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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 FORM INTERROGATORIES
– GENERAL 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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PRELIMINARY STATEMENT

1

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

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

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

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

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

1 or assumed by such discovery request, or that such response constitutes evidence of any fact thus set forth
2 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.

13 **GENERAL OBJECTIONS**

14 The following general objections are incorporated by reference into each and every individual
15 response as though quoted verbatim therein, regardless of whether or not any or all of these general
16 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 in the
18 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 privilege,
21 Defendant objects to each such request.
- 22 • To the extent that any or all of the requests call for information which is not
23 relevant, not admissible into evidence or not reasonably calculated to lead to the
24 discovery of admissible evidence, Defendant objects to each such request.

25 **SPECIFIC OBJECTIONS**

26 Defendant objects to the definition of "Incident" for the responses below insofar as it is
27 defined to include the "breach" of the contract which, as Defendant alleges encompasses a fraudulent
28 course of conduct beginning prior to the execution of the documents and up through its effectuation with
the filing of the instant lawsuit. The responses below are responsive to the definition of Incident as
including the allegations related to the "entering of a contract for the sale of the subject property," but
shall not include the language of "breach thereof" as Defendant alleges Plaintiff's fraudulent course of

1 conduct over the course of over 4 months is overly-broad in the context of responding to requests that
2 join both the entering into an agreement on November 2, 2016, a single incident, whereas Plaintiff's
3 "breach thereof" is addressed and described in the affirmative defenses which detail Plaintiff's actions as
4 alleged by Defendant.

5 **RESPONSES TO FORM INTERROGATORIES**

6 Subject to and without waiving the foregoing general and Special objections and those set forth
7 in his responses below, Defendant responds to Plaintiff's interrogatories as follows:

8 **FORM INTERROGATORY NO. 1.1:**

9 State the name, ADDRESS, telephone number, and relationship to you of each PERSON who
10 prepared or assisted in the preparation of the responses to these interrogatories. (Do not Identify anyone
11 who simply typed or reproduced the responses.)

12 **RESPONSE TO FORM INTERROGATORY NO. 1.1:**

13 Jacob P. Austin
14 Relationship: My attorney
15 ADDRESS: The Law Office of Jacob Austin
16 1455 Frazee Road, #500
17 San Diego, CA 92108
18 Telephone number: (619) 357-6850

19 **FORM INTERROGATORY NO. 2.1:**

20 State:

- 21 (a) your name;
22 (b) every name you have used in the past; and
23 (c) the dates you used each name.

24 **RESPONSE TO FORM INTERROGATORY NO. 2.1:**

- 25 (a) Darryl Cotton;
26 (b) Same as (a) above;
27 (c) Birth to present.

28 **FORM INTERROGATORY NO. 2.2:**

State the date and place of your birth.

RESPONSE TO FORM INTERROGATORY NO. 2.2:

May 29, 1960 at Peoria, Illinois.

FORM INTERROGATORY NO. 2.5:

1 State:

- 2 (a) your present residence ADDRESS;
3 (b) your residence ADDRESSES for the past five years; and
4 (c) the dates you lived at each ADDRESS.

5 **RESPONSE TO FORM INTERROGATORY NO. 2.5:**

- 6 (a) 6176 Federal Blvd San Diego, CA 92114.
7 (b) Same residence in (a) for over 5 years.
8 (c) See (b) above.

9 **FORM INTERROGATORY NO. 2.6:**

10 State:

- 11 (a) the name, ADDRESS, and telephone number of your present employer or place of self-
12 employment; and
13 (b) the name, ADDRESS, dates of employment, job title, and nature of work for each
14 employer or self-employment you have had from five years before the INCIDENT until
15 today.

16 **RESPONSE TO FORM INTERROGATORY NO. 2.6:**

- 17 (a) Inda-Gro Lighting, 6176 Federal Boulevard, San Diego, CA 92114
18 (b) Dates of Employment: 2010 to present
19 Job Title: President
20 Nature of Work: Manufacture and sales of horticulture lights
21 (a) Fleet Systems, 6176 Federal Boulevard, San Diego, CA 92114
22 (b) Dates of Employment: 2006 to present
23 Job Title: Owner/operator
24 Nature of Work: Sales, service and repair of generators
25 (a) 151 Farms, 6176 Federal Boulevard, San Diego, CA 92114
26 (b) Dates of Employment: 2015 to present
27 Job Title: President
28 Nature of Work: Urban Farming Activist

29 **FORM INTERROGATORY NO. 2.7:**

30 State:

- 1 (a) the name and ADDRESS of each school or other academic or vocational institution you
2 have attended, beginning with high school;
3 (b) the dates you attended;
4 (c) the highest grade level you have completed; and
5 (d) the degrees received.

6 **RESPONSE TO FORM INTERROGATORY NO. 2.7:**

- 7 (a) St. Ignatius High School, 1076 Roosevelt Road, Chicago, IL 60608 (1975); Lyons
8 Township High School, 100 South Brainard Avenue, La Grange, IL 60525 (1975-1978)
9 (b) See response to (a) above
10 (c) 12th grade – high school graduate
11 (d) High school diploma

12 **FORM INTERROGATORY NO. 2.8:**

13 Have you ever been convicted of a felony? If so, for each conviction state:

- 14 (a) the city and state where you were convicted;
15 (b) the date of conviction;
16 (c) the offense; and
17 (d) the court and case number.

