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DARRYL COTTON

**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 THORNTON &
BAIRD, a limited liability partnership,
DAVID DEMIAN, an individual,

Case No. 3:18-cv-02751-GPC-MDD

**PLAINTIFF DARRYL COTTON'S
OPPOSITION TO (1) DEFENDANT'S
GINA M. AUSTIN AND AUSTIN LEGAL
GROUPS APC'S MOTION TO DISMISS
AND (2) DEFENDANTS MICHAEL R.
WEINSTEIN, SCOTT TOOTHACRE,
APC'S, MOTION TO DISMISS, OR IN
THE ALTERNATIVE STAY THE CASE;
MOTION TO DISMISS PLAINTIFF JOE
HURTADO PURSUANT TO FRCP
12(B)(6)**

Date: May 24, 2019

Time: 1:30 p.m.

Courtroom: 2D

Judge: Hon. Gonzalo P. Curiel

Complaint Filed: December 6, 2018

Trial Date: None Set

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**PLAINTIFF DARRYL COTTON'S OPPOSITION TO (1) DEFENDANT'S GINA M. AUSTIN
AND AUSTIN LEGAL GROUPS APC'S MOTION TO DISMISS AND (2) DEFENDANTS
MICHAEL R. WEINSTEIN, SCOTT TOOTHACRE, APC'S, MOTION TO DISMISS, OR IN
THE ALTERNATIVE STAY THE CASE; MOTION TO DISMISS PLAINTIFF JOE
HURTADO PURSUANT TO FRCP 12(B)(6)**

1 ADAM WITT, an individual; and)
2 DOES 1 through 50, inclusive,)

3 Defendants.)
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MEMORANDUM OF POINTS AND AUTHORITIES

A. INTRODUCTION

As will become apparent to this Court as it comes to understand the underlying facts, all of the defendants are guilty of varying degrees of unethical and/or unlawful behavior. Notably, none of the pending actions before this Court address the merits of Plaintiffs' case because the judicial and evidentiary admissions regarding the core issue in this action can already be adjudicated in Plaintiffs' favor.

Summarily, Geraci v. Cotton in the Superior Court of California, County of San Diego Case No. 37-2017-00010073-CU-BC-CTL is a malicious prosecution action (the "State Action"). However, any arguments regarding abstention or stays are inapplicable as there is a threshold issue of jurisdiction that has never been addressed: the State Action does not have jurisdiction over the real property at issue because indispensable parties have not been named in the State Action and, consequently, requires the State Action to be dismissed.

Counsel for Cotton and the current equitable owner of the Property have scheduled an ex-parte hearing on April 25, 2019 in the State Action seeking an order dismissing the action pursuant to California Code of Civil Procedure § 389 for failing to join an "indispensable" party. Thus, most of the issues raised in the pending motions before this Court are moot.

B. THE STATE ACTION MUST BE DISMISSED FOR FAILURE TO JOIN INDESPENSIBLE PARTIES

A plaintiff must join as parties to the action all persons whose interests are so directly involved that the court cannot render a fair adjudication in their absence. CCP § 389. CCP § 389 is derived from Rule 19 of the Federal Rules of Civil Procedure. Federal

precedents can therefore be pertinent in resolving compulsory joinder disputes. Dreamweaver Andalusians, LLC v. Prudential Ins. Co. of America (2015) 234 CA4th 1168, 1174, 184 CR3d 735, 740.

Plaintiff is required to join as parties to the action any person whose interest is such that (i) in the person's absence, complete relief cannot be accorded among those already parties to the action; or (ii) any judgment rendered in the person's absence might either (a) prejudice the person's ability to protect his or her interest in later litigation; or (b) leave any of the parties before the court exposed to a risk of additional liability or inconsistent obligations. CCP § 389(a); see Olszewski v. Scripps Health (2003) 30 C4th 798, 808-809 (a person is indispensable only when the judgment to be rendered necessarily must affect that person's rights).

If an action seeks to determine conflicting claims to ownership or possession of property among its owners, all the owners should be joined as parties. If there is a party with a clear right to the property at issue by the absent party, they will be regarded as “indispensable,” and the action should be dismissed without prejudice. Actions for real property require the application of dismissal of actions when indispensable parties are not joined. See Kraus v. Willow Park Pub. Golf Course (1977) 73 CA3d 354, 369; Syvertson v. Butler (App. 1906) 3 Cal.App. 345; Birch v. Cooper (1902) 136 Cal. 636, 69 P. 420.

Cotton submitted to this Court ex-parte and under seal the Secured Litigation Financing Agreement on or about February 9, 2018 in support of his ex-parte motion for a temporary restraining order. Cotton attempted to submit the Secured Litigation Financing Agreement in the State Action on January 17, 2018; however, the state court denied the request. (State Action Docket/ROA No.102.)

1 The Secured Litigation Financing Agreement was recently amended in order to be
2 disclosed in this action; however, the parties thereto had a dispute and they are attempting
3 to reach a resolution. (Austin Declaration ¶ 10). Because counsel for Cotton has fiduciary
4 duties applicable to numerous of the parties to the Secured Litigation Financing
5 Agreement, absent their unanimous consent, he cannot produce the document herein.
6 (Austin Declaration ¶ 11).

7 Setting aside the amendments to the Secured Litigation Financing Agreement, the
8 Property was sold on March 22, 2017 to Richard Martin (“Martin”) (which was
9 subsequently amended into the Secured Litigation Financing Agreement). (Austin
10 Declaration ¶ 12). As part of the Martin sales transaction, Hurtado was to receive an
11 interest in the business to be developed on the Property. Although Geraci and his
12 attorneys did not know about Hurtado’s interest in the Property, they did know that the
13 Property was sold to Martin as the sales agreement was provided to them via discovery
14 in the State Action. (Austin Declaration ¶ 13).

15 Notably, Geraci’s counsel was required pursuant to CCP § 389(c) to explain why Martin
16 was not named as a party. They did not. Whatever reasons Geraci’s counsel may put
17 forward, the reality is that they did not do so because they did not want to include Martin
18 because when the Martin sales agreement was disclosed, Cotton was defending himself
19 pro se. And, along with the Martin sales agreement, Martin’s pre-approval letter for
20 \$2,500,000 was disclosed as well, reflecting he had the means to hire attorneys if sued.
21 (Austin Declaration ¶ 14).

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C. OPPOSITION TO DEFENDANT’S GINA M. AUSTIN AND AUSTIN LEGAL GROUPS APC’S MOTION TO DISMISS

1. FRCP 12 (B)(6) MOTIONS TO DISMISS ARE RARELY GRANTED AND ARE PROPER ONLY IN EXTRAORDINARY CASES.

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleading. De LaCruz v. Tormey 582 F.2d 45, 48 (9th Cir. 1978). A complaint may not be dismissed for failure to state a claim under Rule 12(b)(6), “unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In ruling on a motion pursuant to Rule 12(b)(6), a court must construe the pleadings in the light most favorable to the plaintiff, and further, must accept as true all material allegations in the complaint, as well as any reasonable inferences to be drawn therefrom. See Broam v. Bogan, 320 F.3d 1023, 1028 (9th Cir. 2003). In considering a Rule 12(b)(6) dismissal, “[r]eview is limited to the contents of the complaint.” Moore v. Costa Mesa, 886 F.2d 260, 262 (9th Cir. 1989).

Austin Defendants argue that Plaintiffs have failed to provide “fair notice” of the claims being asserted against them or upon which ground those claims stand. Additionally, they argue that Plaintiffs have not met their burden of stating enough facts to state a claim to relief that is plausible on its face. However, the party bringing a motion to dismiss for failure to state a claim bears the burden of demonstrating that the plaintiff has not met the pleading requirements of Fed R Civ P 8(a)(2) in stating a claim (Gallardo v. DiCarlo (C.D. Cal 2002). Rule 8(a)(2) requires parties seeking relief in federal court by a complaint to include “a short and plain statement of the claim showing that the pleader is entitled to relief” (see Fed R Civ P 8(a)(2)).

Therefore, the Complaint does not require all the detailed factual allegations be plead rather factual allegations must be enough to raise a right to relief “above the

speculative level” (Bell Atl. Corp. v. Twombly (2007) 550 U.S. 544, 555). This “plausibility” standard does not require heightened fact pleading of specifics. Rather, it requires enough facts to state a claim to relief that is plausible on its face. (Twombly at 555–556).

The Complaint has met this standard. The question of plausibility of a conspiracy, fraud, and RICO under these facts are clearly met:

1. Geraci has previously been sanctioned for an illegal marijuana dispensary. Comp ¶ 18.

2. Geraci’s prior sanction bars him from owning an interest in a legal marijuana dispensary. Comp ¶ 17.

3. Austin Defendants hold themselves out to be “cannabis experts” and were hired by Geraci to be responsible for the CUP Application on the subject property. Comp ¶ 20.

4. Geraci’s interest in the CUP Application was not disclosed as required. Comp ¶ 19

5. The ownership disclosure statements filed with the Application states that one Rebecca Berry is lessee of the subject property. Comp ¶ 41

6. On yet another form Berry claims she was the “Owner” of the subject property. Comp ¶ 20

7. Gina Austin was personally responsible for reviewing the submission and unequivocally knew that Rebecca Berry had also falsely stated she was the “Owner” of the subject property. Comp ¶ 20 at pg. 6 ln. 3-5.

8. The Austin Defendants were part of a team helping Geraci to acquire a prohibited interest in a Marijuana Dispensary. Comp ¶ 54.

1 9. Geraci, in furtherance of his conspiracy to acquire a prohibited interest filed
2 a frivolous lawsuit, the State Action. Comp ¶ 23

3 10. Members of this Conspiracy have made threats to Plaintiff Hurtado and his
4 family with the goal of having Plaintiff Hurtado use his influence with Cotton to settle
5 the State Action. Comp ¶ 21, Comp ¶ 23 at pg 7 ln. 9-11.

6 In all averments of fraud or mistake, the circumstances constituting the fraud or
7 mistake must be stated with particularity. (Fed R Civ P 9(b)). This heightened pleading
8 requirement allows the fraud-action defendant to “prepare an adequate answer from the
9 allegations.” (Odom v. Microsoft Corp. (9th Cir 2007) 486 F3d 541, 553).

10 However, in evaluating the Complaint, the Court should be “sensitive” to the fact
11 that application of Rule 9(b) prior to discovery “may permit sophisticated defrauders to
12 successfully conceal the details of their fraud.” In re Burlington Coat Factory Sec. Litig.,
13 114 F.3d 1410, 1418 (3d Cir. 1997) (citation omitted). Austin Defendants are attorneys
14 and a law firm, and if they are involved in defrauding Plaintiffs, the Court should consider
15 them “sophisticated” for these purposes and motion.

16 Furthermore, regarding RICO, Plaintiffs are not required to plead with particularity
17 nonfraudulent predicate acts, or the existence of a racketeering enterprise which may be
18 plead generally. Lewis on behalf of National Semiconductor Corp. v. Sporck (ND Cal
19 1985) 612 F Supp 1316, 1324. Plaintiffs have met their burden. See Fact Nos. 1-9,
20 Section D above.

21
22 ***2. AUSTIN DEFENDANTS CANNOT RELY ON CALIFORNIA ANTI-SLAPP***
23 ***STATUTE TO SHEILD THEIR ILLEGAL ACTIVITY.***

24 a. **Defendant Bears Initial Burden to Make a Prima Facie Showing.** A
25 defendant who brings a special motion to strike under Code Civ. Proc. § 425.16 bears the

1 initial burden of making a prima facie showing that the plaintiff's cause of action arose
 2 from the defendant's acts in furtherance of the defendant's right of petition or free speech
 3 under the United States or California Constitution in connection with a public issue. A
 4 defendant's special motion to strike should be denied if the defendant fails to meet this
 5 initial prima facie showing (Abuemeira v. Stephens (2016) 246 Cal. App. 4th 1291, 201;
 6 Guessous v. Chrome Hearts, LLC (2009) 179 Cal. App. 4th 1177).

7 Austin Defendants have not met their initial burden. They focus solely on the
 8 abuse of process claim and seem to be under the mistaken belief that simply being an
 9 attorney shields all their actions via Anti-SLAPP protection. This is simply not the case.
 10 The cause of action for abuse of process does not stem from Austin Defendants filing of
 11 a frivolous lawsuit, but rather as part of a conspiracy to obtain a prohibited interest for
 12 Geraci. The co-conspirators then filed a frivolous lawsuit against Cotton in furtherance
 13 of the conspiracy.

14 **b. Defendant Must Show a Lawful Exercise of Constitutional Rights.** Even if
 15 the acts alleged in the complaint are done in furtherance of the constitutional rights of
 16 free speech or petition for redress of grievances in connection with a public issue, if those
 17 acts are themselves illegal, defendant is not entitled to protection under Code Civ. Proc.
 18 § 425.16 (Flatley v. Mauro (2006) 39 Cal. 4th 299, 320.)

19 In Flatley, the trial court denied the Anti-SLAPP motion, holding that defendant
 20 had not satisfied his burden of showing that his conduct was protected by the Anti-SLAPP
 21 statute. The court of appeal affirmed, holding that defendant's conduct constituted
 22 extortion, and the California Supreme Court granted defendants' petition for review. The
 23 California Supreme Court affirmed the ruling.

24 Furthermore, California Business and Professions Code § 6128 states:

25 "Every *attorney* is guilty of a misdemeanor who either:

(a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party.

(b) Willfully delays his client's suit with a view to his own gain.

(c) Willfully receives any money or allowance for or on account of any money which he has not laid out or become answerable for.

Any violation of the provisions of this section is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both.” Cal. Bus. Prof. Code § 6128, (emphasis added).

Plaintiffs have clearly laid out facts that if true would constitute, at the very least, a violation of this provision. (*Supra, See above*, Fact No. 1-9, Section D).

c. Anti-SLAPP Motion Must Be Denied if Plaintiff Demonstrates a Probability of Prevailing on the Claim. Even if the initial burden is met that the plaintiff’s cause of action arose from the defendant’s acts in furtherance of the rights of petition or free speech, the anti-SLAPP motion should be denied if the opposing party demonstrates the probability that the plaintiff will prevail on the claim; that is, the opposing party demonstrates that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited (Zamos v. Stroud (2004) 32 Cal. 4th 958, 965, Tichinin v. City of Morgan Hill (2009) 177 Cal. App. 4th 1049, 1062–1089, Sycamore Ridge Apartments v. Naumann (2007) 157 Cal. App. 4th 1385, 1412).

Plaintiffs have met their prima facie showing of facts to demonstrate the probability of prevailing on their claims. (*Supra, See above*, Fact No. 1-9, Section D)

d. Merely Having Some Connection with Official Proceedings Does Not Mean Anti-SLAPP Protections Apply. Code of Civil Procedure Section 425.16 does not

accord anti-SLAPP protection to suits arising from any act having any connection, however remote, with an official proceeding; the statements or writings in question must occur in connection with an issue under consideration or review in the proceeding (Abuemeira v. Stephens (2016) 246 Cal. App. 4th 1291; Panakosta, Partners, LP v. Hammer Lane Management, LLC (2011) 199 Cal. App. 4th 612, 635–639). The scope of the protections afforded to litigation-related communications under the anti-SLAPP statute and that afforded by the litigation privilege (Civ. Code § 47) are not identical, and to suggest that nearly any attempt at negotiation is covered by the privilege, especially when attorneys are involved, is unduly overbroad, and will not support a claim of official proceedings for purposes of applying the anti-SLAPP statute (Dickinson v. Cosby (2017) 17 Cal. App. 5th 655, 681–684; Haneline Pacific Properties, LLC v. May (2008) 167 Cal. App. 4th 311).

Here, Austin Defendants are attempting to argue that all the extra-judicial activities they were involved in are covered by the anti-SLAPP statute. The law is clear that it is not.

e. The Anti-SLAPP Statute Does Not Apply to Non-Judicial Proceedings. By its own terms, Code of Civil Procedure section 425.16 only applies to court proceedings (Garretson v. Post (2007) 156 Cal. App. 4th 1508, 1521; Sheppard v. Lightpost Museum Fund (2006) 146 Cal. App. 4th 315, 323). A lawsuit existing before the activity that is the subject of the anti-SLAPP motion does not automatically make the activity part of a court proceeding (McConnell v. Innovative Artists Talent and Literary Agency (2009) 175 Cal. App. 4th 169, 176).

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D. OPPOSITION TO DEFENDANTS MICHAEL R. WEINSTEIN, SCOTT TOOTHACRE AND FERRIS & BRITTON, APC,'S, MOTION TO DISMISS, OR IN THE ALTERNATIVE STAY THE CASE; MOTION TO DISMISS PLAINTIFF JOE HURTADO PURSUANT TO FRCP 12(b)(6)

a. The Court Should Not Dismiss or Stay the Case Pursuant to the Colorado River Doctrine

1. Colorado River Doctrine

Federal courts have a “virtually unflagging obligation” to exercise the jurisdiction conferred upon them. The *Colorado River* abstention is appropriate, therefore, only under “exceptional circumstances.” Colorado River Water Conservation Dist. v. United States, 424 US at 813; Quackenbush v. Allstate Ins. Co. (1996) 517 US 706, 716; see Smith v. Central Arizona Water Conservation Dist. (9th Cir. 2005) 418 F3d 1028, 1033 (noting although “exact parallelism” between the state and federal proceedings is not required, “existence of a substantial doubt as to whether the state proceedings will resolve the federal action precludes the granting of a *Colorado River* stay” (internal quotes and brackets omitted)).

Here, there is an additional plaintiff, Hurtado, and numerous additional defendants who have never been a party to the State Action. Furthermore, there are claims arising from facts and circumstances not at issue in the State Action. The *Colorado River* doctrine does not apply because the State Action cannot resolve Hurtado’s rights as to the Property or the named defendants in this action. Even if a *Colorado River* doctrine was undertaken, the first factor, jurisdiction over the real property at issue in the State Action and here, dispositively requires that this action not be stayed as this action has jurisdiction and the state court does not.

2. Colorado River Doctrine Regarding 42 USC § 1983

1 The *Colorado River* abstention is generally not appropriate where monetary
 2 damages are sought under federal civil rights laws (42 USC § 1983) while state court
 3 proceedings are pending. The “unflagging obligation” of federal courts to exercise their
 4 jurisdiction in such cases is “particularly weighty.” Tovar v. Billmeyer (9th Cir. 1979)
 5 609 F2d 1291, 1293.

6 On April 17, 2019, Hurtado was deposed by defendant Scott Toothacre. (Austin
 7 Declaration ¶ 15). During that deposition, Hurtado was questioned regarding, and
 8 disagreed with, a contention that Cotton has repeatedly put forth in the State Action and
 9 feels strongly about. *Id.* Cotton and Hurtado had a disagreement, the consequence of
 10 which was that Hurtado decided to seek independent counsel separate from Cotton.
 11 (Austin Declaration ¶ 16). Hurtado submitted a substitution of attorney form seeking to
 12 represent himself pro se while he identifies and hires new counsel on April 18, 2019
 13 (amended on April 19, 2019). *Id.* However, Hurtado has represented that he intends to
 14 seek leave to file a separate or amended complaint, which will include a 42 USC § 1983
 15 claim against the City of San Diego. (Austin Declaration ¶ 17).

16 ***b. The Court Should Not Stay the Case Pursuant to a “Landis” Stay***

17 A party seeking a *Landis* stay “must make out a clear case of hardship or inequity in
 18 being required to go forward, if there is even a fair possibility that the stay for which he
 19 prays will work damage to some one [sic] else.” Landis v. North American Co. (1936)
 20 299 US 248, 254. Among those factors to be considered in a *Landis* stay are: (i) the
 21 possible damage that may result from granting a stay; (ii) the hardship or inequity that a
 22 party may suffer in being required to go forward; and (iii) “the orderly course of justice
 23 measured in terms of the simplifying or complicating of issues, proof, and questions of
 24 law which could be expected to result from a stay.” Lockyer v. Mirant Corp. (9th Cir.
 25 2005) 398 F3d 1098, 1110.

Here, for the reasons set forth above, these factors weigh in favor of not issuing a stay as the State Action does not have jurisdiction over the Property, Hurtado will be prejudiced, and judicial economy and interest weigh in favor of this Court addressing all of the facts and claims raised herein.

c. There is Good Cause to Extend Time for Service

For the reasons set forth in Plaintiff Darryl Cotton's Opposition to Defendant's Finch, Thornton & Baird, David Demian and Adam Witt's Motion to Dismiss Plaintiff's Complaint For Damages Pursuant to FRCP 4, filed concurrently herewith, there is good cause to extend time for service.

d. Leave to Amend the Complaint

Notwithstanding the arguments above, if this Court believes any of the arguments by defendants are meritorious, Cotton requests leave of this Court to file an amended Complaint.

DATED: April 19, 2019

THE LAW OFFICE OF JACOB AUSTIN

By /s/ Jacob Austin

JACOB P. AUSTIN

Attorney for Plaintiff DARRYL COTTON

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Attorney for Plaintiffs

DARRYL COTTON

**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 THORNTON &
BAIRD, a limited liability partnership,
DAVID DEMIAN, an individual,

Case No. 3:18-cv-02751-GPC-MDD

**DECLARATION OF JACOB AUSTIN IN
SUPPORT OF PLAINTIFF DARRYL
COTTON'S OPPOSITION TO
DEFENDANT'S FINCH THORNTON &
BAIRD, DAVID DEMIAN AND ADAM
WITT'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT FOR
DAMAGES PURSUANT TO FRCP 4**

Date: May 24, 2019

Time: 1:30 p.m.

Courtroom: 2D

Judge: Hon. Gonzalo P. Curiel

Complaint Filed: December 6, 2018

Trial Date: None Set

**DECLARATION OF JACOB AUSTIN IN SUPPORT OF PLAINTIFF DARRYL COTTON'S
OPPOSITION TO DEFENDANT'S FINCH THORNTON & BAIRD, DAVID DEMIAN AND
ADAM WITT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR DAMAGES
PURSUANT TO FRCP 4**

ADAM WITT, an individual; and
DOES 1 through 50, inclusive,

Defendants.

I, Jacob Austin, hereby declare:

1. I am a duly licensed attorney within this jurisdiction and not a party to this matter.
2. On December 11, 2018 an email was sent to me by Finch Thornton and Baird, included was an attached letter from Managing Partner, P. Randolph Finch Jr., (the "FTB Notice Email"). The FTB Notice Email specifically states: "We were notified you filed a lawsuit against our firm and two of our attorneys." A true and correct copy is attached hereto as Exhibit 1.
3. Throughout the course of the ninety-day period immediately following the filing of the instant action, litigation in the State Action was ongoing.
4. Also, during this period, the parties were in discussions regarding amending the Complaint to add additional parties and causes of action in the instant matter.
5. I was in the process of amending the Complaint as a matter of right; in fact, my office called the Court approximately prior to the final day to amend to inform the Court that Plaintiffs would be amending the Complaint.
6. However, upon review and consideration given the complex nature and special requirements for pleading certain causes of action (R.I.C.O. and Fraud) we realized I would not be able to finalize the Amended Complaint prior to the 90 days cut-off.
7. Specifically, it has been the intention of the Plaintiffs to include causes of actions for fraud against the FTB Defendants.
8. My contract paralegal Leanne Thomas ("Thomas") served the Summons and Complaint on all parties with known addresses.

- 1 9. On or about June, 15, 2017, plaintiff Darryl Cotton retained the services of
2 Finch, Thornton, and Baird. A true and correct copy of the fee agreement is
3 attached hereto as Exhibit 2.
- 4 10. The Secured Litigation Financing Agreement was recently amended in order
5 to be disclosed in this action, however, the parties thereto had a dispute and
6 they are attempting to reach a resolution.
- 7 11. Due to my fiduciary duties applicable to numerous of the parties to the
8 Secured Litigation Financing Agreement, absent their unanimous consent, I
9 cannot produce the document herein.
- 10 12. Setting aside the amendments to the Secured Litigation Financing
11 Agreement, the Property was sold on March 22, 2017 to Richard Martin
12 (“Martin”) (which was subsequently amended into the Secured Litigation
13 Financing Agreement).
- 14 13. As part of the Martin sales transaction, Hurtado was to receive an interest in
15 the business to be developed on the Property. Although Geraci and his
16 attorneys did not know about Hurtado’s interest in the Property, they did
17 know that the Property was sold to Martin as the sales agreement was
18 provided to them via discovery in the State Action.
- 19 14. Throughout the course of my representation of Mr. Cotton through normal
20 means of discovery we provided to counsel for Geraci a copy of a \$2,500,000
21 Pre-Approval Letter and Sales Agreement naming Richard Martin, III.
- 22 15. On April 17, 2019 Hurtado was deposed by attorney Scott Toothacre and
23 during that deposition Hurtado was questioned regarding a disagreement he
24 had with Cotton over a contention he repeatedly put forth in the State Action.
- 25 16. Because of this disagreement Hurtado has recently decided he wishes to have
26 counsel separate from Cotton. To this effect he submitted a Substitution of
27 Attorney to represent himself pro se on April 18, 2019 with a corrected copy
28 filed April 19, 2019.
17. Hurtado has represented he intends to seek leave to file a separate or
amended Complaint which will include a 42 USC § 1983 claim against the
City of San Diego.

1 18.I am currently the attorney of record for Plaintiff Darryl Cotton in the above
2 captioned action. I am personally familiar with this file and can testify based
3 upon personal knowledge of the facts stated within.

4 19.I hereby incorporate by reference the facts stated in the foregoing to which
5 this declaration is attached. I have personal knowledge of each of those facts
6 and could and would testify to them competently in a court of law.

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

9 Dated: April 19, 2019

_____/s/_____
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Jacob Austin
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EXHIBIT 1

FINCH • THORNTON • BAIRD^{LLP}

ATTORNEYS AT LAW

P. Randolph Finch Jr.
pfinch@ftblaw.com

File 998.099

December 11, 2018

VIA ELECTRONIC MAIL ONLY

Jacob P. Austin, Esq.
Law Offices of Jacob Austin
P.O. Box 231189
San Diego, California 92193
jacobaustinesq@gmail.com

Re: Finch, Thornton & Baird, LLP v. Darryl Cotton

Dear Mr. Austin:

We were notified you filed a lawsuit against our firm and two of our attorneys. We request you preserve all notes, research, and documents relied on by you and your client to support the allegations and claims you have made against Finch, Thornton & Baird, LLP, David Demian, and Adam Witt. We will pay reasonable costs to prevent destruction of that evidence. Thank you for your prompt attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'P. Randolph Finch Jr.', with a stylized flourish extending to the right.

P. Randolph Finch Jr.,
Partner

PRF:kam/3E67444

EXHIBIT 2

FINCH • THORNTON • BAIRD^{LLP}

ATTORNEYS AT LAW

David S. Demian
ddemian@ftblaw.com

File 999.002

June 13, 2017

VIA U.S. AND ELECTRONIC MAIL

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, California 92114
indagrodarryl@gmail.com

Re: Services Agreement For Representation Of Darryl Cotton

Dear Mr. Cotton:

We appreciate your decision to retain Finch, Thornton & Baird, LLP. Please forgive the formality of this letter but the California Business and Professions Code requires that we have a written agreement. This letter sets forth the terms of our representation.

1. Description Of Representation And Services. You retain Finch, Thornton & Baird, LLP to represent you in connection with obtaining a conditional use permit ("CUP") for 6176 Federal Boulevard and also to represent you in related civil and forfeiture actions related to the property. We will provide other services as requested and provided we agree to perform such services. All services shall be subject to this agreement.

2. Fees To Be Charged. Our fees will be billed on the basis of time expended at the hourly billing rates of the attorneys, law clerks and legal assistants involved. At the present time, our hourly rates vary from \$210.00 to \$420.00 for attorneys, \$195.00 to \$210.00 for law clerks and \$75.00 to \$125.00 for paralegal and legal assistants. My current hourly rate is \$400.00. Adam Witt's current hourly rate is \$300.00. These hourly rates are subject to change in the future and typically increase in September of each year. The rate(s) charged will be reflected on the invoices for services rendered. We bill in one-tenth of an hour increments. In order to deliver cost-effective services, when practical, work will be assigned to other qualified attorneys, law clerks or legal assistants with either billing rates lower than mine or some specialized knowledge beneficial to you.

3. Costs And Expenses. We also charge for expenses and costs necessarily incurred to perform our services. Examples of these are Secretary of State fees, California Department of Corporations fees, court filing fees, service of process fees, deposition court reporter and transcript costs, etc. It is our policy to not charge for minor everyday expenses such as photocopies, postage, facsimiles, mileage, phone expenses, etc., unless these expenses become beyond the ordinary. For example, extra large reproductions or photocopying large quantities of documents for discovery, depositions or trial exhibits, etc., are usually costly and we will bill for reimbursement of such expenses or have you pay the vendor directly.

Mr. Darryl Cotton
June 13, 2017
Page 2 of 6

4. Services Of Experts/Consultants. It may become necessary to employ experts or consultants to assist in resolving a matter. We will obtain your approval for the retention of any such consultants or experts, and you may instruct us in writing at any time to terminate their services. The fees of experts and consultants will be in addition to the fees and costs charged for our services. In most circumstances, we will have the experts or consultants bill you directly.

5. Payment Of Legal Fees. For your convenience, we understand that we will be receiving payment for costs, expenses and fees relating to our legal services pursuant to this agreement from Joe Hurtado. Rather than billing you separately, one invoice will be forwarded to Joe.

Rule 3-310(F) of the Rules of Professional Conduct of the State Bar of California requires that we not accept compensation for representing a client from a person other than the client unless: (1) there is no interference with our independent professional judgment or with the attorney-client relationship; (2) information relating to representation of you is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) we obtain your informed written consent to such an arrangement. With regard to Rule 3-310(F), we do not believe there will be any interference with our independence of professional judgment or with the attorney-client relationship between our firm and you as a result of the payment of invoices by Joe because your interests are aligned. Note, you remain liable for all fees and costs if Joe fails to pay. We inform you of these matters and request your written consent to this arrangement. Execution of this agreement constitutes such written consent.

6. Client Responsibilities. We have two primary requests of our clients: (1) that we are kept informed of all information you obtain or discover regarding a matter for which we are retained; and (2) that we receive timely payment for our services and advances. In this regard, we invoice monthly and expect payment within 30 days. Any objection to an invoice must be made in writing within 30 days of the date of your receipt of the invoice or the objection is waived. At our option, late payments will accrue interest at the annual rate of seven percent. As security for the payment of our invoices, you grant us a lien upon any sums recovered (or which you are entitled to recover) as a result of our efforts, including any funds in our client trust account. This lien is in addition to our equitable lien rights.

With regard to our lien rights, Rule 3-300 of the Rules of Professional Conduct of the State Bar of California states:

“[We] shall not enter into a business relationship with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:

- (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
- (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

Mr. Darryl Cotton
June 13, 2017
Page 3 of 6

- (C) The client thereafter consents in writing to the terms of the transaction or the terms of acquisition.”

You granting us a lien is an adverse and/or business relationship and pursuant to the above Rule we recommend you seek advice from an independent lawyer of your choice before granting us the lien and entering into this agreement.

7. Potential Conflicts Of Interest. Representation by us in a particular matter is contingent upon clearance of all conflicts of interest checks. With regard to this matter, Rules 3-310(C) through 3-310(E) of the Rules of Professional Conduct of the State Bar of California state:

Rule 3-310(C):

“[We] shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.”

Rule 3-310(E):

“[We] shall not accept employment adverse to a client or former client where, by reason of the representation of the client or former client, [we have] obtained confidential information material to the employment except with the informed written consent of the client or former client.”

With regard to Rule 3-310(C), it is our duty not to represent clients whose interests potentially or actually conflict, unless each client provides us with informed written consent to such representation. Our current understanding of the available facts and applicable law leads us to believe the prospect for an actual or potential conflict is low. Accordingly, we believe we can represent you in a manner consistent with the professional standards by which we must abide. If this understanding changes in any material way, we will make appropriate disclosures to each of you so a proper course of action may then be pursued.

Although we believe there is only a limited potential for any conflict of interest, we inform you of potential conflicts that could theoretically arise. We do not foresee such a conflict will arise, but advise of the potential. As discussed, we represent the Green Road, LLC, and its principals and agents (collectively “Green Road”) in connection with all aspects of the potential operation of a marijuana dispensary within District 6 of the City of San Diego. Our ability to continue to represent Green Road in all matters that

Mr. Darryl Cotton

June 13, 2017

Page 4 of 6

may arise in the future is critical to our firm, including in connection with potential disputes in which you are adverse to Green Road. Our understanding is that you have an interest in operating a marijuana dispensary in District 6 either directly or indirectly, and that our representation here is focused on obtaining a District 4 dispensary. Accordingly, we do not perceive a conflict here. However, in order to preserve our ability to represent Green Road should a conflict arise in the future, by signing this agreement you agree we may terminate our representation of you at any time of a potential or actual conflict arises between you and Green Road.

In addition, in the even of such a conflict, we may ask your consent to represent you and Green Road concurrently. You each acknowledge that if any party refuses to sign such a waiver our firm reserves the right to terminate our representation of you. Similarly, if we do undertake representation adverse to you, you agree not to seek the disqualification of our firm unless you present court-admissible evidence that our firm (a) has material confidential information from you in the matter in which a conflict is claimed, (b) obtained such material confidential information by virtue of our representation of you, and (c) such information could be used against you in the case in which a conflict is claimed. Note that our withdrawal from representation of you could be expensive (bringing new counsel up to speed), disadvantageous (sending the wrong message to an adversary), or come at an inopportune time.

By execution of this agreement, you acknowledge our warnings of potential conflicts of interest with respect to this matter, and waive any and all conflicts of interest which presently exist, or may hereafter arise, by virtue of our representation. Before consenting to our representation on these terms, we recommend you carefully consider the ramifications of our representation on these terms and consult with counsel of your choice.

8. Disclaimer Of Guarantees. It is impossible for us to make any guarantees regarding the successful termination of a matter and all expressions relative to the merits of your positions are only matters of our opinion and do not constitute a guarantee of a particular result.

9. Client Contact. It is our practice to furnish our clients with copies of all important pleadings and/or correspondence and to give verbal or written status reports from time to time concerning the progress of our representation. We encourage you to contact us if you have any questions concerning the status of our representation.

10. Termination Or Withdrawal. You have the right to terminate our services at any time. We may withdraw from representation upon reasonable written notice to enable you to secure other counsel due to: (1) the dissolution of our firm; (2) the discovery of evidence that your claim, suit or position lacks merit; (3) your non-cooperation or material breach of this agreement; and/or (4) the discovery of an irreconcilable conflict of interest. In the event of termination or withdrawal, we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring the files. Similarly, if at any time, during or after our representation, you request your client files, you agree we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring said files.

Mr. Darryl Cotton

June 13, 2017

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11. Retainer. We request a retainer of \$10,000.00 as an initial payment for our invoices. The retainer will be placed in the Finch, Thornton & Baird, LLP Client Trust Account, and we are authorized to make disbursements into our firm account to cover amounts we invoice you. Our monthly invoices will show the amount charged against the retainer and the retainer balance. We may request this retainer be replenished monthly or from time to time. The retainer amount is not a representation of the estimated total fees, costs and expenses likely to be incurred in the course of our representation. If we allow the retainer to be depleted, you agree to comply with the billing and payment provisions set forth above. You may pay this retainer by check, payable to Finch, Thornton & Baird, LLP Client Trust Account or by going on our website <http://www.ftblaw.com/bill-pay/>. Click on the RETAINER PAYMENT button and pay via credit card. Once the retainer is depleted and you receive invoices for a balance due, you may use this same site to make credit card payments, by clicking the INVOICE PAYMENT button.

12. Arbitration. Any dispute relating to fees and costs due pursuant to this agreement shall, at your discretion and upon timely demand, be submitted to binding arbitration before the San Diego County Bar Association pursuant to California Business and Professions Code section 6200, et seq., or should that organization decline to arbitrate the dispute, before the State Bar of California pursuant to California Business and Professions Code section 6200, et seq.

Subject to the foregoing requirements of California Business and Professions Code section 6200, et seq., any controversy or claim arising out of or relating to this agreement shall be resolved by binding arbitration before the American Arbitration Association by a single arbitrator in San Diego, California, in accordance with the Commercial Rules of the American Arbitration Association prevailing at the time of the arbitration and judgment on the award may be entered in any court having jurisdiction. The right to appeal from the arbitrator's award, any judgment entered, or any order made is expressly waived.

13. Conclusion. To confirm this letter accurately reflects our complete and mutual understanding as to the terms of our agreement, please date, sign and return an original agreement along with a check for \$10,000.00 in the enclosed addressed and stamped envelope. A duplicate original is enclosed for you. Thank you for the opportunity to be of service.

Very truly yours,



David S. Demian,
Partner

Enclosures

DSD:hkr/3BD2583

cc: Mr. Joe Hurtado (via email only) (w/o encls.)


Mr. Darryl Cotton

June 13, 2017

Page 6 of 6

AUTHORIZATION, CONSENT, AND ACKNOWLEDGMENT:

I have read and understand this services agreement. I acknowledge receiving full disclosure of the terms of the conflicts of entering the transaction described above. I understand I may seek independent counsel before signing this agreement. I consent on behalf of the entity listed below to the representation by Finch, Thornton & Baird, LLP, as described above.

Signature: 
Darryl Cotton
Dated: 6-15-2017

Finch, Thornton & Baird, LLP is authorized to accept direction as to the representation of you from the following individuals:

Darryl Cotton  6-15-17

EXHIBIT 3

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92118
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

F I L E D
Clerk of the Superior Court

JUN 13 2018

By: A. SEAMONS, Deputy

Attorney for Defendant/Cross-Complainant DARRYL COTTON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

LARRY GERACI, an individual,
Plaintiff,
vs.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,
Defendants.

AND RELATED CROSS-ACTION.

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

**DECLARATION OF JOE HURTADO IN
SUPPORT OF *EX PARTE* APPLICATION FOR
ORDERS APPOINTING A RECEIVER TO
MANAGE THE CONDITIONAL USE PERMIT
FOR DEFENDANT'S REAL PROPERTY; AND
OTHER RELIEF**

Date: June 14, 2018
Time: 8:30 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

I, Joe Hurtado, declare as follows:

1. I am an individual over the age of 18 years, residing in the County of San Diego, and not a party to this action.

2. The facts contained in this declaration are true and correct of my own personal knowledge, except those facts which are stated upon information and belief; and, as to those facts, I believe them to be true. If called upon to do so, I could and would competently testify as to the truth of the facts stated herein.

1 3. I graduated from New York University School of Law in 2009.

2 4. Upon graduation, I clerked in the United States District Court in the Northern District of
3 California for a year.

4 5. Upon completion of my clerkship, I joined the Mergers & Acquisitions group at Latham
5 & Watkins in New York City as an Associate.

6 6. In 2013, I left the practice of law and joined the Corporate Strategy & Development
7 department at UnitedHealth Group in Minneapolis as a Manager.

8 7. I left UnitedHealth Group in August of 2015, relocated to San Diego and enrolled in the
9 Master of Science in Real Estate (MSRE) degree program at the University of San Diego. In my studies
10 in the MSRE program, we discussed the effect that the legalization of medical cannabis was having on
11 real property values in California.

12 8. Between late-2016 and early-2017, the following sequence of events took place:
13 (i) Mr. Darryl Cotton informed me that he had entered into a conditional agreement for the sale of his
14 real property located at 6176 Federal Boulevard, San Diego, California (the "Property") to
15 Mr. Lawrence Geraci; (ii) Mr. Cotton told me that he expected Mr. Geraci would breach their
16 agreement; (iii) Mr. Cotton asked that I help him to locate a new buyer for his Property; (iv) I confirmed
17 with Mr. Geraci's attorney, Mrs. Gina Austin, that she was in the process of reducing to writing the
18 agreement between Mr. Geraci and Mr. Cotton for the sale of the Property; (v) I entered into a contingent
19 agreement with Mr. Richard Martin to facilitate his purchase of Mr. Cotton's Property in the event the
20 transaction between Mr. Cotton and Mr. Geraci did not close as contemplated; and (vi) I brokered a deal
21 between Mr. Cotton and Mr. Martin for the sale of Mr. Cotton's Property to Mr. Martin.

22 9. The day after the deal between Mr. Cotton and Mr. Martin had been reached on
23 March 21, 2017, I was informed by Mr. Cotton that Mr. Geraci had served him with a lawsuit alleging
24 a document executed in November of 2016 was the final written agreement for Mr. Cotton's Property
25 (the "Geraci Litigation").

26 10. Throughout the course of the Geraci Litigation, the following sequence of events took
27 place: (i) Mr. Cotton attempted to represent himself *pro se* in the Geraci Litigation; (ii) Mr. Cotton chose
28 to no longer represent himself in the Geraci Litigation and asked that I help him finance and facilitate

1 his legal representation; (iii) I identified Attorney David S. Demian of Finch, Thornton & Baird for
2 Mr. Cotton to interview to represent him in his legal matters; (iv) Attorney Demian undertook the
3 representation of Mr. Cotton in various legal matters related to Mr. Cotton's Property; (v) Attorney
4 Demian's representation of Mr. Cotton was terminated after I informed Mr. Cotton that Attorney
5 Demian had failed to raise material evidence at a Court hearing at which I was present on December 7,
6 2017; and (vi) I facilitated Mr. Cotton's legal representation by Attorney Jacob Austin after Mr. Cotton's
7 relationship with Attorney Demian was terminated.

8 11. On March 6, 2017, I attended a local event in San Diego for the kick-off of a new business
9 center at which Mrs. Austin was the keynote speaker. Mr. Cotton had planned to attend the event to
10 speak with Mrs. Austin regarding comments to the written agreements for the purchase of his Property
11 by Mr. Geraci. However, Mr. Cotton could not make it and asked that I communicate so to Mrs. Austin.

12 12. At that point in time, after speaking with Mr. Cotton, I decided to attend the event
13 because I was doubtful that Mr. Geraci would fail to live up to his end of the bargain. The deal Mr.
14 Geraci had reached with Mr. Cotton was very favorable to him given the competition in San Diego for
15 properties that qualified for CUPs with the City for cannabis related businesses.

16 13. My primary goal in attending the event was to speak with Ms. Austin to convey
17 Mr. Cotton's message that he would not be attending and to personally confirm with Ms. Austin that a
18 final agreement for the sale of Mr. Cotton's Property to Mr. Geraci had not been reached.

19 14. My conversation with Mrs. Austin was short, clear, direct, unambiguous and with no
20 possibility for misinterpretation. Mrs. Austin acknowledged that she was working on the drafts for
21 Mr. Geraci's purchase of Mr. Cotton's Property and that no final agreement had yet been executed.

22 15. I have reviewed some of Mrs. Austin's submissions to the Court on behalf of Mr. Geraci
23 arguing that Mr. Cotton and Mr. Geraci entered into a final agreement for the Property in November of
24 2016. It is my belief that Mr. Geraci is falsely representing that document as the final agreement for the
25 Property and that Mrs. Austin knows this is a false representation.

26 16. In January of 2018 I provided a supporting declaration for Mr. Cotton in which I noted I
27 spoke with Ms. Austin at the event in March of 2017. This statement by itself is inconsequential to the
28 Geraci Litigation. I had hoped, since prior to then I had not provided a declaration or been involved in

1 the litigation, that my declaration would let her know I was aware of her contradictory statements to the
 2 Court. And, consequently, she would inform Mr. Geraci about our conversation in March of 2017 which
 3 would lead to a material positive effect on the Geraci Litigation for Mr. Cotton (without me personally
 4 having to become involved).

5 17. I do not understand how Mrs. Austin can ethically reconcile her representations in March
 6 of 2017 and her arguments to the Court alleging facts that contradict her statements to me. Mr. Austin,
 7 counsel for Mr. Cotton, and I have spoken about the conversation I had with Ms. Austin in March of
 8 2017 and information, such as the Metadata Evidence (as defined in Mr. Cotton's submissions to the
 9 Court), that reflect that Mrs. Austin is making false representations to the Court. Mr. Austin forwarded
 10 me an email from Mr. Weinstein in which Mr. Weinstein defends Ms. Austin by stating the following:

11 Ms. Austin has made no misrepresentations to the court. No declaration signed under penalty
 12 of perjury by Gina Austin has been submitted as evidence to the Court in any proceeding in
 13 any of the two cases. She has appeared as counsel in the Writ of Mandate case and argued
 with me in opposition to Mr. Cotton's first ex parte application for issuance of a writ of
 mandate heard by Judge Sturgeon. That is it – legal argument.

14 Therefore, based on this email from Mr. Weinstein, it appears to me that Mr. Weinstein and Mrs. Austin
 15 believe they can make *legal arguments* to the Court that contain factual statements that they know to be
 16 false and not be in violation of any rules or codes of ethical conduct for attorneys. I believe this to be
 17 incorrect.

18 18. I have not previously provided my detailed testimony for the following reasons: (i) my
 19 professional and personal networks are conservative in nature and I did not want there to be a public
 20 record of my involvement in a cannabis related real estate transaction; (ii) I believed that the evidence
 21 presented by Mr. Cotton, especially the Confirmation Email and communications sent by Mr. Geraci to
 22 Mr. Cotton, is more than sufficient to prove his case and that my testimony would be unnecessary;
 23 (iii) Mr. Cotton is an intelligent, strong-willed and politically passionate individual; however, I did not
 24 want to be publicly associated with him because of his history related to his political activism for medical
 25 cannabis; (iv) the Court's orders in this action have repeatedly stated that Mr. Cotton is unlikely to
 26 prevail in this litigation and I have finite capital to allocate toward financing his legal defense
 27 (irrespective of the merits of his case); (v) on January 17, 2018, I was threatened by an individual,
 28 Mr. Shawn Miller, who told me that it would be in my "best interest" to use my influence with

1 Mr. Cotton to convince him to "settle with Geraci"; (v) Mr. Cotton has been the victim of an armed-
2 robbery at his Property, reported to the police, that he believes occurred at the direction of Mr. Geraci;
3 and (vi) Mr. Cotton, on a separate incident, showed me video of being accosted by an individual known
4 as Logan who told Mr. Cotton that he should settle with Mr. Geraci for his own good.

5 19. The language used by Logan sounds similar me to that used by Mr. Miller, leading me
6 to believe there is a reasonable possibility that these individuals were both sent by, or someone
7 connected to, Mr. Geraci.

8 20. I am now providing my testimony at the request of Mr. Austin because I believe his legal
9 arguments regarding the parol evidence rule are meritorious and that Mr. Cotton will prevail in this
10 action as a matter of law.

11 21. Additionally, I am providing my testimony because on May 27, 2018 I was present at a
12 meeting at which Ms. Corina Young described a meeting to Mr. Cotton and his attorney, Mr. Austin,
13 that she had with Mr. Jim Bartell on or around October of 2017. She met with Mr. Bartell upon her
14 attorney's recommendation, Mr. Matthew Shapiro, when she informed him that she was contemplating
15 investing in Mr. Cotton's litigation against Mr. Geraci. Mr. Bartell informed her that he "owns" the CUP
16 on Mr. Cotton's Property and he would be getting it denied "because everyone hates Darryl."

17 22. Ms. Young was attempting to defuse the situation between Mr. Cotton and a Mr. Aaron
18 Magagna who had submitted a competing CUP within 1,000 feet of Mr. Cotton's Property and who
19 appears to have numerous connections to Mr. Geraci.

