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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**06/13/2018** at 03:49:00 PM  
Clerk of the Superior Court  
By Lee McAlister, 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.

AND RELATED CROSS-ACTION.

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

**DECLARATION OF JACOB P. AUSTIN IN  
SUPPORT OF *EX PARTE* APPLICATION FOR  
ORDERS APPOINTING A RECEIVER TO  
MANAGE THE CONDITIONAL USE PERMIT  
FOR DEFENDANT'S REAL PROPERTY; AND  
OTHER RELIEF**

Date: June 14, 2018  
Time: 8:30 a.m.  
Dept: C-73  
Judge: The Hon. Joel R. Wohlfeil

I, JACOB P. AUSTIN, declare:

1. I am the attorney of record for Defendant and Cross-Complainant, DARRYL COTTON ("Cotton" or "Defendant") in this action (hereinafter, the "Litigation").

2. The facts set forth herein are true and correct as of my own personal knowledge, except those facts which are stated upon information and believe; and, as to those facts, I believe them to be true.

3. This declaration is submitted in support of Darryl Cotton's *Ex Parte* Application for Orders Appointing a Receiver to Manage the Conditional Use Permit for Defendant's Real Property;

1 and Other Relief.

2 4. On May 27, 2018, I was with Mr. Cotton when he met Ms. Corina Young who described  
3 a meeting with Mr. Jim Bartell on or around October of 2017. At that meeting, Mr. Bartell  
4 communicated he would be getting the CUP denied on Mr. Cotton's Property. Mr. Cotton and myself  
5 asked her numerous questions so there would be no ambiguity regarding his language and intent, Ms.  
6 Young did not understand that her statements provided evidence of a conspiracy. Ms. Young was  
7 speaking with Mr. Bartell and asking him his opinion because she was contemplating investing in Mr.  
8 Cotton's litigation.

9 5. Ms. Young went on to state that Mr. Bartell was currently employed by her and was using  
10 his political influence to get a CUP on a separate property in the City of La Mesa approved.

11 6. True and correct copies of the emails between Mr. Shapiro and myself are attached as  
12 Exhibit 1 to this declaration.

13 7. True and correct copies of the emails between Mr. Weinstein and myself are attached as  
14 Exhibit 2 to this declaration.

15 8. As opposing counsel Michael R. Weinstein himself has informed Defense multiple times,  
16 approval of the CUP will benefit either party regardless of whom prevails in this litigations.

17 9. For the above reasons, appointing a receiver to manage the CUP application and ensure  
18 its passage will protect the status quo and will be beneficial to both parties.

19 I declare under penalty of perjury according to the laws of the State of California that the  
20 foregoing is true and correct and that this declaration was executed on June 13, 2018 at San Diego,  
21 California.

22  
23 /s/  
24 JACOB P. AUSTIN  
25  
26  
27  
28

# **EXHIBIT 1**



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**Federal Blvd. CUP Application**

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Jake Austin &lt;jpa@jacobaustinesq.com&gt;

To: matthew@shapiro.legal

Sun, May 27, 2018 at 8:51 PM

Matt,

I am writing because I have been made aware of several facts which lead me to believe it is possible you have engaged in a civil conspiracy with your client, Mr. Aaron Magagna, to violate the rights of my client, Mr. Darryl Cotton.

On or around March 12, 2018, I went to Judge Wohlfeil's courtroom and when I entered I saw that you were one seat to the left of Mr. Cotton and his litigation investor who were speaking about the Larry Geraci v. Darryl Cotton matter. As I am sure you are aware, as I know you work extensively with Mrs. Gina Austin, Mrs. Austin has represented Mr. Geraci in the Geraci v. Cotton matter and is an adverse party to Mr. Cotton. Further, Mr. Cotton has filed a federal lawsuit against, among other parties, Mr. Geraci, Mrs. Austin and Mr. Michael Weinstein (Mr. Geraci's counsel in the Geraci v. Cotton case).

Thus, when I walked into the courtroom and saw that you were in casual clothes (the first time I have ever seen you not wearing a suit at court), I was concerned because the Courtroom was predominantly empty and you could have sat anywhere. Yet, you were sitting next to my client and you have a strong relationship with Mrs. Austin.

I sat down between you and Mr. Cotton and his litigation investor. I asked you why you were there and you stated you were "scoping out" Judge Wohlfeil to "see how he rules" in preparation for a case in front of him. Later, you called me and left a voicemail, asking me to speak with you.

