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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.:

MEMORANDUM IN SUPPORT OF DARRYL COTTON'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

Plaintiff *Pro Se* Darryl Cotton ("Cotton") respectfully requests this Federal Court take action to protect Cotton's constitutional rights and his interest in the application for a conditional use permit ("CUP") currently being processed by the City of San Diego ("City") on Cotton's real property located at 6176 Federal Boulevard ("Property"). This *ex parte* request seeking immediate injunctive relief is predicated solely on Cotton's Cause of Action for Breach of Contract.

If the City issues the CUP, the value of the Property will immediately be worth at least

$16,000,000 because the CUP will allow the establishment of a Medical Marijuana Consumer Collective ("MMCC"). Under the regulatory scheme being effectuated by the State of California, an MMCC is a retail-for-profit marijuana store. Because the City is creating an incredibly small oligarchy by only issuing 36 MMCC retail licenses across the entire county and will not issue any more for at least 10 years, the net present value of the Property, to an individual that has the capital and resources to build, develop and operate the MMCC, is at least **$100,000,000**.

Nota Bene: The value of the Property is exponentially *greater* than $100,000,000 to organized, sophisticated and powerful criminals that are looking for legitimate businesses in the marijuana industry that they can use as fronts for their illegal operations. Defendant Larry Geraci ("Geraci") is exactly such a criminal – he runs a criminal enterprise that has for years operated in the illegal marijuana industry. He operates publicly as a tax and financial consultant, but it is a matter of public record that he has been a named defendant in numerous lawsuits filed by the City against him for his owning/operating numerous illegal marijuana dispensaries. He now operates through employees and attorneys to hide his illicit activities.[1]

Cotton is aware that his Federal Complaint makes him sound paranoid and that his narrative as a whole is, simply put, unbelievable. But, however implausible and statistically unlikely this action may appear at the onset, the evidence and facts, that are completely outside the control and/or influence of Cotton, will prove that Geraci, through his employees and agents, including the attorneys named as defendants in this suit, is seeking to fraudulently acquire the Property from Cotton.

However, it is now apparently clear to Geraci, in large part due to the filing of this suit in

[1] I note, though not legally required to be addressed for this *ex parte* request, that but-for my refusal to capitulate to his unlawful demands, necessitating Geraci bringing a lawsuit to acquire lawful title to my Property, there would be no record of Geraci having an ownership interest in the CUP application at issue here – this is unlawful. The City and State of California bodies of regulations that govern the issuance of CUPs connected to marijuana businesses require that all owners in properties or CUPs be named in the CUP application. Geraci is not. His employee, Rebecca Berry, is the named individual on the CUP application on my Property in clear violation of applicable disclosure laws and regulations.

Federal Court, that his criminal scheme will be foiled. Consequently, Geraci is now ***solely*** motivated to limit his liability and damages because of the exposure of his actions to this Federal Court. And, Geraci can easily limit his liability by ***millions of dollars*** by sabotaging the CUP application with the City, which is currently under his exclusive control via Berry. The injunctive relief Cotton requests herein is aimed ***solely*** at preserving the ***status quo*** by preventing Geraci from destroying the subject matter of this litigation, the CUP, while this Federal Court adjudicates Cotton's Federal Complaint.

FACTUAL BACKGROUND

Cotton is the sole record owner of and interest holder in the Property (Declaration of Darryl Cotton ("Cotton Decl." ¶ 3.) On November 2, 2016, Cotton and Geraci met and came to an oral agreement for the sale of Cotton's Property to Geraci (the "November Agreement"). (Cotton Decl. ¶ 31a-e.) The November Agreement had a condition precedent for closing, which was the successful issuance of a CUP on the Property by the City. (Cotton Decl. ¶ 31b.)

The November Agreement consisted of, *inter alia*, Geraci promising to provide the following consideration: (i) a $50,000 non-refundable deposit for Cotton to keep even if the CUP was not issued; (ii) a total purchase price of $800,000 if the CUP was issued; and (iii) a 10% equity stake in the MMCC authorized by the CUP with a guaranteed minimum monthly equity distribution of $10,000. (Cotton Decl. ¶ 31d.)

