

1 **DARRYL COTTON, *In pro se***
2 **6176 Federal Boulevard**
3 **San Diego, CA 92114**
4 **Telephone: (619) 954-4447**
5 **151DarrylCotton@gmail.com**

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7 COUNTY OF SAN DIEGO, HALL OF JUSTICE
SAN DIEGO COUNTY, CA

8 DARRYL COTTON,

9 Plaintiff,

10 v.

11 LAWRENCE (A/K/A LARRY) GERACI, an
individual,

12 Defendant.

Case No.: **37-2022-00000023-CU-MC-CTL**

Related Cases:

**VERIFIED COMPLAINT IN EQUITY TO
SET ASIDE VOID JUDGMENT**

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VERIFIED COMPLAINT

1 Plaintiff Darryl Cotton, upon information and belief, hereby alleges as follows:

2 **INTRODUCTION**

3 1. This action seeks to set aside the *Cotton I* Judgment¹ on the grounds that it is void
4 because, *inter alia*, its entry is “an exercise of a power not authorized by law [and] a grant of relief to a
5 party that the law declares shall not be granted.” *Selma Auto Mall II v. Superior Court* (1996) 44 CA4th
6 1672, 1683–1684.

7 2. More specifically, because the *Cotton I* judgment enforces an illegal contract whose
8 object is defendant Lawrence Geraci’s ownership of a cannabis conditional use permit (“CUP”)² that he
9 is barred by law from owning because he has been sanctioned for unlicensed commercial cannabis
10 activities.

11 3. As proven below based on judicially noticeable facts, the *Cotton I* action was filed against
12 Cotton without factual or legal probable cause and Cotton has been attempting to protect and vindicate
13 his rights since the *Cotton I* action was filed against him in March 2017.

14 4. For almost five years, Cotton has been subjected to extreme emotional, mental and
15 physical distress by Geraci and his attorneys and agents who have used their wealth and the presumption
16 of integrity the law affords attorneys to effectuate their crimes against Cotton via the judicial system.

17 5. Attached hereto as Exhibits 1 and 2 are Independent Psychological Assessments by Dr.
18 Markus Ploesser describing Cotton’s increasing mental and emotional suffering as he has sought to
19 vindicate his rights.

20 6. The first Independent Psychological Assessment in March 2018 diagnoses Cotton with
21 “Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and Major
22 Depression (F32,2).” It concludes that “the level of emotional and physical distress faced by Mr. Cotton
23 at this time is above and beyond the stress on any defendant exposed to litigation.”

24 7. The second Independent Psychological Assessment in July 2021 sets forth Dr. Ploesser’s
25 “medical opinion that Mr. Cotton is unable to process facts and legal issues beyond a basic level, unable
26

27 ¹ The “*Cotton I* Judgment” means the judgment entered in *Larry Geraci v. Darryl Cotton*, Case No. 37-
2017-00010073-CU-BC-CTL.

28 ² “[A] conditional use permit grants an owner permission to devote a parcel to a use that the applicable
zoning ordinance allows not as a matter of right but only upon issuance of the permit.” *Neighbors in
Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1006.

1 to gather relevant evidence in [a] manner called for by litigation, unable to conduct complex legal
2 research, and would be incapable of interacting with any counsel representing Mr. Geraci or [his]
3 associates due to his belief that they are ‘conspiring’ against him.” It concludes that it is Dr. Ploesser’s
4 “professional medical opinion Mr. Cotton’s obsessional ruminations around his legal case are bordering
5 a **delusional** quality, which will make it very difficult for him to competently represent himself in civil
6 litigation.”

7 8. Except, Dr., Ploesser is wrong – ***I am not delusional***. I am a blue-collar farmer. An
8 individual who fortuitously owned real property that became highly valuable because it qualified for a
9 cannabis dispensary and he was targeted by Geraci and his unethical agents and attorneys who first
10 sought to extort him of my real property via litigation and then fabricated evidence and misrepresented
11 the facts and law to the judiciaries for years to make me out to be a purportedly crazy pro se litigant
12 allegedly hellbent on extorting Geraci and his agents for my own evil desire for financial gain.

13 9. Geraci and his agents through their knowledge of the law deceived the *Cotton I* court into
14 believing that Geraci could lawfully own a CUP and thereby prevailed in *Cotton I*.

15 10. Simply stated and understood, this action comes down to one single question of law: can
16 Geraci lawfully own a cannabis business in violation of California’s cannabis licensing statutes? As
17 irrefutably proven below by judicially noticeable facts, the answer is clearly and unequivocally **no**.

18 11. Consequently, the *Cotton I* Judgment is void and Geraci and his agents are liable for
19 putting Cotton through years of extreme physical, mental and emotional distress in their illegal pursuit
20 of financial gain without regard for the law and the rights of Cotton.

21 THE PARTIES

22 12. Plaintiff Cotton, an individual, is and at all times herein mentioned was residing in the
23 County of San Diego, California.

24 13. Defendant Lawrence (A/K/A Larry) Geraci, an individual, is and at all times herein
25 mentioned was residing in the County of San Diego, California.

26 CAUSE OF ACTION – TO SET ASIDE VOID JUDGMENT

27 I. BACKGROUND

28 14. Geraci has approximately 40 years of experience providing tax services and has been the
owner-manager of Tax & Financial Center “T&F Center” since 2001. T&F Center provides

sophisticated tax, financial and accounting services.

15. Geraci is an Enrolled Agent with the Internal Revenue Service.

16. Geraci was a licensed real estate salesperson from July 1992 until March 2017 and is imputed by law with knowledge of the statute of frauds.

17. On October 27, 2014, and June 17, 2015, Geraci was sanctioned for unlicensed commercial cannabis activities in, respectively, the Tree Club Judgment³ and the CCSquared Judgment⁴ (collectively, the “Geraci Judgments”).

18. Cotton is the owner-of-record of 6176 Federal Blvd., San Diego, CA 92114 (the “Property”).

19. The Property qualified for a CUP to operate a cannabis dispensary.

II. NEGOTIATIONS FOR THE PROPERTY, THE JVA AND THE BERRY CUP APPLICATION

20. In mid-2016, Geraci identified the Property and began negotiating with Cotton for the purchase of the Property because he believed it would qualify for a CUP.

21. On October 31, 2016, Geraci presented Cotton with an Ownership Disclosure Statement, a required component for a CUP application with the City of San Diego⁵.

22. Geraci told Cotton that he needed Cotton to execute the form to show to his agents that he had access to the Property as part of his due diligence in determining whether the Property qualified for a CUP.

23. Cotton executed the Ownership Disclosure Form because of Geraci’s fraudulent inducement that the form was part of Geraci’s due diligence process and not that it would actually be submitted without the parties having reached an agreement for the sale of the Property.

³ The “Tree Club Judgment” means *City of San Diego v. The Tree Club Cooperative, et al.*, San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL, Stipulation for Entry of Final Judgement and Permanent Injunction; Judgment Thereon (“Tree Club Judgment”). The Court is hereby requested to take judicial notice of the Tree Club Judgment, a copy of which is attached hereto as Exhibit 3, and fully incorporated by this reference.

⁴ The “CCSquared Judgment” means *City of San Diego v. CCSquared Wellness Cooperative, et. al.*, Case No. 37-2015-00004430-CU-MC-CTL, Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon. The Court is hereby requested to take judicial notice of the CCSquared Judgment, a copy of which is attached hereto as Exhibit 4, and fully incorporated by this reference.

⁵ Attached hereto as Exhibit 5 and fully incorporated by this reference.

1 24. On October 31, 2016, Geraci had an application with the City filed for a CUP at the
2 Property (the “Berry CUP Application”).

3 25. The Berry CUP Application was submitted by Rebecca Berry who is Geraci’s assistant.

4 26. The Berry CUP Application included the Ownership Disclosure Form and a Form DS-
5 3032 General Application (the “General Application”), attached hereto as Exhibit 6.

6 27. The Ownership Disclosure Statement required a list that “*must* include the names and
7 addresses of all persons who have an interest in the property, *recorded or otherwise*, and state the type
8 of interest.”

9 28. The Berry CUP Application falsely states that Berry is the owner of the CUP being
10 applied for; Geraci is not disclosed anywhere in the Berry CUP Application.

11 29. The Berry CUP Application was filed without Cotton’s knowledge or consent.

12 30. On November 2, 2016, Cotton and Geraci met at Geraci’s office and entered into an oral
13 joint venture agreement whereby Cotton would sell the Property to Geraci (the “JVA”).

14 31. The material terms of the JVA were that Cotton would receive (i) \$800,000, (ii) a 10%
15 equity stake in the CUP, (iii) the greater of \$10,000 a month or 10% of the net profits of the contemplated
16 dispensary; and (iv) a \$50,000 non-refundable deposit in the event the CUP application at the Property
17 was not approved. Geraci also promised that his attorney, Gina Austin, would promptly reduce the JVA
18 to writing.

19 32. The JVA was subject to a single condition precedent, the approval of a CUP application
20 with the City at the Property by Geraci.

21 33. At their meeting at which the JVA was reached, Geraci had Cotton execute a three-
22 sentence document to memorialize Cotton’s receipt of \$10,000 towards the total \$50,000 non-refundable
23 deposit (the “November Document”).

24 34. On November 2, 2016, after the parties reached the JVA and executed the
25 “November Document” Geraci did not give Cotton a copy at the time of signing but instead at 3:11
26 PM, emailed it to Cotton, attached hereto as Exhibit 7.

27 35. On November 2, 2016, at 6:55 PM, Cotton, having concerns that the email Geraci
28 had sent earlier described the November Document attachment as a “Cotton and Geraci Contract”,

1 sent Geraci a response request for confirmation (“Request for Confirmation”) that the November
2 Document was NOT a final contract which read;

3
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 decision
8 to sell the property, I'll be fine if you would simply acknowledge that here in a reply.

9 36. On November 2, 2016 at 9:13 PM, Geraci replied: “No no problem at all” (the “Confirmation
10 Email”) Both the “Request” and “Confirmation” email is attached hereto as Exhibit 8.

11 37. On November 3, 2016, Geraci and Cotton spoke over the phone for less than 3 minutes.

12 38. After their phone call, Cotton emailed Geraci regarding the subject of their phone call,
13 which was based entirely on the naming of the new dispensary, attached hereto as Exhibit 9, not any oral
14 clarification of terms as Geraci had testified to at trial.

15 39. Subsequently, for months, Cotton and Geraci communicated via email and texts regarding
16 the JVA, issues regarding the approval of a CUP at the Property and drafts of the written agreement for
17 Geraci’s purchase of the Property.

18 40. For example, on March 7, 2017, Geraci emailed Cotton a revised draft of a purchase
19 agreement for the purchase of the Property and in the cover email he states: “... the 10k a month might
20 be difficult to hit until the sixth month... can we do 5k, and on the seventh month start 10k?”. Cotton
21 replied on March 16, 2017, with his concerns with the draft and Geraci’s failure to reduce the JVA to
22 writing. And Cotton emailed Geraci again on March 17, 2017, after Geraci texted Cotton in reply to
23 Cotton’s March 16, 2017, email asking to meet in person. True and correct copies of this email chain is
24 attached hereto as Exhibit 10 and fully incorporated herein by this reference.

25 41. On March 21, 2017, after Geraci repeatedly refused to reduce the JVA to writing as
26 promised, Cotton emailed Geraci terminating the JVA for anticipatory breach and informed him that he
27 would be entering into an agreement with a third party for the sale of the Property.

28 42. Thereafter, that same day, Cotton entered into a written joint venture agreement with a
third-party for the sale of the Property.

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1 III. THE *COTTON I* ACTION WAS FILED WITHOUT FACTUAL OR LEGAL PROBABLE CAUSE.

2 43. On March 21, 2017, Geraci, as plaintiff, filed in this court against Cotton, as defendant,
3 the *Cotton I* complaint, attached hereto as Exhibit 11, in which Geraci sought damages for an alleged
4 breach of contract against Cotton alleging that the November Document is a fully integrated contract for
5 his purchase of the Property.⁵

6 44. On March 22, 2017, Geraci's attorney, Michael Weinstein of Ferris & Britton served
7 Cotton with the *Cotton I* complaint and a recorded lis pendens on the Property (the "F&B Lis Pendens").
8 Attached hereto as Exhibit 12.

9 45. The *Cotton I* action was filed without factual or legal probable cause because the alleged
10 November Document cannot be a final, fully integrated contract as alleged in the *Cotton I* complaint for
11 at least two reasons as a matter of law: (i) it has an unlawful object (i.e., is an illegal contract) (the
12 "Illegality Issue") and (ii) it lacks mutual assent (the "Mutual Assent Issue").

13 A. The Illegality Issue

14 i. *Framework for assessing enforceability of "illegal" contracts.*

15 46. Under California law, a contract must have a "lawful object." (Civ. Code § 1550(3).)
16 Contracts without a lawful object are void. (*Id.* § 1598.) Civil Code § 1667 elaborates that "unlawful"
17 means: "1. Contrary to an express provision of law; [¶] 2. Contrary to the policy of express law, though
18 not expressly prohibited; or, [¶] 3. Otherwise contrary to good morals." For purposes of illegality, the
19 "law" includes statutes, local ordinances, and administrative regulations issued pursuant to the same.
20 *Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118 Cal. App. 4th 531, 542. "All contracts which
21 have for their object, directly or indirectly, to exempt anyone from responsibility for his own ... violation
22 of law, whether willful or negligent, are against the policy of the law." (Cal. Civ. Code § 1668.)

23 47. "*No principle of law is better settled than that a party to an illegal contract cannot*
24 *come into a court of law and ask to have his illegal objects carried out; nor can he set up a case in*
25 *which he must necessarily disclose an illegal purpose as the groundwork of his claim.*" *Homami v.*
26 *Iranzadi* (1989) 211 Cal.App.3d 1104, 1111 (quoting *Lee On v. Long* (1951) 37 Cal.2d 499, 502
27 (emphasis added)). "*The general principle is well established that a contract... made for the purpose*
28

1 *of furthering any matter or thing prohibited by statute, or to aid or assist any party therein, is void.”*
2 *Id.* at 1109 (emphasis added). “Whether a contract is illegal is a question of law to be determined from
3 the circumstances of each particular case.” *Kashani*, 118 Cal. App. 4th at 540 (cleaned up). “The test as
4 to whether a demand connected with an illegal transaction is capable of being enforced is whether the
5 claimant requires the aid of an illegal transaction to establish his case.” *Brenner v. Haley* (1960) 185
6 Cal.App.2d 183, 287.

7 ii. *California cannabis licensing statutes*

8 48. As in effect in October and November 2016 when the Berry CUP Application was
9 submitted and the November Document executed, California’s cannabis licensing statutes codified at
10 California Business & Professions Code (“BPC”), Division 8, Chapter 3.5 (Medical Cannabis Regulation
11 and Safety Act) provided as follows:

12 a. A license can only be issued to a “*qualified applicant*.” BPC § 19320(b) (“Licensing
13 authorities administering this chapter may issue state licenses only to *qualified applicants* engaging in
14 commercial cannabis activity pursuant to this chapter.”) (emphasis added).

15 b. If the applicant does not qualify for licensure the State’s licensing authorities “*shall deny*”
16 his application. (BPC § 19323(a) (“A licensing authority *shall deny* an application if the applicant...
17 does not qualify for licensure under this chapter or the rules and regulations for the state license.”)
18 (emphasis added).) BPC § 19323(a) was repealed and replaced by BPC § 26057(a), effective June 27,
19 2017 by Stats 2017 ch 27 § (SB 94). (BPC § 26057(a) (“The licensing authority *shall deny* an application
20 if either the applicant, or the premises for which a state license is applied, do not qualify for licensure
21 under this division.”) (emphasis added).)

22 c. An applicant is disqualified for licensure if he has been sanctioned for unauthorized
23 commercial cannabis activities in the three years preceding the submission of an application. (BPC
24 19323(a),(b)(7) (“A licensing authority *shall deny* an application if the applicant has been sanctioned by
25 a city for unlicensed commercial medical cannabis activities in the three years immediately preceding
26 the date the application is filed with the licensing authority.”) (cleaned up; emphasis added).) BPC §
27 19323(a),(b)(7) was repealed and replaced by BPC § 26057(b)(7), effective June 27, 2017 by Stats 2017
28 ch 27 § (SB 94). (BPC § 26057(a),(b)(7) (“The licensing authority *shall deny* an application if the

applicant has been sanctioned by a city for unauthorized commercial in the three years immediately preceding the date the application is filed with the licensing authority.”) (cleaned up; emphasis added).

d. As part of the application process, an applicant is required to first lawfully acquire a local government permit/CUP and submit their fingerprints to the State’s licensing authorities for a background check with the Department of Justice. BPC § 19322(a)(1),(2) (“A person **shall not** submit an application for a state license issued by a licensing authority pursuant to this chapter unless that person has received a license, permit, or authorization from the local jurisdiction. An applicant for any type of state license issued pursuant to this chapter **shall** do all of the following: [¶] (1) Electronically submit to the Department of Justice fingerprint images and related information [for a background check] [¶] (2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.”) (emphasis added).

e. A qualified applicant who is granted a state license is defined as a “licensee.” BPC § 19300.5(x) (“Licensee” means a person issued a state license under this chapter to engage in commercial cannabis activity.”).

iii. *The agreement reached between Cotton and Geraci is illegal.*

49. Geraci was last sanctioned on June 17, 2015 in the CCSquared Judgment. Thus, he was disqualified from owning a CUP or license for cannabis operations until June 18, 2018. If Geraci had applied for a CUP in his name in October 2016 his application would have mandatorily been denied pursuant to BPC § 19323(a),(b)(7).

