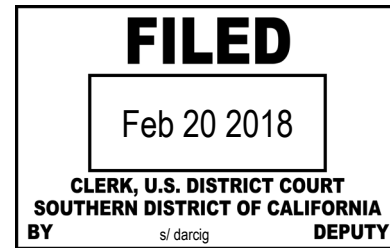


Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

NUNC PRO TUNC
2/13/18

Plaintiff *Pro Se*



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,
Plaintiff,

vs.

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

CASE NO.: 18CV0325 GPC MDD

Judge:
Dept.:

EMERGENCY SUPPLEMENTAL
DECLARATION OF DARRYL COTTON IN
SUPPORT OF DARRYL COTTON'S EX
PARTE APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE REGARDING TEMPORARY
RESTRAINING ORDER

I, Darryl Cotton, for the reasons stated below, believe that my safety is in danger because of my filing of this suit in Federal Court on February 9, 2018 and respectfully request that this Court expedite the hearing on my Ex Parte Application for Temporary Restraining Order and Order to Show Cause Regarding Temporary Restraining Order (the "TRO Motion").

I, Darryl Cotton, hereby declare:

1. I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1 2. As summarized in my Complaint, on February 3, 2018, two individuals visited me at
2 the Property at issue in the suit and at first offered to pay more than \$2,500,000 for the Property.
3 When I turned them down, they then threatened me with, *inter alia*, (i) having the CUP application
4 denied if anyone other than defendant Larry Geraci is going to be the recipient and (ii) having me
5 arrested by the San Diego Police Department and (iii) generally things would not “go well” if I did
6 not settle with Geraci. The individual to threaten me with being arrested and “warn” me that it would
7 be beneficial to me to settle with Geraci is an former special forces operative with the US Military.

8 3. The name of the first individual, upon information and belief, is Duane Alexander. I
9 have been informed that his first name may be Elythias, but that he goes by Duane.

10 4. The second individual, the former special forces operative, I only know by his first
11 name, Logan. Upon information and belief, Duane and Logan have been associates for over 10 years.

12 5. On **Feb 8, 2018**, I emailed counsel for the City of San Diego, Travis Phelps, and
13 counsel for Larry Geraci and Rebecca Berry in the civil actions in San Diego Superior Court
14 providing notice of my intent to file (i) suit in Federal Court and (ii) the TRO Motion. I emailed them
15 at exactly **3:01 PM**. See attached a true and correct copy of that email correspondence attached
16 hereto as Exhibit 1.

17 6. Exactly **31 minutes later**, I got a call from Logan who emphatically told me that he
18 knew I was filing in Federal Court and that he no longer had “anything to do with Duane, Geraci or
19 whatever was going on.” He asked that I not name him or involve him in this Federal Court action.

20 7. No one else knew that I was filing in Federal Court, I did so in contradiction of the
21 advice of everyone who is related to this case because I have no faith that the state court is taking me
22 seriously.

1 legal liability. Upon information and belief, he has already transported drug shipments to other states
2 for Geraci and is facing criminal charges in Texas.

3 14. I believe that Logan is angry at me for describing his actions in this lawsuit and
4 exposing him.

5 15. The CUP at issue in my lawsuit, the issuance of which will trigger the condition
6 precedent for Geraci's obligations to me and the magnitude of his damages as a result of his actions
7 in this matter, will be determined within the next 30 to 45 days. This timeline for the CUP is per
8 Geraci's architect that is an expert in applying for CUP applications with the City for cannabis related
9 businesses. (See Exhibit 5, page 5, paragraph 15; Declaration of Ahbay Schweitzer ("... then the
10 earliest I would expect the CUP application to be heard by a hearing officer is would be March
11 2018").)

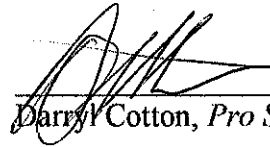
12 16. I believe that Logan and/or other agents of Geraci may try to take action against me to
13 mitigate the damages and/or prevent me from seeking judicial relief in this Federal Court because of
14 the impending March deadline.

15 17. Today, upon printing this Supporting Declaration, I will go to the San Diego Police
16 Department and file a complaint describing the actions that took place on February 3, 2018 and the
17 calls that I have been receiving the last couple days within minutes after providing notice to
18 defendant attorneys Gina Austin and Michael Weinstein.

19 18. Thus, I respectfully request that this Federal Court please address my TRO Motion on
20 an expedited basis, thereby making it impossible for Geraci to "buy" or intimidate/coerce me into
21 withdrawing my Complaint filed in this Federal Court.

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1 Respectfully submitted, this 13th of February 2018.

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4 Darryl Cotton, *Pro Se*
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Darryl Cotton <indagrodarryl@gmail.com>

Re: Depositions

Darryl Cotton <indagrodarryl@gmail.com>

Thu, Feb 8, 2018 at 3:01 PM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>, MPhelps@sandiego.gov,
info@austinlegalgroup.com

All,

Please note that I will be filing suit in Federal court later today. It is clear to me that I will not be able to access justice in front of Judge Wohlfeil. At best, he is incapable of understanding that the Confirmation Email is not disputed and that it resolves this action dispositively in my favor. If that is not the case, I assume a Federal Judge will at least have the decency to explain to me why, unlike Wohlfeil, the Confirmation Email does not.

Also, note that I will simultaneously be filing an ex parte request for a TRO. As soon as I finish my pleadings and have a date and time for the court hearing, I will provide such information.

Mr. Phelps, one of my federal causes of action is against the City for violating my constitutional rights because Development Services' failed to provide me substantive and procedural due process when it (i) continued processing the CUP application after they provided a letter stating it would not process the CUP application as they had been informed the property had been sold and would need MY executed Grant Deed to continue processing the CUP application, which I never did, (ii) lying to me and telling me they could not accept a second CUP application on MY property when it had on other occasions for other CUP applicants and (iii) allowing me to submit a second CUP only after my then-counsel sent a demand letter, but creating a bullshit "horse-race," forcing me to compete against Geraci on my own property when the City, vicariously through your predecessor, KNEW that Geraci had no legal right to my property at that point in time. An exception to doctrine requiring exhaustion of administrative remedies - futility.

I am going to see Geraci, Austin, Weinstein, Toothacre and their respective law firms on the stand. There is no situation where I settle with those unethical "officers of the court" that will justify themselves like Weinstein does below with his legal bullshit. However, I have no desire to engage in litigation with the City. Once we get past the TRO, which is going to be premised solely on the breach of contract cause of action, aided and abetted by Austin and Weinstein, let's get together to discuss the best path forward.

However, please note, should the CUP suddenly and mysteriously be denied and/or you oppose my request for a TRO seeking to have a receiver put in charge of the CUP application until this lawsuit is settled, then I will seek to hold the City fully responsible for ALL of its actions. I note that in Federal Court I will be seeking to have the Federal Judge appoint me counsel to represent me, so it won't be against my legally unsophisticated self that you will be facing off against. Please do not allow Geraci to sabotage the CUP.

On Fri, Jan 26, 2018 at 2:37 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

Mr. Weinstein,

If I'm mistaken than so is the Opinion I reference. The following is a link to Ethics Opinion CAL 1996-146 that discusses the questions below, perfectly on point. Mr. Weinstein you may not have

known that this lawsuit is a fraudulent act by Geraci at the beginning, Gina obviously did, but you do now.

<http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Opinions/1992-126-to-1997-151>

1. What are a lawyer's ethical obligations when she knows or should know her client is committing an ongoing or future fraud upon the public?
2. What are the lawyer's obligations where the client has used the lawyer's services in furthering the fraud?

Darryl Cotton

On Fri, Jan 26, 2018 at 2:17 PM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

Mr. Cotton,

You are mistaken, but that is your prerogative.

I will see you at your deposition.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
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From: Darryl Cotton [mailto:indagroddarryl@gmail.com]

Sent: Friday, January 26, 2018 12:20 PM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>; info@austinlegalgroup.com

Subject: Re: Depositions

Weinstein,

You are correct, you have not "made any misrepresentation to the court about the facts or the law." However, you know that he has made rulings premised on his incorrect belief that there is "disputed" evidence and, as such, you have an **Affirmative Duty** to tell Judge Wohlfeil about his mistaken belief upon which he has made numerous incorrect rulings. I wonder what Judge Wohlfeil is going to think about you and Gina when he eventually realizes that you allowed him to continuously, over the course of months and many motions and oral hearings, issue rulings that show he does not understand that, at least to this date, you have not disputed the Confirmation Email. He has issued orders on that mistaken belief and you have taken advantage of that mistaken belief.

This email by you is a blatant attempt to create a false record to cover your ass. This is why our judicial system fails miserably to achieve justice. I read the Ethics Opinion, I understand it. The violation here is not that you made a misrepresentation to the Court about facts or law, but that you have an Affirmative Duty to correct the judge and the rulings he has made based on an incorrect understanding of dispositive evidence. Again, his ruling is clear, he thinks the Confirmation Email is disputed, it is NOT. You are manipulating Judge Wohlfeil by not bringing this to his attention, hoping I run out of resources before the truth of your actions can come to light. And this email just proves it. You are playing word games, thinking I don't understand the nuances. You are no better than Demian. You are the absolutely the worst kind of unethical attorney there is. It is because of unethical attorneys like you, that manipulate the judicial system, that our system is so flawed. Gina conspired with Geraci from the beginning. But you, you keep doubling down, keeping on maintaining this vexatious lawsuit.

I am attaching here the California States Bar Ethics opinion regarding Deceitful Conduct that has all the language needed for you to know, to the extent you may try to argue that you previously did not know, that you have an AFFIRMATIVE DUTY to tell Judge Wohlfeil that the Confirmation Email is dispositive and this case should be resolved in my favor. I don't think that you will, you are in too deep. I dare you to show this email to Judge Wohlfeil and bring to his attention the dispositive nature of the Confirmation Email so that he finally understands you have been manipulating him by OMISSION. It would be great to see you argue to him that you have allowed him to abuse his discretion on numerous occasions by stating that you "have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law."

Per his stated opinions about you and counsel at the last oral hearing, he thinks you would not take these sorts of actions, don't you think he is going to be pissed once he finds out that after he went out of his way to make you seem like a nice, ethical guy that you actually continued to actively deceive him?

When you opposed the motions for stay, you had no problem citing case law and language to me via email. But, in response to this email, you have decided not to do so because you have no defense. Judge Wohlfeil did not read and/or take my opposition serious. It is a mess. But you did. I know you did. And you know what I tried to convey is true.

"No ill will" towards me? What kind of bullshit is that. I have lost everything. I have been to the ER for a stroke. I have been driven near insane and assaulted people, been disrespectful to people that I care about. I have lost my business and my property. Do you have any idea how I feel knowing that whether I win or lose I lost this property? I have had to negotiate away millions to keep this litigation financed. I have had to demean myself in public records. You are so good at distracting the judge that I don't even have legal representation anymore even though my cause of action is not just meritorious, the evidence makes it clear it is dispositive. No "ill will" towards me? I cannot say the same about you! When this is over, I hope that I can convince the Judge to have you prosecuted criminally for your actions here!!

Darryl Cotton

On Fri, Jan 26, 2018 at 9:56 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

Mr. Cotton,

You have chosen "the last day possible" for your deposition. By my calculation, that would be Wednesday, February 14, 2018 (20 days from today). I will serve an amended deposition notice scheduling your deposition for February 14. Thank you.

As for the remainder of your email, you are way off the mark. I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.

Trial Call is May 11, 2018. At the trial the disputed facts in this case will be presented through admissible witness testimony and a decision will be made by the judge or jury. That is the way the process works. And that is where I, on behalf of my client, will present and argue my case. I will not do so in emails to you.

I wish you no ill will. Please be assured that I will continue to conduct myself in an ethical and civil matter in all my dealings with you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Thursday, January 25, 2018 3:34 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com
Subject: Depositions

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an **affirmative duty**, based on the case law and California State Bar opinions referenced in my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

If I really am crazy, I apologize to you. I really do. If I am not, this will eventually all come out and your actions in this matter will be incredibly clear. I note the the State Bar let me know about "Malicious Prosecution" causes of action. If I prevail in this matter, again, assuming I am not crazy and the Confirmation Email is taken into account by the COA, then you can be assured I will be using this email as evidence that you knew you had an affirmative duty to Judge Wohlfeil about letting him know that the Confirmation Email is **not** disputed and you did not. Again, only if I am crazy. It is not lost on me that I have yet again been before the Court and I still lost (He has never mentioned or referenced the Confirmation Email, I keep hoping he just thinks I am a crazy pro se and don't know what I am doing). At some point I have to realize no matter how sure I am about something, that maybe, I really am not thinking well. If the COA comes back with a reasoned decision taking into account and describing why the Confirmation Email (along with the other communications from Geraci, which include the drafts of purchase agreements prepared by Gina Austin months after November of 2016) does not dispositively address this action in my favor, I shall personally and sincerely offer my apologies. If not, I will eventually, no matter how much it costs me personally financially and emotionally, see you and Gina in Court for malicious prosecution. And there will be no situation where I settle. I want to see you both on the stand responding to this email and why you did not tell Judge Wohlfeil about his incorrect assumption that would have dispositively addressed this case in my favor much sooner and saved me an incredible amount financial and emotional harm.

In anticipation of your reply I remain.

Darryl Cotton



Darryl Cotton <indagrodarryl@gmail.com>

Darryl Cotton v. City of San Diego - Writ of Mandate Proceeding

Michael Weinstein <MWeinstein@ferrisbritton.com>

Fri, Feb 9, 2018 at 5:17 PM

To: Darryl Cotton <indagrodarryl@gmail.com>, "MPhelps@sandiego.gov" <MPhelps@sandiego.gov>

Cc: "Austin, Gina" <gaustin@austinlegalgroup.com>

Dear Mr. Cotton and Mr. Phelps,

As I mentioned to the court following the hearing on January 25, 2018, based on the court's ruling and order denying the motion for issuance of a peremptory writ of mandate, the Respondent, City of San Diego, and the Real Parties in Interest, Larry Geraci and Rebecca Berry, are entitled to have Judgment entered in their favor in this action.

Attached please find my draft of a proposed Judgment for your review and comment as to the form of the Judgment. If I do not receive any comments from you by the close of business on Friday, February 16, 2018, then I will submit the proposed Judgment to the court and request that it be signed by Judge Wohlfeil and entered. If I do receive comments from you as to the form of the Judgment, I will either make the requested changes or, if I disagree, I will submit my proposed Judgment to the court along with your comments so that the judge will have everyone's comments in deciding what form of Judgment should be entered.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
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Darryl Cotton <indagrodarryl@gmail.com>

Re: Darryl Cotton v. City of San Diego - Writ of Mandate Proceeding

Darryl Cotton <indagrodarryl@gmail.com>

Mon, Feb 12, 2018 at 10:08 AM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Cc: "MPhelps@sandiego.gov" <MPhelps@sandiego.gov>, "Austin, Gina" <gaustin@austinlegalgroup.com>

Mr. Phelps,

I want to make you aware that on Saturday February 3, 2018. Two males and a female came to visit me and they first told me they had nothing to do with Geraci, but that they were willing to buy the property/CUP from me. When I told them that I could not, they threatened me in various ways, including by telling me that Geraci has "deep and influential ties" with the "City" and the CUP was definitely going through because of Geraci's influence - his exact words were, the "CUP is a done deal" but that it will only go to Geraci. That if the CUP were to be transferred to me, that he would use his influence with the City to sink the CUP.

One of the individuals, named Duane, is a high net worth individual that recently sponsored a high-end art gala at San Diego State University that was attended by several hundred people. The second individual I wont name because he is a former military special forces operative. He threatened me including by telling me that Geraci can use his influence with the City to have my location raided by the SDPD and have me arrested. I told them that I had an agreement in place with the City that allowed me to operate under Prop 215 guidelines and I was in compliance with that agreement. An agreement that also waives my 4th Amendment rights which gives SDPD that ability to enter my property at any time and assure that I am operating in compliance with that agreement. Being arrested as a threat to cooperate with Geraci was not going to be an influence in my decision to pursue him for his criminal behavior when it comes to me or his attempts to steal my property.

That happened on **2/3/18**. I provided notice to counsel here, you and Michael and Gina, **AND ONLY THE THREE PEOPLE ON THIS EMAIL on February 8, 2018 at 3:01 PM**. Exactly **31 minutes later**, the ex-special forces guy called me and emphatically told me he was done with Duane, Geraci and that he had nothing to do with what was going on and begged me not to name him or involve him in the federal lawsuit that he **knew** I was about to file. It is because I do not want to piss this guy off who I know is incredibly dangerous that I am not naming him.

Mr. Phelps, again, I only told counsel here. **No one else knew I was filing**. That means Michael and/or Gina immediately contact Geraci and/or Duane/Special Forces and told them about my filing in Federal Court. I did file this last Friday. Once the Court approves my in propria status, the US Marshalls will serve summons and copies of the Complaint and the TRO.

Mr. Phelps, Michael and Gina are full on criminals. They have crossed the line. The actions I describe here are 100% true and I can prove it. I have witnesses they visited me, I have video from my property cameras showing they visited me, I have numerous emails, texts and calls I made right after to numerous people after they visited me describing in detail the threats they made.

I have named Michael, Gina and Toothacre as defendants in the federal suit as being co-conspirators and part of Geraci's criminal enterprise that is seeking to unlawfully acquire the property and CUP. The two individuals were at my place threatening me at the behest of Geraci, or maybe even Michael and Gina, we can let the Federal Court sort it out.

I wanted you to be aware of this because Michael's email below is exactly what it appears to be - a pathetic and last minute attempt to try to get the State Court to adjudicate the state action before the federal court can reach my complaint. He did NOT MENTION anything to the Court about how he was going to ask the state court for a judgment. I have numerous witnesses, and they are all drafting declarations right now stating that Michael is blatantly lying - he did not tell the court that judgment is warranted. The record is clear - **ALL** of Michael's pleadings and arguments have specifically stated that this matter should go to trial. **This judgment approach is simply last minute effort to attempt to deprive me of seeking justice in federal court.**

Please take the above into account when dealing with Michael and Gina, at this point, they are going to do whatever they can do to make themselves not be part of Geraci's criminal enterprise. I have filed RICO charges, Geraci ships marijuana out of state and that can be proved. Michael and Gina, even if they were not aware of the out of state shipping, under RICO, are liable for helping Geraci's criminal enterprise seek to unlawfully acquire my property for the same criminal enterprise.

Again, please do not allow Geraci to sabotage the CUP.

On Fri, Feb 9, 2018 at 5:17 PM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

Dear Mr. Cotton and Mr. Phelps,

As I mentioned to the court following the hearing on January 25, 2018, based on the court's ruling and order denying the motion for issuance of a peremptory writ of mandate, the Respondent, City of San Diego, and the Real Parties in Interest, Larry Geraci and Rebecca Berry, are entitled to have Judgment entered in their favor in this action.

Attached please find my draft of a proposed Judgment for your review and comment as to the form of the Judgment. If I do not receive any comments from you by the close of business on Friday, February 16, 2018, then I will submit the proposed Judgment to the court and request that it be signed by Judge Wohlfeil and entered. If I do receive comments from you as to the form of the Judgment, I will either make the requested changes or, if I disagree, I will submit my proposed Judgment to the court along with your comments so that the judge will have everyone's comments in deciding what form of Judgment should be entered.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
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Darryl Cotton <indagrodarryl@gmail.com>

Re: Darryl Cotton v. City of San Diego - Writ of Mandate Proceeding

Darryl Cotton <indagrodarryl@gmail.com>

Mon, Feb 12, 2018 at 1:31 PM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Cc: "MPhelps@sandiego.gov" <MPhelps@sandiego.gov>, "Austin, Gina" <gaustin@austinlegalgroup.com>

Mr. Phelps, the name of the individual who is an ex-special forces operative who works for Geraci is Logan. I don't know last first name. Since I sent this email 3 hours ago, he has been calling me nonstop, he even got a new number and texted me that I must call him right away. I am scared Mr. Phelps. I know that I do not come across as sophisticated and that my passion for political activism marginalizes me. It does not change the fact that Geraci is a real criminal and that Weinstein and Austin are working for him.

MICHAEL/AUSTIN - FUCK YOU BOTH! IF I GET MURDERED, I HOPE TO GOD THIS EMAIL ENDS UP BEING USED AS EVIDENCE AGAINST YOU FOR YOUR ROLE IN THIS. FUCK YOUR "ATTORNEY-CLIENT" PRIVILEGE AND YOUR PROFESSED ZEALOUNESS IN THE ADVOCADY OF YOUR CLIENT'S INTEREST - YOU ARE INFINITELY WORSE CRIMINALS THEN GERACI. YOU UNETHICAL SACKS OF SHIT!



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On Mon, Feb 12, 2018 at 10:08 AM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

Mr. Phelps,

I want to make you aware that on Saturday February 3, 2018. Two males and a female came to visit me and they first told me they had nothing to do with Geraci, but that they were willing to buy the property/CUP from me. When I told them that I could not, they threatened me in various ways, including by telling me that Geraci has "deep and influential ties" with the "City" and the CUP was definitely going through because of Geraci's influence - his exact words were, the "CUP is a done deal" but that it will only go to Geraci. That if the CUP were to be transferred to me, that he would use his influence with the City to sink the CUP.

One of the individuals, named Duane, is a high net worth individual that recently sponsored a high-end art gala at San Diego State University that was attended by several hundred people. The second individual I wont name because he is a former military special forces operative. He threatened me including by telling me that Geraci can use his influence with the City to have my location raided by the SDPD and have me arrested. I told them that I had an agreement in place with the City that allowed me to operate under Prop 215 guidelines and I was in compliance with that agreement. An agreement that also waives my 4th Amendment rights which gives SDPD that ability to enter my property at any time and assure that I am operating in compliance with that agreement. Being arrested as a threat to cooperate with Geraci was not going to be an influence in my decision to pursue him for his criminal behavior when it comes to me or his attempts to steal my property.

That happened on **2/3/18**. I provided notice to counsel here, you and Michael and Gina, AND ONLY THE THREE PEOPLE ON THIS EMAIL on **February 8, 2018 at 3:01 PM**. Exactly **31 minutes**

later, the ex-special forces guy called me and emphatically told me he was done with Duane.

Geraci and that he had nothing to do with what was going on and begged me not to name him or involve him in the federal lawsuit that he knew I was about to file. It is because I do not want to piss this guy off who I know is incredibly dangerous that I am not naming him.

Mr. Phelps, again, I only told counsel here. No one else knew I was filing. That means Michael and/or Gina immediately contact Geraci and/or Duane/Special Forces and told them about my filing in Federal Court. I did file this last Friday. Once the Court approves my in propria status, the US Marshalls will serve summons and copies of the Complaint and the TRO.

Mr. Phelps, Michael and Gina are full on criminals. They have crossed the line. The actions I describe here are 100% true and I can prove it. I have witnesses they visited me, I have video from my property cameras showing they visited me, I have numerous emails, texts and calls I made right after to numerous people after they visited me describing in detail the threats they made.

I have named Michael, Gina and Toothacre as defendants in the federal suit as being co-conspirators and part of Geraci's criminal enterprise that is seeking to unlawfully acquire the property and CUP. The two individuals were at my place threatening me at the behest of Geraci, or maybe even Michael and Gina, we can let the Federal Court sort it out.

I wanted you to be aware of this because Michael's email below is exactly what it appears to be - a pathetic and last minute attempt to try to get the State Court to adjudicate the state action before the federal court can reach my complaint. He did NOT MENTION anything to the Court about how he was going to ask the state court for a judgment. I have numerous witnesses, and they are all drafting declarations right now stating that Michael is blatantly lying - he did not tell the court that judgment is warranted. The record is clear - ALL of Michael's pleadings and arguments have specifically stated that this matter should go to trial. **This judgment approach is simply last minute effort to attempt to deprive me of seeking justice in federal court.**

Please take the above into account when dealing with Michael and Gina, at this point, they are going to do whatever they can do to make themselves not be part of Geraci's criminal enterprise. I have filed RICO charges, Geraci ships marijuana out of state and that can be proved. Michael and Gina, even if they were not aware of the out of state shipping, under RICO, are liable for helping Geraci's criminal enterprise seek to unlawfully acquire my property for the same criminal enterprise.

Again, please do not allow Geraci to sabotage the CUP.

On Fri, Feb 9, 2018 at 5:17 PM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

Dear Mr. Cotton and Mr. Phelps,

As I mentioned to the court following the hearing on January 25, 2018, based on the court's ruling and order denying the motion for issuance of a peremptory writ of mandate, the Respondent, City of San Diego, and the Real Parties in Interest, Larry Geraci and Rebecca Berry, are entitled to have Judgment entered in their favor in this action.

Attached please find my draft of a proposed Judgment for your review and comment as to the form of the Judgment. If I do not receive any comments from you by the close of business on Friday, February 16, 2018, then I will submit the proposed Judgment to the court and request that it be signed by Judge Wohlfeil and entered. If I do receive comments from you as to the form of the Judgment, I will either make the requested changes or, if I disagree, I will submit my

proposed Judgment to the court along with your comments so that the judge will have everyone's comments in deciding what form of Judgment should be entered.

Thank you.

Respectfully,

Michael R. Weinstein
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Vcard



This message contains confidential information. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute this information. If you have received this message in error, please advise (619) 233-3131 or return it promptly by mail.

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Attorneys for Real Parties in Interest
 LARRY GERACI and REBECCA BERRY

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

DARRYL COTTON, an individual,

 Petitioner/Plaintiff,

 v.

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

 Respondents/Defendants.

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

Real Parties In Interest.

Case No. 37-2017-00037675-CU-WM-CTL

Judge: Hon. Eddie Sturgeon

**DECLARATION OF ABHAY
 SCHWEITZER IN SUPPORT OF
 OPPOSITION TO EX PARTE
 APPLICATION FOR ISSUANCE OF AN
 ALTERNATIVE WRIT OF MANDATE
 OR FOR AN ORDER SETTING AN
 EXPEDITED HEARING AND BRIEFING
 SCHEDULE**

[IMAGED FILE]

DATE: October 31, 2017
TIME: 8:30 a.m.
DEPT: C-67

Petition Filed: October 6, 2017
 Trial Date: None

1 I, Abhay Schweitzer, declare:

2 1. I am over the age of 18 and am not a party to this action. I have personal knowledge of
3 the facts stated in this declaration. If called as a witness, I would testify competently thereto. I
4 provide this declaration in support of Real Parties in Interest Rebecca Berry and Larry Geraci's ("Real-
5 Parties") opposition to Petitioner/Plaintiff's request for the ex parte issuance of a writ of mandate or
6 for an order setting an expedited hearing and briefing schedule.

7 2. I am a building designer in the state of California and a Principal with Techne, a design
8 firm I founded in approximately December 2010. Techne provides design services to clients
9 throughout California. Our offices are located at 3956 30th Street, San Diego, CA 92104. Our firm
10 has worked on approximately 30 medical marijuana projects over the past 5 years, including a number
11 of Conditional Use Permits for Medical Marijuana Consumer Cooperatives (MMCC) in the City of
12 San Diego ("City"). One of these projects was and is an application for a MMCC to be located at 6176
13 Federal Ave., San Diego, CA 92105 (the "Property").

14 3. On or about October 4, 2016, Rebecca Berry hired my firm to provide design services
15 in connection with the application for a MMCC to be developed and built at the Property (the
16 "Project"). Those services included, but are not limited to, services in connection with the design of
17 the Project and application for a Conditional Use Permit (the "CUP").]

18 4. The first step in obtaining a CUP is to submit an application to the City of San Diego.
19 My firm along with other consultants (a Surveyor, a Landscape Architect, and a consultant responsible
20 for preparing the noticing package and radius maps) prepared the CUP application for the client as
21 well as prepared the supporting plans and documentation. My firm coordinated their work and
22 incorporated it into the submittal.

23 5. On or after October 31, 2016, I submitted the application to the City for a CUP for a
24 medical marijuana consumer cooperative to be located on the Property. The CUP application for the
25 Project was submitted under the name of applicant, Rebecca Berry, whom I was informed and believe
26 was and is an employee and agent of Larry Geraci. The submittal of the CUP application required the
27 submission of several forms to the City, including Form DS-318, that I am informed and believe was
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1 signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and
2 correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 3 to Real Parties in
3 Interest Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of
4 Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing Schedule
5 (hereafter "RPI NOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6 6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the
7 form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from
8 which to choose when checking – "Owner", "Tenant/Lessee" and "Redevelopment Agency". The
9 purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and*
10 *must be signed by all persons with an interest in the property.*

11 7. The CUP application process generally involves several rounds of comments from the
12 City in which the applicant is required to respond in order to "clear" the comment. This processing
13 involved substantial communication back and forth with the City, with the City asking for additional
14 information, or asking for changes, and our responding to those requests for additional information and
15 making any necessary changes to the plans. I have been the principal person involved in dealings with
16 the City of San Diego in connection with the application for a CUP. My primary contact at the City
17 during the process is and has been Firouzdeh Tirandazi, Development Project Manager, City of San
18 Diego Development Services Department, tele (619) 446-5325, the person whom the City assigned to
19 be the project manager for our CUP application.

20 8. We have been engaged in the application process for this CUP application for
21 approximately twelve (12) months so far.

22 9. At the outset of the review process a difficulty was encountered that delayed the
23 processing of the application. The Project was located in an area zoned "CO" which supposedly
24 included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not
25 specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the
26 City passed a new regulation that amended the zoning ordinance to clarify that operating a medical
27 marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this
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1 regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and
2 the City resumed its processing of the CUP application.

3 10. The CUP application for this Project has completed the initial phase of the process.
4 This initial phase was completed when the City deemed the CUP application complete (although not
5 yet approved) and determined the Project was located in an area with proper zoning. When this
6 occurred, as required, notice of the proposed project was given to the public as follows: First, on
7 March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for
8 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second,
9 the City mailed the Notice of Application to all properties within 300 feet of the subject property.
10 Third, as applicant we posted the Notice of Application at the property line as was required.

11 11. Since the completion of the initial phase of the process we have been engaged in
12 successive submissions and reviews and are presently engaged still in that submission and review
13 process. The most recent comments from the City were received on October 20, 2017. There is one
14 major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the
15 next six (6) weeks.

16 12. Once the City has cleared all the outstanding issues it will issue an environmental
17 determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination
18 ("NORA"). I expect the NORA to be issued sometime in late December 2017 or January 2018.

19 13. The NORA must be published for 10 business days. If no interested party appeals the
20 NORA, City staff will present the CUP for a determination on the merits by a Hearing Officer. The
21 hearing is usually set on at least 30 days' notice so the City's Staff has time to prepare a report with its
22 recommendations regarding the issues on which the hearing officer must make findings. If there is no
23 appeal of the NORA, I expect the hearing before the hearing officer to be held in late January or
24 February 2018.

25 14. If the NORA is appealed it will be set for hearing before the City Council. It is my
26 opinion that the earliest an appeal of the NORA could be heard before the City Council would be mid-
27 January 2018. In all but one instance, the City Council has denied a NORA appeal related to a medical
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1
2 marijuana CUP application. The one NORA appeal that was upheld is a project located in a flood
3 zone.

4 15. If there is a NORA appeal and such appeal is denied by the City Council, then the
5 earliest I would expect the CUP application to be heard by a hearing officer would be March 2018.

6 16. If there is a NORA appeal and it is upheld by the City Council, the City Council would
7 retain jurisdiction and the CUP application would be heard by the City Council for a final
8 determination at some point after the NORA appeal. In that case the earliest I would expect this to
9 occur would also be March 2018.

10 17. To date we have not yet reached the stage of a City Council hearing and there has been
11 no final determination to approve the CUP.

12 18. I have been notified by the City of San Diego that as of October 30, 2017, there has been
13 no other CUP Application submitted concerning on the property.

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15 I declare under penalty of perjury under the laws of the State of California, that the foregoing is
16 true and correct. Executed this 30th day of October, 2017.

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18 Dated: 10/30/2017


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28 ABHAY SCHWEITZER