

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

DARRYL COTTON, an individual,  
Appellant/Plaintiff,

v.

THE SUPERIOR COURT OF  
CALIFORNIA, COUNTY OF  
SAN DIEGO,  
Respondent/Defendant.

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LAWRENCE (a/k/a/ LARRY) GERACI,  
An individual,  
  
Real Party in Interest.

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Court of Appeal Case No.  
D080460

San Diego County Superior Court  
Case No.  
37-2022-000000-CU-MC-CTL

Appeal from the Order by the Honorable James A. Mangione,  
Judge of the Superior Court of California, County of San Diego,  
Entered on February 25, 2022 Denying Petitioner's/Plaintiff's  
Motion to Set Aside Judgment

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**APPELLANTS' APPENDIX - VOLUME III (PAGES 0257-0646)**

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Darryl Cotton  
6176 Federal Boulevard  
San Diego, CA 92114  
[151DarrylCotton@gmail.com](mailto:151DarrylCotton@gmail.com)  
Petitioner/Plaintiff *In Propria Persona*

1 James D. Crosby (State Bar No. 110383)  
Attorney at Law  
2 550 West C Street  
San Diego, CA 92101  
3 Telephone: (619) 450-4149  
Email: crosby@crosbyattorney.com

4 Attorney for Defendant Larry Geraci  
5  
6  
7

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**02/10/2022** at 04:22:00 PM  
Clerk of the Superior Court  
By Taylor Crandall, Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**

10 DARRYL COTTON,

11 Plaintiff,

12 v.

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

14 Defendant.  
15  
16  
17

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

**DECLARATION OF MICHAEL  
WEINSTEIN IN OPPOSITION TO  
PLAINTIFF'S MOTION TO VACATE  
VOID JUDGMENT**

Date: February 25, 2022

Time: 9:00 a.m.

Dept.: C-75

Judge: Hon. James A. Mangione

Complaint Filed: January 3, 2022

Trial Date: Unassigned

18 I, Michael Weinstein, declare and state:

19 1. I am an attorney licensed to practice law in the state of California. I am not a party to  
20 this action. I have personal knowledge of the facts stated in this declaration and, if called upon to do  
21 so, I could and would competently testify to such facts.

22 2. Plaintiff Darryl Cotton ("Cotton") and Defendant Larry Geraci ("Geraci") entered  
23 into an agreement for the purchase and sale of real property. On March 21, 2017, through my legal  
24 representation, Geraci filed a complaint against Cotton in San Diego Superior Court, Case No. 37-  
25 2017-00010073-CU-BC-CTL, alleging, among other things, that Cotton breached their contract. A  
26 true and correct copy of the complaint is attached here as Exhibit 1. Cotton cross-complained for,  
27  
28

1 among other things, breach of contract and fraud. True and correct copies of Cotton cross-complaint  
2 and amendments are attached hereto as Exhibit 2. The case ultimately went to trial in July 2019.

3         3.         On June 21, 2019, Geraci filed a Motion in Limine (MIL) No. 9 to exclude testimony  
4 that Geraci's prior settlement agreements in cases brought by the City of San Diego barred Geraci  
5 from obtaining a CUP or owning a business operating a cannabis dispensary pursuant to a  
6 Conditional Use Permit. On June 26, 2019, Cotton filed his opposition. On July 1, 2019, the court  
7 issued its Trial Minute Order deferring ruling on the MIL (i.e., it did not grant or deny). True and  
8 correct copies of this in-limine motion, Cotton's opposition, and the court's minute order are  
9 attached here as Exhibits 3, 4, and 5, respectively

10         4.         On July 3, 2019, Cotton brought a motion for nonsuit on Geraci's cross-complaint  
11 for breach of contract. My recollection is that the contract illegality issue was raised in that trial  
12 motion, but I have not reviewed the transcript to confirm. On July 3, 2019, the court issued its Trial  
13 Minute Order denying Cotton's motion for nonsuit without prejudice. On July 10, 2019, the court  
14 sustained Geraci's objection to Cotton's Request for Judicial Notice of two lawsuits filed by the  
15 City of San Diego against Geraci in 2014 and 2015.

16         5.         The trial concluded on or about July 16, 2019, the jury found 12-0 against Cotton on  
17 his cross-complaint and in favor of Geraci on his breach of contract claims as against Cotton. The  
18 jury awarded Geraci \$260,109.28 in damages. A true and correct copy of the Special Verdict forms  
19 No. 1 and No. 2 for the complaint and cross-complaint, signed by the jury, are attached hereto as  
20 Exhibit 6.

21         6.         Following the jury trial, judgment was entered in favor of Geraci and against Cotton  
22 on both the complaint and the cross-complaint. A true and correct copy of that judgment is attached  
23 hereto as Exhibit 7.

24         7.         On September 13, 2019, Cotton filed a post-judgment motion for a new trial in  
25 which he directly raised the contract illegality issue. True and correct copy of Cotton's Notice of  
26 Motion, Memorandum of Points and Authorities and Notice of Errata are attached hereto as  
27 Exhibits 8, 9 and 10, respectively. On September 23, 2019, Geraci filed his opposition, a true and  
28

0258

1 correct copy of which is attached hereto as Exhibit 11. On September 30, 2019, Cotton filed his  
2 Reply, a true and correct copy of which is attached hereto as Exhibit 12. On October 25, 2019,  
3 following oral argument, the Court issued a ruling entering its tentative ruling as the final ruling of  
4 the Court, denying Cotton's motion "for a new trial or a finding that the alleged November 2, 2016,  
5 agreement is illegal and void." A true and correct copy of that order is attached hereto as Exhibit  
6 13.

7 8. On November 21, 2019, Cotton filed two appeals. First, a notice of appeal against  
8 the order denying his motion for new trial. Second, a notice of appeal against the judgment after the  
9 jury trial. On January 13, 2020, the Court of Appeal assigned these appeals Fourth DCA Case No.  
10 D077081. On February 11, 2020, the Court of Appeal dismissed the appeals for failure to timely  
11 designate the record on appeal, and for failure to timely deposit costs for preparation of the record.  
12 Remittitur was issued on May 14, 2020.

13 9. I declare under the penalty of perjury under the laws of the State of California that  
14 the foregoing is true and correct and that I executed this declaration on February 10, 2022, in San  
15 Diego, California.

16   
17 Michael Weinstein



# Exhibit 1

FERRIS & BRITTON  
A Professional Corporation  
Michael R. Weinstein (SBN 106464)  
Scott H. Toothacre (SBN 146530)  
501 West Broadway, Suite 1450  
San Diego, California 92101  
Telephone: (619) 233-3131  
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Attorneys for Plaintiff  
LARRY GERACI

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,  
Plaintiff,

v.

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

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

**PLAINTIFF'S COMPLAINT FOR:**

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

Plaintiff, LARRY GERACI, alleges as follows:

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

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

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

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

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

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

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

#### 14                                   GENERAL ALLEGATIONS

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

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

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

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

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

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

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

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

21 **SECOND CAUSE OF ACTION**

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

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

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

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

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

### 8 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 20 **FOURTH CAUSE OF ACTION**

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

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

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

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

6           WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

7           **On the First and Second Causes of Action:**

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

10          **On the Third Cause of Action:**

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

13          3. If specific performance cannot be granted, then damages in an amount in excess of  
14 \$300,000.00 according to proof at trial.

15          **On the Fourth Cause of Action:**

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

19          **On all Causes of Action:**

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

25          6. For costs of suit incurred herein; and

26 ///

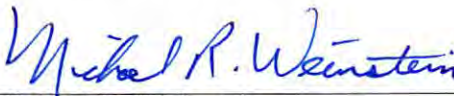
27 ///

28 ///

1           7.       For such other and further relief as the Court may deem just and proper.

2  
3 Dated: March 21, 2017

FERRIS & BRITTON,  
A Professional Corporation

4  
5 By:   
6       Michael R. Weinstein  
7       Scott H. Toothacre

8       Attorneys for Plaintiff  
9       LARRY GERACI



# EXHIBIT A

11/02/2016

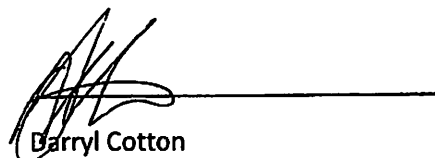
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton

## ACKNOWLEDGMENT

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

State of California

County of San Diego

On November 2, 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)



# Exhibit 2

ORIGINAL

FILED  
CIVIL BUSINESS OFFICE 18  
CENTRAL DIVISION

2017 MAY 12 P 3:49

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

Darryl Cotton, *In pro se*  
6176 Federal Blvd.  
San Diego, CA 92114  
Telephone: (619) 954-4447  
Fax: (619) 229-9387  
Defendant and Cross-Complainant

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

LARRY GERACI, an individual,  
Plaintiff,

vs.

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

DARRYL COTTON, an individual,  
Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1  
through 10, inclusive,  
Cross-Defendants.

CASE NO.: 37-2017-00010073-CU-BC-CTL

Judge: The Honorable Joel Wohlfeil  
Dept.: C-73

COTTON'S CROSS-COMPLAINT FOR:

1. QUIET TITLE
2. SLANDER OF TITLE
3. FRAUD / FRAUDULENT  
MISREPRESENTATION
4. FRAUD IN THE INDUCEMENT
5. BREACH OF CONTRACT
6. BREACH OF ORAL CONTRACT
7. BREACH OF IMPLIED CONTRACT
8. BREACH OF THE IMPLIED  
COVENANT OF GOOD FAITH AND  
FAIR DEALING
9. TRESPASS
10. CONSPIRACY
11. DECLARATORY AND INJUNCTIVE  
RELIEF

Defendant and Cross-complainant Darryl Cotton ("Cotton") alleges as follows:

1. Cotton is, and at all times mentioned was, an individual residing within the County of San Diego, California.

2. Plaintiff and Cross-defendant Larry Geraci ("Geraci") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

1 3. Cross-defendant Rebecca Berry ("Berry") is, and at all times mentioned was,  
2 an individual residing within the County of San Diego, California.

3 4. Cotton, at all times material to this action, was the sole owner of the  
4 commercial property located at 6176 Federal Boulevard in San Diego, California  
5 92114 (the "Property"), the subject of this dispute.

6 5. Cotton is the President of Inda-Gro, a manufacturer of environmentally  
7 sustainable products, primarily induction lighting systems, that help enhance crop  
8 production while conserving energy and water resources.

9 6. Cotton is the President of 151 Farms, a not-for-profit organization he founded  
10 in that is focused on providing ecologically sustainable cultivation practices for the  
11 food and medical needs of urban communities.

12 7. Cotton, at the Property, operates both his Inda-Gro business and his 151  
13 Farms not-for-profit.

14 8. Cotton does not know the true names and capacities of the defendants named  
15 DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed  
16 and believes that DOES 1 through 10 are in some way responsible for the events  
17 described in this Cross-complaint and are liable to Cotton based on the causes of  
18 action below. Cotton will seek leave to amend this Cross-complaint when the true  
19 names and capacities of these parties have been ascertained.

20 9. Based on the foregoing, jurisdiction is proper in this Court and venue in San  
21 Diego County, California.

### 22 GENERAL ALLEGATIONS

23 10. Geraci contacted Cotton in August of 2016 seeking to purchase the  
24 Property from Cotton. Geraci desired to buy the Property because it meets certain  
25 requirements by the City of San Diego (the "City") that would allow Geraci to apply  
26 for a Conditional Use Permit ("CUP"). If granted, the CUP would permit the operation  
27 of a Medical Marijuana Consumer Cooperative ("MMCC") at the Property.

28 11. Subsequent to the initial conversation in August between Geraci and  
Cotton, over the course of approximately two months, the parties entered into

1 intense negotiations regarding the sale of the Property. During this period of time, in  
2 good-faith anticipation of finalizing the sale of the Property, the parties  
3 simultaneously engaged in preliminary due diligence and preparation of the CUP  
4 application.

5 12. During the course of the negotiations and preparation of the CUP  
6 application, Geraci represented to Cotton, among other things, the following:

7 a. That his due diligence uncovered a critical zoning issue that would  
8 prevent the Property from being issued a CUP permit unless he lobbied with the City  
9 to have the issue resolved (the "Critical Zoning Issue");

10 b. That he, through his personal and professional relationships, was in a  
11 unique position to lobby and influence key City political figures to (i) have the Critical  
12 Zoning Issue favorably resolved and (ii) have the CUP application approved once  
13 submitted.

14 c. That he was in a position to successfully operate a MMCC because, at  
15 that point in time, he owned and was managing several other marijuana dispensaries  
16 in the San Diego County area.

17 d. That as an Enrolled Agent for the IRS, and the owner-manager of Tax  
18 and Financial Center, Inc. (a tax-related business), he was an individual that Cotton  
19 could trust because he operated in a fiduciary capacity on a daily-basis for many  
20 high-net worth individuals and businesses.

21 13. On November 2, 2016, after months of negotiations, Geraci and Cotton  
22 met at Geraci's office to negotiate the unsettled terms and finalize their agreement  
23 for the sale of the Property. The parties agreed to over thirty different terms for the  
24 sale of the Property and their intention was to reduce those terms to a writing.

25 14. The consideration for the purchase of the Property consisted of  
26 monetary and non-monetary components. Under the terms of the agreement  
27 reached, Geraci agreed to provide Cotton, among other things, the following  
28 consideration for the Property:

a. The sum of \$800,000;

1           b. A 10% equity stake in the MMCC upon the City's approval of the CUP at  
2           the Property (the "Business"); and

3           c. On a monthly basis, 10% of the profits of the Business for the preceding  
4           month or \$10,000, whichever was greater.

5       15.       A condition precedent to closing the sale of the Property was the City's  
6       approval of the CUP application.

7       16.       Further, Geraci would pay Cotton a non-refundable deposit in the  
8       amount of \$50,000 (the "Non-Refundable Deposit"). Geraci was then to submit a  
9       CUP application to the City. If the City granted the application, the sale and transfer  
10      of title to the Property to Geraci would be consummated upon Geraci's payment of  
11      the \$750,000 balance. However, if the City rejected the CUP application, the sale  
12      and transfer of the Property would not proceed and Cotton would be entitled to retain  
13      the \$50,000 Non-Refundable Deposit.

14      17.       The transaction was to be effectuated via two agreements: (i) a Real  
15      Estate Purchase Agreement and (ii) a Side Agreement. The Real Estate Purchase  
16      Agreement was to specify the payment of \$400,000 from Geraci to Cotton for the  
17      purchase of the Property.

18      18.       The Side Agreement was to include the additional, remaining \$400,000  
19      payment obligation (such that, in aggregate, the monetary components of the Real  
20      Estate Purchase Agreement and the Side Agreement totaled \$800,000). The Side  
21      Agreement was also to include various other material terms, including, without  
22      limitation, the 10% equity stake and monthly profit sharing (i.e., 10% of profits or a  
23      minimum monthly payment of \$10,000).

24      19.       After the parties finalized consideration for the Property, Geraci  
25      requested of Cotton that he be given time to put together the \$50,000 Non-  
26      Refundable Deposit. Geraci alleged that he needed time as he had limited cash and  
27      he would require the cash he did have to immediately fund the costly preparation of  
28      the CUP application and lobbying efforts needed to resolve the Critical Zoning Issue.



