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

LARRY GERACI, an individual,)	
)	
Plaintiff,)	
)	Case No:
vs.)	37-2017-00010073-
)	CU-BC-CTL
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.)	

Videotaped Deposition of DARRYL COTTON
San Diego, California
May 14, 2018

Reported by:
Sheri L. Somers
CSR No. 9734

Job No. 10043157

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LARRY GERACI, an individual,)	
REBECCA BERRY, an)	
individual, and DOES 1)	
through 10, inclusive,)	
)	
Cross-Defendants.)	

Videotaped Deposition of DARRYL COTTON, taken on behalf of plaintiff, at 600 West Broadway, Suite 300, San Diego, California, beginning at 9:10 a.m., and ending at 5:14 p.m., on Monday, May 14, 2018, before Sheri L. Somers, CSR No. 9734.

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Aptus Court Reporting

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1 SAN DIEGO, CALIFORNIA; MONDAY, MAY 14, 2018

2 9:10 A.M. - 5:14 P.M.

3
4 THE VIDEOGRAPHER: We are now on the record.
5 Today's date is May 14, 2018, and the time is 9:10 a.m.
6 This begins the video-recorded deposition of Darryl
7 Cotton being taken on behalf of the plaintiff and
8 cross-defendant in the matter of Larry Geraci versus
9 Darryl Cotton, et al., pending in the Superior Court of
10 California, County of San Diego, Central Division.
11 Case No. 37-2017-00010073-CU-BC-CTL.

12 We are at Aptus Court Reporting and my name
13 is Ryan Asanas, the videographer, of Aptus Court
14 Reporting located at 600 West Broadway, Suite 300,
15 San Diego, California 92101.

16 Will counsel all present please identify
17 yourselves and state whom you represent starting with
18 the taking attorney.

19 MR. WEINSTEIN: Michael Weinstein of Ferris &
20 Britton representing plaintiff Larry Geraci,
21 cross-defendants Larry Geraci and Rebecca Berry, and my
22 colleague Scott Toothacre is present also.

23 MR. AUSTIN: Jacob Austin on behalf of the Law
24 Office of Jacob Austin for Mr. Cotton.

25 MS. PLASKETT: Jo Ellen Plaskett, Law Office of

1 Jo Ellen Plaskett here on behalf of Mr. Cotton.

2 THE VIDEOGRAPHER: Thank you. The court reporter
3 today is Sheri Somers, also with Aptus Court Reporting,
4 and she may now swear in or affirm the deponent.

5

6 DARRYL COTTON,
7 having been administered an oath, was examined and
8 testified as follows:

9

10 EXAMINATION

11 BY MR. WEINSTEIN:

12 Q. Mr. Cotton, good morning. Please state and
13 spell your name for the record.

14 A. Darryl Cotton, D-a-r-r-y-l C-o-t-t-o-n.

15 Q. Mr. Cotton, you obviously are aware that
16 we're here for your deposition. Have you had your
17 deposition taken before?

18 A. I have.

19 Q. How many occasions?

20 A. Once.

21 Q. When was that?

22 A. Ten years ago.

23 Q. Was it -- what type of case was it? Was it
24 civil or criminal?

25 A. It was a civil matter. I represented a

1 business that was going into a settlement with the
2 union, IBEW.

3 Q. So you were taken -- your deposition was
4 taken as a witness, then, representing a party?

5 A. I was the defendant.

6 Q. All right. I'm going to go over basically
7 the rules that are going to govern the case so we have
8 a common understanding. You may already know a lot of
9 this from talking with your attorney, but it's helpful
10 that we have a common understanding.

11 So a deposition is a question-answer session
12 under oath. You'll be testifying under penalty of
13 perjury as though you were testifying in court. Do you
14 understand that?

15 A. I do.

16 Q. There are just a number of rules. One is
17 tell the truth. Will you do that?

18 A. I will.

19 Q. Answer audibly with words, as you have been
20 doing, not with shakes of the head or gestures because
21 the court reporter can only take down audible words.
22 Will you do that?

23 A. I will.

24 Q. If you don't understand the question, say so
25 and I'll attempt to rephrase it. Will you do that?

1 A. I will.

2 Q. You're doing a great job of waiting for me to
3 ask my question before you answer. I'd ask that you
4 continue to do that and not interrupt me and I'll do my
5 best to attempt not to interrupt you until you've
6 completed your answer. Do you understand that?

7 A. I do.

8 Q. One of the reasons we do that and we have
9 these rules is that, as I mentioned, the court reporter
10 is taking things down on her machine, everything that
11 is being said on the record, and she can't hear two of
12 us at one time. Do you understand that?

13 A. I do.

14 Q. When the deposition is completed, all the
15 questions and answers that the court reporter is taking
16 down will be typed up in a booklet form called a
17 transcript, and you'll have an opportunity to review
18 that. Do you understand that?

19 A. I do.

20 Q. When you review it, you'll be entitled to
21 make any changes you need to make in your testimony
22 either because the court reporter mistranscribed
23 something or because you, upon further reflection, have
24 changed your testimony. But I need to caution you if
25 you do change your testimony, if it's a substantive

1 change, myself or any other attorney in the case could
2 comment upon that and that might adversely affect your
3 credibility. So it's important to try and give your
4 best testimony today. Will you do that?

5 A. I will.

6 Q. There may be objections made during the
7 deposition by your attorney. That, again, is for the
8 record. So the attorney may make an objection, you
9 should keep the question in mind because once the
10 attorneys are done talking and the objection is made,
11 you'll then be asked to answer the question unless
12 you're instructed otherwise by your attorney. Do you
13 understand that?

14 A. I do.

15 Q. The reason is pretty straightforward. If we
16 go to trial in the case and I want to read or somebody
17 wants to read your deposition testimony into the case
18 to the judge or the jury, the judge will have a copy of
19 the transcript, the question will be read, the judge
20 will see the objection, and then the judge will rule
21 either to overrule the objection or to sustain the
22 objection. If the objection is sustained, the answer
23 won't be read. If the objection is overruled, then the
24 answer will be read to the judge or the jury. Do you
25 understand that?

1 A. I do.

2 Q. So we're essentially preserving the objection
3 for the time of trial.

4 You can take breaks whatever you want, talk
5 to your attorney whenever you want. I'll try and take
6 regular breaks. If there's a question pending, I may
7 ask you to answer the question before we take the
8 break. But otherwise we'll take breaks. Do you
9 understand that?

10 A. I do.

11 Q. So let's be clear. There is one area where I
12 can't ask you questions and that's -- I can't be told
13 any communications you've had with your attorneys. So
14 if I ask you a question and the only source of
15 information you have about that that enables you to
16 answer the question is something that one of your
17 attorneys told you, then that's protected by the
18 attorney-client privilege and it's as though you don't
19 know the answer. Do you understand that?

20 A. I do.

21 Q. Obviously if you know the answer from other
22 sources besides your attorney, then you're free to
23 testify or should testify about what you do know, and
24 then I'm sure I'll follow up with what the source of
25 the information is. Do you understand that?

1 A. I do.

2 Q. Great. Now, is there -- I know you're on
3 some medication because I saw your discovery responses.
4 Is any of the medication that you're taking something
5 that you believe would impair your ability to give your
6 best memory today?

7 A. No, it will not impair me.

8 Q. Great. Now, I'm going to have marked as the
9 first exhibit in order, Exhibit 1, the Eleventh Amended
10 Notice of Deposition of Defendant Darryl Cotton.

11 (Exhibit 1 was marked for identification.)

12 So each time I mark an exhibit, the court
13 reporter will mark it and then she'll hand it to you so
14 you can look at it. I have brought extra copies so
15 your lawyer can have a copy as well. But that's the
16 process.

17 MS. PLASKETT: Thank you.

18 MR. WEINSTEIN: I brought one copy. I didn't
19 realize there would be two of you here.

20 BY MR. WEINSTEIN:

21 Q. So Mr. Cotton, I'd ask that you read or
22 review Exhibit 1 and let me know whether you've seen it
23 before.

24 A. Okay.

25 Q. Have you seen Exhibit 1 before?

1 A. Not that I recall at this time.

2 Q. Okay. Have you seen -- because this is the
3 eleventh in a series of deposition notices that have
4 been issued over the course of the last several months,
5 each with what I'll call the same document requests
6 which begins on page 2 where it says, "Request for
7 Production."

8 Have you seen any similar deposition notice?

9 A. Not that I can recall.

10 Q. That actually brings me to another point or
11 rule that I failed to discuss with you. Obviously I
12 can't ask you to guess. So if you don't recall
13 something, "I don't recall" is a perfectly appropriate
14 response if you don't recall. Oftentimes, though, my
15 question may ask you for an estimate, in this case in
16 particular may be an estimate as to when something
17 occurred, a date, and you may not know the specific
18 date or time, but you might be able to estimate when it
19 occurred based on other events, like before an event or
20 after an event. So I'm entitled to your best estimate
21 when you have a source or basis for making an estimate
22 but not a guess. Do you understand that?

23 A. I do.

24 Q. Now, in this deposition notice, there is a
25 document request. It starts on page 2 and there are a

1 list of eight categories of documents that I requested
2 be brought to the deposition. Like I said, these were
3 requested and made successively in the prior four --
4 probably four deposition notices.

5 Did you take any action to -- have you
6 brought any documents with you to the deposition today
7 to --

8 A. I'm not sure what your question is.
9 Documents specifically referencing this exhibit?

10 Q. Documents that were -- are brought today to
11 be produced in response to the requests.

12 A. I don't recall having seen this request. So
13 I would say, to your answer, no.

14 Q. Okay. So I'm going to have to go through
15 each of these requests and just see if I can ascertain
16 what documents you may have that haven't already been
17 produced in the case. That's what I'm going to do
18 next.

19 MS. PLASKETT: I believe everything was sent to
20 you via e-mail.

21 MR. WEINSTEIN: When?

22 MS. PLASKETT: All the documents were sent -- were
23 produced via e-mail to your office. I'm not sure of
24 the exact date.

25 MR. WEINSTEIN: So just for clarification, so

1 the -- there were discovery responses that we received
2 on Wednesday, but they were responses to requests for
3 admission to special interrogatories and to form
4 interrogatories. There was not a separate document
5 request. So there was no obligation to produce
6 documents in response to discovery and I didn't receive
7 any. The document requests I'm talking about here has
8 only appeared in the deposition notices. And so we've
9 not received anything specifically addressed in the
10 deposition notice. So -- and I'm sure Mr. Austin can
11 clarify that if you want.

12 MR. AUSTIN: Yeah. He didn't bring any documents
13 for today.

14 BY MR. WEINSTEIN:

15 Q. All right. So let's go through the requests,
16 then, just to see what you do and don't have. The
17 first request seeks documents that relate to
18 communications between you or anybody acting on your
19 behalf and Keith Henderson.

20 Do you have any documents that relate to
21 communications between you and Mr. Henderson?

22 A. Not today I do not.

23 Q. I understand. But I'm not asking about
24 today. I know you haven't brought anything with you.
25 But do you have in your possession -- not here, but in

1 your possession or control elsewhere documents that
2 represent communications with Mr. Henderson?

3 A. I believe I do.

4 Q. Now, we have received documents in response
5 to an earlier document request, and I'll probably be
6 showing you one of them to you later. So just so we're
7 on the same page, I saw a written purchase and sale
8 agreement. So what I'm interested in really is any
9 documents -- what I'm interested in is any documents
10 that relate to communications that you had with
11 Mr. Henderson that haven't previously been produced in
12 the case. And you'll recall that there were documents
13 produced, I think, way back in December of 2017. That
14 was the only document production in the case.

15 Do you know whether you have any documents
16 that relate to communications with Mr. Henderson that
17 weren't previously produced in the case, if you know?

18 A. I do not know that.

19 Q. But do you have a file or a place where you
20 could look to see whether you've got documents that
21 relate to those communications that haven't already
22 been produced?

23 A. I do.

24 Q. Let's go to the second category. The second
25 category in Exhibit 1 is documents that relate to

1 agreements between you and Keith Henderson.

2 Do you have any documents in your possession
3 or control that relate to agreements between you and
4 Keith Henderson that haven't already been produced in
5 the case?

6 A. I'm not sure of your question. Do I have
7 those documents here today or do I have them at all?

8 Q. Have them at all.

9 A. Everything that I have with Keith Henderson I
10 would have a copy of.

11 Q. All right. And since it's been so long since
12 the prior document production, you don't know whether
13 anything that was an agreement would have already been
14 produced; is that fair?

15 A. I do not know whether they've been produced
16 yet.

17 Q. All right. Item 3 is the fully signed or
18 signed counterparts of the Memorandum of Understanding
19 dated January 31, 2017, between Darryl Cotton and Keith
20 Henderson.

21 Do you have a copy of that somewhere?

22 A. I don't recall and I don't know that there is
23 a fully signed counterpart of an MOU with Keith
24 Henderson.

25 Q. But if it existed, it would be within the

1 documents that would be within your possession or
2 control?

3 A. Yes.

4 Q. That's true?

5 A. That's true, yes.

6 Q. The fourth category are fully signed or all
7 signed counterparts to the services agreement contract
8 MOU between Darryl Cotton, president of Inda-Gro and
9 Keith Henderson.

10 Do you have such a document in your
11 possession or control?

12 A. As I said earlier, I would have that document
13 if it exists.

14 Q. Item 5 are documents that relate to
15 communications between you and Richard Martin
16 concerning the property, including but not limited to
17 matters involving the purchase and sale of the
18 property, the application for a conditional use permit,
19 and/or the operation of any business at the property.

20 Do you have such documents in your possession
21 or control?

22 A. Everything I would have with Richard Martin I
23 would have copies of, yes.

24 Q. Item 6 is documents that relate to agreements
25 between you and Richard Martin. Would you also have

1 copies of any such documents between you and
2 Mr. Martin?

3 A. I would have copies of any agreements that
4 exist between myself and Richard Martin.

5 Q. Item 7 are agreements relating to the rental
6 or lease of the property, including but not limited to
7 any rental or lease agreement with Inda-Gro.

8 First of all, does Inda-Gro have a written
9 lease agreement with you to lease the property?

10 A. No. I am the president of Inda-Gro and I own
11 the building.

12 Q. So there's -- so does Inda-Gro -- is Inda-Gro
13 a tenant at the property?

14 A. That is true.

15 Q. But you don't have a written lease. It's an
16 oral arrangement?

17 A. I act on behalf of Inda-Gro. I have not had
18 any oral agreements with myself for the rent.

19 Q. Does Inda-Gro pay rent?

20 A. Yes.

21 Q. And then 8 is documents concerning the
22 formation and ownership of Inda-Gro.

23 Do you have such documents in your
24 possession?

25 A. I do not have them in my possession.

1 Q. Do you know who would have possession of such
2 documents, if there are any?

3 A. They are in my office. I have that
4 possession.

5 MR. WEINSTEIN: So what I'm going to request of
6 counsel is that you make a search and look to see
7 whether or not there are any responsive documents, and
8 I'm going to reserve my right to question him further
9 on those documents once I receive them, but I think
10 that's unlikely. The main thing is I've marked
11 documents for the deposition today. So some documents
12 that would fit within these categories, in particular
13 like a written purchase and sale agreement, may have
14 already been produced and may actually be marked in
15 this deposition as exhibits today.

16 But what I'm going to ask is that you go
17 back, look to see what else is responsive within these
18 categories that hasn't already been produced and
19 produce those. Is that acceptable?

20 MS. PLASKETT: That is acceptable. Would you be
21 able to give me at some point an estimate of when they
22 were initially produced?

23 MR. WEINSTEIN: Sure. There's -- what I'll do is
24 I will -- we have an all-in-one, I believe, PDF of all
25 the documents that were produced by Mr. Cotton. And I

1 believe they were produced on a single occasion.

2 MS. PLASKETT: Okay.

3 MR. WEINSTEIN: So I think I can either e-mail
4 them to you or I can provide -- my paralegal can
5 provide you with a share file site where you can
6 download them.

7 MS. PLASKETT: Perfect. Thank you.

8 MR. WEINSTEIN: Could we go off the record for a
9 moment.

10 THE VIDEOGRAPHER: Going off the record at
11 9:28 a.m.

12 (Discussion off the record.)

13 THE VIDEOGRAPHER: We are back on the record at
14 9:29 a.m.

15 MR. WEINSTEIN: So off the record, Ms. Plaskett
16 gave me her business card, and so now I have her e-mail
17 address and that of Mr. Austin's. What I will do is
18 e-mail you both a copy of the Bates marked documents
19 that were produced prior in the case by Mr. Cotton's
20 attorney, and then you've agreed that you guys will
21 make a search -- or Mr. Cotton will make a search for
22 any responsive documents to the document request in
23 Exhibit 1 and produce any additional documents that
24 haven't previously been produced that are responsive.
25 Is that agreed?

1 MS. PLASKETT: That's agreed.

2 MR. WEINSTEIN: Thanks.

3 BY MR. WEINSTEIN:

4 Q. Mr. Cotton, you graduated from high school,
5 correct?

6 A. Correct.

7 Q. And did you attend college after that?

8 A. No.

9 Q. Did you ever attend a vocational school after
10 that?

11 A. No.

12 Q. Do you hold any licenses of any kind or
13 certifications?

14 A. Not at this time.

15 Q. Did you previously hold a license or
16 certification?

17 A. Yes, I did.

18 Q. And what did you hold?

19 A. A contractor's state license board, I was
20 licensed as an electrical contractor, general
21 contractor, and a paving contractor.

22 Q. And have those licenses expired?

23 A. They have.

24 Q. Can you tell me when each expired.

25 A. I don't have those exact dates.

1 Q. Do you have an estimate of what year?

2 A. I would estimate ten years ago.

3 Q. And for about how long did you hold those
4 licenses?

5 A. The electrical license, I am guessing
6 15 years.

7 Q. Is that a guess or an estimate?

8 A. It's an estimate.

9 Q. And then the general contractor's license?

10 A. I'm estimating ten years.

11 Q. And then the paving contractor license?

12 A. Ten years.

13 Q. Now, I -- and, thank you, I received your
14 discovery responses, and so I know that you read and
15 write English obviously. Do you have any learning
16 disabilities of any kind?

17 A. No.

18 Q. Now, you're presently the sole owner of the
19 real property located at 6176 Federal Boulevard?

20 A. Correct.

21 Q. And when did you acquire that property?

22 A. I believe that was 1998.

23 Q. And did you ever operate a marijuana
24 dispensary at that location?

25 A. I did not.

1 Q. Did any other business operate a dispensary
2 at that location at any time that you've owned it?

3 A. Yes.

4 Q. Who did?

5 A. It was a tenant of mine. He went by the name
6 Ray.

7 Q. Did Ray have a company?

8 A. He did.

9 Q. What was the company called?

10 A. Pure Meds.

11 Q. What was Ray's last name?

12 A. Audish, A-u-d-i-s-h.

13 Q. And did you have any ownership interest of
14 any kind in that business?

15 A. I did not.

16 Q. You simply were the landlord that received
17 rent from Mr. Audish when he operated that business?

18 A. Correct.

19 Q. Was there a written lease agreement with him?

20 A. There was.

21 Q. Do you still have a copy of that lease
22 agreement?

23 A. I do.

24 Q. And during what period of time did Mr. Audish
25 and Pure Meds operate a dispensary at that property?

1 A. I don't remember the exact dates. It's a
2 couple years ago.

3 Q. Now, when you first acquired the Federal
4 Boulevard property, do you know what its zoning
5 classification was?

6 A. Light industrial.

7 Q. Do you know whether at that time it allowed
8 for the operation of a medical marijuana dispensary?

9 A. Could you repeat that question.

10 Q. Sure. At the time you acquired the property
11 and were aware that the zoning classification was light
12 industrial, did you know whether or not the zoning
13 permitted the operation of a medical marijuana
14 dispensary at the property?

15 A. I did not. That was 1998.

16 Q. At some point in time did you become aware
17 that to operate a marijuana medical dispensary at the
18 property, there was a permit that was required?

19 A. Could you repeat that, please.

20 Q. Sure. And I apologize because I switched
21 from zoning to permit, and they are separate things.
22 So I apologize for conflating those two. So -- when
23 you acquired -- when Pure Meds began doing business
24 operating a medical marijuana dispensary, were you
25 aware that a conditional use permit was required to

1 operate a dispensary at the property?

2 A. I was not.

3 Q. At some point in time did you become aware
4 that it was impermissible for Pure Meds to be operating
5 a medical marijuana dispensary at the site?

6 A. I did.

7 Q. When did you become aware of that?

8 A. When a lawsuit was filed against me as the
9 landlord for operating that business.

10 Q. So I'm going to have marked as the next
11 exhibit in order, Exhibit 2, a preliminary injunction
12 order.

13 (Exhibit 2 was marked for identification.)

14 I'd ask that you read Exhibit 2 and let me
15 know whether you've seen it before.

16 A. Could you repeat the question.

17 Q. Sure. Have you seen Exhibit 2 before?

18 A. I believe I have, yes.

19 Q. And the caption to that preliminary
20 injunction order is City of San Diego versus Darryl
21 Cotton. Do you see that?

22 A. Yes.

23 Q. Is that the lawsuit that was filed which was
24 why you became aware that it was impermissible to
25 operate a dispensary at the site?

1 A. Yes.

2 **Q. I'm going to have marked as the next exhibit**
3 **in order, Exhibit 3.**

4 (Exhibit 3 was marked for identification.)

5 MS. PLASKETT: Excuse me. I've got a question for
6 you.

7 MR. WEINSTEIN: Sure.

8 MS. PLASKETT: The word "proposed" on Exhibit 2
9 has been lined out, plus there's writing on page 2,
10 line 3, and scratched out on line 16. Who did the
11 alteration of this document?

12 MR. WEINSTEIN: It was done, I believe, by the
13 lawyers of the court before the court entered the
14 preliminary injunction.

15 MS. PLASKETT: Thank you.

16 BY MR. WEINSTEIN:

17 **Q. Mr. Cotton, I'll have you look at what's been**
18 **marked as Exhibit 3, which I'll identify as a Notice of**
19 **Entry of Order -- actually Notice of Entry of Judgment**
20 **Order, which is four pages, and attached is a two-page**
21 **Final Judgment Granting Permanent Injunction and Civil**
22 **Penalties as to Defendant Darryl Cotton.**

23 Mr. Cotton, have you seen this document
24 before?

25 A. I have.

1 Q. And was this the final judgment that was
2 entered in that case of the City of San Diego versus
3 Darryl Cotton?

4 A. Yes.

5 Q. And did you understand that this permanent
6 injunction replaced or superceded the preliminary
7 injunction that had previously been issued that was
8 marked as Exhibit 2?

9 A. Yes.

10 Q. Now, did you at any time -- we're here
11 obviously because of your transaction between you and
12 Mr. Geraci. At any time in your communications with
13 Mr. Geraci, did you discuss this case that had been
14 filed against you?

15 A. Yes. Mr. Geraci was aware of this.

16 Q. And how did he become aware of it, if you
17 know?

18 A. During our numerous discussions by phone and
19 in his office.

20 Q. So is this something that you advised him
21 about?

22 A. Yes. He knew the history of my personal
23 involvement with the cannabis case versus the city.

24 Q. So I'm going to -- this may be a fine
25 distinction because we're not conversing in a way

1 that's different than in normal conversation at
2 Starbucks, but I don't want you to tell me what you
3 believe he knew. I want you to tell me what you told
4 him. Do you understand the difference?

5 A. I would.

6 Q. Okay. So what did you tell him in your --
7 strike that.

8 Did you have meetings in which you discussed
9 this case with him prior to the November 2nd agreement
10 being signed?

11 A. Go ahead.

12 MS. PLASKETT: Objection. Please clarify the
13 November 2nd --

14 BY MR. WEINSTEIN:

15 Q. Okay. Let me just use -- we're going to get
16 to the agreement, and I know Mr. Cotton is familiar
17 with the document. Let me just use that date of
18 November 2nd, absent the agreement.

19 Prior to November 2nd, 2016, did you have
20 discussions about this case with Mr. Geraci?

21 A. I did.

22 Q. And what you're obviously noticing is that
23 the final judgment wasn't entered until after
24 November 2nd, but the case was ongoing before
25 November 2nd, 2016; is that correct?

1 A. Yes.

2 Q. So when -- when you had communications with
3 Mr. Geraci prior to November 2nd, 2016, the case was
4 ongoing; is that true?

5 A. Correct.

6 Q. All right. So what -- when did you first
7 have discussions with Mr. Geraci about it?

8 A. They began on August 26, 2016, and extended
9 through the month of September.

10 Q. You're looking at a document I haven't
11 provided to you that appears to be a call log that was
12 produced in the case?

13 A. Correct.

14 Q. Is that something that you're using to
15 refresh your recollection as to when the calls -- or
16 the discussions occurred?

17 A. Yes.

18 Q. Okay. So August 26, 2016, is that listed on
19 the call log?

20 A. It is.

21 Q. And what's the significance of that
22 particular call?

23 A. That was the initial call made from Geraci to
24 me.

25 Q. All right. And during that phone call, if

1 you recall, did he -- did you discuss with him this
2 case?

3 A. I don't recall.

4 Q. But it would have been some point after -- on
5 or after that date that you would have had the
6 discussions with him?

7 A. Correct.

8 Q. What did you tell him about the case in the
9 discussion or discussions you had with him about it?

10 A. Well, a number of topics were discussed.
11 Primarily it was the fact that I now knew the property
12 wasn't zoned for an MMCC CUP application.

13 Q. So just for the court reporter, it's MMCC.
14 It stands for medical marijuana consumer cooperative.
15 And then CUP, which stands for conditional use permit.
16 Those are probably acronyms that are going to be used
17 considerably in the deposition.

18 And what did you -- can you recall anything
19 of the specifics that you discussed with him about the
20 case?

21 A. Mr. Geraci was interested in purchasing the
22 property. Specifically we talked about his wanting to
23 make it a licensed consumer -- or a medical marijuana
24 consumer collective. The ongoing dialogues we had
25 were, in my belief, it was ineligible.

1 Q. And you told him -- did you tell him why you
2 thought it was not eligible?

3 A. My understanding it wasn't zoned properly.

4 Q. But is that something you told him?

5 A. Yes.

6 MS. PLASKETT: That's just my notes.

7 MR. WEINSTEIN: So let's go off the record for a
8 moment.

9 THE VIDEOGRAPHER: Off the record?

10 MR. WEINSTEIN: Yeah.

11 THE VIDEOGRAPHER: Going off the record at
12 9:43 a.m.

13 (Discussion off the record.)

14 THE VIDEOGRAPHER: We are back on the record at
15 9:44 a.m.

16 BY MR. WEINSTEIN:

17 Q. After you communicated your belief to
18 Mr. Geraci that you didn't believe the property was
19 eligible because it wasn't zoned properly -- eligible
20 to operate a medical marijuana dispensary, what was his
21 response to you?

22 A. His response was he had unique skills and
23 connections to make it eligible for a medical marijuana
24 consumer collective.

25 Q. And did he tell you what those skills and

1 connections were?

2 A. He did. He had a lobbyist under his employ
3 that assisted in allowing him to acquire properties and
4 get them into a medically marijuana consumer collective
5 compliant relationship with the city.

6 Q. Did he tell you who that lobbyist was at the
7 time?

8 A. He did.

9 Q. Who was that?

10 A. Jim Bartell & Associates.

11 Q. Have you ever met Mr. Bartell?

12 A. I have not.

13 Q. Have you ever met or spoken with Jim Bartell
14 or anybody from his office?

15 A. No.

16 Q. Did Mr. Geraci tell you about any other
17 skills or connections he had to make or attempt to make
18 the property eligible for an MMCC?

19 A. He did.

20 Q. What else?

21 A. That he had particular relationships with
22 various people within the city, decision makers that
23 could make the property eligible for an MMCC CUP
24 permit.

25 Q. Did he tell you who those people were in the

1 city with whom he had relationships?

2 A. He did not.

3 Q. Did he tell you the nature of the
4 relationships?

5 A. Yes.

6 Q. What did he say?

7 A. That he used his political influences and
8 capital to swing the favorable vote to change the
9 zoning to CUP compliant for an MMCC business.

10 Q. And anything else he told you that you
11 haven't already mentioned about the skills and
12 connections he had to attempt to make the property
13 eligible for an MMCC?

14 A. Could you repeat that, please.

15 Q. Sure. You've told me now a number of things
16 that he told you were the skills and connections he had
17 that would help him or enable him to obtain an MMCC.
18 Is there anything else he told you about the skills and
19 connections he has that you haven't already mentioned?

20 A. Yes.

21 Q. What else?

22 A. He represented that he was a financial
23 planner and licensed as an enrolled agent for the IRS,
24 he had a real estate license, and he had the unique
25 perspective of having run and managed and operated

1 other MMCC businesses that would benefit my property
2 should we reach an agreement.

3 Q. And these -- first of all, let's exhaust the
4 list. Is there anything else he told you about his
5 connections and skills to make the property eligible
6 that you haven't already mentioned?

7 A. Not that I can recall.

8 Q. So I want to focus on his having told you
9 about having managed and operated other MMCCs. Did --
10 on how many occasions did he tell you that?

11 A. Several.

12 Q. And was this all before November 2nd, 2016?

13 A. Yes.

14 Q. Did he tell you or identify the location of
15 any of those businesses?

16 A. He did not.

17 Q. Did you ask?

18 A. I did.

19 Q. And what did he say to you?

20 A. That they were throughout Southern California
21 and that -- I would like to clarify the earlier
22 question by adding that he also represented clients
23 that owned and managed MMCC businesses as an EA,
24 enrolled agent.

25 Q. So did you understand that he had -- so

1 you've told me about two sort of, I'll call them,
2 categories, manage and operated MMCC, and then the
3 second category would be representing clients as an
4 enrolled agent that managed and operated MMCC
5 businesses. Do you understand the distinction?

6 A. I do.

7 Q. Did -- based on your conversation with him
8 prior to November 2nd, 2016, had he told you that he
9 was -- he had done both, in other words, he had both
10 managed them himself and represented clients that
11 managed MMCCs?

12 A. Yes. He would put his personnel into place
13 to manage MMCCs that he had invested in developing.

14 Q. And you asked him about the locations and he
15 told you throughout Southern California?

16 A. Yes.

17 Q. Did you ask him how many locations?

18 A. I did not ask specifically how many
19 locations, no.

20 Q. Did you obtain any understanding of how many
21 locations prior to November 2nd, 2016?

22 A. May you repeat that, please.

23 Q. Sure. Did you have any understanding prior
24 to November 2nd, 2016, as to how many locations he
25 either managed and operated MMCC businesses or

1 represented clients who managed and operated those
2 businesses?

3 A. No, I never got that information.

4 Q. Did he indicate whether any of them were in
5 San Diego County?

6 A. Yes.

7 Q. What did he tell you about that?

8 A. That he was particularly familiar with
9 San Diego, the city and the county.

10 Q. Particularly familiar with San Diego County
11 in terms of operating an MMCC?

12 A. Correct.

13 Q. Prior to November 2nd, 2016, did you have any
14 discussions with him about who the personnel was that
15 he had put in place to operate and manage MMCCs?

