for its rulings. Respectfully, if this court
12 would simply provide its reasoning, this action could end. If this court is not inclined, in the interest of
13 justice, this court should issue a stay while the Court of Appeals rules on the appropriateness of this trial
14 court's order on a case-dispositive issue.

15 **CONTINUATION OF THE TRIAL IN THIS MATTER IS NECESSARY BECAUSE**
16 **DEFENDANT WAS DEPRIVED OF SUFFICIENT TIME TO PREPARE FOR TRIAL**

17 When exercising its discretion in determining whether to grant a request to continue a trial, "he
18 court must look beyond the limited facts which cause a litigant to request a last-minute continuance and
19 consider the degree of diligence in his or her efforts to bring the case to trial, including participating in
20 earlier court hearings, conducting discovery, and preparing for trial." (*Link v. Carter* (1998) 60
21 Cal.App.4th 1315, 1324-1325.)

22 Although judicial efficiency is achieved by the trial court expediting and balancing its case loads,
23 "efficiency is not an end in itself" and the purpose of doing so is "*to promote the just resolution of cases*
24 *on their merits.*" (*Thatcher v. Lucky Stores* (2000) 79 Cal.App.4th 1081, 1085, *emphasis added.*)

25 Despite diligent efforts to do so, Defendant and his counsel are not prepared for trial. On April
26 27, 2018 following the hearing on Plaintiff's Motion for Monetary, Terminating/Escalating Sanctions,
27 **at the request of Plaintiff**, this Court continued the trial date in this matter from May 11, 2018 until
28

1 August 17, 2018, and extended the discovery cutoff to afford Plaintiff additional time to conduct
2 discovery.

3 In that same Order, this Court also directed Defendant to provide written responses to Plaintiff's
4 discovery request and to make himself available on a date certain within *ten days* of the date of the
5 Order.

6 Defendant provided full and complete written discovery responses and attended his deposition
7 as ordered. However, even assuming *arguendo* that Defendant would not have been required to spend
8 the next ten days following the April 27, 2018 hearing completing substantial written discovery
9 responses and preparing for and attending his deposition, the new trial date in and of itself effectively
10 precluded him from being afforded any reasonable amount of time to meet the numerous deadlines
11 associated with trial preparation.

12 The two deadlines which were most critical to Defendant's efforts to properly prepare for trial in
13 this case were those governing the time afforded to file a motion for summary judgment/ adjudication
14 and to propound discovery.

15 Specifically, Defendant was only afforded two calendar days within which to draft and mail
16 serve a summary judgment/adjudication motion (110 calendar days before trial – CCP §§437c, 1110),
17 and seven calendar days to draft and personally serve the motion (105 calendar days before trial – CCP
18 §437c) - a deadline even the most seasoned attorney with a large staff would have struggled to meet.
19 By being deprived of adequate – or even somewhat reasonable – time to prepare such a motion,
20 Defendant's only avenue was to bring a motion for judgment on the pleadings – an undertaking which
21 ultimately proved futile.

22 In addition, Defendant's ability to propound and serve written discovery in sufficient time to
23 enable him to file a motion to compel in the event such was necessary (100 calendar days before trial if
24 mail served – CCP §§2024, 2030, 2031, 2019. 1005, 1013) also was impeded since he would have been
25 required to serve the discovery no later than May 9, 2018 – 12 days after entry of the order, five days
26 before Defendant's deposition, and on the same day Defendant served his discovery responses.

27 Moreover, as the Court and opposing counsel will recall, it was not until April 5, 2018 that
28 Attorney Jacob Austin substituted into this case on a limited representation basis to assist Defendant in

1 the preparation of a motion to expunge the *lis pendens*, but did not substitute in to fully represent
2 Defendant until May 1, 2018 – four days *after* the order – following which he spent the next two weeks
3 assisting Defendant to complete his discovery responses and prepare him for his deposition.

4 In addition to the discovery responses and deposition preparation, Attorney Austin also was
5 required to assist Defendant in taking the steps necessary to preserve his appeals, and to prepare and
6 submit relevant, viable law and motion matters to this Court in addition to the motion for judgment on
7 the pleadings.

8 The Fourth District Court of Appeal in *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th
9 1389 opined that, "[t]he *Link* court concluded that the worthy goal of disposing of cases expeditiously
10 would not be met by 'imposing the ultimate sanction of termination on litigants who, due to unforeseen
11 circumstances and reasonable excuse, fail to appear when so ordered.'" (*Id.* at 1396; *Link, supra*, at
12 1326.) This reference to "imposing the ultimate sanction of termination" is directly applicable here
13 based upon the language of this Court's April 27, 2018 Minute Order.

14 The April 27, 2018 Minute Order at paragraph 1 states that the court granted Plaintiff's request
15 for the imposition of lesser sanctions [rather than terminating sanctions striking Defendant's Answer and
16 Cross-Complaint] to extend the trial and discovery deadlines "to permit Cotton one final chance to
17 provide the written discovery responses and make himself available for deposition on a date certain...."
18 In essence, notwithstanding the fact that Defendant fully complied with all terms of the April 27, 2018
19 Order, if this Court denies his request to continue the trial, it will effectively impose the ultimate sanction
20 of termination upon him by forcing him to trial without having afforded him the necessary time and
21 opportunity to properly prepare.

22 For the reasons set forth above and, particularly, because continuing this trial will not operate to
23 prejudice any other party to this action – with the exception of Defendant who will suffer severe
24 prejudice if this the trial is not continued – Defendant respectfully requests that this Court grant its
25 motion and continue the trial for at least 120 days.

26 **DEFENDANT SEEKING A PETITION TO REVIEW THE DENIAL OF**
27 **THIS MOTION FOR A JUDGMENT ON THE PLEADINGS**
28

1 The Court should grant Defendant a stay for the Court of Appeals to review this matter for the
2 following reasons:


3 Petitioner lacks adequate means, such as a direct appeal, by which to attain relief. *See Phelan v.*
4 *Superior Court* (1950) 35 Cal.2d 363, 370–372. The trial court’s order denying Petitioner’s MJOP is
5 non-appealable. And, although the denial the *Ex Parte* Application for a Receiver is appealable,
6 Petitioner’s extraordinary circumstances warrant extraordinary relief. *See Hogya v. Superior Court* (Ct.
7 App. 1977) 75 Cal.App.3d 122, 128 (“Where there is a right to an immediate review by appeal, that
8 remedy is considered adequate unless petitioner can show some special reason why it is rendered
9 inadequate by the particular circumstances of his case.”). Notwithstanding Petitioner’s blue-collar
10 background and his lack of legal education, on these undisputed facts, the trial court should have
11 adjudicated this matter on its own when presented with Petitioner’s evidence (even if done so in a legally
12 unsophisticated manner). It’s continuation is a miscarriage of justice and resolution via the standard
13 appeal process, given the trial court’s rulings, is not adequate.

14 Secondly Petitioner will suffer harm and prejudice in a manner that cannot be corrected on
15 appeal. *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652. The basis of Petitioner’s Ex
16 Parte Application for a Receiver was evidence that Geraci is taking steps to unlawfully sabotage a
17 conditional use permit (the “CUP”) that is being processed on the Property by the City of San Diego
18 (the “City”). As more fully described below, by sabotaging the CUP, Geraci is able to exponentially
19 limit his special and consequential damages to Petitioner.

20
21 DATED: August 1, 2018

THE LAW OFFICE OF JACOB AUSTIN

22
23 By


24 JACOB P. AUSTIN
25 Attorney for Defendant/Cross-Complainant
26 DARRYL COTTON
27
28

Jacob P. Austin [SBN 290303]
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County of San Diego

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By Richard Day, Deputy Clerk

Attorney for Defendant/Cross-Complainant DARRYL COTTON

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

LARRY GERACI, an individual,
Plaintiff,

vs.

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

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

**DECLARATION OF JACOB P. AUSTIN
IN SUPPORT OF DARRYL COTTON'S *EX*
PARTE APPLICATION FOR A STAY AND AN
ORDER CONTINUING TRIAL SCHEDULED
FOR AUGUST 17, 2018
(CRC Rules 3.1203 and 3.1204)**

AND RELATED CROSS-ACTION.

Date: August 2, 2018
Time: 8:30 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

I, Jacob P. Austin, declare as follows:

1. I am an attorney admitted to practice before this Court and all courts in the State of California, counsel of record for Defendant/Cross-Complainant Darryl Cotton ("Cotton"). I make this declaration in support of Cotton's *ex parte* application for a stay and an order continuing trial scheduled for August 17, 2018 pursuant to CRC Rules 3.1203 and 3.1204.

2. The facts set forth in this declaration is true and correct of my own personal knowledge, except for the information stated upon information and belief; and, as to those matters, I believe them to be true. If called upon as a witness, I could and would competently testify to the matters stated herein.