This last week, two issues arose that are the catalyst for this email. First, there is strong evidence to support Mr. Cotton's belief that Mr. Geraci hired an engineering company to make a recommendation to the City of San Diego that they deny Mr. Cotton's pending Marijuana Outlet CUP application on the real property that is the main subject matter of the Geraci v. Cotton case. You should know that when the field personnel were at the property and did two borings, each of which was supposed to be for 50 feet, one only made it to 9 feet and the second only made it to 13 feet before the drill bits broke because the property is essentially on a big rock. The geologist for the engineering company explicitly stated that there are absolutely no problems and they would recommend an approval.

Last week, Mr. Cotton called to confirm with the geologist who was the lead and performed the borings. That person was very anxious and refused to confirm that the drill bits broke at 9 and 13 feet and insinuated that the recommendation would be for a denial. Upon confirmation, if such happens, and the engineering company recommends a denial, Mr. Cotton will hire a third-party engineering company to do his own independent soils sample to confirm the property is suitable for building. Then he will amend his complaint to include the engineering company as part of a civil conspiracy by Mr. Geraci to sabotage the CUP application on the subject

property in an effort to mitigate his damages to Mr. Cotton. Again, they were supposed to bore to 50 feet and hit rock at 9 and 13 feet. Mr. Cotton has already contacted another company to do the soils testing to expose the engineering company and prove that any recommendation for a denial is unsupported.

Second, and more pertinent to you, Mr. Cotton was made aware that a competing CUP application had been filed in March of 2018 and that the owner of the competing CUP application is Mr. Magagna, your client. Attached here as **Exhibit 1** is a Notice of Application by the City of San Diego reflecting that Mr. Magagna is applying for a CUP (Project No. 598124) at a property within 1,000 feet of Mr. Cotton's property; attached here as **Exhibit 2** are Articles of Incorporation for a Mutual Benefit Corporation named A-M Industries, Inc. that you formed for Mr. Magagna filed on November 4, 2014; attached as **Exhibits 3 and 4** are Statements of Information filed with the Secretary of State of the State of California for A-M Industries, Inc. dated December 2, 2014 and July 6, 2017, respectively; and attached as **Exhibit 5** are Amended and Restated Articles of Incorporation for A-M Industries, Inc. filed on February 16, 2018.

Here is the bottom line, notwithstanding the procedural history of the case between Mr. Geraci and Mr. Cotton, Mr. Geraci is going to lose. His only goal is to mitigate his damages. He can only do that by making it impossible for Mr. Cotton to have a CUP application approved on the property and he can only accomplish that by having another CUP approved within 1,000 feet of Mr. Cotton's property.

So, to summarize, it appears likely the engineering company is going to go back on its explicit stated intent to recommend an approval and is going to make a recommendation for a denial. And, even though Mr. Cotton can get another soils sample via another CUP application, it now appears that it would be a futile task as there is another CUP application being processed within 1,000 feet of his property. By the time he got a new CUP application submitted, Mr. Magagna's CUP application could be approved and Mr. Cotton's new CUP application will be disqualified.

I think you already know this. It defies reason and common sense to believe that you "accidentally" sat down next to Mr. Cotton when you have a strong relationship with Mrs. Austin and Mr. Magagna and did so in casual clothes.

As to Mr. Magagna, why would any reasonable businessman file a CUP application that according to all public information, and even the declarations of Mr. Geraci's own experts, is expected to get approved? Mr. Cotton's application has been under review for over a year; no reasonable person would, unless that person is privy to information that steps are being taken to unlawfully sabotage Mr. Cotton's CUP application. As noted above, it is clear the engineering company has been compromised and, thus, provides motive for Mr. Magagna to submit a CUP – he knew ahead of time that Mr. Cotton's application would be unjustly denied.

Matt, again, it is simply impossible that you do not know the above. However, we have known each other for years and I would like to believe that you do not know the following – there is more than probable cause to support Mr. Cotton's allegations that Mr. Geraci has sent third-parties to physically threaten him and his litigation investor. These allegations will be the subject of the federal lawsuit filed by Mr. Cotton against Mr. Geraci, Mrs. Austin, and Mr. Weinstein alleging causes of action that include RICO and Civil Conspiracy arising from Mr. Geraci's attempt to deprive Mr. Cotton of an equity stake in the contemplated dispensary. And the most reasonable deduction is that Mr. Geraci is the individual ultimately behind Mr. Magagna's CUP application



that would, if approved, make it impossible for Mr. Cotton to get a CUP application approved on his property. The federal action is stayed now, but upon going live Mr. Cotton will seek to amend his federal complaint and add you and Mr. Magagna as co-defendants to that action as well.

