

ROA 47
27 pgs

DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@ftblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@ftblaw.com

FINCH, THORNTON & BAIRD, LLP

ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

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County of San Diego

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Clerk of the Superior Court
By Richard Day, Deputy Clerk

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

SECOND AMENDED CROSS-COMPLAINT
FOR:

- (1) BREACH OF CONTRACT;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FALSE PROMISE; AND
- (5) DECLARATORY RELIEF.

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

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1 Defendant and cross-complainant Darryl Cotton ("Cotton") alleges as follows:

2 1. Venue is proper in this Court because the events described below took place in
3 this judicial district and the real property at issue is located in this judicial district.

4 2. Cotton is, and at all times mentioned was, an individual residing within the
5 County of San Diego, California.

6 3. Cotton was at all times material to this action the sole record owner of the
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114
8 ("Property") which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci
10 ("Geraci") is, and at all times mentioned was, an individual residing within the County of San
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is,
13 and at all times mentioned was, an individual residing within the County of San Diego,
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed
17 and believes that ROES 1 through 50 are in some way responsible for the events described in
18 this Second Amended Cross-Complaint. Cotton will seek leave to amend this Second
19 Amended Cross-Complaint when the true names and capacities of these cross-defendants have
20 been ascertained.

21 7. At all times mentioned, each cross-defendant was an agent, principal,
22 representative, employee, or partner of the other cross-defendants, and acted within the course
23 and scope of such agency, representation, employment, and/or partnership, and with
24 permission of the other cross-defendants.

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GENERAL ALLEGATIONS

8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it meets certain requirements of the City of San Diego ("City") for obtaining a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the Property. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. During these negotiations, Geraci represented to Cotton, among other things, that:

(a) Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;

(b) Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci lobbied with the City to have the zoning issue resolved first;

(c) Geraci, through his personal and professional relationships, was in a unique position to lobby and influence key City political figures to have the zoning issue favorably resolved and obtain approval of the CUP application once submitted; and

(d) Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area.

10. Cotton, acting in good faith based upon Geraci's representations during the sale negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a CUP application at the Property while the parties negotiated the terms of a possible deal. However, despite the parties' work on a CUP application, Geraci represented to Cotton that a CUP application for the Property could not actually be submitted until after the critical zoning issue was resolved or the application would be summarily rejected by the City.

1 11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership
2 Disclosure Statement, which is a required component of all CUP applications. Geraci told
3 Cotton that he needed the signed document to show that Geraci had access to the Property in
4 connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of
5 a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement
6 as an indication of good-faith while the parties negotiated on the sale terms. At no time did
7 Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering
8 into a final written agreement for the sale of the Property. In fact, Geraci repeatedly
9 maintained to Cotton that the critical zoning issue needed to be resolved before a CUP
10 application could even be submitted.

11 12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in
12 October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However,
13 Cotton has never met Berry personally and never entered into a lease or any other type of
14 agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who
15 was very familiar with MMCC operations and who was involved with his other MMCC
16 dispensaries. Cotton's understanding was that Geraci was unable to list himself on the
17 application because of Geraci's other legal issues but that Berry was Geraci's agent and was
18 working in concert with him and at his direction. Based upon Geraci's assurances that listing
19 Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton
20 executed the Ownership Disclosure Statement that Geraci provided to him.

21 13. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to
22 negotiate the final terms of their deal for the sale of the Property. The parties reached an
23 agreement on the material terms for the sale of the Property. The parties further agreed to
24 cooperate in good faith to promptly reduce the complete agreement, including all of the
25 agreed-upon terms, to writing.

26 14. The material terms of the agreement reached by the parties at the November 2,
27 2016 meeting included, without limitation, the following key deal points:

28 / / / / /

1 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the
2 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton
3 immediately upon the parties' execution of final integrated written agreements and the
4 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the
5 Property;

6 (b) The parties agreed that the City's approval of a CUP application to
7 operate a MMCC at the Property would be a condition precedent to closing of the sale (in other
8 words, the sale of the Property would be completed and title transferred to Geraci only upon
9 the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of
10 the purchase price to Cotton; if the City denied the CUP application, the parties agreed the sale
11 of the Property would be automatically terminated and Cotton would be entitled to retain the
12 entire \$50,000 non-refundable deposit);

13 (c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the
14 MMCC that would operate at the Property following the City's approval of the CUP
15 application; and

16 (d) Geraci agreed that, after the MMCC commenced operations at the
17 Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and
18 Geraci would guarantee that such payments would amount to at least \$10,000 per month.

