

ROA 244  
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Superior Court of California,  
County of San Diego  
**06/20/2018** at 07:10:00 PM  
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By E- Filing, Deputy Clerk

Attorney for Defendant/Cross-Complainant DARRYL COTTON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN DIEGO**

LARRY GERACI, an individual,  
Plaintiff,  
vs.  
DARRYL COTTON, an individual; and  
DOES 1 through 10, inclusive,  
Defendants.

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

**DECLARATION OF DARRYL COTTON  
IN SUPPORT OF MOTION FOR JUDGMENT  
ON THE PLEADINGS**

Date: July 13, 2018  
Time: 8:30 a.m.  
Dept: C-73  
Judge: The Hon. Joel R. Wohlfeil

AND RELATED CROSS-ACTION.

I, DARRYL COTTON, declare:

1. I am over the age of eighteen years, and the Defendant and Cross-Complainant in this action.
2. The facts set forth herein are true and correct as of my own personal knowledge, except for those facts which are stated upon information and believe; and, as to those facts, I believe them to be true. If called upon to do so, I could and would competently testify to the matters stated herein.
3. This declaration is submitted in support of my Motion for Judgment on the Pleadings served and filed herewith.

1           4.       My real property (the "Property") qualifies for a Conditional Use Permit ("CUP") with the  
2 City of San Diego (the "City") that would allow the operations of a Marijuana Outlet - a retail cannabis store  
3 (the "Business"). In November of 2016, I and Larry Geraci ("Plaintiff") entered into an oral joint-venture  
4 agreement (the "JVA") pursuant to which, *inter alia*, (i) I would sell my Property to Plaintiff and (ii) Plaintiff  
5 would finance the acquisition of the CUP with the City and the development of the Business at the Property.  
6 However, Plaintiff breached the JVA by attempting to deprive me of a bargained-for 10% equity position in  
7 the Business and I terminated the JVA. Thereafter, Plaintiff brought forth this suit in *March 2017* alleging  
8 we never entered into the JVA and that a three-sentence document executed in *November 2016* (the  
9 "November Document") is a completely integrated agreement for my Property. For over a year Plaintiff has  
10 argued that his own written promise in an email, *specifically confirming* the November Document is "not"  
11 a "final agreement" (the "Confirmation Agreement"), is barred by the PER and the statute of frauds ("SOF").

12           5.       On April 4, 2018, I, via counsel, filed a Motion for Expungement of Notice of Pendency of  
13 Action (*Lis Pendens*) (the "LP Motion"). (ROA # 161.) The LP Motion argued, for the *first time in this*  
14 *action*, that neither the PER nor the SOF can "*be used as a shield to prevent the proof of [one's own] fraud*"  
15 – in this case, that Plaintiff could not bar his own Confirmation Agreement proving his own fraud.

16           6.       *For the first time since he filed suit*, in support of his opposition to the LP Motion, Plaintiff  
17 filed a sworn declaration executed on April 9, 2018 ("Plaintiff's Declaration") in which he: (i) *admits* that  
18 he sent the Confirmation Agreement, but (ii) alleges that it was a *mistake* because he only meant to respond  
19 to the first sentence of my email (thanking him for meeting earlier that day) and not the second, third or  
20 fourth sentences in which I specifically requested that Plaintiff respond and confirm a "final agreement"  
21 would contain my bargained-for "10% equity position" in the Business as it was a factored element in my  
22 decision to sell the property; and (iii) alleges that on November 3, 2016, he called me and I allegedly *orally*  
23 *agreed* with him that the November Document *is* the final complete integrated agreement for the sale of the  
24 Property (the "Oral Disavowment").

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1 I declare under penalty of perjury according to the laws of the State of California that the  
2 foregoing is true and correct and that this declaration was executed on June 20, 2018 at San Diego,  
3 California.

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DARRYL COTTON

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