16 A. I did not.

17 Q. So all you knew was generically he had put
18 personnel in place?

19 A. Correct.

20 Q. And then you also understood that there were
21 locations where he didn't put the personnel in place, a
22 client did and he simply represented them as an
23 enrolled agent?

24 MS. PLASKETT: Object as to form. It's a compound
25 question.

1 MR. WEINSTEIN: Let me just take it one at a time.
2 That's a fair objection.

3 BY MR. WEINSTEIN:

4 Q. So you understood generically that he put
5 personnel in place to manage and operate MMCCs himself;
6 is that true?

7 A. That's what he described to me, yes.

8 Q. Right. And he also told you that he had
9 clients that he represented as an enrolled agent who
10 themselves operated and managed MMCCs?

11 A. Correct.

12 Q. Did you discuss anything you haven't already
13 mentioned about his experience in either operating
14 MMCCs or having clients who operated MMCCs?

15 A. Yes.

16 Q. What else did he tell you?

17 A. That the particular benefit of my being in a
18 business relationship with him would be his particular
19 expertise in IRS tax code 280(e).

20 Q. Did he explain what IRS tax code 280(e) was?

21 A. He did.

22 Q. What did he say to you?

23 A. It is the federal taxing authority, the IRS,
24 that does not allow normal business deductions that a
25 business would take. It is disallowed if it is a

1 cannabis-related business.

2 Q. And what was the expertise that he offered in
3 that regard?

4 A. The ability to keep more of that money, based
5 on how it's deducted and claimed, from going to federal
6 taxes.

7 Q. So did you understand that to mean that he
8 had experience in structuring businesses in a way that
9 he could essentially maximize the deductibility of
10 expenses in connection with running the business?

11 A. Correct. That was very appealing to me.

12 Q. Were you aware at the time that 280(e)
13 existed and disallowed deductions for cannabis-related
14 business expenses?

15 A. I was.

16 May I use the restroom.

17 MR. WEINSTEIN: Absolutely. Let's go off the
18 record and take our first break.

19 THE VIDEOGRAPHER: Off the record at 9:55 a.m.

20 (Recess.)

21 THE VIDEOGRAPHER: We are back on the record at
22 10:04 a.m.

23 BY MR. WEINSTEIN:

24 Q. Mr. Cotton, we're back on the record after
25 our first real break. You understand you're still

1 under oath?

2 A. I do.

3 Q. Are there any judgment liens against the
4 property currently?

5 A. Not that I can recall.

6 Q. And just so the record is clear, when we're
7 talking about "the property" in this deposition, we're
8 6176 Federal Boulevard, the property you own. Do you
9 understand that?

10 A. I do.

11 Q. How many times have you spoken in person with
12 Larry Geraci, in other words, face to face in person?

13 A. In person?

14 Q. Yes.

15 A. I can't recall exactly. I would say
16 approximately eight to 12 times.

17 Q. And when was the first time?

18 A. In early September.

19 Q. So you've already identified August 26, 2016,
20 as a date of a telephone call, correct?

21 A. Correct.

22 Q. Was that your first telephone call with him?

23 A. Yes.

24 Q. Was it your first communication with him or
25 did you have communication with him via another method

1 prior to that?

2 A. Not to my knowledge.

3 Q. I'm going to have marked as the next exhibit
4 in order, Exhibit 4.

5 (Exhibit 4 was marked for identification.)

6 Exhibit 4 is a document Bates numbered
7 GER0498 through GER0522. And Mr. Cotton, let me
8 represent to you these are documents -- and I know
9 you're familiar with the document productions in this
10 case because they are Bates numbered. These are
11 documents that were produced by Mr. Geraci with those
12 Bates numbers, and these purport to be text messages
13 between the two of you in chronological order.

14 Mr. Cotton, have you had a chance to review
15 Exhibit 4?

16 A. I have.

17 Q. Do you recognize Exhibit 4 as containing,
18 generally at least, text messages between you and
19 Mr. Geraci between July 21, 2016, and May 8, 2017?

20 A. I do.

21 Q. And by the way, have you retained your text
22 messages on your phone?

23 A. I have not.

24 Q. Your phone number during the time period
25 was -- where you received texts and made texts was

1 (619) 954-4447?

2 A. Correct.

3 Q. Do you still have that phone number?

4 A. I do.

5 Q. So what I'm trying to do is not get us
6 confused chronologically. So obviously you didn't
7 recall having communications with him prior to the
8 phone call on August 24. Does this refresh your
9 recollection that at least you had text message
10 communication before that date?

11 A. I do. And this is helpful because there were
12 office phone calls that aren't reflected in my cellular
13 records, and this would support the texts and phone
14 calls that would have been made between us that are
15 outside of this cellular call recap.

16 Q. Right. Let's -- before we get too far,
17 you've been pointing or looking at what I called a call
18 log. It's not been marked for identification. May I
19 see the document.

20 So is this a call log that you prepared?

21 A. It's based on Sprint phone records that we
22 have that helped me remember. This is a year and a
23 half ago.

24 Q. But did you prepare this or have someone in
25 your office prepared it?

1 A. My office prepared this.

2 **Q. Okay. Could we get a copy of this then?**

3 A. Yes.

4 MR. WEINSTEIN: Let's do that now. Let's go off
5 the record.

6 THE VIDEOGRAPHER: Going off the record at
7 10:12 a.m.

8 (Recess.)

9 THE VIDEOGRAPHER: We are back on the record at
10 10:16 a.m.

11 BY MR. WEINSTEIN:

12 **Q. While we were off the record, the court**
13 **reporter made a photocopy of a three-page document,**
14 **although the first two pages are -- strike that.**

15 **Let's go back off the record.**

16 THE VIDEOGRAPHER: Going off the record at
17 10:17 a.m.

18 (Recess.)

19 THE VIDEOGRAPHER: We are back on the record at
20 10:20 a.m.

21 BY MR. WEINSTEIN:

22 **Q. We've now corrected Exhibit 5 so that it's**
23 **got the correct pages. It's a three-page document,**
24 **first page is Sprint Call Recap.**

25 (Exhibit 5 was marked for identification.)

1 Mr. Cotton, this is a document that was
2 prepared by your office from your phone bills?

3 A. Correct.

4 Q. Do you still have copies of the phone bills?

5 A. I do.

6 Q. And so this is a recap of calls between Larry
7 Geraci's phone number (858) 956-4040 and your cell
8 phone number -- cell phone number (619) 954-4447; is
9 that correct?

10 A. Correct.

11 Q. Is this your -- is Exhibit 5 your summary of
12 the telephone calls that you had with Mr. Geraci during
13 the time period from August 26, 2016, through at least
14 March 25, 2017?

15 A. This is what our records support for cellular
16 calls between Geraci and myself.

17 Q. So you don't show any calls after March 25,
18 2017; is that correct?

19 A. Correct.

20 Q. And no calls before August 26, 2016?

21 A. Not in our records.

22 Q. Okay. So it's your best belief, based on
23 your review of the records, that your first telephone
24 call with Mr. Geraci at least on this phone was
25 August 26, 2016?

1 A. Correct.

2 Q. And did you -- do you recall ever having
3 telephone communications with him using another phone?

4 A. Yes.

5 Q. And what other phone is that?

6 A. That's my office phone number,
7 (619) 266-4004.

8 Q. And do you recall ever reaching him at a
9 different telephone number other than -- or receiving a
10 call from him at a different telephone number than
11 (858) 956-4040?

12 A. Yes.

13 Q. What other number did he have, if you know?

14 A. I don't know that number at this moment. It
15 was his office phone, though.

16 Q. And your recollection is he had a different
17 office phone number than his cell phone number?

18 A. Correct.

19 Q. And is the number that's shown on Exhibit 5,
20 the 858 number, your belief as to his cell phone?

21 A. On Exhibit 5 that is his cell phone number,
22 (858) 956-4040.

23 Q. All right. Okay. So between Exhibit 4 and
24 5, assuming 4 is accurate, and I don't expect you to be
25 able to know that, those would be your text messages

1 and phone calls to and from him from your cell phone?

2 A. Correct.

3 Q. All right. So looking at Exhibit 4, you had
4 some text message communications with him prior to
5 August 26, 2016; is that true?

6 A. Based on Exhibit 4, yes.

7 Q. Does that refresh your recollection in any
8 way about that?

9 A. It does.

10 Q. So let's back up.

11 How did you first get into contact with
12 Mr. Geraci?

13 A. Mr. Geraci reached out to me, he introduced
14 himself as an interested party in my property as it had
15 been identified by his political lobbyist Jim Bartell.

16 Q. How did he reach out to you?

17 A. Initially by phone.

18 Q. So how would you happen to be texting with
19 him if the texts were before the first phone call?

20 A. He would have called my office number.

21 Q. All right. And so let's go back to what you
22 can remember in terms of the specifics of his first
23 phone call to you on your office phone number. Do you
24 know the date that occurred other than -- well, strike
25 that.

1 Would it have been before July 21, 2016?

2 A. It would have been.

3 Q. Okay. And do you have any estimate of when
4 that first communication by phone from him was?

5 A. It would have been very near that time.

6 Q. And do you recall how long that phone
7 conversation was?

8 A. I don't.

9 Q. Do you recall -- you've told me that he
10 introduced himself as interested in your property as
11 identified by his lobbyist Jim Bartell. Do you recall
12 anything else he said to you during that phone call?

13 A. I don't recall.

14 Q. Do you recall anything that you said to him
15 during that first phone call?

16 A. I can't recall any specifics, no.

17 Q. And you then began to have communications
18 with him by text and phone?

19 A. Correct.

20 Q. And do you have phone records that would show
21 calls placed to him or from him from your office phone?

22 A. No.

23 Q. And did you have records at one time?

24 A. I don't know that to be the true way we get
25 billed from Cox Communications. It may be those

1 records exist. As I sit here now, I can't say one way
2 or the other if they do.

3 Q. All right. And this is the (619) 266-4004
4 number?

5 A. Correct. That's our primary phone number for
6 Inda-Gro.

7 Q. All right. Now, at some point in time did
8 Mr. Geraci ever make to you what you considered to be
9 an offer to purchase your property?

10 A. Okay. Let me ask you to rephrase that
11 because as an offer goes, I need to have clarification
12 what you mean by that.

13 Q. Okay. That's a fair point.

14 Where he actually indicated to you that he
15 wanted to purchase your property and was offering you
16 terms for the purchase of your property.

17 MS. PLASKETT: That's compound.

18 BY MR. WEINSTEIN:

19 Q. Do you understand the question.

20 A. I do understand --

21 MS. PLASKETT: Compound. If you can separate it.

22 BY MR. WEINSTEIN:

23 Q. You can still answer it. Let me rephrase it,
24 but just because it's compound, it may mean I can't get
25 it in at trial, but I can still get you to answer it.

1 So let's do -- let's go at it a different way.

2 I want to focus on the time period between
3 your first communication with him and November 2nd,
4 2016. Okay. In fact, let's mark as the next exhibit
5 in order, Exhibit 6, a two-page document Bates numbered
6 GER0489 through GER0490.

7 (Exhibit 6 was marked for identification.)

8 A. May I speak with counsel.

9 MR. WEINSTEIN: Absolutely.

10 (Whereupon Ms. Plaskett and the witness
11 conferred outside the hearing of the
12 reporter.)

13 BY MR. WEINSTEIN:

14 Q. Take a look at Exhibit 6 and let me know if
15 you've seen that before.

16 A. I have.

17 Q. And what is Exhibit 6?

18 A. It represents a document that was signed on
19 11-2-16 between Geraci and myself.

20 Q. And where was it signed?

21 A. At Geraci's office.

22 Q. And how long -- did you meet with him at the
23 office on the day he signed it?

24 A. I did.

25 Q. How long did that meeting take?

1 A. 30 minutes.

2 Q. Did you know what time of day it was?

3 A. It was in the morning, to the best of my
4 recollection.

5 Q. And is that your -- on the first page,
6 there's two signature blocks. One says "Larry Geraci"
7 with a signature purporting to be over that signature,
8 and then there's one that says "Darryl Cotton" with a
9 signature purporting to be over that signature block.

10 Is that your signature over the block "Darryl
11 Cotton"?

12 A. It is.

13 Q. And was that signed in front of a notary?

14 A. It was.

15 Q. And do you recall that the notary recorded
16 that -- took your thumbprint and recorded that in her
17 notary book at the time you signed it?

18 A. I do recall that, yes.

19 Q. And you were present when she did that?

20 A. Yes.

21 Q. All right. So let's start with that meeting
22 and then we'll work our way back. So tell me
23 everything you can recall about what was said between
24 you at that meeting.

25 A. Everything that was said to me on the 11-2-16

1 meeting was predicated on many elements of our
2 agreement that included a partnership whereby I had a
3 ten-percent equity stake in a new dispensary that would
4 pay ten percent of the net operating profit or \$10,000
5 a month, which was ever greater.

6 Q. So my question, though, was, what was said.
7 You told me what it was predicated on. So I want you
8 to think back in your mind's eye, if you can, and tell
9 me what you recall being said between you at that
10 meeting.

11 A. Again, as I was just saying, there was
12 discussions that his attorney, Gina Austin, would
13 provide final contracts that would support not only
14 this receipt, but the elements that led to my agreement
15 with Geraci to sell the property to him under terms
16 that were defined in my two working documents with
17 Geraci.

18 Q. All right. At the time that you had -- let
19 me go at it a different way. I'm going to have marked
20 as the next exhibit in order, Exhibit 7, a document --
21 unsigned document entitled, "Cross-Complaint for
22 Compensatory and Punitive Damages."

23 (Exhibit 7 was marked for identification.)

24 MS. PLASKETT: What exhibit is this?

25 MR. WEINSTEIN: Seven.

1 MS. PLASKETT: Thank you.

2 THE WITNESS: You got your own copy? Bring all
3 this in here.

4 BY MR. WEINSTEIN:

5 Q. So let me know when you've had a chance to
6 determine whether you've seen this document before.

7 A. Thank you. One more minute, please.

8 Q. Sure.

9 A. Okay. I'm satisfied this is the complaint
10 that was filed.

11 Q. So just so we're clear, you've seen Exhibit 7
12 before?

13 A. I have.

14 Q. Was it prepared -- who prepared it?

15 A. I prepared this.

16 Q. And what did you prepare it for?

17 A. It is my complaint seeking damages for quiet
18 title, slander of title, fraud in the inducement,
19 breach of contract, 13 elements overall in the
20 complaint.

21 Q. So this is a document that you prepared and
22 then you signed and filed it with the court, correct?

23 A. Correct.

24 Q. And ultimately it was rejected and you had to
25 re-file it in a different format, correct?

1 A. Correct.

2 Q. But this was your first effort, if you will?

3 A. Yes.

4 Q. And it consisted of essentially a
5 cross-complaint and then attached to that
6 cross-complaint is a document that you called,
7 "Declaration of Darryl Cotton in Support of Answer and
8 Cross-Complaint."

9 Do you see that?

10 A. Right. Correct.

11 Q. I'm going to focus on that portion of
12 Exhibit 7 that I'm going to call the declaration
13 because that's what you allege supports the
14 cross-complaint. Okay?

15 A. Okay.

16 Q. All right. So if you turn to page 3 of the
17 declaration, paragraph 4, it reads, quote, "On
18 November 2nd, 2016, Geraci and I met at his office to
19 finalize the unsettled terms of our negotiations for
20 the sale of the property. We agreed to over 30
21 different terms, most materially the following," and
22 then you listed A, B, C, D, E.

23 Do you see that?

24 A. Correct.

25 Q. Okay. So can you tell me, as you sit here,

1 what the 30 terms were that you had agreed to as of
2 November 2nd, 2016?

3 A. I cannot tell you, as I sit here, what the 30
4 terms were, no.

5 Q. Is there a document where you've written them
6 down anywhere?

7 A. There are two documents.

8 Q. And where would you look to find the 30
9 terms?

10 A. I don't have them with me, but they were my
11 working documents dated September 24, 2016, separated
12 between my personal agreement with Mr. Geraci and
13 Inda-Gro's agreement with Mr. Geraci.

14 Q. So -- and fortunately this case has been
15 going on a while, so I'm familiar with what you're
16 referring to. These are two documents that you drafted
17 and provided to Mr. Geraci on or about September 24,
18 2016?

19 A. Correct.

20 Q. So when you referred in Exhibit 7 to the 30
21 different terms that had been agreed to, those were --
22 were all of those 30 terms listed in those two
23 documents that were prepared by you on September 24,
24 2016?

25 A. Approximately 30. As I sit here, I don't

1 have the exact number, but I would say approximately 30
2 existed. And our oral agreement was on November 2nd
3 that his counsel, Gina Austin, in a finalized real
4 estate contract would be done in a draft legal document
5 form that we would accept mutually and that there would
6 be a contract that would exist between Geraci and
7 Inda-Gro. That was our agreement.

8 Q. So if I wanted to find the 30 terms and
9 conditions, I would look at those two documents,
10 correct?

11 A. Correct.

12 Q. Now, it says in Exhibit 7 that you came to
13 his office to finalize the unsettled terms of our
14 negotiations for the sale of the property. Do you see
15 that?

16 A. Where exactly are you referring?

17 Q. The very first line of paragraph 4, "On
18 November 2nd, 2016, Geraci and I met at his office to
19 finalize the unsettled terms of our negotiations for
20 the sale of the property."

21 A. Correct.

22 Q. Then you go on to say, "We agreed to 30
23 different terms." Do you see that? So my question is,
24 do those -- what was agreed to on November 2nd that had
25 been unsettled prior to that date?

1 A. What was agreed to was that his counsel, Gina
2 Austin, would give me draft legal documents, one that
3 consisted of a real estate contract that was a bona
4 fide California real estate contract, and the second
5 document would incorporate the roughly 30 terms that
6 existed between Inda-Gro and myself in a final contract
7 provided by Austin. The 11-2 agreement was essentially
8 a receipt.

9 **Q. What was to be in the bona fide real estate**
10 **contract separate from the Inda-Gro contract, if you**
11 **can answer it?**

12 A. Well, because Geraci was a licensed tax
13 authority, his advice to me financially was that I
14 split the sale into two parts, \$400,000 each, one would
15 be the sale of the property to me for 400,000 --

16 **Q. Sale of the property by you?**

17 A. I would -- he would -- I would sell the
18 property to him for 400,000, and then he would spend
19 400,000 to Inda-Gro for a cumulative total of 800,000
20 that defined the relocation agreement that Inda-Gro had
21 with Geraci or GERL Investments.

22 **Q. So 400,000 of the 800,000 would be allocated**
23 **and incorporated into the contract with Inda-Gro for**
24 **relocation costs?**

25 A. That is correct.

1 Q. And you mentioned -- I asked you about what
2 was unsettled as of that date, on November 2nd, and you
3 said it was -- what became settled that was unsettled,
4 if I understand your testimony, was you had a
5 discussion that Gene Austin would draft these two
6 separate agreements, the first one, a bona fide real
7 estate purchase agreement; the second one, an agreement
8 related to the relocation costs, each would have
9 \$400,000 price on them, and the Inda-Gro agreement
10 would incorporate these 30 terms and conditions that
11 had been contained in your September 24, 2016,
12 agreement?

13 A. That's a mischaracterization. Inda-Gro had
14 certain elements of the \$400,000 that would be met. Me
15 personally, I had anticipated and had agreed to a
16 business relationship with Geraci that would have
17 incorporated my having a partnership where I received
18 ten percent of the net profits per month, or \$10,000 a
19 month, whichever was greater.

20 Q. And what agreement would that go in?

21 A. That would have been in my -- I termed it a
22 memorandum of understanding dated 9-24. That was my
23 personal relationship with Geraci, not Inda-Gro's.

24 Q. So would there be three documents?

25 A. No. There's two. There's two. There's a

1 memorandum of understanding dated 9-24 that's
2 described, and then there's the -- I believe it's
3 called the services agreement that Inda-Gro had with
4 GERL --

5 Q. Okay.

6 A. -- which is referenced in your document -- or
7 Exhibit 4 before Geraci cleared that up for me.

8 Q. Where in Exhibit 4, what Bates numbered page?
9 Are you referring to pages GER0507 and 0508?

10 A. 0508.

11 Q. So you identify -- in that text message you
12 identify who the entity is, GERL Investments, LLC?

13 A. Correct. As you indicated, 507 was my
14 question, 508 is his response.

15 Q. And in that text you refer to the
16 consultation contract. Is that what you're referring
17 to as the MOU?

18 A. No. The MOU would have been my personal
19 relationship with Geraci as a business partner for the
20 sale of the property and my percentage equity in the
21 new dispensary.

22 Q. Now, you indicate that -- is it your
23 testimony that as of November 2nd, 2016, Mr. Geraci had
24 orally agreed to the terms and conditions that were in
25 the MOU and in the Inda-Gro contract that were both

1 dated September 24, 2016?

2 A. Could you repeat that, please.

3 Q. Sure. I'm trying to make sure I understand
4 what had been agreed to orally as of November 2nd,
5 2016. Because as I understand your testimony,
6 Exhibit 7, you indicate you finalized an agreement on
7 that date and signed the document that you call a
8 receipt, correct?

9 A. Well, the finalization of the unsettled
10 terms --

11 MS. PLASKETT: There's not a pending question.

12 BY MR. WEINSTEIN:

13 Q. Thank you. So as of November 2nd, 2016, was
14 it your understanding that Mr. Geraci had orally agreed
15 to the terms and conditions that were in the memorandum
16 of understanding dated September 24, 2016, that defined
17 the sale of the property -- your personal relationship
18 involving the sale of the property and the equity
19 interest in the business?

20 A. It was my understanding when I signed the
21 document on November 2nd, 2016, that Geraci had agreed
22 to the terms as specified in my working documents dated
23 9-24.

24 Q. And that would include the two documents, the
25 MOU and the document involving Inda-Gro?

1 A. Correct.

2 Q. And so what -- when did Mr. Geraci
3 communicate to you his agreement that he was willing to
4 enter into this -- these agreements with you that were
5 reflected in those two documents that you prepared on
6 September 24, 2016?

7 A. Could you please repeat that.

8 Q. I'm really trying to get a sense of was it in
9 the November 2nd, 2016, meeting that he said, yeah, I
10 agree to the terms and conditions in those two
11 documents or was it at some earlier time?

12 A. He agreed to it on 11-2-16.

13 Q. So when you left his office on 11-2-16, you
14 understood, based on what he told you, that he was
15 agreeing to what was in those two documents, correct?

16 A. Correct.

17 Q. And Gina Austin was going to then, based on
18 that agreement, prepare a bona fide real estate
19 purchase agreement and a second agreement between
20 Inda-Gro and yourself that reflected those agreed terms
21 and conditions?

22 A. Yes.

23 MS. PLASKETT: Could you please -- excuse me.
24 Could you please repeat the last question and answer
25 for me.

1 (Whereupon the record was read as follows:

2 Q. And Gina Austin was going to then, based
3 on that agreement, prepare a bona fide real
4 estate purchase agreement and a second
5 agreement between Inda-Gro and yourself that
6 reflected those agreed terms and conditions?

7 A. Yes.)

8 MS. PLASKETT: Thank you.

9 BY MR. WEINSTEIN:

10 Q. And at that November 2nd, 2016, meeting after
11 Mr. Geraci had indicated his oral agreement to those
12 things, the document marked as Exhibit 6 was signed?

13 A. Yes.

14 Q. Who prepared Exhibit 6?

15 A. That was prepared by Geraci.

16 Q. And was it prepared in your presence?

17 A. No.

18 Q. And when -- if you know, when was it -- how
19 did it get presented to you?

20 A. The first time I saw this document was when I
21 arrived at Geraci's office to sign a receipt for
22 \$10,000 in anticipation of the contract for the
23 purchase of the property and the relocation contract
24 that he had promised me.

25 Q. And then he gave you this document that's

1 marked as Exhibit 6, correct?

2 A. Correct.

3 Q. Did you read it?

4 A. I had.

5 Q. When you say you had, you read it when you
6 were at the office?

7 A. When I was there, yes. I did not leave with
8 a copy.

9 Q. Okay. And did you have any discussion with
10 him about the actual document that's marked as
11 Exhibit 6?

12 A. I did.

13 Q. And was Exhibit 6 signed in the form that he
14 originally prepared or was there some modification to
15 it?

16 A. There was no modification.

17 Q. Did you ask him -- after you read this, did
18 you ask him to revise any of the terms and conditions?

19 A. I did not.

20 Q. Did you ask or discuss any of these terms and
21 conditions in Exhibit 6 with him at that time?

22 A. I did.

23 Q. What was your discussion with him about
24 Exhibit 6?

25 A. The agreement that we had come to in our

1 working documents that there would be a \$50,000
2 nonrefundable payment made towards the 800,000 -- we're
3 just going to call it a cumulative \$800,000 payment,
4 and Geraci's efforts were going to be getting the
5 rezoning done so the CUP application could be submitted
6 to the city. Once that happened, the full \$50,000 was
7 due. Geraci told me on 11-2 that he didn't have the
8 whole 50,000 and that the rezoning was not yet done.
9 So the CUP could not be issued -- or the application
10 could not be submitted, better said.

11 As I stood there signing this, it was
12 understood that Gina Austin's final real estate
13 contract split into one document and the Inda-Gro
14 relocation agreement would be forthcoming. That was
15 good enough at the meeting for me. I took the 10,000
16 only because Geraci claimed he had already spent in
17 excess of \$300,000 on rezoning efforts. I had no
18 reason to disbelieve him.

19 **Q. So when -- so let's look at -- you've**
20 **characterized -- you've called this Exhibit 6 a**
21 **receipt, correct?**

22 A. Correct.

23 **Q. The first word under the date in the document**
24 **says, "Agreement." Do you see that?**

25 A. I do.

1 Q. Did you question the use of that word?

2 A. I did not.

3 Q. And it says, "Agreement between Larry Geraci
4 or assignee and Darryl Cotton."

5 Had you had discussions with Mr. Geraci that
6 you might actually be selling the property to an
7 assignee of his?

8 A. I did.

9 Q. And you understood that to be potentially an
10 entity that was created or had already been created
11 that he had owned?

12 A. Correct.

13 Q. All right. Then it says, "Darryl Cotton has
14 agreed to sell the property located at 6176 Federal
15 Boulevard, California, for a sum of \$800,000 to Larry
16 Geraci or assignee on the approval of a marijuana
17 dispensary," and then in parentheses, "CUP for a
18 dispensary," closed parentheses.

19 Do you see that?

20 A. I do.

21 Q. And was that a true statement?

22 A. It was a true statement.

23 Q. And that was because \$800,000 was going to be
24 the cumulative price that you paid --

25 A. Correct.

1 Q. -- or that was paid?

2 A. That was paid, correct.

3 Q. Now, then the next paragraph says, "\$10,000
4 cash has been given in good faith earnest money."

5 Did you receive 10,000 in cash?

6 A. I did.

7 Q. And the phrase "good faith earnest money,"
8 who drafted that phrase?

9 A. Geraci.

10 Q. And it says, "has been given in good faith
11 earnest money to be applied to the sales price of
12 800,000 and to remain in effect until license is
13 approved."

14 What -- did you have a discussion with him
15 about what the phrase "and to remain in effect until
16 license is approved" meant?

17 A. No, we did not.

18 Q. What was your understanding of what it meant?

19 A. That the \$800,000 would be the sales price if
20 the license was approved. There was no guarantee that
21 the submittal -- the CUP could even be submitted until
22 the rezoning had been done on the 11-2-16 date that
23 this was signed.

24 Q. Right. So you understood that first the
25 property had to be rezoned to make this possible at

1 all, correct?

2 A. Correct.

3 Q. And then the CUP license had to be
4 approved -- applied for and approved, correct?

5 A. Correct.

6 Q. And the ultimate sale and the provision to
7 you of a total sales price of \$800,000 was conditioned
8 upon approval of the CUP?

9 A. Correct.

10 Q. And so when you signed this agreement, the
11 phrase -- the term "license" in there you understood to
12 mean the approval of the CUP?

13 A. The \$800,000 was predicated on an approval of
14 the CUP.

15 Q. And what did you understand the words "to
16 remain in effect" meant?

17 A. Until such time that the final contract for
18 the real estate and the relocation Inda-Gro agreement
19 were in place. The CUP application could not be
20 submitted until such time that the rezoning had been
21 completed and the draft legal documents were created by
22 Austin, which is what I was assured on 11-2, and the
23 good faith earnest money was my way of getting
24 something at that date to apply towards his offer in
25 general.

1 Q. Now, had there been discussions of the
2 \$50,000 deposit, I'll call it, or good faith earnest
3 money before November 2nd, 2016?

4 A. Yes.

5 Q. All right. And so if I understand your
6 testimony, when you showed up, that's what you expected
7 to receive?

8 A. No.

9 Q. Okay. What did you expect to receive?

10 A. 10,000.

11 Q. And at what point did you have a discussion
12 with him that changed your expectation from receiving
13 50,000 to 10,000?

14 A. At the 11-2 meeting, he told me he had spent
15 \$300,000 so far on the rezoning efforts. The CUP
16 application could not be submitted until the rezoning
17 had taken place. Would I be okay to accept \$10,000
18 that day and the minute the CUP was submitted and
19 accepted by the City of San Diego, he would pay the
20 remaining 40,000.

21 Q. I understand that answer. Thank you. So my
22 question more specifically was, when you arrived that
23 day before you had a conversation with him at the
24 meeting, did you expect you were going to be receiving
25 \$50,000 deposit or \$50,000 good faith earnest money?

1 A. No.

2 Q. So what did you expect to be receiving that
3 day in terms of money?

4 A. He told me he had \$10,000 that day that he
5 could pay towards the 50.

6 Q. But did he tell you that before November 2nd,
7 2016?

8 A. He did.

9 Q. All right.

10 A. When he scheduled the November 2nd meeting at
11 his office with the notary.

12 Q. All right. So you came expecting it was
13 going to be 10,000, but that ultimately you'd get
14 \$40,000 more prior to the CUP being submitted -- the
15 application being submitted, and then you would have
16 effectively paid a \$50,000 deposit and the balance of
17 \$750,000 would not be due unless and until a CUP was
18 approved?

19 A. That is correct.

20 Q. Now, when you saw the language that he had --
21 first of all, did he show you this draft before you
22 arrived at the office?

23 A. He did not.

24 Q. When you read that last paragraph in the
25 agreement, did you ask him to change it to say that

1 \$50,000 is agreed to be given as good faith earnest
2 money, but only 10,000 is going to be paid today, or
3 something to that effect?

