

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,

v.

DARRYL COTTON,
Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

DARRYL COTTON,
Cross-Complainant,

v.

LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

☒ Yes ☐ No

If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer no further questions, and have the presiding juror sign and date this form.

2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him to do?

☐ Yes ☒ No

If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your answer to question 2 is no, answer question 3.

3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that the contract required him to do?

☒ Yes ☐ No

If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer no further questions, and have the presiding juror sign and date this form.

4. Did all the condition(s) that were required for Defendant's performance occur?

☐ Yes ☒ No

If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your answer to question 4 is no, answer question 5.

1
2 5. Was the required condition(s) that did not occur excused?

3
4 ☒ Yes ☐ No

5
6 If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no,
7 answer no further questions, and have the presiding juror sign and date this form.

8
9 6. Did Defendant fail to do something that the contract required him to do?

10
11 ☒ Yes ☐ No

12
13 or

14
15 Did Defendant do something that the contract prohibited him from doing?

16
17 ☒ Yes ☐ No

18
19 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
20 options is no, do not answer question 7 and answer question 8.

21
22 7. Was Plaintiff harmed by Defendant's breach of contract?

23
24 ☒ Yes ☐ No

25
26 If your answer to questions 4 or 5 is yes, please answer question 8.

27
28 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

☒ Yes ☐ No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date this form.

9. Was Plaintiff harmed by Defendant's interference?

☒ Yes ☐ No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes, answer no further questions, and have the presiding juror sign and date this form.

10. What are Plaintiff's damages?

\$ 260,109.28

Dated: 7/16/19

Signed: [Signature]
Presiding Juror

After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in the courtroom.

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,

Plaintiff,

v.

DARRYL COTTON,

Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

DARRYL COTTON,

Cross-Complainant,

v.

LARRY GERACI,

Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1 1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral
2 contract to form a joint venture?

3
4 ☐ Yes ☒ No

5
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not
7 answer questions 2 – 7 and answer question 8.

8
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract
10 required him to do?

11
12 ☐ Yes ☐ No

13
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
15 answer to question 2 is no, answer question 3.

16
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant
18 things that the contract required him to do?

19
20 ☐ Yes ☐ No

21
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not
23 answer questions 4 – 7 and answer question 8.

24
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26
27 ☐ Yes ☐ No

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
2 answer to question 4 is no, answer question 5.

3
4 5. Was the required condition(s) that did not occur excused?

5
6 ☐ Yes ☐ No

7
8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not
9 answer questions 6 – 7 and answer question 8.

10
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12
13 ☐ Yes ☐ No

14
15 or

16
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18
19 ☐ Yes ☐ No

20
21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
22 options is no, do not answer question 7 and answer question 8.

23
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

25
26 ☐ Yes ☐ No

27
28 Please answer question 8.

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

☐ Yes ☒ No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

☐ Yes ☐ No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

☐ Yes ☐ No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

☐ Yes ☐ No

1
2 If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do
3 not answer question 12 and answer question 13.
4

5 12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
6 in causing harm to Cross-Complainant?
7

8 ☐ Yes ☐ No
9

10 Please answer question 13.
11

12 **Fraud - False Promise**
13

14 13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the
15 transaction?
16

17 ☐ Yes ☒ No
18

19 If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do
20 not answer questions 14 – 18 and answer question 19.
21

22 14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?
23

24 ☐ Yes ☐ No
25

26 If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do
27 not answer questions 15 – 18 and answer question 19.
28

1 15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

2
3 ____ Yes ____ No
4

5 If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do
6 not answer questions 16 – 18 and answer question 19.
7

8 16. Did Cross-Complainant reasonably rely on this promise?

9
10 ____ Yes ____ No
11

12 If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do
13 not answer questions 17 – 18 and answer question 19.
14

15 17. Did Cross-Defendant perform the promised act?

16
17 ____ Yes ____ No
18

19 If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do
20 not answer question 18 and answer question 19.
21

22 18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in
23 causing harm to Cross-Complainant?
24

25 ____ Yes ____ No
26

27 Please answer question 19.
28

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

☐ Yes ☒ No

If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant made it?

☐ Yes ☐ No

If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

21. Did Cross-Defendant have reasonable grounds for believing the representation was true when Cross-Defendant made it?

☐ Yes ☐ No

If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
2 juror sign and date this form.

3
4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5
6 ____ Yes ____ No
7

8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do
9 not answer questions 23 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
11 juror sign and date this form.

12
13 23. Did Cross-Complainant reasonably rely on the representation?

14
15 ____ Yes ____ No
16

17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror
20 sign and date this form.

21
22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
23 in causing harm to Cross-Complainant?

24
25 ____ Yes ____ No
26

1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

4
5 25. What are Cross-Complainant's damages?

6
7 \$ _____
8
9

10
11 Dated: 7/16/19
12

Signed: 
Presiding Juror

13 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in
14 the courtroom.
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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

08/20/2019 at 03:27:00 PM

Clerk of the Superior Court
By E-Filing, Deputy Clerk

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A Professional Corporation
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stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
Cross-Defendant REBECCA BERRY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, HALL OF JUSTICE**

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: Hon. Joel R. Wohlfeil
Dept.: C-73

**NOTICE OF ENTRY OF JUDGMENT
[IMAGED FILE]**

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

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, August 19, 2019, judgment was entered in the above-captioned
3 cause. A conformed copy of said judgment is attached hereto and incorporated herein by reference as
4 though fully set forth.

5
6 FERRIS & BRITTON
 A Professional Corporation

7
8 Dated: August 20, 2019

9 By: Michael R. Weinstein
 Michael R. Weinstein
 Scott H. Toothacre
10 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI
11 and Cross-Defendant REBECCA BERRY
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ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego
08/19/2019 at 11:53:00 AM
 Clerk of the Superior Court
 By Jessica Pascual, Deputy Clerk

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: Hon. Joel R. Wohlfeil
 Dept.: C-73

JUDGMENT ON JURY VERDICT
[PROPOSED BY PLAINTIFF/CROSS-
DEFENDANTS]

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

This action came on regularly for jury trial on June 28, 2019, continuing through July 16, 2019, in Department C-73 of the Superior Court, the Honorable Judge Joel R. Wohlfeil presiding. Michael R. Weinstein, Scott H. Toothacre, and Elyssa K. Kulas of FERRIS & BRITTON, APC, appeared for Plaintiff and Cross-Defendant, LARRY GERACI and Cross-Defendant, REBECCA BERRY, and Jacob P. Austin of THE LAW OFFICE OF JACOB AUSTIN, appeared for Defendant and Cross-Complainant, DARRYL COTTON.

1 A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified and
2 certain trial exhibits admitted into evidence.

3 During trial and following the opening statement of Plaintiff/Cross-Complainant's counsel, the
4 Court granted the Cross-Defendants' nonsuit motion as to the fraud cause of action against Cross-
5 Defendant Rebecca Berry only in Cross-Complainant's operative Second Amended Cross-Complaint. A
6 copy of the Court's July 3, 2019 Minute Order dismissing Cross-Defendant Rebecca Berry from this
7 action is attached as Exhibit "A."

8 After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court
9 and the cause was submitted to the jury with directions to return a verdict on special issues on two special
10 verdict forms. The jury deliberated and thereafter returned into court with its two special verdicts as
11 follows:

12 **SPECIAL VERDICT FORM NO. 1**

13 We, the Jury, in the above entitled action, find the following special verdict on the questions
14 submitted to us:

15
16 **Breach of Contract**

17
18 1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016
19 written contract?

20 Answer: YES

21
22 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him
23 to do?

24 Answer: NO

25
26 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that
27 the contract required him to do?

28 Answer: YES

1 4. Did all the condition(s) that were required for Defendant's performance occur?

2 Answer: NO

3
4 5. Was the required condition(s) that did not occur excused?

5 Answer: YES

6
7 6. Did Defendant fail to do something that the contract required him to do?

8 Answer: YES

9 or

10 Did Defendant do something that the contract prohibited him from doing?

11 Answer: YES

12
13 7. Was Plaintiff harmed by Defendant's breach of contract?

14 Answer: YES

15
16 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

17
18 8. Did Defendant unfairly interfere with Plaintiffs right to receive the benefits of the contract?

19 Answer: YES

20
21 9. Was Plaintiff harmed by Defendant's interference?

22 Answer: YES

23
24 10. What are Plaintiffs damages?

25 Answer: \$ 260,109.28

26
27 A true and correct copy of Special Verdict Form No. 1 is attached hereto as Exhibit "B."

28 ///

SPECIAL VERDICT FORM NO. 2

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral contract to form a joint venture?

Answer: NO

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Answer: NO

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Given the jury's responses, Question 25 regarding Cross-Complainant's damages became inapplicable as a result of the jury's responses.

///

1 A true and correct copy of Special Verdict Form No. 2 is attached hereto as Exhibit "C."

2
3 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

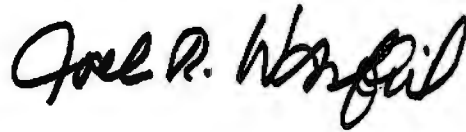
4 1. That Plaintiff LARRY GERACI have and recover from Defendant DARRYL COTTON
5 the sum of \$260,109.28, with interest thereon at ten percent (10%) per annum from the date of entry of
6 this judgment until paid, together with costs of suit in the amount of \$_____;

7 2. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant
8 REBECCA BERRY; and

9 3. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant
10 LARRY GERACI.

11
12 **IT IS SO ORDERED.**

13
14 Dated: 8-19, 2019



15 Hon. Joel R. Wohlfeil
16 **JUDGE OF THE SUPERIOR COURT**

17 Judge Joel R. Wohlfeil
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EXHIBIT A

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

MINUTE ORDER

DATE: 07/03/2019 TIME: 09:00:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Margaret Smith CSR# 9733

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: 37-2017-00010073-CU-BC-CTL CASE INIT.DATE: 03/21/2017

CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Civil Jury Trial

APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Scott H Toothacre, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Jacob Austin, counsel, present for Defendant, Cross - Complainant, Appellant(s).

Darryl Cotton, Defendant is present.

Larry Geraci, Plaintiff is present.

Rebecca Berry, Cross - Defendant is present.

8:55 a.m. This being the time previously set for further Jury trial in the above entitled cause, having been continued from July 2, 2019, all parties and counsel appear as noted above and court convenes. The jurors are not present.

Outside the presence of the jury, Court and counsel discuss exhibits.

9:01 a.m. Court is in recess.

9:03 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are present except for juror no. 4.

An unreported sidebar conference is held. (6 minutes) Juror no. 4 arrives.

9:09 a.m. Attorney Weinstein presents opening statement on behalf of Plaintiff/Cross-Defendant Larry Geraci, et al.

9:55 a.m. Attorney Austin presents opening statement on behalf of Defendant/Cross-Complainant Darryl Cotton.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

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

10:15 a.m. All jurors are admonished and excused for break and Court is in recess.

10:24 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jury is not present.

Outside the presence of the jury, Plaintiff makes a Motion for Non-suit on the Cross-Complaint against Rebecca Berry. The Court hears oral argument. Motion for Non-Suit is denied as to Declaratory Relief claim. Motion for Non-Suit is granted as to Fraud claim.

10:30 a.m. Court is in recess.

10:31 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

10:32 a.m. **LARRY GERACI** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendant:

- 1) Letter of Agreement with Bartell & Associates dated 10/29/15
- 5) Text Messages between Larry Geraci and Darryl Cotton from 7/21/16-5/8/17
- 8) Email to Larry Geraci from Darryl Cotton dated 9/21/16 with attached letter to Dale and Darryl Cotton from Kirk Ross, dated 9/21/16
- 9) Email to Larry Geraci from Darryl Cotton, dated 9/26/16
- 10) Draft Services Agreement Contract between Inda-Gro and GERL Investments, dated 9/24/16
- 14) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/4/16
- 15) Email to Rebecca Berry from Abhay Schweitzer, dated 10/6/16
- 17) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/18/16
- 18) Email thread between Neil Dutta from Abhay Schweitzer, dated 10/19/16
- 21) Email from Larry Geraci to Darryl Cotton, dated 10/24/16
- 30) City of San Diego Ownership Disclosure Statement signed, dated 10/31/16
- 38) Agreement between Larry Geraci or assignee and Darryl Cotton, dated 11/2/16
- 39) Excerpt from Jessica Newell Notary Book, dated 11/2/16
- 40) Email to Darryl Cotton from Larry Geraci attaching Nov. 2 Agreement, dated 11/2/16
- 41) Email from Darryl Cotton to Larry Geraci, dated 11/2/16
- 42) Email to Darryl Cotton from Larry Geraci, dated 11/2/16

11:44 a.m. All jurors are admonished and excused for lunch and Court remains in session.

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit on Breach of Contract claim against Darryl Cotton. The Court hears oral argument. Motion for Non-Suit is denied without prejudice.

11:50 a.m. Court is in recess.

1:19 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are not present.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

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

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit. The Court hears argument. The Motion for Non-Suit is denied without prejudice as pre-mature. Court and counsel discuss scheduling.

1:25 p.m. Court is in recess.

1:33 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

1:34 p.m. Larry Geraci, previously sworn, resumes the stand for further direct examination by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendants:

- 43) Email to Becky Berry from Abhay Schweitzer, dated 11/7/16 with attachment
- 44) Email to Darryl Cotton from Larry Geraci, dated 11/14/16
- 46) Authorization to view records, signed by Cotton, 11/15/16
- 59) Email to Darryl Cotton from Larry Geraci, dated 2/27/17
- 62) Email to Darryl Cotton from Larry Geraci, dated 3/2/17
- 63) Email to Larry Geraci from Darryl Cotton, dated 3/3/17
- 64) Email to Darryl Cotton from Larry Geraci, dated 3/7/17
- 69) Email to Larry Geraci from Darryl Cotton, dated 3/17/17 at 2:15 p.m.
- 72) Email to Larry Geraci from Darryl Cotton, dated 3/19/17 at 6:47 p.m.
- 137) Federal Blvd.- Summary of All Expense Payments, excel spreadsheet

2:29 p.m. An unreported sidebar conference is held. (3 minutes)

2:36 p.m. Cross examination of Larry Geraci commences by Attorney Austin on behalf of Defendant/Cross-Complainant, Darryl Cotton.

2:53 p.m. All jurors are admonished and excused for break and Court is in recess.

3:08 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

3:09 p.m. Larry Geraci is sworn and examined by Attorney Austin on behalf of Defendant/Cross-Complainant, Defendant.

3:47 p.m. Redirect examination of Larry Geraci commences by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

3:48 p.m. The witness is excused.

3:49 p.m. **REBECCA BERRY** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

The following Court's exhibit(s) is marked for identification and admitted on behalf of

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

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

Plaintiff/Cross-Complainant:

34) Forms submitted to City of San Diego dated 10/31/16; Form DS-3032 General Application dated 10/31/16

4:00 p.m. Cross examination of Rebecca Berry commences by Attorney Austin on behalf of Defendant/Cross-complainant, Darryl Cotton.

4:15 p.m. The witness is excused.

4:16 p.m. All jurors are admonished and excused for the evening and Court remains in session.

Outside the presence of the jury, Court and counsel discuss scheduling.

4:22 p.m. Court is adjourned until 07/08/2019 at 09:00AM in Department 73.

EXHIBIT B

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,

v.

DARRYL COTTON,
Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

DARRYL COTTON,
Cross-Complainant,

v.

LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

1
2 ☒ Yes ☐ No
3

4 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer
5 no further questions, and have the presiding juror sign and date this form.
6

7 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him
8 to do?
9

10 ☐ Yes ☒ No
11

12 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
13 answer to question 2 is no, answer question 3.
14

15 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that
16 the contract required him to do?
17

18 ☒ Yes ☐ No
19

20 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer
21 no further questions, and have the presiding juror sign and date this form.
22

23 4. Did all the condition(s) that were required for Defendant's performance occur?
24

25 ☐ Yes ☒ No
26

27 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
28 answer to question 4 is no, answer question 5.

1
2 5. Was the required condition(s) that did not occur excused?

3
4 ☒ Yes ☐ No

5
6 If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no,
7 answer no further questions, and have the presiding juror sign and date this form.

8
9 6: Did Defendant fail to do something that the contract required him to do?

10
11 ☒ Yes ☐ No

12
13 or

14
15 Did Defendant do something that the contract prohibited him from doing?

16
17 ☒ Yes ☐ No

18
19 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
20 options is no, do not answer question 7 and answer question 8.

21
22 7. Was Plaintiff harmed by Defendant's breach of contract?

23
24 ☒ Yes ☐ No

25
26 If your answer to questions 4 or 5 is yes, please answer question 8.

27
28 Breach of the Implied Covenant of Good Faith and Fair Dealing

1
2 8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

3
4 ☒ Yes ☐ No

5
6 If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but
7 your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to
8 questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date
9 this form.

10
11 9. Was Plaintiff harmed by Defendant's interference?

12
13 ☒ Yes ☐ No

14
15 If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but
16 your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes,
17 answer no further questions, and have the presiding juror sign and date this form.

18
19 10. What are Plaintiff's damages?

20
21 \$ 260,109.28

22
23 Dated: 7/16/19

24 Signed: [Signature]
Presiding Juror

25
26 After all verdict forms have been signed, notify the bailiff that you are ready to present your
27 verdict in the courtroom.

EXHIBIT C

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,

Plaintiff,

v.

DARRYL COTTON,

Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

DARRYL COTTON,

Cross-Complainant,

v.

LARRY GERACI,

Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1 1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral
2 contract to form a joint venture?

3
4 ___ Yes ☒ No

5
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not
7 answer questions 2 – 7 and answer question 8.

8
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract
10 required him to do?

11
12 ___ Yes ___ No

13
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
15 answer to question 2 is no, answer question 3.

16
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant
18 things that the contract required him to do?

19
20 ___ Yes ___ No

21
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not
23 answer questions 4 – 7 and answer question 8.

24
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26
27 ___ Yes ___ No

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
2 answer to question 4 is no, answer question 5.

3
4 5. Was the required condition(s) that did not occur excused?

5
6 ☐ Yes ☐ No
7

8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not
9 answer questions 6 – 7 and answer question 8.

10
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12
13 ☐ Yes ☐ No
14

15 or

16
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18
19 ☐ Yes ☐ No
20

21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
22 options is no, do not answer question 7 and answer question 8.

23
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

25
26 ☐ Yes ☐ No
27

28 Please answer question 8.

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

☐ Yes ☒ No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

☐ Yes ☐ No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

☐ Yes ☐ No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

☐ Yes ☐ No

If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do not answer question 12 and answer question 13.

12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor in causing harm to Cross-Complainant?

☐ Yes ☐ No

Please answer question 13.

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

☐ Yes ☒ No

If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do not answer questions 14 – 18 and answer question 19.

14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?

☐ Yes ☐ No

If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do not answer questions 15 – 18 and answer question 19.

1 15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

2
3 ☐ Yes ☐ No

4
5 If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do
6 not answer questions 16 – 18 and answer question 19.

7
8 16. Did Cross-Complainant reasonably rely on this promise?

9
10 ☐ Yes ☐ No

11
12 If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do
13 not answer questions 17 – 18 and answer question 19.

14
15 17. Did Cross-Defendant perform the promised act?

16
17 ☐ Yes ☐ No

18
19 If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do
20 not answer question 18 and answer question 19.

21
22 18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in
23 causing harm to Cross-Complainant?

24
25 ☐ Yes ☐ No

26
27 Please answer question 19.

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

☐ Yes ☒ No

If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant made it?

☐ Yes ☐ No

If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

21. Did Cross-Defendant have reasonable grounds for believing the representation was true when Cross-Defendant made it?

☐ Yes ☐ No

If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
2 juror sign and date this form.

3
4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5
6 ☐ Yes ☐ No

7
8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do
9 not answer questions 23 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
11 juror sign and date this form.

12
13 23. Did Cross-Complainant reasonably rely on the representation?

14
15 ☐ Yes ☐ No

16
17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror
20 sign and date this form.

21
22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
23 in causing harm to Cross-Complainant?

24
25 ☐ Yes ☐ No

1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.
4

5 25. What are Cross-Complainant's damages?
6

7 \$ _____
8
9

10
11 Dated: 7/16/19
12

Signed: 

Presiding Juror

13 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in
14 the courtroom.
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stoothacre@ferrisbritton.com

Attorneys for Plaintiff
LARRY GERACI

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

PLAINTIFF'S COMPLAINT FOR:

- 1. BREACH OF CONTRACT;**
- 2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;**
- 3. SPECIFIC PERFORMANCE; and**
- 4. DECLARATORY RELIEF.**

Plaintiff, LARRY GERACI, alleges as follows:

1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and Defendant COTTON that is the subject of this action was entered into in San Diego County, California, and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County, California (the "PROPERTY").

4. Currently, and at all times since approximately 1998, Defendant COTTON owned the PROPERTY.

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

1 informed and believe and based thereon allege that each of the fictitiously-named defendants is in some
 2 way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as
 3 herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend
 4 this complaint to state the true names and/or capacities of such fictitiously-named defendants when the
 5 same are ascertained.

6 6. Plaintiff alleges on information and belief that at all times mentioned herein, each and
 7 every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in
 8 interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged,
 9 were acting, whether individually or through their duly authorized agents and/or representatives, within
 10 the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate
 11 structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge,
 12 permission, and consent of the remaining defendants, and each of them, and that said defendants
 13 ratified and approved the acts of all of the other defendants.

14 GENERAL ALLEGATIONS

15 7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a
 16 written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated
 17 therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

18 8. On or about November 2, 2016, GERACI paid to COTTON \$10,000.00 good faith
 19 earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
 20 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
 21 conditions of the written agreement.

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
 23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
 24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
 25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
 26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
 27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
 28 \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

3 **(For Breach of Contract against Defendant COTTON and DOES 1-5)**

4 10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
5 paragraphs 1 through 9 above.

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

17 12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer
18 damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI
19 in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended
20 to date on the CUP process for the PROPERTY.

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**
23 **against Defendant COTTON and DOES 1-5)**

24 13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
25 paragraphs 1 through 12 above.

26 14. Each contract has implied in it a covenant of good faith and fair dealing that neither
27 party will undertake actions that, even if not a material breach, will deprive the other of the benefits of
28 the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

1 withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the
 2 PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON
 3 has breached the implied covenant of good faith and fair dealing.

4 15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair
 5 dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for
 6 return of all sums expended by GERACI in reliance on the agreement, including but not limited to the
 7 estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

8 **THIRD CAUSE OF ACTION**

9 **(For Specific Performance against Defendants COTTON and DOES 1-5)**

10 16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
 11 paragraphs 1 through 15 above.

12 17. The aforementioned written agreement for the sale of the PROPERTY is a valid and
 13 binding contract between Plaintiff GERACI and Defendant COTTON.

14 18. The aforementioned written agreement for the sale of the PROPERTY states the terms
 15 and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible
 16 to specific performance.

17 19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a
 18 writing that satisfies the statute of frauds.

19 20. The aforementioned written agreement for the purchase and sale of the PROPERTY is
 20 fair and equitable and is supported by adequate consideration.

21 21. Plaintiff GERACI has duly performed all of his obligations for which performance has
 22 been required to date under the agreement. GERACI is ready and willing to perform his remaining
 23 obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for
 24 a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary
 25 thus satisfying that condition precedent, then to pay the remaining \$790,000.00 balance of the purchase
 26 price.

27 22. Defendant COTTON is able to specifically perform his obligations under the contract,
 28 namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

1 Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that
 2 condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for
 3 receipt of payment from GERACI or assignee of the remaining \$790,000.00 balance of the purchase
 4 price.

5 23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions
 6 that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary
 7 and to specifically perform the contract upon satisfaction of the condition that such approval is in fact
 8 obtained.

9 24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's
 10 attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not
 11 intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon
 12 satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana
 13 dispensary and tender the remaining balance of the purchase price.

14 25. The aforementioned written agreement for the purchase and sale of the PROPERTY
 15 constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy,
 16 and adequate legal remedy is presumed.

17 26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon
 18 specifically enforcing the written agreement for the purchase and sale of the PROPERTY from
 19 Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

20 **FOURTH CAUSE OF ACTION**

21 **(For Declaratory Relief against Defendants COTTON and DOES 1-5)**

22 27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
 23 paragraphs 1 through 14 above.

24 28. An actual controversy has arisen and now exists between Defendant COTTON, on the
 25 one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written
 26 agreement contains terms and condition that conflict with or are in addition to the terms stated in the
 27 written agreement. GERACI disputes those conflicting or additional contract terms.
 28

29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or his assignee. Such a declaration is necessary and appropriate at this time so that each party may ascertain their rights, duties, and obligations thereunder.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First and Second Causes of Action:

1. For compensatory damages in an amount in excess of \$300,000.00 according to proof at trial.

On the Third Cause of Action:

2. For specific performance of the written agreement for the purchase and sale of the PROPERTY according to its terms and conditions; and

3. If specific performance cannot be granted, then damages in an amount in excess of \$300,000.00 according to proof at trial.

On the Fourth Cause of Action:

4. For declaratory relief in the form of a judicial determination of the terms and conditions of the written agreement and the duties, rights and obligations of each party under the written agreement.

On all Causes of Action:

5. For temporary and permanent injunctive relief as follows: that Defendants, and each of them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and all persons acting in concert with or participating with them, directly or indirectly, be enjoined and restrained from taking any action that interferes with Plaintiff GERACI's efforts to obtain approval of a Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

6. For costs of suit incurred herein; and

///

///

///

Dated: March 21, 2017

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

PLAINTIFF' S COMPLAINT

EXHIBIT A

11/02/2016

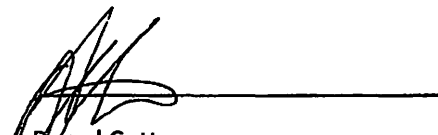
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature [Handwritten Signature] (Seal)

DAVID S. DEMIAN, SBN 220626

E-MAIL: ddemian@ftblaw.com

ADAM C. WITT, SBN 271502

E-MAIL: awitt@ftblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW

4747 EXECUTIVE DRIVE - SUITE 700

SAN DIEGO, CALIFORNIA 92121-3107

TELEPHONE: (858) 737-3100

FACSIMILE: (858) 737-3101

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

08/25/2017 at 11:44:00 AM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE 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

SECOND AMENDED CROSS-COMPLAINT
FOR:

- (1) BREACH OF CONTRACT;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FALSE PROMISE; AND
- (5) DECLARATORY RELIEF.

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

./././././

1 Defendant and cross-complainant Darryl Cotton ("Cotton") alleges as follows:

2 1. Venue is proper in this Court because the events described below took place in
3 this judicial district and the real property at issue is located in this judicial district.

4 2. Cotton is, and at all times mentioned was, an individual residing within the
5 County of San Diego, California.

6 3. Cotton was at all times material to this action the sole record owner of the
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114
8 ("Property") which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci
10 ("Geraci") is, and at all times mentioned was, an individual residing within the County of San
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is,
13 and at all times mentioned was, an individual residing within the County of San Diego,
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed
17 and believes that ROES 1 through 50 are in some way responsible for the events described in
18 this Second Amended Cross-Complaint. Cotton will seek leave to amend this Second
19 Amended Cross-Complaint when the true names and capacities of these cross-defendants have
20 been ascertained.

21 7. At all times mentioned, each cross-defendant was an agent, principal,
22 representative, employee, or partner of the other cross-defendants, and acted within the course
23 and scope of such agency, representation, employment, and/or partnership, and with
24 permission of the other cross-defendants.

25 / / / / /

26 / / / / /

27 / / / / /

28 / / / / /

GENERAL ALLEGATIONS

8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it meets certain requirements of the City of San Diego ("City") for obtaining a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the Property. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. During these negotiations, Geraci represented to Cotton, among other things, that:

(a) Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;

(b) Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci lobbied with the City to have the zoning issue resolved first;

(c) Geraci, through his personal and professional relationships, was in a unique position to lobby and influence key City political figures to have the zoning issue favorably resolved and obtain approval of the CUP application once submitted; and

(d) Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area.

10. Cotton, acting in good faith based upon Geraci's representations during the sale negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a CUP application at the Property while the parties negotiated the terms of a possible deal. However, despite the parties' work on a CUP application, Geraci represented to Cotton that a CUP application for the Property could not actually be submitted until after the critical zoning issue was resolved or the application would be summarily rejected by the City.

11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership Disclosure Statement, which is a required component of all CUP applications. Geraci told Cotton that he needed the signed document to show that Geraci had access to the Property in connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement as an indication of good-faith while the parties negotiated on the sale terms. At no time did Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering into a final written agreement for the sale of the Property. In fact, Geraci repeatedly maintained to Cotton that the critical zoning issue needed to be resolved before a CUP application could even be submitted.

12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However, Cotton has never met Berry personally and never entered into a lease or any other type of agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who was very familiar with MMCC operations and who was involved with his other MMCC dispensaries. Cotton's understanding was that Geraci was unable to list himself on the application because of Geraci's other legal issues but that Berry was Geraci's agent and was working in concert with him and at his direction. Based upon Geraci's assurances that listing Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton executed the Ownership Disclosure Statement that Geraci provided to him.

13. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to negotiate the final terms of their deal for the sale of the Property. The parties reached an agreement on the material terms for the sale of the Property. The parties further agreed to cooperate in good faith to promptly reduce the complete agreement, including all of the agreed-upon terms, to writing.

14. The material terms of the agreement reached by the parties at the November 2, 2016 meeting included, without limitation, the following key deal points:

/ / / / /

1 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the
 2 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton
 3 immediately upon the parties' execution of final integrated written agreements and the
 4 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the
 5 Property;

6 (b) The parties agreed that the City's approval of a CUP application to
 7 operate a MMCC at the Property would be a condition precedent to closing of the sale (in other
 8 words, the sale of the Property would be completed and title transferred to Geraci only upon
 9 the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of
 10 the purchase price to Cotton; if the City denied the CUP application, the parties agreed the sale
 11 of the Property would be automatically terminated and Cotton would be entitled to retain the
 12 entire \$50,000 non-refundable deposit);

13 (c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the
 14 MMCC that would operate at the Property following the City's approval of the CUP
 15 application; and

16 (d) Geraci agreed that, after the MMCC commenced operations at the
 17 Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and
 18 Geraci would guarantee that such payments would amount to at least \$10,000 per month.

19 15. At Geraci's request, the sale was to be documented in two final written
 20 agreements, a real estate purchase agreement and a separate side agreement, which together
 21 would contain all the agreed-upon terms from the November 2, 2016 meeting. At that meeting,
 22 Geraci also offered to have his attorney "quickly" draft the final integrated agreements and
 23 Cotton agreed.

24 16. Although the parties came to a final agreement on the purchase price and
 25 deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come
 26 up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he
 27 had limited cashflow and would require the cash he did have to fund the lobbying efforts
 28 needed to resolve the zoning issue at the Property and to prepare the CUP application.

1 17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit
 2 but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of
 3 “good-faith,” even though the parties had not reduced their final agreement to writing. Cotton
 4 was understandably concerned that Geraci would file the CUP application before paying the
 5 balance of the non-refundable deposit and Cotton would never receive the remainder of the
 6 non-refundable deposit if the City denied the CUP application before Geraci paid the
 7 remaining \$40,000 (thereby avoiding the parties’ agreement that the \$50,000 non-refundable
 8 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).
 9 Despite his reservations, Cotton agreed to Geraci’s request and accepted the lesser \$10,000
 10 initial deposit amount based upon Geraci’s express promise to pay the \$40,000 balance of the
 11 non-refundable deposit prior to submission of the CUP application, at the latest.

12 18. At the November 2, 2016 meeting, the parties executed a three-sentence
 13 document related to their agreement on the purchase price for the Property at Geraci’s request,
 14 which read as follows:

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

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

20 Geraci assured Cotton that the document was intended to merely create a record of Cotton’s
 21 receipt of the \$10,000 “good-faith” deposit and provide evidence of the parties’ agreement on
 22 the purchase price and good-faith agreement to enter into final integrated agreement documents
 23 related to the sale of the Property. Geraci emailed Cotton a scanned copy of the executed
 24 document the same day. Following closer review of the executed document, Cotton wrote in
 25 an email to Geraci several hours later (still on the same day):

26 I just noticed the 10% equity position in the dispensary was not language added
 27 into that document. I just want to make sure that we’re not missing that
 28 language in any final agreement as it is a factored element in my decision to sell
 the property. I’ll be fine if you would simply acknowledge that here in a reply.

1 Approximately two hours later, Geraci replied via email, "No no problem at all."

2 19. Thereafter, Cotton continued to operate in good faith under the assumption that
3 Geraci's attorney would promptly draft the fully integrated agreement documents as the parties
4 had agreed and the parties would shortly execute the written agreements to document their
5 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive
6 and continuously failed to make substantive progress on his promises, including his promises
7 to promptly deliver the draft final agreement documents, pay the balance of the non-refundable
8 deposit, and keep Cotton apprised of the status of the zoning issue.

9 20. Over the weeks and months that followed, Cotton repeatedly reached out to
10 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the
11 non-refundable deposit, and the status of the draft documents. For example, on January 6,
12 2017, after Cotton became exasperated with Geraci's failure to provide any substantive
13 updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I
14 need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine
15 the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month
16 I'll try to call you later today still very sick."

17 21. Between January 18, 2017 and February 7, 2017, the following exchange took
18 place between Geraci and Cotton via text message:

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

20 Cotton: "This resolves the zoning issue?"

21 Geraci: "Yes"

22 Cotton: "Excellent"...

23 Cotton: "How goes it?"

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

25 Cotton: "Whats new?"

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

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

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1 The above communications between Geraci and Cotton regarding the zoning issue conveyed to
 2 Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had
 3 previously represented to Cotton that the CUP application could not be submitted until the
 4 zoning issue was resolved, which was key because Geraci's submission of the CUP application
 5 was the outside date the parties had agreed upon for payment of the \$40,000 balance of the
 6 non-refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he
 7 knew they were untrue as he had already submitted the CUP application months prior.

8 22. With respect to the promised final agreement documents, Geraci continuously
 9 failed to timely deliver the documents as agreed. On February 15, 2017, more than two
 10 months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the
 11 documents with the attorney and hopefully will have them by the end of this week." On
 12 February 22, 2017, Geraci again texted Cotton, "Contract should be ready in a couple days."

13 23. On February 27, 2017, nearly three months after the parties reached an
 14 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase
 15 agreement and stated: "Attached is the draft purchase of the property for 400k. The additional
 16 contract for the 400k should be in today and I will forward it to you as well." However, upon
 17 review, the draft purchase agreement was missing many of the key deal points agreed upon by
 18 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,
 19 Geraci claimed it was simply due to miscommunication with his attorney and promised to have
 20 her revise the agreement to accurately reflect their deal points.

21 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side
 22 agreement that was to incorporate other terms of the parties' deal. Cotton immediately
 23 reviewed the draft side agreement and emailed Geraci the next day stating: "I see that no
 24 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement
 25 completely." Paragraph 3.11 of the draft side agreement stated that the parties had no joint
 26 venture or partnership agreement of any kind, which contradicted the parties' express
 27 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a
 28 condition of the sale of the Property.

25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a misunderstanding with his attorney and that Cotton could speak with her directly regarding any comments on the drafts.

26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement along with a cover email that stated: "... the 10k a month might be difficult to hit until the sixth month... can we do 5k, and on the seventh month start 10k?". Cotton, increasingly frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on March 16, 2017 in an email which included the following:

We started these negotiations 4 months ago and the drafts and our communications have not reflected what agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and the Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed... Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement ... If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

27. On the same day, Cotton contacted the City's Development Project Manager responsible for CUP applications. At that time, Cotton discovered for the first time that Geraci had submitted a CUP application for the Property way back on October 31, 2016, before the parties even agreed upon the final terms of their deal and contrary to Geraci's express representations over the previous five months. Cotton expressed his disappointment and frustration in the same March 16, 2017 email to Geraci:

I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

28. On March 17, 2017, after Geraci requested an in-person meeting via text message, Cotton replied in an email to Geraci which including the following:

I would prefer that until we have final agreements that we converse exclusively via email. My greatest concern is that you get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31 2016 BEFORE we even signed our agreement on the 2nd of November... Please confirm by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

Geraci did not provide the requested confirmation that he would honor their agreement or proffer the requested agreements prior to Cotton's deadlines.

29. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was terminated and that Geraci no longer had any interest in the Property. Cotton also notified Geraci that he intended to move forward with a new buyer for the Property.

30. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"), emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first time that the three-sentence document signed by the parties on November 2, 2016 constituted the parties' complete agreement regarding the Property, contrary to the parties' further agreement the same day, the entire course of dealings between the parties, and Geraci's own statements and actions.

31. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci intended to continue to pursue the CUP application and would be posting notices on Cotton's property. Cotton responded via email the same day and objected to Geraci or his agents entering the Property and reiterated the fact that Geraci has no rights to the Property.

32. The defendants' refusal to acknowledge they have no interest in the Property and to step aside from the CUP application has diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to protect his interest in his Property.

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FIRST CAUSE OF ACTION

(Breach of Contract – Against Geraci and ROES 1 through 50)

33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above, as though set forth in full at this point.

34. Geraci and Cotton entered into an agreement to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting the terms for a purchase and sale of the Property and a side agreement for Cotton to obtain an equity position in the MMCC to operate at the Property. This agreement is comprised of (a) the November 2, 2016 document signed by Geraci and Cotton, and (b) the November 2, 2016 email exchange between Geraci and Cotton including other agreed-upon terms and the parties' agreement to negotiate and collaborate in good faith on final deal documents. True and correct copies of the agreement are attached hereto as Exhibits 1 and 2, respectively.

35. Cotton performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions of the contract between the parties or has been excused from performance.

36. Under the parties' contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable final purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

37. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

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SECOND CAUSE OF ACTION

(Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

38. Cotton realleges and incorporates by reference paragraphs 1 through 37, above, as though set forth in full at this point.

39. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants knew to be false or were made recklessly and without regard for their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

40. The intentional misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

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1 (c) On multiple occasions, Geraci represented to Cotton that a CUP
2 application for the Property could not be submitted until after the zoning issue was resolved;

3 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
4 yet filed a CUP application with respect to the Property when the CUP application had already
5 been filed; and

6 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
7 work of preparing a CUP application was merely underway, when, in fact, the CUP application
8 had already been filed.

9 41. Defendants, through their intentional misrepresentations and the actions taken in
10 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
11 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
12 attorneys' fees to protect his interest in his Property. As a further result of the intentional
13 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
14 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

15 42. The misrepresentations were intentional, willful, malicious, outrageous,
16 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent
17 to deprive Cotton of his interest in the Property. This intentional, willful, malicious,
18 outrageous and unjustified conduct entitles Cotton to an award of general, compensatory,
19 special, exemplary and/or punitive damages under Civil Code section 3294.

20 THIRD CAUSE OF ACTION

21 (Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

22 43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above,
23 as though set forth in full at this point.

24 44. Defendants made statements to Cotton that: (a) were false representations of
25 material facts; (b) defendants had no reasonable grounds for believing were true when the
26 statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and
27 justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in
28 causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and

proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

45. The negligent misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

(c) On multiple occasions, Geraci represented to Cotton that a CUP application for the Property could not be submitted until after the zoning issue was resolved;

(d) On multiple occasions, Geraci represented to Cotton that Geraci had not yet filed a CUP application with respect to the Property when the CUP application had already been filed; and

(e) On multiple occasions, Geraci represented to Cotton that the preliminary work of preparing a CUP application was merely underway, when, in fact, the CUP application had already been filed.

46. Defendants, through their negligent misrepresentations and the actions taken in reliance upon such misrepresentations, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and

attorneys' fees to protect his interest in his Property. As a further result of the negligent misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

FOURTH CAUSE OF ACTION

(False Promise – Against Geraci and ROES 1 through 50)

47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above, as though set forth in full at this point.

48. On November 2, 2016, among other things, Geraci falsely promised the following to Cotton without any intent of fulfilling the promises:

(a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable deposit prior to filing a CUP application;

(b) Geraci would cause his attorney to promptly draft the final integrated agreements to document the agreed-upon deal between the parties;

(c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the monthly profits for the MMCC at the Property if the CUP was granted; and

(d) Cotton would be a 10% owner of the MMCC business operating at Property if the CUP was granted.

49. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016 when he made them.

50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to rely on the false promises and execute the document signed by the parties at their November 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire agreement.

51. Cotton reasonably relied on Geraci's promises.

52. Geraci failed to perform the promises he made on November 2, 2016.

53. Defendants, through their false promises and the actions taken in reliance upon such false promises, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to

1 protect his interest in his Property. As a further result of the false promises, Cotton has been
 2 deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay
 3 prior to filing a CUP application for the Property.

4 54. The false promises were intentional, willful, malicious, outrageous, unjustified,
 5 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive
 6 Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and
 7 unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary
 8 and/or punitive damages under Civil Code section 3294.

9 FIFTH CAUSE OF ACTION

10 (Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

11 55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above,
 12 as though set forth in full at this point.

13 56. An actual controversy has arisen and now exists between Cotton and all
 14 defendants concerning their respective rights, liabilities, obligations and duties with respect to
 15 the Property and the CUP application for the Property filed on or around October 31, 2016.

16 57. A declaration of rights is necessary and appropriate at this time in order for the
 17 parties to ascertain their respective rights, liabilities, and obligations because no adequate
 18 remedy other than as prayed for exists by which the rights of the parties may be ascertained.

19 58. Accordingly, Cotton respectfully requests a judicial declaration of rights,
 20 liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration
 21 that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole
 22 interest-holder in the CUP application for the Property submitted on or around October 31,
 23 2016, (c) defendants have no interest in the CUP application for the Property submitted on or
 24 around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief as follows:

ON THE FIRST CAUSE OF ACTION:

1. For general, special, and consequential damages in an amount not yet fully ascertained and according to proof at trial, but at least \$40,000; and

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE SECOND CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and

3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

ON THE THIRD CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000; and

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE FOURTH CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and

3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

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1 ON THE FIFTH CAUSE OF ACTION

2 1. For a judicial declaration that defendants have no right or interest whatsoever in
3 the Property;

4 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP
5 application for the Property submitted on or around October 31, 2016, defendants have no right
6 or interest in said CUP application, and that defendants are enjoined from further pursuing
7 such CUP application for the Property; and

8 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be
9 released.

10 ON ALL CAUSES OF ACTION

11 1. For interest on all sums at the maximum legal rates from dates according to
12 proof;

13 2. For costs of suit; and

14 3. For such other relief as the Court deems just.

15 DATED: August 25, 2017

Respectfully submitted,

16 FINCH, THORNTON & BAIRD, LLP

17
18 By: 

DAVID S. DEMIAN
ADAM C. WITT

Attorneys for Defendant and Cross-Complainant
Darryl Cotton

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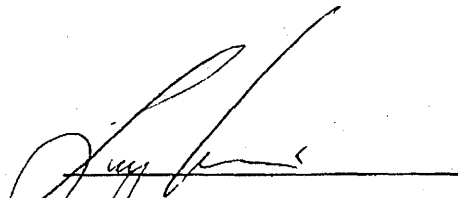
EXHIBIT 1

11/02/2016

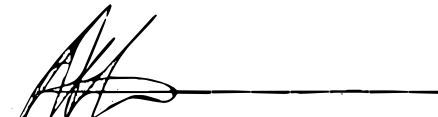
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

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

State of California

County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

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

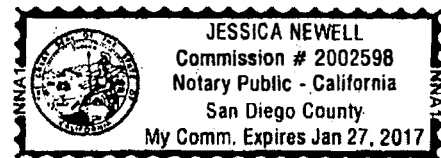
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Jessica Newell

(Seal)



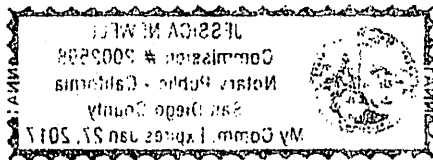


EXHIBIT 2



Darryl Cotton <indagrodarryl@gmail.com>

Agreement

2 messages

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

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

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

6/7/2017

Gmail - Agreement



Cotton & Geraci Contract.pdf

71K

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President



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

6176 Federal Blvd.
San Diego, CA. 92114
USA

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

[Quoted text hidden]

DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@ftblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@ftblaw.com

FINCH, THORNTON & BAIRD, LLP

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

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE 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

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

I, Heidi Runge, declare that:

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California, where the mailing occurred; and my business address is 4747 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence

1 will be deposited with the United States Postal Service this same day in the ordinary course of
2 business. I caused to be served the following document(s): SECOND AMENDED CROSS-
3 COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as
4 follows:

5 Michael R. Weinstein, Esq.
6 Scott H. Toothacre, Esq.
7 Ferris & Britton
8 A Professional Corporation
9 501 West Broadway, Suite 1450
10 San Diego, California 92101
11 Telephone: (619) 233-3131
12 Facsimile: (619) 232-9316
13 Email: mweinstein@ferrisbritton.com
14 stoothacre@ferrisbritton.com

ATTORNEYS FOR PLAINTIFF AND
CROSS-DEFENDANT LARRY GERACI

11 Michael R. Weinstein, Esq.
12 Scott H. Toothacre, Esq.
13 Ferris & Britton
14 A Professional Corporation
15 501 West Broadway, Suite 1450
16 San Diego, California 92101
17 Telephone: (619) 233-3131
18 Facsimile: (619) 232-9316
19 Email: mweinstein@ferrisbritton.com
20 stoothacre@ferrisbritton.com

ATTORNEYS FOR CROSS-DEFENDANT
REBECCA BERRY

16 I then sealed the envelope(s) and, with the postage thereon fully prepaid, either
17 deposited it/each in the United States Postal Service or placed it/each for collection and
18 mailing on August 25, 2017, at San Diego, California, following ordinary business practices.

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

21 Executed on August 25, 2017.

22 
23 Heidi Runge

24
25
26
27
28 2403.004/Proof.hr

DAVID S. DEMIAN, SBN 220626

E-MAIL: ddemian@ftblaw.com

ADAM C. WITT, SBN 271502

E-MAIL: awitt@ftblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW

4747 EXECUTIVE DRIVE - SUITE 700

SAN DIEGO, CALIFORNIA 92121-3107

TELEPHONE: (858) 737-3100

FACSIMILE: (858) 737-3101

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

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

Clerk of the Superior Court
By Erika Engel, Deputy Clerk

Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants,

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

Real Parties In Interest.

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

VERIFIED PETITION FOR
ALTERNATIVE WRIT OF MANDATE
[CODE CIV. PROC., § 1085]

INTRODUCTION

1. Pursuant to Code of Civil Procedure section 1085, petitioner/plaintiff Darryl Cotton ("Cotton") seeks an alternative writ of mandate and a peremptory writ of mandate directing respondents/defendants City of San Diego ("City") and DOES 1 through 25 to: (1) recognize Cotton, the sole record owner of the real property located at 6176 Federal Boulevard, San Diego, California 92105 ("Property"), as the sole applicant with respect to Conditional Use Permit Application – Project No. 520606 ("Cotton Application") for a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the

1 Property; and (2) process the Cotton Application with Cotton as the sole applicant. In the
 2 alternative, Cotton seeks an order to show cause directed to the City as to why the Court should
 3 not issue such a writ.

4 2. The relief sought in paragraph 1 is proper because Cotton has no other plain,
 5 speedy, or adequate legal remedy. The relief is necessary because the City's refusal to
 6 recognize Cotton as the sole applicant on the Cotton Application is lacking in evidentiary
 7 support and inconsistent with the City's legal duty.

8 JURISDICTION, VENUE, AND PARTIES

9 3. The Court has jurisdiction over this petition pursuant to Code of Civil Procedure
 10 section 1085.

11 4. Venue is proper in this Court because the City is a public entity located in this
 12 judicial district and the property at issue is located in this judicial district.

13 5. Petitioner/plaintiff Cotton is, and at all times mentioned was, an individual
 14 living and doing business in California.

15 6. Respondent/defendant City is, and at all times mentioned was, a public entity
 16 organized and existing under the laws of California.

17 7. Cotton is informed and believes real party in interest Rebecca Berry ("Berry")
 18 is, and at all times mentioned was, an individual living and doing business in the County of
 19 San Diego.

20 8. Cotton is informed and believes real party in interest Larry Geraci ("Geraci") is,
 21 and at all times mentioned was, an individual living and doing business in the County of San
 22 Diego.

23 9. Cotton does not know the true names and capacities of the
 24 respondents/defendants named as DOES 1 through 25 and, therefore, sues them by fictitious
 25 names. Cotton is informed and believes DOES 1 through 25 are in some way responsible for
 26 the events described in this petition or impacted by them. Cotton will seek leave to amend this
 27 petition when the true names and capacities of these parties have been ascertained.
 28

10. At all times mentioned each respondent/defendant was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation, and/or employment and with the permission of the others.

11. Cotton does not know the true names and capacities of the real parties in interest named as ROES 1 through 25 and, therefore, names them by fictitious names. Cotton is informed and believes ROES 1 through 25 are in some way responsible for the events described in this petition or impacted by them. Cotton will seek leave to amend this petition when the true names and capacities of these parties have been ascertained.

12. At all times mentioned each real party in interest was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation, and/or employment and with the permission of the others.

BACKGROUND

13. In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it meets certain requirements of the City for obtaining a CUP to operate a MMCC at the Property. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

14. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. Cotton, acting in good faith based upon Geraci's representations during the sale negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a CUP application at the Property while the parties negotiated the terms of a possible deal. However, despite the parties' work on a CUP application, Geraci represented to Cotton that a CUP application for the Property could not actually be submitted until after a critical zoning issue was resolved or the application would be summarily rejected by the City.

1 15. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership
 2 Disclosure Statement, which is a required component of all CUP applications. Geraci told
 3 Cotton that he needed the signed document to show that Geraci had access to the Property in
 4 connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of
 5 a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement
 6 as an indication of good-faith while the parties negotiated on the sale terms. At no time did
 7 Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering
 8 into a final written agreement for the sale of the Property. In fact, Geraci repeatedly
 9 maintained to Cotton that the critical zoning issue needed to be resolved before a CUP
 10 application could even be submitted.

11 16. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in
 12 October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However,
 13 Cotton has never met Berry personally and never entered into a lease or any other type of
 14 agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who
 15 was very familiar with MMCC operations and who was involved with his other MMCC
 16 dispensaries. Cotton's understanding was that Geraci was unable to list himself on the
 17 application because of Geraci's other legal issues but that Berry was Geraci's agent and was
 18 working in concert with him and at his direction. Based upon Geraci's assurances that listing
 19 Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton
 20 executed the Ownership Disclosure Statement that Geraci provided to him. A true and correct
 21 copy of the CUP application, including the Ownership Disclosure Statement, is attached hereto
 22 as Exhibit 1.

23 17. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to
 24 negotiate the final terms of their deal for the sale of the Property. The parties reached an
 25 agreement on the material terms for the sale of the Property. The parties further agreed to
 26 cooperate in good faith to promptly reduce the complete agreement, including all of the
 27 agreed-upon terms, to writing.

1 18. At the November 2, 2016 meeting, the parties executed a three-sentence
2 document related to their agreement on the purchase price for the Property at Geraci's request,
3 which read as follows:

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

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

9 A true and correct copy of the November 2, 2016 agreement is attached hereto as Exhibit 2.
10 Geraci assured Cotton that the document was intended to merely create a record of Cotton's
11 receipt of the \$10,000 "good-faith" deposit and provide evidence of the parties' agreement on
12 the purchase price and good-faith agreement to enter into final integrated agreement documents
13 related to the sale of the Property. A true and correct copy of the November 2, 2016 email is
14 attached hereto as Exhibit 3.

15 19. Thereafter, Cotton continued to operate in good faith under the assumption that
16 Geraci's attorney would promptly draft the fully integrated agreement documents as the parties
17 had agreed and the parties would shortly execute the written agreements to document their
18 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive
19 and continuously failed to make substantive progress on his promises, including his promises
20 to promptly deliver the draft final agreement documents, pay the balance of the non-refundable
21 deposit, and keep Cotton apprised of the status of the zoning issue.

22 20. Over the weeks and months that followed, Cotton repeatedly reached out to
23 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the
24 non-refundable deposit, and the status of the draft documents. For example, between January
25 18, 2017 and February 7, 2017, the following exchange took place between Geraci and Cotton
26 via text message:

27 / / / /

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

2 Cotton: "This resolves the zoning issue?"

3 Geraci: "Yes"

4 Cotton: "Excellent"...

5 Cotton: "How goes it?"

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

7 Cotton: "Whats new?"

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

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

10 The above communications between Geraci and Cotton regarding the zoning issue conveyed to Cotton that the issue had still not yet been fully resolved at that time. Geraci had previously represented to Cotton that the CUP application could not be submitted until the zoning issue was resolved. As it turns out, Geraci's representations were untrue and he knew they were untrue as he had already submitted the CUP application months prior.

11 21. With respect to the promised final agreement documents, Geraci continuously failed to timely deliver the documents as agreed. On February 27, 2017, nearly three months after the parties reached an agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase agreement. However, upon review, the draft purchase agreement was missing many of the key deal points agreed upon by the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation, Geraci claimed it was simply due to miscommunication with his attorney and promised to have her revise the agreement to accurately reflect their deal points.

12 22. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side agreement that was to incorporate other terms of the parties' deal. Cotton immediately reviewed the draft side agreement and emailed Geraci the next day regarding certain missing and inaccurate material terms.

13 / / / / /

14 / / / / /

23. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement along with a further request to change material terms of the parties' deal. Cotton, increasingly frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on March 16, 2017 in an email which included the following:

We started these negotiations 4 months ago and the drafts and our communications have not reflected what agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and the Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed... Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement ... If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

24. On the same day, Cotton contacted the City's Development Project Manager responsible for CUP applications. At that time, Cotton discovered for the first time that Geraci had submitted a CUP application for the Property way back on October 31, 2016, before the parties even agreed upon the final terms of their deal and contrary to Geraci's express representations over the previous five months. Cotton expressed his disappointment and frustration in the same March 16, 2017 email to Geraci:

I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

25. On March 17, 2017, after Geraci requested an in-person meeting via text message, Cotton replied in an email to Geraci which including the following:

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/////

/////

1 I would prefer that until we have final agreements that we converse exclusively
 2 via email. My greatest concern is that you get a denial on the CUP application
 3 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I
 4 feel that you are not dealing with me in good faith, you told me repeatedly that
 5 you could not submit a CUP application until certain zoning issues had been
 6 resolved and that you had spent hundreds of thousands of dollars on getting them
 resolved. You lied to me, I found out yesterday from the City of San Diego that
 you submitted a CUP application on October 31 2016 BEFORE we even signed
 our agreement on the 2nd of November... Please confirm by 12:00 PM Monday
 that you are honoring our agreement and will have final drafts (reflecting
 completely the below) by Wednesday at 12:00 PM.

7 Geraci did not provide the requested confirmation that he would honor their agreement or
 8 proffer the requested agreements prior to Cotton's deadlines.

9 26. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was
 10 terminated and that Geraci had no interest in the Property.

11 27. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"),
 12 emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first
 13 time that the three-sentence document signed by the parties on November 2, 2016 constituted
 14 the parties' complete agreement regarding the Property, contrary to the parties' further
 15 agreement the same day, the entire course of dealings between the parties, and Geraci's own
 16 statements and actions.

17 28. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci
 18 intended to continue to pursue the CUP application and would be posting notices on Cotton's
 19 property. Cotton responded via email the same day and objected to Geraci or his agents
 20 entering the Property and reiterated the fact that Geraci has no rights to the Property.

21 29. On May 12, 2017, Cotton filed a cross-complaint against Berry and Geraci
 22 including causes of action for breach of contract, intentional misrepresentation, negligent
 23 misrepresentation, and false promise with respect to the purchase agreement and the CUP
 24 application.

25 30. On September 22, 2017, Cotton, through his attorneys, demanded the City
 26 remove Berry from the Cotton Application and process it for Cotton. A true and correct copy
 27 of the September 22, 2017 letter is attached hereto as Exhibit 4.

30. The City responded via email on September 29, 2017, but did not agree to remove Berry from the Cotton Application and process it on behalf of Cotton. A true and correct copy of the September 29, 2017 email is attached hereto as Exhibit 5.

FIRST CAUSE OF ACTION

(Writ of Mandate – Against all respondents/defendants and all real parties in interest)

31. Cotton incorporates by reference paragraphs 1 through 30 above as though set forth in full at this point.

32. The City is subject to California law. The City is further responsible for administering the CUP process according to the San Diego Municipal Code (“Municipal Code”), and is obligated to perform the ministerial duties of: (1) recognizing Cotton as the sole applicant for the Cotton Application, as required under Municipal Code sections 112.0102 and 113.0103, and (2) processing the Cotton Application with Cotton as the sole applicant and financially responsible party.

33. As the record owner of the Property, Cotton has a clear, present, legal and beneficial right in seeing that the City follows the Municipal Code and California law and recognizes the correct applicant with respect to the Cotton Application.

34. Cotton has no plain, speedy and adequate remedy in the ordinary course of law, other than the writ by this petition. Cotton has exhausted all available administrative remedies, if any, available to him. The only means by which Cotton may compel the City to follow the Municipal Code and California law is this petition for a writ of mandate.

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
1	CUP application incl. Ownership Disclosure Statement
2	November 2, 2016 agreement
3	Email dated November 2, 2016 between Cotton and Geraci
4	Letter dated September 22, 2017 from Cotton to the City
5	Email dated September 29, 2017 from City to Cotton

////

////

PRAYER FOR RELIEF

WHEREFORE, Cotton prays as follows:

ON ALL CAUSES OF ACTION:

1. For a writ of mandate to be issued under Code of Civil Procedure section 1085, and under seal of this Court, ordering the City to recognize Cotton as the sole applicant with respect to the Cotton Application and to process the Cotton Application with Cotton as the sole applicant;

2. In the alternative, for an order to show cause directed to the City as to why the Court should not issue such a writ; and

3. For such other or further relief the Court deems just.

DATED: October 6, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: 

DAVID S. DEMIAN

ADAM C. WITT

Attorneys for Petitioner/Plaintiff DARRYL COTTON


2403.002/3BX3360.hjg

VERIFICATION

I, Darryl Cotton, have read this VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085], and I am familiar with its contents. I am informed and believe the matters stated therein are true and on that basis verify that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct to the best of my knowledge.

Executed on October 6, 2017 in San Diego, California.


Darryl Cotton

FILED

Feb 09 2018

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *s/ Libanaz* DEPUTY

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

CASE NO.: '18CV0325 GPC MDD

Plaintiff,

Judge:
Dept.:

vs.

PLAINTIFF'S COMPLAINT FOR:

LARRY GERACI, an individual;
REBECCA BERRY, an individual; GINA
AUSTIN, an individual; AUSTIN LEGAL
GROUP, a professional corporation;
MICHAEL WEINSTEIN, an individual;
SCOTT H. TOOTHACRE; an individual;
FERRIS & BRITTON, a professional
corporation; CITY OF SAN DIEGO, a
public entity; and DOES 1 through 10,
inclusive,

Defendants.

1. 42 U.S.C. SEC. 1983; 4TH AMEND. UNLAWFUL SEIZURE
2. 42 U.S.C. SEC. 1983; 14TH AMEND. DUE PROCESS VIOLATIONS
3. BREACH OF CONTRACT;
4. FALSE PROMISE;
5. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
6. BREACH OF FIDUCIARY DUTY;
7. FRAUD IN THE INDUCEMENT;
8. FRAUD / FRAUDULENT MISREPRESENTATION;
9. TRESPASS;
10. SLANDER OF TITLE;
11. FALSE DOCUMENTS LIABILITY;
12. UNJUST ENRICHMENT;
13. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
15. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
16. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
17. CONSPIRACY;
18. RICO;
19. DECLARATORY RELIEF; AND
20. INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

CASE NO.:

Plaintiff,

Judge:

Dept.:

vs.

PLAINTIFF'S COMPLAINT FOR:

LARRY GERACI, an individual;
REBECCA BERRY, an individual; GINA
AUSTIN, an individual; AUSTIN LEGAL
GROUP, a professional corporation;
MICHAEL WEINSTEIN, an individual;
SCOTT H. TOOTHACRE; an individual;
FERRIS & BRITTON, a professional
corporation; CITY OF SAN DIEGO, a
public entity; and DOES 1 through 10,
inclusive,

Defendants.

1. 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE
2. 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS
3. BREACH OF CONTRACT;
4. FALSE PROMISE;
5. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
6. BREACH OF FIDUCIARY DUTY;
7. FRAUD IN THE INDUCEMENT;
8. FRAUD / FRAUDULENT MISREPRESENTATION;
9. TRESPASS;
10. SLANDER OF TITLE;
11. FALSE DOCUMENTS LIABILITY;
12. UNJUST ENRICHMENT;
13. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
15. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS;
16. NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS;
17. CONSPIRACY;
18. RICO;
19. DECLARATORY RELIEF; AND
20. INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL

1
2 Plaintiff *Pro Se* Darryl Cotton ("Plaintiff," "Cotton" or "I") alleges upon information and
3 belief as follows:

4 **INTRODUCTION**

5 1. The origin of this matter is a simpler-than-most real estate contract dispute regarding
6 the sale of my property to defendant Larry Geraci ("Geraci").

7 2. My property qualifies to apply with the City of San Diego ("City") for a Conditional
8 Use Permit ("CUP"). If the City issues the CUP, the value of the Property will immediately be worth
9 at least **\$16,000,000** because the CUP will allow the establishment of a Medical Marijuana Consumer
10 Collective ("MMCC"). Under the regulatory scheme being effectuated by the State of California, an
11 MMCC is a retail-for-profit marijuana store. Because the City is creating an incredibly small
12 oligarchy by only issuing 36 MMCC retail licenses across the entire City, and will not issue any more
13 for at least 10 years, the net present value of the Property, to an individual that has the capital and
14 resources to build, develop and operate the MMCC, is at least **\$100,000,000**.
15

16 3. However, the value of the Property is exponentially **greater** than \$100,000,000 to
17 organized, sophisticated and powerful criminals that are looking for legitimate businesses in the
18 marijuana industry that they can use as fronts for their illegal operations.
19

20 4. Defendant Larry Geraci ("Geraci") is exactly such a criminal – he runs a criminal
21 enterprise that has for years operated in the illegal marijuana industry. He operates publicly through a
22 business providing tax and financial consulting services that he uses to invests his illegal gains and to
23 provide money laundering services to other criminals who own illegal marijuana stores.
24

25 5. It is a matter of public record that Geraci is an Enrolled Agent with the I.R.S. and that
26 he has been a named defendant in numerous lawsuits filed by the City against him for his
27 owning/operating of numerous illegal marijuana dispensaries. As described below, he now operates
28

1 through employees and attorneys to hide his illicit operations. There is no way to ascertain exactly the
2 breadth of his criminal enterprise given his use of private and legal proxies for his criminal activities.

3 6. In November of 2016, Geraci and I came to terms for the sale of my property to him,
4 the terms of which included my having an ownership interest in the contemplated MMCC. However,
5 I found out Geraci had induced me to enter into that agreement on fraudulent grounds and he
6 breached the agreement in numerous ways.

7 7. Consequently, I terminated the agreement. After I terminated the agreement, Geraci, in
8 concert with his office manager/employee Rebecca Berry ("Berry") and his counsel, Gina Austin
9 ("Austin"), Michael Weinstein ("Weinstein") and Scott H. Toothacre ("Toothacre"), and their
10 respective law firms, brought forth a meritless lawsuit in state court attempting to fraudulently
11 deprive me of my property (the "Geraci Action").
12

13 8. After the Geraci Action was filed, I requested the City transfer the CUP application
14 filed by Geraci on my property to me. The City refused. I then filed an action against the City seeking
15 to have the City transfer the CUP application to me as Geraci had no legal basis to my property after
16 our agreement was terminated (the "City Action;" and collectively with the Geraci Action, the "State
17 Action." Defendant attorneys named herein, and their respective law firms, are Geraci's counsel in
18 the State Action (the "Attorney Defendants").
19

20 9. Throughout the course of the State Action, I have dealt with officials from the City of
21 San Diego ("City") that have violated my constitutional rights in various ways. These actions, by
22 themselves unlawful, have also had the effect of allowing, condoning, perpetuating and augmenting
23 the irreparable harm done to me that was originally set in motion by Geraci, Berry and the Attorney
24 Defendants.
25

26 10. I believe the City as an entity is prejudiced against me and has, and is, seeking to
27 deprive me of my rights and property because of (i) my political activism for the legalization of
28

1 medical cannabis ("Political Activism") and/or (ii) as the result of political influence wielded by
2 Geraci.

3 11. Irrespective of motivation and whether the City is in some manner connected to
4 Geraci, which I believe to be true for the reasons explained below, but even I myself find hard to
5 believe (I understand how crazy it sounds), it does not change the facts – the City has taken unlawful
6 actions towards me.
7

8 12. For all intents and purposes, even assuming the City has not been unduly influenced
9 by Geraci and his political lobbyists, the effect to me by the City's actions would be no different as if
10 the City had actually purposefully conspired against me with Geraci to effectuate his unlawful
11 scheme against me to fraudulently deprive me of my Property.
12

13 13. These officials and their unconstitutional actions include, but are not limited to:

14 a. A criminal prosecutor who induced me into entering into a misdemeanor plea
15 agreement and did not tell me or my attorney representing me that as a consequence of entering that
16 misdemeanor plea agreement I would be forfeiting my real property at issue here (which at that point
17 in time was worth at least \$3,000,000). That City attorney then used that misdemeanor plea
18 agreement as the unreasonable basis of filing a lis pendens on my property, thereby unconstitutionally
19 seizing my property, and filing a Forfeiture Action seeking to acquire my property. The City attorney
20 initially requested \$100,000 to cease its unfounded Forfeiture Action, but when my then-counsel
21 produced evidence of my destitute financial status, the City agreed to only extort \$25,000 from me
22 (the short and long-term consequence of having to renegotiate the terms of my agreement with my
23 financial backers to meet the January 2, 2018 deadline to pay this unconstitutional \$25,000 obligation
24 or lose the Property that is worth millions of dollars is the single most financially catastrophic event
25 to happen in this litigation, other than Geraci's breach of our agreement and the actions he set in
26 motion leading to this Federal Complaint.)
27
28

1 b. Officials at Development Services that were processing the CUP application
2 submitted by Geraci violated my constitutional rights by denying me substantive and procedural due
3 process by failing to provide notice about a material change in how they were processing my
4 application; blatantly lying to me by telling me they could not accept a second CUP application on a
5 property (which they later said I could after my then-counsel sent them a demand letter and noted
6 there was no legal basis for their position and that he had personally filed a second CUP application
7 on another property for another landlord in a similar situation to mine);

9 c. Civil attorneys for the City in the State Action that (a) violated their ethical
10 duties by failing to inform the judges in the State Action about the Judge's mistakes/erroneous
11 assumptions and/or working in concert with the State Court Judges and other City officials against
12 me because of my Political Activism and (b) continuing to prosecute the State Action when they
13 knew it was meritless, thereby maliciously putting more undue financial and emotional pressure on
14 me by seeking money/fees and accusing me of having "unclean hands;" and

16 d. The State Court Judges presiding over the State Action whom I am forced to
17 conclude, given that their Orders simply cannot be reconciled with the evidence and arguments made
18 before them, are at the very least guilty of gross negligence by systemically denying me my
19 constitutional rights by assuming that because I am a crazy pro se and that no pleading, evidence and
20 oral argument I put forth over the course of months could actually contain enough legal and factual
21 basis so as to warrant the relief I requested.

23 14. Alternatively, the state court judges have been grossly negligent towards me either
24 because (i) they are unjustly dismissive of me because of my *pro se* and *blue-collar* status and simply
25 did not review my pleadings and disregarded my arguments at the oral hearings (ii) or they are not
26 impartial because, as one judge stated at the last hearing 2 weeks ago, he doubts my allegations of
27
28

1 ethical violations against counsel (including City attorneys) are true because he "knows them all
2 well."

3 15. In the absence of additional information, I am forced to conclude that the state court
4 judges, actually City officials, are acting in concert with other City Officials as part of an off-the-
5 books illegal stratagem to deprive property owners of their properties via Forfeiture Actions if they
6 are sympathetic to and/or share my Political Activism.

7
8 16. I am not the only individual who has had their property unconstitutionally seized as
9 part of a Forfeiture Action that has been used by the City to extort significant financial gains from
10 property owners that share my Political Activism. Should I prevail in the TRO, I may seek out other
11 victims and bring forth a class action lawsuit against the City for their unconstitutional practice of
12 seizing properties.

13
14 17. I pray *this Federal Court* will not be dismissive of me because of my *pro se* and blue-
15 collar status and my Political Activism. I am painfully cognizant that from a statistical standpoint,
16 given my *pro se* status and the allegations above, that I will be perceived immediately as an
17 uneducated, legally-ignorant and conspiracy nut. I understand that. It is a reasonable assumption to
18 make. I just pray that this Federal Court, before it finalizes its conclusion, that it genuinely reviews
19 the evidence submitted with my TRO application because although from statistical standpoint I am
20 probably a *pro se* conspiracy nut, there is the possibility that my case is that 1 in a 1,000,000 chance
21 that there really is a conspiracy against me driven by the fact that the Property can be worth at least
22 \$100,000,000 to sophisticated individuals, such as the defendants herein (excluding the City).

23
24 18. The truth is, I am a step away from literally losing my sanity, and I am aware of that.
25 But I view this Federal Court as my last recourse to protect and vindicate my rights as a citizen of this
26 great country and, if nothing else, that it may please explain to me its logic and evidence in issuing its
27 orders – something the State Courts have never done.
28

1 19. I know how crazy all this sounds even as I write this now. But I would ask the Court
2 to consider that I have owned this property since 1997 and have worked the better part of my life in
3 building my business's and my future at this location. For me to lose this property and what it
4 represents of my life's work is incredibly difficult to bear.

5 20. I have done everything in my power in the State Action, including selling off my
6 future to finance the professional services of attorneys and representing myself pro se, but it has not
7 availed me in the slightest. I have been before the State Judges over eight times and never once have
8 they sought to explain, despite my repeated, specific and emotional pleas that they do so, why my
9 case should not be immediately, summarily adjudicated my favor given undisputed evidence and
10 facts in the record. (See Exhibit 1 (My opposition to a motion to compel my deposition filed in the
11 State Action in which I described the totality of the circumstances to the state judge presiding, which
12 was ignored.)
13
14

15 21. Thus, I am forced to conclude "that state courts [a]re being used to harass and injure
16 individuals [such as myself], either because the state courts [a]re powerless to stop deprivations or
17 [a]re in league with those who [a]re bent upon abrogation of federally protected rights." Mitchum v.
18 Foster, 407 U.S. 225, 240, 92 S. Ct. 2151, 2161, 32 L. Ed. 2d 705 (1972).
19

20 22. I file this Complaint today before this Federal Court, pursuant to s 1983, because
21 "[t]he very purpose of s 1983 was to interpose the federal courts between the States and the people, as
22 guardians of the people's federal rights – to protect the people from unconstitutional action under
23 color of state law, '*whether that action be executive, legislative, or judicial*' Ex parte Virginia, 100
24 U.S., at 346, 25 L.Ed. 676." (*Id.*)
25

26 JURISDICTIONAL FACTS

27
28

1 23. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§§ 1331, 1343(3), 2283,
2 and 18 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for
3 all civil actions arising under the United States Constitution or the laws of the United States, as well
4 as civil actions to redress deprivation under color of state law, of any right immunity or privilege
5 secured by the United States Constitution. Further this court has subject matter jurisdiction pursuant
6 to the Federal Racketeering Act, 18 U.S.C. section 1651, et seq. I also request this Court exercise its
7 supplemental jurisdiction and adjudicate claims arising under the laws of the State of California
8 pursuant to 28 U.S.C. § 1367(a).

10 24. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under
11 color of state and/or local law of rights, privileges, immunities, liberty and property, secured to all
12 citizens by the First, Fourth and Fourteenth Amendments to the United States Constitution, without
13 due process of law. This action seeks injunctive and other extraordinary relief, monetary damages,
14 and such other relief as this Court may find proper.

16 25. Venue is proper in this Court because the events described below took place in this
17 judicial district and the real property at issue is located in this judicial district.