I realize that you may originally have started on this course of action not understanding the full scope of what is taking place. And I am not going to lay out the elements of a conspiracy, but I trust you understand that if Mr. Cotton prevails, you and Mr. Magagna will also be vicariously liable for all actions taken as part of the conspiracy, including the RICO causes of action that will be adjudicated in the federal lawsuit.

We have known each other for a while and have helped each other out on occasion, so I am going to be straight with you – again, Geraci is going to lose. Attached here as **Exhibit 6**, is an appeal that Mr. Cotton submitted himself last week and which was denied. It's a ridiculous *pro se* mess, incorrect legal citations and incorrect citations to exhibits that do not even exist. BUT, the facts and the law he raises in the memo are true and are accurate. I am filing a motion for a judgement on the pleadings based on the same principles (I researched them, but I did not want to file for an extraordinary writ with the Court of Appeals so he did it himself *pro se* against my advice).

Mr. Geraci will lose. Mrs. Austin made false factual representations to the trial court. And you have a strong relationship with Mrs. Austin and Mr. Magagna... sitting down next to Mr. Cotton and his litigation investor in a predominantly empty courtroom and being able to eavesdrop is extremely suspicious. Are you going to argue that this was pure happenstance and just a coincidence?

To me, this appears to be a textbook case of a conspiracy. I am ethically obligated in the defense of Mr. Cotton's rights to bring forth a motion seeking to add you and Mr. Magagna as co-defendants pursuant to CCP § 1714.10 to expose the conspiracy and to prevent Mr. Geraci from depriving Mr. Cotton of a CUP at his property. It is clear that the goal is to have Mr. Cotton's CUP denied based on the recommendation from the engineering company, thus, ALL attention will focus on proving the CUP application submitted by Mr. Magagna is directly connected to Mr. Geraci and Mrs. Austin with you being the obvious tie-in. Your actions by sitting next to Mr. Cotton and your relationship with Mrs. Austin and Mr. Magagna are more than probable cause to bring forth a conspiracy cause of action. I suspect that discovery will probably also reveal that Mr. Jim Bartell has been behind the scenes supporting the CUP application for Mr. Magagna with the City of San Diego. See *Chicago Title Ins. Co. v. Great Western Financial Corp.* (1968) 69 Cal.2d 305, 316 ("The advantage to the pleader in charging a conspiracy is to implicate all participating in the common design and thus fasten liability on him who agreed to the plan to commit the wrong as well as on him who actually carried it out. [Citations.] The conspiracy 'may be inferred from the nature of the acts done, the relations of the parties, the interests of the alleged conspirators, and other circumstances.' [Citations.]")

If I have this wrong, please let me know. I really don't want to take this course of action. On this note, please provide the case number of the matter that you are working on in front of Judge Wohlfeil and which was the basis of you "scoping [him] out" when you sat down next to Mr. Cotton.

Lastly, even if you are already in too deep to get out, you should really inform Mr. Magagna of the totality of the circumstances here and the full extent of the liability that he is being exposed to – I can't imagine that he is aware of the physical assaults and intimidation attempts by Mr. Geraci that I believe will be proven as part of

Mr. Cotton's RICO cause of action and for which he would be held liable as well. Mr. Cotton alleges that he has been told that Mr. Magagna is a "vendor" that sells to unlicensed dispensaries. If this allegation is true, I sincerely doubt your client would want to be a named co-defendant in a legal action that encompasses criminal threats, intimidation and be subject to discovery that would probe this allegation, his activities and his sources of income that he is using to pay for the CUP application.

If I do not hear back from you by close of business on Tuesday, May 29, 2018, I will assume you will stick to a story of "accidentally" sitting next to Mr. Cotton and that you have nothing to do with Mr. Magagna's CUP application and I will proceed accordingly.

- Jacob

P.S. Mr. Cotton and his litigation investors are renegotiating the terms of their deal(s) and are negotiating with several large practices that have the bandwidth and resources to see this case through and then follow-up on malicious prosecution cases against Mr. Geraci, Mrs. Austin and Mr. Weinstein on a contingency basis. I have reviewed the pleadings they have been submitting over the last year and they have all made obvious false statements to the court – do not trust them to look out for you or to protect you when everything gets exposed.