50. To circumvent the law and unlawfully acquire a cannabis business, Geraci applied in the name of his secretary, Berry.

51. Cotton is aware of one factually identical case in which a principal disqualified from having an interest in a cannabis business had his interest held in the name of a proxy and when he sued to recover profits the Court found the contract to be illegal and unenforceable.

52. In *Polk*, Evan Polk (plaintiff) and Leonid Gontmakher (defendant) worked together to

1 create a cannabis cultivation business in Washington.⁶ After Washington state passed an initiative
2 regulating the production, distribution, and sale of marijuana, they decided to obtain a license. (*Id.* at
3 *2.) However, because Polk had previously pled guilty to drug related crimes, “he was prohibited from
4 obtaining a producer or processor license...” (*Id.* at *3.) Polk and Gontmakher “agreed to move forward
5 with the business anyway, orally agreeing to be ‘equal partners’ in their cannabis growing venture.” (*Id.*)
6 Thereafter, they agreed to modify their respective percentages of ownership such that Polk maintained a
7 30% ownership stake in the cannabis business and “Mr. Polk’s ‘interest’ would be held in the name of
8 one of Mr. Gontmakher’s relatives.” (*Id.* at *4.) Subsequently, the parties disputed and Polk filed suit
9 alleging he is entitled to an ownership interest in the cannabis business and past and future profits. (*Id.*)

10 53. The district court dismissed Polk’s original complaint on Gontmakher’s motion to dismiss
11 on two independent grounds. First, because Polk’s claims seeking profits from cannabis activities
12 violated the Federal Controlled Substances Act. (*Id.* at *6.) Second, because Polk was prohibited from
13 obtaining a license by law, the oral agreement was illegal under Washington law. (*See id.* at * 8 (“Mr.
14 Polk’s interest in [the cannabis business] was illegal from the very beginning and he knew it... ***The***
15 ***Court will not enforce an illegal contract.***”) (emphasis added).)

16 54. The court dismissed Polk’s third amended complaint with prejudice on Gontmakher’s
17 motion to dismiss solely on one ground.⁷ The Court described Washington’s cannabis licensing
18 framework that requires that a cannabis license be issued only in the names of “true party(ies) of
19 interest,” who are defined by statute to include any party with a right to revenues from the contemplated
20 cannabis business, and who must undergo a “vetting process” by the Washington Liquor and Cannabis
21 Board. (*Id.* at *5.) The court explained:

22 Plaintiff does not dispute that his claims seeking a share of profits generated by [the
23 cannabis business] would make him a true party of interest under the statute. Because he
24 has not been identified as a true party of interest in [the cannabis business] or vetted by the
25 [Washington Liquor and Cannabis Board], any grant of relief based on entitlement to a

26 ⁶ Attached hereto as Exhibit 13 is a true and correct copy of *Polk v. Gontmakher*, No. 2:18-cv-01434-
27 RAJ, 2019 U.S. Dist. LEXIS 146724, at *3 (W.D. Wash. Aug. 28, 2019). *See Haligowski v. Superior*
28 *Court*, 200 Cal. App. 4th 983, 998, fn. 4 (2011) (“Unpublished federal opinions are citable
notwithstanding California Rules of Court, rule 8.1115 which only bars citation of unpublished
California opinions.”) (cleaned up).

⁷ Attached hereto as Exhibit 14 is a true and correct copy of *Polk v. Gontmakher*, No. 2:18-cv-01434-
RAJ, 2021 U.S. Dist. LEXIS 53569, at *5 (W.D. Wash. Mar. 22, 2021).

1 share of [the cannabis business'] profits would be in violation of the statute. In other words,
2 by affording Plaintiff such relief, the Court would be effectively recognizing him as a true
3 party of interest in subversion of the [Washington Liquor and Cannabis Board] and in
4 violation of Washington state law. The Court cannot require payment of a share of [the
5 cannabis business'] profits to Plaintiff based on his alleged rights to such profits—either
6 through enforcement of the contract or disgorgement of unjust enrichment and related
7 breaches of equity—without violating state statute. *See Bassidji v. Goe*, 413 F.3d 928, 936
8 (9th Cir. 2005) (holding that “courts will not order a party to a contract to perform an act
9 that is in direct violation of a positive law directive, even if that party has agreed, for
10 consideration, to perform that act”). The Court could not, therefore, grant relief on any of
11 Plaintiff’s causes of action. Plaintiff thus fails to state a claim upon which relief can be
12 granted.

13 (*Id.* at *6-7.)

14 55. Like the State of Washington in *Polk*, California’s Legislature has required that a CUP
15 be issued only to a “qualified applicant.” BPC §§ 19320(a). Applying the test of illegal contracts, the
16 November Document, even assuming it was a contract, is illegal because Geraci cannot seek to enforce
17 the alleged agreement without violating the law on at least two independent grounds.

18 56. First, Geraci was barred by BPC § 19323(a),(b)(7) from owning a CUP because of the
19 CCSquared Judgment.

20 57. Second, even assuming Geraci had not been sanctioned, Geraci cannot lawfully acquire
21 a CUP via the Berry CUP Application that knowingly, purposefully and falsely states that Berry would
22 be the owner of the CUP being applied for in violation of the City’s cannabis and laws and regulations
23 requiring that Geraci be disclosed in the Ownership Disclosure Form as the true and sole owner of the
24 CUP being applied for. *See* San Diego Municipal Code (“SDMC”) § 11.0401(b) (“No person willfully
25 shall make a false statement or fail to report any material fact in any application for City license, permit,
26 certificate, employment or other City action under the provisions of the [SDMC].”); SDMC § 11.0402
27 provides that “[w]hensoever in [the SDMC] any act or omission is made unlawful, it shall include causing,
28 permitting, aiding or abetting such act or omission.”); BPC § 19322(a)(1),(2) (requiring applicant
comply with local laws and regulations and lawfully acquire local permit/CUP).

iv. *The illegality argument was raised repeatedly during Cotton I.*

58. Throughout *Cotton I*, Cotton argued that Geraci was barred by law from owning a CUP

1 because of the Geraci Judgments.⁸ At the trial of *Cotton I*, Cotton moved for a directed verdict arguing
2 that BPC § 26057 bars Geraci ownership of a CUP via the Berry CUP Application, which was summarily
3 denied.

4 59. The *Cotton I* Judgment found, *inter alia*, that “[Geraci] is not barred by law pursuant to
5 California Business and Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057
6 (Denial of Application) from owning a Marijuana Outlet conditional use permit issued by the City of
7 San Diego.” A true and correct copy of the *Cotton I* Judgment is attached hereto as Exhibit 15.

8 60. The *Cotton I* Judgement awarded \$260,109.28 in damages to Geraci.

9 61. After trial, Cotton filed a motion for new trial arguing, *inter alia*, the alleged agreement,
10 the November Document, was an illegal contract.

11 62. Geraci opposed the motion arguing that, in regards to the illegality argument, that (i)
12 Cotton waived the defense of illegality; (ii) that neither the Geraci Judgments or the BPC bar Geraci’s
13 ownership of a CUP; and (iii) that Geraci was not disclosed in the Ownership Disclosure Statement
14 because (a) Geraci is an Enrolled Agent, (b) Geraci used Berry as a proxy for “convenience of
15 administration,” and (c) the City’s CUP application forms only allowed Berry to sign as an owner, tenant,
16 or “Redevelopment Agency.”

17 63. Geraci’s arguments are without factual or legal support as none of them make it lawful
18 for Geraci to own a CUP via the Berry CUP Application.

19 64. Judge Wohlfeil, presiding over *Cotton I*, denied the motion for new trial finding that the
20 defense of illegality had been waived because he believed the defense of illegality had not previously
21 been raised in the action.

22 v. *The Cotton I Judgment is void because it is “an exercise of a power not authorized*
23 *by law [and] a grant of relief to [Geraci] that the law declares **shall not be***
24 *granted.”*

25 65. “Generally, a judgment is void if the court lacked subject matter jurisdiction or

26
27 ⁸ See, e.g., *Cotton I*, ROA No. 19 (Cotton’s original cross-complaint filed on May 12, 2017) at ¶ 132
28 (“Berry submitted the CUP application in her name on behalf of Geraci because Geraci has been a named
defendant in numerous lawsuits brought by the City of San Diego against him for the operation and
management of unlicensed, unlawful, and illegal marijuana dispensaries. These lawsuits would ruin
Geraci’s ability to obtain a CUP himself.”).

jurisdiction over the parties.” *Paterra v. Hansen* (2021) 64 Cal.App.5th 507, 535. However, a lack of jurisdiction resulting in a void judgment also occurs when an act by a Court is an “exercise of a power not authorized by law, or a grant of relief to a party that the law declares **shall not** be granted.” *Id.* at 536 (quoting *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 696) (emphasis added).

66. “Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction, in so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari.” *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291.

67. In *Paterra*, a complicated property dispute with numerous competing parties and legal actions spanning over twelve years, Judge Wohlfeil denied a motion to correct or vacate a portion of a prior quiet title judgment that adjudicated the rights of a defaulting lender. *Paterra* at 513. The Court of Appeal reversed and remanded, holding that the judgment was void for three independent reasons. *Id.* at 515. The second reason set forth, dispositive in this matter, was because the trial court did not hold a hearing to adjudicate the lender’s rights as required by the mandatory “shall” language of Cal. Code Civ. Pro § 764.010. *Id.* at 536. The court explained:

[S]ection 764.010 imposes mandatory obligations with respect to default judgments, stating that in a quiet title action, “[t]he court **shall not** enter judgment by default but **shall** in all cases require evidence of plaintiff’s title and hear such evidence as may be offered respecting the claims of any of the defendants” (Italics added.) These provisions—**absolutely prohibiting** a default judgment without an evidentiary hearing as to each defaulting defendant’s claimed interest—reflect the Legislature’s intent to provide a method for adjudicating title to real property to ensure a property owner obtains “a general decree that would be binding on all people.” [Citation.] “[O]nce a quiet title judgment on any grounds becomes final, it is good against all the world as of the time of the judgment. There is, for all practical purposes, no going back.” [Citation.]

Where, as here, the undisputed record shows the court did not hear evidence respecting plaintiff’s quiet title claims against a defaulting defendant, the judgment against that defendant is void as beyond the court’s fundamental powers to provide a final determination on title. Accordingly, the judgment against Clarion was void as outside the scope of the court’s jurisdiction to grant. (See *Carlson, supra*, 54 Cal.App.4th at p. 696 [“The mere fact that the court has jurisdiction of the subject matter of an action before it does not justify an exercise of a power not authorized by law, or a grant of relief to a party that the law declares shall not be granted.”].)

1 *Paterra*, 64 Cal. App. 5th at 535-36.

2 68. Here, as in *Paterra*, the mandatory “*shall deny*” language of BPC §§ 19323(a)/26057(a)
3 applies and reflects the Legislature’s intent to “absolutely prohibit” the approval of a CUP or license by
4 an applicant like Geraci who has been sanctioned for unlicensed commercial cannabis activities.

5 69. Also, an applicant like Berry who knowingly applies for a local CUP with false
6 information in violation of the SDMC requiring the disclosure of all parties with an interest in the CUP
7 sought in the Ownership Disclosure Form.

8 70. By affording Geraci relief, Judge Wohlfeil found that not only was Geraci a “qualified
9 applicant,” but effectively that he would have been a “licensee” who would have been approved by the
10 State’s licensing authorities with rights of ownership to a CUP/license. The *Cotton I* Judgment subverts
11 the State’s licensing authorities mandate to vet individuals and is in direct violation of the cannabis
12 licensing statutes enacted by the Legislature to prevent individuals who have been sanctioned for illegal
13 cannabis operations from owning cannabis businesses and parties who fail to lawfully acquire a local
14 CUP.

15 71. Therefore, as a matter of law based on the judicially noticeable facts set forth above, the
16 *Cotton I* Judgment is void because its entry is “an exercise of a power not authorized by law [and] a
17 grant of relief to [Geraci] that the law declares *shall not* be granted.” *Paterra, supra*, at 536 (quoting
18 *Carlson*, 54 Cal.App.4th at 696 (emphasis added)); *Abelleira*, 17 Cal.2d at 291; *311 South Spring Street*
19 *Co. v. Department of General Services* (2009) 178 Cal.App.4th 1009, 1018 (“we define a judgment that
20 is void for excess of jurisdiction to include a judgment that grants relief which the law declares shall not
21 be granted.”).

22 **B. The Mutual Assent Issue**

23 72. A lawful contract requires mutual assent. *See* Civ. Code § 1550. Consent is not mutual
24 unless the parties all agree on the same thing in the same sense. Civ. Code § 1580.

25 73. The texts and emails between Geraci and Cotton uniformly support the position that the
26 parties reached the JVA as alleged by Cotton and that the November Document was not executed with
27 the intent that it be a final, fully integrated agreement for Geraci’s purchase of the Property.

28 74. The Request for Confirmation and the Confirmation Email prove that the agreement

1 reached by Geraci and Cotton to which they mutually assented included a 10% equity position pursuant
2 to the JVA alleged by Cotton.

3 75. Geraci's March 7, 2017, email asking for a reduction of a monthly payment of an existing
4 obligation from \$10,000 to \$5,000 reflects that the agreement reached by Geraci and Cotton to which
5 they mutually assented included a term of \$10,000 monthly payments to Cotton pursuant to the JVA
6 alleged by Cotton.

7 76. From the filing of the *Cotton I* complaint in March 2017 until April 2018, Geraci's
8 pleadings, motion practice and judicial and evidentiary admissions argued that the statute of frauds and
9 the parol evidence rule barred admission of the Request for Confirmation, the Confirmation Email and
10 other parol evidence as evidence that the parties did not mutually assent to the November Document
11 being a purchase contract for the Property.

12 77. For example, in Geraci's reply to his demurrer of the *Cotton I* second amended cross-
13 complaint:

14 Cotton alleges, based on extrinsic evidence, that the actual agreement between the parties
15 contains material terms and conditions in addition to those in the [November Document]
16 as well as a term (a \$50,000 deposit rather than the \$10,000 deposit stated in the
17 [November Document] that expressly conflicts with a term of the [November Document].
18 However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an
19 agreement at odds with the terms of the written memorandum.

20 78. On April 4, 2018, Cotton, via a specially appearing attorney, filed a motion to expunge
21 the F&B Lis Pendens (the "Lis Pendens Motion"). The Lis Pendens Motion argued for the first time in
22 *Cotton I* that, pursuant to *Riverisland*,⁹ Geraci could not use the parol evidence rule as a shield to bar

23 ⁹ On January 14, 2013, the California Supreme Court overruled a longstanding precedent regarding the
24 fraud exception to the parol evidence rule. In the 1935 case, *Bank of America Etc. Assn. v. Pendergrass*
25 ("*Pendergrass*") 4 Cal.2d 258, the California Supreme Court declared inadmissible evidence of
26 promissory fraud—a promise made without the intent to perform—made prior to and inconsistent
27 with the subsequent written agreement. The court's unanimous decision in *Riverisland Cold Storage,*
28 *Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169, overruled
Pendergrass and declared that the parol evidence rule does not bar evidence of promissory fraud that
contradicts the terms of a writing. *Id.* at 1182 ("*[I]t was never intended that the parol evidence rule
should be used as a shield to prevent the proof of fraud.*") (quotation omitted, emphasis added); see *IIG
Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 ("*[U]nder Pendergrass, external evidence of
promises inconsistent with the express terms of a written contract were not admissible, even to
establish fraud.*") (emphasis added).

1 parol evidence as proof that the parties executed the November Document as a receipt and that Geraci
2 was fraudulently representing it as a contract.

3 79. The Lis Pendens Motion was a *de facto* motion for summary judgment as a finding that
4 the Geraci was fraudulently representing the November Document as a contract when it was executed
5 with the intent it be a receipt would have meant that the *Cotton I* complaint was filed without probable
6 cause and Geraci and his attorneys would be liable for filing what constitutes a malicious prosecution
7 action.

8 80. On April 9, 2018, Geraci executed a declaration in support of his opposition to the Lis
9 Pendens Motion¹⁰.

10 81. In his declaration, Geraci alleged for the first time that (i) Geraci did not read the entire
11 Request for Confirmation before sending the Confirmation Email; (ii) Geraci called Cotton on November
12 3, 2016 and told him that he did not intend to send the Confirmation Email; (iii) Cotton orally agreed
13 that the Request for Confirmation was sent as an attempt to acquire a 10% equity position in the CUP
14 that the parties had not bargained-for and Cotton stated “well, you don’t get what you don’t ask for”;
15 and (iv) Cotton orally agreed he was not entitled to a 10% equity interest in the CUP that is established
16 by his Request for Confirmation and Geraci’s Confirmation Email (the “Disavowment Allegation”).

