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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.

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**

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1  
THROUGH 10, INCLUSIVE,

Cross-Defendants.

**[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  
23 and Geraci.").

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

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

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





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

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

<sup>6</sup> *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

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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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22  
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  
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.

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

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

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

E. CONCLUSION

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

DATED: August 19, 2019

By Jacob P. Austin  
JACOB P. AUSTIN  
Attorney for Defendant  
DARRYL COTTON

# EXHIBIT A



July 8, 2019  
Gina Austin  
Direct + Cross  
pages 10-65

1 week, which is Thursday at noon -- we may be approaching  
2 the beginning of the defendant's case in chief.

3 In any event, plaintiff's case in chief,  
4 Counsel, your next witness will be?

5 MR. WEINSTEIN: Gina Austin.

6 THE COURT: She's out in the hallway?

7 MR. WEINSTEIN: I believe so.

8 THE COURT: Madam Deputy, could you retrieve  
9 Ms. Austin, please.

10 Good morning, Ms. Austin. If you could follow  
11 the directions of my deputy and my clerk, please.

12  
13 Gina Austin,  
14 being called on behalf of the Plaintiff/Cross-Defendant,  
15 having been first duly sworn, testified as follows:

16  
17 THE CLERK: Please state your full name and  
18 spell your first and last name for the record.

19 THE WITNESS: Gina Austin, G-i-n-a A-u-s-t-i-n.

20 THE COURT: All right. Whenever you're ready,  
21 Counsel.

22 MR. WEINSTEIN: Thank you, your Honor.

23 (Direct examination of Gina Austin)

24 BY MR. WEINSTEIN:

25 Q Good morning, Ms. Austin.

26 A Good morning.

27 Q We will be showing you some documents on the  
28 screen, but there are books in front of you with tabs if

1     you look at them more closely where you're sitting.

2             What's your profession?

3             A     I'm an attorney.

4             Q     How long have you been a lawyer?

5             A     Thirteen years.

6             Q     And are you currently employed?

7             A     Yes.

8             Q     By whom?

9             A     Austin Legal Group.

10            Q     And who owns the Austin Legal Group?

11            A     I do.

12            Q     And are you the sole owner?

13            A     Yes.

14            Q     Now, currently how many lawyers do you have  
15     working for you at the law firm?

16            A     Five.

17            Q     And how many were there back in 2016, let's  
18     say, October of 2016?

19            A     Three or four others.

20            Q     Okay. So -- and when you said a moment ago  
21     five, five including yourself?

22            A     Yes.

23            Q     All right. And what areas of law does your  
24     firm generally practice?

25            A     We work corporate mergers and acquisitions,  
26     land use entitlements, cannabis entitlement, and  
27     litigation.

28            Q     And yourself personally, what areas do you

1 focus your practice on?

2 A Currently, almost exclusively in cannabis law.

3 Q And would you explain generally what the area  
4 of cannabis law covers.

5 A It covers land use entitlements. So getting a  
6 dispensary or a manufacturing facility permitted in a  
7 jurisdiction of San Diego. Every city is different. It  
8 includes compliance for those companies so that they're  
9 compliant with the state law as well as the local  
10 jurisdiction law. It has a lot of mergers and  
11 acquisitions since there's been a lot of roll-up in the  
12 industry in the last year.

13 Q And you practice in jurisdictions outside  
14 California?

15 A Yeah. Twenty-five different local  
16 jurisdictions in California and then four other states.

17 Q Okay. Now, have you represented persons or  
18 businesses in connection with regulatory compliance for  
19 getting conditional use permits in the City of  
20 San Diego?

21 A Yes.

22 Q On how many occasions?

23 A At least 50.

24 Q And that includes pending applications?

25 A That includes pending ones, correct.

26 Q And how many of your clients within the City of  
27 San Diego have obtained a CUP license?

28 A I have to count that.



1 Q Do you have an estimate?

2 A Somewhere between 20 and 25.

3 Q Okay. Now, do you consider yourself one of the  
4 experts in the San Diego area as it relates to cannabis  
5 law and regulation?

6 A Yes, I do.

7 Q And do you speak regularly at industry  
8 conferences on subjects related to cannabis law and  
9 regulation?

10 A Yes, I do.

11 Q Can you give me some examples of conferences  
12 you've spoken at.

13 A The most recent -- well, most recently, I did a  
14 law school panel, a panel for the Thomas Jefferson law  
15 school. Before that, I think I was in Chicago speaking  
16 at the Arcview conference. And before that, it would  
17 have been at the NCIA, National Cannabis Industry  
18 Association, conference in Los Angeles.

19 Q And what type of topics have you spoken at  
20 those conferences?

21 A Regulatory compliance issues, corporate  
22 structuring, funding mechanisms, local -- dealing with  
23 local jurisdictions and municipalities.

24 Q And do you know Larry Geraci?

25 A Yes.

26 Q And was Mr. Geraci your client?

27 A Yes.

28 Q Had your firm provided services to him in

1 attempting to obtain a conditional use permit in the  
2 City of San Diego at 6176 Federal Boulevard?

3 A Yes, we did.

4 Q Do you remember when you were first hired with  
5 Mr. Geraci in connection with that matter?

6 A You're going to have to help me.

7 Q Sure. Why don't you look at -- if we could --  
8 actually, I don't need to put it up. If you could look  
9 at Exhibit 138. Actually, I'd offer 138 as well.

10 THE COURT: Just give me one moment, please.

11 THE WITNESS: Somewhere around September or  
12 October of 2016.

13 THE COURT: Any objection -- did you say you're  
14 offering 138?

15 MR. WEINSTEIN: I am.

16 THE COURT: Any objection, Counsel?

17 MR. AUSTIN: No objection.

18 THE COURT: All right. Exhibit 138 will be  
19 admitted.

20 (Premarked Joint Exhibit 138, Austin Legal Group  
21 Expense Summary with Supporting Documentation,  
22 was admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q So in a moment I'll have my associate put up  
25 138. But what did you look at to remind yourself of  
26 when you generally began providing services to  
27 Mr. Geraci?

28 A A billing statement.

1           Q     Okay. And there's also on the second page of  
2     138, there's a -- it looks like a letter to you from  
3     Rebecca Berry and Larry Geraci. Do you see that?

4           A     Yes. Berry.

5           Q     What is that?

6           A     That would be our engagement letter.

7           Q     When was that form signed, if you know?

8           A     I'd have to look at it.

9           Q     What's the date?

10          A     It's dated October 4th, 2016. It would be  
11     signed somewhere around that time.

12          Q     Okay.

13          A     We don't provide services until we have an  
14     executed agreement.

15          Q     Okay. Now, are there zoning requirements to  
16     comply with in order for a dispensary to operate within  
17     the City of San Diego?

18          A     Yes, there are.

19          Q     Would you explain to the jury what zoning  
20     requirements are.

21          A     The zoning requirements today, or the zoning  
22     requirements at the time?

23          Q     Zoning requirements generally, what they are.

24          A     Generally, a dispensary, which is now called an  
25     outlet, is allowed in different certain zones -- only  
26     certain zones. The industrial zone would be one of  
27     them. The commercial zones would be one of them. And  
28     the City of San Diego is broken up into about 20-some



1 different zones.

2 Q Okay. So is it fair to say that in order for a  
3 dispensary to legally operate, it has to be in an area  
4 where zoning permits designate use?

5 A That's correct.

6 Q Okay. Now, if zoning is appropriate, what  
7 other legal requirements are there for a dispensary to  
8 be operated legally?

9 A So it's a long process in the city. We call  
10 this jurisdiction a race jurisdiction, meaning it's the  
11 first person to get there. So in the City of San Diego,  
12 you would have to get a conditional use permit, which is  
13 special land use entitlement, and that would require a  
14 submission of documents, a whole slew of documents,  
15 including building plans, to the city, which would then  
16 review them, send them back to you with comments. You  
17 would go through this process until the city decided  
18 they had exhausted all of their questions. And then you  
19 would be allowed to go on to a hearing.

20 Q Okay. Now, in connection with your  
21 representation of Mr. Geraci, you understand that the  
22 property upon which a conditional use permit was  
23 attempted to be obtained was at 6160 Federal Boulevard?

