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Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

vs.

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

DARRYL COTTON, an individual,
Cross-Complainant,

vs.

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

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

**RESPONSES BY DEFENDANT/
CROSS-COMPLAINANT DARRYL
COTTON TO SPECIAL
INTERROGATORIES PROPOUNDED BY
PLAINTIFF/CROSS-DEFENDANT
LARRY GERACI
[SET ONE]**

PROPOUNDING PARTY: Plaintiff/Cross-Defendant LARRY GERACI

RESPONDING PARTY: Defendant/Cross-Complainant DARRYL COTTON

SET NO: One (1)

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1 **PRELIMINARY STATEMENT**

2 These responses are made solely for the purpose of and in relation to this action. Each response
3 is given subject to all appropriate objections – including, without limitation, objections concerning
4 competency, relevancy, materiality, propriety and admissibility – which would require the exclusion of
5 any statement contained herein if the discovery request was asked of or any statements contained herein
6 was made by a witness present and testifying in court. All such objections and grounds therefor are
7 reserved and may be interposed at the time of trial. Additionally, all objections relative to defendant's
8 powers of exclusion, federal and state privileges, admissibility of evidence and other legislative
9 principals, statutes and rules of law are expressly reserved and may be interposed at any time during this
10 case.

11 Responding party has not yet completed the investigation of the facts relating to this action, and
12 discovery and preparation for trial are not yet complete. Consequently, the following responses are
13 given without prejudice to the responding party's right to produce at the time of trial any subsequently-
14 discovered evidence relating to the proof of any material fact, and to produce as and whenever
15 discovered all evidence relating to the proof of any material fact. Since responding party has not yet
16 completed his examination of the facts, the following responses are given without prejudice to
17 responding party's right to amend the following responses later or at the time of trial if additional
18 documents need be identified.

19 Responding party is continuing his investigation and discovery and the responses set forth herein
20 are complete to the extent possible based upon the information reasonably available it at this time.
21 Responding party reserves the right to amend or supplement these responses based on subsequently-
22 discovered facts, and all its rights to refer to, conduct discovery with reference to, or offer into evidence
23 at the time of trial any and all such witnesses, facts and evidence notwithstanding the evidence or
24 reference to such witnesses, facts and evidence in these responses. Responding party assumes no
25 obligation to voluntarily supplement or amend these responses to reflect witnesses, facts and evidence
26 discovered following the service of these responses.

27 Except for those facts which explicitly are admitted herein, no other admissions of any nature
28 whatsoever are to be implied or inferred. The mere fact that a response to a discovery request has been
provided herein should not be taken as an admission or concession of the existence of any facts set forth

1 or assumed by such discovery request, or that such response constitutes evidence of any fact thus set
2 forth or assumed. All responses must be construed as given on the basis of present recollection.

3 To the extent that any of the requests call for the disclosure and/or production of any information
4 which was prepared in the anticipation of litigation or for trial, or information protected by the
5 attorney/client privilege, the attorney work product doctrine, any privilege relating to confidential trade
6 secrets, the right of privacy or any other privilege, Defendant will identify and assert any such applicable
7 privilege, doctrine and/or right in his responses below.

8 Finally, the signature of the attorney assisting with these responses is included pursuant to Code
9 of Civil Procedure § 2033(g), and is intended only with regard to objections which have been raised in
10 these responses. The attorney's signature in no way constitutes a waiver of any attorney/client, work
11 product and/or any other privilege which may be asserted during subsequent discovery concerning the
12 identity of the sources of the information contained in these responses.

12 **GENERAL OBJECTIONS**

13 The following general objections are incorporated by reference into each and every individual
14 supplemental response as though fully quoted verbatim therein. Each additional objection is incorporated
15 into each individual response as though fully repeated therein, regardless of whether or not any or all of
16 these general objections are repeated or mentioned in response to any specific request.

- 17 • To the extent that any or all of the requests call for information prepared
18 in the anticipation of litigation or for trial, or information protected by the
19 attorney/client privilege, the attorney work product doctrine, any privilege
20 relating to confidential trade secrets, the right of privacy or any other
21 privilege, Defendant objects to each such request.
- 22 • To the extent that any or all of the requests call for information which is
23 not relevant, not admissible into evidence or not reasonably calculated to
24 lead to the discovery of admissible evidence, Defendant objects to each
25 such request.

