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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DARRYL COTTON, an individual; JOE
HURTADO, an individual;

Plaintiffs,

vs.

LARRY GERACI, an individual; REBECCA
BERRY a/k/a REBECCA ANN BERRY
RUNYAN, an individual; MICHAEL R.
WEINSTEIN, an individual; SCOTT
TOOTHACRE, an individual; FERRIS &
BRITTON APC, a California corporation;
GINA M. AUSTIN, an individual; AUSTIN
LEGAL GROUP APC, a California corporation,
SEAN MILLER, an individual FINCH
THORTON & BAIRD, a limited liability
partnership, DAVID DEMIAN, an individual,
ADAM WITT, an individual; and DOES 1
through 50, inclusive,

Defendants.

Case No. **'18CV2751 W AGS**

COMPLAINT FOR:

- 1. FRAUD;**
- 2. ABUSE OF PROCESS;**
- 3. RICO;**
- 4. CIVIL CONSPIRACY; and**
- 5. LEGAL MALPRACTICE**

Plaintiffs Darryl Cotton (Cotton) and Joe Hurtado (Hurtado) (hereinafter collectively “Plaintiffs”), by and through their counsel, Jacob P. Austin, of the Law Offices of Jacob Austin, for Plaintiffs’ causes of action against Defendants, complain and allege as follows on information and belief:

INTRODUCTION

1. The origin of this matter is a very simple real estate breach-of-contract dispute between Darryl Cotton (“Cotton”) and Lawrence Geraci (“Geraci”). Cotton is the owner-of-record of the subject real property, 6176 Federal Blvd., San Diego, CA 92114 (the “Property”), which qualifies for a conditional use permit (“CUP”)¹ that would allow the operation of a highly lucrative Marijuana Outlet – a for-profit cannabis retail store (the “Business”). On November 2, 2016, Cotton and Geraci entered into an oral joint-venture agreement (the “JVA”) pursuant to which, *inter alia*, (i) Cotton would sell his Property to Geraci and (ii) Geraci would finance the acquisition of (a) the CUP for the Property (the “6176 CUP Application”) with the City of San Diego (the “City”) and (b) the development of the Business at the Property. However, Geraci, driven by greed, breached the JVA by attempting to deprive Cotton of a bargained-for 10% equity position in the Business. Consequently, Cotton terminated the JVA and sold the property to a third-party, Richard Martin (“Martin”).

2. The day after Cotton terminated the JVA with Geraci, Cotton was served with a frivolous lawsuit by Geraci and a copy of a *Lis Pendens* filed and recorded on the Property seeking to prevent the sale to Martin (the “Geraci Litigation”).² Cotton hired David Demian (“Demian”) and Adam Witt (“Witt”) of Finch, Thornton & Baird (collectively with Demian and Witt, “FTB”) to represent him in various legal disputes related to the Property, including the Geraci Litigation. Pursuant to Cotton’s agreement with FTB, they were to be paid a maximum of \$10,000 a month with any amount above \$10,000 being carried over as a balance. FTB, however, engaged in a series of fraudulent and negligent actions designed to prolong the litigation and thereby increase their legal fees.

3. In short, what should have been a simple legal matter that could have originally been adjudicated as a matter of law pursuant to the parol evidence rule, became more convoluted as Cotton’s *pro se* representation served to incentivize Geraci and his agents to double-down on their initial

¹ A conditional use permit is administrative permission for use not allowed as a matter of right in a zone, but subject to approval (Cal. Zoning Practice, *Types of Zoning Relief* § 7.64, p.299 (Cont. Ed. Bar 1996). The issuance of a condition use permit may be subject to conditions. (*J-Marion Company, Inc. v. County of Sacramento* (1977) 76 Cal.App.3d 517, 522.)

² Counsel for Plaintiffs notes that the majority of the language in this Complaint has been copied from Cotton’s judicial submissions because, notwithstanding the *procedural* history of that matter, the undisputed facts and the legal arguments already made require, at the very least, that Cotton prevail in the Geraci Litigation on his breach of contract cause of action. The origin of this dispute before it became increasingly convoluted as the actions of Geraci, his agents and the City gave rise to additional causes of action.

