

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

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Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, HALL OF JUSTICE

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

**SEPARATE STATEMENT IN SUPPORT OF
DEFENDANT/CROSS-COMPLAINANT
DARRYL COTTON'S MOTION TO COMPEL
FURTHER RESPONSES OF PLAINTIFF/
CROSS-DEFENDANT LARRY GERACI TO
SPECIAL INTERROGATORIES SET TWO**

Date: February 1, 2019
Time: 9:00 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

Defendant/Cross-Complainant Darryl Cotton respectfully submits the following Separate Statement of Questions and Answers in Dispute in Support of his Motion for an Order Compelling Further Responses to Special Interrogatories (Set Two) by Plaintiff/Cross-Defendant, Larry Geraci. The following are the requests and responses verbatim, which are considered to be an inadequate, evasive or improper response, and the reasons why further responses should be compelled.

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1 **SPECIAL INTERROGATORY NO. 16:**

2 **IDENTIFY** all **DOCUMENTS RELATING TO** the **6176 CUP APPLICATION** reviewed by
3 Jim Bartell.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

5 Objection. Plaintiff does not have personal knowledge of all documents related to the CUP application
6 reviewed by Jim Bartell over the course of the last two years. Mr. Bartell has that information and his
7 deposition can be taken.

8 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

9 The objection is without merit. CCP § 2030.220(c) states, "If the responding party does not have
10 personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall
11 make a reasonable and good faith effort to obtain the information by inquiry to other natural persons
12 or organizations, except where the information is equally available to the propounding party."
13 Additionally, Jim Bartell is Geraci's agent, working for him on the application for CUP on the
14 Property and other projects. Geraci has admitted as much in his answer to Form Interrogatory (Set
15 One), number 12.1 subsection (d). To say that the information is equally available given the expense
16 and time commitment to depose him is erroneous. Plaintiff must respond as to all **DOCUMENTS** that
17 are under his custody and control. He is clearly under control of **DOCUMENTS** that are in the
18 possession of his hired consultant, Jim Bartell, and can readily **IDENTIFY** and produce them.

19 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

20 Plaintiff stands on the original objection. Additionally, it would be hugely burdensome for Plaintiff to
21 have to ascertain and identify how many 1000s of documents in this case were related to the CUP
22 Application. The more proper method to obtain this discovery is to take Mr. Barthel's deposition and
23 request him to bring his file with him to the deposition.

24 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

25 Cotton stands on the original valid objection.

26 **SPECIAL INTERROGATORY NO. 20:**

27 Please describe with specificity all activities undertaken by **YOU** and **YOUR AGENTS** related to
28 the **CUP APPROVAL PROCESS** for the period January 1, 2018 to April 30, 2018.

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 20:**

2 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
3 AGENTS in the Interrogatories as “The term “**AGENTS**” shall mean and refer to all **PERSONS**
4 with whom **YOU** have any type of relationship – personal, professional, contractual or otherwise
5 – including but not limited to friends, acquaintances, associates, affiliates, consultants, contractors
6 or employees, attorneys, accountants, investigators, experts, insurance companies and their agents
7 and employees, and anyone else acting on **YOUR** behalf or at you instruction in any capacity
8 whatsoever, regardless of whether or not any such **AGENTS** received compensation for their
9 services from **YOU** or any other **PERSON**.”

10 To the extent this interrogatory seeks information regarding the activities undertaken by Gina
11 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal.Evid.Code
12 section 954] and attorney work product doctrine. [SIC] To the extent the Interrogatory seeks
13 information from Plaintiff’s accountants it violates Plaintiff’s right to privacy under Article 1,
14 Section 1, of the California Constitution. To the extent it calls for opinions and descriptions of the
15 activities of plaintiff’s expert witnesses in this case, this is an improper discovery procedure for
16 obtaining the opinions of experts. [CCP section 2034.010 et seq.; see Kabala v. Gray (2002) 95
17 Cal.App.4th 1416, 1419.]

18 Notwithstanding and without waiving these objections, Responding Party responds as follows:
19 During the specified period of January 1, 2018 to April 30, 2018. Techne, its employees and
20 contractors lead by Abhay Schweizer, worked approximately 55.30 hours on the approval of the
21 referenced CUP. This work included specifically revising its drawings in order to address the
22 previously received comments from the City of San Diego, coordinating with geotechnical
23 consultant, coordinating with Governmental Relations consultant along with calls and email with
24 the City of San Diego Development Project Manager. A detailed record of this work is contained
25 within its client records. Others with knowledge of this work would include persons employed or
26 hired by the Geotechnical consultant and the Government Relations consultant to perform their
27 work during this time period.