23 **SPECIFIC OBJECTIONS**

24 **A. Defined Terms**

25 In Plaintiff's Special Interrogatories (Set One) propounded to Defendant, Plaintiff defines
26 "SECOND AMENDED CROSS-COMPLAINT" as "refer[ring] to the pleading entitled filed *[sic]* by
27 Cross-Complainant Darryl Cotton in the above-captioned action on March 21, 2017" is inaccurate and,
28 as such, defective. (See Plaintiff/Cross-Defendant Larry Geraci's Special Interrogatories Propounded
to Defendant/Cross-Complainant Darryl Cotton (Set One) at p. 3, ll. 22-23). Based upon Defendant's

1 understanding that the correct definition of the “SECOND AMENDED CROSS-COMPLAINT” to
2 which Plaintiff refers in his Special Interrogatories is “the pleading entitled Second Amended Cross-
3 Complaint For: (1) Breach of Contract; (2) Intentional Misrepresentation; (3) Negligent
4 Misrepresentation; (4) False Promise; and (5) Declaratory Relief filed on August 26, 2017,” Defendant
5 predicates his responses below upon the foregoing definition.

6 Based upon Defendant’s interpretation that the undefined term “Property” means and refers to
7 the real property owned by Defendant located at 6176 Federal Boulevard, San Diego, California,
8 Defendant predicates his responses below upon the foregoing definition.

9 Based upon the Defendant’s interpretation that the undefined term “CUP application” means and
10 refers to an official application to the City of San Diego for a Conditional Use Permit to receive approval
11 for the Property to operate as a Medical Marijuana Collective Cooperative (“MMCC”), Defendant
12 predicates his responses below upon the foregoing definition.

13 **RESPONSES TO SPECIAL INTERROGATORIES**

14 **SPECIAL INTERROGATORY NO. 1:**

15 Please state all facts which support your allegation in paragraph 10 of the Second Amended
16 Cross-Complaint that Cotton assisted Geraci with preliminary due diligence in investigating the
17 feasibility of a CUP application at the Property.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

19 At Plaintiff’s request, Defendant executed a document entitled “Authorization to view and copy
20 Building Records from the County of San Diego Tax Assessor” (“Authorization”) which Plaintiff
21 transmitted to him via e-mail on November 14, 2016 with the request that he sign and return the
22 document “asap.” The Authorization provided that Defendant, as owner of the Property, authorized
23 Abhay Schweitzer, Benjamin Peterson and/or Carlos Gonzales of TECHNE to view and make copies of
24 the San Diego Tax Assessor’s Building Records for the Property.

25 On or about October 31, 2016, Plaintiff requested that Defendant execute an Ownership
26 Disclosure Statement – a required component of all CUP applications – (1) based upon his representation
27 that he needed the executed document to evidence his right to access the Property in connection with his
28 “lobbying efforts” regarding the alleged zoning issue which, unless resolved, would preclude approval
of the CUP Application, and (2) as an indication of good faith during our negotiations of the terms of a
final agreement for sale of Defendant’s Property to Plaintiff.

1 **SPECIAL INTERROGATORY NO. 2:**

2 Please state all facts which support your allegation in paragraph 12 of the Second Amended
3 Cross-Complaint that Cotton's understanding was that Geraci was unable to list himself on the
4 application because of Geraci's other legal issues.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

6 Based upon Defendant's interpretation of the undefined phrase "other legal issues" to mean and
7 refer to the potential negative impact on Plaintiff's personal and business reputations associated with
8 public records reflecting his ownership of MMCC retail cannabis businesses, Defendant responds as
9 follows:

10 Following Plaintiff's telephone call to Defendant in or around late August 2016 to express his
11 interest in purchasing Defendant's Property, the parties met at Plaintiff's office in or around early
12 September 2016 to further discuss the details of the potential sale of Defendant's Property to Plaintiff.

13 During that meeting, Plaintiff advised Defendant that he was a professional financial planner and
14 an IRS Enrolled Agent whose primary business was providing, in a fiduciary capacity, financial and tax
15 planning services and advice to individuals and business clientele of considerable net worth. Plaintiff
16 also told Defendant that he also was a licensed California Real Estate Agent, and a real estate investor
17 and developer who, *inter alia*, purchased properties located in areas where the properties could be
18 converted into MMCC retail cannabis businesses. Plaintiff explained that, because the perception of
19 him being involved in the cannabis business could "tarnish" so-to-speak his reputation in the eyes of his
20 clients for whom he provided financial and tax planning services, he preferred to remain in the
21 background on those transactions, which he accomplished by securing himself an ongoing equity
22 position in the businesses and arranging for other individuals to own and operate the MMCC businesses.

23 Additionally, Defendant came to find out that Plaintiff was named in numerous lawsuits by the
24 City of San Diego for the owning/managing of unlicensed marijuana dispensaries.

25 **SPECIAL INTERROGATORY NO. 3:**

26 Please state all material terms and conditions for the sale of the Property upon which the parties
27 reached an agreement as alleged in paragraph 13 of the Second Amended Cross-Complaint that the
28 parties reached an agreement on the material terms for the sale of the Property.

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3 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

4 At a meeting on November 2, 2016, the parties reached an oral agreement for sale of the Property
5 to Plaintiff which included the following material terms and conditions:

6 1. Plaintiff would provide Defendant a \$50,000 non-refundable deposit and apply for a CUP
7 at the property.