18 **RESPONSE TO FORM INTERROGATORY NO. 2.8:**

19 No.

20 **FORM INTERROGATORY NO. 2.9:**

21 Can you speak English with ease? If not, what language and dialect do you normally use?

22 **RESPONSE TO FORM INTERROGATORY NO. 2.9:**

23 Yes.

24 **FORM INTERROGATORY NO. 2.10:**

25 Can you read and write English with ease? If not, what language and dialect do you normally use?

26 **RESPONSE TO FORM INTERROGATORY NO. 2.10:**

27 Yes.

28 **FORM INTERROGATORY NO. 2.11:**

At the time of the INCIDENT were you acting as an agent or employee for any PERSON? If so,
state:

- (a) the name, ADDRESS, and telephone number of that PERSON: and

1 (b) a description of your duties.

2 **RESPONSE TO FORM INTERROGATORY NO. 2.11:**

3 No.

4 **FORM INTERROGATORY NO. 2.12:**

5 At the time of the INCIDENT did you or any other person have any physical, emotional, or mental
6 disability or condition that may have contributed to the occurrence of the INCIDENT? If so, for each
7 person state:

- 8 (a) the name, ADDRESS, and telephone number;
- 9 (b) the nature of the disability or condition; and
- 10 (c) the manner in which the disability or condition contributed to the occurrence of the
11 INCIDENT.

11 **RESPONSE TO FORM INTERROGATORY NO. 2.12:**

12 No.

13 **FORM INTERROGATORY NO. 2.13:**

14 Within 24 hours before the INCIDENT did you or any person Involved in the INCIDENT use
15 or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of
16 any kind (prescription or not)? If so, for each person state:

- 17 (a) the name, ADDRESS, and telephone number;
- 18 (b) the nature or description of each substance;
- 19 (c) the quantity of each substance used or taken;
- 20 (d) the date and time of day when each substance was used or taken;
- 21 (e) the ADDRESS where each substance was used or taken;
- 22 (f) the name, ADDRESS, and telephone number of each person who was present when each
23 substance was used or taken; and
- 24 (g) the name, ADDRESS, and telephone number of any HEALTH CARE PROVIDER who
25 prescribed or furnished the substance and the condition for which it was prescribed or
26 furnished.

26 **RESPONSE TO FORM INTERROGATORY NO. 2.13:**

27 Yes.

- 28 (a) Darryl Cotton, 6176 Federal Blvd SD CA, 619.266.4004
- (a) Kepra (anti-epileptic), Medical Cannabis (anxiety relief)

- (b) Kepra 250mg 2x/day, Medical Cannabis 10+ grams/day;
(c) Daily dosage morning – evening;
(d) 6176 Federal Blvd. San Diego, CA;
(e) N/A; and
(f) Dr. Thach Diep 7520 El Cajon Blvd La Mesa CA 619.667.2259.

FORM INTERROGATORY NO. 4.1:

At the time of the INCIDENT, was there in effect any policy of Insurance through which you were or might be Insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the INCIDENT?

If so, for each policy state:

- (a) the kind of coverage;
(b) the name and ADDRESS of the Insurance company;
(c) the name, ADDRESS, and telephone number of each named insured;
(d) the policy number;
(e) the limits of coverage for each type of coverage contained in the policy;
(f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
(g) the name, ADDRESS, and telephone number of the custodian of the policy.

RESPONSE TO FORM INTERROGATORY NO. 4.1:

No.

FORM INTERROGATORY NO. 4.2:

Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the INCIDENT? If so, specify the statute.

RESPONSE TO FORM INTERROGATORY NO. 4.2:

No.

FORM INTERROGATORY NO. 6.1:

Do you attribute any physical, mental, or emotional Injuries to the INCIDENT? (If your answer is "no," do not answer interrogatories 6.2 through 6.7).

RESPONSE TO FORM INTERROGATORY NO. 6.1:

Yes.

1 **FORM INTERROGATORY NO. 6.2:**

2 Identify each Injury you attribute to the INCIDENT and the area of your body affected.

3 **RESPONSE TO FORM INTERROGATORY NO. 6.2:**

4 Defendant has and is suffering from ongoing physical, mental and psychological damage which
5 requires experts to fully ascertain and describe. At a minimum, Defendant has been diagnosed with a TIA
6 and Acute Stress Disorder by two separate doctors and with various psychological issues arising from
7 this litigation as supported by the Independent Psychological Assessment by Dr. Ploesser. The documents
8 supporting these statements have been produced in the pleadings previously by Defendant.

9 **FORM INTERROGATORY NO. 6.3:**

10 Do you still have any complaints that you attribute to the INCIDENT? If so, for each complaint
11 state:

- 12 (a) a description;
13 (b) whether the complaint is subsiding, remaining the same, or becoming worse; and
14 (c) the frequency and duration.

15 **RESPONSE TO FORM INTERROGATORY NO. 6.3:**

16 Yes.

- 17 (a) Yes; Defendant has and is suffering from ongoing physical, mental and psychological
18 damage which requires experts to fully ascertain and describe.
19 (b) Defendant's overall state is continuously worsening.
20 (c) The physical, mental and psychological stress faced by Defendant is daily and continuous.

21 **FORM INTERROGATORY NO. 6.4:**

22 Did you receive any consultation or examination (except from expert witnesses covered by Code
23 of Civil Procedure sections 2034.210 – 2034.310) or treatment from a HEALTH CARE PROVIDER for
24 any injury you attribute to the INCIDENT? If so, for each HEALTH CARE PROVIDER state:

- 25 (a) the name, ADDRESS, and telephone number;
26 (b) the type of consultation, examination, or treatment provided;
27 (c) the dates you received consultation, examination, or treatment; and
28 (d) the charges to date.

29 **RESPONSE TO FORM INTERROGATORY NO. 6.4:**

30 Yes.

- 31 1. Scripps Mercy Hospital.