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1 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 20:**

2 The objections are without merit. An objection based on over-broad or unduly burdensome
3 requires a showing that the intent of the party was to create an unreasonable burden, or that burden
4 created does not weigh equally with what requesting party is trying to obtain from it. See Mead
5 Reinsurance Co. v. Superior Court (1986) 188 Cal.App.3d 313. In the *Mead* case, the objecting
6 party showed that it would require the review of over 13,000 claims files requiring five claims
7 adjusters working full time for six weeks. As to "burdensome": an "objection based upon burden
8 must be sustained by evidence showing the quantum of work required..." West Pico Furniture Co.
9 v. Superior Court (1961) 56 Cal.2d 407, 417. "Some burden is inherent in all demands for
10 discovery. The objection of burden is valid only when that burden is demonstrated to result in
11 injustice." *Id.*, at 418. Geraci has not made any showing as to the burden required and how it works
12 an injustice to it. Further, in this matter, Geraci's objection on the ground of burden are without
13 merit because the effort required is not incommensurate as compared to Cotton's right to know.
14 Defendant/Cross-complainant has asked for all activities for all AGENTS of Plaintiff, not just
15 Techne. The term AGENTS is clearly and specifically defined. The interrogatory does not call for
16 attorney work product and does not invade the attorney-client privilege rule. However, even if
17 there are privileged documents, the proper course is to prepare a privilege log. Defendant/Cross-
18 Complainant is entitled to the information as a response will support the operative Cross-Complaint.
19 It has been alleged that Geraci is motivated to cease with the timely approval of the CUP and in
20 fact that it would be in his best interest to sabotage the CUP Application process so as to mitigate
21 his exposure for the fraud he has committed.
22 The response is also evasive. "Parties must state the truth, the whole truth, and nothing but the
23 truth in answering written interrogatories." Scheiding v. Dinwiddie Const. Co. (1999) 69
24 Cal.App.4th 64, 76. This interrogatory asks for Geraci to describe all of the action he or his agents
25 took relating to the CUP APPROVAL PROCESS. This would include all the agents listed in
26 Geraci's prior response to Form Interrogatory (SET ONE) No. 12.1 subsection (d).
27 Finally, Cotton is not required to ask of this discovery from Geraci's agents directly. CCP §
28 2030.220(c) states, "If the responding party does not have personal knowledge

1 sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable
2 and good faith effort to obtain the information by inquiry to other natural persons or organizations,
3 except where the information is equally available to the propounding party.” This includes
4 AGENTS: “A party cannot plead ignorance to information which can be obtained from sources
5 under his control.” Deyo v. Kilbourne (1978) 84 Cal.App.3d 771,782. This includes a party’s
6 agents or employees. Gordon v. Sup. Ct. (U.Z.MFG.Co) (1984) 161 Cal.App. 3d 15,167-168.

7 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 20:**

8 Plaintiff stands on the valid objections and the original response given.

9 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 20:**

10 Cotton stands on the original valid objection.

11 **SPECIAL INTERROGATORY NO. 22:**

12 **IDENTIFY** all **DOCUMENTS RELATING TO** all activities undertaken by **YOU** and **YOUR**
13 **AGENTS** related to the **CUP APPROVAL PROCESS** for the period January 1, 2018 to the
14 April 30, 2018.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 22:**

16 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
17 AGENTS in the Interrogatories as “The term “**AGENTS**” shall mean and refer to all **PERSONS**
18 with whom **YOU** have any type of relationship – personal, professional, contractual or otherwise
19 – including but not limited to friends, acquaintances, associates, affiliates, consultants, contractors
20 or employees, attorneys, accountants, investigators, experts, insurance companies and their agents
21 and employees, and anyone else acting on **YOUR** behalf or at your instruction in any capacity
22 whatsoever, regardless of whether or not any such **AGENTS** received compensation for there
23 services from **YOU** or any other **PERSON**.”

24 Objection: The interrogatory is over-broad and unduly burdensome given the definition of
25 **IDENTIFY** in the Interrogatories as: “The term “**IDENTIFY**” as used herein in any Special
26 Interrogatory seeking information concerning any action **YOU** took and/or any activity in which
27 **YOU** engaged is a request that **YOU** provide:

28 a. The date(s) on which **YOU** took or engaged in each such action and/or in

1 activity;

2 b. A description of each such action and/or activity;

3 c. The identity of each **PERSON** who participated in, witnessed and/or has

4 knowledge of each such action and/or activity; and

5 d. The identity of any and all notes, memoranda or any other **DOCUMENT(S)**

6 memorializing, referring or **RELATING TO** the subject matter of each

7 such action and/or activity.

