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13 pages

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FILED
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JUL 11 2019

By: A. TAYLOR

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.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF DARRYL
COTTON'S MOTION FOR DIRECTED
VERDICT**

Date: July 11, 2019

Time: 10:30 a.m.

Dept: C-73

Judge: The Hon. Joel R. Wohlfeil

AND RELATED CROSS-ACTION.

MEMORANDUM OF POINTS AND AUTHORITIES

Defendant/Cross-complainant Darryl Cotton ("Cotton") hereby submits the following points and authorities in support of the Motion for Directed Verdict. Defendant's motion is brought on the grounds that Plaintiff failed to present sufficient evidence to allow a jury to find in his favor on causes of action asserted in his Complaint.

INTRODUCTION

This case arises out of a contract dispute between Plaintiff Larry Geraci ("Plaintiff") and

1 Defendant and Cross-Complainant Darryl Cotton ("Defendant"). Plaintiff alleges in this action that
2 Defendant breached the terms of a purchase and sale agreement. In his complaint ("Complaint"),
3 Plaintiff presented his case to the jury, and failed to present sufficient evidence to support a jury
4 finding in his favor on the following causes of action:

5 (1) First Cause of Action for Breach of Contract Against Darryl Cotton; and

6 (2) Second Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing Against
7 Darryl Cotton.

8 In order for the jury to find in favor of the Plaintiff on either cause of action they must first find
9 a valid contract. Mr. Geraci however cannot prove that the parties agreed to the terms of the contract,
10 which they have alleged is only the document signed on November 2, 2016 and expressly does not
11 include the other terms alleged by Mr. Cotton. (Plaintiff's Ex No. 38). As required by California Civil
12 Code § 1580 ("Consent is not mutual, unless the parties all agree upon the same thing in the same
13 sense.") and CACI No. 302 ("When you examine whether the parties agreed to the terms of the contract,
14 ask yourself if, under the circumstances, a reasonable person would conclude, from the words and
15 conduct of each party, that there was an agreement").

16 On those grounds, Defendant requests that the Court grant his motion for Directed Verdict as to
17 the foregoing causes of action be granted.

18 LEGAL ANALYSIS

19 Defendant moves for a directed verdict on claims asserted by Plaintiff because the claims
20 because Plaintiff has failed to introduce evidence of sufficient substantiality to support a jury verdict.
21 Defendant is entitled to a directed verdict on these claims because CCP § 630 authorizes a directed
22 verdict on issues in a case.

23
24 **A directed verdict is proper on any issue on which Plaintiff failed to present evidence of**
25 **sufficient substantiality to support a jury verdict**

26 A motion for a directed verdict under CCP § 630 "tests the legal sufficiency" of the opposing
27 party's evidence. Webb v. Special Elec. Co., Inc. 214 Cal.App.4th 595, 606 (2013). A directed verdict
28 is proper if there is no evidence of sufficient substantiality to support a verdict in plaintiff's favor after

1 viewing the evidence in the light most favorable to plaintiff, resolving all presumptions, inferences and
2 doubts in plaintiff's favor, and disregarding any conflicting evidence. Wolf v. Walt Disney Pictures &
3 Television, 162 Cal.App.4th 1107, 1119 (2008); Dumin v. Owens-Corning Fiberglas Corp., 28
4 Cal.App.4th 650, 654. A directed verdict must be granted "where plaintiff's proof raises nothing more
5 than speculation, suspicion, or conjecture." A plaintiff "must therefore produce evidence which
6 supports a logical inference in his favor and which does more than merely permit speculation or
7 conjecture." Westside Center Assoc. v. Safeway Stores 23, Inc., 42 Cal.App.4th 507, 531 (1996).
8 "there must be substantial evidence to create the necessary conflict" Wolf, 162 Cal.App.4th at 1119-
9 1120.

11 As discussed below, Plaintiff failed to present sufficient evidence to support a jury finding in
12 his favor as to the remaining causes of action in his complaint. Pursuant to the case law and statutory
13 authority cited above, Defendant is entitled to a directed verdict as to the remaining causes of action.