17 82. Subsequent to the hearing, Cotton emailed Weinstein accusing him of fabricating the
18 Disavowment Allegation, to which Weinstein responded as follows:

19 First, our view is that the statute of frauds bars the [Confirmation Email] because it is parol
20 evidence that is being offered to explicitly contradict the terms of the [November
21 Document]. Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016,
22 resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10%
23 equity position. Rather, Mr. Geraci’s position is that there was never an oral agreement
24 between them that Mr. Cotton would receive a 10% equity position. Even assuming for the
25 sake of argument that the [Confirmation Email] is not barred by the parol evidence rule
26 and admissible, the telephone call the next day is parol evidence that Mr. Geraci never
27 agreed to a 10% equity position and, therefore, it is consistent with the [November
28 Document] and not barred by the statute of frauds.¹¹

83. Weinstein’s arguments lack any factual or legal justification and are in fact negated by

¹⁰ Attached hereto as Exhibit 16, which the Court is requested to take judicial notice of.

¹¹ This email from Weinstein is attached hereto as Exhibit 17 and fully incorporated by this reference.

undisputed facts and applicable law.

84. First, the Disavowment Allegation is an affirmative defense of mistake that was not pled and therefore waived.

85. Second, the Disavowment Allegation is barred by Geraci's previous discovery responses and judicial and evidentiary admissions that required the disclosure of the Disavowment Allegation prior to being confronted by *Riverisland*.

86. Third, the statute of frauds does not apply to an oral joint venture agreement such as the JVA.¹²

87. Fourth, pursuant to *Riverisland*, parol evidence is not barred to prove fraud. *See Riverisland*, 55 Cal.4th at 1182 ("[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.").

88. Fifth, even assuming that Geraci's allegations are taken as true, they fail to state a claim because under California law Geraci may not allege mistake to avoid the legal impact of confirming in writing that his agreement with Cotton included a 10% equity position for Cotton.

89. As best explained in *Forreststream* relying on California law:

To form a contract, the parties must "reach mutual assent or consent on definite or complete terms." *Netbula, LLC v. Blindview Dev. Corp.*, 516 F. Supp. 2d 1137, 1155 (N.D. Cal. 2007). Mutual assent to a contract is based on the parties' objective and outward manifestations; "a party's 'subjective intent, or subjective consent, therefore is irrelevant.'" *Stewart*, 134 Cal. App. 4th at 1587 (quoting *Beard v. Goodrich*, 110 Cal. App. 4th 1031, 1040, 2 Cal. Rptr. 3d 160 (2003)). Ordinarily, a party "who signs an instrument which on its face is a contract is deemed to assent to all its terms." *Marin Storage & Trucking, Inc. v. Benco Contracting & Eng'g, Inc.*, 89 Cal. App. 4th 1042, 1049, 107 Cal. Rptr. 2d 645 (2001). And, "[a] party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing." *Id.* (citing *Hernandez v. Badger Constr. Equip. Co.*, 28 Cal. App. 4th 1791, 1816, 34 Cal. Rptr. 2d 732 (1994)). Indeed, it is "[a] cardinal rule of contract law . . . that a party's failure to read a contract, or to carefully read a contract, before signing it is no defense to the contract's enforcement." *Desert Outdoor Adver. v. Super. Ct.*, 196 Cal. App. 4th 866, 872, 127 Cal. Rptr. 3d 158 (2011). "[I]n the absence of fraud, overreaching[,], or excusable neglect, . . . one who signs an instrument may not avoid

¹² *Bank of California v. Connolly* ("Connolly") (1973) 36 Cal.App.3d 350, 374 ("[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.").

1 the impact of its terms on the ground that he failed to read the instrument before signing
2 it." *Stewart*, 134 Cal. App. 4th at 1588 (quoting *Hulsey v. Elsinore Parachute Center*, 168
3 Cal. App. 3d 333, 339, 214 Cal. Rptr. 194 (1985)). A contract will thus facially evidence
4 mutual assent where the parties signed it and there is no indication that the contract is
5 conditional "or that [a party] did not intend to be bound by its terms." *See Stewart*, 134 Cal.
6 App. 4th at 1587.

7 *Forreststream Holdings Ltd. v. Shenkman* (N.D.Cal. Mar. 24, 2017, No. 16-cv-01609-LB) 2017
8 U.S.Dist.LEXIS 43624, at *19-20 ("*Forreststream*").

9 90. In *Forreststream*, the court granted summary judgment against Gregory Shenkman in a
10 breach of contract action who opposed summary judgment by, *inter alia*, alleging he did not consent to
11 a contract because he did not read it:

12 Mr. Shenkman... contends that he did not sign the full contract and thus is not bound by it.
13 He declares that in April 2014, "Mr. Zaits, serving as the intermediary, presented [him]
14 with a single page for signature and asked [him] to sign as confirmation of [his] agreement
15 to the terms [they] had been discussing." Mr. Shenkman "understood this to mean that
16 Forreststream had agreed to [his] unequivocal condition that pledging [his] EIS shares
17 meant that the restructured loan would be non-recourse." He did not "understand this to be
18 a final, binding agreement, but rather an agreement to work together in good faith to
19 finalize the terms at a later date." Mr. Shenkman signed the single page — the Loan
20 Restructuring Agreement's signature page — but he never "reviewed, signed, or agreed to
21 the first three pages of that document." Thus, he asserts, he never assented to the terms of
22 the Agreement.

23 *Id.* at *18-19 (citations omitted).

24 91. On the issue of consent, the Court explained:

25 Mr. Shenkman does not argue that any party (including Forreststream) engaged in fraud.
26 Indeed, Forreststream's representatives were not present when he signed the agreement,
27 and he presents no evidence that there were, for example, misrepresentations or pressures
28 to sign. He also cannot establish reasonable reliance or excusable neglect because he failed
to read the Agreement; "[g]enerally, it is not reasonable to fail to read a contract." *Desert
Outdoor Adver.*, 196 Cal. App. 4th at 873 (quoting *Brown v. Wells Fargo Bank, N.A.*, 168
Cal. App. 4th 938, 959, 85 Cal. Rptr. 3d 817 (2008)) (alteration and emphasis in original).
And, in light of these fundamental rules of contract law, Mr. Shenkman's argument that he
only received a signature page is unpersuasive. *See Vulcan Power Co. v. Munson*, 89
A.D.3d 494, 932 N.Y.S. 2d 68 (2011) ("A signer's duty to read and understand that which
it signed is not diminished merely because [the signer] was provided with only a signature
page.") (internal quotations omitted).

1 In sum, Mr. Shenkman assented to the contract and is bound by its terms.

2
3 *Id.* at *20.)

4 92. Here, Cotton requested that Geraci confirm in writing that their “final agreement” would
5 include a “10% equity position” as they had mutually agreed to and Geraci confirmed same. Thus, as
6 defendant in *Forreststream*, because Geraci did not allege that Cotton engaged in fraud, nor can he
7 establish reasonable reliance or excusable neglect based on his allegation that he did not read all of the
8 Request for Confirmation before sending the Confirmation Email, he fails to state a cause of action or
9 defense to Cotton’s action against him as the Confirmation Email clearly and unambiguously confirms
10 the agreement between Cotton and Geraci included a 10% equity position for Cotton.

11 93. Further, as a licensed real estate agent Geraci is imputed with knowledge of the statute of
12 frauds and if the Disavowment Allegation had actually taken place, Geraci knew that he should have
13 memorialized in writing the Disavowment Allegation in order to negate the legal consequence of sending
14 the Confirmation Email.

15 94. To summarize, F&B filed the *Cotton I* action relying on the *Pendergrass* line of reasoning
16 to use the parol evidence rule to bar the facts – the parol evidence, including the Confirmation Email –
17 to fraudulently mispresent the November Document as a contract and effectuate a crime via the judiciary.
18 (See Michelle P. LaRocca, *Note – Reflections on Riverisland: Reconsideration of the Fraud Exception*
19 *to the Parol Evidence Rule* (“*Riverisland Note*”), 65 Hastings L.J. 581, 583 (2014) (“*Pendergrass*
20 provided drafting parties a loophole to make misrepresentations and then disclaim them later in
21 writing.”) (citing Alicia W. Macklin, *Note, The Fraud Exception to the Parol Evidence Rule: Necessary*
22 *Protection for Fraud Victims or Loophole for Clever Parties?*, 82 S. Cal. L. Rev. 809, 810 (2009)); *IIG*
23 *Wireless, Inc.*, 22 Cal.App.5th at 641 (“*[U]nder Pendergrass, external evidence of promises*
24 *inconsistent with the express terms of a written contract were not admissible, even to establish fraud.*”)
25 (emphasis added). When confronted by *Riverisland* removing any legal grounds to bar the parol evidence
26 establishing that Cotton and Geraci mutually assented to an agreement that included a 10% equity
27 position for Cotton, Geraci and his attorneys fabricated facts - the Disavowment Allegation – to seek to
28 avoid the financial and legal liability for filing *Cotton I* without factual or legal probable cause (i.e., a
malicious prosecution action). But, as proven above, even the revised version of factual allegations fail

1 to state a claim under California law.

2 IV. COTTON HAS CONTINUOUSLY SOUGHT TO VINDICATE HIS RIGHTS.

3 95. As noted in the introduction, Cotton has been put under severe emotional, mental, and
4 physical distress since March 2017 in seeking to defend and vindicate his rights against Geraci and his
5 attorneys and agents. It has been almost five years. Because of the pressure he has been under, Cotton
6 for a long time thought that there was a widespread conspiracy against him not just by Geraci and his
7 agents, but by the judiciaries including Judge Wohlfeil. Cotton now understands that the law is a process
8 and that Judge Wohlfeil did not conspire with Geraci or his agents against him by refusing to address
9 the issue of illegality or other questions of law; Weinstein is simply a legal genius that comes across as
10 an honest, affable attorney that has integrity, but who in reality has no respect for the law or the
11 judiciaries and will use his superior intellect and knowledge of the law to effectuate crimes against
12 innocent parties for his clients and to avoid liability for filing what are substantively malicious
13 prosecution actions against innocent parties like Cotton.

14 96. On February 9, 2018, Cotton filed an action in federal court seeking to prevent the *Cotton*
15 *I* action from continuing due to, *inter alia*, Cotton's then-belief of judicial bias. Subsequently Cotton
16 amended his complaint to be solely based on Civil Rights violations – Cotton cannot recover in federal
17 court for cannabis related actions because of illegality under federal law – and filed numerous motions
18 seeking to have court appointed counsel and other relief, including setting aside the *Cotton I* Judgment
19 due to a fraud on the court by the actions of Geraci's attorneys. *See Kougasian v. TMSL, Inc.* (9th Cir.
20 2004) 359 F.3d 1136, 1141 (“It has long been the law that a plaintiff in federal court can seek to set aside
21 a state court judgment obtained through extrinsic fraud.”).

22 97. On October 22, 2021, the federal court issued its latest ruling in Cotton's action finding
23 that the *Rooker-Feldman* doctrine bars its review of the *Cotton I* judgment for illegality. (*See Cotton v.*
24 *Bashant, et al.*, 18-CV-325 TWR (DEB), ECF No. 96 at 7:18-20 (“[Cotton's] claim is barred by the
25 *Rooker-Feldman* doctrine.”)).

26 98. The necessity of having the *Cotton I* judgment declared void must be addressed in this
27 State Court.
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PRAYER FOR RELIEF

WHEREFORE, Cotton prays judgment as follows:

1. That the *Cotton I* Judgment be vacated and set aside pursuant to Code Civ. Proc. § 473(d), the Court's inherent authority to vacate a void judgment entered in error or in excess of the authority of the Court, and/or any other basis at law.
2. For costs of suit herein incurred.
3. For damages as allowed by law.
4. For such other and further relief as the court may deem proper.

VERIFICATION

I, Darryl Cotton, am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe it to be true.

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

January 3, 2022



Darryl Cotton

EXHIBIT 1

1 I, Markus Ploesser, MD, LLM, DABPN, FRCP(C), declare:

2 1. On March 4, 2018, I interviewed Mr. Darryl Cotton for an Independent
3 Psychiatric Assessment. At the beginning of the assessment, I informed Mr. Cotton
4 that the assessment was being prepared to assist the Court and not to act as an advocate
5 on his behalf. Mr. Cotton expressed his understanding, agreement and proceeded with
6 the interview and assessment.
7

8 **DUTY TO COURT**

9
10 2. I certify that I am aware of my duty as an expert to assist the Court and
11 not to be an advocate for any party. I have prepared this report in conformity with that
12 duty. I will provide testimony in conformity with that duty if I am called upon to
13 provide oral or written testimony.
14

15 3. I am solely responsible for the opinions provided in this report. I reserve
16 the right to amend or alter my opinions should additional relevant information become
17 available after the report completion.
18

19 **QUALIFICATIONS**

20
21 4. I am a psychiatrist licensed in the State of California, Physician and
22 Surgeon License No. A101564 and the Province of British Columbia, License No.
23 31564.
24

25 5. I am Board certified by the American Board of Psychiatry and Neurology
26 in the area of Psychiatry (Certificate No. 60630) and the subspecialty of Forensic
27

1 Psychiatry (Certificate No. 1903).

2 6. I am a Fellow of the Royal College of Physicians and Surgeons of Canada,
3 with certifications in Psychiatry and Forensic Psychiatry.
4

5 7. I am on the clinical faculty at the University of British Columbia (UBC)
6 in the division of Forensic Psychiatry.

7 8. My prior work experience has included forensic psychiatric evaluation
8 work for the Forensic Psychiatric Hospital and the Forensic Psychiatric Services
9 Commission in Coquitlam, British Columbia. I have written numerous forensic
10 psychiatric assessment reports and testified as an expert witness before the British
11 Columbia Review Board and the Provincial Courts of British Columbia.
12
13

14 9. I currently work as a psychiatrist for the Department of Corrections for
15 the State of California.
16

17 10. In addition to my medical qualifications, I am also a graduate of Columbia
18 University School of Law in the LLM program.

19 11. In preparation for my assessment of Mr. Cotton, I consulted with Dr.
20 Carolyn Candido regarding her medical diagnosis of Mr. Cotton on December 13,
21 2017. Additionally, I reviewed the declaration previously provided by Dr. Candido
22 regarding her diagnosis of Mr. Cotton prepared on January 22, 2018. (Attached hereto
23 as Exhibit 1.)
24
25

26 12. Prior to my interview with Mr. Cotton, I also discussed the factual
27

1 background regarding Mr. Cotton's need for a psychiatric assessment with his legal
2 consultant, Mr. Jacob Austin. Mr. Austin, I was told, is representing Mr. Cotton on a
3 limited basis due to Mr. Cotton's inability to pay for his full legal representation by
4 Mr. Austin.
5

6 CLIENT INTERVIEW

7 13. Mr. Cotton related the following: He is 57 years old. He was born and
8 raised in the Chicago area and has lived in San Diego since 1980. He owns a lighting
9 manufacturing company but reports that over the past approximately 9-12 months he
10 has experienced financial hardship, stress and anxiety originating from a lawsuit
11 against him.
12
13

14 14. Mr. Cotton denies any history of mental health symptoms predating the
15 current lawsuit. He is taking Keppra 500mg twice daily for a seizure disorder, which
16 he started suffering from around the age of 26. He usually suffers from approximately
17 3 Grand Mal seizures per year. He used to take Dilantin, another anticonvulsant
18 medication. He reports having obtained significant medical benefit from the use of
19 medical cannabis, particularly a high CBD strain which he says has helped to reduce
20 the frequency of his seizures.
21
22

23 15. Mr. Cotton represents he owns a property meeting certain requirements
24 by the City of San Diego and the State of California that would allow the creation and
25 operation of a Medical Marijuana Consumer Collective.
26
27

1 16. Mr. Cotton reports that he has and is being subjected to a variety of threats
2 and harassing behaviors that he believes have been directed against him by the plaintiff
3 in the lawsuit.
4

5 17. Mr. Cotton believes that an armed robbery on June 10th, 2017 on his
6 property may have been directed by the plaintiff. He was present at his property at the
7 time of the armed robbery, slamming the door and thereby escaping the robbers inside
8 a building on his property while he called 911. The armed individuals who committed
9 the robbery threatened Mr. Cotton at gun-point before fleeing from the premises. (Mr.
10 Cotton stated the armed-robbery is still unresolved by the police and it was the subject
11 of local news coverage that is still available online.)
12
13

14 18. Mr. Cotton states he followed the armed individuals in his vehicle as they
15 fled from the scene while he was on the phone with 911. He was told by 911 to cease
16 his pursuit due to safety reasons as Mr. Cotton was chasing the armed robbers at high-
17 speed. Mr. Cotton believes he recognized the driver of the getaway vehicle as an
18 employee of the plaintiff.
19
20

21 19. Mr. Cotton appeared particularly intense during his narration regarding
22 one of his employees who was duct-taped and laying face down at gun-point on the
23 ground. Mr. Cotton states that this long-time employee, an electrical-engineer who Mr.
24 Cotton relied upon heavily, quit the next day because of this incident.
25

26 20. Mr. Cotton describes starting to experience increased symptoms of stress
27
28

and anxiety since the robbery, above that which was caused by the litigation. He had been in his usual state of health prior. He reports that he is now unable to sleep at night, experiences "mood swings" and episodes of explosive rage without apparent triggers. He experiences nightmares around themes of feeling powerless. The nightmares occur in slight variations, and at times he "sees the robbers in his dreams."