- (a) Scripps Mercy Hospital, 4077 Fifth Ave., San Diego California;
(b) Emergency room visit; diagnosed with a TIA;
(c) December 12, 2017; and
(d) Charges are being requested and shall be provided upon receipt.

2. Dr. Candido

- (a) Private residence in El Cajon, California (not a party or related to litigation);
(b) Emergency consultation requested by Mr. Hurtado after Defendant physically assaulted him; fully described in the Declaration of Dr. Candido provided to Plaintiff in pleadings.
(c) December 13, 2017
(d) None.

FORM INTERROGATORY NO. 6.5:

Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the INCIDENT? If so, for each medication state:

- (a) the name;
(b) the PERSON who prescribed or furnished it;
(c) the date it was prescribed or furnished;
(d) the dates you began and stopped taking it; and
(e) the cost to date.

RESPONSE TO FORM INTERROGATORY NO. 6.5:

No.

FORM INTERROGATORY NO. 6.6:

Are there any other medical services necessitated by the injuries that you attribute to the INCIDENT that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:

- (a) the nature;
(b) the date;
(c) the cost; and
(d) the name, ADDRESS, and telephone number of each provider.

RESPONSE TO FORM INTERROGATORY NO. 6.6:

No.

FORM INTERROGATORY NO. 6.7:

1 Has any HEALTH CARE PROVIDER advised that you may require future or additional
2 treatment for any injuries that you attribute to the INCIDENT? If so, for each injury state:

3 (a) the name and ADDRESS of each HEALTH CARE PROVIDER;

4 (b) the complaints for which the treatment was advised; and

5 (c) the nature, duration, and estimated cost of the treatment.

6 **RESPONSE TO FORM INTERROGATORY NO. 6.7:**

7 Yes.

8 (a) Dr. Marcus Ploesser (address to be provided) and Dr. Carolyn Candido (5814 Van Allen
9 Way, Suite 215, Carlsbad, CA 92008).

10 (b) Dr. Ploesser, psychological issues; Dr. Candido, Acute Stress Disorder.

11 (c) Dr. Ploesser, Cognitive Behavioral Therapy for PTSD and depression and an
12 antidepressant medication.

13 **FORM INTERROGATORY NO. 8.0:**

14 Do you attribute any loss of income or earning capacity to the INCIDENT? (If your answer is
15 "no." do not answer interrogatories 8.2 through 8.8).

16 **RESPONSE TO FORM INTERROGATORY NO. 8.0:**

17 Yes.

18 **FORM INTERROGATORY NO. 8.2:**

19 State:

20 (a) the nature of your work;

21 (b) your job title at the time of the INCIDENT; and

22 (c) the date your employment began.

23 **RESPONSE TO FORM INTERROGATORY NO. 8.2:**

24 Defendant incorporates by this reference his Response to Form Interrogatory No. 2.6 as though
25 fully set forth herein.

26 **FORM INTERROGATORY NO. 8.7:**

27 State the total income you have lost to date as a result of the INCIDENT and how the amount was
28 calculated.

RESPONSE TO FORM INTERROGATORY NO. 8.7:

Defendant is unable to respond to this interrogatory at this time because it is currently impossible
to calculate the income he has lost to date as a result of Plaintiff's breach of the parties' oral agreement

1 regarding the purchase of his Property. Defendant reserves his right to supplement his response to this
2 interrogatory once this information has been ascertained.

3 **FORM INTERROGATORY NO. 8.8:**

4 Will you lose income in the future as a result of the INCIDENT? If so, state:

- 5 (a) the facts upon which you base this contention;
6 (b) an estimate of the amount;
7 (c) an estimate of how long you will be unable to work; and
8 (d) how the claim for future income is calculated.

9 **RESPONSE TO FORM INTERROGATORY NO. 8.8:**

10 Based upon Defendant's interpretation of the term "future" as it relates to his loss of income to
11 mean from and after the date these responses are served upon Plaintiff, Defendant responds in the
12 affirmative.

- 13 (a) The income from Defendant's lighting business has ceased because he is unable to enter
14 into any contracts because he may not be able to fulfill them due to the possibility that he
15 could lose this case and his Property at any time. Defendant also is unable to enter into
16 any investment, financing or other types of agreements to obtain working capital because
17 of the cloud on the title to his Property created by the *lis pendens*. Finally, because of
18 Plaintiff's breach of the parties' oral agreement regarding purchase of Defendant's
19 Property, this litigation and the potential threat of losing his Property at any time has
20 caused Defendant to suffer and continue to suffer such severe physical, mental and
21 emotional damage that he cannot operate physically and mentally as if this litigation was
22 not taking place due to the daily stress he suffers.
23 (b) It currently is impossible to calculate the amount of Defendant's loss of future income,
24 and Defendant reserves his right to supplement his response to this interrogatory once this
25 information has been ascertained.
26 (c) Unknown; requires expert diagnosis which Defendant does not have the capital to
27 engage.
28 (d) Because it currently is impossible to calculate the amount of Defendant's loss of future
income or estimate the amount of time he will continue to be unable to work, it likewise
is unknown the method which ultimately will be used to calculate this information.

1 Defendant reserves his right to supplement his response to this interrogatory once this
2 information has been ascertained.

3 **FORM INTERROGATORY NO. 9.1:**

4 Are there any other damages that you attribute to the INCIDENT? If so, for each item of damage
5 state:

- 6 (a) the nature:
7 (b) the date it occurred;
8 (c) the amount; and
9 (d) the name, ADDRESS, and telephone number of each PERSON to whom an obligation
10 was incurred.