15 ***A. PLAINTIFF DID NOT PRESENT SUFFICIENT EVIDENCE TO SUPPORT HIS
16 BREACH OF CONTRACT CAUSE OF ACTION AGAINST DEFENDANT.***

17 ***a. GERACI HAS FAILED TO PROVE THAT THE NOVEMBER DOCUMENT
18 IS A FULLY INTEGRATED CONTRACT.***

19 Defendant has maintained and alleged since the beginning of this matter, that Plaintiff has
20 premised his entire case on an alleged contract signed on November 2, 2016, which they purport to be
21 a completely integrated contract. The reason why Plaintiff has pigeonholed himself to this position is
22 so that Plaintiff can maintain that Defendant Cotton's request for assurances were an anticipatory breach
23 of contract. Defendant's demand that the additional terms be memorialized in writing, which were not
24 in the November 2, 2016 document can only be viewed as an anticipatory breach or request for
25 assurances. Plaintiff has admitted this was their theory as recently as July 9, 2019, when asked by this
26 court, "COURT: AND THE FOUNDATION OF YOUR CONTRACT THEORY IS THE NOVEMBER
27 2, AGREEMENT? [¶] MR. WEINSTEIN: YES, YOUR HONOR" Unedited Real-Time/Draft
28 Transcript July 9, 2019 at 154:24-26.

1 The testimony given in this case by Mr. Geraci himself shows that the November 2, 2016
2 document was not an integrated contract. In fact, Mr. Geraci testified the parties agreed to additional
3 terms that were not included in the document. Mr. Geraci specifically testified:

4 Q. PARENTHESES, CUP FOR A DISPENSARY, CLOSE PARENS. DID YOU
5 HAVE A DISCUSSION WITH MR. COTTON ABOUT THAT LANGES AT THE
6 TIME YOU DRAFTED THE –THE TWO OF YOU DRAFTED THE AGREEMENT.

7 A. YES. IT WAS UNDERSTOOD THAT ON THE APPROVAL OF THE
8 MARIJUAAN DISPENSARY THAT, YOU KNO, I'D BE BEARING THE COSE, AND
9 WE NEED TO GET APPROVAL TO COMPLETE THE ACTUAL PRUCHASE FOR
10 THE PROPERTY.

11 Q. OKAY. WHEN YOU SAID IT WAS UNDERSTOOD, WHAT WAS SAID? I
12 MEAN, HOW DDI YOU HAVE THAT UNDERSTANDING?

13 A. AS I WAS TYPING, I SAID, AND I WILL, OF COURSE, BE PAYING FOR
14 THE—THE PROCESS TO GET CUP.

15 (ROUGH REPORTERS TRANSCRIPT GERCI v. COTTON JULY 3, 2017 AT 93:9-
16 19)(Emphasis added)

17 So according the Mr. Geraci, both parties agreed to this term however as he was typing
18 the November 2, 2016 document, he did not include it. Clearly the actions of the parties show
19 that this was not intended to be an integrated contract. There for Parol Evidence is admissible
20 to prove the intention of the parties.

21 ***b. PAROL EVIDENCE OF THE NOVEMBER EMAIL PROVES MR. COTTON***
22 ***DID NOT INTEND FOR THE NOVEMBER 2, 2016 DOCUMENT TO BE THE***
23 ***FINAL EXPRESSION OF THEIR AGREEMENT.***

24 “The standard elements for a claim for breach of contract are (1) the contract, (2) plaintiff’s
25 performance or excuse for nonperformance, (3) defendant’s breach, and (4) damage to plaintiff
26 therefrom.” Wall Street Network, Ltd. v. New York Times Co. (2008) 164 Cal.App.4th 1171, 1178.

27 As mentioned above, when a contract is not fully integrated parol evidence is admissible to prove
28 the intention of the parties and to prove fraud. In this case this means the admission of the events of
November 2, 2016 which establishes that Neither Mr. Cotton nor Mr. Geraci dispute that on November
2, 2016 they met, reached an agreement regarding the sale of the Property and executed a three-sentence
document (the “November Document”). However, the parties dispute the nature of the November
Document. Mr. Cotton alleges the November Document is a receipt, Mr. Geraci alleges it is a sale
contract for his purchase of the Property. Neither party disputes the following email communications

1 took place on November 2, 2016. At 3:11 p.m., Mr. Geraci emailed Mr. Cotton a copy of the November
2 Document.

