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Attorney for Defendant/Cross-Complainant DARRYL COTTON

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

LARRY GERACI, an individual,  
Plaintiff,  
v.  
DARRYL COTTON, an individual; and  
DOES 1 through 10, inclusive,  
Defendants.

DARRYL COTTON, an individual,  
Cross-Complainant,  
v.  
LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1  
THROUGH 10, INCLUSIVE,  
Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL  
Judge: The Honorable Joel R. Wohlfeil  
Dept: C-73

**REPLY TO OBJECTION BY  
PLAINTIFF/CROSS-DEFENDANTS  
LARRY GERACI AND REBECCA  
BERRY TO JUDGMENT ON JURY  
VERDICT PROPOSED BY  
DEFENDANT/CROSS-COMPLAINANT  
DARRYL COTTON**

**[IMAGED FILE]**

Action Filed: March 21, 2017  
Trial Date: June 28, 2019

**REPLY TO OBJECTION BY PLAINTIFF/CROSS-DEFENDANTS LARRY GERACI AND  
REBECCA BERRY TO JUDGMENT ON JURY VERDICT PROPOSED BY  
DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON  
Case No. 37-2017-00010073-CU-BC-CTL**

1 Defendant/Cross-Complainant Darryl Cotton (“Cotton”) hereby files this Response  
2 to *Objections by Plaintiff/Cross-defendants Larry Geraci and Rebecca Berry to Judgment*  
3 *on Jury Verdict Proposed by Defendant/Cross-Complainant Darryl Cotton* (the  
4 “Objections”).

5 **Cotton’s counsel (“Counsel”) is not legally obligated to file this Response.**

6 Counsel is, however, *ethically* compelled to file this Response against the adamant  
7 desire of his own client, Cotton. This Response is solely for the benefit of this Court.

8 This is not a motion. This Court held a trial in this action. This Court made findings.  
9 A jury verdict was reached in favor of Plaintiff Lawrence Geraci (“Geraci”). The only  
10 matter left for this Court is to enter judgment and thereby enforce Geraci’s breach of  
11 contract and related claims.

12 Counsel *could* have waited a matter of days for this Court to enter the proposed  
13 judgment submitted by Michael Weinstein (“Weinstein”), counsel for Geraci. However,  
14 if this Court enters judgment in favor of Plaintiff, it will be enforcing an illegal contract  
15 and this Court’s judgment will therefore be void. “A contract that conflicts with an  
16 express provision of the law is illegal and the rights thereto cannot be judicially enforced.”  
17 *Vierra v. Workers' Comp. Appeals Bd.*, 154 Cal. App. 4th 1142, 1148 (2007). *See A.I.*  
18 *Credit Corp. v. Aguilar Sebastinelli* (2003) 113 Cal. App. 4th 1072, 1080 (“*courts do not*  
19 *sit to give effect to . . . illegal contracts.*”) (quotation omitted; emphasis added).

20 Geraci cannot legally own a Conditional Use Permit (“CUP”) pursuant to  
21 California Business and Professions Code (“BPC”), Division 10 (**Cannabis**), Chapter 5  
22 (**Licensing**), § 26057 (**Denial of Application**) which states that: “[T]he licensing  
23 authority *shall* deny an application if the *applicant*... has been sanctioned by a licensing  
24 authority or a city... for unauthorized commercial cannabis activities... in the three years  
25 immediately preceding the date the application is filed with the licensing authority.”  
26  
27

1 Cotton has consistently and steadfastly argued this point since he filed his pro se  
2 Cross-complaint. Dock. No. 19. Materially, Cotton’s *pro se* Cross-complaint alleged that  
3 (i) Geraci and Cotton reached an oral joint venture agreement to develop a Marijuana  
4 Outlet at the real property of which Cotton is the owner-of-record;<sup>1</sup> (ii) that Geraci was  
5 legally barred from owning a Marijuana Outlet;<sup>2</sup> and (iii) that Geraci and his receptionist,  
6 Rebecca Berry (“Berry”), conspired to acquire a CUP from the City of San Diego at the  
7 Property via a fraudulent application that falsely stated that Berry was the owner of the  
8 Property and of the CUP being sought.<sup>3</sup>

9 Although this Court has expressed its disbelief, Cotton’s former attorneys amended  
10 his Cross-complaint and dropped this and other material factual allegations. Cotton fired  
11 his former attorneys – the law firm of Finch, Thornton & Baird (“FTB”) – for fraud in  
12 their representation of him in this action. Thereafter, this Court denied Cotton’s motions  
13 to amend his Cross-complaint to include these allegations, but via discovery and motions  
14 Cotton reasserted these allegations thereby amending his Cross-complaint.