1       20.       Geraci offered to provide Cotton on that day \$10,000 as a show of  
2 "good-faith" towards the \$50,000 Non-Refundable Deposit even though the parties  
3 did not have a final legal agreement for the sale of the Property. Cotton raised his  
4 concern, that he would not receive the balance of the Non-Refundable Deposit if the  
5 City denied the CUP application. Geraci promised to pay the balance of the Non-  
6 Refundable Deposit prior to submission of the CUP application with the City and  
7 stressed the need to immediately resolve the Critical Zoning Issue.

8       21.       Cotton agreed and Geraci offered to incur the cost of having his  
9 attorney, Gina Austin, "quickly" draft the Real Estate Purchase Agreement and the  
10 Side agreement.

11       22.       At Geraci's request, the parties executed a three-sentence agreement  
12 that Geraci stated was for there to be a record of Cotton's receipt of the \$10,000  
13 "good-faith" deposit (the "November 2nd Agreement").

14       23.       That same day at 3:11 PM, Geraci emailed Cotton a scanned copy of  
15 the notarized November 2nd Agreement.

16       24.       Later that day at 6:55 PM, Cotton replied to Geraci, noting:  
17 "I just noticed the 10% equity position in the dispensary was  
18 not language added into that document. I just want to make  
19 sure that we're not missing that language in any final  
20 agreement as it is a factored element in my decision to sell the  
21 property. I'll be fine if you would simply acknowledge that here  
22 in a reply."

23       25.       Approximately 2 hours later at 9:13 PM, Geraci replied, stating "No no  
24 problem at all." (Exhibit 1.)

25       26.       Cotton, having received written confirmation from Geraci regarding the  
26 10% equity stake, continued to operate in good-faith under the assumption that  
27 Geraci's attorney would draft the appropriate legal agreements reflecting the deal the  
28 parties reached.

      27.       Thereafter, over the course of the next four months, Cotton continuously  
reached out to Geraci regarding the following three issues:

- a. The progress of the Critical Zoning Issue that precluded the submission of the CUP application;
- b. The balance of the Non-Refundable Deposit; and
- c. The status of the drafts of the Real Estate Purchase Agreement and the Side Agreement.

28. During this four-month period Geraci was predominantly unresponsive and failed to make substantive progress on any of his promises.

29. On January 6, 2017, Cotton, exasperated with Geraci for failing to provide any substantive updates on the Critical Zoning Issue or drafts of the legal agreements, texted him "Can you call me. If for any reason you're not moving forward I need to know."

30. That same day Geraci replied via text, stating "I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to call you later today still very sick."

31. Between January 18, 2017 and February 7, 2017, the following text conversation took place between Geraci and Cotton:

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

Cotton: "This resolves the zoning issue?"

Geraci: "Yes"

Cotton: "Excellent"

Cotton: "How goes it?"

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

Cotton: "Whats new?"

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."

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

32. Thus, Geraci's communications to Cotton regarding final resolution of the Critical Zoning Issue (the prerequisite to the submission of the CUP application and the latest point at which Cotton would receive the remaining \$40,000 of the Non-Refundable Deposit) was that although imminent, it had not yet been completed.

1       33.       On February 15, 2017, Geraci texted Cotton "we are preparing the  
2 documents with the attorney and hopefully will have them by the end of this week."

3       34.       On February 22, 2017, Geraci texted Cotton "Contract should be ready  
4 in a couple days."

5       35.       On February 27, 2017, Geraci emailed Cotton a draft Agreement of  
6 Purchase and Sale of Real Property for the Property (the "First Draft Real Estate  
7 Agreement"). The First Draft Real Estate Agreement completely failed to reflect the  
8 agreement that Geraci and Cotton had reached on November 2, 2016. Cotton called  
9 Geraci who said it was a miscommunication between him and his attorney Gina  
10 Austin and he promised to have her revise the First Draft Real Estate Agreement.

11       36.       On March 2, 2017, Geraci emailed Cotton a draft Side Agreement (the  
12 "First Draft Side Agreement").

13       37.       On March 3, 2017, having reviewed the First Draft Side Agreement,  
14 Cotton emailed Geraci stating: "I see no reference is made to the 10% equity position  
15 [and] para 3.11 looks to avoid our agreement completely." Paragraph 3.11 of the  
16 First Draft Side Agreement states that the parties have no joint venture or  
17 partnership agreement of any kind, in complete contradiction of the deal reached  
18 between the parties.

19       38.       Thereafter, Cotton became increasingly frustrated by Geraci's lack of  
20 progress on the outstanding issues. He noted to Geraci during a conversation that he  
21 would be looking to get an attorney to revise the inaccurate drafts of the legal  
22 agreements provided. Geraci assuaged Cotton by telling him it was a  
23 misunderstanding on his attorney's part and that Cotton could speak with her directly  
24 regarding any comments to the drafts.

25       39.       On March 6, 2017, Geraci, having spoken with Cotton and knowing he  
26 contemplated attending a social event at which his attorney Gina Austin would be,  
27 texted "Gina Austin is there she has a red jacket on if you want to have a  
28 conversation with her."

1       40.       On March 7, 2017, Geraci emailed Cotton a revised draft of the Side  
2 Agreement (the "Second Draft Side Agreement"). The cover email contained the  
3 following language: "... the 10k a month might be difficult to hit until the sixth month...  
4 can we do 5k, and on the seventh month start 10k?"

5       41.       The Second Draft Side Agreement contained the following language:  
6 "Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business  
7 after all expenses and liabilities have been paid... Further, Buyer hereby guarantees  
8 a profits payment of not less than \$5,000 per month for the first three months the  
9 Business is open... and \$10,000 a month for each month thereafter the Business is  
10 operating on the Property."

11       42.       On or about March 16, 2017, having grown increasingly tired of Geraci's  
12 failures to respond to his requests for substantive updates on the Critical Zoning  
13 Issue, Cotton reached out directly to the Development Project Manager for the City  
14 that is responsible for CUP applications. Cotton discovered from the Development  
15 Project Manager that a CUP application had been submitted on his Property on  
16 October 31, 2016.

17       a. Cotton specifically recalled that day, October 31, 2016, as it was the day  
18 that Geraci had asked Cotton to execute an Ownership Disclosure Statement  
19 reflecting that Cotton had leased the Property to an individual named Rebecca Berry.  
20 Geraci told Cotton he required the Ownership Disclosure Statement because:

21               i. As the parties did not have a final agreement in place at that time,  
22 he needed it to show other professionals involved in the preparation of the CUP  
23 application and the lobbying efforts to prove that he had access to the Property; and

24               ii. As a sign of good-faith by Cotton as they had not reached a final  
25 agreement and he wanted something in writing to prove Cotton's support of the CUP  
26 application at the Property as he needed to immediately spend large amounts of  
27 cash to continue with the preparation of the CUP application and the Critical Zoning  
28 Issue lobbying efforts.

1       43.       Geraci told Cotton that Rebecca Berry is very familiar with medical  
2 marijuana operations, is a trusted employee and is involved in his other medical  
3 marijuana dispensaries.

4       44.       Cotton has never met or directly entered into any type of agreement with  
5 Rebecca Berry. Insofar as she is involved with Cotton, she has always been an  
6 agent of Geraci and has been effectuating his plans, either in concert with him or at  
7 his direction.

8       45.       On March 16, 2017, Cotton, after having discovered that Geraci had  
9 submitted a CUP application on the Property and, therefore, had been deceiving him  
10 for months, emailed Geraci stating:

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

21       46.       In response to this email, on the same day, Geraci texted Cotton asking  
22 "Can we meet tomorrow[?]"

23       47.       On March 17, 2017, Cotton replied via email to Geraci's text request for  
24 an in-person meeting stating that:

25       "I would prefer that until we have final agreements that we converse exclusively  
26 via email. My greatest concern is that you get a denial on the CUP application  
27 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel  
28 that you are not dealing with me in good faith, you told me repeatedly that you  
could not submit a CUP application until certain zoning issues had been resolved  
and that you had spent hundreds of thousands of dollars on getting them  
resolved. You lied to me, I found out yesterday from the City of San Diego that  
you submitted a CUP application on October 31 2016 BEFORE we even signed  
our agreement on the 2nd of November."

1 48. Thereafter, communications increasingly devolved between Geraci and  
2 Cotton as Geraci refused to confirm in writing, at Cotton's repeated requests, the  
3 original terms of their agreement.

4 49. On March 21, 2017, it being apparent to Cotton that Geraci had no  
5 intention of confirming or honoring the agreement they had reached on November  
6 2nd, 2016, Cotton called the Development Project Manager and asked her to  
7 withdraw the CUP application pending on his Property.

8 50. Later that day, the Development Project Manager emailed Cotton stating  
9 that she could not withdraw the CUP application on Cotton's Property as he  
10 requested because Rebecca Berry is the "financial responsible party" on the CUP  
11 application and not Cotton.

12 51. Also, on March 21, 2017, Cotton emailed Geraci letting him know that  
13 he had spoken with

14 "the Development Project Manager for the City of San Diego who is handling CUP  
15 applications. She made it 100% clear that there are no restrictions on my property  
16 and that there is no recommendation that a CUP application on my property be  
17 denied. In fact, she told me that the application had just passed the 'Deemed  
18 Complete' phase and was entering the review process. She also confirmed that  
19 the application was paid for in October, before we even signed our  
20 agreement...[t]his is our last communication, you have failed to live up to your  
21 agreement and have continuously lied to me and kept pushing off creating final  
22 legal agreements because you wanted to push it off to get a response from the  
23 City without taking the risk of losing the non-refundable deposit in the event the  
24 CUP application is denied. **To be clear, as of now, you have no interest in my  
25 property...**" (emphasis added.)

26 52. After terminating his agreement with Geraci, Cotton entered into an  
27 agreement with a third-party for the sale of the Property on the same day.

28 53. On March 22, 2017, Cotton was emailed the instant Complaint by  
Geraci's attorney, Michael Weinstein, claiming that

"[t]he November 2, 2016, written agreement is a valid, binding and enforceable  
agreement between Larry Geraci and [me] for the purchase and sale of the  
Property according to its terms and conditions... You have been paid \$10,000.00  
and, in the event the condition precedent of obtaining CUP approval is satisfied,  
then the remaining balance of \$790,000.00 will be due to you from Larry Geraci

1 and you will be obligated to transfer title to Larry Geraci or his assignee."

2 54. On April 29, 2017, Cotton emailed and provided Geraci and Rebecca  
3 Berry with drafts of his Answer to Plaintiff's Complaint and his Cross-Complaint.  
4 Cotton noted that notwithstanding Geraci's unethical behavior that led to this  
5 needless dispute and the overwhelming evidence making clear Geraci's culpability,  
6 that he would like to resolve the dispute as quickly and fairly as possible.

7 55. Neither Geraci or Berry replied to Cotton's request to settle the dispute.

8 56. On May 5, 2017, the Court notified Cotton that his Answer & Cross-  
9 complaint were rejected because he submitted both pleadings in a single document.  
10 Realizing that some time had passed for Geraci, Geraci's attorney and Berry to  
11 further review and think about the evidence against them, Cotton emailed Geraci and  
12 Berry again seeking to reach a settlement and "work out something reasonable."

13 57. Neither Geraci nor Berry replied to his request to settle the dispute.

14 **Count One**

15 **(Quiet Title)**

16 58. Cotton hereby incorporates by reference all of his allegations contained  
17 above as if fully set forth herein.

18 59. This cause of action is directed against plaintiff Larry Geraci and cross  
19 defendant Rebecca Berry.

20 60. Cotton is the sole and rightful owner of record of the Property.

21 61. Based on the allegations contained in Geraci's Complaint and the Lis  
22 Pendens filed by Geraci on the Property, Geraci has made a claim for title to the  
23 Property adverse to Cotton. Further, Ms. Berry has filed a CUP application claiming  
24 to be the sole owner of the Property.

25 62. Cotton is entitled to an order barring and forever estopping Geraci and  
26 Berry from having or claiming any right or title to the Property.  
27  
28

**Count Two**  
**(Slander of Title)**

63. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

64. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

65. Geraci and Berry disparaged Cotton's exclusive valid title by and through the preparing, posting, publishing, and recording of the documents previously described herein, including, but not limited to, the instant Complaint, the Lis Pendens filed on the Property and the CUP application.

66. Geraci knew that such documents were improper in that at the time of the execution and delivery of the documents, Geraci had no right, title, or interest in the Property. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Cotton's legal title to the Property. By posting, publishing and recording documents, Geraci's disparagement of Cotton's legal title was made to the world at large.

67. As a direct and proximate result of Geraci and Berry's conduct in publishing these documents, Cotton's title to the Property has been disparaged and slandered, and there is a cloud on Cotton's title, and Cotton has suffered and continues to suffer damages, including, but not limited to, lost future profits, in an amount to be proved at trial, but in an amount of no less than \$2,000,000.

68. As a further and proximate result of Geraci's conduct, Cotton has incurred expenses in order to clear title to the Property. Moreover, these expenses are continuing and Cotton will incur additional charges for such purpose until the cloud on Cotton's title to the Property has been removed. The amounts of future expenses are not ascertainable at this time, but will be proven at trial.

69. As a further and proximate result of Geraci's conduct, Cotton has suffered humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to his health and



1 well-being, and continues to suffer such injuries on an ongoing basis. The amount of  
2 such damages shall be proven at trial.

3 a. By fortuitous happenstance, the Property qualifies to apply for a CUP,  
4 which represents a significant windfall for Cotton and has the potential to be a life-  
5 changing opportunity for him. Unfortunately, Geraci and Berry have sought to first  
6 fraudulently deprive Cotton of the benefits that he bargained for and to which Geraci  
7 agreed to on November 2<sup>nd</sup>, 2016, and, second, Geraci continues to harm Cotton by  
8 proceeding with this action when he absolutely knows that the evidence is  
9 unequivocal and he will not prevail if this action is seen through.

10 b. Geraci's continuation of this action causes ever increasing damage to  
11 Cotton on a daily basis because, simply put, he is indescribably tormented  
12 emotionally and physically as he sees a once in a lifetime opportunity, that could put  
13 him in a position to provide for his loved ones and support him into retirement, being  
14 destroyed by Geraci and Berry's greed and malicious behavior.

15 70. At the time that the false and disparaging documents were created and  
16 published by Geraci, Geraci knew the documents were false and created and  
17 published them with the malicious intent to injure Cotton and deprive him of his right,  
18 title, and interest in the Property, and to obtain the Property for his own use by  
19 unlawful means.

20 71. The conduct of Geraci in publishing the documents described above  
21 was fraudulent, oppressive, and malicious. Therefore, Cotton is entitled to an award  
22 of punitive damages in an amount sufficient to punish Geraci for his malicious  
23 conduct and to deter such outrageous misconduct in the future.

### 24 Count Three

#### 25 (Fraud / Fraudulent Misrepresentation)

26 72. Cotton hereby incorporates by reference all of his allegations contained  
27 above as if fully set forth herein.

28 73. This cause of action is directed against plaintiff Larry Geraci.

1       74.       On November 2, 2016, Geraci represented to Cotton, among other  
2 things, that:

3               a. He would honor the agreement reached on November 2<sup>nd</sup>, 2016, which  
4 included a 10% equity stake in the Business and a guaranteed monthly equity  
5 distribution of \$10,000 a month.

6               b. He would pay the balance of the non-refundable deposit as soon as  
7 possible, but at the latest when the alleged critical zoning issue was resolved, which,  
8 in turn, he alleged was a necessary prerequisite for submission of the CUP  
9 application.