8 2. If the CUP was denied, Defendant would keep the \$50,000 and his property.

9 3. If the CUP was approved, Plaintiff would build and establish a Marijuana Outlet at the
10 Property and Defendant would receive (i) \$800,000; a 10% equity stake in the contemplated business; a
11 minimum monthly equity distribution of \$10,000 or 10% of the profits, whichever was greater.

12 4. Plaintiff would help Defendant relocate to another property where Defendant could
13 continue to operate his nonprofit and businesses.

14 5. Additional terms that were discussed are incorporated by reference and are included in
15 the Services Agreement that was drafted by Defendant on September 24, 2016, which was developed
16 after conversations with Plaintiff. Defendant sent a copy of the Services Agreement to Plaintiff on March
17 2, 2017, which is attached to Defendant's supporting declaration in his motion to remove the lis pendens.

18 6. Standard terms and conditions for a real estate deal which were supposed to be included
19 by Plaintiff's attorney, Gina Austin.

20 **SPECIAL INTERROGATORY NO. 4:**

21 Please state all facts which support your allegation in paragraph 13 of the Second Amended
22 Cross-Complaint that the parties further agreed to cooperate in good faith to promptly reduce the
23 complete agreement, including all of the agreed-upon terms, to writing.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

25 During the parties' negotiations concerning Plaintiff's purchase of Defendant's Property, Plaintiff
26 made the following representations to Defendant: (i) he could be trusted as reflected by the fact that he
27 operated in a fiduciary capacity as an IRS Enrolled Agent for many powerful and high-net-worth-
28 individuals ("HNWI"); (ii) he is the owner and operator of Tax and Financial Center, Inc., an accounting
and financial advisory services company, servicing HNWI and large businesses in a fiduciary capacity;
(iii) he was a California Licensed Real Estate Agent, bound by professional and ethical obligations, to be

1 truthful in real-estate deals; (iv) through his experts, who had conducted preliminary due diligence, he
2 had uncovered a critical zoning issue that unless *first* resolved would prevent the City from even
3 accepting a CUP application on the Property (the “Critical Zoning Issue”); (v) through his professional
4 relationships, which included his HNWI clients that were politically influential, and through powerful
5 hired lobbyists (some of whom used to work for the City in senior positions), he was in a unique position
6 to have the Critical Zoning Issue resolved; (vi) he was highly qualified to operate a MO because he owned
7 and operated multiple cannabis dispensaries in San Diego; and (vii) his employee, Rebecca Berry
8 (“Berry”), was a trustworthy individual who could be trusted to be the applicant on the CUP application
9 because she (a) managed his marijuana dispensaries, (b) held a senior position at a church and came
10 across as a “nice old lady that had nothing to do with marijuana,” and (c), consequently, would pass the
11 stringent City and State of California background checks required to have the CUP approved
12 (collectively, the “Qualification Representations”).

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

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

26 At the November 2, 2016 meeting, after the parties reached the November Agreement, Plaintiff:
27 (i) provided Defendant with \$10,000 in cash towards the NRD of \$50,000, for which Defendant executed
28 a document to record his receipt thereof (the “Receipt”); (ii) promised to have his attorney, Gina Austin

1 (“Austin”), *promptly* reduce the oral November Agreement to written agreements for execution; and
2 (iii) promised to not submit the CUP to the City until he paid the balance on the NRD.

3 After Plaintiff and Defendant met on November 2, 2016, reached the November Agreement,
4 executed the Receipt and separated – the following email communications took place that same day:

5 At 3:11 p.m., Plaintiff emailed Defendant a scanned copy of the Receipt which states:

6 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd. CA
7 for a sum of \$800,000 to Larry Plaintiff or assignee on the approval of a
8 Marijuana Dispensary. (CUP for a dispensary) [¶] Ten Thousand dollars (cash)
9 has been given in good faith earnest money to be applied to the sales price of
\$800,000 and to remain in effect until license is approved. Darryl Cotton has
agreed to not enter into any other contacts [*sic*] on this property.

10 At 6:55 p.m., Defendant replied:

11 Thank you for meeting today. Since we executed the Purchase Agreement in your
12 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
13 sure that we're *not* missing that language in any final agreement as it is a factored
14 element in my decision to sell the property. I'll be fine if you would simply
acknowledge that here in a reply. (Emphasis added.)

15 At 9:13 p.m., Plaintiff replied: “*No no [sic] problem at all*” (emphasis added).

16 In other words, the very same day on which the Receipt was executed, Defendant received a copy of the
17 Receipt from Plaintiff and realized it could be misconstrued as a final agreement for the Property. Because
18 Defendant was concerned, and wanted there to be no uncertainty, he requested Plaintiff confirm in writing
19 the Receipt was not a final agreement. Plaintiff replied to Defendant’s request for written confirmation;
20 thereby clearly, unambiguously and indisputably confirming the Receipt is *not* a final agreement for
21 Defendant’s Property. Thus, Defendant refers to this email from Plaintiff as the “Confirmation Email.”