### **Law Office of Jacob Austin**

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#### **6 attachments**

-  **EXHIBIT 1\_4-5-18 6220 Fed Blvd DSD Notice of Application.pdf**  
362K
-  **EXHIBIT 2\_A-M IND ARTICLES OF INCORP 11-04-14.pdf**  
28K
-  **EXHIBIT 3\_A-M IND STA OF INFO 12-2-14.pdf**  
104K
-  **EXHIBIT 4\_A-M IND STA OF INFO 7-6-17.pdf**  
130K
-  **EXHIBIT 5\_A-M IND AMENDED ARTICLES OF INCORP 02-16-18.pdf**  
51K
-  **EXHIBIT 6\_Petition for WoM re LP Motion & POS FILED 05-21-18.pdf**  
528K





Jake Austin <jacobaustinesq@gmail.com>

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## Federal Blvd. CUP Application

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Matthew Shapiro <matthew@shapiro.legal>  
To: Jake Austin <jpa@jacobaustinesq.com>

Sun, May 27, 2018 at 10:33 PM

Jake-

You do have this wrong. I don't wear a suit to Court unless I'm appearing on a matter in front of a judge. Much of the information you've referenced is part of public record i.e. pending litigation between Geraci and Cotton. The information you've shared with me about the drill bits and rock underneath the property is the most privy to information that is not on public record that I've had in relation to this application/lawsuit. Also, why on earth would I call you to have a conversation if I was conspiring against you and/or your client? Finally, and I'm not certain about this as I'm only beginning to dip my toes in this land use/licensing area of practice, it is my understanding that the geologists don't actually give approval or denial recommendations to the City.

That said, I'm not looking to be dragged into this mess, especially undeservedly so. Let's look to have a conversation Tuesday but as we are both busy professionals I ask that you give me a reasonable amount of time early next week to have this conversation with you.

-Matt

--

Matthew Shapiro  
Law Office of Matthew Shapiro  
7676 Hazard Center Dr, Suite 500  
San Diego, CA 92108  
Phone: (858) 859-2420  
Fax: (619) 839-3708

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[Quoted text hidden]





Jake Austin <jacobaustinesq@gmail.com>

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## Federal Blvd. CUP Application

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Jake Austin <jpa@jacobaustinesq.com>

To: Matthew Shapiro <matthew@shapiro.legal>

Mon, May 28, 2018 at 11:21 AM

Matt,

To be honest, I find your response unpersuasive.

First, although I'm totally with you on the suit without a hearing issue, I just find it impossible to believe that given your multi-year relationships with Mrs. Austin and Mr. Magagna, that it was a "coincidence" that you sat next to Mr. Cotton and his litigation investor.

Second, you did not provide the case number in front of Judge Wohlfeil that you were supposedly preparing for. Please provide the case number by 3pm, or I will believe that your request for time is meant to be a search for cases in front of Judge Wohlfeil with an attorney that you can associate yourself with. Though you may think this is excessive on my part, if you truly are not aware of what is going on, I can guarantee that if you knew half of what I know about the actions taken by everyone related to Mr. Geraci, especially his counsel, you would be extremely cautious as well.

Third, as to why you called me, because up until that point in time, I was not attorney-of-record and you did not know that I was associated with Mr. Cotton. You did not know that someone that recognizes you as being closely associated with an adverse party to Mr. Cotton (Mrs. Austin) would show up and see you sitting next to Mr. Cotton. I did not call you back specifically because I was leery of your relationship with Mrs. Austin. It is much more reasonable to assume that after you found out I was associated with Mr. Cotton, you called to potentially find out additional or privileged information or misdirect me. This is more plausible than you accidentally sitting next to Mr. Cotton and his litigation investor, especially if you lied to me about being before Judge Wohlfeil preparing for a case when you have no client in front of him.

Fourth, setting aside whether the geologist's test results lead to a recommendation or not, objectively speaking, it makes no sense for a reasonable party to submit a CUP on a property within 1,000 feet of Mr. Cotton's property. By all accounts, the CUP application on Mr. Cotton's property is on the cusp of approval. You say you are just "dipping" your toes into land use regulation. Well, I think we both know enough about the land-use regulations and the competitive market for Marijuana Outlet eligible properties over the last year; and I can state unequivocally that Mr. Magagna is not going to be able to reasonably justify his submission of a CUP application given the information available *to the public* regarding Mr. Cotton's property even now. The only situation that appears logical is that if he knew through you, via Mrs. Austin, that Mr. Geraci was taking steps and using his political influence to sabotage the CUP application either with the City of San Diego, or the engineering company.

I'm OK with speaking sometime later this week, but if you don't respond by 3pm with the case number and provide stronger evidence/arguments than presented in your reply last night, Mr. Cotton is going to the Court of Appeals to file for a Writ describing the conspiracy on Tuesday that will name you and Mr. Magagna as co-conspirators. I myself may be forced to seek to amend Mr. Cotton's complaint to add you and Mr. Magagna as co-defendants and add a cause of action for conspiracy. This is not personal. The actions taken by Mr. Geraci and his agents are absolutely deplorable. Mr. Cotton will be completely destitute if he loses this case, I really just can't sit by and let that happen.