24 A That's correct.

25 Q Do you recall when you first got involved in  
26 the matter whether or not there was a zoning compliance  
27 issue with respect to that property?

28 A There was. So --

1           **Q     Would you explain what that was.**

2           A     So the zoning must be, like I said, generally  
3     commercial or industry. And there was a discrepancy  
4     between what the city had decided in their -- in a  
5     pamphlet, in the information bulletin could be the  
6     allowed zoning, which was CO, and what the actual  
7     Municipal Code and the rules that governed it said it  
8     could be, which was CC.

9                 So at the time that the application was  
10    initially filed, there was no mechanism because the  
11    zoning was CO and it was not allowed. And there needed  
12    to be some revisions to the Municipal Code before a  
13    dispensary would be allowed in the CO zone.

14               MR. WEINSTEIN: Okay. Your Honor, I'd like at  
15    this time to offer Exhibit 24.

16               THE COURT: One moment.

17               Any objection?

18               MR. AUSTIN: No objection.

19               THE COURT: Exhibit 24 will be admitted.

20               (Premarked Joint Exhibit 24, Email to Rebecca  
21    Berry from Abhay Schweitzer re Federal Blvd. -  
22    City Fees breakdown, dated 10/26/16 with  
23    attached City of San Diego Information Bulletin  
24    170, How to Apply for a Conditional Use Permit  
25    Medical Marijuana Consumer Cooperative, was  
26    admitted into evidence.)

27    BY MR. WEINSTEIN:

28           **Q     And I'm showing you what's marked Exhibit 24.**



1 It's an email. But I just want to look at the  
2 attachment to it.

3 On the second page, there's an attachment. Are  
4 you looking at it?

5 A Yes.

6 Q Okay. And it's entitled at the top  
7 "Information Bulletin 170." Is that correct?

8 A Correct.

9 Q Is that the information bulletin that you were  
10 referring to?

11 A Correct. In this information bulletin, you can  
12 see under 2D, it says CO2-1 and CO2-2. That is allowed.  
13 And this was in conflict with the Municipal Code, which  
14 did not allow for that zone.

15 Q And what is the general purpose of this  
16 bulletin, as you understand it?

17 A It's to inform the public as to how to go about  
18 applying for a conditional use permit.

19 Q Okay. And so it's a publication by the City of  
20 San Diego?

21 A Correct.

22 Q All right. And so you said that it was in  
23 conflict with the zoning under the Municipal Code.  
24 Would you describe what the Municipal Code is.

25 A The Municipal Code would be the rules and  
26 regulations that govern the City of San Diego so that  
27 it -- if you want to build a house, you can't build a  
28 house on a commercial lot generally or an industrial lot

1 unless it's in certain zoning. And so all of those  
2 rules, including a lot of other rules -- but those are  
3 the rules that this is focusing on.

4 **Q And do you recall this case how -- was the**  
5 **zoning conflict ever ultimately resolved?**

6 A It was.

7 **Q And how was it resolved?**

8 A Mr. Geraci, along with other consultants on the  
9 team, myself included, worked with the city to amend the  
10 Municipal Code and the 11th code update so that the  
11 Municipal Code accurately reflected what the city  
12 intended to do with this information bulletin.

13 **Q Now, do you have a recollection of what the**  
14 **zoning -- what the name of the zoning ordinance was that**  
15 **changed the Municipal Code?**

16 A It would have been the 11th code update, I  
17 believe.

18 MR. WEINSTEIN: Your Honor, may I have a  
19 moment.

20 THE COURT: You may.

21 BY MR. WEINSTEIN:

22 **Q Do you recall the date that the zoning -- well,**  
23 **first of all, explain the process by which a zoning**  
24 **ordnance is amended.**

25 A I will explain the one -- this process, for  
26 this one. There's a lot of different processes. But in  
27 this particular instance, in 2000, I believe it was, the  
28 city revamped its entire Municipal Code. And so it

1 started basically from scratch. Everything they had,  
2 they kind of threw out the door, and they started over  
3 in 2,000 and renumbered and everything.

4 And then ever since then, they have been doing  
5 clean-ups. And that clean-up can happen once a year, it  
6 can happen every couple years. And it fixes both the  
7 typos, errors, like this bulletin 170, and it adopts new  
8 rules and regulations like when they adopted the  
9 regulations to allow dispensaries in the first place or  
10 when they adopted regulations to allow production  
11 facilities. So those each come in these code updates.  
12 So the first code update, second code update. The  
13 last -- around this time, it was the 11th code update.  
14 Next month, it will have the 12th code update.

15 And so the city staff puts together all those  
16 changes. The changes, they would go through multiple  
17 committees. And then it goes to the planning commission  
18 which hears them. And then it goes to the City Council  
19 to approve it.

20 **Q And at some point is a bill introduced to amend**  
21 **the zoning ordinance?**

22 A So what happens is ultimately it goes to the  
23 planning commission, which will then rule on it. And  
24 the way that the -- the mechanism for amendments to go  
25 in, as people make submissions to these code amendment  
26 team. And so I could say I want a change to the code,  
27 and they may say, no, we're not interested. A council  
28 member will say they want a change to the code. That



1 will get in there. It will be vetted. Committees will  
2 talk about it. They'll massage the language, and  
3 eventually, it will go to hearing. It's a little bit  
4 different than what happens in the -- the legislature,  
5 the state legislature. At the municipal level, it's a  
6 little bit different.

7 **Q So when we say that a zoning ordinance has**  
8 **been --**

9 THE REPORTER: I'm sorry, may the reporter hear  
10 again from the beginning.

11 BY MR. WEINSTEIN:

12 **Q When we talk about a zoning ordinance being**  
13 **introduced to the City Council, what does that mean?**

14 A That means that that entire process that I have  
15 just described has occurred and they have now got a  
16 document that's somewhere between 50 and 100 pages of  
17 redline strikeout showing what the changes are, that  
18 they are going to hear at a public hearing that's  
19 properly noticed where they get to review the -- the  
20 document and all the changes. And then they vote on it  
21 at the City Council hearing.

22 **Q Okay. So before it's even introduced, it's**  
23 **gone through the whole planning commission process?**

24 A It's gone through planning commission, and it's  
25 gone through multiple committees and iterations of  
26 committees at the city level.

27 **Q Okay. And do you recall when this particular**  
28 **zoning ordinance was introduced to the City Council?**

1 A I do not.

2 MR. WEINSTEIN: Your Honor, I'd like to show  
3 the witness a document to refresh her recollection.

4 THE COURT: What exhibit number is that?

5 MR. WEINSTEIN: It's not an exhibit number.

6 THE COURT: Do you want to have it marked next  
7 in order?

8 MR. WEINSTEIN: That would be great.

9 THE COURT: Just give me one moment.

10 All right. Why don't we have this marked next in order  
11 as 164.

12 The general description?

13 MR. WEINSTEIN: Ordinance No. 0-20793.

14 THE COURT: San Diego Municipal Code?

15 MR. WEINSTEIN: It is.

16 THE COURT: All right. Thank you very much.

17 Counsel, any objection if this document is  
18 marked for identification as 164?

19 MR. AUSTIN: No, your Honor.

20 THE COURT: All right. Thank you.

21 (Premarked Joint Exhibit 164, City  
22 Ordinance No. 0-20793, was marked for  
23 identification.)

24 MR. WEINSTEIN: May I approach?

25 THE COURT: You bet.

26 BY MR. WEINSTEIN:

27 Q Do you recognize what I've handed you?

28 A Yes. This is the zoning ordinance that was

1 approved by the City for CO-2-1.

2 Q And this was the ordinance that was approved  
3 and made effective that changed the zoning so that zone  
4 CO-2-1 would be a permissible use -- would allow a  
5 marijuana dispensary to be a permissible use?

6 A That's correct.

7 Q Can you tell from that document in particular,  
8 if you can look at the last page to refresh your  
9 recollection, as to when it was actually introduced to  
10 the City Council?