1 fraudulent scheme to unlawfully acquire Cotton's Property; both by engaging in unlawful conduct in
 2 the Geraci Litigation and extra-judicial attempts aimed at coercing a settlement from Cotton. While
 3 these allegations appear outlandish at first glance, in reality they are neither novel nor incredible: over
 4 the last year the FBI and various law enforcement agencies have increasingly highlighted the criminal
 5 actions and corruption of numerous cities, government agencies, lobbyists, attorneys and private
 6 individuals in "pay to play" schemes across the State of California to engage in highly profitable
 7 commercial marijuana activities.³

8 JURISDICTION AND VENUE

9 4. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(a), and 18
 10 U.S.C. § 1964, which, *inter alia*, confer original jurisdiction to the District Courts of the United States
 11 for all civil actions arising under the United States Constitution or the laws of the United States, as well
 12 as civil actions to redress deprivation under color of state law, of any right immunity or privilege secured
 13 by the United States Constitution. Further, this Court has subject matter jurisdiction pursuant to the
 14 Federal Racketeering Act, 18 U.S.C. § 1651, *et seq.* and supplemental jurisdiction for Plaintiffs' claims
 15 arising under the laws of the State of California pursuant to 28 U.S.C. § 1367(a).

16 5. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color
 17 of state and local law of rights, privileges, immunities, liberty and property, secured to all citizens by
 18 the First, Fourth and Fourteenth Amendments to the United States Constitution.

19 6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) for all Defendants
 20 because the acts and omissions giving rise to the claims alleged herein occurred in this judicial district
 21 and the Property is located in this judicial district.

22 PARTIES

23 7. At all times herein mentioned, Cotton (a) was and is an individual residing in the City
 24 and County of San Diego; and (b) was and is the owner of the Property.

25 8. At all times herein mentioned Hurtado (a) was and is an individual residing in the City
 26 of El Cajon, County of San Diego; (b) was and is a transactional advisor for Cotton; and (c) did operate
 27 as a litigation investor of the underlying lawsuit between Cotton and Geraci.

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³ *E.g. MKay, Inc., et al. v. City of Huntington Park, et al.*, United States District Court for the Central District of California, Case No. 2:17-CV-01467-SJO-AFM, (Plaintiff sued City of Huntington Park for pay-to-play scheme).

1 9. At all times herein mentioned, Defendant Geraci (a) was and is an individual residing
2 and doing business as an accounting and financial advisor in the City and County of San Diego; and (b)
3 was an is the Plaintiff in the underlying lawsuit against Cotton.

4 10. At all times herein mentioned, Defendant REBECCA BERRY a/k/a REBECCA ANN
5 BERRY-RUNYAN ("Berry") (a) was and is an individual residing and doing business in the City and
6 County of San Diego; and (b) was and is the agent of Geraci.

7 11. At all times herein mentioned, Defendant WEINSTEIN ("Weinstein") (a) was and is an
8 individual residing and doing business in the City and County of San Diego; (b) is an attorney licensed
9 by the State of California to practice law; (c) is a managing partner and shareholder of the law firm of
10 Defendant FERRIS & BRITTON APC ("F&B"); and (d) is the attorney of record for Geraci and Berry
11 in the Geraci Litigation.

12 12. At all times herein mentioned, Defendant F&B (a) was and is a California corporation
13 doing business as a professional law firm in the City and County of San Diego; and (b) is the law firm
14 representing Geraci and Berry in the Geraci Litigation.

15 13. At all times herein mentioned, Defendant GINA M. AUSTIN ("Austin") (a) was and is
16 an individual residing and doing business in the City and County of San Diego as an attorney at law
17 specializing in cannabis regulation and permitting; (b) is an attorney licensed by the State of California
18 to practice law; (c) is the sole officer and director of Defendant AUSTIN LEGAL GROUP, APC, a
19 California corporation; (d) is Geraci's attorney in connection with the 6176 CUP Application; and (e)
20 represented Geraci in the Geraci Litigation and in other matters.