Lastly, you should note that Mr. Cotton is very intelligent and he gets legal concepts. He is currently digging deeply into understanding discovery methods and is already thinking of ways to prove that Mr. Magagna makes significant income from allegedly illegal sales to unlicensed dispensaries.

Mr. Cotton is aware of our conversation and, as noted, intends to file with the Court of Appeals on Tuesday naming you and Mr. Magagna among others. Ideally, I would like to be able to argue on your behalf with Mr. Cotton, but ultimately, he does whatever he wants. If you can give me any arguments or information that I can forward to persuade Mr. Cotton I will happily do so.

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## Federal Blvd. CUP Application

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Matthew Shapiro <matthew@shapiro.legal>  
To: Jake Austin <jpa@jacobaustinesq.com>

Mon, May 28, 2018 at 12:10 PM

Jake-

I sent an initial response to your email to acknowledge receipt and set up a call early this week. It was and remains my intention to explain my perspective much more thoroughly on this call. If I am added to a lawsuit prior to this call, my ability to explain the situation from my perspective will be very seriously hindered. It does appear that I am extremely likely to be added to this lawsuit based on a number of very speculative conclusions.

I believe you did call me back and left a message after I called you actually. I don't think we ever connected, however.

There is a short list of cannabis attorneys in San Diego and the fact that I've worked cases both with and against Gina Austin doesn't mean we are in cahoots or have a close relationship.

I was there to observe the Geraci v Cotton case. There is nothing unlawful or conspiratorial about that. As an attorney in the cannabis industry also just getting into civil law, the Geraci v cotton case is interesting both for its influence on the San Diego cannabis industry and for its experiential/observational value. Additionally, since my practice is trending civil, it is of further value to observe how a judge handles their cases, particularly when it pertains to cannabis. My sitting near, not next to, Cotton was truly a coincidence, which I only realized when the case was called. Also, if I recall correctly, it wasn't as empty as you seem to remember and only had 2 or maybe 3 rows of chairs in the entire Courtroom. I always sit in the back row if I can and I chose left instead of right that day. Looks like that decision is going to end up having me embroiled in a lawsuit. Just lovely.

As to the CUP being likely to be approved, that is a very tenuous claim. The most recent recommendation from the City in late 2017 is to deny the project and it is tied up in litigation, both matters of public record. I don't see how anyone could claim it's on the cusp of approval if the soil is only being drilled now. It is not at all unreasonable for somebody to see a project the City recommended be disapproved that is tied up in litigation as an opportunity to submit a competing application, which is entirely lawful.

As I gain further understanding of the situation around this case and the CUP application, it does appear your client may have been wronged in some way shape or form. That is unfortunate. That does not, however, make anyone and everyone with interests not directly aligned with Mr. Cotton a conspirator against him. Neither myself, nor any of my clients that I am aware of, have ever had any contact with Mr. Geraci.

Many of my past and present clients have multiple CUP applications in for both MPF and Marijuana Outlet CUPs, however very few have actually hired me to handle the permitting process due to lack of experience. If one of those is competing with your client, it does not make everyone anyone's ever worked with in the past a conspirator. Particularly when conspiracy requires an unlawful act.

If you won't afford me the courtesy of a phone call early this week, not on a holiday, before telling your client I should be added, so be it. I don't generally like to make enemies out of neutral parties but you guys are free to choose your path and seem thoroughly intent on adding me to this lawsuit.

I do not want a volley of emails back and forth ruining my holiday. Let's look to talk tomorrow.

# **EXHIBIT 2**





Jake Austin <jacobaustinesq@gmail.com>

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## Geraci v. Cotton matter

4 messages

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Jake Austin <jpa@jacobaustinesq.com>

Tue, May 29, 2018 at 1:18 PM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Mr. Weinstein,

Based on Mr. Geraci's last declaration filed with the Court in the lis pendens pleadings, I will be submitting a motion for Judgment on the Pleadings scheduled to be heard on June 22, 2018. I will have moving papers to you on or before June 1, 2018.

Also, yesterday, I was at a meeting with Mr. Cotton and Ms. Corina Young, who is a client of Mr. Jim Bartell. Ms. Young, approximately six months ago or so, was at a meeting with Mr. Bartell and asked him about her intent to invest in Mr. Cotton's CUP venture – Mr. Cotton was attempting to sell off a portion of his remaining interest in the property, with the disclosure that the property was under litigation, to finance his litigation defense. Mr. Bartell informed Ms. Young that he was getting Mr. Cotton's CUP application denied and that it was "because everyone hates Darryl."

