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FILED
Clerk of the Superior Court
JUL 11 2019
By: A. TAYLOR

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
Dept.: C-73

PLAINTIFF/CROSS-DEFENDANT'S PROPOSED JURY INSTRUCTIONS AND PROPOSED SPECIAL VERDICT FORM NOS. 1 AND 2

[IMAGED FILE]

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

Attached are Plaintiff/Cross-Defendant LARRY GERACI's Proposed Jury Instructions and Proposed Special Verdict Forms 1 and 2 that were provided to the Court on June 28, 2019.

FERRIS & BRITTON
A Professional Corporation

Dated: July 11, 2019

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre
Attorney for Plaintiff and Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

Judicial Council of California Advisory Committee on Civil Jury Instructions (CACI) 100 - Preliminary Admonitions

You have now been sworn as jurors in this case. I want to impress on you the seriousness and importance of serving on a jury. Trial by jury is a fundamental right in California. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a verdict based on the evidence presented. Before we begin, I need to explain how you must conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and coworkers, spiritual leaders, advisors, or therapists. You may say you are on a jury and how long the trial may take, but that is all. You must not even talk about the case with the other jurors until after I tell you that it is time for you to decide the case.

This prohibition is not limited to face-to-face conversations. It also extends to all forms of electronic communications. Do not use any electronic device or media, such as a cell phone or smart phone, PDA, computer, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or website, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

During the trial you must not listen to anyone else talk about the case or the people involved in the case. You must avoid any contact with the parties, the lawyers, the witnesses, and anyone else who may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and report the incident to the court [attendant/bailiff] as soon as you can.

After the trial is over and I have released you from jury duty, you may discuss the case with anyone, but you are not required to do so.

During the trial, do not read, listen to, or watch any news reports about this case. [I have no information that there will be news reports concerning this case.] This prohibition extends to the use of the Internet in any way, including reading any blog about the case or about anyone involved with it. If you receive any information about this case from any source outside of the

courtroom, promptly report it to the court [attendant/bailiff]. It is important that all jurors see and hear the same evidence at the same time.

Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case or use any Internet maps or mapping programs or any other program or device to search for or to view any place discussed in the testimony. If you happen to pass by the scene, do not stop or investigate. If you do need to view the scene during the trial, you will be taken there as a group under proper supervision.

If you violate any of these prohibitions on communications and research, including prohibitions on electronic communications and research, you may be held in contempt of court or face other sanctions. That means that you may have to serve time in jail, pay a fine, or face other punishment for that violation.

It is important that you keep an open mind throughout this trial. Evidence can only be presented a piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

Do not concern yourselves with the reasons for the rulings I will make during the course of the trial. Do not guess what I may think your verdict should be from anything I might say or do.

When you begin your deliberations, you may discuss the case only in the jury room and only when all the jurors are present.

You must decide what the facts are in this case. Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 101 - Overview of Trial

To assist you in your tasks as jurors, I will now explain how the trial will proceed. I will begin by identifying the parties to the case. Larry Geraci filed this lawsuit. He is called a plaintiff. He seeks damages from Darryl Cotton, who is called a defendant.

Larry Geraci claims Darryl Cotton breached a written contract for the purchase and sale of Darryl Cotton's property to Larry Geraci as well as breached the covenant of good faith and fair dealing implied in that contract. Darryl Cotton denies those claims. Darryl Cotton also contends that no contract was created because his consent was obtained by fraud.

Darryl Cotton has also filed what is called a cross complaint against Larry Geraci. Darryl Cotton is the defendant, but also is called the cross-complainant. Larry Geraci is the plaintiff, but also is called a cross-defendant. In his cross-complaint, Darryl Cotton claims Larry Geraci breached an oral contract for the purchase and sale of Darryl Cotton's property to Larry Geraci. Darryl Cotton also claims that Larry Geraci is also liable for intentional misrepresentation, negligent misrepresentation, and false promise. Larry Geraci denies those claims. Larry Geraci also contends that contract alleged by Darryl Cotton for the purchase and sale of Darryl Cotton's property is barred by the Statute of Frauds which requires contracts for the sale of real property to be in writing.

First, each side may make an opening statement, but neither side is required to do so. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. Also, because it is often difficult to give you the evidence in the order we would prefer, the opening statement allows you to keep an overview of the case in mind during the presentation of the evidence.

Next, the jury will hear the evidence. Larry Geraci will present evidence related to his complaint first. When Larry Geraci is finished, Darryl Cotton will have an opportunity to present evidence related to Larry Geraci's complaint. Then Darryl Cotton will present evidence related to his cross-complaint. When Darryl Cotton is finished, Larry Geraci will present evidence related to Darryl Cotton's cross complaint.

Each witness will first be questioned by the side that asked the witness to testify. This is called direct examination. Then the other side is permitted to question the witness. This is called cross-examination.

Documents or objects referred to during the trial are called exhibits. Exhibits are given a number so that they may be clearly identified. Exhibits are not evidence until I admit them into evidence. During your deliberations, you will be able to look at all exhibits admitted into evidence.

There are many rules that govern whether something will be admitted into evidence. As one side presents evidence, the other side has the right to object and to ask me to decide if the evidence is permitted by the rules. Usually, I will decide immediately, but sometimes I may have to hear arguments outside of your presence.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments. What the parties say in closing argument is not evidence. The arguments are offered to help you understand the evidence and how the law applies to it.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 102 - Taking Notes During the Trial

You have been given notebooks and may take notes during the trial. Do not take the notebooks out of the courtroom or jury room at any time during the trial. You may take your notes into the jury room during deliberations.

You should use your notes only to remind yourself of what happened during the trial. Do not let your note-taking interfere with your ability to listen carefully to all the testimony and to watch the witnesses as they testify. Nor should you allow your impression of a witness or other evidence to be influenced by whether or not other jurors are taking notes. Your independent recollection of the evidence should govern your verdict, and you should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

[The court reporter is making a record of everything that is said. If during deliberations you have a question about what the witness said, you should ask that the court reporter's records be read to you. You must accept the court reporter's record as accurate.]

At the end of the trial, your notes will be [collected and destroyed/collected and retained by the court but not as a part of the case record/ [specify other disposition]].

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 106 - Evidence

You must decide what the facts are in this case only from the evidence you see or hear during the trial. Sworn testimony, documents, or anything else may be admitted into evidence. You may not consider as evidence anything that you see or hear when court is not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys will talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggests that it is true. However, the attorneys for both sides can agree that certain facts are true. This agreement is called a "stipulation." No other proof is needed and you must accept those facts as true in this trial.