8 To the extent this interrogatory seeks information regarding the activities undertaken by Gina

9 Austin, or Ferris & Britton or its attorneys, it invade the attorney-client privilege [Cal.Evid.Code

10 section 954] and attorney work product doctrine. To the extent the Interrogatory seeks information

11 from Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section 1, of the

12 California Constitution. To the extent it calls for opinions and descriptions of the activities of

13 plaintiff's expert witnesses in this case, this is an improper discovery procedure for obtaining the

14 opinions of experts. [CCP section 2034.010 et seq.; see Kabala v. Gray (2002) 95 Cal.App.4th 1416,

15 1419.]

16 Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as defined

17 by Mr. Cotton herein. Each interrogatory must be "separately set forth" and "full and complete in

18 and of itself." [CCP section 2030.060 (c)-(d).]

19 Subject to and without waiving this objection, Responding Party responds as follows:

20 During the specified period, TECHNE worked on the following drawings relating to activities

21 undertaken related to the CUP approval process:

22 GOOI

23 0002

24 TOPOGRAPHIC SURVEY

25 AIOI

26 A102a

27 A102b

28 A103

1 A104

2 A105

3 A106

4 A107

5 A108

6 A109

7 A201

8 A202

9 A203

10 A301

11 A302

12 Each of these particular drawings are a combination of various files referenced into one final
13 document or drawing. The references above are only to the final product by indicating the
14 numbering of each drawing sheet only.

15 In addition, TECHNE is in possession of numerous emails and digital chats both internal
16 and external to its organization that relate to its working on this CUP approval process. TECHNE
17 is also in possession of Response letters to each reviewing discipline received from the
18 Development Services Department.

19 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 22:**

20 The Objections are without merit. An objection based on over-broad or unduly burdensome
21 requires a showing that the intent of the party was to create an unreasonable burden, or that burden
22 created does not weigh equally with what requesting party is trying to obtain from it. See Mead
23 Reinsurance Co. v. Superior Court (1986) 188 Cal.App.3d 313.

24 The response is also evasive and incomplete. "Parties must state the truth, the whole truth, and
25 nothing but the truth in answering written interrogatories." Scheiding v. Dinwiddie Const. Co.
26 (1999) 69 Cal.App.4th 64, 76. Defendant/Cross-complainant has asked for all activities for all
27 AGENTS of Plaintiff, not just Techne. The term AGENTS is clearly and specifically defined. The
28 interrogatory does not call for attorney work product and does not invade the attorney-client

1 privilege. However, if there are privileged documents, the proper course is to prepare a privilege
2 log. Defendant/Cross-complainant is entitled to the information as a response will support the
3 operative Cross-Complaint. Expert opinion has not been called for at this time, therefore that
4 objection has no merit.

5 As to the privacy objections, [d]uring discovery in a lawsuit seeking punitive damages, an order
6 limiting disclosure of defendant's answers to interrogatories concerning his financial affairs to
7 purposes related to the lawsuit serves a valid purpose and does not violate defendant's right of
8 privacy. Richards v. Superior Court of Los Angeles County (1978, 2nd Dist.) 86 Cal.

9 Further, "[t]he constitutional right of privacy embodied in Cal Const Art I § 1, is not absolute.
10 Thus, in deciding whether to allow a discovery demand which impacts upon one's right to privacy,
11 courts perform a balancing test, weighing the public need in the sense of the importance or primacy
12 of the evidence sought against the weight of the constitutional right. If the sought-after evidence
13 is anticipated to play a major role in a case, the right to privacy may give way." Denari v. Superior
14 Court (Cal. App. 5th Dist. Nov. 22, 1989) 215 Cal. App. 3d 1488.

15 Additionally, the response notes that TECHNE has documents in its possession which may be
16 responsive to this request however gives no reason why it will not produce them herein. Geraci
17 has previously produced discovery held by his agent TECHNE. It appears that the implication in
18 the response is that GERACI lack the information necessary to response to the request and that
19 Cotton request the information from TECHNE directly, however, "a party cannot plead ignorance
20 to information which can be obtained from sources under his control." Deyo v. Kilbourne (1978)
21 84 Cal.App.3d 771,782. This includes a party's agents or employees. Gordon v. Sup. Ct.
22 (U.Z.MFG.Co.) (1984) 161 Cal.App 3d 15,167-168.

23 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 22:**

24 Plaintiff stands on the valid objections and the original response given.

25 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 22:**

26 Cotton stands on the original valid objection.

27 **SPECIAL INTERROGATORY NO. 26:**

28 Please describe with specificity all reasons YOU ceased to have a valid real estate salesperson

1 license issued by the California Bureau of Real Estate.

2 **RESPONSE TO SPECIAL INTERROGATORY NO. 26:**

3 Objection: The interrogatory calls for information which is neither relevant, nor calculated to lead
4 to the discovery of admissible evidence. Subject to and without waiving this objection, responding
5 party responds as follows: I let my license expire.

