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FILED
CIVIL BUSINESS OFFICE 18
CENTRAL DIVISION

2018 JAN 26 P 2:54

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
Cross-Defendant REBECCA BERRY

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

**NOTICE OF RULING AFTER HEARING
RE:**

(1) **MOTION BY PLAINTIFF/CROSS-
DEFENDANT LARRY GERACI AND
CROSS-DEFENDANT REBECCA
BERRY TO COMPEL THE
DEPOSITION OF DARRYL COTTON
AND TO CONTINUE HEARING ON
MOTION FOR PRELIMINARY
INJUNCTION**

(2) **MOTION BY DEFENDANT/CROSS-
COMPLAINANT DARRYL COTTON
FOR PRELIMINARY INJUNCTION**

[IMAGED FILE]

DATE: January 25, 2018
TIME: 8:30 a.m.
DEPT: C-73

Complaint Filed: March 21, 2017
Trial Date: May 11, 2018

PLEASE TAKE NOTICE THAT on January 25, 2018, the Court heard the following noticed
motions:

(1) Motion by Plaintiff and Cross-Defendant, Larry Geraci, and Cross-Defendant, Rebecca

1 Berry, to (a) compel the deposition of Darryl Cotton, and (b) continue the January 25, 2018, hearing
2 on the motion by Defendant and Cross-Complainant, Darryl Cotton, for a preliminary injunction; and

3 (2) Motion by Defendant and Cross-Complainant, Darryl Cotton, for a preliminary injunction.

4 Plaintiff and Cross-Defendant, Larry Geraci, and Cross-Defendant, Rebecca Berry, were represented by
5 attorney Michael R. Weinstein of the law firm Ferris & Britton, APC. Defendant and Cross-
6 Complainant, Darryl Cotton, was represented by Darryl Cotton, pro se.

7 PLEASE TAKE FURTHER NOTICE THAT, having reviewed the written pleadings submitted
8 in support and opposition to the motions and hearing oral argument, the Court ruled as follows:

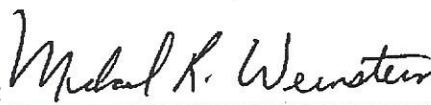
9 (1) The Court confirmed its tentative ruling as the final ruling of the court, set forth in and
10 attached hereto as Exhibit A, GRANTING Plaintiff's motion to compel Plaintiff to a
11 deposition and ordering Plaintiff to submit to a deposition within twenty (20) days of the
12 hearing, and DENYING Plaintiff's motion to continue the January 25, 2018, hearing on
13 Defendant's motion for a preliminary injunction, subject to the following modification:
14 Plaintiff must submit to a deposition within twenty (20) days of the hearing absent further
15 leave of the court or agreement of the parties. By close of business on Friday, January 26,
16 2018, Plaintiff shall provide to attorney Weinstein two dates within the next 20 days on
17 which Plaintiff is available for a full-day deposition (9 a.m. to 5 p.m., with a 1-hour lunch
18 break) to be taken at Aptus Court Reporting Service, which is located at 600 West
19 Broadway, Suite 300, San Diego, CA 92101. Attorney Weinstein shall then select one of
20 those two dates for the deposition and shall serve an amended deposition notice with the
21 selected date.

22 (2) The Court confirmed its tentative ruling as the final ruling of the court, set forth in and
23 attached hereto as Exhibit A, DENYING Defendant's motion for a preliminary injunction.

24 Dated: January 25, 2018

FERRIS & BRITTON, APC

25
26 By:



Michael R. Weinstein

27 Attorneys for Plaintiff and Cross-Defendant LARRY
28 GERACI and Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - January 22, 2018

EVENT DATE: 01/25/2018

EVENT TIME: 09:00:00 AM

DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfell

CASE NO.: 37-2017-00037675-CU-WM-CTL

CASE TITLE: COTTON VS CITY OF SAN DIEGO [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition

CAUSAL DOCUMENT/DATE FILED:

The Motion (ROA # 60, 61) of Real Parties in Interest LARRY GERACI and REBECCA BERRY, to (1) compel the deposition of Petitioner / Plaintiff DARRYL COTTON ("Plaintiff"), and (2) continue the January 25, 2018, hearing on Plaintiff's Motion for issuance of a peremptory writ of mandate, is GRANTED IN PART AND DENIED IN PART.

The Motion to compel Plaintiff to submit to a deposition is GRANTED. Plaintiff shall submit to a deposition within twenty (20) days of the hearing of this Motion.