Each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled. If I overrule an objection, the witness will answer and you may consider the evidence. If I agree with the objection, I will say it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness has already answered, you must ignore the answer.

An attorney may make a motion to strike testimony that you have heard. If I grant the motion, you must totally disregard that testimony. You must treat it as though it did not exist.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 107 - Witnesses

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

(a) How well did the witness see, hear, or otherwise sense what he or she described in court?

(b) How well did the witness remember and describe what happened?

(c) How did the witness look, act, and speak while testifying?

(d) Did the witness have any reason to say something that was not true? For example, did the witness show any bias or prejudice or have a personal relationship with any of the parties involved in the case or have a personal stake in how this case is decided?

(e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness did not tell the truth about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness did not tell the truth about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 111 - Instruction to Alternate Jurors

As an alternate juror, you are bound by the same rules that govern the conduct of the jurors who are sitting on the panel. You will observe the same trial and should pay attention to all of my instructions just as if you were sitting on the panel. Sometimes a juror needs to be excused during a trial for illness or some other reason. If that happens, an alternate will be selected to take that juror's place.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 112 - Questions From Jurors

If, during the trial, you have a question that you believe should be asked of a witness, you may write out the question and send it to me through my courtroom staff. I will share your question with the attorneys and decide whether it may be asked.

Do not feel disappointed if your question is not asked. Your question may not be asked for a variety of reasons. For example, the question may call for an answer that is not allowed for legal reasons. Also, you should not try to guess the reason why a question is not asked or speculate about what the answer might have been. Because the decision whether to allow the question is mine alone, do not hold it against any of the attorneys or their clients if your question is not asked.

Remember that you are not an advocate for one side or the other. Each of you is an impartial judge of the facts. Your questions should be posed in as neutral a fashion as possible. Do not discuss any question asked by any juror with any other juror until after deliberations begin.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 113 - Bias

Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against any party or witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 114 - Bench Conferences and Conferences in Chambers

From time to time during the trial, it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom, or by calling a recess to discuss matters outside of your presence. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence. Do not be concerned about our discussions or try to guess what is being said.

I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or of my view of the evidence.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 116 - Why Electronic Communications and Research Are Prohibited

I know that many of us are used to communicating and perhaps even learning by electronic communications and research. However, there are good reasons why you must not electronically communicate or do any research on anything having to do with this trial or the parties.

In court, jurors must make important decisions that have consequences for the parties. Those decisions must be based only on the evidence that you hear in this courtroom.

The evidence that is presented in court can be tested; it can be shown to be right or wrong by either side; it can be questioned; and it can be contradicted by other evidence. What you might read or hear on your own could easily be wrong, out of date, or inapplicable to this case.

The parties can receive a fair trial only if the facts and information on which you base your decisions are presented to you as a group, with each juror having the same opportunity to see, hear, and evaluate the evidence.

Also, a trial is a public process that depends on disclosure in the courtroom of facts and evidence. Using information gathered in secret by one or more jurors undermines the public process and violates the rights of the parties.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 200 - Obligation to Prove—More Likely True Than Not True

A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true. This is referred to as "the burden of proof."

After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.

In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove something need prove only that it is more likely to be true than not true.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 201 - Highly Probable—Clear and Convincing Proof

Certain facts must be proved by clear and convincing evidence, which is a higher burden of proof. This means the party must persuade you that it is highly probable that the fact is true. I will tell you specifically which facts must be proved by clear and convincing evidence.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 202 - Direct and Indirect Evidence

Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.

Direct evidence can prove a fact by itself. For example, if a witness testifies she saw a jet plane flying across the sky, that testimony is direct evidence that a plane flew across the sky. Some evidence proves a fact indirectly. For example, a witness testifies that he saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as "circumstantial evidence." In either instance, the witness's testimony is evidence that a jet plane flew across the sky.

As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of evidence whatever weight you think it deserves.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 206 - Evidence Admitted for Limited Purpose

During the trial, I explained to you that certain evidence was admitted for a limited purpose. You may consider that evidence only for the limited purpose that I described, and not for any other purpose.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 208 - Deposition as Substantive Evidence

During the trial, you received deposition testimony that was read from the deposition transcript or shown by video. A deposition is the testimony of a person taken before trial. At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was presented to you in the same way as you consider testimony given in court.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 209 - Use of Interrogatories of a Party

Before trial, each party has the right to ask the other parties to answer written questions. These questions are called interrogatories. The answers are also in writing and are given under oath. You must consider the questions and answers that were read to you the same as if the questions and answers had been given in court.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 210 - Requests for Admissions

Before trial, each party has the right to ask another party to admit in writing that certain matters are true. If the other party admits those matters, you must accept them as true. No further evidence is required to prove them.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 212 - Statements of a Party Opponent

A party may offer into evidence any oral or written statement made by an opposing party outside the courtroom.

When you evaluate evidence of such a statement, you must consider these questions:

1. Do you believe that the party actually made the statement? If you do not believe that the party made the statement, you may not consider the statement at all.

2. If you believe that the statement was made, do you believe it was reported accurately?

You should view testimony about an oral statement made by a party outside the courtroom with caution.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 215 - Exercise of a Communication Privilege

The parties have an absolute right not to disclose what they told there attorneys in confidence because the law considers this information privileged. Do not consider, for any reason at all, the fact that the parties did not disclose what they told their attorneys. Do not discuss that fact during your deliberations or let it influence your decision in any way.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 223 - Opinion Testimony of Lay Witness

A witness who was not testifying as an expert gave an opinion during the trial. You may, but are not required to, accept that opinion. You may give the opinion whatever weight you think is appropriate.

Consider the extent of the witness's opportunity to perceive the matters on which the opinion is based, the reasons the witness gave for the opinion, and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion that you find unbelievable, unreasonable, or unsupported by the evidence.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 300 - Breach of Contract—Introduction

A. Geraci Breach of Contract Claim

Larry Geraci claims that he and Darryl Cotton entered into a written contract for the purchase and sale of Darryl Cotton's property located at 6176 Federal Boulevard to Larry Geraci upon the terms and conditions stated in the written agreement. The purchase price was $800,000.00. The sale was conditioned upon Larry Geraci obtaining approval by the City of San Diego of a Conditional Use Permit to operate a Medical Marijuana Dispensary on the property. Larry Geraci paid Darryl Cotton $10,000 good faith earnest money to be applied to the sales price with the balance of $790,000.00 to be due upon satisfaction of the condition, namely, obtaining approval of a Conditional Use Permit.

Larry Geraci claims that Darryl Cotton anticipatorily breached this written contract by stating he would not perform the contract and by entering into another contract to sell the property.