20 23. Subsequent to the May 27, 2018, Ms. Young and I had several conversations in which
21 she first attempted to argue on behalf of Mr. Magagna, until such time that Mr. Magagna attempted to
22 coerce Ms. Young into changing her testimony regarding the meeting with Mr. Bartell and he offered
23 her financial compensation for doing so. Attached hereto as **Exhibit A** are true and correct copies of my
24 text messages with Ms. Young on June 1, 2018. I am breaching her confidence by providing them, but
25 am doing so because I believe her testimony is required to prove Mr. Bartell's statements and that Mr.
26 Shapiro and Mr. Magagna are closely connected to Mr. Bartell and Mrs. Austin, both of whom are agents
27 of Mr. Geraci.

25. On June 4, 2018, Ms. Young hired independent counsel and stated she would not be providing any statements until her attorney reviewed the Geraci Litigation. Subsequent to June 4, 2018, Ms. Young communicated that she would neither confirm nor deny the statements in our text messages and, if subpoenaed, upon the advice of counsel, she would be invoke her right under the 5th Amendment to not self-incriminate herself.

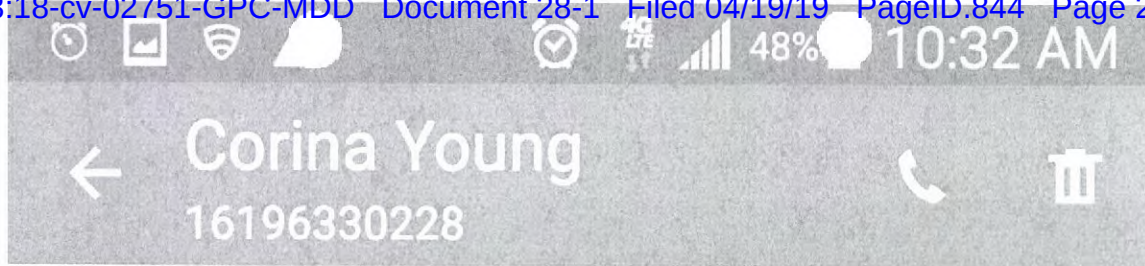
8 26. Lastly, I wish to clearly state that I do *not* share, support or condone in any manner
9 Mr. Cotton's beliefs regarding the various conspiracies he has alleged in his public filings regarding the
10 Court, the City of San Diego or any of their respective employees.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct, and that this declaration was executed on June 13, 2018.



JOE HURTADO

EXHIBIT A



Fri, 06/01/2018

Look, I don't know what to say because at the end of the day as discussed yiurr being put in a shitty situation and it benefits me. Anything i say is suspect. I'm sorry about Darryl and the situation. Talk to your attorney first about this before saying anything more to me or anyone. I just want you to know I can't NOT tell the truth. Jake has already sent emails and I have to provide my testimony to confirm what you said in front of him and darryl. And I'm sorry because although you told me about Aaron in confidence, under oath, I won't be able to lie about it. The whole situation has spiraled out of control.



10:17 AM



I have no words.

10:23 AM

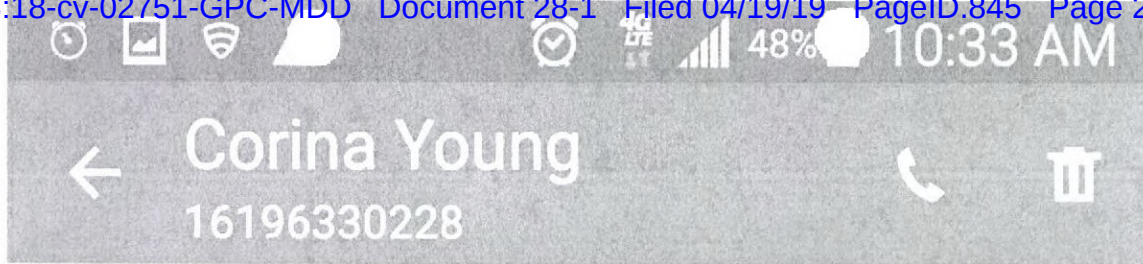


I will be getting an attorney. You are all opportunistic assholes.



Enter message





I will be getting an attorney. You are all opportunistic assholes.

10:31 AM



Matt, Cotton, Gina, Jacob... now you... it's so disgusting to disrupt and destroy people's lives. I'm fucking hiding from Cotton!!!

10:35 AM



Now things I told you in confidence... seriously? You know Jim is on my CUP.

10:37 AM



You know is jeopardizes my future and everything I have worked so hard for.

10:38 AM



I hate you

10:46 AM



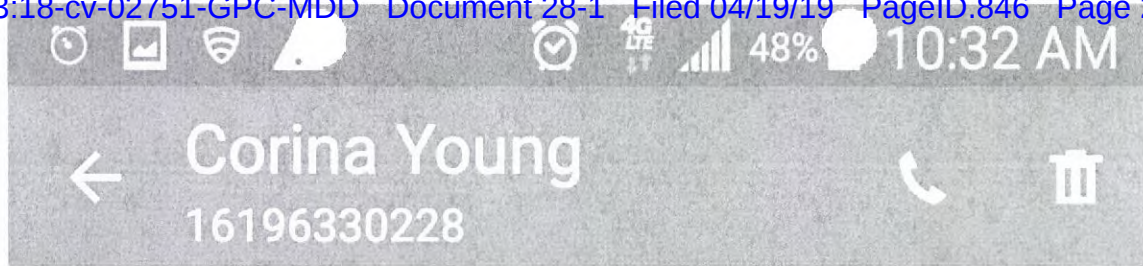
And I never asked you to "not" tell the truth

10:49 AM



Enter message





And I never asked you to
"not" tell the truth

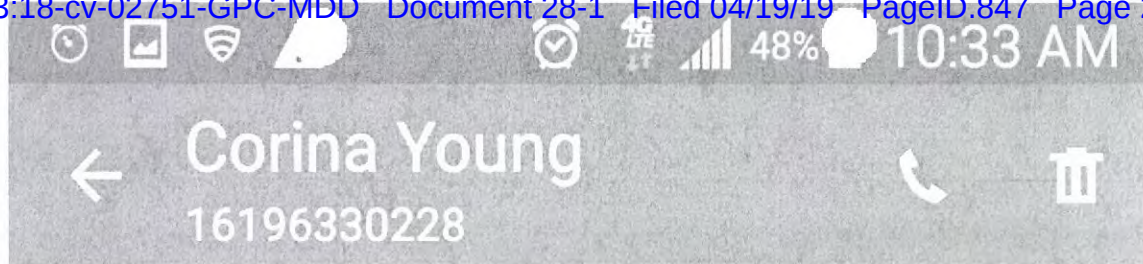
10:48 AM

I have not shared anything
you have told me in
confidence with Darryl. I
don't trust him, he's literally
been driven near insane
because of this. But if this
comes down to getting
deposed and being on trial
and I get asked about Aaron,
which I will, I'm going to
have to tell them what I
know. Aaron pays Matt
points for cannabis sold to
unlicensed shops, he
repeatedly told you that you
were dreaming the Bartell
meeting, he offered you
money to somehow keep
him out of this. Shapiro told



Enter message





I have not shared anything you have told me in confidence with Darryl. I don't trust him, he's literally been driven near insane because of this. But if this comes down to getting deposed and being on trial and I get asked about Aaron, which I will, I'm going to have to tell them what I know. Aaron pays Matt points for cannabis sold to unlicensed shops, he repeatedly told you that you were dreaming the Bartell meeting, he offered you money to somehow keep him out of this. Shapiro told you not to get an attorney. That is so unethical! Believe it or not, I have moved heaven and earth myself to not get involved. Gina told me in march of 2017 she was working on drafts for the property and I have NEVER provided my testimony on that because I don't want to be involved. I don't want to be a witness even though I have testimony that proves she's in on it. Darryl and Jacob have begged me for months to provide my testimony and I have not.