19 15. At Geraci's request, the sale was to be documented in two final written
20 agreements, a real estate purchase agreement and a separate side agreement, which together
21 would contain all the agreed-upon terms from the November 2, 2016 meeting. At that meeting,
22 Geraci also offered to have his attorney "quickly" draft the final integrated agreements and
23 Cotton agreed.

24 16. Although the parties came to a final agreement on the purchase price and
25 deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come
26 up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he
27 had limited cashflow and would require the cash he did have to fund the lobbying efforts
28 needed to resolve the zoning issue at the Property and to prepare the CUP application.

1 17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit
2 but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of
3 “good-faith,” even though the parties had not reduced their final agreement to writing. Cotton
4 was understandably concerned that Geraci would file the CUP application before paying the
5 balance of the non-refundable deposit and Cotton would never receive the remainder of the
6 non-refundable deposit if the City denied the CUP application before Geraci paid the
7 remaining \$40,000 (thereby avoiding the parties’ agreement that the \$50,000 non-refundable
8 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).
9 Despite his reservations, Cotton agreed to Geraci’s request and accepted the lesser \$10,000
10 initial deposit amount based upon Geraci’s express promise to pay the \$40,000 balance of the
11 non-refundable deposit prior to submission of the CUP application, at the latest.

12 18. At the November 2, 2016 meeting, the parties executed a three-sentence
13 document related to their agreement on the purchase price for the Property at Geraci’s request,
14 which read as follows:

15 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA
16 for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a
Marijuana Dispensary. (CUP for a dispensary)

17 Ten Thousand dollars (cash) has been given in good faith earnest money to be
18 applied to the sales price of \$800,000.00 and to remain in effect until license is
19 approved. Darryl Cotton has agreed not to enter into any other contacts on this
property.

20 Geraci assured Cotton that the document was intended to merely create a record of Cotton’s
21 receipt of the \$10,000 “good-faith” deposit and provide evidence of the parties’ agreement on
22 the purchase price and good-faith agreement to enter into final integrated agreement documents
23 related to the sale of the Property. Geraci emailed Cotton a scanned copy of the executed
24 document the same day. Following closer review of the executed document, Cotton wrote in
25 an email to Geraci several hours later (still on the same day):

26 I just noticed the 10% equity position in the dispensary was not language added
27 into that document. I just want to make sure that we’re not missing that
28 language in any final agreement as it is a factored element in my decision to sell
the property. I’ll be fine if you would simply acknowledge that here in a reply.

1 Approximately two hours later, Geraci replied via email, "No no problem at all."

2 19. Thereafter, Cotton continued to operate in good faith under the assumption that
3 Geraci's attorney would promptly draft the fully integrated agreement documents as the parties
4 had agreed and the parties would shortly execute the written agreements to document their
5 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive
6 and continuously failed to make substantive progress on his promises, including his promises
7 to promptly deliver the draft final agreement documents, pay the balance of the non-refundable
8 deposit, and keep Cotton apprised of the status of the zoning issue.

9 20. Over the weeks and months that followed, Cotton repeatedly reached out to
10 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the
11 non-refundable deposit, and the status of the draft documents. For example, on January 6,
12 2017, after Cotton became exasperated with Geraci's failure to provide any substantive
13 updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I
14 need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine
15 the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month
16 I'll try to call you later today still very sick."

17 21. Between January 18, 2017 and February 7, 2017, the following exchange took
18 place between Geraci and Cotton via text message:

19 Geraci: "The sign off date they said it's going to be the 30th."

20 Cotton: "This resolves the zoning issue?"

21 Geraci: "Yes"

22 Cotton: "Excellent"...

23 Cotton: "How goes it?"

24 Geraci: "We're waiting for confirmation today at about 4 o'clock"

25 Cotton: "Whats new?"

26 Cotton: "Based on your last text I thought you'd have some information on the
27 zoning by now. Your lack of response suggests no resolution as of yet."

