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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil

PLAINTIFF LARRY GERACI'S SEPARATE STATEMENT IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION FOR SUMMARY JUDGMENT OR, ALTERNATIVELY, SUMMARY ADJUDICATION

[IMAGED FILE]

DATE: **May 23, 2019**
TIME: **9:00 a.m.**
DEPT: **C-73**

Filed: March 21, 2017
Trial Date: June 28, 2019

Pursuant to California Code of Civil Procedure section 437c(b) and California Rules of Court, Rule 3.1350(f), Plaintiff submits this separate statement in opposition to Defendant's motion for summary judgment or, alternatively, summary adjudication. This separate statement a) responds to moving party's recitation of undisputed material facts and supporting evidence, and b) sets forth the

additional material facts pertinent to disposition of the motion along with the evidence supporting those additional material facts.

PLAINTIFF LARRYGERACI'S RESPONSE TO DEFENDANT DARRYL COTTON'S SEPARATE STATEMENT OF UNDISPUTED FACTS

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
1.	In or around mid-2016, Geraci contacted Cotton and expressed his interest to Cotton in acquiring the Property if further investigation satisfied him that the Property might meet the requirements for a Marijuana Outlet (formerly known as Medical Marijuana Consumer Collectives (MMCC)). Lodged Exhibit No. 1 ¶13.	**Disputed** – Defendant has not supported this fact with admissible evidence. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Plaintiff Larry Geraci's Evidentiary Objections In Opposition to Defendant Darryl Cotton's Motion for Summary Judgment or, Alternatively, Summary Adjudication (hereinafter "Geraci Evid. Obj.") - Objections to Exhibit 1.
2.	Geraci believed at that time that a limited number of properties located in the San Diego City Council District 4 might potentially satisfy the CUP requirements for a Marijuana Outlet. Lodged Exhibit No. 1 ¶13.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara*

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
		University (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
3.	Geraci and Cotton negotiated the terms of the potential sale of the Property. Lodged Exhibit No. 1 ¶14.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
4.	During their negotiations, Geraci discussed with Cotton a zoning issue that would have to be resolved before a CUP could be approved on the Property. Lodged Exhibit 1 ¶14.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.

	MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
5.	On November 2, 2016, the parties met at Geraci's office and executed the three-sentence November Document. The agreement reached was the JVA. Cotton's consideration for entering into the JVA, assuming the CUP was approved, was: (i) $800,000, (ii) a 10% equity position in the Business, and (iii) the greater of $10,000 or 10% of the net profits of the Business on a monthly basis. If the CUP was denied, Cotton would keep a $50,000 non-refundable deposit. At that meeting, Geraci provided $10,000 towards the $50,000 and promised to pay the $40,000 balance and have his attorney reduce the JVA to writing for execution. Cotton executed the November Document to memorialize his receipt of $10,000 in cash, at Geraci's request. Lodged Exhibit No. 1 ¶17.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
6.	At 3: 11 PM, later that same day, Geraci emailed Cotton a copy of the November Document. Lodged Exhibit No. 1 ¶18.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
7.	At 6:55 PM, Cotton replied and specifically requested Geraci confirm that a final agreement would provide for a 10% equity position in the Business. Lodged Exhibit No. 1 ¶18.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
		summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
8.	Cotton's request for written confirmation reads in its entirety as follows: 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. (emphasis added). Lodged Exhibit 2, pg. 9.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 2.
9.	At 9:13 PM later that same evening, Geraci replied: "No no problem at all" (i.e., the Confirmation Email). (emphasis added) Lodged Exhibit No. 1 ¶18; Lodged Exhibit No. 2.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
		or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 2.
10.	Cotton and Geraci texted and emailed extensively between the execution of the November Document and Cotton's receipt of a demand letter from Weinstein alleging the November Document was a fully integrated agreement for the sale of the Property. Lodged Exhibit 2 to the NOL is a copy of all email communications between Cotton and Geraci. Exhibit 3 to the NOL is a copy of all texts between Cotton and Geraci. Lodged Exhibit No.1 ¶17.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
11.	Between the execution of the November Document and Cotton's receipt of Weinstein's demand letter, Cotton sent numerous emails and messages that establish he believed the JVA had been reached and was being reduced to writing by Geraci's attorney. Lodged Exhibit No.1 ¶17.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
		"action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
12.	At no point between the execution of the November Document and Cotton's receipt of the demand letter, did Geraci ever dispute or challenge the emails or texts from Cotton that established they were partners in a joint venture. Lodged Exhibit No. 2; Lodged Exhibit No. 3 Over the course of months after the parties executed the November Document, except for the days leading up to the filing of his Complaint, Geraci's language, actions, and conduct all as reflected in his communication with Cotton via text and email prove that he believed that Cotton and he were joint venturers. Lodged Exhibit No. 2; Lodged Exhibit No. 3.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 3.
13.	On March 2, 2017, Geraci emailed Cotton a draft agreement entitled "SIDE AGREEMENT" that had a provision stating that Geraci and Cotton were not partners. Lodged Exhibit No. 2 pgs. 41-48.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.)