19 **PARTIES**

20 26. Cotton is, and at all times mentioned was, an individual residing within the County of
21 San Diego, California.

22 27. Cotton is, and at all times material to this action was, the sole record owner of the
23 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114
24 ("Property").
25
26
27
28

1 28. Cotton is the President of Inda-Gro that he founded in 2010 which is a manufacturer
2 of environmentally sustainable products, primarily horticulture lighting systems, that help enhance
3 crop production while conserving energy and water resources and which operates from the Property.

4 29. Cotton is the President of 151 Farms, a not-for-profit organization he founded in 2015
5 that is focused on providing ecologically sustainable horticultural practices for the food and medical
6 needs of urban communities which also operates from the Property.

7 30. Upon information and belief Defendant Larry Geraci ("Geraci") is, and at all times
8 mentioned was, an individual residing within the County of San Diego, California.

9 31. Upon information and belief, Defendant Rebecca Berry ("Berry") is, and at all times
10 mentioned was, an individual residing within the County of San Diego, California.

11 32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times
12 mentioned was, an individual residing within the County of San Diego, California.

13 33. Upon information and belief, Austin Legal Group ("ALG") is, and at all times
14 mentioned was, a company located within the County of San Diego, California.

15 34. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at
16 all times mentioned was, an individual residing within the County of San Diego, California.

17 35. Upon information and belief, Defendant Scott H. Toothacre ("Toothacre") is, and at
18 all times mentioned was, an individual residing within the County of San Diego, California.

19 36. Upon information and belief, Ferris & Britton ("F&B") is, and at all times mentioned
20 was, a company located within the County of San Diego, California.

21 37. Defendant City of San Diego ("City") is, and at all times mentioned was, a public
22 entity organized and existing under the laws of California.

23 38. Cotton does not know the true names and capacities of the defendants named DOES 1
24 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES
25
26
27
28

1 through 10 are in some way responsible for the events described in this Complaint and are liable to Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the true names and capacities of these parties have been ascertained.

39. At all times mentioned, defendants Geraci, Berry, Austin, ALG (the "Original Defendants") were each an agent, principal, representative, alter ego and/or employee of the others and each was at all times acting within the course and scope of said agency, representation and/or employment and with the permission of the others.

40. As detailed below, Weinstein, Toothacre & F&B are attorneys representing Geraci and Berry and joined the Original Defendants in their malfeasance when they became aware that the Geraci Lawsuit was vexatious, continued prosecuting the Geraci Lawsuit and took unlawful actions beyond the scope of their legal representation (F&B, from here on out, collectively, with the Original Defendants, the "Private Defendants").

41. As detailed below, the City, through various representatives, each acting either with purposeful intent, in concert with and/or with negligence, condoned, allowed, perpetuated and augmented the irreparable and unlawful actions taken by the Private Defendants with their own unconstitutional actions.

FACTUAL ALLEGATIONS

THE ORIGIN OF THIS MATTER - MY PROPERTY

42. In or around August 2016, Geraci first contacted Cotton to purchase the property and set up an MMCC. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

43. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property and, in good faith, took various steps in

1 contemplation of finalizing their negotiations (including the execution of documents required for the
2 CUP application). During these negotiations, Geraci represented to Cotton, among other things, that:

3 a. Geraci was a trustworthy individual because Geraci operated in a fiduciary
4 capacity for many high net worth individuals and businesses as an Enrolled Agent for the IRS
5 and the owner-manager of Tax and Financial Center, Inc., an accounting and financial
6 advisory business;

7
8 b. Geraci, through his due diligence, had uncovered a critical zoning issue that
9 would prevent the Property from being issued a CUP to operate a MMCC unless Geraci first
10 lobbied with the City to have the zoning issue resolved (the "Critical Zoning Issue");

11 c. Geraci, through his personal, political and professional relationships, was in a
12 unique position to lobby and influence key City political figures to have the Critical Zoning
13 Issue favorably resolved and obtain approval of the CUP application once submitted;

14 d. Geraci was qualified to successfully operate a MMCC because he owned and
15 operated several other marijuana dispensaries in the San Diego County area through his
16 employee Berry and other agents; and

17
18 e. That through his Tax and Financial Center, Inc. company he knew how to "get
19 around" the IRS regulations and minimize tax liability which is something he did for himself
20 and other owners of cannabis dispensaries.

21
22 44. On November 2, 2016, Cotton and Geraci met and came to an oral agreement for the
23 sale of Cotton's Property to Geraci (the "November Agreement").

24 45. The November Agreement had a condition precedent for closing, which was the
25 successful issuance of a CUP by the City.

26
27 46. The November Agreement consisted of, among other things, Geraci promising to
28 provide the following consideration: (i) a \$50,000 non-refundable deposit for Cotton to keep if the

1 CUP was not issued, (ii) a total purchase price of \$800,000 if the CUP was issued; and a 10% equity
2 stake in the MMCC with a guarantee minimum monthly equity distribution of \$10,000.

3 47. At the November 2, 2016 meeting, after the parties reached the November
4 Agreement, Geraci (i) provided Cotton with \$10,000 in cash to be applied towards the total non-
5 refundable deposit of \$50,000 and had Cotton execute a document to record his receipt of the
6 \$10,000 (the "Receipt") and (ii) promised to have his attorney, Gina Austin, speedily draft and
7 provide final, written purchase agreements for the Property that memorialized all of the terms that
8 made up the November Agreement.
9

10 48. The parties agreed to effectuate the November Agreement via two written
11 agreements, one a "Purchase Agreement" for the sale of the Property and a second "Side Agreement"
12 that contained, among other things, Cotton's equity percentage, terms for his continued operations of
13 his Inda-Gro business and 151 Farms operations at the Property until the beginning of construction at
14 the Property of the MMCC, and the guaranteed minimum monthly payments of \$10,000 (collectively,
15 the ("Final Agreement").
16

17 49. On that same day, November 2, 2016, after the parties met, reached the November
18 Agreement and separated, the following email chain took place:

19 a. At 3:11 PM, Geraci emailed a scanned copy of the Receipt to Cotton.

20 b. At 6:55 PM, Cotton replied to Geraci stating the following:

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

25 c. At 9:13 PM, Geraci replied with the following:

26 "*No no problem at all*"
27
28

1 50. In other words, on the same day the Receipt was executed and I received it from
2 Geraci, I realized it could be misconstrued and that it was missing material terms (e.g., my 10%
3 equity stake). Because I was concerned, I emailed him specifically, so that he would confirm that the
4 Receipt was not a final agreement and he confirmed it. That is why I refer to this email as the
5 "**Confirmation Email.**"

6 51. Thereafter, over the course of almost five months, the parties exchanged numerous
7 emails, texts and calls regarding the Critical Zoning Issue, the Final Agreements and comments to
8 various drafts of the Final Agreement that were drafted by Gina Austin.
9

10 52. On March 7, 2017, Geraci emailed a draft Side Agreement. The cover email states:

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

14 53. The attached draft of the Side Agreement to the March 7, 2017 email from Geraci
15 provides, among other things, the following:

16 a. "WHEREAS, the Seller and Buyer have entered into a Purchase Agreement[,]
17 dated as of approximate even date herewith, pursuant to which the Seller shall sell to
18 Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal
19 Blvd., San Diego, California 92114[.]"

20 b. Section 1.2: "Buyer hereby agrees to pay to Seller 10% of the net revenues of
21 Buyer's Business [...] Buyer hereby guarantees a profits payment of not less than
22 \$5,000 per month for the first three months [...] and \$10,000 a month for each month
23 thereafter[.]"

24 c. Section 2.12, which provides for notices, requires a copy of all notices sent to
25 Buyer to be sent to: "Austin Legal Group, APC, 3990 Old Town Ave, A-112, San
26 Diego, CA 92110."

27 54. The draft was provided in a Word version and attached to the email from Geraci, the
28 "Details" information of that Word document states that the "Authors" is "Gina Austin" and that the
"Content created" was done on "3/6/2017 3:48 PM." (the "**Meta-Data Evidence**"; a true and correct
copy of a screenshot of the Meta-Data Evidence is attached hereto as **Exhibit 2**).

1 55. I then found out that Geraci had been lying to me about the Critical Zoning Issue and
2 had submitted a CUP application with the City BEFORE we even finalized the November
3 Agreement.

4 56. Thus, Geraci breached the November Agreement by, *inter alia*, (i) filing the CUP
5 application with the City without first paying Cotton the \$40,000 balance of the non-refundable
6 deposit; not paying Cotton the \$40,000 balance; and (ii) failing to provide the Final Agreement as
7 promised.
8

9 57. I gave Respondent Geraci numerous opportunities to live up to his end of the bargain.
10 I was forced to, I had put off other investors and was relying on the \$40,000 to make payroll and
11 purchase materials for a new line of lights I was developing for my company Inda-Gro. I also, if I had
12 to, would have sold part of my 10% equity stake in the MMCC once it was approved.
13

14 58. However, Geraci made it clear via his email communications that he was going to
15 attempt to deprive me of the benefits of the bargain I bargained for when he refused to confirm via
16 writing that he was going to honor the November Agreement and made a statement that he had his
17 "attorneys working on it."
18

19 59. On March 21, 2017, after Geraci refused to confirm in writing that he was going to
20 honor the November Agreement, I emailed him: "To be clear, as of now, you have no interest in my
21 property, contingent or otherwise." Having anticipated his breach and being in desperate need of
22 money, That same day, I entered into the Written Real Estate Purchase Agreement with a third-party.
23 That deal was brokered by my Investor.

24 60. The next day, Weinstein emailed me a copy of the Geraci Lawsuit and filed a *Lis*
25 *Pendens* on my Property. The Geraci Lawsuit is premised solely and exclusively on the allegation
26 that the Receipt is the Final Agreement. As stated in Geraci's own words in a declaration submitted
27 in State Action under penalty of perjury: "*On November 2, 2016, Mr. Cotton and I executed a*
28

1 *written purchase and sale agreement for my purchase of the Property from him on the terms and*
2 *conditions stated in the agreement[.]'*

3 61. Thus, putting aside an overwhelming amount of additional and undisputed evidence,
4 Geraci's own written admission in the Confirmation Email explicitly confirming the Receipt is not
5 the Final Purchase Agreements is completely damning and dispositive. It contradicts the only basis of
6 his complaint in the State Action and merits summary adjudication in my favor on the Breach of
7 Contract cause of action and related claims (hereinafter, the Breach of Contract cause of action
8 premised on the preceding facts is referred to as the "Original Issue").

10 62. The only argument that has been put forth in the State Action that at first glance
11 appears to have merit is Geraci's argument that the Confirmation Email should be prevented from
12 having legal effect pursuant to the Statute of Frauds (SOF) and the Parol Evidence Rule (PER). That
13 argument was the basis of Geraci's demurrer to my cross-complaint in the State Action, which the
14 State Court denied.

16 63. Thus, the FACTS prove Geraci is lying and that his Complaint is meritless. And the
17 LAW is on my side as it will not prevent the admission of the Confirmation Email. With neither the
18 facts nor the law supporting Geraci's lawsuits, why have the state court judges allowed both legal
19 actions to continue to my great and irreparable physical, emotional, psychological and financial
20 detriment?
21

22 64. The Receipt is the SOLE and ONLY basis of Geraci's claim to the Property in the
23 Civil Action and the CUP application in the City Action. Gina Austin is defending Geraci and Berry
24 in the City Action which is premised on the alleged fact that the Receipt is the Final Agreement for
25 my Property.
26

27 65. The Receipt was executed in November of 2016.
28

1 66. Geraci's motivation for his unlawful behavior here is deplorable, but it is
2 understandable – Greed. What I cannot understand, nor can the attorneys I have spoken with about
3 these matters, is how or what Austin was thinking when she decided to represent Geraci and Berry in
4 the City Action and, on numerous occasions, work with Weinstein and Toothacre in the Geraci
5 Action? The record was already clear by then, and unless she wants to perjure herself or allege that I
6 somehow can get Google to falsify its records, there is evidence that is beyond dispute that she is
7 LYING to the State Court perpetuating a meritless case based solely on one single argument she
8 knows is false.

10 67. She is representing to the State Court that the Receipt is the final agreement for my
11 property, but she drafted several versions of the purchase and the side agreement for my property as
12 late as March of 2017? This appears to me to be criminal. And really, really dumb.

14 68. She is supposedly incredibly smart, she was just named as one of the Top Cannabis
15 Attorneys in San Diego. This is actually the basis of the fear of my Investor, a former attorney
16 himself, what kind of influence does Geraci have that he can force and coerce Austin to commit a
17 crime, to be able to get F&B to bring forth a vexatious lawsuit and to continue to maliciously
18 prosecute a case with no probable cause? Why have the judges not addressed the evidence?

20 69. For me it is impossible to ascertain the full extent of Geraci's influence, but it is
21 significant and scary. It is even enough to force a convict out on parole to risk going back to jail - on
22 January 17, 2018 while attempting to find a paralegal to assist me with filing and proof reading my
23 pleadings in the State Action, my investor, a former federal judicial law clerk, called several
24 paralegals to see if they could help me on short notice because my pleadings were not professional.
25 He invited a paralegal named Shawn Miller of SJBK Consulting over to his home to interview him
26 and give him the background. After he gave a description of the case and the Complaint and my
27 Cross-Complaint, Shawn stated that he knew Geraci and his business associates.

1 70. Because Shawn knew Geraci, my investor told him that matters would not work out
2 and asked him not to mention him to Geraci and/or his associates. My investor specifically told
3 Shawn that as a paralegal, he was ethically and professionally bound to NOT disclose the
4 conversation and its contents.

5 71. Not even two hours later, at around 10:00 PM at night, Shawn called my investor and
6 told him that it would be in his "best interest" for him to use his influence on me to get me to settle
7 with Geraci. This was the last straw for my investor because he does not understand the actions taken
8 by the City, the attorneys and the judges in this action. Being threatened at his home late at night by a
9 convict out on parole who was clearly aware that by violating his ethical and professional duties he
10 would risk going back to jail, reflected to him, that Geraci, putting aside my own belief that he is a
11 thuggish drug-lord at the head of a criminal enterprise, was someone that had a great deal of
12 influence over criminals and was someone he did not want anything to do with.

13 72. My investor has been a nervous wreck knowing that Geraci and his associates,
14 including a former special forces green beret (discussed below) know where he lives.

15 73. With all these seemingly unrelated people and events all coming together to protect,
16 intimidate for, push unfounded legal claims for, and do Geraci's bidding has been disturbing and
17 created nothing but turmoil in my life. Even my family, friends, businessmen and investors are
18 concerned that matters have escalated to a degree that Geraci, in seeking to cover-up everything that
19 has transpired here, may take drastic actions against them.

20
21
22
23 **SUMMARY OF MATERIAL FACTS REGARDING WEINSTEIN, TOOTHACRE AND F&B**

24 74. Initially, given the simple nature of the Original Issue, believing that I would be able
25 to represent myself *pro se* in the Geraci Lawsuit. This was a foolish assumption as it turned out.
26 Without wealth, justice is difficult to access. I prepared and filed an Answer to the Geraci Lawsuit
27 and filed a Cross-Complaint. My Answer and Cross-Complaint were submitted in one document and,
28

1 therefore, denied by the State Court for failing to comply with procedural requirements. Thus, I was
2 forced to realize, notwithstanding the simplicity of the Original Issue, that I would be unable to
3 efficiently represent myself in a legal proceeding and entered into an agreement with a third-party
4 (the "Investor") to finance my representation in the Geraci Lawsuit. (The Investor is also the
5 individual who brokered the Real Estate Written Purchase Agreement between Mr. Martin and
6 myself.)

7
8 75. In exchange for my Investor financing the Geraci Litigation, I exchanged a portion of
9 the proceeds that I would receive from the Real Estate Purchase Agreement.

10 76. Investor did research, interviewed and coordinated my retaining the services of Mr.
11 David Damien of Finch, Thornton and Baird ("FTB"). Investor recommended FTB for me to
12 interview and choose as counsel because Mr. Damien had previously worked on a very similar
13 matter, representing a property owner against an investor with whom he had an agreement to develop
14 an MMCC, but with which he had a falling out before the CUP was issued. Mr. Damien was able to
15 prevail in that lawsuit, a Writ of Mandate action against the City, and have the City transfer the CUP
16 application filed by and paid for by the investor in that matter to the property owner (see
17 *Engerbretsen v. City of San Diego*, 37-2015-00017734-CU-WM-CTL.) Thus, he appeared to be a
18 perfect fit to help represent me against Geraci.

19
20
21 77. Investor negotiated with Mr. Damien for FTB to fully represent me in various legal
22 matters without limitation and to do so via a financing arrangement of \$10,000 a month. However,
23 Mr. Damien did not actually want to do work in excess of \$10,000 a month. Consequently, he was
24 not prepared for several hearings and proved grossly incompetent.[6]

25
26 78. Mr. Damien was professionally negligent on December 7, 2017 when he represented
27 me before the state court judge on an application for a TRO. Summarily, he failed in oral argument to
28 raise with the state court judge the Confirmation Email – the single most powerful and dispositive

1 piece of evidence in this case. After he was berated by my Investor right outside the courtroom for his
2 negligence, he withdrew as my counsel before even speaking with me via email.

3 79. The State Court Judge's order denying my TRO states "The Court, after hearing oral
4 argument and taking into consideration papers filed, denies the request for Temporary Restraining
5 Order and provides counsel with a hearing for the Preliminary Injunction." Based on the facts above,
6 and as can be confirmed with the opposition to the TRO motion filed herewith, there is no factual or
7 legal basis for the Court's decision.
8

9 80. I then filed *pro se* a motion for reconsideration regarding the TRO motion in which I
10 explicitly stated that Damien had been negligent by failing to raise the Confirmation Email with the
11 state court judge. That motion was heard on December 12, 2017.
12

13 81. On December 12, 2017, five days after the denial of my TRO application. I showed
14 up with family, friends, and supporters, confident that I would have "my day in court" and that the
15 State Court judge would realize Damien's negligence and issue the TRO.

16 82. Instead, I was not even given the opportunity to speak a single word. Before I could
17 say anything, the State Court judge told me he was denying my motion for reconsideration and left
18 the bench.
19

20 83. The minute order states: "The Court denies without prejudice the ex parte application.
21 Defendant is directed to go by way of noticed motion." If I am correct in assuming that, even putting
22 aside additional evidence, the Confirmation Email by itself dispositively resolves the case in my
23 favor, then what is the basis of the State Court decision to deny my motion for reconsideration if he
24 had reviewed my motion and understood that Damien had been negligent by failing to raise the
25 Confirmation Email? And why was I not allowed to speak a single word? And how does allowing me
26 to file by way of "noticed motion" address the exigency that was the basis of my TRO? And how
27
28

1 does it address the professional negligence of my counsel at the TRO hearing on December 7, 2017?

2 It does not.

3 84. December 12, 2017 is, and always will be, the worst day of my life. I was in so much
4 shock from the denial of my motion for reconsideration and the way in which it happened, that I
5 suffered a Transient Ischemic Attack, a form of stroke. I had to go to the Emergency Room that day
6 after the state court judge denied my motion without even letting me speak a single word.
7

8 85. The next day my financial investor told me he was going to cease funding my personal
9 needs and the Geraci Litigation because he needed to "cut his losses." I went to his home uninvited. I
10 again pleaded with him to continue his support and he refused. I could not control myself and I ended
11 up physically assaulting him.
12

13 86. He was going to call the police and have me arrested. I will forever be grateful that he
14 did not and instead called a medical doctor who found me to be a danger to myself and others. (See
15 exhibit 1.)

16 87. After the denial of my TRO application, I made numerous calls to the California State
17 Bar and their Ethic Hotline regarding Damien's negligence at the TRO Motion hearing. I was
18 directed to various Ethics opinions regarding not just his actions, but those of the other attorneys who
19 were present who, because of the situation violated their ethical duties by failing to let the State Court
20 know that it was ruling on a motion when it had not taken into account the single most powerful piece
21 of evidence – the Confirmation Email.
22

23 88. The most relevant items that I was pointed to are the following:

24 a. "[A]n attorney has a duty not only to tell the truth in the first place, but a duty
25 to 'aid the court in avoiding error and in determining the cause in accordance with justice
26 and the established rules of practice.' (51 Cal.App. at p. 271, italics added.)"

27 b. "A lawyer acts unethically where she assists in the commission of a fraud by
28 implying facts and circumstances that are not true in a context likely to be misleading." [10]

1
2 89. When Weinstein first emailed me the complaint on March 22, 2017 from the state
3 court action, I replied and noted the facts above, including the Confirmation Email. Thus, Weinstein
4 knew from the very beginning that he was filing and prosecuting a vexatious lawsuit. Unless he wants
5 to argue that he assumed the SOF and the PER would prevent the admission of the Confirmation
6 Email AND he was not aware of the concept of promissory estoppel which would apply if the SOF
7 and PER did apply in the first instance to prevent the admission of the Confirmation Email. (Or likely
8 any of the other common law exceptions to the PER per the Rutter Guide such as fraud, formation
9 defect, condition precedent, collateral agreement, ambiguity or subsequent agreements most of which
10 would swallow up the rule thereby leaving him without a defense. Assuming of course that anyone
11 was actually paying attention or being unduly influenced by Geraci via his political lobbyist. In fact,
12 if I had the money I would hire a private investigator to see what ties Geraci has to my former
13 attorneys at FTB that helped them forget basic first year law school contract law concepts such as
14 promissory estoppel). In fact, an associate at FTB, when partner David Damien was not in the room,
15 even let slip that some of Geraci's clients were also clients of their law firm, FTB. Should FTB not
16 have to disclose that relationship as part of my representation because it could represent a conflict of
17 interest? They never did, aside from the associate, Mr. Witt, who did so in small conversation when
18 the partner Damien was not in the room.)
19
20
21

22 90. Even assuming the above is the case, that Weinstein was not aware of the concept of
23 promissory estoppel, no later than when the State Court denied Geraci's demurrer based on the SOF
24 and the PER, Weinstein knew that the case was at that point vexatious and yet he kept prosecuting it.
25

26 91. At the December 7, 2017 TRO hearing, Weinstein obviously knew that Damien was
27 negligent in not raising, among the other arguments, the Confirmation Email in front of the State
28 Court judge. I believe that given the language provided by the California State Bar, that he violated

1 his ethical obligations to the Court and, vicariously to me, by allowing the State Court judge to rule
2 on the TRO motion without raising with him the fact that he was doing so without having taken into
3 account material and dispositive evidence.

4 92. The obligations of an attorney must stop short of taking advantage of situations that
5 lead to a miscarriage of justice, especially when he knows that I am facing severe financial and
6 emotional distress. This appears to me to be an Abuse of Process, and this is in the best case scenario
7 in which it is can be assumed that he is not vexatiously continuing to prosecute this case when he
8 knows that there is no factual or legal basis for it.

10 93. I filed Notices of Appeal from the denial of my TRO application and Motion for
11 Reconsideration. I hired counsel, Mr. Jacob Austin, a criminal defense attorney, who graciously
12 agreed to help me on my appeals on a contingent basis (and with a guarantee of ultimately being paid
13 by my investor if I did not prevail on my Appeal).

15 94. I was working on the draft of my Appeal, when Weinstein, on January 8, 2018, filed
16 two motions to compel my deposition in the State Action and a large amount of discovery requests.

17 95. Against the advice of my counsel and my investor, I decided to take advantage of the
18 opportunity to oppose the Motion to Compel and highlight to the judge the Confirmation Email and
19 the actions by counsel as described above. I filed my Opposition and it is attached here as Exhibit 1.
20

21 96. The Motions to Compel were granted and the various requests I set forth in my
22 opposition were denied.

23 97. The order issued by the judge granting the motion to compel and denying the relief I
24 requested, is predicated on the erroneous belief that there is "disputed" evidence in the record. Up
25 until that point in time I believed that the state court judge decision was due to Damien's negligence,
26 I now believe that there are other nefarious factors at play and justice simply cannot be had in San
27 Diego state court.
28

1 98. That same day, January 25, 2018, I emailed Weinstein specifically accusing him of
2 violating his ethical obligations as he has an "affirmative duty" to inform the State Court judge about
3 his erroneous assumption regarding the fact that the Confirmation Email was not disputed. He replied
4 with a perfectly crafted legal response, by stating that he "had not made any misrepresentations to the
5 courts about facts or the law," which is completely accurate. My accusation was that he was violating
6 an affirmative duty to act, not that he had taken an act that was a misrepresentation.
7

8 ***SUMMARY OF ADDITIONAL MATERIAL FACTS REGARDING THE CITY***

9 The City Prosecutor – Mark Skeels
10

11 99. In July of 2015, I leased a portion of my building to a tenant who managed a non-
12 profit corporation, "Pure Meds," to run a cannabis dispensary based on his representations that he
13 was fully compliant with the laws. I did not know then what I know now, that leasing my property to
14 Pure Meds without the proper City permit would be unlawful.
15

16 100. Although Pure Meds operated from my building, it was completely segregated with
17 separate entrances and addresses.

18 101. On April 6, 2016, the City shut down Pure Meds and brought charges against Pure
19 Meds and myself almost exactly one year later. On April 5, 2017, realizing and acknowledging my
20 error, I pled guilty to one misdemeanor charge of a Health and Safety Code section HS 11366.5 (a)
21 violation.
22

23 102. My plea agreement states that "*Mr. Cotton retains all legal rights pursuant to prop*
24 *215.*" The judge asked me during the hearing why that language was added. I explained that I run 151
25 Farms at my Property and that I cultivate medical cannabis there in compliance with prop 215.
26 Because I was giving up my 4th amendment rights in the plea agreement, I wanted to be sure that I
27
28

1 was protected for my cultivation at the Property pursuant to Proposition 215. In other words, my Plea
2 Agreement and my discussion was predicated on my keeping my Property.

3 103. Immediately upon entering into the Plea Agreement, the City filed a Petition for
4 Forfeiture of Property based on the Plea Agreement I entered into and filed a Lis Pendens putting yet
5 another cloud on my title.

6 104. Deputy City Attorney Skeels did not explain to me, nor my counsel, that he intended
7 to seek the forfeiture of my property or that it was even a possibility. In fact, he did the opposite, he
8 made it seem as if he was giving me a sweetheart deal with a small fine and informal probation.

9 105. My criminal defense attorney who defended me in that action submitted a sworn
10 declaration stating that he was not aware and was not made aware by Skeels that the forfeiture of my
11 property was a possibility. Skeels did not care.

12 106. In other words, Skeels fraudulently induced me to enter into a plea agreement without
13 telling me the consequences that he was actually planning to pursue. This appears to me to be a
14 violation of my constitutional right to be made aware of the consequences to pleading guilty to a
15 criminal charge. Based on representations of Skeels, I didn't fully understand the charges or the
16 effects of admitting guilt. I would not have entered into a misdemeanor plea agreement if the
17 consequence of that action was to forfeit my property for which at that point in time I was still going
18 to receive in excess of \$3,000,000. It is ludicrous to believe otherwise.

19 107. In fact, this unlawful seizure is, I believe, part of an unconditional strategy by Skeels
20 and the City to deprive individuals of their property. This belief is bolstered by the fact that I have
21 been told on numerous occasions by numerous criminal attorneys as I have explained these facts that
22 it is incredibly rare for prosecutors to talk to defense counsel in the presence of the accused, much
23 less directly communicate with a defendant.

1 108. Skeels told me he was giving me a “sweetheart” deal. I feel that if it wasn’t a pressure
2 tactic than it was essentially a “confidence game” and a complete sham designed to gain undeserved
3 trust and pretend to be helpful while concealing his true intent of pursuing Asset Forfeiture. Under
4 information and belief, I feel that this is just one example of what appears to be endemic, systemic
5 maneuvering to confiscate the properties of as many defendants as possible.

6 109. This seemingly mild misdemeanor, my leasing out my property to third-parties over
7 who I had no control, with its \$239 fine, ended up in an unimaginable \$25,000 extortion that also
8 forced me to renegotiate with numerous parties to get it at a time when I was completely destitute
9 because of this legal action brought forth by Geraci and his crew of criminals.

10 110. Once I hired FTB, Damien reached out to Skeels and according to Damien, even
11 Skeels was not aware of the fact that there would be a forfeiture action. While that would be
12 believable under some circumstances, the Petition for Forfeiture of Property & Lis Pendens were
13 filed the next day so it is impossible to believe him.

14 111. Ultimately, facing numerous lawsuits and needing to prioritize my time and limited
15 financing, I settled and agreed to pay the City \$25,000. For the record, I am not here in this legal
16 action seeking to have that Plea Agreement nullified. Per the Forfeiture Settlement Agreement that
17 Skeels and Damien convinced me into entering, if I fight the Stipulation for Entry of Judgement, then
18 I lose the Property. I am stating these series of events so that it can be taken into account with the
19 other actions by the City via Development Services and the Officers of the Court that together make
20 it clear that there is a pattern of discriminatory and unconstitutional behavior towards me by the City.
21 Whether these actions are because of my Political Activism, Geraci’s influence or a combination of
22 both, will be proven through discovery and trial. (As a side note in regards to Skeels: I would hope
23 that Judge Cano may take it upon herself to sanction Skeels for his manipulation of the Plea
24 Agreement that she approved and which clearly did not contemplate the Forfeiture Action that he
25
26
27
28

1 brought under it as she and I had explicitly discussed the continuation of my cultivation practices on
2 the Property, the basis of the Prop 215 language added into the Plea Agreement. Who knows how
3 many more victims Skeels has extorted and how many orders by judges he has manipulated?)

4
5 The City's Development Services Department

6 112. On March 21, 2017, when I terminated my agreement with Geraci and sold the
7 property to a third-party, I also emailed the Development Project Manager responsible for the CUP
8 application on my Property. I stated:

9
10 "the potential buyer, Larry Geraci (cc'ed herein), and I have failed to finalize the purchase of
11 my property. As of today, there are no third-parties that have any direct, indirect or contingent
12 interests in my property. The application currently pending on my property should be denied
13 because the applicants have no legal access to my property."

14 113. The City refused to cease processing the CUP application as the application was
15 submitted by Geraci's employee, Berry.

16 114. However, on May 19, 2017, after numerous emails and calls with various individuals
17 at Development Services, the Project Manager provided a letter addressed to Abhay Schweitzer,
18 Geraci's architect who is in control of processing the CUP application with City, stating, in relevant
19 part:

20 "City staff has been informed that the project site has been sold. In order to continue the
21 processing of your application, with your project resubmittal, please provide a new Grant
22 Deed, updated Ownership Disclosure Statement, and a change of Financial Responsible Party
23 Form if the Financial Responsible Party has also changed."

24 115. Thus, as of May 19, 2017, I proceeded under the assumption that I was not at risk of
25 losing the CUP process because the CUP process was on hold until, *inter alia*, I executed a Grant
26 Deed. **If a CUP application is submitted and it is denied, then another CUP application cannot**
27 **be resubmitted for a year on the same Property.**
28

1 116. Sometime after May 19, 2017, I contacted Development Services and requested that I
2 be allowed to submit a second CUP application. Development Services denied my request and stated
3 that they could not accept a second CUP application on the same property. This is a blatant lie.
4 Damien had, in the Engerbretsen matter, submitted a second CUP application on behalf of his client
5 with the City.

6
7 117. On September 22, 2017, my then-counsel Damien wrote to Development Services
8 noting their refusal to accept a second CUP application and that such "refusal is not supported by any
9 provision of the Municipal Code."

10 118. The City replied on September 29, 2017, by stating, inter alia, that I could submit a
11 second CUP application, but then also stated the following:

12
13 "As you've acknowledged in your letter, DSD is currently processing an application,
14 submitted by Ms. Rebecca Berry [...] Please be advised that the City is only able to make a
15 decision on one of these applications; the first project deemed ready for a decision by the
16 Hearing Officer will be scheduled for a public hearing. Following any final decision on one of
the CUP applications submitted [...], the CUP application still in process would be obsolete
and would need to be withdrawn."

17 119. On October 30, 2017, through my then-counsel Damien, I filed a Motion for Writ of
18 Mandate directing the City to transfer the CUP application to me. It was not until I reviewed the
19 Declaration of Abhay Schweitzer in Support of Geraci's opposition to my Motion for a Writ of
20 Mandate that I came to find out that the City had, in complete contradiction of the letter provided on
21 May 19, 2017, continued to process the Geraci CUP application on MY Property without the
22 executed Grant Deed.

23
24 120. The City never informed me of this or provided notice of any kind. Had I known, I
25 would have taken alternative steps to secure my rights to the CUP process. Per Schweitzer's
26 declaration, everything was going great and he anticipates the CUP being approved in March of 2018.
27
28

128. The City is accusing me of wrongdoing when it knows that I am not in the wrong. The only wrongs that the City could hold against me are the leasing of my Property to a non-profit that operated an unlicensed dispensary. I recognize I was wrong in not seeking out confirmation of the dispensary's legality and I pled guilty, for which I was extorted \$25,000.

129. The only other potential reason is that the City, when taking into account all of the other unfounded and unconstitutional actions described herein, is that the City is systemically discriminating against me whenever it can because of my Political Activism and/or in connection Geraci as a result of his influence.

The State Court Judges

130. At the oral hearing held on January 25, 2018 on Geraci's motions to compel, the State Court judge started the hearing by stating that he does not believe that counsel against whom I made my allegations would engage in the actions I described. He specifically stated that he has known them all for a long period of time.

131. As I view it, he was telling me he has some form of relationship with attorneys and that he does not believe they would engage in unethical actions. OK, I understand that. I could just be a crazy pro per, but why did he not review the evidence submitted and make a judgment that takes that evidence into account? I literally begged him in my opposition, and for that matter, in my Motion for Reconsideration, that he please provide the reasoning for why the Confirmation Email does not dispositively address my breach of contract cause of action.

132. The Order he issued granting Weinstein's Motions to Compel and denying my requests in my Opposition states the following: "*Disputed* evidence exists suggesting that Cotton was

1 not the only person who possess the right to use the subject property.” THERE IS NO DISPUTED
2 EVIDENCE. The only evidence in the record ever put forth by Geraci for his claim to my Property is
3 his allegation that the Receipt is the final purchase agreement for my property, a lie which is blatantly
4 exposed by his admission in the Confirmation Email. That, again, is NOT DISPUTED.

5 133. To clearly highlight this issue: The Confirmation Email was the subject of a demurrer
6 that the State Court judge ruled on, it was objected to on SOF and PER grounds, not its authenticity
7 that has never been challenged, disputed or denied since November 2, 2016!

8 134. I was preparing yet another Motion for Reconsideration regarding his order granting
9 the Motions to Compel, exhausting my limited resources attempting to make all kinds of arguments
10 when I came to a realization: even if he did turn around and issue some kind of order favorable to me,
11 all the evidence proves that he is at best, grossly negligent, and, at worst, conspiring against me
12 because of my Political Activism.
13
14

15 **THE FILING OF THIS FEDERAL COMPLAINT – THREATS**
16

17 135. On February 3, 2018, two individuals visited me. (I am not naming them because one
18 of the individuals is a former special forces operative for the US military and, for the reasons
19 described below, an agent of Geraci.) These two individuals came to my Property and during the
20 course of that conversation contradicted themselves by stating first that they had nothing to do with
21 Geraci and that they would buy the Property/CUP and assured me a long term job.
22

23 136. When I told them that Mr. Martin was paying a total purchase price of \$2,500,000,
24 they told me they would pay significantly *more* than \$2,500,000 and that it would also be beneficial
25 for me as I would be able to “end” the litigation with Geraci.
26
27
28

1 137. I then explained to them that I was already contractually and legally obligated to
2 pursue the litigation action against Geraci, prevail, and then transfer the Property and the CUP
3 application to Mr. Martin.

4 138. They looked at each other and then contradicted themselves. They told me that Geraci
5 was "powerful" and had "deep ties and influence" with the "City" and that it would not go well for
6 me if I did not agree to settle the action with Geraci. These individuals are NOT simple, street level
7 individuals. One of them is a high-net worth individual that recently sponsored a large art gala at San
8 Diego State (the "Sponsor").

9 139. The other is a former special forces operative for the US Military (the "Operative").
10 The Operative told me that because of my Plea Agreement, Geraci could use his influence with the
11 City to have the San Diego Police Department raid my Property at any time and have me arrested. I
12 told him that all the cannabis on my Property was compliant with Proposition 215 and my rights to
13 cultivate as I had specifically discussed with the judge who accepted the plea agreement. I showed it
14 to them, I have a large photocopy of it on my wall at the Property, and it was clear they were
15 expecting me to be more intimidated.