6 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 26:**

7 The objection is without merit. "Objection as to irrelevancy or immateriality to issues cannot be
8 used to deny discovery, and an order denying a motion for further answers to interrogatories, if
9 predicated solely on an invalid objection, must be deemed an abuse of discretion." Coy v. Superior
10 Court of Contra Costa County (1962) 58 Cal.2d 210.

11 A response will tend to prove or disprove the allegations of the operative Cross-Complaint and is
12 therefore, relevant and admissible. Cotton, prior to Geraci "letting" his license expire, threatened
13 Geraci with reporting him to the California Real Estate Board Association for his conduct in the
14 instant matter. Thus, the reasons for *why* Geraci chose to let his license expire after being active
15 for over 20 years can provide evidence that Geraci "let" his license expire so he would not be
16 sanctioned by the California Real Estate Board Association for his conduct leading up to this action.
17 Also, the response is non-responsive to the interrogatory. Interrogatory No. 26 presupposes that
18 Geraci let his license expire and specifically asks for all of the reasons why he no longer has his
19 license. It is nonsensical to respond to an inquiry as to why he no longer has a license by
20 responding that he has no license. "Parties must state the truth, the whole truth, and nothing but
21 the truth in answering written interrogatories." Scheidig v. Dinwiddie Const. Co. (1999) 69
22 Cal.App.4th 64, 76.

23 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 26:**

24 Plaintiff stands on the valid objections and the original response given.

25 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 26:**

26 Cotton stands on the original valid objection.

27 **SPECIAL INTERROGATORY NO. 27:**

28 Please **IDENTIFY** all transactions for the purchase and sale of real property in which **YOU** have

1 an interest (whether or not your interest is evidenced by a **DOCUMENT** filed or recorded by/with
2 any governmental entity) for which **BERRY** acted as **YOUR** broker during **YOUR** licensure as a
3 California real estate salesperson.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 27:**

5 Objection: The interrogatory calls for information which is neither relevant, nor calculated to lead
6 to the discovery of admissible evidence. Based on the foregoing objection, Responding Party will
7 not respond to this interrogatory.

8 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 27:**

9 The objection is without merit. "Objection as to irrelevancy or immateriality to issues cannot be
10 used to deny discovery, and an order denying a motion for further answers to interrogatories, if
11 predicated solely on an invalid objection, must be deemed an abuse of discretion." Coy v. Superior
12 Court of Contra Costa County (1962) 58 Cal.2d 210.

13 A response will tend to prove or disprove the allegations of the operative Cross-Complaint and is
14 therefore, relevant and admissible. Defendant/Cross-complainant is entitled to the information
15 regarding the full extent of Berry's agency relationship with Geraci. Specifically, Berry has
16 claimed that she was unaware of the statute of frauds, if she has been involved in numerous real
17 estate transactions this claim is much less likely. As an aside, if Berry has a strong economic
18 relationship with Geraci she would have more motive to lie, protect, or otherwise obstruct justice
19 to help Geraci or protect her own economic interest.

20 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 27:**

21 Plaintiff stands on the valid objections and the original response given.

22 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 27**

23 Cotton stands on the original valid objection.

24 **SPECIAL INTERROGATORY NO. 28:**

25 Please **IDENTIFY** all real properties in which **YOU** have an interest for which you have received
26 notice from law enforcement agencies and/or governmental entities that those properties are
27 potentially associated with unlicensed marijuana sales.

28 ///

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

2 Objection: The interrogatory calls for information which is neither relevant, nor calculated to lead
3 to the discovery of admissible evidence. The interrogatory is also unlimited as to time. Subject to
4 and without waiving this objection, Responding Party responds as follows: None currently.

5 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

6 The objection is without merit. "Objection as to irrelevancy or immateriality to issues cannot be
7 used to deny discovery, and an order denying a motion for further answers to interrogatories, if
8 predicated solely on an invalid objection, must be deemed an abuse of discretion. Coy v. Superior
9 Court of Contra Costa County (1962) 58 Cal.2d 210.

10 A response will tend to prove or disprove the allegations of the operative Cross-Complaint and is
11 therefore, relevant and admissible. Specifically, that Geraci has a long and established history with
12 illegal marijuana dispensaries and is therefore barred from owning an interest in a Marijuana Outlet.

13 The response is also non-responsive. The interrogatory specifically asks Geraci to **IDENTIFY** all
14 properties for which such notice has been given, if there are too many properties to identify and
15 this request is too burdensome then the objection should state so, and a protective order requested.

16 The interrogatory does not ask about only current properties. It appears that the interrogatory is
17 being purposefully misconstrued as to time. "A party may not deliberately misconstrue a question
18 for the purpose of supplying an evasive answer. Where the question is somewhat ambiguous, but
19 the nature of the information sought is apparent, the proper solution is to provide an appropriate
20 response." Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 783 (citations omitted).