4 A. There were two reasons I wasn't too concerned
5 about this, as a complete legal or final contract. One
6 was that he assured me the real estate contract would
7 meet all the terms and conditions in my MOU, my
8 memorandum of understanding; and, two, that the
9 Inda-Gro service agreement would meet all the terms and
10 conditions as described there. So it would essentially
11 be two \$400,000 deals. Gene Austin was going to
12 prepare that. It wasn't until February 17th, it looks
13 like, where I receive -- and this is in your Exhibit 4
14 that Geraci acknowledges he had e-mailed the Austin
15 contracts for the purchase of the property and the
16 relocation contract that would be coming sometime later
17 today. Those are his words. This is essentially what
18 was discussed on the 11-2 meeting.

19 **Q. And you're pointing to what page?**

20 A. Page 0520.

21 **Q. 0502 or 20?**

22 A. 0520. And you could start at February 22,
23 2017, "Contract should be ready in a couple days."
24 This is from Geraci to me. Later he says, "Can you
25 call me when you get a chance, thanks." And finally he

1 says, "Good morning, Darryl. I e-mailed you the
2 contract for the purchase of the property. The
3 relocation contract will come sometime today."

4 Q. But what you're telling us in your testimony
5 is that that text, which was on February 23rd of 2017,
6 was in effect what was discussed back on November 2nd,
7 2016?

8 A. That is correct.

9 Q. What discussions -- before I get there,
10 there's a final sentence in the agreement that says,
11 "Darryl Cotton has agreed to not enter into any other
12 contacts" -- I think it was meant to say "contracts" --
13 "on the property." Is that true?

14 A. Correct.

15 Q. All right. So you would agree -- one of the
16 things you had agreed to was to not enter into any
17 other contracts on the property while the CUP
18 application was pending essentially?

19 A. That is not a correct characterization.

20 Q. What was your understanding of what you had
21 agreed to by that language?

22 A. That Geraci would meet final contract
23 conditions, as described in the agreed-upon working
24 documents and formalized in draft documents that we
25 would use from Austin to both Inda-Gro and me

1 personally.

2 Q. And the one to you personally was what you've
3 referred to as the MOU?

4 A. Correct.

5 Q. And to Inda-Gro, was that what you'd call the
6 services agreement?

7 A. Correct.

8 Q. Okay. And so you understood you weren't
9 going to enter into any other contracts on the property
10 pending the signing of these formal documents?

11 A. Correct.

12 Q. All right. So my original question was, did
13 you ask him to change the language to reflect a \$50,000
14 agreement to pay good faith earnest money. And is it
15 correct you did not ask him to do that?

16 A. I found the 11-2-16 document to be vague and
17 ambiguous anyway. First of all, "contacts" isn't
18 "contracts," and second of all, it was not even
19 indicated if the 10,000 was refundable or
20 nonrefundable. His assurances were Austin -- I believe
21 he characterized it as he's not an attorney -- would
22 formalize it in those two draft -- legal draft
23 documents that he and I would sign. To be clear, this
24 is a very good deal. Nobody ever expected that he
25 wouldn't accept the original MOU and services agreement

1 terms.

2 Q. That's -- move to strike your last answer
3 because you're speculating as to what he thought.

4 A. Okay. Fair enough.

5 Q. That's what you thought, though?

6 A. It's actually characterized there.

7 Q. That's okay. We can deal with that language
8 later, but we don't want you speculating as to what was
9 in his head on a particular day.

10 A. Fair enough.

11 Q. All right. But that was what you thought on
12 this day, November 2nd, 2016, it was a good deal for
13 Mr. Geraci?

14 A. Yes.

15 Q. All right. So -- but you didn't answer my
16 question. You didn't ask him to change this document
17 to say \$50,000 in good faith earnest money?

18 A. I did not.

19 Q. And you didn't ask him to change it to
20 reflect a \$10,000 equity interest; is that correct?

21 A. I did not.

22 Q. And you didn't ask him to reflect a minimum
23 distribution against that equity interest of \$10,000 a
24 month; is that correct?

25 A. I did -- not on the 11-2 document, that was

1 not expressed.

2 Q. Did you have any discussion with him on 11 --
3 on November 2nd, 2016, about the ten-percent equity
4 interest?

5 A. Yes.

6 Q. And I apologize if I've asked you to tell me
7 what that discussion was. What was that discussion on
8 November 2nd?

9 A. On November 2nd it was that his attorney,
10 Gina Austin, had the memorandum of understanding and
11 the service agreement, which she was formalizing in two
12 draft legal documents that we would execute, at which
13 time the full \$50,000 would be paid and all terms and
14 conditions would be met between the two.

15 Q. And you had had prior -- discussions prior to
16 November 2nd, 2016, about that ten-percent equity
17 interest. Is that your testimony?

18 A. Yes.

19 Q. So I want to make sure I understand what the
20 discussions were about the ten-percent equity interest.
21 I think earlier you characterized that as ten percent
22 of the net profits. Is that fair?

23 A. Yes.

24 Q. Was there a -- equity interest can mean a lot
25 of things in different contexts. What was your

1 discussion with Mr. Geraci before and up to and
2 including November 2nd, 2016, about what was meant by
3 the -- you receiving a ten-percent equity interest?

4 MS. PLASKETT: Can you please specify as to what
5 time period.

6 BY MR. WEINSTEIN:

7 Q. Anything up -- before and up to November 2nd,
8 2016.

9 A. Initially when I made a decision to consider
10 negotiations with Geraci, it was based on his
11 professional experiences as a financial planner and an
12 enrolled agent in managing to legally keep as much
13 money after costs being available for the partners. So
14 a ten-percent net equity position with Geraci, who
15 would keep more of that money, meant more to me and
16 meant more in terms of what the actual sales price
17 would be as a long-term business venture with Geraci.
18 So my agreement was predicated on his expertise as a
19 financial planner and an enrolled agent and making more
20 of that ten percent, or \$10,000 a month minimum,
21 available to me.

22 Q. And you understood, based on those
23 conversations, that that money was going to flow from
24 the dispensary business that would be opened and
25 operated on the site in the future?

1 A. Correct.

2 Q. All right. And my specific question was
3 literally mechanically, I guess is the word, or
4 literally, what did you -- what were your discussions
5 about what "ten-percent equity interest" means?

6 A. What that means is at the end of the month he
7 would have provided me documentation based on the tax
8 forms that were submitted to the city or the state
9 indicating these were his gross receipts, and then
10 after costs be able to share a ten percent of whatever
11 that net profit was. If it did not reach a ten
12 percent -- a \$10,000 minimum, if -- it wouldn't matter.
13 I would still get the \$10,000 per month. That was the
14 agreement. And then ten percent benefit went to 15,
15 20, whatever that number might be, that's what I would
16 get.

17 Q. Just so I understand what you understood was
18 discussed before November 2nd, 2016, it was if net
19 profit was less than -- for the medical marijuana
20 dispensary was less than \$10,000 in a month, you'd be
21 paid \$10,000, correct?

22 A. That is correct.

23 Q. Okay. And if ten percent of net profits was
24 greater than \$10,000, you would get the greater number?

25 A. That is correct.

1 Q. So essentially guaranteeing that you'd be
2 paid based on a minimum gross -- a minimum net profit
3 of \$100,000 a month?

4 A. Correct.

5 MR. AUSTIN: May I have a minute with Mr. Cotton?

6 MR. WEINSTEIN: Sure. Actually it's a good time
7 to go off the record.

8 THE VIDEOGRAPHER: Going off the record at
9 11:11 a.m.

10 (Recess.)

11 THE VIDEOGRAPHER: We are back on the record at
12 11:20 a.m.

13 BY MR. WEINSTEIN:

14 Q. Mr. Cotton, we're back on the record. Do you
15 understand you're still under oath?

16 A. I do.

17 Q. So when you were talking about the
18 ten-percent equity distribution, you were talking about
19 net profits, which, at least as I understand your
20 testimony, was gross profits less costs?

21 A. Correct.

22 Q. Okay. Did costs include rent -- was there a
23 discussion as to what costs included?

24 A. All costs, labor, everything, would be
25 included -- again, the \$10,000 was a minimum with ten

1 percent after costs.

2 Q. Okay. So rental -- rent would be a cost?

3 A. Yes.

4 Q. Labor meaning people got paid to operate the
5 clinic?

6 A. Labor, salaries, yes.

7 Q. And was this ten-percent interest going to
8 be -- ten-percent equity interest going to be in the
9 entity that operated the business?

10 A. Could you repeat that, please.

11 Q. Sure. Was the ten-percent equity interest
12 going to be -- come from the entity that operated the
13 dispensary business?

14 A. Yes.

15 Q. Because Mr. -- as I understand it,
16 Mr. Geraci, as owner, would get rent?

17 A. Yes.

18 Q. And other than rent going to the owner,
19 his -- any interest he had would be in the business
20 itself, just like you?

21 A. Correct.

22 Q. Now I'm going to mark -- this won't take that
23 long, but I'll mark as Exhibit 8 a copy of the second
24 amended cross-complaint.

25 (Exhibit 8 was marked for identification.)

1 The exhibit that I've marked as Exhibit 8 is
2 a copy of the second amended cross-complaint, and it's
3 signed on page 18 by David Demian, and there's a proof
4 of service attached to the back of it.

5 My question is going to be, Mr. Cotton, do
6 you recognize this document, Exhibit 8?

7 A. I do.

8 **Q. And what is it?**

9 A. It is the amended cross-complaint seeking
10 damages for breach of contract, intentional
11 misrepresentation, negligent misrepresentation, false
12 promise, and declaratory relief.

13 **Q. So this is -- you understand this is a**
14 **pleading filed with the court, your cross-complaint in**
15 **the current action, correct?**

16 A. Correct.

17 **Q. And as you understand it as I sit here,**
18 **that's the pending or operative cross-complaint, as we**
19 **sit here today?**

20 A. Correct.

21 **Q. All right. And did you review it before it**
22 **was signed and filed?**

23 A. I did.

24 **Q. And is it true and correct, to the best of**
25 **your knowledge?**

1 A. It is.

2 Q. If you turn to page 3, paragraph 9 of the
3 **general allegations.**

4 A. I'm there.

5 Q. All right. And you have -- under paragraph 9
6 it talks about negotiations regarding the terms of
7 potential sale. Do you see that?

8 A. I do.

9 Q. And you list representations A, B -- in
10 subparagraphs A, B, C, and D of paragraph 9. Do you
11 see that?

12 A. Yes.

13 Q. And those are each items that you've
14 testified about today already?

15 A. Correct.

16 Q. Is there any -- and this is a difficult
17 question, I know, but are there any representations
18 that were made to you in these categories that you
19 haven't already mentioned to us today?

20 MS. PLASKETT: Can you give us a moment, please --

21 MR. WEINSTEIN: Sure.

22 MS. PLASKETT: -- to review this document.

23 (Whereupon Ms. Plaskett and the witness
24 conferred outside the hearing of the
25 reporter.)

1 MS. PLASKETT: Okay. Thank you.

2 BY MR. WEINSTEIN:

3 Q. Do you have the question in mind?

4 A. No. I believe that the subparagraphs A, B, C
5 and D do actively and accurately reflect what Geraci
6 brought to the table in terms of the financial and
7 operating experience for an MMCC.

8 Q. And my question was more specifically, you
9 testified earlier today -- at least this is my
10 recollection -- of matters that related to each of
11 these categories of representations. Do you recall
12 your testimony earlier?

13 A. I do.

14 Q. And I just wanted to make sure that there
15 wasn't -- was there anything else that would fit in
16 those categories of representations that you haven't
17 already mentioned today?

18 A. No. My earlier testimony would be
19 encompassed under A, B, C, and D.

20 Q. Now, just for purposes of clearing a pile of
21 papers, I'm going to have marked as exhibit -- we're
22 going to come back to the second-amended complaint, but
23 I'm going to mark as Exhibit 9 a very long document
24 entitled, "Declaration of Darryl Cotton in Support of
25 Darryl Cotton's Ex Parte Application for Temporary

1 **Restraining Order and Order to Show Cause Regarding**
2 **Preliminary Injunction."**

3 (Exhibit 9 was marked for identification.)

4 Mr. Cotton, I'm going to ask you to take a
5 moment to look at Exhibit 9, and I'll point out that
6 the signature is on page 8, and after page 8 it's all
7 exhibits. And I want you to let me know whether you've
8 seen that before, seen the document before.

9 MS. PLASKETT: Can you clarify whether you're
10 asking him whether he's seen the document meaning the
11 declaration or the attachments?

12 BY MR. WEINSTEIN:

13 **Q. Well, let's start with one. Let's start with**
14 **the declaration itself, the first eight pages.**

15 A. I am familiar with this declaration, yes.

16 **Q. And you read it and signed it under penalty**
17 **of perjury on page -- on December 5, 2017, on page 8?**

18 A. It was signed on December 5, 2017, on page 8,
19 yes.

20 **Q. And that's your signature above the signature**
21 **block for Darryl Cotton?**

22 A. It is.

23 **Q. And was this declaration, the first eight**
24 **pages, true and correct, to the best of your knowledge,**
25 **on the day you signed it?**

1 A. Yes.

2 Q. Now, the document -- declaration itself
3 incorporates by reference all of the attached exhibits.
4 I don't really expect you to be able to tell me off the
5 top of your head whether it's been copied correctly. I
6 hope it is, but there's 12 exhibits and they are
7 attached.

8 Do you recall, at least at the time you
9 signed it, reviewing the documents that were attached
10 to the declaration at the time you signed it?

11 A. I do recall these attachments.

12 Q. Great. All right. And then your testimony
13 in pages 1 through 8 refers to these different
14 exhibits, correct?

15 A. Correct.

16 Q. I'm going to have marked as the next exhibit
17 in order a three-page document. The first two pages
18 are an e-mail dated October 24, 2016, at 12:38 p.m.,
19 and the third page is an attachment called, "A102 Site
20 Plan, Proposed, Scheme B." And this will be marked
21 Exhibit 10.

22 (Exhibit 10 was marked for identification.)

23 MS. PLASKETT: Excuse me. Could you please --

24 MR. WEINSTEIN: Sure. I'll re-identify it.

25 ///

1 BY MR. WEINSTEIN:

2 Q. Just so we're clear, I've identified this as
3 an e-mail thread, first two pages, and then there's an
4 attachment on page 3, which is identified as, "A102
5 Site Plan - Proposed - Scheme B."

6 Mr. Cotton, is this -- first of all, have you
7 seen Exhibit 10 before?

8 A. Yes, I have.

9 Q. And this is an e-mail that you received on or
10 shortly after October 24, 2016, at 12:38 p.m.?

11 A. Correct.

12 Q. And do you recall that it attached a site
13 plan for the dispensary?

14 A. Yes.

15 Q. And do you recall why it was that this was
16 sent to you by Mr. Geraci?

17 A. I don't recall. And my only observation is
18 that on page 2 of this exhibit goes, this was a subject
19 test send. So this goes back over a year and a half,
20 and as I sit here responding, I don't know that this
21 was the document I saw on Monday, October 24, 2016.

22 Q. All right. You do recall seeing a site plan
23 at some time?

24 A. There were site plans developed, yes.

25 Q. And you would have seen one before signing

1 the document on November 2nd, 2016, if you recall?

2 A. I don't recall.

3 Q. All right. I'm going to have marked as
4 Exhibit 11 a one-page document called "Ownership
5 Disclosure Statement."

6 (Exhibit 11 was marked for identification.)

7 Have you seen Exhibit 11 before?

8 A. I have.

9 Q. We're going to come back to that in a moment.
10 I'm trying to keep this chronological, the best I can.

11 If you look back at Exhibit 8, paragraph 10
12 of your second amended cross-complaint.

13 A. Where did you want us?

14 Q. Paragraph 10 on page 3. In paragraph 10 you
15 allege that "Cotton acted in good faith based on
16 Geraci's representations during the sales negotiations,
17 assisted Geraci with preliminary due diligence in
18 investigating the feasibility of a CUP application at
19 the property while the parties negotiated the terms of
20 a possible deal."

21 Do you see that allegation?

22 A. I do.

23 Q. What did you do in terms of assisting Geraci
24 with the preliminary due diligence?

25 A. I allowed his agents to access the

1 property -- that would have been his civil engineer and
2 his architect -- to take measurements and come up with
3 a plan that would offer them to submit this to the city
4 if the CUP could be granted based on a zoning change.

5 Q. Other than allowing access to the civil
6 engineer and architect to do the things that you've
7 just described, was there any other way that you
8 assisted with the preliminary due diligence in
9 investigating the feasibility of the CUP application at
10 the property?

11 A. Not that I can recall.

12 Q. You go on to say -- allege in that
13 paragraph 10 that "However, despite the parties' work
14 on the CUP application, Geraci represented to Cotton
15 that a CUP application for the property could not
16 actually be submitted until after the zoning issue was
17 resolved or the application would be summarily rejected
18 by the city."

19 Do you see that allegation?

20 A. I do.

21 Q. When did Mr. Geraci first make that
22 representation to you or your best estimate of when?

23 A. He made that on an ongoing basis from the
24 moment we met.

25 Q. So at what point did he identify there was a

1 critical zoning issue or, I should say, at what point
2 was a critical zoning issue identified?

3 A. Okay. The situation was I didn't know there
4 was a zoning issue until I was served the lawsuit from
5 the city when Geraci called me back in July, I guess
6 now, those conversations were centered around the
7 zoning being changed. Nothing could happen with the
8 CUP application until the zoning was changed to allow
9 that to be submitted.

10 Q. And the lawsuit had been filed before
11 Mr. Geraci contacted you, correct?

12 A. Correct.

13 Q. So you were -- when he contacted you, you
14 were aware there was a zoning issue?

15 A. Correct.

16 Q. Now, what did he -- did you have discussions
17 with him prior to November 2nd, 2016, about what the
18 process would be in terms of resolving the zoning issue
19 and then submitting a CUP application?

20 A. Yes. Going back to my cellular records, you
21 can see many of the calls came from Geraci, and they
22 were updates in terms of how the zoning issue was being
23 resolved with the city so that the CUP could be
24 submitted and accepted for submission, in other words,
25 not summarily rejected.

1 Q. And some of those updates were by text
2 message as well, correct?

3 A. Correct.

4 Q. And those are shown on Exhibit 4?

5 A. Correct.

6 Q. Now, in paragraph 11 you allege that "On or
7 around October 31, 2016, Geraci asked Cotton to execute
8 an ownership disclosure statement, which is a required
9 component of all CUP applications."

10 Do you see that?

11 A. I do.

12 Q. And if we take a look at Exhibit 11, which
13 we've already identified you recognize --

14 A. Yes.

15 Q. This is Exhibit 11.

16 A. Yes.

17 Q. -- is Exhibit 11 the ownership disclosure
18 statement that you referred to in the allegations?

19 A. Correct.

20 Q. And on that ownership disclosure statement
21 marked as Exhibit 11, there are two signatures, Rebecca
22 Berry and -- correct? Do you see that?

23 A. I do.

24 Q. And then a signature underneath where the
25 name is typed "Darryl Cotton," is that your signature?

1 A. It was.

2 Q. And did you sign it on or about October 31,
3 2016?

4 A. I did.

5 Q. When you signed it, had Ms. Berry already
6 signed it?

7 A. I don't recall.

8 Q. Had Mr. Cotton discussed Ms. Berry with you
9 prior to you signing the ownership disclosure
10 statement?

11 A. Your question is did I discuss --

12 Q. Did Mr. -- I apologize. I may have misspoke.
13 Mr. Geraci -- did Mr. Geraci discuss with you
14 Rebecca Berry before you signed the ownership
15 disclosure statement?

16 A. He did.

17 Q. What did he tell you about Rebecca Berry?

18 A. He told me that as an enrolled agent, a
19 financial planner, and a real estate agent, he could
20 not personally submit an ownership disclosure statement
21 but his assignee could. Rebecca Berry was his assignee
22 for the purposes of the submittal of the CUP.

23 Q. Did he tell you that she was essentially
24 going to act as his agent?

25 A. Correct.

1 Q. Did he tell you why, as an enrolled agent,
2 financial planner, or real estate agent, he could not
3 personally submit a CUP?

4 A. He told me that Berry was a trusted employee
5 and that his personal listing on the ownership
6 disclosure statement would put him in direct
7 contradiction to what -- as an EA and a financial
8 planner and a real estate agent, would not be
9 acceptable under his professional capacities.

10 Q. So did you understand that what he was
11 telling you was that it would adversely impact his
12 professional designations?

13 A. Correct.

14 Q. So it wouldn't -- not that it was a problem
15 for the CUP application, but it would be a problem for
16 him in terms of his continuing to act as an EA, a
17 financial planner, and a real estate broker?

18 A. Correct.

19 Q. Did he give you any detail as to why he
20 couldn't act as a real estate broker if he was the
21 applicant on a -- on the CUP application?

22 A. He never represented himself as a real estate
23 broker. He represented himself as a real estate agent.

24 Q. I misspoke. I apologize. Real estate agent,
25 is there any -- did he tell you why he couldn't do

1 **that?**

2 A. It was an accumulation of his professional
3 credentials. The most important, I believe, was his
4 enrolled agent capacity, which federally there could be
5 complications with him being personally involved with a
6 cannabis-based business.

7 **Q. Because federal laws that relate to cannabis**
8 **that differ from California state laws?**

9 A. That's what he told me, and I believed him at
10 the time that he told me that.

11 **Q. Do you have any reason to believe that's not**
12 **true, as you sit here today?**

13 A. I do.

14 **Q. And what's the basis of your belief today**
15 **that it's not true?**

16 A. I came to find out that he had been named as
17 a party in illegally operating certain dispensaries,
18 which there were judgments made and accepted terms that
19 would disallow him, should he apply for a conditional
20 use permit, under current state and local law.

21 **Q. And when did you find that out?**

22 A. After March -- hold on on that. I believe I
23 first discovered that in February of 2017.

24 **Q. How did you learn about it?**

25 A. I started doing some due diligence on

1 Mr. Geraci.

2 Q. Were you able to locate actual cases against
3 him?

4 A. They are public record, yes. That may have
5 even been January I started getting nervous and
6 investigated him.

7 Q. And did you actually look at any judgments or
8 orders or injunction orders in those cases or that
9 case?

10 A. To the extent that I was able to see what was
11 online, I read everything I could that was posted
12 online. I did not get the actual filings -- judicial
13 filings that were available in those cases, no.

14 Q. So you don't have a copy of it, as you sit
15 here today?

16 A. I do not.

17 Q. Or back at your office even?

18 A. I do at my office.

19 Q. So you have copies of what you read online?

20 A. I do.

21 Q. By the way, when you had conversations with
22 Mr. Geraci by telephone or in person, did you take
23 notes?

24 A. No.

25 Q. Any other basis for your understanding today

1 that his representation about not being able to be an
2 applicant on the CUP because of his enrolled agent
3 status is untrue?

4 A. I believe it to be completely untrue -- that
5 may have been a reason, but what -- the primary reason
6 he would have been denied had he applied.

7 Q. To your understanding, did he have a judgment
8 against him like you did in terms of being a landlord
9 upon -- on a piece of property for which --

10 MS. PLASKETT: Objection to form.

11 MR. WEINSTEIN: I haven't finish it, but I'll
12 rephrase it. Thank you.

13 BY MR. WEINSTEIN:

14 Q. You saw pleadings in the case against him,
15 correct?

16 A. Correct.

17 Q. How many cases?

18 A. At least two.

19 Q. Did you ever discuss those with him?

20 A. No.

21 Q. Did you -- were you able to determine whether
22 or not he was a landlord on any of those properties?

23 A. I was not interested in that. I was -- at
24 this time I knew Rebecca Berry was the one that was
25 listed as the ownership entity, and really all that

1 mattered was that would she be approved once the zoning
2 issue had been resolved. So whether or not he was a
3 landlord or what his relationship was in those other
4 cases meant nothing to me.

5 **Q. It wouldn't affect the ability to get a CUP**
6 **application, to your understanding, because she was the**
7 **applicant?**

8 A. That is correct.

9 **Q. So you didn't come to an understanding of**
10 **whether he was a landlord or not?**

11 A. I did not.

12 **Q. And have you ever met Abhay Schweitzer?**

13 A. No.

14 **Q. Have you ever spoken to him by telephone?**

15 A. I have not.

16 **Q. Have you communicated with him in any**
17 **fashion?**

18 A. No.

19 **Q. Who -- how did -- how was the document**
20 **presented to you, in other words, how did you get it,**
21 **Exhibit 11?**

22 A. This was signed at Geraci's office on
23 10-31-2016.

24 **Q. And who was present at the time?**

25 A. I believe it was just Geraci and me.

1 Q. Did you actually go into his personal office?

2 A. Yes.

3 Q. And did you know when you arrived there that
4 you were going to be asked to sign this statement?

5 A. Yes.

6 Q. And how did you know that?

7 A. Because he told me that this was going to be
8 necessary. When the zoning was complete, the ownership
9 disclosure statement needed to be assured that his
10 agent, Rebecca Berry, would be listed as a tenant
11 lessee whereby I had already approved it as the owner.
12 Mr. Geraci had invested a considerable amount of money
13 as of 10-31 and was prepared to continue to invest that
14 money towards the rezoning if I signed this.

15 Q. And did you read the form before you signed
16 it?

17 A. I did.

18 Q. Did you read the Part 1 where it talks about
19 the list must include the names and addresses of all
20 persons who have an interest in the property?

21 A. Correct.

22 Q. Did you understand at the time that you
23 signed this that it needed to be signed by both you and
24 Ms. Berry because the applicant had to have an interest
25 in the property in order to be able to pursue the CUP

1 application?

2 A. That was my understanding, yes.

3 Q. And you understood, at least at the time you
4 signed it, that Ms. Berry was going to have an interest
5 in the property as an agent of Mr. Geraci once the
6 agreement was entered into between the two of you in
7 connection with the sale of the property?

8 MS. PLASKETT: Can you please repeat that
9 question.

10 THE WITNESS: Please.

11 MR. WEINSTEIN: Why don't we read it back.

12 (Whereupon the record was read as follows:

13 Q. And you understood, at least at the time
14 you signed it, that Ms. Berry was going to
15 have an interest in the property as an agent
16 of Mr. Geraci once the agreement was entered
17 into between the two of you in connection
18 with the sale of the property?)

19 THE WITNESS: That would be a correct
20 characterization, yes.

21 BY MR. WEINSTEIN:

22 Q. But as I understand -- do I understand your
23 allegation or contention in the lawsuit, you -- your
24 understanding at the time you signed it was it wouldn't
25 be submitted until the CUP application was submitted

1 and that wasn't going to be submitted until the zoning
2 issue was resolved?

3 A. Correct.

4 Q. And that understanding was based on
5 communications you had with Mr. Geraci?

6 A. Correct.

7 Q. And with anybody else or just Mr. Geraci?

8 A. Not that I can recall.

9 Q. Did you ever have any communications with
10 Neil Dutta, D-u-t-t-a?

11 A. I don't recognize that name.

12 Q. Did you ever have any communications with Jim
13 Bartell? And I may have asked you that, but I'm asking
14 again.

15 A. No, I've never spoken with Jim Bartell.

16 Q. Ask when I say communications, I'm
17 encompassing, text, e-mail, telephone.

18 A. None.

19 MS. PLASKETT: Excuse me. Can I ask you to
20 clarify whether he was -- does this include a cc or a
21 bcc?

22 MR. WEINSTEIN: It does. But I understand -- it
23 does. So I don't know whether --

24 BY MR. WEINSTEIN:

25 Q. I'm including you receiving any

1 communication.

2 A. Not to my knowledge.

3 MS. PLASKETT: Thank you.

4 BY MR. WEINSTEIN:

5 Q. The -- strike that.

6 Did you ever have any communications with
7 Matt Matsushita?

8 A. That name is not familiar.

9 Q. Now, earlier you said that you had engaged in
10 preliminary due diligence by providing access to the
11 engineer and the architect on the project that were
12 hired by Mr. Geraci; is that correct?

13 A. Correct.

14 Q. Do you remember the name of the engineer?

15 A. I don't.

16 Q. Do you remember the name of the architect?

17 A. It would have been the Techne firm and
18 anybody that he assigned to do that preliminary work
19 necessary to develop a CUP submittal application.

20 Q. You understood at least, even though you had
21 no communications with Abhay Schweitzer, that TECHNE --
22 T-E-C-H-N-E, an acronym -- was the firm that was
23 essentially overseeing that project for Mr. Geraci?

24 A. Correct. That's what Geraci had told me who
25 he had employed and that he had done this type of work

1 on other medical marijuana dispensaries.

2 Q. When did you first find out that a CUP
3 application had been submitted before the zoning issue
4 was disclosed -- I'm sorry -- resolved?

5 A. Could you repeat that.

6 MR. WEINSTEIN: Sure. Would you read it back,
7 please.

8 (Whereupon the record was read as follows:

9 Q. When did you first find out that a CUP
10 application had been submitted before the
11 zoning issue --)

12 BY MR. WEINSTEIN:

13 Q. I'll restate it.

14 When did you first learn that a CUP
15 application had been submitted prior to the resolution
16 of the zoning issue?

17 A. I believe it was in March when I reached out
18 to the City of San Diego Development Services
19 Department to get an update on the status only to learn
20 that the CUP application had been submitted on 10-31-16
21 prior to my signing the 11-2-16 document. I was upset.

22 Q. And if you look at paragraph 27 on page 9 of
23 the second-amended complaint marked as Exhibit 10, is
24 that the allegation that relates to having reached out
25 to the city's development project manager and learning

1 that fact for the first time?

2 A. So your question is as of March 16th, was
3 that the date?

4 Q. Yes. I mean I'm trying to understand if
5 that's the time -- the event you're referring to when
6 you first learned that the CUP application had already
7 been submitted.

8 A. In or around that time I learned in mid
9 March that Geraci had submitted the CU application on
10 10-31-16.

11 Q. Because in that e-mail you allege -- you
12 state in your e-mail to Geraci of March 16th, 2016, "I
13 found out today that a CUP application for my property
14 was submitted in October."

15 A. I will defer to that statement. I would have
16 known that as of March 16th.

17 MR. WEINSTEIN: Could we take a quick break.

18 THE VIDEOGRAPHER: Going off the record at
19 11:53 p.m.

20 (Recess.)

21 THE VIDEOGRAPHER: We are back on the record at
22 11:58 a.m.

23 BY MR. WEINSTEIN:

24 Q. I'm going to come back to what we've been
25 talking about in a few minutes, but I want to go back

1 in time a little bit.

2 I forgot how many times you told me you've
3 had face-to-face meetings with Mr. Geraci. Was it like
4 eight, 10 or 12? I can't remember what you told me.

5 A. Between eight and 12.

6 Q. Can you tell -- do you recall when the first
7 face-to-face meeting was?

8 A. I would have put that date in around early
9 September.

10 Q. Okay. Are you able to tell from either the
11 call logs or the text messages?

12 A. In your Exhibit 4?

13 Q. 4, uh-huh.

14 A. On page 0506 I'm asking his address, and he's
15 giving it to me on September 20th as 5403 Ruffin Road,
16 Suite 200.

17 Q. And it says "five minutes"?

18 A. It's on my way, so had I already been to his
19 business office, I would have known that address. So
20 I'm guessing based on this exhibit that my first
21 appearance at his office would have been on
22 September 20th.

