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Clerk of the Superior Court  
By Richard Day, Deputy Clerk

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**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

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

**Accompanying Papers: Notice of Motion, Separate  
Statement of Disputed Discovery Responses,  
Declaration of Jacob P. Austin.**

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

Defendant Darryl Cotton ("Cotton") submits the following memorandum of points and authorities in support of his motion to compel plaintiff Larry Geraci ("Geraci") to provide further responses to Cotton's Special Interrogatories (Set Two) numbers 16, 20, 22, 26, 27, 28, 30, 31, 36, 39, 40, 41, 42, 43, 44.

1       **1. INTRODUCTION**

2       Geraci initiated this action against Cotton on March 21, 2017 alleging Cotton breached a real  
3       estate contract to sell Geraci his real property (the "Property"). Neither party disputes they met on  
4       November 2, 2016 and executed a three-sentence document (the "November Document"). The parties,  
5       however, dispute the nature of the November Document. As summarized by Geraci in his demurrer to  
6       Cotton's Cross-complaint: "Geraci alleges in his Complaint that the written agreement signed November  
7       2, 2016, contains all the material terms and conditions of the agreement for the purchase and sale of the  
8       Property and is the entire agreement enforceable between the parties. Cotton contends that the November  
9       Document, sets forth only some of the material terms and conditions agreed to by the parties and some  
10      different and additional material terms and conditions not reflected in a signed writing were agreed to  
11      by the parties."<sup>1</sup>

12      Geraci alleges Cotton anticipatorily breached the agreement with Geraci by refusing to perform  
13      in order to sell the Property to a third-party for a higher price. Cotton alleges the November Document  
14      is a *receipt* intended to memorialize his acceptance of \$10,000 in cash towards an agreed-upon \$50,000  
15      non-refundable deposit and that Geraci promised to have his attorney, Gina Austin, reduce their  
16      agreement to writing; which would provide for, among other things, Cotton's bargained-for 10% equity  
17      position in a contemplated Marijuana Outlet (a retail for-profit cannabis store) to be developed at the  
18      Property (the "Business").

19      Cotton has propounded discovery asking Geraci to admit certain facts, respond to interrogatories,  
20      and produce documents that establish (i) the actual agreement reached between the parties on November  
21      2, 2016 was never reduced to writing, (ii) the November Document is not a completely integrated  
22      agreement, and (iii) that Geraci and his agents have conspired, lied, and committed fraud, to obtain a  
23      prohibited interest in the contemplated Business; i.e. the motive for the fraudulent misrepresentation of  
24      the November Document as a final integrated agreement.

25      Geraci's responses have been vague, evasive, non-responsive, and are riddled with meritless  
26      objections. Additionally, Geraci's responses have been incomplete, unduly complicated, and made

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28      

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<sup>1</sup> Demurrer of Geraci filed .09/28/2017, ROA # 52.



1 with qualifications that contradict his own prior answers. Geraci is actively attempting to avoid  
2 responding.

## 3 **2. BACKGROUND**

### 4 **A. The Discovery at Issue and Geraci's Responses.**

5 On October 8, 2018, Cotton served Geraci and Rebecca Berry ("Berry") with Request for  
6 Admissions (Set One) pursuant to Code of Civil Procedure ("CCP") § 2033.010, Request for Production  
7 (Set Two) pursuant to CCP § 2031.010, Special Interrogatories (Set Two) pursuant to CCP § 2030.010  
8 [(Exhibit 1 to the Declaration of Jacob P. Austin ("Dec. of Austin") filed concurrently)], and Form  
9 Interrogatories, (Set Two) also pursuant to CCP § 2030.010.