21 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

22 Plaintiff stands on the valid objections and the original response given.

23 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

24 Cotton stands on the original valid objection.

25 **SPECIAL INTERROGATORY NO. 30:**

26 Please state the approximate number of transactions for the purchase and sale of commercial real
27 **PROPERTY** in which **YOU** represented buyers and/or sellers during **YOUR** career as a licensed
28 California real estate salesperson.

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 30:**

2 Objection. The interrogatory calls for information which is neither relevant, nor likely to lead to
3 the discovery of admissible evidence. Based on the foregoing objections, Responding Party will
4 not respond to this interrogatory.

5 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 30:**

6 The objection is without merit. "Objection as to irrelevancy or immateriality to issues cannot be
7 used to deny discovery, and an order denying a motion for further answers to interrogatories, if
8 predicated solely on an invalid objection, must be deemed an abuse of discretion." Coy v. Superior
9 Court of Contra Costa County (1962) 58 Cal.2d 210.

10 A response will tend to prove or disprove the allegations of the operative Cross-Complaint and is
11 therefore, relevant and admissible. The number of real estate transactions Geraci has been involved
12 in which a standard real estate sales contract was used will tend to prove his intent to defraud
13 Cotton.

14 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 30:**

15 Plaintiff stands on the valid objections and the original response given.

16 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 30:**

17 Cotton stands on the original valid objection.

18 **SPECIAL INTERROGATORY NO. 31:**

19 **IDENTIFY** all transactions for the purchase and sale of real property to which **YOU** were a party
20 as a buyer, seller or agent that closed using a maximum of a one-page document containing a
21 nonstandard real estate condition precedent (e.g., a condition precedent to obtain a Conditional Use
22 Permit for the subject property to allow the operation of a business) as the complete, final
23 integrated agreement for the sale of the subject real property in an arms-length transaction.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 31:**

25 Objection. The interrogatory calls for information which is neither relevant, nor likely to lead to
26 the discovery of admissible evidence. Based on the foregoing objections, Responding Party will
27 not respond to this interrogatory.

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1 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 31:**

2 The objection is without merit. "Objection as to irrelevancy or immateriality to issues cannot be
3 used to deny discovery, and an order denying a motion for further answers to interrogatories, if
4 predicated solely on an invalid objection, must be deemed an abuse of discretion." Coy v. Superior
5 Court of Contra Costa County (1962) 58 Cal.2d 210. Geraci must answer regardless of whether
6 or not counsel agrees to the relevancy. If such a position is truly meritorious counsel can seek a
7 protective order.

8 A response will tend to prove or disprove the allegations of the operative Cross-Complaint and is
9 therefore, relevant and admissible. The absence of a non-standard real estate contract for the
10 numerous transactions conducted by Geraci will tend to prove his intent to defraud Cotton.

11 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 31:**

12 Plaintiff stands on the valid objections and the original response given.

13 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 31**

14 Cotton stands on the original valid objection.

15 **SPECIAL INTERROGATORY NO. 36:**

16 Please explain with specificity all reasons why BERRY, as YOUR AGENT, executed Form DS-
17 190 of the 6176 CUP APPLICATION as the "Owner" of the PROPERTY.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 36:**

19 This answer assumes the interrogatory is referring to Form DS-290 signed by Rebecca Berry on
20 October 31, 2016. On that form Rebecca Berry was identified as a business owner, not the property
21 owner. On that same date Rebecca Berry also signed form DS-3032 submitted to the City as part
22 of the 6176 CUP APPLICATION, and in box 8 Rebecca Berry was identified as the Applicant
23 who was an "Other person per M.C. Section 112.0102."

24 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 36:**

25 The response is evasive. "Parties must state the truth, the whole truth, and nothing but the truth in
26 answering written interrogatories." Scheiding v. Dinwiddie Const. Co. (1999) 69 Cal.App.4th 64,
27 76. The interrogatory is not asking about DS-290, but rather DS-190. A response to the question
28 as posed is required.

1 Furthermore, “a party may not deliberately misconstrue a question for the purpose of supplying
2 an evasive answer. Where the question is somewhat ambiguous, but the nature of the information
3 sought is apparent, the proper solution is to provide an appropriate response.” Deyo v. Kilbourne
4 (1978) 84 Cal.App.3d 771, 783 (citations omitted).

5 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 36:**

6 The response to Form 290 was a typographical error. The response should be read as referencing Form
7 190. Denied as to the Form DS-190 signed by me on October 31, 2016. On that form Ms. Berry was
8 identified as a business owner. On that same date she also signed Form DS-3032 submitted to the
9 CITY as part of the 6176 CUP APPLICATION, in box 8, she was identified as the Applicant who was
10 an “Other Person per M.C. Section 112.0102.”