16 140. Yesterday, **February 8, 2018**, when I was wrapping up this Federal Complaint and all
17 the required documents for the filing of my TRO submitted concurrently with herewith, I sent an
18 email notice **ONLY** to counsel in the State Action (the "Federal Notice Email").

19 141. NO ONE ELSE KNEW THAT WAS PLANNING ON FILING IN FEDERAL
20 COURT WITH THESE CAUSES OF ACTION YESTERDAY. NOT EVEN MY OWN FAMILY,
21 FRIENDS, INVESTORS, SUPPORTERS, PARALEGALS AND COUNSEL.

22 142. I sent the Federal Notice Email at **3:01 PM**.

23 143. At **3:36 PM**, not even an hour later, the Operative called me and told me *emphatically*
24 that he no longer has anything to do with the Sponsor, Geraci or anything related to me. He was
25

1 aware that I was immediately filing in Federal Court. He asked that I not name him or involve him
2 in this Federal lawsuit. Because he is ex-special forces, I have no desire to do so. Should the Sponsor,
3 Geraci, and whichever attorney informed him deny this allegation, then they can name him and be
4 responsible for the consequences of doing so. I note I have the phone records to prove this and am
5 creating copies that will be kept separately by third-parties.

6
7 144. How could Sponsor and Operative claim to not know Geraci? Why is Operative
8 calling me to tell me that he has nothing to do with Geraci or the actions that have transpired here? I
9 ONLY told counsel in the State Action. Clearly, Sponsor and Operative are working with Austin,
10 Weinstein, Toothacre and Geraci and they were sent to coerce and/or intimidate me at the behest of
11 Geraci in an attempt to force me to settle this lawsuit when they came to visit me on February 8,
12 2018.

13 14 CONCLUSION

15 145. I was researching the last Order by the state judge that denied my requested relief
16 because, he decrees, that I have not Exhausted my Administrative Remedies. In the Rutter guide it
17 states that: "The failure to pursue administrative remedies does not bar judicial relief where the
18 administrative remedy is *inadequate*, or where it would be *futile to pursue* the remedy" and
19 "administrative remedies also inadequate when irreparable harm would result by requiring exhaustion
20 before seek judicial relief" [Rutter Guide 1:906.26.]

21
22 146. Additionally, it stated in that subsection that: "Generally, a plaintiff is not required to
23 exhaust state administrative or judicial remedies before suing under federal civil rights statutes."
24 [Rutter Guide 1:906.29]

25
26 147. This reference led to me researching Section 1983 claims that I already knew allowed
27 federal action, but I was not aware could stop State Court actions while it adjudicated the Federal
28 Questions. That Rutter Guide section has a link to Mitchum v. Foster.

1 148. The United States Supreme Court held in Mitchum v. Foster that Section 1983 claims
2 in Federal Court are an exception to the Anti-Injunction Act that would allow a Federal Court to stay
3 a state court action. In reaching this decision, the United States Supreme Court noted the following
4 from the legislative debates leading to the passing of Section 1983:

5
6 “Senator Osborn: ‘If the State courts had proven themselves competent to suppress the local
7 disorders, or to maintain law and order, we should not have been called upon to legislate[.]’

8 Representative Perry concluded: ‘Sheriffs, having eyes to see, see not; judges, having ears to
9 hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they
10 might be accomplices.... (A)ll the apparatus and machinery of civil government, all the
11 processes of justice, skulk away as if government and justice were crimes and feared
12 detection. Among the most dangerous things an injured party can do is to appeal to justice.’”

13 In my case, among other things, the City attorney unreasonably seized my property, they
14 “saw” and “heard” me speak with the judge regarding my right to retain my Prop 215 rights and my
15 property, but they pretend that they do not; I have repeatedly and emphatically demeaned myself and
16 begged the State Court judges in writing and at oral hearings to hear me regarding the Confirmation
17 Email, but they do not “hear me;” all attorneys present at the TRO hearing on December 7, 2017
18 where obligated to aid the Court in avoiding error, but they “conceal the truth or falsify it.” The City
19 attorneys “skulk away” and pretend to not be involved by stating that this case is a “private dispute”
20 between private actors.

21 149. It is futile to seek to protect and vindicate my rights in State Court. I have been
22 repeatedly told by numerous attorneys that if I were to appeal the State Court orders that there would
23 be severe backlash because judges take severe and personal offense when their judgment is
24 challenged. And that it is especially true when it turns out that they were actually wrong as there is
25 then a record of their “abuse of discretion” – “Among the most dangerous things an injured party
26 can do is to appeal to justice.” (*Id.*)
27
28

1 150. Thus, I find myself here and now today. I do not ask this Federal Court to believe me,
2 I only ask that this Court please genuinely review the evidence submitted with my application
3 submitted herewith for a TRO and the causes of action I bring forth in this Federal Complaint. If
4 Geraci and/or the City is allowed to passively and/or actively sabotage the CUP application, I will
5 have lost everything of value in my life completely unlawfully and unconstitutionally.

6
7 151. Please, I realize that this is a Federal Court and my Political Activism will not endear
8 me to the Federal Judiciary as an entity, but I do not come before this Federal Court to enforce or
9 argue rights related to my Political Activism, but rather for the protection and vindication of those
10 rights that are granted to me by the Constitution of the United States of America.

11
12 **FIRST CLAIM 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE (As**
13 **against the City of San Diego)**

14 152. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1
15 through 135 as though fully set forth herein.

16 153. Defendant(s), acting under the color of state law, county ordinances, and penal codes,
17 individually and in their official capacity, and in violation of 42 U.S.C. § 1983, have violated
18 Plaintiff's right to be free from unreasonable search and seizure under the Fourth Amendment.

19 154. Well after my property was raided because the wrong-doings of my adjoining tenant
20 (Pure Meds), it occurred upon the City that (although they declined to press charges shortly after the
21 raid and waited the full statute of limitations under California Penal Code 364/365 days) I could
22 easily be charged and set up for an Asset Forfeiture action, so they filed. Upon entering a plea
23 following City Attorney Skeels' repeated assurances that the plea was a "sweetheart deal", and for
24 the sake of expediency, I went ahead and pled guilty.

25
26 155. I thought the action was over at that time. I was wrong, the City used this transaction
27 to further their suspicious utilization of Asset Forfeiture and almost immediately filed a Lis Pendens.
28

1 THAT is where the truly unreasonable seizure comes into play. This was essentially a retroactive
2 punishment tacked on to the punishment that the City had already meted out.

3 156. Defendants (City Attorney's Office) violated Plaintiffs' right to procedural due
4 process by issuing a Lis Pendens as a result of the plea without any prior notice and under false
5 pretenses. Defendant City has violated Plaintiffs' right to be free from unreasonable search and
6 seizure under the Fourth Amendment by conducting in such underhanded behavior.

7
8 157. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an
9 amount according to proof at trial.

10
11 **SECOND CLAIM FOR 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS**
12 **VIOLATIONS (As against City)**

13 158. Cotton hereby incorporates by reference all of his allegations contained above as if
14 fully set forth herein.

15 159. Defendants, acting under the color of state law, county ordinances, regulations,
16 customs and usage of regulations and authority, individually and in their official capacity, and in
17 violation of 42 U.S.C. § 1983, have deprived Plaintiff of the rights, privileges or immunities secured
18 by the Due Process Clause of the Fourteenth Amendment.

19 160. Defendant City, specifically Development Services, has violated Plaintiff's rights to
20 substantive and procedural due process by the actions alleged above in regards to my Property and
21 the associated CUP application pending on my Property.

22 161. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an
23 amount according to proof at trial.
24
25

26 **THIRD CLAIM FOR BREACH OF CONTRACT (Against Geraci, Berry, Austin, ALG and**
27 **DOES 1 through 10)**
28

1 162. Cotton hereby incorporates by reference all of his allegations contained above as if
2 fully set forth herein.

3 163. Geraci and Cotton entered into an oral agreement regarding the sale of the Property
4 and agreed to negotiate and collaborate in good faith on mutually acceptable purchase and sale
5 documents reflecting their agreement.

6 164. The November 2nd Agreement was meant to be the written instrument that solely
7 memorialized the partial receipt of the non-refundable deposit.

8 165. Cotton upheld his end of the bargain, including by deciding to not sell his Property to
9 another party while Geraci, among other matters, ostensibly prepared a CUP application for
10 submission.

11 166. Under the parties' oral contract, Geraci was bound to negotiate the terms of an
12 agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith
13 by, among other things, intentionally delaying the process of negotiations, failing to deliver
14 acceptable purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding
15 new and unreasonable terms in order to further delay and hinder the process of negotiations, and
16 failing to timely or constructively respond to Cotton's requests and communications.

17 167. Geraci breached the contract by, among other reasons, alleging the November 2nd
18 Agreement is the final agreement between the parties for the purchase of the Property. Berry, as
19 Geraci's agent is also liable. And Gina Austin and ALG were fully aware and apparently supportive
20 of these actions based on the multiple drafts and revisions of what was to be the final purchase
21 agreement.

22 168. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been
23 damaged in an amount not yet fully ascertainable, has suffered and continues to suffer damages
24 because of Geraci's actions that constitute a breach of contract. This intentional, willful, malicious,
25

1 outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special,
2 exemplary and/or punitive damages.

3 **FOURTH CAUSE OF ACTION FALSE PROMISE – (As Against Geraci, Berry and DOES 1**
4 **through 10)**

5 169. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7 170. On November 2, 2016, among other things, Geraci falsely promised the following to
8 Cotton without any intent of fulfilling the promises.

9 171. Geraci would pay Cotton the remaining \$40,000 of the non-refundable deposit prior to
10 filing a CUP application;

11 172. Geraci would cause his attorney to promptly draft the final integrated agreements to
12 document the agreed-upon deal between the parties;

13 173. Geraci would pay Cotton the greater of \$10,000 per month or 10% of the monthly
14 profits for the MMCC at the Property if the CUP was granted; and

15 174. Cotton would be a 10% owner of the MMCC business operating at Property if the
16 CUP was granted.

17 175. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016
18 when he made them.

19 176. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to
20 rely on the false promises and execute the document signed by the parties at their November 2, 2016
21 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire
22 agreement.

23 177. Cotton reasonably relied on Geraci's promises.

24 178. Geraci failed to perform the promises he made on November 2, 2016.

179. As a result of the actions taken in reliance on Geraci's false promises, Geraci created a cloud on Cotton's title to the Property. As a further result of Geraci's false promises, Geraci has diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur significant unnecessary costs and attorneys' fees to protect his interest in his Property. As a further result of Geraci's false promises, Cotton has been deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

180. Geraci's representations were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages under Civil Code section 3294.

**FIFTH CLAIM OF BREACH OF THE IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING (As against Geraci, Berry, Austin, ALG, the City of San Diego, and
DOES 1 through 10)**

181. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

182. Geraci breached the implied covenant of good faith and fair dealing when, among other actions described herein, he alleged that the November 2nd Agreement is the final purchase agreement between the parties for the Property.

183. As discussed above, Geraci, Berry, by and through counsel (Austin and ALG) and personally continued to negotiate terms of the initial agreement for months following the November 2 Agreement.

184. Additionally, the City of San Diego, specifically Development Services have not dealt with the CUP application fairly as discussed above. They have been paid application fees to process the CUP on my property. I am the sole deed holder and have at all times held exclusive possession of the Federal Blvd. property.

185. In dealing with San Diego, they have breached the implied covenant of good faith and fair dealing when among other actions, they have not kept me informed or allowed me to gain ownership of the CUP and have even went so far as to deny my rights to Due Process in failing to do so.

186. I have suffered and continue to suffer damages because of Geraci's actions, his attorneys actions and the City's Actions that constitute a breach of the implied covenant of good faith and fair dealing.

187. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

SIXTH CLAIM OF BREACH OF FIDUCIARY DUTY (As against Geraci and DOES 1 through 10)

188. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

189. Geraci stated he would honor the agreement reached on November 2nd, 2016, which included a 10% equity stake in the Business and a guaranteed monthly equity distribution of \$10,000 a month.

190. Geraci stated he would pay the balance of the non-refundable deposit as soon as possible, but at the latest when the alleged critical zoning issue was resolved, which, in turn, he alleged was a necessary prerequisite for submission of the CUP application.

1 191. Geraci acknowledged that the November 2nd Agreement was not the final agreement
2 for the purchase of the Property via email on November 2nd, 2016.00

3 *Enrolled Agent – Fiduciary Duty*

4 192. Geraci represented to Cotton that as an Enrolled Agent for the IRS he was an
5 individual that could be trusted as he operated in a fiduciary capacity on a daily basis for many high-
6 net worth individuals and businesses. Further, that as an Enrolled Agent he would be able to structure
7 the tax filings of the medical marijuana dispensary and the owners, including Cotton, in such a way
8 that the tax liability would be very limited and, consequently, would maximize Cotton's share of the
9 profits.
10

11 193. Geraci, by representing himself to be an Enrolled Agent of the IRS that would, among
12 other things, submit on behalf of Cotton tax filings with the IRS, created a fiduciary relationship
13 between Cotton and himself.
14

15 *Real Estate Broker – Fiduciary Duty*

16 194. Geraci is a licensed real estate Broker.

17 195. Geraci took responsibility for the drafting of the Purchase Agreement for the Property
18 stating he would have his attorney provide a draft and, further, that Cotton did not require his own
19 counsel to revise the drafts of the real estate purchase contract.
20

21 196. Geraci induced Cotton into letting him effectuate the real estate transaction by
22 claiming that Cotton could trust Geraci.

23 197. Breach of Fiduciary Duties

24 198. Cotton has violated his fiduciary duties by, among the other actions described herein,
25 fraudulently inducing Cotton into executing the November 2nd Agreement and alleging it is the final
26 agreement for the purchase of the Property.
27
28

1 199. Cotton has suffered and continues to suffer damages because of Geraci's actions that
2 constitute a breach of his fiduciary duties.

3 200. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
4 to an award of general, compensatory, special, exemplary and/or punitive damages.
5

6 **SEVENTH CLAIM FOR FRAUD IN THE INDUCEMENT (As against Geraci, Berry, ALG,
7 Austin and DOES 1 through 10)**

8 201. Plaintiff incorporates by reference each and every allegation contained above as
9 though fully set forth herein.

10 202. Geraci made promises to Cotton on November 2nd, 2016, promising to effectuate the
11 agreement reached on that day, but he did so without any intention of performing or honoring his
12 promises.
13

14 203. Geraci had no intent to perform the promises he made to Cotton on November 2nd,
15 2016 when he made them, as is clear from his actions described herein, that he represented he would
16 be preparing a CUP application.

17 204. In fact, he had already deceived Cotton and submitted a CUP application PRIOR to
18 November 2, 2016.
19

20 205. Geraci intended to deceive Cotton in order to, among things, execute the November
21 2nd Agreement.

22 206. Cotton reasonably relied on Geraci's promises and had no idea Geraci had already
23 started the CUP application process.
24

25 207. Geraci failed to perform the promises he made on November 2nd, 2016, notably, his
26 delivery of the balance of the non-refundable deposit and his promise to treat the November 2nd
27 Agreement as a memorialization of the \$10,000 received towards the non-refundable deposit and not
28 the final legal agreement for the purchase of the Property.

1 208. Cotton has suffered and continues to suffer damages because he relied on Geraci's
2 representations and promises.

3 209. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
4 to an award of general, compensatory, special, exemplary and/or punitive damages.
5

6 **EIGHTH CLAIM FOR FRAUD/FRAUDULENT MISREPRESENTATION (As against**
7 **Geraci, Berry, Austin, ALG and DOES 1 through 10)**

8 210. Cotton hereby incorporates by reference all of his allegations contained above as if
9 fully set forth herein.

10 211. Each of the Defendants and their agents intentionally and/or negligently made
11 representations of material fact(s) in discussions with Cotton. On November 2, 2016, Geraci
12 represented to Cotton, among other things, that:

13 212. He would honor the agreement reached on November 2nd, 2016, which included a
14 10% equity stake in the Business and a guaranteed monthly equity distribution of \$10,000 a month.
15

16 213. He would pay the balance of the non-refundable deposit as soon as possible, but at the
17 latest when the alleged critical zoning issue was resolved, which, in turn, he alleged was a necessary
18 prerequisite for submission of the CUP application.

19 214. He understood and confirmed the November 2nd Agreement was not the final
20 agreement for the purchase of the Property.
21

22 215. That he, Geraci, as an Enrolled Agent by the IRS was someone who was held to a high
23 degree of ethical standards and that he could be trusted to prepare and forward the final legal
24 agreements, honestly effectuate the agreement that they had reached, including the corporate
25 structure of the contemplated businesses so as to ultimately minimize Cotton's tax liability.
26

27 216. That the preparation of the CUP application would be very time consuming and take
28 hundreds of thousands of dollars in lobbying efforts.

1 217. Geraci knew that these representations were false because, among other things, Geraci
2 had already filed a CUP application with the City of San Diego prior to that day. At that point in
3 time, all of his declarations regarding the issues that needed to be addressed, his trustworthiness and
4 his intent to follow through with accurate final legal agreements were false. His subsequent
5 communications via email, text messages and Final Agreement draft revisions make clear that he
6 continued to represent to Cotton that the preliminary work of preparing the CUP application was
7 underway, when, in fact, he was just stalling for time. Presumably, to get an acceptance or denial
8 from the City and, assuming he got a denial, to be able to deprive Cotton of the \$40,000 balance due
9 on the non-refundable deposit.
10

11 218. Geraci intended for Cotton to rely on his representations and, consequently, not
12 engage in efforts to sell his Property.
13

14 219. Cotton did not know that Geraci's representations were false.

15 220. Cotton relied on Geraci's representations.

16 221. Cotton's reliance on Geraci's representations were reasonable and justified.

17 222. As a result of Geraci's representations to Cotton, Cotton was induced into executing
18 the November 2nd Agreement, giving Geraci the only basis of his Complaint and, consequently,
19 among other unfavorable results, allowing Geraci to unlawfully create a cloud on title to his Property.
20 Thus, Cotton has been forced to sell his Property at far from favorable terms.
21

22 223. Cotton has been damaged in an amount of no less than \$2,000,000 from this Claim
23 alone. Additional damages from potential future profit distributions and other damages will be proven
24 at trial.
25

26 224. Geraci's representations were intentional, willful, malicious, outrageous, unjustified,
27 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton
28 of his interest in the Property.

1 225. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton
2 to an award of general, compensatory, special, exemplary and/or punitive damages.

3 **NINTH CLAIM FOR TRESPASS (As against Geraci, Berry, Toothacre, Weinstein,**
4 **F&B and DOES 1 through 10)**

5 226. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7 227. The Property was owned by Cotton and is in his exclusive possession.

8 228. Geraci, or an agent acting on his behalf, illegally entered the subject property on or
9 about March 27, 2017, and posted two NOTICES OF APPLICATION on the Property.
10

11 229. Geraci's attorney, Michael Weinstein, emailed Cotton on March 22, 2017 stating that
12 Geraci or his agents would be placing the aforementioned Notices upon Cotton's property.

13 230. Geraci knew that he had fraudulently induced Cotton into executing the November
14 2nd Agreement and, consequently, he had no valid legal basis to trespass unto Cotton's Property.
15

16 231. Alternatively, setting aside the fraudulent inducement, on March 21, 2017, Cotton,
17 having discovered Geraci's criminal scheme to deprive him of his Property, emailed Geraci stating
18 that he no longer had any interests in the Property and should not trespass on his Property, yet he
19 continued to do despite being warned not to.
20

21 232. Geraci's Notices of Application posted on his Property has caused and continues to
22 damage Cotton because the discouragement of future businesses, partnerships and potential buyers it
23 immediately caused to which Weinstein was a knowing party.

24 233. Cotton has no adequate remedy at law for the injuries currently being suffered in that
25 it will be impossible for Cotton to determine the precise amount Cotton has suffered and continues to
26 suffer damages because of Geraci's actions.
27
28

1 234. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
2 to an award of general, compensatory, special, exemplary and/or punitive damages.

3 **TENTH CLAIM FOR SLANDER OF TITLE (As against Geraci, Berry, Austin, ALG,**
4 **F&B and the City of San Diego)**

5 235. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7 236. Geraci disparaged Cotton's exclusive valid title by and through the preparing, posting,
8 publishing, and recording of the documents previously described herein, including, but not limited to,
9 a Complaint in state court and Lis Pendens filed on the Property.

10 237. The City of San Diego separately also used/abused the Lis Pendens process to strong
11 arm me and violate my 4th Amendment Rights against unreasonable seizure.

12 238. Defendants knew that such documents were improper in that at the time of the
13 execution and delivery of the documents, Defendants had no right, title, or interest in the Property.
14 These documents were naturally and commonly to be interpreted as denying, disparaging, and casting
15 doubt upon Cotton's legal title to the Property. By posting, publishing and recording documents,
16 Defendants' disparagement of Cotton's legal title was made to the world at large.

17 239. As a direct and proximate result of all Defendants' conduct in publishing these
18 documents, Cotton's title to the Property has been disparaged and slandered, and there is a cloud on
19 Cotton's title, and Cotton has suffered and continues to suffer damages, including, but not limited to,
20 lost future profits, in an amount to be proved at trial, but in an amount of no less than \$2,000,000.

21 240. As a further and proximate result of Defendants' conduct, Cotton has incurred
22 expenses in order to clear title to the Property. Moreover, these expenses are continuing, and Cotton
23 will incur additional expenses for such purpose until the cloud on Cotton's title to the Property has
24
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1 been removed. The amounts of future expenses are not ascertainable at this time but will be proven at
2 trial.

3 241. The amount of such damages shall be proven at trial (expert witness testimony will
4 likely be of critical importance).

5
6 **ELEVENTH CLAIM FOR FALSE DOCUMENTS LIABILITY (As against Geraci,
7 Berry, Austin, ALG, F&B and DOES 1 through 10)**

8 242. Cotton hereby incorporates by reference all of his allegations contained above as if
9 fully set forth herein.

10 243. Geraci filed a Complaint against Cotton and a Lis Pendens on the Property with a
11 public office, respectively, this Court and the San Diego County Recorder's Office.

12 244. Geraci knew the Complaint and Lis Pendens, both solely and completely predicated
13 upon his allegation that the November 2nd Agreement was the final agreement for the purchase of the
14 Property, was false and unfounded when he filed them.

15 245. Geraci, his agents and counsel, all knew at the time of the filing he was committing a
16 crime (in violation of California Penal Code Section 115 PC) and did so knowingly anyway.

17 246. Cotton has suffered and continues to suffer damages because of Geraci's actions.

18 247. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
19 to an award of general, compensatory, special, exemplary and/or punitive damages.
20

21
22 **TWELFTH CLAIM OF UNJUST ENRICHMENT (As against Geraci, Berry, and the
23 City of San Diego)**

24 248. Cotton hereby incorporates by reference all of his allegations contained above as if
25 fully set forth herein.

26 249. Geraci represented to Cotton that executing the November 2nd Agreement was only to
27 memorialize the \$10,000 good-faith deposit towards the total \$50,000 non-refundable deposit, but
28

1 Geraci now alleges that the November 2nd Agreement is the final agreement for the purchase of the
2 Property.

3 250. Geraci himself confirmed via email that the November 2nd Agreement is not the final
4 agreement.

5 251. Had Geraci described the effect of executing the November 2nd Agreement in the way
6 that Geraci presently interprets it, then Cotton would never have signed the November 2nd
7 Agreement.
8

9 252. Geraci will be unjustly enriched at the expense of Cotton if he is permitted to retain
10 the interest in the Property that he now asserts under the November 2nd Agreement.

11 253. The City of San Diego was able trick me into entering deals that caused me to lose
12 \$25,000 to remove the Lis Pendens from the property.
13

14 254. Cotton has suffered and continues to suffer damages because of Geraci's actions.

15 255. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
16 to an award of general, compensatory, special, exemplary and/or punitive damages.
17

18 **THIRTEENTH CLAIM OF INTENTIONAL INTERFERENCE WITH**
19 **PROSPECTIVE ECONOMIC RELATIONS -- (As Against Geraci, Berry, Austin, F&B and**
20 **DOES 1 through 10)**

21 256. Cotton hereby incorporates by reference all of his allegations contained above as if
22 fully set forth herein.

23 257. Cotton has an ongoing prospective business relationship with Mr. Martin and the City
24 via by the then-filed CUP application that was resulting, and would have resulted, in an economic
25 benefit to Cotton based on and in connection with the approval of the CUP application.
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1 258. Further, specifically, Cotton has an ongoing prospective business relationship with Mr.
2 Martin for the sale of the Property that was resulting, and would have resulted, in an economic
3 benefit to Cotton based on and in connection with the sale of the Property.

4 259. Defendants knew of Cotton's ongoing and prospective business relationship with Mr.
5 Martin and the City arising from and related to the CUP Application and defendants knew of
6 Cotton's ongoing and prospective business relationship with the new buyer for the Property.
7

8 260. Defendants intentionally engaged in acts designed to interfere, and which have
9 interfered and are likely to continue to interfere, with Cotton's relationship with the City, the CUP
10 application, and the new buyer, including without limitation, their refusal to acknowledge they have
11 no interest in the Property and/or the CUP application.
12

13 261. As a direct and proximate result of the defendants' conduct, Cotton has suffered and
14 will continue to suffer damages in an amount not yet fully ascertainable and to be determined
15 according to proof at trial.

16 262. The aforementioned conduct by defendants was despicable, willful, malicious,
17 fraudulent, and oppressive conduct which subjected Cotton to cruel and unjust hardship in conscious
18 disregard of Cotton's rights, so as to justify an award of exemplary and punitive damages in an
19 amount to be determined according to proof at trial, including pursuant to Civil Code section 3294.
20

21 **FOURTEENTH CLAIM OF NEGLIGENT INTERFERENCE WITH PROSPECTIVE**
22 **ECONOMIC RELATIONS -- (As Against Geraci, Berry, and DOES 1 through 10)**

23 263. Cotton hereby incorporates by reference all of his allegations contained above as if
24 fully set forth herein.

25 264. Cotton has an ongoing prospective business relationship with the City that was
26 resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with
27 the approval of the CUP application. In addition, Cotton has an ongoing prospective business
28

1 relationship with the new buyer of the Property that was resulting, and would have resulted, in an
2 economic benefit to Cotton based on and in connection with the sale of the Property.

3 265. Defendants knew or should have known of Cotton's ongoing and prospective business
4 relationship with the City arising from and related to the CUP Application, and defendants knew or
5 should have known of Cotton's ongoing and prospective business relationship with the new buyer for
6 the Property.
7

8 266. Defendants failed to act with reasonable care when they engaged in acts designed to
9 interfere, and which have interfered and are likely to continue to interfere, with Cotton's relationship
10 with the City, the CUP application, and the new buyer, including without limitation, their refusal to
11 acknowledge they have no interest in the Property and/or the CUP application.
12

13 267. As a direct and proximate result of the defendants' conduct, Cotton has suffered and
14 will continue to suffer damages in an amount not yet fully ascertainable and to be determined
15 according to proof at trial.
16

17 **FIFTH CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (As against**
18 **All Defendants)**

19 268. Cotton hereby incorporates by reference all of his allegations contained above as if
20 fully set forth herein.

21 269. Defendants, and each of them, engaged in outrageous conduct towards Plaintiff, with
22 the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer
23 severe emotional distress. Geraci has event sent convicts to intimidate, coerce and threaten my
24 investors by telling him that it would be in his "best interest" to use his influence me to settle with
25 Geraci.
26
27
28

1 270. All of the above-named defendants know that this is an unfounded lawsuit against me
2 and the continued malicious attempts at depriving me of my rights, money and sanity can only be
3 described as outrageous.

4 271. The defendants have acted for the purpose of causing me emotional distress so severe
5 that it could be expected to adversely affect mental health and well-being.

6 272. The defendants' conduct is causing such distress, which includes, but is not limited to,
7 chronic loss of sleep, paranoia, and other injuries to health and well-being. All of these injuries
8 continue on a daily basis.

9 273. To the extent that said outrageous conduct was perpetrated by certain Defendants, the
10 remaining Defendants adopted and ratified said conduct with a wanton and reckless disregard of the
11 deleterious consequences. As a proximate result of said conduct, I have suffered and continue to
12 suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as
13 economic losses.

14 274. Defendants committed the acts alleged herein maliciously, fraudulently and
15 oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive
16 amounting to malice and in conscious disregard of Plaintiff's rights, entitling Plaintiff to recover
17 punitive damages in amounts to be proven at trial.

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19
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21 **SIXTHTEENTH CLAIM FOR NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**
22 **(As against All Defendants)**

23 275. Plaintiff realleges and incorporates by reference the allegations contained above as
24 though fully set forth.

25 276. All Defendants, and each of them, knew or reasonably should have known that the
26 conduct described herein would, and did, proximately result in physical and emotional distress to
27 Plaintiff. Being as all of the above-named defendants know that this is an unfounded lawsuit against
28

1 me and the continued malicious attempts at depriving me of my rights, money and sanity can only be
2 described as outrageous.

3 277. At all relevant times, all Defendants, and each of them, had the power, ability,
4 authority, and duty to stop engaging in the conduct described herein and/or to intervene to prevent or
5 prohibit said conduct.

6 278. Despite said knowledge, power, and duty, Defendants negligently failed to act so as to
7 stop engaging in the conduct described herein and/or to prevent or prohibit such conduct or otherwise
8 protect Plaintiff. Therefore, whether or not the defendants have acted for the express purpose of
9 causing me this extreme emotional distress, they have caused it. And they should have known this
10 would happen.

11 279. Further, they have been made aware and have been on notice. Weinstein of F&B,
12 specifically. To the extent that said negligent conduct was perpetrated by certain Defendants, the
13 remaining Defendants confirmed and ratified said conduct with the knowledge that Plaintiff's
14 emotional and physical distress would thereby increase, and with a wanton and reckless disregard for
15 the deleterious consequences to Plaintiff.

16 280. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and
18 physical injuries, as well as economic losses, all to his damage in amounts to be proven at trial.

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21
22 **SEVENTEENTH CLAIM FOR CONSPIRACY (As against Geraci, Berry, Austin, ALG,
23 Weinstein, the City of San Diego and DOES 1 through 10)**

24 281. Cotton hereby incorporates by reference all of his allegations contained above as if
25 fully set forth herein.

26 282. Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement on
27 October 31st, 2016, alleging that the Ownership Disclosure Statement was necessary because the
28

1 parties did not have a final agreement in place at that time, thus, he needed it to show other
2 professionals involved in the preparation of the CUP application and the lobbying efforts to prove
3 that he, Geraci, had access to the Property.

4 283. As a sign of good-faith by Cotton as they had not reached a final agreement for the
5 sale of the Property. Geraci wanted something in writing proving Cotton's support of the CUP
6 application at his Property because he needed to immediately spend large amounts of cash to continue
7 with the preparation of the CUP application and the lobbying efforts. However, Geraci promised that
8 the Ownership Disclosure Statement would not under any circumstances actually be submitted to the
9 City of San Diego. Further, that it was impossible to submit the CUP application as the critical zoning
10 issue had been resolved with the city of San Diego.
11

12 284. The Ownership Disclosure Statement is also executed by Rebecca Berry and denotes
13 Rebecca Berry is the "Tenant/Lessee" of the Property.
14

15 285. Geraci represented to Cotton that Rebecca Berry could be trusted and was one of his
16 best employees who was familiar with the medical marijuana industry.

17 286. Cotton has never met or entered into any agreement with Rebecca Berry.

18 287. Rebecca Berry knew that she had not entered into a lease of any form with Cotton for
19 the Property.
20

21 288. Upon information and belief, Rebecca Berry allowed the CUP application to be
22 submitted in her name on behalf of Geraci because Geraci has been a named Cotton in numerous
23 other lawsuits brought by the City of San Diego against him for the operation and management of
24 unlicensed and unlawful marijuana dispensaries.[14]
25

26 289. Rebecca Berry knew that she was filing a document with the City of San Diego that
27 contained a false statement, specifically that she was a lessee of the Property.
28

1 290. Rebecca Berry, at Geraci's instruction or her own desire, submitted the CUP
2 application as Geraci's agent, thereby Geraci's scheme to deprive Cotton of his Property.

3 291. Gina Austin and ALG represented Berry and Geraci in the initial Writ motion
4 involving the City of San Diego, additionally, Austin and ALG drafted the proposed Final Purchase
5 Agreements and subsequent revisions well into March of 2017. Therefore these acts were in full
6 knowledge that the November 2 Agreement (which this whole case is premised on) was NOT
7 intended to be the full and final agreement. The egregiousness of not informing the court of these
8 material facts and allowing this case to proceed so far is a slight to the Superior Court to which an
9 officer of the court has a duty of honesty, integrity and candor. No other possible explanation comes
10 to mind other than Austin and ALG have been knowingly working in concert together to defraud the
11 court, and myself.
12

13 292. Inexplicably, no one working in The City Attorney's Office of the City of San Diego
14 have raised their voices to assist me when they have received all the above information. They have
15 seen my evidence, they have expressed surprise that I was not granted a TRO after reading my
16 Motion for Reconsideration for the TRO. Yet, knowing this is an unfounded case San Diego is still
17 permitting this injustice continue.
18

19 293. The San Diego Department of Services seemingly worked exclusively for Geraci and
20 Berry and essentially blocked me from having any say as to the CUP for my property. They have
21 continued to process the CUP application for Geraci and Berry when they know that Geraci and
22 Berry have no legal right to my Property.
23

24 294. Then I was told to submit a new application which necessarily creates an inequitable
25 race – all these facts can only be reconciled if one is to accept that 1) the city is prejudiced against me
26 or; 2) Geraci has them in his pocket.
27
28

1 295. Not only that, this all follows the tyrannical practices of Deputy City Attorney Mark
2 Skeels who tricked me and my young defense counsel into setting myself up for an Asset Forfeiture
3 Action that ultimately resulted in a \$25,000 extortion. Under the Fourth Amendment, "[t]he right of
4 the people to be secure in their persons, houses, papers, and effects, against unreasonable searches
5 and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const.
6 amend. IV. "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it
7 merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S.Ct.
8 1801, 114 L.Ed.2d 297 (1991). In light of the situation I was in, the unforeseen and extreme result
9 must surely constitute an "unreasonable" seizure.
10

11 296. Further adding to my confusion, frustration and inability to gain any traction in
12 protecting my own interests, the Honorable Judge Wohlfeil presiding over my case has not seemed
13 interested in reading any of my prior submissions. He "knows [the attorneys opposing me] well" and
14 I believe based on that he is biased against me now that I am pro se and a likely mark for everyone to
15 be able to walk over and take advantage of with no repercussions. At best, Judge Wohlfeil probably
16 hopes my case can be settled out of court relieving him of further responsibility (or culpability?) in
17 regard to my case. At worst, Wohlfeil's seemingly purposeful negligence at this point is an
18 intentional cover-up of the fact that he does not care about my case or he is actively helping Geraci.
19
20

21 297. Ultimately, whether it was done purposefully, working in concert with, and/or because
22 of gross negligence, all the parties here, even if operating in their own "mini-conspiracies," have de
23 facto operated in a one, large conspiracy by perpetuating and augmenting the unlawful actions and
24 harm caused to Darryl.
25

26 298. Cotton has suffered and continues to suffer damages because of actions of all
27 defendants such that it would be "a challenge to imagine a scenario in which that harassment would
28

1 not have been the product of a conspiracy.” [*Geinosky v. City of Chicago* (7th Cir. 2012) 675 F3d
2 743, 749].

3 299. As a direct and proximate result of Defendants’, their agents’ and conspirators’
4 concerted, intentional (and even negligent), willful, malicious, outrageous, and unjustified conduct
5 entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.
6 unlawful conduct. Plaintiff has suffered and continues to suffer serious emotional distress,
7 humiliation, anguish, emotional and physical injuries, as well as economic losses, all to his damage in
8 amounts to be proven at trial.
9

10
11 **EIGHTEENTH CLAIM FOR RACKETEER INFLUENCED AND CORRUPT
12 ORGANIZATION ACT (As against All Defendants)**

13 300. Cotton hereby incorporates by reference all of his allegations contained above as if
14 fully set forth herein.