10              c. He understood and confirmed the November 2<sup>nd</sup> Agreement was not the  
11 final agreement for the purchase of the Property.

12              d. That he, Geraci, as an Enrolled Agent by the IRS was someone who  
13 was held to a high degree of ethical standards and could be trusted effectuate the  
14 agreement reached.

15       75.       That the preparation of the CUP application would be very time  
16 consuming and take hundreds of thousands of dollars in lobbying efforts.

17       76.       Geraci knew that these representations were false because, among  
18 other things, Geraci had already filed a CUP application with the City of San Diego  
19 prior to that day. His subsequent communications via email and text messages make  
20 clear that he continued to represent to Cotton that the preliminary work of preparing  
21 the CUP application was underway, when, in fact, he was just stalling for time.  
22 Presumably, to get an acceptance or denial from the City and, assuming he got a  
23 denial, to be able to deprive Cotton of the \$40,000 balance due on the Non-  
24 Refundable Deposit.

25       77.       Geraci intended for Cotton to rely on his representations and,  
26 consequently, not engage in efforts to sell his Property.

27       78.       Cotton did not know that Geraci's representations were false.

28       79.       Cotton relied on Geraci's representations.

1 80. Cotton's reliance on Geraci's representations were reasonable and  
2 justified.

3 81. As a result of Geraci's representations to Cotton, Cotton was induced  
4 into executing the November 2nd Agreement, giving Geraci the only basis of his  
5 Complaint and, consequently, among other unfavorable results, allowing Geraci to  
6 unlawfully create a cloud on title on the Property. Thus, Cotton has been forced to  
7 sell his Property at far from favorable terms.

8 82. Cotton has been damaged in an amount of no less than \$2,000,000.  
9 Additional damages from potential future profit distributions and other damages will  
10 be proven at trial.

11 83. Geraci's representations were intentional, willful, malicious, outrageous,  
12 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with  
13 the intent to deprive Cotton of his interest in the Property.

14 84. This intentional, willful, malicious, outrageous and unjustified conduct  
15 entitles Cotton to an award of general, compensatory, special, exemplary and/or  
16 punitive damages.

#### 17 Count Four

#### 18 (Fraud in the Inducement)

19 85. Cotton hereby incorporates by reference all of his allegations contained  
20 above as if fully set forth herein.

21 86. This cause of action is directed against plaintiff Larry Geraci.

22 87. Geraci made promises to Cotton on November 2<sup>nd</sup>, 2016, promising to  
23 effectuate the agreement reached on that day, but he did so without any intention of  
24 performing or honoring his promises.

25 88. Geraci had no intent to perform the promises he made to Cotton on  
26 November 2<sup>nd</sup>, 2016 when he made them, as is clear from his actions described  
27 herein, that he represented he would be preparing a CUP application, when, in fact,  
28 he had already deceived Cotton and submitted a CUP application.

1 89. Geraci intended to deceive Cotton in order to, among things, execute  
2 the November 2<sup>nd</sup> Agreement.

3 90. Cotton reasonably relied on Geraci's promises.

4 91. Geraci failed to perform the promises he made on November 2<sup>nd</sup>, 2016,  
5 notably, his delivery of the balance of the Non-Refundable Deposit and his promise  
6 to treat the November 2<sup>nd</sup> Agreement as a memorialization of the \$10,000 received  
7 towards the Non-Refundable Deposit and not the final legal agreement for the  
8 purchase of the Property.

9 92. Cotton has suffered and continues to suffer damages because he relied  
10 on Geraci's representations and promises in an amount to be determined at trial, but  
11 which is no less than \$2,000,000.

12 93. This intentional, willful, malicious, outrageous, and unjustified conduct  
13 entitles Cotton to an award of general, compensatory, special, exemplary and/or  
14 punitive damages.

15 **Count Five**  
16 **(Breach of Contract)**

17 94. Cotton hereby incorporates by reference all of his allegations contained  
18 above as if fully set forth herein.

19 95. This cause of action is directed against plaintiff Larry Geraci.

20 96. The agreement reached on November 2<sup>nd</sup>, 2016 is a valid and binding  
21 agreement between Cotton and Geraci and the November 2<sup>nd</sup> Agreement was meant  
22 to be the written instrument that solely memorialized the partial receipt of the Non-  
23 Refundable Deposit and was not representative of the entirety of the agreement.

24 97. Cotton upheld his end of the bargain, by, among other things, not selling  
25 his Property and helping with the preparation of the CUP application.

26 98. Geraci breached the contract by, among other reasons, alleging the  
27 November 2<sup>nd</sup> Agreement is the final agreement between the parties for the  
28 purchase of the Property.

1 99. Cotton has suffered and continues to suffer damages because of  
2 Geraci's actions that constitute a breach of contract in an amount to be determined  
3 at trial, but which is no less than \$2,000,000.

4 **Count Six**

5 **(Breach of Oral Contract)**

6 100. Cotton hereby incorporates by reference all of his allegations contained  
7 above as if fully set forth herein.

8 101. This cause of action is directed against plaintiff Larry Geraci.

9 102. The agreement reached on November 2nd, 2016 is a valid and binding  
10 oral agreement between Cotton and Geraci.

11 103. Geraci has breached the agreement by, among other actions described  
12 herein, alleging the written November 2<sup>nd</sup> Agreement is the final and entire  
13 agreement for the Property.

14 104. Cotton performed his obligations as agreed on November 2nd, 2016;  
15 among other things, he did not sell his property and, as a consequence of Geraci's  
16 breach of the agreement, is excused from having done so, but, Geraci, is still liable  
17 for the remainder of the balance due on the Non-Refundable Deposit.

18 105. Cotton has suffered and continues to suffer damages because of  
19 Geraci's actions that constitute a breach of oral contract in an amount to be  
20 determined at trial, but which is no less than \$2,000,000.

21 **Count Seven**

22 **(Breach of Implied Contract)**

23 106. Cotton hereby incorporates by reference all of his allegations contained  
24 above as if fully set forth herein.

25 107. This cause of action is directed against plaintiff Larry Geraci.

26 108. A cause of action for breach of implied contract has the same elements  
27 as does a cause of action for breach of contract, except that the promise is not  
28 expressed in words but is implied from the promisor's conduct.

1 109. The agreement reached on November 2nd, 2016 is a valid and binding  
2 agreement between Cotton and Geraci.

3 110. Geraci fraudulently induced Cotton into executing the November 2<sup>nd</sup>  
4 Agreement, which Geraci now purports is the final agreement between the parties for  
5 the purchase of the Property. However, the emails, texts and actions taken by and  
6 between Geraci and Cotton make indisputably clear that there was an implied  
7 contract that is not the November 2<sup>nd</sup> Agreement.

8 111. Geraci has breached the implied contract by, among other actions  
9 described herein, alleging the November 2<sup>nd</sup> Agreement is the final agreement  
10 between the parties for the purchase of the Property.

11 112. Cotton has suffered and continues to suffer damages because of  
12 Geraci's actions that constitute a breach of implied contract in an amount to be  
13 determined at trial, but which is no less than \$2,000,000.

#### 14 **Count Eight**

##### 15 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

16 113. Cotton hereby incorporates by reference all of his allegations contained  
17 above as if fully set forth herein.

18 114. This cause of action is directed against plaintiff Larry Geraci and cross  
19 defendant Rebecca Berry.

20 115. There is an implied covenant of good faith and fair dealing in every  
21 contract that neither party will do anything which will injure the right of the other to  
22 receive the benefits of the agreement.

23 116. Geraci breached the implied covenant of good faith and fair dealing  
24 when, among other actions described herein, he alleged that the November 2<sup>nd</sup>  
25 Agreement is the final purchase agreement between the parties for the Property.

26 117. Cotton has suffered and continues to suffer damages because of  
27 Geraci's actions that constitute a breach of the implied covenant of good faith and  
28 fair dealing.

1 118. This intentional, willful, malicious, outrageous, and unjustified conduct  
2 entitles Cotton to an award of general, compensatory, special, exemplary and/or  
3 punitive damages in an amount to be determined at trial, but which is no less than  
4 \$2,000,000.

5 **Count Nine**  
6 **(Trespass)**

7 119. Cotton hereby incorporates by reference all of his allegations contained  
8 above as if fully set forth herein.

9 120. This cause of action is directed against plaintiff Larry Geraci and cross  
10 defendant Rebecca Berry.

11 121. At relevant times, the Property was owned solely by Cotton and,  
12 currently, is still in his sole possession.

13 122. Geraci, or an agent acting on his behalf, illegally entered the subject  
14 Property on or about March 27, 2017, and posted two NOTICES OF APPLICATION  
15 on the Property.

16 123. Geraci's attorney, Michael Weinstein, emailed Cotton on March 22, 2017  
17 stating that Geraci or his agents would be placing the aforementioned Notices upon  
18 Cotton's property.

19 124. Geraci knew that he had fraudulently induced Cotton into executing the  
20 November 2nd Agreement and, consequently, he had no valid legal basis to trespass  
21 unto Cotton's Property.

22 125. On March 21, 2017 Cotton emailed Geraci stating that he no longer had  
23 any interests in the Property and should not trespass on his Property, yet he  
24 continued to do despite being warned not to.

25 126. Geraci's Notices of Application posted on his Property has caused and  
26 continues to damage to Cotton because:

27 a. It is a trespass upon Cotton's Property by Geraci who has no right to the  
28 Property.

1           b. The posting gives the appearance that Ms. Berry is the only owner of  
2 the CUP application for the Property, thereby damaging Mr. Cotton's interest in the  
3 CUP application.

4           c. Cotton has no adequate remedy at law for the injuries currently being  
5 suffered in that it will be impossible for Cotton to determine the precise amount of  
6 damages that he will suffer if Geraci and/or his agents conduct is not restrained.

7       127. Cotton has suffered and continues to suffer damages because of  
8 Geraci's actions in an amount to be determined at trial, but which is no less than  
9 \$2,000,000.

10                               Count Ten  
11                               (Conspiracy)

12       128. Cotton hereby incorporates by reference all of his allegations contained  
13 above as if fully set forth herein.

14       129. This cause of action is directed against plaintiff Larry Geraci and cross  
15 defendant Rebecca Berry.

16           a. Geraci fraudulently induced Cotton to execute the Ownership Disclosure  
17 Statement on October 31st, 2016, alleging that the Ownership Disclosure Statement  
18 was necessary because the parties did not have a final agreement in place at that  
19 time, he needed it to show other professionals involved in the preparation of the CUP  
20 application and the lobbying efforts to prove that he, Geraci, had access to the  
21 Property.

22           b. Geraci wanted something in writing proving Cotton's support of the CUP  
23 application at his Property.

24           c. The Ownership Disclosure Statement is also executed by Berry and  
25 denotes Berry is the "Tenant/Lessee." Further, Berry filed a separate document with  
26 the City claiming she is the "Owner" of the Property.

27       130. Geraci represented to Cotton that Berry could be trusted, is a trusted  
28 employee, and is familiar with the medical marijuana industry.



1 131. Cotton has never met or entered into a direct agreement with Berry.  
2 Berry knew that she had not entered into a lease of any form with Cotton for the  
3 Property and knew that she had no ownership interest in the Property.

4 132. Upon information and belief, Berry submitted the CUP application in her  
5 name on behalf of Geraci because Geraci has been a named defendant in numerous  
6 lawsuits brought by the City of San Diego against him for the operation and  
7 management of unlicensed, unlawful and illegal marijuana dispensaries. These  
8 lawsuits would ruin Geraci's ability to obtain a CUP himself.

9 133. Berry knew that she was filing a document with the City of San Diego  
10 that contained false statements, specifically that she was a lessee of the Property  
11 and owner of the property.

12 134. Berry, at Geraci's instruction or her own desire, submitted the CUP  
13 application as Geraci's agent, and thereby participated in Geraci's scheme to deprive  
14 Cotton of his Property and his ownership interest in the CUP application.

15 135. Cotton has suffered and continues to suffer damages because of Geraci  
16 and Berrys' actions in an amount to be determined at trial, but which is no less than  
17 \$2,000,000.

18 136. This intentional, willful, malicious, outrageous, and unjustified conduct  
19 entitles Cotton to an award of general, compensatory, special, exemplary and/or  
20 punitive damages.

21 **Count 11**  
**(Injunctive Relief)**

22 137. Cotton hereby incorporates by reference all of his allegations contained  
23 above as if fully set forth herein.

24 138. This cause of action is directed against plaintiff Larry Geraci and cross  
25 defendant Rebecca Berry.

26 139. Geraci and Berry have continued to act as owners or parties of interest  
27 in the Property, even though both parties know they have no interest in the Property.  
28

1 140. These actions, including applying for the CUP without making clear  
2 Cotton's ownership interest in the CUP application, trespassing on the Property to  
3 post notices, and filing the lis pendens, has caused Cotton to lose and continue to  
4 lose profits, the benefits of his bargain and the Property if their actions are permitted  
5 to continue.

6 141. Defendant Cotton does not have a plain, speedy, and adequate remedy  
7 in the ordinary course of law as the CUP application is currently under review before  
8 the City.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Cotton prays for relief as follows:

- 11 1. That the Court order the Lis Pendens on the Property be released;  
12 2. That the Court order, by way of declaratory relief, that there is no purchase  
13 agreement between the parties and that Cotton and his successors-in-interest  
14 are the owners of the Property;  
15 3. That the Court order that Geraci and Berry have no interest in the CUP  
16 application;  
17 4. That Cotton be awarded damages in the amount of \$2,000,000;  
18 5. That Cotton be awarded damages for a loss of profits and other damages in  
19 an amount to be proven at trial; and  
20 6. That other relief is awarded as the Court determines is in the interest of justice.

21 Dated: May 12, 2017.

22  
23 

24 Darryl Cotton, Defendant in Pro Per  
25  
26  
27  
28

## **Exhibit 1**

11/2/16 Email from Geraci to Cotton acknowledging additional terms



Darryl Cotton &lt;indagrodarryl@gmail.com&gt;

---

**Agreement**

---

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton &lt;darryl@inda-gro.com&gt; wrote:

Hi Larry,

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

Regards.

Darryl Cotton, President



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

6176 Federal Blvd.  
San Diego, CA. 92114  
USA

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

[Quoted text hidden]

DAVID S. DEMIAN, SBN 220626  
E-MAIL: ddemian@ftblaw.com  
ADAM C. WITT, SBN 271502  
E-MAIL: awitt@ftblaw.com

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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**06/30/2017** at 12:10:00 PM

Clerk of the Superior Court  
By Richard Day, Deputy Clerk

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO  
CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

FIRST AMENDED CROSS-COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FALSE PROMISE;
- (5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
- (6) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS; AND
- (7) DECLARATORY RELIEF.

[IMAGED FILE]

Assigned to:  
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017  
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual;  
REBECCA BERRY, an individual; and  
ROES 1 through 50,

Cross-Defendants.

1 Defendant and cross-complainant Darryl Cotton ("Cotton") alleges as follows:

2 1. Venue is proper in this Court because the events described below took place in  
3 this judicial district and the real property at issue is located in this judicial district.

4 2. Cotton is, and at all times mentioned was, an individual residing within the  
5 County of San Diego, California.