10 Prior to the deadline to respond, opposing counsel for Geraci and Berry requested an extension  
11 to serve responses to all set of discovery requests. The parties agreed that the responses for the  
12 requests for admission for both Geraci and Berry would be served on or before November 8, 2018 and  
13 all other responses would be due on or before November 21, 2018. The parties further agreed that the  
14 time for filing any motion to compel as to any of these responses would be calculated from the date of  
15 service of the latter verified responses to avoid duplicate and/or inconsistent motion hearing dates  
16 (Exhibit 5 to Dec. of Austin, filed concurrently). Those responses were initially served on or about  
17 November 21, 2018. However, on November 28, 2018 counsel for Cotton realized that the responses  
18 were not verified and emailed opposing counsel regarding same. On November 30, 2018 opposing  
19 counsel served verification of the discovery responses for Geraci and Rebecca Berry (Exhibit 6 to Dec.  
20 of Austin, filed concurrently).

21 Geraci's Responses to the Special Interrogatories were served by mail on November 21, 2018.  
22 (Exhibit 2 to the Dec. of Austin filed concurrently). Certain of these responses were incomplete,  
23 inadequate and contained meritless objections. On December 18, 2018 Cotton provided specific  
24 objections to Geraci's responses (Exhibit 3 to Dec. of Austin, filed concurrently), which were  
25 supplemented by follow up letter dated January 3, 2018 (Exhibit 4 to Dec. of Austin, filed  
26 concurrently). Additionally, counsel for Cotton sent an email on January 8, 2019 regarding objections  
27 to four additional responses provided (Exhibit 8 to Dec. of Austin, filed concurrently).

### 28 **B. Cotton's Meet and Confer Efforts**

1 On January 7, 2019 counsel for Geraci sent a response to Cotton's meet and confer letter dated  
2 January 3, 2019 (Exhibit 7 to Dec. of Austin, filed concurrently). In that letter counsel for Geraci replies  
3 to Cotton's objections to discovery answers previously provided by Geraci. The response makes very  
4 small and inconsequential concessions. Summarily, Geraci generally maintains that his responses are  
5 unambiguous and legal objections sound. They are manifestly not and warrant the imposition of  
6 sanctions.

### 7 **3. ARGUMENT**

8 The primary objective of any discovery request is to educate the parties in advance of trial as to  
9 the real value of their claims and defenses. Lehman v. Superior Court (1986) 179 Cal. App. 3d 558, 564.  
10 A "party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter  
11 involved in the pending action...if the matter is itself admissible in evidence or appears reasonably  
12 calculated to lead to the discovery of admissible evidence." CCP § 2017.010; see also Norton v. Superior  
13 Court (1994) 24 Cal. App.4th 1750, 1760-1761 re former CCP § 2107.010. As set forth in the Separate  
14 Statement filed concurrently herewith, the information sought via these discovery devices will tend to  
15 prove, as previously noted, (i) the actual agreement reached between the parties on November 2, 2016  
16 was never reduced to writing, (ii) the November Document is not an integrated agreement, and (iii) that  
17 Geraci and his agents have conspired, lied, and committed fraud, to obtain a prohibited interest in a  
18 highly lucrative Marijuana Outlet.

19 Geraci's responses, by way of the disputed discovery requests, are not entitled to privilege, are  
20 relevant to the subject matter of the action, and are either admissible or reasonably calculated to lead to  
21 the discovery of admissible evidence. Accordingly, Geraci must provide full and complete verified  
22 further responses to the requests.

23 CCP § 2030.220(a) states "each answer in a response to interrogatories shall be as complete and  
24 straightforward as the information reasonably available to the responding party permits."

25 CCP § 2030.220(b) states that "If an interrogatory cannot be answered completely, it shall be  
26 answered to the extent possible. Finally, CCP § 2030.220(c) states "If the responding party does not  
27 have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but  
28 shall make a reasonable and good faith effort to obtain the information by inquiry to other natural



1 persons or organizations, except where the information is equally available to the propounding party.”  
2 Furthermore, judicial precedent has long established that “[A] party may not deliberately misconstrue a  
3 question for the purpose of supplying an evasive answer.” Deyo v. Kilbourne (1978) 84 Cal.App.3d  
4 771, 783.

5 “Parties must state the truth, the whole truth, and nothing but the truth in answering written  
6 interrogatories.” Scheiding v. Dinwiddie Const. Co. (1999) 69 Cal.App.4th 64, 76.