11 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 36:**

12 Geraci’s supplemental response continues to purposefully misconstrue the question. Form DS-190
13 required Berry to designate herself as either the “Owner” or “Agent” of the Property. She checked the
14 box for “Owner.” The fact that she alleged to be the “Business Owner” on the same form is a
15 purposeful misdirection from the question asked: why she claimed to be the “Owner” of the Property
16 on Form DS-190. Her answer does not answer the question asked. Deyo v. Kilbourne (1978) 84
17 Cal.App.3d 771, 783 (citations omitted) (“a party may not deliberately misconstrue a question for the
18 purpose of supplying an evasive answer. Where the question is somewhat ambiguous, but the nature of
19 the information sought is apparent, the proper solution is to provide an appropriate response.”).

20 **SPECIAL INTERROGATORY NO. 39:**

21 IDENTIFY each written communication between YOU and COTTON – including but not limited
22 to emails, text messages or other DOCUMENTS – and the specific language therein that YOU
23 allege are an attempt to renegotiate the terms of the NOVEMBER DOCUMENT.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 39:**

25 Responding Party has previously produced all documents evidencing an attempt to negotiate the
26 NOVEMBER DOCUMENT, all of which were created during the time period of approximately
27 November 3, 2016, through the filing of the complaint on or about March 21, 2017.

28 ///

1 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 39:**

2 The response is non-responsive. Plaintiff was asked to IDENTIFY documents. It is an improper
3 response to refer Propounding Party to documents from which an answer may or may not be found.
4 For example, “see my files and records” is not a proper response. Fuss vs. Superior Court (1969)
5 273 Cal.App.2d 807, 815-817.

6 Geraci has alleged, without any support, that the contracts sent by him to Cotton were attempts to
7 renegotiate the terms of the contract and not attempts to memorialize the underlying contract itself
8 as alleged by Cotton. This interrogatory request that Geraci IDENTIFY what documents support
9 his allegation and if none exist, he should unequivocally say so.

10 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 39:**

11 Plaintiff will stand on the original response, however adding the objection that the request is
12 compound in that it calls for a description of each document and the particular language in each
13 document that are an attempt to renegotiate the terms of the NOVEMBER DOCUMENT.

14 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 39:**

15 Cotton stands on the original valid objection.

16 **SPECIAL INTERROGATORY NO. 40:**

17 IDENTIFY each written communication between YOU and COTTON – including but not limited to
18 emails, texts message or other DOCUMENTS – and the specific language therein that reflects YOU
19 intended to provide for the employment of COTTON in any capacity at any point in time.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 40:**

21 Responding Party has previously produced all documents that are written communications between
22 Responding Party and Mr. Cotton regarding any and all matters. Responding Party never agreed to
23 provide Mr. Cotton employment in any capacity at any point in time.

24 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 40:**

25 The request asks for Geraci to identify what written evidence there is to support his contention he
26 “intended to provide for the employment of” of Cotton. The response that Geraci “never agreed to
27 provide [Cotton] with employment” misconstrues the question. It is clear the parties never agreed; the
28

1 question is for him to identify what evidence, if any, exists that Geraci "intended" to provide for
2 Cotton's employment.

3 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 40:**

4 To further clarify, we will amend the response to state that: Prior to signing the Nov.2nd Written
5 Agreement, Mr. Cotton expressed to Mr. Geraci a desire to participate in different ways to the
6 operation of the future MMCC business at the Property. There were discussions between them related
7 to the possibility of compensation of Mr. Cotton in exchange for his providing various services to the
8 business but an agreement was never reached. Mr. Geraci was very concerned that Mr. Cotton was
9 going to interfere with the completion of the CUP process. Mr. Geraci tried his best to discuss and
10 work with Mr. Cotton on some other compensation arrangement that was reasonable and avoid the risk
11 he might try to "torpedo" the project and find another buyer. Therefore, on several successive
12 occasions, Mr. Geraci had his attorney draft written agreements that contained terms that Mr. Geraci
13 believed he could live with and hoped would be sufficient to satisfy Mr. Cotton's demands for
14 additional compensation. Mr. Cotton rejected each of those suggestions and unsatisfactory. No
15 agreement was ever reached. As no agreement was ever reached, there are not documents reflecting an
16 intention by Mr. Geraci to provide for the employment of Mr. Cotton in any capacity.