6 3. Cotton was at all times material to this action the sole record owner of the  
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114  
8 ("Property") which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci  
10 ("Geraci") is, and at all times mentioned was, an individual residing within the County of San  
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is,  
13 and at all times mentioned was, an individual residing within the County of San Diego,  
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants  
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed  
17 and believes that ROES 1 through 50 are in some way responsible for the events described in  
18 this First Amended Cross-Complaint ("FACC"). Cotton will seek leave to amend this FACC  
19 when the true names and capacities of these cross-defendants have been ascertained.

20 7. At all times mentioned, each cross-defendant was an agent, principal,  
21 representative, employee, or partner of the other cross-defendants, and acted within the course  
22 and scope of such agency, representation, employment, and/or partnership, and with  
23 permission of the other cross-defendants.

24 GENERAL ALLEGATIONS

25 8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the  
26 Property. Geraci desired to buy the Property from Cotton because it meets certain  
27 requirements of the City of San Diego ("City") for obtaining a Conditional Use Permit  
28 ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the Property.

1 The Property is one of a very limited number of properties located in San Diego City Council  
2 District 4 that potentially satisfy the CUP requirements for a MMCC.

3 9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively  
4 regarding the terms of a potential sale of the Property. During these negotiations, Geraci  
5 represented to Cotton, among other things, that:

6 (a) Geraci was a trustworthy individual because Geraci operated in a  
7 fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for  
8 the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial  
9 advisory business;

10 (b) Geraci, through his due diligence, had uncovered a critical zoning issue  
11 that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci  
12 lobbied with the City to have the zoning issue resolved first;

13 (c) Geraci, through his personal and professional relationships, was in a  
14 unique position to lobby and influence key City political figures to have the zoning issue  
15 favorably resolved and obtain approval of the CUP application once submitted; and

16 (d) Geraci was qualified to successfully operate a MMCC because he owned  
17 and operated several other marijuana dispensaries in the San Diego County area.

18 10. Cotton, acting in good faith based upon Geraci's representations during the sale  
19 negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a  
20 CUP application at the Property while the parties negotiated the terms of a possible deal.  
21 However, despite the parties' work on a CUP application, Geraci represented to Cotton that a  
22 CUP application for the Property could not actually be submitted until after the zoning issue  
23 was resolved or the application would be summarily rejected by the City.

24 11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership  
25 Disclosure Statement, which is a required component of all CUP applications. Geraci told  
26 Cotton that he needed the signed document to show that Geraci had access to the Property in  
27 connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of  
28 a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement

1 as an indication of good-faith while the parties negotiated on the sale terms. At no time did  
2 Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering  
3 into a final written agreement for the sale of the Property. In fact, Geraci repeatedly  
4 maintained to Cotton that the zoning issue needed to be resolved before a CUP application  
5 could even be submitted.

6 12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in  
7 October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However,  
8 Cotton has never met Berry personally and never entered into a lease or any other type of  
9 agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who  
10 was very familiar with MMCC operations and who was involved with his other MMCC  
11 dispensaries. Cotton's understanding was that Geraci was unable to list himself on the  
12 application because of Geraci's other legal issues but that Berry was Geraci's agent and was  
13 working in concert with him and at his direction. Based upon Geraci's assurances that listing  
14 Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton  
15 executed the Ownership Disclosure Statement that Geraci provided to him.

16 13. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to  
17 negotiate the final terms of their deal for the sale of the Property. At that meeting, the parties  
18 reached an oral agreement on the material terms for the sale of the Property. The parties  
19 further agreed to cooperate in good faith to promptly reduce the agreed-upon terms to writing.

20 14. The material terms of the agreement reached by the parties at the November 2,  
21 2016 meeting included, without limitation, the following key deal points:

22 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the  
23 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton  
24 immediately upon the parties' execution of final integrated written agreements and the  
25 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the  
26 Property;

27 / / / /

28 / / / /



1 (b) The parties agreed that the City's approval of a CUP application to  
2 operate a MMCC at the Property would be a condition precedent to closing of the sale (In other  
3 words, the sale of the Property would be completed and title transferred to Geraci only upon  
4 the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of  
5 the purchase price to Cotton. If the City denied the CUP application, the parties agreed the  
6 sale of the Property would be automatically terminated and Cotton would be entitled to retain  
7 the entire \$50,000 non-refundable deposit);

8 (c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the  
9 MMCC that would operate at the Property following the City's approval of the CUP  
10 application; and

11 (d) In addition, Geraci agreed that, after the MMCC commenced operations  
12 at the Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits  
13 and Geraci would guarantee that such payments would amount to at least \$10,000 per month.

14 15. At Geraci's request, the sale was to be documented in two written agreements, a  
15 real estate purchase agreement and a separate side agreement, which together would contain all  
16 the agreed-upon terms from the November 2, 2016 meeting. At that meeting, Geraci also  
17 offered to have his attorney "quickly" draft the final integrated agreements and Cotton agreed.

18 16. Although the parties came to a final agreement on the purchase price and  
19 deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come  
20 up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he  
21 had limited cashflow and would require the cash he did have to fund the lobbying efforts  
22 needed to resolve the zoning issue at the Property and to prepare the CUP application.

23 17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit  
24 but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of  
25 "good-faith," even though the parties had not reduced their final agreement to writing. Cotton  
26 was understandably concerned that Geraci would file the CUP application before paying the  
27 balance of the non-refundable deposit and Cotton would never receive the remainder of the  
28 non-refundable deposit if the City denied the CUP application before Geraci paid the

1 remaining \$40,000 (thereby avoiding the parties' agreement that the \$50,000 non-refundable  
2 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).  
3 Despite his reservations, Cotton agreed to Geraci's request and accepted the lesser \$10,000  
4 initial deposit amount based upon Geraci's express promise to pay the \$40,000 balance of the  
5 non-refundable deposit no later than prior to submission of the CUP application.

6 18. At the November 2, 2016 meeting, the parties executed a three-sentence  
7 document related to their agreement at Geraci's request, which read as follows:

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

11 Ten Thousand dollars (cash) has been given in good faith earnest  
12 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 not to enter into any other contacts on this property.

13 Geraci assured Cotton that the document was intended to merely create a record of Cotton's  
14 receipt of the \$10,000 "good-faith" deposit and provide evidence of the parties' agreement to  
15 enter into final integrated agreement documents related to the sale of the Property. That same  
16 day, Geraci emailed Cotton a scanned copy of the executed document. In an email to Geraci  
17 several hours later following closer review of the document, Cotton wrote:

18 I just noticed the 10% equity position in the dispensary was not  
19 language added into that document. I just want to make sure that  
20 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.

21 Approximately two hours later, Geraci replied via email, "No no problem at all."

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

1           20. Over the weeks and months that followed, Cotton repeatedly reached out to  
2 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the  
3 non-refundable deposit, and the status of the draft documents. For example, on January 6,  
4 2017, after Cotton became exasperated with Geraci's failure to provide any substantive  
5 updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I  
6 need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine  
7 the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month  
8 I'll try to call you later today still very sick."

9           21. Between January 18, 2017 and February 7, 2017, the following exchange took  
10 place between Geraci and Cotton via text message:

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

12           Cotton: "This resolves the zoning issue?"

13           Geraci: "Yes"

14           Cotton: "Excellent"...

15           Cotton: "How goes it?"

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

17           Cotton: "Whats new?"

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

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

23 The above communications between Geraci and Cotton regarding the zoning issue conveyed to  
24 Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had  
25 previously represented to Cotton that the CUP application could not be submitted until the  
26 zoning issue was resolved, which was key as Geraci's submission of the CUP application was  
27 the outside date the parties had agreed upon for payment of the \$40,000 balance of the non-  
28 refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he  
knew they were untrue as he had in fact already submitted the CUP application months prior.

29           22. With respect to the promised final agreement documents, Geraci continuously  
30 failed to timely deliver the documents as agreed. On February 15, 2017, more than two  
31 months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the

1 documents with the attorney and hopefully will have them by the end of this week.” On  
2 February 22, 2017, Geraci again texted Cotton, “Contract should be ready in a couple days.”

3 23. On February 27, 2017, nearly three months after the parties reached an  
4 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase  
5 agreement and stated: “Attached is the draft purchase of the property for 400k. The additional  
6 contract for the 400k should be in today and I will forward it to you as well.” However, upon  
7 review, the draft purchase agreement was missing many of the key deal points agreed upon by  
8 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,  
9 Geraci claimed it was simply due to miscommunication with his attorney and promised to have  
10 her revise the agreement to accurately reflect their deal points.

11 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side  
12 agreement that was to incorporate other terms of the parties’ deal. Cotton immediately  
13 reviewed the draft side agreement and emailed Geraci the next day stating: “I see that no  
14 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement  
15 completely.” Paragraph 3.11 of the draft side agreement stated that the parties had no joint  
16 venture or partnership agreement of any kind, which contradicted the parties’ express  
17 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a  
18 condition of the sale of the Property.

19 25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an  
20 attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci  
21 dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a  
22 misunderstanding with his attorney and that Cotton could speak with her directly regarding any  
23 comments on the drafts.

24 26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement  
25 along with a cover email that stated: “... the 10k a month might be difficult to hit until the  
26 sixth month... can we do 5k, and on the seventh month start 10k?”. Cotton, increasingly  
27 frustrated with Geraci’s failure to abide by the parties’ agreement, responded to Geraci on  
28 March 16, 2017 in an email which included the following:



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

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

19 I found out today that a CUP application for my property was  
20 submitted in October, which I am assuming is from someone  
21 connected to you. Although, I note that you told me that the  
22 \$40,000 deposit balance would be paid once the CUP was  
23 submitted and that you were waiting on certain zoning issues to be  
24 resolved. Which is not the case.

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

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

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

1           29.     On March 21, 2017, Cotton emailed Geraci to confirm their agreement was  
2 terminated and that Geraci no longer had any interest in the Property. Cotton also notified  
3 Geraci that he intended to move forward with a new buyer for the Property.

4           30.     On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"),  
5 emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first  
6 time that the three-sentence document signed by the parties on November 2, 2016 constituted  
7 the parties' complete agreement regarding the Property, contrary to the entire course of  
8 dealings between the parties and Geraci's own statements and actions.

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

13           32.     The defendants' refusal to acknowledge they have no interest in the Property  
14 and to step aside from the CUP application has diminished the value of the Property, reduced  
15 the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and  
16 attorneys' fees to protect his interest in his Property.

17                               FIRST CAUSE OF ACTION

18                               (Breach of Contract – Against Geraci and ROES 1 through 50)

19           33.     Cotton realleges and incorporates by reference paragraphs 1 through 32, above,  
20 as though set forth in full at this point.

21           34.     Geraci and Cotton entered into an oral agreement regarding the sale of the  
22 Property and agreed to negotiate and collaborate in good faith on mutually acceptable purchase  
23 and sale documents reflecting their agreement.

24           35.     Cotton performed all conditions, covenants, and promises required on his part to  
25 be performed in accordance with the terms and conditions of the oral contract between the  
26 parties or has been excused from performance.

27     / / / / /

28     / / / / /

36. Under the parties' oral contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

37. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

## SECOND CAUSE OF ACTION

(Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

38. Cotton realleges and incorporates by reference paragraphs 1 through 37, above, as though set forth in full at this point.

39. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants knew to be false or were made recklessly and without regard for their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

40. The intentional misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

/ / / / /

1 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to  
2 execute the document Geraci now alleges is the fully integrated agreement between the parties  
3 by representing that (i) the CUP application would not be filed until the zoning issue was  
4 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at  
5 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000  
6 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci  
7 understood and agreed the document was not intended to be the final agreement between the  
8 parties for the purchase of the Property and did not contain all material terms of the parties'  
9 agreement;

10 (c) On multiple occasions, Geraci represented to Cotton that a CUP  
11 application for the Property could not be submitted until after the zoning issue was resolved;

12 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not  
13 yet filed a CUP application with respect to the Property when the CUP application had already  
14 been filed; and

15 (e) On multiple occasions, Geraci represented to Cotton that the preliminary  
16 work of preparing a CUP application was merely underway, when, in fact, the CUP application  
17 had already been filed.

18 41. Defendants, through their intentional misrepresentations and the actions taken in  
19 reliance upon such misrepresentations, have diminished the value of the Property, reduced the  
20 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and  
21 attorneys' fees to protect his interest in his Property. As a further result of the intentional  
22 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable  
23 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

24 42. The misrepresentations were intentional, willful, malicious, outrageous,  
25 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent  
26 to deprive Cotton of his interest in the Property. This intentional, willful, malicious,  
27 outrageous and unjustified conduct entitles Cotton to an award of general, compensatory,  
28 special, exemplary and/or punitive damages under Civil Code section 3294.



1 THIRD CAUSE OF ACTION

2 (Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

3 43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above,  
4 as though set forth in full at this point.

5 44. Defendants made statements to Cotton that: (a) were false representations of  
6 material facts; (b) defendants had no reasonable grounds for believing were true when the  
7 statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and  
8 justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in  
9 causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and  
10 proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

11 45. The negligent misrepresentations by defendants include at least the following:

12 (a) On or about October 31, 2016, Geraci fraudulently induced Cotton to  
13 execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to  
14 show he had access to the Property in connection with his lobbying efforts to resolve the  
15 zoning issue and in connection with the preparation of a CUP application; and (ii) by  
16 indicating the document would only be used as a show of good-faith while the parties  
17 negotiated on the sale terms;

18 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to  
19 execute the document Geraci now alleges is the fully integrated agreement between the parties  
20 by representing that (i) the CUP application would not be filed until the zoning issue was  
21 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at  
22 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000  
23 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci  
24 understood and agreed the document was not intended to be the final agreement between the  
25 parties for the purchase of the Property and did not contain all material terms of the parties'  
26 agreement;

27 / / / /

28 / / / /

1 (c) On multiple occasions, Geraci represented to Cotton that a CUP  
2 application for the Property could not be submitted until after the zoning issue was resolved;

3 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not  
4 yet filed a CUP application with respect to the Property when the CUP application had already  
5 been filed; and

6 (e) On multiple occasions, Geraci represented to Cotton that the preliminary  
7 work of preparing a CUP application was merely underway, when, in fact, the CUP application  
8 had already been filed.

9 46. Defendants, through their negligent misrepresentations and the actions taken in  
10 reliance upon such misrepresentations, have diminished the value of the Property, reduced the  
11 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and  
12 attorneys' fees to protect his interest in his Property. As a further result of the negligent  
13 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable  
14 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

15 FOURTH CAUSE OF ACTION

16 (False Promise – Against Geraci and ROES 1 through 50)

17 47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above,  
18 as though set forth in full at this point.

19 48. On November 2, 2016, among other things, Geraci falsely promised the  
20 following to Cotton without any intent of fulfilling the promises:

21 (a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable  
22 deposit prior to filing a CUP application;

23 (b) Geraci would cause his attorney to promptly draft the final integrated  
24 agreements to document the agreed-upon deal between the parties;

25 (c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the  
26 monthly profits for the MMCC at the Property if the CUP was granted; and

27 (d) Cotton would be a 10% owner of the MMCC business operating at  
28 Property if the CUP was granted.

49. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016 when he made them.

50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to rely on the false promises and execute the document signed by the parties at their November 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire agreement.

51. Cotton reasonably relied on Geraci's promises.

52. Geraci failed to perform the promises he made on November 2, 2016.

53. Defendants, through their false promises and the actions taken in reliance upon such false promises, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to protect his interest in his Property. As a further result of the false promises, Cotton has been deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

54. The false promises were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages under Civil Code section 3294.

#### FIFTH CAUSE OF ACTION

(Intentional Interference with  
Prospective Economic Relations – Against Geraci and ROES 1 through 50)

55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above, as though set forth in full at this point.