28 Geraci: "I'm just walking in with clients they resolved it its fine we're just
waiting for final paperwork."

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1 The above communications between Geraci and Cotton regarding the zoning issue conveyed to
2 Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had
3 previously represented to Cotton that the CUP application could not be submitted until the
4 zoning issue was resolved, which was key because Geraci's submission of the CUP application
5 was the outside date the parties had agreed upon for payment of the \$40,000 balance of the
6 non-refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he
7 knew they were untrue as he had already submitted the CUP application months prior.

8 22. With respect to the promised final agreement documents, Geraci continuously
9 failed to timely deliver the documents as agreed. On February 15, 2017, more than two
10 months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the
11 documents with the attorney and hopefully will have them by the end of this week." On
12 February 22, 2017, Geraci again texted Cotton, "Contract should be ready in a couple days."

13 23. On February 27, 2017, nearly three months after the parties reached an
14 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase
15 agreement and stated: "Attached is the draft purchase of the property for 400k. The additional
16 contract for the 400k should be in today and I will forward it to you as well." However, upon
17 review, the draft purchase agreement was missing many of the key deal points agreed upon by
18 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,
19 Geraci claimed it was simply due to miscommunication with his attorney and promised to have
20 her revise the agreement to accurately reflect their deal points.

21 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side
22 agreement that was to incorporate other terms of the parties' deal. Cotton immediately
23 reviewed the draft side agreement and emailed Geraci the next day stating: "I see that no
24 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement
25 completely." Paragraph 3.11 of the draft side agreement stated that the parties had no joint
26 venture or partnership agreement of any kind, which contradicted the parties' express
27 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a
28 condition of the sale of the Property.

1 25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an
2 attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci
3 dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a
4 misunderstanding with his attorney and that Cotton could speak with her directly regarding any
5 comments on the drafts.

6 26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement
7 along with a cover email that stated: "... the 10k a month might be difficult to hit until the
8 sixth month... can we do 5k, and on the seventh month start 10k?". Cotton, increasingly
9 frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on
10 March 16, 2017 in an email which included the following:

11 We started these negotiations 4 months ago and the drafts and our
12 communications have not reflected what agreed upon and are still far from
13 reflecting our original agreement. Here is my proposal, please have your
14 attorney Gina revise the Purchase Agreement and the Side Agreement to
15 incorporate all the terms we have agreed upon so that we can execute final
16 versions and get this closed... Please confirm by Monday 12:00 PM whether we
17 are on the same page and you plan to continue with our agreement ... If,
18 hopefully, we can work through this, please confirm that revised final drafts that
19 incorporate the terms will be provided by Wednesday at 12:00 PM. I promise to
20 review and provide comments that same day so we can execute the same or next
21 day.

22 27. On the same day, Cotton contacted the City's Development Project Manager
23 responsible for CUP applications. At that time, Cotton discovered for the first time that
24 Geraci had submitted a CUP application for the Property way back on October 31, 2016,
25 before the parties even agreed upon the final terms of their deal and contrary to Geraci's
26 express representations over the previous five months. Cotton expressed his
27 disappointment and frustration in the same March 16, 2017 email to Geraci:

28 I found out today that a CUP application for my property was submitted in
October, which I am assuming is from someone connected to you. Although, I
note that you told me that the \$40,000 deposit balance would be paid once the
CUP was submitted and that you were waiting on certain zoning issues to be
resolved. Which is not the case.

 28. On March 17, 2017, after Geraci requested an in-person meeting via text
message, Cotton replied in an email to Geraci which including the following:

1 I would prefer that until we have final agreements that we converse exclusively
2 via email. My greatest concern is that you get a denial on the CUP application
3 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I
4 feel that you are not dealing with me in good faith, you told me repeatedly that
5 you could not submit a CUP application until certain zoning issues had been
6 resolved and that you had spent hundreds of thousands of dollars on getting
7 them resolved. You lied to me, I found out yesterday from the City of San
8 Diego that you submitted a CUP application on October 31 2016 BEFORE we
9 even signed our agreement on the 2nd of November... Please confirm by 12:00
10 PM Monday that you are honoring our agreement and will have final drafts
11 (reflecting completely the below) by Wednesday at 12:00 PM.

12 Geraci did not provide the requested confirmation that he would honor their agreement or
13 proffer the requested agreements prior to Cotton's deadlines.

14 29. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was
15 terminated and that Geraci no longer had any interest in the Property. Cotton also notified
16 Geraci that he intended to move forward with a new buyer for the Property.

