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County of San Diego

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Attorney for Defendant/Cross-Complainant DARRYL COTTON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

LARRY GERACI, an individual,  
Plaintiff,

vs.

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

AND RELATED CROSS-ACTION.

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

**DEFENDANT/CROSS-PLAINTIFF DARRYL  
COTTON'S REPLY TO PLAINTIFF/CROSS-  
DEFENDANT LARRY GERACI'S  
ADDITIONAL MATERIAL FACTS AND  
SUPPORTING EVIDENCE.**

Date: May 23, 2019  
Time: 9:00 a.m.  
Dept: C-73  
Judge: The Hon. Joel R. Wohlfeil

**DEFENDANT/CROSS-PLAINTIFF DARRYL COTTON'S REPLY TO PLAINTIFF/CROSS-  
DEFENDANT LARRY GERACI'S ADDITIONAL MATERIAL FACTS AND SUPPORTING  
EVIDENCE**

**DEFENDANT/CROSS-PLAINTIFF'S REPLY TO PLAINTIFF/CROSS-DEFENDANT  
LARRY GERACI'S ADDITIONAL MATERIAL FACTS AND SUPPORTING  
EVIDENCE**

Defendant/Cross-Plaintiff Darryl Cotton submits the following:

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.)	Undisputed.
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.)	Undisputed.
3. Geraci hired a design professional, Abhay Schweitzer of TECHNE as part of the team.  (Geraci Decl. ¶ 2, at 2:3)	Undisputed.
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.)	Undisputed.
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.)	Undisputed.
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,	Undisputed.

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

**MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE**

	<p>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.</p> <p>(Geraci Decl. ¶ 3, at 2:6-11.)</p>	
7.	<p>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.</p> <p>(Geraci Decl. ¶ 3, at 2:11-14.)</p>	<p>Disputed. The property was located for Geraci and Bartell by Bianca Martinez.</p> <p>Supplemental Declaration of Darryl Cotton ("Cotton Decl.") at [20].</p>
8.	<p>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.</p> <p>(Geraci Decl. ¶ 4, at 2:18-23.)</p>	<p>Undisputed.</p>
9.	<p>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.</p> <p>(Geraci Decl. ¶ 5, at 2:24-26.)</p>	<p>Undisputed.</p>
10.	<p>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</p>	<p>Undisputed.</p>

PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
<p>lose his investment.</p> <p>(Geraci Decl. ¶ 5, at 2:26-3:1.)</p>	
<p>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.</p> <p>(Geraci Decl. ¶ 5, at 3:1-2.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 5, at 3:2-5.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>13. Mr. Cotton and Mr. Geraci agreed on a down payment of \$10,000.00 and a purchase price of \$800,000.00.</p> <p>(Geraci Decl. ¶ 5, at 3:5-6.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 6, at 3:13-17.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>15. Mr. Geraci tendered the \$10,000.00 deposit to Mr. Cotton.</p> <p>(Geraci Decl. ¶ 5, at 3:11-12.)</p>	<p>Undisputed.</p>

PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
<p>16. The November 2, 2016 written agreement states:</p> <p>11/02/2016</p> <p>Agreement between Larry Geraci or assignee and Darryl Cotton:</p> <p>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.)</p> <p>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.</p> <p>_____ Larry Geraci                      Darryl Cotton</p> <p>(Geraci Decl. ¶ 5, at 3:8-11; Written Agreement attached as Exhibit 1 to Geraci NOL.)</p>	<p>Undisputed.</p>
<p>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.</p> <p>(Geraci Decl. ¶ 7, at 3:18-23.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 8, at 3:24-28.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>

PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
<p>If the CUP was not approved, then he would keep the property and the \$10,000. So that is how the agreement was written.</p> <p>(Geraci Decl. ¶ 9, at 4:1-3.)</p>	
<p>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.</p> <p>(Geraci Decl. ¶ 10, at 4:4-11.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>21. Mr. Geraci did not promise to have attorney Gina Austin reduce any oral agreement to written agreements for execution.</p> <p>(Geraci Decl. ¶ 11, at 4:12-17.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 12, at 4:18-23.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>

PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
<p>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.</p> <p>(Geraci Decl. ¶ 12, at 4:23-26; Ownership Disclosure Statement attached as Exhibit 2 to Geraci NOL.)</p>	
<p>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.</p> <p>(Geraci Decl. ¶ 12, at 4:26-28; Exhibit 2 to Geraci NOL.)</p>	<p>Disputed. Rebecca Berry worked on behalf of the joint venture between Cotton and Geraci. Cotton Decl. at [22]</p>
<p>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:</p> <p>"Hi Larry,</p> <p>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."</p> <p>(Geraci Decl. ¶ 13, at 5:7-15; Email attached as Exhibit 3 to Geraci NOL.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>



PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
<p>him for the meeting.</p> <p>(Geraci Decl. ¶ 13, at 6:13-15; Email attached as Exhibit 3 to Geraci NOL.)</p>	
<p>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.</p> <p>(Geraci Decl. ¶ 14, at 5:18-23; Copy of Geraci's AT&amp;T Call Detail attached as Exhibit 4 to Geraci NOL)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 14, at 5:23-28.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>29. Prior to signing the November 2, 2016 Written Agreement, Mr. Cotton had expressed his desire to participate in different ways in the <i>operation</i> 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 <i>operation</i> of the business (unrelated to the purchase of the Property) and they discussed the <i>possibility</i> of compensation to him (e.g., a percent of the net profits) in exchange for his providing various services to the business by an</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>



PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
<p>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.</p> <p>(Geraci Decl. ¶ 15, at 6:1-9.)</p>	
<p>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.</p> <p>(Geraci Decl. ¶ 16, at 6:10-12.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 16, at 6:12-16.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 16, at 6:16-18.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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 with and hoped would be sufficient to satisfy Mr. Cotton's demands, but Mr. Cotton rejected each draft agreement as not satisfactory.</p> <p>(Geraci Decl. ¶ 16, at 6:18-20.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>

PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
<p>monthly distributions in amounts that Geraci thought were unreasonable and to which he was unwilling to agree.</p> <p>(Geraci Decl. ¶ 16, at 6:21-23.)</p>	
<p>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.</p> <p>(Geraci Decl. ¶ 16, at 6:23-26.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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 <i>operation</i> 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.</p> <p>(Geraci Decl. ¶ 17, at 7:3-8.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 18, at 7:9-14; Email attached as Exhibit 5 to Geraci NOL.)</p>	<p>Undisputed.</p>

PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
<p>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]."</p> <p>(Geraci Decl. ¶ 19, at 7:15-20; Email attached as Exhibit 6 to Geraci NOL.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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."</p> <p>(Geraci Decl. ¶ 20, at 7:21-28; Email attached as Exhibit 7 to Geraci NOL.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 22, at 8:3-6.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 23, at 8:7-8. 13-16.)</p>	<p>Disputed. Cotton</p> <p>Decl. at [21].</p>

PLAINTIFF/CROSS-DEFENDANTS' ADDITIONAL MATERIAL FACTS AND SUPPORTING EVIDENCE	MOVING PARTIES' RESPONSE AND SUPPORTING EVIDENCE
<p>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.</p> <p>(Geraci Decl. ¶ 24, at 8:16-19.)</p>	<p>Disputed.</p> <p>Cotton Decl. at [].</p>
<p>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.</p> <p>(Geraci Decl. ¶ 10, at 4:4-11)</p>	<p>Disputed.</p> <p>Cotton Decl. at [].</p>

DATED: April 4, 2019

THE LAW OFFICE OF JACOB AUSTIN

By Jacob P. Austin  
JACOB P. AUSTIN  
Attorney for Defendant/Cross-Complainant  
DARRYL COTTON