Larry Geraci also claims that Darryl Cotton breached the covenant of good faith and fair dealing implied in every contract by engaging in conduct which interfered with Larry Geraci's efforts to obtain approval of the Conditional Use Permit in order to satisfy that condition of the contract and thereby deprived Larry Geraci of the benefits of the contract.

Larry Geraci seeks damages from Darryl Cotton for all amounts expended by him in reliance on the contract in seeking to obtain approval of the Conditional Use Permit.

Darryl Cotton denies he breached the alleged written contract or the covenant of good faith and fair dealing implied in the alleged written contract. Darryl Cotton denies he entered into the alleged written contract. Darry Cotton also contends that no written contract was created because his assent was obtained by fraud.

B. Cotton Breach of Contract Claim

Darryl Cotton contends that he did not have a written contract with Larry Geraci; rather, he contends that he had an oral contract with Larry Geraci for the purchase and sale of Darryl Cotton's property located at 6176 Federal Boulevard containing different and additional terms and conditions than those stated in the written contract alleged by Larry Geraci. Darryl Cotton alleges the terms and conditions of the oral contract included, but were not limited to: payment

by Geraci of a $50,000.00 non-refundable deposit (and alleging he writing signed by the parties was merely a receipt for payment of initial earnest money of $10,000.00); the sale was conditioned upon Larry Geraci obtaining approval of the Conditional Permit; and upon approval of the Conditional Use Permit and satisfaction of that condition, payment by Geraci of an additional $750,000.00 (total $800,000.00) plus a 10% equity stake in the dispensary with minimum cash distributions of $10,000.00 per month.

Darryl Cotton alleges Larry Geraci breached this oral contract by, among other things, insisting that the writing signed by the parties was the written contract between them for the sale and purchase of the property. Darryl Cotton seeks damages resulting from the alleged breach.

Larry Geraci denies he breached the alleged oral contract. Larry Geraci denies he entered into the alleged oral contract. Larry Geraci contends that the parties entered into a written contract for the sale and purchase of the property.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 302- Contract Formation—Essential Factual Elements

A. Geraci Breach of Contract Claim

Larry Geraci claims that the parties entered into a written contract. To prove that a contract was created, Larry Geraci must prove all of the following:

1. That the contract terms were clear enough that the parties could understand what each was required to do;

2. That the parties agreed to give each other something of value a promise to do something or not to do something may have value; and

3. That the parties agreed to the terms of the contract.

When you examine whether the parties agreed to the terms of the contract, ask yourself if, under the circumstances, a reasonable person would conclude, from the words and conduct of each party, that there was an agreement. You may not consider the parties' hidden intentions.

If Larry Geraci did not prove all of the above, then a contract was not created.

B. Cotton Breach of Contract Claim

Darryl Cotton claims that the parties entered into an oral contract. To prove that a contract was created, Darryl Cotton must prove all of the following:

1. That the contract terms were clear enough that the parties could understand what each was required to do;

2. That the parties agreed to give each other something of value a promise to do something or not to do something may have value; and

3. That the parties agreed to the terms of the contract.

When you examine whether the parties agreed to the terms of the contract, ask yourself if, under the circumstances, a reasonable person would conclude, from the words and conduct of each party, that there was an agreement. You may not consider the parties' hidden intentions.

If Darryl Cotton did not prove all of the above, then a contract was not created.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 303 - Breach of Contract—Essential Factual Elements

A. Geraci Breach of Contract Claim

To recover damages from Darryl Cotton for breach of contract, Larry Geraci must prove all of the following:

1. That Larry Geraci and Darryl Cotton entered into a contract;

2. That Larry Geraci was excused from having to satisfy the condition of obtaining approval of a Conditional Use Permit for the property to operate a medical marijuana dispensary;

3. That Darryl Cotton did something that the contract prohibited him from doing;

4. That Larry Geraci was harmed; and

5. That Darryl Cotton's breach of contract was a substantial factor in causing Larry Geraci's harm.

B. Cotton Breach of Contract Claim

To recover damages from Larry Geraci for breach of contract, Darryl Cotton must prove all of the following:

1. That Darryl Cotton and Larry Geraci entered into a contract;

2. That Darryl Cotton did all, or substantially all, of the significant things that the contract required him to do;

3. That a Conditional Use Permit for the property to operate a medical marijuana dispensary was approved and thus satisfied that condition in the contract;

4. That Darryl Cotton was harmed; and

5. That Larry Geraci's breach of contract was a substantial factor in causing Darryl Cotton's harm.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 304 - Oral or Written Contract Terms [MODIFIED]

Generally, contracts may be written or oral.

However, a contract for the purchase and sale of real property is invalid unless the agreement or some other note or memorandum is in writing, signed by the parties or the parties' agent, and contains all essential terms of the purchase and sale agreement.

AUTHORITY: Cal. Civil Code § 1624

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

Special No. 1 – Statute of Frauds

A contract for the purchase and sale of real property is invalid unless it is in writing, signed by the parties, and contains all essential terms.

The essential terms of a real estate purchase and sale agreement generally include the parties, the price, the time and manner of payment, and a description of the property to be sold so that it may be identified. Only the essential terms must be stated, details or particulars need not be. A term is essential if the inability to enforce that term strictly would make enforcement of the remainder of the agreement unfair.

AUTHORITY:

A contract for the purchase and sale of real property is invalid unless it is in writing, signed by the parties, and contains all essential terms. Cal. Civil Code § 1624; *Sterling v. Taylor* (2007) 40 Cal.4th 757, 766.

The essential terms of a real estate purchase and sale agreement are the parties, the price, the time and manner of payment, and a description of the property to be transferred so that it may be identified. *King v. Stanley* (1948) 32 Cal.2d 584; *see also Patel v. Liebermensch* (2008) 45 Cal.4th 344, 349)

"Only the essential terms must be stated, details or particulars need not be." *Sterling v. Taylor* (2007) 40 Cal.4th 757, 766.

A term is essential if the inability to enforce that term strictly would make the enforcement of the remainder of the agreement unfair. *City of Los Angeles v. Superior Court* (1959) 51 Cal.2d 423, 433.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

Special Instruction No. 3 – Integration of a Written Contract

A written contract is considered fully integrated if the parties intended their written agreement to serve as the complete and exclusive statement of the terms of the agreement.

If you find that the parties intended the written contract to serve as the complete and exclusive statement of the terms of their agreement (in other words, fully integrated), then you may not consider any prior or contemporaneous oral agreement(s) to add to, to vary, to explain, or to supplement the terms of the written agreement.

A written contract is considered partially integrated if the parties intended the writing to be the final expression of their agreement.