56. Cotton has an ongoing prospective business relationship with the City that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the approval of the CUP application. In addition, Cotton has an ongoing prospective business relationship with the new buyer of the Property that was resulting, and

1 would have resulted, in an economic benefit to Cotton based on and in connection with the sale  
2 of the Property.

3 57. Defendants knew of Cotton's ongoing and prospective business relationship  
4 with the City arising from and related to the CUP Application and defendants knew of Cotton's  
5 ongoing and prospective business relationship with the new buyer for the Property.

6 58. Defendants intentionally engaged in acts designed to interfere, and which have  
7 interfered and are likely to continue to interfere, with Cotton's relationship with the City, the  
8 CUP application, and the new buyer, including without limitation, their refusal to acknowledge  
9 they have no interest in the Property and/or the CUP application.

10 59. As a direct and proximate result of the defendants' conduct, Cotton has suffered  
11 and will continue to suffer damages in an amount not yet fully ascertainable and to be  
12 determined according to proof at trial.

13 60. The aforementioned conduct by defendants was despicable, willful, malicious,  
14 fraudulent, and oppressive conduct which subjected Cotton to cruel and unjust hardship in  
15 conscious disregard of Cotton's rights, so as to justify an award of exemplary and punitive  
16 damages in an amount to be determined according to proof at trial, including pursuant to Civil  
17 Code section 3294.

18 SIXTH CAUSE OF ACTION

19 (Negligent Interference with Prospective  
20 Economic Relations – Against Geraci and ROES 1 through 50)

21 61. Cotton realleges and incorporates by reference paragraphs 1 through 60, above,  
22 as though set forth in full at this point.

23 62. Cotton has an ongoing prospective business relationship with the City that was  
24 resulting, and would have resulted, in an economic benefit to Cotton based on and in  
25 connection with the approval of the CUP application. In addition, Cotton has an ongoing  
26 prospective business relationship with the new buyer of the Property that was resulting, and  
27 would have resulted, in an economic benefit to Cotton based on and in connection with the sale  
28 of the Property.



1           63. Defendants knew or should have known of Cotton's ongoing and prospective  
2 business relationship with the City arising from and related to the CUP Application, and  
3 defendants knew or should have known of Cotton's ongoing and prospective business  
4 relationship with the new buyer for the Property.

5           64. Defendants failed to act with reasonable care when they engaged in acts  
6 designed to interfere, and which have interfered and are likely to continue to interfere, with  
7 Cotton's relationship with the City, the CUP application, and the new buyer, including without  
8 limitation, their refusal to acknowledge they have no interest in the Property and/or the CUP  
9 application.

10          65. As a direct and proximate result of the defendants' conduct, Cotton has suffered  
11 and will continue to suffer damages in an amount not yet fully ascertainable and to be  
12 determined according to proof at trial.

#### 13                               SEVENTH CAUSE OF ACTION

14               (Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

15          66. Cotton realleges and incorporates by reference paragraphs 1 through 65, above,  
16 as though set forth in full at this point.

17          67. An actual controversy has arisen and now exists between Cotton and all  
18 defendants concerning their respective rights, liabilities, obligations and duties with respect to  
19 the Property and the CUP application for the Property filed on or around October 31, 2016.

20          68. A declaration of rights is necessary and appropriate at this time in order for the  
21 parties to ascertain their respective rights, liabilities, and obligations because no adequate  
22 remedy other than as prayed for exists by which the rights of the parties may be ascertained.

23          69. Accordingly, Cotton respectfully requests a judicial declaration of rights,  
24 liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration  
25 that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole  
26 interest-holder in the CUP application for the Property submitted on or around October 31,  
27 2016, (c) defendants have no interest in the CUP application for the Property submitted on or  
28 around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

1 PRAYER FOR RELIEF

2 WHEREFORE, Cotton prays for relief as follows:

3 ON THE FIRST CAUSE OF ACTION:

4 1. For general, special, and consequential damages in an amount not yet fully  
5 ascertained and according to proof at trial, but at least \$40,000; and

6 2. For compensatory and reliance damages in an amount not yet fully ascertained  
7 and according to proof at trial.

8 ON THE SECOND CAUSE OF ACTION

9 1. For general, special, and consequential damages in an amount not yet fully  
10 ascertained but at least \$40,000;

11 2. For compensatory and reliance damages in an amount not yet fully ascertained  
12 and according to proof at trial; and

13 3. For punitive and exemplary damages in an amount just and reasonable to punish  
14 and deter defendants.

15 ON THE THIRD CAUSE OF ACTION

16 1. For general, special, and consequential damages in an amount not yet fully  
17 ascertained but at least \$40,000; and

18 2. For compensatory and reliance damages in an amount not yet fully ascertained  
19 and according to proof at trial.

20 ON THE FOURTH CAUSE OF ACTION

21 1. For general, special, and consequential damages in an amount not yet fully  
22 ascertained but at least \$40,000;

23 2. For compensatory and reliance damages in an amount not yet fully ascertained  
24 and according to proof at trial; and

25 3. For punitive and exemplary damages in an amount just and reasonable to punish  
26 and deter defendants.

27 / / / /

28 / / / /

1 ON THE FIFTH CAUSE OF ACTION

2 1. For general, special, and consequential damages in an amount not yet fully  
3 ascertained but at least \$40,000;

4 2. For compensatory and reliance damages in an amount not yet fully ascertained  
5 and according to proof at trial; and

6 3. For punitive and exemplary damages in an amount just and reasonable to punish  
7 and deter defendants.

8 ON THE SIXTH CAUSE OF ACTION

9 1. For general, special, and consequential damages in an amount not yet fully  
10 ascertained but at least \$40,000; and

11 2. For compensatory and reliance damages in an amount not yet fully ascertained  
12 and according to proof at trial.

13 ON THE SEVENTH CAUSE OF ACTION

14 1. For a judicial declaration that defendants have no right or interest whatsoever in  
15 the Property;

16 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP  
17 application for the Property submitted on or around October 31, 2016, defendants have no right  
18 or interest in said CUP application, and that defendants are enjoined from further pursuing  
19 such CUP application for the Property; and

20 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be  
21 released.

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1 ON ALL CAUSES OF ACTION

2 1. For interest on all sums at the maximum legal rates from dates according to  
3 proof;

4 2. For costs of suit; and

5 3. For such other relief as the Court deems just.

6 DATED: June 30, 2017

Respectfully submitted,

7 FINCH, THORNTON & BAIRD, LLP

8  
9 By: 

10 DAVID S. DEMIAN

ADAM C. WITT

11 Attorneys for Defendant and Cross-Complainant  
12 Darryl Cotton  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**08/25/2017 at 11:44:00 AM**

Clerk of the Superior Court  
By Richard Day, Deputy Clerk

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

SECOND AMENDED CROSS-COMPLAINT  
FOR:

- (1) BREACH OF CONTRACT;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FALSE PROMISE; AND
- (5) DECLARATORY RELIEF.

[IMAGED FILE]

Assigned to:  
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017  
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;  
REBECCA BERRY, an individual; and  
ROES 1 through 50,

Cross-Defendants.

./././././

1 Defendant and cross-complainant Darryl Cotton ("Cotton") alleges as follows:

2 1. Venue is proper in this Court because the events described below took place in  
3 this judicial district and the real property at issue is located in this judicial district.

4 2. Cotton is, and at all times mentioned was, an individual residing within the  
5 County of San Diego, California.

6 3. Cotton was at all times material to this action the sole record owner of the  
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114  
8 ("Property") which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci  
10 ("Geraci") is, and at all times mentioned was, an individual residing within the County of San  
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is,  
13 and at all times mentioned was, an individual residing within the County of San Diego,  
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants  
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed  
17 and believes that ROES 1 through 50 are in some way responsible for the events described in  
18 this Second Amended Cross-Complaint. Cotton will seek leave to amend this Second  
19 Amended Cross-Complaint when the true names and capacities of these cross-defendants have  
20 been ascertained.

21 7. At all times mentioned, each cross-defendant was an agent, principal,  
22 representative, employee, or partner of the other cross-defendants, and acted within the course  
23 and scope of such agency, representation, employment, and/or partnership, and with  
24 permission of the other cross-defendants.

25 / / / / /

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GENERAL ALLEGATIONS

8. 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 of San Diego ("City") for obtaining a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("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.

9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. During these negotiations, Geraci represented to Cotton, among other things, that:

(a) Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;

(b) Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci lobbied with the City to have the zoning issue resolved first;

(c) Geraci, through his personal and professional relationships, was in a unique position to lobby and influence key City political figures to have the zoning issue favorably resolved and obtain approval of the CUP application once submitted; and

(d) Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area.

10. 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 the critical zoning issue was resolved or the application would be summarily rejected by the City.

1           11.     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           12.     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.

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

26           14.     The material terms of the agreement reached by the parties at the November 2,  
27 2016 meeting included, without limitation, the following key deal points:

28     / / / / /

1 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the  
2 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton  
3 immediately upon the parties' execution of final integrated written agreements and the  
4 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the  
5 Property;

6 (b) The parties agreed that the City's approval of a CUP application to  
7 operate a MMCC at the Property would be a condition precedent to closing of the sale (in other  
8 words, the sale of the Property would be completed and title transferred to Geraci only upon  
9 the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of  
10 the purchase price to Cotton; if the City denied the CUP application, the parties agreed the sale  
11 of the Property would be automatically terminated and Cotton would be entitled to retain the  
12 entire \$50,000 non-refundable deposit);

13 (c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the  
14 MMCC that would operate at the Property following the City's approval of the CUP  
15 application; and

16 (d) Geraci agreed that, after the MMCC commenced operations at the  
17 Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and  
18 Geraci would guarantee that such payments would amount to at least \$10,000 per month.

19 15. At Geraci's request, the sale was to be documented in two final written  
20 agreements, a real estate purchase agreement and a separate side agreement, which together  
21 would contain all the agreed-upon terms from the November 2, 2016 meeting. At that meeting,  
22 Geraci also offered to have his attorney "quickly" draft the final integrated agreements and  
23 Cotton agreed.

24 16. Although the parties came to a final agreement on the purchase price and  
25 deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come  
26 up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he  
27 had limited cashflow and would require the cash he did have to fund the lobbying efforts  
28 needed to resolve the zoning issue at the Property and to prepare the CUP application.

1           17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit  
2 but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of  
3 “good-faith,” even though the parties had not reduced their final agreement to writing. Cotton  
4 was understandably concerned that Geraci would file the CUP application before paying the  
5 balance of the non-refundable deposit and Cotton would never receive the remainder of the  
6 non-refundable deposit if the City denied the CUP application before Geraci paid the  
7 remaining \$40,000 (thereby avoiding the parties’ agreement that the \$50,000 non-refundable  
8 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).  
9 Despite his reservations, Cotton agreed to Geraci’s request and accepted the lesser \$10,000  
10 initial deposit amount based upon Geraci’s express promise to pay the \$40,000 balance of the  
11 non-refundable deposit prior to submission of the CUP application, at the latest.

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

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

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

20           Geraci assured Cotton that the document was intended to merely create a record of Cotton’s  
21 receipt of the \$10,000 “good-faith” deposit and provide evidence of the parties’ agreement on  
22 the purchase price and good-faith agreement to enter into final integrated agreement documents  
23 related to the sale of the Property. Geraci emailed Cotton a scanned copy of the executed  
24 document the same day. Following closer review of the executed document, Cotton wrote in  
25 an email to Geraci several hours later (still on the same day):

26           I just noticed the 10% equity position in the dispensary was not language added  
27 into that document. I just want to make sure that we’re not missing that  
28 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.

1 Approximately two hours later, Geraci replied via email, "No no problem at all."

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

9 20. Over the weeks and months that followed, Cotton repeatedly reached out to  
10 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the  
11 non-refundable deposit, and the status of the draft documents. For example, on January 6,  
12 2017, after Cotton became exasperated with Geraci's failure to provide any substantive  
13 updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I  
14 need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine  
15 the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month  
16 I'll try to call you later today still very sick."

17 21. Between January 18, 2017 and February 7, 2017, the following exchange took  
18 place between Geraci and Cotton via text message:

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

20 Cotton: "This resolves the zoning issue?"

21 Geraci: "Yes"

22 Cotton: "Excellent"...

23 Cotton: "How goes it?"

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

25 Cotton: "Whats new?"

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

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

/// / /

/// / /

1 The above communications between Geraci and Cotton regarding the zoning issue conveyed to  
2 Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had  
3 previously represented to Cotton that the CUP application could not be submitted until the  
4 zoning issue was resolved, which was key because Geraci's submission of the CUP application  
5 was the outside date the parties had agreed upon for payment of the \$40,000 balance of the  
6 non-refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he  
7 knew they were untrue as he had already submitted the CUP application months prior.

8 22. With respect to the promised final agreement documents, Geraci continuously  
9 failed to timely deliver the documents as agreed. On February 15, 2017, more than two  
10 months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the  
11 documents with the attorney and hopefully will have them by the end of this week." On  
12 February 22, 2017, Geraci again texted Cotton, "Contract should be ready in a couple days."

13 23. On February 27, 2017, nearly three months after the parties reached an  
14 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase  
15 agreement and stated: "Attached is the draft purchase of the property for 400k. The additional  
16 contract for the 400k should be in today and I will forward it to you as well." However, upon  
17 review, the draft purchase agreement was missing many of the key deal points agreed upon by  
18 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,  
19 Geraci claimed it was simply due to miscommunication with his attorney and promised to have  
20 her revise the agreement to accurately reflect their deal points.

21 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side  
22 agreement that was to incorporate other terms of the parties' deal. Cotton immediately  
23 reviewed the draft side agreement and emailed Geraci the next day stating: "I see that no  
24 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement  
25 completely." Paragraph 3.11 of the draft side agreement stated that the parties had no joint  
26 venture or partnership agreement of any kind, which contradicted the parties' express  
27 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a  
28 condition of the sale of the Property.



1           25.     On or about March 3, 2017, Cotton told Geraci he was considering retaining an  
2 attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci  
3 dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a  
4 misunderstanding with his attorney and that Cotton could speak with her directly regarding any  
5 comments on the drafts.

6           26.     On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement  
7 along with a cover email that stated: "... the 10k a month might be difficult to hit until the  
8 sixth month... can we do 5k, and on the seventh month start 10k?". Cotton, increasingly  
9 frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on  
10 March 16, 2017 in an email which included the following:

11           We started these negotiations 4 months ago and the drafts and our  
12 communications have not reflected what agreed upon and are still far from  
13 reflecting our original agreement. Here is my proposal, please have your  
14 attorney Gina revise the Purchase Agreement and the Side Agreement to  
15 incorporate all the terms we have agreed upon so that we can execute final  
16 versions and get this 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.

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

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

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

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  
7 them resolved. You lied to me, I found out yesterday from the City of San  
8 Diego that you submitted a CUP application on October 31 2016 BEFORE we  
9 even signed our agreement on the 2nd of November... Please confirm by 12:00  
10 PM Monday that you are honoring our agreement and will have final drafts  
11 (reflecting 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 29. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was  
15 terminated and that Geraci no longer had any interest in the Property. Cotton also notified  
16 Geraci that he intended to move forward with a new buyer for the Property.