15 301. The elements of civil RICO are as follows: (1) conduct, (2) of an enterprise, (3)
16 through a pattern (4) of racketeering activity, (5) resulting in injury.

17 302. Geraci, as proven by public records of lawsuits filed by the City against him for the
18 operating of illegal dispensaries, has run an enterprise of illegal marijuana dispensaries over the
19 course of years. His enterprise is focused on marijuana dispensaries and related financial support
20 services meant to unlawfully circumvent IRS tax liabilities. As discussed above, he uses employees,
21 third-parties, attorneys and criminals to operate his criminal enterprise.
22

23 303. Geraci specifically told Cotton, when fraudulently inducing him to enter into the
24 November Agreement, that as an Enrolled Agent for the IRS, he was uniquely positioned to “get
25 around” paying IRS Code Section 280(e). At the time, it appeared to Cotton that Geraci was stating
26 he had some form of unknown method to do so lawfully. In retrospect, it is apparent that he is
27
28

1 providing money laundering services for himself and others, using his Tax and Financial company as
2 legitimate front for his behind the scenes unlawful activities.

3 304. Geraci runs his enterprise through his employees, such as Berry, who use their names
4 on applications, such as the CUP application at issue here, to provide anonymity and for Geraci to
5 stay off the radar of law enforcement agencies. For example, Geraci, and Berry, were required by law
6 to state the names of all individuals who had an interest in the CUP when the CUP application was
7 filed. Geraci's name is NOT on the CUP application. His office manager, Berry, is. Had this instant
8 lawsuit not required him to fraudulently attempt to enforce the Receipt as the final agreement for the
9 Property, there would be no record of his ownership in the CUP application.

11 305. Geraci is the lead perpetrator in the enterprise. It is Geraci that had his office manager,
12 Berry submit the CUP application with material omissions (his name); having Gina Austin, his
13 attorney, represent him in the State Actions although she knows she is violating her ethical (and
14 potentially legal) obligations to the Court by representing Geraci under the false premise that the
15 Receipt is the final agreement for the Property; Geraci is directing Weinstein, also his attorney, to
16 continue to represent him when Weinstein knows that there is no factual or legal basis to continue
17 prosecuting the State Action against me to my great detriment.

19 306. Mr. Geraci has told me that he has run many illegal marijuana dispensaries through his
20 employee, Berry. I believe that he has invested the proceeds of the pattern of racketeering activity
21 into the enterprise endeavors to continuously open more illegal dispensaries. Further, because he has
22 evaded criminal prosecution and additionally managed to pull off this farce of a civil suit against me,
23 I believe he has also used said monies to compensate Austin and Weinstein, and, de facto, their
24 respective law firms, for the unethical and unlawful actions against me. How else can one explain
25 why two, ostensibly intelligent attorneys who statistically speaking should be smarter than most
26 would take the actions they have which are clearly unethical and unlawful.

1 307. The way in which the City has dealt with me in every avenue also points to the distinct
2 possibility that Geraci's "influence" has in fact tainted the state legal process against me. I have been
3 specifically told by Mr. Dwayne and his associate Mr. L that Geraci has deep connections to the
4 City's politicians.

5 308. To my knowledge all defendants and Does above in some way shape or form have
6 worked in conjunction with one another willfully, occasionally negligently, but at all times in
7 association against me. Most certainly, Austin, ALG, Weinstein, Toothacre, Berry and F&B do
8 Geraci's bidding and are complicit in all of his dishonest schemes.

9 309. As a direct and proximate result of the Defendants', their agents' and coconspirators'
10 plot to participate in the conduct of the affairs of their conspiracy and wrongs, alleged herein,
11 Plaintiff has been and is continuing to be injured in his property, person and business as set forth
12 herein.
13

14
15 **NINETEENTH CLAIM OF DECLARATORY RELIEF (As Against All Defendants)**

16 310. Cotton hereby incorporates by reference all of his allegations contained above as if
17 fully set forth herein.

18 311. An actual controversy has arisen and now exists between Cotton and all defendants
19 concerning their respective rights, liabilities, obligations and duties based on the actions described
20 herein.
21

22 312. A declaration of rights is necessary and appropriate at this time in order for the parties
23 to ascertain their respective rights, liabilities, and obligations because no adequate remedy other than
24 as prayed for exists by which the rights of the parties may be ascertained.

25 313. Accordingly, Cotton respectfully requests a judicial declaration of rights, liabilities,
26 and obligations of the parties. Specifically, Cotton requests a judicial declaration that (a) Cotton is
27 the sole owner of the Property, (b) Cotton is the owner and sole interest-holder in the CUP
28

1 application for the Property submitted on or around October 31, 2016, (c) defendants have no right or
2 interest in the Property or the CUP application for the Property submitted on or around October 31,
3 2016, and (d) the Lis Pendens filed by Geraci be released.

4
5 **INJUNCTIVE RELIEF (As Against All Defendants)**

6 314. Cotton hereby incorporates by reference all of his allegations contained above as if
7 fully set forth herein.

8 315. For the reasons argued above, Cotton respectfully requests that all defendants be
9 immediately be notified and enjoined that their actions, even if under the color of effectuating
10 professional legal services, the law or the authority of any governmental agency, cease violating Mr.
11 Cotton's rights.
12

13 316. That the Geraci be ordered to continue to pay for the costs associated with getting
14 approval of the CUP application and the development of the MMCC per his agreement with Cotton,
15 and as he stated in his declaration in the state action.
16

17 317. That the City not be allowed to passively and/or affirmatively sabotage the CUP so as
18 to limit its liability for its actions stated herein.

19 318. Such as other injunctive relief as is required based on the facts alleged above to protect
20 and vindicate my rights.
21
22
23
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25

26 //

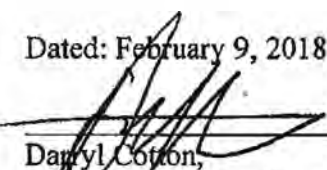
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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That the Court order the Lis Pendens on the Property be released;
2. That the Court order, by way of declaratory relief, that there is no purchase agreement between the Geraci and that Cotton is the sole owner of the Property;
3. That the CUP application be transferred to me;
4. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than \$5,000,000;
5. Punitive damages against all defendants;
6. Sanctions against counsel as this Court may find warranted based on the allegations above that will be proven to be true during the course of this litigation;
7. That this Court appoint Mr. Cotton counsel until such time as he has the financial wherewithal to pay for counsel himself; and
8. That other relief is awarded as the Court determines is in the interest of justice.

Dated: February 9, 2018.


Darryl Cotton,
Cotton and Cotton Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,
Plaintiff,
v.
LARRY GERACI, an individual;
REBECCA BERRY, an individual; GINA
AUSTIN, an individual AUSTIN LEGAL
GROUP, a professional corporation;
MICHAEL WEINSTEIN, an individual;
FERRIS & BRITTON, a professional
corporation; CITY OF SAN DIEGO, a
public entity; and DOES 1 through 10,
inclusive,,
Defendant.

Case No.: 18cv325-GPC(MDD)

ORDER:

**1) GRANTING PLAINTIFF'S
MOTION TO PROCEED IN FORMA
PAUPERIS**

**2) SUA SPONTE STAYING THE
CASE PURSUANT TO THE
COLORADO RIVER DOCTRINE**

**3) DENYING EX PARTE MOTION
FOR TEMPORARY RESTRAINING
ORDER; AND**

**4) DENYING PLAINTIFF'S
MOTION FOR APPOINTMENT OF
COUNSEL**

On February 9, 2018, Plaintiff Darryl Cotton ("Plaintiff"), proceeding pro se, filed a complaint against Defendants Larry Geraci, Rebecca Berry, Gina Austin, Austin Legal Group, Michael Weinstein, Ferris & Britton, and the City of San Diego ("Defendants") alleging eighteen causes of action under federal and state law as well as declaratory and injunctive relief. Plaintiff concurrently filed a motion for leave to proceed *in forma*

1 *pauperis* (“IFP”) under 28 U.S.C. § 1915(a) (“§ 1915(a)”). (Dkt. No. 2.) Furthermore,
2 Plaintiff filed an ex parte application for a temporary restraining order (“TRO”), as well
3 as a motion for appointment of counsel. (Dkt. Nos. 3, 6.) Based on the reasoning below,
4 the Court GRANTS Plaintiff’s motion to proceed IFP, *sua sponte* STAYS the case
5 pursuant to the Colorado River doctrine, and DENIES Plaintiff’s ex parte motion for
6 TRO and motion for appointment of counsel as MOOT.

7 Discussion

8 A. Motion to Proceed *In Forma Pauperis*

9 All parties instituting any civil action, suit, or proceeding in a district court of the
10 United States, except an application for writ of habeas corpus, must pay a filing fee of
11 \$400. See 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff’s failure to
12 prepay the entire fee only if he is granted leave to proceed IFP pursuant to § 1915(a). See
13 Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007); Rodriguez v. Cook, 169
14 F.3d 1176, 1177 (9th Cir. 1999). The plaintiff must submit an affidavit demonstrating his
15 inability to pay the filing fee, and the affidavit must include a complete statement of the
16 plaintiff’s assets. 28 U.S.C. § 1915(a)(1). When a plaintiff moves to proceed IFP, the
17 court first “grants or denies IFP status based on the plaintiff’s financial resources alone
18 and then independently determines whether to dismiss the complaint” pursuant to 28
19 U.S.C. § 1915(e)(2) (“§ 1915(e)(2)”). Franklin v. Murphy, 745 F.2d 1221, 1226 n.5 (9th
20 Cir. 1984).

21 Here, Plaintiff submitted a declaration reporting that he is currently unemployed,
22 and he receives \$192 a month from public assistance and \$600 a month from “Recycled
23 Material Processing.” (Dkt. No. 2 at 2.) Plaintiff declares that he has real estate valued
24

25
26 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50. See
27 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff.
28 Dec. 1, 2014)). The additional \$50 administrative fee does not apply to persons granted leave to proceed
IFP. Id.

1 at \$400,000 and a car valued at \$1,400. (Id. at 3.) Plaintiff reported no debts nor
 2 dependents. (Id. at 3.) He has living expenses totaling \$2,935.00. (Id. at 4-5.)

3 In consideration of Plaintiff's application, the Court finds that Plaintiff has
 4 sufficiently demonstrated that he is unable to pay the required filing fee and meets the §
 5 1915(a) requirements to proceed IFP. Therefore, the Court GRANTS Plaintiff's motion
 6 for leave to proceed IFP.

7 **B. *Sua Sponte* Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)**

8 A complaint filed by any person proceeding IFP pursuant to § 1915(a) is subject to
 9 mandatory *sua sponte* review and dismissal by the Court if it is "frivolous, or malicious;
 10 fails to state a claim upon which relief may be granted; or seeks monetary relief against a
 11 defendant immune from such relief." 28 U.S.C. § 1915(e)(2)(B); Calhoun v. Stahl, 254
 12 F.3d 845, 845 (9th Cir. 2001) ("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not
 13 limited to prisoners."); Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000).
 14 § 1915(e)(2) mandates that a court reviewing a complaint filed pursuant to the IFP
 15 provisions of 28 U.S.C. § 1915 make and rule on its own motion to dismiss before
 16 directing that the complaint be served by the U.S. Marshal pursuant to Federal Rule of
 17 Civil Procedures 4(c)(2). Lopez, 203 F.3d at 1127.

18 **C. Factual Background**

19 On March 21, 2017, Defendant Larry Geraci filed a complaint against Plaintiff
 20 Cotton in San Diego Superior Court alleging breach of contract, breach of the covenant
 21 of good faith and fair dealing, specific performance and declaratory relief. (Dkt. No. 3-
 22 11, P's RJN, Ex. 2, State Court Compl.) According to the state court complaint, the
 23 parties entered into a written agreement for the purchase and sale of Cotton's real
 24 property located 6176 Federal Boulevard, San Diego, CA on November 2, 2016. (Id.,
 25 Compl. ¶ 7.) A copy of the written agreement is attached as exhibit A to the state court
 26 complaint. (Id., Ex. A.) On that day, Geraci paid Cotton \$10,000 good faith earnest
 27 money to be applied to the sales price of \$800,000 and to remain in effect until a
 28 conditional use permit ("CUP") is approved by the City of San Diego. (Id. ¶ 8.) Geraci

1 made efforts and spent money to obtain a CUP which is a long and time-consuming
2 process, including hiring a consultant to coordinate the CUP efforts, Defendant Rebecca
3 Berry, as well as an architect. (Id. ¶ 9.) The state court complaint claims that Cotton has
4 anticipatorily breached the contract stating he will not perform according to the terms of
5 the written contract. (Id. ¶ 11.) Specifically, Geraci alleges that Cotton “has stated that,
6 contrary to the written terms, the parties agreed to a down payment or earnest money in
7 the amount of \$50,000.00 and that he will not perform unless GERACI makes a further
8 down payment. COTTON has also stated that, contrary to the written terms, he is entitled
9 to a 10% ownership interest in the PROPERTY and that he will not perform unless
10 GERACI transfers to him a 10% ownership interest. COTTON has also threatened to
11 contact the City of San Diego to sabotage the CUP process by withdrawing his
12 acknowledgment that GERACI has a right to possession or control of the PROPERTY if
13 GERACI will not accede to his additional terms and conditions and, on March 21, 2017,
14 COTTON made good on his threat when he contacted the City of San Diego and
15 attempted to withdraw the CUP application.” (Id.)

16 At some point, Cotton filed a cross-complaint against Geraci and Rebecca Berry.
17 (Dkt. No. 3-13, P’s RJN, Ex. 5.) On December 6, 2017, Cotton, with counsel, filed an ex
18 parte application for temporary restraining order and order to show cause regarding
19 preliminary injunction. (Dkt. No. 3-13, P’s RJN, Ex. 4.) It sought an injunction against
20 Geraci and Berry to recognize Cotton as a co-applicant on the CUP. (Id. at 6.¹) On
21 December 7, 2017, the Superior Court denied the request for TRO and set a date for
22 hearing on preliminary injunction for January 25, 2018. (Id., Ex. 6.) On December 12,
23 2017, the state court denied Cotton’s, now proceeding pro se, ex parte application for
24 reconsideration of the state court’s ruling on the TRO. (Id., Ex. 7.)

25
26
27
28 ¹ Page numbers are based on the CM/ECF pagination.

1 On January 25, 2018, the state court held a hearing on Cotton's writ of mandate
2 and motion for preliminary injunction, and Geraci and Berry's motion to compel Cotton's
3 deposition. (Id., Ex. 8.) In its brief order, the state court noted no additional papers were
4 filed, and denied Cotton's writ of mandate and denied his motion for a preliminary
5 injunction, and granted Geraci and Berry's motion to compel Cotton's deposition. (Id.)

6 On February 9, 2018, Plaintiff Cotton filed the instant complaint alleging breach of
7 contract of the agreement between him and Geraci on November 2, 2016 as well as
8 seventeen causes of action. (Dkt. No. 1, Compl.) Cotton's property at 6176 Federal
9 Boulevard, San Diego, CA, qualifies for a Conditional Use Permit ("CUP") for the
10 establishment of a Medical Marijuana Consumer Collective ("MMCC") (Id. ¶ 2.) If the
11 CUP is approved, the value of the property will potentially be greater than \$100 million.
12 (Id. ¶¶ 2, 3.) On November 2, 2016, Cotton and Geraci orally agreed to terms for the sale
13 of Cotton's property. (Id. ¶ 44.) The oral agreement contained condition precedents
14 prior to closing. (Id. ¶ 45.) The Agreement required that Geraci provide a \$50,000 non-
15 refundable deposit for Cotton to keep if the CUP was not issued; a total purchase price of
16 \$800,000 if the CUP was issued; and a 10% equity stake in the MMCC with a guaranteed
17 monthly equity distribution of \$10,000. (Id. ¶ 46.) According to Cotton, Geraci provided
18 Cotton with \$10,000 cash to be applied toward the non-refundable deposit of \$50,000 and
19 had Cotton execute a document to record his receipt of the money and promised to have
20 his attorney, Gina Austin, speedily draft a final, written purchase agreement for the
21 Property that would memorialize their oral terms. (Id. ¶ 47.) They agreed to two written
22 agreements: the "purchase agreement" for the sale of the property and a "side agreement"
23 concerning Cotton's equity stake and other provisions. (Id. ¶ 48.)

24 Plaintiff claims he has definitive proof of the terms of their agreement based on a
25 confirmation email Geraci sent to Cotton stating, "No No problem at all" when Cotton
26 emailed Geraci noting that the 10% equity interest in the dispensary was not added into
27 their purchase agreement of November 2, 2016 and asked that Geraci simply
28 acknowledge that interest in a reply email. (Id. ¶ 49.) According to Cotton, Geraci's

1 response to the email demonstrates that the November 2, 2016 agreement is not the final
2 agreement. (*Id.* ¶ 50.) He also claims that Geraci emailed him a draft “side agreement”
3 providing for the 10% interest. (*Id.* ¶¶ 52-54.) Cotton argues that Geraci breached the
4 Agreement by filing the CUP application without first paying the balance of \$40,000, and
5 failing to provide the final agreement as promised. (*Id.* ¶ 56.) Geraci made it clear he
6 would not honor the Agreement, and then Cotton responded informing Geraci that he no
7 longer has any interest in his property. (*Id.* ¶ 59.) In desperate need of funds, Cotton
8 entered into a written real estate purchase agreement with a third party. (*Id.*)

9 Cotton alleges causes of action against Geraci and his agent Rebecca Berry, their
10 attorneys for their actions during the underlying state court complaint, and the City of
11 San Diego for its handling of the CUP. (Dkt. No. 1.)

12 **D. Colorado River Abstention Doctrine**

13 In general, federal courts have a “virtually unflagging obligation . . . to exercise the
14 jurisdiction given them.” Colorado River Water Conservation Dist. v. United States, 424
15 U.S. 800, 817 (1976). However, the Court recognized that considerations of “[w]ise
16 judicial administration, giving regard to the conservation of judicial resources and
17 comprehensive disposition of litigation” allows a district court from either staying or
18 dismissing a case pending resolution of concurrent state court litigation. *Id.* (quoting
19 Kerotest Mfg. Co. v. C–O–Two Fire Equip. Co., 342 U.S. 180, 183 (1952)).

20 The Court was concerned about the “problem posed by the contemporaneous
21 exercise of concurrent jurisdiction by state and federal courts.” Smith v. Central Arizona
22 Water Conserv. Dist., 418 F.3d 1028, 1032 (9th Cir. 2005); Kirkbride v. Cont’l Cas. Co.,
23 933 F.2d 729, 734 (9th Cir. 1991) (The Colorado River abstention may be exercised only
24 “in situations involving the contemporaneous exercise of concurrent jurisdictions, either
25 by the federal courts or by state and federal courts.”). Nonetheless, the Court has noted
26 that the Colorado River abstention should be invoked only in “exceptional
27 circumstances.” Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 19
28 (1983).

1 The Colorado River doctrine may be raised by the Court *sua sponte*. See Jimenez
2 v. Rodriguez-Pagan, 597 F.3d 18, 27 n. 4 (1st Cir. 2010) (even though issue was not
3 raised below, decision to decline jurisdiction under Colorado River may be raised sua
4 sponte); Heiner v. Fed. Nat'l Mort. Ass'n, No. 13cv364-DN, 2014 WL 4851888, at *5, 8
5 (D. Utah Sept. 29, 2014) (proposed amended complaint would be futile as it would be
6 subject to dismissal under the Colorado River doctrine under sua sponte analysis of 28
7 U.S.C. § 1915(e)(2)(B)(ii).)

8 The Ninth Circuit has identified “eight factors for assessing the appropriateness of
9 a Colorado River stay or dismissal: (1) which court first assumed jurisdiction over any
10 property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid
11 piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether
12 federal law or state law provides the rule of decision on the merits; (6) whether the state
13 court proceedings can adequately protect the rights of the federal litigants; (7) the desire
14 to avoid forum shopping; and (8) whether the state court proceedings will resolve all
15 issues before the federal court.” R.R. St. & Co. v. Transp. Ins. Co., 656 F.3d 966, 978-79
16 (9th Cir. 2011) (citing Holder v. Holder, 305 F.3d 854, 870 (9th Cir. 2002)). “These
17 factors are to be applied in a pragmatic and flexible way, as part of a balancing process
18 rather than as a ‘mechanical checklist.’” American Int'l Underwriters, (Phillipines), Inc.
19 v. Continental Ins. Co., 843 F.2d 1253, 1257 (9th Cir. 1988) (quoting Moses Cone, 460
20 U.S. at 16).

21 The first factor is neutral as this case does not involve an in rem or quasi in rem
22 proceeding. “Where concurrent proceedings in state and federal court are both suits in
23 rem or quasi in rem, the court first assuming jurisdiction over the property may maintain
24 and exercise that jurisdiction to the exclusion of the other.” Knaefler v. Mack, 680 F.2d
25 671, 675 (9th Cir. 1982). The Supreme Court has held “that the court first assuming
26 jurisdiction over property may exercise that jurisdiction to the exclusion of other courts.”
27 Colorado River, 424 U.S. at 818. “Actions relating to land, such as suits to quiet title, are
28 denominated quasi-in-rem.” Park v. Powers, 2 Cal. 2d 590, 598-99 (1935). Here, there is

1 no dispute as to the ownership of the property but a breach of contract claim concerning
2 the sale of property.

3 Next, the second factor concerning the inconvenience of the federal forum is
4 neutral since the location of the state and federal courts are both located in San Diego and
5 the parties reside in San Diego. (Dkt. No. 1, Compl. ¶¶ 26-37.)

6 The third factor concerning the desire to avoid piecemeal litigation strongly weighs
7 in favor of a stay or dismissal. “Piecemeal litigation occurs when different tribunals
8 consider the same issue, thereby duplicating efforts and possibly reaching different
9 results.” Seneca Ins. Co., Inc. v. Strange Land, Inc., 862 F.3d 835, 842 (9th Cir. 2017)
10 (quoting Am. Int’l Underwriters (Philippines), Inc. v. Cont’l Ins. Co., 843 F.2d 1253,
11 1258 (9th Cir. 1988)). Here, Plaintiff seeks to litigate the exact same issues that are
12 currently pending in state court in this Court. Not only will both courts consider the same
13 issues but could possibly reach different results.

14 Fourth, the state court action was filed first in March 2017 and appears to be in the
15 middle of discovery² while this case was recently filed on February 9, 2018. Therefore,
16 this factor favors application of the Colorado River doctrine.

17 The fifth factor looks at whether federal or state law provides the rule of decision
18 on the merits and the sixth factor considers whether the state court proceedings can
19 adequately protect the rights of the federal litigant. In this case, there are two federal
20 causes of action for an unlawful seizure and violation of due process under 28 U.S.C. §
21 1983 and sixteen state law causes of action. Therefore, state and federal law will apply in
22 this case. While federal law will apply to the § 1983 causes of action, state courts have
23 concurrent jurisdiction over these claims. See Maine v. Thiboutot, 448 U.S. 1, 3 n. 1
24 (1980) (finding concurrent jurisdiction over 42 U.S.C. § 1983 suits, despite federal
25 procedural provisions in § 1988); Patsy v. Bd. of Regents of Fla., 457 U.S. 496, 506-07
26

27
28 ² On January 25, 2018, the state court granted Plaintiff’s motion to compel the deposition of Defendant Cotton. (Dkt. No. 3-13, P’s RJN, Ex. 8.)

(1982) (canvassing the legislative debates of the 1871 Congress and noting that “many legislators interpreted [§ 1983] to provide dual or concurrent forums in the state and federal system, enabling the plaintiff to choose the forum in which to seek relief”); but see Krieger v. Atheros Comm’ns, Inc., 776 F. Supp. 2d 1053, 1059-60 (N.D. Cal. 2011) (claims under the Securities Exchange Act are within the exclusive jurisdiction of the federal courts and therefore does not provide reason to stay under the Colorado River doctrine). “[I]f there is a possibility that the parties will not be able to raise their claims in the state proceeding, a stay or dismissal is inappropriate.” R.R. Street & Co., Inc., 656 F.3d at 981; but see Holder, 305 F.3d at 869 n. 5 (state court probably lacked jurisdiction to hear the plaintiff’s federal International Child Abduction Remedies Act (“ICARA”) claim). Here, the state court is able to address the state law causes of action as well as the 1983 causes of action. These two factors weigh in favor of a stay or dismissal.

The seventh factor on whether the complaint filed in this case is an attempt by Plaintiff to forum shop strongly weighs in favor of a stay or dismissal. See Nakash v. Marciano, 882 F.2d 1411, 1417 (9th Cir. 1989) (after three and a half years, Nakash was dissatisfied with the state court and sought a new forum and the court has “no interest in encouraging this practice.”); Conte v. Aargon Agency, Inc., No. 12cv2811-MCE-DAD, 2013 WL 1907722, at *5 (E.D. Cal. May 7, 2013) (filing of federal action shortly after adverse state court ruling demonstrated “reactive nature” of the federal lawsuit). In this case, Plaintiff is frustrated and dissatisfied with the acts taken by the defendants in the underlying state court case, and dissatisfied with the rulings of the state court. (See Dkt. No. 1, Compl. ¶¶ 79, 81-83, 97, 130, 131 134.) As a result, Cotton filed the instant complaint alleging the same breach of contract of the Agreement made on November 2, 2016 between Cotton and Geraci. Cotton also filed a cross-complaint against Geraci and Berry in the state court complaint but it is not provided to the Court. In this case, Cotton also added additional defendants based on his dissatisfaction with their role during the state court litigation which include claims against Geraci’s agent, Berry, Geraci’s attorneys, and the City of San Diego for its handling of the CUP. (Dkt. No. 1.)

1 In fact, Plaintiff Cotton expressly asks this Court to review the evidence currently
2 pending in state court. (Dkt. No. 1, Compl. ¶ 150.) As stated in the TRO application,
3 Cotton is “seeking the same injunctive relief requested” (Dkt. No. 3-1, at 7.) He
4 provides the state court pleadings so that this Court can “make its own evaluation of
5 whether the state court judge’s orders can be supported by the evidence and arguments
6 they were presented with.” (*Id.* at 8.) Cotton is clearly forum shopping by asking this
7 Court to review the evidence and rulings of the state court, a factor that strongly supports
8 a stay or dismissal.

9 The final factor, whether the state court proceedings will resolve all issues before
10 the federal court weighs in favor of a stay or dismissal. “[E]xact parallelism” is not
11 required; “[i]t is enough if the two proceedings are ‘substantially similar.’” *Nakash*, 882
12 F.2d at 1416 (citations omitted). Proceedings are “substantially similar” when they arise
13 out of the same conduct or interactions between the parties. *Silvaco Data Sys. v.*
14 *Technology Modeling Assocs.*, 896 F. Supp. 973, 976 (N.D. Cal. 1995) (state and federal
15 actions substantially similar for purposes of Colorado River even though they did not
16 address identical factual or legal issues). “[T]he existence of a substantial doubt as to
17 whether the state proceedings will resolve the federal action precludes the granting of a
18 stay.” *Intel Corp. v. Adv. Micro Devices, Inc.*, 12 F.3d 908, 913 (9th Cir. 1993). Here,
19 the state court complaint and this federal complaint are substantially similar as they both
20 concern the same November 2, 2016 agreement between Cotton and Geraci and
21 subsequent disputed actions. While there are additional defendants and causes of action
22 in this case, these claims arise out the same November 2 Agreement. This factor weighs
23 in favor of the application of the Colorado River doctrine.

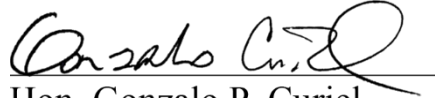
24 Accordingly, given the pendency of the parallel state proceeding and evaluating
25 the factors in this case, the Court STAYS the case pending resolution of the state court
26 action pursuant to the Colorado River doctrine. See *R.R. St. & Co.*, 656 F.3d at 978 n. 8
27 (“We generally require a stay rather than a dismissal.”)
28

Conclusion

Based on the above, the Court GRANTS Plaintiff's motion for IFP status, STAYS the case until resolution of the parallel state court action and DENIES Plaintiff's ex parte motion for temporary restraining order and motion for appointment of counsel as MOOT. Plaintiff shall notify the Court promptly upon final judgment in the state court action.

IT IS SO ORDERED.

Dated: February 28, 2018


Hon. Gonzalo P. Curiel
United States District Judge

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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

DARRYL COTTON, an individual; JOE
 HURTADO, an individual;

Plaintiffs,

vs.

LARRY GERACI, an individual; REBECCA
 BERRY a/k/a REBECCA ANN BERRY
 RUNYAN, an individual; MICHAEL R.
 WEINSTEIN, an individual; SCOTT
 TOOTHACRE, an individual; FERRIS &
 BRITTON APC, a California corporation;
 GINA M. AUSTIN, an individual; AUSTIN
 LEGAL GROUP APC, a California corporation,
 SEAN MILLER, an individual FINCH
 THORTON & BAIRD, a limited liability
 partnership, DAVID DEMIAN, an individual,
 ADAM WITT, an individual; and DOES 1
 through 50, inclusive,

Defendants.

Case No. **'18CV2751 W AGS**

COMPLAINT FOR:

- 1. FRAUD;**
- 2. ABUSE OF PROCESS;**
- 3. RICO;**
- 4. CIVIL CONSPIRACY; and**
- 5. LEGAL MALPRACTICE**

Plaintiffs Darryl Cotton (Cotton) and Joe Hurtado (Hurtado) (hereinafter collectively
 “Plaintiffs”), by and through their counsel, Jacob P. Austin, of the Law Offices of Jacob Austin, for
 Plaintiffs’ causes of action against Defendants, complain and allege as follows on information and
 belief:

INTRODUCTION

1. The origin of this matter is a very simple real estate breach-of-contract dispute between Darryl Cotton (“Cotton”) and Lawrence Geraci (“Geraci”). Cotton is the owner-of-record of the subject real property, 6176 Federal Blvd., San Diego, CA 92114 (the “Property”), which qualifies for a conditional use permit (“CUP”)¹ that would allow the operation of a highly lucrative Marijuana Outlet – a for-profit cannabis retail store (the “Business”). On November 2, 2016, Cotton and Geraci entered into an oral joint-venture agreement (the “JVA”) pursuant to which, *inter alia*, (i) Cotton would sell his Property to Geraci and (ii) Geraci would finance the acquisition of (a) the CUP for the Property (the “6176 CUP Application”) with the City of San Diego (the “City”) and (b) the development of the Business at the Property. However, Geraci, driven by greed, breached the JVA by attempting to deprive Cotton of a bargained-for 10% equity position in the Business. Consequently, Cotton terminated the JVA and sold the property to a third-party, Richard Martin (“Martin”).

2. The day after Cotton terminated the JVA with Geraci, Cotton was served with a frivolous lawsuit by Geraci and a copy of a *Lis Pendens* filed and recorded on the Property seeking to prevent the sale to Martin (the “Geraci Litigation”).² Cotton hired David Demian (“Demian”) and Adam Witt (“Witt”) of Finch, Thornton & Baird (collectively with Demian and Witt, “FTB”) to represent him in various legal disputes related to the Property, including the Geraci Litigation. Pursuant to Cotton’s agreement with FTB, they were to be paid a maximum of \$10,000 a month with any amount above \$10,000 being carried over as a balance. FTB, however, engaged in a series of fraudulent and negligent actions designed to prolong the litigation and thereby increase their legal fees.

3. In short, what should have been a simple legal matter that could have originally been adjudicated as a matter of law pursuant to the parol evidence rule, became more convoluted as Cotton’s *pro se* representation served to incentivize Geraci and his agents to double-down on their initial

¹ A conditional use permit is administrative permission for use not allowed as a matter of right in a zone, but subject to approval (Cal. Zoning Practice, *Types of Zoning Relief* § 7.64, p.299 (Cont. Ed. Bar 1996). The issuance of a condition use permit may be subject to conditions. (*J-Marion Company, Inc. v. County of Sacramento* (1977) 76 Cal.App.3d 517, 522.)

² Counsel for Plaintiffs notes that the majority of the language in this Complaint has been copied from Cotton’s judicial submissions because, notwithstanding the *procedural* history of that matter, the undisputed facts and the legal arguments already made require, at the very least, that Cotton prevail in the Geraci Litigation on his breach of contract cause of action. The origin of this dispute before it became increasingly convoluted as the actions of Geraci, his agents and the City gave rise to additional causes of action.

1 fraudulent scheme to unlawfully acquire Cotton's Property; both by engaging in unlawful conduct in
 2 the Geraci Litigation and extra-judicial attempts aimed at coercing a settlement from Cotton. While
 3 these allegations appear outlandish at first glance, in reality they are neither novel nor incredible: over
 4 the last year the FBI and various law enforcement agencies have increasingly highlighted the criminal
 5 actions and corruption of numerous cities, government agencies, lobbyists, attorneys and private
 6 individuals in "pay to play" schemes across the State of California to engage in highly profitable
 7 commercial marijuana activities.³

8 JURISDICTION AND VENUE

9 4. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(a), and 18
 10 U.S.C. § 1964, which, *inter alia*, confer original jurisdiction to the District Courts of the United States
 11 for all civil actions arising under the United States Constitution or the laws of the United States, as well
 12 as civil actions to redress deprivation under color of state law, of any right immunity or privilege secured
 13 by the United States Constitution. Further, this Court has subject matter jurisdiction pursuant to the
 14 Federal Racketeering Act, 18 U.S.C. §1651, *et seq.* and supplemental jurisdiction for Plaintiffs' claims
 15 arising under the laws of the State of California pursuant to 28 U.S.C. § 1367(a).

16 5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color
 17 of state and local law of rights, privileges, immunities, liberty and property, secured to all citizens by
 18 the First, Fourth and Fourteenth Amendments to the United States Constitution.

19 6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) for all Defendants
 20 because the acts and omissions giving rise to the claims alleged herein occurred in this judicial district
 21 and the Property is located in this judicial district.

22 PARTIES

23 7. At all times herein mentioned, Cotton (a) was and is an individual residing in the City
 24 and County of San Diego; and (b) was and is the owner of the Property.

25 8. At all times herein mentioned Hurtado (a) was and is an individual residing in the City
 26 of El Cajon, County of San Diego; (b) was and is a transactional advisor for Cotton; and (c) did operate
 27 as a litigation investor of the underlying lawsuit between Cotton and Geraci.

28

³ *E.g. MKay, Inc., et al. v. City of Huntington Park, et al.*, United States District Court for the Central District of California, Case No. 2:17-CV-01467-SJO-AFM, (Plaintiff sued City of Huntington Park for pay-to-play scheme).

1 9. At all times herein mentioned, Defendant Geraci (a) was and is an individual residing
2 and doing business as an accounting and financial advisor in the City and County of San Diego; and (b)
3 was an is the Plaintiff in the underlying lawsuit against Cotton.

4 10. At all times herein mentioned, Defendant REBECCA BERRY a/k/a REBECCA ANN
5 BERRY-RUNYAN ("Berry") (a) was and is an individual residing and doing business in the City and
6 County of San Diego; and (b) was and is the agent of Geraci.

7 11. At all times herein mentioned, Defendant WEINSTEIN ("Weinstein") (a) was and is an
8 individual residing and doing business in the City and County of San Diego; (b) is an attorney licensed
9 by the State of California to practice law; (c) is a managing partner and shareholder of the law firm of
10 Defendant FERRIS & BRITTON APC ("F&B"); and (d) is the attorney of record for Geraci and Berry
11 in the Geraci Litigation.

12 12. At all times herein mentioned, Defendant F&B (a) was and is a California corporation
13 doing business as a professional law firm in the City and County of San Diego; and (b) is the law firm
14 representing Geraci and Berry in the Geraci Litigation.

15 13. At all times herein mentioned, Defendant GINA M. AUSTIN ("Austin") (a) was and is
16 an individual residing and doing business in the City and County of San Diego as an attorney at law
17 specializing in cannabis regulation and permitting; (b) is an attorney licensed by the State of California
18 to practice law; (c) is the sole officer and director of Defendant AUSTIN LEGAL GROUP, APC, a
19 California corporation; (d) is Geraci's attorney in connection with the 6176 CUP Application; and (e)
20 represented Geraci in the Geraci Litigation and in other matters.