At the November 2, 2016 meeting, after the parties reached the November Agreement, Geraci (i) provided Cotton with $10,000 in cash to be applied towards the total non-refundable deposit of $50,000 and had Cotton execute a document to record his receipt of the $10,000 (the "Receipt") (Cotton Decl. ¶ 32) and (ii) promised to have his attorney, Gina Austin ("Austin"), speedily draft and provide final, written purchase agreements for the Property that memorialized all of the terms that made up the November Agreement (Cotton Decl. ¶ 32).

The parties agreed to effectuate the November Agreement via two written agreements, one a

"Purchase Agreement" for the sale of the Property and a second "Side Agreement" (collectively, the "Final Agreements"). (Cotton Decl. ¶ 34.) The Side Agreement was to contain, *inter alia*, Cotton's 10% equity percentage; the guaranteed minimum monthly payments of $10,000; and terms for the continued operations of Cotton's Inda-Gro business and his 151 Farms nonprofit organization, both of which operate from the Property, until such time as the existing building on the Property was to be demolished to begin construction of a contemplated new building from which the MMCC will operate. (Cotton Decl. ¶ 35; Request for Judicial Notice ("RJN"), Exhibit 1, Pages 64-128.)

On that same day, November 2, 2016, after the parties met, reached the November Agreement and separated, the following email communications took place between Cotton and Geraci:

1. At 3:11 PM, Geraci emailed a scanned copy of the Receipt to Cotton.[2]

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

> "Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any ***final agreement*** as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply." [Cotton Decl.¶ 33; RJN Ex. 1, page 58]

3. At 9:13 PM, Geraci replied with the following (emphasis added):

> "***No no problem at all***" [*Id.*]

In other words, on the same day the Receipt was executed, and Cotton received a copy of the Receipt from Geraci, Cotton realized the Receipt could be misconstrued as being the "***final agreement***" for the purchase of his Property. Because Cotton was concerned, he emailed Geraci specifically to request from Geraci a written confirmation that the Receipt was *not* a "final agreement." Geraci replied two hours later, *explicitly* and *unequivocally* confirming the Receipt is not

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[2] RJN Exhibit 1, page 58

the final agreement. Thus, Cotton refers to this email from Geraci as the "***Confirmation Email***." (Cotton Decl.¶ 33; RJN Ex. 1, page 58.)

Thereafter, over the course of almost five months, the parties exchanged numerous emails, texts and calls regarding various issues related to the CUP application and the drafts of the Final Agreements that were provided by Gina Austin. (RJN Ex. 1 pages 63-178, 221-226.)

On **March 7, 2017**, Geraci emailed a draft of the Side Agreement prepared by Austin. The cover email states:

> "Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month….can we do 5k, and on the seventh month start 10k?" (RJN Ex. 1 at page 135 and 178.)

The draft of the Side Agreement attached to the March 7, 2017 email reflects, *inter alia*, (i) the Side Agreement contemplated being executed as of the "approximate" date with the Purchase Agreement for the Property in **2017** and (ii) that Cotton would be provided a 10% equity stake and $10,000 a month.[3]

Further, the embedded meta-data to that Word document states that the "Authors" is "**Gina Austin**" and that the "Content [was] created" on "**3/6/2017**" (the "Meta-Data Evidence" - Exhibit 1 to Cotton Decl. (Screenshot of Meta-Data Evidence).)

Thereafter, Geraci breached the November Agreement by, *inter alia*, failing to provide: (i) the $40,000 balance of the non-refundable deposit due and (ii) the Final Agreements that incorporated all of the terms that comprised the November Agreement as he had promised to do. (Cotton Decl. ¶¶ 36

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[3] *See* RJN: **Exhibit 1 at pages 117-122** ("WHEREAS, the Seller and Buyer have entered into a Purchase Agreement[,] dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114[.]"); **Exhibit 1 at page 117** (Section 1.2: "Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business […] Buyer hereby guarantees a profits payment of not less than $5,000 per month for the first three months […] and $10,000 a month for each month thereafter[.]"); **Exhibit 1 at page 117** (Section 2.12, which provides for notices, requires a copy of all notices sent to Buyer to be sent to: "Austin Legal Group, APC, 3990 Old Town Ave, A-112, San Diego, CA 92110.").

and 37.)