23 Q. And that's really not a guess, it's an
24 estimate based on the text message?

25 A. Correct. That's what I'm using to get that

1 statement.

2 Q. And then you've mentioned that you met with
3 him on 10-31-16 at his office to sign the ownership
4 disclosure form that's marked as Exhibit 11, correct?

5 A. Correct.

6 Q. And you were at his office again on
7 November 2nd, 2016, to sign what's been marked as
8 Exhibit 6, correct?

9 A. Correct.

10 Q. Do you recall any face-to-face meetings with
11 him that were not at his office?

12 A. None.

13 Q. So they were all at his office?

14 A. Correct.

15 Q. Are you -- do you recall whether you -- so
16 I've described or we've discussed three times you've
17 met with him, up to and including the date that you
18 signed the Exhibit 11 on November 2nd, 2016. Did you
19 have any other face-to-face meetings with him before
20 November 2nd, 2016, other than those three?

21 A. Not that I can recall.

22 Q. All of your other face-to-face meetings at
23 his office would have occurred after November 2nd,
24 2016?

25 A. Yes.

1 Q. And do you recall when the next one was, or
2 even if not when, what the subject was that you
3 discussed at the first meeting after November 2nd,
4 2016?

5 A. All of my discussions with Geraci centered
6 around the zoning issue that he was attempting to
7 resolve to get the CUP submitted to the city. So all
8 of those discussions were centered around that, as I
9 had a \$40,000 remaining payment that was due me once
10 that CUP was successfully submitted to the city,
11 Department of Services Development.

12 Q. So are you suggesting that your subsequent
13 face-to-face meetings with him at his office that make
14 up the eight to 12 times in which you met with him were
15 discussions you had in his office about the status of
16 the zoning issue?

17 A. I would say that based on the 11-2-16
18 agreement, there were probably four or five meetings at
19 his office before that and another four or five
20 meetings after that. It was roughly equal amounts of
21 visits to his office. He's never been to my office,
22 never been to the property.

23 Q. Okay. And we've identified the first meeting
24 as September 20, 2016. So those four to five meetings
25 occurred -- included September 20, 2016, and would have

1 occurred up to and including potentially November 2nd,
2 2016?

3 A. Correct.

4 Q. And one of those was on October 31, 2016?

5 A. Correct.

6 Q. And there were others, you just don't
7 remember the dates?

8 A. I can't remember the dates. It's been too
9 long.

10 Q. So if you were to try and recreate the dates
11 that you met with him prior to November 2nd, 2016,
12 would you be able to look anywhere besides these text
13 messages that have been marked as Exhibit 4? Do you
14 have a diary or a calendar, for example?

15 A. I don't have a diary or a calendar of those
16 dates, no.

17 Q. And does your phone log help -- would that
18 help you at all in determining when you met with him
19 face to face?

20 A. My phone log doesn't give me any context of
21 what the calls were, just that they were made that day.

22 Q. So we're basically -- if it's not reflected
23 some way or another or suggested in the text messages,
24 there's no way to recreate it?

25 A. That's correct.

1 Q. If you turn to Exhibit 4, page GER0509, and
2 I'm looking at --

3 MS. PLASKETT: 0409?

4 BY MR. WEINSTEIN:

5 Q. 0509. I'm looking at text messages on
6 September 8, 2016, from Mr. Geraci to you, and the last
7 one on that date from him says, "Do they have a final
8 judgment on your property?"

9 Do you see that?

10 A. Yes.

11 Q. And then you respond, "Not sure what you
12 mean? Payoff?" Do you see that?

13 A. I do.

14 Q. Did you ever -- did you ever determine or
15 learn what he was referring to in that text?

16 A. It was my understanding he just wanted to
17 know what the encumbrances were against the property.

18 Q. So this wasn't, to your understanding, a
19 reference to your -- legal action against you by the
20 City of San Diego?

21 A. That was not my understanding, no. And I
22 asked the next question, what do you mean, is that the
23 payoff?

24 Q. Did he ever respond to you what -- didn't
25 respond by text. Did he ever respond to you in any

1 other way?

2 A. I believe it is actually referenced in here
3 later where it's a \$330,000 payoff.

4 Q. I don't need you to point that out. I do
5 remember seeing that. I just don't know if that was
6 related to that communication or not.

7 A. No. Not to my recollection, no.

8 Q. There's a reference at the bottom of the page
9 to 1661 North Second Avenue, El Cajon. Do you see
10 that?

11 A. I do.

12 Q. What is that a reference to, if you know?

13 A. I don't know.

14 Q. Were you going to another address to look at
15 a property?

16 A. I don't know why this is here. It might have
17 been him referencing a dispensary that he was currently
18 involved with.

19 Q. But you don't remember specifically?

20 A. I don't recall specifically, no.

21 Q. And the next page, it's September 30, 2016,
22 there's a text from you that says, "I'll check it out."

23 A. That's what it was.

24 Q. Do you recall checking it out?

25 A. I never went.

1 Q. And then subsequent to that message on
2 October 3, 2016, there's a text related to the
3 architect and the builder coming to the property. Is
4 that part of the due diligence you previously referred
5 to?

6 A. It is.

7 Q. And then on the next page, 50511, it talks
8 about surveyors being out there. Is that also part of
9 the due diligence you previously referred to?

10 A. Yes, it is.

11 Q. And then the following page, GER0512, there's
12 a reference to the architect needing access. Was that
13 also -- that was on October 17, 2016. Was that also
14 part of the due diligence that you previously referred
15 to?

16 A. Yes.

17 Q. If you go to the next page, GER0513, there's
18 a reference at the bottom of the page to architect
19 drawings that were sent to you. Do you see those
20 references? And it continues on to the next page?

21 A. The Sent to, "Just sent over. That e-mail is
22 not going through, could you recheck it for me," and
23 then on 514, "I just sent you a test send e-mail. I
24 love it." So that was me looking at a site plan.

25 Q. And if you look at Exhibit 10, is that

1 possibly a reference to -- what's been previously
2 marked as Exhibit 10, that was the test send e-mail
3 with the plans?

4 A. Yes. That makes sense.

5 Q. All right. If you go to page GER0515 on
6 Exhibit 4, there's a reference about two-thirds of the
7 way down the page to a November 9, 2016, text in which
8 you tell Mr. Geraci that Lemon Grove shot down
9 Measure V. Do you see that?

10 A. Yes.

11 Q. And so that was a measure on the ballot,
12 Measure V that was -- missed approval by one percent?

13 A. Correct.

14 Q. And how -- was that good for the two of you's
15 proposed business?

16 A. Absolutely.

17 Q. Why?

18 A. Well, we would have less competition, and one
19 of the reasons I felt Geraci's going to make the most
20 profitable dispensary in all of the City of San Diego
21 is because in our district they'll allow four, but we
22 had certain conditions that allowed that dispensary to
23 be built there based on setback issues.

24 Q. So there was no other -- at the time that you
25 were having these discussions with Mr. Geraci, there

1 was no other dispensary being operated in Lemon Grove,
2 correct?

3 A. Not only wasn't there one in Lemon Grove as
4 Measure V was denied, there were no pending in
5 District 4 either.

6 Q. Which is where you were going to be?

7 A. Correct.

8 Q. All right. And so the thought was at the
9 time we'll be first in line?

10 A. Good for us, that's correct.

11 Q. Because you'd be first?

12 A. Yes.

13 Q. On the next page, GER0516, there's a series
14 of text messages. First one says, "I just sent you an
15 e-mail and just need a quick signature and send back to
16 me. If you can get that back ASAP I'd appreciate it."

17 Do you remember what that was?

18 A. I believe that was authorization for his
19 architect to access the drawings at the county
20 recorder.

21 Q. So would you -- I'd like to mark as the next
22 exhibit in order, Exhibit 12.

23 (Exhibit 12 was marked for identification.)

24 (Whereupon Ms. Plaskett and the witness

25 conferred outside the hearing of the

1 reporter.)

2 BY MR. WEINSTEIN:

3 Q. Take a look at Exhibit 12 and let me know
4 whether you've seen it before. Have you?

5 A. Yes. As I alluded to, this was my
6 acknowledgment that his architect could access my
7 property's records with the county.

8 Q. Just so we're clear, the reference on the
9 first text on November 14, 2016, at the top of page
10 GER0516 is a reference to this e-mail that Mr. Geraci
11 sent you for you to sign that authorization?

12 A. Yes.

13 Q. Later that day on November 16, 2016, you text
14 him, "How goes it?"

15 He responds, "No news yet."

16 And then you text him at 16:26, which I
17 assume is 4:26 in the afternoon on November 16th, "Did
18 they accept the CUP application?"

19 Do you see that?

20 A. What page are you on?

21 Q. GER0516 still.

22 A. Okay. Yes. "How goes it?" I see where
23 you're referencing.

24 Q. Okay. So you ask, "Did they accept the CUP
25 application?"

1 At that time were you aware that the CU
2 application had been submitted?

3 A. I was not.

4 Q. So what were you referring to there?

5 A. The rezoning that would allow the CU
6 application to be submitted, how goes the rezoning work
7 that he claimed he was doing.

8 Q. So you didn't ask has the zoning been
9 changed, correct?

10 A. No. Our understanding was that the CUP
11 application could not be submitted until the zoning was
12 approved for an MMCC business.

13 Q. So at the time you wrote, "Did they
14 accept the CUP application?" it's your testimony you
15 did not know that there was actually a CUP application
16 that had been submitted?

17 A. Correct. I did not know that.

18 Q. And just so we're clear, your understanding
19 was an application couldn't be submitted until the
20 zoning was approved?

21 A. That's what Geraci had been telling me, and
22 on your Exhibit 4 he actually mentions that again. On
23 0516, there is the "we're still getting through them
24 excepting the property" -- and I believe he meant
25 accepting, not excepting -- but then he follows up

1 with, "Once the property is approved, then I believe
2 we're set to go."

3 Q. Right. And you understand that to be we
4 can't submit an application until the zoning is
5 approved?

6 A. That is correct.

7 Q. And based on what Mr. Geraci told you, you
8 didn't understand that those two things could happen
9 simultaneously?

10 A. What was that?

11 Q. Submitting an application and waiting for
12 zoning to be approved.

13 A. My understanding was they would deny the CUP
14 application if you did not have a zone that was
15 eligible for an MMCC business.

16 Q. Isn't it correct that what -- what you
17 understood at the time was that a CUP application
18 couldn't be deemed complete until the zoning was
19 approved?

20 A. My understanding was it couldn't even be
21 accepted.

22 Q. Do you have an understanding, as you sit here
23 today, about the distinction between submitting an
24 application and an application being deemed complete?

25 A. I do have an understanding.

1 Q. So you understand today that once an
2 application is deemed complete, then it goes on to the
3 next phase, which is the review phase?

4 A. Yes.

5 Q. And you also understand, as you sit here
6 today, that an application can't be deemed complete --
7 won't be deemed complete unless zoning is proper; is
8 that true?

9 A. I am not an expert in this field at all. I
10 only was going by the assurances of Geraci based on his
11 background and having done these before and his
12 architect TECHNE. At the time I was told that our
13 consideration of the \$50,000 was tied into his
14 submission of the CUP application, that the city would
15 accept the submission of that application.

16 Q. Did you ever come to learn that zoning -- the
17 zoning change was made that would allow the operation
18 of a dispensary -- would allow the operation of a
19 dispensary in the new zoned area? I'm going to -- I'll
20 rephrase it.

21 Part of the issue was waiting for zoning to
22 be changed, correct? Because the way it was zoned at
23 the time that you signed the agreement on November 2nd,
24 2016, one could not operate a dispensary with that
25 zoning?

1 MS. PLASKETT: Assuming facts -- objection.

2 Assuming facts, misstating an earlier --

3 BY MR. WEINSTEIN:

4 Q. Was that your understanding?

5 A. My understanding is I could not run an MMCC
6 based on the zoning as it stood at the time we signed
7 the 11-2 document.

8 Q. So the zoning had to change?

9 A. Correct.

10 Q. And that was one of the things that
11 Mr. Geraci, through his consultants, was working on,
12 correct?

13 A. Yes.

14 Q. And did you ever learn that they had
15 successfully obtained or gotten the zoning changed so
16 that an MMCC would be a permitted use in that zone?

17 A. Could you repeat that.

18 Q. Sure. Were they ever successful in getting
19 the zoning changed?

20 A. The zoning changed. Whether or not it was a
21 result of their work, I don't know.

22 Q. When did you learn that the zoning changed?

23 A. In March of '15 I found out that the zoning
24 was being accepted, at least as it had been submitted.
25 It still hadn't been accepted into a CUP-eligible zone.

1 So what I found out on the 10-15 conversations I'd with
2 DSD was that on 10-31 the CUP application had been
3 submitted, and that contradicted my understanding with
4 what I had with Geraci.

5 Q. Right. And so when did you learn that the
6 zoning had changed?

7 A. I did not know that it had changed until much
8 later.

9 Q. My question is when. Do you have an estimate
10 of when you learned that?

11 A. I believe it was maybe May or June of 2017.

12 Q. And when you learned that the zoning had
13 changed in May or June of 2017, as you sit here, you
14 don't have any knowledge as to whether that was the
15 result of Mr. Geraci's consultants' efforts or whether
16 it was for some other reason?

17 A. I don't know.

18 Q. Do you have any reason to believe that
19 Mr. Geraci and his consultants didn't pursue a change
20 in the zoning in a diligent fashion?

21 A. I had every reason to believe that he would
22 have made the change to the zone so that the CUP
23 application could have been submitted. That was my
24 understanding.

25 MR. WEINSTEIN: Would you read his answer back,

1 please.

2 (Whereupon the record was read as follows:

3 A. I had every reason to believe that he
4 would have made the change to the zone so
5 that the CUP application could have been
6 submitted. That was my understanding.)

7 BY MR. WEINSTEIN:

8 Q. So as far as you know, he and his consultants
9 were diligently pursuing a change to the zoning to
10 allow an MMCC?

11 A. That was my understanding as of 11-2 he was
12 going to do, yes.

13 Q. And did you ever learn after that that a
14 change to zoning had not been diligently pursued by
15 Mr. Geraci or his consultants?

16 A. I never knew the status other than text
17 messages that went back and forth requesting that he
18 update me. He kept telling me he was working on
19 getting it rezoned so he could submit the CUP
20 application.

21 Q. I'm going to have marked as the next exhibit
22 in order, Exhibit 13, a November 2nd, 2016, at
23 3:11 p.m. e-mail with attachment from Larry Geraci to
24 Darryl Cotton. It's Bates BER0074 through BER0078.

25 (Exhibit 13 was marked for identification.)

1 MS. PLASKETT: Could we go off the record.

2 MR. WEINSTEIN: Certainly.

3 THE VIDEOGRAPHER: Going off the record at
4 12:20 p.m.

5 (Lunch recess.)

6 THE VIDEOGRAPHER: We are back on the record at
7 1:24 p.m.

8 BY MR. WEINSTEIN:

9 Q. So Mr. Cotton, I understand you may need to
10 clarify some prior testimony. But before you do that,
11 you understand you're still under oath?

12 A. I do.

13 Q. Great.

14 Is there something that needs to be
15 clarified?

16 MS. PLASKETT: Yeah. There's a couple things.
17 One thing, I think there might be a page missing or
18 there's something that doesn't seem right on the
19 declaration of Darryl Cotton, the exhibits.

20 MR. WEINSTEIN: Which exhibit?

21 MS. PLASKETT: It would, I believe, be Exhibit 7.

22 MR. WEINSTEIN: And what --

23 MS. PLASKETT: I just -- it's at the
24 correspondence --

25 MR. WEINSTEIN: There is no correspondence on

1 Exhibit 7.

2 THE WITNESS: I believe it's in 9.

3 MR. WEINSTEIN: 9.

4 THE WITNESS: It's in 9.

5 MR. WEINSTEIN: So the concern is about one of the
6 exhibits?

7 MS. PLASKETT: Yes. It's Darryl saying, "Look,
8 I'm not lying to you. Read the comment below from the
9 city on Wednesday, March 15th." And it says to Abhay,
10 but this looks like it's cut and paste from Abhay to
11 Larry, and then it's got Larry's footer. So I think
12 there's a page missing. Something is wrong here.

13 MR. WEINSTEIN: Let's go off the record for a
14 moment.

15 THE VIDEOGRAPHER: Going off the record at
16 1:26 p.m.

17 (Discussion off the record.)

18 THE VIDEOGRAPHER: We are back on the record at
19 1:30 p.m.

20 BY MR. WEINSTEIN:

21 Q. So there were two things we discussed off the
22 record that we should put on the record. One is that
23 it's not clear whether or not there are any issues with
24 the accuracy of the exhibits that are attached to the
25 declaration of Darryl Cotton that's been marked as

1 Exhibit 9. Counsel has indicated that they'll go back
2 and check their file copy and if it's a -- needs to be
3 corrected, she'll provide that to counsel.

4 I will go on the record and say Mr. Cotton
5 has authenticated pages 1 through 8, which is his
6 signed declaration, but I will acknowledge that he
7 cannot be held, as he sits here today, to know whether
8 or not the exhibits have been accurately copied and
9 attached to Exhibit 9. And so he's not -- his
10 testimony would not be used as some acknowledgment that
11 these were the exact documents that were attached in
12 this order.

13 Is that fair?

14 MS. PLASKETT: That's fair. Thank you.

15 MR. WEINSTEIN: And second thing is Mr. Cotton
16 wants to clarify his testimony with respect to
17 meetings -- face-to-face meetings that he had with
18 Larry Geraci.

19 So why don't you go ahead and explain how you
20 need to change your testimony or clarify it.

21 THE WITNESS: I said earlier that I believe I met
22 four times before 11-2 and maybe four or five times
23 afterwards, and I believe I've confused some of those
24 meetings with his architects and surveyors on my
25 property. So I would say the total number of times I

1 met Geraci at his office would be somewhere between
2 four and five overall.

3 BY MR. WEINSTEIN:

4 Q. Okay. And in particular, then, if I
5 understand you correctly, you testified obviously to a
6 September 20, 2016, meeting in his office, and an
7 October 31, 2016, meeting in his office, and a
8 November 2nd, 2016, meeting in his office. Other
9 meetings that may have taken place before November 2nd,
10 2016, may have been with others that you understood
11 were representatives of him or people working for him
12 but not necessarily him?

13 A. Correct.

14 Q. And do you recall the names of any -- you
15 said the architect?

16 A. The surveyor, his crew, there was
17 communications between Geraci and I when the Techne
18 office was going to send some people over go take
19 pictures and get those documents prepared so we could
20 submit it with the CUP once the zoning had been redone.

21 Q. But those were all events that occurred at
22 your property, correct?

23 A. Yes.

24 Q. And you testified earlier, and I assume it's
25 still your testimony, that any face-to-face meetings

1 you had with Mr. Geraci were at his office because he
2 never came to the property?

3 A. That is correct.

4 Q. All right. Thank you for clearing that up.
5 All right. If you would take a look at
6 Exhibit 13, what we left off with -- it's probably --

7 MS. PLASKETT: November 21st.

8 BY MR. WEINSTEIN:

9 Q. So before we get too confused, you have some
10 exhibits over there, Mr. Cotton, that don't have tags
11 on them.

12 A. Right.

13 Q. Those may actually be your counsel's copies
14 because anything that you have should have an exhibit
15 tag on it. So there's some to his left in front of the
16 table?

17 MS. PLASKETT: Okay. Thank you.

18 MR. WEINSTEIN: That have handwritten -- perfect.

19 MS. PLASKETT: This is 13.

20 BY MR. WEINSTEIN:

21 Q. So if you put Exhibit 13 before you.

22 A. Okay.

23 Q. Great. All right. Have you seen Exhibit 13
24 before?

25 A. I have.

1 Q. And what is Exhibit 13?

2 A. Exhibit 13 is the receipt that I signed on
3 11-2 which was outlining the \$10,000 I took as an
4 agreement to accept \$10,000 as good faith earnest
5 money.

6 Q. So actually Exhibit 13, more precisely it's a
7 November 2nd, 2016, e-mail at 3:11 p.m. which attached
8 a copy of the agreement you had signed or the document
9 you had signed earlier in the day at Mr. Geraci's
10 office; is that accurate?

11 A. Correct.

12 Q. All right. And so I think you previously
13 testified that after you signed the document that we've
14 marked as Exhibit 6, you didn't take a copy with you
15 and that this is an e-mail of a copy of it to you at
16 3:11 in the afternoon, correct?

17 A. Correct. It required that he e-mail me a
18 copy of that, which he did.

19 Q. Actually if you go to the second page of the
20 exhibit, there's a reference to the attachment itself.

21 A. Cotton and Geraci contract PDF. Okay. So
22 when I got that --

23 Q. You reviewed it, correct?

24 A. I reviewed it and replied via e-mail.

25 Q. And --

1 MS. PLASKETT: Is this the reply in here?

2 BY MR. WEINSTEIN:

3 Q. What we're going to give you is what we're
4 going to mark as Exhibit 14, a new exhibit, one-page
5 document Bates numbered BER0081, which is an e-mail
6 thread that contains an e-mail from Mr. Cotton to Larry
7 Geraci on November 2nd, 2016 at 6:55 p.m., and then a
8 second e-mail at 9:13 p.m. from Mr. Geraci back to
9 Mr. Cotton.

10 (Exhibit 14 was marked for identification.)

11 MS. PLASKETT: Okay.

12 BY MR. WEINSTEIN:

13 Q. So Mr. Cotton, have you seen Exhibit 14
14 before?

15 A. I have.

16 Q. So when you said a moment ago that you wrote
17 back or e-mailed back Mr. Cotton after reviewing the
18 contract that was attached to Exhibit 13, the e-mail
19 you're referring to is the one on Exhibit 14 that you
20 sent him at 6:55 p.m.?

21 A. Correct. When I saw the attachment listing
22 it as the contract, I felt it was necessary to make
23 clear, based on our oral agreement, that this was not a
24 final contract.

25 Q. So I'll just read it for the record. It

1 says, "Hi Larry, thank you for the meeting today.
2 Since we executed the purchase agreement in your office
3 for the sales price of the property, I just noticed the
4 ten-percent equity position of the dispensary was not
5 language added into that document. I just wanted to
6 make sure that we're not missing that language in any
7 final agreement as it is in fact an element in my
8 decision to sell the property. I'll be fine if you
9 would simply acknowledge that here in reply. Regards,
10 Darryl Cotton, President."

11 That's e-mail, correct?

12 A. Correct.

13 Q. Did you notice that the ten-percent equity
14 position in the dispensary was not in the language of
15 the November 2nd, 2016, document while you were at
16 Mr. Geraci's office?

17 A. I did not see this as any kind of final
18 contract as it was titled in the e-mail where he sent
19 it as an attachment. I saw this and it was represented
20 as a receipt for the \$10,000. So there was no
21 reference to many of the other elements that were a
22 factored decision on my agreement to sell him the
23 property.

24 Q. I understand that. But I don't think that
25 answers my question.

1 **Would you read the question back.**

2 (Whereupon the record was read as follows:

3 Q. Did you notice that the ten-percent
4 equity position in the dispensary was not in
5 the language of the November 2nd, 2016,
6 document while you were at Mr. Geraci's
7 office?)

8 THE WITNESS: I did not notice it.

9 BY MR. WEINSTEIN:

10 Q. And I think, if I understood your testimony
11 from before, you did not ask him about that language
12 or -- you did not ask him to add language like that in
13 the document at the time you were at his office; is
14 that true?

15 A. That is true.

16 Q. Now, at the time you saw the document in his
17 office, you testified that you indicated it was a
18 receipt --

19 A. Correct.

20 Q. -- for \$10,000, correct?

21 A. Correct.

22 Q. Did you -- do you know why it was notarized?

23 A. Just so that -- based on him being a real
24 estate agent, I believe that in his normal course of
25 business he would have notarized receipts. It was

1 cash. There was no paper trail.

2 Q. And so that was your understanding as to why
3 it was notarized?

4 A. Correct. Because it was cash.

5 Q. And as I recall your testimony, you didn't
6 discuss with him at the time you were in his office
7 about the language that he used, "agreement," in
8 Exhibit 6; is that correct?

9 A. To be clear, "agreement" to me represented
10 the \$10,000 acceptance, not the 50.

11 Q. So when you left the office, you viewed the
12 Exhibit 6 that you had signed as a receipt for his --
13 his receipt for your having been provided \$10,000 good
14 faith earnest money, correct?

15 A. Correct.

16 Q. And was that still your view, it was a
17 receipt when you received a copy of it by e-mail at
18 3:11 p.m. that afternoon?

19 A. Could you repeat that.

20 Q. Sure. Did you still understand when you
21 received the e-mail marked as Exhibit 13 at 3:11 p.m.
22 that the document you had signed was a receipt for the
23 \$10,000?

24 A. Well, no. At the point that I got the
25 e-mail, he was calling it a contract. And based on his

1 other assurances that the final contracts were
2 forthcoming, this could not be perceived as a contract.
3 That's why I sent him the e-mail I did.

4 **Q. Where in Exhibit 13 does he call it a**
5 **contract?**

6 A. It's in the attachment. If you look at
7 page 2 of the page -- of Exhibit 13, he calls it
8 "Cotton Geraci Contract."

9 **Q. And that's what made you think --**

10 A. That's what concerned me.

11 **Q. Because you didn't view it as a contract?**

12 A. I did not.

13 **Q. You viewed it as a receipt for the \$10,000?**

14 A. An agreement to accept \$10,000 and a receipt
15 therefor.

16 **Q. The e-mail that you send at 3:11 p.m. asks**
17 **him to confirm -- first of all, you referred to it as**
18 **the purchase agreement in the e-mail marked as**
19 **Exhibit 14, correct?**

20 A. Correct.

21 **Q. And because it says, quote, "Since we**
22 **executed the purchase agreement in your office for the**
23 **sale of the property, I just noticed," and you go on.**

24 MS. PLASKETT: Did you say price of the property?

25 ///

1 BY MR. WEINSTEIN:

2 Q. Let me slow down.

3 MS. PLASKETT: Excuse me.

4 MR. WEINSTEIN: It's okay. It's not your speed.
5 It's my speed that's a problem.

6 BY MR. WEINSTEIN:

7 Q. You wrote in the -- in the 3:11 -- I'm
8 sorry -- in the 6:55 p.m. e-mail back to Mr. Geraci,
9 quote, "Since we executed the purchase agreement in
10 your office for the sale of the property, I just
11 noticed the ten-percent equity position," and it
12 continues.

13 MS. PLASKETT: Misquoting -- you forgot the price
14 again.

15 MR. WEINSTEIN: Okay. Let me do it again.

16 MS. PLASKETT: Sorry.

17 MR. WEINSTEIN: That's okay. I appreciate you
18 beholding me to be accurate.

19 BY MR. WEINSTEIN:

20 Q. In the 6:55 p.m. e-mail, it says, from
21 Mr. Cotton, in the second sentence, quote, "Since we
22 executed the purchase agreement in your office for the
23 sale price of the property, I just noticed the
24 ten-percent equity position in the dispensary was not
25 language added to that document."

1 Do you see that?

2 A. I do.

3 Q. So you referred to it as a purchase
4 agreement, correct?

5 A. Yes. This was -- my understanding was the
6 purchase agreement and the ten percent would be applied
7 to that 800,000.

8 Q. And were there -- you also testified that at
9 the November 2nd, 2016, meeting, you had come to an
10 agreement about 30 or so terms and conditions of the
11 agreement between you and Mr. Geraci, correct?

12 A. Correct. It was to be split in two parts.

13 Q. And were there other things -- other terms
14 and conditions besides the ten-percent equity position
15 in the dispensary that were not in Exhibit 6 that you
16 noticed had -- were not in Exhibit 6 when you got the
17 e-mail of 3:11 p.m. marked as Exhibit 13?

18 A. Yes. All of the items that were listed in my
19 9-24 working documents, none of those were there
20 either.

21 Q. So -- but the only thing you mentioned in
22 your response was the ten-percent equity position.

23 A. Correct. It's -- the assurances were made at
24 the time I was signing that that Austin was finalizing
25 two separate contracts that would pick up all the

1 elements in the working docs.

2 Q. Right. And one of those terms was the
3 ten-percent equity position, correct?

4 A. Correct.

5 Q. Another one of those terms was a guaranteed
6 minimum of 10,000 a month, correct?

7 A. Correct.

8 Q. But in your response at 6:55 p.m. in
9 Exhibit 14, you only mentioned the one provision
10 involving the ten-percent equity position as having
11 been left out of the document that was attached to
12 Exhibit 13?

13 A. That's all I mentioned, yes.

14 Q. And why didn't you mention all of the other
15 terms and conditions that had been agreed to that had
16 not been contained within Exhibit 6?

17 A. I did not think he was operating in bad
18 faith. His promise that the contracts were forthcoming
19 and would memorialize everything that was within our
20 working documents was, again, forthcoming shortly
21 thereafter, and I had no reason to believe that wasn't
22 going to be the case.

23 Q. Is there a reason why you didn't use the word
24 "receipt" in your response, if you can recall?

25 A. I saw it as an agreement on the \$10,000, and

1 the purchase agreement overall being 800,000 was a
2 formality. How the two documents came together was
3 what I was expecting from his attorney.

4 Q. So then at 9:13 p.m., you get an e-mail
5 response, "No, no problem at all."

6 Do you see that?

7 A. I see that.

8 Q. And you understood that as what? What did
9 that mean to you?

10 A. That the final -- the legal draft documents
11 would incorporate all of the terms in my 9-24
12 memorandum of understanding and the service agreement
13 between Inda-Gro and Geraci.

14 Q. So it was your understanding throughout the
15 process that there -- that all of these terms and
16 conditions would be incorporated in formal -- the two
17 formal written agreements that Gina Austin was to
18 prepare to encompass all the terms and conditions of
19 the agreement for the sale of the property?

20 A. Yes. We had lots of phone calls. There was
21 lots of dialogue before and after November 2nd that
22 reinforced that. My attorney's busy, Austin will be
23 getting these within a couple weeks, you'll have the
24 documents.

25 Q. Did you ever sign a subsequent document that

1 you believe stated the agreement between you and
2 Mr. Geraci for the purchase and sale of the property?
3 And when I mean subsequent document, any document that
4 you believe was a contract or agreement after
5 November 2nd, 2016.

6 A. No.

7 Q. So ultimately Gina Austin never provided --
8 well, Mr. Geraci never provided you with the two formal
9 written agreements that contained all of the terms and
10 conditions that you thought the parties had orally
11 agreed to as of November 2nd, 2016; is that true?

12 A. He assured me it was coming. I can point out
13 different checks that reinforce that on your Exhibit 4,
14 page 0520.

15 Q. That's fine, but that's not my question.

16 Would you read the question back.

17 (Whereupon the record was read as follows:

18 Q. So ultimately Gina Austin never
19 provided -- well, Mr. Geraci never provided
20 you with the two formal written agreements
21 that contained all of the terms and
22 conditions that you thought the parties had
23 orally agreed to as of November 2nd, 2016; is
24 that true?)