17 30. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"),
18 emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first
19 time that the three-sentence document signed by the parties on November 2, 2016 constituted
20 the parties' complete agreement regarding the Property, contrary to the parties' further
21 agreement the same day, the entire course of dealings between the parties, and Geraci's own
22 statements and actions.

23 31. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci
24 intended to continue to pursue the CUP application and would be posting notices on Cotton's
25 property. Cotton responded via email the same day and objected to Geraci or his agents
26 entering the Property and reiterated the fact that Geraci has no rights to the Property.

27 32. The defendants' refusal to acknowledge they have no interest in the Property
28 and to step aside from the CUP application has diminished the value of the Property, reduced
the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
attorneys' fees to protect his interest in his Property.

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1 FIRST CAUSE OF ACTION

2 (Breach of Contract – Against Geraci and ROES 1 through 50)

3 33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above,
4 as though set forth in full at this point.

5 34. Geraci and Cotton entered into an agreement to negotiate and collaborate in
6 good faith on mutually acceptable purchase and sale documents reflecting the terms for a
7 purchase and sale of the Property and a side agreement for Cotton to obtain an equity position
8 in the MMCC to operate at the Property. This agreement is comprised of (a) the November 2,
9 2016 document signed by Geraci and Cotton, and (b) the November 2, 2016 email exchange
10 between Geraci and Cotton including other agreed-upon terms and the parties' agreement to
11 negotiate and collaborate in good faith on final deal documents. True and correct copies of the
12 agreement are attached hereto as Exhibits 1 and 2, respectively.

13 35. Cotton performed all conditions, covenants, and promises required on his part to
14 be performed in accordance with the terms and conditions of the contract between the parties
15 or has been excused from performance.

16 36. Under the parties' contract, Geraci was bound to negotiate the terms of an
17 agreement for the Property in good faith. Geraci breached his obligation to negotiate in good
18 faith by, among other things, intentionally delaying the process of negotiations, failing to
19 deliver acceptable final purchase documents, failing to pay the agreed-upon non-refundable
20 deposit, demanding new and unreasonable terms in order to further delay and hinder the
21 process of negotiations, and failing to timely or constructively respond to Cotton's requests and
22 communications.

23 37. As a direct and proximate result of Geraci's breaches of the contract, Cotton has
24 been damaged in an amount not yet fully ascertainable and to be determined according to proof
25 at trial.

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1 (c) On multiple occasions, Geraci represented to Cotton that a CUP
2 application for the Property could not be submitted until after the zoning issue was resolved;

3 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
4 yet filed a CUP application with respect to the Property when the CUP application had already
5 been filed; and

6 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
7 work of preparing a CUP application was merely underway, when, in fact, the CUP application
8 had already been filed.

9 41. Defendants, through their intentional misrepresentations and the actions taken in
10 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
11 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
12 attorneys' fees to protect his interest in his Property. As a further result of the intentional
13 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
14 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

15 42. The misrepresentations were intentional, willful, malicious, outrageous,
16 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent
17 to deprive Cotton of his interest in the Property. This intentional, willful, malicious,
18 outrageous and unjustified conduct entitles Cotton to an award of general, compensatory,
19 special, exemplary and/or punitive damages under Civil Code section 3294.

20 THIRD CAUSE OF ACTION

21 (Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

22 43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above,
23 as though set forth in full at this point.

24 44. Defendants made statements to Cotton that: (a) were false representations of
25 material facts; (b) defendants had no reasonable grounds for believing were true when the
26 statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and
27 justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in
28 causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and

1 proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

2 45. The negligent misrepresentations by defendants include at least the following:

3 (a) On or about October 31, 2016, Geraci fraudulently induced Cotton to
4 execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to
5 show he had access to the Property in connection with his lobbying efforts to resolve the
6 zoning issue and in connection with the preparation of a CUP application; and (ii) by
7 indicating the document would only be used as a show of good-faith while the parties
8 negotiated on the sale terms;

9 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to
10 execute the document Geraci now alleges is the fully integrated agreement between the parties
11 by representing that (i) the CUP application would not be filed until the zoning issue was
12 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at
13 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000
14 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci
15 understood and agreed the document was not intended to be the final agreement between the
16 parties for the purchase of the Property and did not contain all material terms of the parties'
17 agreement;

18 (c) On multiple occasions, Geraci represented to Cotton that a CUP
19 application for the Property could not be submitted until after the zoning issue was resolved;

20 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
21 yet filed a CUP application with respect to the Property when the CUP application had already
22 been filed; and

23 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
24 work of preparing a CUP application was merely underway, when, in fact, the CUP application
25 had already been filed.