15 At least at trial, it appears this Court was deceived by Geraci, Weinstein and Austin  
16 into thinking that it is lawful for Geraci to acquire a CUP via a fraudulent application. On  
17 July 8, 2019, Austin testified at trial in this matter as follows:<sup>4</sup>

18 Cotton’s Attorney: Are you familiar with this code [BPC § 26057]?  
19  
20

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21 <sup>1</sup> Docket. No. 19 (Cotton’s Cross-Complaint) (Count Six – Breach of Oral Contract) at 17:10-12  
22 (“The agreement reached on November 2nd; 2016 is a valid and binding oral agreement between Cotton  
and Geraci.”).

23 <sup>2</sup> *Id.* (Cotton’s Cross-Complaint) (Count Ten – Conspiracy) at 21:3-7 (“Berry submitted the CUP  
24 application in her name on behalf of Geraci because Geraci has been a named defendant in numerous  
25 lawsuits brought by the City of San Diego against him for the operation and management of unlicensed,  
unlawful and illegal marijuana dispensaries. These lawsuits would ruin Geraci’s ability to obtain a CUP  
himself.”).

26 <sup>3</sup> *Id.*

27 <sup>4</sup> A true and correct copy of the rough transcript is attached as Exhibit A.

1 Austin: Yes.

2 Cotton Attorney: So in subsection (a), it states that the licensing authority shall  
3 deny an application if either the applicant or the premises for which the state license  
4 applied do not qualify for the license under this division. Correct?

5 Austin: Correct.

6 Cotton's Attorney: All right. So although you're [allegedly] not aware of any  
7 sanctions against Mr. Geraci, if such a thing were in existence, would he be barred  
8 from having a license issued in his name?

9 Austin: No.

10 [...]

11 Cotton's Attorney: So if the State had an issue with Mr. Geraci's name [not being  
12 on the application], what would that process be to try and ensure that he could  
13 acquire the license?

14 Weinstein: Objection. Your Honor. Vague, irrelevant, since we're not talking about  
15 a state license. That's...

16 Judge Wohlfeil: Sustained.

17  
18 The question asked was neither vague nor irrelevant and the objection should not  
19 have been sustained by this Court.

20 As to Austin, her testimony is directly contradicted by the clear and unambiguous  
21 language of BPC § 26057. "[T]he word 'shall' is mandatory." *Woolls v. Superior Court*  
22 (2005) 127 Cal. App. 4th 197, 208 (emphasis added). There is no discretion here; Geraci's  
23 application must be denied and therefore he cannot seek relief from this Court for  
24 something that he cannot legally own – a CUP.

25 Respectfully, Counsel reviewed Austin's testimony in depth from the trial  
26 transcripts and this Court was so blatantly deceived by her that it is clear this Court did  
27

1 not review any of the applicable laws and regulations at issue here. Virtually everything  
2 Austin testified about is a complete lie that that made a mockery of this Court and the  
3 judicial system. Although the BPC does contain mechanisms by which individuals that  
4 violate laws can proceed through a process to determine whether a license should be  
5 denied or revoked, those mechanisms are for crimes that are not directly related to the  
6 operations of the license issued. As Austin testified at trial, it would be like if an attorney  
7 got a DUI, depending on the circumstances and the history of the individual, the attorney  
8 may or may not lose his law license. However, if an attorney conspired to steal from,  
9 kidnap and murder her own client, that attorney would definitely lose their law license  
10 and there would be no discretion or mechanism in that situation by which that attorney  
11 could retain her law license and continue to practice law.

12 As to Weinstein, he deceived this Court with Austin into thinking that the BPC  
13 does not apply to Geraci because a CUP issued by the City is not a “state license.”