25 THE WITNESS: That is true. I never received

1 formal documents that incorporated all those terms.

2 BY MR. WEINSTEIN:

3 Q. Now, did you, subsequent to receiving this
4 e-mail from Mr. Geraci at 9:13 p.m. on November 2nd,
5 2016, have any communication with him about the
6 ten-percent equity position?

7 A. Could you repeat that question, please.

8 Q. Sure. Subsequent to receiving the
9 November 2nd, 2016, 9:13 p.m. e-mail from Mr. Geraci,
10 which is the top e-mail on Exhibit 14, did you ever
11 have any further discussion with him concerning the
12 ten-percent equity position?

13 A. In other words, were there oral discussions
14 about --

15 Q. Yes.

16 A. No. It was already understood and he was, at
17 this point, telling me the attorney was incorporating
18 the final draft legal agreements.

19 Q. So let's mark as the next exhibit in order,
20 Exhibit 15, a document entitled, "Declaration of Larry
21 Geraci in Opposition to Defendant Darryl Cotton's
22 Motion to Expunge Lis Pendens. It's 11 pages and it
23 purports to be signed April 9, 2018, by Larry Geraci.

24 (Exhibit 15 was marked for identification.)

25 MS. PLASKETT: What exhibit is this one?

1 MR. WEINSTEIN: 15.

2 BY MR. WEINSTEIN:

3 Q. I'll have you take a look at Exhibit 15 and
4 let me know if you've seen Exhibit 15 before.

5 A. Yes, I have seen this.

6 Q. So I'm going to focus your attention on
7 paragraph 10, which begins on page 6, line 21, in which
8 Mr. Geraci references the 6:55 p.m. e-mail that you
9 sent to him on November 2nd, 2016, and his 9:00 p.m.
10 response, and that continues over to the next page.

11 Have you read that? And then starting at
12 line 6 through line 16, I'd like you to read that to
13 yourself. So this is page 7, line 6 through 16.

14 A. Okay.

15 Q. So in that part of Mr. Geraci's declaration,
16 he refers to an approximate three-minute phone call
17 that he had with you at 12:40 p.m. the following day,
18 November 3rd, 2016. Do you see that reference?

19 A. I do.

20 Q. Do you remember that phone call?

21 A. I don't remember that phone call
22 specifically, but it's in my records. I received it as
23 well.

24 Q. All right. So you're looking at Exhibit 5
25 and Exhibit 5 refers to an incoming call of one minute

1 around 12:38 p.m., and then an outgoing call of three
2 minutes at 12:40 p.m., correct?

3 A. It's the reverse. There was an outgoing call
4 at one minute and there was an incoming call at three
5 minutes.

6 Q. Okay. And so do you remember -- well,
7 Mr. Cotton -- I'm sorry -- Mr. Geraci states that
8 during that telephone call he told you that a
9 ten-percent equity position in the dispensary was not
10 part of the agreement as he had never agreed to pay you
11 any amounts above the 800,000 purchase price for the
12 property. Do you see that statement in the
13 declaration?

14 A. I do.

15 Q. Is that true?

16 A. No.

17 Q. All right. He goes on to say that you
18 responded in that phone call by saying something to the
19 effect of, "Well, you don't get what you don't ask
20 for."

21 Do you see that?

22 A. I do.

23 Q. Was that true?

24 A. No.

25 Q. He further states, "You were not upset and

1 you commented further to the effect that things are
2 looking pretty good. We should all make some money
3 here."

4 Do you see that?

5 A. I do.

6 Q. Is that a true statement?

7 A. Absolutely not.

8 Q. And then he says, "That was the end of the
9 discussion."

10 So you don't recall the phone call
11 specifically, correct?

12 A. I do not recall the specifics.

13 Q. And so is the basis for your testimony that
14 those three things are not true is that you don't
15 remember ever being told those things by Mr. Geraci?

16 A. Geraci nor I ever said what's being stated
17 here.

18 Q. At any time?

19 A. It's a complete fabrication.

20 Q. Just to be -- just so the record is clear, at
21 any time you never had -- he never made these
22 statements to you?

23 A. At no time.

24 Q. He goes on in paragraph 11 of his declaration
25 to talk about communications with you concerning your

1 **desire to participate in the operation of the future**
2 **MMCC business at the property. Do you see that?**

3 A. I do.

4 **Q. Is anything that he states in paragraph 11,**
5 **which is on page 7 from lines 17 through 25 of**
6 **Exhibit 15, true?**

7 MS. PLASKETT: Can you please repeat that.

8 MR. WEINSTEIN: Sure. What I'm asking is for him
9 to read paragraph 11 and then tell me whether there's
10 anything in there that's true.

11 MS. PLASKETT: Anything?

12 MR. WEINSTEIN: Anything.

13 BY MR. WEINSTEIN:

14 **Q. And if it makes sense for clarification**
15 **purposes, if you want to tell me what's true and what's**
16 **false, that would be acceptable, too. I just want to**
17 **understand what your reaction is.**

18 A. I can make this very easy. Everything in 11
19 is a fabrication as well. I wanted nothing to do with
20 the operation of the business. And that was never
21 indicated in either of my working documents.

22 **Q. So what you wanted, as I understand your**
23 **testimony, then, is simply a revenue stream?**

24 A. Correct. He is the expert.

25 **Q. In paragraph 12 he goes on to state,**

1 "Beginning in or about mid February of 2017 and after
2 the zoning issues had been resolved, Mr. Cotton began
3 making increasing demands for compensation in
4 connection with the sale."

5 Do you see that?

6 A. I do.

7 Q. And as I understand your testimony, you did
8 not even become aware until May or June of 2017 that
9 any zoning issues had been resolved; is that true?

10 MS. PLASKETT: You're misstating the previous
11 issue we had with the e-mails from -- that
12 Mr. Geraci -- on our break that Mr. Geraci provided to
13 Mr. Cotton where there might be some kind of an error
14 or missing page.

15 BY MR. WEINSTEIN:

16 Q. So let me ask it a different way.

17 What's your best recollection of when you
18 became aware, if ever, that zoning issues related to
19 the ability to operate an MMCC on the property had been
20 resolved?

21 A. I believe, based on having contradicting
22 information from department of -- DSD and Geraci, I
23 wasn't sure when the actual zoning had been changed to
24 make a CO2.1 eligible for an MMCC. I believe it was in
25 May of 2017 I came to find out that that zoning had

1 been accepted in April of 2017. But I was also told
2 January of 2017, and I got that information from Geraci
3 himself.

4 Q. So let's break that down because the one sort
5 of time stamp or time point you put in your answer was
6 you learned in approximately May of 2017 that a zoning
7 issue -- the zoning issues had been previously
8 resolved. Is that true?

9 A. I believe in May I found out from DSD that
10 the zoning issue had been resolved.

11 Q. Okay. And did you learn from D -- whatever
12 the agency is, when the zoning issue had been resolved?

13 A. No, I did not learn exactly but it was
14 recommended or referenced to me that it happened in
15 April of 2017.

16 Q. And who referenced or recommended that to
17 you?

18 A. That would have been Firouzeh Tirandazi, the
19 development services project manager.

20 Q. Just so the record is clear, it's Firandazi,
21 F-i-r-a-n-d-a-z-i -- I'm sorry. It's -- I'm going to
22 get that name wrong because I'm never going to remember
23 which is the first name and which is the last name.
24 It's Firouzeh, F-i-r-o-u-z-e-h, Tirandazi,
25 T-i-r-a-n-d-a-z-i.

1 So this was at that time the project manager
2 for the CUP application that related to this property,
3 correct?

4 A. Correct.

5 Q. All right. And so Firouzeh Tirandazi had
6 told you in May of 2017 that the zoning should have
7 been resolved sometime in April of 2017 or was that in
8 an e-mail?

9 A. No. That's my visiting DSD to find that out.

10 Q. So when you visited it, you met with -- you
11 just looked at the files? How did you learn it was in
12 April?

13 A. It's public record. You can -- unless it's
14 part of their diary documents, it is public record if
15 you go there and search it out.

16 Q. So just so we're clear, in May of 2017, you
17 went and looked at the records on file and looked and
18 saw a document that led you to believe that the zoning
19 issues had been resolved in April of 2017?

20 A. There were -- I don't want to misstate this.
21 There were occasions where I went down there and met
22 with DSD, and there were times I would get through to
23 them on the phone. They are hard to reach. But in
24 backing up what I'm about to tell you, April 2017, that
25 may have actually been a phone call.

1 Q. Okay. And then you subsequent -- sorry. And
2 then at another occasion you got information from
3 Mr. Geraci that it had occurred in January of 2017?

4 A. Correct.

5 Q. And when did you learn that?

6 A. There were e-mails and texts. One of them is
7 in your Exhibit 4. It would be your page 0518 where he
8 indicates in a January 6th text, "I'm at the doctor
9 now. Everything is going fine."

10 Well, previously I asked him, "Can you call
11 me. If for any reason you're not moving forward, I
12 need to know." And his response was, "I'm at the
13 doctor now and everything is going fine. The meeting
14 went great" today -- "great yesterday, supposed to sign
15 off on the zoning on the 24th of this month. I'll try
16 and call you later today. Still very sick."

17 So based on this response, my understanding
18 was as of the 24th of January, the zoning issue had
19 been resolved and he could submit the CUP.

20 Q. Was going to be resolved. You're talking
21 about January 24th and this text is January 8th.

22 A. The zoning would be resolved as of
23 January 24th.

24 Q. But this text is January 6, 2017?

25 A. Correct.

1 Q. All right. And then there's subsequent
2 e-mail on January 18th from him where he says, "The
3 signoff date, they said it's going to be the 30th"?

4 A. Correct.

5 Q. And you respond, "This resolves zoning
6 issue?" And he says, "Yes," correct?

7 A. Correct.

8 Q. And so that was -- at least at that point in
9 time by text you understood that the zoning issue was
10 expected to be resolved as of January 30th?

11 A. Correct.

12 Q. And then you have some further texts with him
13 in early February 2017 about the zoning issue on the
14 next page, GER0519.

15 A. I see that, yes.

16 MR. WEINSTEIN: Let's go off the record briefly.
17 I need a short break.

18 THE VIDEOGRAPHER: Going off the record at
19 2:01 p.m.

20 (Recess.)

21 THE VIDEOGRAPHER: We are back on the record at
22 2:07 p.m.

23 BY MR. WEINSTEIN:

24 Q. Mr. Cotton, you understand we're still under
25 oath?

1 A. I do.

2 Q. Or you're still under oath?

3 A. Yes.

4 Q. I am not. I know you have a headache. So if
5 you need a break, just let us know.

6 A. When given an opportunity, I would like to
7 clarify, you asked if I had any other communication
8 with Geraci regarding those terms that were missing in
9 the 11-2 agreement, and in fact I took that as a phone
10 call conversation, oral communications. There were
11 written communications, too.

12 Q. E-mails, for example?

13 A. Correct, which I have here as exhibits.

14 Q. And I realize it was a relatively broad
15 question, and so --

16 A. Yes.

17 Q. Because there were discussions -- without
18 going into them in detail, there were discussions by
19 e-mail of what your position was regarding what had
20 happened between the parties, and there were
21 discussions of the provisions in those e-mails at
22 minimum. Like there was a March --

23 MS. PLASKETT: 3rd.

24 BY MR. WEINSTEIN:

25 Q. March 3rd e-mail, and there were other ones

1 as well. That's what you're referring to, correct?

2 A. Yes.

3 Q. So let's look at Exhibit 9, please, the
4 Declaration of Darryl Cotton in Support of Darryl
5 Cotton's Ex Parte Application for Temporary Restraining
6 Order and Order to Show Cause Regarding Preliminary
7 Injunction.

8 A. Okay.

9 Q. Would you look at paragraph 17 on page 5 of
10 that declaration.

11 A. We're talking Exhibit 9.

12 Q. Right. Page 5.

13 A. Got it. Paragraph what?

14 Q. 17. Starts on line 8.

15 A. Okay.

16 Q. And you talk there -- or your declaration
17 states there, quote, "Because of Geraci's bad faith
18 actions and breaches of the November writing, I entered
19 into a real estate purchase agreement with another
20 buyer, RJ, for the subject property."

21 Do you see that?

22 A. I do.

23 Q. And when you refer to "November writing" in
24 that, you're talking about the document that was signed
25 November 2nd, 2016, that we previously marked as

1 **Exhibit 6?**

2 A. Correct.

3 **Q. Who is RJ?**

4 A. Richard Martin is a high net worth individual
5 that offered to buy the property.

6 **Q. All right. And you entered into that
7 agreement with him in March of 2017, correct?**

8 A. Correct.

9 **Q. Who is Keith Henderson?**

10 A. Keith Henderson, like Geraci, operates
11 medical marijuana consumer collectives in San Diego
12 County.

13 **Q. Did you ever enter into an agreement with him
14 to sell the property?**

15 A. No.

16 **Q. So I'm going to have marked as the next
17 exhibit in order, Exhibit 16, a two-page document
18 entitled, "Memorandum of Understanding" dated
19 January 31, 2017, and as Exhibit 17 a two-page document
20 entitled, "Services Agreement Contract" dated
21 January 31, 2017, both signed by a Keith Henderson, but
22 not signed by Darryl Cotton.**

23 (Exhibits 16 and 17 were marked for
24 identification.)

25 Mr. Cotton, let me know if you've had a

1 chance to review Exhibit 16 and 17.

2 A. I've reviewed them.

3 Q. Have you seen those documents before?

4 A. I have.

5 Q. And what's Exhibit 16?

6 A. Exhibit 16 is a memorandum of understanding
7 between myself and Keith Henderson.

8 Q. And dated January 31, 2017?

9 A. Correct.

10 Q. And what is Exhibit 17?

11 A. Is a services agreement between Inda-Gro and
12 Keith Henderson.

13 Q. Who -- did you ever sign -- let me back up.

14 Both these documents appear to be signed by
15 Keith Henderson. Do you see that?

16 A. Correct.

17 Q. It looks like they are signed and dated -- or
18 purport to be signed and dated on February 1, 2017?

19 A. Correct.

20 Q. Did you ever sign these documents?

21 A. I did not.

22 Q. Did you have discussions with Mr. Henderson
23 about his interest in purchasing the property from you?

24 A. Yes. He reached out to me to see if he could
25 be second in line if Geraci failed to close the

1 purchase agreement.

2 Q. And when was your first contact communication
3 with Mr. Henderson?

4 A. I don't recall. Days before this.

5 Q. So not -- do you have an estimate of how long
6 before the actual signed, at least by Mr. Henderson,
7 memorandum of understanding and services agreement
8 contract were -- you had your first communication with
9 Mr. Henderson?

10 A. It would have been within two weeks of this.
11 It was shortly after my finding out Mr. Geraci had
12 these settlements for having ran illegal dispensaries,
13 and at that time I wasn't sure where that was going to
14 end up. So I entertained a competing offer, a
15 secondary offer by Keith Henderson.

16 Q. So -- but Mr. Henderson approached you,
17 correct?

18 A. He did.

19 Q. Did he indicate to you how -- did he know
20 when he approached you that you had already had a
21 potential business relationship with Mr. Geraci?

22 A. I told him.

23 Q. So he approached you and you told him?

24 A. Yes.

25 Q. You had discussions with him that caused the

1 preparation of these two documents that were signed by
2 him?

3 A. I showed him the same services agreement and
4 memorandum of understanding I had with Geraci, I told
5 Keith Henderson that I was awaiting the final contracts
6 that would incorporate all the terms as shown here, and
7 I was just in the process of waiting for those final
8 contracts. He was second in line should I not get
9 them.

10 Q. And so who prepared Exhibits 16 and 17?

11 A. Me.

12 Q. So he approached you and then you prepared
13 these documents?

14 A. Correct.

15 Q. All right? And -- but you never signed them,
16 correct?

17 A. I did not.

18 Q. Okay. Why didn't you sign them?

19 A. Because I still believed Geraci would live up
20 to the terms of our oral agreement on the 11-2-16
21 receipt.

22 Q. I'm going to mark as Exhibit -- Exhibit 18 a
23 one-page e-mail dated Sunday, February 19, 2017, from
24 Keith Henderson to Darryl Cotton.

25 (Exhibit 18 was marked for identification.)

1 I'm going to mark as Exhibit 19 a collection
2 of documents entitled, "Commercial Property Purchase
3 Agreement and Joint Escrow Instructions" with a date
4 prepared of February 17, 2017, at least on the first
5 document, and there appears to be a series of documents
6 that relate to the potential transaction.

7 (Exhibit 19 was marked for identification.)

8 Have you had a chance to review Exhibit 18?

9 A. I have.

10 **Q. And have you had a chance to review**
11 **Exhibit 19?**

12 A. Yes.

13 **Q. So was Exhibit 18 essentially the transmittal**
14 **by e-mail to you of what's been marked as Exhibit 19?**

15 A. One moment. Can you repeat the question.

16 **Q. Sure.**

17 **Would you read that back, please.**

18 (Whereupon the record was read as follows:

19 Q. So was Exhibit 18 essentially the
20 transmittal by e-mail to you of what's been
21 marked as Exhibit 19?)

22 THE WITNESS: Yes.

23 BY MR. WEINSTEIN:

24 **Q. So at this point in time you were still**
25 **having discussions with Mr. Henderson?**

1 A. No. Mr. Henderson was -- he represented
2 himself as a Realtor, as shown in Exhibit 18. And I
3 told him that my final contract documents with Geraci,
4 also a Realtor, would be a standard commercial property
5 purchase agreement and joint escrow instructions.

6 **Q. And so he prepared what's been marked as**
7 **Exhibit 19 and e-mailed it to you?**

8 A. Correct. In anticipation of Geraci not
9 forwarding me a California Association of Realtors
10 contract in this format.

11 **Q. Okay. And so that you would be able to**
12 **execute them potentially if your deal with Mr. Geraci**
13 **didn't move forward?**

14 A. He wanted to be second in line in
15 consideration, yes.

16 **Q. And did you ever sign the purchase agreement**
17 **and joint escrow instructions?**

18 A. I did not. I never even requested this.

19 **Q. So he just did that essentially unilaterally?**

20 A. Precisely.

21 **Q. And then on the very last page of Exhibit 19**
22 **there's an Addendum No. 1 --**

23 A. Yes.

24 **Q. -- which incorporates what we've marked as**
25 **Exhibit 16 and 17, the memorandum of understanding and**

1 the services agreement contract; is that true?

2 A. Yes.

3 Q. Is that your understanding?

4 A. Correct.

5 Q. And so the three documents together,
6 Exhibits 16, 17 and 19, essentially are a potential
7 purchase transaction and agreement between you and
8 Mr. Henderson as a backup to the Geraci agreement?

9 A. Precisely.

10 Q. After you received the purchase agreement
11 from Mr. Henderson on February 19, 2017, did you have
12 any further communication with him?

13 A. I did not, not to my knowledge. I don't
14 recollect having other communication.

15 Q. Was there a point in time in which you
16 learned -- either told him you were not interested or
17 he told you he was not interested?

18 A. Well, I told him that until -- and I had
19 ongoing texts and dialogue and e-mails with Geraci, I
20 believed that my best relationship was going to be with
21 him and I was holding out for those legal draft
22 documents.

23 Q. And so these documents with Mr. Henderson
24 just -- this is probably not a great phrase, but sort
25 of just died a slow death?

1 A. They did.

2 Q. And you never picked up -- Mr. Henderson
3 never picked up with you to have further discussions
4 after transmitting you the draft purchase agreement; is
5 that true?

6 A. I think he reached out to me, but I wasn't
7 prepared to make the deal with him because I did
8 believe and gave Larry Geraci every opportunity to make
9 good on our oral agreement on 11-2.

10 Q. Now, that takes us to Richard John Martin.
11 You entered into a purchase agreement with him in
12 March of 2017, correct?

13 A. Correct.

14 Q. So I'm going to have marked as the next
15 exhibit in order, Exhibit 20, a document entitled,
16 "Commercial Property Purchase Agreement and Joint
17 Escrow Instructions," and Exhibit 21 as Addendum No. 2
18 to that purchase agreement, and as Exhibit 22 an
19 Addendum No. 3 to that purchase agreement.

20 (Exhibits 20, 21, and 22 were marked for
21 identification.)

22 MS. PLASKETT: Do you have any clearer copies of
23 that?

24 MR. WEINSTEIN: Sadly, this is how it was produced
25 to us by Mr. Geraci. This is the best copy I have.

1 MS. PLASKETT: Okay. I found a date, 3-21-17.
2 That's what I was looking for was a date.

3 MR. WEINSTEIN: They are actually -- and the
4 reason -- just for clarity, I believe that these all
5 relate to the same purchase agreement. The addendum 2
6 and 3 were signed on subsequent dates, and so that's
7 why I marked them separately.

8 MS. PLASKETT: Okay. Thank you.

9 THE WITNESS: Can I take a moment. This headache
10 is killing me.

11 MR. WEINSTEIN: Sure. Let's take a break off the
12 record.

13 THE VIDEOGRAPHER: Going off the record at
14 2:23 p.m.

15 (Recess.)

16 THE VIDEOGRAPHER: We are back on the record at
17 2:31 p.m.

18 BY MR. WEINSTEIN:

19 Q. Mr. Cotton, you understand you're still under
20 oath?

21 A. I do.

22 Q. I've marked before the break Exhibits 20, 21,
23 and 22, which relate to a commercial property purchase
24 agreement and joint escrow instructions and three
25 addendums involving an offer from a Richard John

1 Martin II. Do you see that?

2 A. I do.

3 Q. Did you enter into an agreement with
4 Mr. Martin to sell the property that's the subject of
5 this litigation?

6 A. Yes.

7 Q. And is that your signature on the third --
8 well, on the third-to-last page of Exhibit 20 by the
9 date 3-21-17?

10 A. Yes.

11 Q. And that's where you accepted the offer,
12 correct?

13 A. Paragraph 42, yes.

14 Q. And then that's your signature on the last
15 page, which is addendum No. 1?

16 A. Correct.

17 Q. Okay. And as part of -- before I get to
18 addendums No. 2 and 3, the agreement, the offer, the
19 acceptance and addendum No. 1 are all marked as
20 Exhibit 20, correct?

21 A. Correct.

22 Q. And as part of that, you were to receive
23 \$100,000 an earnest money deposit that's nonrefundable?

24 A. Correct.

25 Q. Did you ever receive that money?

1 A. I have not.

2 Q. It also provides on addendum No. 1 that
3 you're going to receive 20 percent equity stake in the
4 business?

5 A. Correct.

6 Q. And 20 percent of profits on a monthly basis,
7 correct?

8 A. Correct.

9 Q. Or \$10,000, whichever is greater?

10 A. Correct.

11 Q. And then on April 15, 2017, you signed
12 addendum No. 2, which is marked as Exhibit 21?

13 A. Okay.

14 Q. Is that correct?

15 A. Exhibit 21 is my addendum No. 2, yes,
16 correct.

17 Q. So on April 15, 2017, you signed this
18 addendum No. 2 that modified or amended, if you'd
19 prefer, the agreement that's Exhibit 20?

20 A. Correct.

21 Q. And one of the things it did was add a
22 confidentiality provision?

23 A. Correct.

24 Q. And it also provided for the buyer to
25 immediately provide the seller with a \$50,000

1 nonrefundable deposit. Do you see that?

2 A. Correct.

3 Q. Did you ever receive that nonrefundable
4 deposit?

5 A. This nonrefundable deposit has not been paid.

6 Q. Have you received any money or compensation
7 in connection with this particular agreement with
8 Mr. Martin?

9 A. I have.

10 Q. And how much have you received?

11 A. Well, I have a confidentiality clause
12 scheduled in paragraph 7 that is litigation investment
13 money that is helping me defend this case until such
14 time I can refinance the property and pull equity out
15 of it.

16 Q. All right. So take a look at addendum No. 3.
17 And you signed addendum No. 3 on May 12, 2017?

18 A. On May 12, 2017 I signed addendum 3, yes.

19 Q. And what addendum No. 3 did is it allowed you
20 to disclose the -- this agreement in response to the
21 Geraci lawsuit. It's one of the things it did?

22 A. Correct.

23 Q. Because you had to in discovery, correct?

24 A. Correct.

25 Q. So you went to them and they agreed to allow

1 you to disclose the agreement, correct?

2 A. Correct.

3 Q. And then it also provides that you would not
4 have to pay the 200,000 fine for breach of the
5 confidentiality provision previously agreed to. Do you
6 see that?

7 A. Yes.

8 Q. And that's a reference to essentially not
9 holding you to the confidentiality clause that's in
10 addendum No. 2?

11 A. Correct.

12 Q. Which is item 7 in addendum No. 2.

13 A. Yes.

14 Q. To your understanding, do you still have some
15 other confidentiality provision that prevents you from
16 providing information regarding this agreement?

17 A. Not in force, no.

18 Q. But you have a confidentiality provision --
19 I'll make this clear. You have a confidentiality
20 provision that deals with essentially a separate but
21 related issue, which has to do with the funding of the
22 litigation.

23 A. Correct.

24 Q. Which is not something that is made part of
25 this agreement and addendums 1, 2, and 3.

1 A. No.

2 Q. That's true?

3 A. That is true. The confidentiality agreement
4 was originally because RJ Martin -- Richard Martin did
5 not want to be exposed.

6 Q. I understand. So to cut to the chase,
7 Mr. Geraci was able to learn about the agreement in the
8 context of the litigation and get a copy of this
9 agreement?

10 A. Correct.

11 Q. But you have not provided a copy of the
12 agreement that you have with Mr. Martin relative to the
13 funding of the litigation?

14 A. No.

15 Q. Is that true?

16 A. That's true.

17 Q. What is that agreement called?

18 A. It's a litigation investors agreement.

19 Q. And do you know when it was signed?

20 A. I don't recall.

21 Q. Do you know when it was signed in relation to
22 these three documents?

23 A. In or around this time, March 21st.

24 Q. Okay. And that relates to the funding of the
25 defense of the litigation, correct?

1 A. Correct.

2 Q. And it also -- and that's because you
3 understand it's part of the agreement that's been
4 marked as Exhibits 20, 21 and 22, the purchase
5 agreement really only goes forward if you're successful
6 in the litigation?

7 A. Correct.

8 Q. And so when you said that you've received
9 compensation or money in connection with the agreement,
10 what you were referring to was really the litigation
11 agreement?

12 A. That's correct.

13 Q. Not towards the purchase of the property?

14 A. Correct.

15 Q. And not towards any nonrefundable deposit?

16 A. Correct.

17 Q. So what's contemplated, to your
18 understanding, is that should you be successful in
19 litigation, this agreement that could then go forward
20 and then you would receive a nonrefundable deposit?

21 A. Could you repeat that.

22 MR. WEINSTEIN: Would you read it back. If I need
23 to rephrase it I will.

24 (Whereupon the record was read as follows:

25 Q. So what's contemplated, to your

1 understanding, is that should you be
2 successful in litigation, this agreement that
3 could then go forward and then you would
4 receive a nonrefundable deposit?)

5 BY MR. WEINSTEIN:

6 Q. I'll rephrase it.

7 So what you understand is your arrangement
8 with Mr. Martin is that if you're successful in the
9 litigation involving Mr. Geraci, then you would be able
10 to move forward with the purchase agreement that's
11 represented by Exhibits 20, 21, and 22, correct?

12 A. That is correct.

13 Q. And as part of that, then you would get a
14 nonrefundable deposit and all of the other terms and
15 conditions would apply?

16 A. Correct.

17 Q. So then I presume that you're -- I'm not
18 asking you to tell me whether you know that I presume
19 it.

20 You are providing Mr. Martin with updates
21 regarding the litigation under the purview of that
22 litigation investors agreement?

23 A. Correct.

24 Q. And as we sit here today, this agreement that
25 you've signed, Exhibits 20, 21, and 22 with Mr. Martin,

1 is still a valid and binding contract that exists
2 between the two of you, according to its terms?

3 A. Yes.

4 Q. When did you first have any contact with
5 Mr. Martin?

6 A. It would have been about the time I was
7 hearing from Henderson, it became apparent that other
8 parties were interested. There were numbers of people
9 that called me trying to get in and buy the property.
10 But Mr. Martin was brought to me by an individual named
11 Joel Hurtado, and he was an alternate. That would have
12 been done in early March.

13 Q. Who is Joe Hurtado?

14 A. He is the litigation investment broker.

15 Q. Is he the individual that's been attending a
16 lot of the court hearings?

17 A. Yes.

18 Q. Did you know Mr. Hurtado before he got
19 involved as a litigation investment broker in this
20 case?

21 A. Yes.

22 Q. Does that litigation investment agreement
23 apply to the various appeals that you've filed in the
24 Geraci versus Cotton case?

25 MS. PLASKETT: Objection. Privilege.

1 THE WITNESS: Yes. I have a work privilege
2 agreement with Hurtado.

3 BY MR. WEINSTEIN:

4 Q. You've represented to the court in those
5 filings that you're in forma pauperis.

6 A. Yes.

7 Q. Yet you're being funded for that litigation
8 by the individuals with whom you have the litigation
9 investors broker agreement.

10 A. To the extent that they saw it through a
11 superior court matter, yes. The appeals, and so on,
12 are basically being covered by me.

13 MS. PLASKETT: Again, objection. Work privilege.

14 BY MR. WEINSTEIN:

15 Q. I'll have marked as the next exhibit in
16 order, Exhibit 23, a two-page e-mail from Darryl Cotton
17 to Larry Geraci dated March 16, 2017, at 8:23 p.m.

18 (Exhibit 23 was marked for identification.)

19 Let me know whether you've seen Exhibit 23
20 before.

21 A. I have.

22 Q. Is that an e-mail that you prepared and sent
23 to Mr. Geraci on March 16, 2017, at 8:23 p.m.?

24 A. Yes. This is in response to his e-mail where
25 he asked to renegotiate the \$10,000 a month to drop it

1 for six months to \$5,000 a month, and I was a little
2 more frank in my return ply.

3 Q. Right. So what I've done is -- just because
4 we're going to run out of time, I skipped a number of
5 the e-mails that kind of speak for themselves and I've
6 advanced us to March 16, 2017. So -- just so you're
7 kind of following along, the -- so this was essentially
8 your response to Mr. Geraci's e-mail about the \$10,000
9 minimum monthly distributions that you understood you
10 were going to receive under the agreement?

11 A. Yes. He is -- tried to suggest that it be
12 lowered to 5,000 a month for the first six months, and
13 some of the language in the Austin's second contract
14 expressly stated that there was no partnering
15 agreement. So I was upset.

16 Q. Now, were any of the -- I'm not going to go
17 through everything in this e-mail. I guess the first
18 question is, is everything in this e-mail true and
19 correct, to the best of your knowledge, at the time you
20 sent it?