21. Furthermore, his description of his nightmares include vivid scenes of violence towards the attorneys for plaintiff that he believes are not acting in a professional manner. Mr. Cotton believes that the attorneys representing plaintiff are “in it together” with the plaintiff to use the lawsuit to “defraud” him of his property. This point is one of the main foci of his expressed mental distress.

22. Mr. Cotton's distress due to his perception of a conspiracy against him by attorneys is amplified by what he believes is the Court's disregard for the evidence and arguments he has presented. He states he has never been provided the reasoning for the denial of any relief he sought. Mr. Cotton expressed that at certain points during the course of the litigation he believed the trial court judge was part of the perceived conspiracy against him.

23. Mr. Cotton is also under the belief that his former law firm could have resolved this matter at an early stage in the proceedings but chose not to in order to continue billing legal fees.

24. Mr. Cotton reports no improvement in his mental health symptoms since

1 the robbery. He describes that since the robbery there have been additional threats made
2 against him by "agents" of the plaintiff. Specifically, he describes that two associates
3 of plaintiff went to his property on February 3, 2017 under the pretense of discussing
4 potential business opportunities, but when they arrived they were there to indirectly
5 threaten him by informing him that it would be "good" for him to "settle with Geraci."

7
8 25. Mr. Cotton now feels hopeless, helpless, unable to sleep, with decreased
9 appetite, but either no or only minimal changes in weight.

10 26. Mr. Cotton states that on December 12, 2017, immediately after a court
11 hearing, he was evaluated in the emergency department of a hospital for a TIA
12 (transitory ischemic attack, a frequent precursor of a stroke).
13

14 27. The day after his emergency department discharge, Mr. Cotton states he
15 assaulted a third-party and that is also the day he was diagnosed with Acute Stress
16 Disorder by Dr. Candido.
17

18 28. Mr. Cotton expressed having experienced suicidal ideation, most recently
19 on December 13th, 2017. He denied symptoms of psychosis, specifically
20 hallucinations.
21

22 **OPINIONS AND RECOMMENDATIONS**

23
24 29. It is my professional opinion that Mr. Cotton currently meets criteria of
25 Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and
26 Major Depression (F32.2). He does not present with any objective, observable signs
27

and symptoms of psychosis.

30. Given the absence of a prior mental health history of psychotic disorder (and the physical symptoms that led to a diagnosis of a TIA and Acute Stress Disorder by separate medical doctors), I have no reason to believe that Mr. Cotton's reports of harassment by the plaintiff would be of delusional quality. It is my professional opinion that Mr. Cotton sincerely believes that the plaintiff and his counsel are in a conspiracy against him and that they represent a threat to his life.

31. It is my medical opinion that Mr. Cotton's symptoms are unlikely to improve as long as current stressors (pending litigation, and what Mr. Cotton believes to be threatening behaviors by plaintiff or his "agents") persist. His symptoms are also likely to be significantly reduced if he believes the Court was not ignoring and disregarding him.

32. It is my medical opinion that Mr. Cotton's mental health condition would likely benefit from a rapid resolution of current legal proceedings. In my professional opinion, the level of emotional and physical distress faced by Mr. Cotton at this time is above and beyond the usual stress on any defendant being exposed to litigation. If causative triggers and threats against Mr. Cotton persist, there is a substantial likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental health.

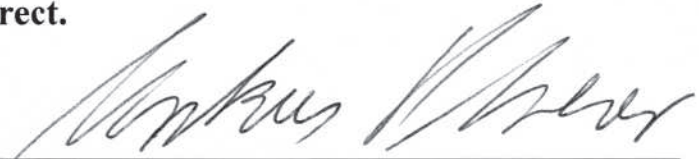
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1 33. Besides a removal of current stressors, his mental health condition would
2 likely benefit from Cognitive Behavioral Therapy for PTSD and depression, as well as
3 a trial of antidepressant medication.
4

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

7
8 DATED:

9 3/4/2018


Markus Ploesser, MD, LLM, DABPN, FRCP(C)

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11 M. PLOESSER, M.D.
12 PSYCHIATRIST
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EXHIBIT 2



SILVERLINING
PSYCHIATRY
MEDICAL
GROUP

3252 Holiday Court
Suite 108
La Jolla, California 92037

Tel: 858-230-7585
Fax: 858-658-0857

Re: Cotton, Darryl

July 16, 2021

DOB: 5/29/1960

This letter is prepared as an update to my March 4, 2018 assessment. I am a psychiatrist licensed in the State of California. I am board certified in general and forensic psychiatry, and have conducted hundreds of forensic psychiatric assessments. I am on faculty at UBC, Division of Forensic Psychiatry, and UC Riverside. I have again interviewed Mr. Cotton on July 15, 2021 for a time period of approximately 1 hour.


Mr. Cotton discussed at length numerous actions by Mr. Geraci's attorneys that he believes to constitute illegal acts. He informed me that his legal case was being stalled by "a powerful presence". Mr. Cotton believes that Mr. Geraci is part of a group that has conspired to create a monopoly in the city of San Diego in the cannabis industry. He expressed that the death of an individual named Michael Sherlock was a staged suicide, and that he was in fact murdered. Mr. Cotton expressed that he thinks he has "gone crazy". He obsesses over the case, and had to start taking antidepressant medication (Sertraline 50mg PO daily). He reports that he started seeing a psychiatrist of the name Anthony Bui, MD since January or February 2021. He had stopped sleeping and developed suicidal ideation. His anxiety level remains elevated.

He believes that any attorney representing Mr. Geraci will be part of a conspiracy to perpetuate "the cover up" of a conspiracy that resulted in the loss of his case in state litigation action that "enforces an illegal contract" and is "lawfully void."

It is my medical opinion that Mr. Cotton is unable to process facts and legal issues beyond a basic level, unable to gather relevant evidence in manner called for by litigation, unable to conduct complex legal research, and would be incapable of interacting with any counsel representing Mr. Geraci or associates due to his belief that they are "conspiring" against him. In my professional

opinion Mr. Cotton's obsessional ruminations around his legal case are bordering a delusional quality, which will make it very difficult for him to competently represent himself in civil litigation.

Sincerely



M. PLOESSER, M.D.
PSYCHIATRIST

Markus Ploesser, MD

Lic# A101564

EXHIBIT 3

FILED
Clerk of the No Fee GC \$6103
OCT 27 2014
By: DJ JELLISON, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal
corporation,

Plaintiff,

v.

THE TREE CLUB COOPERATIVE, INC., a
California corporation;
JONAH McCLANAHAN, an individual;
JOHN C. RAMISTELLA, an individual;
JL 6th AVENUE PROPERTY, LLC, a
California limited liability company;
LAWRENCE E. GERACI, also known as
LARRY GERACI, an individual;
JEFFREY KACHA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2014-00020897-CU-MC-CTL

JUDGE: RONALD S. PRAGER

STIPULATION FOR ENTRY OF FINAL
JUDGMENT AND PERMANENT
INJUNCTION; JUDGMENT THEREON
[CCP § 664.6]

IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its
attorneys, Jan I. Goldsmith, City Attorney, and by Marsha B. Kerr, Deputy City Attorney, and
Defendants JL 6th AVENUE PROPERTY, LLC, a California limited liability company;
LAWRENCE E. GERACI, aka LARRY GERACI, an individual; and JEFFREY KACHA, an
individual, appearing by and through their attorney, Joseph S. Carmellino, enter into the
following Stipulation for Entry of Final Judgment in full and final settlement of the above-
captioned case without trial or adjudication of any issue of fact or law, and agree that a final
judgment may be so entered:

1 1. This Stipulation for Entry of Final Judgment (Stipulation) is executed between and
2 among Plaintiff City of San Diego, a municipal corporation, and Defendants JL 6th AVENUE
3 PROPERTY, LLC; LAWRENCE E. GERACI, aka LARRY GERACI; and JEFFREY KACHA
4 only, who are named parties in the above-entitled action (collectively, "Defendants").

5 2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court
6 of the State of California for the County of San Diego, entitled *City of San Diego, a municipal*
7 *corporation v., The Tree Club Cooperative, Inc., a California corporation; Jonah McClanahan,*
8 *an individual; John C. Ramistella, an individual; JL 6th Avenue Property, LLC, a California*
9 *limited liability company; Lawrence E. Geraci, also known as Larry Geraci, an individual;*
10 *Jeffrey Kacha, an individual; and DOES 1 through 50, inclusive,* Case No. 37-2014-00020897-
11 CU-MC-CTL. This Stipulation does not affect *City of San Diego v. Tycel Cooperative, Inc., et al.,*
12 San Diego Superior Court case No. 37-2014-00025378-CU-MC-CTL, which is a separate case to
13 be considered separately.

14 3. The parties wish to avoid the burden and expense of further litigation and accordingly
15 have determined to compromise and settle their differences in accordance with the provisions of
16 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein
17 shall be deemed to constitute an admission or an adjudication of any of the allegations of the
18 Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and
19 only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent
20 Injunction by the Superior Court.

21 4. The address where the tenant Defendants were maintaining a marijuana dispensary
22 business is 1033 Sixth Avenue, San Diego, California, 92101, also identified as Assessor's Parcel
23 Number 534-186-04-00 (PROPERTY).

24 5. The PROPERTY is owned by JL 6th AVENUE PROPERTY, LLC (JL), according to
25 San Diego County Recorder's Grant Deed, Document No. 2012-0184893, recorded March 29,
26 2012. Defendants GERACI and KACHA are members of JL and hereby certify they have
27 authority to sign for and bind JL herein.

28 ///

THE NORTH HALF OF LOT D IN BLOCK 34 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MADE BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 522 OF DEEDS, IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY.

7. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

8. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,** Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

a. Keeping, maintaining, operating, or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative at the PROPERTY, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code.

b. Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.

DEFENDANTS agree to do the following at the **PROPERTY**:

9. Within 24 hours from the date of signing this Stipulation, cease maintaining, operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

1 10. The Parties acknowledge that where local zoning ordinances allow the operation of a
2 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
3 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
4 cooperative in the City of San Diego as authorized under the law after Defendants provide the
5 following to Plaintiff in writing:

- 6 a. Proof that the business location is in compliance with the ordinance; and
7 b. Proof that any required permits or licenses to operate a marijuana dispensary,
8 collective or cooperative have been obtained from the City of San Diego as required by the
9 SDMC.

10 11. If the marijuana dispensary that is operating at the PROPERTY, including but
11 not limited to, The Tree Club Cooperative, Inc., Jonah McClanahan and John C.
12 Ramistella, does not agree to immediately voluntarily vacate the premises, then within 24
13 hours from the date of signing this Stipulation, DEFENDANTS shall in good faith use all legal
14 remedies available to evict the marijuana dispensary business known as The Tree Club
15 Cooperative, Inc., Jonah McClanahan and John C. Ramistella or the appropriate party responsible
16 for the leasehold and operation of the marijuana dispensary, including but not limited to,
17 prosecuting an unlawful detainer action.

18 12. Within 24 hours from the date of signing this Stipulation, remove all signage from
19 the exterior of the premises advertising a marijuana dispensary, including but not limited to,
20 signage advertising The Tree Club Cooperative.

21 13. Within 24 hours from the date of signing this Stipulation, post a sign for a
22 minimum of 60 calendar days, conspicuously visible from the exterior of the PROPERTY stating
23 in large bold font and capital letters that can be seen from the public right way, that "The Tree
24 Club Cooperative" is permanently closed and that there is no dispensary operating at this address.

25 14. Allow personnel from the City of San Diego access to the PROPERTY to inspect for
26 compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of
27 8:00 a.m. and 5:00 p.m.

15. When this Stipulation has been filed with the Court, Jeffrey Kacha will personally pick up a conformed copy of the Stipulation and Order from the Office of the City Attorney. He or his attorney will contact the City's investigator, Connie Johnson, at 619-533-5699 within 15 days of the filing of this Stipulation to set a time for Mr. Kacha to pick up the conformed copy.

MONETARY RELIEF

16. Within 15 calendar days from the date of signing this Stipulation, Defendants shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's investigative costs, the amount of \$281.93. Payment shall be in the form of a certified check, payable to the "City of San Diego," and shall be in full satisfaction of all costs associated with the City's investigation of this action to date. The check shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

17. Commencing within 30 days of signing this Stipulation, Defendants shall pay to Plaintiff City of San Diego civil penalties in the amount of \$25,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **\$19,000 of these penalties is immediately suspended.** These suspended penalties shall only be imposed if Defendants fail to comply with the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties in the amount of **\$6,000** shall be paid in 15 monthly installments of \$400.00 each, at 30-day intervals following the date of the first payment as specified above, in the form of a certified check, payable to the "City of San Diego," and delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention: Marsha B. Kerr.

ENFORCEMENT OF JUDGMENT

18. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the

1 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing
2 legal rate from the date of default until paid in full.

3 19. Nothing in this Stipulation shall prevent any party from pursuing any remedies as
4 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,
5 including criminal prosecution and civil penalties that may be authorized by the court according
6 to the SDMC at a cumulative rate of up to \$2,500 per day per violation.

7 20. Defendants agree that any act, intentional or negligent, or any omission or failure by
8 their contractors, successors, assigns, partners, members, agents, employees or representatives to
9 comply with the requirements set forth in Paragraphs 8-17 above will be deemed to be the act,
10 omission, or failure of Defendants and shall not constitute a defense to a failure to comply with
11 any part of this Stipulation. Further, should any dispute arise between any contractor, successor,
12 assign, partner, member, agent, employee or representative of Defendants for any reason,
13 Defendants agree that such dispute shall not constitute a defense to any failure to comply with
14 any part of this Stipulation, nor justify a delay in executing its requirements.

15 **RETENTION OF JURISDICTION**

16 21. The Court will retain jurisdiction for the purpose of enabling any of the parties to this
17 Stipulation to apply to this Court at any time for such order or directions that may be necessary or
18 appropriate for the construction, operation or modification of the Stipulation, or for the
19 enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

20 **RECORDATION OF JUDGMENT**

21 22. A certified copy of this Judgment shall be recorded in the Office of the San Diego
22 County Recorder pursuant to the legal description of the PROPERTY.

23 **KNOWLEDGE AND ENTRY OF JUDGMENT**

24 23. By signing this Stipulation, Defendants admit personal knowledge of the terms set
25 forth herein. Service by mail shall constitute sufficient notice for all purposes.

26 ///

1 24. The clerk is ordered to immediately enter this Stipulation.

2 IT IS SO STIPULATED.

3 Dated: OCT. 21, 2014

JAN I. GOLDSMITH, City Attorney

4
5 By Marsha B. Kerr

6 Marsha B. Kerr
7 Deputy City Attorney
8 Attorneys for Plaintiff

9 Dated: 7/26 2014

JL 6TH AVENUE PROPERTY, LLC

10 By [Signature]

11 Member

12 Dated: 10-21-14 2014

13 [Signature]
14 Lawrence E. Geraci aka Larry Geraci, an
15 individual

16 Dated: 9/26 2014

17 [Signature]
18 Jeffrey Kacha

19 Dated: 9/26 2014

20 [Signature]
21 Joseph S. Carmellino, Attorney for
22 Defendants JL 6th Avenue Property, LLC,
23 Lawrence E. Geraci aka Larry Geraci and
24 Jeffrey Kacha

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ORDER

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 10/27/14



JUDGE OF THE SUPERIOR COURT

RONALD S. PRAGER

37-2014-00020897-CU-MC-CTL

EXHIBIT 4

FILED
Clerk of the Superior Court

JUN 17 2015

FILED
Clerk of the Superior Court

JUN 17 2015

By: H. CHAVARIN, Deputy
JUN 11 PM 1:37

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal
corporation,

Plaintiff,

v.

CCSQUARED WELLNESS COOPERATIVE,
a California corporation;
BRENT MESNICK, an individual;
JL INDIA STREET, LP, formerly known as JL
INDIA STREET, LLC;
JEFFREY KACHA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2015-00004430-CU-MC-CTL

STIPULATION FOR ENTRY OF FINAL
JUDGMENT AND PERMANENT
INJUNCTION; JUDGMENT THEREON
[CCP § 664.6]

IMAGED FILE

1. Plaintiff, City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and Marsha Kerr, Deputy City Attorney; and Defendants, JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI (Doe 1) (collectively, "Defendants"), appearing by and through their attorney, Joseph Carmellino, Esq., enter into the following Stipulation for Entry of Final Judgment (Stipulation) in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered.

///

1 2. The parties to this Stipulation are parties in two civil actions pending in the Superior
2 Court of the State of California for the County of San Diego. It is the intention of the parties that
3 the terms of this Stipulation constitute a global settlement of the following cases:

4 a. *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-
5 00004430-CU-MC-CTL.

6 b. *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-
7 000000972.

8 3. The parties wish to avoid the burden and expense of further litigation and accordingly
9 have determined to compromise and settle their differences in accordance with the provisions of
10 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein
11 shall be deemed to constitute an admission or an adjudication of any of the allegations of the
12 Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and
13 only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent
14 Injunction by the Superior Court.

15 4. The address where the Defendants were maintaining a marijuana dispensary business
16 at all times relevant to this action is 3505 Fifth Avenue, San Diego, also identified as Assessor's
17 Parcel Number 452-407-17-00 (PROPERTY). The PROPERTY is currently owned by JL INDIA
18 STREET, LP, formerly known as JL INDIA STREET, LLC.