14 As defined in the San Diego Municipal Code (“SDMC”): “Marijuana outlet means  
15 a retail establishment operating with a Conditional Use Permit... *in accordance with*  
16 *dispensary or retailer licensing requirements contained in the California Business and*  
17 *Professions Code sections governing marijuana and medical marijuana.” SDMC §*  
18 *42.1502 (emphasis added).*

19 SDMC § 42.1502 is clear and unambiguous - a Marijuana Outlet CUP compliant  
20 with the City’s *land use regulations* can only be issued by the City and operate if the  
21 applicant meets the requirements for a cannabis license set forth in the BPC.<sup>5</sup> Contrary  
22

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23 <sup>5</sup> See also SDMC Chapter 4 (Health and Sanitation), Article 2 (Health Regulated Businesses and  
24 Activities), Division 15 (Marijuana Outlets, Marijuana Production Facilities, and Transportation of  
25 Marijuana), § 42.1501 (**Purpose and Intent**) (“It is the intent of this Division to promote and protect the  
26 public health, safety, and welfare of the citizens of San Diego by allowing but strictly regulating the  
27 retail sale of marijuana at marijuana outlets... in accordance with state law. It is further the intent of this  
28

1 to Weinstein’s objections, there is no such thing as a “City license” that can be issued  
2 without requiring a “state license.”

3 Austin knows this. In her own words: “*I am an expert in cannabis licensing and*  
4 *entitlement at the state and local levels and regularly speak on the topic across the*  
5 *nation.*”<sup>6</sup> At trial in this matter, she pretended that she did not know if Geraci had  
6 previously been sanctioned by the City for unlawful cannabis operations. Another  
7 demonstrable lie - perjury. Austin has been served with numerous submissions in this  
8 and related matters that contain requests for judicial notice of the lawsuits against Geraci  
9 for his management/ownership of illegal marijuana dispensaries – she deceived this  
10 Court.

11 A. THIS COURT IS LEGALLY OBLIGATED TO NOT ENFORCE AN ILLEGAL CONTRACT

12  
13 Whatever the state of the pleadings, when the evidence shows that the plaintiff  
14 in substance seeks to enforce an illegal contract or recover compensation for  
15 an illegal act, **the court has both the power and duty to ascertain the true**  
16 **facts** in order that it may not unwittingly lend its assistance to the  
17 consummation or encouragement of what public policy forbids. [Citations.]  
18 It is immaterial that the parties, whether by inadvertence or consent, even at  
19 the trial do not raise the issue. The court may do so of its own motion when  
20 the testimony produces evidence of illegality. **It is not too late to raise the**  
21 **issue on motion for new trial, in a proceeding to enforce an arbitration**  
22 **award, or even on appeal.**

23 *Lewis Queen v. N.M. Ball Sons* (1957) 48 Cal. 2d 141, 146-48 (emphasis added; citations  
24 omitted).

25  
26 \_\_\_\_\_  
27 Division to ensure that marijuana is not diverted for illegal purposes, and to limit its use to those persons  
28 authorized under state law. *Nothing in this Division is intended to authorize the... sale... of*  
*marijuana... in violation of state law. [¶] It is not the intent of this Division to supersede or conflict*  
*with state law, but to implement [AUMA.]”* (emphasis added).

6 *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL,  
ROA 127, ¶ 2.

1 In the present case the issue of illegality was raised in Cotton’s pro se complaint,  
2 consistently thereafter in numerous motions after Cotton fired his former counsel for  
3 fraud, and at trial.

4 B. ILLEGAL CONTRACTS

5 California courts have held that a lawful contract "must not be in conflict either  
6 with express statutes or public policy"—as a corollary, "[a] contract that conflicts with an  
7 express provision of the law is illegal and the rights thereto cannot be judicially enforced."  
8 *Vierra v. Workers' Comp. Appeals Bd.*, 154 Cal. App. 4th 1142, 1148 (2007) (citations  
9 omitted); *see also Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83,  
10 124 (2000) ("If the central purpose of the contract is tainted with illegality, then the  
11 contract as a whole cannot be enforced.").