Further, at that meeting with Ms. Young was her attorney, Mr. Matthew Shapiro. Mr. Shapiro has a strong relationship with Mrs. Austin. Mr. Shapiro's client, Mr. Aaron Magagna, is also the applicant on a CUP application filed last month on a property within 1,000 feet of Mr. Cotton's property that, if approved, would result in Mr. Cotton never being able to get a CUP application approved on his property.

Two months ago, before I became attorney-of-record and Mr. Shapiro knew I was associated with this case (and I personally know he has a strong relationship with Mrs. Austin), he sat down, at a hearing in the Geraci v. Cotton matter in front of Judge Wohlfeil, next to Mr. Cotton and his litigation investor in plain clothes. I walked in to the courtroom after he had been eavesdropping on them for a considerable amount of time. I asked him why he was there, he informed me that he was there to prepare for a case in front of Judge Wohlfeil for a client. Over this weekend, I asked him to produce the case number of the matter before Judge Wohlfeil and he asked for time. When I pressed him, explicitly stating that I believed he was buying time to find an attorney that has a case in front of Judge Wohlfeil to associate himself with, he admitted he was there to observe the Geraci v. Cotton matter, but that it was "truly a coincidence" he sat in the immediate vicinity of Mr. Cotton. To be clear, he explicitly lied to me at first and only told the truth when asked to provide proof of his alleged reason for being in front of Judge Wohlfeil.

Further, during the conversation with Ms. Young, Mr. Cotton was probing to make it very clear regarding the wording and intent of her conversation with Mr. Bartell. He is incredibly livid, Mr. Cotton asked Ms. Young to provide her testimony. She refused the request once she understood that her testimony would provide evidence of a conspiracy between Mr. Geraci, Mr. Bartell and Mrs. Austin, on one hand, and

Mr. Aaron Magagna and Mr. Shapiro on the other (the individuals that benefit from Mr. Bartell's use of his political influence to get a denial on Mr. Cotton's property). She stated she would not get involved in any litigation because, in addition to not wanting to be involved in litigation for any reason, she has a significant amount of capital invested in another CUP application that Mr. Bartell was hired to facilitate its approval and she is scared that he will retaliate against her if she provides her testimony or appears to be a "snitch." Mr. Cotton is currently seeking the assistance of a private investigator to locate Ms. Young with the intent of subpoenaing her to be deposed.

Additionally, please see attached, an email exchange between myself and Mr. Shapiro regarding this factual allegation – that he was present at a meeting with Mrs. Young and Mr. Bartell and that Mr. Bartell made the aforementioned statement. Mr. Shapiro does not deny it.

Lastly, Mr. Cotton believes that the engineering company hired by Mr. Geraci to make a recommendation to the City of San Diego has been unduly influenced into making a denial recommendation. On the day of the soils sample, the company was supposed to bore to 50 feet at two locations, however, they only got to 9 and 13 feet before the drills bits broke because the property is essentially on a big rock. The geologist for the engineering company explicitly stated that there are absolutely no problems and they would recommend an approval. Mr. Cotton himself took many pictures while they were there and called me contemporaneously during the procedure letting me know the good news (he had anticipated that Mr. Geraci was using the soils sample as a ruse to have the CUP application denied). However, Mr. Cotton followed-up with the geologist last week to get a copy of the report and she sounded extremely anxious and scared, would not confirm the depths reached were only 9 and 13 feet and insinuated that the company would be recommending a denial.

Thus, based on:

- (i) Mr. Geraci's latest declaration with new sworn factual allegations;
- (ii) Ms. Young's statements regarding Mr. Bartell that I personally witnessed and will attest to;
- (iii) Mr. Shapiro's (a) lie to me regarding his reasoning for sitting down next to Mr. Cotton and his litigation investor, (b) his indirect admission that he was present and heard Mr. Bartell state he was getting Mr. Cotton's CUP application denied, (c) the fact that the competing CUP application is a client of Mr. Shapiro, and (d) the fact that he has a deep relationship with Mrs. Austin (an adverse party to Mr. Cotton); and
- (iv) the engineering company's apparent intent to go back on an explicit representation to recommend an approval (that appears to have been coerced);

Mr. Cotton will be seeking to amend his Cross-Complaint.

Please let me know if you would agree to stipulate to an amendment. Mr. Cotton will be seeking to amend his Cross-Complaint to, inter alia, respond to the new factual allegations raised by Mr. Geraci and to add as co-defendants the engineering company, Mr. Shapiro, Mr. Magana, and Mr. Bartell. He will also, at a minimum, be bringing forth a cause of action for conspiracy for the reasons stated above.