11 A It looks like the first reading was on  
12 January 31st.

13 Q What year?

14 A And then it finally passed on February 22nd.

15 Q So when you say January 31st, what year?

16 A 2017.

17 Q And it was passed on February 22nd, 2017?

18 A Oh, I'm sorry. So it was introduced on the  
19 31st. The first reading on the 14th, and second reading  
20 on February 22nd, so February 14th and February 22nd of  
21 2017, because the public has to have two opportunities  
22 to hear it.

23 Q And then is there a passage date on the front?

24 A February 22nd, 2017.

25 Q And then when did that ordinance become  
26 effective, if you know?

27 A Generally, they become effective 30 days after  
28 passage.



1           Q     And do you know if that was true of this  
2 ordinance?

3           A     I believe it was.

4           Q     Okay. Now, just so we're clear, so as of  
5 January 31st, did -- this had already gone through the  
6 planning commission and code amendment process before  
7 being introduced to the City Council?

8           A     That's correct.

9           Q     All right. Thank you.

10           MR. WEINSTEIN: Your Honor, I would offer 164.

11           THE COURT: Any objection?

12           MR. AUSTIN: No objection.

13           THE COURT: Exhibit 164 is admitted.

14           (Premarked Joint Exhibit 164, City  
15 Ordinance No. 0-20793, was admitted into  
16 evidence.)

17 BY MR. WEINSTEIN:

18           Q     Now, Ms. Austin, do you know whether Mr. Geraci  
19 assembled a team to guide him through the CUP  
20 application process for that appropriate property?

21           A     Yes, he did.

22           Q     Do you recall who was on that team?

23           A     Abide Switzer as the architect or designer, Jim  
24 Bartell as the policy consultant and political  
25 consultant, myself as the attorney. I believe there  
26 were a couple others, but I didn't have much interaction  
27 with them.

28           Q     What was your role? How would you describe

1     **your role?**

2           A     To get the CUP.

3           MR. WEINSTEIN:   Okay.  I'd like to show the  
4     witness what's been -- I'd like to first of all offer --  
5     it's already been offered and admitted, Exhibit 14.  I'd  
6     like to have it published again for the witness.

7           THE COURT:   Exhibit 14 has been admitted.  You  
8     can publish it.

9           MR. WEINSTEIN:   Great.

10          BY MR. WEINSTEIN:

11           **Q     Ms. Austin, let me know when you have had a**  
12     **chance to review Exhibit 14.**

13           A     Yes.

14           **Q     And what is it?**

15           A     Exhibit 14, it's an email from Abhay  
16     Schweitzer, the architect, to Larry Geraci, Neil Dutta.  
17     That was another person on the team.  Myself, and Jim  
18     Bartell.

19           **Q     Okay.  And what does this email generally**  
20     **relate to?**

21           A     Initial site inspection, going out and checking  
22     on the feasibility of the property.

23           **Q     And why were you copied on this email?  Do you**  
24     **know?**

25           A     I would generally be copied on all  
26     correspondence that related to whether or not the permit  
27     could be issued.  Because a lot of times what will  
28     happen is the architect may not see there to be



1 sufficient parking, and there's an exception in the Code  
2 that I could show them that would then allow for  
3 sufficient parking or other issues. Parking is a big  
4 one.

5 Q So who was the person on the team mainly  
6 responsible for marshaling the application, preparing  
7 the application and marshaling it through the process?

8 A Abhay Schweitzer.

9 Q And he could keep other members in the team in  
10 the loop as things progressed?

11 A That's correct.

12 Q At this point in time, there were issues  
13 related to whether or not the property would be feasible  
14 for potential MMCC?

15 A Correct.

16 MR. WEINSTEIN: Okay. I'd like to offer  
17 Exhibit 25, your Honor.

18 THE COURT: Any objection?

19 MR. AUSTIN: No objection.

20 THE COURT: Exhibit 25 will be admitted.

21 (Premarked Joint Exhibit 25, Email to Larry  
22 Geraci and Rebecca Berry from Abhay Schweitzer  
23 re Federal Blvd - Site Plan and Floor Plan,  
24 dated 10/26/16 with attachments, was admitted  
25 into evidence.)

26 BY MR. WEINSTEIN:

27 Q Let me know when you have had a chance to look  
28 at Exhibit 25.

1 A I've reviewed it.

2 Q Is that another email you were copied on from  
3 the team?

4 A Yes.

5 Q And what's the date of the email?

6 A I'm sorry. What was the question?

7 Q What was the date of the email?

8 A October 26th, 2016.

9 Q And is there an attachment to that?

10 A Yes. There -- it looks like there were three  
11 attachments.

12 Q Okay. Would you go to the first attachment,  
13 please.

14 A Okay.

15 Q So just generally describe, since it is a  
16 little difficult for the jury to see, what are -- what  
17 types of drawings are attached to this email?

18 A There is a site plan, a separation exhibit, and  
19 a floor plan. So the site plan -- the site plan would  
20 be the entire location, the property boundaries.  
21 There's a requirement for a distance of 100 feet from  
22 residential. So that's the second one. And the third  
23 one is the proposed floor plan of what it would look  
24 like inside the dispensary.

25 Q Now, are these all plans that would be required  
26 to be submitted to the city in connection with the CUP  
27 application?

28 A That's correct.

1           Q     All right. Now, if you go back to the first  
2 page email --

3           A     Yes.

4           Q     -- Mr. Schweitzer makes the statement "I added  
5 the language that Gina mentioned for the irrevocable  
6 offer of dedication."

7           A     Yes, I see that.

8           Q     Okay. And can you tell the jury what that was  
9 referring to.

10          A     Oh, getting technical now. The City of  
11 San Diego requires a 1,000-foot separation from  
12 residential property zones, meaning that you don't  
13 actually have to have a house there -- not 1,000.  
14 100 feet. Excuse me. It's 100 feet from a residential  
15 property zone.

16                 And in this particular area, the zone of the  
17 residential property went from not only where the  
18 property across the street but all the way into the  
19 center of Federal Boulevard so that the zone was right  
20 there on the center line of Federal Boulevard, which  
21 meant we couldn't possibly meet that distance for the  
22 application. And so the idea was that we would offer  
23 the city an irrevocable offer of dedication, meaning  
24 we're going to give this area to you, city, when you  
25 decide to do your street widening which you're going to  
26 on Federal Boulevard, then you would have this area.  
27 And that would help us meet the distance for a  
28 thousand -- or for 100 feet.



1 Q Okay. So the way it was currently -- zoned  
2 currently was you didn't have 100 feet from that  
3 residential zone?

4 A That's correct.

5 Q All right. So was the plan -- if I understand,  
6 the plan, then, was to essentially offer to give that  
7 however many feet you needed to give off the property to  
8 the city so that you could essentially achieve a  
9 100-foot distance?

10 A That's correct.

11 Q All right. And is that strip that's offered to  
12 be dedicated reflected on the site plan?

13 A Let -- yes, it is. It is that lower portion  
14 that's hashed out.

15 Q Let's see if we can pull it up for the jury.  
16 Is it on that one, or the next one?

17 A That's it.

18 Q Okay. So, sadly, my eyesight is not that good.  
19 So there's a -- so there's the existing  
20 property line that I'm pointing to here. Correct?

21 A That's correct.

22 Q And there was an offer to dedicate back to a  
23 new property line so that the city ends up with this  
24 area. Correct?

25 A That's correct.

26 Q And that was the game plan to achieve the  
27 100-foot separation?

28 A That's correct.

1           Q     All right. Now, as part of your role on the  
2 team, did you get involved in the review of  
3 application -- of forms that were submitted with the CUP  
4 application?

5           A     Some of them.

6           Q     Okay. Would you put up 34 that's previously  
7 been admitted.

8                     So under Exhibit 34, if you'll note there are  
9 four forms.

10          A     Yes.

11          Q     Okay. Are each of those forms forms that are  
12 required by the city to be submitted in connection with  
13 the CUP application?

14          A     Yes, they are.

15          Q     Were you involved in reviewing any of those  
16 forms before they were submitted?

17          A     I'm sure I was.

18          Q     Okay. All right. Let's -- let's look at them  
19 generally. The first form was called General  
20 Application DS-3032. That's on the first page.