On March 21, 2017, after weeks of Geraci refusing to provide drafts of the Final Agreements that accurately reflected the November Agreement, and Cotton providing Geraci numerous opportunities for him to live up to his end of the bargain, Cotton terminated the agreement with Geraci.[4]

Having anticipated Geraci's breach and being desperately in need of money after having relied on Geraci's false promises, that same day, Cotton sold the property to a third-party, Mr. Martin, and entered into a written real estate purchase agreement (the "Martin Sale Agreement"). (Cotton Decl.¶ 38; Ex.1, pages 182-193.) The next day, defendant attorney Michael Weinstein ("Weinstein") emailed me a copy of a Lis Pendens filed on Cotton's Property and a Complaint filed in state court against Cotton by Geraci alleging the Receipt is the ***final agreement*** for Cotton's Property (the "State Action"). (RJN, Ex. 2 (Complaint); RJN Ex. 3, page 3 (Geraci's sworn declaration, submitted in the State Action under penalty of perjury, stating: "***On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement***[.]")

Because Geraci filed the lis pendens and Mr. Martin was made aware of Geraci's criminal background, Mr. Martin decided he wanted to cancel the deal. (Cotton Decl.¶ 53.) However, because Cotton had relied on Geraci's promises, he (i) was already facing incredibly severe financial strain, (ii) had put off other business opportunities and investors, (iii) would not be able to sell to another buyer because of the lis pendens, and (iv) did not have any resources to hire counsel. Thus, Cotton was forced to renegotiate the deal terms with Mr. Martin and sell off a portion of his remaining

[4] *See* RJN, Exhibit 1 at pg. 172 ("To be clear, as of now, you have no interest in my property, contingent or otherwise.")

interest with a third-party investor to finance the litigation against Geraci in the State Action.[5] On April 15, 2017, Cotton unconditionally sold to Mr. Martin, "with all the associated rights and liabilities, his ownership, rights and interests in the property and the associated CUP application pending before the City of San Diego for $500,000." (RJN, Ex. 1, pg. 194) The condition precedent for the closing of the Martin Sale Agreement is Cotton's prevailing over Geraci in the litigation over the Property. (*Id.*) On September 28, 2017, Geraci and Berry, through Weinstein, filed a Demurrer to my cross-complaint premised on the Statute of Frauds ("SOF") and the Parol Evidence Rule ("PER") seeking to prevent the admission of the Confirmation Email. The state court denied the Demurrer.

On December 6, 2017, Cotton filed an *ex parte* request for a TRO in the State Action seeking the same injunctive relief requested herein. (RJN, Ex. 4.) Weinstein filed a masterful 16-page opposition that has endless ***procedural*** arguments, but NEVER ONCE addresses the ***substantive*** fact that the state court had already denied his demurrer and admitted the Confirmation Email. (RJN Ex. 5.) Consequently, all his arguments are inapplicable. However, Cotton's ex parte request for a TRO was denied, the State Court finding that Cotton was unlikely to prevail on the merits and that he was unlikely to suffer irreparable harm, but the state court failed to explain its reasoning for such findings in light of the Confirmation Email. (RJN, Ex. 6 - minute order.) I leave to this Federal Court to determine whether such findings are merited or whether there is perhaps something else at play here.

On December 11, 2017, Cotton filed a Motion for Reconsideration of his Ex Parte Request for a TRO at that point in time believing the state court judge's decision to deny may have been based on his then-counsel's negligence. On December 12, 2017, the State Court again denied Cotton's request *without* providing the reasoning for its denial. (RJN Ex. 7.) Of note, at the hearing on Cotton's

[5] Cotton Decl. ¶ 38; *See also*, Secured Litigation Financing Agreement submitted concurrently herewith ex parte and under seal because of confidentiality provisions and a penalty of $200,000 if I publicly disclose it without permission.

Motion for Reconsideration, in front of numerous witnesses who attended to support Cotton, the state court judge denied Cotton's motion without allowing him to speak a single word and then immediately walking off the bench. (Cotton. Decl.¶60b.) I was left standing at the table as the judge walked off wondering what I was supposed to do. That day was the worst day of my life.