26 46. Defendants, through their negligent misrepresentations and the actions taken in
27 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
28 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and

1 attorneys' fees to protect his interest in his Property. As a further result of the negligent
2 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
3 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

4 FOURTH CAUSE OF ACTION

5 (False Promise – Against Geraci and ROES 1 through 50)

6 47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above,
7 as though set forth in full at this point.

8 48. On November 2, 2016, among other things, Geraci falsely promised the
9 following to Cotton without any intent of fulfilling the promises:

10 (a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable
11 deposit prior to filing a CUP application;

12 (b) Geraci would cause his attorney to promptly draft the final integrated
13 agreements to document the agreed-upon deal between the parties;

14 (c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the
15 monthly profits for the MMCC at the Property if the CUP was granted; and

16 (d) Cotton would be a 10% owner of the MMCC business operating at
17 Property if the CUP was granted.

18 49. Geraci had no intent to perform the promises he made to Cotton on November
19 2, 2016 when he made them.

20 50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton
21 to rely on the false promises and execute the document signed by the parties at their November
22 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the
23 parties' entire agreement.

24 51. Cotton reasonably relied on Geraci's promises.

25 52. Geraci failed to perform the promises he made on November 2, 2016.

26 53. Defendants, through their false promises and the actions taken in reliance upon
27 such false promises, have diminished the value of the Property, reduced the price Cotton will
28 be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to

1 protect his interest in his Property. As a further result of the false promises, Cotton has been
2 deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay
3 prior to filing a CUP application for the Property.

4 54. The false promises were intentional, willful, malicious, outrageous, unjustified,
5 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive
6 Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and
7 unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary
8 and/or punitive damages under Civil Code section 3294.

9 FIFTH CAUSE OF ACTION

10 (Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

11 55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above,
12 as though set forth in full at this point.

13 56. An actual controversy has arisen and now exists between Cotton and all
14 defendants concerning their respective rights, liabilities, obligations and duties with respect to
15 the Property and the CUP application for the Property filed on or around October 31, 2016.

16 57. A declaration of rights is necessary and appropriate at this time in order for the
17 parties to ascertain their respective rights, liabilities, and obligations because no adequate
18 remedy other than as prayed for exists by which the rights of the parties may be ascertained.

19 58. Accordingly, Cotton respectfully requests a judicial declaration of rights,
20 liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration
21 that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole
22 interest-holder in the CUP application for the Property submitted on or around October 31,
23 2016, (c) defendants have no interest in the CUP application for the Property submitted on or
24 around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

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1 PRAYER FOR RELIEF

2 WHEREFORE, Cotton prays for relief as follows:

3 ON THE FIRST CAUSE OF ACTION:

4 1. For general, special, and consequential damages in an amount not yet fully
5 ascertained and according to proof at trial, but at least \$40,000; and

6 2. For compensatory and reliance damages in an amount not yet fully ascertained
7 and according to proof at trial.

8 ON THE SECOND CAUSE OF ACTION

9 1. For general, special, and consequential damages in an amount not yet fully
10 ascertained but at least \$40,000;

11 2. For compensatory and reliance damages in an amount not yet fully ascertained
12 and according to proof at trial; and

13 3. For punitive and exemplary damages in an amount just and reasonable to punish
14 and deter defendants.

15 ON THE THIRD CAUSE OF ACTION

16 1. For general, special, and consequential damages in an amount not yet fully
17 ascertained but at least \$40,000; and

18 2. For compensatory and reliance damages in an amount not yet fully ascertained
19 and according to proof at trial.

20 ON THE FOURTH CAUSE OF ACTION

21 1. For general, special, and consequential damages in an amount not yet fully
22 ascertained but at least \$40,000;

23 2. For compensatory and reliance damages in an amount not yet fully ascertained
24 and according to proof at trial; and

25 3. For punitive and exemplary damages in an amount just and reasonable to punish
26 and deter defendants.