21                     Do you see that?

22          A     Yes.

23          Q     What's the purpose of that form?

24          A     Basically, the application cover sheet that  
25 would go to the City to tell the City what is going --  
26 who's applying for it, what they're applying for. It's  
27 a conditional use permit. You see at the top, there's  
28 all kind of boxes you can check. They use the same form



1 for everything.

2 Q And who was the applicant on this form?

3 A I believe it's Rebecca Berry. Let me check.

4 Q And was she acting as Mr. Geraci's agent, to  
5 your knowledge, in connection with the CUP application?

6 A That's my understanding.

7 Q Was there any -- is there any problem from your  
8 perspective and given your experience with having an  
9 agent be the applicant on a CUP?

10 A No. Because a conditional on it, obviously  
11 makes a difference, I think, of why I said that. The  
12 conditional use permit runs with the land.

13 Q Explain to the jury what that means.

14 A What that means is it doesn't matter who the  
15 applicant is. Ultimately, it's tied to the dirt. So if  
16 the dirt has an entitlement to build a marijuana  
17 dispensary, then it stays there, regardless of whether  
18 or not I decide to do it, you decide to do it, someone  
19 else decides to run it. It's kind of like owning a  
20 home, and if I lease it out to somebody else, it's  
21 still -- I still own it.

22 Q Okay. Would you look at the next form, which  
23 is an Affidavit for Medical Marijuana Consumer  
24 Cooperative Form DS-190.

25 Do you see that?

26 A Yes.

27 Q And what's the purpose of that form?

28 A Let me just make sure. This one is the City

1 wants the applicant to make the representation that they  
2 know that there is no sensitive use or residential use  
3 within 1,000 feet or 100 feet, depending on which, from  
4 the property.

5 Q And in this case, there was one within 100 feet  
6 or less, and there was an offer of dedication. Is that  
7 your --

8 A That's correct.

9 Q And you see that Rebecca -- it looks like  
10 Rebecca signed it at the bottom --

11 A That's correct.

12 Q -- as the business owner?

13 Any problem, from your perspective, in your  
14 experience, with her signing as a CUP applicant, this  
15 form?

16 A No. The City is only interested in that  
17 somebody made that representation. So there are only  
18 two boxes, owner and agent. And so we just pick one  
19 kind of intermittently -- or indiscriminately, owner of  
20 the business, agent of the business, because the City is  
21 not using this for anything other than the verification  
22 of the 1,000 feet and 100 feet.

23 Q And they're going to get plans as well that  
24 will verify that?

25 A That's correct.

26 Q All right. Let's look at the third form.

27 A Yes.

28 Q Okay. That's called a Deposit Account



1     **Financially Responsible Party Form, DS-3242. And we see**  
2     **Rebecca Berry has signed that form?**

3        A     That's correct.

4        Q     **What's the purpose of that form?**

5        A     This form is who's going to be paying, because  
6     you don't have to own the property to make a  
7     application. You just have to have authorization to do  
8     that. But somebody has to be responsible for paying,  
9     and the City wants to know who that is.

10       Q     **From your perspective, any problem with**  
11     **Mr. Geraci being the financially responsible party**  
12     **signing these forms?**

13       A     No.

14       Q     **Go to the next form, please.**

15             **This is the ownership disclosure statement.**

16       A     Yes.

17       Q     **Do you see that?**

18       A     Yes.

19       Q     **Have you seen -- first of all, tell the jury**  
20     **what is the purpose of this form?**

21       A     The purpose of this form, from the City's  
22     perspective, is to determine -- so that council members  
23     and planning commission members can have -- determine  
24     whether or not they have a conflict when they're voting  
25     on a matter. So because these are forms -- or these are  
26     projects that will go before a hearing body, the  
27     ownership is relevant because a council member can't  
28     vote on a project if they are involved in it. And the



1 same with planning commissioners.

2 Q Do you see in the middle -- can you pull it up  
3 for me, please.

4 Above Rebecca Berry's signature, there are  
5 three boxes. One says owner. One says tenant/lessee.  
6 And one says redevelopment agent.

7 Do you see that on the form?

8 A Yes.

9 Q And I apologize, your Honor, for not blowing it  
10 up on the screen.

11 Are there any other boxes on the form above  
12 Rebecca Berry's name?

13 A No.

14 Q It's a preprinted form?

15 A It is a preprinted form.

16 Q And the box checked says tenant/lessee.  
17 Do you see that?

18 A Yes.

19 Q And you're aware that Rebecca Berry was not a  
20 tenant on the property?

21 A That's correct.

22 Q Is there a problem from your perspective with  
23 that box being checked on this form?

24 A No.

25 Q Why not?

26 A Again, the City's forms are limited. They have  
27 two boxes, sometimes only three boxes. Also, the  
28 redevelopment agency also doesn't make a whole lot of

1 sense for any applicant that would be applying or using  
2 this form. And so the City's main concern -- this has  
3 come out in the planning commission over the last  
4 several months and council as well -- their main concern  
5 is to know whether or not the person who is involved in  
6 the project that's before them is somebody that they  
7 have a business relationship with and have taken more  
8 than \$500 from in the last year.

9 Q Okay. And this form represents -- or  
10 identifies Rebecca Berry as that person?

11 A That's correct.

12 Q And also identifies Cherlyn Cac, as you see on  
13 the left-hand side of the form?

14 A That's correct.

15 MR. WEINSTEIN: Your Honor, I'd offer  
16 Exhibit 45.

17 MR. AUSTIN: No objection.

18 THE COURT: Any objection?

19 MR. AUSTIN: No objection.

20 THE COURT: Exhibit 45 will be admitted.

21 (Premarked Joint Exhibit 45, Email to Jim  
22 Bartell from Abhay Schweitzer re Federal Blvd.  
23 MMCC - Completeness Review, dated 11/14/16, was  
24 admitted into evidence.)

25 MR. TOOTHACRE: I think it already was.

26 MR. WEINSTEIN: She's going to reboot.

27 THE WITNESS: Okay.  
28

1 BY MR. WEINSTEIN:

2 Q Could you identify for the jury what Exhibit 45  
3 is.

4 A It's an email from Jim Bartell and is CC'd to  
5 Larry Geraci, myself, and Rebecca Berry from Abhay  
6 Schweitzer on November 14th, 2016, regarding the Federal  
7 Boulevard MMCC completeness review.

8 Q Okay. And so you're being notified about that  
9 subject by Mr. Schweitzer?

10 A That's correct.

11 Q All right. And that's to keep you in the loop?

12 A That's correct.

13 Q Okay. Explain to the jury what a completeness  
14 review phase is.

15 A So because of the competitive nature of  
16 marijuana outlets with only four being allowed per  
17 district, the City took their step one process, which is  
18 normally just giving them everything, and they  
19 bifurcated it and made it 1A and 1B.

20 And the completeness review is 1A. And they go  
21 in, and that's where the city looks to make sure that  
22 it's in the proper zone, that it isn't in a district  
23 that has already four permitted, that there's a set of  
24 plans, a floor plan, a site plan, distance maps that the  
25 packages put together before they ever do anything.

26 Q So they make sure the application is complete  
27 and that zoning is appropriate?

28 A That's correct.



1           Q     All right. Normally, how long does that  
2     completeness phase take?

3           A     Twenty-four hours to 10 days.

4           Q     Okay. In this case, how long did it take?

5           A     I do not know that answer.

6           Q     Do you know when the application was  
7     essentially hung up in the completeness review phase  
8     until the zoning issue was resolved?

9           A     Oh. I -- the completeness review, the initial  
10    steps -- so they started it. And then they just let it  
11    sit because we didn't want it to be denied because  
12    there's -- if there's competitors, then you have this  
13    race over who got completed first, who paid first, who  
14    did all of these processes first.

15                So in this particular instance, rather than  
16    deny it at the completeness check, I believe what they  
17    did is they just let it sit until the zoning amendment  
18    was finalized.

19           Q     Okay. And that occurred at some time after it  
20    was passed on February -- on February 22nd, 2017?

21           A     That's correct.

22           Q     When you get out of the completeness review  
23    phase, what happens next when you review an application?

24           A     You give them money, and then they go and they  
25    take it and they parse the application out to all of the  
26    different disciplines. So some will go to planning.  
27    Then they'll go to traffic, go to engineering. And the  
28    full review of the application starts.

