

7. Site plan with development summary.
8. Floor plan.
9. Elevations if proposing exterior modifications.
10. Historic Resources Information (See Information Bulletin 580) if exterior alterations are proposed on a structure 45 years or older.
11. Fees (see Information Bulletin 503 & Section V of this bulletin).
12. In addition to the submittal requirements for CUP, the following information is required:
 - a. 1000-foot Radius Map.
 - i. Provide a one page Assessor's parcel map outlining a 1000-foot radius around the subject property. Include a spreadsheet identifying the use, address, assessor parcel number, and business name within the 1,000 foot radius.
 - ii. The map must also identify residential zones within 100-feet of the property.
 - b. Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP) (DS-190).

Please note that all forms required above not completely filled out and/or signed will be rejected. Once staff has determined that the submittal application contains all of the required information listed above, the MMCC CUP application will be entered into the Development Services Department's Project Tracking System, assigned a project number and given a creation date. Your application will then go to Step Two, known as Submitted Completeness Review.

B. STEP TWO: SUBMITTED COMPLETENESS REVIEW

If your project application meets the minimum requirements described in Step One above, your project will then go through the Step Two comprehensive review called Submitted Completeness Review. Submitted Completeness Review can take up to 30 (calendar) days to complete.

The Public Notice Package will not be required as part of the Submitted Completeness Review, but will be collected at the time of Full Submittal. Upon completion of the Submitted Completeness Review, staff will notify the applicant via E-mail or by telephone whether the application is ready to be fully submitted or if additional information/clarification is required.

C. STEP THREE: FULL SUBMITTAL

When the project is ready for a Full Submittal, staff will provide the applicant with the number of document sets required, including the

request for the Public Notice Package. Once staff accepts the Full Submittal, the project will then be assigned to a project manager and routed to the required reviewers.

Once the project application has been determined by staff to meet all City, State and Federal rules, codes, policies and procedures, the project will be scheduled for a public hearing with the Hearing Officer. Once four (4) projects per each council district have obtained final approval from the City's decision-maker, all other applicants in that Council district will be notified that pursuant to the Municipal Code, no more applications can be approved.

V. DEPOSIT/FEE

The deposit and fees must be paid at the time of Initial Screening (Step One). See Information Bulletin 503 "Fee Schedule for Development & Policy Approvals/Permits."

The following deposit and fees will be charged at time of application:

Initial Deposit.....	\$8,000.00
General Plan Maintenance Fee.....	\$275.00
Mapping Fee.....	\$10.00
Close Out Fee.....	\$515.00

VI. PUBLIC SAFETY PERMIT

MMCCs must obtain a Public Safety Permit from the Development Services Department pursuant to Chapter 4, Article 2, Division 15 of the San Diego Municipal Code. Applications for this permit will be processed after approval of the Conditional Use Permit.

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones															
	1st & 2nd >>	CN ⁽¹⁾ -					CR-		CO-						CV-		CP-
	3rd >>	1-					1-	2-	1-		2-		3-		1-	1-	
	4th >>	1	2	3	4	5	1	1	1	2	1	2	1	2	1	2	1
Body Painting Studio		L					L	L	-	-	-	-	-	-	L	-	
Massage Establishment		L					L	L	-	-	-	-	-	-	-	-	
Sexual Encounter Establishment		L					L	L	-	-	-	-	-	L	-		
Assembly and Entertainment Uses, Including Places of Religious Assembly		L ⁽¹⁰⁾					L	L	L	L	L	L	L	L ⁽¹⁰⁾	-		
Bed & Breakfast Establishments:																	
1-2 Guest Rooms		-					P	P	-	-	-	-	-	-	P	-	
3-5 Guest Rooms		-					P	P	-	-	-	-	-	-	P	-	
6+ Guest Rooms		-					P	P	-	-	-	-	-	-	P	-	
Boarding Kennels/Pet Day Care		L					L	L	N	N	-	-	-	N ⁽¹⁰⁾	-		
Camping Parks		-					C	C	C	C	-	-	-	C	-		
Child Care Facilities:																	
Child Care Centers		L					L	-	L	L	L	L	L	L ⁽¹⁰⁾	-		
Large Family Child Care Homes		L					L	-	L	L	L	L	L	L ⁽¹⁰⁾	-		
Small Family Child Care Homes		L					L	-	L	L	L	L	L	L	-		
Eating and Drinking Establishments with a Drive-in or Drive-through Component		-	C	-	-	-	P		P	P	-	-	-	P	-	-	
Fairgrounds		-					C	C	-	-	-	-	-	C	-		
Golf Courses, Driving Ranges, and Pitch & Putt Courses		-					C	C	C	C	-	-	-	C	-		
Helicopter Landing Facilities		-					C	C	C	C	C	C	C	C ⁽¹⁰⁾	-		
Massage Establishments, Specialized Practice		L					L	L	-	-	-	-	-	L ⁽¹⁴⁾	-		
Medical Marijuana Consumer Cooperatives		-					-	C	-	-	-	-	-	-	-		
Mobile Food Trucks		L ⁽¹⁵⁾					L ⁽¹⁵⁾	L ⁽¹⁵⁾	L ⁽¹⁵⁾	L ⁽¹⁵⁾	L ⁽¹⁵⁾	L ⁽¹⁵⁾	L ⁽¹⁵⁾	L ⁽¹⁵⁾	L ⁽¹⁵⁾		
Nightclubs & Bars Over 5,000 Square Feet in Size		-					C	C	C	C	C	C	C	C	-		
Parking Facilities as a Primary Use:																	
Permanent Parking Facilities		-					P	P	C	C	-	-	-	C	P		
Temporary Parking Facilities		-					N	N	C	C	C	C	C	C	N		
Private Clubs, Lodges and Fraternal Organizations		P ⁽¹⁰⁾					P	P	P	P	P	P	P	P ⁽¹⁰⁾	-		
Privately Operated, Outdoor Recreation Facilities over 40,000 Square Feet in Size ⁽⁹⁾		-					P	P	C	C	-	-	-	C	-		
Pushcarts:																	
Pushcarts on Private Property		L					L	L	L	L	L	L	L	L	-		
Pushcarts in Public Right-of-Way		N					N	N	N	N	N	N	N	N	-		

Ch. Art. Div.

13 | 1 | 5 | 14

§131.0504 Purpose of the CO (Commercial--Office) Zones

- (a) The purpose of the CO zones is to provide areas for employment uses with limited, complementary retail uses and residential use as specified. The CO zones are intended to apply in large-scale activity centers or in specialized areas where a full range of commercial activities is not desirable.
- (b) The CO zones are differentiated based on the uses and development scale allowed as follows:
 - (1) The following zones allow residential *development*:
 - CO-1-1 is intended to accommodate a mix of office and residential uses with a neighborhood scale and orientation and permits a maximum *density* of 1 *dwelling unit* for each 1,000 square feet of *lot area*
 - CO-1-2 is intended to accommodate a mix of office and residential uses that serve as an employment center and permits a maximum *density* of 1 *dwelling unit* for each 1,500 square feet of *lot area*
 - (2) The following zones prohibit residential *development*:
 - CO-2-1 is intended to accommodate office uses with a neighborhood scale and orientation
 - CO-2-2 is intended to accommodate office uses that serve as an employment center
 - (3) The following zones allow residential *development* in a pedestrian oriented development:
 - CO-3-1 is intended to accommodate a mix of office and residential uses and permits a maximum *density* of 1 *dwelling unit* for each 800 square feet of *lot area*
 - CO-3-2 is intended to accommodate a mix of office and residential uses and permits a maximum *density* of 1 *dwelling unit* for each 600 square feet of *lot area*

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 7-10-2015 by O-20512 N.S.; effective 8-9-2015.)



October 21, 2016

City of San Diego
Development Services
1222 First Ave., MS-501
San Diego, CA 92101
(619) 446-5000

Medical Marijuana Information Bulletin No. 170

<http://www.sandiego.gov/development-services/industry/information/infobulletins/index.shtml>

Public notices: applications, hearings, appeals (type MMCC in search box)

<http://www.sandiego.gov/city-clerk/officialdocs/index.shtml>

Approved MMCCs

- Council District 1

10671 Roselle Street

- Council District 2 (No longer accepting applications in this CD)

3452 Hancock Street
4645 De Soto Street
3500 Estudillo Street
1028 Buenos Ave

- Council District 3

3703 Camino Del Rio South
3455 Camino Del Rio South

- Council District 6 (No longer accepting applications in this CD)

8888 Clairemont Mesa Blvd
7128 Miramar Rd
5125 Convoy St
8863 Balboa Ave

October 21, 2016

- Council District 8 (No longer accepting applications in this CD)

2335 Roll Drive
658 E. San Ysidro Blvd
2405 Harbor Drive
3385 Sunrise Street

Public Hearings

Continued- No date certain

7625 Carroll Rd -- CD 6
9212 Mira Este Court - CD 6

Applications in process

2425 Camino del Rio S -- CD7
2835 Camino del Rio S -- CD7

Applications in process per Council District

	In process	Approved
CD1	0	1
CD2	0	4
CD3	0	2
CD4	0	0
CD5	0	0
CD6	2	4
CD7	2	0
CD8	0	4
CD9	0	0
Total	4	15

MMCC must be 1000 feet from:

- Child care center
- *Church* means an institution that people regularly attend to participate in or hold religious services, meetings, or other activities. This term does not carry a secular connotation and includes the buildings or other locations in which the religious services of any denomination are held.
- Libraries owned and operated by the City of San Diego
- *Minor oriented facility* means any after school program, teen center, club for boys and/or girls, children's theatre, children's museum, or other establishment where the primary use is devoted to people under the age of 18.
- Other medical marijuana consumer cooperative
- *Playground* means any outdoor premises or ground owned or operated by the City that contains any play or athletic equipment used or intended to be used by any persons less than eighteen (18) years old.
- *Public Park* means a publicly owned area that is designated as a park.
- *Residential Care facility* provides in-house treatment or rehabilitation programs for residents on a 24-hour basis. Residential care facilities include drug and alcohol rehabilitation and recovery facilities and residential and community care facilities as defined by the state or county. Housing for senior citizens, nursing homes, convalescent homes, work furlough and probationary residential facilities, and emergency shelters are not residential care facilities.
- *Schools* means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school which education is primarily conducted in private homes.