27 / / / /

28 / / / /

1 ON THE FIFTH CAUSE OF ACTION

2 1. For a judicial declaration that defendants have no right or interest whatsoever in
3 the Property;

4 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP
5 application for the Property submitted on or around October 31, 2016, defendants have no right
6 or interest in said CUP application, and that defendants are enjoined from further pursuing
7 such CUP application for the Property; and

8 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be
9 released.

10 ON ALL CAUSES OF ACTION

11 1. For interest on all sums at the maximum legal rates from dates according to
12 proof;

13 2. For costs of suit; and

14 3. For such other relief as the Court deems just.

15 DATED: August 25, 2017

Respectfully submitted,

16 FINCH, THORNTON & BAIRD, LLP

17
18 By: 

19 DAVID S. DEMIAN
ADAM C. WITT

20 Attorneys for Defendant and Cross-Complainant
21 Darryl Cotton
22
23
24
25
26

27 2403.004/3BQ6279.hkr
28

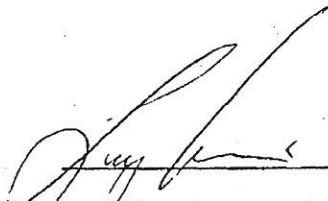
EXHIBIT 1


11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.



Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On November 2, 2010 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jessica Newell (Seal)



My Comm. Expires Jan 27, 2017
Notary Public - California
Commission # 5003228
JESSICA M. WELLS



EXHIBIT 2



Darryl Cotton <indagroddarryl@gmail.com>

Agreement

2 messages

Larry Geraci <Larry@tfcSD.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

 Cotton & Geraci Contract.pdf
71K

Larry Geraci <Larry@tfcSD.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

Hi Larry,

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

Regards.

Darryl Cotton, President



darryl@inda-gro.com
www.inda-gro.com
Ph: 877.452.2244
Cell: 619.954.4447
Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA. 92114
USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

[Quoted text hidden]

1 DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@fblaw.com
2 ADAM C. WITT, SBN 271502
E-MAIL: awitt@fblaw.com

3 **FINCH, THORNTON & BAIRD, LLP**

4 ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
5 TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

6
7 Attorneys for Defendant and Cross-Complainant Darryl Cotton

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO

10 CENTRAL DIVISION

11 LARRY GERACI, an individual,

12 Plaintiff,

13 v.

14 DARRYL COTTON, an individual; and
15 DOES 1 through 10, inclusive,

16 Defendants.

17 DARRYL COTTON, an individual,

18 Cross-Complainant

19 v.

20 LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
21 ROES 1 through 50,

22 Cross-Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

23 I, Heidi Runge, declare that:

24 I am over the age of eighteen years and not a party to the action; I am employed in the
25 County of San Diego, California, where the mailing occurred; and my business address is 4747
26 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am
27 readily familiar with the business' practice for collection and processing of correspondence for
28 mailing with the United States Postal Service pursuant to which practice the correspondence

PROOF OF SERVICE BY MAIL

1 will be deposited with the United States Postal Service this same day in the ordinary course of
2 business. I caused to be served the following document(s): SECOND AMENDED CROSS-
3 COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as
4 follows:

5 Michael R. Weinstein, Esq.
6 Scott H. Toothacre, Esq.
7 Ferris & Britton
8 A Professional Corporation
9 501 West Broadway, Suite 1450
10 San Diego, California 92101
11 Telephone: (619) 233-3131
12 Facsimile: (619) 232-9316
13 Email: mweinstein@ferrisbritton.com
14 stoothacre@ferrisbritton.com

ATTORNEYS FOR PLAINTIFF AND
CROSS-DEFENDANT LARRY GERACI

11 Michael R. Weinstein, Esq.
12 Scott H. Toothacre, Esq.
13 Ferris & Britton
14 A Professional Corporation
15 501 West Broadway, Suite 1450
16 San Diego, California 92101
17 Telephone: (619) 233-3131
18 Facsimile: (619) 232-9316
19 Email: mweinstein@ferrisbritton.com
20 stoothacre@ferrisbritton.com

ATTORNEYS FOR CROSS-DEFENDANT
REBECCA BERRY

21 I then sealed the envelope(s) and, with the postage thereon fully prepaid, either
22 deposited it/each in the United States Postal Service or placed it/each for collection and
23 mailing on August 25, 2017, at San Diego, California, following ordinary business practices.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on August 25, 2017.

27 
Heidi Runge

28 2403.004/Proof.hr