11 **RESPONSE TO FORM INTERROGATORY NO. 9.1:**

12 Yes.

- 13 (a) Legal fees and costs; personal loans for personal living needs.
14 (b) Ongoing since March of 2017.
15 (c) Because Defendant continues to incur additional legal fees and costs on a daily basis and
16 portions of his costs and fees are contingent upon the final resolution of this case, the exact
17 amount of his legal fees and costs incurred to date are not capable of being ascertained.
18 Further, Defendant continues to borrow money to meet his living expenses on a monthly
19 basis. Defendant reserves his right to supplement his response to this interrogatory once
20 same has been ascertained.
21 (d) (i) Finch Thornton & Baird, LLP, 4747 Executive Drive, Suite 700, San Diego, CA
22 92121, (858) 737-3100;
23 Jacob P. Austin, The Law Offices of Jacob Austin, 1455 Frazee Road, #500, San Diego,
24 CA 92108, (619) 357-6850
25 (ii) Defendant has also incurred costs and liabilities pursuant to a Secured Litigation
26 Financing Agreement that describes the terms and conditions upon which Defendant's
27 litigation investors shall provide funds for Defendant's litigation and his personal needs.
28 The Secured Litigation Financing Agreement has parties thereto not a party to this
litigation and contains a confidentiality provision specifically prohibiting the release of
the agreement without first acquiring the written consent of all the parties thereto.
Additionally, the Secured Litigation Financing Agreement also contains milestones and

1 condition precedents for additional funding to be provided to or on behalf of Defendant
2 and, as such, is privileged.

3 **FORM INTERROGATORY NO. 9.2:**

4 Do any DOCUMENTS support the existence or amount of any item of damages claimed in
5 interrogatory 9.1? If so, describe each document and state the name, ADDRESS, and telephone number
6 of the PERSON who has each DOCUMENT.

7 **RESPONSE TO FORM INTERROGATORY NO. 9.2:**

8 (i) Yes; billing statements from FTB have previously been disclosed by Defendant reflecting
9 outstanding amount due in the approximate amount of \$90,000. Defendant had previously provided FTB
10 approximately \$70,0000.

11 (ii) Yes; however, as noted above, the Secured Litigation Financing Agreement is privileged.
12 Defendant reserves his right to supplement his response to this interrogatory once this information has
13 been ascertained and/or events take place that allow the disclosure of responsive information that will
14 not violate any privilege and/or the confidentiality clause of the Secured Litigation Financing Agreement.

15 **FORM INTERROGATORY NO. 11.1:**

16 Except for this action, in the past 10 years have you filed an action or made a written claim or
17 demand for compensation for your personal injuries? If so, for each action, claim, or demand state:

- 18 (a) the date, time, and place and location (closest street ADDRESS or intersection) of the
19 INCIDENT giving rise to the action, claim, or demand;
20 (b) the name, ADDRESS, and telephone number of each PERSON against whom the claim
21 or demand was made or the action filed;
22 (c) the court, names of the parties, and case number of any action filed;
23 (d) the name, ADDRESS, and telephone number of any attorney representing you;
24 (e) whether the claim or action has been resolved or is pending; and
25 (f) a description of the injury.

26 **RESPONSE TO FORM INTERROGATORY NO. 11.1:**

27 No.

28 **FORM INTERROGATORY NO. 12.1:**

State the name, ADDRESS, and telephone number of each individual:

- (a) who witnessed the INCIDENT or the events occurring immediately before or after the
INCIDENT;

- 1 (b) who made any statement at the scene of the INCIDENT;
- 2 (c) who heard any statements made about the INCIDENT by any individual at the scene; and
- 3 (d) who YOU OR ANYONE ACTING ON YOUR BEHALF claim has knowledge of the
- 4 INCIDENT (except for expert witnesses covered by Code of Civil Procedure section
- 5 2034).

6 **RESPONSE TO FORM INTERROGATORY NO. 12.1:**

- 7 1. Witnesses of the parties entering into the contract on November 2, 2016 (the "Incident"):
- 8 (a) Plaintiff, Defendant and Notary Public Jessica Newell
- 9 (b) Plaintiff and Defendant
- 10 (c) The answer to this question encompasses almost every personal and professional
- 11 individual that Defendant interacted with on the day the November Document was
- 12 executed and in the weeks thereafter. Defendant was excited because, having believed
- 13 Plaintiff's representations that he would receive at least \$10,000 a month for a reasonably
- 14 anticipated time frame of 10 years.
- 15 (d) Same as (c) above, but notably Mr. Joe Hurtado who spoke with Gina Austin, Plaintiff's
- 16 attorney who was drafting the agreements for the purchase of the property by Plaintiff.

17 **FORM INTERROGATORY NO. 12.2:**

18 Have YOU OR ANYONE ACTING ON YOUR BEHALF interviewed any individual concerning

19 the INCIDENT? If so, for each individual state:

- 20 (a) the name, ADDRESS, and telephone number of the individual interviewed;
- 21 (b) the date of the interview; and
- 22 (c) the name, ADDRESS, and telephone number of the PERSON who conducted the
- 23 interview.

24 **RESPONSE TO FORM INTERROGATORY NO. 12.2:**

25 (a) Below is a list of individuals interviewed, addresses and telephone numbers have been

26 requested for disclosure and shall be provided upon receipt.

- 27 1. Don Casey
- 28 2. Dale Cotton
3. Cindy Jackson
4. Jeffery Hagler
5. Shawna Salazar
6. James Whitfield

7. Charles Findley
8. Stephen Jao
9. Michael McShane
10. Elizabeth Emerson
11. Tom Maas
12. Cheryl Morrow
13. Sean Major
14. Rod Luck
15. Michael Scott McKim
16. Anna Espinoza
17. Joe Hurtado

(b) The interviews took place on an ongoing basis from approximately December 27, 2017 through March 30, 2018. Specific dates of interviews with individuals shall be provided in a supplemental response as counsel needs additional time to review his notes for specific times and locations with each individual.

