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**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

**DECLARATION OF ABHAY  
SCHWEITZER 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]

DATE: March 23, 2017  
TIME: 9:00 a.m.  
DEPT: C-73

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

I, Abhay Schweitzer, declare:

1. I am over the age of 18 and am not a party to this action. I have personal knowledge of the facts stated in this declaration. If called as a witness, I would testify competently thereto. I provide this declaration in support of the motion by Plaintiff and Cross-Defendant, Larry Geraci, motion for a preliminary injunction or other order requiring Defendant and Cross-Complainant, Darryl Cotton, to allow access to the property located at 6176 Federal Blvd., San Diego, CA 92105 (the "Subject Property") to conduct soils testing, including the signing of a related Property Owner Consent form and to otherwise allow unhindered access to the Subject Property to conduct said soils testing.

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

1 Diego, CA 92105 (the "Property").

2 3. On or about October 4, 2016, Rebecca Berry, whom I was and am informed was acting as the agent of Larry  
3 Geraci, hired my firm to provide design services in connection with the application for a MMCC to be developed and built at  
4 the Property (the "Project"). Those services included, but are not limited to, services in connection with the design of the  
5 Project and application for a Conditional Use Permit (the "CUP").]

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

10 5. On or after October 31, 2016, I submitted the application to the City for a CUP for a medical marijuana  
11 consumer cooperative to be located on the Property. The CUP application for the Project was submitted under the name of  
12 applicant, Rebecca Berry. The submittal of the CUP application required the submission of several forms to the City,  
13 including Form DS-318 signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and  
14 correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 1 to the Notice of Lodgment by  
15 Plaintiff/Cross-Defendant, Larry Geraci, in Support of Motion for a Preliminary Injunction or Other Order to Compel Access  
16 to the Subject Property for Soils Testing (hereinafter the "Geraci NOL"). Mr. Cotton's signed consent can be found on Form  
17 DS-318.

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

22 7. The CUP application process generally involves several rounds of comments from the City in which the  
23 applicant is required to respond in order to "clear" the comment. This processing involved substantial communication back  
24 and forth with the City, with the City asking for additional information, or asking for changes, and our responding to those  
25 requests for additional information and making any necessary changes to the plans. I have been the principal person involved  
26 in dealings with the City of San Diego regarding the CUP application. My primary contact during the process had been  
27 Firouzeh Tirandazi, Development Project Manager, City of San Diego Development Services Department, tele (619) 446-  
28 5325, whom the City initially assigned to be the project manager for the CUP application. Recently the Project Manager has  
changed from Firouzeh Tirandazi to Cherlyn Cac.

8. We have been engaged in the application process for this CUP application for approximately sixteen (16)  
months so far.

9. At the outset of the review process a difficulty was encountered that delayed the processing of the application.  
The Project was located in an area zoned "CO" which supposedly included medical marijuana dispensary as a permitted use,  
but the City's zoning ordinance did not specifically state that was a permitted use. I am informed and believe that on



1 February 22, 2017, the City passed a new regulation that amended the zoning ordinance to clarify that operating a medical  
2 marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this  
3 regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and the City resumed its  
4 processing of the CUP application.

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

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

15 12. In my previous declaration submitted October 30, 2017, I stated that at that time I expected this issue to be  
16 resolved within the next six (6) weeks. The issue has not yet been resolved. A medical marijuana dispensary cannot be  
17 located within 100 feet of a residential zoned lot and the Property is located within 100 feet of a residential zoned lot. To  
18 overcome this barrier, we previously suggested to the City the following solution: that we make an irrevocable offer of  
19 dedication of 7-feet of the Property to the City of San Diego which, when accepted, would mean the Property would be more  
20 than 100 feet from a residential neighborhood and thereby satisfy the requirement. Previously Jim Bartell met with the  
21 City's reviewer responsible for this issue, who indicated a tentative agreement with our proposed solution. However, the  
22 most recent comments issued by the City regarding the project still listed as "not cleared" the issue of the Property location  
23 being within 100 feet of a residential zoned lot. Thus, the City's reviewer has still not formally recommended approval of  
24 our proposed solution of an offer of dedication and that issue still needs to be "cleared". Nevertheless, I still expect the  
25 City's reviewer to ultimately "clear" the issue based on our suggested solution of an offer of dedication as there is no basis in  
26 the San Diego Municipal Code to deny our proposed offer of dedication. Currently, my best estimate of when I expect this  
27 issue to be "cleared" or resolved is on or about April 16, 2018. What I mean by resolved is that point in time when the City  
28 staff responsible for this correction formally accepts our proposed solution and "clears" the comments from their review.  
However, the irrevocable offer of dedication is not effective until the proposed Conditional Use Permit is approved at the  
final instance and the irrevocable offer of dedication is properly recorded.