1           Q     Okay. Is there any really review of the merits  
2 of the application prior to an application being deemed  
3 complete through the completeness phase?

4           A     No.

5           Q     All right. Explain what -- you mentioned some  
6 of the disciplines. Explain what the various  
7 disciplines are, to the extent you can recall.

8           A     So each -- they call them departments in the  
9 city, but they really are just desks sitting next to  
10 each other. So think of them more as a person than a  
11 department. But you have a planner that looks at issues  
12 like zoning and height restrictions and setbacks and  
13 street widths and things like that.

14                    You've got traffic engineers. That's another  
15 discipline in traffic. And traffic will determine  
16 whether or not there is sufficient egress and ingress to  
17 the property, make sure that the sidewalk is there if  
18 there isn't one and that you build it out.

19                    Then there's engineering, environmental  
20 assessment, which would be the environmental  
21 determination whether it needs to comply with the  
22 California Environmental Quality Act or whether it's  
23 exempt.

24                    There might be a couple others, but those are  
25 the --

26           Q     Once -- once you are in the review process,  
27 what do these disciplines do?

28           A     They will basically redline or markup the plans

1 and -- what's submitted. And then each discipline will  
2 provide a set of comments as to what they want changed.  
3 And then that will get back to -- in the summary form,  
4 back to the applicant, which will then jump through all  
5 the hoops that the city is requesting, and then  
6 resubmit.

7 MR. WEINSTEIN: Okay. I'd like to offer  
8 Exhibit 49, your Honor.

9 THE COURT: Any objection?

10 MR. AUSTIN: No objection.

11 THE COURT: Exhibit 49 will be admitted.

12 (Premarked Joint Exhibit 49, Email to Abhay  
13 Schweitzer from Jim Bartell RE: Federal Blvd -  
14 Completeness Review corrections, dated 11/30/16,  
15 was admitted into evidence.)

16 BY MR. WEINSTEIN:

17 Q Ms. Austin, let me know when you have had a  
18 chance to review Exhibit 49.

19 A Okay.

20 Q Okay. And have you seen this email before?

21 A Yes.

22 Q Okay. And you were copied on it to keep you in  
23 the loop?

24 A That's correct.

25 Q Okay. I'm highlighting the second paragraph  
26 where Mr. Schweitzer states that the staff would not  
27 support it since it's in a zone that does not allow  
28 MMCCs.



1           Do you see that?

2           A     Yes.

3           Q     Is that just confirmation of what you told us  
4 earlier, that the application was sitting there and  
5 wouldn't be processed through the completeness phase  
6 because of the zoning issues?

7           A     Can you rephrase the question.

8           Q     Sure.

9                 When did you receive this email?

10          A     It looks like I received it on November 30th.

11          Q     All right. And was that consistent with your  
12 recollection that this -- the application was being  
13 processed through the completeness phase because of the  
14 zoning issue that existed?

15          A     Right. The City was -- was conflicted as to  
16 what to do.

17                 We met with the City trying to get them to --  
18 knowing that it was going to be corrected in the 11th  
19 code update or hoping that it would be, to not deny this  
20 outright and continue to process it. And it just sat  
21 there as they were trying to figure out what to do with  
22 it.

23          Q     Until the zoning issue was resolved in late  
24 February?

25          A     That's correct.

26          Q     All right. Now, this case involves a signed  
27 document between Mr. Geraci and Mr. Cotton related to  
28 the purchase and sale of Mr. Cotton's property.

1 Do you understand that?

2 A Yes.

3 Q Were you involved in the negotiation of an  
4 agreement that was signed on November 2nd, 2016? In  
5 fact, why don't I have you look at Exhibit 38. That's  
6 already been admitted. That will refresh your memory.

7 A What number did you say?

8 Q Thirty-eight.

9 A No, I was not involved in that.

10 Q Okay. And at some point in time after the --  
11 the zoning ordinance was introduced to the City Council,  
12 were you contacted by Mr. Geraci in connection with  
13 doing any drafting of the new agreement?

14 A Yes, I was.

15 Q What happened?

16 A So I'm not confident on the date. I want to  
17 say it was around probably March, but I could be off by  
18 a couple months here or there of 2017.

19 Mr. Geraci called and said something to the  
20 effect of -- I don't want to give exact words. But it  
21 was something to the effect of I am tired of being  
22 extorted by Darryl Cotton. He wants more money and  
23 more -- more interest than what we agreed to. So I'm  
24 going to -- I want to draft a new agreement. And can  
25 you do that for me? And I said sure. We'll put  
26 something together for you.

27 Q And did you get involved, then, in the attempt  
28 to draft a new agreement to replace the original



1 agreement?

2 A Our office did.

3 Q And it was an attorney in your office?

4 A That's correct.

5 Q Okay. And were you the person that  
6 communicated with that attorney and that was the liaison  
7 with the client?

8 A That's correct.

9 Q All right. Did Mr. Cotton -- Geraci tell you  
10 what terms he wanted in that new agreement?

11 A He did. But I do not recall what they were.

12 Q Okay. What did you do when you heard those  
13 terms from him?

14 A I gave them to an attorney in the office,  
15 Arden Anderson, and said this is what we need done. We  
16 need a new agreement. Please draft.

17 Q Okay. Would you put up Exhibit 59, previously  
18 been admitted.

19 So let me know when you have gotten to  
20 Exhibit 59.

21 A I'm here.

22 Q Okay. So Exhibit 59, that's a cover email.  
23 But I would like to look at the attachment behind the  
24 email.

25 A Yes.

26 Q Okay. On the third page, there's the beginning  
27 of an attachment.

28 A Yeah.

1 Q And how long is that document -- how long is  
2 the attachment?

3 A Seventeen pages.

4 Q Okay. What is it?

5 A It's a purchase and sale agreement.

6 Q Okay. And do you know who drafted that?

7 A It looks like our office drafted it.

8 Q Okay. And was that the document that was  
9 drafted in response to Mr. Geraci's attempt to draft a  
10 new agreement that he can present to Mr. Cotton?

11 A Yes.

12 Q Okay. And the date on that email was  
13 February 27th. Does that refresh your recollection as  
14 to when Mr. Cotton -- or Mr. Geraci would have contacted  
15 you?

16 A It would have been in February.

17 Q Okay.

18 A Early February.

19 Q Okay. Would you look at Exhibit 62, which has  
20 previously been admitted.

21 A Yes.

22 Q Okay. And, again, that's another email with an  
23 attachment --

24 A Yes.

25 Q -- let's go back to the attachment.

26 A Correct.

27 Q And it starts on page 3 with side agreement.  
28 How many pages is that?

1 A Six. It looks like six.

2 Q And do you recognize that document?

3 A Yes.

4 Q What is it?

5 A It is the second half of the purchase and sale  
6 agreement.

7 Q Okay. And, again, do you know who drafted this  
8 document?

9 A Our office drafted it.

10 Q And was this, again, in response to  
11 Mr. Geraci's request to try to put together a new  
12 agreement that he could negotiate with Mr. Cotton about?

13 A That's correct.

14 Q Okay. Do you know if these agreements were  
15 ever signed?

16 A I do not believe they were ever signed.

17 Q Okay. Did any conversation with you and  
18 Mr. Geraci ever say that he wanted to provide Mr. Cotton  
19 with a 10-percent equity interest in the dispensary?

20 A No.

21 Q Did he ever tell you he wanted to provide  
22 Mr. Cotton with guaranteed monthly distributions  
23 of \$10,000 a month?

24 A No.

25 Q Did he tell you what the purchase price was?

26 A There was -- that -- that's these two  
27 agreements. We're going back several years here. But I  
28 remember it was -- it was going to be 800,000. But then



1 for some reason, they needed to split it into two 400s.

2 Q Okay. We'll change subjects briefly.

3 Do you know of a gentleman named Joe Hurtado?

4 A I've heard of him recently.

5 Q There's a gentleman by the name of Joe Hurtado  
6 that claims to have talked to you at a cannabis  
7 conference you were speaking about.