3 At 6:55 p.m., Mr. Cotton replied to that email as follows:

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

10 *Id.* at 6:24-7:1 (the "Request for Confirmation") (emphasis added).

11 At 9:13 p.m., Mr. Geraci replied: "*No no problem at all.*" *Id.* at 7:3-4 (i.e., the Confirmation
12 Email) (emphasis added).

13 This clearly establishes that, at least with regards to Mr. Cotton, he never intended the November
14 Document to be a contract.

15 ***B. Plaintiff Did Not Present Sufficient Evidence to Support His Breach of the Covenant of
16 Good Faith and Fair Dealing Cause of Action Against Defendant.***

17 It is well established that every contract has an implied promise of good faith and fair dealing.
18 In fact CACI No. 325 reads as the first element that "1. That [Larry Geraci] and [Darryl Cotton] entered
19 into a contract[.]" Here, as mentioned above, the Plaintiff has failed to prove that the November
20 Document constitutes a contract since they have pigeonholed themselves to just the November
21 Document.

22 ***C. Despite Ms. Austin's Testimony Mr. Geraci's Prior Sanctions, and His Intentional Failure
23 to Disclose his Interest, Bar Him From Ownership of Marijuana Dispensary.***

24 On July 1, 2016, the California Secretary of State released a list of propositions including
25 Proposition 64, a voter initiative called the Adult Use of Marijuana Act ("AUMA"). AUMA passed and
26 became law on November 9, 2016. AUMA added Division 10 to the Business & Professions Code
27 (BPC) starting at Section 26000, which was titled "Marijuana." Materially, BPC § 26057 mandates the
28 state licensing authority deny an application for a marijuana license if the applicant has failed to provide
material information, including disclosure of all owners of the sought license, or if the applicant had

1 previously been sanctioned for illegal marijuana activities in the three years preceding the application
2 for a license. PBC § 26000 (Note: 2016 Prop. 64, BPC § 26057).

3 On February 22, 2017, the City adopted Ordinance No. 20793. As stated in the Recitals of
4 Ordinance No. 20793, "the City of San Diego desires to amend the current medical marijuana
5 cooperative land use regulations in accordance with state law, to apply to the retail of all marijuana."

6 Here despite the testimony of Ms. Austin, in which she dismisses the need to disclose the
7 applicant in the application with the City, she has admitted that she is actively disregarding these
8 disclosure laws, albeit state law, which is applicable here. In fact the forms state that the owners need
9 to be disclosed, to which Ms. Austin states is just for "conflict check." So basically, Ms. Austin has
10 decide unilaterally that the City does not need that information. This is wholly improper.

11 CONCLUSION

12 Plaintiff failed to present sufficient evidence to establish a prima facie case as to the following
13 causes of action:

14 Respectfully submitted,

15
16 DATED: July 11, 2019

17 THE LAW OFFICE OF JACOB AUSTIN

18
19 By


JACOB P. AUSTIN

20 Attorney for Defendant/Cross-Complainant
21 DARRYL COTTON
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Adult Use of Marijuana Act – 2016
Proposition 64**

26045.

Orders of the panel shall be subject to judicial review under Section 1094.5 of the Code of Civil Procedure upon petition by the bureau or licensing authority or any party aggrieved by such order.

Chapter 5. Licensing

26050.

(a) The license classification pursuant to this division shall, at a minimum, be as follows:

- (1) Type 1 - Cultivation; Specialty outdoor; Small.
- (2) Type 1A - Cultivation; Specialty indoor; Small.
- (3) Type 1B - Cultivation; Specialty mixed-light; Small.
- (4) Type 2 - Cultivation; Outdoor; Small.
- (5) Type 2A - Cultivation; Indoor; Small.
- (6) Type 2B - Cultivation; Mixed-light; Small.
- (7) Type 3 - Cultivation; Outdoor; Medium.
- (8) Type 3A - Cultivation; Indoor; Medium.
- (9) Type 3B - Cultivation; Mixed-light; Medium.
- (10) Type 4 - Cultivation; Nursery.
- (11) Type 5 - Cultivation; Outdoor; Large.
- (12) Type 5A - Cultivation; Indoor; Large.
- (13) Type 5B - Cultivation; Mixed-light; Large.
- (14) Type 6 - Manufacturer 1.
- (15) Type 7 - Manufacturer 2.
- (16) Type 8 - Testing.
- (17) Type 10 - Retailer.
- (18) Type 11 - Distributor.
- (19) Type 12 - Microbusiness.

