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Attorney for Defendant/Cross-Complainant DARRYL COTTON

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/18/2019 at 05:01:00 PM
Clerk of the Superior Court
By Rhonda Babers, Deputy Clerk

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

LARRY GERACI, an individual,
Plaintiff,

vs.

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

AND RELATED CROSS-ACTION.

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

**DECLARATION OF JACOB P. AUSTIN IN
SUPPORT OF DEFENDANT/CROSS-
COMPLAINANT DARRYL COTTON'S
MOTION FOR PARTIAL ADJUDICATION**

Date: May 10, 2019
Time: 9:00 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

Complaint filed: March 21, 2017
Trial Date: May 31, 2019

I, JACOB P. AUSTIN, declare:

1. I am an attorney duly licensed to practice law before all the courts of the State of California and am attorney of record for Defendant/Cross-complainant Darryl Cotton ("Cotton"). I am personally familiar with this file and can testify based upon personal knowledge of the facts stated within.

2. I hereby incorporate by reference the facts stated in the foregoing to which this declaration is attached. I have personal knowledge of each of those facts.
3. A true and correct copy of Cotton's Verified Petition for Alternative Writ of Mandate filed on October 6, 2017, is attached as Exhibit 1 hereto.
4. A true and correct copy of Exhibit 3 to Cotton's Verified Petition for Alternative Writ of Mandate filed on October 6, 2017, is attached as Exhibit 2 hereto.
5. A true and correct copy of Geraci's Answer to Cotton's Cross-Complaint, filed November 20, 2017, is attached as Exhibit 3 hereto.
6. A true and correct copy of the reporter's transcript on Cotton's Motion for Judgment on the Pleadings dated July 13, 2018, is attached as Exhibit 4 hereto.
7. A true and correct copy of the reporter's transcript on the Cotton's Motion to Compel Discovery dated February 8, 2019, is attached as Exhibit 5 hereto.
8. A true and correct copy of redacted phone call records between Cotton and Geraci (Bates No. Geraci207) is attached as Exhibit 6 hereto.

DATED: April 18, 2019

THE LAW OFFICE OF JACOB AUSTIN

By Jacob P. Austin

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

EXHIBIT 1

1 FERRIS & BRITTON
2 A Professional Corporation
3 Michael R. Weinstein (SBN 106464)
4 Scott H. Toothacre (SBN 146530)
5 501 West Broadway, Suite 1450
6 San Diego, California 92101
7 Telephone: (619) 233-3131
8 Fax: (619) 232-9316
9 mweinstein@ferrisbritton.com
10 stoothacre@ferrisbritton.com

11 AUSTIN LEGAL GROUP, APC
12 3990 Old Town Ave., Ste. A112
13 San Diego, CA 92110
14 Telephone: (619) 924-9600
15 Fax: (619) 881-0045
16 gaustin@austinlegalgroup.com

17 Attorneys for Real Party in Interest
18 LARRY GERACI and REBECCA BERRY

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,

Respondents/Defendants.

REBECCA BERRY, an individual; LARRY
GERACI, an individual, and ROES 1 through
25,

Real Parties In Interest.

Case No. 37-2017-00037675-CU-WM-CTL

Judge: Hon. Joel Wohlfeil
Dept: C-73

**REAL PARTY IN INTEREST LARRY
GERACI'S VERIFIED ANSWER TO
PETITION FOR WRIT OF MANDATE**

[IMAGED FILE]

Filed: October 6, 2017
Trial Date: None

Real Party in Interest, LARRY GERACI ("Geraci" or "Real Party in Interest"), answers,
paragraph by paragraph, the allegations set forth in the Verified Petition for Alternative Writ of
Mandate [Code Civil. Proc., § 1085] filed by Petitioner/Plaintiff, DARRYL COTTON ("Cotton"), as
follows:

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/30/2017 at 03:55:00 PM
Clerk of the Superior Court
By Rhonda Babers, Deputy Clerk

1 1. Paragraph 1 of the Petition does not make factual allegations but merely states the relief
2 requested by Cotton. In response to Paragraph 1, Real Party in Interest denies that Cotton is entitled to
3 the relief requested; in particular, Real Party in Interest denies that the facts and law require the City of
4 San Diego ("City") to recognize Cotton as the applicant with respect to Conditional Use Permit
5 Application—Project No. 520606 for a Conditional Use Permit ("CUP") to operate a Medical
6 Marijuana Consumer Cooperative ("MMCC") at 6176 Federal Boulevard San Diego, California 92105
7 (the "Property").

8 2. In response to paragraph 2, Real Party in interest denies that the relief sought is proper
9 because Cotton has no other plain, speedy, or adequate legal remedy. Real Party in Interest also denies
10 that the relief is necessary because the City's refusal to recognize Cotton as the sole applicant on the
11 Cotton Application is lacking in evidentiary and legal support. [See "*Western States Petroleum Ass'n*
12 *v. Superior Court* (1995) 9 Cal.4th 559 – criticizing petition containing "only a conclusory argument"
13 on inadequacy of remedy.] Moreover, Real Party in Interest alleges that Cotton does have a plain
14 speedy and adequate legal remedy in that, among other things, the City has advised Cotton that he may
15 file and pursue his own separate CUP Application.

16 3. In response to paragraph 3, Real Party in Interest admits the allegation that this Court
17 has jurisdiction over this petition pursuant to Code of Civil Procedure § 1085.

18 4. In response to paragraph 4, Real Party in Interest admits the allegation that venue is
19 proper in this Court.

20 5. In response to paragraph 5, Real Party in Interest admits the allegation that Cotton is,
21 and at all times mentioned was, an individual living and doing business in California.

22 6. In response to paragraph 6, Real Party in Interest admits the allegation that the City is,
23 and at all times mentioned was, a public entity organized and existing under the laws of California.

24 7. In response to paragraph 7, Real Party in Interest admits the allegation that Rebecca
25 Berry is, and at all times mentioned was, an individual living and doing business in the County of San
26 Diego.

27 8. In response to paragraph 8, Real Party in Interest admits the allegation that Larry Geraci
28 is, and at all times mentioned was, an individual living and doing business in the County of San Diego.

1 9. In response to paragraph 9, Real Party in Interest does not have insufficient information
2 and belief to answer the allegations therein that Cotton does not know the true names and capacities of
3 the respondents/defendants named as DOES 1-25 and that Cotton is informed and believes that
4 DOES 1-25 are in some way responsible for the events described in his petition or impacted by them,
5 and on that basis denies the allegations.

6 10. In response to paragraph 10, Real Party in Interest does not have sufficient information
7 and belief to answer the allegations therein that each respondent/defendant (i.e., the City and DOES 1-
8 25) was an agent, principal, alter ego, and/or employee of the others and each was at all times acting
9 within the course and scope of said agency, representation, and/or employment and with the permission
10 of others, and on that basis the denies the allegations.

11 11. In response to paragraph 11, Real Party in Interest does not have insufficient information
12 and belief to answer the allegations therein that Cotton does not know the true names and capacities of
13 the real Party in interest named as ROES 1-25 and that Cotton is informed and believes that ROES 1-25
14 are in some way responsible for the events described in his petition or impacted by them, and on that
15 basis denies the allegations.

16 12. In response to paragraph 12, Real Party in Interest does not have sufficient information
17 and belief to answer the allegations therein that each real party in interest (i.e., Geraci, Cotton and
18 ROES 1-25) was an agent, principal, alter ego, and/or employee of the others and each was at all times
19 acting within the course and scope of said agency, representation, and/or employment and with the
20 permission of others, and on that basis the denies the allegations, except as follows: Real Party in
21 Interest admits that Berry was an agent and employee of Geraci at times mentioned in the petition.

22 13. In response to paragraph 13, Real Party in Interest denies the allegations therein, except
23 as follows: Real Party in Interest admits that, in or around mid-2016, Geraci contacted Cotton and
24 expressed his interest to Cotton in acquiring the Property if further investigation satisfied him that the
25 Property might meet the requirements for an MMCC site. Real Party in Interest also admits Geraci
26 believed at that time that a limited number of properties located in San Diego City Council District 4
27 might potentially satisfy the CUP requirements for a MMCC.

28 14. In response to paragraph 14, Real Party in Interest denies the allegations therein except

1 as follows: Real Party in Interest admits that Geraci and Cotton negotiated regarding the terms of the
2 potential sale of the Property. Real Party in Interest alleges that during that time Geraci did discuss
3 with Cotton a zoning issue that would have to be resolved before a CUP could be approved but Real
4 Party in Interest denies that Geraci represented to Cotton that a CUP application for the Property could
5 not actually be submitted until after the zoning issue was resolved.

6 15. In response to paragraph 15, Real Party in Interest denies the allegations therein except
7 as follows: Real Party in Interest admits that on or around October 31, 2016, Geraci asked Cotton to
8 execute an Ownership Disclosure Statement, which is a required component of all CUP applications;
9 and Real Party in Interest admits that Geraci told Cotton that he needed the signed document so that
10 Geraci or his agent could proceed with the submission of a CUP application. Real Party in Interest
11 alleges that during that time Geraci did discuss with Cotton a zoning issue that would have to be
12 resolved before a CUP could be approved but Real Party Real Party in Interest denies that Geraci
13 repeatedly maintained to Cotton that the zoning issue needed to be resolved before a CUP application
14 could be submitted.

15 16. In response to paragraph 16, Real Party in Interest denies the allegations therein except
16 as follows: Real Party in Interest admits that Cotton had never met Berry and had never entered into a
17 lease or other agreement with her; Real Party in Interest admits that Geraci explained to Cotton that
18 Berry was Geraci's agent and was working on his behalf and his direction; Real Party in Interest admits
19 that Cotton executed the Ownership Disclosure Statement that Geraci provided to him; and Real Party
20 in Interest admits that a true and correct copy of the CUP application, including the Ownership
21 Disclosure Statement, is attached as Exhibit 1 to the Verified Petition.

22 17. In response to paragraph 17, Real Party in Interest denies the allegations therein except
23 as follows: Real Party in Interest admits that on November 2, 2016, Geraci and Cotton met at Geraci's
24 office to a) sign a written agreement setting forth the material terms and conditions of the agreement
25 they had negotiated regarding the purchase and sale of the Property, and b) so Cotton could receive
26 payment in cash from Geraci of the \$10,000 that they had agreed Geraci would pay Cotton as earnest
27 money. Real Party in Interest alleges that in advance of that meeting Cotton insisted on receiving the
28 agreed amount of earnest money in cash rather than in another form of payment.

1 18. In response to paragraph 18, Real Party in Interest denies the allegations therein except
2 as follows: Real Party in Interest admits that at the November 2, 2016, meeting the Party executed a
3 writing stating the material terms and conditions of their agreement and that a true and correct copy of
4 the November 2, 2016, written agreement is attached as Exhibit 2 to the Verified Petition; and Real
5 Party in Interest admits that Exhibit 3 to the Verified Petition is a true and correct copy of certain
6 emails exchanged between them. Real Party in Interest further alleges that the Party intended the
7 November 2, 2016, written agreement to be a binding agreement between the parties.

8 19. In response to paragraph 19, Real Party in Interest denies the allegations therein.

9 20. In response to paragraph 20, Real Party in Interest denies the allegations therein except
10 as follows: Real Party in Interest admits that the quoted text messages were exchanged between Cotton
11 and Geraci; and Real Property in Interest admits that Cotton and Geraci had discussions about the status
12 of the CUP application and, in particular, the zoning issue that needed to be resolved. Real Party in
13 Interest alleges that during that time Geraci did discuss with Cotton the zoning issue that would have to
14 be resolved before a CUP could be approved but Real Party Real Party in Interest denies that Geraci
15 represented to Cotton that a CUP application could not be submitted until the zoning issue was
16 resolved.

17 21. In response to paragraph 21, Real Party in Interest denies the allegations therein, except
18 as follows: Real Party in Interest admits that on or about February 27, 2017, Geraci provided Cotton
19 with a new draft real estate purchase agreement; however, Real Party in Interest alleges Geraci did so in
20 furtherance of an effort to negotiate a new agreement with Cotton because Cotton was making
21 additional demands for compensation and other consideration beyond what the parties had previously
22 agreed to and set forth in the signed November 2, 2016, written agreement, and which made Geraci
23 concerned that Cotton would withhold his cooperation and/or interfere with the pending CUP
24 application that had been submitted. Real Party in Interest further alleges that the parties never reached
25 a modified or new agreement regarding the purchase and sale of the Property.

26 22. In response to paragraph 22, Real Party in Interest denies the allegations therein except
27 as follows: Real Party in Interest admits that on or about March 2, 2017, Geraci email Cotton a draft of
28 an agreement that contained terms and conditions to which Geraci was willing to agree; and Real Party

1 in Interest admits that or or about the next day Cotton emailed Geraci back with his comments.

2 23. In response to paragraph 23, Real Party in Interest denies the allegations therein except
3 as follows: Real Party in Interest admits that on or about March 7, 2017, Geraci emailed Cotton a
4 revised draft of an agreement that contained terms and conditions to which Geraci was willing to agree;
5 and Real Party in Interest admits that Cotton responded to Geraci in a March 16, 2017, email that is
6 quoted in part in paragraph 23.

7 24. In response to paragraph 24, Real Party in Interest denies the allegations therein except
8 as follows: Real Party in Interest admits that the next day Cotton contacted the City's Development
9 Project Manager responsible for the CUP application; and Real Party in Interest admits that Cotton sent
10 Geraci the March 16, 2017, email that is quoted in part in paragraph 23. Real Party denies the
11 allegation that Cotton first learned of the CUP application on March 16, 2017, during this contact with
12 the City's Development Project Manager.

13 25. In response to paragraph 25, Real Party in Interest admits the allegations therein, except
14 as follows: Real Party in Interest alleges Geraci never reached any further agreement with Cotton
15 concerning the purchase and sale of the Property that would amend, modify or replace their prior
16 November 2, 2016, written agreement.

17 26. In response to paragraph 26, Real Party in Interest denies the allegations therein, except
18 as follows: Real Party in Interest admits that Cotton sent a March 21, 2017, email to Geraci stating or
19 asserting that their agreement was terminated and that Geraci had no interest in the Property. Real
20 Party in Interest alleges that Cotton had no contractual or other basis to terminate their November 2,
21 2016, written agreement, concerning the purchase and sale of the Property, and that written agreement
22 remained in force and effect. Real Party in interest further alleges that Geraci had, continued to have,
23 and has an interest in the Property pursuant to the November 2, 2016, written agreement.

24 27. In response to paragraph 27, Real Party in Interest denies the allegations therein, except
25 as follows: Real Party in Interest admits on March 22, 2017, Geraci's attorney (Michael Weinstein)
26 emailed Cotton a copy of a complaint filed by Geraci.

27 28. In response to paragraph 28, Real Party in Interest admits the allegations therein, except
28 as follows: Real Party in Interest denies Cotton's assertion in his email that Geraci has no rights to the

1 Property. Real Party in interest alleges that Geraci had at the time and thereafter continued to have and
2 has an interest in the Property pursuant to the November 2, 2016, written agreement.

3 29. In response to paragraph 29, Real Party in Interest admits the allegations therein.

4 30. In response to paragraph 30, Real Party in Interest admits the allegations therein.

5 30(2). In response to the "second" paragraph 30, Real Party in Interest admits the allegations
6 therein, subject to the following: The City further stated to Cotton that he can submit his own CUP
7 application for the Property and that the City will process that application.

8 **FIRST CAUSE OF ACTION**

9 **(Writ of Mandate – Against all respondents/defendants and all real Party in interest)**

10 31. Real Party in Interest incorporates by reference the responses to paragraphs 1 through 30
11 above as though fully set forth

12 32. In response to paragraph 32, Real Party in Interest admits that the City is subject to
13 California law and is responsible for administering the CUP process according to the San Diego
14 Municipal Code. Real Party in Interest denies that the City has a ministerial duty to recognize Cotton
15 as the sole applicant for the CUP application or to process the CUP application with Cotton as the sole
16 applicant and financially responsible party.

17 33. In response to paragraph 33, Real Party in Interest admits the allegations therein, except
18 as follows: Real Party in Interest denies that the City has a ministerial duty under the Municipal Code
19 and California law to recognize Cotton as the sole applicant for the CUP application or to process the
20 CUP application with Cotton as the sole applicant and financially responsible party.

21 34. In response to paragraph 34, Real Party in Interest denies the allegations therein. Real
22 Party in Interest denies that the City has a ministerial duty under the Municipal Code and California
23 law to recognize Cotton as the sole applicant for the CUP application or to process the CUP application
24 with Cotton as the sole applicant and financially responsible party.

25 ///

26 ///

27 ///

28 ///

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 **(Right to Apply Other Affirmative Defenses Reserved)**

3 7. Because the Petition only alleges conclusions of fact and law, answering Real Party in
4 Interest cannot fully anticipate all affirmative defenses that may be applicable to this action.
5 Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative
6 defenses are applicable, is hereby reserved.

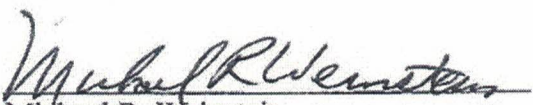
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Real Party in Interest prays for judgment against Petitioner as follows:

- 9 1. That the Petition for Writ of Mandamus be denied;
10 2. That Petitioner takes nothing by virtue of his Petition herein;
11 3. That the Court dismiss Petitioner's Petition for Writ of Mandamus with prejudice;
12 4. For reasonable attorneys' fees and costs of suit; and
13 5. For such other and further relief as this Court deems just and proper.

14
15 Dated: November 30, 2017

FERRIS & BRITTON
A Professional Corporation

16
17
18 By: 
19 Michael R. Weinstein
20 Scott H. Toothacre
21 Attorneys for Real Party in Interest
22 LARRY GERACI

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct to the best of my knowledge.

Executed on November 30, 2017 in San Diego, California.



Larry Geraci

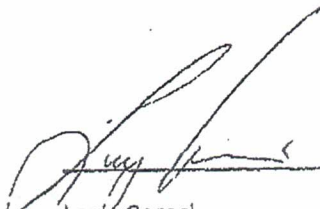

Exhibit 2

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

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 Gerasi
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)



My Comm. Expires Jan 25, 2013
San Diego County
Notary Public - California
Commission # 2002288
JESSICA M. WILF



EXHIBIT 3

Exhibit 3



Darryl Cotton <Indagroddarryl@gmail.com>

Agreement

2 messages

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

Circular 230 Disclaimer:

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 Cotton & Geraci Contract.pdf
71K

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.dalberda

6176 Federal Blvd.
San Diego, CA. 92114
USA

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[Quoted text hidden]

8/7/2017

Gmail - Agreement



Darryl Cotton <Indagrodarryl@gmail.com>

Agreement

2 messages

Wed, Nov 2, 2016 at 3:11 PM

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

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

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8/7/2017

Gmail - Agreement

 Cotton & Geraci Contract.pdf
71K

Wed, Nov 2, 2016 at 9:13 PM

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

No no problem at all

Sent from my iPhone

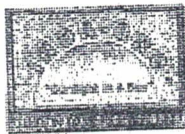
On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

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
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Skype: dc.dalbercia

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San Diego, CA. 92114
USA

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[Quoted text hidden]

EXHIBIT 4

10/26/16- 11/25/16	419	11/02/16	1:30 PM	OUT	11	41
	422	11/02/16	1:52 PM	IN	2	
	462	11/03/16	12:38 PM	OUT	1	
	464	11/03/16	12:40 PM	IN	3	
	677	11/08/16	3:10 PM	OUT	1	
	725	11/09/16	11:29 AM	OUT	2	
	1131	11/17/16	3:33 PM	OUT	1	
	1132	11/17/16	3:35 PM	IN	1	
	1149	11/17/16	6:01 PM	OUT	13	
	1173	11/18/16	11:51 AM	OUT	1	
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	880	12/12/16	12:46 PM	OUT	1	
	892	12/12/16	5:47 PM	IN	8	
	982	12/14/16	10:14 AM	OUT	1	
	995	12/14/16	1:00 PM	OUT	1	
	1017	12/14/16	3:44 PM	OUT	1	
	1024	12/14/16	5:04 PM	IN	4	
12/26/16- 01/25/17	321	01/04/17	12:00 PM	OUT	1	16
	322	01/04/17	12:11 PM	OUT	4	
	359	01/05/17	11:11 AM	OUT	1	
	383	01/05/17	8:16 PM	OUT	1	
	390	01/06/17	8:07 AM	OUT	1	
	494	01/09/17	11:56 AM	IN	2	
	619	01/13/17	10:45 AM	OUT	1	
	624	01/13/17	11:32 AM	IN	4	
	930	01/24/17	10:24 AM	OUT	1	
01/26/17- 02/25/17	193	01/30/17	3:49 PM	OUT	1	48
	254	01/31/17	5:25 PM	OUT	1	
	268	01/31/17	6:57 PM	IN	11	
	434	02/06/17	8:49 AM	OUT	1	
	450	02/06/17	12:14 PM	OUT	1	
	481	02/06/17	3:52 PM	OUT	1	
	537	02/07/17	1:36 PM	IN	5	
	539	02/07/17	1:48 PM	IN	2	
	571	02/07/17	8:38 PM	IN	12	
	941	02/15/17	1:11 PM	OUT	1	
	952	02/15/17	1:56 PM	OUT	1	
	953	02/15/17	2:00 PM	IN	9	
	1303	02/23/17	2:57 PM	OUT	2	
02/26/17- 03/25/17	178	03/01/17	6:10 PM	OUT	1	26
	225	03/02/17	9:49 AM	OUT	3	
	352	03/04/17	2:04 PM	OUT	14	
	443	03/06/17	3:36 PM	OUT	2	
	445	03/06/17	3:53 PM	OUT	2	
	562	03/09/17	9:12 AM	OUT	4	
						268

EXHIBIT 5

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

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

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)

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EXHIBIT 6

In The Superior Court Of The State Of California
In And For The County Of San Diego
Department 73 Hon; 5. JOEL WOHLFEIL, Judge

LARRY GERACI,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
DARRYL COTTON)	
)	
Defendants.)	
_____)	

Reporter's Transcript
JULY 13, 2018

Appearances:

For the Plaintiff: Michael Weinstein, Esq.
Ferris & Britton
501 W. Broadway, #1450
San Diego, California 92101

For the Defendant: Jacob Austin, Esq.
1455 Frazee Road, #500
San Diego, California 92108

Darla Kmety, RPR, CSR 12956
Official Court Reporter
San Diego Superior Court
San Diego, California 92101

1 JULY 13, 2018; San Diego, California; 9:15 A.M.

2 -- 00o --

3 THE COURT: Item 7. Geraci versus Cotton.
4 Ending 10073.

5 MR. WEINSTEIN: Good morning, your Honor.
6 Michael Weinstein for plaintiff, Larry Geraci. We're
7 submitting. Just time to reply.

8 MR. AUSTIN: Good morning, your Honor. Jacob
9 Austin on behalf of Mr. Cotton.

10 THE COURT: Good morning to each of you two.
11 Interesting motion, particularly combined with your
12 request for judicial notice. Is there anything else that
13 you'd like to add?

14 MR. AUSTIN: Well, I would like an explanation.
15 So Mr. Geraci, the plaintiff in this case, he submitted
16 the declaration admitting essentially that --

17 THE COURT: It's the "essentially" part that I
18 don't agree with. You make those same comments in your
19 paper. There's four separate causes of action.

20 MR. AUSTIN: Right.

21 THE COURT: The court wasn't persuaded that even
22 if I were to grant the request to take judicial notice of
23 a declaration granted of a party opponent, it's still not
24 dispositive of the entire complaint. And that's what your
25 motion is directed to, isn't it --

26 MR. AUSTIN: Well --

27 THE COURT: -- in it's entirety?

28 MR. AUSTIN: Because all four causes of action

1 are premised on a breach of contract, so if there's not an
2 integrated contract, according to plaintiff himself, I
3 feel that all four causes of actions fail.

4 THE COURT: Not so sure if I agree with that
5 entire analysis.

6 Anything else, counsel?

7 MR. AUSTIN: Well, I was just wondering if you
8 could explain to me, if you believe as a matter of law,
9 the three-sentence contracts that plaintiff claims is an
10 integrated contract. If you believe that to actually be a
11 fully integrated contract.

12 THE COURT: You know, we've been down this road
13 so many times, counsel. I've explained and reexplained
14 the court's interpretation of your position. I don't know
15 what more to say.

16 Is there anything else, counsel?

17 CO COUNSEL: Your Honor, if I may, I'm co
18 counsel on behalf of Mr. Cotton.

19 Your Honor, the only thing we really want
20 clarification is the matter whether or not the court deems
21 the contract an integrated contract or not.

22 THE COURT: Again, we've addressed that in
23 multiple motions. I'm not going to go back over it again
24 at this point in time.

25 Anything else, counsel?

26 CO COUNSEL: That's it.

27 THE COURT: All right. So the court confirms
28 the court's tentative ruling. Makes it an order of the

1 court and directs that plaintiff's counsel serve notice.
2 Thank you very much.

3

4

5 [End of proceeding.]

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1 STATE OF CALIFORNIA
2 COUNTY OF SAN DIEGO
3
4

5 I, Darla Kmety, Court-Approved Official Pro Tem
6 Reporter for the Superior Court of the State of
7 California, in and for the County of San Diego, do hereby
8 certify:
9

10 That as such reporter, I reported in machine
11 shorthand the proceedings held in the foregoing case;
12

13 That my notes were transcribed into typewriting
14 under my direction and the proceedings held on
15 July 13, 2018, contained within pages 1 through 4, are a
16 true and correct transcription.
17

18
19 This Day 2nd of August 2018
20
21
22
23

24 _____
25 Darla Kmety, CSR 12956
26
27
28

A	Defendant 1:19 Defendants 1:9 Department 1:3 Diego 1:2,17,20,24 1:24,1 4:2,7 directed 1:25 direction 4:14 directs 3:1 dispositive 1:24	L	1:1 4:2,7 separate 1:19 serve 3:1 shorthand 4:11 State 1:1 4:1,6 submitted 1:15 submitting 1:7 Superior 1:1,24 4:6 sure 2:4	2
A.M 1:1 action 1:19,28 actions 2:3 add 1:13 addressed 2:22 admitting 1:16 agree 1:18 2:4 analysis 2:5 Appearances 1:14 August 4:19 Austin 1:19,8,9,14 1:20,26,28 2:7	E entire 1:24 2:5 entirety 1:27 Esq 1:15,19 essentially 1:16,17 explain 2:8 explained 2:13 explanation 1:14	M machine 4:10 matter 2:8,20 Michael 1:15,6 morning 1:5,8,10 motion 1:11,25 motions 2:23 multiple 2:23	T take 1:22 Tem 4:5 tentative 2:28 Thank 3:2 thing 2:19 three-sentence 2:9 time 1:7 2:24 times 2:13 transcribed 4:13 Transcript 1:11 transcription 4:16 true 4:16 two 1:10 typewriting 4:13	3
B back 2:23 behalf 1:9 2:18 believe 2:8,10 breach 2:1 Britton 1:16 Broadway 1:16	F fail 2:3 feel 2:3 Ferris 1:16 foregoing 4:11 four 1:19,28 2:3 Frazee 1:19 fully 2:11	N notes 4:13 notice 1:12,22 3:1	4 4 4:15	4
C California 1:1,17 1:20,24,1 4:1,7 case 1:7,15 4:11 causes 1:19,28 2:3 certify 4:8 claims 2:9 clarification 2:20 combined 1:11 comments 1:18 complaint 1:24 confirms 2:27 contained 4:15 contract 2:1,2,10,11 2:21,21 contracts 2:9 correct 4:16 Cotton 1:8,3,9 2:18 counsel 2:6,13,16 2:17,18,25,26 3:1 County 1:2 4:2,7 court 1:1,23,24,3,10 1:17,21,21,27 2:4 2:12,20,22,27,27 3:1 4:6 court's 2:14,28 Court-Approved 4:5 CSR 1:23 4:25	G Geraci 1:5,3,6,15 go 2:23 going 2:23 Good 1:5,8,10 grant 1:22 granted 1:23	O O0o 1:2 Official 1:23 4:5 opponent 1:23 order 2:28	5 5 1:3 500 1:19 501 1:16	5
D Darla 1:23 4:5,25 DARRYL 1:8 Day 4:19 declaration 1:16,23 deems 2:20	H held 4:11,14 Hon 1:3 Honor 1:5,8 2:17,19	P pages 4:15 paper 1:19 part 1:17 particularly 1:11 party 1:23 persuaded 1:21 plaintiff 1:6,15,6,15 2:2,9 plaintiff's 3:1 point 2:24 position 2:14 premised 2:1 Pro 4:5 proceeding 3:5 proceedings 4:11,14	6 7 1:3 73 1:3	6
	I integrated 2:2,10 2:11,21 Interesting 1:11 interpretation 2:14 Item 1:3	Q	7 9:15 1:1 92101 1:17,24 92108 1:20	7
	J Jacob 1:19,8 JOEL 1:3 Judge 1:3 judicial 1:12,22 July 1:12,1 4:15	R really 2:19 reexplained 2:13 reply 1:7 reported 4:10 reporter 1:23 4:6 4:10 Reporter's 1:11 request 1:12,22 right 1:20 2:27 road 1:19 2:12 RPR 1:23 ruling 2:28	8	8
	K Kmety 1:23 4:5,25 know 2:12,14	S San 1:2,17,20,24,24	9	9
			U	
			V	
			versus 1:3 vs 1:7	
			W	
			W 1:16 want 2:19 wasn't 1:21 We're 1:6 we've 2:12,22 Weinstein 1:15,5,6 WOHLFEIL 1:3 wondering 2:7	
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EXHIBIT 7

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN DIEGO

3
4 DEPARTMENT 73

HON. JOEL R. WOHLFEIL

5
6 LARRY GERACI, an individual,)

7 Plaintiff,)

8 VS.,)

9)
10 DARRYL COTTON, an individual;)
11 and DOES 1 through 10,)
inclusive,)

12 Defendants.)
13 -----)

14 AND RELATED CROSS-ACTIONS.)
15 -----)

CASE NO.

37-2017-

00010073-CU-BC-

CT

16 REPORTER'S TRANSCRIPT

17 FRIDAY, FEBRUARY 8, 2019

18
19
20
21 APPEARANCES ON NEXT PAGE

22
23 LOIS MASON THOMPSON, CSR, RPR, CRR

24 CSR NO. 3685

25 lois.mason51@gmail.com

1 APPEARANCES:

2
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7 501 WEST BROADWAY
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9 SAN DIEGO, CALIFORNIA 92101
10 619.233.3131

11 FOR THE DEFENDANT AND CROSS-COMPLAINANT DARRYL
12 COTTON, AN INDIVIDUAL

13 THE LAW OFFICE OF ANDREW FLORES
14 BY: ANDREW FLORES
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19 LAW OFFICES OF JACOB P. AUSTIN
20 BY: JACOB P. AUSTIN
21 1455 FRAZEE ROAD
22 SUITE 500
23 SAN DIEGO, CALIFORNIA 92108
24 619.357.6850
25

1 San Diego, California, Friday, February 8, 2019,

2 AM Session

3 ---000---

4 THE COURT: Finally, calling Items 7
5 through 12, Geraci versus Cotton, Case Number ending
6 10073.

7 MR. WEINSTEIN: Good morning, Your Honor.
8 Michael Weinstein for the plaintiff and cross-defendant
9 Larry Geraci and cross-defendant Rebecca Berry.

10 MR. AUSTIN: Good morning, Your Honor.
11 Jacob Austin on behalf of the defendant and
12 cross-complainant Darryl Cotton.

13 MR. FLORES: And Andrew Flores also on his
14 behalf, Your Honor.

15 THE COURT: All right. Good to see all three
16 of you.

17 All right. Let me get the Court's tentative
18 ruling.

19 Let me see. These are the defendant's
20 motions.

21 Counsel, did you get the Court's tentative?

22 MR. AUSTIN: We did, Your Honor.

23 THE COURT: Counsel, did you get the Court's
24 tentative.

25 MR. WEINSTEIN: We did, Your Honor.

1 THE COURT: All right. I guess let's take
2 them in the order that the Court found them. I mean,
3 counsel, this is rapidly becoming one of the more
4 heavily litigated cases that the Court has in this
5 department.

6 Believe it or not, the most heavily litigated
7 one has now exceeded 2,000 ROAs. You're not quite at
8 500, but at least you weren't when I last saw it; but
9 there's a lot of filings that the Court has to make its
10 way through just to figure out what the motion is.

11 So what I did was I worked them up in the
12 order in which I discovered them. And it may appear as
13 if I went backwards, but don't put any weight into the
14 order in which they are reflected. It was just the
15 order in which I managed to find them among all of the
16 other matters that have been filed in this case. So
17 let's start with the first of the matters.

18 Let me go to defense counsel. What do you
19 think?

20 MR. FLORES: Your Honor, as a housekeeping
21 matter we are prepared to submit on the Court's
22 tentative with regards to the motions to compel for
23 Rebecca Berry; so that would be Number 1, 2, and 3, on
24 the Court's tentative.

25 THE COURT: All right. Just give me one

1 moment here.

2 And then am I correct that Motions 4, 5, and 6
3 all relate to Mr. Geraci?

4 MR. FLORES: That's correct, Your Honor.

5 THE COURT: All right. So let's just focus on
6 1, 2, and 3.

7 Let me go to the plaintiff's counsel. Did you
8 want to be heard on 1, 2, or 3?

9 MR. WEINSTEIN: We would submit on 1, 2, and 3
10 as well.

11 You had a note, in response to Number 3, about
12 whether -- you know, you wanted to have a discussion
13 about this election to assert the privilege and how it
14 might affect the scope of testimony at trial.

15 THE COURT: Oh, okay.

16 MR. WEINSTEIN: And I can address that if
17 the Court wants to address that.

18 THE COURT: Let me just make a parenthetical
19 comment, and it's not intended to be critical of either
20 side; but there are cases, and this may fall into that,
21 where there is so much law and motion that it becomes
22 difficult for the Court to keep in mind, if it ever has
23 been made clear to the Court, what your respective
24 theories of the case are.

25 I mean I know each side have taken turns

1 expressing disappointment at the Court's rulings, but --
2 and the reason I say that, again, I'm not intending to
3 be critical to either one of you, but -- so the focus of
4 the third motion is the Court wasn't entirely clear on
5 how relevant if at all -- I think it's relevant -- the
6 so-called disavowment allegation is that was the focus
7 of this part of the discovery. So it seems to me that
8 presuming it's relevant, if in this case -- is it
9 Ms. Berry?

10 MR. WEINSTEIN: Ms. Berry.

11 THE COURT: All right.

12 MR. WEINSTEIN: And I can -- I think I can
13 short circuit it.

14 THE COURT: All right.

15 MR. WEINSTEIN: Ms. Berry had some disavowment
16 allegation defined as Mr. Cotton sent an email to
17 Mr. Geraci on November 2nd after they signed a written
18 document. Mr. Geraci responded back.

19 And Mr. Geraci says he was responding back to
20 the first sentence in that email.

21 And then the next day they had a telephone
22 conversation in which they discussed the rest of the
23 email.

24 And he denied that his email sent the night
25 before was an agreement with what was in the rest of the

1 email. And they had a discussion about it the next day
2 and discussed it and there was no agreement.

3 Ms. Berry has no personal knowledge of that
4 telephone conversation or the emails and she's not been
5 told anything about it by any nonprivileged source. So
6 there is no testimony that's going to be offered by her
7 regarding what they have defined as the disavowment
8 allegation.

9 So it might be relevant if she had knowledge,
10 but she doesn't.

11 THE COURT: Thank you.

12 Let me go back to the defense side.

13 And thank you for reminding me that there was
14 a sliver of the third motion that I wanted to hear from
15 counsel.

16 I don't know whether Ms. Berry does or does
17 not know anything about this allegation or whether there
18 may be a credibility evaluation. I have no clue. But I
19 am satisfied that she is entitled to assert a privilege
20 if the source of her information is based upon a
21 communication with counsel.

22 So what I am inclined to do is to confirm
23 the Court's tentative as modified. As modified, to the
24 extent that Ms. Berry has chosen to assert a privilege
25 on any issue, in this case it happens to be the

1 so-called disavowment allegation in discovery, she will
2 be prohibited from testifying to that at trial.

3 Now, that's not to suggest in this case that
4 the defense can't inquire. I'm not suggesting that you
5 can't conduct a wide ranging cross-examination. But you
6 won't be -- you will not be at risk that Ms. Berry may
7 be able to change what she says in discovery and all of
8 a sudden you're being confronted with her saying
9 something about her knowledge of this so-called
10 disavowment allegation. Unless you choose to go into
11 that area, she would be barred from testifying about it.

12 That should be reflected, by the way, in the
13 Court's tentative ruling.

14 So the Court confirms the Court's tentative
15 rulings as to Motions 1, 2, and 3 involving Ms. Berry as
16 is to Number 1, as is to Number 2, and as modified to
17 Number 3.

18 And I am going to direct counsel for the
19 moving party to serve notice of the Court's ruling.

20 All right. Let's go to the fourth, fifth and
21 sixth motions.

22 And again, let me go to defense counsel.
23 Which ones, if any, would you like to be heard on?

24 MR. FLORES: Your Honor, I think 16 and 31 on
25 the special interrogatories for Mr. Geraci is the ones

1 that we would like to address.

2 THE COURT: Okay. So we are focusing on the
3 fourth motion?

4 MR. FLORES: Yes, Your Honor.

5 THE COURT: Okay. And 16 and 31 --

6 MR. FLORES: And I think the Court sustained
7 those objections.

8 THE COURT: Right. Let me get the separate
9 statement, counsel.

10 MR. FLORES: Sure.

11 THE COURT: By the way, if I didn't indicate
12 at first, thanks for being so patient. It took me
13 almost an hour to get you up here.

14 All right. That's ROA 386. All right. It
15 looks like the separate statement is 390. Yeah, that's
16 it.

17 So you want me to look at 16.

18 MR. FLORES: And also Number 31, Your Honor.

19 THE COURT: Right.

20 Let's take 16. All documents relating to the
21 6176 CUP application reviewed by Jim Bartell.

22 MR. FLORES: Yes, Your Honor.

23 Jim Bartell is an agent of Mr. Geraci. He's a
24 lobbyist that has worked for Mr. Geraci in the CUP
25 application on the subject property. And I think the

1 objection was that he has no personal knowledge of what
2 Mr. Jim Bartell had actually reviewed.

3 The problem, the deficiency here, Your Honor,
4 is that under California Code of Civil Procedure
5 2030.220(c) there's no statement with regards to a
6 reasonable good faith effort to make themselves -- to
7 obtain this knowledge from their agent. Right? So --

8 THE COURT: Well, when you say -- first of
9 all, Mr. Geraci has been named -- or is an individual
10 litigant?

11 MR. FLORES: That's correct.

12 THE COURT: There are limits to what you can
13 impose upon an individual litigant to search in order to
14 respond to a discovery request.

15 MR. FLORES: And that we understand,
16 Your Honor.

17 The problem that we have with the response is
18 that there's no -- I mean, literally the Code of Civil
19 Procedure says that it shall state, make a reasonable
20 good faith effort to inquire as to this thing that they
21 have no knowledge of.

22 And I point out that the Court overruled a
23 similar objection with regards to the plaintiff's
24 personal knowledge of what their attorney reviewed prior
25 to the submission as well.

1 All we want is an identification of what may
2 or may not have been reviewed.

3 Now, as far as their supplemental response,
4 they go on to say even though they have no personal
5 knowledge, that they also refer to there may be
6 thousands of documents.

7 Well, you know, they're, in essence, trying to
8 force us to do what may be, you know, an unfruitful
9 deposition of Mr. Jim Bartell. This is our very first
10 volley of information seeking in this particular
11 instance.

12 THE COURT: All right. Just let me look at
13 31. Okay.

14 Counsel, I know you spent a lot of time
15 waiting in court to be heard and so I don't want to be
16 short with anybody.

17 I could ask opposing counsel to respond to 16
18 and 31.

19 And, by the way, I looked at these. I worked
20 them up. I didn't have somebody else help work these
21 up, so this is the Court's work product truly. And I am
22 just not persuaded -- well, I'm comfortable that the
23 nature and scope of the request is objectionable.

24 Quite frankly, there may have been other
25 objections that the other side, I guess Mr. Geraci,

1 could have interposed.

2 I'm not inclined to change the Court's
3 tentative on 16 and 31.

4 MR. FLORES: Your Honor, if I might just
5 address the relevancy of 31 because the Court sustained
6 the objection with regards to relevancy.

7 In essence, what we are asking for Mr. Geraci
8 to do is to identify any other transactions where he
9 used a non standard real estate contract, which is
10 exactly what's going on here, Your Honor. They used a
11 three sentence document to initiate a sale -- for the
12 purchase and sale of property. So we're trying to
13 establish what exactly -- if that's common practice,
14 that's something that he does, and that may tend to
15 show, you know, a fraud did occur.

16 THE COURT: Here's how I evaluate -- first of
17 all, let me back up.

18 Relevancy is a very difficult objection to
19 stand on in discovery. So what I am imagining is
20 Mr. Geraci is on the witness stand. And one of you two,
21 and I'm looking at defense counsel, are putting a
22 question to him to this effect, and opposing counsel
23 were to leap to his feet and say objection, relevancy, I
24 mean, as it's currently framed, without any context, I
25 would sustain that objection.

1 It's possible that Mr. Geraci has used this
2 one-page type document a whole bunch of times in the
3 past or he may not have done it at all, but in order to
4 evaluate that relevancy we would have to find out or
5 start looking at all of those other pieces of paper as
6 well as the underlying transactions to see how similar,
7 if at all, they were to the facts of this case. And,
8 folks, we're not going to spend the time doing that.

9 I don't know if this is an aberration or a
10 common practice by Mr. Geraci, but there's only so much
11 time that we have to allocate to the trial of the case.
12 So I just found myself questioning the relevancy.

13 So again, counsel, I am not arguing with you,
14 but I did go through that exercise, I can assure you. I
15 just didn't sustain it without giving it any thought
16 whatsoever. So I'm going to confirm that portion of
17 the Court's tentative as well.

18 MR. FLORES: Fair enough, Your Honor.

19 THE COURT: And again, we could spend time a
20 hearing from opposing counsel, but I'm just -- you all
21 don't need to hear that right now.

22 MR. FLORES: Fair enough.

23 THE COURT: With all due with respect to
24 opposing counsel.

25 MR. WEINSTEIN: Understood, Your Honor.

1 THE COURT: So that's Motion Number 4.

2 Are those the two items that you wanted to be
3 heard on, on that portion?

4 MR. FLORES: On that portion, yes.

5 THE COURT: Let me go to opposing counsel.
6 What do you think?

7 MR. WEINSTEIN: We would submit on 4.

8 THE COURT: All right. So the Court then
9 confirms it's ruling on the fourth motion involving
10 Mr. Geraci and the special interrogatories and directs
11 that counsel for the moving party serve notice of that
12 one as well.

13 Let's go on to the fifth motion. Counsel?

14 MR. FLORES: Yes, Your Honor, that was the
15 request for admissions. There's two that we can take
16 together, Your Honor, because I think the objection was
17 sustained as to compound for 29 and 30.

18 THE COURT: All right. Let me get to the
19 separate statement, please.

20 MR. WEINSTEIN: So Number 5 is actually the
21 request for production, not the request for admissions.

22 MR. FLORES: My apologies, Your Honor. That's
23 true.

24 THE COURT: I gotcha.

25 Let me just find it real quick.

1 MR. WEINSTEIN: So 5, Your Honor, had the same
2 issue of privilege being asserted and what would be able
3 to be permitted at trial regarding the disavowment
4 allegation by Mr. Geraci.

5 THE COURT: Right. Now, 30 I overruled.
6 You said 29 and 30?

7 MR. WEINSTEIN: He was talking about --

8 MR. FLORES: I'm sorry. My apologies,
9 Your Honor. I had them out of order.

10 THE COURT: Okay. So are we still on 5?

11 MR. FLORES: Yeah, we are.

12 THE COURT: All right. So we are just
13 focusing on 29?

14 MR. FLORES: Sorry, Your Honor. On Number 5
15 we're actually going to submit.

16 The only thing that I would point out,
17 Your Honor, as a housekeeping matter with regards to the
18 disavowment allegation is that we do have -- we have
19 calendared a motion to bind in regards --

20 THE COURT: A motion for what?

21 MR. FLORES: A motion to bind.

22 THE COURT: What is --

23 MR. FLORES: And if I may, Your Honor, the
24 motion we have calendared is to bind Mr. Geraci's
25 response to a previous response that he had given

1 regarding the disavowment allegation.

2 When we first -- when Mr. Cotton first
3 provided Mr. Geraci with form interrogatories, one of
4 the form interrogatories specifically mentioned whether
5 or not there were any amendments. You know, it's
6 basically 50.1, et seq, with regards to the contract.

7 In those responses he basically said there was
8 no response, you know, there were no modifications.

9 Now, almost a year later they bring up this
10 disavowment allegation. They respond to it in their
11 interrogatories and other requests for productions. So
12 I guess whatever ruling the Court makes, I would ask for
13 it to hold off on substantively this issue until it's
14 able to hear our motion.

15 MR. WEINSTEIN: Would the Court like me to
16 address that, Your Honor? Because I have anticipated
17 the motion because they have told us that they were
18 going to bring it.

19 Fine, they can file a motion. We will seek
20 sanctions.

21 A motion to bind means that you have served
22 responses to discovery requests and then you served an
23 amended response and the amended response changes the
24 original response and you want to bind them to the
25 original response.

1 In this case, there is no -- what they are
2 referring to is not an interrogatory response that was
3 amended, so there's nothing to bind. The motion is not
4 even applicable.

5 What they are saying is, in his form
6 interrogatory response, is Mr. Geraci said the agreement
7 wasn't amended.

8 The disavowment allegation says that -- it
9 doesn't say anything about there being an amendment. It
10 talks about discussing the email. And then Mr. Geraci's
11 declaration, which is not a discovery response, goes on
12 to talk about attempts to renegotiate the contract that
13 were never ever consummated. And so the form
14 interrogatory responses and the declaration aren't even
15 inconsistent. But when they're talking about a motion
16 to bind, that's what they're talking about.

17 They haven't filed it yet. But I am advising
18 the Court our position is going to be that it's not even
19 a motion that the statute applies to.

20 THE COURT: All right. Now you haven't drawn
21 a judge who discourages parties from filing motions. I
22 have never heard -- and I'm not being flip, I truly have
23 not heard of a motion to bind.

24 But if I understand the underlying dispute,
25 what the defense is saying is Mr. Geraci said something

1 at one time and then amended it to say something
2 differently at another time and you want to hold him,
3 if you will, to his original answer.

4 MR. FLORES: To his original answer.

5 THE COURT: All right.

6 Now the way that I imagine it would play out
7 and the way that I see it play out in just about every
8 single case and every single trial is at some point in
9 time, I guess on this side, the defense can present to
10 the jury Mr. Geraci's original response, and I guess you
11 could choose to also present the amended response,
12 that's up to you; but how I see it is one side presents
13 an original response, the other side presents an amended
14 response and the jury decides which one is more credible
15 than the other.

16 MR. WEINSTEIN: Sure.

17 THE COURT: But I am not inclined to say that
18 either side -- and this could hold as true for
19 Mr. Cotton as Mr. Geraci, can't file amended response.
20 Now, again, ultimately it becomes a credibility
21 determination by the jury, not by me.

22 MR. FLORES: And that we understand,
23 Your Honor.

24 THE COURT: Just food for thought, counsel.

25 MR. FLORES: That we understand, Your Honor.

1 The only issue that we have is that now we're
2 put in a position where we have to defend against
3 basically a frivolous allegation that's being made up.

4 THE COURT: Well, but that's credibility. And
5 you're not going to get me -- in discovery, you're not
6 going to get me weighing in on that.

7 The Court's job is to make sure that responses
8 are served, credible or not, and then ultimately you
9 make your pitch to the jury and they decide credibility.
10 Again, if it's of any assistance to you.

11 MR. FLORES: Right.

12 And, Your Honor -- actually, one thing I want
13 to mention, Your Honor, I do have a CMC in Department 65
14 that's supposed to start right now.

15 THE COURT: It's 65?

16 MR. AUSTIN: Yes. With Judge Frazier.

17 THE COURT: All right. Well, let's get you
18 out of here so you can get down there.

19 Now, I have looked back again at 29. The only
20 question that I have is have you gotten the documents or
21 any documents?

22 MR. FLORES: No, Your Honor. And that's why
23 we would -- as long as the Court is consistent with what
24 the Court decided with the Berry responses as far as
25 them not beating able to testify to the disavowment

1 allegation if they do choose to --

2 THE COURT: Well, this is Mr. Geraci now, not
3 Ms. Berry. I mean the analysis is the same.

4 But let me go back to counsel. Will you be
5 producing or have you produced any documents involving
6 this allegation by Mr. Geraci?

7 MR. WEINSTEIN: Yes. As reflected in our
8 written response, which is -- and the only documents
9 that we have to directly address this are telephone
10 records. So we have actually produced their telephone
11 bill that they gave us earlier in the case and we have a
12 telephone bill that Mr. Geraci has that reflects the
13 same call as on their client's bill. And I'll double
14 check to make sure that's been produced, but that's it.
15 Otherwise, anything that directly talks about what they
16 term the disavowment allegation, that was verbal.

17 THE COURT: I gotcha.

18 Now, let me ask this. Have these documents
19 that one side or the other have produced been Bates
20 stamped?

21 MR. WEINSTEIN: Absolutely. So, for example,
22 the phone bill, their own phone bill, Mr. Cotton's own
23 phone bill was Bates numbered Geraci and the last three
24 digits are 207.

25 THE COURT: All right. So here's what I am

1 inclined to do. Again, I am inclined to sustain
2 Mr. Geraci's right to assert the privilege, as I would
3 Mr. Cotton. But there is a price to be paid; he can't
4 go back and reopen that area once you have narrowed the
5 scope by asserting the privilege.

6 However, what I am going to do is confirm as
7 modified this tentative. As modified, the Court will
8 direct Mr. Geraci to serve a further response on the
9 subject of the Request for Production Number 29 to
10 identify the Bates stamp numbers of the documents that
11 you have produced.

12 MR. WEINSTEIN: Okay.

13 THE COURT: So that in this case the defense
14 side now understands the narrow scope of the
15 nonprivileged documents that are in play in response to
16 this discovery request.

17 MR. WEINSTEIN: Very good, Your Honor.

18 THE COURT: All right. And then I'm going to
19 direct counsel for the moving party to serve notice.

20 That leaves us with the sixth motion.

21 Counsel, anything that you want to argue on
22 that one?

23 MR. FLORES: Yes, Your Honor. I started to,
24 but I had them out order.

25 Basically, 29 and 30, the Court sustained the

1 compound objection on that one. And then 33 as well.

2 THE COURT: All right. Let me -- I think I
3 recall them, but before I say anything -- what time is
4 your CMC scheduled?

5 MR. AUSTIN: 10:15, Your Honor.

6 THE COURT: All right. Well, did you ask them
7 to trail you?

8 MR. FLORES: I did not.

9 THE COURT: All right. What is your case?

10 MR. FLORES: It is Vidal versus Pick Ax
11 (phonetic).

12 THE COURT: Could you call that department and
13 say we'll send him down real soon.

14 THE CLERK: Which department was it, again?

15 THE COURT: Is it 65?

16 MR. FLORES: I thought it was 65.

17 THE COURT: 65. All right.

18 So let's get this -- let me pull up the
19 separate statement real quick.

20 All right. Request for admissions. And
21 it's -- I'm sorry -- 29, 30, and 33?

22 MR. FLORES: Yes, Your Honor.

23 THE COURT: All right.

24 MR. FLORES: We can take 29 and 30 together,
25 though, Your Honor. It is the same objection. The

1 questions are very similar.

2 THE COURT: All right. Let me just retrieve
3 it really quick.

4 All right, 29. Okay. You know, there's only
5 so much that you can expect -- and, by the way, again,
6 we'd be having the exact same discussion if you were on
7 the receiving end of this request for admission, I'm
8 confident that I would be looking at it the same way.

9 But you have asked the other side to admit a
10 fact based upon a timeline that is what? -- nine or ten
11 months broad, encompasses a whole bunch of exhibits.

12 I mean, there may be a sliver among all of
13 that information that they might admit. There may be a
14 bunch that they might not admit. You're just asking
15 more than any reasonable receiving party should be
16 expected to respond to. It was the breath, among other
17 things.

18 MR. FLORES: In that vein, Your Honor, I
19 think, though it may be poorly written, I think the
20 subject matter is very simple.

21 THE COURT: Well, I'm not questioning
22 relevancy, but there's -- generally speaking, requests
23 for admissions should be more narrowly tailored.

24 If there's a specific fact encompassed within
25 all of that information that you want the other side to

1 admit, give them that one fact and then admit or deny.
2 I'm confident the other side would respond accordingly.
3 But I struggle -- so that is why the Court sustained the
4 objection to 29.

5 The same with 30.

6 Let me go to 33. I'm sure there was something
7 about that that I thought was -- well, again, you're
8 asking them to look at a declaration of attorney David
9 S. Dimion (phonetic) --

10 MR. WEINSTEIN: Their former attorney.

11 THE COURT: All right.

12 MR. WEINSTEIN: Mr. Cotton's former attorney.

13 THE COURT: Once again, counsel --

14 MR. FLORES: Once again, as we explained in
15 our meet and confer, the question can be read without
16 that information, Your Honor.

17 The underlying facts are what we're worried
18 about. We're not asking them -- it's for their own
19 edification. It has nothing to do with specifically
20 identifying this document X, Y, Z, is did you or did you
21 not agree to stipulate.

22 Now, for the Court's reference, if the Court
23 recalls, Mr. Cotton was here before the Court with a
24 motion for a receiver based on the CUP application that
25 he believed would be sabotaged by the other side and

1 that there was another competing CUP being sought and
2 that did occur, that did happen, Your Honor.

3 THE COURT: All right. Well, again.

4 The Court's intention is not to be critical, but there
5 may be a more narrowly tailored fact that you could
6 propound to the other side.

7 But as soon as I saw the reference to "as more
8 fully outlined in the declaration of," again, it becomes
9 -- it does become compound; but the breadth of which I
10 also -- it also strikes me as unreasonable.

11 MR. FLORES: So is it a compound objection the
12 Court is sustaining? Or relevancy?

13 THE COURT: Well, I'm not -- oh, I see what
14 you are saying. All right.

15 Well, I was not focusing so much on relevancy,
16 counsel. It really was the more the compound,
17 conjunctive, disjunctive, the breadth. I mean, I was
18 looking at all them in their totality.

19 And I'm not suggesting that this might not be
20 a relevant line of inquiry by your side, but as framed,
21 I remain comfortable that one or more of the objections
22 are well taken.

23 MR. FLORES: Okay.

24 THE COURT: All right. So the Court -- well,
25 anything else, counsel?

1 MR. FLORES: I just had some housekeeping
2 matters, Your Honor.

3 THE COURT: All right. Well, but on this
4 motion, anything else, counsel?

5 MR. FLORES: No.

6 MR. WEINSTEIN: No, Your Honor.

7 THE COURT: All right. The Court confirms its
8 tentative on Motion Number 6, and then directs the
9 defense counsel to serve notice of the Court's ruling on
10 all of them.

11 All right. All right. Let's go to
12 housekeeping. May 31, 2019, I'm looking forward to
13 seeing everybody in this trial department. If not this
14 department, I'll have one, I hope, lined up for you. So
15 everything is heading in the right direction.

16 Counsel, did you have something you wanted to
17 say?

18 MR. FLORES: Yes, Your Honor.

19 We're up against a deadline right now to file
20 our motion for summary judgment, which is going to be on
21 the 13th, Your Honor.

22 Our client would be highly prejudiced if we're
23 not able to include the supplemental responses to that
24 motion, Your Honor. So we may -- and we've set the
25 hearing date, unfortunately, for the very last day

1 that's possible.

2 THE COURT: All right.

3 MR. FLORES: So we either have to continue the
4 day or we come in on an ex parte basis for the Court.
5 But if the opposing side is willing to stipulate to
6 change the dates.

7 THE COURT: So I think I said to the extent
8 that additional responses are due -- oh, I said ten
9 days?

10 MR. WEINSTEIN: Their summary judgment motion,
11 Your Honor, would be due to be personally served today.

12 THE COURT: Oh. Well, I hear this --

13 MR. WEINSTEIN: I don't have a problem with
14 backing up and avoiding the 30 day. You know, there is
15 a 30 day before trial limitation, which the Court can
16 hear a motion less than 30 days before trial on good
17 cause, I'm okay with that. I just don't want to be
18 shortened on my time to respond.

19 THE COURT: Right.

20 So the hearing date on your motion for summary
21 judgment is April 26th. So you're saying you would be
22 willing to stipulate to have that heard 30 days before
23 trial?

24 MR. WEINSTEIN: Well, yes. I'm thinking on
25 the -- I think the TRC is the 17th, right?

1 THE COURT: Well, why don't -- and, folks, I
2 know I am pushing you hard to get to trial date, but
3 what I am thinking is for a very limited period of time,
4 no more than 30 days, let's extend those last three
5 dates, the trial call, the TRC, and the law and motion
6 and discovery date.

7 And as it is, counsel, I only gave you ten
8 days. That's not a lot of time, but you're not
9 complaining about that.

10 But if the Court were to extend the dates by
11 30, that would allow you to get your hearing date 30
12 days later than currently and still have time to
13 incorporate the supplemental responses into your moving
14 papers.

15 Can you live with that?

16 MR. FLORES: We can, Your Honor.

17 THE COURT: All right. And so --

18 MR. WEINSTEIN: One caveat, Your Honor.

19 THE COURT: Yes.

20 MR. WEINSTEIN: I don't have my calendar so I
21 don't know my client's schedule for trial yet, but I am
22 willing to have you select one and then I'd have to let
23 the Court know if it's an issue, but I'm hoping it
24 won't.

25 THE COURT: Come on in here. You know where

1 to find me.

2 MR. WEINSTEIN: Okay.

3 THE COURT: All right. So here's what
4 the Court is going to do. The Court is going to
5 continue the last three dates as follows: Your trial
6 call will now be June 28th at 8:30 a.m., your trial
7 readiness conference is two weeks before on June 14th at
8 10:45 a.m., your law and motion and discovery cutoff
9 date including the completion of expert discovery is
10 May 31st.

11 And the Court is going to direct that the
12 defense serve notice of that as well.

13 All right. Any other clean-up items from the
14 defense side?

15 MR. FLORES: No, Your Honor.

16 THE COURT: Let me go to the plaintiff's side.
17 Are there any other issues?

18 MR. WEINSTEIN: No.

19 But just so there's clarity, you have moved
20 the motion cutoff date to May 31st, which means probably
21 that the summary judgment motion would have to be heard
22 May 24th to be more than 30 days before trial, which is
23 still nearly 30 days from when it would be heard now,
24 which is fine. But do they need to calendar a hearing
25 date for May 24th.

1 THE COURT: Well, all right. Let me to this.

2 Do you object if a hearing on the motion for
3 summary judgment is heard as late or as close to the
4 trial as May 31st?

5 MR. WEINSTEIN: I do not.

6 THE COURT: All right. So all motions
7 including a motion for summary judgment filed by either
8 side can be heard within less than 30 days before trial,
9 namely, as late as May 31st.

10 And that also should be reflected in your
11 notice of ruling.

12 MR. WEINSTEIN: Fair enough.

13 THE COURT: All right. Counsel, that takes
14 care of everything.

15 Thank you all very much.

16 MR. FLORES: Thank you, Your Honor.

17 MR. AUSTIN: Thank you, Your Honor.

18 MR. WEINSTEIN: Thank you, Your Honor.

19

20 (Proceedings adjourned at 10:28 a.m.)

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CERTIFICATE

State of California)

County of San Diego)

I, Lois Mason Thompson, CSR No. 3685, a pro tem reporter in the Superior Court of the State of California, in and for the County of San Diego, hereby certify that I reported in machine shorthand the proceedings held on February 8, 2019, that my notes were transcribed into typewriting under my direction, that the foregoing transcript, pages 1 through 31 is a full, true, and correct transcript of the said proceedings.

Dated at San Diego, California, February 18, 2019


Lois Mason Thompson

CSR No. 3685

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0	37-2017 [1] - 1:9 386 [1] - 9:14 390 [1] - 9:15	23:23 admit [5] - 23:9, 13-14; 24:1 advising [1] - 17:17 affect [1] - 5:14 agent [2] - 9:23; 10:7 agree [1] - 24:21 agreement [3] - 6:25; 7:2; 17:6 allegation [15] - 6:6, 16; 7:8, 17; 8:1, 10; 15:4, 18; 16:1, 10; 17:8; 19:3; 20:1, 6, 16 allocate [1] - 13:11 allow [1] - 28:11 almost [2] - 9:13; 16:9 AM [1] - 3:2 amended [8] - 16:23; 17:3, 7; 18:1, 11, 13, 19 amendment [1] - 17:9 amendments [1] - 16:5 AN [1] - 2:11 analysis [1] - 20:3 AND [4] - 1:2, 14; 2:3, 10 Andrew [1] - 3:13 ANDREW [2] - 2:13 answer [2] - 18:3 anticipated [1] - 16:16 apologies [2] - 14:22; 15:8 appear [1] - 4:12 APPEARANCES [2] - 1:21; 2:1 applicable [1] - 17:4 application [3] - 9:21, 25; 24:24 applies [1] - 17:19 April [1] - 27:21 area [2] - 8:11; 21:4 argue [1] - 21:21 arguing [1] - 13:13 assert [4] - 5:13; 7:19, 24; 21:2 asserted [1] - 15:2 asserting [1] - 21:5 assistance [1] - 19:10 assure [1] - 13:14 attempts [1] - 17:12 attorney [4] - 10:24; 24:8, 10, 12 Austin [1] - 3:11 AUSTIN [7] - 2:17; 3:10, 22; 19:16; 22:5; 30:17 avoiding [1] - 27:14	Ax [1] - 22:10	31:1 certify [1] - 31:8 change [3] - 8:7; 12:2; 27:6 changes [1] - 16:23 check [1] - 20:14 choose [3] - 8:10; 18:11; 20:1 chosen [1] - 7:24 circuit [1] - 6:13 Civil [2] - 10:4, 18 clarity [1] - 29:19 clean [1] - 29:13 clean-up [1] - 29:13 clear [2] - 5:23; 6:4 CLERK [1] - 22:14 client [1] - 26:22 client's [2] - 20:13; 28:21 close [1] - 30:3 clue [1] - 7:18 CMC [2] - 19:13; 22:4 Code [3] - 10:4, 18; 31:20 comfortable [2] - 11:22; 25:21 comment [1] - 5:19 common [2] - 12:13; 13:10 communication [1] - 7:21 compel [1] - 4:22 competing [1] - 25:1 complainant [1] - 3:12 COMPLAINANT [1] - 2:10 complaining [1] - 28:9 completion [1] - 29:9 compound [5] - 14:17; 22:1; 25:9, 11, 16 conduct [1] - 8:5 confer [1] - 24:15 conference [1] - 29:7 confident [2] - 23:8; 24:2 confirm [3] - 7:22; 13:16; 21:6 confirms [3] - 8:14; 14:9; 26:7 confronted [1] - 8:8 conjunctive [1] - 25:17 consistent [1] - 19:23 consummated [1] - 17:13 context [1] - 12:24 continue [2] - 27:3; 29:5 contract [3] - 12:9;
000 [2] - 3:3; 30:21 00010073-CU-BC [1] - 1:10	4	4 [3] - 5:2; 14:1, 7	B	backing [1] - 27:14 backwards [1] - 4:13 barred [1] - 8:11 Bartell [4] - 9:21, 23; 10:2; 11:9 based [3] - 7:20; 23:10; 24:24 basis [1] - 27:4 Bate [1] - 20:19 Bates [2] - 20:23; 21:10 beating [1] - 19:25 become [1] - 25:9 becomes [3] - 5:21; 18:20; 25:8 becoming [1] - 4:3 behalf [2] - 3:11, 14 BERRY [1] - 2:3 Berry [12] - 3:9; 4:23; 6:9, 15; 7:3, 16, 24; 8:6, 15; 19:24; 20:3 bill [6] - 20:11-13, 22 bind [8] - 15:19, 21, 24; 16:21, 24; 17:3, 16, 23 breadth [2] - 25:9, 17 breath [1] - 23:16 bring [2] - 16:9, 18 BRITTON [1] - 2:4 broad [1] - 23:11 BROADWAY [1] - 2:5 bunch [3] - 13:2; 23:11, 14 BY [3] - 2:5, 13, 18
1	5	5 [5] - 5:2; 14:20; 15:1, 10, 14 50.1 [1] - 16:6 500 [2] - 2:19; 4:8 501 [1] - 2:5	C	calendar [2] - 28:20; 29:24 calendared [2] - 15:19, 24 California [5] - 3:1; 10:4; 31:2, 7, 13 CALIFORNIA [4] - 1:1; 2:6, 15, 19 CAMINO [1] - 2:14 care [1] - 30:14 case [12] - 4:16; 5:24; 6:8; 7:25; 8:3; 13:7, 11; 17:1; 18:8; 20:11; 21:13; 22:9 Case [1] - 3:5 CASE [1] - 1:9 cases [2] - 4:4; 5:20 caveat [1] - 28:18 CERTIFICATE [1] -
1 [8] - 1:10; 4:23; 5:6, 8-9; 8:15; 31:11 10 [1] - 1:10 10073 [1] - 3:6 10:15 [1] - 22:5 10:28 [1] - 30:20 10:45 [1] - 29:8 12 [1] - 3:5 13th [1] - 26:21 1450 [1] - 2:6 1455 [1] - 2:18 14th [1] - 29:7 16 [6] - 8:24; 9:5, 17, 20; 11:17; 12:3 17th [1] - 27:25 18 [1] - 31:13	6	6 [2] - 5:2; 26:8 6176 [1] - 9:21 619.233.3131 [1] - 2:7 619.356.1556 [1] - 2:15 619.357.6850 [1] - 2:20 65 [5] - 19:13, 15; 22:15 69954(D) [1] - 31:20		
2	7	7 [1] - 3:4 73 [1] - 1:4		
2 [6] - 4:23; 5:6, 8-9; 8:15 2,000 [1] - 4:7 2019 [5] - 1:17; 3:1; 26:12; 31:9, 13 2030.220(c) [1] - 10:5 207 [1] - 20:24 24th [2] - 29:22, 25 26th [1] - 27:21 28th [1] - 29:6 29 [10] - 14:17; 15:6, 13; 19:19; 21:9, 25; 22:21, 24; 23:4; 24:4 2nd [1] - 6:17	8	8 [3] - 1:17; 3:1; 31:9 8:30 [1] - 29:6		
3	9	92101 [1] - 2:6 92108 [2] - 2:15, 19		
3 [7] - 4:23; 5:6, 8-9, 11; 8:15, 17 30 [17] - 14:17; 15:5; 21:25; 22:21, 24; 24:5; 27:14-16, 22; 28:4, 11; 29:22; 30:8 31 [9] - 8:24; 9:5, 18; 11:13, 18; 12:3, 5; 26:12; 31:11 31st [4] - 29:10, 20; 30:4, 9 33 [3] - 22:1, 21; 24:6 337 [1] - 2:14 35050 [1] - 2:14 3685 [3] - 1:24; 31:5, 18	A	a.m [3] - 29:6, 8; 30:20 aberration [1] - 13:9 able [5] - 8:7; 15:2; 16:14; 19:25; 26:23 absolutely [1] - 20:21 accordingly [1] - 24:2 ACTIONS [1] - 1:14 additional [1] - 27:8 address [6] - 5:16; 9:1; 12:5; 16:16; 20:9 adjourned [1] - 30:20 admission [1] - 23:7 admissions [4] - 14:15, 21; 22:20;		

<p>16:6; 17:12 conversation [2] - 6:22; 7:4 copies [1] - 31:22 copy [2] - 31:21 correct [4] - 5:2, 4; 10:11; 31:12 COTTON [2] - 1:10; 2:11 Cotton [7] - 3:5, 12; 6:16; 16:2; 18:19; 21:3; 24:23 Cotton's [2] - 20:22; 24:12 counsel [32] - 3:21, 23; 4:3, 18; 5:7; 7:15, 21; 8:18, 22; 9:9; 11:14, 17; 12:21; 13:13, 20, 24; 14:5, 11, 13; 18:24; 20:4; 21:19, 21; 24:13; 25:16, 25; 26:4, 9, 16; 28:7; 30:13 County [2] - 31:3, 7 COUNTY [1] - 1:2 court [3] - 11:15; 31:20, 22 Court [33] - 4:2, 4, 9; 5:17, 22-23; 6:4; 8:14; 9:6; 10:22; 12:5; 14:8; 16:12, 15; 17:18; 19:23; 21:7, 25; 24:3, 22-23; 25:12, 24; 26:7; 27:4, 15; 28:10, 23; 29:4, 11; 31:6 COURT [74] - 1:1; 3:4, 15, 23; 4:1, 25; 5:5, 15, 18; 6:11, 14; 7:11; 9:2, 5, 8, 11, 19; 10:8, 12; 11:12; 12:16; 13:19, 23; 14:1, 5, 8, 18, 24; 15:5, 10, 12, 20, 22; 17:20; 18:5, 17, 24; 19:4, 15, 17; 20:2, 17, 25; 21:13, 18; 22:2, 6, 9, 12, 15, 17, 23; 23:2, 21; 24:11, 13; 25:3, 13, 24; 26:3, 7; 27:2, 7, 12, 19; 28:1, 17, 19, 25; 29:3, 16; 30:1, 6, 13 Court's [17] - 3:17, 21, 23; 4:21, 24; 6:1; 7:23; 8:13, 19; 11:21; 12:2; 13:17;</p>	<p>19:7; 24:22; 25:4; 26:9 credibility [4] - 7:18; 18:20; 19:4, 9 credible [2] - 18:14; 19:8 critical [3] - 5:19; 6:3; 25:4 cross [4] - 3:8, 12; 8:5 CROSS [4] - 1:14; 2:2, 10 CROSS-ACTIONS [1] - 1:14 cross-complainant [1] - 3:12 CROSS-COMPLAINANT [1] - 2:10 CROSS-DEFENDANT [2] - 2:2 cross-defendant [2] - 3:8 cross-examination [1] - 8:5 CRR [1] - 1:23 CSR [4] - 1:23; 31:5, 18 CT [1] - 1:10 CUP [4] - 9:21, 24; 24:24; 25:1 cutoff [2] - 29:8, 20</p>	<p>defense [11] - 4:18; 7:12; 8:4, 22; 12:21; 17:25; 18:9; 21:13; 26:9; 29:12, 14 deficiency [1] - 10:3 defined [2] - 6:16; 7:7 DEL [1] - 2:14 denied [1] - 6:24 deny [1] - 24:1 DEPARTMENT [1] - 1:4 Department [1] - 19:13 department [5] - 4:5; 22:12, 14; 26:13 deposition [1] - 11:9 determination [1] - 18:21 Diego [4] - 3:1; 31:3, 7, 13 DIEGO [4] - 1:2; 2:6, 15, 19 differently [1] - 18:2 difficult [2] - 5:22; 12:18 digits [1] - 20:24 dimion [1] - 24:9 direct [4] - 8:18; 21:8, 19; 29:11 direction [2] - 26:15; 31:10 directly [2] - 20:9, 15 directs [2] - 14:10; 26:8 disappointment [1] - 6:1 disavowment [12] - 6:6, 15; 7:7; 8:1, 10; 15:3, 18; 16:1, 10; 17:8; 19:25; 20:16 discourages [1] - 17:21 discovered [1] - 4:12 discovery [12] - 6:7; 8:1, 7; 10:14; 12:19; 16:22; 17:11; 19:5; 21:16; 28:6; 29:8 discussed [2] - 6:22; 7:2 discussing [1] - 17:10 discussion [3] - 5:12; 7:1; 23:6 disjunctive [1] - 25:17 dispute [1] - 17:24 document [4] - 6:18; 12:11; 13:2; 24:20 documents [9] - 9:20; 11:6; 19:20; 20:5, 8, 18; 21:10, 15 DOES [1] - 1:10</p>	<p>done [1] - 13:3 double [1] - 20:13 down [2] - 19:18; 22:13 drawn [1] - 17:20 due [3] - 13:23; 27:8, 11</p>	<p>E</p> <p>edification [1] - 24:19 effect [1] - 12:22 effort [2] - 10:6, 20 either [5] - 5:19; 6:3; 18:18; 27:3; 30:7 election [1] - 5:13 email [6] - 6:16, 20, 23-24; 7:1; 17:10 emails [1] - 7:4 encompassed [1] - 23:24 encompasses [1] - 23:11 end [1] - 23:7 ending [1] - 3:5 entirely [1] - 6:4 entitled [1] - 7:19 essence [2] - 11:7; 12:7 establish [1] - 12:13 estate [1] - 12:9 et [1] - 16:6 evaluate [2] - 12:16; 13:4 evaluation [1] - 7:18 ex [1] - 27:4 exact [1] - 23:6 exactly [2] - 12:10, 13 examination [1] - 8:5 example [1] - 20:21 exceeded [1] - 4:7 exercise [1] - 13:14 exhibit [1] - 31:21 exhibits [1] - 23:11 expect [1] - 23:5 expected [1] - 23:16 expert [1] - 29:9 explained [1] - 24:14 expressing [1] - 6:1 extend [2] - 28:4, 10 extent [2] - 7:24; 27:7</p>	<p>F</p> <p>fact [4] - 23:10, 24; 24:1; 25:5 facts [2] - 13:7; 24:17 fair [3] - 13:18, 22; 30:12 faith [2] - 10:6, 20</p>	<p>fall [1] - 5:20 far [2] - 11:3; 19:24 February [3] - 3:1; 31:9, 13 FEBRUARY [1] - 1:17 fee [1] - 31:21 feet [1] - 12:23 FERRIS [1] - 2:4 fifth [2] - 8:20; 14:13 figure [1] - 4:10 file [3] - 16:19; 18:19; 26:19 filed [3] - 4:16; 17:17; 30:7 filing [1] - 17:21 filings [1] - 4:9 finally [1] - 3:4 fine [2] - 16:19; 29:24 first [8] - 4:17; 6:20; 9:12; 10:8; 11:9; 12:16; 16:2 flip [1] - 17:22 FLORES [46] - 2:13; 3:13; 4:20; 5:4; 8:24; 9:4, 6, 10, 18, 22; 10:11, 15; 12:4; 13:18, 22; 14:4, 14, 22; 15:8, 11, 14, 21, 23; 18:4, 22, 25; 19:11, 22; 21:23; 22:8, 10, 16, 22, 24; 23:18; 24:14; 25:11, 23; 26:1, 5, 18; 27:3; 28:16; 29:15; 30:16 Flores [1] - 3:13 focus [3] - 5:5; 6:3, 6 focusing [3] - 9:2; 15:13; 25:15 folks [2] - 13:8; 28:1 follows [1] - 29:5 food [1] - 18:24 FOR [3] - 1:2; 2:2, 10 force [1] - 11:8 foregoing [1] - 31:11 form [4] - 16:3; 17:5, 13 former [2] - 24:10, 12 forward [1] - 26:12 fourth [3] - 8:20; 9:3; 14:9 framed [2] - 12:24; 25:20 frankly [1] - 11:24 fraud [1] - 12:15 FRAZEE [1] - 2:18 Frazier [1] - 19:16 FRIDAY [1] - 1:17 Friday [1] - 3:1 frivolous [1] - 19:3 full [1] - 31:11</p>
---	---	--	--	--	---	---

fully ^[1] - 25:8	housekeeping ^[4] - 4:20; 15:17; 26:1, 12	judge ^[1] - 17:21 Judge ^[1] - 19:16 judgment ^[6] - 26:20; 27:10, 21; 29:21; 30:3, 7 June ^[2] - 29:6 jury ^[4] - 18:10, 14, 21; 19:9	15:17; 23:20 matters ^[3] - 4:16; 26:2 mean ^[7] - 4:2; 5:25; 10:18; 12:24; 20:3; 23:12; 25:17 means ^[2] - 16:21; 29:20 meet ^[1] - 24:15 mention ^[1] - 19:13 mentioned ^[1] - 16:4 MICHAEL ^[1] - 2:5 Michael ^[1] - 3:8 might ^[6] - 5:14; 7:9; 12:4; 23:13; 25:19 mind ^[1] - 5:22 modifications ^[1] - 16:8 modified ^[5] - 7:23; 8:16; 21:7 moment ^[1] - 5:1 months ^[1] - 23:11 morning ^[2] - 3:7, 10 most ^[1] - 4:6 Motion ^[2] - 14:1; 26:8 motion ^[33] - 4:10; 5:21; 6:4; 7:14; 9:3; 14:9, 13; 15:19-21, 24; 16:14, 17, 19, 21; 17:3, 15, 19, 23; 21:20; 24:24; 26:4, 20, 24; 27:10, 16, 20; 28:5; 29:8, 20-21; 30:2, 7 motions ^[5] - 3:20; 4:22; 8:21; 17:21; 30:6 Motions ^[2] - 5:2; 8:15 moved ^[1] - 29:19 moving ^[4] - 8:19; 14:11; 21:19; 28:13 MR ^[80] - 3:7, 10, 13, 22, 25; 4:20; 5:4, 9, 16; 6:10, 12, 15; 8:24; 9:4, 6, 10, 18, 22; 10:11, 15; 12:4; 13:18, 22, 25; 14:4, 7, 14, 20, 22; 15:1, 7-8, 11, 14, 21, 23; 16:15; 18:4, 16, 22, 25; 19:11, 16, 22; 20:7, 21; 21:12, 17, 23; 22:5, 8, 10, 16, 22, 24; 23:18; 24:10, 12, 14; 25:11, 23; 26:1, 5-6, 18; 27:3, 10, 13, 24; 28:16, 18, 20; 29:2, 15, 18; 30:5, 12, 16	N
G	I	K		named ^[1] - 10:9 namely ^[1] - 30:9 narrow ^[1] - 21:14 narrowed ^[1] - 21:4 narrowly ^[2] - 23:23; 25:5 nature ^[1] - 11:23 nearly ^[1] - 29:23 need ^[2] - 13:21; 29:24 never ^[2] - 17:13, 22 next ^[2] - 6:21; 7:1 NEXT ^[1] - 1:21 night ^[1] - 6:24 nine ^[1] - 23:10 NO ^[2] - 1:9, 24 non ^[1] - 12:9 nonprivileged ^[2] - 7:5; 21:15 note ^[1] - 5:11 notes ^[1] - 31:9 nothing ^[2] - 17:3; 24:19 notice ^[6] - 8:19; 14:11; 21:19; 26:9; 29:12; 30:11 November ^[1] - 6:17 Number ^[12] - 3:5; 4:23; 5:11; 8:16; 9:18; 14:1, 20; 15:14; 21:9; 26:8 numbered ^[1] - 20:23 numbers ^[1] - 21:10
generally ^[1] - 23:22 Geraci ^[26] - 3:5, 9; 5:3; 6:17-19; 8:25; 9:23; 10:9; 11:25; 12:7, 20; 13:1, 10; 14:10; 15:4; 16:3; 17:6, 25; 18:19; 20:2, 6, 12, 23; 21:8 GERACI ^[2] - 1:6; 2:3 Geraci's ^[4] - 15:24; 17:10; 18:10; 21:2 given ^[1] - 15:25 gotcha ^[2] - 14:24; 20:17 Government ^[1] - 31:20 guess ^[5] - 4:1; 11:25; 16:12; 18:9	identification ^[1] - 11:1 identify ^[2] - 12:8; 21:10 identifying ^[1] - 24:20 imagine ^[1] - 18:6 imagining ^[1] - 12:19 impose ^[1] - 10:13 IN ^[2] - 1:1 inclined ^[5] - 7:22; 12:2; 18:17; 21:1 include ^[1] - 26:23 including ^[2] - 29:9; 30:7 inclusive ^[1] - 1:11 inconsistent ^[1] - 17:15 incorporate ^[1] - 28:13 indicate ^[1] - 9:11 INDIVIDUAL ^[1] - 2:11 individual ^[4] - 1:6, 10; 10:9, 13 information ^[5] - 7:20; 11:10; 23:13, 25; 24:16 initiate ^[1] - 12:11 inquire ^[2] - 8:4; 10:20 inquiry ^[1] - 25:20 instance ^[1] - 11:11 intended ^[1] - 5:19 intending ^[1] - 6:2 intention ^[1] - 25:4 internal ^[1] - 31:22 interposed ^[1] - 12:1 interrogatories ^[5] - 8:25; 14:10; 16:3, 11 interrogatory ^[3] - 17:2, 6, 14 involving ^[3] - 8:15; 14:9; 20:5 issue ^[5] - 7:25; 15:2; 16:13; 19:1; 28:23 issues ^[1] - 29:17 Items ^[1] - 3:4 items ^[2] - 14:2; 29:13	L		O
H	J	M		
hard ^[1] - 28:2 heading ^[1] - 26:15 hear ^[5] - 7:14; 13:21; 16:14; 27:12, 16 heard ^[11] - 5:8; 8:23; 11:15; 14:3; 17:22; 27:22; 29:21, 23; 30:3, 8 hearing ^[6] - 13:20; 26:25; 27:20; 28:11; 29:24; 30:2 heavily ^[2] - 4:4, 6 held ^[1] - 31:9 help ^[1] - 11:20 hereby ^[1] - 31:7 highly ^[1] - 26:22 hold ^[3] - 16:13; 18:2, 18 HON ^[1] - 1:4 Honor ^[51] - 3:7, 10, 14, 22, 25; 4:20; 5:4; 8:24; 9:4, 18, 22; 10:3, 16; 12:4, 10; 13:18, 25; 14:14, 16, 22; 15:1, 9, 14, 17, 23; 16:16; 18:23, 25; 19:12, 22; 21:17, 23; 22:5, 22, 25; 23:18; 24:16; 25:2; 26:2, 6, 18, 21, 24; 27:11; 28:16, 18; 29:15; 30:16 hope ^[1] - 26:14 hoping ^[1] - 28:23 hour ^[1] - 9:13	Jacob ^[1] - 3:11 JACOB ^[2] - 2:17 Jim ^[4] - 9:21, 23; 10:2; 11:9 job ^[1] - 19:7 JOEL ^[1] - 1:4	Larry ^[1] - 3:9 LARRY ^[2] - 1:6; 2:2 last ^[5] - 4:8; 20:23; 26:25; 28:4; 29:5 late ^[2] - 30:3, 9 law ^[3] - 5:21; 28:5; 29:8 LAW ^[2] - 2:13, 17 leap ^[1] - 12:23 least ^[1] - 4:8 leaves ^[1] - 21:20 less ^[2] - 27:16; 30:8 limitation ^[1] - 27:15 limited ^[1] - 28:3 limits ^[1] - 10:12 line ^[1] - 25:20 lined ^[1] - 26:14 literally ^[1] - 10:18 litigant ^[2] - 10:10, 13 litigated ^[2] - 4:4, 6 live ^[1] - 28:15 lobbyist ^[1] - 9:24 Lois ^[2] - 31:5, 17 LOIS ^[1] - 1:23 lois.mason51@gmail.com ^[1] - 1:24 look ^[3] - 9:17; 11:12; 24:8 looked ^[2] - 11:19; 19:19 looking ^[5] - 12:21; 13:5; 23:8; 25:18; 26:12 looks ^[1] - 9:15		object ^[1] - 30:2 objection ^[11] - 10:1, 23; 12:6, 18, 23, 25; 14:16; 22:1, 25; 24:4; 25:11 objectionable ^[1] - 11:23 objections ^[3] - 9:7; 11:25; 25:21 obtain ^[1] - 10:7 occur ^[2] - 12:15; 25:2 OF ^[5] - 1:1; 2:13, 17 offered ^[1] - 7:6 OFFICE ^[1] - 2:13 OFFICES ^[1] - 2:17 ON ^[1] - 1:21 once ^[3] - 21:4; 24:13 one ^[20] - 4:3, 7, 25; 6:3; 12:20; 13:2; 14:12; 16:3; 18:1, 12, 14; 19:12; 20:19; 21:22; 22:1; 24:1; 25:21; 26:14; 28:18,

<p>22</p> <p>one-page [1] - 13:2</p> <p>ones [2] - 8:23, 25</p> <p>opposing [6] - 11:17; 12:22; 13:20, 24; 14:5; 27:5</p> <p>order [9] - 4:2, 12, 14-15; 10:13; 13:3; 15:9; 21:24; 31:22</p> <p>original [6] - 16:24; 18:3, 10, 13</p> <p>otherwise [2] - 20:15; 31:22</p> <p>outlined [1] - 25:8</p> <p>overruled [2] - 10:22; 15:5</p> <p>own [3] - 20:22; 24:18</p>	<p>portion [4] - 13:16; 14:3; 31:21</p> <p>position [2] - 17:18; 19:2</p> <p>possible [2] - 13:1; 27:1</p> <p>practice [2] - 12:13; 13:10</p> <p>prejudiced [1] - 26:22</p> <p>prepared [1] - 4:21</p> <p>present [2] - 18:9, 11</p> <p>presents [2] - 18:12</p> <p>presuming [1] - 6:8</p> <p>previous [1] - 15:25</p> <p>price [1] - 21:3</p> <p>privilege [6] - 5:13; 7:19, 24; 15:2; 21:2, 5</p> <p>pro [1] - 31:5</p> <p>problem [3] - 10:3, 17; 27:13</p> <p>Procedure [2] - 10:4, 19</p> <p>Proceedings [1] - 30:20</p> <p>proceedings [2] - 31:9, 12</p> <p>produced [5] - 20:5, 10, 14, 19; 21:11</p> <p>producing [1] - 20:5</p> <p>product [1] - 11:21</p> <p>Production [1] - 21:9</p> <p>production [1] - 14:21</p> <p>productions [1] - 16:11</p> <p>prohibited [1] - 8:2</p> <p>property [2] - 9:25; 12:12</p> <p>propound [1] - 25:6</p> <p>provide [1] - 31:22</p> <p>provided [1] - 16:3</p> <p>pull [1] - 22:18</p> <p>purchase [1] - 12:12</p> <p>purchased [1] - 31:20</p> <p>pursuant [1] - 31:21</p> <p>pushing [1] - 28:2</p> <p>put [2] - 4:13; 19:2</p> <p>putting [1] - 12:21</p>	<p>R</p> <p>ranging [1] - 8:5</p> <p>rapidly [1] - 4:3</p> <p>read [1] - 24:15</p> <p>readiness [1] - 29:7</p> <p>real [4] - 12:9; 14:25; 22:13, 19</p> <p>really [2] - 23:3; 25:16</p> <p>reason [1] - 6:2</p> <p>reasonable [3] - 10:6, 19; 23:15</p> <p>REBECCA [1] - 2:3</p> <p>Rebecca [2] - 3:9; 4:23</p> <p>receiver [1] - 24:24</p> <p>receiving [2] - 23:7, 15</p> <p>records [1] - 20:10</p> <p>refer [1] - 11:5</p> <p>reference [2] - 24:22; 25:7</p> <p>referring [1] - 17:2</p> <p>reflected [4] - 4:14; 8:12; 20:7; 30:10</p> <p>reflects [1] - 20:12</p> <p>regarding [3] - 7:7; 15:3; 16:1</p> <p>regards [7] - 4:22; 10:5, 23; 12:6; 15:17, 19; 16:6</p> <p>relate [1] - 5:3</p> <p>RELATED [1] - 1:14</p> <p>relating [1] - 9:20</p> <p>relevancy [9] - 12:5, 18, 23; 13:4, 12; 23:22; 25:12, 15</p> <p>relevant [5] - 6:5, 8; 7:9; 25:20</p> <p>remain [1] - 25:21</p> <p>reminding [1] - 7:13</p> <p>renegotiate [1] - 17:12</p> <p>reopen [1] - 21:4</p> <p>reported [1] - 31:8</p> <p>reporter [2] - 31:6, 21</p> <p>REPORTER'S [1] - 1:16</p> <p>reproduce [1] - 31:21</p> <p>request [8] - 10:14; 11:23; 14:15, 21; 21:16; 22:20; 23:7</p> <p>Request [1] - 21:9</p> <p>requests [3] - 16:11, 22; 23:22</p> <p>respect [1] - 13:23</p> <p>respective [1] - 5:23</p> <p>respond [6] - 10:14; 11:17; 16:10; 23:16; 24:2; 27:18</p>	<p>responded [1] - 6:18</p> <p>responding [1] - 6:19</p> <p>response [21] - 5:11; 10:17; 11:3; 15:25; 16:8, 23-25; 17:2, 6, 11; 18:10, 13-14, 19; 20:8; 21:8, 15</p> <p>responses [8] - 16:7, 22; 17:14; 19:7, 24; 26:23; 27:8; 28:13</p> <p>rest [2] - 6:22, 25</p> <p>retrieve [1] - 23:2</p> <p>reviewed [4] - 9:21; 10:2, 24; 11:2</p> <p>RIO [1] - 2:14</p> <p>risk [1] - 8:6</p> <p>ROA [1] - 9:14</p> <p>ROAD [1] - 2:18</p> <p>ROAs [1] - 4:7</p> <p>RPR [1] - 1:23</p> <p>rule [1] - 31:22</p> <p>ruling [7] - 3:18; 8:13, 19; 14:9; 16:12; 26:9; 30:11</p> <p>rulings [2] - 6:1; 8:15</p>	<p>19:8; 27:11</p> <p>Session [1] - 3:2</p> <p>set [1] - 26:24</p> <p>shall [2] - 10:19; 31:22</p> <p>short [2] - 6:13; 11:16</p> <p>shortened [1] - 27:18</p> <p>shorthand [1] - 31:8</p> <p>show [1] - 12:15</p> <p>side [20] - 5:20, 25; 7:12; 11:25; 18:9, 12-13, 18; 20:19; 21:14; 23:9, 25; 24:2, 25; 25:6, 20; 27:5; 29:14, 16; 30:8</p> <p>signed [1] - 6:17</p> <p>similar [3] - 10:23; 13:6; 23:1</p> <p>simple [1] - 23:20</p> <p>single [2] - 18:8</p> <p>sixth [2] - 8:21; 21:20</p> <p>sliver [2] - 7:14; 23:12</p> <p>so-called [3] - 6:6; 8:1, 9</p> <p>soon [2] - 22:13; 25:7</p> <p>sorry [3] - 15:8, 14; 22:21</p> <p>sought [1] - 25:1</p> <p>source [2] - 7:5, 20</p> <p>SOUTH [1] - 2:14</p> <p>speaking [1] - 23:22</p> <p>special [2] - 8:25; 14:10</p> <p>specific [1] - 23:24</p> <p>specifically [2] - 16:4; 24:19</p> <p>spend [2] - 13:8, 19</p> <p>spent [1] - 11:14</p> <p>stamp [1] - 21:10</p> <p>stamped [1] - 20:20</p> <p>stand [2] - 12:19</p> <p>standard [1] - 12:9</p> <p>start [3] - 4:17; 13:5; 19:14</p> <p>started [1] - 21:23</p> <p>STATE [1] - 1:1</p> <p>State [1] - 31:6</p> <p>state [2] - 10:19; 31:2</p> <p>statement [5] - 9:9, 15; 10:5; 14:19; 22:19</p> <p>statute [1] - 17:19</p> <p>still [3] - 15:10; 28:12; 29:23</p> <p>stipulate [3] - 24:21; 27:5, 22</p> <p>strikes [1] - 25:10</p> <p>struggle [1] - 24:3</p> <p>subject [3] - 9:25; 21:9; 23:20</p>
<p>P</p> <p>PAGE [1] - 1:21</p> <p>page [1] - 13:2</p> <p>pages [1] - 31:11</p> <p>paid [1] - 21:3</p> <p>paper [1] - 13:5</p> <p>papers [1] - 28:14</p> <p>parenthetical [1] - 5:18</p> <p>part [1] - 6:7</p> <p>parte [1] - 27:4</p> <p>particular [1] - 11:10</p> <p>parties [1] - 17:21</p> <p>party [6] - 8:19; 14:11; 21:19; 23:15; 31:20, 23</p> <p>past [1] - 13:3</p> <p>patient [1] - 9:12</p> <p>paying [1] - 31:21</p> <p>period [1] - 28:3</p> <p>permitted [1] - 15:3</p> <p>person [2] - 31:20, 23</p> <p>personal [4] - 7:3; 10:1, 24; 11:4</p> <p>personally [1] - 27:11</p> <p>persuaded [1] - 11:22</p> <p>phone [3] - 20:22</p> <p>phonetic [1] - 24:9</p> <p>phonetic [1] - 22:11</p> <p>Pick [1] - 22:10</p> <p>pieces [1] - 13:5</p> <p>pitch [1] - 19:9</p> <p>plaintiff [1] - 3:8</p> <p>Plaintiff [1] - 1:7</p> <p>PLAINTIFF [1] - 2:2</p> <p>plaintiff's [3] - 5:7; 10:23; 29:16</p> <p>play [3] - 18:6; 21:15</p> <p>point [3] - 10:22; 15:16; 18:8</p> <p>poorly [1] - 23:19</p>	<p>Q</p> <p>questioning [2] - 13:12; 23:21</p> <p>questions [1] - 23:1</p> <p>quick [3] - 14:25; 22:19; 23:3</p> <p>quite [2] - 4:7; 11:24</p>			

submission ^[1] - 10:25 submit ^[4] - 4:21; 5:9; 14:7; 15:15 substantively ^[1] - 16:13 sudden ^[1] - 8:8 suggest ^[1] - 8:3 suggesting ^[2] - 8:4; 25:19 SUITE ^[3] - 2:6, 14, 19 summary ^[6] - 26:20; 27:10, 20; 29:21; 30:3, 7 SUPERIOR ^[1] - 1:1 Superior ^[1] - 31:6 supplemental ^[3] - 11:3; 26:23; 28:13 supposed ^[1] - 19:14 sustain ^[3] - 12:25; 13:15; 21:1 sustained ^[5] - 9:6; 12:5; 14:17; 21:25; 24:3 sustaining ^[1] - 25:12	13, 24; 26:3, 7; 27:2, 7, 12, 19; 28:1, 17, 19, 25; 29:3, 16; 30:1, 6, 13 themselves ^[1] - 10:6 theories ^[1] - 5:24 thereof ^[1] - 31:21 thinking ^[2] - 27:24; 28:3 third ^[2] - 6:4; 7:14 THOMPSON ^[1] - 1:23 Thompson ^[2] - 31:5, 17 thousands ^[1] - 11:6 three ^[5] - 3:15; 12:11; 20:23; 28:4; 29:5 timeline ^[1] - 23:10 today ^[1] - 27:11 together ^[2] - 14:16; 22:24 took ^[1] - 9:12 totality ^[1] - 25:18 trail ^[1] - 22:7 transactions ^[2] - 12:8; 13:6 transcribed ^[1] - 31:10 TRANSCRIPT ^[1] - 1:16 transcript ^[3] - 31:11, 20 TRC ^[2] - 27:25; 28:5 trial ^[17] - 5:14; 8:2; 13:11; 15:3; 18:8; 26:13; 27:15, 23; 28:2, 5, 21; 29:5, 22; 30:4, 8 true ^[3] - 14:23; 18:18; 31:12 truly ^[2] - 11:21; 17:22 trying ^[2] - 11:7; 12:12 turns ^[1] - 5:25 two ^[4] - 12:20; 14:2, 15; 29:7 type ^[1] - 13:2 typewriting ^[1] - 31:10	25:10 up ^[13] - 4:11; 9:13; 11:20; 12:17; 16:9; 18:12; 19:3; 22:18; 26:14, 19; 27:14; 29:13
T	U	V
		vein ^[1] - 23:18 verbal ^[1] - 20:16 versus ^[2] - 3:5; 22:10 Vidal ^[1] - 22:10 volley ^[1] - 11:10 VS ^[1] - 1:8
T	U	W
		waiting ^[1] - 11:15 wants ^[1] - 5:17 weeks ^[1] - 29:7 weighing ^[1] - 19:6 weight ^[1] - 4:13 WEINSTEIN ^[32] - 2:5; 3:7, 25; 5:9, 16; 6:10, 12, 15; 13:25; 14:7, 20; 15:1, 7; 16:15; 18:16; 20:7, 21; 21:12, 17; 24:10, 12; 26:6; 27:10, 13, 24; 28:18, 20; 29:2, 18; 30:5, 12, 18 Weinstein ^[1] - 3:8 WEST ^[1] - 2:5 whatsoever ^[1] - 13:16 whole ^[2] - 13:2; 23:11 wide ^[1] - 8:5 willing ^[3] - 27:5, 22; 28:22 witness ^[1] - 12:20 WOHLFEIL ^[1] - 1:4 worried ^[1] - 24:17 written ^[3] - 6:17; 20:8; 23:19
T	U	Y
		year ^[1] - 16:9
tailored ^[2] - 23:23; 25:5 talks ^[2] - 17:10; 20:15 telephone ^[5] - 6:21; 7:4; 20:9, 12 tem ^[1] - 31:5 ten ^[3] - 23:10; 27:8; 28:7 tend ^[1] - 12:14 tentative ^[12] - 3:17, 21, 24; 4:22, 24; 7:23; 8:13; 12:3; 13:17; 21:7; 26:8 term ^[1] - 20:16 testify ^[1] - 19:25 testifying ^[2] - 8:2, 11 testimony ^[2] - 5:14; 7:6 THE ^[80] - 1:1; 2:2, 10, 13; 3:4, 15, 23; 4:1, 25; 5:5, 15, 18; 6:11, 14; 7:11; 9:2, 5, 8, 11, 19; 10:8, 12; 11:12; 12:16; 13:19, 23; 14:1, 5, 8, 18, 24; 15:5, 10, 12, 20, 22; 17:20; 18:5, 17, 24; 19:4, 15, 17; 20:2, 17, 25; 21:13, 18; 22:2, 6, 9, 12, 14-15, 17, 23; 23:2, 21; 24:11, 13; 25:3,	ultimately ^[2] - 18:20; 19:8 under ^[2] - 10:4; 31:10 underlying ^[3] - 13:6; 17:24; 24:17 understood ^[1] - 13:25 unfortunately ^[1] - 26:25 unfruitful ^[1] - 11:8 unless ^[1] - 8:10 unreasonable ^[1] -	

EXHIBIT 8

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By Erika Engel, Deputy Clerk

Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,

Respondents/Defendants,

REBECCA BERRY, an individual;
LARRY GERACI, an individual; and
ROES 1 through 25,

Real Parties In Interest.

CASE NO: 37-2017-00037875-CU-MM-CTL

VERIFIED PETITION FOR
ALTERNATIVE WRIT OF MANDATE
[CODE CIV. PROC., § 1085]

INTRODUCTION

1. Pursuant to Code of Civil Procedure section 1085, petitioner/plaintiff Darryl Cotton ("Cotton") seeks an alternative writ of mandate and a peremptory writ of mandate directing respondents/defendants City of San Diego ("City") and DOES 1 through 25 to: (1) recognize Cotton, the sole record owner of the real property located at 6176 Federal Boulevard, San Diego, California 92105 ("Property"), as the sole applicant with respect to Conditional Use Permit Application -- Project No. 520606 ("Cotton Application") for a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the

1 Property; and (2) process the Cotton Application with Cotton as the sole applicant. In the
2 alternative, Cotton seeks an order to show cause directed to the City as to why the Court should
3 not issue such a writ.

4 2. The relief sought in paragraph 1 is proper because Cotton has no other plain,
5 speedy, or adequate legal remedy. The relief is necessary because the City's refusal to
6 recognize Cotton as the sole applicant on the Cotton Application is lacking in evidentiary
7 support and inconsistent with the City's legal duty.

8 JURISDICTION, VENUE, AND PARTIES

9 3. The Court has jurisdiction over this petition pursuant to Code of Civil Procedure
10 section 1085.

11 4. Venue is proper in this Court because the City is a public entity located in this
12 judicial district and the property at issue is located in this judicial district.

13 5. Petitioner/plaintiff Cotton is, and at all times mentioned was, an individual
14 living and doing business in California.

15 6. Respondent/defendant City is, and at all times mentioned was, a public entity
16 organized and existing under the laws of California.

17 7. Cotton is informed and believes real party in interest Rebecca Berry ("Berry")
18 is, and at all times mentioned was, an individual living and doing business in the County of
19 San Diego.

20 8. Cotton is informed and believes real party in interest Larry Geraci ("Geraci") is,
21 and at all times mentioned was, an individual living and doing business in the County of San
22 Diego.

23 9. Cotton does not know the true names and capacities of the
24 respondents/defendants named as DOES 1 through 25 and, therefore, sues them by fictitious
25 names. Cotton is informed and believes DOES 1 through 25 are in some way responsible for
26 the events described in this petition or impacted by them. Cotton will seek leave to amend this
27 petition when the true names and capacities of these parties have been ascertained.

10. At all times mentioned each respondent/defendant was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation, and/or employment and with the permission of the others.

11. Cotton does not know the true names and capacities of the real parties in interest named as ROES 1 through 25 and, therefore, names them by fictitious names. Cotton is informed and believes ROES 1 through 25 are in some way responsible for the events described in this petition or impacted by them. Cotton will seek leave to amend this petition when the true names and capacities of these parties have been ascertained.

12. At all times mentioned each real party in interest was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation, and/or employment and with the permission of the others.

BACKGROUND

13. In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it meets certain requirements of the City for obtaining a CUP to operate a MMCC at the Property. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

14. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. Cotton, acting in good faith based upon Geraci's representations during the sale negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a CUP application at the Property while the parties negotiated the terms of a possible deal. However, despite the parties' work on a CUP application, Geraci represented to Cotton that a CUP application for the Property could not actually be submitted until after a critical zoning issue was resolved or the application would be summarily rejected by the City.

1 15. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership
2 Disclosure Statement, which is a required component of all CUP applications. Geraci told
3 Cotton that he needed the signed document to show that Geraci had access to the Property in
4 connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of
5 a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement
6 as an indication of good-faith while the parties negotiated on the sale terms. At no time did
7 Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering
8 into a final written agreement for the sale of the Property. In fact, Geraci repeatedly
9 maintained to Cotton that the critical zoning issue needed to be resolved before a CUP
10 application could even be submitted.

11 16. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in
12 October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However,
13 Cotton has never met Berry personally and never entered into a lease or any other type of
14 agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who
15 was very familiar with MMCC operations and who was involved with his other MMCC
16 dispensaries. Cotton's understanding was that Geraci was unable to list himself on the
17 application because of Geraci's other legal issues but that Berry was Geraci's agent and was
18 working in concert with him and at his direction. Based upon Geraci's assurances that listing
19 Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton
20 executed the Ownership Disclosure Statement that Geraci provided to him. A true and correct
21 copy of the CUP application, including the Ownership Disclosure Statement, is attached hereto
22 as Exhibit 1.

23 17. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to
24 negotiate the final terms of their deal for the sale of the Property. The parties reached an
25 agreement on the material terms for the sale of the Property. The parties further agreed to
26 cooperate in good faith to promptly reduce the complete agreement, including all of the
27 agreed-upon terms, to writing.

1 18. At the November 2, 2016 meeting, the parties executed a three-sentence
2 document related to their agreement on the purchase price for the Property at Geraci's request,
3 which read as follows:

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

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

9 A true and correct copy of the November 2, 2016 agreement is attached hereto as Exhibit 2.
10 Geraci assured Cotton that the document was intended to merely create a record of Cotton's
11 receipt of the \$10,000 "good-faith" deposit and provide evidence of the parties' agreement on
12 the purchase price and good-faith agreement to enter into final integrated agreement documents
13 related to the sale of the Property. A true and correct copy of the November 2, 2016 email is
14 attached hereto as Exhibit 3.

15 19. Thereafter, Cotton continued to operate in good faith under the assumption that
16 Geraci's attorney would promptly draft the fully integrated agreement documents as the parties
17 had agreed and the parties would shortly execute the written agreements to document their
18 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive
19 and continuously failed to make substantive progress on his promises, including his promises
20 to promptly deliver the draft final agreement documents, pay the balance of the non-refundable
21 deposit, and keep Cotton apprised of the status of the zoning issue.

22 20. Over the weeks and months that followed, Cotton repeatedly reached out to
23 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the
24 non-refundable deposit, and the status of the draft documents. For example, between January
25 18, 2017 and February 7, 2017, the following exchange took place between Geraci and Cotton
26 via text message:

27 / / / / /

1 Geraci: "The sign off date they said it's going to be the 30th."

2 Cotton: "This resolves the zoning issue?"

3 Geraci: "Yes"

4 Cotton: "Excellent"...

5 Cotton: "How goes it?"

6 Geraci: "We're waiting for confirmation today at about 4 o'clock"

7 Cotton: "Whats new?"

8 Cotton: "Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet."

9 Geraci: "I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork."

10 The above communications between Geraci and Cotton regarding the zoning issue conveyed to
11 Cotton that the issue had still not yet been fully resolved at that time. Geraci had previously
12 represented to Cotton that the CUP application could not be submitted until the zoning issue
13 was resolved. As it turns out, Geraci's representations were untrue and he knew they were
14 untrue as he had already submitted the CUP application months prior.

15 21. With respect to the promised final agreement documents, Geraci continuously
16 failed to timely deliver the documents as agreed. On February 27, 2017, nearly three months
17 after the parties reached an agreement on the terms of the sale, Geraci finally emailed Cotton a
18 draft real estate purchase agreement. However, upon review, the draft purchase agreement was
19 missing many of the key deal points agreed upon by the parties at their November 2, 2016
20 meeting. After Cotton called Geraci for an explanation, Geraci claimed it was simply due to
21 miscommunication with his attorney and promised to have her revise the agreement to
22 accurately reflect their deal points.

23 22. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side
24 agreement that was to incorporate other terms of the parties' deal. Cotton immediately
25 reviewed the draft side agreement and emailed Geraci the next day regarding certain missing
26 and inaccurate material terms.

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28 / / / / /

1 23. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement
2 along with a further request to change material terms of the parties' deal. Cotton, increasingly
3 frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on
4 March 16, 2017 in an email which included the following:

5 We started these negotiations 4 months ago and the drafts and our
6 communications have not reflected what agreed upon and are still far from
7 reflecting our original agreement. Here is my proposal, please have your attorney
8 Gina revise the Purchase Agreement and the Side Agreement to incorporate all
9 the terms we have agreed upon so that we can execute final versions and get this
10 closed... Please confirm by Monday 12:00 PM whether we are on the same page
and you plan to continue with our agreement ... If, hopefully, we can work
through this, please confirm that revised final drafts that incorporate the terms
will be provided by Wednesday at 12:00 PM. I promise to review and provide
comments that same day so we can execute the same or next day.

11 24. On the same day, Cotton contacted the City's Development Project Manager
12 responsible for CUP applications. At that time, Cotton discovered for the first time that
13 Geraci had submitted a CUP application for the Property way back on October 31, 2016,
14 before the parties even agreed upon the final terms of their deal and contrary to Geraci's
15 express representations over the previous five months. Cotton expressed his
16 disappointment and frustration in the same March 16, 2017 email to Geraci:

17 I found out today that a CUP application for my property was submitted in
18 October, which I am assuming is from someone connected to you. Although, I
19 note that you told me that the \$40,000 deposit balance would be paid once the
20 CUP was submitted and that you were waiting on certain zoning issues to be
resolved. Which is not the case.

21 25. On March 17, 2017, after Geraci requested an in-person meeting via text
22 message, Cotton replied in an email to Geraci which including the following:

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1 I would prefer that until we have final agreements that we converse exclusively
2 via email. My greatest concern is that you get a denial on the CUP application
3 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I
4 feel that you are not dealing with me in good faith, you told me repeatedly that
5 you could not submit a CUP application until certain zoning issues had been
6 resolved and that you had spent hundreds of thousands of dollars on getting them
7 resolved. You lied to me, I found out yesterday from the City of San Diego that
8 you submitted a CUP application on October 31 2016 BEFORE we even signed
9 our agreement on the 2nd of November... Please confirm by 12:00 PM Monday
10 that you are honoring our agreement and will have final drafts (reflecting
11 completely the below) by Wednesday at 12:00 PM.

12 Geraci did not provide the requested confirmation that he would honor their agreement or
13 proffer the requested agreements prior to Cotton's deadlines.

14 26. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was
15 terminated and that Geraci had no interest in the Property.

16 27. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"),
17 emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first
18 time that the three-sentence document signed by the parties on November 2, 2016 constituted
19 the parties' complete agreement regarding the Property, contrary to the parties' further
20 agreement the same day, the entire course of dealings between the parties, and Geraci's own
21 statements and actions.

22 28. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci
23 intended to continue to pursue the CUP application and would be posting notices on Cotton's
24 property. Cotton responded via email the same day and objected to Geraci or his agents
25 entering the Property and reiterated the fact that Geraci has no rights to the Property.

26 29. On May 12, 2017, Cotton filed a cross-complaint against Berry and Geraci
27 including causes of action for breach of contract, intentional misrepresentation, negligent
28 misrepresentation, and false promise with respect to the purchase agreement and the CUP
application.

30. On September 22, 2017, Cotton, through his attorneys, demanded the City
remove Berry from the Cotton Application and process it for Cotton. A true and correct copy
of the September 22, 2017 letter is attached hereto as Exhibit 4.

30. The City responded via email on September 29, 2017, but did not agree to remove Berry from the Cotton Application and process it on behalf of Cotton. A true and correct copy of the September 29, 2017 email is attached hereto as Exhibit 5.

FIRST CAUSE OF ACTION

(Writ of Mandate – Against all respondents/defendants and all real parties in interest)

31. Cotton incorporates by reference paragraphs 1 through 30 above as though set forth in full at this point.

32. The City is subject to California law. The City is further responsible for administering the CUP process according to the San Diego Municipal Code ("Municipal Code"), and is obligated to perform the ministerial duties of: (1) recognizing Cotton as the sole applicant for the Cotton Application, as required under Municipal Code sections 112.0102 and 113.0103, and (2) processing the Cotton Application with Cotton as the sole applicant and financially responsible party.

33. As the record owner of the Property, Cotton has a clear, present, legal and beneficial right in seeing that the City follows the Municipal Code and California law and recognizes the correct applicant with respect to the Cotton Application.

34. Cotton has no plain, speedy and adequate remedy in the ordinary course of law, other than the writ by this petition. Cotton has exhausted all available administrative remedies, if any, available to him. The only means by which Cotton may compel the City to follow the Municipal Code and California law is this petition for a writ of mandate.

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
1	CUP application incl. Ownership Disclosure Statement
2	November 2, 2016 agreement
3	Email dated November 2, 2016 between Cotton and Geraci
4	Letter dated September 22, 2017 from Cotton to the City
5	Email dated September 29, 2017 from City to Cotton

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1 PRAYER FOR RELIEF

2 WHEREFORE, Cotton prays as follows:

3 ON ALL CAUSES OF ACTION:

4 1. For a writ of mandate to be issued under Code of Civil Procedure section 1085,
5 and under seal of this Court, ordering the City to recognize Cotton as the sole applicant with
6 respect to the Cotton Application and to process the Cotton Application with Cotton as the sole
7 applicant;

8 2. In the alternative, for an order to show cause directed to the City as to why the
9 Court should not issue such a writ; and

10 3. For such other or further relief the Court deems just.

11 DATED: October 6, 2017

Respectfully submitted,

12 FINCH, THORNTON & BAIRD, LLP

13
14 By: 

DAVID S. DEMIAN
ADAM C. WITT

Attorneys for Petitioner/Plaintiff DARRYL
COTTON


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VERIFICATION

I, Darryl Cotton, have read this VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085], and I am familiar with its contents. I am informed and believe the matters stated therein are true and on that basis verify that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct to the best of my knowledge.

Executed on October 6, 2017 in San Diego, California.

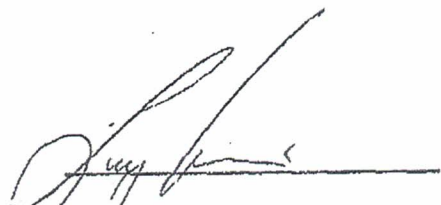

Darryl Cotton

11/02/2016

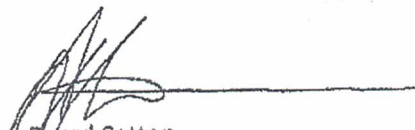
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

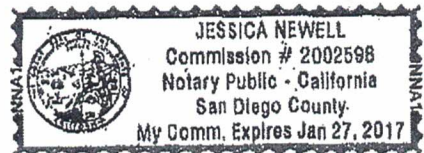
On November 2, 2010 before me, Jessica Newell Notary Public
(Insert name and title of the officer)

personally appeared Darryl Cotton and Larry Gerasi
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)



MA County, 19th Nov 2013
Notary Public - California
Commission # 200588
JESSICA M. WILLY