7 Cross-Defendant Berry is an admitted employee and agent of Geraci. Jim Bartell is a lobbyist  
8 hired by Geraci to help get the CUP Application approved on the Property. Gina Austin is Geraci’s  
9 marijuana land use entitlement attorney hired to help get the CUP Application approved on the Property.  
10 All information requested and objected to on the bases of lack of information or belief has not stated  
11 that a reasonable inquiry has been conducted. A simple inquiry by Geraci to his employee/agent,  
12 lobbyist, or attorney would have provided him with the information he allegedly lacks. Therefore, these  
13 responses are not code compliant and necessitate this motion to compel.

14 **A. Geraci’s Objections are Meritless, his Substantive Response are Deficient and**  
15 **Evasive.**

16 **i. Special Interrogatories**

17 **1. Responses with No Objections that are Evasive or Non-Responsive**  
18 **to the Request.**

19 In responses to Special Interrogatories (Set Two), Geraci qualifies some of his answers in such  
20 a way as to make them non-responsive and unduly confusing. One way this is effectuated is by  
21 deliberately misconstruing the question and disregarding the underlying request. An example of this  
22 can be seen in Special Interrogatory No. 36. The information sought by this interrogatory is simple and  
23 important. It is simple in that it asks Geraci to explain why his agent, Berry, executed Form DS-190 as  
24 the “Owner” of the Property. It is important because Berry was never given authority by Cotton to claim  
25 to be the owner, so she has therefore engaged in fraud by 1) not disclosing Geraci’s interest in the  
26 Property and 2) by misrepresenting herself as the Owner of the Property on the CUP Application form.

27 **SPECIAL INTERROGATORY NO. 36:**

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

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

4 This answer assumes the interrogatory is referring to Form DS-290 signed by Rebecca Berry on  
5 October 31, 2016. On that form Rebecca Berry was identified as a business owner, not the property  
6 owner. On that same date Rebecca Berry also signed form DS-3032 submitted to the City as part of the  
7 6176 CUP APPLICATION, and in box 8 Rebecca Berry was identified as the Applicant who was an  
8 "Other person per M.C. Section 112.0102."

9 **SUPPLEMENTAL RESPONSES TO SPECIAL INTERROGATORY NO. 36**

10 The response to Form 290 was a typographical error. The response should be read as referencing  
11 Form 190.

12 Denied as to the Form DS-190 signed by me on October 31, 2016. On that form Ms. Berry was  
13 identified as a business owner. On that same date she also signed Form DS-3032 submitted to the CITY  
14 as part of the 6176 CUP APPLICATION, in box 8, she was identified as the Applicant who was an  
15 "Other Person per M. C. Section 112. 0102."

16 **REASON FURTHER RESPONSE SHOULD BE COMPELLED:**

17 Geraci's supplemental response continues to purposefully misconstrue the question. Form DS-190  
18 required Berry to designate herself as either the "Owner" or "Agent" of the Property. She checked the  
19 box for "Owner." The supplement response refers to "DS-190 signed by me." However, the  
20 interrogatory asks why *Berry* executed the form. Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 783  
21 (citations omitted) ("a party may not deliberately misconstrue a question for the purpose of supplying  
22 an evasive answer. Where the question is somewhat ambiguous, but the nature of the information sought  
23 is apparent, the proper solution is to provide an appropriate response.").

24 Geraci's assertion that reference to DS-290 was a typographical error is unpersuasive. For one,  
25 the statement "on that form" implies that Cotton was mistaken in reference to DS-190. Secondly, the  
26 answer states "this answer assumes the interrogatory is referring to Form DS-290." Geraci differentiates  
27 Form DS-290 from Form DS-190 as the response makes it clear that it "assumes" the interrogatory is  
28 referencing DS-290 when DS-190 is clearly written. Berry in a similar interrogatory makes the same



1 typographical error. The likelihood of both Geraci and Berry making the exact same typographical error  
2 is illogical when taken in the context of the response as given.