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

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

27 32. The defendants' refusal to acknowledge they have no interest in the Property  
28 and to step aside from the CUP application has diminished the value of the Property, reduced  
the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and  
attorneys' fees to protect his interest in his Property.

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FIRST CAUSE OF ACTION

(Breach of Contract – Against Geraci and ROES 1 through 50)

33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above, as though set forth in full at this point.

34. Geraci and Cotton entered into an agreement to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting the terms for a purchase and sale of the Property and a side agreement for Cotton to obtain an equity position in the MMCC to operate at the Property. This agreement is comprised of (a) the November 2, 2016 document signed by Geraci and Cotton, and (b) the November 2, 2016 email exchange between Geraci and Cotton including other agreed-upon terms and the parties' agreement to negotiate and collaborate in good faith on final deal documents. True and correct copies of the agreement are attached hereto as Exhibits 1 and 2, respectively.

35. Cotton performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions of the contract between the parties or has been excused from performance.

36. Under the parties' contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable final purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

37. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

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1 SECOND CAUSE OF ACTION

2 (Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

3 38. Cotton realleges and incorporates by reference paragraphs 1 through 37, above,  
4 as though set forth in full at this point.

5 39. Defendants made statements to Cotton that: (a) were false representations of  
6 material facts; (b) defendants knew to be false or were made recklessly and without regard for  
7 their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably  
8 relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and  
9 damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such  
10 fraudulent statements as described in paragraphs 1 through 32 above.

11 40. The intentional misrepresentations by defendants include at least the following:

12 (a) On or about October 31, 2016, Geraci fraudulently induced Cotton to  
13 execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to  
14 show he had access to the Property in connection with his lobbying efforts to resolve the  
15 zoning issue and in connection with the preparation of a CUP application; and (ii) by  
16 indicating the document would only be used as a show of good-faith while the parties  
17 negotiated on the sale terms;

18 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to  
19 execute the document Geraci now alleges is the fully integrated agreement between the parties  
20 by representing that (i) the CUP application would not be filed until the zoning issue was  
21 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at  
22 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000  
23 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci  
24 understood and agreed the document was not intended to be the final agreement between the  
25 parties for the purchase of the Property and did not contain all material terms of the parties'  
26 agreement;

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1 (c) On multiple occasions, Geraci represented to Cotton that a CUP  
2 application for the Property could not be submitted until after the zoning issue was resolved;

3 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not  
4 yet filed a CUP application with respect to the Property when the CUP application had already  
5 been filed; and

6 (e) On multiple occasions, Geraci represented to Cotton that the preliminary  
7 work of preparing a CUP application was merely underway, when, in fact, the CUP application  
8 had already been filed.

9 41. Defendants, through their intentional misrepresentations and the actions taken in  
10 reliance upon such misrepresentations, have diminished the value of the Property, reduced the  
11 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and  
12 attorneys' fees to protect his interest in his Property. As a further result of the intentional  
13 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable  
14 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

15 42. The misrepresentations were intentional, willful, malicious, outrageous,  
16 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent  
17 to deprive Cotton of his interest in the Property. This intentional, willful, malicious,  
18 outrageous and unjustified conduct entitles Cotton to an award of general, compensatory,  
19 special, exemplary and/or punitive damages under Civil Code section 3294.

20 THIRD CAUSE OF ACTION

21 (Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

22 43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above,  
23 as though set forth in full at this point.

24 44. Defendants made statements to Cotton that: (a) were false representations of  
25 material facts; (b) defendants had no reasonable grounds for believing were true when the  
26 statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and  
27 justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in  
28 causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and

proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

45. The negligent misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

(c) On multiple occasions, Geraci represented to Cotton that a CUP application for the Property could not be submitted until after the zoning issue was resolved;

(d) On multiple occasions, Geraci represented to Cotton that Geraci had not yet filed a CUP application with respect to the Property when the CUP application had already been filed; and

(e) On multiple occasions, Geraci represented to Cotton that the preliminary work of preparing a CUP application was merely underway, when, in fact, the CUP application had already been filed.

46. Defendants, through their negligent misrepresentations and the actions taken in reliance upon such misrepresentations, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and

1 attorneys' fees to protect his interest in his Property. As a further result of the negligent  
2 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable  
3 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

4 FOURTH CAUSE OF ACTION

5 (False Promise – Against Geraci and ROES 1 through 50)

6 47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above,  
7 as though set forth in full at this point.

8 48. On November 2, 2016, among other things, Geraci falsely promised the  
9 following to Cotton without any intent of fulfilling the promises:

10 (a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable  
11 deposit prior to filing a CUP application;

12 (b) Geraci would cause his attorney to promptly draft the final integrated  
13 agreements to document the agreed-upon deal between the parties;

14 (c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the  
15 monthly profits for the MMCC at the Property if the CUP was granted; and

16 (d) Cotton would be a 10% owner of the MMCC business operating at  
17 Property if the CUP was granted.

18 49. Geraci had no intent to perform the promises he made to Cotton on November  
19 2, 2016 when he made them.

20 50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton  
21 to rely on the false promises and execute the document signed by the parties at their November  
22 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the  
23 parties' entire agreement.

24 51. Cotton reasonably relied on Geraci's promises.

25 52. Geraci failed to perform the promises he made on November 2, 2016.

26 53. Defendants, through their false promises and the actions taken in reliance upon  
27 such false promises, have diminished the value of the Property, reduced the price Cotton will  
28 be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to

1 protect his interest in his Property. As a further result of the false promises, Cotton has been  
2 deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay  
3 prior to filing a CUP application for the Property.

4 54. The false promises were intentional, willful, malicious, outrageous, unjustified,  
5 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive  
6 Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and  
7 unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary  
8 and/or punitive damages under Civil Code section 3294.

9 FIFTH CAUSE OF ACTION

10 (Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

11 55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above,  
12 as though set forth in full at this point.

13 56. An actual controversy has arisen and now exists between Cotton and all  
14 defendants concerning their respective rights, liabilities, obligations and duties with respect to  
15 the Property and the CUP application for the Property filed on or around October 31, 2016.

16 57. A declaration of rights is necessary and appropriate at this time in order for the  
17 parties to ascertain their respective rights, liabilities, and obligations because no adequate  
18 remedy other than as prayed for exists by which the rights of the parties may be ascertained.

19 58. Accordingly, Cotton respectfully requests a judicial declaration of rights,  
20 liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration  
21 that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole  
22 interest-holder in the CUP application for the Property submitted on or around October 31,  
23 2016, (c) defendants have no interest in the CUP application for the Property submitted on or  
24 around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

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1 ON THE FIFTH CAUSE OF ACTION

2 1. For a judicial declaration that defendants have no right or interest whatsoever in  
3 the Property;

4 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP  
5 application for the Property submitted on or around October 31, 2016, defendants have no right  
6 or interest in said CUP application, and that defendants are enjoined from further pursuing  
7 such CUP application for the Property; and

8 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be  
9 released.

10 ON ALL CAUSES OF ACTION

11 1. For interest on all sums at the maximum legal rates from dates according to  
12 proof;

13 2. For costs of suit; and

14 3. For such other relief as the Court deems just.

15 DATED: August 25, 2017

Respectfully submitted,

16 FINCH, THORNTON & BAIRD, LLP

17  
18 By: 

DAVID S. DEMIAN  
ADAM C. WITT

Attorneys for Defendant and Cross-Complainant  
Darryl Cotton

21  
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26  
27 2403.004/3BQ6279.hkr

EXHIBIT 1

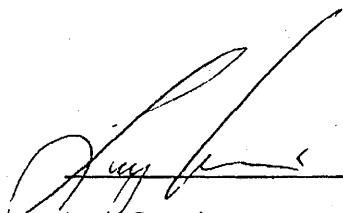

0334

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, 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.

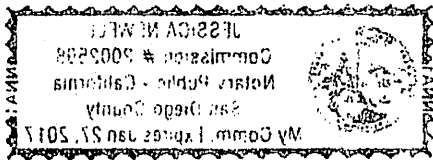
WITNESS my hand and official seal.

Signature

Jessica Newell

(Seal)









Darryl Cotton &lt;indagrodarryl@gmail.com&gt;

---

**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:

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



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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.dalbercia

6176 Federal Blvd.  
San Diego, CA. 92114  
USA

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

[Quoted text hidden]

1 DAVID S. DEMIAN, SBN 220626  
E-MAIL: ddemian@ftblaw.com  
2 ADAM C. WITT, SBN 271502  
E-MAIL: awitt@ftblaw.com

3 **FINCH, THORNTON & BAIRD, LLP**

4 ATTORNEYS AT LAW  
4747 EXECUTIVE DRIVE - SUITE 700  
SAN DIEGO, CALIFORNIA 92121-3107  
5 TELEPHONE: (858) 737-3100  
FACSIMILE: (858) 737-3101

6  
7 Attorneys for Defendant and Cross-Complainant Darryl Cotton

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO

10 CENTRAL DIVISION

11 LARRY GERACI, an individual,

12 Plaintiff,

13 v.

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

15 Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

Assigned to:  
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017  
Trial Date: Not Set

16  
17 DARRYL COTTON, an individual,

18 Cross-Complainant

19 v.

20 LARRY GERACI, an individual;  
REBECCA BERRY, an individual; and  
ROES 1 through 50,

21 Cross-Defendants.  
22

23 I, Heidi Runge, declare that:

24 I am over the age of eighteen years and not a party to the action; I am employed in the  
25 County of San Diego, California, where the mailing occurred; and my business address is 4747  
26 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am  
27 readily familiar with the business' practice for collection and processing of correspondence for  
28 mailing with the United States Postal Service pursuant to which practice the correspondence

1 will be deposited with the United States Postal Service this same day in the ordinary course of  
2 business. I caused to be served the following document(s): SECOND AMENDED CROSS-  
3 COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as  
4 follows:

5 Michael R. Weinstein, Esq.  
6 Scott H. Toothacre, Esq.  
7 Ferris & Britton  
8 A Professional Corporation  
9 501 West Broadway, Suite 1450  
10 San Diego, California 92101  
11 Telephone: (619) 233-3131  
12 Facsimile: (619) 232-9316  
13 Email: mweinstein@ferrisbritton.com  
14 stoothacre@ferrisbritton.com

ATTORNEYS FOR PLAINTIFF AND  
CROSS-DEFENDANT LARRY GERACI

11 Michael R. Weinstein, Esq.  
12 Scott H. Toothacre, Esq.  
13 Ferris & Britton  
14 A Professional Corporation  
15 501 West Broadway, Suite 1450  
16 San Diego, California 92101  
17 Telephone: (619) 233-3131  
18 Facsimile: (619) 232-9316  
19 Email: mweinstein@ferrisbritton.com  
20 stoothacre@ferrisbritton.com

ATTORNEYS FOR CROSS-DEFENDANT  
REBECCA BERRY

21 I then sealed the envelope(s) and, with the postage thereon fully prepaid, either  
22 deposited it/each in the United States Postal Service or placed it/each for collection and  
23 mailing on August 25, 2017, at San Diego, California, following ordinary business practices.

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

26 Executed on August 25, 2017.

27   
28 Heidi Runge

2403.004/Proof.hr

# Exhibit 3

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

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

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**06/21/2019** at 03:16:00 PM

Clerk of the Superior Court  
By Treva Cutts, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1  
THROUGH 10, INCLUSIVE,

Cross-Defendants

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

Judge: Hon. Joel R. Wohlfeil  
Dept.: C-73

**PLAINTIFF/CROSS-DEFENDANTS'  
NOTICE OF MOTION AND MOTION IN  
LIMINE TO EXCLUDE TESTIMONY  
THAT MR. GERACI'S PRIOR  
SETTLEMENT AGREEMENTS BAR HIM  
FROM OBTAINING A CUP OR OWNING  
A BUSINESS OPERATING A  
DIPENSARY PURSUANT TO A CUP**

**[MIL NO. 9 OF 15]**

**[IMAGED FILE]**

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

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**


**PLEASE TAKE NOTICE** that on June 28, 2019 at 8:30 a.m. or as soon thereafter as the  
matter may be heard in Department C-73 of the San Diego Superior Court, located at 330 West  
Broadway, San Diego, California, Plaintiff/Cross-Defendant, LARRY GERACI, and Cross-  
Defendant, REBECCA BERRY, will move *in limine* pursuant to Evid. Code §§ 210, 350, 352, 703,  
1101(a) and 1200 et seq., for an order excluding any evidence, examination, argument or other

1 reference to Mr. Cotton and Mr. Hurtado's allegations that Mr. Geraci's prior settlement agreements  
2 bar him from obtaining a CUP or owning a business operating a dispensary pursuant to a CUP.

3 This motion will be based on this Notice of Motion, the Memorandum of Points and  
4 Authorities, and Notice of Lodgment served and filed herewith, on the records and file herein, and  
5 on such evidence as may be presented at the hearing of this motion.

6  
7 FERRIS & BRITTON  
A Professional Corporation

8  
9 Dated: June 21, 2019

10 By:   
Michael R. Weinstein  
Scott H. Toothacre  
11 Attorney for Plaintiff and Cross-Defendant LARRY  
12 GERACI and Cross-Defendant REBECCA BERRY  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As acknowledged by Mr. Cotton in multiple pleadings throughout this case, this is a simple  
4 breach of contract case. Yet Mr. Cotton seeks to raise collateral issues that are irrelevant to the  
5 resolution of the claims and are instead directed at falsely impugning the credibility of Mr. Geraci  
6 in order to prejudice him.

7 As it relates to this motion, it has been the theory of Mr. Cotton (and his litigation investor  
8 Mr. Hurtado) that Mr. Geraci is precluded from obtaining a CUP and that therefore Rebecca Berry  
9 acting as Mr. Geraci's agent in applying for the CUP was somehow illegal. In that regard, Mr.  
10 Cotton's counsel added item 40 to the Legal Issues in Dispute in the Trial Readiness Conference  
11 Report, which states: "40. Whether pursuant to state and city regulations, Mr. Geraci's prior  
12 settlement agreements with the City of San Diego bar him from having an ownership interest in a  
13 business operated pursuant to a marijuana outlet CUP."

14 Mr. Cotton incorrectly asserts that Mr. Geraci's prior settlement agreements with the City of  
15 San Diego bar him from obtaining a CUP or owning a business operating a dispensary pursuant to  
16 a CUP. This assertion is false and inflammatory. The court records in those actions demonstrate that Mr.  
17 Geraci, like Mr. Cotton, has been named in actions in which he was a landlord subjected to injunctive  
18 relief because a tenant operated an unpermitted medical marijuana dispensary. However, nothing in those  
19 orders preclude Mr. Geraci from obtaining a CUP or operating a dispensary that is properly permitted.  
20 In fact, the stipulated orders/judgments in those cases expressly provide that Mr. Geraci is not precluded  
21 from maintaining and operating a dispensary upon obtaining the necessary CUP. (See Court Orders, true  
22 and correct copies of which are attached as Exhibit 14 to NOL.) In fact those settlement agreements  
23 demonstrate that Mr. Geraci is permitted to maintain and operate a marijuana dispensary upon obtaining  
24 a CUP. (Exhibit 14 to NOL.)