17 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO.40:**

18 Despite the further response, it does not answer the interrogatory which asks that Geraci identify any
19 written evidence between he and Cotton that reflects any intention to provide employment to Cotton.
20 The original objection stands. Furthermore, the non-response is telling. Geraci, in his declaration in
21 opposition to Cotton's Motion to Expunge Lis Pendens (ROA 180) states "Prior to signing the Nov 2nd
22 Written Agreement we had preliminary discussion related to [Cotton's] desire to be involved in the
23 operation of the business (not related to the purchase of the Property) and we discussed the possibility
24 of compensation." It appears the Court relied on this assertion in denying said motion "the documents
25 Defendant offers in support of this Motion were created after November 2, 2016 and appear to be
26 unsuccessful attempts to renegotiate changes to the original agreement." (ROA 191) So here again
27 Geraci is at an impasse. He and his attorney allowed the Court to scribe to those draft contracts, sent
28 to Cotton by Geraci himself, the connotation that there were related to these "preliminary discussion"

1 for employment. So now when asked to specifically identify any written communication which
2 supports this contention, he cannot deny that any communication exists because or it would provide
3 evidence that would directly contradict his prior explanation for the subsequent contracts sent to
4 Cotton *and* he cannot identify said written communication because they never happened.
5 Furthermore, "a party may not deliberately misconstrue a question for the purpose of supplying
6 an evasive answer. Where the question is somewhat ambiguous, but the nature of the information
7 sought is apparent, the proper solution is to provide an appropriate response." Deyo v. Kilbourne
8 (1978) 84 Cal.App.3d 771, 783 (citations omitted).

9 **SPECIAL INTERROGATORY NO. 41:**

10 Please describe with specificity the "alternative consideration in lieu of Deposit" YOU allege YOU
11 provided to COTTON as set forth in Paragraph 3a of the draft Purchase Agreement (First Draft)
12 YOU emailed to COTTON on February 27, 2017 at 8:49 a.m.

13 **RESPONSE TO SPECIAL INTERROGATORY NO. 41:**

14 Objection: Calls for a legal opinion or conclusion. Subject to and without waiving this objection.
15 Responding Party responds as follows: The First Draft was prepared by counsel and Responding
16 Party does not know what counsel intended.

17 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 41:**

18 The objection is without merit. A legal conclusion is not required to respond; Propounding Party
19 is asking about Plaintiff's own allegations. This can be done by simply identifying the
20 consideration. It is not a valid ground for objection to state that a question seeks information which
21 is to be determined by the trier of fact. This is an improper objection. West Pico Furniture Co. v.
22 Superior Court (1961) 56 Cal.2d 407, 418.

23 The response is evasive. The question calls for Geraci to describe the consideration. No legal
24 opinion is required. The response is claiming that Geraci cannot respond because he does not have
25 the necessary personal knowledge to do so, however Code Civ. Proc., § 2030.220(c) states,
26 "If the responding party does not have personal knowledge sufficient to respond fully to an
27 interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain
28 the information by inquiry to other natural persons or organizations, except where the information

1 is equally available to the propounding party.” This includes AGENTS: “A party cannot plead
2 ignorance to information which can be obtained from sources under his control.” Deyo v.
3 Kilbourne (1978) 84 Cal.App.3d 771,782. This includes a party’s agents or employees. Gordon v.
4 Sup. Ct. (U.Z.MFG.Co.) (1984) 161 Cal.App 3d 15,167-168. Geraci is therefore required to reach
5 out to his attorney, (a natural person) or her law firm (as an organization).

6 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 41:**

7 Plaintiff stands on the valid objections and the original response given.

8 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 41:**

9 Cotton stands on the original valid objection.

10 **SPECIAL INTERROGATORY NO. 42:**

11 Please describe with specificity the date(s), time(s) and circumstance(s) under which **COTTON**
12 agreed to accept the "alternative consideration in lieu of Deposit" set forth in Paragraph 3a of the
13 Purchase Agreement (First Draft) **YOU** emailed to **COTTON** on February 27, 2017 at 8:49 a.m.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 42:**

15 Objection: Calls for a legal opinion or conclusion. Subject to and without waiving this objection.
16 Responding Party responds as follows: The First Draft was prepared by counsel and Responding
17 Party does not know what counsel intended.

18 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 42:**

19 The objection is without merit. A legal conclusion is not required to respond; Propounding Party
20 is asking about Plaintiff’s own allegations. This can be simply describing the fact surrounding
21 Cotton’s agreeing to accept alternative consideration. It is not a valid ground for objection to state
22 that a question seeks information which is to be determined by the trier of fact. This is an improper
23 objection. West Pico Furniture Co. v. Superior Court (1961) 56 Cal.2d 407, 418.

24 The response appears to be claiming that Geraci cannot respond because he does not have the
25 necessary personal knowledge to do so, however CCP § 2030.220(c) states, “If
26 the responding party does not have personal knowledge sufficient to respond fully to an
27 interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain
28 the information by inquiry to other natural persons or organizations, except where the information

1 is equally available to the propounding party.” This includes AGENTS: “A party cannot plead
2 ignorance to information which can be obtained from sources under his control.” Deyo v.
3 Kilbourne (1978) 84 Cal.App.3d 771,782. This includes a party’s agents or employees. Gordon v.
4 Sup. Ct. (U.Z.MFG.Co.) (1984) 161 Cal.App 3d 15,167-168. He his therefore required to reach
5 out to his attorney, (a natural person) or her law firm (as an organization).