(c) Jacob Austin, see contact information above.

FORM INTERROGATORY NO. 12.3:

Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained a written or recorded statement from any individual concerning the INCIDENT? If so, for each statement state:

- (a) the name, ADDRESS, and telephone number of the individual from whom the statement was obtained;
- (b) the name, ADDRESS, and telephone number of the individual who obtained the statement;
- (c) the date the statement was obtained; and
- (d) the name, ADDRESS, and telephone number of each PERSON who has the original statement or a copy.

RESPONSE TO FORM INTERROGATORY NO. 12.3:

No.

FORM INTERROGATORY NO. 15.1:

Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:

- (a) state all facts upon which you base the denial or special or affirmative defense;
- (b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts; and

1 (c) identify all DOCUMENTS and other tangible things that support your denial or special or
2 affirmative defense, and state the name, ADDRESS, and telephone number of the
3 PERSON who has each DOCUMENT.

4 **RESPONSE TO FORM INTERROGATORY NO. 15.1:**

5 **Affirmative Defenses**

6 **1. Fraud.**

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

26 On or around October 31, 2016, Plaintiff asked Defendant to execute Form DS-318 (Ownership
27 Disclosure Statement) ("Ownership Statement") – a required component of all CUP applications.
28 Plaintiff told Defendant that he needed the executed Ownership Statement to show that he had access to
the Property in connection with his planning and lobbying efforts to resolve the Critical Zoning Issue.
On November 2, 2016, Plaintiff and Defendant met at Plaintiff's office to negotiate the final terms of the
sale of the Property. At the meeting, the parties reached an oral agreement on the material terms for the

1 sale of the Property (the "November Agreement"). The November Agreement consisted of the following:
2 If the CUP was approved, then Plaintiff would, *inter alia*, provide: (i) a total purchase price of \$800,000;
3 (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of \$10,000. If the
4 CUP was denied, Defendant would keep an agreed upon \$50,000 non-refundable deposit ("NRD") and
5 the transaction would not close. In other words, the issuance of the CUP at the Property was a condition
6 precedent for closing on the sale of the Property and, if the CUP was denied, Defendant would keep his
7 Property and the \$50,000 NRD.

8 At the November 2, 2016 meeting, after the parties reached the November Agreement, Plaintiff:
9 (i) provided Defendant with \$10,000 in cash towards the NRD of \$50,000, for which Defendant executed
10 a document to record his receipt thereof (the "Receipt"); (ii) promised to have his attorney, Gina Austin
11 ("Austin"), *promptly* reduce the oral November Agreement to written agreements for execution; and (iii)
12 promised to not submit the CUP to the City until he paid the balance on the NRD.

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

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

16 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd. CA for a
17 sum of \$800,000 to Larry Plaintiff or assignee on the approval of a Marijuana
18 Dispensary. (CUP for a dispensary) [¶] Ten Thousand dollars (cash) has been given in
19 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.

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

21 Thank you for meeting today. Since we executed the Purchase Agreement in your office
22 for the sale price of the property I just noticed the 10% equity position in the dispensary
23 was not language added into that document. I just want to make sure that we're *not*
24 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.
(Emphasis added.)

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

26 In other words, the very same day on which the Receipt was executed, Defendant received a copy
27 of the Receipt from Plaintiff and realized it could be misconstrued as a final agreement for the Property.
28 Because Defendant was concerned, and wanted there to be no uncertainty, he requested Plaintiff confirm
in writing the Receipt was not a final agreement. Plaintiff replied to Defendant's request for written

1 confirmation; thereby clearly, unambiguously and indisputably confirming the Receipt is not a final
2 agreement for Defendant's Property. Thus, Defendant refers to this email from Plaintiff as the
3 "Confirmation Email."

4 Thereafter, over the course of almost five months, the parties exchanged numerous emails, texts
5 and calls regarding various issues related to the Critical Zoning Issue, the CUP application and drafts of
6 the final written agreements for the Property. However, Plaintiff continuously failed to make actual,
7 substantive progress. Most notably, he failed to provide the final written agreements, pay the balance of
8 the NRD, and to provide facts regarding the progress being made on the Critical Zoning Issue. (DC Decl.
9 ¶9.) Regarding the Critical Zoning Issue, and also reflecting Plaintiff's general non-substantive replies
10 and avoidance, the following text exchanges took place between Plaintiff and Defendant from January 6,
11 2017 and February 7, 2017:

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

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

16 Cotton: Are you available for a call?

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

18 Cotton: Thx

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

20 Cotton: This resolves the zoning issue?

21 Geraci: Yes

22 Cotton: Excellent

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

24 Cotton: Ok

25 Cotton: How goes it?

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

27 Cotton: Whats *[sic]* new?

28 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*"

1 cover email clearly states Plaintiff's intent of effectuating the oral November Agreement via two separate
2 written documents (each for \$400,000). Notably, Section 18(i) states:

3
4 The parties shall be legally bound with respect to the purchase and sale of the Property
5 pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully
6 executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile
7 transmission).