21 A. Yes.

22 Q. Were there -- you ask him at the bottom to
23 incorporate some terms into the revised drafts. Do you
24 see that?

25 A. Where are you referring?

1 Q. Look towards the bottom of the first page.
2 It says, "Please have these terms incorporated into
3 revised drafts."

4 A. Okay. I see it.

5 Q. And then there's a number of bullet items
6 with those terms. Do you see that?

7 A. I do.

8 Q. And they continue on to the next page?

9 A. Yes.

10 Q. Were any of those terms and conditions that
11 you wanted incorporated into the revised drafts new and
12 different from those that had been agreed to, to your
13 understanding, as of November 2nd, 2016?

14 A. On the second page, the first bullet does ask
15 for third-party accounting firm to be responsible for
16 calculating my ten-percent monthly equity
17 distributions. Until that point I had not asked for
18 that. Everything else would have been consistent with
19 what the original working documents asked for.

20 Q. The first bullet -- the last bullet point on
21 the first page where you asked for consent rights for
22 any material decisions, had that been discussed and
23 agreed to as of November 2nd, 2016?

24 A. It was suggested and recommended, Geraci, we
25 would use Gina Austin if we agreed to the terms, that

1 she would act on both our behalves.

2 Q. I'm looking -- I'm looking --

3 MS. PLASKETT: You're on the wrong page.

4 BY MR. WEINSTEIN:

5 Q. -- at the last bullet item on the first page.

6 MS. PLASKETT: Here, that's what he's talking
7 about.

8 BY MR. WEINSTEIN:

9 Q. So essentially a provision that gives you
10 consent rights for any material decisions, was that
11 something that had been agreed to as of November 2nd,
12 2016?

13 A. No.

14 Q. So that was new as well?

15 A. Yes.

16 Q. And then in the first full paragraph of the
17 second page, this is when you tell him about how you
18 found out today that the application for the property
19 was submitted in October, correct?

20 A. The first full paragraph on the second page?

21 Q. Yeah, second sentence.

22 A. Correct.

23 Q. And did Mr. Geraci respond to Exhibit 23?

24 A. He did.

25 Q. He texted you and asked for a meeting in

1 person, correct?

2 A. Correct.

3 Q. And then you responded to that request by
4 another e-mail, correct?

5 A. Correct.

6 Q. I'm going to mark as Exhibit 24 a one-page
7 e-mail dated March 17, 2017, at 2:15 p.m. from Darryl
8 Cotton to Larry Geraci.

9 (Exhibit 24 was marked for identification.)

10 A. Okay.

11 Q. And have you seen Exhibit 24 before?

12 A. I have.

13 Q. And is this an e-mail you sent to Mr. Geraci
14 on March 17, 2017, at about 2:15 p.m.?

15 A. Correct.

16 Q. And this was your e-mail response to his text
17 asking that you meet in person?

18 A. Correct.

19 Q. All right. And you told him you didn't --
20 effectively you didn't want to meet in person, you
21 wanted to do everything in writing from that point on?

22 A. Correct.

23 Q. Explain to me -- one of the things that you
24 contend in the litigation is that Mr. Geraci was not to
25 submit the CUP application until the zoning issue was

1 resolved, correct?

2 A. Correct.

3 Q. And he wasn't -- once the zoning issue was
4 resolved, he was to provide you with an additional
5 \$40,000 nonrefundable deposit to make it \$50,000 total,
6 correct?

7 A. Correct.

8 Q. And then he was supposed to submit the CUP
9 application?

10 A. Correct.

11 Q. And in fact it turned out the CUP
12 application, from your point of view, was -- strike
13 that -- the CUP application was submitted prior to
14 those two things happening, correct?

15 A. Correct.

16 Q. How did that harm you, to your understanding?

17 A. It harmed me in a lot of ways. It destroyed
18 my faith in our negotiations and our relationship
19 because I was clear with him and he was clear with me
20 that nothing could happen on the CUP application until
21 such time that the zoning was resolved to allow an MMCC
22 type of business. And it was what his connections with
23 the various people he knew and had relationships with
24 that would be able to get that CUP accepted for
25 submittal, but only after the zoning had been done. I

1 found that all to be untrue and stated I did not want
2 any kind of personal one-on-one oral conversation with
3 him. His word meant nothing to me.

4 Q. So I'm still going to focus on the harm
5 issue. You understood at all times that no CUP
6 application would be approved unless the zoning issue
7 was resolved, correct?

8 A. I understood that no CUP could be submitted
9 until the zoning issue was resolved.

10 Q. Okay. And you also knew that no CUP
11 application could be approved until the zoning issue
12 was resolved as well?

13 A. That's a fair statement.

14 Q. Because if you submitted the application and
15 there was a zoning issue, your understanding was it
16 would be summarily rejected?

17 A. Correct.

18 Q. So how did the early -- well, was the
19 zoning -- was the CUP application that was submitted
20 before you understood it was going to be submitted, was
21 that summarily rejected because the zoning issues had
22 not yet been resolved?

23 A. It was recommended to be denied in one of the
24 reports between DSD and Geraci.

25 Q. Because zoning was an issue that had to be

1 resolved before it could move forward?

2 A. Correct.

3 Q. But they -- the city was not going to approve
4 a CUP application if the zoning for that use wasn't
5 appropriate, correct?

6 A. Correct.

7 Q. So you have a CUP that's been submitted, you
8 have a zoning issue that hasn't yet been resolved, and
9 nothing is going to happen, no action is going to -- no
10 favorable action is going to be taken on the CUP
11 application until the zoning issue was resolved,
12 correct?

13 MS. PLASKETT: Objection.

14 THE WITNESS: That's speculation. I don't know
15 what the city's processes are there. I never did.

16 BY MR. WEINSTEIN:

17 Q. Come on, you know that the CUP application is
18 dead in the water until zoning is resolved, correct?

19 A. My understanding was it couldn't even be
20 accepted.

21 Q. All right. So zoning -- until zoning is
22 resolved, it couldn't even be accepted, right?

23 A. Correct.

24 Q. And your understanding was it wasn't even
25 going to be submitted until it was accepted?

1 A. Correct.

2 **Q. But it was submitted before you understood it**
3 **was going to be submitted, correct?**

4 A. It was submitted before I understood it was
5 going to be submitted.

6 **Q. And it was submitted before the zoning issue**
7 **was resolved, correct?**

8 A. It was submitted before our 11-2 agreement
9 and before zoning was resolved.

10 **Q. And how did that -- in the end how did that**
11 **harm you?**

12 A. It harmed me because the money that was
13 promised to me, the \$50,000, was money I was going to
14 use in my business. It was branch money that I needed
15 to be able to apply to costs I had with Inda-Gro at the
16 time, and those were the promises and assurances I was
17 made. They were not lived up to.

18 **Q. But you were going to get -- under your**
19 **understanding of the agreement, you were going to get**
20 **another \$40,000 once the zoning issue was resolved,**
21 **correct?**

22 A. No, that's incorrect. I was going to get the
23 other \$40,000 once the CUP application was submitted
24 and accepted for submittal.

25 **Q. All right. You didn't testify earlier that**

1 the zoning -- that you weren't going to get your -- the
2 remainder of your nonrefundable deposit until the
3 zoning issue was resolved?

4 A. No. It was going to be when the CUP was
5 accepted as a submittal.

6 Q. All right. And so the way -- as I understand
7 it, the way you were harmed was you should have gotten
8 the \$40,000 earlier?

9 A. I should have gotten the whole 50,000 at the
10 time, 10-31, that the CUP was submitted and accepted by
11 the city for that submittal process.

12 Q. What information do you have that the CUP
13 application that was submitted on October 31st, 2016,
14 was accepted by the city on October 31st, 2016?

15 A. I don't have that information with me, but I
16 have Techne's declaration between Geraci and Abhay
17 Schweitzer that officially the process began on
18 10-31-16 when, I believe her name was, Delores Gonzales
19 accepted it for the review.

20 Q. And you understood acceptance as something
21 different than the application being deemed complete?

22 A. That means they paid 8,000-plus dollars and
23 the city took it in on a zone that wasn't licensed for
24 an MMCC.

25 Q. Right. And that was money that Mr. Geraci

1 laid out?

2 A. Correct.

3 Q. And so -- but my question was, did you
4 understand when you were entering into your agreement
5 on November 2nd, 2016, this oral agreement that you've
6 described, that there was a difference between
7 submittal of an application and having an application
8 deemed complete by the city?

9 A. I wasn't aware of that process.

10 Q. I'm going to have marked as Exhibit 25 a
11 series of e-mails Bates numbered GER0024 through 0028.

12 (Exhibit 25 was marked for identification.)

13 Have you seen Exhibit 25 before?

14 A. I have.

15 Q. And I'm going to focus your attention on the
16 first page where there's two e-mails. The first one is
17 March 18th at 1:43 p.m. from Larry Geraci to you. Do
18 you see that?

19 A. I do.

20 Q. And then the second one is on Sunday,
21 March 19, 9:02 a.m., from you back to Mr. Geraci,
22 correct?

23 A. Yes.

24 Q. And these are just the -- is it correct that
25 these two e-mails are the e-mails in serial order, if

1 you will, following your having sent Mr. Geraci the
2 e-mail that's been marked as Exhibit 24?

3 A. Correct.

4 Q. All right. And you -- the first e-mail you
5 received from Mr. Cotton on or about the date and time
6 indicated; is that true?

7 A. Could you repeat that.

8 Q. Sure. The e-mail from Mr. Geraci to you was
9 received by you on or about the date and time
10 indicated, which was March 18th at 1:43 p.m.?

11 A. Correct.

12 Q. And then you -- is it correct that you sent
13 the e-mail that's the top of the first page of
14 Exhibit 25 to Mr. Cotton on March 19th at or about
15 9:02 a.m.?

16 A. Yes.

17 Q. And then the last paragraph of that
18 November -- March 19, 2017, e-mail you write, "If I do
19 not have a written confirmation from you by 12:00 p.m.
20 tomorrow, I will contacting the City of San Diego and
21 let them know that our agreement was not completed and
22 that the application pending on my property needs to be
23 denied because the applicant has no right to my
24 property."

25 Do you see that?

1 A. I do.

2 Q. Did you subsequently contact the city to
3 advise them of that?

4 A. Yes.

5 Q. And how did you do that? What was the method
6 you used?

7 A. I went to visit DSD and talked to Firouzeh
8 and told her that the grant deed was not going to be
9 transferred into Rebecca Berry's name or Geraci, for
10 that matter, and what did we have to do to amend
11 whatever the CUP application process was at the time.
12 I was getting information.

13 Q. And what did Ms. Tirandazi say to you?

14 A. She told me that Geraci, Rebecca Berry, owned
15 that CUP application and the only way that it could be
16 conferred over to me or my agent would have been with
17 their approval.

18 Q. And if you look at the first -- first e-mail,
19 if you will -- strike that.

20 There's an e-mail on the first page of
21 exhibit -- you know what, I haven't marked it yet.

22 I'm going to have marked as the next exhibit
23 in order a number of e-mails Bates numbered GER0014
24 through GER0020. And that will be marked as
25 Exhibit 26.

1 (Exhibit 26 was marked for identification.)

2 A. Okay.

3 Q. Have you had a chance to look at Exhibit 26?

4 A. I have.

5 Q. And are these e-mails exchanged between you
6 and Mr. Geraci?

7 A. Yes.

8 Q. All right. And so some of them we've seen
9 before, but I want to focus on the e-mail -- first on
10 the e-mail on the first page of Exhibit 26 on March 19,
11 2017, at 3:11 p.m. from Larry Geraci to you in the
12 middle of the page. Do you see that?

13 A. I do.

14 Q. And he essentially accuses you of changing
15 your mind every time we talk. Is that fair?

16 A. Correct.

17 Q. And then he responds to your prior e-mail in
18 which you essentially accused him of lying about the
19 status of the CUP application by referring you to an
20 e-mail from -- to and by from Tirandazi of the city
21 regarding the status of the CUP application. Do you
22 see that?

23 A. I see the reference, yes.

24 Q. It looks like it was cut and pasted into the
25 e-mail.

1 A. That's what it looks like to me, too.

2 **Q. Okay. And when you received this sort of**
3 **cut-and-paste e-mail from Mr. Geraci between the city**
4 **and Mr. Schweitzer, did that address your concerns**
5 **about the actual status of the application?**

6 A. Not at all.

7 **Q. Why not?**

8 A. Well, my concern was that the CUP application
9 had been submitted and accepted by the city for
10 submittal. My relationship with Geraci was that the
11 \$50,000 nonrefundable would be paid when the city
12 accepted the submittal of the CUP application, which
13 they did on 10-31.

14 My response to changing my mind every time we
15 talk reinforces the fact that the final contracts that
16 were promised on 11-2 wouldn't be necessary if the 11-2
17 agreement was final. So I was very upset when I got
18 this.

19 **Q. And you responded to him with the e-mail at**
20 **the top of Exhibit 26, correct?**

21 A. Correct.

22 **Q. And you sent that to him on -- you sent that**
23 **to Mr. Geraci on March 19, 2017, at or about 6:47 p.m.?**

24 A. Correct.

25 **Q. And then you ask for him to respond to you**

1 with a confirmation of what you requested or you were
2 going to e-mail the city, correct? It's the last
3 sentence, if you will, of the --

4 A. I would notice the city, correct.

5 Q. And did you do that?

6 A. Yes.

7 Q. And how did you do that, what method?

8 A. It would have been done by e-mail and, I
9 believe, letter. I'll have to check our records on
10 that, though, but they were noticed.

11 Q. I'm going to mark as Exhibit 27 a one-page
12 document that's an e-mail from Firouzeh Tirandazi to
13 Darryl Cotton dated March 21, 2017, at 8:54 a.m.

14 (Exhibit 27 was marked for identification.)

15 A. Okay.

16 Q. So did you -- have you seen Exhibit 27
17 before?

18 A. I have.

19 Q. Did you receive it from Ms. Tirandazi on
20 March 21, 2017, at or about 8:54 a.m.?

21 A. Yes.

22 Q. And was this after you had noticed the city,
23 as you had indicated you would do?

24 A. I can't speak to that directly. It states
25 that it was a follow-up to our conversation. So this

1 may have been as a result of our conversation only, not
2 a written memorialization of the fact.

3 Q. Okay. And just to refresh my memory if
4 you've already told me, what was your conversation with
5 Ms. Tirandazi that she was following up to?

6 A. That Berry was no longer a -- had an owner
7 interest in the property as a lessee or a tenant or an
8 owner, and there would not be a grant deed being
9 submitted in her name.

10 Q. Why would a grant deed have to be submitted
11 in her name?

12 A. That is one of -- the DS318 form that the
13 city requires, requires that the grant deed be current
14 to the application.

15 Q. So your understanding at the time you
16 received this e-mail was that in order for the
17 application to go forward, Ms. -- there would have to
18 be a grant deed in favor of Ms. Berry provided to the
19 city?

20 A. That was what I was told at the time by
21 Tirandazi, yes.

22 Q. And did that make sense to you at the time
23 she told you that?

24 A. It did.

25 Q. How would Rebecca Berry have a grant deed in

1 her favor if she never owned the property?

2 A. She would have been the agent of Geraci. So
3 our original understanding as of 11-2 is that Berry
4 would be getting the CUP with whoever the grant
5 deeds -- eventually was going to be in their name
6 authorizing the CUP under Berry. So I was not going to
7 authorize Berry.

8 Q. That I understand. What was your
9 understanding of what a grant deed is?

10 A. It's the grant deed to the title of the
11 property, which was currently in my name.

12 Q. So you understood that had the deal -- were
13 the deal to go forward with Geraci, you would actually
14 have to transfer the property to Berry and then produce
15 to the city a grant deed showing title in Ms. Berry?

16 A. Correct.

17 Well, that's actually called for --

18 MS. PLASKETT: I'm confused.

19 THE WITNESS: You'd have to read the May document,
20 which is right here if you want to give him a copy.

21 BY MR. WEINSTEIN:

22 Q. I'm going to have marked as the next exhibit
23 in order, Exhibit 28, a one-page e-mail Bates No.
24 BER0138.

25 (Exhibit 28 was marked for identification.)

1 A. Do you want to give the other exhibits so you
2 know?

3 MS. PLASKETT: Do you have this already?

4 THE WITNESS: This was not in the Techne docs.
5 You need to see it.

6 MS. PLASKETT: This has another page to it.
7 You've got it.

8 MR. WEINSTEIN: Yeah.

9 THE WITNESS: That's what I based it on.

10 BY MR. WEINSTEIN:

11 Q. Mr. Cotton, have you seen Exhibit 28 before?

12 A. I have.

13 Q. And did you receive this -- did you send this
14 e-mail to Larry Geraci on or about March 21st at
15 3:18 p.m.?

16 A. I did.

17 Q. And this was your attempt to communicate to
18 Mr. Geraci about your communications over the last
19 couple of days -- or the prior couple of days with the
20 project manager for the city, Ms. Tirandazi, correct?

21 A. Correct.

22 Q. And you tell him she made it clear that
23 there's no recommendation that the CUP application will
24 be denied, correct?

25 A. That's what she told me.

1 Q. And she told you that the application had
2 just passed the deemed complete phase and was entering
3 the review process, correct?

4 A. Correct.

5 Q. What did you understand that meant?

6 A. I didn't know.

7 Q. So you were essentially parroting what she
8 told you but didn't know what that meant?

9 A. Correct.

10 Q. And she confirmed that the application was
11 paid for in October of 2016, correct?

12 A. Correct.

13 Q. And you advise him in the last paragraph here
14 you're going to enter into an agreement with a
15 third-party seller, correct?

16 A. Yes.

17 Q. And that's the agreement with Mr. Martin that
18 you signed on March 21, 2017?

19 A. The third-party seller was Hurtado. He acted
20 as the broker.

21 Q. All right. So you were referring to an
22 agreement with a third party, you're referring to the
23 broker agreement?

24 A. Correct. Hurtado brought RJ Martin to -- as
25 an alternate to Geraci.

1 Q. Right. And didn't you actually sign a
2 purchase agreement with Mr. Martin on March 21, 2017?

3 A. I did.

4 Q. Did you sign a listing agreement with
5 Mr. Hurtado?

6 A. I did not.

7 Q. But he was the broker?

8 A. Correct.

9 Q. And the whole purpose of your contacting
10 Ms. Tirandazi over the prior two days was to
11 essentially end the CUP application that had been
12 submitted by Ms. Berry?

13 A. Correct.

14 Q. And what was your plan should that be
15 successful?

16 A. Well, it was RJ Martin's opportunity then to
17 assign a new CUP applicant.

18 Q. So it was your understanding that had that
19 been successful, Mr. Martin would then have gone
20 forward and submitted his own CUP application?

21 A. That was suggested, but it was first denied.
22 The city wasn't going to allow a second application.

23 Q. I understand that. But when you sent this
24 e-mail, that's what you understood was going to happen?

25 A. Yes.

1 Q. And was an actual application submitted by
2 Mr. Martin or was the idea rejected by the city before
3 it was --

4 A. The city initially rejected that.

5 Q. How did you communicate -- or how was it
6 communicated to the city that Mr. Martin would be
7 submitting a CUP application?

8 A. It was not communicated to the city that the
9 CUP application would be submitted by Martin. I had
10 Finch Thornton & Baird, as counsel at the time, demand
11 that the city accept the second application should we
12 be able to not negotiate the CUP that Geraci had.

13 Q. And did Finch Thornton & Baird communicate
14 with the city about that?

15 A. Finch Thornton & Baird did in fact
16 communicate with the city.

17 Q. And do you know what method they used to
18 communicate with them? Was it e-mail or
19 correspondence?

20 A. It was mail.

21 Q. Do you know when they did that?

22 A. I couldn't tell you. I can't recall the
23 exact dates there.

24 Q. Okay. Then your understanding was that the
25 city said we can't have two CUP applications at the

1 same time?

2 A. Running currently, no. That was our initial
3 reaction.

4 Q. And did you have an understanding as to
5 whether or not they would essentially accede to your
6 attempts to stop the CUP application that was being
7 processed for Ms. Berry?

8 MS. PLASKETT: Can you please repeat that.

9 MR. WEINSTEIN: Sure.

10 (Whereupon the record was read as follows:

11 Q. And did you have an understanding as to
12 whether or not they would essentially accede
13 to your attempts to stop the CUP application
14 that was being processed for Ms. Berry?)

15 THE WITNESS: I had no way of knowing whether or
16 not they would accede to my demand that they transfer
17 the CUP that Berry had in place to me or it would
18 require a second CUP. I had no way of knowing that.
19 This was all new to me.

20 BY MR. WEINSTEIN:

21 Q. I'm going to have marked as the next exhibit
22 in order, Exhibit 29, an e-mail thread Bates numbered
23 GER0035 through 0036.

24 (Exhibit 29 was marked for identification.)

25 Mr. Cotton, have you seen Exhibit 29 before?

1 A. I have.

2 Q. Is this an e-mail that you received -- well,
3 strike that.

4 Is this a series of e-mails on the first page
5 from you to Ms. Tirandazi and then from Ms. Tiran --
6 strike that.

7 There's an e-mail in the middle of the page,
8 March 16, 2017 at 4:55 p.m. from Ms. Tirandazi to you,
9 correct?

10 A. Correct.

11 Q. Did you receive it on or about that date and
12 time?

13 A. I did.

14 Q. And she provided you with a copy of the
15 ownership disclosure statement, correct?

16 A. Correct.

17 Q. Had you had a copy before then?

18 A. No.

19 Q. And you hadn't kept a copy from when you had
20 signed one at Mr. Geraci's office?

21 A. Mr. Geraci did not give me a copy of that.

22 Q. And she's told you here the project was
23 deemed complete on March 13, 2017. Do you see that?

24 A. I do.

25 Q. And is this how you learned that the project

1 was deemed complete or the application was deemed
2 complete?

3 A. Yes. Geraci was supposed to provide me with
4 copies of the signed ownership disclosure statement and
5 the full submittal package when it went in. This was
6 the first time I found out as of October 31st, 2016, it
7 had been submitted and I was not noticed until this
8 point right here, March 16th.

9 Q. And you didn't know what "deemed complete"
10 meant at that point; is that true?

11 A. I did not know what "deemed complete" meant,
12 but I do know what "accepted for the submittal process"
13 meant.

14 Q. And then you write back to Ms. Tirandazi on
15 March 21st at around 3:25 p.m., five days later,
16 approximately, in which you tell her that you fail --
17 you and Mr. Geraci failed to finalize the purchase of
18 your property to him?

19 A. Correct.

20 Q. And asking -- or telling her that the
21 application currently pending should be denied because
22 the applicants have no legal access to your property.
23 Do you see that?

24 A. I do.

25 Q. And was that your understanding of the

1 situation at the time?

2 A. Yes.

3 Q. And your intent on sending that was to make
4 sure that the CUP application that had been submitted
5 by Mr. Geraci through Ms. Berry would not be pursued by
6 the city?

7 A. Correct.

8 MR. WEINSTEIN: Let's take a break now. What time
9 is it? Let's break until 3:25, let's say.

10 THE VIDEOGRAPHER: Going off the record at
11 3:16 p.m.

12 (Recess.)

13 THE VIDEOGRAPHER: We are back on the record at
14 3:25 p.m.

15 BY MR. WEINSTEIN:

16 Q. Mr. Cotton, do you understand you're still
17 under oath?

18 A. I do.

19 Q. When you sent the e-mail that's been marked
20 Exhibit 29 to Ms. Tirandazi, you knew at the time that
21 Mr. Geraci was contending he had a valid and binding
22 written agreement with you; is that correct?

23 A. I did not know that.

24 Q. I'm going to have marked as next exhibit in
25 order, Exhibit 30, a March 22, 2017, letter from

1 Michael Weinstein of Ferris & Britton to Darryl Cotton.

2 (Exhibit 30 was marked for identification.)

3 A. Okay. I have it.

4 Q. Have you seen Exhibit 30 before?

5 A. I have.

6 Q. And this is a letter that you received from
7 me by e-mail on March 22, 2017?

8 A. March 22, 2017, yes.

9 Q. And so at least as of that date, you
10 understood that Mr. Cotton had an attorney and that --
11 I'm sorry -- Mr. Geraci had an attorney and that
12 Mr. Geraci was contending he had a valid, binding, and
13 enforceable agreement with you?

14 A. I understood based on this communication that
15 was his belief, yes.

16 Q. Now, I'm going to try and kind of go through
17 some things quickly. But is it correct that subsequent
18 to receiving the March 22, 2017, letter, you received a
19 communication from me about the necessity of posting a
20 notice of application on the property in connection
21 with obtaining the CUP?

22 A. I recall that. I'm not sure when that
23 occurred.

24 Q. Okay. Let me just have marked as Exhibits 31
25 and 32.

1 (Exhibits 31 and 32 was marked for
2 identification.)

3 31 is an e-mail from Michael Weinstein to
4 Darryl Cotton with attachments, Bates numbered GER0495
5 through 0497, and Exhibit 32 is an e-mail response from
6 Mr. Cotton to me Bates GER0031 on March 28, 2017, at
7 9:18 p.m.

8 Mr. Cotton, you've reviewed what's been
9 marked Exhibit 31?

10 A. Yes.

11 Q. And you received this e-mail from me on or
12 about March 28th at 11:24 a.m.?

13 A. Yes.

14 Q. And I advised you that my client was
15 continuing to pursue approval of the CUP?

16 A. Yes.

17 Q. And that there would be a notice of
18 application that needed to be posted at the property
19 and I attached a copy of that. Do you see that?

20 A. I do.

21 Q. And is Exhibit 32 your response to me?

22 A. Yes.

23 Q. And effectively you said that if any notices
24 were removed, you would call the police -- I'm sorry --
25 if any notices were posted, you would be immediately

1 removing them and calling the police. Do you see that?

2 A. Yes.

3 Q. Was a notice of application posted at the
4 property?

5 A. I don't recall if one was posted or not. I
6 never saw it.

7 Q. So you didn't tear it down when it was
8 posted?

9 A. No. I never saw it.

10 Q. Okay. Did you ever learn that a notice of
11 application had been posted?

12 A. I did eventually learn that one had been
13 posted, yes.

14 Q. Who did you learn that from?

15 A. It's in the Abhay Schweitzer declaration.
16 It's a 3,600-page declaration, and one of the exhibits
17 shows a time date stamp picture of that posting that he
18 sent to Tirandazi, yes.

19 Q. When you said it's a 3,600-page declaration,
20 what are you referring to?

21 A. It's in the -- I call it the Techne original
22 documents, and it's in the exhibits that were provided
23 from your side to us.

24 Q. All right. So --

25 A. And you'll find it in there.

1 Q. So it was -- I'm aware of the document, but
2 I'm not aware of a 3,600 page --

3 A. It's 3,600 pages.

4 Q. Right. It's not a declaration is my point.

5 A. You're right.

6 Q. So that's why I'm confused. So it was within
7 the document production.

8 A. There you go.

9 Q. And so you learned about it from the document
10 production?

11 A. Correct.

12 Q. All right. And prior to seeing the
13 photograph that was in the document production, you
14 just weren't aware that a notice of application had
15 been posted on your property?

16 A. I was not.

17 Q. I'm going to have marked as Exhibit 32 a --
18 an e-mail from Mr. Darryl Cotton to Larry Geraci with a
19 copy to me Bates numbered GER0192 through 0193.

20 MS. PLASKETT: Could I have a moment. I haven't
21 seen this document before.

22 MR. WEINSTEIN: Absolutely.

23 MS. PLASKETT: If you're going to need a minute
24 with this, could I just take one more quick break?

25 MR. WEINSTEIN: Sure. Let's take a break now,

1 take five minutes.

2 THE VIDEOGRAPHER: Going off the record at
3 3:32 p.m.

4 (Recess.)

5 THE VIDEOGRAPHER: We are back on the record at
6 3:37 p.m.

7 BY MR. WEINSTEIN:

8 Q. Mr. Cotton, I've marked as Exhibit 32 an
9 April 29, 2017, e-mail from you to Larry Geraci, Gina
10 Austin, Becky Berry, with a copy to me. Do you have a
11 copy of that in front of you?

12 A. You have it as 33?

13 Q. I'm sorry. It's 33, thank you. I mislabeled
14 it on yours.

15 MS. PLASKETT: I've got 32 here.

16 MR. WEINSTEIN: It's 33. Court reporter knows
17 what she's doing.

18 THE WITNESS: Yes, I am familiar with this.

19 (Exhibit 33 was marked for identification.)

20 BY MR. WEINSTEIN:

21 Q. Is this a document or e-mail that you
22 prepared and sent to those persons on April 29, 2017,
23 at about 9:01 p.m.?

24 A. Yes. I was very stressed out. I see I was
25 very emotional here and it shows. But yes, I provided

1 this.

2 Q. Throughout this e-mail you talk about Larry's
3 criminal scheme or criminal behavior? Do you see that?

4 A. I do.

5 Q. What, as you understood it, was the criminal
6 conduct that he was engaging in?

7 A. He introduced me to people that ran his
8 dispensary while I was there at his office, and it
9 turned out that these were not licensed dispensaries
10 and these people weren't legitimate employees. There
11 were threats made against me. I believe they had
12 something to do with Larry Geraci. There were threats
13 made to people that were assisting me that spoke to
14 Larry Geraci's reach and his full intent to get this
15 property at any and all costs.

16 Q. So this e-mail is dated April 29, 2017. What
17 threats had been made against you prior -- on or prior
18 to April 29, 2017?

19 A. I don't have the exact dates, but people that
20 knew Geraci told me it would be in my best interest to
21 settle with him.

22 Q. Wasn't that many, many months after this
23 e-mail was sent?

24 A. Not necessarily. I don't know, again, the
25 exact dates as it relates to this e-mail, but there was

1 a robbery at my property and I told the police at the
2 time that it looked like the driver was somebody that I
3 had met at Geraci's office.

4 Q. When was the robbery?

5 A. I don't have the exact date, but I believe it
6 was in early April.

7 Q. And the threats that you're talking about,
8 are these the threats that you mention in the -- in
9 this litigation in filings with the court that occurred
10 in December of 2017?

11 A. I don't have the exact dates, but I did
12 reference it in my other filings, yes.

13 Q. Okay. And as you sit here, do you know
14 whether or not you received any threats from anyone
15 prior to April 29, 2017, that are being referred to in
16 this letter?

17 MS. PLASKETT: Can you please repeat that.

18 BY MR. WEINSTEIN:

19 Q. Let me rephrase it.

20 You testified a moment ago that threats were
21 made against me, and I'm familiar with your filings in
22 this litigation of threats that you claim were made
23 against you in December of 2017, which is almost seven
24 months after this e-mail. So what I'm asking is
25 whether or not you have recollection of threats made

1 **against you prior to April 29, 2017.**

2 A. I believe the threats I'm referring to here
3 was the fact that the robbery occurred and when I was
4 able to chase the three young black -- armed black men
5 out of the yard, they got into a getaway car, and the
6 driver of that getaway car looked like an individual I
7 met at Geraci's office, and he took the getaway car to
8 a rental yard in Chula Vista not far from where his
9 dispensary was.