6 The response is also evasive. Cotton has maintained that the alternative consideration referenced
7 therein was the \$10,000 earnest money deposit already received at the time the November
8 Document was signed. This would prove that the Purchase Agreement was an attempt to
9 memorialize the underlying agreement because it references the “alternative consideration in lieu
10 of Deposit” already provided which was the only consideration received by Cotton. The
11 interrogatory asks Geraci describe the circumstance surrounding this alternative consideration that
12 was allegedly provided if not the \$10,000 earnest money deposit. No legal opinion is required.

13 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 42:**

14 Plaintiff stands on the valid objections and the original response given.

15 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 42:**

16 Cotton stands on the original valid objection.

17 **SPECIAL INTERROGATORY NO. 43:**

18 **IDENTIFY** all **PERSONS** who witnessed **YOU** provide **COTTON** the "alternative consideration
19 in lieu of Deposit" as set forth in Paragraph 3a of the Purchase Agreement (First Draft) **YOU**
20 emailed to **COTTON** on February 27, 2017 at 8:49 a.m.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 43:**

22 Objection: Calls for a legal opinion or conclusion. Subject to and without waiving this objection.
23 Responding Party responds as follows: The First Draft was prepared by counsel and Responding
24 Party does not know what counsel intended.

25 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 43:**

26 The response is evasive. The question calls for Geraci to identify persons. No legal opinion is
27 required. The response is claiming that Geraci cannot respond because he does not have the
28 necessary personal knowledge to do so, however Code Civ. Proc., § 2030.220(c) states, “If

1 the responding party does not have personal knowledge sufficient to respond fully to an
2 interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain
3 the information by inquiry to other natural persons or organizations, except where the information
4 is equally available to the propounding party." He is therefore required to reach out to his attorney,
5 (a natural person) or her law firm (as an organization).

6 The objection is without merit. A response will tend to prove or disprove the allegations of the
7 operative Cross-Complaint, and it is therefore relevant and admissible. Further, a legal conclusion
8 is not required to respond; Propounding Party is asking about Plaintiff's own allegations. It is not
9 a valid ground for objection to state that a question seeks information which is to be determined
10 by the trier of fact. This is an improper objection. West Pico Furniture Co. v. Superior Court (1961)
11 56 Cal.2d 407, 418.

12 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 43:**

13 Plaintiff stands on the valid objections and the original response given.

14 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 43:**

15 Cotton stands on the original valid objection.

16 **SPECIAL INTERROGATORY NO. 44:**

17 **IDENTIFY** all **DOCUMENTS** evidencing that **YOU** provided **COTTON** the "alternative
18 consideration in lieu of Deposit" as set forth in Paragraph 3a of the Purchase Agreement (First
19 Draft) **YOU** emailed to **COTTON** on February 27, 2017 at 8:49 a.m.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 44:**

21 Objection: Calls for a legal opinion or conclusion. Subject to and without waiving this objection.
22 Responding Party responds as follows: The First Draft was prepared by counsel and Responding
23 Party does not know what counsel intended.

24 **OBJECTION TO RESPONSE TO SPECIAL INTERROGATORY NO. 44:**

25 The objection is without merit. A legal conclusion is not required to respond; Propounding Party
26 is asking about Plaintiff's own allegations. No legal opinion is necessary to identify documents.
27 It is not a valid ground for objection to state that a question seeks information which is to be
28 determined by the trier of fact. This is an improper objection. West Pico Furniture Co. v. Superior

1 Court (1961) 56 Cal.2d 407, 418.

2 The response is evasive. The question calls for Geraci to identify documents. No legal opinion is
3 required. The response is claiming that Geraci cannot respond because he does not have the
4 necessary personal knowledge to do so, however Code Civ. Proc., § 2030.220(c) states, "If
5 the responding party does not have personal knowledge sufficient to respond fully to an
6 interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain
7 the information by inquiry to other natural persons or organizations, except where the information
8 is equally available to the propounding party." He his therefore required to reach out to his attorney, (a
9 natural person) or his law firm (as an organization).

10 **FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 44:**

11 Plaintiff stands on the valid objections and the original response given.

12 **OBJECTION TO FURTHER RESPONSE TO SPECIAL INTERROGATORY NO. 44:**

13 Cotton stands on the original valid objection.

14 DATED: January 9, 2019

THE LAW OFFICE OF JACOB AUSTIN

15
16 By



JACOB P. AUSTIN

Attorney for Defendant/Cross-Complainant
DARRYL COTTON