On January 8, 2018, Weinstein filed two motions seeking to compel Cotton's deposition and responses to a large number of discovery requests ("Motions to Compel"). Cotton, representing himself *pro se* at this point in time, filed a comprehensive Opposition to the Motions to Compel believing that the judge presiding over the State Action did not really understand that, *inter alia*, the Confirmation Email ***dispositively*** addressed the State Action in Cotton's favor. (RJN Ex. 1.)

At the oral hearing held on January 25, 2018, on the Motions to Compel, the state court judge started the hearing by *very strongly asserting* to Cotton that he does not believe that Geraci's counsel, against whom Cotton had made allegations of ethical violations against in his Opposition, would take such actions because "knew them all very well." (Cotton Decl. ¶ 60g.) The state court judge then granted the Motions to Compel and denied the relief Cotton requested in his Opposition. (RJN, Ex. 8.)

Cotton provides the pleadings in the State Action so that this Federal Court can make its own evaluation of whether the state court judge's orders can be supported by the evidence and arguments they were presented with. Additionally, so that this Federal Court can already anticipate and know every argument that will be put forth by Geraci's counsel in opposing this TRO request. Lastly, and more importantly to Cotton, it will provide proof to this Federal Court that something is seriously wrong. "It is a challenge to imagine a scenario in which that harassment would not have been the product of a conspiracy." Geinosky v. City of Chicago, 675 F.3d 743, 749 (7th Cir. 2012). As to ***why*** the judges in the state court, private attorneys and City attorneys and City officials have taken actions that have perpetuated and augmented the unlawful actions set in motion by Geraci, that will

ultimately be a question this Federal Court will address in adjudicating the allegations in my Complaint and the motions I plan to bring forth as soon as the CUP application is protected via the TRO requested herein.

LEGAL STANDARD

"A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, [4] and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008).

ARGUMENT

1. COTTON IS LIKELY TO SUCCEED ON THE MERITS OF HIS CAUSE OF ACTION FOR BREACH OF CONTRACT

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011))

Geraci Breached The November Agreement

Neither Cotton nor Geraci dispute an agreement was reached on November 2, 2016. (Cotton Decl. ¶ 31; RJN, Ex. 3 (Geraci Decl.).) The parties sole and case-dispositive dispute is whether the Receipt is actually a "receipt" as Cotton alleges or the "final agreement" for the Property as Geraci alleges.

Putting aside the emails, texts and numerous draft Purchase and Side Agreements referenced above and in the record,[6] which were sent by Geraci AFTER November 2, 2016, the Confirmation Email by itself makes it *indisputably* and *dispositively* clear that Geraci knew and intended the Receipt to be just a receipt and not the final written agreement for the Property as he alleges in his Complaint.

Geraci has never, in over a year, disputed the authenticity of the Confirmation Email or the

[6] RJN, Ex. 1, pgs. 48 – 178 (all emails between Cotton and Geraci).

numerous communications from Cotton after November 2, 2016 that support the clear fact that a final agreement was never entered into by Cotton and Geraci. (See, e.g., *Keller v. Key System Transit Lines* (1954) 129 Cal.App.2d 593, 596 ["The basis of the rule on admissions made in response to accusations is the fact that human experience has shown that generally it is natural to deny an accusation if a party considers himself innocent of negligence or wrongdoing."] There is NOT a single piece of evidence in the record, or even alleged by Geraci to exist, other than his own perjured testimony, that supports his contention that the Receipt is the final agreement for my Property. (Cotton Decl. ¶ 32; RJN Exhibit 3, page 3.)

Geraci's sole *superficial* litigation strategy was to attempt to rely on the Statute of Frauds ("SOF") and the Parol Evidence Rule ("PER") to prevent the admission of the Confirmation Email. A legal construct that, if given effect, would result in unconscionable injury and unjust enrichment. However, if the state court were to have ruled otherwise, or this Federal Court were to take a different view of the Receipt and find that the SOF/PER would apply in the first instance to prevent the admission of the Confirmation Email, the concept of estoppel in California would prevent Geraci's use of the SOF/PER to fully effectuate his intended crime. (*See* Monarco v. Lo Greco (1950) 35 Cal.2d 621, 623; *See also*, Phillippe v. Shapell Indus., 43 Cal. 3d 1247, 1259 (1987) ("[Party] correctly cites Monarco v. Lo Greco for the proposition that estoppel is proper to avoid unconscionable injury or unjust enrichment that would result from refusal to enforce an oral promise.")