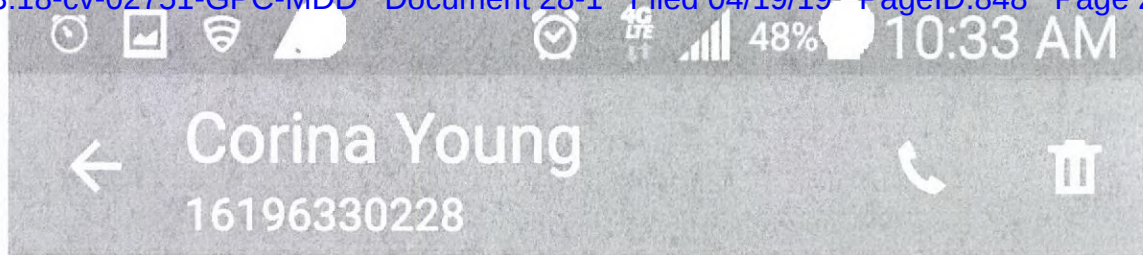


10:48 AM



Enter message





And I never asked you to "not" tell the truth

10:49 AM

I know. I'm not saying you did. I just meant that there is no situation where I cannot. I would stay out of it if I could. But that's not an option for me either now.



10:49 AM



I dont know what to believe anymore

10:51 AM



In this business everyone make points. Thanks not a big deal. I'm more bothered by the fact Matt literally knows every deal offer that I have had.

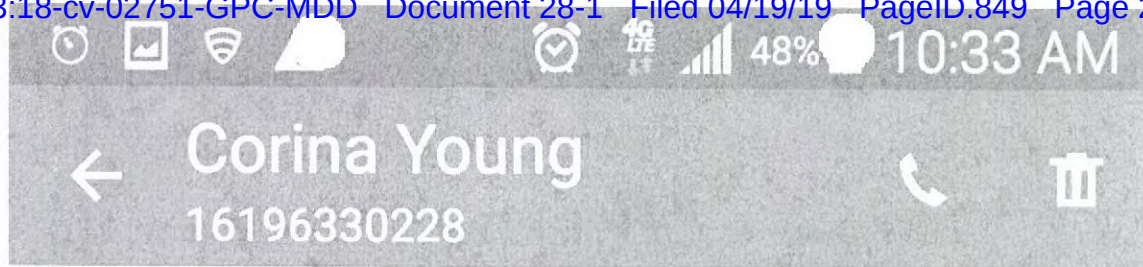
10:54 AM

I know. But it's not ethical for attorneys to facility cannabis transactions and get paid point for every deal. I know it's normal in the industry, but it's not ethical for attorneys. That's what bothers me.



Enter message





I know. But it's not ethical for attorneys to facility cannabis transactions and get paid point for every deal. I know it's normal in the industry, but it's not ethical for attorneys. That's why he's going to try to discredit you and say you're a pothead, to make it look like you have a bad memory or are a liar. When you talk to your attorney, he will confirm that Gerais lawsuit is fraudulent and matt's actions are unethical. And Aarons actions speak for themselves. Just tell everything to your attorney and follow his advice.



10:59 AM

Matt can't use attorney client privileged information in any way against you. Have your attorney send him a letter explicitly stating as much.



11:00 AM



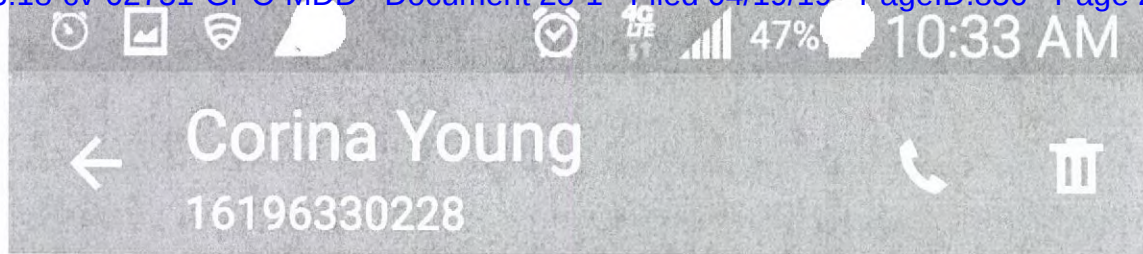
If I lose my La MESA CUP over any of this... I'm suing everyone

11:00 AM



Enter message





If this is true and what they are doing to Cotton is true..... What do you think they will do to us for simply telling the truth. Haven't you already gotten

11:41 AM



threats? What do you think will come next? These guys know where I live. THEY KNOW WHERE I LIVE! Matt has sat on my patio and discussed federal and all my

11:41 AM



deals... he inserted Gina and Bartel in my life ... as well as Aaron now that I think about it. All after I discussed federal with him. Is this all a random

11:41 AM



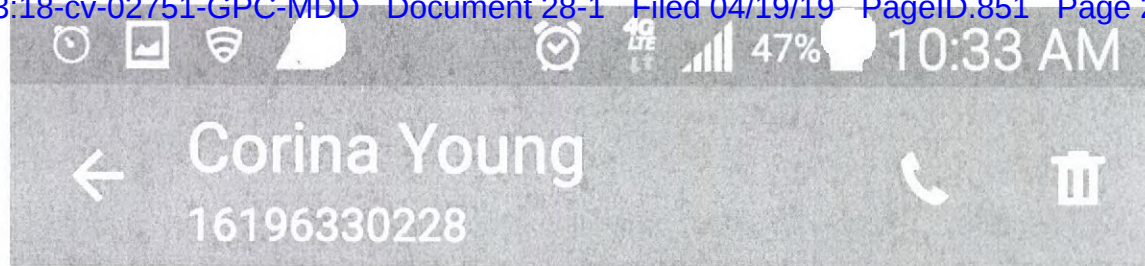
coincidence or is it all because of federal? I'm growing more and more concerned that these things are true. Is Matt saying I'm a pothead a big deal? He was

11:41 AM



Enter message





sitting next to me in from of Jim
when I asked if I should invest. He
said No. The whole point was to give
them a list of properties to see if
they were viable

11:41 AM



or not. We hired Jim. I wasn't
medicated at the damn meeting
either. The truth is the truth. By
saying the truth... I stand to lose
everything, I also can not

11:41 AM



lie under oath. I'd rather just not say
anything at all. I wish you would
continue to protect your family as
well. It is apparent that it is every
man for

11:41 AM



himself right now. It's a lose lose for
me all the way around.

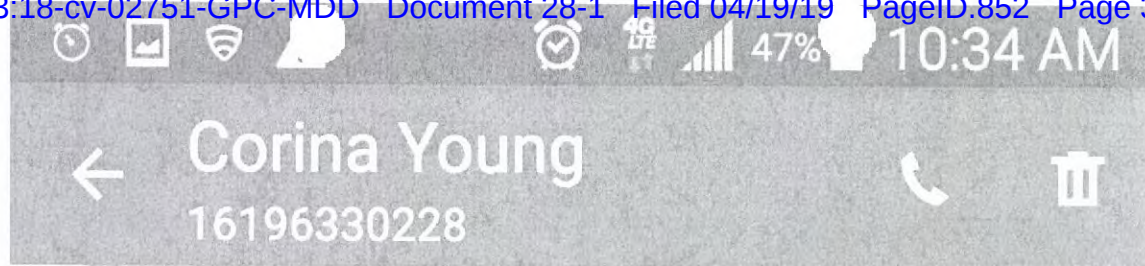
11:41 AM

Corina. I know your upset and this is
bad. Please meet your attorney as



Enter message





11:41 AM

Corina. I know your upset and this is bad. Please meet your attorney as soon possible and don't text me or anyone anymore, these text messages can get subpoenaed. This is important. I'm not an attorney and nothing you tell me is covered by privilege. Don't talk or text anyone until your attorney examines and understands the geraci v cotton case. What I still don't think you understand the complete import of, is that Bartell's comment shows bad faith and provides proof of a conspiracy. I know you had no idea that comment back then would stir up such a shit storm now. But I can't control Cotton and there is no way he will not drag you and me into this. I swear I wish I had not been there and heard you say that. But it puts us in a potentially adversarial position. DON'T TALK OR TEXT WITH ANYONE. Everyone has their own agenda, you need to look out for yourself.



11:51 AM



Enter message