(b) All licenses issued under this division shall bear a clear designation indicating that the license is for commercial marijuana activity as distinct from commercial medical cannabis activity licensed under Chapter 3.5 (commencing with Section 19300) of Division 8. Examples of such a designation include, but are not limited to, "Type 1 - Nonmedical," or "Type 1 NM."

(c) A license issued pursuant to this division shall be valid for 12 months from the date of issuance. The license may be renewed annually.

(d) Each licensing authority shall establish procedures for the issuance and renewal of licenses.

(e) Notwithstanding subdivision (c), a licensing authority may issue a temporary license for a period of less than 12 months. This subdivision shall cease to be operative on January 1, 2019.

26051.

(a) In determining whether to grant, deny, or renew a license authorized under this division, a licensing authority shall consider factors reasonably related to the determination, including,

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Adult Use of Marijuana Act – 2016
Proposition 64**

but not limited to, whether it is reasonably foreseeable that issuance, denial, or renewal of the license could:

- (1) Allow unreasonable restraints on competition by creation or maintenance of unlawful monopoly power;
 - (2) Perpetuate the presence of an illegal market for marijuana or marijuana products in the state or out of the state;
 - (3) Encourage underage use or adult abuse of marijuana or marijuana products, or illegal diversion of marijuana or marijuana products out of the state;
 - (4) Result in an excessive concentration of licensees in a given city, county, or both;
 - (5) Present an unreasonable risk of minors being exposed to marijuana or marijuana products; or
 - (6) Result in violations of any environmental protection laws.
- (b) A licensing authority may deny a license or renewal of a license based upon the considerations in subdivision (a).
- (c) For purposes of this section, "excessive concentration" means when the premises for a retail license, microbusiness license, or a license issued under Section 26070.5 is located in an area where either of the following conditions exist:
- (1) The ratio of a licensee to population in the census tract or census division in which the applicant premises are located exceeds the ratio of licensees to population in the county in which the applicant premises are located, unless denial of the application would unduly limit the development of the legal market so as to perpetuate the illegal market for marijuana or marijuana products.
 - (2) The ratio of retail licenses, microbusiness licenses, or licenses under Section 26070.5 to population in the census tract, division or jurisdiction exceeds that allowable by local ordinance adopted under Section 26200.

26052.

- (a) No licensee shall perform any of the following acts, or permit any such acts to be performed by any employee, agent, or contractor of such licensee:
- (1) Make any contract in restraint of trade in violation of Section 16600;
 - (2) Form a trust or other prohibited organization in restraint of trade in violation of Section 16720;
 - (3) Make a sale or contract for the sale of marijuana or marijuana products, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the consumer or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of such seller, where the effect of such sale, contract, condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce;
 - (4) Sell any marijuana or marijuana products at less than cost for the purpose of injuring competitors, destroying competition, or misleading or deceiving purchasers or prospective purchasers;

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Adult Use of Marijuana Act – 2016
Proposition 64**

- (5) Discriminate between different sections, communities, or cities or portions thereof, or between different locations in such sections, communities, cities or portions thereof in this state, by selling or furnishing marijuana or marijuana products at a lower price in one section, community, or city or any portion thereof, or in one location in such section, community, or city or any portion thereof, than in another, for the purpose of injuring competitors or destroying competition; or
- (6) Sell any marijuana or marijuana products at less than the cost thereof to such vendor, or to give away any article or product for the purpose of injuring competitors or destroying competition.
- (b) Any person who, either as director, officer or agent of any firm or corporation, or as agent of any person, violates the provisions of this chapter, assists or aids, directly or indirectly, in such violation is responsible therefor equally with the person, firm or corporation for which such person acts.
- (c) A licensing authority may enforce this section by appropriate regulation.
- (d) Any person or trade association may bring an action to enjoin and restrain any violation of this section for the recovery of damages.