21 14. At all times herein mentioned, Defendant Damian (a) was and is an individual residing
22 and doing business in the City and County of San Diego; (b) is an attorney licensed by the State of
23 California to practice law; (c) is a partner and shareholder of the law firm of Defendant FTB.

24 15. At all times herein mentioned, Defendant Witt (a) was and is an individual residing and
25 doing business in the City and County of San Diego; (b) is an attorney licensed by the State of California
26 to practice law; (c) is a junior associate of the law firm of Defendant FTB.

27 16. At all times herein mentioned, FTB, was a limited liability partnership with its principle
28 place of business in the County of San Diego.

GENERAL ALLEGATIONS

A. Material Factual Background

17. The regulatory schemes being effectuated by the State of California and the City of San Diego governing the licensing of marijuana businesses prohibit individuals who have previously been sanctioned with illegal marijuana activities from having an ownership interest in a legal Marijuana Outlet. San Diego Municipal Code (“SDMC”) §42.1501 materially states: “the intent of this Division [is] to ensure that marijuana is not diverted for illegal purposes, and to limit its use to those persons authorized under state law.” California Bus. & Prof. Code § 26057 applies to the licensing of marijuana operations and provides the criteria pursuant to which a license may be denied, including the “[f]ailure to provide information required by the licensing authority” and “[t]he applicant... has been sanctioned by a licensing authority or a city... for unauthorized commercial cannabis activities...” Bus. & Prof. Code § 26057(b)(3),(7). Additionally, various other provisions void marijuana licenses acquired through fraud and other unlawful actions. *See, e.g.*, Bus. & Prof. Code § 480(d) (“A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.”)

18. Geraci has been a named defendant and sanctioned in at least three actions by the City for owning/managing illegal marijuana dispensaries. Geraci is not named as a person with an interest in the Property or the 6176 CUP Application in contravention of numerous City and State laws. Geraci judicially admits that he has previously been sanctioned and that his name is not on the 6176 CUP Application.

19. Berry is Geraci’s agent, a California licensed Real Estate Broker, disclaims knowledge of the statute of frauds, submitted the 6176 CUP Application claiming to be the Owner of the Property, and alleges she thought it was proper to not disclose Geraci as an individual with an interest in the Property or the CUP in the 6176 CUP Application.

20. Austin, per her own sworn declaration, is a “an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation... [and] performs... legal services [that] include corporate transactions and structuring, land use entitlements and

1 regulations related to cannabis, and state compliance related to cannabis.”⁴ Austin is Geraci’s
 2 attorney/agent who is responsible for the 6176 CUP Application and who has also represented him in
 3 the Geraci Litigation. She reviewed and approved the 6176 CUP Application before its submission to
 4 the City knowing that Berry had falsely stated she was the “Owner” of the Property in the application
 5 for the 6176 CUP Application.

6 21. Sean Miller (“Miller”) is an agent of Geraci and a violent convict out on parole who “was
 7 found guilty on two counts of committing wire fraud, in violation of 18 U.S.C. § 1343, two counts of
 8 money laundering, in violation of 18 U.S.C. § 1957, and one count of witness tampering, in violation of
 9 18 U.S.C. § 1512(b)(3).” *United States v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008). Miller threatened
 10 Hurtado and his family with the goal of having Hurtado use his influence with Cotton to have him
 11 forcibly settle with Geraci.