The Motion to continue the hearing of Plaintiff's Motion for issuance of a peremptory writ of mandate, is DENIED.

The Petition (ROA # 38, 42) of Plaintiff / Petitioner DARRYL COTTON ("Plaintiff") for writ of mandate, is DENIED.

The Court initially notes that its December 7, 2017 order denying the ex parte application for an order shortening time to hear this Motion (ROA # 42) invited the filing of moving and opposition papers per Code. However, no additional papers were filed. As a result, this ruling is premised the original Petition for writ of mandate, and briefing and evidence presented to the Court prior to both ex parte hearings.

A traditional writ of mandate under Code of Civil Procedure section 10858 is a method for compelling a public entity to perform a legal and usually ministerial duty. Klajic v. Castaic Lake Water Agency (2001) 90 Cal. App. 4th 987, 995. The Court reviews an administrative action, pursuant to Code of Civil Procedure section 1085, to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. Id.

A record owner, or "[a]ny person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application" may submit an application for a permit. SDMC 112.0102. Plaintiff argues that the City has a ministerial duty to process the CUP Application with Petitioner as the sole applicant; however, Petitioner cannot demonstrate that he was the only person who possessed the right to use the subject property. Whether someone other than the "record owner" possesses a valid

Event ID: 1897564

TENTATIVE RULINGS

Calendar No.:

Page: 1

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - January 22, 2018

EVENT DATE: 01/25/2018

EVENT TIME: 09:00:00 AM

DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2017-00037675-CU-WM-CTL

CASE TITLE: COTTON VS CITY OF SAN DIEGO [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition

CAUSAL DOCUMENT/DATE FILED:

The Motion (ROA # 60, 61) of Real Parties in Interest LARRY GERACI and REBECCA BERRY, to (1) compel the deposition of Petitioner / Plaintiff DARRYL COTTON ("Plaintiff"), and (2) continue the January 25, 2018, hearing on Plaintiff's Motion for issuance of a peremptory writ of mandate, is GRANTED IN PART AND DENIED IN PART.

The Motion to compel Plaintiff to submit to a deposition is GRANTED. Plaintiff shall submit to a deposition within twenty (20) days of the hearing of this Motion.

The Motion to continue the hearing of Plaintiff's Motion for issuance of a peremptory writ of mandate, is DENIED.

The Petition (ROA # 38, 42) of Plaintiff / Petitioner DARRYL COTTON ("Plaintiff") for writ of mandate, is DENIED.

The Court initially notes that its December 7, 2017 order denying the ex parte application for an order shortening time to hear this Motion (ROA # 42) invited the filing of moving and opposition papers per Code. However, no additional papers were filed. As a result, this ruling is premised the original Petition for writ of mandate, and briefing and evidence presented to the Court prior to both ex parte hearings.

A traditional writ of mandate under Code of Civil Procedure section 10858 is a method for compelling a public entity to perform a legal and usually ministerial duty. Klajic v. Castaic Lake Water Agency (2001) 90 Cal. App. 4th 987, 995. The Court reviews an administrative action, pursuant to Code of Civil Procedure section 1085, to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. Id.

A record owner, or "[a]ny person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application" may submit an application for a permit. SDMC 112.0102. Plaintiff argues that the City has a ministerial duty to process the CUP Application with Petitioner as the sole applicant; however, Petitioner cannot demonstrate that he was the only person who possessed the right to use the subject property. Whether someone other than the "record owner" possesses a valid

right to apply for and obtain the CUP is disputed. Evidence exists demonstrating an agreement for the purchase and sale of the subject property, which could confer a legal right and entitlement to the use of the property.

In addition, Plaintiff has not exhausted his administrative remedy by submitting his own separate CUP application. He cannot be recognized as the "sole applicant" (see Petition at page 10, line 5) when he has not, in fact, submitted a separate application. The City may very well have a ministerial duty to accept and process Petitioner's CUP application in lieu of any competing application, but this duty does not arise in the absence of the filing of such an application.

The Motion (ROA # 94, 95) of Plaintiff and Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY ("Cross-Defendants") to (1) compel the deposition of Defendant and Cross-Complainant DARRYL COTTON ("Defendant"), and (2) continue the January 25, 2018, hearing on Defendant's Motion for a preliminary injunction, is GRANTED IN PART AND DENIED IN PART.

The Motion to compel Defendant to submit to a deposition is GRANTED. Defendant shall submit to a deposition within twenty (20) days of the hearing of this Motion.

The Motion to continue the hearing of Defendant's Motion for a preliminary injunction, is DENIED.