➤ Helpful links

<http://www.sandiego.gov/development-services/zoning/zoninggridmap.shtml>

<http://www.sandiego.gov/development-services/opendsd/index.shtml>

<https://arcc.sdcounty.ca.gov/Pages/parcelmaps.aspx>

<http://apps.sandiego.gov/BusinessLookup/>

<http://www.sandiego.gov/treasurer/taxesfees/btax/nblactive.shtml>

October 21, 2016

<http://www.daftlogic.com/projects-google-maps-distance-calculator.htm>

Approved Medical Marijuana Consumer Cooperatives (November 7, 2016)					
PTS	Address	Business Name	CUP/SDP No.	CUP Approved	Contact
Council District 1					
390943	10671 Roselle Street	Torrey Holistics	1371299	10/29/2015	Tony Hall
Council District 2					
368344	3452 Hancock Street	Point Loma Patients CC	1377388	3/19/2015	Adam Knopf
368309	4645 De Soto Street	N/A	1292098	5/28/2015	Un Chong
368302	3500 Estudillo Street	Sustainable Therapeutics	1292799	12/17/2015	George Diaz
369290	1028 Buenos Ave	The Hollistic Café	1605038	4/7/2016	Will Senn
Council District 3					
378883	3703 Camino Del Rio South	The Healing Center	1330834/1420871	8/13/2015	Raymond Taylor
368346	3455 Camino Del Rio South	The Emerald Courtyard	1295099/1508276	8/25/2016	Sara Cadenas
Council District 6					
373481	8888 Clairemont Mesa Blvd	Zen SD	1310456	3/12/2015	Victoria Dupont
368343	7128 Miramar Rd	Mankind Cooperative	1296361	6/18/2015	James Schmachtenberger
369478	5125 Convoy St	Apothekare	1291580	6/25/2015	Rakesh Goyal
368347	8863 Balboa Ste E	N/A	1296130	7/9/2015	Will Senn
Council District 8					
368304	2335 Roll Drive	A Green Alternative	1298258	1/29/2015	David Blair
368312	658 E. San Ysidro Blvd	Southwestern Patient Group	1298246	3/12/2015	Wayne Alexander Scherer
381308	2405 Harbor Drive	Harbor MMCC	1337996	6/25/2015	Noel Shamoun
368337	3385 Sunrise Street	Urban Leaf	1298376/1319996	9/17/2015	Will Senn

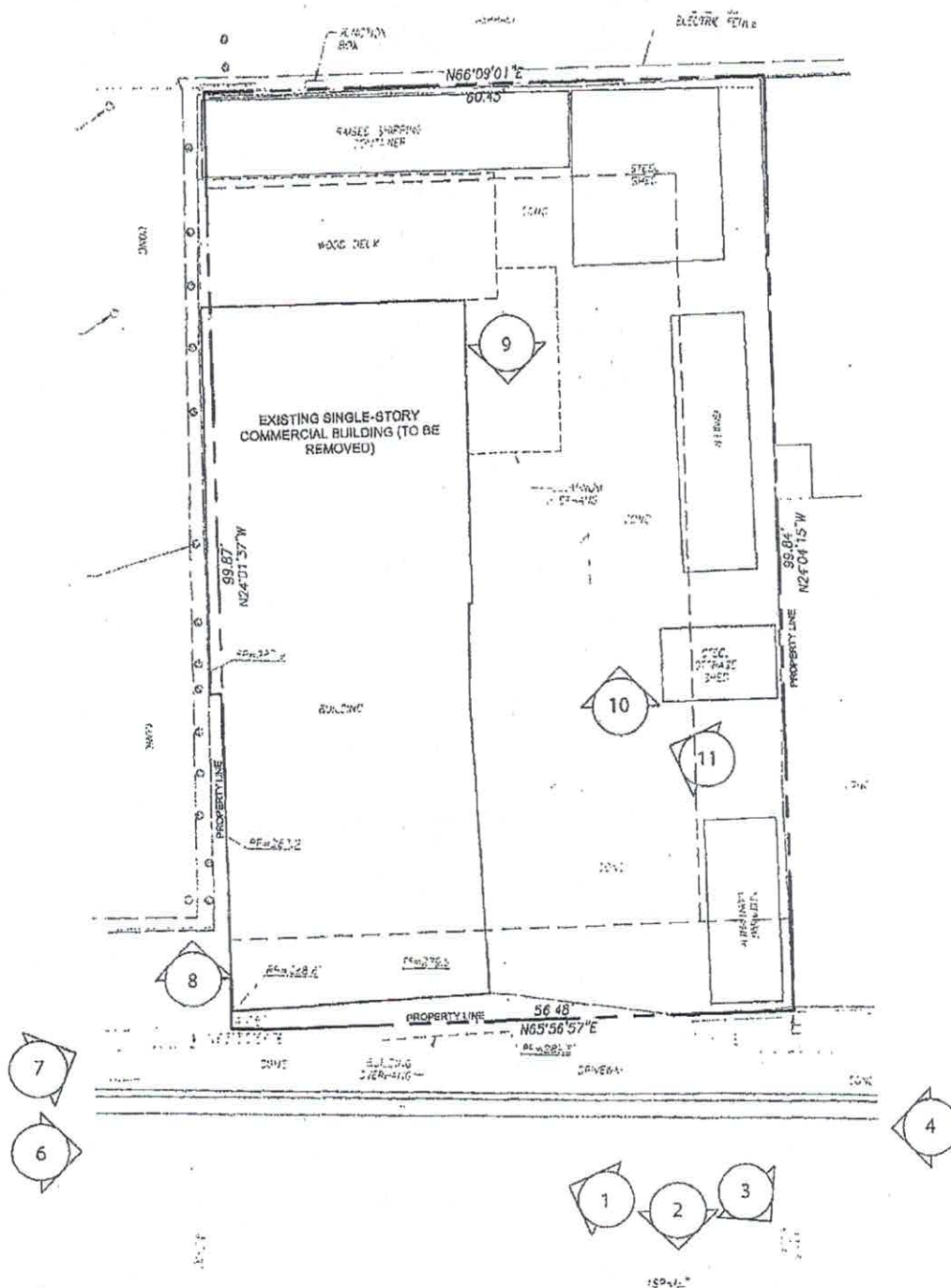


DESIGN | DEVELOPMENT

PHOTOGRAPHIC SURVEY

6176 Federal Blvd. San Diego, CA. 92114

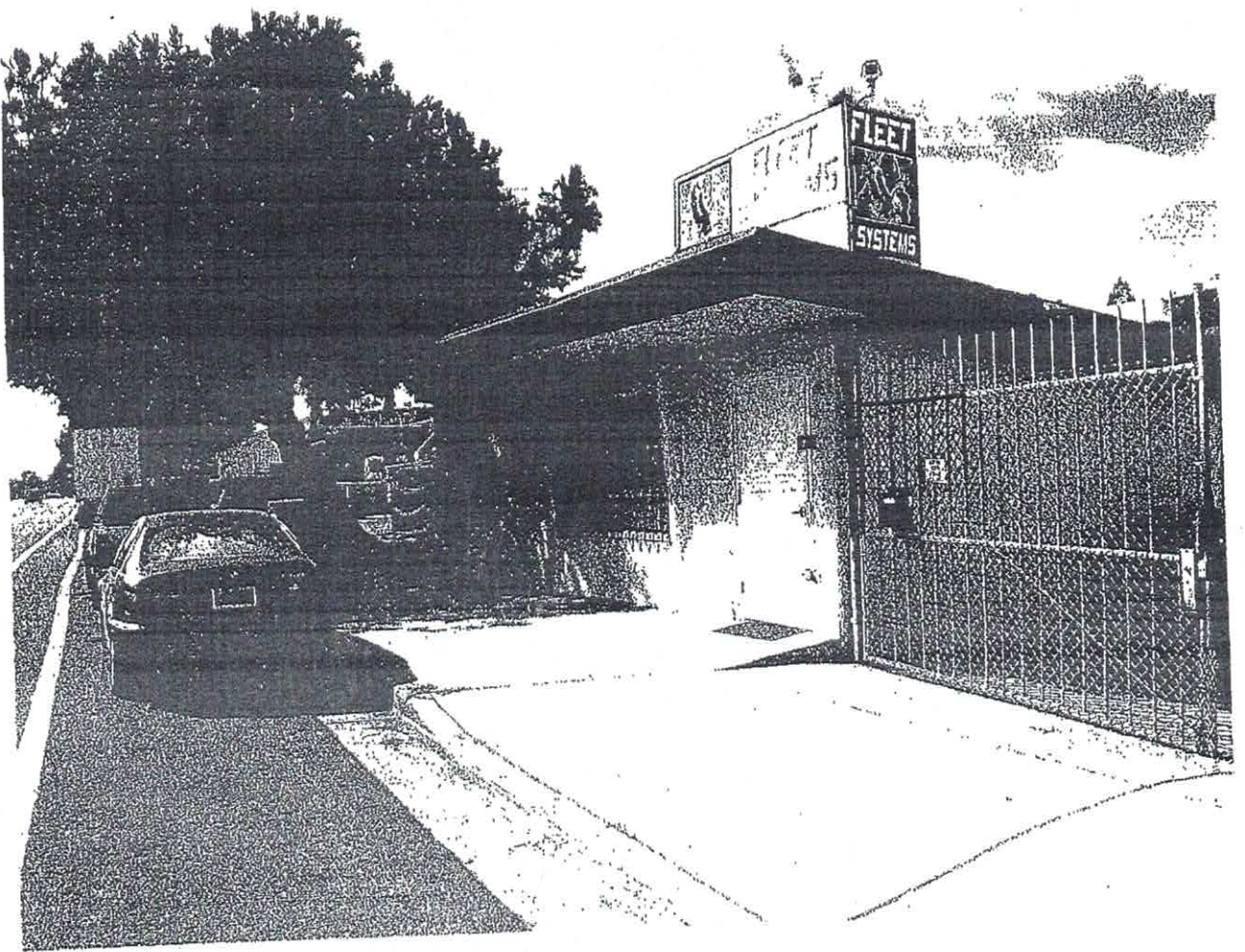
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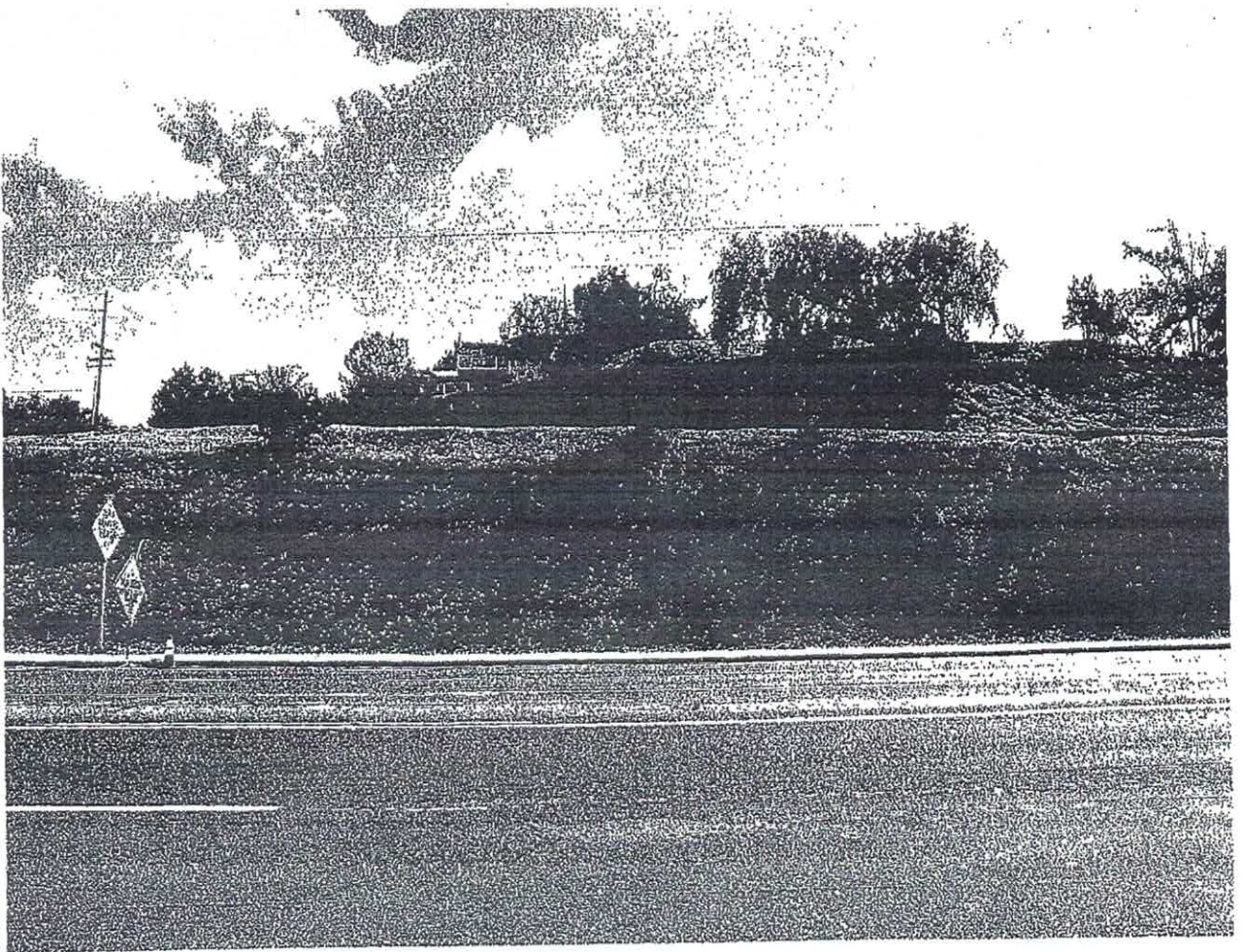