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		Please refer to Geraci Evid. Obj. - Objections to Exhibit 2.
14.	The next day, Cotton emailed Geraci: "Larry, [¶] I read the Side Agreement in your attachment and I see that no reference is made to the 10% equity position… In fact para 3.11 [stating we are not partners] looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?" Cotton texted Geraci later that day: "Did you get my email?" Lodged Exhibit No.1 ¶17.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
15.	Geraci replied one minute later: "Yes I did I'm having her rewrite it now[.] As soon as I get it I will forward it to you[.]" Lodged Exhibit No. 2 GER0521.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 2.

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
16.	On March 7, 2017, Geraci emailed Cotton a revised Side Agreement. In that email, Geraci wrote: Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month. . . can we do 5k, and on the seventh month start 10k? (the "$10,000 Confirmation Email"). Lodged Exhibit No.1 ¶17; Exhibit 2, pg. 53-58.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1 and 2.
17.	The revised Side Agreement provided for Cotton to receive 10% of the "net profits" instead of the "10% equity position." Exhibit 2, pg. 53-58.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 2.
18.	On March 16, 2017, Cotton emailed Geraci the following: We started these negotiations 4 months ago and the drafts and our communications have not reflected what agreed upon and are still far from	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	reflecting our original agreement.... please confirm that revised final drafts that incorporate the [JVA] terms will be provided by Wednesday at 12:00 PM, I promise to review and provide comments that same day so we can execute the same or next day. Lodged Exhibit No. 2, pg. 59-69.	by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 2.
19.	On March 17, 2017, Geraci requested an in-person meeting with Cotton via text ("[can we meet in person]"). Lodged Exhibit No. 3 GER0521.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 3.
20.	Cotton replied via email as follows: I would prefer that until we have final agreements that we converse exclusively via email. My greatest concern is that you get a denial on the CUP application and not provide the remaining $40,000 non-refundable deposit... Please confirm by 12:00 PM Monday that you are honoring our agreement and will have final drafts... by Wednesday at 12:00 PM. Lodged	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd.

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	Exhibit No. 2, pg. 61.	(b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 2.
21.	Geraci failed to reduce the JVA to writing, provide written assurance of performance (e.g, that he would reduce the JVA to writing), or pay the $40,000 balance due on the non-refundable deposit Lodged Exhibit 2, p.61.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 2.
22.	On March 21, 2017, Cotton terminated the agreement with Geraci for breach of contract. Lodged Exhibit No. 2, pg. 59-60.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
		defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 2.
23.	On March 22, 2017, Geraci's attorney (Michael Weinstein) emailed Cotton a copy of Geraci's Complaint. Lodged Exhibit No. 1 ¶27.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
24.	Geraci's Complaint alleges four causes of action all of which are predicated on the allegation that the November Document is a fully integrated agreement: (i) breach of contract, (ii) breach of the covenant of good faith and fair dealing, (iii) specific performance and (iv) declaratory relief. Lodged Exhibit No. 4. (Complaint)	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.)

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
		Please refer to Geraci Evid. Obj. - Objections to Exhibit 4.
25.	Materially, as alleged in Geraci's Complaint: "On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement for the purchase and sale of the [Property] on the terms and conditions stated therein" and, "[Cotton] has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, [Cotton] has stated that, contrary to the written terms, the parties agreed to a down payment... of $50,000... [and] he is entitled to a 10% ownership interest in the [Property.]" [The Complaint does not allege Geraci sent the Confirmation Email by mistake or the Disavowment Allegation.] Lodged Exhibit No. 4, ¶7, ¶11.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 4.
26.	On August 25, 2017, Cotton filed a cross-complaint against Berry and Geraci including causes of action for breach of contract, intentional misrepresentation, negligent misrepresentation, and false promise with respect to the purchase agreement and the CUP application. In his Cross-complaint, Cotton argues the existence of the JVA and attached the Confirmation Email as evidence of his bargained-for 10% equity position. Lodged Exhibit No. 6.	**Undisputed** - That on August 25, 2017, Cotton filed a Cross-Complaint against Geraci and Berry. "While judicial notice may be taken of court records (Evid. Code, § 452, subd. (d)), the truth of matters asserted in such documents is not subject to judicial notice." (*Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1, citing *Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597) **The Remainder is Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP §

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		437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 6.
27.	On November 20, 2017 Geraci filed his Answer to Cotton's cross-complaint and it did not allege he sent the Confirmation Email by mistake or the Disavowment Allegation. Lodged Exhibit No.7.	**Undisputed** – That on November 20, 2017 Geraci filed his Answer to Cotton's Cross-Complaint. "While judicial notice may be taken of court records (Evid. Code, § 452, subd. (d)), the truth of matters asserted in such documents is not subject to judicial notice." (*Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1, citing *Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597) **The Remainder is Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 7.