22 Thereafter, over the course of almost five months, the parties exchanged numerous emails, texts
23 and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of
24 the final written agreements for the Property. However, Plaintiff continuously failed to make actual,
25 substantive progress. Most notably, he failed to provide the final written agreements, pay the balance of
26 the NRD, and to provide facts regarding the progress being made on the Critical Zoning Issue. (DC Decl.
27 ¶9.) Regarding the Critical Zoning Issue, and also reflecting Plaintiff’s general non-substantive replies
28 and avoidance, the following text exchanges took place between Plaintiff and Defendant from January 6,

2017 and February 7, 2017:

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

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

Cotton: Are you available for a call?

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

Cotton: Thx

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

Cotton: This resolves the zoning issue?

Geraci: Yes

Cotton: Excellent

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

Cotton: Ok

Cotton: How goes it?

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

Cotton: Whats *[sic]* new?

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

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

These text communications were meant to and did induce Defendant into believing, relying and acting on Plaintiff's representations he was making progress on the Critical Zoning Issue (the "Text Communications").

On February 27, 2017, Plaintiff emailed Defendant: "***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.***" The cover email clearly states Plaintiff's intent of effectuating the oral November Agreement via two separate written documents (each for \$400,000). Notably, Section 18(i) states:

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

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

On March 2, 2017, Plaintiff emailed Defendant a draft of the additional contract, the Side

1 Agreement, that was supposed to provide for, *inter alia*, Defendant's 10% equity stake. The next day,
2 Defendant replied:

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

8 Plaintiff did not reply to Defendant's email. Plaintiff did not pick up when Defendant called later.
9 Exasperated, Defendant followed up with Plaintiff via text wanting to confirm that Plaintiff had received
10 the email and understood his concern – that the Side Agreement did not provide for his "**10% equity**
11 **position**" in the MO. Defendant texted: "**Did you get my email?**" Plaintiff replied one minute later: "**Yes**
12 **I did I'm having her rewrite it now[.] As soon as I get it I will forward it to you[.]**" (the "Confirmation
13 Text").) The Confirmation Text proves that on March 3, 2017 Plaintiff (i) was going to have Austin revise
14 the Side Agreement to contain Defendant's "10% equity position" in the MO and (ii) had previously
15 *received, acknowledged and consented* to the terms contained in the "Inda-Gro GERL Services
16 Agreement." Notably, Plaintiff does not refuse, refute, argue or so much as question Defendant's
17 requests or statements as would be logical if the Receipt were the full agreement as **now** alleged.

18 On March 6, 2017, Plaintiff and Defendant spoke regarding revisions required to have the drafts
19 accurately reflect the November Agreement. Defendant communicated his frustration with the delays and
20 Plaintiff again promised to have Austin *promptly* correct the mistakes in the drafts. During that
21 conversation, Defendant let Plaintiff know he would be attending a local cannabis event at which Austin
22 was scheduled to be the headnote speaker. Plaintiff later texted Defendant he could speak with Austin
23 directly at the event: "**Gina Austin is there she has a red jacket on if you want to have a conversation**
24 **with her.**"

25 Defendant did not attend the event, but Mr. Joe Hurtado did. Mr. Hurtado spoke with Gina Austin
26 and informed her that Defendant was not attending the event and noted Defendant's concern with not
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28

1 having a final written agreement that included his 10% equity stake. Ms. Austin acknowledged
2 Defendant's concern and stated that she was working on the revised agreement.¹

3 The next day, March 7, 2017, Plaintiff sent the following email to Defendant:

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

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

12 Attached to Plaintiff's email was a revised draft of the Side Agreement in Word format. This
13 draft provides for, *inter alia*, Defendant receiving (i) 10% of the net profits of the MO and (ii) a
14 minimum monthly payment of \$10,000. (DC Decl. at Ex. 1, p.55.) Furthermore, Attorney Gina Austin
15 (who for several months represented Plaintiff – a Real Party in Interest to the related Writ Action against
16 the City), was responsible for, and did draft versions of the contracts months after the November
17 agreement indicating her awareness that no final agreement had been executed. The attachment of the
18 last draft provided was dated "**March 3, 2017**" (the "Metadata Evidence").