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

10 On March 2, 2017, Plaintiff emailed Defendant a draft of the additional contract, the Side Agreement,
11 that was supposed to provide for, *inter alia*, Defendant's 10% equity stake. The next day, Defendant
12 replied:

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

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

27 On March 6, 2017, Plaintiff and Defendant spoke regarding revisions required to have the drafts
28 accurately reflect the November Agreement. Defendant communicated his frustration with the delays and
Plaintiff again promised to have Austin *promptly* correct the mistakes in the drafts. During that
conversation, Defendant let Plaintiff know he would be attending a local cannabis event at which Austin
was scheduled to be the headnote speaker. Plaintiff later texted Defendant he could speak with Austin

1 directly at the event: *"Gina Austin is there she has a red jacket on if you want to have a conversation*
2 *with her."*

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 draft
13 provides for, inter alia, Defendant receiving (i) 10% of the net profits of the MO and (ii) a minimum
14 monthly payment of \$10,000. (DC Decl. at Ex. 1, p.55.) Furthermore, Attorney Gina Austin (who for
15 several months represented Plaintiff – a Real Party in Interest to the related Writ Action against the City),
16 was responsible for, and did draft versions of the contracts months after the November agreement
17 indicating her awareness that no final agreement had been executed. The attachment of the last draft
18 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 until
26 he had paid Defendant the balance of the NRD. A Parcel Information Report provided by the City of San
27 Diego, Development Services Department ("City Parcel Report") states the zoning of the Property was
28 changed to "CO-2-1" (MO qualifying zone) on January 14, 2016. In other words, the City Parcel Report
makes clear the entire Critical Zoning Issue was a fraudulent scheme to (i) induce Defendant into
executing the Ownership Statement – no zoning change was required to submit the CUP for an MO to

1 the City on the Property – and (ii) to deceive Defendant into thinking that he required Plaintiff's unique
2 and powerful political influence to resolve the alleged Critical Zoning Issue.

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

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

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

17 Larry, I received your text asking to meet in person tomorrow. I would prefer that until we
18 have final agreements, that we converse exclusively via email.... To be frank, I feel that
19 you are not dealing with me in good faith, you told me repeatedly that you could not submit
20 a CUP application until certain zoning issues had been resolved and that you had spent
21 hundreds of thousands of dollars on getting them resolved. You lied to me, I found out
22 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.

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

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

28 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*

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

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

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

15 (b) Defendant incorporates by reference answer to 12.6 above. Defendant reserves the right
16 to supplement his response to this interrogatory once he has continued to review his records and
17 determine who else he spoke with regarding the facts given rise to the instant action.

18 (c) Defendant herein incorporates by reference the emails and texts between Plaintiff and
19 Defendant attached to his declaration in support of his motion to expunge the *lis pendens* on the property.

20 **2. Mistake of Fact.**

21 (a) Defendant incorporates by reference response above at 15.1(1)(a); Defendant believed
22 that he would receive, *inter alia*, a 10% equity stake in the contemplated business as fully described
23 above.

24 (b) Defendant incorporates by reference response above at 15.1(1)(b).

25 (c) Defendant incorporates by reference response above at 15.1(1)(c).

26 **3. Statute of Frauds.**

27 (a) A memorandum sufficient to satisfy the statute of frauds may consist of several items read
28 together [Rest.2d Contracts § 132], which Defendant alleges his emails and texts between Plaintiff and
Defendant cumulatively reflect the actual agreement reached on November 2, 2016.

1 (b) Defendant incorporates by reference response above at 15.1(1)(b).

2 (c) Defendant incorporates by reference response above at 15.1(1)(c).

3 **4. Unconscionability.**

4 (a) Defendant incorporates by reference response above at 15.1(1)(a); the facts demonstrate
5 that Plaintiff is a sophisticated business individual who at the time was a licensed real estate agent and
6 had Defendant go to his place of business to execute the November Document, which Plaintiff drafted.
7 Procedurally, Plaintiff created a perceived unequal bargaining position with Defendant by alleging that
8 Defendant without Plaintiff's help would not be able to acquire a CUP and demonstrated because he was
9 a sophisticated businessman (e.g., a real estate agent, Enrolled Agent, owner/manager of Tax and
10 Financial Center, Inc.) Defendant could trust him to deal with the alleged zoning issues which Plaintiff
11 alleged he was in a unique position to resolve. Substantively, Defendant was able to sell his property for
12 \$2,000,000; a 20% equity stake in the contemplated business; and a minimum monthly \$10,000 payment
13 for the life of the business. Plaintiff's allegation and suit seeking to provide Defendant with only \$800,000
14 as consideration is unconscionable. Defendant shall supplement this response with expert testimony
15 and/or supporting documentation regarding the values of properties and CUPs in San Diego showing that
16 a purchase price of \$800,000 is so far below market rates as to be unconscionable.

16 (b) Defendant incorporates by reference response above at 15.1(1)(b).

17 (c) Defendant incorporates by reference response above at 15.1(1)(c).

18 **5. Undue Influence.**

19 (a) Defendant incorporates by reference response above at 15.1(1)(a); the facts demonstrate
20 that Plaintiff is a sophisticated business individual who at the time was and represented to Defendant,
21 that he was a licensed real estate agent and an Enrolled Agent for the IRS. Plaintiff also alleged to
22 Defendant that there were zoning issues that prevented the submission of CUP application and that
23 without Plaintiff's help (as fully described above), Defendant would not prevail in acquiring a CUP at
24 his property.

24 (b) Defendant incorporates by reference response above at 15.1(1)(b).

25 (c) Defendant incorporates by reference response above at 15.1(1)(c).