26053.

- (a) The bureau and licensing authorities may issue licenses under this division to persons or entities that hold licenses under Chapter 3.5(commencing with Section 19300) of Division 8.
- (b) Notwithstanding subdivision (a), person or entity that holds a state testing license under this division or Chapter 3.5(commencing with Section 19300) of Division 8 is prohibited from licensure for any other activity, except testing, as authorized under this division.
- (c) Except as provided in subdivision (b), a person or entity may apply for and be issued more than one license under this division.

26054.

- (a) A licensee shall not also be licensed as a retailer of alcoholic beverages under Division 9 (commencing with Section 23000) or of tobacco products.
- (b) No licensee under this division shall be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued, unless a licensing authority or a local jurisdiction specifies a different radius. The distance specified in this section shall be measured in the same manner as provided in paragraph (c) of Section 11362. 768 of the Health and Safety Code unless otherwise provided by law.
- (c) It shall be lawful under state and local law, and shall not be a violation of state or local law, for a business engaged in the manufacture of marijuana accessories to possess, transport, purchase or otherwise obtain small amounts of marijuana or marijuana products as necessary to conduct research and development related to such marijuana accessories, provided such marijuana and marijuana products are obtained from a person or entity licensed under this division or Chapter 3.5 (commencing with Section 19300) of Division 8 permitted to provide or deliver such marijuana or marijuana products.

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Adult Use of Marijuana Act – 2016
Proposition 64**

26054.1

- (a) No licensing authority shall issue or renew a license to any person that cannot demonstrate continuous California residency from or before January 1, 2015. In the case of an applicant or licensee that is an entity, the entity shall not be considered a resident if any person controlling the entity cannot demonstrate continuous California residency from and before January 1, 2015.
- (b) Subdivision (a) shall cease to be operable on December 31, 2019 unless reenacted prior thereto by the Legislature.

26054.2

- (a) A licensing authority shall give priority in issuing licenses under this division to applicants that can demonstrate to the authority's satisfaction that the applicant operated in compliance with the Compassionate Use Act and its implementing laws before September 1, 2016, or currently operates in compliance with Chapter 3.5(commencing with Section 19300) of Division 8.
- (b) The bureau shall request that local jurisdictions identify for the bureau potential applicants for licensure based on the applicants' prior operation in the local jurisdiction in compliance with state law, including the Compassionate Use Act and its implementing laws, and any applicable local laws. The bureau shall make the requested information available to licensing authorities.
- (c) In addition to or in lieu of the information described in subdivision (b), an applicant may furnish other evidence to demonstrate operation in compliance with the Compassionate Use Act or Chapter 3.5 (commencing with Section 19300) of Division 8. The bureau and licensing authorities may accept such evidence to demonstrate eligibility for the priority provided for in subdivision (a).
- (d) This section shall cease to be operable on December 31, 2019 unless otherwise provided by law.

26055.

- (a) Licensing authorities may issue state licenses only to qualified applicants.
- (b) Revocation of a state license issued under this division shall terminate the ability of the licensee to operate within California until the licensing authority reinstates or reissues the state license.
- (c) Separate licenses shall be issued for each of the premises of any licensee having more than one location, except as otherwise authorized by law or regulation.
- (d) After issuance or transfer of a license, no licensee shall change or alter the premises in a manner which materially or substantially alters the premises, the usage of the premises, or the mode or character of business operation conducted from the premises, from the plan contained in the diagram on file with the application, unless and until prior written assent of the licensing authority or bureau has been obtained. For purposes of this section, material or

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Adult Use of Marijuana Act – 2016
Proposition 64**

substantial physical changes of the premises, or in the usage of the premises, shall include, but not be

limited to, a substantial increase or decrease in the total area of the licensed premises previously diagrammed, or any other physical modification resulting in substantial change in the mode or character of business operation.

- (e) Licensing authorities shall not approve an application for a state license under this division if approval of the state license will violate the provisions of any local ordinance or regulation adopted in accordance with Section 26200.

26056.