If you find that the parties intended the writing to be the final expression of their agreement (in other words, partially integrated), then you may consider evidence of any prior or contemporaneous oral agreement(s) to explain or supplement the terms of the written agreement but only if those prior or contemporaneous oral agreement(s) do not contradict the writing.

AUTHORITY:

Cal. Civil Code § 1856

Kanno v. Marwit Capital Partners II, L.P. (2017) 18 Cal.App.5th 987, 1000-1001

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

Special Instruction No. 4 – Rebecca Barry Was Geraci's Agent

At all relevant times, Ms. Rebecca Barry was acting as an agent on behalf of Larry Geraci.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 314 - Interpretation—Disputed Words

Larry Geraci and Darryl Cotton dispute the meaning of the following words in the written contract: "good faith earnest money",

Larry Geraci] claims that the words mean the same thing as a "non-refundable deposit."

Darryl Cotton] claims that the words mean [insert defendant's interpretation].

Larry Geraci] must prove that his interpretation is correct.

In deciding what the words of a contract mean, you must decide what the parties intended at the time the contract was created. You may consider the usual and ordinary meaning of the language used in the contract as well as the circumstances surrounding the making of the contract.

The following instructions may also help you interpret the words of the contract:

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

Special No. 3 – Good Faith Earnest Money – Definition

Earnest money is a sum of money paid by a buyer at the time of tendering a contract to indicate the intention and ability of the buyer to carry out the contract. It is a deposit of part payment of purchase price on a sale to be consummated in the future. Normally such earnest money is applied against the purchase price. Often the contract provides for forfeiture of this sum if the buyer defaults.

AUTHORITY: Black's Law Dictionary

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 315 - Interpretation—Meaning of Ordinary Words

You should assume that the parties intended the words in their contract to have their usual and ordinary meaning unless you decide that the parties intended the words to have a special meaning.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 317 - Interpretation—Construction of Contract as a Whole

In deciding what the words of a contract meant to the parties, you should consider the whole contract, not just isolated parts. You should use each part to help you interpret the others, so that all the parts make sense when taken together.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 322 - Occurrence of Agreed Condition Precedent [MODIFIED]

The parties agreed in their contract that Darryl Cotton would not have to sell his property to Larry Geraci unless Larry Geraci obtained approval of a Conditional Use Permit to operate a medical marijuana dispensary on the property.

It is not disputed Larry Geraci was unable to obtain approval of a Conditional Use Permit to operate a medical marijuana dispensary on the property and, therefore, the condition was not satisfied unless the performance of this condition precedent was excused by conduct of Darryl Cotton which interfered with Larry Geraci's efforts to satisfy this condition.

AUTHORITY:

CACI 303 – see Use Note, and CACI 325

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 323 Waiver of Condition Precedent

[Name of plaintiff] and [name of defendant] agreed in their contract that [name of defendant] would not have to [insert duty] unless [insert condition precedent]. That condition did not occur. Therefore, [name of defendant] contends that [he/she/it] did not have to [insert duty].

To overcome this contention, [name of plaintiff] must prove by clear and convincing evidence that [name of defendant], by words or conduct, gave up [his/her/its] right to require [insert condition precedent] before having to [insert duty].

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 324 - Anticipatory Breach

A party can breach, or break, a contract before performance is required by clearly and positively indicating, by words or conduct, that he or she will not or cannot meet the requirements of the contract.

If Larry Geraci proves that he would have been able to fulfill the terms of the contract and that Darryl Cotton clearly and positively indicated, by words or conduct, that he would not or could not meet the contract requirements, then Darryl Cotton breached the contract.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 325 - Breach of Implied Covenant of Good Faith and Fair Dealing—Essential Factual Elements

In every contract or agreement there is an implied promise of good faith and fair dealing. This means that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract; however, the implied promise of good faith and fair dealing cannot create obligations that are inconsistent with the terms of the contract. Larry Geraci claims that Darryl Cotton violated the duty to act fairly and in good faith. To establish this claim, Larry Geraci must prove all of the following:

1. That Larry Geraci and Darryl Cotton entered into a contract;

2. That Larry Geraci did all, or substantially all of the significant things that the contract required him with the exception of obtaining approval of a Conditional Use Permit and, as to that, was excused by prevention or hindrance of that occurrence as the result of Darryl Cotton's acts;

3. That Darryl Cotton unfairly interfered with Larry Geraci's right to receive the benefits of the contract; and

4. That Larry Geraci was harmed by Darryl Cotton's conduct.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 335 - Affirmative Defense—Fraud

Darryl Cotton claims that no contract was created because his consent was obtained by fraud. To succeed, Darryl Cotton must prove all of the following:

1. That Larry Geraci represented that [insert alleged fraudulent statement];

2. That Larry Geraci knew that the representation was not true;

3. That Larry Geraci made the representation to persuade Darryl Cotton to agree to the contract;

4. That Darryl Cotton reasonably relied on this representation; and

5. That Darryl Cotton would not have entered into the contract if he had known that the representation was not true.

If you decide that Darryl Cotton has proved all of the above, then no contract was created.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 336 Affirmative Defense—Waiver

[Name of defendant] claims that [he/she/it] did not have to [insert description of performance] because [name of plaintiff] gave up [his/her/its] right to have [name of defendant] perform [this/these] obligation[s]. This is called a "waiver."

To succeed, [name of defendant] must prove both of the following by clear and convincing evidence:

1. That [name of plaintiff] knew [name of defendant] was required to [insert description of performance]; and

2. That [name of plaintiff] freely and knowingly gave up [his/her/its] right to have [name of defendant] perform [this/these] obligation[s].

A waiver may be oral or written or may arise from conduct that shows that [name of plaintiff] gave up that right.

If [name of defendant] proves that [name of plaintiff] gave up [his/her/its] right to [name of defendant]'s performance of [insert description of performance], then [name of defendant] was not required to perform [this/these] obligation[s].

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 350 - Introduction to Contract Damages

A. Geraci Breach of Contract Claim

If you decide that Larry Geraci has proved his claim against Darryl Cotton for breach of contract or his claim against Darryl Cotton for breach of the implied covenant of good faith and fair dealing, then you also must decide how much money will reasonably compensate Larry Geraci for the harm caused by the breach. This compensation is called "damages." The purpose of such damages is to put Larry Geraci in as good a position as he would have been if Darryl Cotton had performed as promised.

To recover damages for any harm, Larry Geraci must prove that when the contract was made, both parties knew or could reasonably have foreseen that the harm was likely to occur in the ordinary course of events as result of the breach of the contract.

Larry Geraci also must prove the amount of his damages according to the following instructions. He does not have to prove the exact amount of damages. You must not speculate or guess in awarding damages.