Thus, while Geraci *superficially* pursued the State Action in good-faith, he was really using his attorneys, Austin and Weinstein, and other agents to put undue emotional and financial pressure on Cotton. Geraci's filing of the State Action is a continuation of his breach of the November Agreement, a manipulation of the judicial system to unlawfully exert pressure on Cotton to extort and coerce the Property from him.

2. COTTON "IS LIKELY TO SUFFER IRREPERABLE HARM ABSENT PRELIMINARY RELIEF"

Absent immediate intervention by this Federal Court, Cotton will suffer irreparable harm in the following ways:

First, where a plaintiff suffers "substantial injury that is not accurately measurable or adequately compensable by money damages, irreparable harm is a natural sequel." (*Ross-Simons of Warwick, Inc. v. Baccarat, Inc.* (1st Cir. 1996) 102 F3d 12, 18). There is no way in this action to accurately replace or measure the emotional, physical, mental and financial losses that Cotton has suffered as a result of Geraci's malicious actions. (RJN, Ex. 1, pg. 41 - Declaration of Dr. Carolyn Candido stating "***Mr. Cotton had an elevated pulse, was speaking incoherently and exhibited signs of anxiety, panic and was expressing suicidal thoughts. His language vacillated from being clear to incoherent. I am unclear as to what he was attempting to express, but from what I could make out, he was in an emotional state due to matters related to some legal matter regarding his property.***") Allowing Geraci to continue to control the CUP application, and thereby affording him the opportunity to sabotage the CUP application so that he may limit his damages, will make it even harder to measure the damage inflicted upon Cotton and is a source of every day extreme anguish for Cotton. (Cotton Decl., ¶ 60 c; also see RJN, Ex. 1, pg. 41, lines 12-17.)

Further, although theoretically another CUP application could be filed one year later if Geraci were to sabotage the Berry CUP. There are only 4 CUPs that will be issued per district in San Diego. (Cotton Decl., ¶ 60 i.) Even if the CUP were to issue in the future on the Property, Cotton would have no interest in it because he sold the Property to Mr. Martin, his only hope of having a future in which he is not destitute is for him to prevail in this action and the CUP to issue. (Cotton Decl., ¶ 60 k.)

Second, "[h]arm may be irreparable where the loss is difficult to replace or measure, ***or where plaintiffs should not be expected to suffer the loss***." (*WPIX, Inc. v. ivi, Inc.* (2nd Cir. 2012) 691 F3d 275, 285 (*emphasis added*).) The action brought by Geraci and everything that has happened to

Cotton is unjustified. Simply put, "[***Cotton***] ***should not be expected to suffer the loss***" of his Property and the equity and monthly payments that he has had to negotiate away in order to subsist and continuing to fight to protect and vindicate his rights. (*See* Secured Litigation Financing Agreement.)

Third, while likelihood of irreparable harm is required, "the alleged harm need not be occurring or be certain to occur" before a court can grant a preliminary injunction. (*Michigan v. United States Army Corps of Engineers* (7th Cir. 2011) 667 F3d 765, 788.) ***In this case, it is reasonable to assume that Geraci/Berry and all co-defendants will take ANY and ALL actions to sabotage the CUP application so as to limit their liability to Cotton for which they will ALL be held accountable should Cotton prevail on his Conspiracy and RICO causes of action.***

Fourth, a "substantial loss of business and perhaps even bankruptcy" absent preliminary injunctive relief shows "irreparable injury." (*Doran v. Salem Inn, Inc.* (1975) 422 US 922, 932, 95 S.Ct. 2561, 2568; *Grand River Enterprise Six Nations, Ltd. v. Pryor* (2nd Cir. 2007) 481 F3d 60, 67—loss of current or future market share may constitute irreparable harm.) Cotton is facing severe financial hardship.[7] He will not even have the resources to file for bankruptcy should the CUP not issue. Any delays in the issuance of the CUP will also result in a delay of the MMCC that will in turn cause a delay for the MMCC to begin its operations. San Diego is a new market and the Property has the potential to be one of the first MMCCs to be open to operate. This unfounded action, if allowed to continue, will result in a loss of potential market share. I do not know how to explain it in economical terms, but it will be disastrous if the MMCC is delayed given the competition and the opportunity for the Property to be one of the first MMCCs to open in San Diego.