13. Another issue has arisen. In order to continue the CUP process, we have been required by the City to  
provide a geotechnical investigation for the Subject Property. To conduct the necessary soils testing we are required  
to file a permit with the San Diego County Department of Environmental Health because the exploratory borings  
exceed 20 feet below ground surface. To obtain the permit we must include a signed Property Owner Consent form



1 **evidencing consent by the property owner, Darryl Cotton.** In late January I was advised by counsel for Ms. Berry and  
2 Mr. Geraci, Michael Weinstein, that Darryl Cotton had agreed to allow access to the property to conduct the soils testing  
3 analysis.

4 14. The required geotechnical investigation will need to be performed by an engineering company. On behalf of  
5 Mr. Geraci and Ms. Berry, I have contracted with SCST, Inc. a professional engineering firm headquartered in San Diego to  
6 conduct the soils testing analysis. SCST is comprised of over 130 professionals who provide geotechnical engineering,  
7 environmental science & Engineering, special inspection & materials testing, and facilities consulting service. SCST is  
8 comprised of skilled geotechnical engineers, civil and environmental engineers, environmental scientists, engineering  
9 geologists, multi-credential inspectors and technicians.

10 15. The soils testing analysis to be performed by SCST necessitates drilling down more than 20 feet below the  
11 surface. As previously noted, whenever exploratory borings exceed 20 feet below ground surface a permit is required to be  
12 filed with the San Diego County Department of Environmental Health which in turn requires the property owner to sign a  
13 Property Owner Consent form. I am informed by Mr. Weinstein, counsel for Mr. Geraci and Ms. Berry, that Mr. Weinstein  
14 provided the Property Owner Consent form to Mr. Cotton to sign but Mr. Cotton has not signed and returned the form. This  
15 action by the property owner, Mr. Cotton, is directly interfering with the attempts to obtain the necessary Conditional Use  
16 Permit by preventing the completion of the soils testing which is necessary to satisfy this requirement being imposed by the  
17 City to obtain the Conditional Use Permit.

18 16. SCST cannot conduct the required soils testing analysis without the consent of Darryl Cotton, the property  
19 owner, on the Property Owner Consent form, and without access to the Property to conduct the soils testing. Once Mr.  
20 Cotton has signed that form and SCST is allowed access to the Property, SCST will conduct the required soils testing and  
21 submit the results to the City.

22 17. Once the City has cleared all the outstanding issues it will issue an environmental determination and the City  
23 Clerk will issue a Notice of Right to Appeal Environmental Determination ("NORA").

24 18. In my previous declaration submitted October 30, 2017, I stated that at that time I expected the NORA to be  
25 issued sometime in late December 2017 or January 2018. The NORA has not yet been issued. Currently, my best estimate is  
26 that the NORA will be issued sometime on or about May 31, 2018.

27 19. The NORA must be published for 10 business days. If no interested party appeals the NORA, City staff will  
28 present the CUP for a determination on the merits by a Hearing Officer. The hearing is usually set on at least 30 days' notice  
so the City's Staff has time to prepare a report with its recommendations regarding the issues on which the hearing officer  
must make findings. If there is no appeal of the NORA, I expect the hearing before the hearing officer to be held on or about  
June 29, 2018.

20. If the NORA is appealed it will be set for hearing before the City Council. Currently, it is my opinion that the  
earliest an appeal of the NORA could be heard before the City Council would be on or about June 29, 2018. In all but one  
instance, the City Council has denied a NORA appeal related to a medical marijuana CUP application. The one NORA

1 appeal that was upheld is a project located in a flood zone.

2 21. If there is a NORA appeal and such appeal is denied by the City Council, then the earliest I would expect the  
3 CUP application to be heard by a hearing officer would be on or about July 30, 2018.

4 22. If there is a NORA appeal and it is upheld by the City Council, the City Council would retain jurisdiction and  
5 the CUP application would be heard by the City Council for a final determination at some point after the NORA appeal. In  
6 that case the earliest I would expect this to occur would also be on or about July 30, 2018.

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

9 I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.  
10 Executed this 27th day of February, 2018.

11  
12 Dated: 02/27/18

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14 ABHAY SCHWEITZER  
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