12 22. Cotton hired FTB because they represented plaintiff in *Engbreetsen v. City of San Diego*
 13 (Nov. 30, 2016, No. D068438) ___Cal.App.5th___ [2016 Cal. App. Unpub. LEXIS 8548, at *1]. In
 14 *Engbreetsen* “[plaintiff] sought a writ of mandate to compel the [City] to recognize him as the sole
 15 applicant for a [CUP] to operate a [Marijuana Outlet] on his [real property] and process the application
 16 accordingly. Engbreetsen alleged he was the sole record owner and interest holder of [his real property]
 17 throughout the application process. Although real party in interest Radoslav Kalla was listed as the
 18 applicant for the CUP, Engbreetsen alleged that Kalla was acting on Engbreetsen's behalf as an agent,
 19 Kalla never had an independent legal right to use the [Engbreetsen’s real property], and Engbreetsen
 20 had since revoked Kalla's agency. The City did not oppose Engbreetsen's writ petition. [¶] The trial court
 21 granted the writ, and in a statement of decision, discussed its basis for finding that (1) Kalla was acting
 22 as Engbreetsen’s agent in pursuing the CUP; (2) Kalla did not have any independent authority to pursue
 23 it or legal interest in the [Engbreetsen’s real property]; (3) Engbreetsen, as the principal, terminated
 24 Kalla's agency and became the only proper applicant; and (4) the City had a ministerial duty to process
 25 the application in Engbreetsen's name.” *Id.* at *1-2. In other words, a nearly identical situation in which
 26 Cotton found himself with Geraci. Cotton entered into a joint-venture with Geraci and, although it was
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 28

⁴ CASE NO. 37-2018-00034229-CU-BC-CTL, SUPPLEMENTAL DECLARATION OF GINA M. AUSTIN FOR SEPTEMBER 7, 2018 HEARING, filed September 4, 2018.

done without his knowledge, Berry submitted the 6176 CUP Application to the City as an agent of joint-venture between Cotton and Geraci. When Geraci breached the JVA, Cotton terminated the agreement and, thus, the agency relationship with Berry, who by her own judicial admissions has no interest in the Property other than as Geraci's agent.

B. Geraci's Conspiracy to Unlawfully Acquire Cotton's Property

23. The day after Cotton terminated the JVA with Geraci, Cotton was served with a frivolous lawsuit by Geraci and a copy of a Lis Pendens filed on the Property seeking to prevent the sale to Martin. Additionally, Geraci began a course of unlawful conduct to coerce Cotton to settle the Geraci Litigation for less than what Cotton had bargained-for in the JVA. Geraci's efforts included physical threats and intimidation tactics that were not only aimed at Cotton, but also Cotton's friends, employees and his litigation investor, Hurtado. When Cotton communicated that he could not legally agree to a settlement that would result in Geraci owning the Property and CUP, due to an amendment to the agreement with Martin resulting from the filing of the Geraci Litigation, Geraci changed course and conspired with his agents, who include Jim Bartell (a powerful political lobbyist with a great degree of influence with the City), to sabotage the 6176 CUP Application with the City. The ultimate goal being to limit Geraci and his agents' legal and financial liability to Cotton and Martin. Their efforts to sabotage the 6176 CUP Application at the Property primarily consisted of two routes, both of which were effectuated via Bartell's political influence. First, to have the City deny the 6176 CUP Application and, second, to stall the 6176 CUP Application while a competing CUP application (the "6120 CUP Application") was filed via a proxy within 1,000 feet of the Property.⁵

C. FTB's Legal Malpractice

24. On or about May 12, 2107 Cotton, self-represented, filed a cross-complaint against Geraci and Berry which contained 11 causes of action.

⁵ **San Diego Municipal Code § 141.0504** (a) Marijuana outlets shall maintain the following minimum separation between uses, as measured between property lines, in accordance with Section 113.0225: (1) 1,000 feet from resource and population-based city parks, other marijuana outlets, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, and schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

1 25. On or about June 13, 2017, at San Diego, California, Plaintiffs retained and employed
2 FTB to represent Cotton in, inter alia, the Geraci Litigation.

3 26. FTB agreed to represent Cotton on a financed agreement of \$10,000 a month. The
4 agreement was that the law firm would fully represent Cotton even if the cost was greater than \$10,000.
5 If there was a month that was in excess of \$10,000, then that balance would be carried over.