19 5. The legal description of the PROPERTY is:

20 Lot 3 in block 45 of loma grande, in the city of San Diego, County of San
21 Diego, State of California, according to Map thereof No. 692, filed in the
22 Office of the County Recorder of San Diego County, November 23, 1891.

23 6. This action is brought under California law and this Court has jurisdiction over the
24 subject matter, the PROPERTY, and each of the parties to this Stipulation.

24 INJUNCTION

25 7. The provisions of this Stipulation are applicable to Defendants, their successors and
26 assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or
27 other entities acting by, through, under or on behalf of Defendants, and all persons acting in
28 concert with or participating with Defendants with actual or constructive knowledge of this

1 Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,**
2 Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San
3 Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil
4 Procedure section 526, and under the Court's inherent equity powers, from engaging in or
5 performing, directly or indirectly, any of the following acts:

6 Keeping, maintaining, operating or allowing any commercial, retail, collective,
7 cooperative or group establishment for the growth, storage, sale or distribution of marijuana,
8 including, but not limited to, any marijuana dispensary, collective or cooperative organized
9 anywhere in the City of San Diego without first obtaining a Conditional Use Permit pursuant to
10 the San Diego Municipal Code.

11 COMPLIANCE MEASURES

12 **DEFENDANTS agree to do the following at the PROPERTY:**

13 8. **Immediately** cease maintaining, operating, or allowing any commercial, retail,
14 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of
15 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
16 organized pursuant to the California Health and Safety Code.

17 9. The Parties acknowledge that where local zoning ordinances allow the operation of a
18 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
19 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
20 cooperative in the City of San Diego as authorized under the law after Defendants provide the
21 following to Plaintiff in writing:

- 22 a. Proof that the business location is in compliance with the ordinance; and
- 23 b. Proof that any required permits or licenses to operate a marijuana dispensary,
24 collective or cooperative have been obtained from the City of San Diego as
25 required by the SDMC.

26 10. **Within 24 hours from the date of signing this Stipulation,** remove all signage from
27 the exterior of the premises advertising a marijuana dispensary, including but not limited to,
28 signage advertising CCSquared Wellness Cooperative or CCSquared Storefront.

1 11. No later than 48 hours from signing this Stipulation cease advertising on the
2 internet, magazines or through any other medium the existence of CCSquared Wellness
3 Cooperative or CCSquared Storefront at the PROPERTY.

4 12. No later than 48 hours from signing this Stipulation remove all fixtures, items and
5 property associated with a marijuana dispensary business from the PROPERTY.

6 13. Within one week of signing this Stipulation, Defendant will contact City zoning
7 investigator Leslie Sennett at 619-236-6880 to schedule an inspection of the PROPERTY.

8 **MONETARY RELIEF**

9 14. Defendants, jointly and severally, shall pay Plaintiff City of San Diego, for
10 Development Services Department, Code Enforcement Section's investigative costs, the amount
11 of \$2,438.03. All other attorney fees and costs expended by the parties in the above-captioned
12 case are waived by the parties. The parties agree that payment in full of the monetary amount
13 referenced as investigative costs is applicable to and satisfies payment of investigative costs for
14 both cases referenced in paragraph 2 above.

15 15. Defendants shall jointly and severally pay to Plaintiff City of San Diego civil penalties
16 in the amount of \$75,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims
17 against Defendants arising from any of the past violations alleged by Plaintiff in this action.
18 \$37,500 of these penalties is immediately suspended. Payment in the amount of \$37,500 in
19 civil penalties plus \$2438.03 in investigative costs referenced in paragraph 14, totaling
20 \$39,938.03, shall be made in 24 monthly installments of \$1,664.09 each beginning on or before
21 June 5, 2015, and continuing on the fifth of each successive month until paid in full. Receipt of
22 Defendants' initial monthly payment of \$1,664.09 on June 4, 2015 is acknowledged. The parties
23 agree that payment in full of the monetary amounts referenced as civil penalties is applicable to
24 and satisfies payment of civil penalties for both of the cases referenced in paragraph 2 above. All
25 payments shall be made in the form of a certified check payable to the "City of San Diego," and
26 shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue,
27 Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

28 ///

1 16. The suspended penalties shall only be imposed if Defendants fail to comply with the
2 terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if
3 imposition of the penalties will be sought by Plaintiff and on what basis.

4 **ENFORCEMENT OF JUDGMENT**

5 17. In the event of default by Defendants as to any amount due under this Stipulation, the
6 entire amount due shall be deemed immediately due and payable as penalties to the City of San
7 Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the
8 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing
9 legal rate from the date of default until paid in full. Service by mail shall constitute sufficient
10 notice for all purposes.

11 18. Nothing in this Stipulation shall prevent any party from pursuing any remedies as
12 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,
13 including criminal prosecution and civil penalties that may be authorized by the court according
14 to the SDMC at a cumulative rate of up to \$2,500 per day per violation occurring after the
15 execution of this Stipulation.

16 19. Defendants agree that any act, intentional act, omission or failure by their contractors,
17 successors, assigns, partners, members, agents, employees or representatives on behalf of
18 Defendants to comply with the requirements set forth in Paragraphs 7-15 above will be deemed to
19 be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to
20 comply with any part of this Stipulation. Further, should any dispute arise between any
21 contractor, successor, assign, partner, member, agent, employee or representative of Defendants
22 for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to
23 comply with any part of this Stipulation, nor justify a delay in executing its requirements.

24 **RETENTION OF JURISDICTION**

25 20. The Court will retain jurisdiction for the purpose of enabling any of the parties to
26 this Stipulation to apply to this Court at any time for such order or directions that may be
27 necessary or appropriate for the construction, operation or modification of the Stipulation, or for
28 the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

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RECORDATION OF JUDGMENT

21. This Stipulation shall not be recorded unless there is an uncured breach of the terms herein, in which instance a certified copy of this Stipulation and Judgment may be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

22. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by regular mail shall constitute sufficient notice for all purposes.

23. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

By Marsha B. Kerr

Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 6-10, 2015

JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC

By Jeffrey Kacha

General Partner

Dated: 6-10, 2015

Jeffrey Kacha, an individual

Dated: 6-8, 2015

Lawrence E. Geraci, aka Larry Geraci, an individual

///

1 Dated: 6/11/15, 2015

2
3 By Joseph S. Carmellino

4 Joseph S. Carmellino
5 Attorney for Defendants Jeffrey Kacha and
6 JL India Street LP, formerly known as JL
7 India Street, LLC

8 **JUDGMENT**

9 Upon the stipulation of the parties hereto and upon their agreement to entry of this
10 Stipulation without trial or adjudication of any issue of fact or law herein, and good cause
11 appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

12 Dated: 6-12-16

13 JOHN S. MEYER

14 JUDGE OF THE SUPERIOR COURT
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EXHIBIT 5



THE CITY OF SAN DIEGO

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other _____

Project Title**Project No. For City Use Only**

Federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No**Name of Individual (type or print):**

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency**Street Address:**

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

(619) 954-4447

Fax No:**Signature:****Date:**

10-31-2016

Name of Individual (type or print):

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency**Street Address:**

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:**Signature:****Date:**

10-31-2016

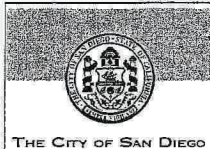
Name of Individual (type or print):☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency**Street Address:****City/State/Zip:****Phone No:****Fax No:****Signature:****Date:****Name of Individual (type or print):**☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency**Street Address:****City/State/Zip:****Phone No:****Fax No:****Signature:****Date:**

EXHIBIT 6

Court's Ex. **034**

Case # 37-2017-00010073-CU-BC-CTL

Rec'd _____

Dept. **C-73** Clk. _____

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

General Application

FORM
DS-3032
AUGUST 2013

1. **Approval Type:** *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way; ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☒ Other: CUP

2. **Project Address/Location:** *Include Building or Suite No.*

6176 Federal Blvd.

Project Title:

Federal Blvd. MMCC

Project No.: *For City Use Only*

520604

Legal Description: *(Lot, Block, Subdivision Name & Map Number)*

TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO

Assessor's Parcel Number:

543-020-02

Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☒ Commercial/Non-Residential ☐ Vacant Land

Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☒ Commercial/Non-Residential ☐ Vacant Land

Project Description:

The project consists of the construction of a new MMCC facility

3. **Property Owner/Lessee Tenant Name:** *Check one* ☐ Owner ☒ Lessee or Tenant

Telephone:

Fax:

Rebecca Berry

Address:

5982 Gullstrand Street

City:

San Diego

State:

CA

Zip Code:

92122

E-mail Address:

becky@tfcisd.net

4. **Permit Holder Name** - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.

Name:

Rebecca Berry

Telephone:

Fax:

Address:

5982 Gullstrand Street

City:

San Diego

State:

CA

Zip Code:

92122

E-mail Address:

becky@tfcisd.net

5. **Licensed Design Professional** (if required): (check one) ☒ Architect ☐ Engineer

Name:

Michael R Morton AIA

Telephone:

License No.: C-19371

Fax:

Address:

3956 30th Street

City:

San Diego

State:

CA

Zip Code:

92104

E-mail Address:

6. **Historical Resources/Lead Hazard Prevention and Control** (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) -

a. Year constructed for all structures on project site: 1951

b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A

c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☒ Yes ☐ No

d. Does the project include any foundation repair, digging, trenching or other site work? ☒ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer

Signature: Date: 10/28/2016

7. **Notice of Violation** - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☐ No ☐ Yes, copy attached

8. **Applicant Name:** *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☒ Other Person per M.C. Section 112.0102

Telephone:

Fax:

Rebecca Berry

Address:

5982 Gullstrand Street

City:

San Diego

State:

CA

Zip Code:

92122

E-mail Address:

becky@tfcisd.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature:

Date: Oct 31 2016

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
Upon request, this information is available in alternative formats for persons with disabilities.

DS-3032 (08-13)

EXHIBIT 7



Darryl Cotton <indagrodarryl@gmail.com>

Agreement

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

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Court's Ex. **040**
Case # 37-2017-00010073-CU-BC-CTL
Rec'd _____
Dept. **C-73** Clk. _____

Circular 230 Disclaimer:

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

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15827193a18790...> 4/26/2017

BER0074

recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.



Cotton & Geraci Contract.pdf
71K

Exhibit B

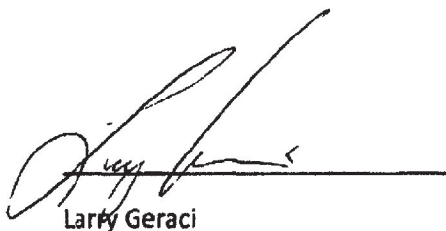
(November 2nd Agreement)

11/02/2016

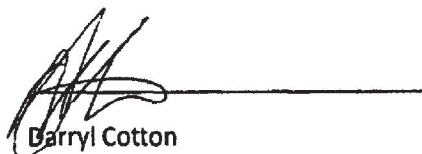
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton

BER0077

ACKNOWLEDGMENT

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

State of California

County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature

Jessica Newell

(Seal)



EXHIBIT 8



Darryl Cotton <indagroddarryl@gmail.com>

Agreement

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President



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

6176 Federal Blvd.
San Diego, CA. 92114
USA

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

[Quoted text hidden]

Court's Ex. **042**
Case # 37-2017-00010073-CU-BC-CTL
Rec'd _____
Dept. **C-73** Clk. _____

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=1582864ae4d4c9...> 4/26/2017

BER0081

EXHIBIT 9

Larry Geraci

From: darryl@dalbercia.us on behalf of Darryl Cotton <darryl@inda-gro.com>
Sent: Thursday, November 3, 2016 1:41 PM
To: Larry Geraci
Subject: Re: Agreement

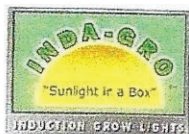
Larry,

Per our phone call the name 151 AmeriMeds has not been taken nor has there been any business entity formed from it. If you see this as an opportunity to piggyback some of the work I've done and will continue to do as 151 Farmers with further opportunities as a potential franchise for your dispensary I'd like for you to consider that as the process evolves.

We'll firm it up as you see fit.

Regards.

Darryl Cotton, President



darryl@inda-gro.com

www.inda-gro.com

Ph: 877.452.2244

Cell: 619.954.4447

Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA. 92114
USA

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

On Wed, Nov 2, 2016 at 3:11 PM, Larry Geraci <Larry@tfcgsd.net> wrote:

Best Regards,

EXHIBIT 10

To: Larry Geraci[Larry@tfcfsd.net]
From: Darryl Cotton
Sent: Fri 3/17/2017 2:15:50 PM
Importance: Normal
Subject: Re: Contract Review
Received: Fri 3/17/2017 2:15:56 PM

Court's Ex. **069**
Case # 37-2017-00010073-CU-BC-CTL
Rec'd _____
Dept. **C-73** Clk. _____

Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

Please confirm, as requested, by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

It is unfortunate that matters have turned out like this, but hearing from the city that the application had been submitted before our deal was signed and that it is already under review, meaning you have been lying to me for months, forces me to take this course of action.

Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

-Darryl

On Thu, Mar 16, 2017 at 8:23 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finalize it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an \$800,000 purchase price, a \$50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum \$10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the \$800,000 and that as a sign of good faith, you were providing a \$10,000 deposit towards the required \$50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining \$40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the \$10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to \$5,000 a month. I know from our conversations that you have spent over \$300,000 on lobbying and zoning

efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a \$5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining \$40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of \$10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total \$50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your \$10,000 of the \$50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <Larry@tfcisd.net> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: [858.576.1040](tel:858.576.1040)

Fax: [858.630.3900](tel:858.630.3900)

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at [\(858\)576-1040](tel:858.576.1040) and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

EXHIBIT 11

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff
LARRY GERACI

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.

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

PLAINTIFF'S COMPLAINT FOR:

- 1. BREACH OF CONTRACT;**
- 2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;**
- 3. SPECIFIC PERFORMANCE; and**
- 4. DECLARATORY RELIEF.**

Plaintiff, LARRY GERACI, alleges as follows:

1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and Defendant COTTON that is the subject of this action was entered into in San Diego County, California, and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County, California (the "PROPERTY").

4. Currently, and at all times since approximately 1998, Defendant COTTON owned the PROPERTY.

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

1 informed and believe and based thereon allege that each of the fictitiously-named defendants is in some
2 way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as
3 herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend
4 this complaint to state the true names and/or capacities of such fictitiously-named defendants when the
5 same are ascertained.

6 6. Plaintiff alleges on information and belief that at all times mentioned herein, each and
7 every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in
8 interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged,
9 were acting, whether individually or through their duly authorized agents and/or representatives, within
10 the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate
11 structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge,
12 permission, and consent of the remaining defendants, and each of them, and that said defendants
13 ratified and approved the acts of all of the other defendants.

14 GENERAL ALLEGATIONS

15 7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a
16 written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated
17 therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

18 8. On or about November 2, 2016, GERACI paid to COTTON \$10,000.00 good faith
19 earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
20 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
21 conditions of the written agreement.

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
28 \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

3 **(For Breach of Contract against Defendant COTTON and DOES 1-5)**

4 10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
5 paragraphs 1 through 9 above.

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

17 12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer
18 damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI
19 in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended
20 to date on the CUP process for the PROPERTY.

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**
23 **against Defendant COTTON and DOES 1-5)**

24 13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
25 paragraphs 1 through 12 above.

26 14. Each contract has implied in it a covenant of good faith and fair dealing that neither
27 party will undertake actions that, even if not a material breach, will deprive the other of the benefits of
28 the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

1 withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the
2 PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON
3 has breached the implied covenant of good faith and fair dealing.

4 15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair
5 dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for
6 return of all sums expended by GERACI in reliance on the agreement, including but not limited to the
7 estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

8 **THIRD CAUSE OF ACTION**

9 **(For Specific Performance against Defendants COTTON and DOES 1-5)**

10 16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
11 paragraphs 1 through 15 above.

12 17. The aforementioned written agreement for the sale of the PROPERTY is a valid and
13 binding contract between Plaintiff GERACI and Defendant COTTON.

14 18. The aforementioned written agreement for the sale of the PROPERTY states the terms
15 and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible
16 to specific performance.

17 19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a
18 writing that satisfies the statute of frauds.

19 20. The aforementioned written agreement for the purchase and sale of the PROPERTY is
20 fair and equitable and is supported by adequate consideration.

21 21. Plaintiff GERACI has duly performed all of his obligations for which performance has
22 been required to date under the agreement. GERACI is ready and willing to perform his remaining
23 obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for
24 a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary
25 thus satisfying that condition precedent, then to pay the remaining \$790,000.00 balance of the purchase
26 price.

27 22. Defendant COTTON is able to specifically perform his obligations under the contract,
28 namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

1 Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that
2 condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for
3 receipt of payment from GERACI or assignee of the remaining \$790,000.00 balance of the purchase
4 price.

5 23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions
6 that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary
7 and to specifically perform the contract upon satisfaction of the condition that such approval is in fact
8 obtained.

9 24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's
10 attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not
11 intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon
12 satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana
13 dispensary and tender the remaining balance of the purchase price.

14 25. The aforementioned written agreement for the purchase and sale of the PROPERTY
15 constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy,
16 and adequate legal remedy is presumed.

17 26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon
18 specifically enforcing the written agreement for the purchase and sale of the PROPERTY from
19 Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

20 **FOURTH CAUSE OF ACTION**

21 **(For Declaratory Relief against Defendants COTTON and DOES 1-5)**

22 27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
23 paragraphs 1 through 14 above.

24 28. An actual controversy has arisen and now exists between Defendant COTTON, on the
25 one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written
26 agreement contains terms and condition that conflict with or are in addition to the terms stated in the
27 written agreement. GERACI disputes those conflicting or additional contract terms.
28

29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or his assignee. Such a declaration is necessary and appropriate at this time so that each party may ascertain their rights, duties, and obligations thereunder.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First and Second Causes of Action:

1. For compensatory damages in an amount in excess of \$300,000.00 according to proof at trial.

On the Third Cause of Action:

2. For specific performance of the written agreement for the purchase and sale of the PROPERTY according to its terms and conditions; and

3. If specific performance cannot be granted, then damages in an amount in excess of \$300,000.00 according to proof at trial.

On the Fourth Cause of Action:

4. For declaratory relief in the form of a judicial determination of the terms and conditions of the written agreement and the duties, rights and obligations of each party under the written agreement.

On all Causes of Action:

5. For temporary and permanent injunctive relief as follows: that Defendants, and each of them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and all persons acting in concert with or participating with them, directly or indirectly, be enjoined and restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

6. For costs of suit incurred herein; and

///

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Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

EXHIBIT A

11/02/2016

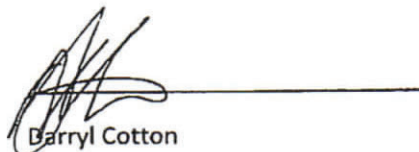
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

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

State of California

County of San Diego

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

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

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

WITNESS my hand and official seal.



Signature Jessica Newell (Seal)

EXHIBIT 12

ROA 9 4 pgs 4 pgs

DOC# 2017-0129756



Mar 22, 2017 01:32 PM

OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$24.00

PAGES: 4

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

03/22/2017 at 03:07:00 PM

Clerk of the Superior Court
By Delia Velma, Deputy Clerk

Recorded and Requested By:

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff
LARRY GERACI

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.

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

NOTICE OF LIS PENDENS

IMAGED FILE

Dept: C-73
Judge: Hon. Joel Wohlfeil

Complaint filed: March 21, 2017

NOTICE IS HEREBY GIVEN that the above-entitled action was filed on March 21, 2017, in the Superior Court of the State of California for the County of San Diego, Central Division, as Case No. 37-2017-00010073-CU-BC-CTL, by LARRY GERACI, an individual, Plaintiff, and against DARRYL COTTON, an individual, and DOES 1 through 10, inclusive, Defendants.

This action states a real property claim in that it affects title or a claim of title to specific real property which is located at 6176 Federal Blvd., in the City of San Diego, County of San Diego, State of California, Assessor's Parcel No. 543-020-02-00, and more particularly described in the following legal description (the "PROPERTY"):

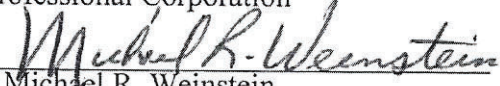
THAT PORTION OF BLOCK 25, TRACT NO. 2 OF ENCANTO HEIGHTS, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1100, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 5, 1907, AS SHOWN ON MAP NO. 2121 OF JOFAINA VISTA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 20, 1928, NOW ABANDONED AND DESCRIBED AS LOT 20.

1 This action states causes of action for, among other things, (a) specific performance of a
2 written agreement for the purchase and sale of the PROPERTY from DARRYL COTTON to
3 LARRY GERACI or assignee; and (b) declaratory relief seeking a determination regarding the
4 terms and conditions of said written agreement and the rights, duties, and obligations of the
5 parties thereunder.

6
7 Dated: March 22, 2017

FERRIS & BRITTON,
A Professional Corporation

8
9 By:


Michael R. Weinstein
Scott H. Toothacre

10
11 Attorneys for Plaintiff
LARRY GERACI
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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document. Cal.Civ.Code § 1189

COUNTY OF SAN DIEGO) ss.

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

 ANNA KRISTINE LIZANO
Notary Public – California
San Diego County
Commission # 2175219
My Comm. Expires Dec 11, 2020

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

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**PROOF OF SERVICE
BY MAIL**

I declare: I am over 18 years of age, employed in the County of San Diego, State of California, and not a party to this action. My business address is 501 West Broadway, Suite 1450, San Diego, CA 92101.

I served the following documents:

Notice of Lis Pendens

on each of the following persons and entities at their respective addresses as follows:

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114

____ (BY MAIL) By placing a true copy in a sealed envelope addressed to each party and placing said envelopes for collection and mailing on the date hereof following our ordinary business practices. I am readily familiar with our firm's practice for collection and processing of correspondence for mailing; correspondence is deposited on the same day with the U.S. Postal Service at San Diego, California, in the ordinary course of business.

XX (BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED) By placing a true copy in a sealed envelope addressed to each party and mailing each envelope by Certified Mail, Return Receipt Requested, with the United States Postal Service at San Diego, California, on the date set forth below.

____ (BY FACSIMILE) Per written agreement between counsel, by sending said documents by facsimile transmission from telephone no. (619) 232-9316 to the above facsimile machine telephone number(s), on this date and at the time(s) set forth above. The transmission was reported as complete and without error, as stated in the transmission report properly issued by the transmitting facsimile machine and attached hereto.

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

____ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 22, 2017, at San Diego, California.


ANNA LIZANO

EXHIBIT 13

Polk v. Gontmakher

United States District Court for the Western District of Washington

August 28, 2019, Decided; August 28, 2019, Filed

Case No. 2:18-cv-01434-RAJ

Reporter

2019 U.S. Dist. LEXIS 146724 *; 2019 WL 4058970

EVAN JAMES POLK, a/k/a JAMES MOZROK, an individual, Plaintiff, v. LEONID GONTMAKHER, and JANE DOE GONTMAKHER, husband and wife, and the marital community composed thereof; CANNEX CAPITAL HOLDINGS, INC., a Canadian corporation; NORTHWEST CANNABIS SOLUTIONS, d/b/a NWCS425.COM, a Washington cannabis licensee; JOHN DOES 1-10 and JANE DOES 1-10, husbands and wives, and the martial communities composed thereof; and XYZ LLCs 1-10, Defendants.

Subsequent History: Dismissed by, Without prejudice [Polk v. Gontmakher, 2020 U.S. Dist. LEXIS 89872, 2020 WL 2572536 \(W.D. Wash., May 21, 2020\)](#)

Dismissed by [Polk v. Gontmakher, 2021 U.S. Dist. LEXIS 53569 \(W.D. Wash., Mar. 22, 2021\)](#)

Core Terms

cannabis, license, federal law, allegations, marijuana

Counsel: [*1] For Evan James Polk, a married man as his separate property also known as James Mozrok, Plaintiff: Steven Joseph Gordon, BELLEVUE, WA.

For Leonid Gontmakher, also known as Leo Gontmakher, Jane Doe Gontmakher, husband and wife, and the marital community composed thereof, Defendants: Stacia N Lay, Venkat Balasubramani, FOCAL PLLC, SEATTLE, WA.

For Cannex Capital Holdings Inc, a Canadian corporation, Northwest Cannabis Solutions, a Washington cannabis licensee doing business as NWCS425.com, Defendants: Daniel J. Oates, Kent Michael Fandel, MILLER NASH GRAHAM & DUNN LLP (SEA), SEATTLE, WA.

Judges: Honorable Richard A. Jones, United States District Judge.

Opinion by: Richard A. Jones

Opinion

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter comes before the Court on Defendant Leonid Gontmakher's Motion to Dismiss (Dkt. # 6). Defendants Cannex Capital Holdings, Inc. and Northwest Cannabis Solutions d/b/a NWCS425.com join the Motion. Dkt. # 14. Having considered the submissions of the parties, the relevant portions of the record, and the applicable law, the Court finds that oral argument is unnecessary. For the reasons stated below, Defendant's Motion is GRANTED.

I. BACKGROUND

The following is taken from Plaintiff's Complaint [*2] (Dkt. # 1), which is assumed to be true for the purposes of this motion to dismiss.¹ [Sanders v. Brown, 504 F.3d 903, 910 \(9th Cir. 2007\)](#). Plaintiff Evan James Polk ("Mr.

¹ As an initial matter, the Court notes that Mr. Polk submitted a factual declaration in support of his Opposition. Dkt. # 16. A court typically cannot consider evidence beyond the four corners of the complaint, without converting the motion to a motion for summary judgment. [Lee v. City of Los Angeles, 250 F.3d 668, 688 \(9th Cir. 2001\)](#). There are two exceptions to this rule: (1) the court may consider a document to which the complaint refers if the document is central to the party's claims and its authenticity is not in question, and (2) the court may consider evidence subject to judicial notice. [Id. at 688](#). Because Mr. Polk's declaration does not meet either of the exceptions, the Court declines to consider the declaration in ruling on this motion.

Polk" or "Plaintiff") and Defendant Leonid Gontmakher ("Mr. Gontmakher" or "Defendant") are in the cannabis business. In late 2012 or early 2013, Mr. Gontmakher approached Mr. Polk about starting a cannabis growing and processing business in Washington. Dkt. # 1 at ¶ 3.2. At the time, Washington voters had just passed Initiative 502 regulating the production, distribution, and sale of marijuana and removing related state criminal and civil penalties—codified in the *Washington Uniform Controlled Substances Act* as RCW § 69.50.

Under RCW § 69.50, individuals or entities intending to produce, process, or distribute cannabis must obtain either a producer/processor license or a retail license from the Liquor and Cannabis Board ("LCB"). [RCW § 69.50.325](#). There are, of course, restrictions to who can obtain these licenses. Individuals with a criminal history are generally restricted from obtaining a license if they have 8 or more points under the LCB's point system. WAC 314-55-040. Felony convictions are assigned 12 points, while misdemeanors are assigned 4 or 5 points. WAC 314-55-040(1). During the application [*3] process, prior state or federal convictions may be considered for mitigation on an individual basis. WAC 314-55-040(3)(b).

Mr. Polk and Mr. Gontmakher initially launched their growing operation from a relative's house. Dkt. # 1 at ¶ 3.4. After the new cannabis regulations were promulgated, they decided to purchase a producer/processor license. Dkt. # 1 at ¶ 3.3. But they soon ran into a problem. Prior to starting the business with Mr. Gontmakher, Mr. Polk pled guilty to possession of marijuana with intent to dispense in Virginia (a felony), and possession of drugs in Nevada (a misdemeanor). Dkt. # 7, Exs. A—C. As such, he was prohibited from obtaining a producer or processor license under WAC 314-55-040(3)(b), absent mitigation of his criminal convictions. After Mr. Polk and Mr. Gontmakher realized that Mr. Polk could not be listed as an owner of their licensed business, Northwest Cannabis Solutions ("NWCS"), they agreed to move forward with the business anyway, orally agreeing to be "equal partners" in their cannabis growing venture. *Id.* at ¶ 3.5. They ultimately agreed that Mr. Polk would receive a 30% ownership interest in NWCS, Mr. Gontmakher would receive a 30% interest, and the [*4] other investors would receive a 40% interest. *Id.* at ¶ 3.10. Mr. Polk's "interest" would be held in the name of one of Mr. Gontmakher's relatives. *Id.*

Over time, Mr. Polk explored different ways to make his interest in NWCS legal. Dkt. # 1 at ¶¶ 3.11-3.12, 3.17,

3.20. Although these efforts were unsuccessful, he stayed with NWCS at Mr. Gontmakher's encouragement. Dkt. # 1 at ¶ 3.16. Finally, in September 2015, Mr. Polk left NWCS. Dkt. # 1 at ¶ 3.28. After his departure, Mr. Gontmakher disputed what he owed Mr. Polk for his alleged interest in NWCS. *Id.* at ¶ 3.29. As a result, in 2018, Mr. Polk sued Mr. Gontmakher, NWCS, and the other investors in NWCS, alleging, among other things, that he is entitled to an ownership interest in NWCS and past and future profits. Dkt. # 1. Mr. Gontmakher moves to dismiss causes of action one to four, and cause of action six, for failure to state a claim under [Fed. R. Civ. P. 12\(b\)\(6\)](#).

II. LEGAL STANDARD

A. [FRCP 12\(b\)\(6\)](#)

[Fed. R. Civ. P. 12\(b\)\(6\)](#) permits a court to dismiss a complaint for failure to state a claim. The court must assume the truth of the complaint's factual allegations and credit all reasonable inferences arising from those allegations. [Sanders v. Brown](#), 504 F.3d 903, 910 (9th Cir. 2007). A court "need not accept as true conclusory allegations that are [*5] contradicted by documents referred to in the complaint." [Manzarek v. St. Paul Fire & Marine Ins. Co.](#), 519 F.3d 1025, 1031 (9th Cir. 2008). Instead, the plaintiff must point to factual allegations that "state a claim to relief that is plausible on its face." [Bell Atl. Corp. v. Twombly](#), 550 U.S. 544, 568, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). If the plaintiff succeeds, the complaint avoids dismissal if there is "any set of facts consistent with the allegations in the complaint" that would entitle the plaintiff to relief. *Id.* at 563; [Ashcroft v. Iqbal](#), 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

III. DISCUSSION

A. Federal Law Precludes Enforcement of the Agreement

In the absence of a federal statute or treaty, a federal court sitting in diversity generally applies the law of the forum state. [Erie R. R. Co. v. Tompkins](#), 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938). But where it is alleged that an agreement violates a federal statute, courts look to federal law. See [Kelly v. Kosuga](#), 358 U.S. 516, 519, 79 S. Ct. 429, 3 L. Ed. 2d 475 (1959).

("the effect of illegality under a federal statute is a matter of federal law"). Contracts that violate a federal statute are illegal and unenforceable. [*Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 102 S. Ct. 851, 70 L. Ed. 2d 833 \(1982\)](#). Here, Mr. Polk alleges that he is entitled to an ownership interest in NWCS. Dkt. # 1 at ¶¶ 3.37, 3.40, 3.42, 3.44. Under the [*Federal Controlled Substances Act \("CSA"\)*](#), however, the production, distribution, and sale of marijuana remains illegal. [21 U.S.C. § 801 et seq.](#) So any agreement giving Mr. Polk an equity interest in NWCS is illegal under federal law.

Mr. Polk argues that the CSA is not an absolute [*6] bar to enforcement where the requested remedy does not require a violation of the CSA. Dkt. # 17 at 10 (citing *Bassidji v. Goe*, 413 F.3d 928 (9th Cir. 2005) ("Nuanced approaches to the illegal contract defense, taking into account such considerations as the avoidance of windfalls or forfeitures, deterrence of illegal conduct, and relative moral culpability, remain viable in federal court ... as long as the relief ordered does not mandate illegal conduct.")). The Court agrees. However, Mr. Polk's characterization that he is only requesting monetary damages is inconsistent with his Complaint. Mr. Polk is not requesting monetary damages that can be obtained legally. He is asserting an equity interest in NWCS and a right to its past and future profits. Dkt. # 1 at ¶¶ 3.37, 3.40, 3.42, 3.44. NWCS is a company that produces/processes marijuana. Dkt. # 1 at ¶ 1.4. Thus, awarding Mr. Polk an ownership interest in, or profits from, NWCS contravenes federal law.

B. Washington Law Precludes Enforcement of the Agreement

Even if the Court could enforce the agreement under federal law, Mr. Polk's agreement is also illegal under Washington law. He admits as much. Dkt. # 1 at ¶ 3.7. Still, he argues, the Court should enforce the agreement because [*7] he is the less "morally guilty" party under the doctrine of *in pari delicto*. Dkt. # 17 at 13-16. At its core, *in pari delicto* is based on public policy considerations such as whether the court's decision is likely to prevent future illegal transactions and whether the public good will be enhanced. [*Golberg v. Sanglier*, 96 Wash. 2d 874, 883, 639 P.2d 1347, amended, 96 Wash. 2d 874, 639 P.2d 1347 \(1982\)](#) ("Ultimately, a decision as to whether a party is *in pari delicto* relies on public policy considerations ... [t]he fundamental concern that should guide a court in making its decision is whether the 'public good (will be) enhanced.'").

Here, the Court finds that the public good is not served by enforcing this agreement. [Id. at 883](#). The purpose of Initiative 502 was to take "marijuana out of the hands of illegal drug organizations and bring it under a tightly regulated, state-licensed system ..." [*Haines-Marchel v. Washington State Liquor & Cannabis Bd.*, 1 Wn. App. 2d 712, 406 P.3d 1199, 1218 \(Wash. Ct. App. 2017\), review denied, 191 Wn.2d 1001, 422 P.3d 913 \(2018\), cert. denied, 139 S. Ct. 1383, 13 S. Ct. 1383, 203 L. Ed. 2d 617 \(2019\)](#). Enforcing Mr. Polk's agreement undermines this purpose by allowing him to profit from an illegal agreement intentionally forged outside the bounds of the state regulatory system.

The Court sympathizes with Mr. Polk's plight. He helped to build a successful business from the ground up and is now being deprived of the fruits of his labors. Dkt. # 1 at ¶ 3.34. But this [*8] is a crisis of his own making. Mr. Polk's interest in NWCS was illegal from the very beginning and he knew it. Dkt. # 1 at ¶ 3.7. As he notes, there was a legal path to obtain the license, he just chose not to pursue it. Dkt. # 17 at 4. The Court will not enforce an illegal contract. Because Mr. Polk's claims are based on an unenforceable agreement, the Court finds that he has failed to state a claim under [Fed. R. Civ. P. 12\(b\)\(6\)](#).

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss for Failure to State a Claim is **GRANTED**. Dkt. # 6. Plaintiff shall have **ten days** from the date of this Order to file an amended pleading or the Court will dismiss this action.

DATED this 28th day of August, 2019.

/s/ Richard A. Jones

The Honorable Richard A. Jones

The Honorable Richard A. Jones United States District Judge

End of Document

EXHIBIT 14

Polk v. Gontmakher

United States District Court for the Western District of Washington

March 22, 2021, Decided; March 22, 2021, Filed

Case No. 2:18-cv-01434-RAJ

Reporter

2021 U.S. Dist. LEXIS 53569 *; 2021 WL 1090739

EVAN JAMES POLK, a/k/a JAMES MOZROK, Plaintiff, v. LEONID GONTMAKHER, and JANE DOE GONTMAKHER, husband and wife, and the marital community composed thereof; and JOHN DOES 1-10 and JANE DOES 1-10, husbands and wives, and the marital communities composed thereof, Defendants.

Prior History: [Polk v. Gontmakher, 2019 U.S. Dist. LEXIS 146724, 2019 WL 4058970 \(W.D. Wash., Aug. 28, 2019\)](#)

Case Summary

Overview

HOLDINGS: [1]-The defendants were entitled to dismissal of the plaintiff's third amended complaint because the court could not grant the complaint for a share of a company's profits—either through enforcement of the contract or disgorgement of unjust enrichment and related breaches of equity—without violating the state statute, recent case law involving cannabis-related business contracts did not espouse an absolute bar to the enforcement of such contracts and, having granted the plaintiff multiple opportunities to correct the deficiencies in his complaint, further amend would be futile.

Outcome

Motion granted.

Counsel: [*1] For Evan James Polk, a married man as his separate property also known as James Mozrok, Plaintiff: Steven Joseph Gordon, BELLEVUE, WA.

For Leonid Gontmakher, also known as Leo Gontmakher, Jane Doe Gontmakher, husband and wife, and the marital community composed thereof, Defendants: Stacia N Lay, Venkat Balasubramani, FOCAL PLLC, SEATTLE, WA.

For Cannex Capital Holdings Inc, a Canadian

corporation, Northwest Cannabis Solutions, a Washington cannabis licensee doing business as NWCS425.com, Defendant: Daniel J. Oates, Kent Michael Fandel, MILLER NASH GRAHAM & DUNN LLP (SEA), SEATTLE, WA.

Judges: HONORABLE Richard A. Jones, United States District Judge.

Opinion by: Richard A. Jones

Opinion

ORDER GRANTING MOTION TO DISMISS

This matter comes before the Court on Defendants' Motion to Dismiss Plaintiff's Third Amended Complaint. Dkt. # 34. For the reasons stated below, Defendants' motion is **GRANTED**.

I. BACKGROUND

On June 2, 2020, Plaintiff Evan James Polk ("Plaintiff") filed his third amended complaint for breach of contract, disgorgement of unjust enrichment, and other relief against Defendants Leonid Gontmakher, his marital community, and investors and any other individuals who were involved in Northwest Cannabis Solutions [*2] ("NWCS") and profited from Plaintiff's contributions to it (collectively, "Defendants"). Dkt. # 33. The Court had twice granted Defendants' motions to dismiss Plaintiff's prior complaints for failure to state a claim without prejudice. Dkt. ## 20, 32. On June 16, 2020, Defendants filed the pending motion to dismiss. Dkt. # 34.

The facts alleged in Plaintiff's Third Amended Complaint, Dkt. # 33, are substantially the same as those alleged in his Amended Complaint, Dkt. #21. Because the Court has already recounted them in its

prior order dismissing Plaintiff's amended complaint, Dkt. # 32, the Court incorporates them here and need not recount them.

In his Third Amended Complaint, Plaintiff revised his requests for relief in an effort to align with the Court's order dismissing his prior claims. Dkt. # 33. He now alleges four causes of action seeking only profits already earned, not any interest in future profits related to NWCS. *Id.* at 15-18. Specifically, he seeks (1) judgment against Defendant Gontmakher for 50 percent of all money previously paid to Mr. Gontmakher by NWCS based on breach of contract; (2) judgment against Mr. Gontmakher for 50 percent of all money previously paid to Mr. Gontmakher [*3] by NWCS based on disgorgement of unjust enrichment and related breaches of equity; (3) as an alternative for the First and Second Causes of Action, judgment against all Defendants for 30 percent of all money previously paid to Defendants by NWCS based on breach of contract; and (4) as an alternative for the First, Second, and Third causes of action, judgment against all of the Defendants based on disgorgement of unjust enrichment and related breaches of equity. *Id.*

II. LEGAL STANDARD

[Fed. R. Civ. P. 12\(b\)\(6\)](#) permits a court to dismiss a complaint for failure to state a claim. The court must assume the truth of the complaint's factual allegations and credit all reasonable inferences arising from those allegations. [Sanders v. Brown, 504 F.3d 903, 910 \(9th Cir. 2007\)](#). A court "need not accept as true conclusory allegations that are contradicted by documents referred to in the complaint." [Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 \(9th Cir. 2008\)](#). Instead, the plaintiff must point to factual allegations that "state a claim to relief that is plausible on its face." [Bell Atl. Corp. v. Twombly, 550 U.S. 544, 568, 127 S. Ct. 1955, 167 L. Ed. 2d 929 \(2007\)](#). If the plaintiff succeeds, the complaint avoids dismissal if there is "any set of facts consistent with the allegations in the complaint" that would entitle the plaintiff to relief. *Id.* at 563; [Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 \(2009\)](#).

III. DISCUSSION

In their motion to dismiss, Defendants assert that Plaintiff [*4] has failed to remedy his claims sufficiently to survive a motion to dismiss. Dkt. # 34. Defendants

argue that the claims are not cognizable for three reasons. *Id.* at 9. First, they allege that the Court is barred from enforcing illegal agreements. *Id.* Next, they claim that because Plaintiff has not been vetted by the Washington Liquor and Cannabis Board ("LCB"), the illegal agreement is not "complete" and could not be completed without Court ordering a party to violate Washington law. *Id.* And finally, they argue that enforcing the illegal agreement would "require the Court to endorse and reward [Plaintiff] for violations of the federal Controlled Substances Act ("CSA")." *Id.*

Plaintiff responds that he is "not asking the Court to 'enforce an illegal contract' but, rather, is asking the Court to restore money from an illegal contract which is due to Plaintiff and is currently in possession of the Defendants." Dkt. # 35 at 15. Plaintiff contends that his amendments render his claim cognizable pursuant to the Court's last order dismissing his claims because he is no longer requesting future profits from a business that produces and processes cannabis in violation of federal law. *Id.* at 4-5. He alleges that [*5] limiting his request for relief to past profits to which he believes he is entitled circumnavigates the Court's concern with providing relief that will require a violation of federal law and is, he claims, supported by recent case law. *Id.*

As the Court indicated in its prior order, the Court agrees with Plaintiff that recent case law involving cannabis-related business contracts does not espouse an absolute bar to the enforcement of such contracts. *Id.* at 16; see e.g. [Green Earth Wellness Ctr., LLC v. Atain Specialty Ins. Co., 163 F. Supp. 3d 821, 835 \(D. Colo. 2016\)](#); [Ginsburg v. ICC Holdings, LLC, No. 3:16-CV-2311-D, 2017 U.S. Dist. LEXIS 187391, 2017 WL 5467688, at *8 \(N.D. Tex. Nov. 13, 2017\)](#); [Mann v. Gullickson, 2016 U.S. Dist. LEXIS 152125, 2016 WL 6473215, at *7 \(N.D. Cal. Nov. 2, 2016\)](#). The Court therefore rejects Defendants' first argument that reliance on an illegal contract alone is sufficient to dismiss Plaintiff's claims. Dkt. # 34 at 9-10.

Plaintiff's second argument, however, is compelling. Under Washington law, "[a] marijuana license must be issued in the name(s) of the true party(ies) of interest." WAC 314-55-035; see also [Headspace Int'l LLC v. Podworks Corp., 5 Wn. App. 2d 883, 428 P.3d 1260, 1268 \(Wash. Ct. App. 2018\)](#). The statute defines a "true party of interest" as any entity or person "with a right to receive some or all of the revenue, gross profit, or net profit from the licensed business during any full or partial calendar or fiscal year" and subjects any true party of interest to a vetting process by the LCB. WAC

314-55-035(1). State law [*6] prohibits issuance of a license "unless all of the members thereof are qualified to obtain a license as provided in this section." [RCW 69.50.331](#).

End of Document

Plaintiff does not dispute that his claims seeking a share of profits generated by NWCS would make him a true party of interest under the statute. Because he has not been identified as a true party of interest in NWCS or vetted by the LCB, any grant of relief based on entitlement to a share of NWCS's profits would be in violation of the statute. In other words, by affording Plaintiff such relief, the Court would be effectively recognizing him as a true party of interest in subversion of the LCB and in violation of Washington state law. The Court cannot require payment of a share of NWCS's profits to Plaintiff based on his alleged rights to such profits—either through enforcement of the contract or disgorgement of unjust enrichment and related breaches of equity—without violating state statute. See *Bassidji v. Goe*, 413 F.3d 928, 936 (9th Cir. 2005) (holding that "courts will not order a party to a contract to perform an act that is in direct violation of a positive law directive, even if that party has agreed, for consideration, to perform that act"). The Court could not, therefore, grant relief on any [*7] of Plaintiff's causes of action. Plaintiff thus fails to state a claim upon which relief can be granted.

Because this argument, which Plaintiff does not counter, is fatal to Plaintiff's claims, the Court need not consider the other arguments set forth. Having granted Plaintiff multiple opportunities to correct the deficiencies in his complaint, the Court now finds that further amend would be futile. See *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004) (holding that "[f]utility alone can justify the denial of a motion to amend"). The Court GRANTS Defendants' motion. Dkt. # 34.

IV. CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss Plaintiff's third amended complaint is **GRANTED** with prejudice. Dkt. # 34.

DATED this 22nd day of March, 2021.

/s/ Richard A. Jones

The Honorable Richard A. Jones

United States District Judge

EXHIBIT 15

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/19/2019 at 11:53:00 AM

Clerk of the Superior Court
By Jessica Pascual, Deputy Clerk

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

JUDGMENT ON JURY VERDICT
[PROPOSED BY PLAINTIFF/CROSS-
DEFENDANTS]

[IMAGED FILE]

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

This action came on regularly for jury trial on June 28, 2019, continuing through July 16, 2019, in Department C-73 of the Superior Court, the Honorable Judge Joel R. Wohlfeil presiding. Michael R. Weinstein, Scott H. Toothacre, and Elyssa K. Kulas of FERRIS & BRITTON, APC, appeared for Plaintiff and Cross-Defendant, LARRY GERACI and Cross-Defendant, REBECCA BERRY, and Jacob P. Austin of THE LAW OFFICE OF JACOB AUSTIN, appeared for Defendant and Cross-Complainant, DARRYL COTTON.

1 A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified and
2 certain trial exhibits admitted into evidence.

3 During trial and following the opening statement of Plaintiff/Cross-Complainant's counsel, the
4 Court granted the Cross-Defendants' nonsuit motion as to the fraud cause of action against Cross-
5 Defendant Rebecca Berry only in Cross-Complainant's operative Second Amended Cross-Complaint. A
6 copy of the Court's July 3, 2019 Minute Order dismissing Cross-Defendant Rebecca Berry from this
7 action is attached as Exhibit "A."

8 After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court
9 and the cause was submitted to the jury with directions to return a verdict on special issues on two special
10 verdict forms. The jury deliberated and thereafter returned into court with its two special verdicts as
11 follows:

12 **SPECIAL VERDICT FORM NO. 1**

13 We, the Jury, in the above entitled action, find the following special verdict on the questions
14 submitted to us:

15
16 **Breach of Contract**

17
18 1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016
19 written contract?

20 Answer: YES

21
22 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him
23 to do?

24 Answer: NO

25
26 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that
27 the contract required him to do?

28 Answer: YES

1 4. Did all the condition(s) that were required for Defendant's performance occur?

2 Answer: NO

3
4 5. Was the required condition(s) that did not occur excused?

5 Answer: YES

6
7 6. Did Defendant fail to do something that the contract required him to do?

8 Answer: YES

9 or

10 Did Defendant do something that the contract prohibited him from doing?

11 Answer: YES

12
13 7. Was Plaintiff harmed by Defendant's breach of contract?

14 Answer: YES

15
16 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

17
18 8. Did Defendant unfairly interfere with Plaintiffs right to receive the benefits of the contract?

19 Answer: YES

20
21 9. Was Plaintiff harmed by Defendant's interference?

22 Answer: YES

23
24 10. What are Plaintiffs damages?

25 Answer: \$ 260,109.28

26
27 A true and correct copy of Special Verdict Form No. 1 is attached hereto as Exhibit "B."

28 ///

1 **SPECIAL VERDICT FORM NO. 2**

2 We, the Jury, in the above entitled action, find the following special verdict on the questions
3 submitted to us:

4 **Breach of Contract**

5
6 1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral
7 contract to form a joint venture?

8 Answer: NO
9

10 **Fraud - Intentional Misrepresentation**

11
12 8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

13 Answer: NO
14

15 **Fraud - False Promise**

16
17 13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the
18 transaction?

19 Answer: NO
20

21 **Fraud - Negligent Misrepresentation**

22
23 19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

24 Answer: NO
25

26 Given the jury's responses, Question 25 regarding Cross-Complainant's damages became
27 inapplicable as a result of the jury's responses.

28 ///

1 A true and correct copy of Special Verdict Form No. 2 is attached hereto as Exhibit "C."

2
3 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

4 1. That Plaintiff LARRY GERACI have and recover from Defendant DARRYL COTTON
5 the sum of \$260,109.28, with interest thereon at ten percent (10%) per annum from the date of entry of
6 this judgment until paid, together with costs of suit in the amount of \$ 33,612.16 ; *added 10/1/19*
af

7 2. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant
8 REBECCA BERRY; and

9 3. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant
10 LARRY GERACI.

11
12 **IT IS SO ORDERED.**

13
14 Dated: 8-19, 2019



15 Hon. Joel R. Wohlfeil
16 **JUDGE OF THE SUPERIOR COURT**

17 Judge Joel R. Wohlfeil
18
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28

EXHIBIT 16

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

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
Dept.: C-73

**DECLARATION OF LARRY GERACI IN
OPPOSITION TO DEFENDANT DARRYL
COTTON'S MOTION TO EXPUNGE LIS
PENDENS**

[IMAGED FILE]

**Hearing Date: April 13, 2018
Hearing Time: 9:00 a.m.**

Filed: March 21, 2017
Trial Date: May 11, 2018

I, Larry Geraci, declare:

1. I am an adult individual residing in the County of San Diego, State of California, and I am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts and if called as a witness could and would so testify.

2. In approximately September of 2015, I began lining up a team to assist in my efforts to develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical

1 marijuana dispensary) in San Diego County. At the time, I had not yet identified a property for the
2 MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify
3 potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE.
4 I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of
5 Bartell & Associates. In addition, I hired a land use attorney, Gina Austin of Austin Legal Group.

6 3. The search to identify potential locations for the business took some time, as there are a
7 number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a
8 City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child
9 care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities,
10 or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be
11 proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta
12 identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San
13 Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a
14 potential site for acquisition and development for use and operation as a MMCC. And in
15 approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest
16 to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might
17 meet the requirements for an MMCC site.

18 4. For several months after the initial contact, my consultant, Jim Bartell, investigated
19 issues related to whether the location might meet the requirements for an MMCC site, including zoning
20 issues and issues related to meeting the required distances from certain types of facilities and residential
21 areas. For example, the City had plans for street widening in the area that potentially impacted the
22 ability of the Property to meet the required distances. Although none of these issues were resolved to a
23 certainty, I determined that I was still interested in acquiring the Property.

24 5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the
25 Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon
26 my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I
27 was willing to bear the substantial expense of applying for and obtaining CUP approval and understood
28 that if I did not obtain CUP approval then I would not close the purchase and I would lose my

1 investment. I was willing to pay a price for the Property based on what I anticipated it might be worth
2 if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale
3 conditional upon CUP approval because if the condition was satisfied he would be receiving a much
4 higher price than the Property would be worth in the absence of its approval for use as a medical
5 marijuana dispensary. We agreed on a down payment of \$10,000.00 and a purchase price of
6 \$800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement
7 for my purchase of the Property from him on the terms and conditions stated in the agreement
8 (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written
9 Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-
10 Defendant, Larry Geraci's Notice of Lodgment in Support of Opposition to Motion to Expunge Lis
11 Pendens (hereafter the "Geraci NOL"). I tendered the \$10,000 deposit to Mr. Cotton as acknowledged
12 in the Nov 2nd Written Agreement.

13 6. In paragraph 5 of his supporting declaration, Darryl Cotton states:

14 "On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final
15 terms of the sale of the Property. At the meeting, we reached an oral agreement
16 on the material terms for the sale of the Property (the "November Agreement").
17 The November Agreement consisted of the following: If the CUP was approved,
18 then Geraci would, inter alia, provide me: (i) a total purchase price of \$800,000;
19 (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity
20 distribution of \$10,000. If the CUP was denied, I would keep an agreed upon
21 \$50,000 non-refundable deposit ("NRD") and the transaction would not close. In
22 other words, the issuance of a CUP at the Property was a condition precedent for
23 closing on the sale of the Property and, if the CUP was denied, I would keep my
24 Property and the \$50,000 NRD."

25 Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of
26 the sale of the Property and we reached an agreement on the final terms of the sale of the Property.
27 That agreement was not oral. We put our agreement in writing in a simple and straightforward written
28

1 agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement,
2 Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

3 **11/02/2016**

4 **Agreement between Larry Geraci or assignee and Darryl Cotton:**

5 **Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd.,**
6 **CA for a sum of \$800,000 to Larry Geraci or assignee on the approval of a**
Marijuana Dispensary. (CUP for a dispensary.)

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

10 **/s/**
Larry Geraci

/s/
Darryl Cotton

11 I never agreed to pay Mr. Cotton a \$50,000.00 non-refundable deposit. At the meeting, Mr.
12 Cotton stated he would like a \$50,000 non-refundable deposit. I said “no.” Mr. Cotton then asked for a
13 \$10,000 non-refundable deposit and I said “ok” and that amount was put into the written agreement.
14 After he signed the written agreement, I paid him the \$10,000 cash as we had agreed. If I had agreed to
15 pay Mr. Cotton a \$50,000 deposit, it would have been a very simple thing to change “\$10,000” to
16 \$50,000” in the agreement before we signed it.

17 I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never
18 agreed to pay Mr. Cotton a minimum monthly equity distribution of \$10,000. If I had agreed to pay
19 Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution
20 of \$10,000, then it would have also been a simple thing to add a sentence or two to the agreement to
21 say so.

22 What I did agree to was to pay Mr. Cotton a total purchase price of \$800,000, with the balance
23 of \$790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the
24 Property and the \$10,000. So that is how the agreement was written.

25 7. In paragraph 6 of his supporting declaration, Darryl Cotton states:

26 “At the November 2, 2016, meeting we reached the November Agreement,
27 Geraci: (i) provided me with \$10,000 in cash towards the NRD of \$50,000, for
28 which I executed a document to record my receipt thereof (the “Receipt”); (ii)

1 promised to have his attorney, Gina Austin (“Austin”), *promptly* reduce the oral
2 November Agreement to written agreements for execution; and (iii) promised to
3 not submit the CUP to the City until he paid me the balance of the NRD.”

4 I did pay Mr. Cotton the \$10,000 cash after we signed the Nov 2nd Written Agreement. As
5 stated above, I never agreed to a \$50,000 deposit and, if I had, it would have been a simple thing to
6 state that in our written agreement.

7 Mr. Cotton refers to the written agreement (i.e., the Nov 2nd Written Agreement) as a
8 “Receipt.” Calling the Agreement a “Receipt” was never discussed. There would have been no need
9 for a written agreement before a notary simply to document my payment to him of \$10,000. In
10 addition, had the intention been merely to document a written “Receipt” for the \$10,000 payment, then
11 we could have identified on the document that it was a “Receipt” and there would have been no need
12 to put in all the material terms and conditions of the deal. Instead, the document is expressly called an
13 “Agreement” because that is what we intended.

14 I did not promise to have attorney Gina Austin reduce the oral agreement to written agreements
15 for execution. What we did discuss was that Mr. Cotton wanted to categorize or allocate the \$800,000.
16 At his request, I agreed to pay him for the property into two parts: \$400,000 as payment for the
17 property and \$400,000 as payment for the relocation of his business. As this would benefit him for tax
18 purposes but would not affect the total purchase price or any other terms and conditions of the
19 purchase, I stated a willingness to later amend the agreement in that way.

20 I did not promise to delay submitting the CUP to the City until I paid the alleged \$40,000
21 balance of the deposit. I agreed to pay a \$10,000 deposit only. Also, we had previously discussed the
22 long lead-time to obtain CUP approval and that we had already begun the application submittal
23 process as discussed in paragraph 8 below.

24 8. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the
25 CUP application and approval process and that his consent as property owner would be needed to
26 submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as
27 my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as
28

1 the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or
2 marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton
3 signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he
4 acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the
5 subject Property with the intent to record an encumbrance against the property. The Ownership
6 Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was
7 serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure
8 Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to
9 the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval
10 of a CUP would be a condition of the purchase and sale of the Property.

11 9. As noted above, I had already put together my team for the MMCC project. My design
12 professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of
13 the Project and the CUP application and approval process. Mr. Schweitzer was responsible for
14 coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property
15 and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San
16 Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration
17 (Declaration of Abhay Schweitzer in Support of Opposition to Motion to Expunge Lis Pendens) has
18 been submitted concurrently herewith and describes in greater detail the CUP Application submitted to
19 the City of San Diego, which submission included the Ownership Disclosure Statement signed by
20 Darryl Cotton and Rebecca Berry.

21 10. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr.
22 Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. This
23 literally occurred the evening of the day he signed the Nov 2nd Written Agreement.

24 On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated:

25 Hi Larry,

26 Thank you for meeting today. Since we examined the Purchase Agreement in
27 your office for the sale price of the property I just noticed the 10% equity position
28 in the dispensary was not language added into that document. I just want to make
sure that we're not missing that language in any final agreement as it is a factored

1 element in my decision to sell the property. I'll be fine if you simply
2 acknowledge that here in a reply.

3 I receive my emails on my phone. It was after 9:00 p.m. in the evening that I glanced at my
4 phone and read the first sentence, "Thank you for meeting with me today." And I responded from my
5 phone "No no problem at all." I was responding to his thanking me for the meeting.

6 The next day I read the entire email and I telephoned Mr. Cotton because the total purchase
7 price I agreed to pay for the subject property was \$800,000 and I had never agreed to provide him a
8 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton
9 by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the
10 Call Detail from my firm's telephone provider showing those two telephone calls is attached as
11 Exhibit 3 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in
12 the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above
13 the \$800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect
14 of "well, you don't get what you don't ask for." He was not upset and he commented further to the
15 effect that things are "looking pretty good—we all should make some money here." And that was the
16 end of the discussion.

17 11. To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a
18 desire to participate in different ways in the *operation* of the future MMCC business at the Property.
19 Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding
20 the operation of such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary
21 discussions related to his desire to be involved in the *operation* of the business (not related to the
22 purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of
23 the net profits) in exchange for his providing various services to the business—but we never reached an
24 agreement as to those matters related to the operation of my future MMCC business. Those discussions
25 were not related to the purchase and sale of the Property, which we never agreed to amend or modify.

26 12. Beginning in or about mid-February 2017, and after the zoning issues had been resolved,
27 Mr. Cotton began making increasing demands for compensation in connection with the sale. We were
28 several months into the CUP application process which could potentially take many more months to

1 successfully complete (if it could be successfully completed and approval obtained) and I had already
2 committed substantial resources to the project. I was very concerned that Mr. Cotton was going to
3 interfere with the completion of that process to my detriment now that the zoning issues were resolved.
4 I tried my best to discuss and work out with him some further compensation arrangement that was
5 reasonable and avoid the risk he might try to “torpedo” the project and find another buyer. For
6 example, on several successive occasions I had my attorney draft written agreements that contained
7 terms that I that I believed I could live with and hoped would be sufficient to satisfy his demands for
8 additional compensation, but Mr. Cotton would reject them as not satisfactory. Mr. Cotton continued
9 to insist on, among other things, a 10% equity position, to which I was not willing to agree, as well as
10 on minimum monthly distributions in amounts that I thought were unreasonable and to which I was
11 unwilling to agree. Despite our back and forth communications during the period of approximately
12 mid-February 2017 through approximately mid-March 2017, we were not able to re-negotiate terms for
13 the purchase of the property to which we were both willing to agree. The Nov. 2nd Written Agreement
14 was never amended or modified. Mr. Cotton emailed me that I was not living up to my agreement and
15 I responded to him that he kept trying to change the deal. As a result, no re-negotiated written
16 agreement regarding the purchase and sale of the property was ever signed by Mr. Cotton or me after
17 we signed and agreed to the terms and conditions in the Nov 2d Written Agreement.

18 13. Ultimately, Mr. Cotton was extremely unhappy with my refusal to accede to his
19 demands and the failure to reach agreement regarding his possible involvement with the *operation* of
20 the business to be operated at the Property and my refusal to modify or amend the terms and conditions
21 we agreed to in the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr.
22 Cotton made clear that he had no intention of living up to and performing his obligations under the
23 Agreement and affirmatively threatened to take action to halt the CUP application process.

24 14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr.
25 Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of
26 processing the CUP Application, regarding Mr. Cotton’s interest in withdrawing the CUP Application.
27 That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to
28

1 Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as
2 Exhibit 4 to the Geraci NOL.

3 15. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he
4 would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his
5 property and that “I will be entering into an agreement with a third party to sell my property and they
6 will be taking on the potential costs associated with any litigation arising from this failed agreement
7 with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 5
8 to the Geraci NOL.

9 16. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the
10 City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: “... the potential buyer,
11 Larry Gerasi [sic] (cc’ed herein), and I have failed to finalize the purchase of my property. As of today,
12 there are no third-parties that have any direct, indirect or contingent interests in my property. The
13 application currently pending on my property should be denied because the applicants have no legal
14 access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached
15 as Exhibit 6 to the Geraci NOL. Mr. Cotton’s email was false as we had a signed agreement for the
16 purchase and sale of the Property – the Nov 2nd Written Agreement.

17 17. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the
18 CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

19 18. Due to Mr. Cotton’s clearly stated intention to not perform his obligations under the
20 written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP
21 application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to
22 enforce the Nov 2nd Written Agreement.

23 19. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue
24 our CUP Application and approval of the CUP. Despite Mr. Cotton’s attempts to withdraw the CUP
25 application, we have completed the initial phase of the CUP process whereby the City deemed the CUP
26 application complete (although not yet approved) and determined it was located in an area with proper
27 zoning. We have not yet reached the stage of a formal City hearing and there has been no final
28 determination to approve the CUP. The current status of the CUP Application is set forth in the

1 Declaration of Abhay Schweitzer.

2 20. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m.
3 email (referenced in paragraph 15 above - see Exhibit 5 to the Geraci NOL) stating that he would be
4 “entering into an agreement with a third party to sell my property and they will be taking on the
5 potential costs associated with any litigation arising from this failed agreement with you. We have
6 learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had
7 been negotiating with other potential buyers of the Property to see if he could get a better deal than he
8 had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase
9 and sale agreement to sell the Property to another person, Richard John Martin II.

10 21. Although he entered into this alternate purchase agreement with Mr. Martin as early as
11 March 21, 2017, to our knowledge in the nine (9) months since, neither Mr. Cotton nor Mr. Martin or
12 other agent has submitted a separate CUP Application to the City for processing. During that time, we
13 continued to process our CUP Application at great effort and expense.

14 22. During approximately the last 17 months, I have incurred substantial expenses in excess
15 of \$150,000 in pursuing the MMCC project and the related CUP application.

16 23. Finally, Mr. Cotton has asserted from the outset of his lawsuit and, again, in paragraph
17 16 of his supporting declaration, that he did not discover until March 16, 2017, that I had submitted the
18 CUP Application back on October 31, 2016. That is a blatant lie. I kept Mr. Cotton apprised of the
19 status of the CUP application and the problems we were encountering (e.g., an initial zoning issue)
20 from the outset. Attached as Exhibit 7 is a true and correct copy of a text message Mr. Cotton sent me
21 on November 16, 2016, in which he asks me, “Did they accept the CUP application?” Mr. Cotton was
22 well aware at that time that we had already submitted the CUP application and were awaiting the City’s
23 completion of its initial review of the completeness of the application. Until the City deems the CUP
24 application complete it does not proceed to the next step—the review of the CUP application.

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 9th day of April, 2018.

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5 LARRY GERACI
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EXHIBIT 17



Jake Austin <jacobaustinesq@gmail.com>

Geraci v. Cotton matter

Michael Weinstein <MWeinstein@ferrisbritton.com>

Mon, Jun 4, 2018 at 8:34 AM

To: Jake Austin <jpa@jacobaustinesq.com>

Cc: Scott Toothacre <SToothacre@ferrisbritton.com>

Dear Mr. Austin,

Please accept my confirmation that you have fulfilled your meet and confer obligation with respect to your client's stated intention to file a second motion for judgment on the pleadings.

You have also stated your client's intention to file a motion seeking leave of court to amend Mr. Cotton's Cross-Complaint to add, *inter alia*, a cause of action for conspiracy and additional defendants.

My client will oppose both motions. My position is that your entire analysis is flawed. I will address whatever arguments you make in detail in my opposition briefs after you file the respective motions. For now, I will address just a few points.

You continue to insist that Mr. Geraci brought forth a meritless lawsuit and that Mr. Geraci's declaration filed in opposition to Mr. Cotton's motion to expunge the *lis pendens* strengthens that position. We disagree. Mr. Geraci's declaration supports the claim regarding the written agreement that was reached on November 2, 2016. Those issues will be decided at trial.

You state that the parole evidence rule (PER) allows the admission of his written confirmation and likewise bars as a matter of law his allegation that he called Mr. Cotton the next day and they **orally agreed** that Mr. Cotton was not entitled to a 10% equity position. Again, we disagree and contend that you are misapplying the parole evidence rule. First, our view is that the statute of frauds bars the latter email because it is parole evidence that is being offered to **explicitly contradict** the terms of the written agreement entered into on November 2. Second, Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016, resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10% equity position. Rather, Mr. Geraci's position is that there was **never** an oral agreement between them that Mr. Cotton would receive a 10% equity position. Even assuming for the sake of argument that the November 2 email is not barred by the parole evidence rule and admissible, the telephone call the next day is parole evidence that Mr. Geraci never agreed to a 10% equity position and, therefore, it is **consistent** with the November 2 written agreement and not barred by the statute of frauds.

A motion for judgment on the pleadings is like a demurrer in that the Court looks to the four corners of the pleading in the Complaint. California is a notice pleading jurisdiction. Mr. Geraci's Complaint sufficiently alleges all elements of the various causes of action alleged therein. Mr. Geraci's declaration filed in opposition to Mr. Cotton's motion to expunge the *lis pendens* does nothing to alter that analysis. In addition, even if Mr. Cotton brought a motion for summary judgment/summary adjudication, which he has not done, the declaration would be evidence creating a material factual dispute that would defeat such a motion. Your client's intended motion for judgment on the pleadings is frivolous and will be denied for the same reasons that it was denied the first time it was filed.

As for the motion for leave of court to amend the Second Amended Cross-Complaint to add a cause of action for conspiracy and additional defendants is simply a further transparent attempt to delay the trial in this action. By bringing in new defendants the trial will have to be continued to give them the opportunity to defend. That would substantially prejudice Mr. Geraci. Quite frankly, I do not see how such delay would be in Mr. Cotton's best interest either. The court should not allow that to happen.

I look forward to receiving service of your client's moving papers for each motion.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450

San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard



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From: jacobaustinesq@gmail.com <jacobaustinesq@gmail.com> **On Behalf Of** Jake Austin

Sent: Friday, June 01, 2018 4:42 PM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>

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- (ii) Ms. Young's statements regarding Mr. Bartell that I personally witnessed and will attest to;
- (iii) Mr. Shapiro's (a) lie to me regarding his reasoning for sitting down next to Mr. Cotton and his litigation investor, (b) his indirect admission that he was present and heard Mr. Bartell state he was getting Mr. Cotton's CUP application denied, (c) the fact that the competing CUP application is a client of Mr. Shapiro, and (d) the fact that he has a deep relationship with Mrs. Austin (an adverse party to Mr. Cotton); and
- (iv) the engineering company's apparent intent to go back on an explicit representation to recommend an approval (that appears to have been coerced);

Mr. Cotton will be seeking to amend his Cross-Complaint.

Please let me know if you would agree to stipulate to an amendment. Mr. Cotton will be seeking to amend his Cross-Complaint to, *inter alia*, respond to the new factual allegations raised by Mr. Geraci and to add as co-defendants the engineering company, Mr. Shapiro, Mr. Magana, and Mr. Bartell. He will also, at a minimum, be bringing forth a cause of action for conspiracy for the reasons stated above.

Also, please consider this notice for an ex-parte TRO scheduled for June 6, 2018 seeking to have the Court appoint a receiver to manage the CUP application. I realize that Mr. Cotton has made this request before, but I believe that with the newly discovered facts and Mr. Geraci's latest factual allegations in his declaration, Mr. Cotton will be able to meet his burden and prove to the court that more likely than not he will prevail on the merits of his cause of action for breach of contract. I will forward the moving papers as soon as they are ready, but no later than 12:00 PM on June 5, 2018.

Lastly, I will have an updated disclosure response to you this week.

-Jacob

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