12 Here, the alleged contract in this action is contrary to express statutes and public  
13 policy. The alleged contract in this action was subject to one condition precedent – the  
14 issuance of a CUP at the Property to Geraci. That is the “object” of the alleged contract  
15 that Geraci sought to enforce in this action. But, Geraci cannot legally own the object of  
16 this action for at least three obvious reasons. First, the CUP application filed by Berry  
17 constitutes fraud and violates AUMA and federal antitrust laws.<sup>7</sup> *See Clipper Exxpress,*  
18 *v. Rky. Mount. Motor Tariff* (9th Cir. 1982) 674 F.2d 1252, 1258 (“[T]he *Walker Process*  
19 *doctrine... extends antitrust liability to one who commits fraud on a court or agency to*  
20 *obtain competitive advantage.*”). Second, Geraci is barred from owning a CUP for the  
21 reasons set forth above. Lastly, enforcement of this alleged contract violates the  
22

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23  
24 <sup>7</sup> Cotton respectfully notes that on June 27, 2019, attorney Andrew Flores argued to this court that  
25 he had evidence that directly implicated Gina Austin in an anti-trust conspiracy to acquire all of the  
26 marijuana licenses in San Diego. On July 8, 2019 Austin testified in this action that she had acquired  
27 approximately 23 of the limited number of cannabis permits issued by the City. The City of San Diego  
28 has capped the number of Marijuana Outlet permits to four per City Council District for a maximum  
total of thirty-six.

1 underlying public policy that requires disclosure of all parties with an interest in a  
2 cannabis license both to prevent the infiltration of organized crime and to prevent  
3 monopolies being formed in the cannabis market. *See* BPC § 2600 notes (describing  
4 purpose and intent of cannabis regulations); BPC § 26222.3 (“An association that is  
5 organized pursuant to this chapter shall not conspire in restraint of trade, or serve as an  
6 illegal monopoly, attempt to lessen competition, or to fix prices in violation of law of this  
7 state.”).

8 C. COUNSEL’S ETHICAL DILEMMA

9 For over year, ever since Counsel became Cotton’s attorney-of-record, he has  
10 struggled with his ethical obligations to his client and the State and Federal judiciaries.  
11 Counsel signed-up for a dispute regarding whether a three-sentence document executed  
12 by Geraci and Cotton in November of 2016 is or is not a fully integrated sales contract  
13 for Geraci’s purchase of the Property from Cotton.

14 What Counsel could never have imagined was that Geraci and his agents are part  
15 of a group of individuals who have conspired to create an unlawful monopoly in the  
16 marijuana market in the City of San Diego. A group that uses violence in furtherance of  
17 its goal to acquire a monopoly and that, *inter alia*, bribed and intimidated witnesses to  
18 prevent them from testifying at trial in this matter in violation of 42 U.S.C. § 1985.<sup>8</sup> *See*  
19 *Bell v. Milwaukee* (7th Cir. 1984) 746 F.2d 1205, 1233 (“42 U.S.C. § 1985... create[es]  
20 a cause of action based on a conspiracy which deprives one of access to justice or equal  
21 protection of law.”).

22 Furthermore, every attorney who represented any party in this and related actions  
23 violated their ethical duties to this Court by failing to inform it of the conspiracies against  
24 Cotton. They all knew or should have known that (i) Geraci was barred as a matter of law  
25

26 \_\_\_\_\_  
27 <sup>8</sup> *See, e.g.*, Docket No. 546 (Joint Trial Readiness Conference Report).



1 from owning a marijuana license and this action seeks to enforce an illegal contract, (ii)  
2 Geraci could not prevail in this action because he cannot acquire a marijuana permit from  
3 the City via an application to the City’s Department of Development Services without  
4 committing fraud, and (iii) the November Document is not a fully integrated sales contract  
5 as a matter of law, therefore rendering the instant litigation the archetype of a sham  
6 lawsuit / malicious prosecution action. Consequently, they are all liable under 42 U.S.C.  
7 § 1986. *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 626 (9th Cir. 1988)  
8 (“[§] 1986 imposes liability on every person who knows of an impending violation of [§]  
9 1985 but neglects or refuses to prevent the violation.”).<sup>9</sup>

10 Up until now, Counsel’s main dilemma was attempting to convince this court that  
11 multiple attorneys from different law firms and the City are legally and financially  
12 motivated to prevent the exposure of their individual crimes because they have all  
13 contributed to Cotton’s damages and are thus jointly liable as joint tortfeasors even if not  
14 as co-conspirators.