19 On March 16, 2017, after having reviewed the revised agreement forwarded by Plaintiff on
20 March 7, 2017, and discovering that it again did not accurately reflect the November Agreement,
21 Defendant decided to follow up with the City regarding the Critical Zoning Issue personally. It was at
22 this point that Defendant discovered that Plaintiff had been lying from the very beginning – Plaintiff had
23 submitted a CUP for the Property on October 31, 2016, before the parties even reached the November
24 Agreement. Plaintiff's submission was a direct contradiction of his (i) representation that a CUP could
25 not be submitted until the Critical Zoning Issue was resolved and (ii) promise to not submit the CUP
26 until he had paid Defendant the balance of the NRD. A Parcel Information Report provided by the City
27 of San Diego, Development Services Department ("City Parcel Report") states the zoning of the

28 ¹ Defendant notes that Mr. Hurtado was present at the hearing held on Defendant's motion to expunge the lis
pendens and was prepared to offer his testimony on this point, but the Court denied Defendant's counsel's request to
admit Mr. Hurtado's testimony.

1 Property was changed to "CO-2-1" (MO qualifying zone) on January 14, 2016. In other words, the
2 City Parcel Report provides support for the contention that the entire Critical Zoning Issue was a
3 fraudulent scheme to (i) induce Defendant into executing the Ownership Statement – no zoning change
4 was required to submit the CUP for an MO to the City on the Property – and (ii) to deceive Defendant
5 into thinking that he required Plaintiff's unique and powerful political influence to resolve the alleged
6 Critical Zoning Issue.

7 Later that same day, March 16, 2017, Defendant emailed Plaintiff, in relevant part, the following:

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

22 The next day, Plaintiff texted Defendant: "***Can we meet tomorrow [?]***" Of note, Plaintiff, did not
23 refute or dispute Defendant's factual assertions that Plaintiff had lied and submitted the CUP without,
24 *inter alia*, paying Defendant the balance of the NRD and reducing the November Agreement to writing.
25 Defendant replied via email:

26 Larry, I received your text asking to meet in person tomorrow. I would prefer that
27 until we have final agreements, that we converse exclusively via email.... To be
28 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.*

29 Please *confirm, as requested*, by 12:00 PM Monday *that you are honoring our*
30 *agreement and will have final drafts* (reflecting completely the below) by
Wednesday at 12:00 PM. (Emphasis added.)

1 On March 18, 2017, Plaintiff replied to Defendant as follows: "*Darryl, I have an attorney*
2 *working on the situation now. I will follow up by Wednesday with the response as their timing will play*
3 *a factor.*" Defendant, now understanding Plaintiff's deceitful nature, replied:

4 Larry, I understand that drafting the agreements will take time, but you don't need
5 to consult with your attorneys to tell me whether or not you are going to honor our
6 agreement. ***I need written confirmation that you will honor our agreement*** so that
7 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. (Emphasis added.)

8 Plaintiff's response to Defendant's **three (3) written requests for assurance of performance** was
9 nebulous, and there was no finalization of the written agreements or confirmation of his intent to do so
10 by Defendant's deadline.

11 Thus, Defendant, having been true his word and waiting until March 20 had passed (without
12 receipt of adequate assurance nor performance by Plaintiff, *i.e.*, Plaintiff's breach of the November
13 agreement) terminated the deal with Plaintiff on March 21, 2017 for breach: "To be clear, as of now,
14 you have no interest in my property, contingent or otherwise." Having anticipated Plaintiff's breach,
15 Defendant had already lined up another buyer and then executed a written purchase agreement for the
16 sale of the Property to Mr. Martin. The next day, Plaintiff's counsel, Michael Weinstein, emailed
17 Defendant the Complaint – premised solely on the allegation that the Receipt is the final written
18 agreement for the Property – and the *lis pendens* was recorded on the Property ("Plaintiff's Course of
19 Conduct").

20 Defendant incorporates by this reference the emails and text communications between Plaintiff
21 and Defendant provided as Exhibits in Defendant's declaration in support of his motion for a *lis pendens*.

22 **SPECIAL INTERROGATORY NO. 5:**

23 Please state all facts which support your contention in paragraph 14(a) of the Second Amended
24 Cross-Complaint that Geraci agreed to pay a \$50,000 non-refundable deposit payable to Cotton
25 immediately upon the parties' execution of final integrated written agreements.

26 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

27 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
28 fully set forth herein.

SPECIAL INTERROGATORY NO. 6:

1 Please state all facts which support your contention in paragraph 14(a) of the Second Amended
2 Cross-Complaint that Geraci was to pay the remaining \$750,000 payable to Cotton upon the City's
3 approval of a CUP application for the property.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

5 Plaintiff incorporates by this reference his Response to Special Interrogatory No. 4 as though
6 fully set forth herein.

7 **SPECIAL INTERROGATORY NO. 7:**

8 Please state all facts which support your allegation in paragraph 14(b) of the Second Amended
9 Cross-Complaint that if the City denied the CUP application, the parties agreed the sale of the Property
10 would be automatically terminated and Cotton would be entitled to retain the entire \$50,000
11 nonrefundable deposit.

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14 **RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

15 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
16 fully set forth herein.

17 **SPECIAL INTERROGATORY NO. 8:**

18 Please state all facts which support your contention in paragraph 14(c) of the Second Amended
19 Cross-Complaint that Geraci agreed to grant Cotton a ten percent (10%) equity stake in the MMCC that
20 would operate at the Property following the City's approval of the CUP application.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

22 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
23 fully set forth herein.

24 **SPECIAL INTERROGATORY NO. 9:**

25 Please state all facts that support your allegation in paragraph 14(d) of the Second Amended
26 Cross-Complaint that Geraci agreed that, after the MMCC commenced operations at the Property,
27 Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and Geraci would guarantee
28 that those payments would amount to at least \$10,000 per month.

RESPONSE TO SPECIAL INTERROGATORY NO. 9:

1 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
2 fully set forth herein.

3 **SPECIAL INTERROGATORY NO. 10:**

4 Please state all facts which support your contention in paragraph 15 of the Second Amended
5 Cross-Complaint that, at Geraci's request, the sale was to be documented in two final written agreements,
6 a real estate purchase agreement and a separate side agreement which would reflect the terms agreed
7 upon at the November 2, 2016 meeting.

8 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

9 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
10 fully set forth herein.

11 **SPECIAL INTERROGATORY NO. 11:**

12 Please state all facts which support your contention in paragraph 16 of the Second Amended
13 Cross-Complaint that Geraci request *[sic]* additional time to come up with the \$50,000 non-refundable
14 deposit.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

16 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
17 fully set forth herein.

18 **SPECIAL INTERROGATORY NO. 12:**

19 Please state all facts that support your allegation in paragraph 17 of the Second Amended Cross-
20 Complaint that Geraci made an express promise to pay the \$40,000 balance of the non-refundable
21 deposit prior to submission of the CUP application.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

23 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
24 fully set forth herein.

25 **SPECIAL INTERROGATORY NO. 13:**

26 Please state all facts which support your allegation in paragraph 19 of the Second Amended
27 Cross-Complaint that Geraci failed to make progress on his promises, including his promises to
28 promptly deliver the draft final agreement documents.

RESPONSE TO SPECIAL INTERROGATORY NO. 13:

1 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
2 fully set forth herein.

3 **SPECIAL INTERROGATORY NO. 14:**

4 Please state all facts which support your allegation in paragraph 19 of the Second Amended Cross-
5 Complaint that Geraci failed to make progress on his promises, including his promises to pay the balance
6 of the non-refundable deposit.

7 **RESPONSE TO SPECIAL INTERROGATORY NO. 14:**

8 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
9 fully set forth herein.

10 **SPECIAL INTERROGATORY NO. 15:**

11 Please state all facts which support your allegation in paragraph 19 of the Second Amended Cross-
12 Complaint that Geraci failed to make progress on his promises, including his promises to keep Cotton
13 apprised of the status of the zoning issue.

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16 **RESPONSE TO SPECIAL INTERROGATORY NO. 15:**

17 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
18 fully set forth herein.

19 **SPECIAL INTERROGATORY NO. 16:**

20 Please state all facts which support your allegation in paragraph 21 of the Second Amended
21 Cross-Complaint that Geraci had previously represented to Cotton that the CUP application could not be
22 submitted until the zoning issue was resolved.

23 **RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

24 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
25 fully set forth herein.

26 **SPECIAL INTERROGATORY NO. 17:**

27 Please state all facts which support your allegation in paragraph 23 of the Second Amended Cross-
28 Complaint that the 11/02/2016 written agreement signed by both parties was missing many of the key
deal points agreed upon by the parties at their November 2, 2016 meeting.

RESPONSE TO SPECIAL INTERROGATORY NO. 17:

1 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
2 fully set forth herein.

3 **SPECIAL INTERROGATORY NO. 18:**

4 Please state all facts which support your allegation in paragraph 24 of the Second Amended Cross-
5 Complaint that Paragraph 3.11 of the draft side agreement, which stated that the parties had no joint
6 venture or partnership agreement of any kind, contradicted the parties' express agreement.

7 **RESPONSE TO SPECIAL INTERROGATORY NO. 18:**

8 Paragraph 3.11 of the draft Side Agreement states:

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

12 This provision directly contradicts the parties' express agreement that, as one of the terms of sale of the
13 Property, Defendant would receive a 10% equity stake in the MMCC which, once it began operations,
14 would generate monthly equity distributions to Defendant of no less than \$10,000, the payment of which
15 was guaranteed by Plaintiff.

16 After reviewing the draft Side Agreement Plaintiff e-mailed to him on March 2, 2016, Defendant
17 e-mailed Plaintiff on March 3, 2016 advising him that the document contained no provision for Defendant
18 to receive a 10% equity stake in the MMCC as the parties had agreed and as was memorialized in the
19 September 24, 2016 Services Agreement Contract.

20 In his e-mail response on March 7, 2016, Plaintiff advised Defendant, *inter alia*, that he had not
21 yet reviewed the side agreement, and "the 10k "a month [equity payment] might be difficult to hit until
22 the sixth month Can we do 5k, and on the seventh month start 10k?"

23 Plaintiff's March 7, 2016 e-mail alone clearly supports Defendant's allegations in Paragraph 24
24 of the Second Amended Cross-Complaint.

25 Defendant also incorporates by this reference his Response to Special Interrogatory No. 4 as
26 though fully set forth herein.

27 **SPECIAL INTERROGATORY NO. 19:**

28 Please state all facts which support your allegation in paragraph 29 of the Second Amended Cross-
Complaint that Cotton notified Geraci that he intended to move forward with a new buyer for the
Property.

RESPONSE TO SPECIAL INTERROGATORY NO. 19:

1 In an e-mail dated March 21, 2017, Defendant advised Plaintiff that, based upon information he
2 had received during communications with the City of San Diego's Development Project Manager on
3 March 19 and 20, 2017 which included Plaintiff's premature submission of the CUP Application in
4 breach of their agreement, and Plaintiff's ongoing delays and ultimate failure to provide final agreements
5 accurately reflecting the parties agreed-upon terms and conditions for the sale of Defendant's Property,
6 Defendant would be entering into an agreement with a third party to sell his Property.

7 Plaintiff also incorporates by this reference his Responses to Special Interrogatories No. 4 as
8 though fully set forth herein.

9 **SPECIAL INTERROGATORY NO. 20:**

10 If you contend that any of the terms and conditions stated in the 11/02/2016 written agreement
11 signed by both parties are ambiguous, please state each and every such ambiguous term and condition.

12 **RESPONSE TO SPECIAL INTERROGATORY NO. 20:**

13 Defendant does not contend that any of the terms and conditions of the November 2, 2016
14 agreement are ambiguous; rather, Defendant steadfastly has contended that November 2, 2016 agreement
15 is not and was never intended to be a memorialization of all the terms and conditions agreed upon by the
16 parties regarding Plaintiff's purchase of Defendant's Property; rather, it was nothing more than a receipt
17 for the \$10,000 cash advance paid by Plaintiff toward the agreed-upon \$50,000 non-refundable deposit.

18 Moreover, as a licensed Real Estate Agent who manages purchases and sales of real properties
19 for his clients, purchases real properties himself as investments, Plaintiff is acutely familiar with the
20 required documentation associated with real property purchase and sale transactions in California such
21 that neither he – nor any other reasonable individual of similar occupation and professional experience –
22 could possibly construe the November 2, 2016 receipt as a final agreement setting forth all the terms for
23 the purchase and sale of any property.

24 **SPECIAL INTERROGATORY NO. 21:**

25 For each and every ambiguous term and condition identified in your response to Special
26 Interrogatory No. 21, if any, please state each and every fact which you contend helps explain the
27 meaning of each such ambiguous term and condition.

28 **RESPONSE TO SPECIAL INTERROGATORY NO. 21:**

Not applicable. Defendant incorporates by reference his Response to Special Interrogatory
No. 20 as though fully set forth herein.

1 **SPECIAL INTERROGATORY NO. 22:**

2 If you contend that you entered into an agreement with Larry Geraci containing material terms
3 and conditions in addition to those stated in the 11/02/2016 written agreement signed by both parties,
4 please state each and every such additional material term and condition.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 22:**

6 Defendant incorporates by this reference his response to Special Interrogatory Nos. 3 and 4 as
7 though fully set forth herein.

8 **SPECIAL INTERROGATORY NO. 23:**

9 If you contend that Larry Geraci breached an agreement that he had entered into with you, then
10 please state all the material terms and conditions of that agreement.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 23:**

12 Defendant incorporates by this reference his response to Special Interrogatory No. 3 and 4 as
13 though fully set forth herein.

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15 **SPECIAL INTERROGATORY NO. 24:**

16 If you contend that Larry Geraci breached an agreement that he had entered into with you, then
17 please state each and every act or omission of Geraci which breached that agreement.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 24:**

19 Defendant contends that Plaintiff entire course of conduct was a fraudulent scheme and hereby
20 incorporates by this reference his Responses to Interrogatories Nos. 3 and 4 as though fully set forth
21 herein describing said conduct which in total represents his breach of the oral November Agreement.

22 **SPECIAL INTERROGATORY NO. 25:**

23 If you contend that Larry Geraci breached an agreement that he had entered into with you and
24 that you are entitled to recover damages as a result of that breach, then please describe the nature and
25 amount of damages that you are entitled to recover, including how that amount was calculated.

26 **RESPONSE TO SPECIAL INTERROGATORY NO. 25:**

27 The full nature and extent of all damages suffered by Defendant are currently unknown; however,
28 they do include but are not limited to ongoing financial, physical, mental and psychological damages. At
a minimum, Defendant has been diagnosed with a TIA and Acute Stress Disorder by two separate doctors
and with various psychological issues arising from this litigation as supported by the Independent

Psychological Assessment by Dr. Ploesser. The documents supporting these statements have been produced in the pleadings previously filed and served in this action by Defendant. Because these damages are ongoing, experts will be required to fully ascertain and describe them.

Finally, because of Plaintiff's breach of the parties' oral agreement regarding purchase of Defendant's Property, this litigation and the potential threat of losing his Property at any time has caused Defendant to suffer and continue to suffer such severe physical, mental and emotion damage that he cannot operate physically and mentally as if this litigation was not taking place due to the daily stress he suffers.

Defendant reserves his right to supplement his response to this interrogatory once further information concerning his damages is ascertained.

SPECIAL INTERROGATORY NO. 26:

Please state each statement by Geraci that you contend were false statements of material facts as alleged in paragraph 39 of your Second Amended Complaint.

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RESPONSE TO SPECIAL INTERROGATORY NO. 26:

Defendant incorporates by reference his Response to Interrogatory No. 4 as though fully set forth herein.

SPECIAL INTERROGATORY NO. 27:

Please state all facts which support your contention that Geraci knew the statements to be false or made them with reckless disregard for their truth as alleged in paragraph 39 of your Second Amended Complaint.

RESPONSE TO SPECIAL INTERROGATORY NO. 27:

Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though fully set forth herein.

SPECIAL INTERROGATORY NO. 28:

Please state all facts which support your contention that you reasonably and justifiably relied on Geraci's false statements as alleged in paragraph 39 of your Second Amended Cross-Complaint.

RESPONSE TO SPECIAL INTERROGATORY NO. 28:

Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though fully set forth herein.

1 **SPECIAL INTERROGATORY NO. 29:**

2 Please state all facts which support your contention that your reasonable reliance upon Geraci's
3 false statements was a substantial factor in causing you damage and harm as alleged in paragraph 39 of
4 your Second Amended Cross-Complaint.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 29:**

6 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
7 fully set forth herein.

8 **SPECIAL INTERROGATORY NO. 30:**

9 Please state all facts which support your contention that Geraci's false representations caused you
10 damages as alleged by you in paragraph 39 of your Second Amended Cross-Complaint.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 30:**

12 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
13 fully set forth herein.

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15 **SPECIAL INTERROGATORY NO. 31:**

16 Please state all facts which support your contention that Geraci's misrepresentations have
17 diminished the valued *[sic]* of the property as alleged in paragraph 41 of your Second Amended Cross-
18 Complaint.

19 **RESPONSE TO SPECIAL INTERROGATORY NO. 31:**

20 The filing of the *lis pendens* has clouded title on the Property such that it is not marketable and
21 cannot be sold by Defendant, nor can Defendant obtain any investments or financing for the Property.

22 **SPECIAL INTERROGATORY NO. 32:**

23 Please state all facts which support your contention that Geraci's misrepresentations have reduced
24 the price Cotton will be able to receive for the property as alleged in paragraph 41 of your Second
25 Amended Cross-Complaint.

26 **RESPONSE TO SPECIAL INTERROGATORY NO. 32:**

27 In the event the pending CUP Application for the Property is not approved, another CUP
28 Application cannot be submitted for at least one year following the denial of pending CUP Application.
Additionally, a CUP Application is currently pending for an adjacent property located approximately 300
feet away from Defendant's Property.

1 **SPECIAL INTERROGATORY NO. 33:**

2 Please state all facts which support your contention that you are entitled to an award of general,
3 compensatory, special, exemplary and/or punitive damages as alleged in paragraph 42 of your Second
4 Amended Cross-Complaint.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 33:**

6 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
7 fully set forth herein.

8 **SPECIAL INTERROGATORY NO. 34:**

9 Please state all facts which support your contention that Geraci made negligent misrepresentations
10 to you as alleged in paragraph 45 of your Second Amended Cross-Complaint.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 34:**

12 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
13 fully set forth herein.

14 **SPECIAL INTERROGATORY NO. 35:**

15 Please state all facts which support your contention that you have been damaged as a result of
16 negligent misrepresentations made by Geraci as alleged in paragraph 46 of your Second Amended
17 Complaint.

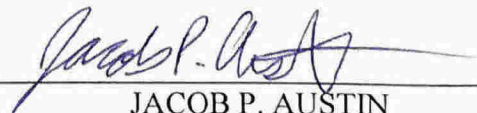
18 **RESPONSE TO SPECIAL INTERROGATORY NO. 35:**

19 Defendant incorporates by this reference his Response to Special Interrogatory No. 4 as though
20 fully set forth herein.

21 DATED: May 9, 2018

THE LAW OFFICE OF JACOB P. AUSTIN

22 By



JACOB P. AUSTIN

Attorney for Defendant/Cross-Complainant
DARRYL COTTON

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As a party to this action, I am authorized to and hereby do make this verification for that reason.


DARRYL COTTON