BOULEVARD

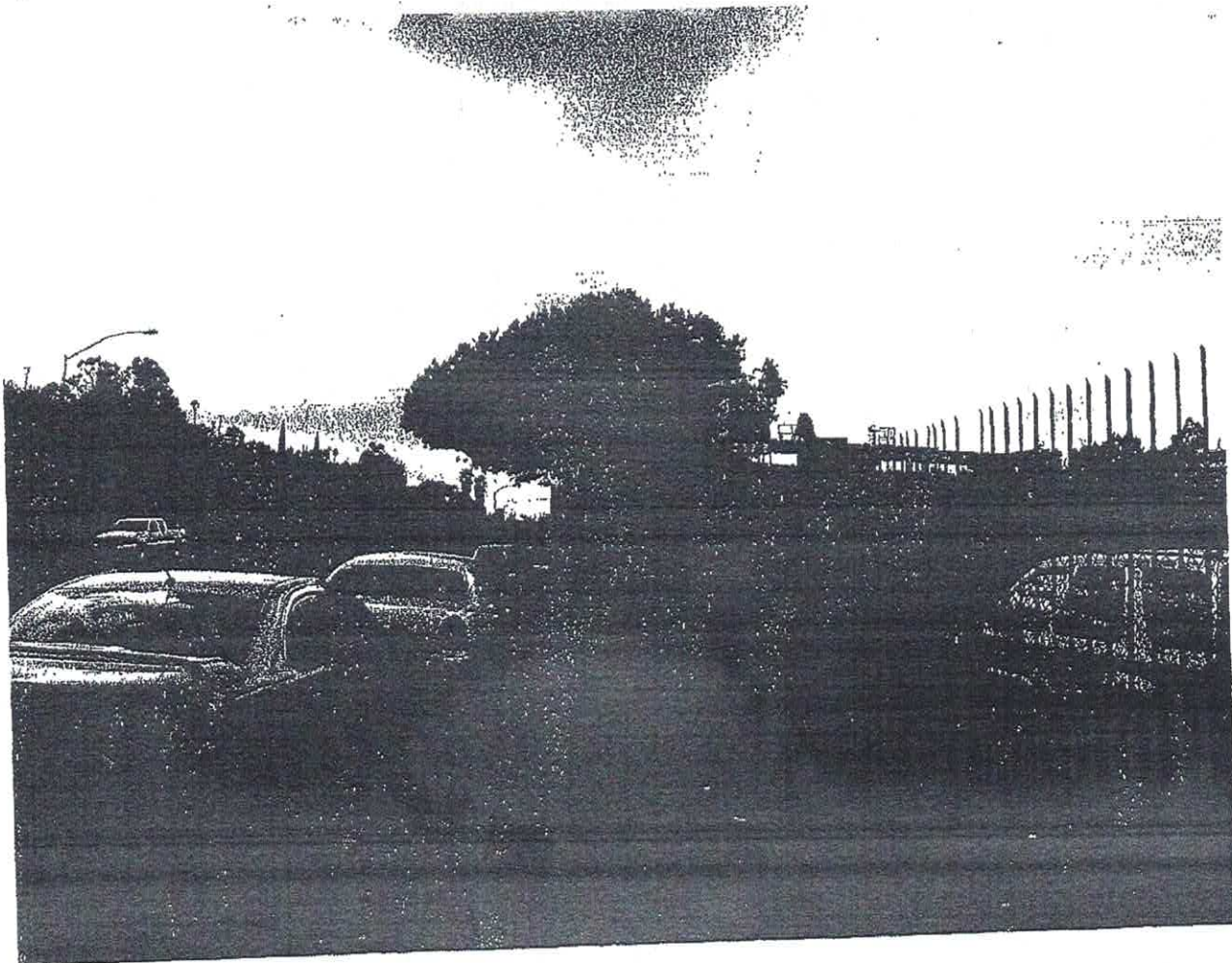


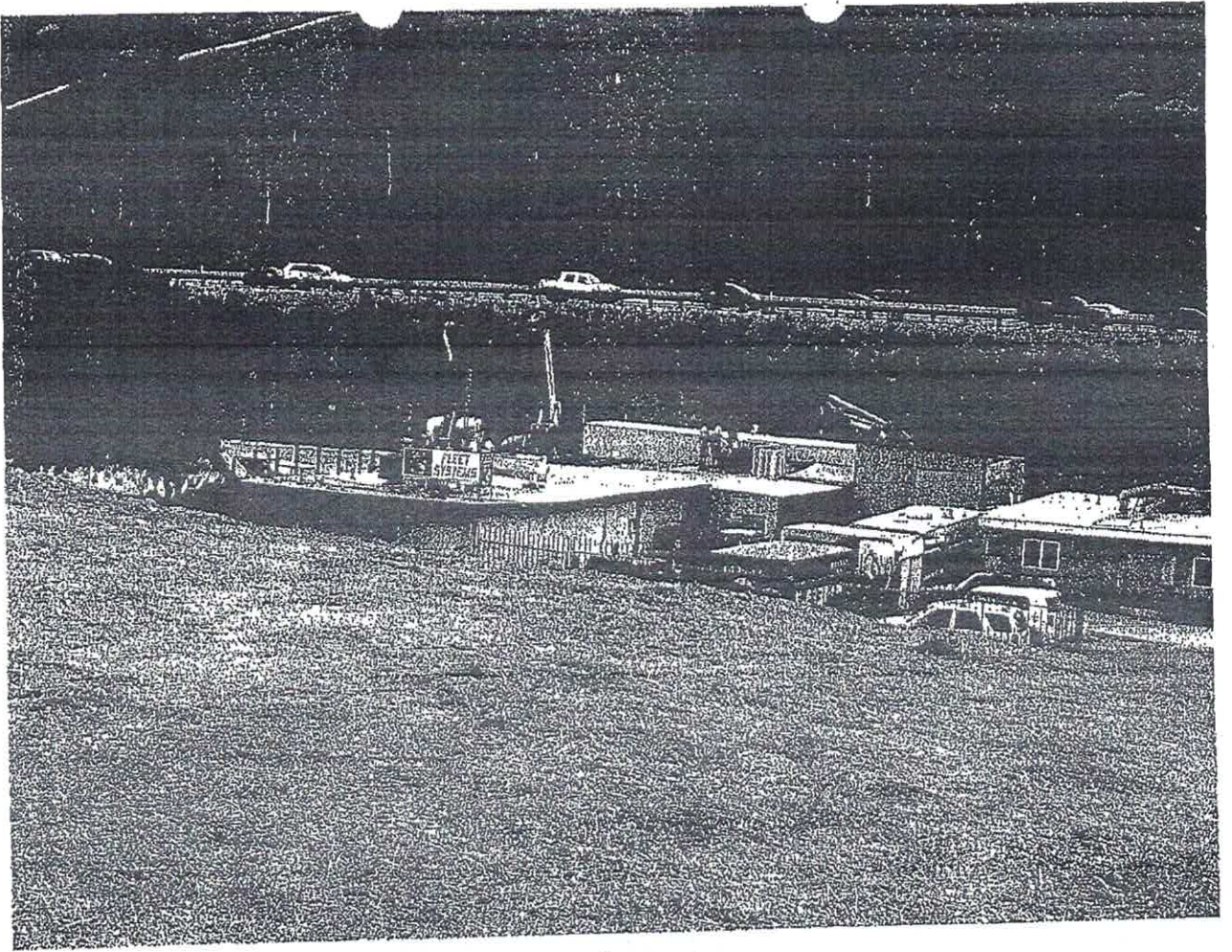
KEYPLAN

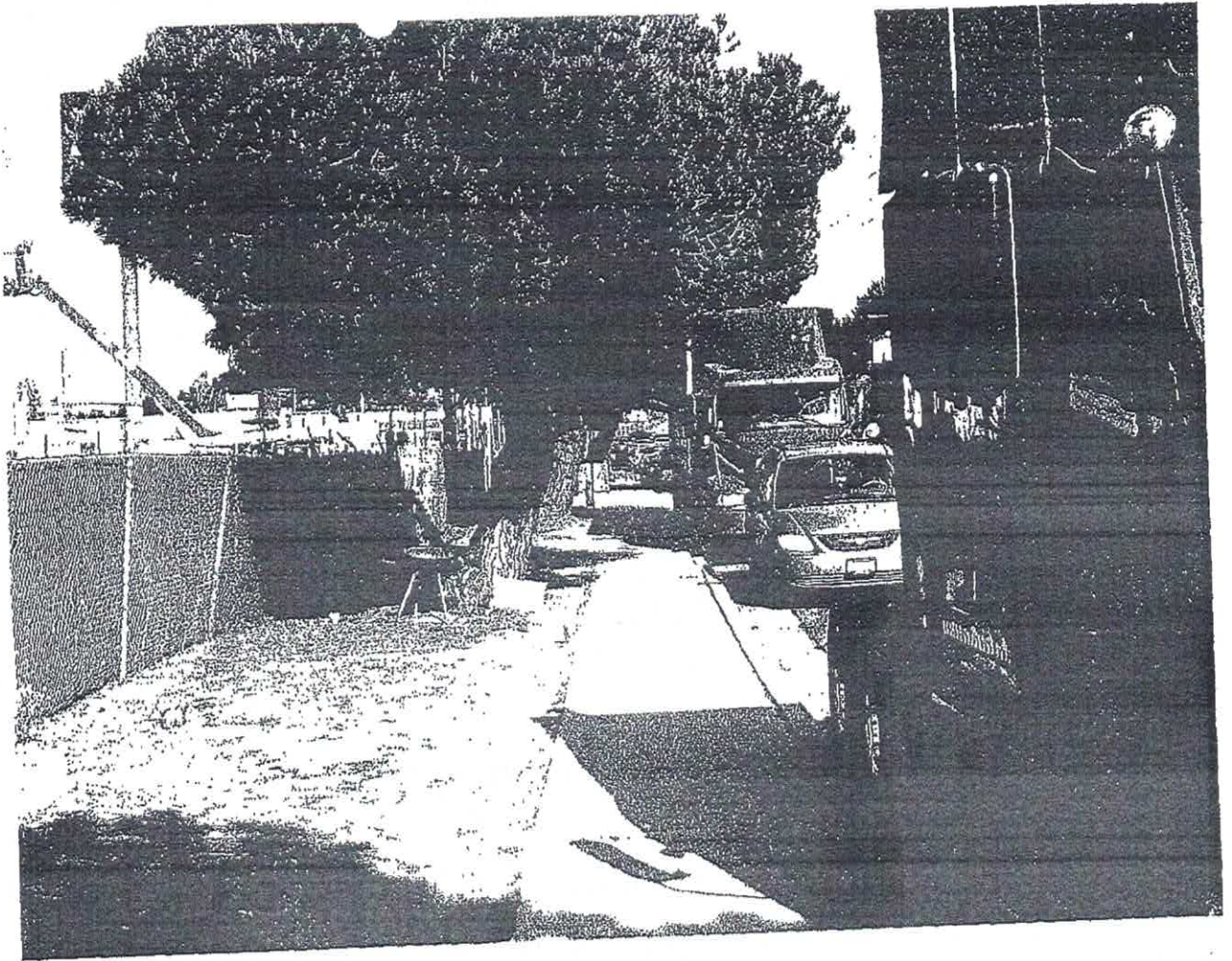


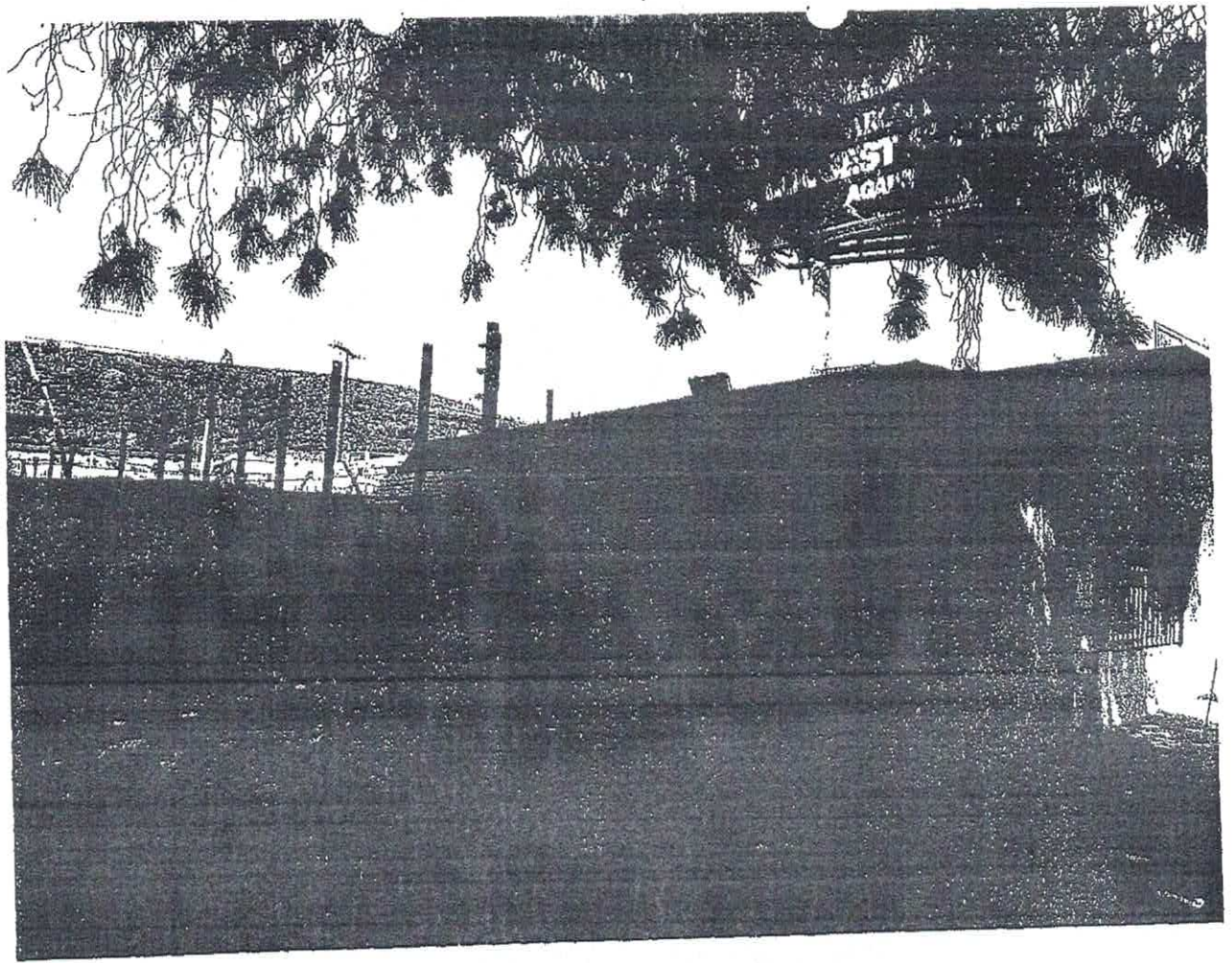




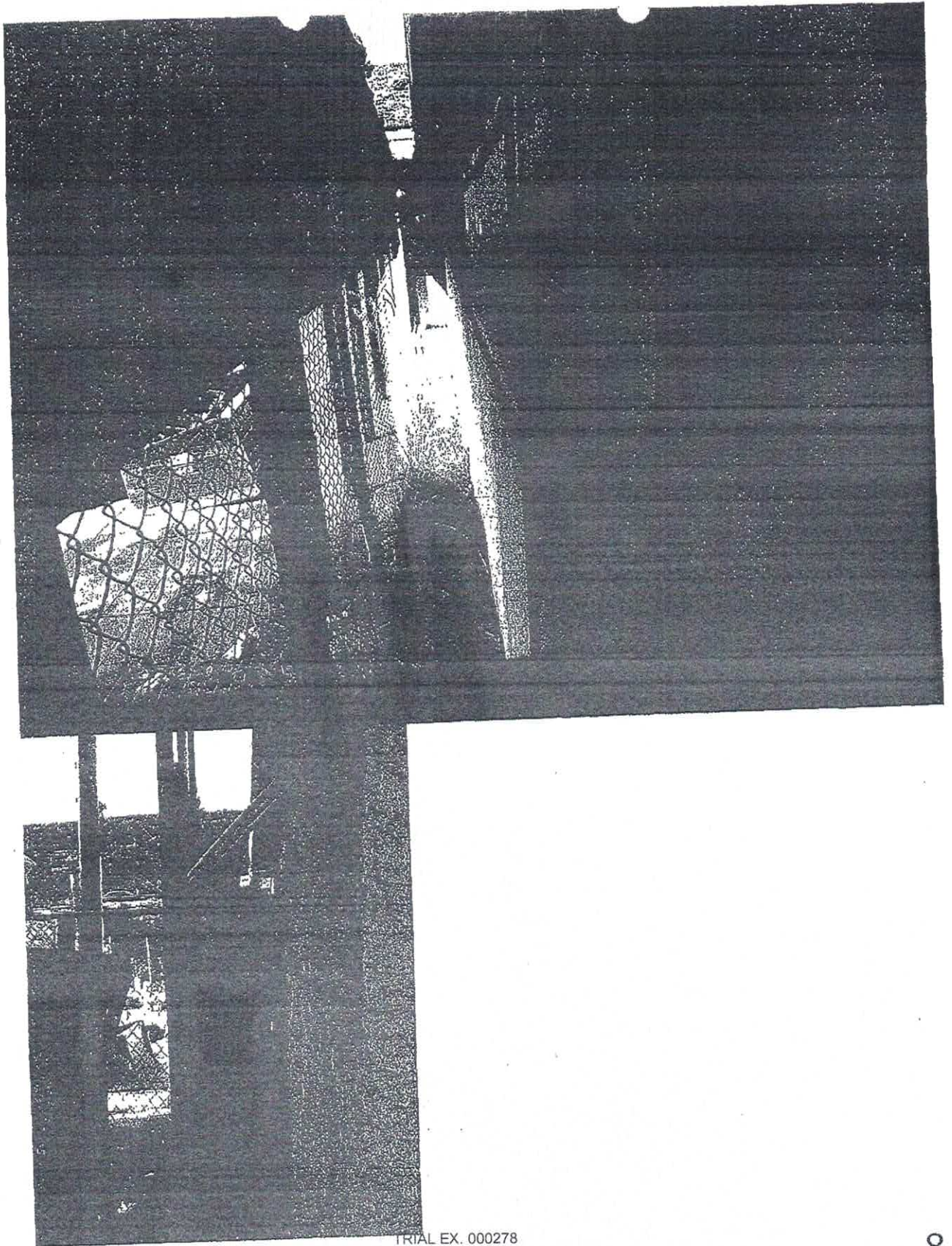




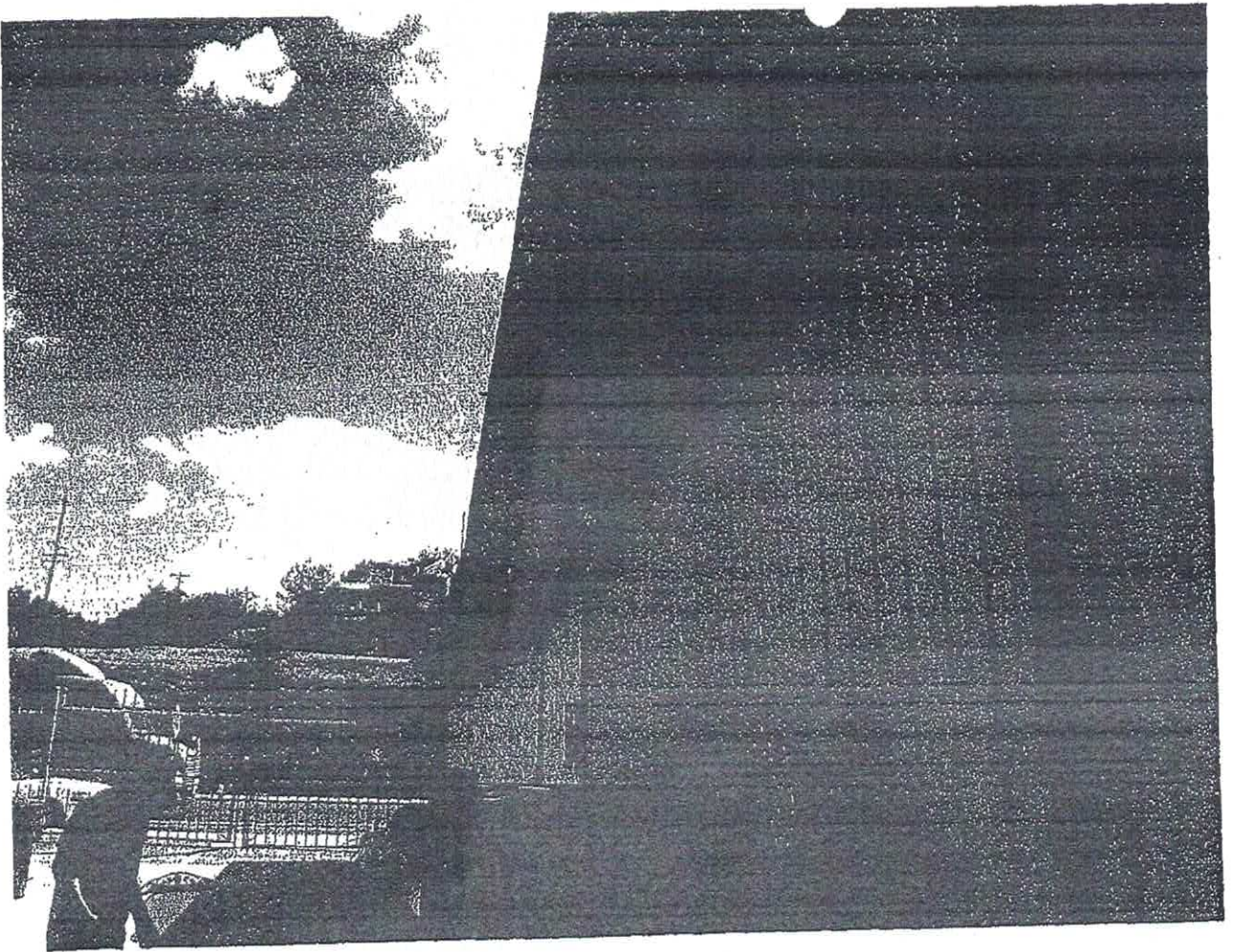




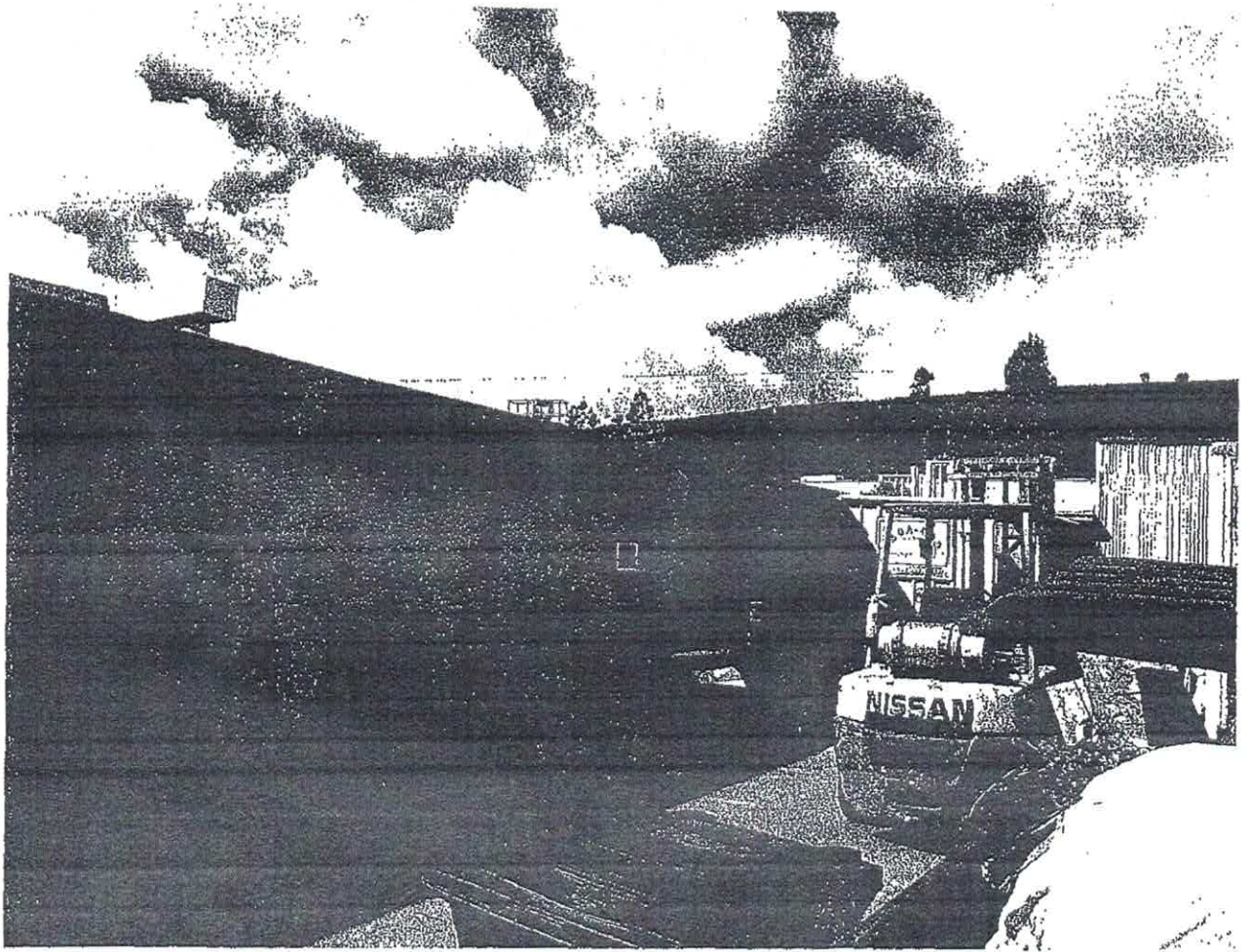
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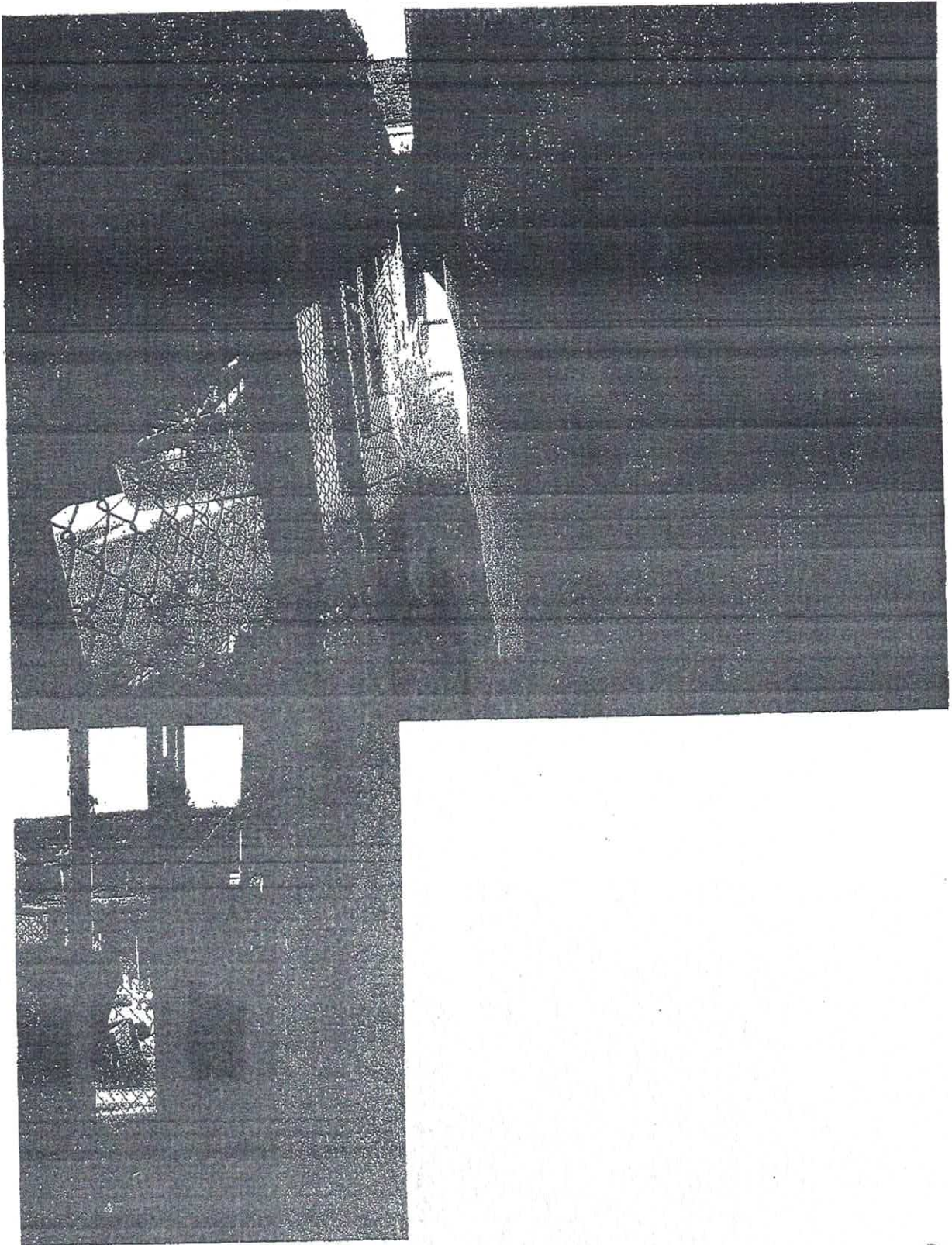
TRIAL EX. 000278











TRIAL EX. 000283

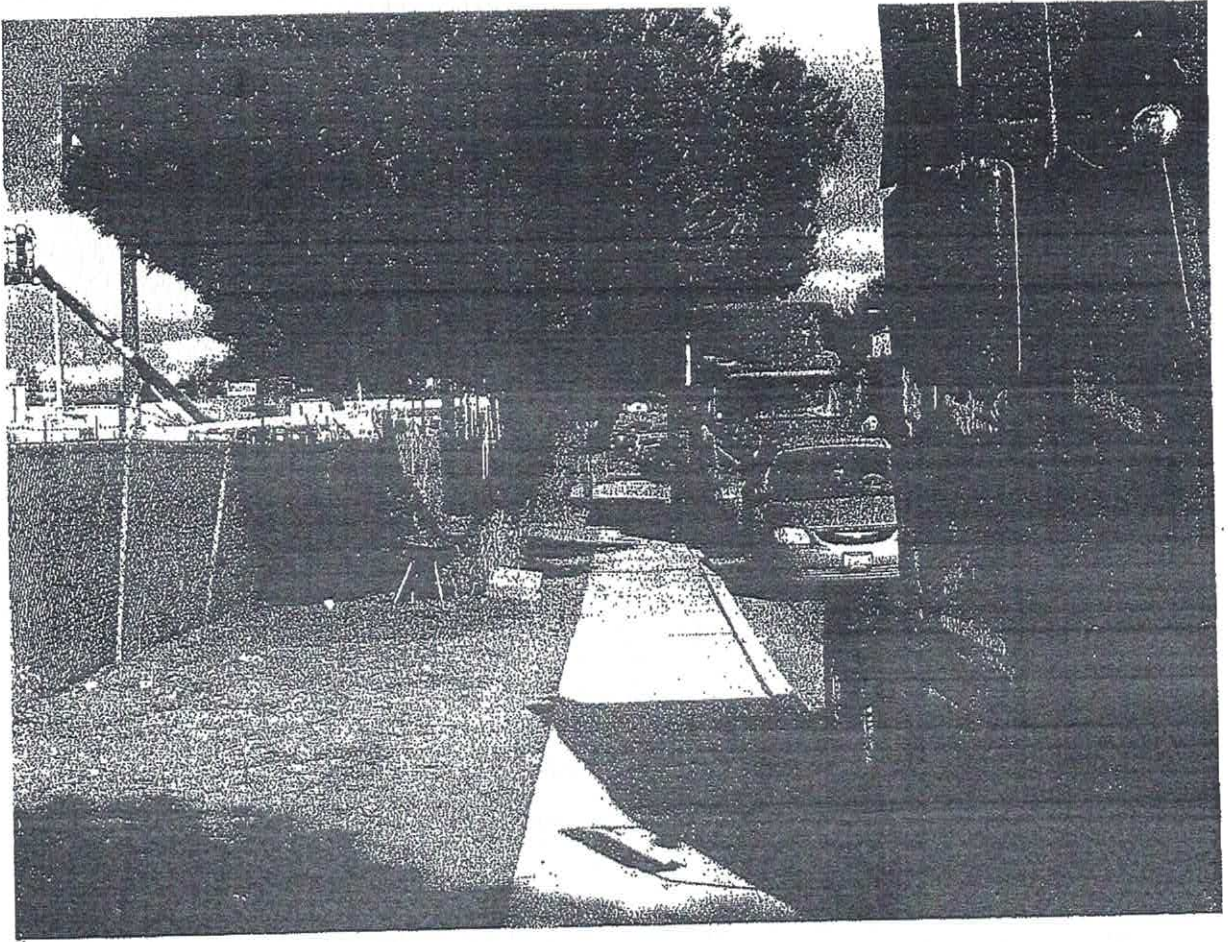


Exhibit 2

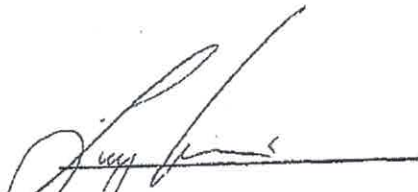
TRIAL EX. 000285

11/02/2016

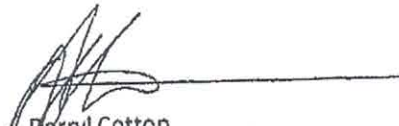
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego

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

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

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

WITNESS my hand and official seal.

Signature

Jessica Newell

(Seal)



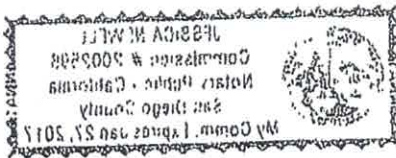


Exhibit 3

TRIAL EX. 000289

6/7/2017

Gmail - Agreement



Darryl Cotton <Indagrodarryl@gmail.com>

Agreement

2 messages

Wed, Nov 2, 2016 at 3:11 PM

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

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com


Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

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

TRIAL EX. 000290

 Cotton & Geraci Contract.pdf
71K

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

Hi Larry,

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

Regards.