6 27. However, Witt communicated that Damian was concerned his partners would not like it
7 if they knew that he took on Cotton's representation with an understanding that Cotton would only pay
8 \$10,000 a month. Witt, however, expressly stated that it would not be an issue as they could just pretend
9 that any delay in payments was due to Cotton's delay in payment. At Witt's suggestion, Cotton emailed
10 the executed agreement with FTB for their services that does not contain the \$10,000 a month agreement
11 but noted in the cover email that their real agreement was the agreed-to \$10,000 a month payment plan.

12 28. On or about June 30, 2017, FTB filed Cotton's "First Amended Cross-Complaint." The
13 "First Amended Cross-Complaint" contained seven causes of action.

14 29. On or about August 25, 2017 FTB filed Cotton's "Second Amended Cross-Complaint."
15 The "Second Amended Cross-Complaint" contained four causes of actions.

16 30. FTB had no justification to dismiss the other causes of action and Cotton did not
17 understand, at that point in time, that he would lose his meritorious causes of action as a result of FTB's
18 dismissal of causes of action and release of Berry from other causes of action.

19 31. No court order was issued with relation to the merits of any of Cotton's original causes
20 of action that would require FTB to drop any cause of action.

21 32. Plaintiffs submit that no reasonable attorney would dismiss or otherwise fail to plea those
22 causes of action as they were meritorious.

23 33. In fact, Cotton's First Amended Cross-Complaint, drafted and filed by FTB, contained
24 two causes of action for interference with a prospective economic relation which Cotton had not
25 including in his pro per filing. These meritorious causes were not carried over to the Second Amended
26 Cross-Complaint. FTB has never provided any reasoning for this action, and justified their dismissal

27 34. On December 7, 2016, at a hearing on Cotton's request for a temporary restraining order,
28 FTB failed to raise in oral argument the most critical and case-dispositive piece of evidence in the
 lawsuit, the Confirmation Email (as defined below).

1 40. During their negotiations, Geraci represented to Cotton that (a) he was a California
2 licensed Real Estate Agent; (b) he was an Enrolled Agent with the IRS; (c) he was the owner and
3 manager of Tax and Financial Center, Inc. (a sophisticated accounting and financial advisory services
4 company); (d) preliminary due diligence on the Property by his experts had discovered that there was a
5 zoning issue that unless first resolved would prevent the City from even accepting the 6176 CUP
6 Application (the “Zoning Issue”); (e) through his professional relationships and powerful hired
7 lobbyists, he was in a unique position to have the Zoning Issue resolved; (f) he was highly qualified to
8 operate the Business because he owned and operated multiple cannabis dispensaries in the City; and
9 (g) Berry was a trustworthy individual to be the applicant for the 6176 CUP Application because, inter
10 alia, she assisted Geraci in managing his marijuana dispensaries and could pass the background checks.

11 41. On or around October 31, 2016, Geraci asked Cotton to execute Form DS-318 (the
12 “Ownership Disclosure Statement”) – a required component of all CUP applications for Marijuana
13 Outlets with the City. Geraci asked Cotton to execute the Ownership Disclosure Statement in good faith
14 so that he could show it to his experts to prove that he had access to the Property and they could begin
15 their planning and lobbying efforts to resolve the Zoning Issue. The Ownership Disclosure Statement
16 stated that Berry was the “lessee” of the Property, however, Cotton has never met Berry or entered into
17 any type of agreement with Berry.

18 42. On November 2, 2016, Cotton was actively negotiating with various parties regarding
19 the purchase and sale of the Property. However, in the afternoon of November 2, 2016, Cotton and
20 Geraci met at Geraci’s office, finalized their negotiations and entered into the JVA. The agreed-upon
21 terms included but were not limited to the following:

22 a. Geraci would resolve the Zoning Issue and pay for all costs associated with the
23 submission and approval of the 6176 CUP Application;

24 b. If the CUP was approved, then Geraci would pay for the development of the
25 Business at the Property and provide Cotton (i) a total purchase price of \$800,000 for the Property; (ii)
26 a 10% equity position in the Business; and (iii) the greater of \$10,000 or 10% of the net profits on a
27 monthly basis; and

28 c. If the CUP was denied, Cotton would keep an agreed upon \$50,000 non-
refundable deposit (“NRD”) and the transaction would not close. In other words, the issuance of the

1 CUP at the Property was a condition precedent for closing on the sale of the Property (the “Condition
2 Precedent”) and, if the CUP was denied, Defendant would keep his Property and the \$50,000 NRD.