10 **Q. Whose dispensary?**

11 A. Geraci's.

12 **Q. And Geraci had a dispensary in Chula Vista?**

13 A. Yes.

14 **Q. Where in Chula Vista?**

15 A. I don't know where. I've never been there.
16 I've never visited any of his dispensaries.

17 **Q. And so you advised the police that that's**
18 **what you had seen?**

19 A. Correct.

20 **Q. And do you know whether an investigation was**
21 **done?**

22 A. No. But I gave the detective the information
23 and said -- because they did apprehend the driver --
24 they never did any follow-up. I recommended they check
25 the driver's cellular phone to Geraci's cellular phone

1 number, and to my knowledge, that never occurred.

2 Q. So your sole basis for believing that this
3 robbery was connected to Mr. Geraci was the person that
4 you saw driving the getaway car was somebody you
5 thought you had seen in his office?

6 A. Yes.

7 Q. And was -- describe this person for me.

8 A. I remember him being a somewhat Asian looking
9 male, six-foot, six-foot two, in that neighborhood, and
10 he was parked down the street in the getaway car when
11 the three young black men ran into the car and jumped
12 in, he immediately drove away, drove right past me on a
13 U-turn, I jumped in my truck, chased him and gave the
14 police the license plate number.

15 Q. And how old did this person appear to you,
16 your best estimate?

17 A. Early 30's.

18 Q. And what about weight, do you have an
19 estimate of his weight?

20 A. He was driving. It would be hard to say.
21 But he didn't look to be more than 150 to 180 pounds,
22 in that neighborhood.

23 Q. And you gave this description to the police?

24 A. I did.

25 Q. Was any of this caught on -- at least of the

1 getaway driver on videotape?

2 A. No. I don't have cameras on the street.

3 Q. Now, you also testified a moment ago that
4 there were threats to people assisting you. What
5 threats are you aware of that were made to people
6 assisting you that were made on or before April 29,
7 2017?

8 A. One would be Jeff Hagler who was working in
9 my office on the day of the robbery. He was tied up
10 and held at gun point.

11 Q. So this is -- so one of the items that you
12 believe fits in that category is the actual day of the
13 robbery, action against Mr. Hagler, your employee?

14 A. Correct.

15 Q. Anything else? Any other threats to people
16 assisting you that occurred on or before April 29,
17 2017?

18 A. Not that I can recall.

19 Q. Any that -- any threats to persons assisting
20 you that you believe -- well, that occurred after
21 April 29, 2017, that you believe Mr. Geraci had
22 something to do with?

23 A. Yes.

24 Q. When were those -- what were those?

25 A. Mr. Hurtado was threatened by a parallel by

1 the name of Shawn Miller. And Shawn Miller, in our
2 interview, told us, Joe, that he knew Geraci and that
3 curtailed -- it ceased any further dialogue with
4 Miller. Miller left and then notified Joe via text
5 that it would be in our best interest to settle with
6 Geraci.

7 **Q. And does Joe have a copy of that text?**

8 A. He does.

9 **Q. And do you have possession of a copy of that**
10 **text?**

11 A. Not here with me, but yes.

12 **Q. So if I asked you to produce it, you'd be**
13 **able to produce a copy?**

14 A. Yes. Unless that's covered under work
15 privilege.

16 MS. PLASKETT: It might be covered. I'm not sure.

17 MR. WEINSTEIN: I can tell you that it's not. I
18 mean if this is a third person that allegedly
19 threatened you at the behest of my client, then there's
20 nothing work product or privileged about anything.

21 MS. PLASKETT: I can't say somebody can produce
22 something. I'm not that person but --

23 MR. WEINSTEIN: Right. So you can be sure that
24 I'm going to ask you for a copy of the text.

25 THE WITNESS: I'd be happy to provide it as long

1 as it's not work privilege.

2 MR. WEINSTEIN: I'll let you deal with your
3 attorney on that but the point is, you should it.

4 MS. PLASKETT: Retain the text.

5 THE WITNESS: Because he reached out to me.

6 BY MR. WEINSTEIN:

7 Q. Does Mr. -- do you know how to spell Shawn
8 Miller -- how his first name is spelled?

9 A. I think it's -- do we know that?

10 MR. AUSTIN: I think it's S-h-a-w-n.

11 BY MR. WEINSTEIN:

12 Q. And you say he's a paralegal?

13 A. Yes.

14 Q. How do you know that?

15 A. He actually works in Jake's building.

16 Q. For whom?

17 MR. AUSTIN: He's an independent paralegal. He's
18 got his own little consulting company he calls it.

19 BY MR. WEINSTEIN:

20 Q. And when he came and made this, what you
21 called, a threat against Joe, did -- Joe talked to him
22 at the time, and this is the information that Joe was
23 able to obtain from him at the time?

24 A. Joe received texts right after the visit that
25 he has copies of that supports the recommendation from

1 Miller that Hurtado used his influence to make me
2 settle this with Geraci. And then I got a call from
3 Miller months later, weeks later, that indicated he was
4 trying to find out if Hurtado was my attorney. Clearly
5 that is not the case. And I have text copies of all
6 that.

7 **Q. Any other threats that were made against you**
8 **or people that assisted you that were made at any time**
9 **prior to today that you believe Mr. Geraci was**
10 **responsible for?**

11 A. Yes. The acknowledgement from Duane -- I'm
12 not positive of his last name. I believe it's in one
13 of the filings I did with FTB.

14 **Q. This is the African-American guy?**

15 A. Yes. And he also indicated that it would be
16 in my, quote, unquote, best interest to settle with
17 Geraci.

18 **Q. And how did you meet Duane?**

19 A. Duane is a commercial -- licensed commercial
20 cannabis grower who had an interest in the property.

21 **Q. When you say he had an interest in the**
22 **property, did he approach you?**

23 A. He did initially until such time that he
24 found out Geraci was -- and I were in negotiations to
25 agree to that sale. So his subsequent meeting was to

1 tell me to settle with Geraci.

2 Q. So you met him -- or he approached you while
3 you were in negotiations with Mr. Geraci?

4 A. For the first time, yes.

5 Q. And that would have been before November 2nd
6 of 2016?

7 A. Yes, I believe it was.

8 Q. And then there was a second meeting after the
9 litigation had happened, which would have been in
10 March 2017 or later --

11 A. Later.

12 Q. -- in which he -- did he approach you again?

13 A. Yes.

14 Q. Where did he approach you?

15 A. He asked to visit me at my office.

16 Q. How did he ask?

17 A. He reached out to me through Logan, one of
18 his associates who I also know, and he, Logan, and a
19 female that had been at the first visit showed up
20 again.

21 Q. And did they show up as a surprise or had
22 they arranged --

23 A. No. We arranged to meet.

24 Q. So Logan, the female, and Duane came to your
25 6176 Federal Boulevard?

1 A. Correct.

2 **Q. And did they -- what was -- you obviously**
3 **told them they could come. So what was the purpose of**
4 **the meeting?**

5 A. Well, they wanted to discuss with me
6 possible ongoing future business relationships at
7 alternate locations, but it really ended up being a
8 discussion fully centered on the 6176 property and how
9 I should settle with Geraci. It's in my, quote,
10 unquote, best interest to do so. There was no other
11 business opportunities discussed.

12 **Q. And how did they threaten you, if they did?**

13 A. It was implied, it was stated.

14 **Q. What was implied?**

15 A. That it's in my best interest from these
16 people, that that's -- that is a threat.

17 **Q. That's how you took it?**

18 A. Yes.

19 **Q. What were the words they used?**

20 A. As stated, it would be in my best interest to
21 settle with Geraci.

22 **Q. And what leads you to believe that that**
23 **was -- that statement or those statements were made at**
24 **the behest of Mr. Geraci or anybody acting on**
25 **Mr. Geraci's behalf?**

1 A. They have no other reason to make that
2 statement unless they were working with Geraci. They
3 have no interest in it.

4 **Q. So that's your conclusion?**

5 A. Correct.

6 **Q. Okay. So other than the fact that you**
7 **believe that they have no other reason for making these**
8 **statements unless they were working in concert with**
9 **Mr. Geraci, you have no other evidence that they were**
10 **working in concert with him; is that true?**

11 (Whereupon Ms. Plaskett and the witness
12 conferred outside the hearing of the
13 reporter.)

14 **Q. I'm asking -- it doesn't matter why you think**
15 **it. If you have a reason that you believe they were**
16 **acting in concert with Mr. Geraci besides what you've**
17 **already told me --**

18 A. I have work privilege, an understanding that
19 there is evidence that they were working with Geraci.

20 MS. PLASKETT: I can't help you. I don't know.

21 MR. WEINSTEIN: Let's do this. Let's take a
22 break.

23 THE VIDEOGRAPHER: Going off the record at
24 3:51 p.m.

25 (Recess.)

1 THE VIDEOGRAPHER: We are back on the record at
2 3:54 p.m.

3 BY MR. WEINSTEIN:

4 Q. Do you have any other information as to why
5 you believe that Mr. Geraci had something to do with
6 these threats against you or people who assist you
7 other than what you've told me?

8 A. I just don't want to make speculations right
9 now at this moment.

10 Q. Well, if it's a basis for your belief because
11 you've accused him of criminal conduct and you've
12 accused him of these things, I need to know what the
13 basis of your belief is, whether it pans out or not.

14 A. I don't want to speculate on the
15 relationships, as you've asked me to describe that,
16 until I know in fact they exist.

17 Q. Okay. So there's nothing you have to add to
18 what you've already said so far as to why you believe
19 Mr. Geraci was involved in any of these things?

20 A. With Duane in particular, there's
21 speculations I'm not willing to make at this time.

22 Q. You knew Duane before he contacted you,
23 correct?

24 A. I had met him once before, yes.

25 Q. Do you know if he's ever even met Geraci?

1 A. I don't want to speculate.

2 **Q. No. That's a question. Do you know whether**
3 **he's met him?**

4 A. He has.

5 **Q. And how do you know that?**

6 A. Because they operate in the same circles in
7 the cannabis community. There's a canna event, for
8 example, that Gina Austin was at. I was asked to
9 attend, I couldn't, Hurtado went on my behalf.

10 **Q. And Larry Geraci was there?**

11 A. I don't know who was there, but those are
12 typically where everybody gets together and discusses
13 that.

14 **Q. So you have no information -- you haven't**
15 **seen Mr. Geraci speak to Duane, correct?**

16 A. I've never seen Mr. Geraci out of his office.

17 **Q. Okay. Nobody has ever told you that they saw**
18 **Mr. Geraci or heard Mr. Geraci speak to Duane; is that**
19 **true?**

20 A. That's not true.

21 **Q. Who told you they heard Mr. Geraci speak to**
22 **or talk with Duane?**

23 A. I can't recall.

24 **Q. So how is it not true? So you recall**
25 **somebody telling you that, but you don't know who it**

1 is -- don't recall who it is?

2 MS. PLASKETT: That's work product. His attorney
3 knows who it is. He doesn't.

4 BY MR. WEINSTEIN:

5 Q. I don't want to know if it came from your
6 attorney.

7 A. It did.

8 Q. All right. Let's go back to Exhibit 33. So
9 we were talking about the basis for your accusing
10 Mr. Geraci of criminal behavior in this particular
11 e-mail on April 29, 2017. We're focused on that. So
12 you told me one of the things he did was, he introduced
13 you to people that ran, what you called, his
14 dispensaries and those dispensaries are being operated
15 illegally, correct?

16 A. They were not licensed.

17 Q. And you mentioned these threats that were
18 made against either you or people that assist you
19 that -- some that you mentioned were before April 29,
20 2017, correct?

21 A. Correct.

22 Q. Any other reason or information you have that
23 Mr. Geraci was engaged in criminal behavior at the time
24 you wrote this e-mail?

25 A. Not that I can recall at this time.

1 Q. In this e-mail is it correct that you are
2 making a settlement demand to Mr. Geraci?

3 A. I am.

4 Q. And you're telling him if you do not get the
5 money that you're demanding in the settlement, in
6 particular \$40,000, by Sunday, 6:00 p.m., that you're
7 going to send your answer and cross-complaint with
8 proof of filing to various entities, correct?

9 A. Correct.

10 Q. And you say -- let me just read the e-mail.
11 This is the last full paragraph of the e-mail. Quote,
12 "Now, assuming you continue to think I am too stupid to
13 defend myself and you can have your attorney ride
14 rough-shot over me, here's what is going to happen if I
15 do not get my \$40,000 by Sunday, 6:00 p.m. At
16 8:00 a.m. I have filing my answer and cross-complaint
17 with the court. Immediately thereafter I will be
18 sending a full packet with proof of filing, including
19 my supporting declaration, as exhibits to the
20 following: No. 1, the National Association of Enrolled
21 Agents, specifically, Cedric Calhoun who sits on the
22 Ethics and Professional Conduct Committee; No. 2,
23 California Society of Enrolled Agents. I already
24 reached out to them. I will be sending the packet to
25 Leslie Cain, the executive vice president, who will

1 forward to their ethics committee; No. 3, the IRS. I
2 reached out to them. All I have to do is e-mail them
3 the complaint package with a short explanation, and
4 they will forward to their internal ethics compliance
5 officer; 4, the San Diego city attorneys and all of the
6 previous cases brought against you by the City of
7 San Diego related to the operating and managing of
8 marijuana dispensaries. At the very least, Marsha
9 Kerr, deputy city attorney. On Monday, since I will be
10 at the courthouse, I will pull up the other cases to
11 find the contact information for each and every one of
12 the other city attorneys and let them know how you
13 continue to engage in unlawful behavior. However, how
14 you now use your employees to cover your tracks.
15 Further, I will speak with them earnestly and ask them
16 about what process is for me to make a complaint
17 against you and have them criminally prosecute you for
18 your actions against me. I will make myself available
19 to them completely to help them put you in jail where
20 you belong."

21 Do you see that?

22 A. I do.

23 Q. And what you were telling Mr. Geraci there
24 was that you were going to contact these different
25 groups and provide them with the information unless you

1 got paid that \$40,000 by Sunday at 6:00 p.m.?

2 A. Absolutely.

3 Q. And did you contact the National Association
4 of Enrolled Agents?

5 A. No.

6 Q. Did you contact the California Society of
7 Enrolled Agents?

8 A. No.

9 Q. Did you contact the IRS?

10 A. No.

11 Q. Did you contact any of the San Diego city
12 attorneys?

13 A. No.

14 Q. Did you take any action to initiate or
15 criminally complain about the actions of Mr. Geraci?

16 A. I was very upset when I wrote this.

17 Q. My question is, did you do any actions?

18 A. The answer is no.

19 Q. So what you did was you wrote this e-mail
20 threatening to do that, but never followed through --

21 A. I had the full intention when I wrote it, but
22 I did not follow through.

23 Q. In this e-mail when you're referring to the
24 draft answer and criminal complaint, you're actually
25 referring to what's been marked as Exhibit 7?

1 A. Correct.

2 Q. And just so I'm clear, you were threatening
3 by this e-mail to report not only Mr. Geraci, but Gina
4 Austin and Rebecca Berry as well?

5 A. Correct.

6 Q. And I suppose me as well?

7 A. Correct.

8 Q. I'm going to have marked as the next exhibit
9 in order, Exhibit 34, a three-page e-mail thread, and
10 in particular on the first -- top of the first page
11 there's an e-mail from Ms. Tirandazi to Darryl Cotton,
12 dated May 8, 2017, at 8:30 a.m.

13 (Exhibit 34 was marked for identification.)

14 Have you seen what's been marked as
15 Exhibit 34 before?

16 A. I don't recall seeing this, but it was sent
17 to me, so I believe it was something I saw.

18 Q. Because it would have been your practice to
19 open or look at your e-mails on a daily basis?

20 A. Yes.

21 Q. And you typically open e-mails shortly after
22 you receive them?

23 A. Yes.

24 Q. So at the time that -- well, you understood
25 this e-mail on May 8th was a report by Ms. Tirandazi to

1 you regarding the status of the CUP application at that
2 time?

3 A. Yes.

4 Q. And in the e-mail earlier on May 5, 2017, at
5 3:45 a.m. -- sorry -- 3:45 p.m. which starts at the
6 bottom of the first page and carries over to the second
7 page, you had told Ms. Tirandazi that you were under
8 the understanding that the CUP application was still
9 being processed, correct?

10 A. Yes.

11 Q. That's what you understood at that time you
12 wrote that e-mail?

13 A. Yes.

14 Q. I'll have marked as the next exhibit in
15 order, Exhibit 35, a one-page document that's an e-mail
16 thread with e-mails on Monday, May 15, 2017, from
17 Mr. Cotton to Ms. Tirandazi and from Ms. Tirandazi to
18 Mr. Cotton.

19 (Exhibit 35 was marked for identification.)

20 Looking first at Exhibit 35, have you seen
21 the e-mails that are in Exhibit 35 before?

22 A. I have.

23 Q. And looking at the one that was on -- that's
24 dated May 15, 2017, at 3:51 p.m., did you receive that
25 e-mail from Ms. Tirandazi around that date and time?

1 A. Yes.

2 Q. And you understood when she sent this to you
3 that if the properties changed ownership, revised
4 information would need to be provided, including a new
5 grant deed, correct?

6 A. Correct.

7 Q. And had you advised her the properties
8 changed ownership?

9 A. I did.

10 Q. And who did you advise her ownership had
11 changed from, from whom to whom?

12 A. The property was going to be sold to Richard
13 Martin.

14 Q. Did you make clear that it had not yet
15 happened?

16 A. There was a cloud on title, and this
17 litigation was clouding that transfer.

18 Q. So you made clear to Ms. Tirandazi that you
19 still were the record owner of the property, correct?

20 A. It had not transferred title yet. So at that
21 moment, yes, I was still the record owner of the
22 property.

23 Q. Did you tell that to Ms. Tirandazi?

24 A. Yes.

25 Q. All right. So did you understand this then

1 as -- well, what did you understand you were to do in
2 response to this e-mail, if anything?

3 A. In my response to her, I'm discussing
4 procedurally they couldn't accept the updated ownership
5 disclosure statement on behalf of Richard Martin, and
6 that's when we started talking about Andrew Braxton
7 versus the City of San Diego. And at that time I
8 was --

9 MS. PLASKETT: You're not answering his question.

10 THE WITNESS: Then maybe misunderstood the
11 question.

12 BY MR. WEINSTEIN:

13 Q. Sure. I was asking you when you received the
14 e-mail on May 15th, what did you understand you needed
15 to respond to, if anything?

16 MS. PLASKETT: This one.

17 BY MR. WEINSTEIN:

18 Q. The one at the bottom.

19 A. There was nothing to respond to at this time.

20 Q. But then you sent her an e-mail -- strike
21 that.

22 It appears as though the first e-mail was
23 from her to you.

24 A. Let's see. That's dated the 3-15 at 3:51.
25 It was afterwards.

1 Q. Let me restate that.

2 The e-mail at the top -- most of the time
3 these e-mails are in reverse chronological order. The
4 e-mail at the top of this page is May 15, 2017, at
5 3:12 p.m. from you to Ms. Tirandazi, correct?

6 A. Correct.

7 Q. And you sent it to her on or about that date
8 and time?

9 A. Yes.

10 Q. And at that time you knew that -- from her
11 that they could not accept the updated ownership
12 disclosure statement reflecting Richard Martin on the
13 CUP application, correct?

14 A. Correct.

15 Q. And had an ownership disclosure statement
16 with Mr. Martin's name on it been submitted?

17 A. No, it had not.

18 Q. So how did she know about it? Is it
19 something you had talked to her about?

20 A. Yes.

21 Q. And then you were advising her about the
22 Andrew Braxton case, correct?

23 A. Correct.

24 Q. Did you read that case?

25 A. I did.

1 Q. And at the time that you had this e-mail
2 exchange with her, did you advise her that you were
3 still the record owner of the property?

4 A. I did.

5 Q. And then she wrote back to you then at
6 3:51 p.m., which is the e-mail at the bottom.

7 A. That's correct.

8 Q. And said if the property has changed owners,
9 that you need to provide this additional information to
10 her, including a new grant deed, correct?

11 A. Correct.

12 Q. Now let's mark as the next exhibit in order,
13 Exhibit 36, a May 19, 2017, letter from the City of
14 San Diego to Abhay Schweitzer.

15 (Exhibit 36 was marked for identification.)

16 MS. PLASKETT: It's the one letter?

17 MR. WEINSTEIN: One letter with attachments.

18 THE WITNESS: Okay.

19 BY MR. WEINSTEIN:

20 Q. Previously in your deposition testimony, you
21 had referred to this May 19, 2017, letter. Do you
22 remember that?

23 A. I do.

24 Q. Why were you referring to this letter in your
25 deposition testimony?

1 A. Third paragraph down, "City staff has been
2 informed that the project has been sold. In order to
3 continue the processing of your application with your
4 project resubmittal, please provide a new grant deed,
5 updated disclosure statement, and a change of financial
6 responsible party form if the financial responsible
7 party has also changed."

8 **Q. Do you know how the city staff had been**
9 **informed that the project site had been sold?**

10 A. I told them.

11 **Q. So you told them that it had been sold from**
12 **you to Mr. Martin?**

13 A. Yes.

14 **Q. So you -- and where did you see a copy of**
15 **this letter?**

16 A. This -- I don't remember how I got a copy of
17 this letter. I believe it might have been --

18 **Q. Didn't you get it when you went down to look**
19 **at the file?**

20 A. -- in the declarations maybe. It could have
21 been publicly accessed through the file as well. I
22 don't remember, though.

23 **Q. But you understood at that time that you had**
24 **actually informed the city staff that the project site**
25 **had been sold?**

1 A. Yes.

2 Q. And you knew when you submitted -- or when
3 you told the city staff this prior to this May 19,
4 2017, letter, that Mr. Cotton -- the Mr. Geraci
5 believed the property had still been validly sold to
6 him?

7 A. I'm not -- could you repeat that.

8 Q. Sure. When you told the city staff that the
9 project site had been sold, you said you were referring
10 to your sale to Mr. Martin, correct?

11 A. Correct.

12 Q. Which was a sale that was conditional upon
13 you prevailing in your litigation with Mr. Geraci,
14 correct?

15 A. It would have been.

16 Q. And you hadn't yet prevailed in that
17 litigation from Mr. Geraci, had you?

18 A. I canceled our contract with Geraci when I
19 never had either the contracts that were supposed to
20 have been developed by Austin to me that we had both
21 signed off on. So I ceased that sale.

22 Q. So did that, in your mind, satisfy your
23 condition to allow you to proceed with the sale to
24 Richard Martin?

25 A. It did.

1 Q. So did you advise Richard Martin of that?

2 A. Did I advise him of what?

3 Q. That he -- that this condition had been
4 satisfied and he can now pay your \$200,000
5 nonrefundable deposit and move forward with the sale?

6 A. No. Because the grant deed wasn't available
7 to Richard Martin until such time that we completed the
8 litigation. There was ongoing litigation.

9 Q. Right. So your sale to Mr. Martin was
10 conditional upon you prevailing in the litigation
11 against Mr. Geraci, correct?

12 A. I would say yes.

13 Q. And until that litigation was completed and a
14 winner was declared, you weren't going to be
15 transferring title to Mr. Martin pursuant to your sales
16 agreement with him; is that correct?

17 A. I would have transferred title had there not
18 been a lis pendens on the property.

19 Q. You understood that the lis pendens prevented
20 you from transferring title?

21 A. At the time I sold it to Richard Martin,
22 there was not a lis pendens on the property. It was
23 put on the following day.

24 Q. Do you understand that you can transfer
25 property even if it's subject to a lis pendens?

1 A. That wasn't the agreement that Richard Martin
2 had made with me.

3 MS. PLASKETT: Listen to the question.

4 THE WITNESS: Okay.

5 MR. WEINSTEIN: Go ahead and read it back, please.

6 I'm just asking for your understanding.

7 (Whereupon the record was read as follows:

8 Q. Do you understand that you can transfer
9 property even if it's subject to a lis
10 pendens?)

11 THE WITNESS: I did not understand that.

12 BY MR. WEINSTEIN:

13 Q. All right. So you believed at the time that
14 the lis pendens prevented you from transferring title
15 to Mr. Martin?

16 A. Yes.

17 Q. When did you make Mr. Martin -- Mr. Martin
18 was aware of the litigation between you and Mr. Geraci
19 at the time you entered into the purchase and sale
20 agreement with him, correct?

21 A. Correct.

22 Q. So did you understand at the time that you
23 transferred -- or that you entered into that purchase
24 and sale agreement with Mr. Martin that any transfer to
25 him would be subject to the litigation, irrespective of

1 whether or not a lis pendens had been recorded?

2 MR. AUSTIN: I'm sorry. Could we have a minute?

3 MR. WEINSTEIN: Sure. Let's take a break.

4 THE VIDEOGRAPHER: Off the record at 4:15 p.m.

5 (Recess.)

6 THE VIDEOGRAPHER: We are back on the record at

7 4:22 p.m.

8 BY MR. WEINSTEIN:

9 Q. Mr. Cotton, thanks for bearing with us. I
10 know it's been a long day. I have marked as Exhibit 37
11 a five-page document, Darryl Cotton's Declaration in
12 Support of Motion for Expungement of Notice of Pendency
13 of Action that was served by you in this case. It is
14 without the voluminous exhibits. So there are exhibit
15 references in here, but I've just made a copy of the
16 portion of the declaration that you prepared and
17 signed.

18 (Exhibit 37 was marked for identification.)

19 Have you seen Exhibit 37 before?

20 A. I have.

21 Q. And is everything --

22 MS. PLASKETT: I don't have it. Sorry.

23 BY MR. WEINSTEIN:

24 Q. And this was your declaration in support of
25 your motion to expunge the lis pendens?

1 A. Yes.

2 Q. And is everything that you stated in there of
3 your personal knowledge, was that true and correct at
4 the time you signed this declaration on page 5 on or
5 about April 4, 2018?

6 A. Yes.

7 Q. And that is your signature?

8 A. Yes.

9 Q. I'm going to -- doing my best to make sure
10 we're done by 5:00. So there were a number of
11 declarations that have been submitted by what I'll call
12 third-party witnesses in this case.

13 So Joe Hurtado we've already discussed. Who
14 is Shawna Salazar?

15 A. Shawna Salazar is my girlfriend.

16 Q. And is she presently your girlfriend?

17 A. Yes.

18 Q. And was she during the period of time since,
19 let's just say, July 1st of 2016 through the present
20 date?

21 A. Yes, she is.

22 Q. And is she somebody who would be a witness to
23 the emotional distress you're claiming as a result of
24 this litigation?

25 A. Certainly.

1 Q. And you have her contact information?

2 A. I do.

3 Q. And Cindy Jackson, who is she?

4 A. She has worked for me for almost 20 years.

5 Q. So she's a bookkeeper that helped create
6 Inda-Gro?

7 A. Yes.

8 Q. And she has, I assume, knowledge of the
9 operation of that business?

10 A. Yes.

11 Q. Does she -- is she on site or is she an
12 independent person?

13 A. She's on site.

14 Q. So she actually is employed by Inda-Gro?

15 A. She's independent. I haven't had the money
16 to pay her. She's just there because she wants to
17 still be there and help me.

18 Q. Is she also a witness to the emotional
19 distress that you're claiming as a result of this
20 litigation?

21 A. Certainly, yes.

22 Q. And you have her contact information as well?

23 A. I do.

24 Q. And then Mr. Hurtado would also be a witness
25 regarding your emotional distress concerning or arising

1 from this litigation; is that true?

2 A. That is correct.

3 Q. And that at least since -- you've known him
4 since even before he got involved in funding the
5 litigation, correct?

6 A. Yes.

7 Q. And you have his contact information?

8 A. Yes.

9 Q. Who is Cheryl Morrow?

10 A. She is a -- I call them friends of the farm,
11 people that come down and assist and watch us develop.
12 She runs the San Diego Monitor. She's the editor of
13 that newspaper.

14 Q. How frequently do you interact with
15 Ms. Morrow?

16 A. A few, four times a year maybe.

17 Q. Does she have any knowledge of your emotional
18 distress you're claiming as a result of the -- this
19 litigation?

20 A. I would say she does, yes.

21 Q. And do you have her contact information?

22 A. Yes.

23 Q. When I say "contact information," I mean
24 name, address, cell phone number, and e-mail.

25 A. I do.

1 **Q. And then who is Michael Scott McKim?**

2 A. Michael Scott McKim is an independent farmer
3 who helps around our farm, and he would also be a good
4 source for testifying to the emotional distress I've
5 been under.

6 **Q. So he would also be somebody that you have
7 contact information for?**

8 A. Oh, yes.

9 **Q. Okay. Now, I think in your discovery
10 responses you indicate you're currently employed by
11 three different companies, Inda-Gro Lighting, Fleet
12 Systems, and 151 Farms; is that correct?**

13 A. I serve in a capacity of all three of those
14 businesses, yes.

15 **Q. Are you the owner of all three business?**

16 A. I am.

17 **Q. Are you the sole owner of all three
18 businesses?**

19 A. Yes.

20 **Q. Are they all sole proprietorships?**

21 A. They are a corporation under Dalbercia, Inc.

22 **Q. Spell that.**

23 A. D-a-l-b-e-r-c-i-a, Inc.

24 **Q. Dalbercia, Inc.?**

25 A. It's a California corporation with the dba

1 Inda-Gro.

2 Q. And Inda-Gro is I-n-d-a dash G-r-o?

3 A. Correct.

4 Q. And is it dba Inda-Gro Lighting?

5 A. It's just Inda-Gro Lighting, I believe, yes.

6 Q. And that's a dba that you've registered with
7 the San Diego County office of the recorder?

8 A. Yes, correct.

9 Q. Wherever you -- do you have also have dba's
10 for Fleet Systems and 151 Farms?

11 A. 151 Farms is not a business entity at this
12 time. It's an ideology. It represents a belief in
13 farming both cannabis and food for one community. It
14 has not been formed.

15 Q. There was a -- I thought I saw something
16 that -- like maybe it was on a website about
17 151 Enterprises, Inc., a 501(c)3 nonprofit?

18 A. There was some discussion about setting it up
19 that way early on, but we've never formed it as a
20 501(c)3 or for profit yet.

21 Q. So 151 Enterprises or 151 Farms. Is there --
22 anything else with the "151" name in it is not yet an
23 actual formed entity?

24 A. Correct.

25 Q. So these are just, as you would put it,

1 ideologies or concepts for what you might be able to do
2 in the future?

3 A. That is correct.

4 Q. And no dba for 151 Farms?

5 A. Correct.

6 Q. And then Fleet Systems, what kind of business
7 is that?

8 A. It's a generator repair company. But I do
9 very little of that anymore. On occasions some of the
10 news vans and things will come in and want us to work
11 on their vans' generators, and we still will. But I
12 don't advertise for that.

13 Q. And is Ms. -- is it Jackson?

14 A. Uh-huh.

15 Q. Is she the bookkeeper for both Fleet Systems
16 and Inda-Gro Lighting?

17 A. So.

18 Q. So in effect, she's the bookkeeper for
19 Dalbercia, Inc.?

20 A. Correct.

21 Q. And are there any other businesses besides
22 Inda-Gro Lighting and Fleet Systems that are operating
23 under the Dalbercia, Inc. umbrella?

