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County of San Diego  
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LARRY GERACI

**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.

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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

**DECLARATION OF MICHAEL R.  
WEINSTEIN IN SUPPORT OF MOTION  
BY PLAINTIFF/CROSS-DEFENDANT  
LARRY GERACI FOR A PRELIMINARY  
INJUNCTION OR OTHER ORDER TO  
COMPEL ACCESS TO THE SUBJECT  
PROPERTY FOR SOILS TESTING**

**[IMAGED FILE]**

**Hearing Date: March 23, 2018**  
**Hearing Time: 9:00 a.m.**  
**Department: C-73**

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

I, Michael R. Weinstein, declare:

1. I am an attorney with Ferris & Britton, APC, the attorneys for Plaintiff and Cross-Defendant, LARRY GERACI ("Geraci"), and Cross-Defendant, REBECCA BERRY, in this action (hereafter, the "Geraci Lawsuit"). The Trial Date in the Geraci Lawsuit is May 11, 2018.

2. I also represent Larry Geraci and Rebecca Berry (as Real Parties in Interest) in a later-filed lawsuit captioned *Darryl Cotton v. City of San Diego*, Case No. 37-2017-00037675-CU-WM-

1 CTL, which was filed on October 6, 2017 and is also assigned to the Honorable Joel R. Wohlfeil  
2 (hereafter, the "Writ of Mandate Lawsuit").

3 3. I have personal knowledge of the facts stated in this Declaration. If called as a witness, I  
4 would testify competently thereto. I provide this Declaration in support of this motion in the Geraci  
5 Lawsuit to compel attendance at deposition and to compel responses to written discovery, and for an  
6 award of monetary and other sanctions representing the time and effort in bringing this motion and for  
7 willful disobedience to this Court's prior Order that Mr. Cotton attend his deposition within 20 days of  
8 this Court's ruling on an earlier motion to compel attendance at deposition, which was held on  
9 January 25, 2018.

10 4. On January 18, 2018, I met with Mr. Cotton in the court hallway after Mr. Cotton's ex  
11 parte hearing earlier that day. In that conversation, I explained to Mr. Cotton that the City was  
12 requiring soils testing pursuant to the pending CUP application. I explained that regardless of which  
13 party ultimately prevails in the underlying lawsuit, Mr. Cotton's permitting the soils testing would be  
14 beneficial to whichever party ultimately prevails in the litigation because the CUP runs with the land.  
15 Thus, it benefits all parties to obtain approval of the CUP to operate a medical marijuana dispensary.  
16 During that January 18, 2018, discussion Mr. Cotton voluntarily agreed to permit access to the subject  
17 property for purposes of conducting the necessary soils testing.

18 5. That afternoon, I sent a confirming email to Mr. Cotton explaining that Mr. Cotton  
19 would be provided with several dates from which he could select, for the dates of the soil testing. I also  
20 explained that I was cc'ing Mr. Abhay Schweitzer on the email because Mr. Schweitzer was going to  
21 be coordinating the soils testing with the soils testing company. A true and correct copy of my January  
22 18, 2018, email to Mr. Cotton is attached as Exhibit 6 to the Notice of Lodgment in Support of Motion  
23 by Plaintiff/Cross-Defendant Larry Geraci for a Preliminary Injunction or Other Order to Compel  
24 Access to the Subject Property for Soils Testing, dated February 27, 2018 (hereinafter "Geraci NOL".)  
25 I received no response from Mr. Cotton to my email.

26 6. On January 22, 2018, Defendant Cotton filed with the court in this action a pleading  
27 entitled Verified Memorandum of Points and Authorities in Support of Darryl Cotton's Response to (1)  
28 Motion by Plaintiff/Cross-Defendants Larry Geraci and Cross-Defendant Rebecca Berry to Compel the



1 Deposition of Darryl Cotton and (2) Motion by Real Parties in Interest, Larry Geraci and Rebecca  
2 Berry, to Compel the Deposition of Darryl Cotton.” In that pleading, Mr. Cotton references the  
3 discussion between myself and Mr. Cotton after his ex parte hearing and acknowledges that I requested  
4 that he agree to allow soils testing on the subject property. Yet Mr. Cotton failed to respond to my  
5 January 18, 2018 confirming email.

6 7. On February 6, 2018, I sent Mr. Cotton a second email regarding the proposed soils  
7 sampling. In that email I reiterated that after the January 18th ex parte hearing, Mr. Cotton had agreed  
8 to permit soils testing on the subject property in connection with the CUP application. I informed Mr.  
9 Cotton that Abhay Schweitzer had advised me that the geotechnical consultant who would be  
10 performing the soils testing was required to file a permit with the San Diego County Department of  
11 Environmental Health because the exploratory boring exceeded 20 feet below ground surface; in order  
12 to do so, the consent of the property owner (Mr. Cotton) was required. To that email, I attached the  
13 required Property Owner Consent Form for Mr. Cotton to complete, sign, and return to me. I again told  
14 Mr. Cotton that the CUP would “run with the land” so obtaining a CUP would benefit whichever party  
15 ultimately prevails in this litigation. A true and correct copy of my February 6, 2018, email to Mr.  
16 Cotton attaching the Property Owner Consent form is attached as Exhibit 7 to the Geraci NOL. Mr.  
17 Cotton has not responded to that email either.

18 8. On February 26, 2018, I sent one last email to Mr. Cotton asking him to sign the  
19 Property Owner Consent form and told him that if he failed to do so, I would be forced to file the  
20 instant motion. So far Mr. Cotton has also failed to respond to that email. A true and correct copy of  
21 my February 26, 2018, email to Mr. Cotton is attached as Exhibit 8 to the Geraci NOL.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
23 true and correct. Executed this 27th day of February, 2018, in San Diego, California.

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26 Michael R. Weinstein  
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