Darryl Cotton, President



darryl@inda-gro.com
www.inda-gro.com
Ph: 877.452.2244
Cell: 619.954.4447
Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA. 92114
USA

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

[Quoted text hidden]

TRIAL EX. 000291

Exhibit 4

TRIAL EX. 000292

FINCH • THORNTON • BAIRD^{LLP}

ATTORNEYS AT LAW

David S. Demian
ddemian@ftblaw.com

File 2403.002

September 22, 2017

VIA U.S. AND ELECTRONIC MAIL

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

Re: 6176 Federal Boulevard - Project 520606 Conditional Use Permit

Dear Ms. Tirandazi:

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

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

1. Remove Ms. Berry From Project 520606

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

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

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

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

2. Accept Second Application

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

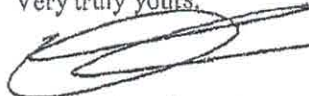
An application may be filed by any person that can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application. (SDMC § 112.0102.) Where there is a dispute over who has a right to the use of the property, the City must necessarily allow for multiple,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

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

3. Conclusion

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

Very truly yours,



David S. Demian,
Partner

DSD:dsd/3BU080502

Exhibit 5

TRIAL EX. 000295

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

Good Afternoon Mr. Demian,

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

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

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

Regards,

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

(619)446-5325
sanidiego.gov



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CONFIDENTIAL COMMUNICATION

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

Ms. Tirandazi,

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

Holly J. Glavinic *Legal Secretary*

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

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David S. Demian, SBN 220626 Adam C. Witt, SBN 271502 Finch, Thornton & Baird, LLP 4747 Executive Drive, Suite 700 San Diego, California 92121 TELEPHONE NO.: (858) 737-3100 FAX NO.: (858) 737-3101 ATTORNEY FOR (Name): Darryl Cotton		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 10/06/2017 at 02:22:55 PM Clerk of the Superior Court By Erika Engel, Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Central Division			
CASE NAME: Darryl Cotton v. City of San Diego, et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)		<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
<input type="checkbox"/> Counter		<input type="checkbox"/> Joinder	
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: 37-2017-00037675-CU-WM-CTL JUDGE: Judge Eddie C. Sturgeon DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

- | | | |
|--|---|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (26)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input checked="" type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|---|

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): One (Writ of Mandate)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: October 6, 2017

Adam C. Witt, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (not asbestos or toxic/environmental) (24)
- Medical Malpractice (45)
 - Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (not medical or legal)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36) Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract (not unlawful detainer or wrongful eviction)
 - Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
 - Negligent Breach of Contract/Warranty
 - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (not provisionally complex) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (non-domestic relations)
 - Sister State Judgment
 - Administrative Agency Award (not unpaid taxes)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (not specified above) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (non-harassment)
 - Mechanics Lien
 - Other Commercial Complaint Case (non-tort/non-complex)
 - Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (not specified above) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

CITY OF SAN DIEGO, a public entity;

DOES 1 through 25;

REBECCA BERRY, an individual;

LARRY GERACI, an individual; and

ROES 1 through 25

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DARRYL COTTON, an individual

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

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

10/06/2017 at 02:22:55 PM

Clerk of the Superior Court
By Erika Engel, Deputy Clerk

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

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

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

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

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

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California

County of San Diego - Central Division

330 West Broadway

San Diego, California 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

David S. Demian, SBN 220626 Adam C. Witt, SBN 271502

Finch, Thornton & Baird, LLP, 4747 Executive Drive, Suite 700, San Diego, California 92121

Telephone: (858) 737-3100 Facsimile: (858) 737-3101

DATE: 10/11/2017

(Fecha)

Clerk, by
(Secretario)

E. Engel
E. Engel

Deputy
(Adjunto)

CASE NUMBER:

(Número del Caso): 37-2017-00037875-CU-WM-CTL

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

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

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☐ on behalf of (specify):
under:

<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.80 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- ☐ by personal delivery on (date):

TRIAL EX. 000302

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7067	
PLAINTIFF(S) / PETITIONER(S): DARRYL COTTON et.al.	
DEFENDANT(S) / RESPONDENT(S): City of San Diego	
COTTON VS CITY OF SAN DIEGO [IMAGED]	
NOTICE OF CASE ASSIGNMENT and CASE MANAGEMENT CONFERENCE	CASE NUMBER: 37-2017-00037675-CU-WM-CTL

CASE ASSIGNMENT

Judge: Eddie C Sturgeon

Department: C-67

COMPLAINT/PETITION FILED: 10/06/2017

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
---------------------------	------	------	------	-------

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

TRIAL EX. 000304



Superior Court of California County of San Diego

NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at www.onelegal.com for information.

This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2017-00037675-CU-WM-CTL CASE TITLE: Cotton vs City of San Diego [IMAGED]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

TRIAL EX. 000307

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO		FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway		
MAILING ADDRESS: 330 West Broadway		
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827		
BRANCH NAME: Central		
PLAINTIFF(S): DARRYL COTTON et.al.		
DEFENDANT(S): City of San Diego		
SHORT TITLE: COTTON VS CITY OF SAN DIEGO [IMAGED]		
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)		CASE NUMBER: 37-2017-00037675-CU-WM-CTL

Judge: Eddie C Sturgeon

Department: C-67

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 10/11/2017

TRIAL EX. 000309

JUDGE OF THE SUPERIOR COURT

DAVID S. DEMIAN, SBN 220828
E-MAIL: ddemian@fblaw.com
ADAM C. WITT, SBN 271602
E-MAIL: awitt@fblaw.com
RISHI S. BHATT, SBN 312407
E-MAIL: rbhatt@fblaw.com

FINCH, THORNTON & BAIRD, LLP

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/30/2017 at 08:00:00 AM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants,

CASE NO: 37-2017-00037675-CU-WM-CTL

EX PARTE APPLICATION FOR (1)
ALTERNATIVE WRIT OF MANDATE AND
ORDER TO SHOW CAUSE WHY
PEREMPTORY WRIT SHOULD NOT
ISSUE, AND (2) THE SCHEDULING OF A
HEARING AND EXPEDITED SCHEDULE
FOR VERIFIED PETITION FOR WRIT OF
MANDATE

[IMAGED FILE]

Assigned to:
Hon. Eddie C. Sturgeon, Dept. C-67

Date: October 31, 2017
Time: 8:30 a.m.
Dept.: C-67

Petition Filed: October 6, 2017
Trial Date: Not Set

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

Real Parties In Interest.

/////

/////

TRIAL EX. 000314

EX PARTE APPLICATION FOR (1) ALTERNATIVE WRIT OF MANDATE AND ORDER TO SHOW
CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE, AND (2) THE SCHEDULING OF A HEARING
AND EXPEDITED SCHEDULE FOR VERIFIED PETITION FOR WRIT OF MANDATE

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on October 31, 2017, at 8:30 a.m. or as soon thereafter
3 as the matter may be heard in Department C-67 of the above-entitled court, located at 330
4 West Broadway, San Diego, California 92101, petitioner/plaintiff Darryl Cotton ("Cotton")
5 will appear ex parte to request the Court issue the following relief pursuant to Code of Civil
6 Procedure section 1085:

7 1. An alternative writ of mandate under seal of this Court and an order to show
8 cause why a peremptory writ should not issue. Specifically, Cotton respectfully requests (1) an
9 alternative writ of mandate directing respondent/defendant City of San Diego ("City") to
10 recognize Cotton, the sole record owner of the real property located at 6176 Federal Boulevard,
11 San Diego, California 92114 ("Property"), as the sole applicant with respect to Conditional
12 Use Permit Application – Project No. 520606 ("Cotton Application") for a Conditional Use
13 Permit to operate a Medical Marijuana Consumer Cooperative at the Property, and to process
14 the Cotton Application with Cotton as the sole applicant, and (2) an order to show cause why a
15 peremptory writ should not issue.

16 2. In the alternative, Cotton requests the Court schedule the following expedited
17 hearing and briefing schedule on Cotton's verified petition for writ of mandate:

Event	Date/Deadline
Cotton's Petition/Application	October 31, 2017
Oppositions of City, Berry, and Geraci	November 7, 2017
Cotton's Replies	November 10, 2017
Hearing on Cotton's Petition/Application	November 14, 2017

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

25 / / / /

26 / / / /

27 / / / /

Parties	Attorneys
Darryl Cotton	David S. Demian Adam C. Witt Rishi S. Bhatt Finch, Thornton & Baird, LLP 4747 Executive Drive, Suite 700 San Diego, California 92121 Telephone: (858) 737-3100
City of San Diego c/o City Clerk - Elizabeth Maland 202 C Street, 2nd Floor San Diego California 92101 Telephone: (619) 972-5280	Jana Mickova Will, Deputy City Attorney 1200 Third Avenue Suite 1100 San Diego, California 92101 Telephone: (619) 235-5872
Rebecca Berry	Michael R. Weinstein Ferris & Britton 501 West Broadway, Suite 1450 San Diego, California 92101 Telephone: (619) 233-3131
Larry Geraci	Michael R. Weinstein Ferris & Britton 501 West Broadway, Suite 1450 San Diego, California 92101 Telephone: (619) 233-3131

This application is based on upon the concurrently filed memorandum, declaration of Darryl Cotton, declaration of David S. Demian, notice of lodgment, request for judicial notice, proposed order, the pleadings and records on file in this action, including the verified petition and its exhibits, and other oral and documentary evidence that may be presented at the time of the hearing on this application.

Timely notice for this application was given by counsel for Cotton to all parties pursuant to California Rules of Court, rule 3.1203(a). (Declaration of David S. Demian, ¶ 3.)

DATED: October 27, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By:

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

Attorneys for Petitioner/Plaintiff Darryl Cotton

2403.002/3C18925.amq

DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@ftblaw.com
ADAM C. WITT, SBN 271602
E-MAIL: awitt@ftblaw.com
RISHI S. BHATT, SBN 312407
E-MAIL: rbhatt@ftblaw.com

FINCH, THORNTON & BAIRD, LLP

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

ELECTRONICALLY FILED
Superior Court of California,
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10/30/2017 at 08:00:00 AM

Clerk of the Superior Court
By Katelyn O'Keefe, Deputy Clerk

Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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DARRYL COTTON, an individual,

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

Respondents/Defendants,

CASE NO: 37-2017-00037675-CU-WM-CTL

MEMORANDUM IN SUPPORT OF EX
PARTE APPLICATION FOR (1)
ALTERNATIVE WRIT OF MANDATE AND
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PEREMPTORY WRIT SHOULD NOT
ISSUE, AND (2) THE SCHEDULING OF A
HEARING AND EXPEDITED SCHEDULE
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MANDATE

[IMAGED FILE]

Assigned to:
Hon. Eddie C. Sturgeon, Dept. C-67

Date: October 31, 2017
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Petition Filed: October 6, 2017
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REBECCA BERRY, an individual;
LARRY GERACI, an individual; and
ROES 1 through 25,

Real Parties In Interest.

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MEMORANDUM IN SUPPORT OF EX PARTE APPLICATION FOR (1) ALTERNATIVE WRIT OF
MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE, AND (2)
THE SCHEDULING OF A HEARING AND EXPEDITED SCHEDULE FOR VERIFIED PETITION FOR
WRIT OF MANDATE

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INTRODUCTION

Plaintiff/petitioner Darryl Cotton ("Cotton") brings this writ petition and ex parte application to compel respondent/defendant City of San Diego ("City") to recognize Cotton as the sole applicant on a Conditional Use Permit ("CUP") application originally filed and pursued for Cotton's solely-owned real property by Cotton's former prospective business partner, Larry Geraci ("Geraci"), and Geraci's associate, Rebecca Berry ("Berry").

Cotton is the sole owner of and sole interest holder in the real property for which the CUP application was filed. Cotton previously requested the City proceed with the application under his own name after Cotton terminated his agreement with Geraci (Cotton has never had an agreement or any other business relationship with Berry directly). The City has arbitrarily and capriciously refused to remove Berry from the CUP application even though Cotton is the only person under the law who meets the express statutory definition of an applicant with respect to the CUP application.