Also, please consider this notice for an ex-parte TRO scheduled for June 6, 2018 seeking to have the Court appoint a receiver to manage the CUP application. I realize that Mr. Cotton has made this request before, but I believe that with the newly discovered facts and Mr. Geraci's latest factual allegations in his declaration, Mr. Cotton will be able to meet his burden and prove to the court that more likely than not he will prevail on the merits of his cause of action for breach of contract. I will forward the moving papers as soon as they are ready, but no later than 12:00 PM on June 5, 2018.

Lastly, I will have an updated disclosure response to you this week.

-Jacob

Law Office of Jacob Austin

1455 Frazee Rd. Suite 500

San Diego, CA 92108 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

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Gmail - Federal Blvd. CUP Application.pdf  
200K

Jake Austin <jpa@jacobaustinesq.com>

To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Tue, May 29, 2018 at 3:10 PM

Mr. Weinstein,

I am following up on the below regarding one point - I just finished a lengthy conversation with Mr. Shapiro. We are going to attempt to settle the potential dispute between Mr. Cotton and Mr. Magagna. But, I want to stress the following - Mr. Shapiro explicitly admits to being at the meeting with Mr. Bartell and Ms. Young and that Mr. Bartell did comment on Mr. Cotton's CUP application. However, he alleges he does not remember clearly what Mr. Bartell said regarding Mr. Cotton's CUP application. I told him that Ms. Young was completely clear, remembered the conversation in detail as she had hoped it would be a good investment, and provided detailed responses to Mr. Cotton's questions before she realized that her testimony had a material impact on a litigation matter.

Mr. Shapiro responded by insinuating that Ms. Young is not a reliable witness for any number of reasons, including the allegation that she smokes marijuana and cannot be trusted.

Needless to say, irrespective of whether the issue with Mr. Shapiro and Mr. Magagna is resolved without litigation, his confirmation of the meeting and the fact that Mr. Bartell did make a statement regarding Mr.

Cotton's CUP application is supporting evidence of the conspiracy that Mr. Cotton has been alleging for months.

Jacob

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Michael Weinstein <MWeinstein@ferrisbritton.com>  
To: Jake Austin <jpa@jacobaustinesq.com>

Wed, May 30, 2018 at 10:01 AM

Dear Mr. Austin,

I do not intend to address your client's allegations below of a conspiracy. It is without merit and based on irrational speculation. I will address the pertinent questions.

First, thank you for notifying me in advance of the moon setting for June 22, 2018. Frankly, I do not understand the basis for a renewed motion for judgment on the pleadings. Mr. Cotton sought this once before and it was denied. I do not understand your statement that you will be submitting such a motion "[b]ased on Mr. Geraci's last declaration filed with the Court in the lis pendens pleadings." That declaration contains evidence consistent with the now allegations pleaded in the complaint. That Mr. Cotton disputes those factual allegations is irrelevant on a

motion for judgment on the pleadings. If you file such a motion, then please be aware we may seek sanctions against you and Mr. Cotton.

Second, please be advised that we will not stipulate to an order providing leave for Mr. Cotton to file an amended Cross-Complaint. There is no basis for doing so at this late stage and will only serve to derail and delay the trial date as it will add new parties and legal theories to the case. You will need to file a motion seeking leave to amend if that is what your client desires to do.

Third, thank you for the notice of the June 6 ex parte. This ex parte motion to appoint a receiver to manage the CUP application has been heard and denied previously. Please be advised that the motion is not properly heard on an ex parte basis and should be the subject of a noticed motion. My clients will object to the relief being sought on an ex parte basis. In addition, like before, the motion has no merit. If you bring such a motion, I suggest you do so by a noticed motion.

Fourth, I look forward to receiving the "updated disclosure response" later this week.

Respectfully,

Michael R. Weinstein  
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Vcard



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From: [jacobaustinesq@gmail.com](mailto:jacobaustinesq@gmail.com) <[jacobaustinesq@gmail.com](mailto:jacobaustinesq@gmail.com)> On Behalf Of Jake Austin  
Sent: Tuesday, May 29, 2018 1:18 PM  
To: Michael Weinstein <[MWeinstein@ferrisbritton.com](mailto:MWeinstein@ferrisbritton.com)>  
Subject: Geraci v. Cotton matter

[Quoted text hidden]

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Jake Austin <[jpa@jacobaustinesq.com](mailto:jpa@jacobaustinesq.com)>  
To: Michael Weinstein <[MWeinstein@ferrisbritton.com](mailto:MWeinstein@ferrisbritton.com)>

Fri, Jun 1, 2018 at 4:41 PM

Mr. Weinstein,



Pursuant to CCP §439, prior to filing a motion for judgment on the pleadings, it was incumbent upon me to have given you 5 days' notice prior to the filing of the motion in order to afford us the opportunity to meet and confer in that regard. Thus, because I failed to provide you the notice required by statute, I have rescheduled the hearing date on the motion for July 13, 2018 at 9:00 a.m.