25 **II. LEGAL ARGUMENT**

26 **A. The Court May Exclude Prejudicial Evidence in Advance of Trial by way of an**  
27 **In Limine Motion.**

28 The court has the inherent power to grant a motion in limine to exclude "any kind of evidence

1 which could be objected to at trial, either as irrelevant or subject to discretionary exclusion as unduly  
2 prejudicial.” (*Clemens v. American Warranty Corp.* (1987) 193 Cal.App.3d 444; *Peat, Marwick,*  
3 *Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 288).

4 **B. Mr. Cotton and Mr. Hurtado’s Allegations Regarding the Prior Settlement**  
5 **Agreements is Inadmissible Hearsay – Evidence Code § 1200**

6 Evidence Code § 1200(a) provides: “Hearsay evidence” is evidence of a statement that was  
7 made other than by a witness while testifying at the hearing and that is offered to prove the truth of  
8 the matter stated.” “Except as provided by law, hearsay evidence is inadmissible.” (Evidence Code  
9 § 1200(b).) Mr. Cotton and Mr. Hurtado’s “knowledge” regarding Mr. Geraci’s prior settlement  
10 agreements bar him from obtaining a CUP or owning a business operating a dispensary has to have  
11 been obtained via hearsay statements. Not only is this inadmissible hearsay, it is false as shown by  
12 the Court orders attached as Exhibit 14 to the NOL.

13 **C. The Evidence is Not Made on Personal Knowledge – Evidence Code § 703**

14 Pursuant to Evidence Code Section 703, the testimony of a witness concerning a particular  
15 matter is inadmissible unless he has personal knowledge of the matter. Here, neither Mr. Hurtado  
16 nor Mr. Cotton have personal knowledge that Mr. Geraci’s prior settlement agreements bar him  
17 from obtaining a CUP or owning a business operating a dispensary pursuant to a CUP. Not having  
18 personal knowledge of the event, neither Mr. Cotton nor Mr. Hurtado may offer testimony on this  
19 issue.

20 **D. This Evidence Should Be Excluded as Impeachment on a Collateral Matter**

21 “[C]ollateral matters are admissible for impeachment purposes ....” (*People v. Lavergne*  
22 (1971) 4 Cal.3d 735, 742.) However, “the collateral character of the evidence reduces its probative  
23 value.” (*Ibid.*) Therefore, when a party seeks to impeach a witness on a collateral matter, a trial court  
24 must determine whether the probative value of the evidence is substantially outweighed by the  
25 likelihood that its admission will necessitate undue consumption of time or create substantial danger  
26 of undue prejudice, of confusing the issues or of misleading the jury. (Evid. Code, § 352.) Mr.  
27 Cotton has not taken Mr. Geraci’s deposition and therefore has not investigated the truth or falsity  
28 of his theory, which is demonstrably false. The time for discovery has come and gone. Mr. Cotton



1 should not be permitted to go on a fishing expedition regarding potentially harmful inadmissible  
2 character evidence in the presence of the jury.

3 Moreover, it is improper to elicit otherwise irrelevant testimony on cross-examination merely  
4 for the purpose of contradicting it. (*Lavergne, supra*, 4 Cal.3d at p. 744 [“A party may not cross-  
5 examine a witness upon collateral matters for the purpose of eliciting something to be  
6 contradicted.”].) Thus, Mr. Cotton may not during cross-examination ask Mr. Geraci questions  
7 regarding his theory that Mr. Geraci’s prior settlement agreements bar him from obtaining a CUP  
8 or owning or operating a dispensary pursuant to a CUP.

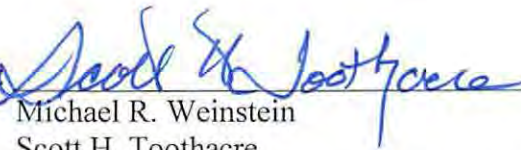
9 Admission of these collateral issues will only confuse the jury and would lead them down a  
10 rabbit hole that has nothing whatsoever to do with this case. As such, the evidence should be  
11 excluded pursuant to Evidence Code § 352.

12 **III. CONCLUSION**

13 For all the foregoing reasons, Mr. Geraci asks this Court to issue an order in limine excluding  
14 any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado’s allegations  
15 that Mr. Geraci’s prior settlement agreements bar him from obtaining a CUP or owning a business  
16 operating a dispensary pursuant to a CUP, and further, that Mr. Cotton, Attorney Jacob Austin and  
17 all attorneys and witnesses be cautioned not to refer to these allegations.

18  
19 FERRIS & BRITTON  
A Professional Corporation

20  
21 Dated: June 21, 2019

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

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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 LARRY GERACI, an individual,

11 Plaintiff,

12 v.

13 DARRYL COTTON, an individual; and DOES 1  
14 through 10, inclusive,

15 Defendants.

16 DARRYL COTTON, an individual,

17 Cross-Complainant,

18 v.

19 LARRY GERACI, an individual, REBECCA  
20 BERRY, an individual, and DOES 1  
21 THROUGH 10, INCLUSIVE,

22 Cross-Defendants  
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Case No. 37-2017-00010073-CU-BC-CTL

Judge:

Hon. Joel R. Wohlfeil

Dept.:

C-73

**ORDER [PROPOSED]  
RE PLAINTIFF/CROSS-DEFENDANTS'  
MOTION IN LIMINE NO. 9 OF 15 TO  
EXCLUDE TESTIMONY THAT MR.  
GERACI'S PRIOR SETTLEMENT  
AGREEMENTS BAR HIM FROM  
OBTAINING A CUP OR OWNING A  
BUSINES OPERATING A DIPSENSARY  
PURSUANT TO A CUP**

**[MIL NO. 9 OF 15]**

**[IMAGED FILE]**

Complaint Filed:

March 21, 2017

Trial Date:

June 28, 2019

1 After considering all moving, opposition and reply papers, as well as the oral argument of counsel,  
2 **IT IS HEREBY ORDERED THAT** Plaintiff/Cross-Defendants' Motion in Limine No. 9 of 15 is  
3 [GRANTED/GRANTED WITHOUT PREJUDICE/DENIED/DENIED WITHOUT PREJUDICE].  
4 [Any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado's  
5 allegations that Mr. Geraci's prior settlement agreements bar him from obtaining a CUP or owning  
6 a business operating a dispensary pursuant to a CUP is precluded, and all counsel are ordered to  
7 advise their clients and witnesses of the Court's Order.]

8  
9 Dated: July \_\_, 2019

\_\_\_\_\_  
10 HON. JOEL R. WOHLFEIL  
Judge of the San Diego County Superior Court

# Exhibit 4

Jacob P. Austin [SBN 290303]  
The Law Office of Jacob Austin  
P.O. Box 231189  
San Diego, CA 92193  
Telephone: (619) 357-6850  
Facsimile: (888) 357-8501  
E-mail: [JPA@JacobAustinEsq.com](mailto:JPA@JacobAustinEsq.com)

Attorney for Defendant/Cross-Complainant DARRYL COTTON

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

LARRY GERACI, an individual,  
Plaintiff,

vs.

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

AND RELATED CROSS-ACTION.

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

**DEFENDANT/CROSS-COMPLAINANT  
DARRYL COTTON'S OPPOSITION TO  
PLAINTIFF/CROSS-DEFENDANT'S MOTION  
IN LIMINE NO. 6 TO EXCLUDE TESTIMONY  
THAT GERACI WAS SOMEHOW BEHIND AN  
ARMED ROBBERY OF MR. COTTON AND  
HIS EMPLOYEES**

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 testimony that Geraci was somehow behind an armed robbery of Mr. Cotton and his employees.

**INTRODUCTION**

Plaintiff/Cross-defendants seeks to exclude testimony that Geraci was somehow behind an armed robbery of Mr. Cotton and his employees.

Plaintiff/Cross-defendant's motion should be denied because it is circumstantial evidence of a

1 conspiracy/anti-trust enterprise.

## 3 ARGUMENT

### 4 I. COTTON HAS CONSISTENTLY ARGUED THAT ON INFORMATION 5 AND BELIEF, THE GET AWAY DRIVER ON THE DAY OF THE ROBBERY 6 HE RECOGNIZED AS SOMEONE HE HAD PRVIOUSLY SEEN AT GERACI'S OFFICE, THESE FACTS ARE RELEVANT TO COTTON'S A CONSPIRACY/ANTI-TRUST DEFENSE.

7 If Mr. Cotton is correct, that a conspiracy exists, he will only be able to prove such with  
8 circumstantial evidence. It is well established that a civil conspiracy can be inferred from evidence  
9 showing a course of conduct on the part of the defendants "teeming with fraudulent representations and  
10 replete with intrigue, deception and duplicity." Anderson v. Thacher, 76 Cal. App. 2d 50, 73.

11 Additionally, a plaintiff need not produce evidence showing that the defendants met and actually  
12 agreed to undertake the performance of the unlawful act (Black v. Sullivan (1975) 48 Cal. App. 3d 557,  
13 567). Because of the inherent difficulty in proving a conspiracy, a conspiracy may sometimes be inferred  
14 from the nature of the acts done, the relations of the parties, the interests of the alleged conspirators, and  
15 other circumstances (Chicago Title Ins. Co. v. Great W. Fin. Corp. (1968) 69 Cal. 2d 305, 316; Black  
16 v. Sullivan (1975) 48 Cal. App. 3d 557, 566-567)

17 A civil conspiracy can be inferred from evidence showing a course of conduct on the part of the  
18 defendants "teeming with fraudulent representations and replete with intrigue, deception and  
19 duplicity." Anderson v. Thacher, 76 Cal. App. 2d 50, 73.

20 Here we have highly contentions litigation involving the marijuana industry. Cotton notes that  
21 recently a high net worth individual named Salam Razuki attempted to have his partner in a marijuana  
22 business, Ninas Malan, murdered because he was losing too much money in a contention legal batter  
23 with him over ownership rights in several marijuana dispensaries. Mr. Razuki is currently facing  
24 federal charges here in San Diego stemming from his attempt to hire a hit man to deal with his partner,  
25 luckily for Mr. Malan the hit man Mr. Razuki was seeking was a undercover agent with the FBI.

26 Geraci now is attempting to exclude all of the circumstantial evidence which proves the  
27 conspiracy. In fact, the vast majority of his motions in limine attempt to do just that, however when  
28 this evidence is taking as a whole the case for an affirmative defense of conspiracy/anti-trust enterprise

1 are proven.

2 **CONCLUSION**

3 For the foregoing reasons, the Court should deny Plaintiff/Cross-defendant's motion in limine  
4 to exclude testimony that Geraci had a part to play in an armed robbery of Mr. Cotton and his employees.

5 DATED: June 26, 2019

6 Respectfully submitted,

7  
8 

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Jacob Austin  
9 Attorney for Defendant/Cross-  
10 Complainant  
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3 DATED: June 26, 2019  
4  
5

Respectfully submitted,

6  
7 Jacob Austin  
Attorney for Defendant/Cross-  
Complainant  
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# Exhibit 5

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 07/01/2019

TIME: 01:30:00 PM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017

CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

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**EVENT TYPE:** Civil Jury Trial

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**APPEARANCES**

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Scott H Toothacre, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Jacob Austin, counsel, present for Defendant, Cross - Complainant, Appellant(s).

Darryl Cotton, Defendant is present.

Larry Geraci, Plaintiff is present.

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1:31 p.m. This being the time set for Jury Trial in the above-entitled cause, having been trailed in this department, all parties and counsel appear as noted above and trial commences.

The Court hears argument by counsel on the filed Motions in Limine.

**Defendant DARRYL COTTON's Motion:**

No. 1 (# 551) – To exclude Plaintiff from offering in evidence, examination, argument or other reference to an alleged phone call in which Defendant disavows his alleged 10% equity interest in the marijuana business "Geraci's November 3rd Factual Allegations" – **DENIED.**

**Plaintiff LARRY GERACI's Motions:**

No. 1 (# 555) – To exclude Defendant's lawsuit filed in the USDC Case No. 3:18-cv-00325-GPC-MDD, and Defendant and Joe Hurtado's lawsuit filed in the USDC Case No. 3:18-cv-02751-GPC-MDD – **GRANTED.**

No. 2 (# 556) – To preclude any evidence, examination or reference to Darryl Cotton, Jacob Austin, or Joe Hurtado's personal attacks against Michael R. Weinstein, Scott H. Toothacre and Attorney Gina

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Austin – **DENIED.**

No. 3 (# 557) – To preclude any evidence, examination argument or any other reference to Cotton's and Hurtado's allegations that the Court is biased – **GRANTED.**

No. 4 (# 558) – To preclude any evidence, examination, argument or other reference to Cotton's, Hurtado's and Attorney Jacob Austin's allegations that Mr. Geraci's case is frivolous and / or a malicious prosecution case, or was otherwise filed pursuant to a fraudulent scheme to acquire an MMCC business – **DENIED.**

No. 5 (# 559) – To preclude any evidence or reference to Corina Young's alleged conversation with Jim Bartell and any reference to Corina Young allegedly relaying the context of that conversation to Daryl Cotton, Jacob Austin, or Joe Hurtado and / or any evidence or argument concerning Mr. Cotton 's conspiracy theory – **DENIED.** Counsel directed to stay away from the word conspiracy.

No. 6 (# 560) – To exclude any and all evidence, examination, argument or other reference to allegations that Mr. Geraci was somehow behind a burglary of his 151 farms on June 10, 2017 – **GRANTED.**

No. 7 (# 561) – To preclude any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado's allegations that Mr. Geraci is somehow connected to Sean Miller, Logan Stulmacher and an individual known only as Duane, individuals whom they allege threatened Mr. Cotton and Mr. Hurtado to force a settlement of the instant action – **GRANTED.**

No. 8 (# 562) – To preclude any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado's allegations that Mr. Geraci "screwed some other guy, and the guy committed suicide and shot himself because he lost his life savings and everything" – **GRANTED.**

No. 9 (# 563) – To exclude any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado' s allegations that Mr. Geraci's prior settlement agreements bar him from obtaining a CUP or owning a business operating a dispensary pursuant to a CUP – **DEFERRED.** Counsel to stay away from prior settlement agreements. Defendant to lodge with Court any settlement agreement with the City by tomorrow.

No. 10 (# 564) – To preclude any evidence, examination, argument or other reference to Mr. Cotton and Mr. Hurtado's allegations that Mr. Bartell sexually harassed his former employee Bianca Martinez – **GRANTED.**

No. 11 (# 565) – To preclude any evidence, examination or reference to Cotton's and Hurtado's financial conditions allegedly resulting from this litigation – **GRANTED.**

No. 12 (# 566) – To preclude any evidence, examination, argument or other reference to an alleged Venture Agreement or JVA between Geraci and Cotton – **DENIED.**

No. 13 (# 567) – To preclude any evidence, examination or reference to Mr. Cotton's alleged heart attack and / or TIA and / or Mr. Cotton's alleged ongoing physical, mental and psychological damage which he attributes to the litigation – **GRANTED.**

No. 14 (# 568) – To preclude any evidence, examination, argument or other reference to Mr. Cotton and

Mr. Hurtado's lay opinions regarding the CUP process – **DENIED**. Lay opinion may be admissible. CACI 223.

No. 15 (# 569) – To preclude any evidence, examination or reference to Mr. Cotton's allegations that Mr. Geraci and Mr. Magagna conspired to have a competing CUP application approved and the allegation that Mr. Magagna threatened a witness on Mr. Geraci's behalf such that she refuses to testify in this matter – **DEFERRED**.

Defense counsel makes a motion to amend answer to add Anti-Trust Enterprise defense for conspiracy. Court hears oral argument. The motion to amend answer is denied.