By this ex parte application, Cotton seeks: (1) an alternative writ of mandate directing the City to recognize Cotton as the sole applicant with respect to Conditional Use Permit Application - Project No. 520606 ("Cotton Application") for a CUP to operate a Medical Marijuana Consumer Cooperative ("MMCC") at Cotton's property and to process the Cotton Application with Cotton as the sole applicant; and (2) an order to show cause why a peremptory writ should not issue. As explained below, Cotton requests a peremptory writ be issued at the hearing on this application. In the alternative, Cotton requests the Court schedule an expedited hearing and briefing schedule on Cotton's verified petition for writ of mandate.

The relief Cotton seeks in his writ petition and in this ex parte application is proper because he has no other plain, speedy, or adequate legal remedy. There are no other administrative processes or legal channels by which Cotton can compel the City to recognize his beneficial right to be recognized as the sole applicant on the Cotton Application.

1 Unless the Court issues an order directing the City to recognize Cotton as the applicant
2 on the Cotton Application, Cotton will be irreparably harmed by being forced to abdicate his
3 right to control who may beneficially use his property, as permitted under both state and
4 federal law. In addition, Cotton will lose the "first-mover" advantage he currently enjoys as a
5 leading applicant to operate a marijuana dispensary in the San Diego market and Cotton will be
6 forced to abandon his year-old application and resubmit under a new, entirely different, and
7 potentially lengthier regulatory scheme being implemented on January 1, 2018.

8 II

9 FACTUAL BACKGROUND

10 A. Parties, Property, and Initial Application

11 Cotton has been the sole record owner of and interest holder in the real property located
12 at 6167 Federal Boulevard San Diego, California 92114 ("Property") at all relevant times.
13 (Declaration of Darryl Cotton ("Cotton Decl."), ¶ 3; VP Ex. 1.¹)

14 In or around August 2016, Geraci first approached Cotton and expressed interest in
15 purchasing the Property because it was potentially eligible to be used for the operation of a
16 Medical Marijuana Consumer Cooperative ("MMCC"). (Cotton Decl. ¶ 4.) Geraci
17 represented that for the Property to run as a MMCC, a Conditional Use Permit ("CUP") must
18 be issued by the City – a process that takes several months. (Cotton Decl. ¶¶ 5-6.) However,
19 Geraci represented that there was a zoning issue at the Property that must be resolved before
20 the Cotton Application could be filed. (Cotton Decl. ¶ 6.) Geraci stated that he has special
21 expertise in acquiring CUP permits for MMCCs and was uniquely qualified to resolve the
22 zoning issue preventing the filing of the application on Cotton's Property. (Cotton Decl. ¶ 6.)

23 Over the next several months, Cotton and Geraci engaged in lengthy negotiations over
24 the terms for potential sale of the Property and ultimately reached agreement on several key
25 terms. However, these deal points were never reduced to a fully integrated written agreement.

26
27 ¹ All references to "VP Ex." or "VP Exs." are to the exhibits attached to Cotton's Verified Petition for Writ of
Mandate [Code Civ. Proc. § 1085] filed on October 6, 2017.

1 (Cotton Decl. ¶¶ 9-14.)

2 On or about October 31, 2016, while negotiations were ongoing, Geraci asked Cotton
3 to execute an Ownership Disclosure Statement, which is a required part of all CUP
4 applications. (Cotton Decl. ¶ 8.) Geraci said that Cotton had to sign the form in order to
5 provide Geraci with the ability to prepare the Cotton Application for the Property. (Cotton
6 Decl. ¶ 8.) The Ownership Disclosure Statement form that Geraci induced Cotton to sign
7 inaccurately stated that that Cotton had leased the Property to Berry. (Cotton Decl. ¶ 8; VP Ex.
8 1 [reflecting that Berry was listed as "Tenant/Lessee" of the subject Property.]) In fact, Cotton
9 and Berry have never entered into any agreement, written or otherwise, with respect to the
10 Property and Cotton has never met Berry personally. (Cotton Decl. ¶ 8.) Nonetheless, Geraci
11 indicated that Berry was his trusted employee who was familiar with the MMCC CUP process
12 and that she was involved in Geraci's other MMCC dispensaries. (Cotton Decl. ¶ 8.) In other
13 words, Geraci represented that Berry was his agent and would act on his behalf. (Cotton Decl.
14 ¶ 8.) Based on Geraci's representations, Cotton executed the Ownership Disclosure Statement
15 that Geraci provided him. (Cotton Decl. ¶ 8.)

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

26 / / / /

1 Due to Geraci's bad faith actions and breaches of the parties' agreement to negotiate in
2 good faith, Cotton emailed Geraci on March 21, 2017 to confirm that their agreement was
3 terminated and that Geraci had no interest in the Property. (Cotton Decl. ¶ 13.) A few days
4 later, Geraci's attorney emailed Cotton and indicated that Geraci intended to continue to pursue
5 the Cotton Application under his and Berry's name. (Cotton Decl. ¶ 14.) Cotton immediately
6 responded and reiterated that neither Geraci nor his agents have any right to the Property.
7 (Cotton Decl. ¶ 15.)

8 On September 22, 2017, Cotton, through his attorneys, demanded the City remove
9 Berry from the Cotton Application and to process it for Cotton, the sole record owner of the
10 Property. (Cotton Decl. ¶ 17; VP Ex. 4 [letter from Cotton's attorney David Demian to
11 Firouzeh Tirandazi].)

12 On September 29, 2017, the City responded by email to Cotton's letter and indicated its
13 refusal to remove Berry from the application or process it in Cotton's sole name. (Cotton
14 Decl., ¶ 18; VP Ex. 5 [email response from Firouzeh Tirandazi].)

15 III

16 STATUTORY AUTHORITY FOR REQUESTED MANDATE RELIEF

17 Cotton seeks a writ of mandate under Code of Civil Procedure section 1085,
18 subdivision (a), which provides in part: "A writ of mandate may be issued by any court to any
19 inferior tribunal, corporation, board, or person, to compel the performance of an act which the
20 law specially enjoins, as a duty resulting from an office, trust, or station." (Code Civ. Proc. §
21 1085, subd. (a).)

22 A petitioner is entitled to writ relief if the respondent has failed to comply with a "clear,
23 present, and ministerial duty that inures to the petitioner's benefit." (*California High-Speed*
24 *Rail Auth v. Superior Court* (2014) 228 Cal.App.4th 676, 707.) A ministerial duty is one that
25 an officer of a public agency, such as the City, is "obligated to perform in a prescribed manner
26 required by law when a given state of facts exists." (*Alliance for a Better Downtown Millbrae*
27
28

1 v. *Wade* (2003) 108 Cal.App.4th 123, 129.)

2 Courts review a public agency's action interpreting a statute under an abuse of
3 discretion standard, meaning the challenged agency action is reviewed to determine if it was
4 "arbitrary, capricious, lacking in evidentiary support, or was made without due regard for the
5 petitioner's rights." (*American Indian Model Schools v. Oakland Unified School District*
6 (2014) 227 Cal.App.4th 258, 286).

7 As explained below, the City's Planning Commission abused its discretion because
8 Cotton is the only person who may be rightfully recognized as the applicant on the Cotton
9 Application under California law. The City's refusal to recognize Cotton as such is an
10 arbitrary and capricious decision made without due regard to Cotton's rights under state law.

11 IV

12 COTTON IS THE ONLY PERSON LEGALLY ENTITLED TO BE THE
13 APPLICANT ON THE COTTON APPLICATION UNDER STATE LAW
14 AND THE CITY HAS A DUTY TO RECOGNIZE COTTON AS THE APPLICANT

15 A. The City's Improperly Refused To Honor Cotton's
16 Requests To Be The Person To Beneficially Use His
17 Solely-Owned Property In Connection With A CUP

18 Under both California and federal law, a property owner enjoys the right to use – and to
19 exclude from beneficial use – his property as he sees fit. For instance, California Civil Code
20 section 654 provides that "ownership of a thing is the right of one or more persons to possess
21 and use it to the exclusion of others." (Emphasis added.) The United States Supreme Court
22 has also held that a landowner's right to exclude others from the use and the possession of the
23 property is "one of the most essential sticks in the bundle of rights that are commonly
24 characterized as property." (*Loretto v. Teleprompter Manhattan CATV Corp.* (1982) 458 U.S.
25 419, 435.)

26 Here, Cotton is, and at all times material to this action was, the sole record owner of the
27 Property, the real property that is the subject to this dispute. (Cotton Dec. ¶ 3.) Berry does not
28 have and has never had any interest in the Property, whether under a lease or otherwise.

(Cotton Dec. ¶ 8.) Any rights Geraci may have had to the Property were terminated when Cotton terminated the parties' agreement after Geraci repeatedly acted in bad faith and failed to honor the parties' agreement. (Cotton Dec. ¶ 14.) Accordingly, Cotton has the power to validly exclude Berry and Geraci from beneficially using or attempting to use the Property, which they have no interest in whatsoever.

The City cannot nullify Cotton's property rights, conferred by the most basic tenets of law, to control who may (or may not) beneficially use his Property. Yet, this is precisely what the City does when it refuses to recognize Cotton as the only applicant entitled to the benefits of a CUP that would run with Cotton's land. (*Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th, 362, 370 [holding that a CUP runs with the owner's land]). Accordingly, the City's refusal to honor Cotton's requests to remove Berry from the Cotton Application is preempted by state and federal law. (See *O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1067 ["If otherwise valid local legislation conflicts with state law, it is preempted by such law and is void."]) As such, the City must process the Cotton Application in Cotton's name alone, as repeatedly requested by Cotton.

B. The City Has a Duty to Recognize Cotton
As The Applicant On The Cotton Application

Additionally, Cotton is, and always has been, the sole qualifying applicant for the Cotton Application under the municipal code governing CUPs in the City. Municipal Code section 113.0103 states:

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

(Emphasis added.) Under the plain language of section 113.0103, Cotton, the sole record owner of the Property, is the only person who qualifies as the applicant on the Cotton Application. Although Berry and Geraci initially filed the Cotton Application while the parties contemplated an agreement on the sale of the Property, neither is or has ever been the record

owner of the Property. Further, neither Berry nor Geraci is Cotton's authorized agent (nor have they claimed to be). Finally, as discussed above, neither Berry nor Geraci has demonstrated or can demonstrate any legal right, title, or entitlement to the Property because Cotton has never entered into an agreement with Berry and any rights Geraci may have had were terminated months ago. Therefore, the City has a ministerial duty to recognize Cotton as the sole applicant on the Cotton Application.

V

AN EXPEDITED HEARING AND BRIEFING SCHEDULE SHOULD BE ORDERED

Failing the immediate issuance of the requested writ relief, Cotton requests that the Court schedule a hearing on the merits of Cotton's petition for writ of mandate as soon as possible and adopt an expedited briefing schedule, lest Cotton be subject to irreparable harm in the following ways.

First, as alluded to above, Cotton would be irreparably harmed by being continually denied the right to exercise his authority to decide who may or may not beneficially use his property. Courts have recognized that such harm is irreparable. For example, in *Fretz v. Burke* (1967) 247 Cal.App.2d 741, 746, the court held that an irreparable harm occurs where one's behavior "constitutes an overbearing assumption by one person of superiority and domination over the rights and property of others." (Emphasis added.) If Cotton is forced to wait for a hearing on the merits of his writ petition, the court would essentially lend its imprimatur to Berry's appropriation of Cotton's property rights by overriding Cotton's express wishes that she not be listed as a beneficial user of his Property.

Second, if Cotton is forced to wait for a regular hearing on his petition, Cotton will lose the competitive advantage he has worked for and anticipated for months. The State of California is set to implement the "Control, Regulate and Tax Adult Use of Marijuana Act." Under this Act, the State will institute a new process licenses for persons to legally sell marijuana on January 1, 2018. (Section 26012(a)(1)-(2)(c) ["Licensing authorities shall begin

1 issuing licenses under this division by January 1, 2018.”) If the issues related to the Cotton
2 Application are not resolved in sufficient time for the CUP to be issued for the Property prior
3 to the implementation of the Act, Cotton will be forced to abandon his year-old application on
4 his Property and resubmit under an entirely new and potentially lengthier regulatory scheme,
5 with no assurance that the Property will qualify under this entirely different set of laws.
6 Accordingly, the Court should expedite the hearing of Cotton’s petition in order to prevent the
7 potential waste of the Property’s business potential and loss of Cotton’s property rights.