21 14. At all times herein mentioned, Defendant Damian (a) was and is an individual residing
22 and doing business in the City and County of San Diego; (b) is an attorney licensed by the State of
23 California to practice law; (c) is a partner and shareholder of the law firm of Defendant FTB.

24 15. At all times herein mentioned, Defendant Witt (a) was and is an individual residing and
25 doing business in the City and County of San Diego; (b) is an attorney licensed by the State of California
26 to practice law; (c) is a junior associate of the law firm of Defendant FTB.

27 16. At all times herein mentioned, FTB, was a limited liability partnership with its principle
28 place of business in the County of San Diego.

GENERAL ALLEGATIONS

A. Material Factual Background

17. The regulatory schemes being effectuated by the State of California and the City of San Diego governing the licensing of marijuana businesses prohibit individuals who have previously been sanctioned with illegal marijuana activities from having an ownership interest in a legal Marijuana Outlet. San Diego Municipal Code (“SDMC”) §42.1501 materially states: “the intent of this Division [is] to ensure that marijuana is not diverted for illegal purposes, and to limit its use to those persons authorized under state law.” California Bus. & Prof. Code § 26057 applies to the licensing of marijuana operations and provides the criteria pursuant to which a license may be denied, including the “[f]ailure to provide information required by the licensing authority” and “[t]he applicant... has been sanctioned by a licensing authority or a city... for unauthorized commercial cannabis activities...” Bus. & Prof. Code § 26057(b)(3),(7). Additionally, various other provisions void marijuana licenses acquired through fraud and other unlawful actions. *See, e.g.*, Bus. & Prof. Code § 480(d) (“A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.”)

18. Geraci has been a named defendant and sanctioned in at least three actions by the City for owning/managing illegal marijuana dispensaries. Geraci is not named as a person with an interest in the Property or the 6176 CUP Application in contravention of numerous City and State laws. Geraci judicially admits that he has previously been sanctioned and that his name is not on the 6176 CUP Application.

19. Berry is Geraci’s agent, a California licensed Real Estate Broker, disclaims knowledge of the statute of frauds, submitted the 6176 CUP Application claiming to be the Owner of the Property, and alleges she thought it was proper to not disclose Geraci as an individual with an interest in the Property or the CUP in the 6176 CUP Application.

20. Austin, per her own sworn declaration, is a “an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation... [and] performs... legal services [that] include corporate transactions and structuring, land use entitlements and

1 regulations related to cannabis, and state compliance related to cannabis.”⁴ Austin is Geraci’s
 2 attorney/agent who is responsible for the 6176 CUP Application and who has also represented him in
 3 the Geraci Litigation. She reviewed and approved the 6176 CUP Application before its submission to
 4 the City knowing that Berry had falsely stated she was the “Owner” of the Property in the application
 5 for the 6176 CUP Application.

6 21. Sean Miller (“Miller”) is an agent of Geraci and a violent convict out on parole who “was
 7 found guilty on two counts of committing wire fraud, in violation of 18 U.S.C. § 1343, two counts of
 8 money laundering, in violation of 18 U.S.C. § 1957, and one count of witness tampering, in violation of
 9 18 U.S.C. § 1512(b)(3).” *United States v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008). Miller threatened
 10 Hurtado and his family with the goal of having Hurtado use his influence with Cotton to have him
 11 forcibly settle with Geraci.

12 22. Cotton hired FTB because they represented plaintiff in *Engbreetsen v. City of San Diego*
 13 (Nov. 30, 2016, No. D068438) ___ Cal.App.5th ___ [2016 Cal. App. Unpub. LEXIS 8548, at *1]. In
 14 *Engbreetsen* “[plaintiff] sought a writ of mandate to compel the [City] to recognize him as the sole
 15 applicant for a [CUP] to operate a [Marijuana Outlet] on his [real property] and process the application
 16 accordingly. Engbreetsen alleged he was the sole record owner and interest holder of [his real property]
 17 throughout the application process. Although real party in interest Radoslav Kalla was listed as the
 18 applicant for the CUP, Engbreetsen alleged that Kalla was acting on Engbreetsen's behalf as an agent,
 19 Kalla never had an independent legal right to use the [Engbreetsen’s real property], and Engbreetsen
 20 had since revoked Kalla's agency. The City did not oppose Engbreetsen's writ petition. [¶] The trial court
 21 granted the writ, and in a statement of decision, discussed its basis for finding that (1) Kalla was acting
 22 as Engbreetsen’s agent in pursuing the CUP; (2) Kalla did not have any independent authority to pursue
 23 it or legal interest in the [Engbreetsen’s real property]; (3) Engbreetsen, as the principal, terminated
 24 Kalla's agency and became the only proper applicant; and (4) the City had a ministerial duty to process
 25 the application in Engbreetsen's name.” *Id.* at *1-2. In other words, a nearly identical situation in which
 26 Cotton found himself with Geraci. Cotton entered into a joint-venture with Geraci and, although it was
 27
 28

⁴ CASE NO. 37-2018-00034229-CU-BC-CTL, SUPPLEMENTAL DECLARATION OF GINA M. AUSTIN FOR SEPTEMBER 7, 2018 HEARING, filed September 4, 2018.

1 done without his knowledge, Berry submitted the 6176 CUP Application to the City as an agent of joint-
 2 venture between Cotton and Geraci. When Geraci breached the JVA, Cotton terminated the agreement
 3 and, thus, the agency relationship with Berry, who by her own judicial admissions has no interest in the
 4 Property other than as Geraci's agent.

5 **B. Geraci's Conspiracy to Unlawfully Acquire Cotton's Property**

6 23. The day after Cotton terminated the JVA with Geraci, Cotton was served with a frivolous
 7 lawsuit by Geraci and a copy of a Lis Pendens filed on the Property seeking to prevent the sale to Martin.
 8 Additionally, Geraci began a course of unlawful conduct to coerce Cotton to settle the Geraci Litigation
 9 for less than what Cotton had bargained-for in the JVA. Geraci's efforts included physical threats and
 10 intimidation tactics that were not only aimed at Cotton, but also Cotton's friends, employees and his
 11 litigation investor, Hurtado. When Cotton communicated that he could not legally agree to a settlement
 12 that would result in Geraci owning the Property and CUP, due to an amendment to the agreement with
 13 Martin resulting from the filing of the Geraci Litigation, Geraci changed course and conspired with his
 14 agents, who include Jim Bartell (a powerful political lobbyist with a great degree of influence with the
 15 City), to sabotage the 6176 CUP Application with the City. The ultimate goal being to limit Geraci and
 16 his agents' legal and financial liability to Cotton and Martin. Their efforts to sabotage the 6176 CUP
 17 Application at the Property primarily consisted of two routes, both of which were effectuated via
 18 Bartell's political influence. First, to have the City deny the 6176 CUP Application and, second, to stall
 19 the 6176 CUP Application while a competing CUP application (the "6120 CUP Application") was filed
 20 via a proxy within 1,000 feet of the Property.⁵

21 **C. FTB's Legal Malpractice**

22 24. On or about May 12, 2107 Cotton, self-represented, filed a cross-complaint against
 23 Geraci and Berry which contained 11 causes of action.

26 ⁵ **San Diego Municipal Code § 141.0504** (a) Marijuana outlets shall maintain the following minimum separation between
 27 uses, as measured between property lines, in accordance with Section 113.0225: (1) 1,000 feet from resource and population-
 28 based city parks, other marijuana outlets, churches, child care centers, playgrounds, libraries owned and operated by the City
 of San Diego, minor-oriented facilities, residential care facilities, and schools. For purposes of this section, school means
 any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not
 include any private school in which education is primarily conducted in private homes.

1 25. On or about June 13, 2017, at San Diego, California, Plaintiffs retained and employed
2 FTB to represent Cotton in, inter alia, the Geraci Litigation.

3 26. FTB agreed to represent Cotton on a financed agreement of \$10,000 a month. The
4 agreement was that the law firm would fully represent Cotton even if the cost was greater than \$10,000.
5 If there was a month that was in excess of \$10,000, then that balance would be carried over.

6 27. However, Witt communicated that Damian was concerned his partners would not like it
7 if they knew that he took on Cotton's representation with an understanding that Cotton would only pay
8 \$10,000 a month. Witt, however, expressly stated that it would not be an issue as they could just pretend
9 that any delay in payments was due to Cotton's delay in payment. At Witt's suggestion, Cotton emailed
10 the executed agreement with FTB for their services that does not contain the \$10,000 a month agreement
11 but noted in the cover email that their real agreement was the agreed-to \$10,000 a month payment plan.

12 28. On or about June 30, 2017, FTB filed Cotton's "First Amended Cross-Complaint." The
13 "First Amended Cross-Complaint" contained seven causes of action.

14 29. On or about August 25, 2017 FTB filed Cotton's "Second Amended Cross-Complaint."
15 The "Second Amended Cross-Complaint" contained four causes of actions.

16 30. FTB had no justification to dismiss the other causes of action and Cotton did not
17 understand, at that point in time, that he would lose his meritorious causes of action as a result of FTB's
18 dismissal of causes of action and release of Berry from other causes of action.

19 31. No court order was issued with relation to the merits of any of Cotton's original causes
20 of action that would require FTB to drop any cause of action.

21 32. Plaintiffs submit that no reasonable attorney would dismiss or otherwise fail to plea those
22 causes of action as they were meritorious.

23 33. In fact, Cotton's First Amended Cross-Complaint, drafted and filed by FTB, contained
24 two causes of action for interference with a prospective economic relation which Cotton had not
25 including in his pro per filing. These meritorious causes were not carried over to the Second Amended
26 Cross-Complaint. FTB has never provided any reasoning for this action, and justified their dismissal

27 34. On December 7, 2016, at a hearing on Cotton's request for a temporary restraining order,
28 FTB failed to raise in oral argument the most critical and case-dispositive piece of evidence in the
lawsuit, the Confirmation Email (as defined below).

35. Demian notified Cotton he was withdrawing as counsel via email without notice after failing to prepare for that hearing, failing to raise material evidence at the hearing (that would have resulted in a favorable decision as a matter of law), and admitting to Hurtado, immediately after the hearing outside the courtroom, that he was not prepared because the “\$10,000 was not enough.”

36. Cotton thereafter represented himself before the court pro se and, having no legal education or prior legal experience, was unable to convey the facts free of emotion resulting in his inability to persuade the trial court of the frivolous nature of the action against him; despite the undisputed facts and judicial admissions that mandate resolution in his favor as a matter of law in the Geraci Litigation. Summarily stated, Cotton’s submissions to the Court and oral arguments at hearings, alleging a conspiracy by Geraci, Geraci’s attorneys and agents, various City officials and even his own attorneys, FTB, make him appear to be a “conspiracy nut.” Thus, causing him to lose all credibility with the presiding judge in the Geraci Litigation.

37. Plaintiffs’ justifiable reliance on the misrepresentations of FTB directly caused damages in the form of economic losses to Plaintiffs in an amount to be determined at trial.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

FRAUD

(Against Defendants Geraci, Berry, Weinstein, Toothacre, F&B, Austin, ALG
and DOES 1-50) Inclusive)

38. Plaintiff realleged and incorporates herein by this reference all the allegations contained above.

39. In the summer of 2016, Geraci was one of several parties who contacted Cotton seeking to purchase the Property in order to apply for a CUP to establish and operate a Marijuana Outlet at the Property (i.e., the Business). Over the course of the ensuing five to six months, Geraci and Cotton met, spoke by telephone, and emailed and texted one another actively working to negotiate the terms of the potential sale of the Property to Geraci. During this time, Cotton was also actively meeting, negotiating and communicating with other parties who were interested in purchasing the Property.

1 40. During their negotiations, Geraci represented to Cotton that (a) he was a California
2 licensed Real Estate Agent; (b) he was an Enrolled Agent with the IRS; (c) he was the owner and
3 manager of Tax and Financial Center, Inc. (a sophisticated accounting and financial advisory services
4 company); (d) preliminary due diligence on the Property by his experts had discovered that there was a
5 zoning issue that unless first resolved would prevent the City from even accepting the 6176 CUP
6 Application (the “Zoning Issue”); (e) through his professional relationships and powerful hired
7 lobbyists, he was in a unique position to have the Zoning Issue resolved; (f) he was highly qualified to
8 operate the Business because he owned and operated multiple cannabis dispensaries in the City; and
9 (g) Berry was a trustworthy individual to be the applicant for the 6176 CUP Application because, inter
10 alia, she assisted Geraci in managing his marijuana dispensaries and could pass the background checks.

11 41. On or around October 31, 2016, Geraci asked Cotton to execute Form DS-318 (the
12 “Ownership Disclosure Statement”) – a required component of all CUP applications for Marijuana
13 Outlets with the City. Geraci asked Cotton to execute the Ownership Disclosure Statement in good faith
14 so that he could show it to his experts to prove that he had access to the Property and they could begin
15 their planning and lobbying efforts to resolve the Zoning Issue. The Ownership Disclosure Statement
16 stated that Berry was the “lessee” of the Property, however, Cotton has never met Berry or entered into
17 any type of agreement with Berry.

18 42. On November 2, 2016, Cotton was actively negotiating with various parties regarding
19 the purchase and sale of the Property. However, in the afternoon of November 2, 2016, Cotton and
20 Geraci met at Geraci’s office, finalized their negotiations and entered into the JVA. The agreed-upon
21 terms included but were not limited to the following:

22 a. Geraci would resolve the Zoning Issue and pay for all costs associated with the
23 submission and approval of the 6176 CUP Application;

24 b. If the CUP was approved, then Geraci would pay for the development of the
25 Business at the Property and provide Cotton (i) a total purchase price of \$800,000 for the Property; (ii)
26 a 10% equity position in the Business; and (iii) the greater of \$10,000 or 10% of the net profits on a
27 monthly basis; and

28 c. If the CUP was denied, Cotton would keep an agreed upon \$50,000 non-
refundable deposit (“NRD”) and the transaction would not close. In other words, the issuance of the

1 CUP at the Property was a condition precedent for closing on the sale of the Property (the “Condition
2 Precedent”) and, if the CUP was denied, Defendant would keep his Property and the \$50,000 NRD.

3 43. At the November 2, 2016 meeting, Geraci provided \$10,000 in cash towards the agreed
4 upon \$50,000 NRD and had Cotton execute a three-sentence document he drafted to memorialize
5 Cotton’s receipt of the \$10,000 (the “November Document”).⁶ Also, Geraci promised to (i) have his
6 attorney, Austin, *promptly* reduce the JVA to writing and (ii) to not submit the 6176 CUP Application
7 to the City until he paid the balance of the NRD to Cotton.

8 44. Later that *same* day, the following communications took place between Geraci and
9 Cotton:

10 a. At 3:11 p.m., Geraci emailed Cotton a scanned copy of the November Document,
11 which states:

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

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

17 (emphasis added).

18 b. At 6:55 p.m., Cotton replied:

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

23 (emphasis added).

24 c. At 9:13 p.m., Geraci replied: “*No no problem at all*” (the “Confirmation Email”).

25 45. Geraci filed the Complaint in the Geraci Litigation stating that the November Document
26 was the final agreement for the purchase of the Property. Geraci knows that such a statement is false, as
27

28
⁶ The November Document, at Geraci's request, was notarized by an employee of Geraci who works at his office and was there during their meeting.

1 he himself has confirmed in the Confirmation Email, but he did so to seek to unlawfully deprive Cotton
2 of, *inter alia*, his bargained-for 10% equity position. It is justified for Cotton to have relied on Geraci
3 and his representations as he was a California licensed real estate agent, an Enrolled Agent with the IRS,
4 and held himself out as a sophisticated businessman. Geraci's representations have resulted in damages
5 as Cotton has been forced to continuously sell off his interest in the Property and the CUP to finance his
6 legal defense.

7
8 SECOND CAUSE OF ACTION

9 ABUSE OF PROCESS

10 (Against Defendants Geraci, Berry, Weinstein, Toothacre, F&B, Austin, ALG
and DOES 1-50, Inclusive)

11 46. Plaintiff realleged and incorporates herein by this reference all the allegations contained
12 above.

13 47. Geraci, with the help of others, including named defendants herein, filed a frivolous
14 lawsuit, filed a Lis Pendens on the property, filed motions, declarations, responsive pleadings, taken
15 depositions, and generally maintained the lawsuit knowing it lacked probable cause at its filing and, as
16 result of Geraci's judicial admissions, was barred by the parol evidence rule and the statute of frauds.

17 48. That Geraci and his cohorts used this legal procedure to interfere in a contractual
18 relationship and force the sale of the Property to Geraci instead of and rather than Geraci.

19 49. That Plaintiffs were and continue to be harmed; and

20 50. That Defendants conduct was a substantial factor in causing Plaintiffs' harm.

21 THIRD CAUSE OF ACTION

22 RICO

23 (Against Defendants Geraci, Berry, Weinstein, Toothacre, F&B, Austin, ALG, Miller
24 and DOES 1-50, Inclusive)

25 51. Plaintiff realleged and incorporates herein by this reference all the allegations contained
26 above.

27 52. Geraci is the head of a criminal enterprise dealing in illegal marijuana operations who is
28 attempting acquire a prohibited interest in a Marijuana Outlet via a proxy.

53. The goal of Geraci and his agents is to circumvent the applicable regulatory scheme and thereby continue to run their criminal enterprise under the facade of a lawful and legitimate business.

54. Commencing on or about August of 2016, Geraci and his agents named as defendants herein, conspired together wrongfully to acquire a CUP for a Marijuana Outlet on the Property. To this end Geraci and his agents have engaged in fraud, misrepresentations, intimidation, cohesion, abuse of process, causing all of the value that Plaintiffs' would have benefited from and instead have had to expend all of their resources to defend a frivolous lawsuit.

55. Geraci and his agents were aware that Geraci and others planned to interfere in and prevent Cotton from 1) transferring his property to a bona fide purchaser for value; and/or 2) obtaining a CUP on the Property.

56. Defendants agreed with Geraci and others and intended that the interference with the sale of the property and issuance of a CUP on the Property be committed.

57. Additionally, a conspiracy can be inferred from the circumstances, the nature of the acts done by each Defendant, the relationships between the Defendants, and the interest of each Defendant individually and collectively.

58. Geraci, per his own and Berry's judicial admissions, is prohibited from being licensed with the State of California for a Marijuana Outlet because, inter alia, (i) his prior involvement with unauthorized commercial cannabis activities for which he was sanctioned; (ii) his failure to have his agent, Berry, disclose his ownership interest in the Property and the CUP in the 6176 CUP Application; and (iii) his filing of the Geraci Litigation which, as fully described herein, is a fraudulent action in furtherance of his conspiracy seeking to use the judiciary to unlawfully deprive Cotton and Martin of their interest in the Property and the CUP.

FOURTH CAUSE OF ACTION

CIVIL CONSPIRACY

(Against Defendants Geraci, Berry, Weinstein, Toothacre, Austin, Miller, ALG
And DOES 1-50, Inclusive)

59. Plaintiff realleged and incorporates herein by this reference all the allegations contained above.

60. Defendants named in this cause of action conspired to fraudulently deprive Plaintiffs of their interest in the Property and to unlawfully coerce and intimidate them into having Cotton settle the Geraci Litigation. All the named defendants knew that Geraci did not have a lawful claim to the Property, yet he and they agreed, and took action, to effectuate the fraudulent scheme premised on the false allegation that the November Document was the final integrated agreement for the Property. And, in furtherance of the conspiracy, to unlawfully intimidate Plaintiffs.

FIFTH CAUSE OF ACTION
LEGAL MALPRACTICE

(Against FTB, Demain, Witt and DOES 1-50 Inclusive)

61. Plaintiffs repeat and reallege all previous allegation as if restated herein.

62. On or about June 13, 2017, at San Diego, California, Plaintiffs retained and employed FTB to represent Cotton in connection with his legal issues related to the Property. At such a time and place Defendants and each of them accepted such employment and agreed to perform legal services for Plaintiffs.

63. At all times herein mentioned, FTB and each of them, failed to exercise reasonable care and skill in undertaking to perform such legal services for Plaintiffs.

64. Had FTB, and each of them, exercised proper care and skill in the foregoing matter, Plaintiffs would have seen the resolution of the underlying matter in their favor and Geraci and his attorneys would not have been emboldened to continue to maintain a frivolous lawsuit and take extra judicial actions to attempt to limit their own liability.

65. As a proximate result of negligence of the FTB, and each of them, Plaintiffs have been damaged in an amount which is unknown or unknowable, but which is excess of the jurisdictional limits of this Court. Plaintiffs will request leave of Court to amend this Complaint when such an amount is ascertained.

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PRAYER FOR RELIEF:

WHEREFORE, Cotton prays for relief against defendants as follows.

1. General, exemplary, special and or consequential damages in the amount to be proven at trial, but which are no less than 5,000,000;
2. All applicable relief entitled to Plaintiffs by law and equity.
3. All other relief is awarded as the Court determine is in the interest of justice.

Dated: December 6, 2018

THE LAW OFFICE OF JACOB AUSTIN

/s Jacob P. Austin

JACOB P. AUSTIN
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual; JOSE
HURTADO, an individual,

Plaintiff,

v.

LARRY GERACI, an individual;
REBECCA BERRY a/k/a REBECCA
ANN BERRY RUNYAN, an individual;
MICHAEL R. WEINSTEIN, an
individual; SCOTT TOOTHACRE, an
individual; FERRIS & BRITTON APC, a
California corporation; GINA M.
AUSTIN, an individual; AUSTIN LEGAL
GROUP APC, a California corporation;
SEAN MILLER, an individual; FINCH
THORTON & BAIRD, a limited liability
partnership; DAVID DEMIAN, an
individual; ADAM WITT, an individual;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 18cv2751-GPC(MDD)

**ORDER DISMISSING THE
COMPLAINT WITH PREJUDICE
AND DENYING DEFENDANTS'
MOTIONS TO DISMISS AS MOOT**

[Dkt. Nos. 18, 20, 21.]

Before the Court are Defendants Finch Thornton & Baird LLP, David Demian and
Adam Witt's motion to dismiss pursuant to Federal Rule of Civil Procedure 4, (Dkt. No.

18); Defendants Michael R Weinstein, Scott Toothacre, and Ferris & Britton, APC's motion to dismiss, or in the alternative, motion to stay the case, (Dkt. No. 20); and Defendants Gina M. Austin and Austin Legal Group APC's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), 9(b) and California's anti-SLAPP statute. (Dkt. No. 21.) Oppositions were filed by Plaintiff Darryl Cotton.¹ (Dkt. Nos. 27, 28.) Replies were subsequently filed by all Defendants. (Dkt. Nos. 29-31.)

Based on the reasoning below, the Court DISMISSES the Complaint pursuant to the Court's Order filed on February 28, 2018 in Case No. 18cv325-GPC(MDD) and DENIES Defendants' motions to dismiss as moot.

Discussion

On December 6, 2018, Plaintiffs Darryl Cotton ("Cotton") and Joe Hurtado ("Hurtado"), with counsel, filed the instant Complaint alleging causes of action for fraud, abuse of process, RICO, civil conspiracy, and legal malpractice against Defendant Larry Geraci and a number of other defendants involved in a pending state court case in the Superior Court of San Diego in Case No. 37-2017-00010073-CU-BC-CTL. (Dkt. No. 1.) Pursuant to Local Civil Rule 40.1, the instant Complaint was low-numbered to a prior case in this Court filed by Darryl Cotton against Larry Geraci and numerous defendants in Case No. 18cv325-GPC(MDD) because they are related. (Dkt. No. 3.) On April 19, 2019, Hurtado substituted himself in to proceed in pro per in place of his counsel. (Dkt. No. 26.)

The instant case is based on an alleged real estate purchase and sale contract between Cotton and Geraci that is the subject of the controversy in the state court action and also includes Cotton's claims against individuals involved in the underlying state court case. On March 21, 2017, Geraci filed a state court complaint against Cotton alleging breach of contract, breach of the covenant of good faith and fair dealing, specific

¹ Plaintiff Hurtado, now proceeding pro se, did not file an opposition.

1 performance and declaratory relief concerning a real estate purchase and sale agreement.
2 (Dkt. No. 20-2, Ds' RJN², Ex. B, State Court Compl.) According to the state court
3 complaint, the parties entered into a written agreement for the purchase and sale of
4 Cotton's real property located at 6176 Federal Boulevard, San Diego, CA on November
5 2, 2016. (Id., Compl. ¶ 7.) On that day, Geraci paid Cotton \$10,000 good faith earnest
6 money to be applied to the sales price of \$800,000 and the sale was subject to approval of
7 a conditional use permit ("CUP") by the City of San Diego. (Id. ¶ 8.) Geraci engaged in
8 efforts and spent money to obtain a CUP including hiring a consultant, Rebecca Berry, to
9 coordinate the CUP efforts and an architect. (Id. ¶ 9.) The state court complaint claims
10 that Cotton anticipatorily breached the contract stating he will not perform according to
11 the terms of the written contract. (Id. ¶ 11.) Specifically, Geraci alleges that Cotton "has
12 stated that, contrary to the written terms, the parties agreed to a down payment or earnest
13 money in the amount of \$50,000.00 and that he will not perform unless Geraci makes a
14 further down payment. Cotton has also stated that, contrary to the written terms, he is
15 entitled to a 10% ownership interest in the Property and that he will not perform unless
16 Geraci transfers to him a 10% ownership interest. Cotton also threatened to contact the
17 City of San Diego to sabotage the CUP process by withdrawing his acknowledgment that
18 Geraci has a right to possession or control of the Property if Geraci will not accede to his
19 additional terms and conditions and, on March 21, 2017, Cotton made good on his threat
20 when he contacted the City of San Diego and attempted to withdraw the CUP
21 application." (Id.) On May 12, 2017, Cotton subsequently filed a cross-complaint in
22 state court against Geraci and Berry for numerous causes of action relating the contract
23 for the sale of his Property. (Id., Ex. C.)

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27 ² The Court grants Defendants Weinstein, Toothacre and Ferris & Britton, APC's request for judicial
28 notice of court filings in state court and this Court. (Dkt. No. 20-2.) The Court may take judicial notice
of court filings and other matters of public record. See Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442
F.3d 741, 746 n.6 (9th Cir. 2006).

1 During the pendency of the state court complaint, on February 9, 2018, Cotton,
2 proceeding *pro se*, filed a Complaint in this Court alleging eighteen causes of action
3 under federal and state law along with a motion to proceed in forma pauperis. (Case No.
4 18cv325-GPC(MDD), Dkt. Nos. 1, 2.) Similar to the state court complaint and cross-
5 complaint, the Complaint concerned the alleged breach of an agreement for the purchase
6 and sale of Cotton's real property located at 6176 Federal Boulevard, San Diego, CA on
7 November 2, 2016. (Case No. 18cv325-GPC(MDD), Dkt. No. 1, Compl.³) The
8 Complaint alleged that Cotton's property at 6176 Federal Boulevard, San Diego, CA,
9 qualifies for a Conditional Use Permit ("CUP") for the establishment of a Medical
10 Marijuana Consumer Collective ("MMCC"). (*Id.* ¶ 2.) If the CUP is approved, the value
11 of the property will potentially be greater than \$100 million. (*Id.* ¶¶ 2, 3.) On November
12 2, 2016, Cotton and Geraci orally agreed to terms for the sale of Cotton's property. (*Id.* ¶
13 44.) The oral agreement contained condition precedents prior to closing. (*Id.* ¶ 45.) The
14 Agreement required that Geraci provide a \$50,000 non-refundable deposit for Cotton to
15 keep if the CUP was not issued; a total purchase price of \$800,000 if the CUP was issued;
16 and a 10% equity stake in the MMCC with a guaranteed monthly equity distribution of
17 \$10,000. (*Id.* ¶ 46.) According to Cotton, Geraci provided Cotton with \$10,000 cash to
18 be applied toward the non-refundable deposit of \$50,000 and had Cotton execute a
19 document to record his receipt of the money and promised to have his attorney, Gina
20 Austin, speedily draft a final, written purchase agreement for the Property that would
21 memorialize their oral terms. (*Id.* ¶ 47.) They effectively agreed to two written
22 agreements: the "purchase agreement" for the sale of the property and a "side agreement"
23 concerning Cotton's equity stake and other provisions. (*Id.* ¶ 48.)

24 Cotton claims he has definitive proof of the terms of their agreement based on a
25 confirmation email Geraci sent to Cotton stating, "No No problem at all" when Cotton
26

27
28 ³ The allegations in the Complaint, in 18cv325, are similar to those in Cotton's cross-complaint in state
court. (*See* Dkt. No. 20-2, Ds' RJN, Exs. C and D.)

1 emailed Geraci noting that the 10% equity interest in the dispensary was not added into
2 their purchase agreement of November 2, 2016 and asked that Geraci simply
3 acknowledge that interest in a reply email. (*Id.* ¶ 49.) According to Cotton, Geraci's
4 response to the email demonstrates that the November 2, 2016 agreement is not the final
5 agreement. (*Id.* ¶ 50.) He also claims that Geraci attached a draft "side agreement"
6 providing for the 10% interest in an email on March 7, 2017. (*Id.* ¶¶ 52-54.) Cotton
7 argues that Geraci breached the agreement by filing the CUP application without first
8 paying the balance of \$40,000, and failed to provide the final agreement as promised.
9 (*Id.* ¶ 56.) Geraci made it clear he would not honor the agreement, and then Cotton
10 responded informing Geraci that he no longer has any interest in his property. (*Id.* ¶ 59.)
11 In desperate need of funds, Cotton entered into a written real estate purchase agreement
12 with a third party. (*Id.*)

13 On February 28, 2018, the Court granted Plaintiff's motion to proceed IFP and *sua*
14 *sponte* stayed the case until resolution of the parallel state court action pursuant to the
15 Colorado River⁴ doctrine. (Dkt. No. 7.) In its order, the Court conducted a detailed
16 analysis going through the eight factors to determine if the Colorado River abstention
17 doctrine applied. (*Id.* at 6-10.) Of significance, the Court noted that "Plaintiff seeks to
18 litigate the exact same issues that are currently pending in state court in this Court. Not
19 only will both courts consider the same issues but could possibly reach different results."
20 (*Id.* at 8.) The Court also noted that the state court action was filed first and was in the
21 middle of discovery. (*Id.* at 8.) The Court concluded that Cotton was "clearly forum
22 shopping" and was "dissatisfied with the acts taken by the defendants in the underlying
23 state court case, and dissatisfied with the rulings of the state court." (*Id.* at 9-10.)
24 Finally, the court concluded that the state court and federal court complaint were
25 substantially similar as the causes of action all arise out of the same November 2, 2016
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28

⁴ Colorado River Water Dist. v. United States, 424 U.S. 800 (1976).

1 agreement and subsequent disputes. The Court stayed the case on February 28, 2018
2 “until resolution of the parallel state court action.” (*Id.* at 11.)

3 By filing the instant Complaint on December 6, 2018 alleging causes of action
4 relating to the November 2, 2016 purchase and sale agreement between Cotton and
5 Geraci, Cotton is again improperly attempting to forum shop, and this time, attempting to
6 circumvent the Court’s order staying the issues concerning the real estate purchase and
7 sale agreement of November 2, 2016 pending resolution of the state court action.
8 According to Defendants, the state court action is still pending with a trial date set for
9 June 28, 2019. (Dkt. No. 20-1 at 10.) Instead of filing a new complaint, Plaintiff should
10 have filed a motion to lift the stay in Case No. 18cv325 explaining why the stay should
11 be lifted due to changed circumstances. See Taylor v. Hawley Troxel Ennis & Hawley,
12 LLP, 628 Fed. App’x 490, 491 (9th Cir. 2015) (district court erred in denying motion to
13 lift stay due to changed circumstances).

14 In responding to the motion to dismiss by Weinstein, Toothacre, and Ferris &
15 Britton, Plaintiff appears to justify the filing of the new Complaint or demonstrate
16 changed circumstances by arguing that the stay based on the Colorado River abstention is
17 inapplicable because the state court does not have jurisdiction over the real property at
18 issue because indispensable parties have not been named; therefore, the state action must
19 be dismissed. (Dkt. No. 27 at 6.) He argues that his counsel has an *ex parte* hearing on
20 April 25, 2019 in the state action seeking dismissal for failure to join an “indispensable
21 party” however, he has not updated the Court on the state court’s ruling and based on a
22 review of the Register of Actions on the state court’s website, the case is still pending in
23 state court. Moreover, Defendants explained that the April 25, 2019 *ex parte* hearing
24 never proceeded because Cotton never filed an application. (Dkt. No. 31 at 4.) Cotton
25 then argues that the state court action should be dismissed for failure to join an
26 indispensable party, Richard Martin, the third party who purchased the property on
27 March 22, 2017. However, this issue is not properly before this Court.
28

1 Cotton further argues, without legal authority, that the Colorado River abstention
2 doctrine is no longer applicable because there are additional parties and an additional
3 cause of action for legal malpractice.⁵

4 The Colorado River abstention doctrine applies to actions that are “substantially
5 similar,” and “exact parallelism” is not required. Nakash v. Marciano, 882 F.2d 1411,
6 1412-13, 1416 (9th Cir. 1989) (The federal action, filed five years after the state action
7 included slightly different parties and similar, although not identical, causes of action).
8 In Nakash, the court found that the state and federal actions were substantially similar
9 because it was merely a “spin-off” of the more comprehensive state litigation.” Id. at
10 1417; Am. Int’l Underwriters, Inc. v. Continental Ins. Co., 843 F.2d 1253, 1259-60 (9th
11 Cir. 1988) (after filing in state court, plaintiff brought suit in federal court to avoid the
12 state court’s unfavorable evidentiary rules); Silvaco Data Sys., Inc. v. Tech. Modeling
13 Assocs., Inc., 896 F. Supp. 973, 976 (N.D. Cal. 1995) (pointing out that “[t]he mere fact
14 that the claims in state and federal court are not based on exactly the same laws does not
15 preclude a finding of substantial similarity” and holding that “[a]lthough the state and
16 federal actions are not identical, they include extremely similar claims that all arise out of
17 the long-standing competitive feud between [the parties]”).

18 Here, the instant Complaint adds an additional plaintiff, Joe Hurtado, adds as
19 defendants his former attorneys representing him in the state court action, Finch Thorton
20 & Baird, David Demian and Adam Witt as well as adding Sean Miller as a defendant.
21 According to the Complaint, Joe Hurtado is Cotton’s “transactional advisor” and
22 “litigation investor” as it relates to the “underlying lawsuit between Cotton and Geraci.”
23 (Dkt. No. 1, Compl. ¶ 8.) It also adds Sean Miller as a defendant because he threatened
24

25
26 ⁵ Cotton also argues that the Colorado River abstention does not apply where monetary damages are
27 sought under a claim pursuant to 42 U.S.C. § 1983 while state court proceedings are pending. He claims
28 that Hurtado has stated that he intends to file a separate complaint to include a 42 U.S.C. § 1983 claim
against the City of San Diego. (Dkt. No. 28 at 16.) Even if Plaintiff’s argument is correct, the argument
is without merit as the pending complaint does not assert a claim under 42 U.S.C. § 1983.

1 Hurtado and his family with the purpose of using Hurtado's influence with Cotton to
2 have him forcibly settle with Geraci. (Id. ¶ 21.) Finally, the Complaint adds a legal
3 malpractice claim against Cotton's former counsel in the state court action, Finch
4 Thornton & Baird, Demian and Witt. (Id. ¶¶ 24-37.) However, the naming of additional
5 parties and the addition of the legal malpractice claim that arise out of the state court
6 litigation concerning the November 2, 2016 real estate contract between Cotton and
7 Geraci do not demonstrate changed circumstances sufficient to lift the stay. Plaintiff
8 continues to be dissatisfied with the state court proceedings and the conduct of the named
9 defendants in the state court proceedings. See Nakash, 882 F.2d at 1417 ("We have no
10 interest in encouraging this practice [of forum shopping due to dissatisfaction with the
11 state court]."). Accordingly, because there is a pending case that is currently stayed, the
12 Court DISMISSES the Complaint with prejudice pursuant to the Court's Order staying
13 the action under the Colorado River abstention doctrine, filed on February 29, 2018, in
14 Case No. 18cv325-GPC(MDD).