1 3. As ordered on April 27, 2018, Defendant provided full and complete written discovery
2 responses and attended his deposition as ordered. However, even assuming *arguendo* that Defendant
3 and I would not have been required to spend the next ten days following that hearing completing
4 substantial written discovery responses and preparing for and attending his deposition, the new trial date
5 in and of itself effectively precluded us from being afforded any reasonable amount of time to meet the
6 numerous deadlines associated with trial preparation.

7 4. The two deadlines which were most critical to Defendant's and my efforts to properly
8 prepare for trial in this case were those governing the time afforded to file a motion for summary
9 judgment/ adjudication and to propound discovery.

10 5. Specifically, Defendant and I were only afforded two calendar days within which to draft
11 and mail serve a summary judgment/adjudication motion (110 calendar days before trial – CCP §§437c,
12 1110), and seven calendar days to draft and personally serve the motion (105 calendar days before trial
13 – CCP §437c) - a deadline even the most seasoned attorney with a large staff would have struggled to
14 meet. By being deprived of adequate – or even somewhat reasonable – time to prepare such a motion,
15 my only avenue was to bring a motion for judgment on the pleadings – an undertaking which ultimately
16 proved futile.

17 6. In addition, Defendant's and my ability to propound and serve written discovery in
18 sufficient time to enable him to file a motion to compel in the event such was necessary (100 calendar
19 days before trial if mail served – CCP §§2024, 2030, 2031, 2019. 1005, 1013) also was impeded since
20 he would have been required to serve the discovery no later than May 9, 2018 – 12 days after entry of
21 the order, five days before Defendant's deposition, and on the same day we served his discovery
22 responses.

23 7. Moreover, as the Court and opposing counsel will recall, it was not until April 5, 2018
24 that I substituted into this case on a limited representation basis to assist Defendant in the preparation of
25 a motion to expunge the *lis pendens*, but I did not substitute in to fully represent Defendant until May 1,
26 2018 – four days *after* the order – following which I spent the next two weeks assisting Defendant to
27 complete his discovery responses and prepare him for his deposition.
28

8. In addition to the discovery responses and deposition preparation, I also was required to assist Defendant in taking the steps necessary to preserve his appeals, and to prepare and submit relevant, viable law and motion matters to this Court in addition to the motion for judgment on the pleadings.

9. Attached is a true and correct copy of the Motion of Points and Authorities of the Motion for Judgment on the Pleadings (JOP) filed on June 20, 2018.

10. Attached is a true and correct copy of the preliminary draft transcript from the JOP hearing heard on July 13, 2018.

11. On August 1, 2018 at 9:38 a.m., Attorney Weinstein's office was given notice of the instant *ex parte* application including the date and time of the hearing, the department in which the matter would be heard, and the relief being sought.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 1, 2018 at San Diego, California.

JACOB P. AUSTIN

EXHIBIT 1

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Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LARRY GERACI, an individual,
Plaintiff,

vs.

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

AND RELATED CROSS-ACTION.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF DEFENDANT
DARRYL COTTON'S MOTION FOR
JUDGMENT ON
THE PLEADINGS**

Date: July 13, 2018
Time: 9:00 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

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1 Defendant/Cross-Complainant Darryl Cotton (“Defendant”) brings forth this motion for Judgment on
2 the Pleadings (“MJOP”) pursuant to Code of Civil Procedure (“CCP”) § 438. Defendant’s MJOP should be
3 granted because, *inter alia*, Plaintiff Larry Geraci’s (“Plaintiff”) judicial admissions – in his sworn declaration
4 provided in this action in April of 2018 – are subject to judicial notice and establish that Plaintiff’s Complaint
5 cannot state a cause of action as a matter of law pursuant to the parol evidence rule (“PER”).

6 Defendant’s real property (the “Property”) qualifies for a Conditional Use Permit (“CUP”) with the
7 City of San Diego (the “City”) that would allow the operations of a Marijuana Outlet - a retail cannabis store
8 (the “Business”). In November of 2016, Defendant and Plaintiff entered into an oral joint-venture agreement
9 (the “JVA”) pursuant to which, *inter alia*, (i) Defendant would sell his Property to Plaintiff and (ii) Plaintiff
10 would finance the acquisition of the CUP with the City and the development of the Business at the Property.
11 However, Plaintiff breached the JVA by attempting to deprive Defendant of a bargained-for 10% equity
12 position in the Business and Defendant terminated the JVA. Thereafter, Plaintiff brought forth this suit in
13 **March 2017** alleging the parties never entered into the JVA and that a three-sentence document executed in
14 **November 2016** (the “November Document”) is a completely integrated agreement for Defendant’s
15 Property.¹ For over a year Plaintiff has argued that his own written promise in an email, *specifically*
16 **confirming** the November Document is “not” a “final agreement” (the “Confirmation Agreement”), is barred
17 by the PER and the statute of frauds (“SOF”). This had been Plaintiff’s sole position on this issue until April
18 9, 2018. Declaration of Darryl Cotton (“Cotton Decl.”) ¶ 4.

19 On April 4, 2018, Defendant filed a Motion for Expungement of Notice of Pendency of Action (*Lis*
20 *Pendens*) (the “LP Motion”). (ROA # 161.) The LP Motion argued, for the *first time in this action*, that
21 neither the PER nor the SOF can “***be used as a shield to prevent the proof of [one’s own] fraud***” – in this
22 case, that Plaintiff could not bar his own Confirmation Agreement proving his own fraud. Cotton Decl. ¶ 5.
23 As explained by the Supreme Court in the seminal case of *Riverisland Cold Storage, Inc. v. Fresno-Madera*
24 *Production Credit Assn.* (2013) 55 Cal.4th 1169 at 1183:

25 [W]e overrule *Bank of America etc. Assn. v. Pendergrass*, *supra*, 4 Cal.2d 258, and its
26 progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch*, [204 Cal. 342, 347]:
27 ‘***[I]t was never intended that the parol evidence rule should be used as a shield to prevent***

28 ¹ Request for Judicial Notice (“RJN”), Exhibit (“Ex.”) 1 (the Complaint).

1 *the proof of fraud.*’ [¶] This court took a similar action in *Tenzer v. Superscope, Inc.* (1985)
2 39 Cal.3d 18 (*Tenzer*). *Tenzer* disapproved a 44-year-old line of cases to bring California law
3 into accord with the Restatement Second of Torts, holding that a fraud action is not barred
4 when the allegedly fraudulent promise is unenforceable under the statute of frauds.
5 Considerations that were persuasive in *Tenzer* also support our conclusion here. The *Tenzer*
6 court decided the Restatement view was better as a matter of policy. (*Tenzer, supra*, 39 Cal.3d
7 at p. 29.) *It noted the principle that a rule intended to prevent fraud, in that case the statute*
8 *of frauds, should not be applied so as to facilitate fraud.* (*Id.* at p. 30.) (Emphasis added).

9 *For the first time since he filed suit*, in support of his opposition to the LP Motion, Plaintiff filed a
10 sworn declaration executed on April 9, 2018 (“Plaintiff’s Declaration”)² in which he: (i) *admits* that he sent
11 the Confirmation Agreement, but (ii) alleges that it was a *mistake* because he only meant to respond to the
12 first sentence of Defendant’s email (thanking him for meeting earlier that day) and not the second, third or
13 fourth sentences in which Defendant specifically requested that Plaintiff respond and confirm a “final
14 agreement” would contain his bargained-for “10% equity position” in the Business as it was “a factored
15 element in [his] decision to sell the [P]roperty;” and (iii) alleges that on November 3, 2016, he called
16 Defendant who *orally agreed* with Plaintiff that the November Document *is* the final complete integrated
17 agreement for the sale of the Property (the “Oral Disavowment”).³ Cotton Decl. ¶ 6.

18 Defendant, pursuant to CCP §439, reached out to meet and confer with Plaintiff’s counsel regarding
19 this MJOP prior to filing. Defendant noted that per Plaintiff’s judicial admissions in his declaration, dismissal
20 of Plaintiff’s Complaint is mandated pursuant to the PER. Plaintiff’s counsel responded; his position is that
21 the PER/SOF bar his client’s Confirmation Agreement; however, should this Court admit the Confirmation
22 Agreement, then Defendant’s counsel contends Plaintiff’s Oral Disavowment is sufficient evidence to create
23 “a material factual dispute” requiring a trial.⁴ In other words, if Plaintiff can’t prevent the admission of his
24 own writing *proving* his own fraud, then he will use his NEW parol evidence – the Oral Disavowment – to
25 *disprove* his fraud. This is manifestly absurd and an obvious fabrication in *response* to the principles
26 articulated in *Riverisland* and *Tenzer* in the LP Motion.

27 **FACTUAL AND PROCEDURAL BACKGROUND**

28 As alleged in Plaintiff’s Complaint filed on March 21, 2017:

(i) “On November 2, 2016, [Plaintiff] and [Defendant] entered into a written agreement for

² RJN Ex. 2 (Larry Geraci Declaration).

³ *Id.* at p. 6, ln. 21 – p. 7, ln. 16.

⁴ Declaration of Jacob Austin, Ex. D.

the purchase and sale of the [Property] on the terms and conditions stated therein.” (RJN 1 at ¶7.);

- (ii) “On or about November 2, 2016, [Plaintiff] paid to [Defendant] \$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.” (RJN 1 at ¶8.); and
- (iii) “[Defendant] has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, [Defendant] 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.]” (RJN 1 at ¶11.)

On April 9, 2018, Plaintiff’s Declaration was filed - it is a masterfully crafted response to the principles of *Riverisland* and *Tenzer*, filled with extraneous self-serving factual allegations whose primary goal is to introduce the fabricated Oral Disavowment. The only material statements buried in Plaintiff’s declaration are his (i) ADMISSION that he sent the Confirmation Agreement; (ii) ADMISSIONS to alleged terms reached with Defendant relating to the sale of the Property that would be included in the November Document if it were a completely integrated agreement; and (iii) Oral Disavowment. The material statements from Plaintiff’s Declaration are:

- (i) “On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated: [¶] [...] 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.**” (Geraci Declaration p. 6, ln. 25 - p. 7, ln. 1);
- (ii) “[A]fter 9:00 p.m. [...] I responded from my phone ‘**No no problem at all.**’” (Geraci Decl. p. 7, ln. 4-5);
- (iii) “The next day I read the entire email and I telephoned Mr. Cotton...During that telephone call I told Mr. Cotton that a 10% equity position in the dispensary was not part of our agreement... Mr. Cotton’s response was to say something to the effect of “well, you don’t get what you don’t ask for.” (Geraci Decl. p. 7, ll. 6-14);
- (iv) “I agreed to pay him for the property into two parts: \$400,000 as payment for the property and \$400,000 as payment for relocation of his business. As this would benefit him for tax purposes but would not affect the total price or any other terms and conditions of the purchase.” (Geraci Decl. p. 5, ll.16-19);
- (v) “Prior entering into the Nov 2nd written agreement, [...] I discussed with [Mr. Cotton] 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” (Geraci Decl. p. 5, ln. 24 – p.6, ln 1);
- (vi) "As a purchaser, I was willing to bear the substantial expense of applying for and obtaining the CUP approval and understood that if I did not obtain approval then

I would not close the purchase and would lose my investment"(Geraci Decl. p. 2, ll. 25 - p. 3, ln. 1); and

(vii) "Mr. Cotton then asked for a \$10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement." (Geraci Decl. p.4- ll. 12-13)

Summarized, Plaintiff would have this court disregard the clear language in his Confirmation Agreement to strike an unambiguous integrated term - Defendant's equity position - based on his Oral Disavowment with Defendant on November 3, 2016. A factually and legally unsupported position. *See Sass v. Hank* (1951) 108 Cal.App.2d 207, 214 ("[A]n **important covenant cannot be stricken from a written contract solely upon the ipse dixit of a party thereto.**") (emphasis added).

LEGAL STANDARD

[A MJOP] is the equivalent of a general demurrer. [Citation.] This motion tests whether the allegations of the pleading under attack support the pleader's cause if they are true. [Citation.] [¶] [I]n order for judicial notice to support a motion for judgment on the pleadings by **negating** an express allegation of the pleading, the notice must be of something that cannot reasonably be controverted. [Citations.] The same is true of evidentiary admissions or concessions. [¶] Judicial notice may conclusively defeat the pleading as where it establishes res judicata or collateral estoppel. ***The pleader's own concession may have this same conclusive effect.***⁵ [¶] In these limited situations, the court, in ruling on a [MJOP], properly looks beyond the pleadings. But it does so only because the party whose pleading is attached will as a matter of law, or law's equivalent of judicial notice of a fact not reasonably subject to contradiction, fail in the litigation.

Columbia Casualty Co. v. Northwestern Nat. Ins. Co. (1991) 231 Cal.App.3d 457, 468 (emphasis added).

"A trial court has no discretion in granting or denying a [MJOP]." *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 603. "On a pure question of law, trial courts have no discretion. They must, without choice, apply the law correctly." *Id.*

ARGUMENT

The sole and dispositive issue in this MJOP is whether the November Document is a completely integrated agreement. "Whether a contract is integrated is a question of law when the evidence of integration is not in dispute." [Citations.]" *Kanno v. Marwit Capital Partners II, L.P. (Kanno)* (2017) 18 Cal.App.5th 987, 1001 (emphasis added). "The crucial issue in determining whether there has been an integration is

⁵ *See Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 485 ("[A] court may take judicial notice of a party's admissions or concessions, but only in cases where the admission 'cannot reasonably be controverted,' such as in answers to interrogatories or requests for admission, or in affidavits and **declarations** filed on the party's behalf. [Citations.]" (emphasis added); *Lueras v. BAC Home Loans Servicing, LP (Lueras)* (2013) 221 Cal.App.4th 49, 93-94 (analyzing numerous opinions for appropriateness and effect of judicial admissions in briefs, arguments, and other documents submitted to the court and concluding: "***In sum, we are not permitted to turn a blind eye to [a party's] admissions[.]***") (emphasis added).

whether the parties intended their writing to serve as the exclusive embodiment of their agreement.”
Masterson v. Sine (1968) 68 Cal.2d 222, 225.

I. The November Document and the Confirmation Agreement Are Both Partially Integrated Agreements Relating to the Same Transaction.

The 4th DCA’s November 29, 2017 opinion in *R.W.L. Enterprises v. Oldcastle, Inc.* (2017) 17 Cal.App.5th 1019 (“*Oldcastle*”), is directly controlling on this specific issue: whether the November Document and the Confirmation Agreement should be construed, as a matter of law, as part of the same transaction pursuant to CCP § 1642. The *Oldcastle* Court held, *inter alia*, that the trial court erred in awarding fees based on construing the credit application together with the dealer agreement pursuant to CCP § 1642. A reference in one agreement did not “clearly” and “unequivocally” demonstrate an intent to incorporate a future arrangement and took into consideration, notably, an integration clause and the fact the agreements were executed years apart from each other. In reaching its decision, Justice Huffman articulated the principles under which two agreements should be held to be part of the same transaction pursuant to CCP § 1642:

“Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.” (Civ. Code, § 1642.) Although the statute refers expressly to several “contracts,” the language has been broadened by case law to apply to instruments or writings that are not on their own contracts. (1 Witkin, Summary of Cal. Law (11th ed. 2017) Contracts, § 770, p. 826; *Harm v. Frasher* (1960) 181 Cal.App.2d 405, 413 [5 Cal. Rptr. 367].) Civil Code section 1642 “is most frequently applied to writings executed contemporaneously, but it is likewise applicable to agreements executed by the parties at different times if the later document is in fact a part of the same transaction.” (*Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 814 [Citation].)

Oldcastle, supra, at 1027-1028.

Unlike in *Oldcastle*, here, the November Document **does not** have an integration clause, the Confirmation Agreement and the November Document were executed by the same parties, on the same day, within hours of each other, relate to the same subject matter and the Confirmation Agreement was sent **by** Plaintiff at Defendant’s specific request for confirmation of a term that was not included in the November Document. Both documents here were “executed contemporaneously” and can only reasonably lead to the conclusion that they both should relate to the same transaction – the sale of the Property from Defendant to Plaintiff for which he would receive an equity position. Further, of great import in *Oldcastle* was the fact that the two agreements were executed nine years apart – one in 2001 and one in 2010 and there was no clear

1 reference between them. Here, the November Document and the Confirmation Agreement were executed
2 within hours of each other. *Oldcastle, supra*, 1031 (“[H]ere, where the two writings were executed nine years
3 apart, we believe an integration clause in the later writing weighs heavily against a finding that the parties
4 intended to add terms to their prior agreement.”).

5 The *Oldcastle* Court further explained that, “**For the terms of another document to be incorporated**
6 **into the document executed by the parties the reference must be clear and unequivocal[.]**” [Citation.]
7 (italics in original, emphasis in bold added). “**The contract need not recite that it ‘incorporates’ another**
8 **document, so long as it ‘guide[s] the reader to the incorporated document.’**” [Citation.] (emphasis added).
9 To be construed together, the separate instruments must be “so interrelated as to be considered one contract.”
10 [Citation.] This standard compels our result. *Oldcastle, supra*, at 1027-1028.

11 Here, it is undisputed that Defendant’s email requesting confirmation of his equity position clearly
12 and directly references the November Document. Plaintiff wrote: “I just noticed the 10% equity position in
13 the dispensary was not language added into that document [(i.e., the November Document)]. I just want to
14 make sure that we’re not missing that language [(i.e., the 10% equity position)] in any final agreement as it
15 is factored element in my decision to sell the property.” (Geraci Decl. p. 6, ll. 25 - p. 7, ln. 1) Thus, Defendant’s
16 reference is “*clear and unequivocal.*” *Id.*

17 *Versaci*, relied on in *Oldcastle* heavily, is also instructive here – the question in *Versaci* was whether
18 a college superintendent’s 2002–2003 performance goals were part of his 2001 employment contract so as to
19 be subject to a California Public Records Act request. The court concluded that a “mere reference” in the
20 employment contract to the fact that goal-setting would be part of the evaluation process “does not clearly
21 and unequivocally evidence the parties’ intent to incorporate the yet to be determined goals into the contract.”
22 *Versaci* at p. 817. In contrast, here, Defendant’s email to Plaintiff seeking confirmation is not a “mere
23 reference” nor is the language forward-seeking in any manner; Defendant is clearly and plainly requesting
24 CONFIRMATION of a *previously established term* of an agreement reached between the parties that would
25 be reduced to writing in a forthcoming *final agreement*.

26 Lastly, as noted in *Oldcastle*, “[w]hen the parties to a written contract have agreed to it as an
27 ‘integration’—a complete and final embodiment of the terms of an agreement—parol evidence cannot be used
28 to add to or vary its terms.” [*Masterson, supra*, at 225]” *Oldcastle, supra*, at 1023, fn. 3. Here, Plaintiff’s

admissions in his declaration provide a great deal of support for the conclusion the November Document is not a complete integrated agreement. Included in Plaintiff's Declaration are five judicial admissions that support this conclusion because if it was, then these terms would have been "naturally" included (*Masterson*, *supra*, at 227): (i) Plaintiff agreed to split the payment of the \$800,000 into two \$400,000 payments, one for the property and another to relocated Defendant's business; (Geraci Decl. p. 5, ll.16-19) (ii) Plaintiff and Defendant agree that Plaintiff will use a third party (Rebecca Berry) as an agent for the application of the CUP prior to the signing of the November Document; (Geraci Decl. p. 5, ln. 24 – p. 6, ln.1) (iii) Plaintiff confirmed and acknowledged a 10% equity position in the dispensary for Defendant; (Geraci Decl. p. 7, ll. 4-5), (iv) It was the intention of the parties to make the \$10,000 deposit to be non-refundable; (Geraci Decl. p. 4, ll. 12-13) and (v) Plaintiff admitted that he agreed to pay ALL of the cost associated with the CUP process. (Geraci Decl. p. 2, ln. 25 - p. 3, ln 1.) All of these elements were stated by Plaintiff in his sworn affidavit. These are material terms to the November Document that had the parties intended to have a completely integrated agreement, would have been easy to add.

II. The Parol Evidence Rule Does Not Bar the Confirmation Agreement, But Does Bar the Oral Disavowment.

The Fourth District Appellate Court's ("4th DCA") December 22, 2017 opinion by in *Kanno* is directly and fully controlling here. In *Kanno*, plaintiff sued defendants for breach of oral contract, specific performance, and promise without intent to perform in connection with a transaction that was documented by three writings, each of which had an extensive integration clause. A jury found in favor of plaintiff on his claim for breach of an oral agreement. The trial court held that the PER did not bar plaintiff's oral agreement. On appeal, as described in appellant's opening paragraph:

The question presented by this appeal is whether a complex written \$23.5 million transaction to purchase all of the assets of plaintiff's company-negotiated by Sheppard Mullin for plaintiff and Paul Hastings for defendants and including multiple separate integrated agreements comprising two binders of materials-can be anything other than a fully integrated agreement.[⁶]

The 4th DCA affirmed the judgment. The 4th DCA found that the oral agreement was not made unenforceable by the PER notwithstanding the integration clauses in the three completely integrated agreements. In reaching its decision, the 4th DCA "address[ed] the definition, meaning, and scope of the parol evidence rule under

⁶ *Kanno v. Marwit Capital*, 2016 CA App. Ct. Briefs LEXIS 857.

California law.... to determine whether the three written agreements were intended as partial integrations (final expressions), complete integrations (complete and exclusive statements), or not integrated writings at all.” *Kanno*, 18 Cal.App.5th at 991. As described by Judge O’Leary in *Kanno*:

[CCP §] 1856 creates two levels of contract integration or finality: (1) the parties intended the writing to be the final expression of their agreement; and (2) the parties intended the writing to be the complete and exclusive statement of the terms of their agreement. [¶] If a writing falls within level 1 (the writing is a final expression) then a prior or contemporaneous oral agreement is admissible if it does not contradict the writing, and evidence of consistent additional terms may be used to explain or supplement the writing. (§ 1856, subd. (a).) *Ibid.* [¶] If a writing falls within level 2 (complete and exclusive statement) then evidence of consistent additional terms may not be used to explain or supplement the writing. (§ 1856, subd. (b).)

In other words, as further clarified in *Kanno* and commonly referred to in many other opinions, Level 1 refers to a “partially integrated agreement” and Level 2 is a “completely integrated agreement.”⁷ For consistency, hereinafter, the references shall be to “partial” and “complete” integration. Here, Plaintiff alleges that the November Document is a completely integrated agreement. The Court in *Kanno*, specifically laid out the facts required to determine if a contract is partially or fully integrated:

The issue of contract integration may be analyzed by addressing four questions: “(1) does the written agreement appear on its face to be a complete agreement; obviously, the presence of an ‘integration’ clause will be very persuasive, if not controlling, on this issue; (2) does the alleged oral agreement directly contradict the written instrument; (3) can it be said that the oral agreement might naturally have been made as a separate agreement or, to put it another way, if the oral agreement had been actually agreed to, would it certainly have been included in the written instrument; and (4) would evidence of the oral agreement be likely to mislead the trier of fact.” (Citing *Banco Do Brasil, S.A. v. Latian, Inc.* (1991) 234 Cal.App.3d 973, 1002–1003.)

Kanno, supra, at 1007 (emphasis added).

A. Applying the Parol Evidence Rule to the November Document.

1. Does the November Document appear on its face to be a complete agreement? “We start by asking whether the [November Document] appears on its face to be a final expression of the parties’ agreement with respect to the terms included in that agreement. [Citation.]” *Id.* at 1007. Unlike in *Kanno*,

⁷ (“Some clarification of terms is in order. Case law sometimes uses the term ‘integration’ to mean a complete integration, *i.e.*, the second level of integration. Justice Traynor did so in *Masterson v. Sine, supra*, at 225. To be consistent with California statute, we use the term ‘final expression’ to mean the level of integration referred to in section 1856, subdivision (a), and the term ‘complete and exclusive statement’ to mean the level of integration referred to in section 1856, subdivision (b). A final expression corresponds to a partially integrated agreement under section 210, subdivision (2) of the Restatement Second of Contracts, and a complete and exclusive statement corresponds to a completely integrated agreement under section 210, subdivision (1) of the Restatement Second of Contracts.”) (emphasis added).) *Kanno, supra*, at 1000.

1 the November Document does not appear to be so because it is not “lengthy, formal, detailed... and has [no]
2 integration clause.” *Id.* “The integration clause is a factor, and persuasive, but it is not controlling.” *Id.* The
3 lack of an integration clause weighs in favor of Defendant. Further, the November Document is three
4 sentences long, is missing many essential terms when compared to even a standard real estate purchase
5 agreement, much less one that has a condition precedent requiring the approval of a CUP by the City for the
6 Business, and has grammar and spelling mistakes (*e.g.*, “contacts” instead of “contracts”).

7 “To determine whether the [November Document] is the final expression [(*i.e.*, partially integrated)]
8 or the complete and exclusive statement [(*i.e.*, completely integrated)] of the parties' agreement, [the court]
9 must look beyond the four corners of the agreement.” *Id.* As noted above, Plaintiff's judicial admissions
10 provide dispositive support for the conclusion that the November Document is not a complete integrated
11 agreement.

12 The *Kanno* Court noted an exchange between the parties: “[plaintiff] insisted that [defendant]
13 ‘promise this to me.’ [Defendant] paused and then said, ‘[o]kay, [plaintiff], **I promise.**’” *Id.* at 1009 (emphasis
14 added). Relying heavily on that exchange, it found that “[t]he evidence supports a finding that the parties
15 intended the terms of the [oral agreement] to be part of their [written] agreement.” *Ibid.* Here, the case is
16 even stronger for Defendant: Defendant emailed Plaintiff asking him to confirm in writing (*i.e.*, promise) that
17 a “final agreement” would contain his “equity position” and Plaintiff replied, “**No no problem at all.**” (Geraci
18 Decl. p. 6, ll.25 a – p. 7, ln. 1.)

19 Thus, as in *Kanno*, “[t]he presence of [two] agreements therefore is persuasive evidence the parties
20 did not intend the [November Document] to be the ‘complete and exclusive statement’ of the parties'
21 agreement.” *Id.* at 1008. Furthermore, by the Plaintiffs own admission there have been agreements made both
22 prior to the November Document and thereafter that were relating to the same transaction. Namely that the
23 Plaintiff would use an agent for the CUP and that the payment for the property would be reduced to \$400,000
24 with a \$400,000 relocation fee.

25 Lastly, of note on this issue, the November Document is three-sentences long and misspells the word
26 “contract” (*i.e.*, contact). It is an undisputed fact that Plaintiff was a real estate agent for over 25 years
27 (suspiciously allowing his license to expire the same month he filed this lawsuit against Defendant and
28

1 AFTER Defendant had threatened to report Plaintiff to the California Board of Realtors)⁸. In sum, the
2 November Document does not appear to be a final complete integrated agreement.

3 2. Does the alleged oral agreement directly contradict the written instrument?

4 Plaintiff's Disavowment is that the parties never reached a JVA and that Defendant's email,
5 requesting written assurance of performance, is an attempt to renegotiate the deal reached which is fully
6 reflected in the November Document. As such, Plaintiff's Oral Disavowment directly contradicts the written,
7 integrated term providing for Defendant's "10% equity position" that would be reduced to writing in a
8 forthcoming "final agreement" and is thus barred by the PER.

9 Conversely, the Confirmation Agreement, sent by Plaintiff at Defendant's specific request for written
10 confirmation of a material term, does not vary or contradict the terms in the November Document. This Court
11 has already ruled and stated exactly the same in denying Plaintiff's demurrer to Defendant's cross-complaint.⁹
12 Notwithstanding this Court's explicit ruling, Plaintiff continues to argue the November Document is not
13 ambiguous and, consequently, the Confirmation Agreement is barred as it seeks to vary and contradict the
14 terms in the November Document. In other words, he argues the two documents should be read separately.

15 3. Can it be said that the oral agreement might naturally have been made as a separate
16 agreement or, to put it another way, if the oral agreement had been actually agreed to,
17 would it certainly have been included in the written instrument?

18 The November Document was meant to be a "receipt." The Confirmation Agreement was meant to
19 be just that – a confirmation of the most material term reached in the JVA – Defendant's equity position – to
20 provide assurance to Defendant while a "final agreement" that reduced the JVA to writing was being prepared
21 by Plaintiff's counsel.
22

23 ⁸ RJN 4 (State of California Bureau of Real Estate License Information for Larry E Geraci).

24 ⁹ RJN 3 (11/6/2017 Minute Order denying Plaintiff's general Demurrer (ROA # 52)) at p.1. ("[Plaintiff] argues that the
25 [November Document] is contradicted by the alleged oral agreement, and as a result violates the statute of frauds. [Plaintiff]
26 argues: "In the instant case, the only writing signed by both parties is the November 2, 2016 [November Document], which
27 explicitly provides for a \$10,000 down payment ('earnest money to be applied to the sales price'); in fact, the agreement
28 acknowledges receipt of that down payment. [Defendant] is alleging that the oral agreement provided for a down payment of
\$50,000, which is in direct contradiction of the written term of a \$10,000 down payment." However, *this argument lacks merit because the [November Document] attached to the SAC-C is unclear. The acknowledgement as to payment of \$10,000 does not necessarily mean that the total deposit was not, in fact, \$50,000 (such that \$40,000 remained due). As alleged, there is no conflict.*") (emphasis added).

1 The *Kanno* defendants also sought to create a dispute between documents related to the same
2 transaction by arguing that some terms contained in some agreements were contradictory; however, the Court
3 held that because some of the agreements in dispute were “silent on the matter ... does not directly contradict”
4 other agreements which did contain such a term. *Id.* at 1010. In other words, Plaintiff is urging this Court to
5 do exactly what a party in *Kanno* failed to do – namely, to interpret the silence of a term in one document as
6 being contradicted if not reflected in another document. In this case, the mere fact that the Confirmation
7 Agreement provides for an equity position and the November Document does not – pursuant to *Kanno* –does
8 not result in a conflict which would bar introduction of the Confirmation Agreement.

9 [I]n determining the issue of integration, the collateral agreement will be examined only insofar
10 as it does not directly contradict an express term of the written agreement; “*it cannot*
11 *reasonably be presumed that the parties intended to integrate two directly contradictory*
12 *terms in the same agreement.*” [Citation.] In the case of prior or contemporaneous
13 representations, the collateral agreement must be one which might naturally be made as a
14 separate contract, *i.e.*, if in fact agreed upon need not certainly have appeared in writing.”
(*Banco Do Brasil, S.A. v. Latian, Inc.* (1991) 234 Cal.App.3d 973, 1002 [Citation],
disapproved on other grounds in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production*
Credit Assn. (2013) 55 Cal.4th 1169, 1182 [Citation].)
Kanno, supra, at 999-1001 (emphasis added).

15 **This is the gravamen of this motion.** Plaintiff’s Confirmation Agreement and his Oral Disavowment
16 contain “two directly contradictory terms [that are part of] the same agreement [*i.e.*, the JVA].” *Id.* Thus,
17 Plaintiff’s Oral Disavowment is barred.

18 Defendant notes that “even in situations where the court concludes that it would not have been natural
19 for the parties to make the alleged collateral oral agreement, parol evidence of such an agreement should
20 nevertheless be permitted if the court is convinced that the unnatural actually happened in the case being
21 adjudicated.” *Masterson, supra*, at 228, fn. 1.; *Kanno, supra*, at 1009. However, in this case, given that this
22 Court can judicially notice that Plaintiff was a California Licensed Real Estate Agent for over 25 years¹⁰; is
23 an Enrolled Agent with the IRS; and the fact that Plaintiff did not raise the Oral Disavowment for over a year
24 until confronted with *Riverisland* and *Tenzer*, there is no evidence to support the “unnatural” happened here.

25 To be clear, for the unnatural to have happened here, that would require at a minimum: (i) Defendant
26 to have sent an email to Plaintiff pretending that a deal had been reached in which he was already promised
27

28 ¹⁰ RJN 4 (State of California Bureau of Real Estate license information for Larry E Geraci).

1 a very specific “10% equity position;” (ii) Plaintiff to have mistakenly confirmed in writing Defendant’s
2 pretend position; (iii) Plaintiff, a licensed Real Estate Agent at the time for over 25 years, to not have ever
3 sought in any manner to document the fact that he mistakenly sent the Confirmation Agreement; (iv) for
4 Plaintiff to have realized, over a year after filing suit, that he should raise the Oral Disavowment; and (vi) that
5 he did so, coincidentally, in response to Defendant’s motion citing controlling case law that would prevent
6 Plaintiff from using the PER as a shield to bar proof of his own fraud (*i.e.*, the Confirmation Agreement).

7 That is exactly what Plaintiff is arguing. This is a factually and legally flawed position. The Court
8 must make a preliminary determination of the credibility of the evidence, as described by the Supreme Court
9 in *Masterson*, “[e]vidence of oral collateral agreements should be excluded only when the fact finder is likely
10 to be misled. **The rule must therefore be based on the credibility of the evidence.**” *Masterson v. Sine*
11 (1968) 68 Cal.2d 222, 227 (emphasis added). There is nothing credible about Plaintiff’s Oral Disavowment.

12 4. Mislead the trier of fact. Evidence of a collateral oral agreement should be excluded
13 if it is likely to mislead the fact finder. *Masterson, supra*, at 227. Here, the November Document and the
14 confirmation email would not mislead the trier of fact.

15 **B. Applying the Parol Evidence Rule to Plaintiff’s Oral Disavowment**

16 1. The more complete the agreement appears to be on its face, the more likely it was
17 intended as a “final expression” of the agreement. As noted above, the November Document has no integration
18 clause and its absence supports a finding that November Document is not completely integrated. *Wallis v.*
19 *Farmers Group, Inc.* (1990) 220 CA3d 718, 730, 269 CR 299, 305 (disapproved on other grounds in *Dore v.*
20 *Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389, 394).

21 Where a written contract is not the parties' complete and final agreement, evidence of a separate oral
22 agreement is admissible on any matter on which the written agreement is silent and that is *not inconsistent*
23 *with its written terms.* *Masterson, supra*, at 226-228. Here, Plaintiff’s Oral Disavowment is inconsistent with
24 the written terms in the Confirmation Agreement. The plain language in the Confirmation Agreement reflects
25 that the parties did not intend for either the November Document or the Confirmation Agreement to be a final
26 agreement as they both clearly contemplated a "final agreement" that would provide for Defendant's equity
27 position. However, the Confirmation Agreement clearly reflects that the parties intended the Confirmation
28 Agreement to be a final and complete agreement with respect to a particular term - Defendant's equity position.

1 *Masterson, supra*, at 225. As such, the PER bars extrinsic evidence as to those matters determined to be
2 partially integrated. *Wallis v. Farmers Group, Inc.* (1990) 220 Cal.App.3d 718, 730, (disapproved on other
3 grounds in *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389, 394 & fn. 2). "Parol evidence may
4 not be offered to contradict the terms of even a partially integrated writing." *Esbensen v. Userware Int'l, Inc.*
5 (1992) 11 Cal.App.4th 631, 638. Thus, here, Plaintiff's Oral Disavowment is barred.

6 2. In determining whether a writing was intended as a final expression of the parties'
7 agreement, "collateral oral agreements" that contradict the writing cannot be considered. *Banco Do Brasil,*
8 *supra*, 1002-1003. In *Banco Do Brasil*, guarantors claimed bank had orally agreed to extend a \$2 Million line
9 of credit, but this directly contradicted their written guaranty stating their obligation was "absolute and
10 unconditional." The claimed oral agreement could not be considered in determining whether the writing was
11 an integration. Similarly, here, Plaintiff Oral Disavowment directly contradicts his written confirmation that
12 he would provide Defendant an equity position in a forthcoming "final agreement."

13 3. Where a "collateral" oral agreement is alleged, the court must determine whether the
14 subject matter is such that it would "certainly" have been included in the written agreement had it actually
15 been agreed upon; or would "naturally" have been made as a separate agreement. *Masterson, supra*, at 227.
16 Here, had Defendant actually agreed to the Oral Disavowment, it would be natural for Plaintiff, a California
17 Licensed Real Estate Agent for over 25 years, to have memorialized Defendant's alleged agreement with him
18 that the November Document was a completely integrated agreement. It is not *natural* to assume that Plaintiff
19 has allowed over a year since he filed this suit before raising this allegation. *Id.*

20 4. Evidence of a collateral oral agreement should be excluded if it is likely to mislead
21 the fact finder. *Masterson, supra*, at 227. Here, there is no support for Plaintiff's Oral Disavowment and light
22 of his undisputed communications and judicial admissions, it would lead to mislead a fact finder. Once it is
23 found that the parties intended the writing to be the "final expression" of their agreement (*i.e.*, an integration),
24 contrary expressions of intent are excluded. A party is not permitted to escape its obligations "by showing he
25 did not intend to do what his words bound him to do." *Brant v. California Dairies* (1935) 4 Cal.2d 128, 134.
26 In this case, Plaintiff clearly originally sought to deprive Defendant of the equity position that he had
27 bargained for. Lastly, and directly on point here, while extrinsic evidence is admissible to show what the
28

1 parties meant by what they said, it is inadmissible to show the parties meant something other than what they
2 said. *See Larsen v. Johannes* (1970) 7 Cal.App.3d 491, 500.

3 For all the reasons set forth above, the PER bars Plaintiff's Oral Disavowment.

4 **III. Plaintiff's "Mistake"**

5 The bottom line is that Plaintiff's Confirmation Agreement is fatal to his Complaint. His argument
6 in opposition – the Oral Disavowment – is that he sent it by mistake. “When the terms of an instrument have
7 been reduced to writing and are not ambiguous, any extrinsic evidence is excluded unless the validity of the
8 agreement is in dispute or a mistake or imperfection of the writing is put in issue. [CCP §§ 1856, 1625.]”
9 *Brant v. California Dairies, Inc.*, 4 Cal.2d 128, 134. Plaintiff will no doubt oppose this motion based on his
10 alleged mistake, but should not be successful in his attempt – his judicial admissions and his Confirmation
11 Agreement reflect his *intent*. Thus, the evidence he offers cannot be admitted under that paradigm. A contract
12 cannot be varied by the undisclosed intention of one of the parties. *Bell v. Minor*, 88 Cal.App.2d 879, 882
13 “[W]here the terms of an agreement are set forth in writing, and the words are not equivocal or ambiguous,
14 the writing or writings will constitute the contract of the parties, and one party is not permitted to escape
15 from its obligations by showing that he did not intend to do what his words bound him to do.” *Brant, supra*,
16 at 134.

17 “[T]he law imputes to a person an intention corresponding to the reasonable meaning of his words
18 and acts. It judges of his intention by his outward expressions and excludes all questions in regard to his
19 unexpressed intention. If his words or acts, judged by a reasonable standard, manifest an intention to agree in
20 regard to the matter in question, that agreement is established, and it is immaterial what may be the real but
21 unexpressed state of his mind on that subject.” *Crow v. P.E.G. Constr. Co.* (1957) 156 Cal.App.2d 271, 278-
22 279. Plaintiff is simply attempting to renege on his obligations to Defendant and is before this court asking it
23 to ignore the plain, clear language of his Confirmation Agreement and simply ignore the Confirmation
24 Agreement. *Crow, supra*, at 278 (“In other words, when the language of a contract is plain and unambiguous
25 it is not within the province of a court to rewrite or alter by construction what has been agreed upon.”).

26 **CONCLUSION**

27 The reality is that the facts in this matter are incredibly simple – Plaintiff and Defendant reached an
28 oral joint venture agreement and, at some point thereafter, Plaintiff chose to renege on the deal he had reached

1 with Defendant and sought to deprive Defendant of a bargained-for equity position. Plaintiff's judicial
2 admissions confirming he sent the Confirmation Agreement and other material terms not in the November
3 Document prove it is not a complete integrated agreement and, thus, are fatal to Plaintiff's Complaint.

4 Lastly, Defendant wants to be **emphatically** clear with this Court about Plaintiff's Oral Disavowment:
5 it is a blatant lie. The details in Plaintiff's declaration that Defendant stated "well, you don't get what you
6 don't ask for" and "looking pretty good-we all should make some money here" are complete fabrications.
7 They are contradicted by *every* piece of undisputed evidence created before the inception of this lawsuit and
8 reflect Plaintiff's willingness to *falsify evidence* to manipulate this Court to reach a favorable result for
9 himself. This Court must recognize the patently obvious motivation behind Plaintiff's lies, if this suit is
10 adjudicated in Defendant's favor pursuant to the PER, then Defendant shall have a cause of action for
11 malicious prosecution against Plaintiff. *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 349 ("*We*
12 *hold that terminations based on the parol evidence rule are favorable for malicious prosecution*
13 *purposes.*"). The fact that Plaintiff raised the Oral Disavowment over a year after filing suit, and only when
14 confronted with controlling case law preventing his use of the PER as a shield to bar proof of his own fraud,
15 leads to only one logical and reasonable conclusion – it is a malicious and manipulative lie.

16 DATED: June 20, 2018

THE LAW OFFICE OF JACOB AUSTIN

17
18 By _____


JACOB P. AUSTIN

19 Attorney for Defendant/Cross-Complainant DARRYL COTTON
20
21
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EXHIBIT 2

1 DRAFT OF July 13, 2018 Department 73, Judge Joel wohlfeil

2

3 THE COURT: Item 7. Geraci versus Cotton.

4 Ending 10073.

5 MR. WEINSTEIN: Good morning, your Honor.

6 Michael weinstein for plaintiff, Larry Geraci. We're
7 submitting. Just time to reply.

8 MR. AUSTIN: Good morning, your Honor. Jacob
9 Austin on behalf of Mr. Cotton.

10 THE COURT: Good morning to each of you two.
11 Interesting motion, particularly combined with your
12 request for judicial notice. Is there anything else that
13 you'd like to add?

14 MR. AUSTIN: Well, I would like an explanation.
15 So Mr. Geraci, the plaintiff in this case, he submitted
16 the declaration admitting essentially that --

17 THE COURT: It's the "essentially" part that I
18 don't agree with. You make those same comments in your
19 paper. There's four separate causes of action.

20 MR. AUSTIN: Right.

21 THE COURT: The court wasn't persuaded that even
22 if I were grant the request to take judicial notice of a
23 declaration granted of a party opponent, it's still not
24 dispositive of the entire complaint. And that's what your
25 motion is directed to, isn't it --

26 MR. AUSTIN: Well --

27 THE COURT: -- in it's entirety?

28 MR. AUSTIN: Because all four causes of action

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1 are premised on a breach of contract, so if there's not an
2 integrated contract, according to plaintiff himself, I
3 feel that all four causes of actions fail.

4 THE COURT: Not so sure if I agree with that
5 entire analysis.

6 Anything else, counsel?

7 MR. AUSTIN: Well, I was just wondering if you
8 could explain to me, if you believe as a matter of law,
9 the three-sentence contracts that plaintiff claims is an
10 integrated contract. If you believe that to actually be a
11 fully integrated contract.

12 THE COURT: You know, we've been down this road
13 so many times, counsel. I've explained and reexplained
14 the court's interpretation of your position. I don't know
15 what more to say.

16 Is there anything else, counsel?

17 CO COUNSEL: Your Honor, if I may, I'm co
18 counsel on behalf of Mr. Cotton.

19 Your Honor, the only thing we really want
20 clarification is the matter whether or not the court deems
21 the contract an integrated contract or not.

22 THE COURT: Again, we've addressed that in
23 multiple motions. I'm not going to go back over it again
24 at this point in time.

25 Anything else, counsel?

26 CO COUNSEL: That's it.

27 THE COURT: All right. So the court confirms
28 the court's tentative ruling. Makes it an order of the

1 court and directs that plaintiff's counsel serve notice.
2 Thank you very much.

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*****DRAFT ***** DRAFT ***** DRAFT

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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/01/2018 at 01:18:00 PM
Clerk of the Superior Court
By Richard Day, Deputy Clerk

Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LARRY GERACI, an individual,
Plaintiff,

vs.

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

AND RELATED CROSS-ACTION.

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

**DECLARATION REGARDING NOTICE
OF DARRYL COTTON'S *EX PARTE*
APPLICATION FOR A STAY AND AN ORDER
CONTINUING TRIAL SCHEDULED
FOR AUGUST 17, 2018
(CRC Rules 3.1203 and 3.1204)**

Date: August 2, 2018
Time: 8:30 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

I, ZOË GAYLE VILLAROMAN, declare as follows:

1. I am over the age of 18 years, not a party to this action and a contract paralegal who has assisted Defendant's counsel in matters related to this litigation.

2. The facts set forth in this declaration is true and correct of my own personal knowledge, except for the information stated upon information and belief; and, as to those matters, I believe them to be true. If called upon as a witness, I could and would competently testify to the matters stated herein.

///

///

1 3. On August 1, 2018 at 9:38 a.m., I called and spoke with Deborah at Attorney Weinstein's
2 office and gave her notice of the instant *ex parte* application including the date and time of the hearing,
3 the department in which the matter would be heard, and the relief being sought.

4 I declare under penalty of perjury according to the laws of the State of California that the
5 foregoing is true and correct and that this declaration was executed on August 1, 2018 at San Diego,
6 California.

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9 ZOË GAYLE VILLAROMAN
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EXHIBIT 8 [ROA 161]

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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

**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,

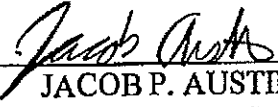
1 California, Defendant/Cross-Complainant Darryl Cotton, by and through his counsel Jacob P. Austin,
2 will move for an order expunging the *lis pendens* recorded in the office of the Recorder of San Diego
3 County as Instrument Number 2017-0129756 and filed in the above-referenced action on March 22,
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 JACOB P. AUSTIN
16 Attorney for Defendant and Cross-Complainant
17 DARRYL COTTON
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F I L E D
Clerk of the Superior Court
APR 12 2018

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 (*LIS PENDENS*)

DATE: April 13, 2018
TIME: 9:00 a.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 AUTHORITES

2 Defendant and Cross-Complainant Darryl Cotton ("Cotton") hereby moves this Court to expunge
3 the *Lis Pendens* (the "LP") 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. [¶] 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 *Hilberg 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

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

3 **I. FACTUAL BACKGROUND**

4 Cotton is the sole owner of record of the Property.¹ In or around August 2016, Geraci first
5 contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton
6 because it met certain requirements of the City of San Diego ("City") to apply for and obtain a conditional
7 use permit ("CUP")² that would allow the operation of a Marijuana Outlet ("MO")³ at the Property. Over
8 the ensuing months, the parties extensively negotiated the terms of a potential sale of the Property. (DC
9 Decl. ¶2; VP ¶13, ¶14.)

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

25
26 ¹ Declaration of Darryl Cotton ("DC Decl.") ¶1; Request for Judicial Notice ("RJN") Exhibit ("Ex.") 1; (Verified Petition for
Alternative Writ of Mandate) ("VP") ¶1; RJN Ex. 2 (Complaint ("Comp.") ¶4.

27 ² A conditional use permit is administrative permission for uses not allowed as a matter of right in a zone, but subject to
28 approval. (Cal. Zoning Practice, *Types of Zoning Relief* §7.64, p.299 (Cont. Ed. Bar 1996.) The issuance of a conditional use
permit may be subject to conditions. (*J-Marion 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 Decl. ¶3.)

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 Decl. ¶4.)

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 Decl. ¶5.)

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 Decl. ¶6.)

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) [¶] 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 Decl. 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 not
4 missing that language in any final agreement as it is a factored element in my decision
to sell the property. I'll be fine if you would simply acknowledge that here in a reply.
[DC Decl. Ex. 1, p.9 (emphasis added).]

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

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

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

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

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

23 Cotton: Are you available for a call?

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

25 Cotton: Thx

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

27 Cotton: This resolves the zoning issue?

28 Geraci: Yes

Cotton: Excellent

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

Cotton: Ok

⁴ See DC Decl. Ex. 1. (Fifteen (15) emails with attachments sent between Cotton and Geraci prior to the commencement of the instant suit between 10/24/16-03/21/17 containing all email communications between them.)

1 Cotton: How goes it?

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

3 Cotton: Whats *[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 Decl. 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 Decl. ¶¶9-11.)

9 On February 27, 2017, Geraci emailed Cotton: "*Attached is the draft purchase of the property*
10 *for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.*"
11 (DC Decl. 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 Decl. 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 Decl. 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-Gro 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 Decl. Ex. 2, p.4.) Geraci replied one minute later: "*Yes*
28 *I did I'm having her rewrite it now[.] As soon as I get it I will forward it to you[.]*" (DC Decl. Ex. 2, p.4)

⁵ DC Decl. 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 Agreement 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 Agreement." 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 Decl. ¶13.) Geraci later texted Cotton he could speak with
11 Austin directly at the event: "*Gina Austin is there she has a red jacket on if you want to have a*
12 *conversation with her.*" (DC Decl. Ex. 2, p.4.)

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

14 Hi Darryl, 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 seventh month start 10k? [DC Decl. 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 Decl. 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 Decl. ¶15, 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 Decl.
6 ¶16.) Geraci's submission was a direct contradiction 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 "CO-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. [¶] I really want to finalize this as soon as possible - ***I***
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. [¶] 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 Decl. Ex.
1, pp.59-60]

25 The next day, Geraci texted Cotton: "***Can we meet tomorrow*** [?]" (DC Decl. 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 Decl. 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 Decl. 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. *I 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 Decl. 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 deadline.

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, i.e., 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 Decl. 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 counsel, Michael Weinstein ("Weinstein"), emailed Cotton the Complaint and the LP filed
on the Property. (DC Decl. ¶¶ 18,19.) The Complaint is premised solely on the allegation the Receipt is
the final written agreement for the Property (Comp. ¶7).

29 II. DISCUSSION

30 A. GERACI HAS THE BURDEN OF PROOF IN OPPOSING COTTON'S MOTION TO 31 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

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

3 (i) "On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement for the
4 purchase and sale of the [Property] on the terms and conditions stated therein." (Comp. ¶7.);

5 (ii) "On or about November 2, 2016, [Geraci] paid to [Cotton] \$10,000 good faith earnest
6 money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
conditions of the written agreement." (Comp. ¶8.); and

7 (iii) "[Cotton] has anticipatorily breached the contract by stating that he will not perform the
8 written agreement according to its terms. Among other things, [Cotton] has stated that,
9 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.)

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

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

23
24 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
25 pleadings filed, at least three full-time attorneys from two separate and sizeable law firms – Ferris & Britton and Austin Legal
26 Group – representing him and engaging in litigation and discovery tactics that are demonstratively oppressive. "Oppression
27 means the ultimate effect of the burden of responding to the discovery is incommensurate with the result sought. In considering
28 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 *pro se*) 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* ¶5:3 (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 Request 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) 117 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 Agreement.¹⁰

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**
EMAIL AND OTHER EVIDENCE PROVING THE RECEIPT IS JUST A RECEIPT.

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

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

22 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
23 performance has arrived, an anticipatory breach is said to have occurred." *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th
24 479, 489; see 1 Witkin, Summary of California Law, Contracts §§861-868; *Restatement (Second) Contracts* §§250-257
(Anticipatory breach—also called "anticipatory repudiation" and "prospective nonperformance"—occurs when a party whose
performance is not yet due makes clear that it does not intend to perform.).

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

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 for 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. ¶9.)

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

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

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

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

THE LAW OFFICE OF JACOB AUSTIN

Jacob Aust
JACOB P. AUST

**Attorney for Defendant and Cross-Complainant
DARRYL COTTON**

¹⁴ *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1018 (“Under section 405.38, a prevailing party on a motion to 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.]

EXHIBIT 8 [ROA 161]

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

F I L E D
Clerk of the Superior Court

APR 04 2018

By: A. SEAMONS, Deputy

2018 APR 4 4:11:46

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 DECLARATION IN
SUPPORT OF MOTION FOR EXPUNGEMENT
OF NOTICE OF PENDENCY OF ACTION
(*LIS PENDENS*)

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:

- I am the owner of record of the real property located at 6176 Federal Blvd., San Diego (the "Property").
- 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. During 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 ("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 me 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 made 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" 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 have 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
yet.

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

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

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

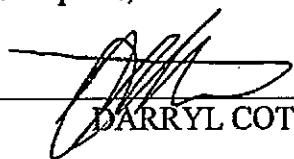
20 
21 DARRYL COTTON
22
23
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27
28

EXHIBIT 1

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



Darryl Cotton <indagrodarryl@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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Gmail - Drawing

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.

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@tfcscd.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

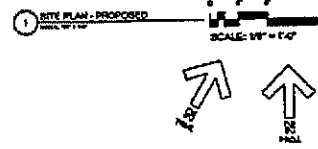
6176 Federal Blvd.


San Diego, CA. 92114

USA

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



<h1 style="margin: 0;">TECHNE</h1> <p style="margin: 0;">DESIGN & DEVELOPMENT</p> <p style="margin: 0; font-size: small;">7666 79th Street, San Diego, CA 92126 (619) 594-0000 (619) 594-0001 (619) 594-0002 FAX (619) 594-0003 (619) 594-0004 (619) 594-0005</p>	
<p>COMPLIANCE</p>	
	
<p>Federal Blvd. MMCC 637 S Federal Blvd. San Diego, CA 92114</p>	
<p>OWNER</p>	<p style="text-align: center;">Owner Address City, CA Zip Code</p>
Empty space for drawing content	
<p>PROJECT NO.</p>	<p>_____</p>
<p>DRAWN BY</p>	<p>_____</p>
<p>CHECKED BY</p>	<p>_____</p>
<p>PRODUCTION DATE</p>	
<p>CAD DRG FILE FILE NAME FILE DATE</p>	
<p>DRAWN BY DATE FILE</p>	
<p>CHECKED BY DATE FILE</p>	
<p>COMMENTS</p>	
<p>SCALE</p>	
<h2 style="margin: 0;">SITE PLAN -</h2> <h2 style="margin: 0;">PROPOSED -</h2> <h2 style="margin: 0;">Scheme B</h2>	
<p style="font-size: 2em; margin: 0;">A102</p>	



Darryl Cotton <indagrodarryl@gmail.com>

Agreement

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

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

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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.

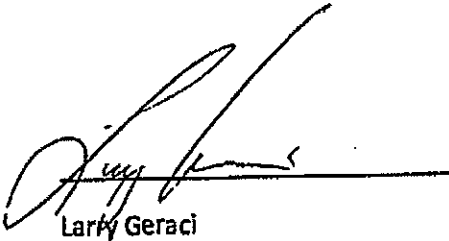
 Cotton & Geraci Contract.pdf
71K

11/02/2016

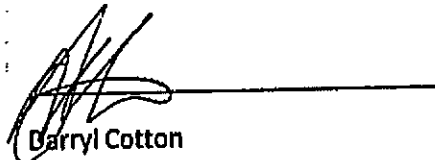
Agreement between Larry Geraci or assignee and Darryl Cotton:

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 San Diego

On November 2, 2010 before me, Jessica Newell Notary Public
(Insert name and title of the officer)

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

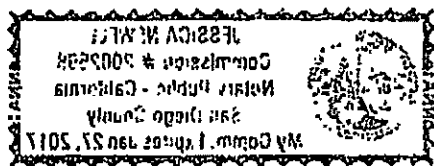
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jessica Newell

(Seal)







Darryl Cotton <indagroddarryl@gmail.com>

Re: Agreement

1 message

Larry Geraci <Larry@ffcsd.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 <indagroddarryl@gmail.com>

Federal Blvd need sig ASAP

Larry Geraci <Larry@tfcisd.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 D....pdf
35K

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 of TECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

Signature

____/____/____

Date



Darryl Cotton <indagrodarryl@gmail.com>

Federal Blvd Property

Larry Geraci <Larry@tfcisd.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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 17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf
347K

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:

1. **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 (1) 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 1, 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 1. 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 1, 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 prorations 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"

SERVICE CONTRACTS

EXHIBIT "D"

THREATENED OR PENDING LAWSUITS

EXHIBIT "E"

MEMORANDUM OF AGREEMENT



Darryl Cotton <indagrodarryl@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.

 **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 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.

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:



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

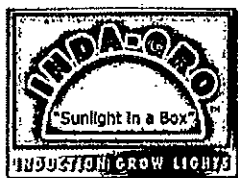
Bus: 858.576.1040

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



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: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci



Darryl Cotton <indagrodarryl@gmail.com>

Contract Review

Larry Geraci <Larry@tfcisd.net>
To: Darryl 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 5k, 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

Gmail - Contract Review

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. Termination. 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



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcisd.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 3/7, 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



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



Darryl Cotton <indagrodarryl@gmail.com>

RE: Contract Review

1 message

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



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

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



Darryl Cotton <indagrodarryl@gmail.com>

RE: Contract Review

1 message

Larry Geraci <Larry@tfcisd.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 CO-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,



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

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



Darryl Cotton <indagrodarryl@gmail.com>

Re: Contract Review

1 message

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

EXHIBIT 2

Friday, March 3, 2017

12:16 PM Did you get my email?

L Yes I did I'm having her
rewrite 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

4:30 PM

Tuesday, March 7, 2017

L Just sent the contract over

12:05 PM

12:10 PM Ill look it over tonight

Thursday, March 16, 2017

L How's it going with the
contract?

4:47 PM

Friday, March 17, 2017

L Can we meet tomorrow

11:44 AM

📎 Enter message



That sounds good. Can we
10:15 AM speak later?

(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

8:25 AM

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

8:50 AM

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
10:04 AM

Wednesday, January 18, 2017

L

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

10:27 AM

This resolves the zoning issue?

10:34 AM

L

Yes

10:36 AM

11:03 AM

Excellent

Monday, January 30, 2017

L

On phone.. Call you back shortly..

3:50 PM

3:50 PM

Ok

Tuesday, January 31, 2017

2:47 PM

How goes it?

L

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

2:48 PM

Monday, February 6, 2017

12:15 PM

Whats 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

L

I'm just walking in with clients they resolved it it's fine we're just waiting for final paperwork

8:20 AM

< **Larry Geraci**
8589564040



SMS/MMS

Wednesday, January 4, 2017

L

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

Get better and try!

Thursday, January 5, 2017

8:52 AM

Any better?

Friday, January 6, 2017

8:40 AM

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

L

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?

10:46 AM

L

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

10:47 AM

10:47 AM

Thx

17-0306 Side Agreement unsigned v2 Properties



General Security Details

Property Value

Description

Title

Subject

Tags

Categories

Comments

Origin

Author

Chris Austin

Last saved by AEA

Revision number 4

Version number

Program name Microsoft Office Word

Company HP

Manager

Content created 3/6/2017 3:48 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 3

EXHIBIT 4

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 1. 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

1 Psychiatry (Certificate No. 1903).

2 6. I am a Fellow of the Royal College of Physicians and Surgeons of Canada,
3 with certifications in Psychiatry and Forensic Psychiatry.
4

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

8 8. My prior work experience has included forensic psychiatric evaluation
9 work for the Forensic Psychiatric Hospital and the Forensic Psychiatric Services
10 Commission in Coquitlam, British Columbia. I have written numerous forensic
11 psychiatric assessment reports and testified as an expert witness before the British
12 Columbia Review Board and the Provincial Courts of British Columbia.
13

14 9. I currently work as a psychiatrist for the Department of Corrections for
15 the State of California.
16

17 10. In addition to my medical qualifications, I am also a graduate of Columbia
18 University School of Law in the LLM program.
19

20 11. In preparation for my assessment of Mr. Cotton, I consulted with Dr.
21 Carolyn Candido regarding her medical diagnosis of Mr. Cotton on December 13,
22 2017. Additionally, I reviewed the declaration previously provided by Dr. Candido
23 regarding her diagnosis of Mr. Cotton prepared on January 22, 2018. (Attached hereto
24 as Exhibit 1.)
25

26 12. Prior to my interview with Mr. Cotton, I also discussed the factual
27
28

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

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

21 15. Mr. Cotton represents he owns a property meeting certain requirements
22 by the City of San Diego and the State of California that would allow the creation and
23 operation of a Medical Marijuana Consumer Collective.
24
25
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, slamming 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 18. Mr. Cotton states he followed the armed individuals in his vehicle as they
14 fled from the scene while he was on the phone with 911. He was told by 911 to cease
15 his pursuit due to safety reasons as Mr. Cotton was chasing the armed robbers at high-
16 speed. Mr. Cotton believes he recognized the driver of the getaway vehicle as an
17 employee of the plaintiff.
18
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."
6

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

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

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

24 24. Mr. Cotton reports no improvement in his mental health symptoms since
25

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 potential 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 Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and
25 Major Depression (F32.2). He does not present with any objective, observable signs
26
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

10 31. It is my medical opinion that Mr. Cotton's symptoms are unlikely to
11 improve as long as current stressors (pending litigation, and what Mr. Cotton believes
12 to be threatening behaviors by plaintiff or his "agents") persist. His symptoms are also
13 likely to be significantly reduced if he believes the Court was not ignoring and
14 disregarding him.
15
16

17 32. It is my medical opinion that Mr. Cotton's mental health condition would
18 likely benefit from a rapid resolution of current legal proceedings. In my professional
19 opinion, the level of emotional and physical distress faced by Mr. Cotton at this time
20 is above and beyond the usual stress on any defendant being exposed to litigation. If
21 causative triggers and threats against Mr. Cotton persist, there is a substantial
22 likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental
23 health.
24
25

26 ///

1 33. Besides a removal of current stressors, his mental health condition would
2 likely benefit from Cognitive Behavioral Therapy for PTSD and depression, as well as
3 a trial of antidepressant medication.
4

5 I declare under penalty of perjury under the laws of the State of California
6 that the foregoing is true and correct.
7

8 DATED:

9 3/4/2018


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

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11 M. PLOESSER, M.D.
12 PSYCHIATRIST
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