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
28.	On October 6, 2017, Cotton filed a Petition for Alternative Writ of Mandate against the City of San Diego (the "Petition"), naming Geraci and Berry as real-parties-in-interest, and demanding the City remove Berry from the CUP application on the Property. Cotton's verified Petition described the Confirmation Email and it was attached thereto. Geraci's Verified Answer admits the Confirmation Email is authentic, but he does not allege he sent the Confirmation Email by mistake or the Disavowment Allegation. Lodged Exhibit No. 5.	**Undisputed** – That on October 6, 2017, Cotton filed a Petition for Alternative Writ of Mandate against the City of San Diego naming Geraci and Berry as real-parties-in-interest. "While judicial notice may be taken of court records (Evid. Code, § 452, subd. (d)), the truth of matters asserted in such documents is not subject to judicial notice." (*Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1, citing *Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597) **The Remainder is Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 5.
29.	On November 30, 2017, Geraci filed a Verified Answer to Cotton's Petition. Lodged Exhibit No. 1.	**Undisputed** – That on November 30, 2017, Geraci filed a Verified Answer to Cotton's Petition. "While judicial notice may be taken of court records (Evid. Code, § 452, subd. (d)), the truth of matters asserted in such documents is not subject to judicial notice." (*Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1, citing *Board of Pilot Commissioners v. Superior Court* (2013)

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
		218 Cal.App.4th 577, 597) **The Remainder is Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
30.	Geraci's Verified Answer specifically confirms he sent the Confirmation Email. Geraci's Verified Answer admits the Confirmation Email is authentic, but he does not allege he sent the Confirmation Email by mistake or the Disavowment Allegation. Lodged Exhibit No. 1 ¶18.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
31.	On September 25, 2017, Geraci provided verified answers to Form Interrogatories propounded by Cotton (the "First Form Discovery Answers"). Lodged Exhibit No. 8.	**Undisputed, but irrelevant.**
32.	Geraci's response to Form Interrogatory 50.1(a) identifies the November Document as the sole agreement alleged in the pleadings. Lodged Exhibit No. 8, pg. 14.	**Undisputed.**
33.	Furthermore, Geraci answers there is no part of the agreement not in writing [50.1(b)]. Lodged Exhibit No. 8, pg. 14.	**Undisputed.**
34.	Geraci answers that there are no documents evidencing any part of the agreement not in writing [50.1(c)] Lodged Exhibit No. 8, pg. 14.	**Undisputed.**
35.	Geraci answers that there are no documents modifying any part of the agreement [50.1(d)]. Lodged Exhibit No. 8, pg. 14.	**Undisputed.**
36.	Geraci answers that there are no modifications not in writing to the agreement [50.1(e)]. Lodged Exhibit No. 8, pg. 14.	**Undisputed.**
37.	Geraci answers that there are no documents evidencing any modification to the agreement not in writing [50.1(f)]. Lodged Exhibit No. 8, pg. 14.	**Undisputed.**
38.	In response to Form Interrogatory 50.2, requiring descriptions of any breaches to the agreement, Geraci provides a lengthy answer alleging Cotton has anticipatorily breached the contract by denying his obligations under the November Document, potentially selling the Property to a third-party and contacting the City to stop the CUP application on the Property. Lodged Exhibit No. 8, pg. 14-15.	**Disputed,** as to Cotton's characterization of the answer as lengthy and as to only providing a portion of the response out of context. The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518
39.	(38) In Form Interrogatories 50.3 – 50.5 Geraci answers that there are no other agreements alleged in the pleadings whose performance was	**Undisputed** that Geraci responded that performance of the agreement alleged in his pleadings is not excused, not

	MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
		excused. However, he does not allege the Disavowment Allegation – Cotton's alleged oral promise to not enforce Geraci's written promise to provide Cotton a 10% equity position because the Confirmation Email was allegedly sent by mistake. Lodged Exhibit No. 8, pg. 15.	terminated by mutual agreement, release, accord and satisfaction or novation and not unenforceable. The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518
	40.	(39) In Form Interrogatory 50.4, Geraci answers that no other agreements alleged in the pleadings were terminated by mutual agreement, release, accord and satisfaction, or novation. Lodged Exhibit No. 8, pg. 15.	**Undisputed** - The Interrogatory refers to Mr. Geraci's pleadings.
	41.	(40) In Form Interrogatory 50.5, Geraci answers that no other agreements alleged in the pleadings were unenforceable Lodged Exhibit No. 8, pg. 15-16	**Undisputed**- The Interrogatory refers to Mr. Geraci's pleadings.
	42.	(41) Geraci's attorney, Mr. Weinstein, alleges that these interrogatories did not require the disclosure of the factual allegation that Geraci sent the Confirmation Email by mistake or that Cotton agreed to not enforce the written promise by Geraci in the Confirmation Email to provide him a 10% equity position in the Business. Lodged Exhibit No. 1 ¶17.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.
	43.	(42) On September 28, 2017, Geraci filed a demurrer to Cotton's operative Cross-complaint (the "Demurrer"). Lodged Exhibit No. 10.	**Undisputed** – That on September 28, 2017, Geraci filed a demurrer to Cotton's operative Cross-Complaint. "While judicial notice may be taken of court records (Evid. Code, § 452, subd. (d)), the

	MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
			truth of matters asserted in such documents is not subject to judicial notice." (*Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1, citing *Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597) **The Remainder is Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 10.
44.	(43) On October 23, 2017, Cotton, through his former-counsel, filed an opposition arguing, inter alia, the Confirmation Email is evidence of the JVA and Cotton's bargained for 10% equity position in the Business. Lodged Exhibit No. 11.		**Undisputed** – That on October 23, 2017, Cotton, through his former-cousnel, field an opposition. "While judicial notice may be taken of court records (Evid. Code, § 452, subd. (d)), the truth of matters asserted in such documents is not subject to judicial notice." (*Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1, citing *Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597) **The Remainder is Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice.

	MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
			A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 11.
45.	(44) On October 27, 2017, Geraci filed his Reply to his Demurrer. Lodged Exhibit No.12.		**Undisputed** – That On October 27, 2017, Geraci filed his Reply to his Demurrer. "While judicial notice may be taken of court records (Evid. Code, § 452, subd. (d)), the truth of matters asserted in such documents is not subject to judicial notice." (*Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1, citing *Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597)
46.	(45) In his Reply, Geraci summarized his reasons for why the Confirmation Email fails to establish the November Document is not a fully integrated agreement: Cotton argues that the agreement between the parties is comprised of the November 2, 2016 written agreement (hereafter [the "November Document"]) and certain November emails (hereafter "November Emails") which were incorporated into that document and together evidence the basic terms of the agreement. Cotton's argument fails for a number of reasons: 1) the emails were not integrated into the [November Document]; 2) even if the November Emails were integrated into the [November Document], they are not signed by Geraci, and		**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.)

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	therefore are barred by the statute of frauds; 3) the November Emails do not in and of themselves evidence an agreement between the parties; and 4) Geraci has done everything required of him under the [November Document] and therefore has not breached the contract itself nor the implied covenant of good faith and fair dealing. Lodged Exhibit No.12 pg. 2 lines 8-12	Please refer to Geraci Evid. Obj. - Objections to Exhibit 12.
47.	(46) On November 20, 2017, Geraci filed his answer to Cotton's Cross-complaint (the "Answer"). Lodged Exhibit No. 7.	**Undisputed** – That on November 20, 2017, Geraci filed his Answer to Cotton's Cross-Complaint. "While judicial notice may be taken of court records (Evid. Code, § 452, subd. (d)), the truth of matters asserted in such documents is not subject to judicial notice." (*Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1, citing *Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597)
48.	(47) Geraci's Answer sets forth five affirmative defenses, which are: 1. Each of [Cotton's] purported causes of action against [Geraci] fails to state facts sufficient to constitute a cause of action against [Geraci]. 2. [Cotton's] purported first cause of action for breach of contract is barred by the Statute of Frauds[.] 3. [Cotton's] purported first cause of action for breach of contract, to the extent it purports to state a cause of action for breach of an agreement to negotiate, fails to allege facts sufficient to state such a claim under Copeland v. Baskin Robbins USA, 96 Cal.App.4th 1251 (2002). 4. [Cotton's] purported second cause of action for intentional misrepresentation is barred by the doctrine of waiver in that [Cotton] has accepted a substantial benefit in the form of the efforts and substantial expense undertaken by [Geraci] to apply for and obtain approval of a Conditional Use Permit.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 7.

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	5. [Geraci] currently has insufficient information upon which to form a belief as to the existence of additional and as yet unstated affirmative defenses. [Geraci] reserves the right to assert additional affirmative defenses in the event discovery discloses the existence of said affirmative defenses. Lodged Exhibit No. 7.at pg. 2:6-pg. 3	
49.	(48) On November 30, 2017, Geraci executed his Verified Answer to Cotton's Petition for Writ of Mandate. Lodged Exhibit No. 1 pg.10:10.	**Undisputed** – That on November 30, 2017, Geraci executed his Verified Answer to Cotton's Petition for Writ of Mandate. "While judicial notice may be taken of court records (Evid. Code, § 452, subd. (d)), the truth of matters asserted in such documents is not subject to judicial notice." (*Coenbarger v. Morris Cerullo World Evangelism, Inc.* 29 Cal.App.4th 1, citing *Board of Pilot Commissioners v. Superior Court* (2013) 218 Cal.App.4th 577, 597)
50.	(49) In his Verified Answer, Geraci "admits that [the Confirmation Email attached as] Exhibit 3 to the Verified Petition is a true and correct copy of certain emails exchanged between them. [Geraci] further alleges that [Cotton] intended the [November Document] to be a binding agreement between the parties." Lodged Exhibit No. 1 pg. 5, ¶18.	**Disputed** – This fact is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) Please refer to Geraci Evid. Obj. - Objections to Exhibit 1.

	MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
51.	(50) On February 27, 2018, Geraci executed a declaration in support of a motion for a preliminary injunction to compel Cotton to grant him access to the Property. Without specifically referencing his own Confirmation Email or any other parol evidence, Geraci implies that Cotton's request for written assurance of performance was an attempt by Cotton to immediately get better terms Lodged Exhibit No. 13. In his February 2018 declaration, Geraci again states the November Document is a fully integrated contract. Further, without specifically referencing his own Confirmation Email or any other parol evidence, implies that Cotton's request for written assurance of performance was an attempt by Cotton to immediately get better terms, ("After we signed the [November Document] for my purchase of the Property, Mr. Cotton immediately began attempts to renegotiate our deal for the purchase of the Property."). Lodged Exhibit No. 13 pg. 4 ¶8.	**Disputed** – This fact is counsel's argument regarding Geraci's Declaration and what he believes it "implies". The argument is not supported by admissible evidence, nor judicial admission or matters of which the Court may take judicial notice. A motion for summary judgment "shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. (CCP § 437c, subd. (b)(1).) "To be entitled to judgment as a matter of law, the moving party must show by *admissible evidence* that the "action has no merit or that there is no defense" thereto. *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 859, citing §437c; italics added.) The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518.
52.	(51) On April 9, 2018, Geraci executed his Declaration of Larry Geraci in Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens (the "Lis Pendens Motion"). Lodged Exhibit No. 14.	**Undisputed.**
53.	(52) In his April 2018 declaration, Geraci raised for the first time the Disavowment Allegation. He alleges he sent the Confirmation Email by mistake because he only meant to respond to the first sentence of Cotton's email which thanks him for meeting that day. Lodged Exhibit No. 14 pg. 7 lines 3-5.	**Disputed** to the extent this is argument of counsel. The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518.
54.	(53) He goes on to describe the Disavowment Allegation as follows: The next day I read the entire email and I telephoned Mr. Cotton.... During that telephone	**Disputed.** Nowhere in the exhibit does it refer to a "Disavowment Allegation". The argument of counsel is neither a

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	call I told Mr. Cotton that a 10% equity position in the dispensary was not part of our agreement... Mr. Cotton's response was to say something to the effect of "well, you don't get what you don't ask for." He was not upset and he commented further to the effect that things are "looking pretty good-we all should make some money here." And that was the end of the discussion. Lodged Exhibit No. 14 pg. 7 lines 6-16.	declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518.
55.	(54) On November 8, 2018, Geraci provided his Responses to Requests for Admissions propounded by Cotton. Lodged Exhibit No. 15.	**Undisputed.**
56.	(55) The judicial admissions material to this Motion by Geraci are: (i) he was a licensed real estate agent for over twenty years at the time of the execution of the November Document; Lodged Exhibit No. 15 pg. 5 line 24.	**Disputed** as to which admissions are material to this motion. That is argument of counsel. The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518. Additionally, the Response to RFA contained an objection that the request is neither relevant to the subject matter of the action nor reasonably calculated to lead to the discovery of admissible evidence. (CCP § 2017.010.) **Otherwise Admitted.**
57.	(56) (ii) he was aware of the statute of frauds at the time of the execution of the November Document; Lodged Exhibit No.15 pg. 6 line 5.	**Undisputed, but irrelevant.**
58.	(57) (iii) he has never used an agreement of five sentences or less to formalize and finalize an arms-length transaction for the purchase and sale of real property; Lodged Exhibit No. 15 pg. 6 line 15.	**Undisputed, but irrelevant.**

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
59.	(58) (v) the $10,000 provided to Cotton on November 2, 2016 is a non-refundable deposit; Lodged Exhibit No. 15 pg. 11 line 27. [Note: the qualifier after the admission was deemed stricken by the court after hearing on Cotton's Motion to Compel: Request For Judicial Notice No. 11.]	**Disputed** to the extent this is argument of counsel. The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518.
60.	(59) (vi) as part of the agreement reached with Cotton on November 2, 2016, Geraci was responsible for financing and submitting a CUP application on the Property; Lodged Exhibit No. 15 pg. 12; line 7.	**Undisputed.**
61.	(60) (vii) prior to his April 9, 2018 declaration, Geraci has no emails or texts referencing or describing the Disavowment Allegation.	**Undisputed, but irrelevant.**
62.	(61) (viii) prior to the filing of his Complaint, Geraci did not send a single written communication stating that Cotton had no equitable interest in the CUP application. Lodged Exhibit No. 15 pg 14 lines 2-4	**Disputed.** The evidence referenced does not support this fact.
63.	(62) RFA Response No. 22 contradicts Geraci's prior judicial and evidentiary admissions, including his verified First Discovery Responses provided in September of 2017 prior to being confronted with Riverisland. Lodged Exhibit No. 15 pg. 12 lines 16-21.	**Disputed.** There is no contradiction in Geraci's responses. The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518.
64.	(63) On January 9, 2019, counsel for Cotton emailed counsel for Geraci seeking to reconcile Geraci's RFA Response No. 22 with his First Discovery Answers. Lodged Exhibit 16.	**Undisputed** that an email was sent. **Disputed** there was anything to reconcile between Geraci's Response No. 22 and his First Discovery Answers. Irrelevant- Evid. Code §§ 210, 350, and 351. Inadmissible Hearsay – Evid. Code § 1200 The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518.