An applicant for any type of state license issued pursuant to this division shall comply with the same requirements as set forth in Section 19322 of Chapter 3.5 of Division 8 unless otherwise provided by law, including electronic submission of fingerprint images, and any other requirements imposed by law or a licensing authority, except as follows:

- (a) Notwithstanding paragraph (2) of subdivision (a) of Section 19322, an applicant need not provide documentation that the applicant has obtained a license, permit or other authorization to operate from the local jurisdiction in which the applicant seeks to operate;
- (b) An application for a license under this division shall include evidence that the proposed location meets the restriction in subdivision (b) of Section 26054; and
- (c) For applicants seeking licensure to cultivate, distribute, or manufacture nonmedical marijuana or marijuana products, the application shall also include a detailed description of the applicant's operating procedures for all of the following, as required by the licensing authority:
 - (1) Cultivation.
 - (2) Extraction and infusion methods.
 - (3) The transportation process.
 - (4) The inventory process.
 - (5) Quality control procedures.
 - (6) The source or sources of water the applicant will use for the licensed activities, including a certification that the applicant may use that water legally under state law.
- (d) The applicant shall provide a complete detailed diagram of the proposed premises wherein the license privileges will be exercised, with sufficient particularity to enable ready determination of the bounds of the premises, showing all boundaries, dimensions, entrances and exits, interior partitions, walls, rooms, and common or shared entryways, and include a brief statement or description of the principal activity to be conducted therein, and, for licenses permitting cultivation, measurements of the planned canopy including aggregate square footage and individual square footage of separate cultivation areas, if any.

26056.5.

The bureau shall devise protocols that each licensing authority shall implement to ensure compliance with state laws and regulations related to environmental impacts, natural resource protection, water quality, water supply, hazardous materials, and pesticide use in accordance

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Adult Use of Marijuana Act – 2016
Proposition 64

with regulations, including but not limited to, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050), lake or streambed alteration agreements (Chapter 6 (commencing with Section 1600), the Clean Water Act (33 U.S.C. Sec 1251 et seq.), the Porter-Cologne Water Quality Control Act (Division 7 commencing with Section 13000) of the Water Code), timber production zones, wastewater discharge requirements, and any permit or right necessary to divert water.

26057.

- (a) The licensing authority shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division.
- (b) The licensing authority may deny the application for licensure or renewal of a state license if Any of the following conditions apply:
 - (1) Failure to comply with the provisions of this division, any rule or regulation adopted pursuant to this division, or any requirement imposed to protect natural resources, including, but not limited to, protections for instream flow and water quality.
 - (2) Conduct that constitutes grounds for denial of licensure under Chapter 2 (commencing with Section 480) of Division 1.5, except as otherwise specified in this section and Section 26059.
 - (3) Failure to provide information required by the licensing authority.
 - (4) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:
 - (A) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.
 - (B) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.
 - (C) A felony conviction involving fraud, deceit, or embezzlement.
 - (D) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
 - (E) A felony conviction for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8.

**Comprehensive
Adult Use of Marijuana Act – 2016
Proposition 64**

- (5) Except as provided in subparagraphs (D) and (E) of paragraph (4) and notwithstanding Chapter 2 (commencing with Section 480) of Division 1.5, a prior conviction, where the sentence, including any term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.
- (6) The applicant, or any of its officers, directors, or owners, has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Sections 12025 or 12025.1 of the Fish and Game Code.
- (7) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial marijuana activities or commercial medical cannabis activities, has had a license revoked under this division or Chapter 3.5 (commencing with Section 19300) of Division 8 in the three years immediately preceding the date the application is filed with the licensing authority, or has been sanctioned under Sections 12025 or 12025.1 of the Fish and Game Code.
- (8) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.
- (9) Any other condition specified in law.

26058.

Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing.

26059.

An applicant shall not be denied a state license if the denial is based solely on any of the following:

- (a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.
- (b) A conviction that was subsequently dismissed pursuant to Sections 1203.4, 1203.4a, or 1203.41 of the Penal Code or any other provision allowing for dismissal of a conviction.

Chapter 6. Licensed Cultivation Sites

26060.

- (a) Regulations issued by the Department of Food and Agriculture governing the licensing of indoor, outdoor, and mixed-light cultivation sites shall apply to licensed cultivators under this division.

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