26 **FORM INTERROGATORY NO. 17.1:**

27 Is your response to each request for admission served with these interrogatories an unqualified
28 admission? If not, for each response that is not an unqualified admission:

- 1 (a) state the number of the request;
- 2 (b) state all facts upon which you base your response;
- 3 (c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have
- 4 knowledge of those facts; and
- 5 (d) identify all DOCUMENTS and other tangible things that support your response and state
- 6 the name, ADDRESS, and telephone number

7 **RESPONSE TO FORM INTERROGATORY NO. 17.1:**

8 No.

9 A.

- 10 (a) 1.
- 11 (b) Defendant considered the 11/02/2016 document to be a receipt.
- 12 (c) Plaintiff and Defendant whose names, addresses and phone numbers are known to their
- 13 respective counsel and a matter of record.
- 14 (d) Emails between Plaintiff and Defendant attached to Exhibit 1 to Darryl Cotton's Declaration
- 15 in support of Motion to Expunge Lis Pendens filed and served April 4, 2018.

16 B.

- 17 (a) 2.
- 18 (b) Other terms were left out that were in addition to the \$800,000 purchase price, see Response
- 19 to Special Interrogatory No. 3 as set forth fully herein.
- 20 (c) Plaintiff and Defendant whose names, addresses and phone numbers are known to their
- 21 respective counsel and a matter of record.
- 22 (d) See Response to Special Interrogatory No. 3 as set forth fully herein.

23 C.

- 24 (a) 3.
- 25 (b) Defendant admits he received ten thousand dollars (cash) when he executed the November
- 26 Document but denies the sale price consists of \$800,000 as the sales price was to include as
- 27 consideration, inter alia, a 10% equity stake in the contemplated business
- 28 (c) Plaintiff and Defendant whose names, addresses and phone numbers are known to their
- respective counsel and a matter of record
- (d) Emails between Plaintiff and Defendant attached to Exhibit 1 to Darryl Cotton's Declaration
- in support of Motion to Expunge Lis Pendens filed and served April 4, 2018.

1 D.

2 (a) 4.

3 (b) Defendant admits that he agreed to not enter into any other contracts on November 2, 2016,
4 but he did so pursuant to the oral agreement reached that day, not the November Document.

5 (c) Plaintiff and Defendant whose names, addresses and phone numbers are known to their
6 respective counsel and a matter of record.

7 (d) Emails between Plaintiff and Defendant attached to Exhibit 1 to Darryl Cotton's Declaration
8 in support of Motion to Expunge Lis Pendens filed and served April 4, 2018.

9 E.

10 (a) 7.

11 (b) Plaintiff did not meet his obligations, see Response to Special Interrogatory No. 3.

12 (c) Plaintiff and Defendant whose names, addresses and phone numbers are known to their
13 respective counsel and a matter of record.

14 (d) See Response to Special Interrogatory No. 3.

15 E.

16 (a) 8.

17 (b) Other terms were left out, see Response to Special Interrogatory No. 3.

18 (c) Plaintiff and Defendant whose names, addresses and phone numbers are known to their
19 respective counsel and a matter of record.

20 (d) Emails between Plaintiff and Defendant attached to Exhibit 1 to Darryl Cotton's Declaration
21 in support of Motion to Expunge Lis Pendens filed and served April 4, 2018.

22 F.

23 (a) 9.

24 (b) Plaintiff did breach his agreement with Defendants, see Response to Special Interrogatory No.
25 3.

26 (c) Plaintiff and Defendant whose names, addresses and phone numbers are known to their
27 respective counsel and a matter of record.

28 (d) See Response to Special Interrogatory No. 3.

G.

(a) 10.

(b) Plaintiff made many false promises. See Response to Special Interrogatory No. 3.

1 (c) Plaintiff and Defendant whose names, addresses and phone numbers are known to their
2 respective counsel and a matter of record.

3 (d) See Response to Special Interrogatory No. 3.

4 H.

5 (a) 11.

6 (b) Defendant has sustained significant damages as referenced herein; Defendant has and is
7 suffering from ongoing physical, mental and psychological damage which requires experts to
8 fully ascertain and describe. At a minimum, Defendant has been diagnosed with a TIA and Acute
9 Stress Disorder by two separate doctors and with various psychological issues arising from this
10 litigation as supported by the Independent Psychological Assessment by Dr. Ploesser.

11 (c) Plaintiff and Defendant whose names, addresses and phone numbers are known to their
12 respective counsel and a matter of record.

13 (d) Emails between Plaintiff and Defendant attached to Exhibit 1 to Darryl Cotton's Declaration
14 in support of Motion to Expunge Lis Pendens filed and served April 4, 2018.

15 **FORM INTERROGATORY NO. 50.1:**

16 For each agreement alleged in the pleadings:

17 (a) identify each DOCUMENT that is part of the agreement and for each state the name,
18 ADDRESS, and telephone number of each PERSON who has the DOCUMENT;

19 (b) state each part of the agreement not in writing, the name, ADDRESS, and telephone
20 number of each PERSON agreeing to that provision, and the date that part of the
21 agreement was made;

22 (c) identify all DOCUMENTS that evidence any part of the agreement not in writing and for
23 each state the name, ADDRESS, and telephone number of each PERSON who has the
24 DOCUMENT;

25 (d) identify all DOCUMENTS that are part of any modification to the agreement, and for each
26 state the name, ADDRESS, and telephone number of each PERSON who has the
27 DOCUMENT;

28 (e) state each modification not in writing, the date, and the name, ADDRESS, and telephone
number of each PERSON agreeing to the modification, and the date the modification was
made;

- 1 (f) identify all DOCUMENTS that evidence any modification of the agreement not in writing
2 and for each state the name, ADDRESS, and telephone number of each PERSON who has
3 the DOCUMENT.

4 **RESPONSE TO FORM INTERROGATORY NO. 50.1:**

5 The parties' oral agreement November 2, 2016 regarding the terms and conditions for Plaintiff's
6 purchase of Defendant's Property.