Larry Geraci claims damages for all of the expenses he incurred attempting to obtain approval for a Conditional Use Permit to operate a medical marijuana dispensary at 6176 Federal Boulevard.

B. Cotton Breach of Contract Claim

If you decide that Darryl Cotton has proved his claim against Larry Geraci for breach of contract, then you also must decide how much money will reasonably compensate Darryl Cotton for the harm caused by the breach. This compensation is called "damages." The purpose of such damages is to put Darryl Cotton in as good a position as he would have been if Larry Geraci had performed as promised.

To recover damages for any harm, Darryl Cotton must prove that when the contract was made, both parties knew or could reasonably have foreseen that the harm was likely to occur in the ordinary course of events as result of the breach of the contract.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

Darryl Cotton also must prove the amount of his damages according to the following instructions. He does not have to prove the exact amount of damages. You must not speculate or guess in awarding damages.

Darryl Cotton claims damages for _____.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 361 - Reliance Damages

If you decide that Darryl Cotton breached the contract or breached the implied covenant of good faith and fair dealing, then Larry Geraci may recover the reasonable amount of money that he spent in preparing for contract performance. These amounts are called "reliance damages." Larry Geraci must prove the amount that he was induced to spend in reliance on the contract.

If Larry Geraci proves reliance damages, Darryl Cotton may avoid paying some or all of those damages by proving include one or both of the following:

1. That some or all of the money that Larry Geraci spent in reliance was unnecessary;

2. That Larry Geraci would have suffered a loss even if Darryl Cotton had fully performed his obligations under the contract.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 3925 - Arguments of Counsel Not Evidence of Damages

The arguments of the attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 1900 - Intentional Misrepresentation

Darryl Cotton claims that Larry Geraci made a false representation that harmed him. To establish this claim, Darryl Cotton must prove all of the following:

1. That Larry Geraci represented to Darryl Cotton that a fact was true;

2. That Larry Geraci's representation was false;

3. That Larry Geraci knew that the representation was false when he made it, or that he made the representation recklessly and without regard for its truth;

4. That Larry Geraci intended that Darryl Cotton rely on the representation;

5. That Darryl Cotton reasonably relied on Larry Geraci's representation;

6. That Darryl Cotton was harmed; and

7. That Darryl Cotton's reliance on Larry Geraci's representation was a substantial factor in causing his harm.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motibn	
Refused					
Withdrawn		Judge			

CACI 1902 - False Promise

Darryl Cotton claims he was harmed because Larry Geraci made a false promise. To establish this claim, Darryl Cotton must prove all of the following:

1. That Larry Geraci made a promise to Darryl Cotton;

2. That Larry Geraci did not intend to perform this promise when he made it;

3. That Larry Geraci intended that Darryl Cotton rely on this promise;

4. That Darryl Cotton reasonably relied on Larry Geraci's promise;

5. That Larry Geraci did not perform the promised act;

6. That Darryl Cotton was harmed; and

7. That Darryl Cotton's reliance on Larry Geraci's promise was a substantial factor in causing his harm.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 1903 - Negligent Misrepresentation

Darryl Cotton claims he was harmed because Larry Geraci negligently misrepresented a fact. To establish this claim, Darryl Cotton must prove all of the following:

1. That Larry Geraci represented to Darryl Cotton that a fact was true;

2. That Larry Geraci's representation was not true;

3. That although Larry Geraci may have honestly believed that the representation was true, Larry Geraci had no reasonable grounds for believing the representation was true when he made it;

4. That Larry Geraci intended that Darryl Cotton rely on this representation;

5. That Darryl Cotton reasonably relied on Larry Geraci's representation;

6. That Darryl Cotton was harmed; and

7. That Darryl Cotton's reliance on Larry Geraci's representation was a substantial factor in causing his harm.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 1904 - Opinions as Statements of Fact [MODIFIED]

Ordinarily, an opinion is not considered a representation of fact. An opinion is a person's belief that a fact exists, a statement regarding a future event, or a judgment about quality, value, authenticity, or similar matters.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 1907 - Reliance

Darryl Cotton relied on Larry Geraci's misrepresentation or false promise if:

1. The misrepresentation or false promise substantially influenced him to sell his property to Larry Geraci; and

2. He would probably not have sold the property to Larry Geraci without the misrepresentation or false promise.

It is not necessary for a misrepresentation or false promise to be the only reason for Darryl Cotton's conduct.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 1908 - Reasonable Reliance

In determining whether Darryl Cotton's reliance on the misrepresentation or false promise was reasonable, he must first prove that the matter was material. A matter is material if a reasonable person would find it important in determining his or her choice of action.

If you decide that the matter is material, you must then decide whether it was reasonable for Darryl Cotton to rely on the misrepresentation or false promise. In making this decision, take into consideration Darryl Cotton's intelligence, knowledge, education, and experience.

However, it is not reasonable for anyone to rely on a misrepresentation or false promise that is preposterous. It also is not reasonable for anyone to rely on a misrepresentation or false promise if facts that are within his observation show that it is obviously false.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 1923 Damages – "Out of Pocket Rule"

If you decide that Darryl Cotton has proved his claim against Larry Geraci, you also must decide how much money will reasonably compensate Darryl Cotton for the harm. This compensation is called "damages."

The amount of damages must include an award for all harm that Larry Geraci was a substantial factor in causing, even if the particular harm could not have been anticipated.

Darryl Cotton must prove the amount of his damages. However, Darryl Cotton does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. You must not speculate or guess in awarding damages.

To decide the amount of damages, you must determine the fair market value that Darryl Cotton gave and subtract from that the fair market value of what he received.

"Fair market value" is the highest price that a willing buyer would have paid on the date of the transaction to a willing seller, assuming:

1. That there is no pressure on either one to buy or sell; and

2. That the buyer and seller know all the uses and purposes for which the property is reasonably capable of being used.

Darryl Cotton may also recover amounts that he reasonably spent in reliance on Larry Geraci's false representations or false promise if those amounts would not otherwise have been spent.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5000 - Duties of the Judge and Jury

Members of the jury, you have now heard all the evidence. The attorneys will have one last chance to talk to you in closing argument. But before they do, it is my duty to instruct you on the law that applies to this case. You must follow these instructions [as well as those that I previously gave you]. You will have a copy of my instructions with you when you go to the jury room to deliberate. [I have provided each of you with your own copy of the instructions.] [I will display each instruction on the screen.]

You must decide what the facts are. You must consider all the evidence and then decide what you think happened. You must decide the facts based on the evidence admitted in this trial.