3 43. At the November 2, 2016 meeting, Geraci provided \$10,000 in cash towards the agreed
4 upon \$50,000 NRD and had Cotton execute a three-sentence document he drafted to memorialize
5 Cotton’s receipt of the \$10,000 (the “November Document”).⁶ Also, Geraci promised to (i) have his
6 attorney, Austin, *promptly* reduce the JVA to writing and (ii) to not submit the 6176 CUP Application
7 to the City until he paid the balance of the NRD to Cotton.

8 44. Later that *same* day, the following communications took place between Geraci and
9 Cotton:

10 a. At 3:11 p.m., Geraci emailed Cotton a scanned copy of the November Document,
11 which states:

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

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

17 (emphasis added).

18 b. At 6:55 p.m., Cotton replied:

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

23 (emphasis added).

24 c. At 9:13 p.m., Geraci replied: “*No no problem at all*” (the “Confirmation Email”).

25 45. Geraci filed the Complaint in the Geraci Litigation stating that the November Document
26 was the final agreement for the purchase of the Property. Geraci knows that such a statement is false, as
27

28
⁶ The November Document, at Geraci’s request, was notarized by an employee of Geraci who works at his office and was there during their meeting.

1 he himself has confirmed in the Confirmation Email, but he did so to seek to unlawfully deprive Cotton
2 of, *inter alia*, his bargained-for 10% equity position. It is justified for Cotton to have relied on Geraci
3 and his representations as he was a California licensed real estate agent, an Enrolled Agent with the IRS,
4 and held himself out as a sophisticated businessman. Geraci's representations have resulted in damages
5 as Cotton has been forced to continuously sell off his interest in the Property and the CUP to finance his
6 legal defense.

7
8 SECOND CAUSE OF ACTION

9 ABUSE OF PROCESS

10 (Against Defendants Geraci, Berry, Weinstein, Toothacre, F&B, Austin, ALG
and DOES 1-50, Inclusive)

11 46. Plaintiff realleged and incorporates herein by this reference all the allegations contained
12 above.

13 47. Geraci, with the help of others, including named defendants herein, filed a frivolous
14 lawsuit, filed a Lis Pendens on the property, filed motions, declarations, responsive pleadings, taken
15 depositions, and generally maintained the lawsuit knowing it lacked probable cause at its filing and, as
16 result of Geraci's judicial admissions, was barred by the parol evidence rule and the statute of frauds.

17 48. That Geraci and his cohorts used this legal procedure to interfere in a contractual
18 relationship and force the sale of the Property to Geraci instead of and rather than Geraci.

19 49. That Plaintiffs were and continue to be harmed; and

20 50. That Defendants conduct was a substantial factor in causing Plaintiffs' harm.

21 THIRD CAUSE OF ACTION

22 RICO

23 (Against Defendants Geraci, Berry, Weinstein, Toothacre, F&B, Austin, ALG, Miller
24 and DOES 1-50, Inclusive)

25 51. Plaintiff realleged and incorporates herein by this reference all the allegations contained
26 above.

27 52. Geraci is the head of a criminal enterprise dealing in illegal marijuana operations who is
28 attempting acquire a prohibited interest in a Marijuana Outlet via a proxy.

1 53. The goal of Geraci and his agents is to circumvent the applicable regulatory scheme and
2 thereby continue to run their criminal enterprise under the facade of a lawful and legitimate business.