- 7 (a) (1) the November 2, 2016 receipt signed by Plaintiff and Defendant, and (2) the
8 November 2, 2016 e-mail exchange between Plaintiff and Defendant including other
9 agreed-upon terms and the parties' agreement to negotiate and collaborate in good faith
10 on memorialize all the terms of their oral agreement in final documents for execution.

- 11 (b) When the parties met on November 2, 2016, they reached an oral agreement for sale of
12 the Property to Plaintiff which included the following material terms and conditions:

- 13 (1) Plaintiff would undertake the application process for a rezone of the Property to
14 permit the operation of MMCCs.

- 15 (2) Following the rezone, Plaintiff would then undertake the application process to
16 obtain a CUP for the Property to be converted into and operated as an MMCC.

- 17 (3) The agreed-upon purchase price for the Property was \$800,000, with a \$50,000
18 non-refundable down payment to be immediately paid to Defendant.

- 19 (4) The parties agreed that, in the event Plaintiff was unsuccessful in his efforts to
20 obtain a rezone and a CUP to enable conversion of the Property to an MMCC,
21 Defendant would be entitled to keep the non-refundable \$50,000 down payment
22 and the transaction for sale of the Property to Plaintiff would terminate.

- 23 (5) In the event Plaintiff was successful in his efforts to obtain a rezone and a CUP for
24 the Property:

- 25 (i.) Plaintiff would proceed with the purchase of the Property for \$800,000;

- 26 (ii.) Immediately upon execution of the parties execution of the final agreement
27 memorializing the terms of their November 2, 2016 oral agreement,
28 Plaintiff would pay Defendant the \$50,000 non-refundable down payment;

- (iii.) Defendant would credit the \$50,000 non-refundable down payment toward
the \$800,000 purchase price; and

- (iv.) Defendant would receive a ten percent (10%) equity stake in the MMCC

1 which, once it MMCC began operations, would generate monthly equity
2 distributions to Defendant of no less than \$10,000, the payment of which
3 was guaranteed by Plaintiff.

4 (2) Plaintiff would enlist the services of his counsel to promptly reduce the terms of
5 their November 2, 2016 oral agreement to the form of two written agreements for
6 execution by the parties.

7 (3) After their November 2, 2016 meeting at which the parties reached an agreement
8 on the terms of purchase of Defendant's Property as set forth above, Plaintiff told
9 Defendant that he needed additional time to pay the entire \$50,000 non-refundable
10 deposit because his cash flow was limited due to the \$150,000+ he alleged he
11 already had invested to fund lobbying efforts for the rezone, the additional cash
12 required to ultimately resolve the rezone and to prepare the CUP Application for
13 the Property. He asked Defendant if he would be willing to accept a \$10,000 cash
14 advance toward the \$50,000 non-refundable down payment, with the \$40,000
15 balance to be paid upon the submission of the CUP Application to – not upon its
approval by – the City of San Diego.

16 (b) All of the parties' texts, e-mails and attachments thereto for the period November 2, 2016
17 to March 21, 2017. Copies of these documents were collectively attached as Exhibits 1
18 and 2 to the Darryl Cotton's Declaration in Support of Motion for Expungement of Notice
19 of Pendency of Action (*Lis Pendens*) filed on April 4, 2016 and, as such are in the
20 possession of Plaintiff, Defendant and their respective counsel of record.

21 (c) Not applicable.

22 (d) Not applicable.

23 (e) Not applicable.

24 **FORM INTERROGATORY NO. 50.2:**

25 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe
26 and give the date of every act or omission that you claim is the breach of the agreement.

27 **RESPONSE TO FORM INTERROGATORY NO. 50.2:**

28 Yes; Defendant incorporates by reference his response to No. 50.1(1)(a) above, fully describing
Plaintiff's course of conduct that cumulative reflects a fraudulent scheme culminating in the instant
lawsuit seeking to deprive Defendant of the benefit of the oral agreement reached on November 2, 2016.

1 **FORM INTERROGATORY NO. 50.3:**

2 Was performance of any agreement alleged in the pleadings excused? If so, identify each
3 agreement excused and state why performance was excused.

4 **RESPONSE TO FORM INTERROGATORY NO. 50.3:**

5 No.

6 **FORM INTERROGATORY NO. 50.4:**

7 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and
8 satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and the basis
9 of the termination.

10 **RESPONSE TO FORM INTERROGATORY NO. 50.4:**

11 No.

12 **FORM INTERROGATORY NO. 50.5:**

13 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable
14 agreement and state why it is unenforceable.

15 **RESPONSE TO FORM INTERROGATORY NO. 50.5:**

16 Yes. The parties' November 2, 2016 oral agreement for the purchase of Defendant's Property is
17 unenforceable as the result of Plaintiff's willful, knowing and intentional acts and omissions to
18 fraudulently induce Defendant to enter into said agreement.

19 **FORM INTERROGATORY NO. 50.6:**

20 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement
21 and state why it is ambiguous.

22 **RESPONSE TO FORM INTERROGATORY NO. 50.6:**

23 No.

24 DATED: May 9, 2018

THE LAW OFFICE OF JACOB P. AUSTIN

25
26 By


JACOB P. AUSTIN

Attorney for Defendant/Cross-Complainant
DARRYL COTTON

VERIFICATION

I, Darryl Cotton, the Defendant and Cross-Complainant in this matter, have read the foregoing Responses by Defendant/Cross-Complainant Darryl Cotton to Special Interrogatories Propounded by Plaintiff/Cross-Defendant Larry Geraci [Set One] and know the contents thereof.

The matters stated in the foregoing document are true and correct of my own personal knowledge, except those matters which are stated based upon information and belief; and, as to those matters, I believe them to be true.

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

Dated: May 9, 2018



DARRYL COTTON