8 VI

9 COTTON PROVIDED THE REQUIRED NOTICE

10 Cotton provided timely notice of this application to all parties per California Rules of
11 Court 3.1203 and 3.1204. (Concurrently filed Declaration of David S. Demian (“Demian
12 Decl.”), ¶ 3.) As of this drafting, it is unknown if City, Geraci, and Berry will be opposing.
13 (Demian Decl., ¶ 4.)

14 VII

15 CONCLUSION

16 For the reasons stated above, the Court should grant Cotton’s request for (1) an
17 alternative writ of mandate directing the City to recognize Cotton as the sole applicant with
18 respect to the Cotton Application at the Property and to process the Cotton Application with
19 Cotton as the sole applicant; (2) an order to show cause why a peremptory writ should not
20 issue; and/or (3) the scheduling of an expedited hearing and briefing schedule on Cotton’s
21 verified petition for writ of mandate.

22 DATED: October 27, 2017

Respectfully submitted,

23 FINCH, THORNTON & BAIRD, LLP

24 By: 

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

Attorneys for Petitioner/Plaintiff Darryl Cotton

26 2403.002/3C18983.amq

DAVID S. DEMIAN, SBN 220326
E-MAIL: ddemian@fbblaw.com
ADAM C. WITT, SBN 271602
E-MAIL: awitt@fbblaw.com
RISHI S. BHATT, SBN 312407
E-MAIL: rbhatt@fbblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
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v.

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

Respondents/Defendants,

CASE NO: 37-2017-00037675-CU-WM-CTL

DECLARATION OF DARRYL COTTON IN
SUPPORT OF EX PARTE APPLICATION
FOR (1) ALTERNATIVE WRIT OF
MANDATE AND ORDER TO SHOW
CAUSE WHY PEREMPTORY WRIT
SHOULD NOT ISSUE, AND (2) THE
SCHEDULING OF A HEARING AND
EXPEDITED SCHEDULE FOR VERIFIED
PETITION FOR WRIT OF MANDATE

[IMAGED FILE]

Assigned to:
Hon. Eddie C. Sturgeon, Dept. C-67

Date: October 31, 2017
Time: 8:30 a.m.
Dept.: C-67

Petition Filed: October 6, 2017
Trial Date: Not Set

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

Real Parties In Interest.

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DECLARATION OF DARRYL COTTON IN SUPPORT OF EX PARTE APPLICATION FOR (1)
ALTERNATIVE WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT
SHOULD NOT ISSUE, AND (2) THE SCHEDULING OF A HEARING AND EXPEDITED SCHEDULE FOR
VERIFIED PETITION FOR WRIT OF MANDATE

1 I, Darryl Cotton, declare as follows:

2 1. I make this declaration in support of my application for: (1) alternative writ of
3 mandate and order to show cause why peremptory writ should not issue, and (2) the scheduling
4 of a hearing and expedited schedule for verified petition for writ of mandate.

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

7 3. I am, and have been at all relevant times, the sole record owner of the real
8 property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").

9 4. In or about August 2016, Larry Geraci ("Geraci") approached me and expressed
10 interest in purchasing the Property.

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

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

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

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

26 / / / /

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

3 9. On November 2, 2016, Geraci and I spoke at his office about our CUP
4 arrangement and the sale of the Property. We executed a very short and incomplete writing
5 that said (a) that Geraci would purchase the Property for \$800,000.00, conditioned on the
6 City's approval of the CUP application, and (b) acknowledged that Geraci paid me a partial
7 deposit of \$10,000.00 as good-faith earnest money towards formalizing and finalizing our
8 purchase and equity agreement ("November Document").

9 10. Later the same day that we executed the November Document, I emailed Geraci
10 and told him that after further review our November Document failed to reflect a key term
11 regarding my equity stake in the MMCC to be operated at the Property. In my email, I
12 reminded Geraci that my ten percent equity in the MMCC was vitally important to me. I also
13 told Geraci to confirm that my equity stake was a term of our agreement. He replied by saying
14 "no problem."

15 11. In the weeks and months after our November meeting, I tried to follow up with
16 Geraci to inquire about the status of the CUP application and our purchase and sale documents.
17 However, Geraci was continuously evasive and non-responsive.

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

23 13. On March 21, 2017, after becoming frustrated with Geraci's numerous bad faith
24 actions, I sent him notice via email that our agreement with respect to the Property was
25 terminated.

26 / / / /

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

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

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

17. On September 22, 2017, my attorney, David S. Demian, sent a letter to the City of San Diego demanding that the City remove Berry from the CUP application and process the CUP in my name alone.

18. On September 29, 2017, the City of San Diego responded and indicated they would not remove Berry from the CUP. The City continues to refuse my request to remove Berry from my CUP on my Property even though I have provided evidence that I am the sole record owner of the Property and confirmed that Berry has no rights to the Property.

19. I am concerned that the City's failure to honor my request will cause me to lose the competitive advantage that I will otherwise have in the marketplace because I will be forced to abandon my year-old application and resubmit under a new, entirely different, and potentially longer regulatory scheme beginning January 1, 2018.

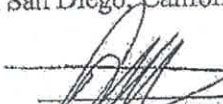
20. I seek the Court's intervention now to help me protect my property rights and prevent the waste of my Property's business potential.

/ / / / /

/ / / / /

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

3 Executed this 27 day of October 2017 in San Diego, California.

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5 
6 DARRYL COTTON

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DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@fbblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@fbblaw.com
RISHI S. BHATT, SBN 312407
E-MAIL: rbhatt@fbblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (658) 737-3100
FACSIMILE: (658) 737-3101

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/30/2017 at 08:00:00 AM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

Attorneys for Petitioner/Plaintiff Darryl Cotton

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

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants,

CASE NO: 37-2017-00037675-CU-WM-CTL

DECLARATION OF DAVID S. DEMIAN IN
SUPPORT OF EX PARTE APPLICATION
FOR (1) ALTERNATIVE WRIT OF
MANDATE AND ORDER TO SHOW
CAUSE WHY PEREMPTORY WRIT
SHOULD NOT ISSUE, AND (2) THE
SCHEDULING OF A HEARING AND
EXPEDITED SCHEDULE FOR VERIFIED
PETITION FOR WRIT OF MANDATE

[IMAGED FILE]

Assigned to:
Hon. Eddie C. Sturgeon, Dept. C-67

Date: October 31, 2017
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Trial Date: Not Set

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

Real Parties In Interest.

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DECLARATION OF DAVID S. DEMIAN IN SUPPORT OF EX PARTE APPLICATION FOR (1)
ALTERNATIVE WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT
SHOULD NOT ISSUE, AND (2) THE SCHEDULING OF A HEARING AND EXPEDITED SCHEDULE FOR
VERIFIED PETITION FOR WRIT OF MANDATE

1 I, David S. Demian, declare as follows:

2 1. I am an attorney admitted to practice before this Court and all courts in the State
3 of California and a partner in the law firm of Finch, Thornton & Baird, LLP, counsel of record
4 for petitioner/plaintiff Darry Cotton ("Cotton"). I make this declaration in support of Cotton's
5 ex parte application for: (1) alternative writ of mandate and order to show cause why
6 peremptory writ should not issue, and (2) the scheduling of a hearing and expedited schedule
7 for verified petition for writ of mandate.

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

10 3. Pursuant to California Rules of Court, rules 3.1203 and 3.1204, I provided
11 timely ex parte notice of this application to all parties, including the date, time, and relief
12 sought. On October 27, 2017, I sent written notice of this ex parte application to Jana Mickova
13 Will, Deputy City Attorney for respondent/defendant City of San Diego. A true and correct
14 copy of the written notice is attached as Exhibit "A" to this declaration. On October 27, 2017,
15 I sent written notice of this ex parte application to Michael R. Weinstein, counsel of record for
16 real parties in interest Rebecca Berry and Larry Geraci. A true and correct copy of the written
17 notice is attached as Exhibit "B" to this declaration.

18 4. The notice provided stated that Cotton's application would be filed in
19 Department C-67 of the captioned court and would proceed at 8:30 a.m. or as soon thereafter
20 as the Court would hear it. As of this drafting, I have not received response stating whether the
21 City, Berry, or Geraci will oppose.

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

24 Executed this 27 day of October 2017, in San Diego, California.

25 
26 DAVID S. DEMIAN

27 2403.002/3C19009.amq

EXHIBIT A

TRIAL EX. 000333

From: David S. Demlan
Sent: Friday, October 27, 2017 4:55 PM
To: Will, Jana
Subject: Ex parte notice Darryl Cotton v. City of San Diego, Real Parties in Interest Rebecca Berry and Larry Geraci (Case No. 37-2017-00037675-CU-WM-CTL)

Importance: High

Jana:

This confirms, consistent with your prior email to me, we have set an ex parte hearing in the referenced action before Judge Sturgeon in Department C-67 on Tuesday, October 31, 2017, at 8:30 a.m., at which we will seek (1) an issuance of the writ; and (2) in the alternative an order to shorten time and specially set the hearing on this writ. My apologies for not yet getting my papers out to you. We are preparing moving papers and will serve them on you as soon as they are available.

Regards,

David

David S. Demlan *Partner*

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

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

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EXHIBIT B

TRIAL EX. 000335

From: David S. Demian
Sent: Friday, October 27, 2017 4:59 PM
To: Michael Weinstein
Subject: Ex parte notice Darryl Cotton v. City of San Diego, Real Parties in Interest Rebecca Berry and Larry Geraci (Case No. 37-2017-00037675-CU-WM-CTL)

Importance: High

Michael

This is to provide notice we have set an ex parte hearing in the referenced action before Judge Sturgeon in Department C-67 on Tuesday, October 31, 2017, at 8:30 a.m., at which we will seek (1) an issuance of the writ; and (2) in the alternative an order to shorten time and specially set the hearing on this writ. My apologies for not yet getting my papers out to you. We are preparing moving papers and will serve them on you as soon as they are available.

Regards,

David

David S. Demian *Partner*

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

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

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DAVID S. DEMIAN, SBN 220628
E-MAIL: ddemian@fblaw.com
ADAM C. WITT, SBN 271602
E-MAIL: awitt@fblaw.com
RISHI S. BHATT, SBN 312407
E-MAIL: rbhatt@fblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (658) 737-3100
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Superior Court of California,
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By Katelin O'Keefe, Deputy Clerk

Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants,

CASE NO: 37-2017-00037675-CU-WM-CTL

NOTICE OF LODGMENT IN SUPPORT OF
EX PARTE APPLICATION FOR (1)
ALTERNATIVE WRIT OF MANDATE AND
ORDER TO SHOW CAUSE WHY
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MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT SHOULD NOT ISSUE, AND (2)
THE SCHEDULING OF A HEARING AND EXPEDITED SCHEDULE FOR VERIFIED PETITION FOR
WRIT OF MANDATE

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that petitioner/plaintiff Darryl Cotton ("Cotton") lodges a
3 true and correct copy of his Verified Petition for Alternative Writ of Mandate [Code Civ. Proc.,
4 § 1085], along with its exhibits, as Exhibit "A" to this Notice Of Lodgment. For the Court's
5 convenience, the exhibits to the Verified Petition are as follows:

Exhibit	Description
1	CUP application, including Ownership Disclosure Statement
2	November 2, 2016 Agreement
3	Email dated November 2, 2016 between Cotton and Geraci
4	Letter dated September 22, 2017 from Cotton to the City
5	Email dated September 29, 2017 from City to Cotton

10 DATED: October 27, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: 

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

Attorneys for Petitioner/Plaintiff Darryl Cotton

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