15 Plaintiff expressed concern of prejudice if the complaint is dismissed because his
16 legal malpractice claim would be barred because the statute of limitations for legal
17 malpractice not related to fraud is one year.⁶ See Cal. Civ. Proc. Code § 340.6. Plaintiff
18 notes that his attorneys in state court were grossly negligently or purposefully by failing
19 to address factual and legal issues at oral argument on December 7, 2017. (Dkt. No. 27 at
20 3.) Therefore, the instant Complaint was filed within the one-year limitations period on
21 December 6, 2018. However, Plaintiff indicated that he intends to allege a legal
22 malpractice claim based on fraud where the statute of limitations is four years. (Dkt. No.
23 27 at 7.) Therefore, Plaintiff will not be prejudiced by the Court's dismissal of this
24 action.

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26 _____
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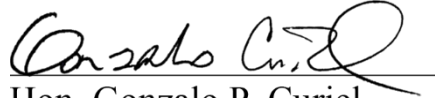
28 ⁶ Plaintiff raised the prejudice issue with regards to Defendants Finch Thornton & Baird, Demian and Witt's motion to dismiss for improper service. (Dkt. No. 27 at 6.)

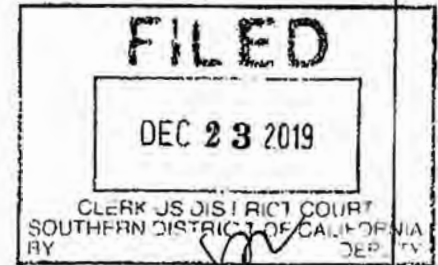
Conclusion

Based on the above, the Court DISMISSES the Complaint with prejudice. Any future filings shall be made in Case No. 18cv325-GPC(MDD). The Court DENIES all Defendants' motions to dismiss as moot. The hearing set for May 24, 2019 shall be **vacated.**

IT IS SO ORDERED.

Dated: May 14, 2019


Hon. Gonzalo P. Curiel
United States District Judge



Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,
Plaintiff,

vs.

LARRY GERACI, an individual;
REBECCA BERRY, an individual;
GINA AUSTIN, an individual;
AUSTIN LEGAL GROUP, APC, a
California corporation; MICHAEL R.
WEINSTEIN, an individual; SCOTT
TOOTHACRE, an individual; FERRIS
& BRITTON, APC, a California
corporation; CITY OF SAN DIEGO, a
public entity and DOES 1 through 10,
inclusive,

Defendants.

Case No. 18-CV-0325-GPC (MDD)

**PLAINTIFF'S EX PARTE
APPLICATION FOR (1) LIFT OF
STAY OF THIS PROCEEDING,
(2) APPOINTMENT OF COUNSEL,
AND (3) INJUNCTIVE RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

**ORAL ARGUMENT
RESPECTFULLY REQUESTED**

Date:

Time:

Ctrm: 2D

Judge: The Hon. Gonzalo P. Curiel

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1 Pursuant to this Court's Order entered May 14, 2019, Plaintiff hereby submits the
2 following Memorandum of Points and Authorities in Support of his *Ex Parte*
3 Application for Lift of Stay of this proceeding, appointment of counsel to represent
4 Plaintiff, and explaining the changed circumstances that warrant lifting the stay in this
5 action.

6 Additionally, I ask that pursuant to the equitable doctrine of "fraud upon the
7 court" and the bias and bad faith exceptions to the *Younger* doctrine, this Court
8 immediately enjoin the related state action. If not, I will be forced to sell what little
9 equity I have left in my real property (the "Property"). Also, I remain under the pressure
10 of an award of damages to Larry Geraci ("Geraci") as a result of a sham trial. Please
11 help cease my unjust suffering and the ever-increasing mental and emotional harm that
12 these Defendants have caused me. I have attached relevant exhibits to my declaration in
13 support of my request as "Dec Exhibit" which are true and correct copies of original
14 documents.

15 INTRODUCTION

16 The origin of this action arises from a three-sentence document executed by
17 Geraci and Darryl Cotton ("Plaintiff") in November of 2016 (the "November
18 Document"). Cotton is the owner-of-record of the real Property that is at the nexus of
19 this action. Neither Geraci nor Cotton dispute that they met on 11/02/16 and executed
20 the November Document.

21 In his original complaint, *Geraci v. Cotton* (Case No. 37-2017-00010073-CU-BC-
22 CTL), Geraci alleges the November Document is a fully integrated sales agreement for
23 his purchase of the Property from Cotton. Cotton alleges they reached an oral joint
24 venture agreement (the "JVA") and the November Document was executed with the
25 intent that it be a receipt for \$10,000 in cash received that day towards a total agreed
26 upon \$50,000 non-refundable deposit reached as part of the JVA.

27 The Property qualifies for a Marijuana Outlet ("MO") which requires a
28 conditional use permit ("CUP") with the City of San Diego ("City") Development
Services Department ("DSD") for that type of for-profit marijuana retail store ("The

1 Business"). If the CUP were approved at the Property, the Property would be worth no
2 less than \$5,000,000. The value of the Property and the potential high profits from the
3 Business were the *original* drivers behind this litigation.

4 As described below, the conspiracy to deprive me of the Property is only one
5 illegal action among many others in furtherance of an unlawful scheme by a small group
6 of wealthy individuals, their many agents outside the law, and finally their unethical
7 attorneys (the "Enterprise") seeking to establish an unlawful monopoly in the marijuana
8 market within the City of San Diego (the "Antitrust Conspiracy"). The litigation *now* is
9 driven by a desperate desire of all defendants (including those previously unknown to be
10 a part of the conspiracy) to avoid the compensatory, consequential and punitive damages
11 they are liable for.

12 *I know that this introduction reinforces the established "conspiracy nut"*
13 *perception of me – I am alleging a conspiracy by the City and numerous other parties*
14 *after a jury verdict has been entered against me.*¹ But I am stating what I believe to be
15 true because I wish to always be honest and transparent so that at no point in the future
16 can my credibility be impugned or attacked as a result of choosing "smart" litigation
17 tactics.

18 It is clear to me that Judge Joel R. Wohlfeil ("Judge Wohlfeil") did not, in fact,
19 exercise sound legal judgement and instead, for whatever reason, whether it be for
20 convenience or because he viewed me as a "conspiracy nut," relied solely on the
21 representations of his friends and longtime-colleagues, attorney Gina Austin ("Austin"),
22 attorney Michael Weinstein ("Weinstein") and attorney David Demian ("Demian").
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26 ¹ I would also like to apologize to the Court for my original complaint filed at a point in time in which I was not completely
27 mentally or emotionally stable. Since the time of that filing I have become more familiar with professional legal pleadings
28 and the deduction of legal conclusions based on facts. I hope the Court can appreciate that I was under severe emotional,
financial, and mental distress throughout that period of time. As reflected by the IPA submitted by Dr. Ploesser, Dec.
Exhibit 1, this is not just a façade for an emotional appeal to the Court. It is the simple truth. I understand the perception of
me that I created with my allegations, but I am trying to do my best now and keep the issues strictly factual and legal,
however sometimes that is difficult to do even in my current state.

1 Either way it has directly corrupted the impartial function of the court and has subverted
2 the integrity of the court itself.

4 MATERIAL FACTUAL AND PROCEDURAL HISTORY

5 **I. Relevant Background**

6 *A. Material City and State Cannabis Laws and Regulations²*

7 General City CUP Requirements. Since August 8, 1993, San Diego Municipal
8 Code ("SDMC") § 11.0401 has prohibited the furnishing of false or incomplete
9 information in any application for any type of permit from the City. *See* SDMC §
10 11.0401(b) ("No person willfully shall make a false statement or fail to report any
11 material fact in any application for City license, permit, certificate, employment or other
12 City action under the provisions of the San Diego Municipal Code."). Also, SDMC §
13 11.0402 provides that "[w]hensoever in this Code any act or omission is made unlawful, it
14 shall include causing, permitting, aiding or abetting such act or omission." Thus,
15 applying for an MO CUP or aiding a party to apply for same from the City and willfully
16 making a false statement in the application is illegal.

17 State Law. In 2003, the State enacted the Medical Marijuana Program Act (the
18 "MMPA"), which established certain requirements for Medical Marijuana Consumer
19 Cooperatives ("MMCC"). On October 9, 2015, Senate Bill No. 643 ("SB 643") was
20 enacted and added § 19323 to the Cal. Bus. & Prof. Code ("BPC"), which mandated that
21 an application for an MMCC be denied if the applicant did not qualify for licensure. SB
22 643 at § 10 (adding BPC § 19323).

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26 ² I note there are many other laws and regulations that apply to make the actions described here illegal, but I am attempting
27 to focus on the easiest issues to prove to make my case. For example, there are RICO and antitrust laws that make the
28 actions described herein illegal, but I don't know how to explain them clearly and succinctly and I still don't understand
them all. *See, e.g., Clipper Express, v. Rky. Mount. Motor Tariff* (9th Cir. 1982) 674 F.2d 1252, 1258 ("the Walker Process
doctrine... extends antitrust liability to one who commits fraud on a court or agency to obtain competitive advantage."); *id.*
at 1263 n.17 ("Conspiracy with a licensing authority to eliminate a competitor may also result in an antitrust
transgression.").

1 BPC § 19323 was amended by 2016 Cal SB 837, effective June 27, 2016, and
2 read in relevant part as follows when the MO CUP at issue in this case was filed on
3 October 28, 2016:

4 (a) A licensing authority *shall* deny an application if the applicant or the
5 premises for which a state license is applied does not qualify for licensure
6 under this chapter or the rules and regulations for the state license.

7 (b) A licensing authority *may* deny an application for licensure or renewal of a
8 state license, or issue a conditional license, if any of the following conditions
9 apply:

10 (1) Failure to comply with the provisions of this chapter or any rule or
11 regulation adopted pursuant to this chapter...

12 (2) Conduct that constitutes grounds for denial of licensure pursuant to
13 Chapter 2 (commencing with Section 480) of Division 1.5.

14 (3) The applicant has failed to provide information required by the
15 licensing authority.

16
17 (7) The applicant, or any of its officers, directors, or owners, has been
18 sanctioned by a licensing authority or a city... for unlicensed
19 commercial medical cannabis activities... in the three years immediately
20 preceding the date the application is filed with the licensing authority.

21 A review of the enacting and amending legislation make clear that at this point in
22 time the "applicant" could be an individual, in which case the mandatory provisions of
23 subsection (a) applied. Or, if a non-profit or other type of entity was the applicant, the
24 discretionary language of subsection (b) applied.
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1 *B. Geraci has been sanctioned at least three times for owning/operating illegal*
2 *marijuana dispensaries and is therefore barred as a matter of law from owning*
3 *a cannabis CUP.*

4 Geraci has been sued and settled at least three lawsuits with the City related to his
5 owning/management of illegal marijuana dispensaries (the "Geraci Judgments").³ The
6 last settlement agreement he entered into was on May 29, 2015 which prohibited him
7 from owning a marijuana business until at least May 29, 2018, if at all.

8 *C. Gina Austin has provided knowingly false testimony to the State Court.*

9 During the state trial in this matter, Attorney Austin testified with respect to her
10 involvement as the drafter of the various agreements between myself and Geraci which
11 were supposed to reflect my 10% interest in the resulting business which was to be
12 created on the Property. However, those agreements never reflected those terms,
13 **instead of an equity interest** the latest draft only including a 10% net profits provision
14 which are substantially different in kind. More important than that Austin provided her
15 legal opinion regarding relevant Business and Profession Codes related to Marijuana.

16 She states:

17 Cotton Attorney: Are you familiar with this code [BPC § 26057]?

18 Austin: Yes.

19 Cotton Attorney: So in subsection (a), it states that the licensing authority
20 shall

21 deny an application if either the applicant or the premises for which the
22 state license

23 applied do not qualify for the license under this division. Correct?

24 Austin: Correct.

25 Cotton's Attorney: All right. So although you're [allegedly] not aware of
26 any

27 sanctions against Mr. Geraci, if such a thing were in existence, would he be
28 barred

from having a license issued in his name?

³ The three cases are: (i) *City of San Diego v. The Tree Club Cooperative*, Case No. 37-2014-00020897-CU-MC-CTL, (ii) *City of San Diego v. CCSquared Wellness Cooperative*, Case No. 37-2015-00004430-CU-MC-CTL and, (iii) *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-000000972.

1 Austin: No.

2 [....]

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

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

11 Judge Wohlfeil: Sustained

12 Dec Exhibit 2 pg. 3 ln. 18- pg.4 ln. 17.

13 As an alleged expert Austin should know that Geraci does not qualify for a CUP because
14 (1) he has been previously sanctioned for illegal marijuana activity and (2) they have
15 purposefully hidden his interest in the CUP as to avoid the scrutiny of the licensing
16 entity of his prior sanctions.

17 **II. Material Factual and Procedural History**

18 First and foremost, I would like to express to the Court that though I have learned a
19 lot through this process I am by no means an attorney or able to express complex legal
20 issues. I would ask that the Court please review my motion for new trial, Geraci's
21 opposition, and my response attached to my declaration as a single exhibit. Dec Exhibit
22 3. This along with the transcript from the hearing on that motion and the Verified
23 Statement of Disqualification will confirm much of what I state below. Dec Exhibit 4
24 Transcript of the hearing on the Motion for New Trial, Dec Exhibit 5 Verified Statement
25 of Disqualification.

26 **A. Judge Wohlfeil is Biased**

27 On September 12, 2018, I, through counsel, filed a Verified Statement of
28 Disqualification ("DQ") seeking to disqualify Judge Wohlfeil from further presiding
over the proceeding in state court. The basis for the motion was primarily on the fact that

1 he had a favorable bias towards Geraci's attorney Michael Weinstein. The evidence for
2 this bias was in the form of statements made from the bench by Judge Wohlfeil.

3 The DQ outlined that Geraci was using his attorneys to acquire an interest in a
4 Marijuana Outlet despite the fact that he was ineligible because he had been previously
5 sanctioned on three separate occasions for his involvement in illegal marijuana
6 dispensaries in San Diego, California.

7 On January 25, 2018, after Plaintiff made a clear allegation against Geraci and his
8 Attorneys acting unethically to deprive him of his Property in order to obtain an illegal
9 interest for Geraci, Judge Wohlfeil commented from the bench that he has known
10 Weinstein for decades wince early in their careers and that he does not believe they
11 would act unethically.

12 B. Specific Acts by Judge Wohlfeil

13 a. *Judge Wohlfeil Lied About Being Personally Served with the Statement*
14 *of Disqualification.*

15 As mentioned above on September 12, 2018 through my attorney Jacob Austin we
16 filed the DQ. On September 17, 2018 Judge Wohlfeil struck the DQ. The first ground
17 for striking the DQ cited by Judge Wohlfeil in his order is failure to personally serve him
18 or his clerk as required by the California Code of Civil Procedure § 170.3(C)(1). Judge
19 Wohlfeil maintains that the DQ was not properly served. Dec Exhibit 6 at pg 2 ln 22-27.

20 This is a lie. My attorney Jacob Austin personally served Judge Wohlfeil's clerk
21 while Judge Wohlfeil was in chambers. In fact, Attorney Andrew Flores ('Flores')
22 called, and has a call log record, Judge Wohlfeil's department just before Jacob Austin
23 arrived at the courthouse to confirm that Judge Wohlfeil was in fact in chambers.
24 According to Flores he spoke with a male clerk who relayed that he was substituting for
25 Judge Wohlfeil's regular clerk and that Judge Wohlfeil was in fact in chamber. That
26 clerk came out to meet Mr. Austin and accepted the Motion from Mr. Jacob Austin. Why
27 Judge Wohlfeil would lie is unknown.
28

1 ***b. Judge Wohlfeil Lied About His Statements Being the Court Expressing***
2 ***its Views About Legal and Factual Issues Before it is also False.***

3 On September 17, 2018 Judge Wohlfeil issued an order striking the Verified
4 Statement of Disqualification. Judge Wohlfeil's second claim is that statements he
5 made, regarding his beliefs related to Weinstein's ethics, are comments related to legal
6 and factual issues before the court. *Id.* at pg. 5 ln. 22-25. The problem is that his
7 statement is extra judicial. It does not rely on fact presented to the court; it relies on his
8 personal experience with Weinstein since they were young attorneys. This is clearly a
9 misrepresentation of his comments to me in open court when I raised the issue of the
10 unethical acts of Geraci and his attorneys.

11 ***c. Judge Wohlfeil Claimed I Never Raised and Therefore Waived the***
12 ***Illegality Argument.***

13
14 On September 13, 2019, I, through counsel filed a motion for new trial in state
15 court. The premise of the motion was that the alleged contract, despite the jury verdict,
16 at its core, sought to enforce and illegal object, mainly that Geraci acquire an interest in
17 a Marijuana Outlet even though he was barred from doing so because of his prior
18 sanctions for illegal marijuana activity. (*See*, fn. 3).

19 On October 25, 2018 the state court held a hearing on my Motion for New Trial.
20 During that hearing, Judge Wohlfeil on several occasions suggested that I had failed to
21 bring up this issue of illegality and therefore waived the issue. Dec Exhibit 4 Transcript
22 at pg 4 ln 28- pg. 5 ln. 6, pg 5 ln. 20-22, pg. 7 ln. 2-3. However, these facts were
23 brought up specifically in the DQ. Dec Exhibit 5 at pg 5 ¶16-pg ¶32. This outlines the
24 entire factual scenario regarding Geraci's illegal purpose. Though not qualified as an
25 illegal contract argument all the facts are presented and presented a *sua sponte* duty to
26 refuse to entertain an action that seeks to enforce an illegal contract. (*See*, May v.
27 Herron, (1954) 127 Cal.App.2d 707, 710-12 (internal citations and quotations omitted).

28 ***d. Judge Wohlfeil did Not Allow Flores to Intervene.***

1 On March 21, 2017, shortly after cancelling the joint venture with Geraci because
2 he failed to adequately respond to several requests for assurances with respect to having
3 his attorney memorialize our agreement I entered into a contract for the purchase and
4 sale of the Property with Richard Martin ("Martin"). Throughout the litigation Martin
5 made it clear that he did not want to be part of the litigation even though my former
6 special appearance attorney Flores made it clear that he had a cause of action for
7 intentional interference in a contract because of the fact that Geraci filed his lawsuit with
8 the specific intention of stopping the transfer of the Property to Martin. Flores offered to
9 purchase his contractual right which he did in March of 2019.

10 On June 26, 2019 Flores filed a motion to intervene in Geraci v. Cotton, included
11 in that motion was his declaration describing his prior purchase of Martin's contractual
12 rights, his discovery of evidence of an anti-trust conspiracy, and he attached his purchase
13 agreement. Geraci v. Cotton, 37-2017-00010073-CU-BC-CTL, ROA 572.

14 At the ex parte hearing on Flores' motion to intervene Judge Wohlfeil summarily
15 denied the request claiming that Flores showed no good cause for the relief requested.
16 *Id* at ROA 590. It is clear that Flores is an indispensable party, without his intervention
17 the parties cannot fully adjudicate the dispute. For one if what he has alleged is true then
18 it would subject all parties to further, and inconsistent litigation, because Flores will file
19 a federal complaint.

20 C. Defendants have Perpetuated a Fraud Upon the Court.

21 a. *Austin's Testimony at Trial- Misrepresentation and Lies.*

22 As outlined above Austin's testimony at trial, which Judge Wohlfeil allowed as an
23 undesignated "cannabis expert" is clearly false and intended to defraud the state court in
24 to believing that Geraci is able to acquire an interest in a Marijuana Outlet and not
25 disclose said interest in the CUP application. As mentioned, this issue is outlined in Dec
26 Exhibit 2 at pg 3 ln. 18- pg 4 ln 24.

27 b. *Demian and his attorney Ken Feldman ("Feldman") failed to inform the*
28 *court of all the implications of his client's actions in regard to this case.*

1 In Cotton et al v. Geraci et al 18CV02751-GPC-MDD, Feldman's response to the
2 complaint were objections made only on procedural grounds. On September 07, 2019 I
3 sent an email to Demian and Feldman putting them on notice, *inter alia*, that as Officers
4 of the Court they had a duty to inform the court that this case was an attempt to enforce
5 an illegal contract. Dec Exhibit 7.

6
7 *c. Judge Wohlfeil's Bias has allowed the Fraud to Continue.*

8 Judge Wohlfeil's inability to resolve the issue due to his bias towards Geraci and
9 his attorneys. He has stated in open court to me directly, when I was pro per and told
10 him there was evidence of a conspiracy involving said attorneys, that he did not believe
11 that the attorneys would act unethically because he has known them since they were
12 "young lawyers." If this is not an indication that I have not gotten a fair shake in this
13 process I don't know what is. In fact, when confronted with these facts by Flores at a
14 later hearing, he says "I may have made those comments." He then strikes a well written
15 Statement of Disqualification, which outlines the prior sanctions of Geraci, his own
16 statements, the perception of bias. He does so, not on the merits, but rather saying he
17 was improperly served and that the request is untimely. He was properly served by my
18 former attorney personally served his clerk in chambers. Additionally, just before the
19 service Flores called to confirm that he was in chambers and spoke to his stand in court
20 clerk as his regular court clerk was not in.

21
22 **D. The City has Conspired with Defendants to Mitigate Their Liability to Plaintiff**

23 *a. City Filed Unlawful Lis Pendens.*

24
25 On April 18, 2017 the City filed an illegal lis pendens on the Property. It was
26 illegal because they knew that the Property was not subject to forfeiture because the
27 Property was also being used for a lawful purpose and there was a tenant living on the
28 Property.

1 ***b. City was Required to Cancel the CUP on the Property but Failed to Do***
2 ***So.***

3 On March 21, 2017, Plaintiff asked the City of San Diego to terminate the CUP
4 application on the Property because the contract between he and Geraci was never
5 memorialized and after many requests for assurances Geraci failed to provide a final
6 memorialization of their agreement, as he was required to do.

7 The City did not cancel the application and instead told me that there could only
8 be one application submitted at the time. In response to my request to have the CUP
9 cancelled, DSD Project Manager, Firouzeh Tirandazi stated via an email that since I was
10 not the "Financially Responsible Party" it would have to Rebecca Berry, (Geraci's proxy
11 for the Application) who was listed as the "Financially Responsible Party" would be the
12 only one eligible to withdraw the CUP application. I, as the property owner, could not
13 do so. This response was a knowing deception by the City as is proven by the Court of
14 Appeals decision in Engbreetsen v. City of San Diego, Case No. D068438 (attached as
15 Dec Exhibit 8). The COA affirmed a writ of mandate against the City specifically
16 because the City failed to transfer a CUP application on the property to the owner-of-
17 record when the applicant could not establish ownership or right to use the property. The
18 COA specifically informed the City failing to do so violated a property owner's
19 constitutional rights. Therefore, the City had actual and direct guidance that it needed to
20 cancel the CUP application submitted by Geraci in the name of Berry when I demanded
21 that it do so. Any opposition by the City on this issue just proves that it is acting
22 maliciously by helping Geraci obstruct me equal protection of the laws. The CITY
23 knows Geraci can't own a MO CUP applied for under fraud and because Geraci has
24 been sanctioned BY the City!!

25 ***c. City Allowed a Competing CUP application to Be Granted Despite the***
26 ***Fact that the Property Did Not Qualify for Such, In Order to Deprive***
27 ***Plaintiff of a CUP on His Property.***
28

1 On March 14, 2018 a competing CUP application was made on a property located
2 at 6220 Federal Blvd (the "Competing CUP"). This property is located within 300 ft of
3 my Property and if granted would bar my Property from having a CUP because of the
4 rules related to the distances between Marijuana Outlets. The Competing CUP had not 1,
5 but 2 childcare businesses within 1,000 without granting variances, which was raised at
6 the public hearing on the approval of the Competing CUP which the City willfully and
7 intentionally ignored.

8 *E. Due to the Continual Fraud by the Enterprise I am Unable to Afford the*
9 *\$200,000 Needed to Mount an Appeal of the Fraudulently Obtained Jury*
10 *Verdict.*

11 After trial in state court, I borrowed \$5k to have noted appellate attorney Kelly
12 Woodruff ("Woodruff") review my case for her opinion on how to proceed with an
13 Appeal. Dec Exhibit 9. Woodruff was of the opinion that the November Document was
14 not a contract but that if I were to engage her services, she would require \$200k to
15 represent me on that appeal given the large number of ROAs and difficulty unraveling
16 the fraud. Even though I always believed I was in the right on the November Document
17 not being a contract and numerous attorneys have agreed with that observation,
18 including now Woodruff, that \$200k is money I do not have. Nor do I have any way of
19 borrowing it anymore. I am also currently in default in my appeal of the jury verdict on
20 account of my not being able to properly designate a record for appeal, with my limited
21 legal understanding is difficult to complete. Dec Exhibit 10.

22 LEGAL STANDARD

23 "A plaintiff seeking a preliminary injunction must establish [1] that he is likely to
24 succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of
25 preliminary relief, [3] that the balance of equities tips in his favor, [4] and that an
26 injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7,
27 20, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008).

28 ARGUMENT

I. Likelihood of Success on the Merits

A. *The Judgement Entered by Judge Wohlfeil Enforces an Illegal Contract*

I humbly and respectfully request that this Court allow me to incorporate by reference the arguments by my counsel who argued this issue before Judge Wohlfeil as shown in Dec Exhibit 3, are the motion for new trial, Geraci's opposition, and my reply.

My contention is that since the very inception of our agreement, Geraci and his attorneys knew that he could not qualify for a conditional use permit for a marijuana outlet because of his prior sanctions. This is why he chose to use a proxy, which circumvents the disclosure laws and transparency policy of applicable state law regarding legal marijuana industry. Though Geraci claims he used a proxy because of his status as a Tax Professional, he has provided no legal reason he is allowed to continue to violate the law and not disclose his ownership interest in the CUP Application. His attorney Austin testified at trial that proxies are a common practice. First, though Austin holds herself out as a "marijuana expert" she was never qualified as an expert but Judge Wohlfeil allowed her to testify to the jury to "common practice" with absolutely no foundation. Additionally, even if it is "common practice" does not mean it is legal to do. Austin has in fact admitted her fraud in open court, but due to his bias and or corruption, Judge Wohlfeil cannot see it.

II. Irreparable Harm

A. *Mental Health.* As I have already mentioned, my mental health is clearly at issue here. If the Defendants are not brought to justice either financially or criminally, I cannot even imagine what type of toll this will take on me. This case has led me mentally down dark paths in which I have considered taking the law into my own hands or stoop to their level to address my grievances. Though I am attempting to represent myself and have drafted this motion, I am constantly under the pressure of anxiety and fear as to what these criminals are willing to do to shut me up, but the principle of the matter is what will not allow me stop seeking justice.

1 B. *Financial Harm.* Financially, I cannot afford to move forward on an appeal.
2 I simply do not have the legal acumen or financial resources to do so. As I mentioned
3 above, I have borrowed \$5,000 to retain an appellate specialist who informed me that
4 there is merit to the appeal but that it will cost over \$200,000, money that I do not have
5 as I have exhausted every resource, I have access to. I have even borrowed from family
6 and friends, and not been able to pay back, without being turned down at this point.

7 C. *Public Policy/Public Good.*

8 Meanwhile the Enterprise is developing the competing 6220 site and getting ready
9 to open up a dispensary it has been procured by fraud. The property owner of the 6220
10 site, a Mr. John Ek ("Ek"), is an innocent party and like me, another victim of the
11 Enterprise conspiracy. If the request I seek here is not granted, the development of the
12 competing dispensary is set to begin (which I believe has already started) and if later it is
13 found to be an illegally obtained CUP the development will have to be stopped and
14 returned to its original condition which will bring financial harm to Ek and those current
15 tenants on that 6220 property who have been displaced by the illegally approved CUP
16 being granted at Ek's property.

17 **III. Balance of Equities**

18 The judgement entered against me enforces an alleged contract that has an unlawful
19 object and was procured by a fraud upon the court. All equitable considerations lie
20 solely in my favor.

21 **IV. Public Interest.**

22 "There is an irrefragable linkage between the courts' inherent powers and the
23 rarely-encountered problem of fraud on the court. Courts cannot lack the power to
24 defend their integrity against unscrupulous marauders; if that were so, it would place at
25 risk the very fundament of the judicial system." *Aoude v. Mobil Oil Corp.* (1st Cir. 1989)
26 892 F.2d 1115, 1119. This issue is one of the most important public interest issues there
27 could be. On the one hand the State is implementing a law that by its very own makes
28 transparency the central focal point, in order to root out the criminal element in the

1 marijuana industry. To allow these criminals to use the judiciary to effectuate their
2 illegal purposes because they hire attorneys who are willing to fabricate evidence and
3 perjure themselves in open court should be the most important issue before any court.
4 They simply cannot get away with this, otherwise what precedent does that set for other,
5 attorneys, marijuana entrepreneurs, and the public in general.

6 **V. Issues Regarding Defendant City of San Diego have Not Been Addressed.**

7 The City of San Diego, named herein as a defendant, was not a party to the State
8 Trial in Geraci v. Cotton. There are two specific issues yet to be addressed against this
9 defendant. These issues are regards to violation of my constitutional rights related to my
10 Property. As can be seen in the City of Engebretson, the City had a responsibility to
11 cancel the application on my property when I requested. They continued to allow Geraci
12 and the Enterprise to control the CUP on my Property, when they were required to
13 cancel the application by their own regulations.

14 The City also, in order to sabotage the application on my Property and to cover up
15 their own malfeasance, issued a CUP on a property a short distance away from mine
16 which was (1) made by a member of the Enterprise with clear ties to Geraci's attorneys ,
17 (2) which was within the 1,000 ft of a daycare in violation of their own regulations
18 explicitly requiring that no dispensary be within 1,000 ft of a daycare, and (3) this is in
19 spite of the fact that the application on my property was filed over a year before the
20 competing CUP. In doing so they have in effect terminated my application.

21 In this instant the Enterprise was required to seek a variance from the City.
22 However, the City did not require the Enterprise Applicant Aaron Magagna to file for a
23 variance, they simply ignored their own ordinance and state law in order limit their own
24 liability.

25 Recently there have been actions by other local governments that have come to
26 discover a licensed MO business were found to be in violation of the state mandated
27 600' minimum setback rules and, as shown in Dec Exhibit 11, have ordered those MO
28 businesses to move.

CONCLUSION

I hope I've given the court enough reasons to unstay my case, prove the urgency in issuing a Temporary Restraining Order and expose these people for who they are and what they've done. As I prepared this motion, just weeks before Christmas, I found myself continuously asking myself; why is it that Weinstein, an Officer of the Court, has been able to use the law to crush me, my friends, family and investors? Why does he and everyone else in the Enterprise, get to have a Merry Christmas with their families when they are criminals who help other criminals achieve their illegal goals through their cozy relationships and knowledge of the law when I do not?

Although I just had a judgment issued by a jury against me in state court, I still steadfastly maintain my enemies are the ones that are "really dumb." Defendants have taken easily proven illegal action in their desperate attempts to avoid liability. This is the driver now for all the litigation – everyone wants to avoid financial liability for their grossly unethical and unlawful actions.

"Generally, [punitive damages] cases fall into three categories: (1) really stupid defendants; (2) really mean defendants; and, (3) really stupid defendants who could have caused a great deal of harm by their actions but who actually caused minimal harm." *TXO Production Corp. v. Alliance Resources Corp.* (1993) 509 U.S. 443, 453 n.15.

Although there is a lot of parties overlap to consider in this complaint, for which I attempt to show in the List of Parties Flowchart, Dec Exhibit 12, attorney Gina Austin is the really stupid defendant for testifying that Geraci can own a Marijuana Outlet CUP despite filing the Berry CUP Application under fraudulent pretenses and the fact that he has been sanctioned for illegal marijuana activities in the three years prior to the submission of the Berry CUP Application. She also testified that such is her "common practice"!!

In order to avoid liability on one CUP application, she testified that she has violated the law as to her other 23 approved CUP applications. That means all of her applications have to be reviewed to determine the actual owners are not criminals, like

1 Geraci, with a history of illegal marijuana operations, who were not disclosed in the
2 CUP applications to the city. Her own testimony provides evidence of the existence of
3 the Enterprise and the Antitrust Conspiracy.

4 Weinstein, Toothacre, Demian, Witt, Feldman and all the City attorneys are the
5 truly unethical defendants. They are not unaware; criminals can't own marijuana
6 business that they seek to acquire with applications to government agencies containing
7 knowing false information.

8 Feldman in particular, I assume, must offend this Court. He is a partner at an
9 international law firm, and he markets the fact that he teaches ethics to federal judges
10 even as he takes unethical actions to protect his client's unethical actions in perpetuating
11 a fraud upon both the state and federal courts. I used to think higher profile law firms
12 somehow were more ethical, they are not. They are still ethically ambulance chasing
13 attorneys who will do anything for money so long as they don't get caught, not whether
14 their actions are illegal.

15
16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff respectfully requests that this Court grant him the
18 following relief:

19 1. That this Court issue an order enjoining the State Action as Plaintiff's
20 appeal is currently in default;

21 2. Lift of the stay in this action, appointment Plaintiff counsel, and grant leave
22 for appointed counsel to amend the Complaint to conform to the facts now known;

23 3. An order enjoining further development of the Marijuana Outlet at 6220
24 Federal Boulevard, San Diego as it is within 1,000 feet of two daycares in violation of
25 the SDMC and State law;

26 4. And for the issuance of a subpoena for attorney Nguyen to immediately
27 present herself at the hearing on this TRO application and explain why she should not be
28 sanctioned for failing to provide the testimony of Corina Young, her client, and an that

1 she provide the promised testimony. (I note that in the amended complaint I will be
2 naming Nguyen for knowingly violating my civil rights by failing to provide Young's
3 deposition as promised and therefore obstructing justice).

4
5
6 DATED: January 23, 2019


DARRYL COTTON
Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiff,

v.

LARRY GERACI, *et al.*,

Defendants.

Case No.: 18cv325-BAS (MDD)

ORDER

(1) GRANTING PLAINTIFF'S EX PARTE APPLICATION TO LIFT THE STAY IN THE CASE; (2) DIRECTING U.S. MARSHALL TO EFFECT SERVICE; AND (3) DENYING PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF

[ECF No. 8.]

Currently pending before the Court is Plaintiff Darryl Cotton's ex parte application, wherein he seeks an order lifting the stay in the case, appointment of counsel¹ and injunctive relief. (ECF No. 8.) In the application, he complains of the "fraud" in the state

¹ While Plaintiff states he seeks appointment of counsel in the caption of his application, he does not provide any reason or legal authority to support his request. Accordingly, the Court declines to consider his request for appointment of counsel.

1 court case and challenges the “sound legal judgement (sic)” of Judge Wohlfeil, and the
2 “sham trial.” (*Id.* at 2, 3.)

3 On February 9, 2018, Plaintiff, proceeding pro se, filed a complaint alleging breach
4 of contract against Defendant Larry Geraci (“Geraci”) for the purchase and sale of
5 Plaintiff’s real property which qualifies for a Conditional Use Permit for a Medical
6 Marijuana Consumer Collective. (“Compl.,” ECF No. 1.) Cotton names defendants
7 involved in the transaction and alleges seventeen causes of action arising from the breach.
8 A year before the filing of the complaint in this Court, on March 21, 2017, Geraci filed a
9 complaint against Cotton in San Diego Superior Court alleging breach of contract and
10 related claims for the purchase and sale of Cotton’s real property. (ECF No. 3-11 (state
11 court complaint).) On February 28, 2019, the Court granted Plaintiff’s motion to proceed
12 in forma pauperis and sua sponte stayed the case under the *Colorado River* doctrine, due
13 to the related pending state court case involving the same facts and issues. (ECF No. 7);
14 *see Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

15 It is not clear from Plaintiff’s papers whether the state case has been completed.
16 Based on the Court’s review of the state court’s Register of Actions Notice in the Superior
17 Court of California, County of San Diego, Court of Appeal, and California Supreme Court,
18 it appears that the state case is completed. After a jury trial, judgment was entered in favor
19 of Geraci and against Plaintiff. *Geraci v. Cotton*, Case No. 37-2017-00010073-CU-BCD-
20 CTL, Register of Actions Nos. 646, 694. Accordingly, based on this understanding, the
21 Court **LIFTS** the stay in this case. Further, because the Court granted Plaintiff’s motion
22 to proceed IFP on February 28, 2019,

23 1. The Clerk of Court is **DIRECTED** to issue a summons with respect to
24 Plaintiff’s Complaint, ECF No. 1. The Clerk should then provide Plaintiff with the
25 summons. When sending the summons to Plaintiff, the Clerk should include with the
26 summons: (a) a blank U.S. Marshal Form 285; (b) another letter instructing Plaintiff on
27 how to complete this Form 285; (c) a certified copy of this Order; (d) a certified copy of
28 the Order granting Plaintiff’s motion to proceed in forma pauperis, ECF No. 7; and (e) a

1 certified copy of the Complaint, ECF No. 1. Together, the summons and additional
2 documents are Plaintiff's "IFP Package."