Defendant and Cross-Complainant DARRYL COTTON'S Motion for a preliminary injunction is DENIED.

The Court initially notes that its December 7, 2017 order denying the ex parte application for a TRO and setting this hearing (ROA # 72) invited the filing of moving and opposition papers. However, no additional papers were filed. As a result, this ruling is premised on the briefing and evidence presented to the Court prior to the ex parte hearing.

The Court considers two interrelated questions in deciding whether to issue a preliminary injunction: (1) is Plaintiff likely to suffer greater injury from a denial of the injunction than Defendant is likely to suffer from its grant; and (2) is there a reasonable probability that Plaintiff will prevail on the merits. Robbins v. Superior Court (1985) 38 Cal.3d 199, 206; Code Civ. Proc. 526(a). The Court's determination must be guided by a "mix" of the potential-merit and interim-harm factors. Butt v. State of California (1992) 4 Cal. 4th 668, 678. A preliminary injunction is appropriate when pecuniary compensation would not afford adequate relief; or where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. Code Civ. Proc. 526(a). The burden is on the moving party to show all elements necessary to support issuance of a preliminary injunction. O'Connell v. Superior Court (2006) 141 Cal. App. 4th 1452, 1481. A preliminary injunction amounts to a mere interlocutory order to maintain the status quo pending a determination of the action on its merits. Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal. 4th 180, 191.

Regarding the probability of prevailing, a record owner, or "[a]ny person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application" may submit an application for a permit. SDMC §112.0102. Defendant and Cross-Complainant Cotton argues that the City must process the CUP Application with him as the sole applicant. However, disputed evidence exists suggesting that Cotton was not the only person who possesses the right to use the subject property. Whether someone other than the "record owner" possesses a valid right to apply for and obtain the CUP is disputed. Evidence exists demonstrating an agreement for the purchase and sale of

the subject property, which could confer a legal right and entitlement to the use of the property.

In addition, Defendant and Cross-Complainant Cotton is not likely to prevail because the evidence demonstrates that he has not submitted his own separate and competing CUP application. He cannot be recognized as the sole applicant when he has not, in fact, submitted an application. A determination regarding the City's obligation to accept and process Cotton's CUP application in lieu of any competing application cannot be made in the absence of the filing of such an application.

Finally, Defendant and Cross-Complainant Cotton is unlikely to sustain irreparable harm because pecuniary compensation would afford adequate relief. Plaintiff can prosecute a claim premised on the lost revenue from operation of a medical marijuana dispensary. Although calculating such revenue may be somewhat complicated and require an expert opinion, this is far from an impossible task.

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6 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
7 Cross-Defendant REBECCA BERRY

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

10 LARRY GERACI, an individual,

11 Plaintiff,

12 v.

13 DARRYL COTTON, an individual; and
14 DOES 1 through 10, inclusive,

15 Defendants.

16 DARRYL COTTON, an individual,

17 Cross-Complainant,

18 v.

19 LARRY GERACI, an individual, REBECCA
20 BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,

21 Cross-Defendants.
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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

Judge: Hon. Joel R. Wohlfeil

PROOF OF SERVICE

[IMAGED FILE]

Complaint Filed: March 21, 2017
Trial Date: May 11, 2018

1 I, Anna K. Lizano, declare that: I am over the age of 18 years and not a party to the case; I am
2 employed in the County of San Diego, California; and my business address is: 501 West Broadway,
3 Suite 1450, San Diego, California 92101.

4 On, January 25, 2018, I served the following documents:

- 5 1. NOTICE OF RULING AFTER HEARING RE: (1) MOTION BY
6 PLAINTIFF/CROSS-DEFENDANT LARRY GERACI AND CROSS-
7 DEFENDANT REBECCA BERRY TO COMPEL THE DEPOSITION OF
8 DARRYL COTTON AND TO CONTINUE HEARING ON MOTION FOR
PRELIMINARY INJUNCTION (2) MOTION BY DEFENDANT/CROSS-
COMPLAINANT DARRYL COTTON FOR PRELIMINARY INJUNCTION.


9 [X] EMAIL. Based on an agreement of the parties to accept service by email, I caused the
10 document[s] to be sent to the person at approximately 4:00 p.m. on the date above, to the following
11 email addresses:

12 Darryl Cotton
13 indagrodarryl@gmail.com

14 I did not receive, within a reasonable time after the transmission, any electronic message or other
15 indication that the transmission was not successful.

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

18 Dated: January 25, 2018

19 
Anna K. Lizano