24 A. No.

25 Q. What's Urban Farming Technologies?

1 A. Urban Farming Technologies was a concept that
2 would provide just urban farming ideologies and
3 direction. Again, it never was formed but it was the
4 precursor to 151 Farms.

5 Q. Because actually saw a dba for that
6 registered by you in your individual name.

7 A. Correct. It wasn't anything I pursued.

8 Q. Okay. So you may have formed a dba, but it
9 never got actually formed as its own independent
10 entity?

11 A. No, it didn't.

12 Q. And it morphed into 151 Farms which --

13 A. That's correct.

14 Q. And that's still never been formed?

15 A. Correct.

16 Q. And I also noticed in your discovery
17 responses that it says you live at 6176 Federal
18 Boulevard. So do you actually reside there?

19 A. Yes.

20 Q. So is there living space within the office
21 there?

22 A. There is.

23 Q. Have you been living there for at least five
24 years?

25 A. Yes.

1 Q. Now, in your discovery responses you mention
2 various doctors that you've seen. I'm not going to go
3 through the list, but I take it you have contact
4 information for all of those doctors?

5 A. Correct, I do.

6 Q. In your interrogatory responses -- and I
7 realize I'm going fast, but you --

8 MS. PLASKETT: Are these form rogs or special
9 rogs?

10 MR. WEINSTEIN: Form rogs.

11 BY MR. WEINSTEIN:

12 Q. This is actually the response to form rog 6.4
13 where you're asked about essentially any examination or
14 consultation you received from a medical provider that
15 you attribute to the incident as that's defined in the
16 interrogatories, and you've mentioned a visit to
17 Scripps Mercy on December 12, 2017, correct?

18 A. Oh, yes.

19 Q. That was right after the hearing on your
20 attempt to obtain a temporary restraining order,
21 correct?

22 A. Correct.

23 Q. And you had an emergency room visit and you
24 were diagnosed with a TIA, correct?

25 A. Yes.

1 Q. Who was the doctor?

2 A. I can't recall.

3 Q. Do you have any paperwork from that visit at
4 your office?

5 A. I do.

6 Q. And then there's a Dr. Candido?

7 A. Yes.

8 Q. And I believe I recognize that -- a
9 declaration of Dr. Candido in some documents that were
10 filed with the court. Does Dr. Candido -- what kind of
11 doctor is he or she?

12 A. She. She's an M.D.

13 Q. And it indicated her address was a private
14 residence. Does she work out of her home?

15 A. I'm not positive if she's gotten a job yet.
16 She was interviewing.

17 Q. So how did you happen to be seen by -- looks
18 like you were seen by her as a result of a request by
19 Mr. Hurtado?

20 A. Correct. I was at his house and I was losing
21 it.

22 Q. And so he knew Dr. Candido?

23 A. He was concerned and recommended I go to the
24 hospital, and I did not want to go. He called in
25 Dr. Candido as a personal favor.

1 Q. And if I'm reading from the interrogatory
2 responses, it looks like you saw her on December 13,
3 2017?

4 A. I will defer to that interrogatory.

5 Q. And it says here -- I'll just read it --
6 quote, "Emergency consultation requested by Mr. Hurtado
7 after defendant physically assaulted him; fully
8 described in declaration of Dr. Candido provided to
9 plaintiff in pleadings."

10 Who does "defendant" refer to?

11 A. I assaulted Hurtado. It was a result of him
12 pulling his financial assistance for further
13 litigation.

14 Q. So you assaulted Mr. Hurtado, and as a
15 result, he suggested you be seen by a physician?

16 A. Yes.

17 Q. And that, again, occurred presumably on
18 December 12th or December 13th of 2017?

19 A. I'm not positive of the dates. But it's the
20 day that Dr. Candido showed up.

21 Q. So he actually arranged for Dr. Candido to
22 look at you?

23 A. As a favor, yes. I was not going to go to
24 the hospital.

25 Q. And you said he pulled his financing of the

1 **litigation at that point in time?**

2 A. I wasn't getting any support from Judge
3 Wohlfeil, and I couldn't get the third-party
4 administrator for a temporary restraining order. So
5 no, I was unsuccessful. He was done.

6 **Q. Why did you assault Mr. Hurtado? That's what**
7 **I don't understand.**

8 A. I wasn't thinking clearly.

9 **Q. But I thought you had testified that he had**
10 **pulled his litigation support. Is that accurate?**

11 A. That was the conversation we were having,
12 yes.

13 **Q. Okay. Because you had been unsuccessful in**
14 **these hearings, he didn't want to put any more money**
15 **into the litigation?**

16 MS. PLASKETT: Vague. Objection. Misstating the
17 evidence, previous testimony.

18 BY MR. WEINSTEIN:

19 **Q. Well, is that true?**

20 A. That was the crux of it. He was pulling any
21 additional financing and he was determined to just
22 extricate himself from the case.

23 **Q. But that has not happened now, he's still**
24 **involved?**

25 A. He agreed to stay on.

1 **Q. Who is Dr. Marcus Ploesser?**

2 A. He's a psychiatrist.

3 **Q. And when did you see Dr. Ploesser?**

4 A. I don't remember the exact date. It's a
5 couple times that we've had discussions. He was
6 concerned, too.

7 **Q. Did you actually see him at his office?**

8 A. I visited him at Hurtado's house, another
9 request was made for him to visit me there, and then we
10 went offsite, we had dinner. I spent like two hours
11 with him discussing the stresses, in fact I couldn't
12 eat, been vomiting, losing weight, the financial and
13 emotional stresses have been piling on. And he was
14 recommending that I get treatment, and I told him that
15 at this point I couldn't afford it and had I been able
16 to at least get some money out of the equity in my
17 property, I would have applied it for some relief to
18 Hurtado and certainly for some relief for me to have
19 that type professional care.

20 **Q. So you saw Dr. Ploesser at least -- you had
21 this conversation with him on one occasion?**

22 A. I think two now, we've discussed, and he
23 wants me to have professional treatment.

24 **Q. What I'm focusing on is your visits with him.
25 You mentioned a two-hour dinner.**

1 A. Correct.

2 Q. And was there a second occasion?

3 A. I talked to him on a second occasion, yes.

4 Q. By phone?

5 A. Yes.

6 Q. First occasion, when was that?

7 A. I don't remember the exact date.

8 Q. Was it before or after you saw Dr. Candido?

9 A. That would have been after.

10 Q. So it would have been after December 12 of
11 2017?

12 A. What was that date again?

13 Q. December 12, 2017.

14 A. Yes, it was after.

15 Q. And again, this was for problems you were
16 having as a result of the litigation in this matter?

17 A. Yes.

18 Q. And the stress from the litigation?

19 A. Yes.

20 Q. All right. Has he provided any kind of
21 report to you?

22 A. He does. I don't -- he has written a report
23 that does include -- and I believe it's in our
24 exhibits.

25 Q. I saw Dr. Candido's declaration, but you

1 believe you've produced -- do you know whether
2 Dr. Ploesser has provided a declaration?

3 A. I don't recall.

4 Q. So all the treatment that you've sought as a
5 result of the litigation has occurred in December of
6 2017 or afterward?

7 A. Correct.

8 Q. And this litigation began in March of 2017?

9 A. Correct.

10 Q. And up until December of 2017, you were
11 not -- it was not -- that you did not need to go see
12 any doctors for treatment?

13 A. No. I felt I was being adequately defended
14 by Finch Thornton & Baird, and I thought Geraci had my
15 back -- or Hurtado had my back. And as of December, it
16 just got overwhelming.

17 Q. When you say it got overwhelming, essentially
18 not having -- having potentially financing of the
19 litigation pulled?

20 A. Correct.

21 Q. And also having to deal with representing
22 yourself pro se?

23 A. Correct.

24 Q. And those are the things that you believe
25 caused you to have to seek treatment from Dr. Ploesser

1 and Dr. Candido and go to Scripps Mercy Hospital?

2 A. I was trying to see what I could afford to
3 get treatment on, but there was no way I could afford
4 either the litigation assistance or the medical
5 assistance that I really needed.

6 Q. There is an indication that you've been
7 taking some antidepressants. What is -- it's
8 called Keppra?

9 A. Keppra is not an antidepressant. It's an
10 anticonvulsant.

11 Q. Okay. And how long have you been taking
12 that?

13 A. Five years.

14 Q. So that's something that you had -- that
15 you've been taking as a result of a physical condition
16 you've had even before this dispute?

17 A. Yes. I have nocturnal seizures on occasion,
18 which are also assisted by medical cannabis and
19 specific strains.

20 Q. So you treat this seizure condition with
21 the -- I'm going to say it wrong, K-e-p --

22 A. Keppra, K-e-p-r-a.

23 Q. -- with Keppra and with various varieties of
24 medical cannabis?

25 A. Yes.

1 Q. And you've been doing that for more than five
2 years?

3 A. Yes.

4 Q. And have you taken any other medication to
5 treat those conditions?

6 A. No.

7 Q. Have you had to take any medication as a
8 result of anything that's arisen in the litigation?

9 A. It's recommended by Dr. Ploesser that I seek
10 additional treatment, and I have not been able to
11 afford it.

12 Q. But in terms of medication, has Dr. Ploesser
13 or Dr. Candido prescribed any medications for you?

14 A. They have not.

15 Q. When you were at Scripps, did they prescribe
16 any medications for your TIA?

17 A. They have not.

18 Q. So the only medications you're currently
19 taking are those that you've been taking for at least
20 five years for -- and that's the Keppra and the medical
21 cannabis?

22 A. Correct.

23 Q. Are you --

24 Let's go off the record for one moment.

25 THE VIDEOGRAPHER: Going off the record at

1 4:41 p.m.

2 (Discussion off the record.)

3 THE VIDEOGRAPHER: We are back on the record at
4 4:42 p.m.

5 MR. WEINSTEIN: While we are off the record, I had
6 a brief discussion with counsel about my views related
7 to damages that may or may not be protected by the
8 secured-litigation financing agreement, and I've
9 indicated that I'll communicate with counsel about that
10 and we'll see if we can attempt to resolve that.

11 BY MR. WEINSTEIN:

12 Q. I noticed in your interrogatory responses,
13 Mr. Cotton, that Mr. Hurtado spoke with Gina Austin.
14 That's what it says. Do you know when he spoke with
15 her?

16 A. I don't remember the exact date. I believe I
17 put it in the interrogatory, but it was at a canna
18 event that Geraci had originally wanted me to go to to
19 discuss with Austin how the final contract drafts were
20 come along. Hurtado went on my behalf.

21 Q. Do you know whether he had that discussion
22 with Gina Austin?

23 A. He did.

24 Q. So I'll have to ask him what, if anything --
25 or Gina Austin what, if anything, was discussed?

1 A. Yeah. I believe he has a declaration that
2 points to that discussion.

3 **Q. And what did he tell you his discussion was**
4 **with Ms. Austin?**

5 A. She acknowledged that the final draft
6 contracts, both -- one for Inda-Gro and one for Fleet
7 Systems -- or me personally, Darryl Cotton, that is --
8 was being completed and would be delivered shortly.

9 Hurtado had not met her before. He was
10 addressed by Geraci basically through me that Austin
11 was wearing a red jacket and to find her when he got
12 there, which is what he did.

13 **Q. So he basically located her at the conference**
14 **based on this clue as to what she was wearing and then**
15 **inquired about it, and what you understand she told him**
16 **was that she acknowledged the fact that the final draft**
17 **contracts for Inda-Gro and yourself, Darryl Cotton,**
18 **were being completed and would be provided shortly?**

19 A. That's my understanding through -- yes. I
20 never heard that from Austin.

21 **Q. And anything else Mr. Hurtado told you about**
22 **his communication with Ms. Austin at that time?**

23 A. Not that I can recall.

24 **Q. Who is Dale Cotton?**

25 A. That's my father.

1 Q. And how frequently do you speak with Dale
2 Cotton?

3 A. Very regularly.

4 Q. Is he somebody that has knowledge concerning
5 the distress you've suffered as a result of the
6 litigation?

7 A. Yes.

8 Q. That's why you listed him in your
9 interrogatory responses?

10 A. Correct.

11 Q. And then who is James Whitfield?

12 A. James Whitfield is a long-time employee of
13 mine who has gotten up in years. He's a veteran so I
14 let him stay at the yard free of charge just so he has
15 a place to stay.

16 Q. So he, again, observed you during this time
17 period?

18 A. Yes.

19 Q. So I'm going to list -- there's numbers 7
20 through 17 in your responses, and I'm just going to
21 list the names. Charles Findley, Stephen Jao, Michael
22 McShane, Elizabeth Emerson, Tom Maas, Cheryl Morrow,
23 Sean Major, Rod Luck, Michael Scott McKim, Anna
24 Espinoza, and Joe Hurtado.

25 Are these all people that were listed because

1 they've observed you since December of 2017 and can
2 attest to what they observed in connection with your
3 emotional distress?

4 A. Yes.

5 Q. Anything else that they have knowledge of, to
6 your understanding, that relates to this litigation?

7 A. They would know that -- the financial,
8 emotional, and physical pressure, they can speak to
9 that.

10 Q. Who is Cheryl Morrow?

11 A. Cheryl Morrow is the editor of the San Diego
12 Monitor.

13 Q. I apologize. I recognized that name and I
14 apparently recognized it from about an hour ago.

15 Rod Luck is the Rod Luck who is the sports
16 caster?

17 A. KUSI.

18 Q. And, again, how frequently do you see him?

19 A. Three or four times a year.

20 Q. But he's somebody else that you've had
21 conversations with during the course of the litigation
22 that can attest to your situation?

23 A. Oh, yes.

24 Q. And you have contact information for all of
25 those people?

1 A. I do.

2 Q. I don't think I'm going to make -- maybe I
3 will make this an exhibit. Next exhibit in order is
4 Exhibit 38. I'm just marking the plaintiff's complaint
5 that you filed in federal court without exhibits, so
6 it's the first 59 pages, with your signature on
7 page 59.

8 (Exhibit 38 was marked for identification.)

9 And my questioning about this is going to be
10 very brief. I just want, first of all, to know whether
11 or not you have seen this document before.

12 A. Yeah, I have. I prepared it.

13 Q. And it was prepared and filed by you pro se
14 in federal court as a federal court lawsuit against the
15 named defendants?

16 A. Correct.

17 Q. And a number of these allegations overlap
18 matters that are being dealt with in our case. So my
19 question really is, are the allegations in this
20 complaint that's been marked as Exhibit 38, were they
21 true and correct, to the best of your knowledge, at the
22 time you filed it?

23 A. Yes.

24 Q. And it was filed on February 9, 2018?

25 A. Yes.

1 MR. WEINSTEIN: Let's take a short break and I'm
2 going to try and wrap up.

3 THE VIDEOGRAPHER: Going off the record at
4 4:49 p.m.

5 (Recess.)

6 THE VIDEOGRAPHER: We are back on the record at
7 4:56 p.m.

8 BY MR. WEINSTEIN:

9 Q. Mr. Cotton, you understand you're still under
10 oath?

11 A. I do.

12 Q. We're in the home stretch, just a few more
13 minutes.

14 Do you know who Daniel Tames is, T-a-m-e-s?

15 A. I'm not familiar with that name.

16 Q. Do you know if he's an individual associated
17 with Richard Martin?

18 A. I wouldn't know that.

19 Q. Do you have contract information for Richard
20 John Martin?

21 A. Contract?

22 Q. Contact information.

23 A. I do.

24 Q. And where does he live?

25 A. Hawaii.

1 Q. Is he a professor?

2 A. He is.

3 Q. Okay. And do you have information regarding
4 his address and cell phone number and e-mail?

5 A. Yes.

6 Q. And does he have any representatives that act
7 on his behalf here in his absence from the state?

8 A. What type of representatives, attorneys or --

9 Q. Well, any business representatives?

10 A. He uses Hurtado as a business consultant as
11 well.

12 Q. So Mr. Hurtado is a business consultant to
13 Mr. Richard Martin and he's also a consultant to you?

14 A. Correct.

15 Q. And he's got a real estate agent or broker's
16 license?

17 A. No. He is more or less somebody that I would
18 just run the business and project -- prospective
19 business opportunities through and get his opinion.

20 Q. Does Mr. Hurtado reside in San Diego as well?

21 A. La Mesa, I believe. Hurtado represents my
22 sounding board for those business ideas, is what I
23 meant to say.

24 Q. All right. I'm going to have marked as the
25 next exhibit in order, Exhibit 39, an e-mail from

1 **Firouzeh Tirandazi to Holly Glavinic, G-l-a-v-i-n-i-c,**
2 **with a cc to David Demian, Abhay Schweitzer, and PJ**
3 **Fitzgerald.**

4 MS. PLASKETT: What number is this one?

5 MR. WEINSTEIN: 39.

6 BY MR. WEINSTEIN:

7 **Q. Actually let me mark as Exhibit 40 --**
8 **actually, you know what, let me remark what -- the**
9 **e-mail that I just marked as Exhibit 39 as Exhibit 40,**
10 **and I'd like to marked as Exhibit 39 a September 22,**
11 **2017, letter from Finch Thornton & Baird to Firouzeh**
12 **Tirandazi. I'm going to go ahead and keep them in**
13 **chronological order.**

14 (Exhibits 39 and 40 were marked for
15 identification.)

16 So this is now 39 --

17 MS. PLASKETT: 39, and this is 40.

18 BY MR. WEINSTEIN:

19 **Q. So Mr. Cotton, have you seen the letter from**
20 **Mr. Demian that's dated September 22, 2017, marked as**
21 **Exhibit 39?**

22 A. I have.

23 **Q. And was that sent with your approval?**

24 A. Yes.

25 **Q. All right. Then turning to Exhibit 40, have**

1 you seen that e-mail before?

2 A. Yes.

3 Q. And I don't see you as an addressee on the
4 e-mail. Did you -- how did you see this?

5 A. It was shared with me at FTB's offices that
6 Development Services Department changed their
7 position and was going to allow the second CUP to be
8 submitted.

9 Q. Okay. And it's your understanding that
10 that's what this e-mail does, it notifies you that a
11 second CUP can be submitted for that same property
12 site?

13 A. Correct. Based on the Finch Thornton & Baird
14 letter of the 22nd, the city reversed their position
15 and allowed the second application to go forward.

16 Q. Was a second application ever filed?

17 A. It was decided not to file it.

18 Q. So as far as you know today, the only
19 application pending on the property is the one that was
20 submitted by Rebecca Berry?

21 A. Correct.

22 Q. Bear with me. I think I'm done.

23 Have you ever shown Richard Martin the 11 --
24 the November 2nd, 2016, signed document?

25 A. I have not.

1 Q. Have you discussed with Mr. Martin the
2 litigation with Mr. Geraci?

3 A. No. That's been Hurtado's responsibility.

4 Q. Has he done that outside the presence of
5 counsel or has counsel always been with him, if you
6 know?

7 A. I don't know.

8 Q. Have you ever spoken to Mr. Martin?

9 A. I have.

10 Q. On how many occasions?

11 A. Several. He's been to the farm.

12 Q. By "the farm" you mean the facilities at
13 6176 Federal Boulevard?

14 A. Correct.

15 Q. We talked previously about this litigation
16 financing that Mr. Hurtado has essentially been
17 responsible for. That's the word I'll use. Is the
18 agreement you've talked about that's confidential
19 called the secured-litigation financing agreement?

20 A. Yes.

21 MS. PLASKETT: I have a question --

22 MR. WEINSTEIN: Sure.

23 MS. PLASKETT: -- on the exhibit numbers. You've
24 got this federal complaint marked as 59?

25 MR. WEINSTEIN: It's -- I believe it's 39.

1 MS. PLASKETT: It wouldn't be 39.

2 THE WITNESS: It's 38 on my side.

3 MR. WEINSTEIN: Just seeing if you're paying
4 attention.

5 MS. PLASKETT: Keep me jumping over here.

6 I have a couple of follow-up questions.

7 MR. WEINSTEIN: Why don't you go ahead and if I
8 have anything, I'll let you know.

9

10 EXAMINATION

11 BY MS. PLASKETT:

12 Q. Did you experience any stress prior to the
13 12-2017 dates?

14 A. Yes. This entire case has been extremely
15 stressful. Prior to that there was enormous pressure
16 financially, physically, and emotionally.

17 Q. And when did the stress begin?

18 A. Right after the filing of the lawsuit in
19 March of 2017.

20 Q. And did you experience anything that made you
21 fearful, stressful prior to that?

22 A. Yes. I was afraid for my safety with some of
23 these threats, too.

24 Q. And was there any time that you had a panic
25 and anxiety attack prior to that date?

1 MR. WEINSTEIN: What date are we talking about?

2 MS. PLASKETT: The 12-17 date. Thank you.

3 THE WITNESS: Yes. There were occasions that I
4 would have panic attacks and anxiety attacks. I would
5 try to dose it myself with cannabis and was somewhat
6 successful.

7 BY MS. PLASKETT:

8 Q. Did you read any books or do any exercises to
9 assist with the stress and anxiety?

10 A. That I have been doing, yes, reading a lot on
11 the Internet. This book here is one I wanted to
12 represent has helped a lot, too. But it's not
13 professional consultation, which is what I think I
14 really need. And I have in fact had another seizure.
15 So that's very rare, but it's what it is. The stress
16 doesn't go away ever.

17 Q. When was the last time that you had a
18 seizure?

19 A. It's been a couple years.

20 Q. And when did you have the recent seizure?

21 A. A few weeks ago.

22 Q. Did it require hospitalization?

23 A. No. I come out of them generally after about
24 a couple minutes, but when you're sleeping and your
25 mind won't shut down and it's just overwhelming is when

1 you're suspect to this.

2 **Q. And have you found that this has been going**
3 **on since -- is there any event that you feel has**
4 **triggered this stress and anxiety?**

5 A. I just feel like the entire system works
6 against me, and from Geraci's filing on, there has been
7 no relief. I thought I had a deal with a good,
8 ethical, professional person that would have been
9 mutually beneficial. Everybody thought this was going
10 to be mutually beneficial. They thought Geraci was
11 crazy to walk away from this and it wouldn't happen.
12 I'm here to tell you it happened.

13 **Q. Did you suffer any anxiety because of the**
14 **robbery?**

15 A. Yes, very much so.

16 **Q. Did you feel that Mr. Geraci had some kind of**
17 **participation or instruction towards that robbery?**

18 A. I believe that's a very distinct possibility.

19 **Q. And how did that affect you afterwards?**

20 A. My employees now fear for their safety,
21 Hagler quit, my electrical engineer, who was there -- I
22 really couldn't afford him anyway, but we're working on
23 new product lines, expanding our induction testing --
24 well, lamps and getting into light emitting diodes. I
25 have a patent on that. And I felt with the Geraci

1 money it would help launch that. We're well-known in
2 the industry. I wanted to concentrate on that, not
3 this.

4 **Q. Are you talking about the earnest money**
5 **deposit or the final settlement?**

6 A. I was told that the CUP application
7 processing would take approximately nine months to a
8 year at most. We're 18 months into this with no end in
9 sight. So I needed the extra 40,000 after the ten, I
10 was lied to, and the stresses have been piling on every
11 since.

12 **Q. When did you believe you would get the**
13 **additional 40,000?**

14 A. When the CUP application was submitted and
15 accepted by the city for the submittal that occurred on
16 10-31-16.

17 **Q. Were you made -- were you notified of this?**

18 A. No. I got ongoing text messages that he was
19 in the process of completing rezoning, which would have
20 allowed the city to accept the CUP application, and
21 that's what I was led to believe until I started doing
22 my own due diligence, and it started with finding out
23 that he had been named in illegal dispensaries, and
24 that got me looking at what I better do as an
25 alternative. He could not have hurt me at a worse

1 time, financially and mentally and emotionally,
2 frankly, because I also had the city issues going on.

3 Q. Okay. Thank you. Did you find that -- did
4 you find that the doctors that you were -- that you saw
5 that Mr. Hurtado got for you, do you feel that they did
6 an examination on you?

7 A. Oh, yes. They were very thorough. And I
8 resist doctors. I frankly fear them. I don't want to
9 be opiated. I don't want to be medicated. I know
10 there can be damage to the liver by some of these
11 drugs. And I liked both of them, but I couldn't afford
12 them.

13 Q. Did you ask what their fees were?

14 A. Hurtado would have covered it, but even he
15 has a limit to what he'll spend and I don't have
16 insurance.

17 Q. Okay. After you -- after the 11-2 oral
18 agreement and receipt with Mr. Geraci, did you receive
19 any other drafts of agreements?

20 MR. WEINSTEIN: I'm going to object to the
21 question as phrased because it characterizes oral and
22 written agreement. Maybe we can just go with the date.

23 MS. PLASKETT: We can go with the date.

24 BY MS. PLASKETT:

25 Q. Let me rephrase this.

1 Have you been provided any other agreements
2 after the 11-2 document?

3 A. Other than Austin's?

4 **Q. Including Austin's, any documents provided by**
5 **Geraci or his team?**

6 A. Yes. He sent me e-mails requesting to
7 renegotiate the \$10,000-a-month minimum or ten percent
8 to a \$5,000-a-month minimum. These were exchanges that
9 I felt showed a good faith attempt to try to coordinate
10 the final contracts that we had discussed in our
11 working documents of 9-24-16.

12 **Q. Did you receive any indication from**
13 **Ms. Austin that she was working on finalizing**
14 **documents?**

15 A. I have never received anything directly from
16 Ms. Austin, to my knowledge. I got them from Geraci.
17 He would have them sent to him and then send them to
18 me.

19 **Q. At any point did you receive a draft, an**
20 **additional draft of an agreement from Geraci?**

21 A. I did not. I never got a draft of an
22 agreement. I got an e-mail suggesting that we reduce
23 the 10,000 to 5,000.

24 **Q. I believe in February -- around February 26,**
25 **27, did you receive a second agreement from -- that was**

1 **drafted by Ms. Austin?**

2 MR. WEINSTEIN: I'm going to object as leading.

3 You can answer.

4 THE WITNESS: Well, I think I know what you're
5 asking. There was a second offer made that would have
6 raised the offer to \$900,000 and I would take away the
7 ten-percent interest in the property -- the dispensary,
8 that is, and that was offered by Mr. Weinstein.

9 MR. AUSTIN: I think what's being asked is, did
10 you get e-mails from Geraci that included attachments
11 that were drafts of purchase agreements.

12 THE WITNESS: Those were the ones I'm referring to
13 from Austin, yes.

14 MR. WEINSTEIN: I think he's testified -- we have
15 the e-mails that are going to speak for themselves.

16 MS. PLASKETT: He's tired. I'm done.

17 MR. WEINSTEIN: I don't have any follow-up. I
18 appreciate it.

19 MS. PLASKETT: Sorry.

20 MR. WEINSTEIN: It's okay. Thank you. We
21 appreciate your time.

22 I'm going to request a stipulation that we
23 stipulate the court reporter is relieved of whatever
24 duties she may still have under the code to retain a
25 copy of the transcript; that the original transcript be

1 sent to Mr. Austin to have reviewed by Mr. Cotton and
2 to make changes, if any, within 30 days of receipt and
3 to sign under penalty of perjury, and then to return --
4 to notify all counsel of the changes and to return the
5 original transcript to me for safekeeping.

6 Also would ask for a stipulation that if the
7 original is lost or can't be found or for any reason is
8 unavailable at the trial, a certified copy can be used
9 in its place.

10 MS. PLASKETT: I hereby stipulate.

11 MR. AUSTIN: So stipulated.

12 MR. WEINSTEIN: So Mr. Cotton, just so you know,
13 the booklet we talked about before is going to be sent
14 to your lawyer, your lawyer is going to provide it to
15 you and give you 30 days to read it, make any changes
16 you need to make, sign it under penalty of perjury, and
17 then you give it back to your lawyer. He'll then
18 communicate that to me and give it back to me to hold
19 for trial.

20 And then obviously I will lodge the
21 transcript at trial, if requested. And I'm sure I will
22 be lodging it. Agreed?

23 MS. PLASKETT: Agreed.

24 MR. WEINSTEIN: Great.

25 THE VIDEOGRAPHER: This concludes the

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video-recorded deposition of Darryl Cotton. Going off
the record at 5:14 p.m.

(The deposition was concluded at 5:14 p.m.)

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand,
8 which was thereafter transcribed under my direction;
9 that the foregoing transcript is a true record of the
10 testimony given.

11 Further, that if the foregoing pertains to the
12 original transcript of a deposition in a federal case,
13 before completion of the proceedings, review of the
14 transcript [X] was [] was not requested.

15
16 I further certify I am neither financially
17 interested in the action nor a relative or employee of
18 any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: May 24, 2018

23 
24 _____
25 Sheri L. Somers
CLR, CSR No. 9734

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DECLARATION UNDER PENALTY OF PERJURY

Case Name: Geraci vs. Cotton, et al.

Date of Deposition: 05/14/2018

Job No.: 10043157

I, DARRYL COTTON, hereby certify
under penalty of perjury under the laws of the State of
_____ that the foregoing is true and correct.

Executed this _____ day of
_____, 2018, at _____.

DARRYL COTTON

NOTARIZATION (If Required)

State of _____

County of _____

Subscribed and sworn to (or affirmed) before me on
this _____ day of _____, 20__,

by _____, proved to me on the
basis of satisfactory evidence to be the person
who appeared before me.

Signature: _____ (Seal)

1 DEPOSITION ERRATA SHEET

2 Case Name: Geraci vs. Cotton, et al.

3 Name of Witness: Darryl Cotton

4 Date of Deposition: 05/14/2018

5 Job No.: 10043157

6 Reason Codes: 1. To clarify the record.

7 2. To conform to the facts.

8 3. To correct transcription errors.

9 Page _____ Line _____ Reason _____

10 From _____ to _____

11 Page _____ Line _____ Reason _____

12 From _____ to _____

13 Page _____ Line _____ Reason _____

14 From _____ to _____

15 Page _____ Line _____ Reason _____

16 From _____ to _____

17 Page _____ Line _____ Reason _____

18 From _____ to _____

19 Page _____ Line _____ Reason _____

20 From _____ to _____

21 Page _____ Line _____ Reason _____

22 From _____ to _____

23 Page _____ Line _____ Reason _____

24 From _____ to _____

25 Page _____ Line _____ Reason _____

From _____ to _____

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From _____ to _____

1 DEPOSITION ERRATA SHEET

2 Page _____ Line _____ Reason _____

3 From _____ to _____

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6 Page _____ Line _____ Reason _____

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8 Page _____ Line _____ Reason _____

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18 Page _____ Line _____ Reason _____

19 From _____ to _____

20 Page _____ Line _____ Reason _____

21 From _____ to _____

22 _____ Subject to the above changes, I certify that the transcript is true and correct

23 _____ No changes have been made. I certify that the transcript is true and correct.

24

25

_____ DARRYL COTTON

Exhibits			
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