MOVING PARTY'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE		OPPOSING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
65.	(64) Counsel for Geraci, Mr. Scott Toothacre, did not substantively address factual contradictions therein and conclusory repeats, inter alia, that "no pleading or discovery request required the disclosure of the 'disavowment allegation.'" Lodged Exhibit No. 17	**Disputed.** There are no contradictions. Irrelevant- Evid. Code §§ 210, 350, and 351. Inadmissible Hearsay – Evid. Code § 1200 The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518.
66.	(65) On June 4, 2019, Michael R. Weinstein send an email stating: First, our view is that the statute of frauds bars the [Confirmation Email] because it is parol evidence that is being offered to explicitly contradict the terms of the [November Document]. Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016, resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10% equity position. Rather, Mr. Geraci's position is that there was never an oral agreement between them that Mr. Cotton would receive a 10% equity position. Even assuming for the sake of argument that the [Confirmation Email] is not barred by the parol evidence rule and admissible, the telephone call the next day is parol evidence that Mr. Geraci never agreed to a 10% equity position and, therefore, it is consistent with the [November Document] and not barred by the statute of frauds. Lodged Exhibit No. 9	**Undisputed, but irrelevant.** Irrelevant- Evid. Code §§ 210, 350, and 351. Inadmissible Hearsay – Evid. Code § 1200 The argument of counsel is neither a declaration nor admissible as evidence in court. *Saldana v. Globe-Weis Systems Co.* (1991) 233 Cal.App.3d 1505, 1518.

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PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE

Plaintiff/Cross-Defendants' submit the following additional material facts pertinent to the disposition of the motion together with references to supporting evidence:

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
1.	In approximately September of 2015, Mr. Geraci began assembling a team to assist him in his efforts to develop and operate a Medical Marijuana Consumer Cooperative (MMCC) busing (aka a medical marijuana dispensary) (Geraci Decl. ¶ 2, at 1:27-2:2.)	
2.	Geraci hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify potential real property sites for the business. (Geraci Decl. ¶ 2, at 2:2-3.)	
3.	Geraci hired a design professional, Abhay Schweitzer of TECHNE as part of the team. (Geraci Decl. ¶ 2, at 2:3)	
4.	Geraci hired a public affairs relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. (Geraci Decl. ¶ 2, at 2:4-5.)	
5.	Geraci hired a land use attorney, Gina Austin of Austin Legal Group to be a part of his team. (Geraci Decl. ¶ 2, at 2:5.)	
6.	The search for potentially suitable locations was difficult and lengthy due to the numerous restrictions imposed on MMCC businesses including only 4 MMCCs are allowed in any one City Council District, MMCCs are not allowed within 1,000 feet of public parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities,	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	other MMCCs, residential facility or schools. MMCCs are also not allowed within 100 feet of a residential zone and the zoning has to be proper as MMCC's are allowed only in certain zones. (Geraci Decl. ¶ 3, at 2:6-11.)	
7.	In approximately June 2016, Neil Dutta brought to Mr. Geraci's attention real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 as a potential site for acquisition and development for use and operation as a MMCC. (Geraci Decl. ¶ 3, at 2:11-14.)	
8.	For several months after first locating the property, Mr. Geraci's consultant, Jim Bartell, investigated issues related to whether the location of Mr. Cotton's property might meet the requirements for an MMCC sit, including zoning issues, and issues related to meeting the required distances from certain types of facilities and residential areas. Although none of these issues were resolved to a certainty, Geraci determined that he was still interested in acquiring the property. (Geraci Decl. ¶ 4, at 2:18-23.)	
9.	Mr. Geraci approached Mr. Cotton to discuss the possibility of purchasing the property. Mr. Geraci was interested in purchasing the property from Mr. Cotton contingent upon his obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. (Geraci Decl. ¶ 5, at 2:24-26.)	
10.	As the potential purchaser of the property, Mr. Geraci was willing to bear the substantial expense of applying for and obtaining CUP approval and understood that if he did not obtain CUP approval then he would not close the purchase and he would	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	lose his investment. (Geraci Decl. ¶ 5, at 2:26-3:1.)	
11.	Mr. Geraci was willing to pay a price for the property based on what he anticipated it might be worth if he obtained CUP approval. (Geraci Decl. ¶ 5, at 3:1-2.)	
12.	Mr. Cotton told Mr. Geraci that he was willing to make the sale of the property conditional upon CUP approval because if the condition was satisfied he would be receiving a much higher price than the property would be worth in the absence of its approval for use as a medical marijuana dispensary. (Geraci Decl. ¶ 5, at 3:2-5.)	
13.	Mr. Cotton and Mr. Geraci agreed on a down payment of $10,000.00 and a purchase price of $800,000.00. (Geraci Decl. ¶5, at 3:5-6.)	
14.	On November 2, 2016 Mr. Cotton and Mr. Geraci met in Mr. Geraci's office and negotiated the final terms of the sale of the property and reached an agreement on the final terms of the sale of the property. Mr. Geraci and Mr. Cotton put their agreement in writing in a simple and straightforward written agreement which was signed by them both before a notary executed a written purchase and sale agreement for Mr. Geraci's purchase of Mr. Cotton's property on the terms and conditions stated in the agreement. (Geraci Decl. ¶ 6, at 3:13-17.)	
15.	Mr. Geraci tendered the $10,000.00 deposit to Mr. Cotton. (Geraci Decl. ¶ 5, at 3:11-12.)	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
16.	The November 2, 2016 written agreement states: 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 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 the license is approved. Darryl Cotton has agreed to not enter into any other contracts [sic] on this property. _____ _____ Larry Geraci Darryl Cotton (Geraci Decl. ¶ 5, at 3:8-11; Written Agreement attached as Exhibit 1 to Geraci NOL.)	
17.	Mr. Geraci never agreed to pay Mr. Cotton a $50,000.00 non-refundable deposit. If Mr. Geraci had agreed to pay a $50,000.00 non-refundable deposit, he would have included that term in the written agreement. (Geraci Decl. ¶ 7, at 3:18-23.)	
18.	Mr. Geraci never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary and never agreed to pay Mr. Cotton a minimum monthly equity distribution of $10,000.00. If those terms were agreed to, Mr. Geraci would have included those terms in the written agreement. (Geraci Decl. ¶ 8, at 3:24-28.)	
19.	What Mr. Geraci did agree to was to pay Mr. Cotton a total purchase price of $800,000.00, with the balance of $790,000 due upon approval of a CUP.	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	If the CUP was not approved, then he would keep the property and the $10,000. So that is how the agreement was written. (Geraci Decl. ¶ 9, at 4:1-3.)	
20.	During the instant litigation, Mr. Cotton began referring to our written agreement (i.e., the November 2, 2016 written agreement) as a "Receipt." Neither Mr. Cotton nor Mr. Geraci ever referred to their agreement as a "receipt" for the $10,000.00 deposit during negotiations or at any time prior to signing the written agreement. If that document was intended as a receipt Mr. Geraci would have identified on the document that it was a receipt instead of identifying the document as an agreement. (Geraci Decl. ¶ 10, at 4:4-11.)	
21.	Mr. Geraci did not promise to have attorney Gina Austin reduce any oral agreement to written agreements for execution. (Geraci Decl. ¶ 11, at 4:12-17.)	
22.	Prior to entering the November 2, 2016 Written Agreement, Darryl Cotton and Mr. Geraci discussed the CUP application and approval process and that his consent as property owner would be needed to submit with the CUP application. Mr. Geraci told Mr. Cotton that his assistant Rebecca Berry would act as his authorized agent to apply for the CUP on his behalf. Mr. Cotton agreed to Ms. Berry serving as the Applicant on Mr. Geraci's behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the property. (Geraci Decl. ¶ 12, at 4:18-23.)	
23.	On October 31, 2016, As owner of the property, Mr. Cotton signed For DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he acknowledged that an application for a	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	permit (CUP) would be filed with the City of San Diego on the subject property with the intent to record an encumbrance on the property. (Geraci Decl. ¶ 12, at 4:23-26; Ownership Disclosure Statement attached as Exhibit 2 to Geraci NOL.)	
24.	The Ownership Disclosure Statement was also signed by Rebecca Berry who was serving as the CUP applicant on Mr. Geraci's behalf as an agent and employee of Mr. Geraci. (Geraci Decl. ¶ 12, at 4:26-28; Exhibit 2 to Geraci NOL.)	