15 In a strange turn of events, this Response represented Counsel’s greatest ethical  
16 dilemma both personally and professionally. Personally, this Court has with open  
17 contempt disregarded Counsel’s assertion of facts and arguments and never provided its  
18 reasoning for its rulings. Counsel relied on this Court impartiality and it made a liar of  
19 Counsel. Allowing this Court to enter a judgment to enforce an illegal contract would  
20 provide support for Cotton’s allegations that this Court is corrupt and has conspired with  
21 Weinstein. However, Counsel does not actually believe this Court is corrupt.

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23  
24 <sup>9</sup> See *Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) (“Though there appears to be no  
25 clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate  
26 the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that  
27 the attorney may be held liable for damages if, on behalf of the client, the attorney takes actions that he  
28 or she knows, or reasonably should have known, would violate the clearly established constitutional or  
statutory rights of another.”).

1 Thus, despite the personal desire for this Court to be held accountable for its errors  
2 - and this Court has no conception of the horrific emotional and financial distress its  
3 refusal to properly adjudicate this action has caused numerous individuals and their  
4 families - Counsel will not perpetuate the same lack of ethics that led to this instant  
5 situation.

6 Professionally, Counsel and Cotton were greatly at odds over the filing of this  
7 Response. If this Court takes five minutes to contemplate that Weinstein, Austin and  
8 Demian are capable of lying in order to avoid legal and financial liability, and reviewed  
9 the applicable laws and regulations at issue here, it would realize that Geraci cannot  
10 legally own a CUP and that the entire trial in this action made this Court the proverbial  
11 Emperor wearing the Emperors Clothes. This Court presided over trial in this matter and  
12 made grand statements from its elevated bench about justice and impartiality in an action  
13 in which every attorney knew that this Court had no idea what was actually taking place.

14 D. WEINSTEIN'S OBJECTIONS TO COTTON'S PROPOSED JUDGMENT

15 Weinstein in his Opposition does NOT argue that the three findings by this Court,  
16 as to *questions of law* that Cotton proposes to be included in the final judgment, are  
17 incorrect. Rather, Weinstein concludes, without any factual or legal support, that: "To  
18 include this partial recitation and characterization of findings and conclusion by the Court  
19 is unnecessary, argumentative, and invites confusion." Opp. at 2:5-6.

20 Cotton's proposed judgment is an edited version of Weinstein's proposed judgment  
21 that *only* adds one paragraph stating the Court is including three findings material to the  
22 case, which are:

- 23 1. The November 2, 2016 written document is a fully integrated sales contract  
24 as alleged by Plaintiff in his Complaint.

1 2. Plaintiff's testimony and evidence at trial neither constitute legal affirmative  
2 defenses of mistake or fraud nor contradict his judicial admissions in his Answer  
3 to Defendant's Cross-complaint.

4 3. Plaintiff is not barred by law pursuant to the California Business and  
5 Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial  
6 of Application) from owning a Marijuana Outlet conditional use permit issued by  
7 the City of San Diego.

8 These three findings by the Court are questions of law that support Weinstein's  
9 client's case. *There is no logical reason for him to oppose their inclusion and there is*  
10 *certainly nothing that is unnecessary, argumentative or that would invite confusion from*  
11 *their inclusion.*

12 E. CONCLUSION

13 Counsel sincerely and emphatically requests that this Court consider the possibility  
14 that this entire action has been a sham meant to deceive this Court. If not for Cotton's  
15 sake, then at least for its own. Counsel does not want to be involved in a litigation matter  
16 in which one of the issues is whether this Court has unlawfully conspired with Weinstein  
17 to predetermine the outcome of this action in a manner that minimizes the financial  
18 liability of numerous attorneys the Court has made statements about that can be used  
19 against it to justify allegations of corruption.

20  
21 DATED: August 19, 2019

22  
23 By Jacob P. Austin  
24 JACOB P. AUSTIN  
25 Attorney for Defendant  
26 DARRYL COTTON