No matter what happens, Cotton has really already lost his Property. It is not his. If he loses,

[7] RJN, Ex. 1, pgs 245-255 (Email notice to counsel in State Action providing proof of financial hardship – notice from SDG&E that security deposit is to be reinstated for failure to make monthly payments over the preceding months and that electricity will be shut off if payment is not made the next day).

he gets $800,000 from Geraci, but Cotton has over $300,000 in liens against the property that are recorded, but there are another close to $200,000 that is unrecorded and that he owes to family and friends. If he wins, he is legally obligated to close on his deal with Mr. Martin and for which he will receive a lump sum of $500,000. That is NOT enough to pay his debts. If the CUP issues, he will receive an additional $1,500,000, however, after paying off all of his debts and taxes, he will be left with less than $450,000. (Cotton Decl., ¶ 60 k.) Cotton is 57 years old. That is not sufficient to provide for himself and his loved one for the rest of his life. And it is not enough to procure a new commercial property and set up and begin his lighting manufacturing business. (Cotton Decl., ¶ 60 k.) Cotton has already been damaged by losing the benefits of the bargain that should have been his – the terms of the original agreement with Geraci, then the better terms he first reached with Mr. Martin.

Fifth, a "loss of an interest in real property constitutes an irreparable injury." (*Park Village Apt. Tenants Ass'n v. Mortimer Howard Trust* (9th Cir. 2011) 636 F3d 1150, 1159.) I have been at this Property since 1997 when I first purchased it and used my life savings for the down payment. (Cotton Decl. ¶3.) As described above, defendants actions have forced Cotton to continuously lose what interest he has left in the Property.

Sixth, "an alleged constitutional infringement will often alone constitute irreparable harm" (*Monterey Mechanical Co. v. Wilson* (9th Cir. 1997) 125 F3d 702, 715 (internal quotes omitted).) All of the defendants here, including the various actors by the City, most notably the state court judges, have at the very least in gross negligence perpetuated and augmented the irreparable harm done to Cotton with their actions. Individually and cumulatively, defendants' actions have and continue to deprive Cotton of his constitutional right as a property owner to determine who may use his property as he sees fit. (See *Loretto v. Teleprompter Manhattan* (1982) 458 U.S. 419, 435 [saying that a landowner's right to exclude others from the use and possession of the property is "one of the most

essential sticks in the bundle of rights that are commonly characterized as property."]; see also *Fretz v. Burke* (1967) 247 Cal.App.2d 741, 746 [holding that an irreparable harm occurs where one's behavior "constitutes an overbearing assumption by one person of superiority and domination over the rights and property of others."]). Thus, for all the reasons stated above, Cotton will incur irreparable injury without relief.

3. "The Balance of the Equities Tips in [Cotton's] Favor

The balance of harms factor starkly weighs in favor of the Court granting Cotton's request. In contrast to the harm that Cotton would suffer absent an injunction, Geraci will not suffer harm at all if an injunction is imposed. Geraci has already stated in his declaration that he undertook to pay for all associated costs with procuring the CUP. (RJN, Ex. 3.) Cotton hereby agrees, should this Court still harbor any doubts, that in the event Geraci prevails in this action, that Geraci may debit from his payment to Cotton that amount required to pay for the Receiver. (Cotton Decl. ¶ 52.) Thus, there is NO loss to Geraci should he ultimately prevail as the Receiver will, under this Federal Court's supervision, prosecute the CUP application in good-faith with the sole goal of having it approved as expeditiously as possible.

4. The Injunction Is In The Public Interest

"[I]t is always in the public interest to prevent the violation of a party's constitutional rights." Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (*internal citations not included.*) For the reasons discussed above, completely irrespective of motivation and reason, the undisputed facts in the record show that all defendants, either purposefully, working in concert with, and/or in gross negligence, are effectively aiding and abetting Geraci's criminal enterprise to fraudulently deprive Cotton of his Property in violation of numerous of Cotton's constitutional rights.