In order to facilitate an effective and productive meet and confer, my interpretation of the facts and law relevant to this case, and the evidence in support thereof, are set forth below.

Additionally, as noted below, it also is my intent to seek leave of court to amend Mr. Cotton's Cross-Complaint to add, inter alia, a cause of action for conspiracy and additional defendants. Please understand that it is not my desire to pursue this course of action; however, while Mr. Cotton can be a challenging individual, he does not deserve to unjustly lose everything of value in his life.

As it currently stands, it is my position that Mr. Geraci brought forth a meritless lawsuit. In light of his declaration filed in opposition to Mr. Cotton's motion to expunge the lis pendens filed on his property, I feel this position is now even stronger than ever. In his declaration, Mr. Geraci explicitly confirms that he wrote the email which confirms he would provide Mr. Cotton a "10% equity position," but allegedly did so by accident and the next day he clarified as such via a telephone conversation with Mr. Cotton - it is suspect that Mr. Geraci raises this material factual allegation for the very first time nearly 13 months after this case was initiated, that fact that he did so in response to our moving papers, citing the controlling case law of Riverisland and Tenzer raised for the first time in this matter, also provides reason to be suspicious of its credibility.

While the parol evidence rule (PER) allows the admission of his written confirmation, it likewise bars as a matter of law his allegation that he called Mr. Cotton the next day and they orally agreed that Mr. Cotton was not entitled to a 10% equity position. Accordingly, it is my position that dismissal of Mr. Geraci's Complaint is likewise warranted as a matter of law.

Please feel free to correct me if you disagree with my reasoning and point me to the evidence with which your reasoning is supported.

In your clients' opposition to Mr. Cotton's motion to expunge the lis pendens, you alleged that Mrs. Austin drafted agreements in an attempt to appease Mr. Cotton, which did not materialize - i.e., "Ultimately, Mr. Cotton was extremely unhappy with Mr. Geraci's refusal to accede to Mr. Cotton's demands and the failure to reach an agreement regarding his possible involvement with the operation of the business to be operated at the Property...."

In that vein, would you please be so kind as to identify which draft agreement prepared by Mrs. Austin provided for an "operation" role for Mr. Cotton in the business? I have reviewed the documents and, although I cannot remember every provision, I certainly don't recall any language to support your factual statement that the purpose of the draft agreements sent to Mr. Cotton was to attempt to revise the alleged agreement reached on November 2, 2016 to include a role for Mr. Cotton in the "operations" of the contemplated business. At least to me, these arguments appear to lack any evidentiary support whatsoever, and are contradicted by the written communications between Messrs. Geraci and Cotton.

Pursuant to *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, it appears to me that if Mr. Cotton is granted judgment on the pleadings and your client's complaint is dismissed pursuant to the PER, potential exposure to liability for a malicious prosecution cause of action lies. (Id. at 349 ("Accordingly, we hold that terminations based on the parol evidence rule are favorable for malicious prosecution purposes."))

Thus, please understand that while I personally do not want to (i) file an ex parte TRO and (ii) seek leave to amend Mr. Cotton's Cross-Complaint to, inter alia, allege a conspiracy based on Mr. Shapiro and Ms. Young's testimony, the

evidence and my ethical obligations to Mr. Cotton compel me to do so.

Although I am confident in my reasoning based on the facts and evidence, I do look forward to any arguments and facts you have that provide just cause to not bring forth these motions with the Court.

Thus, please provide your specific reasoning for why the PER does not bar Mr. Geraci's oral allegation that Mr. Cotton agreed to forgo the 10% equity position that Mr. Geraci confirmed, at Mr. Cotton's request, in the Confirmation Email.

Also, please point me to locations in the draft agreements forwarded to Mr. Cotton that supports your arguments that the agreements sent by Mrs. Austin were meant to include a role for Mr. Cotton in the "operations" of the contemplated business.

Absent any evidence, I cannot change my course of conduct based on your unsupported legal claims below and I interpret your threat of sanctions against me as seeking to unduly intimidate me into failing to ethically and zealously advocate for the best interests of my client.

Best,  
Jacob

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