3 54. Commencing on or about August of 2016, Geraci and his agents named as defendants
4 herein, conspired together wrongfully to acquire a CUP for a Marijuana Outlet on the Property. To this
5 end Geraci and his agents have engaged in fraud, misrepresentations, intimidation, cohesion, abuse of
6 process, causing all of the value that Plaintiffs' would have benefited from and instead have had to
7 expend all of their resources to defend a frivolous lawsuit.

8 55. Geraci and his agents were aware that Geraci and others planned to interfere in and
9 prevent Cotton from 1) transferring his property to a bona fide purchaser for value; and/or 2) obtaining
10 a CUP on the Property.

11 56. Defendants agreed with Geraci and others and intended that the interference with the
12 sale of the property and issuance of a CUP on the Property be committed.

13 57. Additionally, a conspiracy can be inferred from the circumstances, the nature of the acts
14 done by each Defendant, the relationships between the Defendants, and the interest of each Defendant
15 individually and collectively.

16 58. Geraci, per his own and Berry's judicial admissions, is prohibited from being licensed
17 with the State of California for a Marijuana Outlet because, inter alia, (i) his prior involvement with
18 unauthorized commercial cannabis activities for which he was sanctioned; (ii) his failure to have his
19 agent, Berry, disclose his ownership interest in the Property and the CUP in the 6176 CUP Application;
20 and (iii) his filing of the Geraci Litigation which, as fully described herein, is a fraudulent action in
21 furtherance of his conspiracy seeking to use the judiciary to unlawfully deprive Cotton and Martin of
22 their interest in the Property and the CUP.

23
24 FOURTH CAUSE OF ACTION

25 CIVIL CONSPIRACY

26 (Against Defendants Geraci, Berry, Weinstein, Toothacre, Austin, Miller, ALG
27 And DOES 1-50, Inclusive)

28 59. Plaintiff realleged and incorporates herein by this reference all the allegations contained
above.

60. Defendants named in this cause of action conspired to fraudulently deprive Plaintiffs of their interest in the Property and to unlawfully coerce and intimidate them into having Cotton settle the Geraci Litigation. All the named defendants knew that Geraci did not have a lawful claim to the Property, yet he and they agreed, and took action, to effectuate the fraudulent scheme premised on the false allegation that the November Document was the final integrated agreement for the Property. And, in furtherance of the conspiracy, to unlawfully intimidate Plaintiffs.

FIFTH CAUSE OF ACTION
LEGAL MALPRACTICE

(Against FTB, Demain, Witt and DOES 1-50 Inclusive)

61. Plaintiffs repeat and reallege all previous allegation as if restated herein.

62. On or about June 13, 2017, at San Diego, California, Plaintiffs retained and employed FTB to represent Cotton in connection with his legal issues related to the Property. At such a time and place Defendants and each of them accepted such employment and agreed to perform legal services for Plaintiffs.

63. At all times herein mentioned, FTB and each of them, failed to exercise reasonable care and skill in undertaking to perform such legal services for Plaintiffs.

64. Had FTB, and each of them, exercised proper care and skill in the foregoing matter, Plaintiffs would have seen the resolution of the underlying matter in their favor and Geraci and his attorneys would not have been emboldened to continue to maintain a frivolous lawsuit and take extra judicial actions to attempt to limit their own liability.

65. As a proximate result of negligence of the FTB, and each of them, Plaintiffs have been damaged in an amount which is unknown or unknowable, but which is excess of the jurisdictional limits of this Court. Plaintiffs will request leave of Court to amend this Complaint when such an amount is ascertained.

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PRAYER FOR RELIEF:

WHEREFORE, Cotton prays for relief against defendants as follows.

1. General, exemplary, special and or consequential damages in the amount to be proven at trial, but which are no less than 5,000,000;
2. All applicable relief entitled to Plaintiffs by law and equity.
3. All other relief is awarded as the Court determine is in the interest of justice.

Dated: December 6, 2018

THE LAW OFFICE OF JACOB AUSTIN

/s Jacob P. Austin

JACOB P. AUSTIN
Attorney for Plaintiffs