8 Do you have any recollection of that meeting?

9 A I do not.

10 Q It would have been in March of 2017. Do you  
11 recall speaking at a cannabis conference then?

12 A I don't. I'm sure I was, but I don't doubt  
13 that. I just don't recall.

14 Q Okay. So you don't doubt that you may have,  
15 because you speak at a lot of conferences?

16 A That's correct.

17 Q All right. Would you have discussed with a  
18 person not your client any details with respect to any  
19 negotiations you were assisting your client with?

20 A No.

21 Q Okay. Did Mr. Geraci ever mention to you  
22 anything about a joint venture?

23 A No.

24 MR. WEINSTEIN: Your Honor, I believe that's  
25 all I have. Thank you.

26 THE COURT: All right. Cross-examination?

27 MR. AUSTIN: Yes, your Honor.

28 \ \ \



1 (Cross-examination of Gina Austin)

2 BY MR. AUSTIN:

3 Q Good morning.

4 A Good morning.

5 Q Mrs. Austin, you mentioned in direct that  
6 you're an attorney in the field of cannabis regulation.  
7 Correct?

8 A That's correct.

9 Q And you would consider yourself an expert in  
10 that field?

11 A That's correct.

12 Q Have you ever testified as a cannabis expert?

13 A No. Let me take that back. Not -- I have  
14 been -- I've had trials where I -- where our office is  
15 representing a cannabis client and I am there as the  
16 expert to provide background information to the Court  
17 but not testifying.

18 Q Okay. So -- all right. You haven't been an  
19 expert in trials for background --

20 A Not as a designated expert, no.

21 Q Oh. Not expert. All right.

22 How long have you worked in the area of  
23 cannabis regulation?

24 A A little over six years.

25 Q As an expert cannabis attorney, do you have  
26 clients that seek out your services to assist them in  
27 obtaining permits to get licenses to operate medical  
28 outlet -- or marijuana outlets?

1           A     Yes.

2           Q     Do you also do cultivation facilities or  
3 manufacturing?

4           A     Yes.

5           Q     As a good attorney, one of the things you try  
6 to do is figure out in particular if a client is  
7 eligible for a marijuana license permit before beginning  
8 the process. Correct?

9           A     As a good attorney? Sure.

10          Q     You are aware that certain people are not  
11 eligible for or are barred from obtaining certain CUPs.  
12 Correct?

13          A     Not at the city level, but at the state level,  
14 yes.

15          Q     At the state level. Is there anything that  
16 could bar someone from the city level?

17          A     There might be. I haven't seen the -- they  
18 have to run a LiveScan, which is a background check,  
19 fingerprint similar to what attorneys now have to do.  
20 And the City doesn't -- hasn't denied anybody, and they  
21 haven't said what they would be looking for. Presuming  
22 that it would be the same as what is at the state level,  
23 but I -- we haven't seen anybody be denied. So I'm not  
24 sure.

25          Q     On the state level, do criminal convictions  
26 prevent someone from obtaining licenses?

27          A     Very rarely. It would be felony and a crime of  
28 moral turpitude.

1           Q     What if someone has had illegal operations that  
2     have resulted in a lawsuits on the property, illegal  
3     principals?

4           A     So in different jurisdictions, it's different.  
5     It's different. But if we're talking about the City of  
6     San Diego -- the state only makes you write a  
7     rehabilitation plan. They don't preclude you from  
8     operating. So you can have a misdemeanor -- and you  
9     have to disclose them all. So you have to disclose  
10    your -- if you've got a DUI, if you had some petty theft  
11    as a teenager or, I guess, over 18, if you -- and we see  
12    all of these things. And they simply -- you disclose  
13    it, and then you write a rehabilitation to the state,  
14    and the state says, okay, here you go.

15          Q     So does the City care if someone has been  
16    sanctioned for illegal commercial cannabis activity?

17               MR. WEINSTEIN: Objection. Vague as phrased.

18               THE COURT: Overruled.

19               THE WITNESS: Does the City care if somebody  
20    has been sanctioned? Yes and no because it just depends  
21    on what that was. If that -- if there was -- Urban  
22    League had a perfect example. Wilson had been  
23    sanctioned for prior activity, and at the time when they  
24    first started those back in 2009, there was a --  
25    phrasing in the -- in the settlement agreement that said  
26    you cannot conduct any cannabis activity unless amended  
27    by the Court. And he was still awarded a dispensary.  
28    And he ultimately did get it amended, the -- the



1 judgment or the stipulation amended to say no illegal  
2 cannabis activity.

3 So does the City care? I don't know how to  
4 answer that.

5 BY MR. AUSTIN:

6 Q All right. So it would be fair to say that the  
7 first goal of the regulating agencies in the city and  
8 the state is to protect the community and keep these  
9 types of individuals who had had illegal activity --  
10 illegal cannabis activity going on, the goal would be to  
11 keep the public safe?

12 A I don't understand that question. Can you  
13 rephrase it?

14 Q No. Cancel that. Sorry. Strike that.

15 So on the 6176 property, Mr. Geraci's name was  
16 not used on the CUP application. Correct?

17 A That's correct.

18 Q And was the reason because of his tax business?  
19 Is that what you were told?

20 A I don't know if I was told.

21 Q Were you given a reason why Rebecca Berry would  
22 be used as the agent?

23 A I -- I don't recall if I was or if I wasn't.  
24 I'm trying to think back. I -- I -- I don't know if it  
25 was his tax business or -- you know, every year things  
26 loosen up a little bit, and there's been a -- always  
27 been a fear of federal enforcement. And so I don't  
28 remember the exact reason right now.



1           Q     Are you aware that Mr. Geraci has been  
2     sanctioned for illegal cannabis activity on three  
3     occasions for owning property in which illegal marijuana  
4     principals were housed?

5           A     No.

6           Q     You're not aware of that?

7           A     No.

8           Q     Did you do any type of -- actually, have you  
9     worked with Mr. Geraci on any project other than the  
10    6176 CUP?

11          A     I'm not sure I can answer that for client  
12    privilege. I know he waived with regard to this. If  
13    someone could instruct me whether or not it's been  
14    waived to everything, that would be helpful.

15               MR. WEINSTEIN: Waived, your Honor.

16               THE COURT: I'm sorry?

17               MR. WEINSTEIN: We will waive the privilege.

18               THE WITNESS: Okay. Yes. I did work with him  
19    on -- working on some other land use entitlement  
20    projects.

21    BY MR. AUSTIN:

22          Q     Were those marijuana related?

23          A     They were not.

24          Q     So in the forms that we saw up on the board,  
25    you said that Rebecca Berry's name was all that was  
26    required because the -- any CUP runs with the land.  
27    Correct?

28          A     That's correct.

1           Q     So if Ms. Berry was Mr. Geraci's agent,  
2     wouldn't you say that in fact Mr. Geraci did have an  
3     interest in the CUP?

4           A     I'm sorry. The question is I would say that  
5     Mr. Geraci has an interest in the CUP because Rebecca  
6     Berry was his agent?

7           Q     Yes.

8           A     Yeah. I believe that they were working  
9     together to obtain the CUP.

10          Q     So in Exhibit 30, which has already been  
11     admitted into evidence, the first page, Part 1, it's  
12     fine print. But three lines down, does it not say to  
13     list -- and by the list it's referring to -- anyone --

14                THE REPORTER: Can the reporter hear that last  
15     part again, and louder Counsel.

16                BY MR. AUSTIN:

17          Q     Okay. In Part 1, it refers to the ownership  
18     disclosure statement. And three lines down, it says the  
19     list must include the names and addresses of all persons  
20     who have an interest in the property, recorded or  
21     otherwise, and state the type of property interest,  
22     including tenants who will benefit from the permit, all  
23     individuals who own the property.

24          A     Yes.

25          Q     So after reading that, why does it seem  
26     unnecessary to list Mr. Geraci?

27          A     I don't know that it -- it was unnecessary or  
28     necessary. We just didn't do it.



1           **Q**     But at some point, his involvement would have  
2     to be disclosed. Correct?