3 Another example of an evasive answer can be seen in Response to Special Interrogatory No. 35:

4 **SPECIAL INTERROGATORY NO. 35:**

5 Have YOU or YOUR AGENTS requested that Shawn Miller contact Mr. Joe Hurtado  
6 regarding any matter related to this litigation?

7 **RESPONSE TO SPECIAL INTERROGATORY NO. 35:**

8 Not that I am aware. Moreover, I have never requested or authorized any person to do so.

9 **REASON FURTHER RESPONSE SHOULD BE COMPELLED:**

10 The question asks if Geraci or his agents requested Miller to contact Hurtado. Geraci's response  
11 is that he is "not aware" and that if someone did, he did not authorize anyone to do so. Hurtado has  
12 submitted a sworn declaration that Miller threatened him to use his influence with Cotton to settle the  
13 instant litigation. Geraci's response is akin to saying that he is not aware if any of his agents threatened  
14 Hurtado, but if discovery and evidence later reveals that one of his agents did have Miller threaten  
15 Hurtado, that they acted independently. Geraci has a duty to check with his agents and provide all  
16 information in his control, including that of his agents.

17 If one of his agents did contact Miller and asked him to contact Hurtado, he should admit that, whether  
18 or not his agent did so with his consent or not. A party cannot plead ignorance to information, which  
19 can be obtained from sources under his control. Deyo v. Kilbourne (1978) 84 CA3d 771, 782. This  
20 includes agents, employees, (Gordon v. Sup. Ct. (1984) 161 CA 3d 151, 167-168), and family  
21 members (Jones v. Superior Court (1981) 119 CA 3d 534, 552).

22 **2. Responses that Contained Meritless Objection and Incomplete**

23 **Evasive or Non-Responsive Answers.**

24 In yet other responses to Special Interrogatories (Set Two) Geraci makes clearly meritless  
25 objections and then misconstrues the question in order to evade answering the interrogatory as poses.  
26 One example of this is Special Interrogatory No. 28.

27 **SPECIAL INTERROGATORY NO. 28:**

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

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

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

8 **SUPPLEMENTAL RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

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

10 **REASON FURTHER RESPONSE SHOULD BE COMPELLED:**

11 The objection is without merit. "Objection as to irrelevancy or immateriality to issues cannot be  
12 used to deny discovery, and an order denying a motion for further answers to interrogatories, if  
13 predicated solely on an invalid objection, must be deemed an abuse of discretion. Coy v. Superior  
14 Court of Contra Costa County (1962) 58 Cal.2d 210. A response will tend to prove or disprove the  
15 allegations of the operative Cross-Complaint and is therefore relevant and admissible. Specifically, that  
16 Geraci has a long and established history with illegal marijuana dispensaries and is therefore barred  
17 from owning an interest in a Marijuana Outlet, which is the motivation for committing fraud.

18 The answer is also non-responsive. The interrogatory specifically asks Geraci to **IDENTIFY** all  
19 properties for which such notice has been given, if there are too many properties to identify and this  
20 request is too burdensome then the objection should state so, and a protective order requested. The  
21 interrogatory does not ask about only current properties. A responsive answer would tend to show that  
22 Geraci has been operating in illegal marijuana dispensaries in addition to the ones already known. This  
23 information would provide evidence that Geraci and his team of experts have been engaging in and  
24 intended to engage fraud from the very outset of their interactions with Cotton.

25 It appears that the interrogatory is being purposefully misconstrued as to time in order to avoid  
26 disclosure. "A party may not deliberately misconstrue a question for the purpose of supplying an evasive  
27 answer. Where the question is somewhat ambiguous, but the nature of the information sought is  
28 apparent, the proper solution is to provide an appropriate response." Deyo v. Kilbourne (1978) 84



1 Cal.App.3d 771, 783 (citations omitted). It is clear, that any illegal interest by Geraci at this point would  
2 be transferred or transmuted in such a way as to not become subject of this lawsuit which is why Special  
3 Interrogatory No. 28 specifically notes properties in which you have received notice from law  
4 enforcement. It would seem reasonable to ask for all of the instances with no consideration of time,  
5 unless as mentioned before the task is too burdensome.