Do not allow anything that happens outside this courtroom to affect your decision. Do not talk about this case or the people involved in it with anyone, including family and persons living in your household, friends and coworkers, spiritual leaders, advisors, or therapists. Do not do any research on your own or as a group. Do not use dictionaries or other reference materials.

These prohibitions on communications and research extend to all forms of electronic communications. Do not use any electronic devices or media, such as a cell phone or smart phone, PDA, computer, tablet device, the Internet, any Internet service, any text or instant-messaging service, any Internet chat room, blog, or website, including social networking websites or online diaries, to send or receive any information to or from anyone about this case or your experience as a juror until after you have been discharged from your jury duty.

Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. [Do not read, listen to, or watch any news accounts of this trial.] You must not let bias, sympathy, prejudice, or public opinion influence your decision.

[If you violate any of these prohibitions on communications and research, including prohibitions on electronic communications and research, you may be held in contempt of court or face other sanctions. That means that you may have to serve time in jail, pay a fine, or face other punishment for that violation.]

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

I will now tell you the law that you must follow to reach your verdict. You must follow the law exactly as I give it to you, even if you disagree with it. If the attorneys [have said/say] anything different about what the law means, you must follow what I say.

In reaching your verdict, do not guess what I think your verdict should be from something I may have said or done.

Pay careful attention to all the instructions that I give you. All the instructions are important because together they state the law that you will use in this case. You must consider all of the instructions together.

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

If I repeat any ideas or rules of law during my instructions that does not mean that these ideas or rules are more important than the others. In addition, the order in which the instructions are given does not make any difference.

[Most of the instructions are typed. However, some handwritten or typewritten words may have been added, and some words may have been deleted. Do not discuss or consider why words may have been added or deleted. Please treat all the words the same, no matter what their format. Simply accept the instruction in its final form.]

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5002 - Evidence

You must decide what the facts are in this case only from the evidence you have seen or heard during the trial, including any exhibits that I admit into evidence. Sworn testimony, documents, or anything else may be admitted into evidence. You may not consider as evidence anything that you saw or heard when court was not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggested that it was true. [However, the attorneys for both sides have agreed that certain facts are true. This agreement is called a stipulation. No other proof is needed and you must accept those facts as true in this trial.]

Each side had the right to object to evidence offered by the other side. If I sustained an objection to a question, ignore the question and do not guess as to why I sustained the objection. If the witness did not answer, you must not guess what he or she might have said. If the witness already answered, you must ignore the answer.

[During the trial I granted a motion to strike testimony that you heard. You must totally disregard that testimony. You must treat it as though it did not exist.]

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5003 - Witnesses

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

(a) How well did the witness see, hear, or otherwise sense what he or she described in court?

(b) How well did the witness remember and describe what happened?

(c) How did the witness look, act, and speak while testifying?

(d) Did the witness have any reason to say something that was not true? For example, did the witness show any bias or prejudice or have a personal relationship with any of the parties involved in the case or have a personal stake in how this case is decided?

(e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness did not tell the truth about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness did not tell the truth about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased in favor of or against any witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, [or] socioeconomic status[, or [insert any other impermissible form of bias]].

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5009 - Predeliberation Instructions

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently.

Please do not state your opinions too strongly at the beginning of your deliberations or immediately announce how you plan to vote as it may interfere with an open discussion. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

You should use your common sense and experience in deciding whether testimony is true and accurate. However, during your deliberations, do not make any statements or provide any information to other jurors based on any special training or unique personal experiences that you may have had related to matters involved in this case. What you may know or have learned through your training or experience is not a part of the evidence received in this case.

Sometimes jurors disagree or have questions about the evidence or about what the witnesses said in their testimony. If that happens, you may ask to have testimony read back to you or ask to see any exhibits admitted into evidence that have not already been provided to you. Also, jurors may need further explanation about the laws that apply to the case. If this happens during your discussions, write down your questions and give them to the bailiff. I will talk with the attorneys before I answer so it may take some time. You should continue your deliberations while you wait for my answer. I will do my best to answer them. When you write me a note, do not tell me how you voted on an issue until I ask for this information in open court.

At least nine jurors must agree on a verdict. When you have finished filling out the form, your presiding juror must write the date and sign it at the bottom and then notify the

bailiff that you are ready to present your verdict in the courtroom.]

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

Your decision must be based on your personal evaluation of the evidence presented in the case. Each of you may be asked in open court how you voted on each question.

While I know you would not do this, I am required to advise you that you must not base your decision on chance, such as a flip of a coin. If you decide to award damages, you may not agree in advance to simply add up the amounts each juror thinks is right and then, without further deliberations, make the average your verdict.

You may take breaks, but do not discuss this case with anyone, including each other, until all of you are back in the jury room.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5010 - Taking Notes During the Trial

If you have taken notes during the trial, you may take your notebooks with you into the jury room.

You may use your notes only to help you remember what happened during the trial. Your independent recollection of the evidence should govern your verdict. You should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

At the end of the trial, your notes will be [collected and destroyed/collected and retained by the court but not as a part of the case record/[specify other disposition]].

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5011 - Reading Back of Trial Testimony in Jury Room

You may request in writing that trial testimony be read to you. I will have the court reporter read the testimony to you. You may request that all or a part of a witness's testimony be read.

Your request should be as specific as possible. It will be helpful if you can state:

1. The name of the witness;

2. The subject of the testimony you would like to have read; and

3. The name of the attorney or attorneys asking the questions when the testimony was given.

The court reporter is not permitted to talk with you when she or he is reading the testimony you have requested.

While the court reporter is reading the testimony, you may not deliberate or discuss the case.

You may not ask the court reporter to read testimony that was not specifically mentioned in a written request. If your notes differ from the testimony, you must accept the court reporter's record as accurate.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5012 - Introduction to Special Verdict Form

I will give you verdict forms with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the forms carefully. You must consider each question separately. Although you may discuss the evidence and the issues to be decided in any order, you must answer the questions on the verdict forms in the order they appear. After you answer a question, the form tells you what to do next. At least 9 of you must agree on an answer before you can move on to the next question. However, the same 9 or more people do not have to agree on each answer.

All 12 of you must deliberate on and answer each question regardless of how you voted on any earlier question. Unless the verdict form tells all 12 jurors to stop and answer no further questions, every juror must deliberate and vote on all of the remaining questions.

When you have finished filling out the forms, your presiding juror must write the date and sign it at the bottom of the last page and then notify the bailiff that you are ready to present your verdict in the courtroom.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5016 - Judge's Commenting on Evidence

In this case, I have exercised my right to comment on the evidence. However, you the jury are the exclusive judges of all questions of fact and of the credibility of the witnesses. You are free to completely ignore my comments on the evidence and to reach whatever verdict you believe to be correct, even if it is contrary to any or all of those comments.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5017 - Polling the Jury

After your verdict is read in open court, you may be asked individually to indicate whether the verdict expresses your personal vote. This is referred to as "polling" the jury and is done to ensure that at least nine jurors have agreed to each decision.