3           **A**     Like I said, this -- the purpose of this form  
4     is for conflict of interests. And so at some point --  
5     and it happens all the time -- the applicant isn't the  
6     name of the person who's -- who's on the form. And we  
7     go to planning commission. And the planning  
8     commissioners have reviewed all the documents. And they  
9     wouldn't have seen Mr. Geraci's name. And had he known  
10    one of them or had done work with one of them and they  
11    would need to recuse, they would then be upset that it  
12    didn't get listed on the form.

13           **Q**     Right. That makes sense.

14                    So if Mr. Geraci has been sanctioned for  
15    illegal cannabis activity --

16                    MR. WEINSTEIN: Objection, your Honor. May we  
17    have a sidebar?

18                    THE COURT: The objection is sustained.

19                    Next question. And the request for sidebar is  
20    deferred at this time.

21                    BY MR. AUSTIN:

22           **Q**     On the state level, would Mr. Geraci's interest  
23    have to be disclosed in his -- his involvement with the  
24    CUP?

25           **A**     Yes. At the -- when -- once the CUP -- if the  
26    CUP had been issued and a state permit had been applied  
27    for, then they're -- the state's rules are much more  
28    explicit as to what -- who needs to be disclosed as an

1 owner and a financially interested party. But we didn't  
2 get to that point.

3 Q Okay. So as the main attorney on the CUP  
4 application, you were involved in pretty much all  
5 important conversations?

6 MR. WEINSTEIN: Object. Vague and ambiguous as  
7 phrased.

8 THE COURT: Do you -- do you understand the  
9 question, Ms. Austin?

10 THE WITNESS: I think he's asking me if I was  
11 involved in every conversation.

12 THE COURT: All right. The objection is  
13 overruled.

14 Please answer.

15 THE WITNESS: I wasn't involved in every  
16 conversation.

17 BY MR. AUSTIN:

18 Q Just the most important ones that would have an  
19 effect on the outcome?

20 A I would hope so.

21 Q All right. And you're familiar with Abhay  
22 Schweitzer?

23 A Abhay Schweitzer, yes.

24 Q Did you ever have an email conversation with  
25 Mr. Schweitzer asking that Mr. Geraci's name not be  
26 included in any of the applications?

27 A Maybe. I worked with Abhay on dozens of  
28 projects. And this is several years ago. But maybe.



1           **Q     And Exhibit 36, which I believe has already**  
2 **been admitted into evidence --**

3           THE COURT:   Thirty-six has not yet been  
4 admitted.

5           MR. AUSTIN:   Oh.

6           THE COURT:   Are you offering it?

7           MR. AUSTIN:   Yes, if we could, your Honor.

8           THE COURT:   Any objection to the admission of  
9 Exhibit 36?

10          MR. WEINSTEIN:  No, your Honor.

11          THE COURT:   Exhibit 36 will be admitted.

12          (Premarked Joint Exhibit 36, Email to Rebecca  
13 Berry from Abhay Schweitzer Re: Federal Blvd -  
14 Site Plan and Floor Plan, dated 10/31/16, was  
15 admitted into evidence.)

16          THE WITNESS:  Okay.

17 BY MR. AUSTIN:

18          **Q     Okay.  On the first page, towards the bottom,**  
19 **the email dated October 28th, do you recognize this?**

20          A     Yeah.

21          **Q     So it purports to be an email you sent to**  
22 **Mr. Schweitzer.**

23          A     Yes.

24          **Q     So Item 1, as you have them numbered, can you**  
25 **read that.**

26          A     "I would like to" -- I think I meant file or  
27 fill.  I don't know.  It's misspelled -- "in the tenant  
28 and not the owner on Item No. 3.  Cotton has legal

1 issues with the City, and I don't want to see his name  
2 on the application unless necessary."

3 Q And what legal issues were those?

4 A My understanding is that he had multiple  
5 enforcement actions for illegal cultivation on site.

6 Q Was it multiple, or just one? Do you recall?

7 A I was told multiple.

8 Q Okay. Is that a similar reason why  
9 Mr. Geraci's name was kept off that form?

10 A No. Like I said, I didn't know anything about  
11 that.

12 Q Okay. Are you familiar with the California  
13 Business and Professions Code 26057?

14 A Probably. It sounds like it's part of the  
15 cannabis regulations.

16 Q Yes. I don't -- I don't know if you would like  
17 to read the first paragraph of this to refresh your  
18 recollection or if I can read this section in.

19 THE COURT: What's the exhibit number, Counsel?

20 MR. AUSTIN: What would be the exhibit number  
21 on this?

22 THE COURT: Has that been marked previously as  
23 an exhibit?

24 MR. AUSTIN: It has not. Could we get judicial  
25 notice of the California business code and  
26 professions -- or Business and Professions Code.

27 THE COURT: Well, have you shown opposing  
28 counsel that document? Why don't you do so.

1 MR. WEINSTEIN: We've seen it. It's part of  
2 what we discussed on Friday in terms of lodgement. He  
3 wants to show the witness the statute.

4 THE COURT: All right.

5 MR. WEINSTEIN: And I would ask that she be  
6 given the statute in front of her to read.

7 THE COURT: All right. So let's -- the next  
8 exhibit in order is 281. Counsel, what's the name of  
9 the statute? B&P Code section what?

10 MR. AUSTIN: 26057.

11 THE COURT: All right. And did you want to  
12 show that statute to Ms. Austin to refresh her memory?

13 MR. AUSTIN: Yes.

14 THE COURT: All right. So we'll have that  
15 marked next in order Exhibit 281.

16 (Premarked Joint Exhibit 281, B&P Code  
17 Section 26057, was marked for identification.)

18 BY MR. AUSTIN:

19 Q Are you familiar with this Code?

20 A Yes.

21 Q So in Subsection A, it states that "The  
22 licensing authority shall deny an application if either  
23 the applicant or the premises for which the state  
24 license applied do not qualify for the license under  
25 this division." Correct?

26 A Correct.

27 Q All right. So although you're not aware of any  
28 sanctions against Mr. Geraci, if such a thing were in



1     **existence, would he be barred from having a license**  
2     **issued in his name?**

3             A     No.

4             MR. WEINSTEIN:  Objection.  Belated objection,  
5     your Honor.

6             THE WITNESS:  Sorry.

7             MR. WEINSTEIN:  Same as before.

8             THE COURT:  The objection is overruled.

9             THE WITNESS:  No.  Because this statute has to  
10    be read in its totality.  A says if this.  And then  
11    under B4, large A tells what you kind of crimes they're  
12    talking about.

13    BY MR. AUSTIN:

14            **Q     Right.**

15            A     So if there was a violent felony conviction,  
16    which most of these have to do with moral turpitude,  
17    then an applicant may be denied for state licensing --  
18    or shall be denied for state licensing.  But we have --  
19    I can tell you, because of the nature of the industry,  
20    every person out there operating a legal dispensary in  
21    the City of San Diego has a prior conviction.

22            **Q     So if the state had an issue with Mr. Geraci's**  
23    **name, what would that process be to try and ensure that**  
24    **he could acquire the license?**

25            MR. WEINSTEIN:  Objection, your Honor.  Vague,  
26    irrelevant, since we're not talking about a state  
27    license.  That's --

28            THE COURT:  Sustained.



1 MR. AUSTIN: Okay. Moving on.

2 BY MR. AUSTIN:

3 Q You said you drafted some proposed contracts  
4 for Mr. Geraci and Darryl Cotton. Correct?

5 A Yeah. Our office did, correct.

6 Q And that was roughly March 2017?

7 A That's correct.

8 Q Were you aware of any prior contract between  
9 Mr. Geraci and Mr. Cotton?

10 A Yes.

11 Q What was contained in that contract?

12 A I don't know if I had seen the contract. I  
13 know that Mr. Geraci told me he had an agreement with  
14 Darryl Cotton. And, as I mentioned, Darryl was trying  
15 to change it. And so he wanted me to draft up something  
16 new.

17 Q Okay. So he had an agreement with Mr. Cotton.  
18 Was it in writing?

19 A I -- I understood it to be in writing. I don't  
20 believe I had seen anything at the time we drafted this.

21 Q And when your office drafted this contract, did  
22 you have any working documents to base the contract off  
23 of?