6 **3. Meritless Objection with No Substantive Response.**

7 The last type of tactic used by Geraci in avoiding answering is by using clearly meritless  
8 objections. An example of this can be seen in his response to Special Interrogatory No. 16:

9 **SPECIAL INTERROGATORY NO. 16:**

10 **IDENTIFY all DOCUMENTS RELATING TO the 6176 CUP APPLICATION** reviewed  
11 by Jim Bartell.

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

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

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

17 Plaintiff stands on the original objection. Additionally, it would be hugely burdensome for  
18 Plaintiff to have to ascertain and identify how many 1,000s of documents in this case  
19 were related to the CUP Application. The more proper method to obtain this discovery is  
20 to take Mr. Barthel's deposition and request him to bring his file with him to the  
21 deposition.

22 **REASON FURTHER RESPONSE SHOULD BE COMPELLED:**

23 The objection is without merit. CCP § 2030.220,(c) states, "If the responding party does not have  
24 personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall  
25 make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or  
26 organizations, except where the information is equally available to the propounding party."

27 Additionally, Jim Bartell is Geraci's agent, working for him on the application for CUP on the Property  
28 and other projects. Geraci has admitted as much in his answer to Form Interrogatory (Set One), number

12.1 subsection (d). To say that the information is equally available given the expense and time commitment to depose him is erroneous. Plaintiff must respond as to all DOCUMENTS that are under his custody and control. He is clearly under control of DOCUMENTS that are in the possession of his hired consultant, Jim Bartell, and can readily IDENTIFY and produce them.

**B. The Underlying Fraudulent Scheme Requires Geraci to Avoid Certain Admissions or Disclosures.**

Though it may seem shocking for Geraci to engaged in such deceptive tactics, when put against the nature of the overall scheme being effectuated it makes clear sense why Geraci would engage in such a practice.

The regulatory schemes being effectuated by the State of California and the City of San Diego governing the licensing of marijuana businesses prohibit individuals who have previously been sanctioned with illegal marijuana activities from having an ownership interest in a legal Marijuana Outlet. San Diego Municipal Code ("SDMC") §42.1501 materially states: "the intent of this Division [is] to ensure that marijuana is not diverted for illegal purposes, and to limit its use to those persons authorized under state law." California Bus. & Prof. Code § 26057 applies to the licensing of marijuana operations and provides the criteria pursuant to which a license may be denied, including the "[f]ailure to provide information required by the licensing authority" and "[t]he applicant... has been sanctioned by a licensing authority or a city... for unauthorized commercial cannabis activities..." Bus. & Prof. Code § 26057(b)(3), (7). Additionally, various other provisions void marijuana licenses acquired through fraud and other unlawful actions. *See, e.g.*, Bus. & Prof. Code § 480(d) ("A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license.")

Geraci has been a named defendant and sanctioned in at least three actions by the City for owning/managing illegal marijuana dispensaries. Geraci is not named as a person with an interest in the Property or the 6176 CUP Application in contravention of numerous City and State laws. Geraci judicially admits that he has previously been sanctioned and that his name is not on the 6176 CUP Application.

**4. CONCLUSION**




1 Geraci has failed to provide further verified responses to properly propounded Special  
2 Interrogatories (Set Two), necessitating this motion to compel. Based on the foregoing, Cotton  
3 respectfully requests that the court:

4 1. Issue an order that Geraci provide further responses, without objection, to  
5 Defendant/Cross-complainant's Special Interrogatories (Set Two) as set forth in its Separate Statement  
6 filed concurrently herewith.

7 2. Issue an order that Geraci be sanctioned for Cottons fees and costs in the amount of  
8 \$4,260.00

9 DATED: January 9, 2019

THE LAW OFFICE OF JACOB AUSTIN

11 By   
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13 Attorney for Defendant/Cross-Complainant  
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