3 3. Plaintiff is **DIRECTED** to complete the following actions to aid the U.S.
4 Marshal in serving his Complaint:

5 a. First, upon receiving the IFP Package, Plaintiff must complete the IFP
6 package, including the U.S. Marshal Form 285, as accurately as possible.

7 b. Second, Plaintiff must return the completed IFP package and Form 285
8 to the U.S. Marshal according to the instructions provided by the Clerk's
9 letter.

10 c. Third, Plaintiff must include on the Form 285 addresses where the U.S.
11 Marshal can serve Defendants. *See* S.D. Cal. Civ L.R. 4.1.c.

12 4. Plaintiff is **FURTHER DIRECTED** to complete the following actions for all
13 of his future filings in this case:

14 a. Plaintiff must serve upon Defendants a copy of every pleading or
15 document that Plaintiff files with the Court in this case.

16 b. For every future filing with the Court in his case, Plaintiff must include
17 a certificate of service which states:

18 i. How he served a true and correct copy of that filing on
19 Defendants, and

20 ii. The date when Defendants were served.

21 c. Any paper received by the Court which has not been properly filed with
22 the Clerk, or which fails to include a Certificate of Service, may be
23 disregarded.

24 5. Upon receipt, the U.S. Marshal is **ORDERED** to serve a copy of the
25 complaint and summons upon Defendants as directed by Plaintiff on his completed U.S.
26 Marshal Form 285. All costs of service will be advanced by the United States. *See* 28
27 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).
28

1 In his ex parte application, Plaintiff also seeks injunctive relief enjoining the state
2 action,² enjoining further development of the Marijuana Outlet as it is within 1,000 feet of
3 two daycares in violation of the law, and issuing a subpoena for attorney Nguyen to present
4 herself at the TRO hearing and explain why she should not be sanctioned for failing to
5 provide the testimony of Corina Young, her client.³ (ECF No. 8, at 18–19.) The Ninth
6 Circuit has held that “there must be a relationship between the injury claimed in the motion
7 for injunctive relief and the conduct asserted in the underlying complaint.” *Pac. Radiation*
8 *Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015) (“Absent that
9 relationship or nexus, the district court lacks authority to grant the relief requested.”). Here,
10 the allegations in the ex parte application post-date the allegations in the original complaint
11 filed on February 9, 2018. There is no nexus between the allegations in the complaint and
12 the injuries claimed in the TRO application. *See id.*; *Panno v. Wells Fargo Bank, N.A.*,
13 Case No. SA CV 16-118-DOC(KESx), 2016 WL 7494896, at *3 (C.D. Cal. June 13, 2016)
14 (noting the plaintiff’s lack of clarity on this critical issue as the TRO alleged violations of
15 California Civil Code section 2923.6 which was not pleaded in the second amended
16 complaint). Accordingly, the Court **DENIES** Plaintiff’s request for injunctive relief.

17 **IT IS SO ORDERED.**

18
19 **DATED: January 15, 2020**

20 
21 **Hon. Cynthia Bashant**
22 **United States District Judge**

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27
28 ² It appears Plaintiff is seeking to enjoin the judgment in the state court case.

³ It is unclear who Nguyen and Young are and how they are related in this matter.

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2020 MAY 13 PM 2: 18

CLERK US DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

Plaintiff Pro Se

BY _____ DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,
 Plaintiff,
 vs.

CASE NO.:3:18-cv-00325-BAS-MDD

PLAINTIFF'S FIRST AMENDED
 COMPLAINT FOR:

CYNTHIA BASHANT, an individual; JOEL
 WOHLFEIL, an individual; LARRY GERACI, an
 individual; REBECCA BERRY, an individual;
 GINA AUSTIN, an individual; MICHAEL
 WEINSTEIN, an individual; JESSICA
 MCELFRISH, an individual; and DAVID
 DEMIAN, an individual
Defendants.

1. DEPRIVATION OF CIVIL RIGHTS
 (42 U.S.C. § 1983)
2. DEPRIVATION OF CIVIL RIGHTS
 (42 U.S.C. § 1983)
3. DECLARATORY RELIEF
4. PUNITIVE DAMAGES

Related Case: 20CV0656-BAS-MDD

DEMAND FOR JURY TRIAL

///
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1
2 Plaintiff *Pro Se* Darryl Cotton ("Plaintiff," "Cotton" or "I") alleges upon information and belief
3 as follows:

4 INTRODUCTION

5 1. This action is a collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil in
6 *Cotton I*.¹

7 2. "Under California law, the 'well-settled rule [is] that the courts will not aid a party whose claim
8 for relief rests on an illegal transaction.'" *Singh v. Baidwan*, 651 F. App'x 616, 2-3 (9th Cir. 2016)
9 (quoting *Wong v. Tenneco, Inc.*, 702 P.2d 570, 576 (Cal. 1985) (in bank)).

10 3. "A contract to perform acts barred by California's licensing statutes is illegal, void and
11 unenforceable." *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986).

12 4. *Cotton I* was a breach of contract action filed by Lawrence Geraci against Cotton.

13 5. Geraci and Cotton reached an oral joint venture agreement (the "JVA") to develop a cannabis
14 dispensary at Cotton's real property (the "Property").

15 6. However, Geraci had no intention of honoring his agreement with Cotton. In fact, Geraci could
16 not honor his agreement with Cotton because he had been repeatedly sanctioned for his
17 owning/management of illegal marijuana dispensaries and, consequently, is barred as a matter of law
18 from owning a cannabis dispensary (the "Illegality Issue").

19 7. To get around the Illegality Issue and still own the cannabis permit at the Property, Geraci
20 applied for a cannabis permit at the Property with the City in the name of his receptionist, Rebecca
21 Berry (the "Berry Application").

22 8. In the Berry Application, Berry certified under penalty of perjury she is the sole owner of the
23 cannabis permit being sought (the "Berry Fraud").

24 9. At trial in *Cotton I*, Geraci testified he instructed Berry to submit the Berry Application.

25 10. At trial in *Cotton I*, Berry testified she made the certifications knowing they were false.

26
27
28 ¹ "Cotton I" means *Larry Geraci vs Darryl Cotton*, San Diego County Superior Court, Case No. 37-2017-00010073-CU-BC-CTL.

1 11. Austin, as Geraci's cannabis attorney and responsible for the Berry Application, testified in
2 *Cotton I* that it is not unlawful for Berry to have submitted the Berry Application with false statements.

3 12. The JVA had a condition precedent, the approval of a marijuana dispensary at the Property

4 13. *Cotton I* was filed by attorney Michael Weinstein of Ferris & Britton without probable cause.

5 14. When Cotton accused Weinstein of being an unethical attorney, Wohlfeil admonished Cotton
6 stating from the bench that he does not believe that Weinstein is even capable of acting unethically.

7 15. Wohlfeil stated that the basis of his belief is based on the fact that both he and Weinstein had
8 started their legal careers at the same time and from the years of Weinstein having practiced before him
9 when he became a judge.

10 16. Unfortunately for Wohlfeil, Weinstein *is* an unethical attorney that cares more about avoiding
11 liability for filing a malicious prosecution action than betraying Wohlfeil's blind trust in him.

12 17. The *Cotton I* judgment is void for being procured via a fraud on the court, the product of judicial
13 bias, and because the alleged contract has an unlawful object and is therefore illegal and cannot be
14 enforced.

15 18. This action will force the judge overseeing this matter to choose between exposing the unethical
16 actions of at least two judges and numerous attorneys or to enforce an illegal contract that rewards a
17 drug dealer for seeking to acquire a cannabis permit under fraudulent pretenses and filing a malicious
18 prosecution action.

19 19. Cotton hopes that the presiding judge in this matter will not retaliate against Cotton for seeking
20 to protect his rights.

21 20. Cotton has painfully come to learn that judges instinctively protect other judges because they
22 operate from the assumption that a pro se litigant making allegations of bias and prejudice after a jury
23 trial are just sore losers. And 99.99% of the time they are probably right.

24 21. However, that probability does not give a judge the right to violate their judicial oath and not
25 vet the facts and arguments they are presented with.

26 22. In complete candid honesty, Cotton has been fighting for over three years to vindicate his rights
27 and he is simply disgusted and exhausted of hearing that he needs to be subservient and denigrate
28

1 himself before judges even when they violate Cotton's basic rights because they assume he is a pro se
2 "conspiracy nut" litigant.

3 23. Cotton continues pushing forward, trusting not in the ridiculous notions of Justice or the Rule
4 of Law (this case proves those things do not exist), but because he knows that if he keeps filing lawsuits
5 against the unethical attorneys and the judges who have objectively shown bias against Cotton as a pro
6 se litigant that he will eventually get the attention of the media.

7 24. Then, fear of liability will force a judge to finally expose Wohlfeil for the biased judge that he
8 is. A judge who ruined Cotton's life because he chose to trust Weinstein rather than do the job he is
9 paid to do and apply the law to the facts which he had been presented with.

10 JURISDICTION AND VENUE

11 25. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(3), 2283, and 18
12 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for all civil
13 actions arising under the United States Constitution or the laws of the United States, as well as civil
14 actions to redress deprivation under color of state law, of any right immunity or privilege secured by
15 the United States Constitution.

16 26. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of
17 state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by
18 the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process
19 of law.

20 27. Venue is proper in this Court because the events described below took place in this judicial
21 district and the real property at issue is located in this judicial district.

22 PARTIES

23 28. Cotton is, and at all times mentioned was, an individual residing within the County of San
24 Diego, California.

25 29. Cotton is, and at all times material to this action was, the sole record owner of the commercial
26 real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").
27
28

30. Upon information and belief Defendant Geraci is, and at all times mentioned was, an individual residing within the County of San Diego, California.

31. Upon information and belief, Defendant Berry is, and at all times mentioned was, an individual residing within the County of San Diego, California.

32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

33. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

34. Upon information and belief, Defendant Jessica McElfresh ("McElfresh") is, and at all time mentioned was, an individual residing within the County of San Diego, California.

35. Upon information and belief, Defendant David Demian ("Demian") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

36. Upon information and belief, Defendant Joel Wohlfeil ("Wohlfeil") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

37. Upon information and belief, Defendant Cynthia Bashant ("Bashant") is, and at all time mentioned was, an individual residing within the County of San Diego, California.

38. Cotton does not know the true names and capacities of the defendants named DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES 1 through 10 are in some way responsible for the events described in this Complaint and are liable to Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the true names and capacities of these parties have been ascertained.

FACTUAL ALLEGATIONS

I. Background

A. Geraci is an intelligent and highly sophisticated businessman who has been sanctioned at least three times for his ownership/management of illegal marijuana dispensaries.

39. Geraci has approximately 40 years of experience providing tax services and has been the owner-manager of Tax & Financial Center, Inc. ("Tax Center") since 2001.

40. Tax Center provides sophisticated tax, financial and accounting services.

1 41. Geraci has been an Enrolled Agent with the IRS since 1999.

2 42. Geraci was a California licensed real estate salesperson for approximately 25 years from 1993-
3 2017.

4 43. Geraci has been sued by the City for his ownership/management of at least three illegal
5 marijuana dispensaries (the "Illegal Marijuana Dispensaries").

6 44. Geraci settled all three cases, collectively paying fines in the amount of \$100,000.

7 45. Geraci did not "coincidentally" lease three real properties to the Illegal Marijuana
8 Dispensaries; he was an operator and beneficial owner. *See, e.g., City of San Diego v. CCSquared*
9 *Wellness Cooperative*, Case No. Case No. 37-2015-00004430-CU-MC-CTL, ROA No. 44 (Stipulated
10 Judgment) at 2:15-16 ("The address where the Defendants were maintaining a marijuana dispensary
11 business at all times relevant to this action is 3505 Fifth Ave, San Diego, CA 92103").

12 B. State and City Cannabis Laws and Regulations

13 46. It is against State and City laws and regulations to apply for a cannabis license or permit in the
14 name of a third party who knowingly and falsely states in the application that they are the applicant for
15 the cannabis license and/or permit being sought.

16 47. It is against the public policy of the State and City to issue cannabis licenses or permits to
17 individuals with a history of engaging in illegal commercial marijuana activity.

18 48. It is against the public policy of the State and City to issue cannabis licenses or permits to an
19 applicant who seeks to acquire a license or permit via unlawful means.

20 49. As an example of applicable State law when the JVA was formed, California Business and
21 Professions Code ("BPC") § 19323, amended by 2016 Cal SB 837 and effective June 27, 2016,
22 mandated the denial of an application for an cannabis license if the applicant had, *inter alia*,
23 purposefully omitted required information, made false representations, been sanctioned for
24 unauthorized commercial marijuana activity in the three years preceding the application, or
25 failed to comply with local ordinances.

26 50. As an example of applicable City laws/regulations, the San Diego Municipal Code ("SDMC")
27 prohibits the furnishing of false or incomplete information in any application for any type of license or
28 permit from the City. SDMC § 11.0401(b) ("No person willfully shall make a false statement or fail to

1 report any material fact in any application for City license, permit, certificate, employment or other
2 City action under the provisions of the [SDMC].”).

3 51. Further, SDMC § 11.0402 provides that “[w]henver in [the SDMC] any act or omission is
4 made unlawful, it shall include causing, permitting, aiding or abetting such act or omission.”

5 52. SDMC § 121.0311 states as follows: “Violations of the Land Development Code shall be
6 treated as **strict liability offenses** regardless of intent.”²

7 53. Thus, applying for a cannabis permit or license, or aiding a party to apply for same, and willfully
8 making a false statement in the application is illegal regardless of intent.³

9 C. Gina Austin

10 54. Attorney Gina Austin attended the Thomas Jefferson School of Law and was admitted to the
11 California Bar on December 1, 2006.

12 55. Austin, with approximately two to three years of experience as an attorney, founded her law
13 firm ALG in 2009.

14 56. Austin, in her own words, is “an expert in cannabis licensing and entitlement at the state and
15 local levels and regularly speak[s] on the topic across the nation.”⁴

16 57. Austin has worked on at least 50 conditional use permit applications with the City.

17 58. Austin has been the single most successful attorney in the City in aiding her clients acquire
18 cannabis permits.

19 59. Austin’s success is not because she is a legal genius, but because she engages in and ratifies
20 unlawful actions against the competition, such as filing sham lawsuits like *Cotton I*.

21
22 ² The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing §§
111.0101-1412.0113). (SDMC § 111.0101(a).)

23 ³ See *City of San Diego v. 1735 Garnet, LLC*, D071332, at *16 (Cal. Ct. App. Oct. 30, 2017) (“[I]n a
24 recent case in which a land owner who leased property to a marijuana dispensary was sued for
25 violations of a Los Angeles Municipal Code (LAMC) section similar to SDMC section 121.0302(a),
26 the appellate court concluded the land owner’s argument that he lacked knowledge of the marijuana
27 dispensary and thus should not be held liable was meritless, when the violation of LAMC section
12.21A.1(a), was a **strict liability offense**. [Citation.] The same is true here. The terms of the SDMC
specifically provide that violations of the Land Development Act are to be treated as ‘**strict liability**
offenses.’ (SDMC, § 121.0311.)”).

28 ⁴ *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL, ROA 127 (Declaration of Gina Austin) at ¶ 2.

1 **II. The November Document and the November 3, 2016 Phone Call**

2 60. In early 2016 Geraci contacted Cotton to purchase the Property because it potentially qualified
3 to operate a cannabis dispensary.

4 61. In good faith, Cotton engaged with Geraci in preliminary due diligence.

5 62. On October 31, 2016, Geraci, without Cotton's knowledge or consent, had Berry submit the
6 Berry Application.

7 63. On November 2, 2016, Geraci and Cotton reached the JVA pursuant to which Cotton would
8 sell the Property to Geraci.

9 64. Cotton's consideration for entering into the JVA included (i) a 10% equity position in the
10 dispensary, (ii) on a monthly basis, the greater of \$10,000 or 10% of the net profits of the dispensary,
11 (iii) a \$50,000 non-refundable deposit for Cotton to keep if the permit for a dispensary was not
12 approved at the Property, and (iv) Geraci promised to have his attorney, Gina Austin, promptly reduce
13 the JVA to writing for execution.

14 65. At the meeting Geraci and Cotton executed a three-sentence document drafted by Geraci (the
15 "November Document").

16 66. The November Document was executed with the intent it be a receipt for Cotton's acceptance
17 of \$10,000 in cash towards the \$50,000 non-refundable deposit.

18 67. That same day:

19 (i) Geraci emailed Cotton a copy of the November Document, which in the email
20 attachment Geraci had titled the November Document the 'Geraci – Cotton Contract'.

21 (ii) Upon review and within hours of having received the Geraci email Cotton replied and
22 requested that Geraci confirm in writing the November Document is not a purchase contract reflecting
23 'any final agreement'. (the "Request for Confirmation"); and

24 (iii) Geraci replied and confirmed the November Document is not a purchase contract (the
25 "Confirmation Email"). A true and correct copy of these emails are attached hereto as Exhibit 1.

26 68. The Request for Confirmation and the Confirmation Email prove that Cotton and Geraci did
27 not mutually assent to the November Document being a purchase contract for the Property (the "Mutual
28 Assent Issue").

69. On November 3, 2016, Cotton called Geraci to talk about Geraci branding the contemplated dispensary at the Property with his nonprofit 151 Farms organization.

70. At 1:41 p.m. on November 3, 2016, Cotton emailed Geraci after they had spoken as follows:

Larry, [¶] Per our phone call the name 151 AmeriMeds has not been taken nor has there been any business entity formed from it. If you see this as an opportunity to piggyback some of the work I've done and will continue to do as 151 Farmers with further opportunities as a potential franchise for your dispensary I'd like for you to consider that as the process evolves. [¶] We'll firm it up as you see fit.

71. On March 21, 2017, after Geraci repeatedly refused to reduce the JVA to writing as promised, Cotton emailed Geraci and terminated the JVA with Geraci for anticipatory breach.

72. In his email terminating the JVA, Cotton specifically informed Geraci that he was selling the Property to a third-party: "To be clear, as of now, you have no interest in my [P]roperty, contingent or otherwise. I will be entering into an agreement with a third-party[.]"

73. On March 21, 2017, after terminating the JVA with Geraci, Cotton entered into a written joint venture agreement with Richard Martin.

III. The Cotton I Litigation

74. The next day, March 22, 2017, Weinstein emailed Cotton copies of the *Cotton I* complaint and a lis pendens recorded by F&B on the Property (the "F&B Lis Pendens").

75. The *Cotton I* complaint alleges causes of action for (i) breach of contract, (ii) breach of the covenant of good faith and fair dealing, (iii) specific performance, and (iv) declaratory relief.

76. All four causes of action are premised on the allegation that the November Document is a fully integrated purchase contract.

77. The *Cotton I* complaint alleges that Cotton anticipatorily breached his agreement with Geraci by demanding additional consideration not originally agreed to, including the 10% equity position in the dispensary.

1 78. Weinstein filed the *Cotton I* complaint relying on the *Pendergrass*⁵ line of reasoning seeking to
 2 use the parol evidence rule as a shield to bar the admission of the Confirmation Email and other
 3 incriminating parol evidence.⁶

4 79. On May 12, 2017, Cotton filed pro se a cross-complaint in *Cotton I* against Geraci and Berry
 5 with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent misrepresentation,
 6 (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied
 7 contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x)
 8 conspiracy, and (xi) declaratory and injunctive relief.

9 80. After dealing with the procedural difficulties of representing himself pro se, Cotton reached an
 10 agreement with a litigation investor to hire counsel to represent him in *Cotton I* and related legal matters
 11 required to acquire a cannabis permit at the Property.

12 81. Cotton's litigation investor reached an agreement with then-prominent and yet to be publicly
 13 disgraced cannabis attorney Jessica McElfresh for her representation of Cotton in *Cotton I*.

14 82. McElfresh did not disclose that Geraci and numerous of Geraci's associates are her clients.

15 83. McElfresh did not disclose that she shares numerous clients with Austin.

16 84. In May 2017, the San Diego County District Attorney's office filed charges against McElfresh
 17 for her efforts in seeking to conceal the illegal cannabis operations of one of her clients from
 18 government inspectors.

19 85. Specifically, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime,
 20 Manufacturing of a Controlled Substance, and Obstruction of Justice.

21 86. McElfresh charged Cotton for her legal services for Cotton in *Cotton I*.

22 87. McElfresh referred Cotton's litigation investor to David Demian of Finch, Thornton & Baird to
 23 represent Cotton in *Cotton I*.

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 25
 26 ⁵ *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258.

27 ⁶ See *IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 (emphasis added) ("under *Pendergrass*,
 28 external evidence of promises inconsistent with the express terms of a written contract were not
 admissible, even to establish fraud.").

1 88. Neither McElfresh nor Demian disclosed that FTB had shared clients with Geraci and his
2 business.

3 89. FTB twice amended Cotton's pro se complaint with the intent to sabotage Cotton's case.

4 90. Most notably, FTB removed from Cotton's complaint the allegations that Geraci and Berry
5 conspired to acquire a cannabis permit at the Property in Berry's name because Geraci could not own
6 a cannabis permit because of the Illegality Issue.

7 91. Further, FTB removed Cotton's allegation that Geraci and Cotton had reached a valid and
8 binding oral agreement and replaced it with an allegation that Geraci and Cotton had reached an
9 agreement to agree in the future, which is not a valid and enforceable agreement.

10 92. Demian, like Weinstein, Austin and McElfresh, is a criminal with a license to practice law and
11 represents the most vile type of all attorneys – those who would connive to defeat their own client's
12 case.

13 **IV. The Disavowment Allegation**

14 93. From the filing of *Cotton I* in March 2017 until April 2018 Weinstein argued that the statute of
15 frauds and the parol evidence rule barred the Confirmation Email and other parol evidence as proof of
16 the JVA.

17 94. For example, Weinstein argued:

18 Cotton alleges, based on extrinsic evidence [(e.g., the Confirmation Email)], that the
19 actual agreement between the parties contains material terms and conditions in
20 addition to those in the [November Document] as well as a term (a \$50,000 deposit rather
21 than the \$10,000 deposit stated in the [November Document]) that expressly conflicts
22 with a term of the [November Document]. However, such a claim cannot stand as extrinsic
evidence cannot be employed to prove an agreement at odds with the terms of the
written memorandum.

23 95. However, in April 2018, attorney Jacob Austin specially appearing for Cotton filed a motion to
24 expunge the F&B Lis Pendens and cited and argued for the first time in *Cotton I* that Geraci/Weinstein
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1 could not use the parol evidence rule to bar the Confirmation Email pursuant to the *Pendergrass* line
2 of reasoning because it had been overruled by *Riverisland* in 2013 (the “Lis Pendens Motion”).⁷

3 96. In opposition to the Lis Pendens Motion, Geraci submitted a supporting declaration alleging for
4 the first time that (i) he sent the Confirmation Email by mistake because he only read the first sentence
5 of Cotton’s Request for Confirmation email; (ii) that on November 3, 2016 he called Cotton to tell him
6 that he sent the Confirmation Email by mistake; (iii) Cotton agreed with Geraci that the Confirmation
7 Email was sent by mistake and he was not entitled to a 10% equity position in the dispensary; and (iv)
8 Cotton sent the Request for Confirmation **pretending** that Geraci and him had reached an agreement
9 that included a 10% equity position for Cotton (the “Disavowment Allegation”).

10 97. Pursuant to FRCP 201 Cotton requests the Court take judicial notice of Geraci’s April 9, 2018
11 declaration attached hereto as Exhibit 2.

12 98. Geraci’s April 9, 2018 declaration contradicts dozens of his evidentiary and judicial admissions
13 he set forth in his declarations, discovery responses and arguments in briefs prior to then.

14 99. Even assuming that Geraci’s April 9, 2018 declaration did not contradict his previous judicial
15 and evidentiary admissions, his claim is barred by the statute of frauds and the parole evidence rule.

16 100. The statute of frauds applies to an agreement for the sale of real property as Geraci
17 alleges, but it does not apply to a joint venture agreement as Cotton alleges.⁸

18 101. Geraci cannot just pretend the Confirmation Email has no legal effect.

19 **V. The Federal Lawsuits**

20 102. In February 2018, Cotton filed suit and a TRO in federal court against, *inter alia*, Geraci,
21 Weinstein and Austin alleging, *inter alia*, RICO and § 1983 claims (“*Cotton IIF*”).⁹

24 ⁷*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* (“*Riverisland*”) (2013) 55 Cal.4th 1169, 1182 (“[W]e overrule *Pendergrass* and its progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch* [(1928) 204 Cal. 342, 347]: ‘**[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.**’”) (emphasis added).

26 ⁸ *Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 (“[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.”).

28 ⁹ *Cotton v. Geraci*, Case No.: 18cv325-GPC(MDD).

103. On February 28, 2019, because of *Cotton I*, Judge Curiel stayed *Cotton III* pursuant to the *Colorado River* doctrine.

104. In July 2019, Wohlfeil entered judgment against Cotton in *Cotton I* after a jury trial implicitly finding that the November Document is a fully integrated purchase contract that has a lawful object as a matter of law.

105. Cotton filed a motion for new trial (“MNT”) arguing, *inter alia*, assuming the November Document is a contract, it is an illegal contract that cannot be enforced. (*Cotton I*, ROA No 672.)

106. Wohlfeil denied the MNT believing Weinstein’s frivolous opposition argument that Cotton had waived the defense of illegality to the enforcement of a contract because Cotton had not allegedly raised the Illegality Issue before in *Cotton I*.

107. Factually and legally the arguments are contradicted by the facts and law. Cotton did raise the Illegality Issue before the MNT and even if he had not he cannot waive the defense of illegality. *See City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) (“A party to an illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and **cannot waive** his right to urge that defense.”).

108. On January 10, 2020, Judge Curiel recused himself from *Cotton III* after Cotton had filed a motion to lift the *Colorado River* stay and a TRO seeking to have Judge Curiel found to be a biased judge that was enforcing an illegal contract and a request for counsel.

109. Cotton believes that Judge Curiel realized that with the information contained within his motion to lift the stay, Cotton was not a conspiracy nut and that Wohlfeil was a biased judge and *Cotton I* represents a three-year long egregious miscarriage of justice.

110. *Cotton III* was transferred to Judge Bashant and on January 15, 2020 Bashant lifted the *Colorado River* stay, but denied Cotton’s in Forma Pauperis request for court appointed counsel.

111. On April 9, 2020, Cotton filed an ex parte application seeking reconsideration of Bashant’s order denying his request for counsel premised on, *inter alia*, the argument that Cotton needed to prove Judge Wohlfeil is biased.

112. Getting any kind of relief from judges against judges is virtually impossible. Judges protect judges.

113. On April 16, 2020, Judge Bashant denied Cotton's ex parte application in a typical pro se fashion with a conclusory finding that Cotton had failed to prove "exceptional circumstances," but without describing why.

114. Judge Wohlfeil is enforcing an illegal contract and he made statements that manifestly prove he is biased because he stated Weinstein is not capable of acting unethically when the entire *Cotton I* case is undisputable evidence that Weinstein is acting unethically.

115. Any reasonable person would find that a judge enforcing an illegal contract and requiring a jury to determine a matter of law does represent exceptional circumstances.

116. Cotton now believes that with her recent rulings, Judge Bashant is covering up for Wohlfeil.

117. Both Wohlfeil and Bashant served on the San Diego Superior Court for at least seven years together before Bashant was elevated to the federal court.

118. Because of the violence and Wohlfeil's action led Martin to believe that he was actively seeking to sabotage Cotton's case Martin sold his interest in the property to Cotton's former attorney, Andrew Flores.

119. On April 3, 2020, Andrew Flores filed suit in federal court and an ex parte TRO after Cotton told him that some of his supporters, who had lent him significant money, were considering taking violent action against Geraci's attorneys to bring in law enforcement agencies to investigate this case because Wohlfeil and the City Attorney's are corrupt. (*Flores, et al. v. Austin, et al.*, Case No.20-cv-656-BAS-MDD.)

120. On April 20, 2020, Bashant denied Flores' TRO. The opening paragraph states: "Plaintiffs... allege civil rights violations under 42 U.S.C. § 1983, make a 'neglect to perform wrongful act' cause of action, and seek various forms of declaratory relief. The complaint is almost impossible to summarize due to its length and confusing nature."

121. Bashant's order also alleges that Flores did not comply with FRCP 65(b) for the issuance of a TRO based, in part, on Bashant's allegation that Corina Young is a "defendant."

122. First, according to Bashant, Flores lacks any professional competence as an attorney because he sued for "neglect[ing] to perform wrongful act."

123. Flores did not.

124. Flores filed a § 1986 cause of action for “neglect to **prevent** a wrongful act” which is clearly stated in the title page of his complaint.

125. Second, Corina Young is a *witness* who has been threatened from providing her testimony. She is not a “defendant.”

126. Bashant simply made that up.

127. Third, Flores did provide notice, case law and argument for why notice is not required pursuant to FRCP 65.

128. Fourth, given the preceding three points, Bashant’s allegation that the Flores’ complaint is “confusing” is meritless as she clearly does not understand even the most basic facts she was presented with.

129. The bottom line is that Bashant either knew that statements she attributed to Flores were true or she did not know because she did not take the time to vet Flores’ complaint and TRO.

130. If Bashant knew they were false, she did so to purposefully denigrate anyone that seeks to prove that Wohlfeil is a biased judge to Cotton’s great prejudice.

131. If Bashant did not know her statements were false, then without justification she is making rulings warranted by law and facts, but in reality, she never even bothered understand the facts and apply the law.

132. In either scenario, a reasonable person would conclude that Bashant is a biased judge who is not impartial.

VI. **This Complaint**

133. The Flores complaint is 177 pages and explains in detail how the *Cotton I* complaint is but one sham action among many filed in furtherance by Geraci and his associates seeking to acquire as many cannabis permits as they can in the City to establish a monopoly.

134. Cotton does not have the ability to explain the conspiracy in a clear and succinct manner so he files this amended complaint focused on the fact that the November Document cannot be a contract because it lacks mutual assent, has an unlawful object and Judge Wohlfeil’s statements and actions prove that he is biased.

1 135. Cotton did not have a fair and impartial tribunal.

2 136. Cotton does not have the ability to explain the entire conspiracy which gives rise to
3 RICO, antitrust, obstruction of justice, and fraud causes of action that includes multiple government
4 and private attorneys.

5 137. However, Cotton intends to prepare and file a motion seeking court counsel to amend
6 this Complaint to include all defendants against whom Cotton has valid causes of action.

7 **First Cause of Action -§ 1983**

8 (Plaintiff against Bashant)

9 138. Plaintiff realleges and incorporates herein by reference the allegations in the preceding
10 paragraphs.

11 139. The presence of bad faith can render an exercise of legal judgment judicial misconduct;
12 “Bad faith” in this context means “acts within the lawful power of a judge which nevertheless are
13 committed for a corrupt purpose, i.e., for any purpose other than the faithful discharge of judicial
14 duties.” *Cannon v. Commission on Judicial Qualifications*, 14 Cal.3d 678, 695 (Cal. 1975).

15 140. Cotton has filed judicial complaints against both Wohlfeil and Bashant for their failure
16 to exercise their judicial discretion in bad faith.

17 141. Bashant’s order finding that Cotton did not prove exceptional circumstances when
18 Wohlfeil entered a judgment in *Cotton I* that enforces an illegal contract as a matter of law, coupled
19 with her fabricated statements that she attributed to Flores’ that undermines the case against Wohlfeil,
20 would lead any reasonable person to believe that she is covering up for Wohlfeil. Or, at the very least,
21 that she is not impartial.

22 142. “Bias exists where a court has prejudged, or reasonably appears to have prejudged, an
23 issue.” *Kenneally v. Lungren*, 967 F.2d 329, 333 (9th Cir. 1992) (quotation and citation omitted).

24 143. Cotton should not have to “hope” that Bashant will not take other unethical and
25 prejudiced actions against him either to continue to cover up for Wohlfeil or to retaliate against him
26 for exposing that she fabricated and attributed multiple statements to Flores that were not true.

27 144. This relief against Bashant is prospective.

28 **Second Cause of Action -§ 1983**

(Plaintiff against Wohlfeil)

145. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

146. Plaintiff seeks to have the *Cotton I* judgment vacated and a new trial in state court where he originally filed his cross-complaint and Wohlfeil should not continue to preside over *Cotton I*.

147. As with Bashant, Cotton should not have to hope that Wohlfeil will not retaliate against him for exposing him for being a biased judge that exposed him for being a judge that thinks the defense of illegality is capable of being waived because Cotton had allegedly not raised the Illegality Issue before the MNT.

148. This relief against Wohlfeil is prospective.

Third Cause of Action – Declaratory Relief

(Plaintiff against the Geraci, Berry, Weinstein, Austin, McElfresh and Demian)

149. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

150. Plaintiff seeks to have the *Cotton I* judgment declared void and vacated for being procured by a fraud on the court, the product of judicial bias, and because it enforces an illegal contract.

Fourth Cause of Action – Punitive Damages

(Plaintiff against all defendants)

151. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

152. “At some point, justice delayed is justice denied.” *Southern Pacific Transp. Co. v. I.C.C.*, 871 F.2d 838, 848 (9th Cir. 1989).

153. Since March 2017, Plaintiff has incurred over **\$3,000,000** from 7 different law firms and at least three contract paralegals in legal fees. The law firms are: (i) Finch, Thornton, & Baird; (ii) Law Office of Jacob Austin; (iii) Kerr & Wagstaffe LLP; (iv) Law Office of JoEllen Plaskett; (v) Law Office of Andrew Flores; (vi) California Appellate Law Group; and (vii) Tiffany & Bosco. The three contract paralegals are: (i) Leanne Thomas; (ii) Zoe Villaroman, and (iii) Lori Hatmaker.

154. “Generally, [punitive damages] cases fall into three categories: (1) really stupid defendants; (2) really mean defendants; and, (3) really stupid defendants who could have caused a great deal of harm by their actions but who actually caused minimal harm.” *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 453 n. 15 (1993) (citation and quotation omitted).

155. Judges are protected by their judicial immunity.

156. But *Cotton I* at every point, has failed to state a cause of action as filed when Weinstein incorrectly assumed the parol evidence rule would bar the Confirmation Email and as de facto amended, when confronted by *Riverisland*, to alleging that the Confirmation Email was sent by mistake.

157. Cotton believes it would be an egregious miscarriage of justice to find that defendants can file and maintain a malicious prosecution action that at no point stated a cause of action and rely on the judgments or orders by judges, that were biased against Cotton, to avoid being held liable for Cotton’s legal fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That this Court disqualify Bashant from continuing to preside over this matter;
2. That the *Cotton I* judgment be declared void;
3. That the *Cotton I* action be stayed pending resolution of this action;
4. That Wohlfeil be declared bias and prohibited from continuing to preside over Cotton I upon its resumption pending resolution of this Complaint;
5. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than \$7,000,000;
6. Punitive damages against all defendants saved Wohlfeil and Bashant who are protected by their judicial immunity;
7. That this Court appoint Cotton counsel;
8. That this Court grant Cotton’s appointed counsel leave to amend this Complaint to include all defendants and set forth all material allegations; and
9. That other relief is awarded as the Court determines is in the interest of justice.

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2 Dated: May 13, 2020.

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5 Darryl Cotton,

6 Cotton and Cotton Pro Se
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JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Cotton, Darryl.

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
In Pro Per

DEFENDANTS

Bashant, Cynthia A., Wohlfeil, Joel, Garaci, Lawrence, Berry, Rebecca, Austin, Gina M., Weinstein, Michael, R., McElfresh, Jessica, Demien, David.

County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FOREFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:

Deprivation of Civil Rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Bashant

DOCKET NUMBER 20CV0656-BAS-MDD

DATE

05/13/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE