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Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LARRY GERACI, an individual,	Case No. 37-2017-00010073-CU-BC-CTL
Plaintiff,	**DEFENDANT/CROSS-COMPLAINANT**
vs.	**DARRYL COTTON'S OPPOSITION TO PLAINTIFF/CROSS-DEFENDANT'S MOTION IN LIMINE NO. 12 TO EXCLUDE REFERENCE TO THE "JOINT VENTURE AGREEMENT" OR THE "JVA"**
DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,	
Defendants.	
AND RELATED CROSS-ACTION.	Dept: C-73 Judge: The Hon. Joel R. Wohlfeil

Defendant/Cross-complainant Darryl Cotton ("Cotton), submits the following opposition to Plaintiff/Cross-defendant's motion in limine to exclude reference to the "Joint Venture Agreement" or the "JVA".

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INTRODUCTION

Plaintiff/Cross-defendants seeks to exclude reference to the "Joint Venture Agreement" or the "JVA". Plaintiff/Cross-defendant's motion should be denied for at least three reasons.

First, Mr. Cotton did plead a joint venture agreement, it is the heart of his entire case: that Mr. Geraci and him were to be partners in the Marijuana Outlet and he was to have a 10% equity position.

Second, a joint venture can be formed by oral agreement and proven by parol evidence, which would include Mr. Geraci's writing specifically confirming Mr. Cotton he was providing Mr. Cotton an equity position.

ARGUMENT

I.   Mr. Cotton Did Plead A Joint Venture – A "10% Equity Position"

"The law requires little formality in the creation of a joint venture. The relationship may be created by oral agreement. The relationship between the parties is not to be determined by the *label* which the pleader gives to an agreement; it is to be determined by the ultimate facts pleaded." Sadugor v. Holstein, 199 Cal. App. 2d 477, 483 (citations omitted).

The heart of Mr. Cotton's case is Mr. Geraci's written confirmation that he would provide Mr. Cotton a 10% equity position in the contemplated Marijuana Outlet. That Mr. Cotton originally referred to the joint venture as a "10% equity position" in the contemplated business does not change the substance of his allegations in his cross-complaint or the relationship that he alleged with Mr. Geraci. Mr. Weinstein's attempt to argue that Mr. Cotton's failure to *label* the relationship as a "joint venture" is without legal justification.

II.   A joint venture can be formed by oral contract.

"A joint venture or partnership may be formed orally [citations], or 'assumed to have been organized from a reasonable deduction from the acts and declarations of the parties.' [Citation.]" Weiner v. Fleischman (1991) 54 Cal.3d 476, 482-483.

Mr. Cotton contends that Mr. Geraci and him entered into a joint venture agreement on November 2, 2016, and Mr. Geraci confirmed exactly that in writing on that day. Mr. Geraci's position that he sent the written confirmation of the joint venture by accident because he only "intended" to respond to the first sentence of Mr. Cotton's request for written confirmation of his bargained-for 10%

equity position is simply preposterous. Stated in other words, Mr. Weinstein's attempt to exclude evidence and testimony regarding the existence of a joint venture is to effectively dismiss Mr. Cotton's entire case.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff/Cross-defendant's motion in limine to exclude reference to the "Joint Venture Agreement" or the "JVA".

DATED: June 26, 2019   Respectfully submitted,

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Jacob Austin
Attorney for Defendant/Cross-
Complainant

DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON'S OPPOSITION TO PLAINTIFF/CROSS-DEFENDANT'S MOTION IN LIMINE #12