The verdict forms that you will receive ask you to answer several questions. You must vote separately on each question. Although nine or more jurors must agree on each answer, it does not have to be the same nine for each answer. Therefore, it is important for each of you to remember how you have voted on each question so that if the jury is polled, each of you will be able to answer accurately about how you voted.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5020 - Demonstrative Evidence

During the trial, materials have been shown to you to [help explain testimony or other evidence in the case/ [specify other purpose]]. [Some of these materials have been admitted into evidence, and you will be able to review them during your deliberations.

Other materials have also been shown to you during the trial, but they have not been admitted into evidence.] You will not be able to review them during your deliberations because they are not themselves evidence or proof of any facts. You may, however, consider the testimony given in connection with those materials.

Request by Plaintiff		Requested by Defendant		Request by	
Given as Requested		Given as Modified		Given Court's Motion	
Refused					
Withdrawn		Judge			

CACI 5021 - Electronic Evidence

Some exhibits that have been admitted into evidence will be provided to you electronically. The equipment necessary to view these exhibits will be available to you in the jury room. Do not use the equipment for any purpose other than to view the electronic exhibits. Do not use it to access the Internet or any other source of information. Do not use it for any personal reason whatsoever, including but not limited to reviewing email, entertainment, or engaging in social media.

If you need technical assistance or additional equipment or supplies, you may make a request by sending me a note through the bailiff. Should it become necessary for a technician to enter the jury room, stop your deliberations until the technician has left. Do not discuss with him or her, or with each other, any exhibit or any aspect of the case while the technician is present. Do not say anything to the technician other than to (1) describe the technical problem(s) and/or to (2) request instruction on how to operate the equipment.

[You may request a paper copy of an exhibit received in evidence. One will be supplied, if possible.]

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Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

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

SPECIAL VERDICT FORM NO. 1 [PROPOSED BY PLAINTIFF GERACI]

[IMAGED FILE]

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

WE, THE JURY, in the above entitled action, find the following special verdict on the questions submitted to us:

SECTION 1

GERACI CLAIM - BREACH OF CONTRACT

We answer the questions submitted to us as follows:

1. Did Larry Geraci and Darryl Cotton enter into a contract?

____Yes ____No

If your answer to question 1 is yes, then answer question 2. If you answered no, then skip forward to SECTION 2 and answer question 8.

2. Did Larry Geraci do all, or substantially all, of the significant things that the contract required him to do?

____Yes ____No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Was Larry Geraci excused from having to do all, or substantially all, of the significant things that the contract required him to do?

____Yes ____No

If your answer to question 3 is yes, then answer question 4. If you answered no, then skip forward to SECTION 2 and answer question 8..

4. Did all the conditions that were required for Darryl Cotton's performance occur?

____Yes ____ No

If your answer to question 4 is yes, skip question 5 and answer question 6. If you answered no, then answer question 5.

5. Was the required condition that did not occur excused?

____Yes ____ No

If your answer to question 5 is yes, then answer question 6. If you answered no, then skip forward to SECTION 2 and answer question 8.

6. Did Darryl Cotton fail to do something that the contract required him to do?

____Yes ____ No]

or

Did Darryl Cotton do something that the contract prohibited him from doing?

____Yes ____ No]

If your answer to either option for question 6 is yes, then answer question 7. If you answered no to both options, then skip forward to SECTION 2 and answer question 8.

7. Was Larry Geraci harmed by Darryl Cotton's breach of contract?

____Yes ____ No

Please go to SECTION 2 and answer question 8. (Note: If you answered question 7 yes, then later in this verdict form you will also be asked to answer question 15 in SECTION 3.)

SECTION 2

GERACI CLAIM - BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

8. Did Larry Geraci and Darryl Cotton enter into a contract?

____Yes ____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, then skip forward to SECTION 3 and answer question 15 if directed to do so.

9. Did Larry Geraci do all, or substantially all, of the significant things that the contract required him to do?

____Yes ____ No]

If your answer to question 2 is yes, skip question 10 and answer question 11. If you answered no, then answer question 10.

10. Was Larry Geraci excused from having to do all, or substantially all, of the significant things that the contract required him to do?

____Yes ____ No

If your answer to question 10 is yes, then answer question 11. If you answered no, then skip forward to SECTION 3 and answer questions question 15 if directed to do so.

11. Did all the conditions that were required for Darryl Cotton's performance occur?

____Yes ____ No

If your answer to question 11 is yes, then skip question 12 and answer question 13. If you answered no, answer question 13.

12. Were the required conditions that did not occur excused?

____Yes ____ No

If your answer to question 12 is yes, then answer question 13. If you answered no, then skip forward to SECTION 3 and answer question 15 if directed to do so.

13. Did Darryl Cotton unfairly interfere with Larry Geraci's right to receive the benefits of the contract?

____Yes ____ No

If your answer to question 13 is yes, then answer question 14. If you answered no, then skip forward to SECTION 3 and answer question 15 if directed to do so.

14. Was Larry Geraci harmed by Darryl Cotton's interference?

____Yes ____ No

Please go to SECTION 3 and answer question 15 if directed to do so.

SECTION 3

DAMAGES

If you answered "Yes" to either question 7 or question 14, than answer question 15 below.
If you did not answer "Yes" to either question 7 or question 14, then answer no further questions and have the presiding juror sign and date this form.

15. What are Larry Geraci's damages?

a. Past economic loss [including expenses incurred in efforts to obtain CUP approval]: TOTAL $_____

Signed : _____

Presiding Juror

Dated: _____

After all verdict forms have been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

AUTHORITY: CACI VF-300 and CACI VF-304

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Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

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

SPECIAL VERDICT FORM NO. 2 [PROPOSED BY PLAINTIFF/CROSS-DEFENDANT GERACI]

[IMAGED FILE]

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

WE, THE JURY, in the above entitled action, find the following special verdict on the questions submitted to us:

SECTION 1

COTTON CLAIM - BREACH OF CONTRACT

We answer the questions submitted to us as follows:

1. Did Larry Geraci and Darryl Cotton enter into a contract?

____Yes ____ No

If your answer to question 1 is yes, then answer question 2. If you answered no, then skip forward to SECTION __ and answer question __.

2. Did Darryl Cotton do all, or substantially all, of the significant things that the contract required him to do?

____Yes ____ No

If your answer to question 2 is yes, skip question 3 and answer question 4. If you answered no, answer question 3.