24 A What do you mean "working documents"?

25 Q Were you given any outlines, like, of what the  
26 terms of the agreement were?

27 A No. I believe that was a phone call.

28 Q It's just a phone call from Mr. Geraci?

1           A     That's correct.

2           Q     So you developed this 17-page contract based  
3 off a phone call?

4           A     Yes.

5           Q     Okay. You said there was two contracts.  
6 Correct?

7           A     There was the side agreement. So it was a  
8 purchase and sale for the property and a side agreement.

9           Q     What was contained in the side agreement?

10          A     I'd have to go back and look at it. Could you  
11 tell me what exhibit number that was. As I said, my  
12 office drafted them. I didn't personally -- I  
13 supervised.

14          Q     Okay. Well, upon completion of the purchase  
15 and sale agreement and the side contract, did you email  
16 those drafts to Mr. Geraci?

17          A     Yes.

18          Q     Did you anticipate getting some edits -- or  
19 requests for edits or revisions?

20          A     I don't know if I anticipated or -- or didn't.  
21 I mean, the normal process with a client is you send  
22 them over a draft and you walk -- or you explain to them  
23 the key pertinent parts. And they say I don't want this  
24 or I do want that. I --

25          Q     Okay. Did you in fact end up making a second  
26 draft, or your office, rather?

27          A     I don't recall because Arden was the primary  
28 person working on that. And so I don't recall if there

1 was some minor -- I'd be guessing.

2 Q Okay. Do you know if Mr. Cotton -- I believe  
3 you testified -- and I didn't quite catch the answer --  
4 do you know if Mr. Cotton or Mr. Geraci ever executed  
5 those contract drafts?

6 A I don't believe so.

7 Q Okay.

8 A And I say that because I don't have an executed  
9 copy at my office. So I'm assuming that it didn't  
10 happen. But they might have and not given me a copy.

11 Q Okay. Do you know why the 6176 CUP has not  
12 been approved?

13 A Because it's within 1,000 feet of another one  
14 that was approved.

15 Q Do you know who owns the one that was approved?

16 A Yes.

17 Q What is the name of that individual?

18 A Aaron Magagna.

19 Q Have you ever represented Mr. Magagna before?

20 A Yes. But I will note that that's the end of  
21 what I'm allowed to say because he has not waived the  
22 privilege.

23 Q Fair.

24 You weren't representing him on the competing  
25 CUP, were you?

26 A No.

27 Q As a part of professional responsibilities in  
28 California, you did do a conflict to check on



1 Mr. Magagna before representing him. Correct?

2 A I think I can fairly answer that yes.

3 Q So you wouldn't make it a habit of representing  
4 clients that have conflicting interests, would you?

5 A I do not make it a habit of representing  
6 clients who have conflicting interests, no.

7 Q And if you did have clients with conflicting  
8 interests, what -- what would you do?

9 A That's too hypothetical for me to answer.  
10 Every situation is very unique.

11 Q But it is fair to say it would be unethical to  
12 represent two clients with competing interests.  
13 Correct?

14 A Yes.

15 Q For example, partially for the jury's  
16 edification, it would be unethical if you had, say, a  
17 workers' compensation case and you were representing the  
18 worker and the employer wanted to hire you. Correct?

19 A Sure.

20 Q Are you aware of how long Mr. Geraci's CUP  
21 application process took?

22 A Well, it started in 2016. So it took quite a  
23 bit of time.

24 Q Are you familiar with the length of time  
25 Mr. Magagna's CUP was being processed?

26 A I know it started after Mr. Geraci's.

27 Q Do you have a -- do you know approximately when  
28 it would have started?



1           A     No. But I'm sure -- I -- I believe that it --  
2     that it went in -- we saw the notice of application  
3     after the zone change.

4           Q     So the notice of application, does that go out  
5     to neighboring properties?

6           A     It's posted on the City's website. We  
7     monitor -- monitor them daily.

8           Q     Okay. Would it be fair to say it began in  
9     2018?

10          A     I don't know. I don't know. I'd have to see a  
11     document to remind me.

12          Q     Initially, you said that you've done multiple  
13     speaking events.

14          A     Yes.

15          Q     The first one you mentioned was the -- at the  
16     Thomas Jefferson School of Law?

17          A     That's correct.

18          Q     And towards the end of your testimony, you --  
19     you said you did not recall having a conversation with a  
20     man named Joe Hurtado?

21          A     That's correct. I've been told about it. But  
22     I don't know anything about it.

23          Q     Is it possible that this alleged conversation  
24     could have happened at the Jefferson School of Law  
25     speech?

26          A     This year, like a month ago? No, I don't think  
27     it happened a month ago.

28          Q     Oh. Oh. In 2017?

1           A     I think I did a presentation there in 2017 as  
2     well. I've done two or three there.

3           Q     Okay. I was going to ask you how many. Okay.  
4     Perfect.

5                     And what was the nature of the speaking event  
6     in 2017, if you recall, at Thomas Jefferson?

7           A     I don't. It was cannabis related. I don't  
8     know what it was about.

9           Q     Okay. When Mr. Magagna's CUP was approved,  
10    that effectively terminated Mr. Cotton -- or  
11    Mr. Geraci's CUP application. Correct?

12          A     Correct.

13          Q     But is there an appeal process for that?

14          A     So when -- so it's a two-step process. It goes  
15    to the hearing officer first, and then it goes to  
16    planning commission.

17                     And so the hearing officer granted, I guess, I  
18    think -- I think the hearing officer must have granted.  
19    And then Mr. Geraci must have appealed to the planning  
20    commission. And then the planning commission would have  
21    affirmed. And then that would be the end of it, unless  
22    they wanted to litigate.

23          Q     Are you aware of any, at least, preliminary  
24    attempts, with the hearing officer or -- or anything  
25    else that Mr. Geraci's team would have participated in?

26          A     I was not involved. So I do not know.

27          Q     You were never approached regarding trying to  
28    assist with that appeal, then, I -- I assume?

1           A     I was not involved, no.

2           **Q     Okay. You've been involved with approximately**  
3 **25 CUPs?**

4           A     In San Diego?

5           **Q     In San Diego.**

6           A     Yes.

7           **Q     Yes. How many of those were successful?**

8           A     The majority of them. I think -- so many of  
9 these came in after the fact while we were doing  
10 compliance. But we're working with about 25 clients  
11 here in San Diego. There have been three in the City --  
12 or two in the city proper of San Diego that have not  
13 been approved that I worked on from the beginning.

14          **Q     So you have roughly a 23 out of 25 success**  
15 **rate?**

16          A     Yes. Not all of those I started in the  
17 beginning, though. So, I mean, I may be working with  
18 them at the tail end of it. It may be coming in  
19 currently to make -- keep their CUPs. There's a lot of  
20 different -- a lot of different things.

21          **Q     It's fair to say you were involved on the**  
22 **Geraci CUP from the very beginning. Correct?**

23          A     Yes. Until your client sued me, in which case  
24 I stopped representing him.

25          **Q     All right.**

26               MR. AUSTIN: I have no further questions.

27               THE COURT: Redirect?

28               MR. WEINSTEIN: Just one question, your Honor.



1 (Redirect examination of Gina Austin)

2 BY MR. WEINSTEIN:

3 Q Business and Professions Code 260 --

4 A Yes.

5 Q -- 57, is that applicable to municipal  
6 licenses?

7 A No.

8 Q Is it applicable to state licenses?

9 A Yes.

10 MR. WEINSTEIN: Thank you. That's all, your  
11 Honor.

12 THE COURT: Anything else, Counsel?

13 MR. AUSTIN: No, your Honor.

14 THE COURT: May Ms. Austin be excused?

15 MR. WEINSTEIN: Yes, your Honor.

16 MR. AUSTIN: Can she be subject to re-call?

17 THE COURT: Subject to re-call. Thank you very  
18 much, Counsel. You're excused for the time being.  
19 Thank you very much.

20 THE WITNESS: Just for the Court's information,  
21 I have hearings all --

22 THE COURT: That's fine. If you want to step  
23 down, we'll chat for just a moment.

24 Ladies and gentlemen, we're going to take our  
25 morning break at this time. We're going to take a  
26 recess for 15 minutes. Do not form or express an  
27 opinion or discuss the case until deliberations. We'll  
28 be in recess for 15 minutes.