CONCLUSION

I note, referenced above and provided herewith, are the pleadings in my requests in the state courts seeking the same relief requested here and based on the same facts. Summarily, the arguments put forth by Weinstein are nonsensical because they are ALL premised on the incorrect assumption that the Confirmation Email does not exist. Weinstein argues on and on and at great length about all the money and time and energy spent by Geraci in pursuing the CUP application – none of *those* facts change *the* fact that Geraci confirmed the Receipt is ***not*** a final purchase agreement for my property. Thus, providing credence to my allegation that Geraci is the head of a criminal enterprise and is using his illicit wealth to manipulate the judicial system, via attorneys of the ilk of Weinstein and Austin, to pervert the judicial process to effectuate a miscarriage of justice.

I respectfully request of this Federal Court, if possible, at the hearing on this ex parte request, to please ask Austin how she can legally and ethically represent Geraci in the state action, premised on the allegation the Receipt is the Final Agreement, when she was working on drafts for my property for Geraci in March of 2017? And, as to Weinstein, given that the state court denied the SOF/PER arguments he put forth, what exactly is the factual and legal basis that provides any probable cause for his continued prosecution of the state actions against me?

Based on the foregoing, I respectfully request this Court issue the Temporary Restraining Order and Order to Show Cause. I have attempted strongly in this request to not come across as what could be perceived as being paranoid and a crazy pro se, but I ask this Federal Court to please understand that I am on my literal "last breath" and on the edge of losing my sanity. What is discussed above is just the tip of the iceberg in regards to the events that have taken place in this matter. As of today, February 9, 2018, when I submit this, I feel hounded and conspired against. I have alienated my friends, employees, family, supporters and even the litigation investors who stand to gain the most if I prevail in this legal action stay as far away as possible. They fear that Geraci may

take unlawful retaliation against them. One of my litigation investors is a former attorney who has worked at Goldman Sachs, Latham & Watkins and he is even a former federal judicial clerk in the 9th district court. He stopped helping me in mid-January when a third party, a convict out on parole, called him late at night at his home and threatened him by telling him that it would be in his "best interest" to use his influence on me to get me to settle with Geraci. (Cotton Decl. 50f.) Also, because he cannot understand why the state judges have ruled the way they have. Given the facts of this case, he believes this case should have been summary adjudicated or dismissed in the early stages. He has the luxury of being able to walk away. I do not. People are depending on me. I am risking it all now by bringing suit in this Federal Court and not holding anything back about Geraci and his criminal enterprise. I ask this Federal Court to please help protect and vindicate my rights.

PRAYER

WHEREFORE, Cotton prays for relief as follows:

1. That this Court order Geraci and Berry to transfer control to a Court-appointed Receiver;
2. That Geraci/Berry be enjoined from withdrawing and/or sabotaging the CUP application;
3. That this Court order and empower the Receiver to have the ability to supervise the City in its processing of the CUP application so as to prevent the City from retaliating against Cotton for bringing forth his Federal Complaint seeking to protect his Constitutional rights;
4. That the City immediately provide the status of the CUP application and the steps required for its completion to this Federal Court, the Receiver and Cotton;
5. That Geraci, as he has agreed to do in his sworn declaration, be ordered to pay for the remaining costs needed to complete the CUP application.[8]

[8] RJN, Ex. 3 (Geraci Declaration stating: "***As the purchaser, I was willing to bear the substantial expense of applying for and obtaining the CUP approval and understood that if CUP approval was not obtained the purchase would not be consummated and I would lose my investment.***")

6. Order all defendants to stay their actions in the state court proceedings while this Federal Court adjudicates Cotton's causes of action brought forth in his Federal Complaint;
7. Any and all monetary relief against any and/or all of the defendants that this Federal Court finds is warranted based on the facts in the record and allowed pursuant to any and all laws/regulations that exist but which Cotton does not exist so he cannot name them; and
8. Any and all other relief this Federal Court is empowered to provide and is justified. If possible, summary adjudication on Cotton's Breach of Contract cause of action.

Dated: February 9, 2018.

Darryl Cotton, *Pro Se*