3. Did all the conditions that were required for Larry Geraci's performance occur?

____Yes ____ No

If your answer to question 3 is yes, then answer question 4. If you answered no, then skip forward to SECTION 2 and answer question __.

4. Did Larry Geraci fail to do something that the contract required him to do?

____Yes ____ No]

or

Did Larry Geraci do something that the contract prohibited him from doing?

____Yes ____ No]

If your answer to either option for question 4 is yes, then answer question 5. If you answered no to both options, then skip forward to SECTION 2 and answer question 6.

5. Was Darryl Cotton harmed by Larry Geraci's breach of contract?

____Yes ____ No

Please go to SECTION 2 and answer question 6. (Note: If you answered question 5 yes, then later in this verdict form you will also be asked to answer question __ in SECTION 5.)

SECTION 2

COTTON CLAIM – INTENTIONAL MISREPRESENTATION

6. Did Larry Geraci make a false representation of facts to Darryl Cotton?

____Yes ____ No

If your answer to question 6 is yes, then answer question 7. If you answered no, then skip forward to SECTION 3 and answer question __.

7. Did Larry Geraci know that the representation was false, or did he make the statement without a reasonable belief that it was true?

____Yes ____ No

If your answer to question 2 is yes, then answer question 8. If you answered no, then skip forward to SECTION 3 and answer question __.

8. Did Larry Geraci intend that Darryl Cotton rely on the representation?

____Yes ____ No

If your answer to question 8 is yes, then answer question 9. If you answered no, then skip forward to SECTION 3 and answer question __.

9. Did Darryl Cotton reasonably rely on the representation?

____Yes ____ No

If your answer to question 9 is yes, then answer question 10. If you answered no, then skip forward to SECTION 3 and answer question __.

10. Was Darryl Cotton's reliance on Larry Geraci's representation a substantial factor in causing harm to Darryl Cotton?

____Yes ____ No

If your answer to question 10 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

Please go to SECTION 3 and answer question 11. (Note: If you answered question 10 yes, then later in this verdict form you will also be asked to answer question __ in SECTION 5.)

SECTION 3

COTTON CLAIM – FALSE PROMISE

11. Did Larry Geraci make a promise to Darryl Cotton?

____Yes ____ No

If your answer to question 11 is yes, then answer question 12. If you answered no, then skip forward to SECTION 4 and answer question __.

12. Did Larry Geraci intend to perform this promise when he made it?

____Yes ____ No

If your answer to question 12 is no, then answer question 13. If you answered yes, then skip forward to SECTION 4 and answer question __.

13. Did Larry Geraci intend that Darryl Cotton rely on this promise?

____Yes ____ No

If your answer to question 13 is yes, then answer question 14. If you answered no, then skip forward to SECTION 4 and answer question __.

14. Did Darryl Cotton reasonably rely on this promise?

____Yes ____ No

If your answer to question 14 is yes, then answer question 15. If you answered no, then skip forward to SECTION 4 and answer question __.

15. Did Larry Geraci perform the promised act?

____Yes ____ No

If your answer to question 15 is no, then answer question 16. If you answered yes, then skip forward to SECTION 4 and answer question __.

16. Was Darryl Cotton's reliance on Larry Geraci's promise a substantial factor in causing harm to Darryl Cotton?

____Yes ____No

Please go to SECTION 4 and answer question 17. (Note: If you answered question 16 yes, then later in this verdict form you will also be asked to answer question __ in SECTION 5.)

SECTION 4

COTTON CLAIM – NEGLIGENT MISREPRESENTATION

17. Did Larry Geraci make a false representation of facts to Darryl Cotton?

____Yes ____No

If your answer to question 17 is yes, then answer question 18. If you answered no, then skip forward to SECTION 5 and answer question __ if directed to do so.

18. Did Larry Geraci honestly believe that the representation was true when he made it?

____Yes ____No

If your answer to question 18 is yes, then answer question 19. If you answered no, then skip forward to SECTION 5 and answer question __ if directed to do so.

19. Did Larry Geraci have reasonable grounds for believing the representation was true when he made it?

____Yes ____No

If your answer to question 19 is no, then answer question 20. If you answered yes, then skip forward to SECTION 5 and answer question __ if directed to do so.

stop here, answer no further questions, and have the presiding juror sign and date this form.

20. Did Larry Geraci intend that Darryl Cotton rely on the representation?

____Yes ____No

If your answer to question 20 is yes, then answer question 21. If you answered no, then skip forward to SECTION 5 and answer question __ if directed to do so.

21. Did Darryl Cotton reasonably rely on the representation?

____Yes ____No

If your answer to question 21 is yes, then answer question 22. If you answered no, then skip forward to SECTION 5 and answer question __ if directed to do so.

22. Was Darryl Cotton's reliance on Larry Geraci's representation a substantial factor in causing harm to Darryl Cotton?

____Yes ____No

Please go to SECTION 5 and answer question 23 if directed to do so.

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SECTION 5

DAMAGES

If you answered "Yes" to either question 5 or question 10 or question 16 or question 22, then answer question 23 below.

If you did not answer "Yes" to either question 5 or question 10 or question 16 or question 22, then answer no further questions and have the presiding juror sign and date this form.

23. What are Darryl Cotton's damages?

a. Past economic loss

[including _____] TOTAL $ _____

Signed : _____

Presiding Juror

Dated: _____

After all verdict forms have been signed, notify the [clerk/bailiff/court attendant] that you are ready to present your verdict in the courtroom.

AUTHORITY: CACI VF-300. VF-1900, VF-1902, and VF-1904

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FILED
Clerk of the Superior Court
JUL 11 2019
By: A. TAYLOR

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
Dept.: C-73

PROOF OF PERSONAL SERVICE

[IMAGED FILE]

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

I, Michael R. Weinstein, declare that: I am over the age of 18 years and not a party to the case; I am employed in the County of San Diego, California; and my business address is: 501West Broadway, Suite 1450, San Diego, California 92101.

On July 11, 2019, I served the following document(s):

1. **PLAINTIFF/CROSS-DEFENDANT'S PROPOSED JURY INSTRUCTIONS AND PROPOSED SPECIAL VERDICT FORM NOS. 1 AND 2.**

PERSONAL SERVICE. I hand delivered the above mentioned document(s) to the addressee listed below at approximately 10:30 a.m. on the date listed above as follows:

Jacob P. Austin, Esq.
c/o San Diego Superior Court
330 West Broadway, Dept. C-73
San Diego, California 92101
Attorney for Defendant/Cross-Complainant
Darryl Cotton

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

Dated: July 11, 2019

Michael R. Weinstein
MICHAEL R. WEINSTEIN