25.	After signing the November 2, 2016 Written Agreement, Mr. Cotton immediately began attempts to renegotiate the deal for the purchase of the property. This occurred the evening of the day he signed the Agreement. That evening Mr. Cotton sent an email stating: "Hi Larry, Thank you for meeting today. Since we examined 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 simply acknowledge that here in a reply." (Geraci Decl. ¶ 13, at 5:7-15; Email attached as Exhibit 3 to Geraci NOL.)	
26.	Mr. Geraci received that email on his cell phone. It was after 9:00 p.m. when he glanced at his phone and read the first sentence of Mr. Cotton's email, "Thank you for meeting with me today." Mr. Geraci responded from his phone "No no problem at all." Mr. Geraci was responding to Mr. Cotton's thanking	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	him for the meeting. (Geraci Decl. ¶ 13, at 6:13-15; Email attached as Exhibit 3 to Geraci NOL.)	
27.	The next day Mr. Geraci read the entire email and he telephoned Mr. Cotton because the total purchase price he had agreed to pay for the subject property was $800,000 and he had never agreed to provide Mr. Cotton with a 10% equity position in the dispensary as part of his purchase of the property. That phone call lasted approximately 3 minutes and is reflected on Mr. Geraci's phone bill. (Geraci Decl. ¶ 14, at 5:18-23; Copy of Geraci's AT&T Call Detail attached as Exhibit 4 to Geraci NOL)	
28.	During the November 3, 2016 phone call from Mr. Geraci to Mr. Cotton, Mr. Geraci told Mr. Cotton that a 10% equity position in the dispensary was not part of the agreement and that he had never agreed to pay him anything more than $800,000.00 for the purchase price of the property. Mr. Cotton responded something to the effect of "well you don't get what you don't ask for." Mr. Cotton was not upset and he commented further that things are "looking pretty good- we all should make some money here. And that was the end of the discussion. (Geraci Decl. ¶ 14, at 5:23-28.)	
29.	Prior to signing the November 2, 2016 Written Agreement, Mr. Cotton had expressed his desire to participate in different ways in the *operation* of the future MMCC business at the Property as his expertise is in hydroponics. Prior to signing the Agreement Mr. Geraci and Mr. Cotton had preliminary discussions related to his desire to be involved in the *operation* of the business (unrelated to the purchase of the Property) and they discussed the *possibility* of compensation to him (e.g., a percent of the net profits) in exchange for his providing various services to the business by an	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	agreement was never reach related to those matters. Those discussions were not related to the purchase and sale of the property, which the parties never agreed to amend or modify. (Geraci Decl. ¶ 15, at 6:1-9.)	
30.	Beginning about mid-February 2017, and after zoning issues had been resolved, Mr. Cotton began making demands for compensation in connection with the sale of the property. (Geraci Decl. ¶ 16, at 6:10-12.)	
31.	At that time Mr. Geraci was several months into the CUP process with several more months until completion. He had already committed substantial resources to the project and he was very concerned that Mr. Cotton was going to interfere with the completion of the CUP Application process to Mr. Geraci's detriment. (Geraci Decl. ¶ 16, at 6:12-16.)	
32.	Mr. Geraci tried his best to work out some further compensation arrangement that was reasonable in order to try to avoid the risk that Mr. Cotton might interfere with the CUP process and find another buyer for the property. (Geraci Decl. ¶ 16, at 6:16-18.)	
33.	Attempting to appease Cotton's demands, Mr. Geraci asked his attorney to draft written agreements that contained terms that Mr. Geraci believed he could live worth and hoped would be sufficient to satisfy Mr. Cotton's demands, but Mr. Cotton rejected each draft agreement as not satisfactory. (Geraci Decl. ¶ 16, at 6:18-20.)	
34.	Mr. Cotton continued to insist on, among other things, a 10% equity position, to which Mr. Geraci was unwilling to agree, as well as on a minimum	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
	monthly distributions in amounts that Geraci thought were unreasonable and to which he was unwilling to agree. (Geraci Decl. ¶ 16, at 6:21-23.)	
35.	Despite Mr. Geraci's and Mr. Cotton's back and forth communications during the period of approximately mid-February 2017 through approximately mid-March 2017, the parties were unable to re-negotiate terms for the purchase of the property to which both parties were willing to agree. The November 2, 2016 was never amended or modified. (Geraci Decl. ¶ 16, at 6:23-26.)	
36.	Mr. Cotton was extremely unhappy with Mr. Geraci's refusal to accede to his demands and the failure to reach agreement regarding his possible involvement with the *operation* of the business to be operated at the property and Mr. Geraci's refusal to modify or amend the terms and condition we agreed to in the November 2, 2016 Written Agreement regarding Mr. Geraci's purchase from Mr. Cotton of the property. Mr. Cotton made clear that he had no intention of living up to and performing his obligations under the 'agreement and affirmatively threatened to take action to halt the CUP application process. (Geraci Decl. ¶ 17, at 7:3-8.)	
37.	On March 21, 2017, Mr. Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application. (Geraci Decl. ¶ 18, at 7:9-14; Email attached as Exhibit 5 to Geraci NOL.)	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
38.	That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed Mr. Geraci, reinforcing that he would not honor the November Agreement. In his email, Mr. Cotton stated that Mr. Geraci had no interest in his property and that Mr. Cotton "will be entering into an agreement with a third party to sell [his] property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with [Mr. Geraci]." (Geraci Decl. ¶ 19, at 7:15-20; Email attached as Exhibit 6 to Geraci NOL.)	
39.	Four minutes later that same day, Mr. Cotton emailed Ms. Tirandazi at the City, with a cc to both Mr. Geraci and Rebecca Berry, stating falsely to Ms. Tirandazi: "... the potential buyer, Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property." (Geraci Decl. ¶ 20, at 7:21-28; Email attached as Exhibit 7 to Geraci NOL.)	
40.	Due to Mr. cotton's clearly stated intention to not perform his obligations under the written agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, Mr. Geraci filed the instant lawsuit on March 21, 2017 to enforce the November 2, 2016 Written Agreement. (Geraci Decl. ¶ 22, at 8:3-6.)	
41.	After the March 21, 2017 filing of the instant lawsuit, Geraci and his team continued to diligently pursue the CUP Application and approval of the CUP. (Geraci Decl. ¶ 23, at 8:7-8. 13-16.)	

	PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
42.	Documents obtained in discovery during this litigation have established that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the property to see if he could get a better deal than he and Mr. Geraci had agreed to. As of March 21, 2017, Mr. Cotton already entered into a real estate purchase and sale agreement to sell the property to another person, Richard John Martin II. (Geraci Decl. ¶ 24, at 8:16-19.)	
43.	Neither Mr. Geraci nor Mr. Cotton ever referred to their agreement as a "receipt" for the $10,000.00 deposit during negotiations or at any time prior to signing the November 2, 2016 agreement. (Geraci Decl. ¶ 10, at 4:4-11)	

Respectfully submitted,

Dated: May 9, 2019

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