Defense counsel makes a motion that the Court issue an order against Natalie Nguyen and Corina Young. The motion is denied.

3:00 p.m. Court is in recess.

3:15 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above.

The Court intends to pre-instruct on the following CACI jury instructions: 100, 101, 102, 106, 107, 111, 113, 114, 116, 200, 303, Special #1, 325, 335, 336, 1900, 1902 and 1903.

The Court explains departmental procedure with counsel.

Counsel will give mini opening statements.

Plaintiff makes a motion to exclude witnesses Natalie Nguyen and Bianca Martinez. The Court hears argument. The motion to exclude Natalie Nguyen as a lawyer is granted. The motion to exclude Bianca Martinez is denied.

Court will have the clerk email the jury instructions to counsel to review this evening.

3:55 p.m. Court is adjourned until 07/02/2019 at 09:00AM in Department 73.

# Exhibit 6

ORIGINAL

FILED  
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,  
Plaintiff,

v.

DARRYL COTTON,  
Defendant.

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

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

DARRYL COTTON,  
Cross-Complainant,

v.

LARRY GERACI,  
Cross-Defendant.

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

Breach of Contract

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

1  
2 ☒ Yes ☐ No

3  
4 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer  
5 no further questions, and have the presiding juror sign and date this form.

6  
7 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him  
8 to do?

9  
10 ☐ Yes ☒ No

11  
12 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your  
13 answer to question 2 is no, answer question 3.

14  
15 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that  
16 the contract required him to do?

17  
18 ☒ Yes ☐ No

19  
20 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer  
21 no further questions, and have the presiding juror sign and date this form.

22  
23 4. Did all the condition(s) that were required for Defendant's performance occur?

24  
25 ☐ Yes ☒ No

26  
27 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your  
28 answer to question 4 is no, answer question 5.

1  
2 5. Was the required condition(s) that did not occur excused?

3  
4 ☒ Yes ☐ No

5  
6 If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no,  
7 answer no further questions, and have the presiding juror sign and date this form.

8  
9 6. Did Defendant fail to do something that the contract required him to do?

10  
11 ☒ Yes ☐ No

12  
13 or

14  
15 Did Defendant do something that the contract prohibited him from doing?

16  
17 ☒ Yes ☐ No

18  
19 If your answer to either option for question 6 is yes, answer question 7. If your answer to both  
20 options is no, do not answer question 7 and answer question 8.

21  
22 7. Was Plaintiff harmed by Defendant's breach of contract?

23  
24 ☒ Yes ☐ No

25  
26 If your answer to questions 4 or 5 is yes, please answer question 8.

27  
28 **Breach of the Implied Covenant of Good Faith and Fair Dealing**



1  
2 8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

3  
4 ☒ Yes ☐ No

5  
6 If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but  
7 your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to  
8 questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date  
9 this form.

10  
11 9. Was Plaintiff harmed by Defendant's interference?

12  
13 ☒ Yes ☐ No

14  
15 If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but  
16 your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes,  
17 answer no further questions, and have the presiding juror sign and date this form.

18  
19 10. What are Plaintiff's damages?

20  
21 \$ 260,109.28

22  
23 Dated: 7/16/19

24 Signed: [Signature]  
Presiding Juror

25  
26 After all verdict forms have been signed, notify the bailiff that you are ready to present your  
27 verdict in the courtroom.

ORIGINAL

FILED  
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,  
Plaintiff,

v.

DARRYL COTTON,  
Defendant.

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

Judge: Hon. Joel R. Wohlfeil

**SPECIAL VERDICT FORM NO. 2**

DARRYL COTTON,  
Cross-Complainant,

v.

LARRY GERACI,  
Cross-Defendant.

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

**Breach of Contract**

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

3  
4 ☐ Yes ☒ No

5  
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not  
7 answer questions 2 – 7 and answer question 8.

8  
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract  
10 required him to do?

11  
12 ☐ Yes ☐ No

13  
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your  
15 answer to question 2 is no, answer question 3.

16  
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant  
18 things that the contract required him to do?

19  
20 ☐ Yes ☐ No

21  
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not  
23 answer questions 4 – 7 and answer question 8.

24  
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26  
27 ☐ Yes ☐ No

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your  
2 answer to question 4 is no, answer question 5.

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

5  
6 ☐ Yes ☐ No  
7

8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not  
9 answer questions 6 – 7 and answer question 8.

10  
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12  
13 ☐ Yes ☐ No  
14

15 or

16  
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18  
19 ☐ Yes ☐ No  
20

21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both  
22 options is no, do not answer question 7 and answer question 8.

23  
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

25  
26 ☐ Yes ☐ No  
27

28 Please answer question 8.

1  
2 **Fraud - Intentional Misrepresentation**

3  
4 8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

5  
6 ☐ Yes ☒ No

7  
8 If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not  
9 answer questions 9 – 12 and answer question 13.

10  
11 9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make  
12 the representation recklessly and without regard for its truth?

13  
14 ☐ Yes ☐ No

15  
16 If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do  
17 not answer questions 10 – 12 and answer question 13.

18  
19 10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

20  
21 ☐ Yes ☐ No

22  
23 If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do  
24 not answer questions 11 – 12 and answer question 13.

25  
26 11. Did Cross-Complainant reasonably rely on the representation?

27  
28 ☐ Yes ☐ No

1  
2 If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do  
3 not answer question 12 and answer question 13.  
4

5 12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor  
6 in causing harm to Cross-Complainant?  
7

8 ☐ Yes ☐ No  
9

10 Please answer question 13.  
11

12 **Fraud - False Promise**  
13

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

17 ☐ Yes ☒ No  
18

19 If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do  
20 not answer questions 14 – 18 and answer question 19.  
21

22 14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?  
23

24 ☐ Yes ☐ No  
25

26 If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do  
27 not answer questions 15 – 18 and answer question 19.  
28

1 15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

2  
3 \_\_\_\_ Yes \_\_\_\_ No  
4

5 If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do  
6 not answer questions 16 – 18 and answer question 19.  
7

8 16. Did Cross-Complainant reasonably rely on this promise?

9  
10 \_\_\_\_ Yes \_\_\_\_ No  
11

12 If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do  
13 not answer questions 17 – 18 and answer question 19.  
14

15 17. Did Cross-Defendant perform the promised act?

16  
17 \_\_\_\_ Yes \_\_\_\_ No  
18

19 If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do  
20 not answer question 18 and answer question 19.  
21

22 18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in  
23 causing harm to Cross-Complainant?  
24

25 \_\_\_\_ Yes \_\_\_\_ No  
26

27 Please answer question 19.  
28

1 **Fraud - Negligent Misrepresentation**

2  
3 19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

4  
5 ☐ Yes ☒ No

6  
7 If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do  
8 not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If  
9 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding  
10 juror sign and date this form.

11  
12 20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant  
13 made it?

14  
15 ☐ Yes ☐ No

16  
17 If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do  
18 not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If  
19 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding  
20 juror sign and date this form.

21  
22 21. Did Cross-Defendant have reasonable grounds for believing the representation was true when  
23 Cross-Defendant made it?

24  
25 ☐ Yes ☐ No

26  
27 If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do  
28 not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If



1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding  
2 juror sign and date this form.

3  
4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5  
6 ☐ Yes ☐ No  
7

8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do  
9 not answer questions 23 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If  
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding  
11 juror sign and date this form.

12  
13 23. Did Cross-Complainant reasonably rely on the representation?

14  
15 ☐ Yes ☐ No  
16

17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do  
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your  
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror  
20 sign and date this form.

21  
22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor  
23 in causing harm to Cross-Complainant?

24  
25 ☐ Yes ☐ No  
26

1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but  
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and  
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

4  
5 25. What are Cross-Complainant's damages?

6  
7 \$ \_\_\_\_\_  
8  
9

10  
11 Dated: 7/16/19

Signed:   
Presiding Juror

12  
13 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in  
14 the courtroom.  
15  
16  
17  
18  
19  
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21  
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26  
27  
28

# Exhibit *7*

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**08/19/2019 at 11:53:00 AM**  
Clerk of the Superior Court  
By Jessica Pascual, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1  
THROUGH 10, INCLUSIVE,

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil  
Dept.: C-73

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

**[IMAGED FILE]**

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

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

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

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

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

12 **SPECIAL VERDICT FORM NO. 1**

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

15  
16 **Breach of Contract**

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

20 Answer: YES

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

24 Answer: NO

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

28 Answer: YES

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

2 Answer: NO

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

5 Answer: YES

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

8 Answer: YES

9 or

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

11 Answer: YES

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

14 Answer: YES

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

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

19 Answer: YES

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

22 Answer: YES

23  
24 10. What are Plaintiffs damages?

25 Answer: \$ 260,109.28

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

28 ///

1 **SPECIAL VERDICT FORM NO. 2**

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

4 **Breach of Contract**

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

8 Answer: NO

9  
10 **Fraud - Intentional Misrepresentation**

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

13 Answer: NO

14  
15 **Fraud - False Promise**

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

19 Answer: NO

20  
21 **Fraud - Negligent Misrepresentation**

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

24 Answer: NO

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

28 ///

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

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

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

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

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

11  
12 **IT IS SO ORDERED.**

13  
14 Dated: 8-19, 2019



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

17 Judge Joel R. Wohlfeil  
18  
19  
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28



# **EXHIBIT A**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 07/03/2019

TIME: 09:00:00 AM

DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Margaret Smith CSR# 9733

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017

CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

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**EVENT TYPE:** Civil Jury Trial

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**APPEARANCES**

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Scott H Toothacre, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Jacob Austin, counsel, present for Defendant, Cross - Complainant, Appellant(s).

Darryl Cotton, Defendant is present.

Larry Geraci, Plaintiff is present.

Rebecca Berry, Cross - Defendant is present.

---

8:55 a.m. This being the time previously set for further Jury trial in the above entitled cause, having been continued from July 2, 2019, all parties and counsel appear as noted above and court convenes. The jurors are not present.

Outside the presence of the jury, Court and counsel discuss exhibits.

9:01 a.m. Court is in recess.

9:03 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are present except for juror no. 4.

An unreported sidebar conference is held. (6 minutes) Juror no. 4 arrives.

9:09 a.m. Attorney Weinstein presents opening statement on behalf of Plaintiff/Cross-Defendant Larry Geraci, et al.

9:55 a.m. Attorney Austin presents opening statement on behalf of Defendant/Cross-Complainant Darryl Cotton.

10:15 a.m. All jurors are admonished and excused for break and Court is in recess.

10:24 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jury is not present.

Outside the presence of the jury, Plaintiff makes a Motion for Non-suit on the Cross-Complaint against Rebecca Berry. The Court hears oral argument. Motion for Non-Suit is denied as to Declaratory Relief claim. Motion for Non-Suit is granted as to Fraud claim.

10:30 a.m. Court is in recess.

10:31 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

10:32 a.m. **LARRY GERACI** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendant:

- 1) Letter of Agreement with Bartell & Associates dated 10/29/15
- 5) Text Messages between Larry Geraci and Darryl Cotton from 7/21/16-5/8/17
- 8) Email to Larry Geraci from Darryl Cotton dated 9/21/16 with attached letter to Dale and Darryl Cotton from Kirk Ross, dated 9/21/16
- 9) Email to Larry Geraci from Darryl Cotton, dated 9/26/16
- 10) Draft Services Agreement Contract between Inda-Gro and GERL Investments, dated 9/24/16
- 14) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/4/16
- 15) Email to Rebecca Berry from Abhay Schweitzer, dated 10/6/16
- 17) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/18/16
- 18) Email thread between Neil Dutta from Abhay Schweitzer, dated 10/19/16
- 21) Email from Larry Geraci to Darryl Cotton, dated 10/24/16
- 30) City of San Diego Ownership Disclosure Statement signed, dated 10/31/16
- 38) Agreement between Larry Geraci or assignee and Darryl Cotton, dated 11/2/16
- 39) Excerpt from Jessica Newell Notary Book, dated 11/2/16
- 40) Email to Darryl Cotton from Larry Geraci attaching Nov. 2 Agreement, dated 11/2/16
- 41) Email from Darryl Cotton to Larry Geraci, dated 11/2/16
- 42) Email to Darryl Cotton from Larry Geraci, dated 11/2/16

11:44 a.m. All jurors are admonished and excused for lunch and Court remains in session.

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit on Breach of Contract claim against Darryl Cotton. The Court hears oral argument. Motion for Non-Suit is denied without prejudice.

11:50 a.m. Court is in recess.

1:19 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are not present.

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit. The Court hears argument. The Motion for Non-Suit is denied without prejudice as pre-mature. Court and counsel discuss scheduling.

1:25 p.m. Court is in recess.

1:33 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

1:34 p.m. Larry Geraci, previously sworn, resumes the stand for further direct examination by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendants:

- 43) Email to Becky Berry from Abhay Schweitzer, dated 11/7/16 with attachment
- 44) Email to Darryl Cotton from Larry Geraci, dated 11/14/16
- 46) Authorization to view records, signed by Cotton, 11/15/16
- 59) Email to Darryl Cotton from Larry Geraci, dated 2/27/17
- 62) Email to Darryl Cotton from Larry Geraci, dated 3/2/17
- 63) Email to Larry Geraci from Darryl Cotton, dated 3/3/17
- 64) Email to Darryl Cotton from Larry Geraci, dated 3/7/17
- 69) Email to Larry Geraci from Darryl Cotton, dated 3/17/17 at 2:15 p.m.
- 72) Email to Larry Geraci from Darryl Cotton, dated 3/19/17 at 6:47 p.m.
- 137) Federal Blvd.- Summary of All Expense Payments, excel spreadsheet

2:29 p.m. An unreported sidebar conference is held. (3 minutes)

2:36 p.m. Cross examination of Larry Geraci commences by Attorney Austin on behalf of Defendant/Cross-Complainant, Darryl Cotton.

2:53 p.m. All jurors are admonished and excused for break and Court is in recess.

3:08 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

3:09 p.m. Larry Geraci is sworn and examined by Attorney Austin on behalf of Defendant/Cross-Complainant, Defendant.

3:47 p.m. Redirect examination of Larry Geraci commences by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

3:48 p.m. The witness is excused.

3:49 p.m. **REBECCA BERRY** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

The following Court's exhibit(s) is marked for identification and admitted on behalf of

---

Plaintiff/Cross-Complainant:

**34) Forms submitted to City of San Diego dated 10/31/16; Form DS-3032 General Application dated 10/31/16**

4:00 p.m. Cross examination of Rebecca Berry commences by Attorney Austin on behalf of Defendant/Cross-complainant, Darryl Cotton.

4:15 p.m. The witness is excused.

4:16 p.m. All jurors are admonished and excused for the evening and Court remains in session.

Outside the presence of the jury, Court and counsel discuss scheduling.

4:22 p.m. Court is adjourned until 07/08/2019 at 09:00AM in Department 73.

# **EXHIBIT B**

ORIGINAL

FILED  
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,  
Plaintiff,

v.

DARRYL COTTON,  
Defendant.

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

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

DARRYL COTTON,  
Cross-Complainant,

v.

LARRY GERACI,  
Cross-Defendant.

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

Breach of Contract

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

1  
2 ☒ Yes ☐ No

3  
4 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer  
5 no further questions, and have the presiding juror sign and date this form.

6  
7 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him  
8 to do?

9  
10 ☐ Yes ☒ No

11  
12 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your  
13 answer to question 2 is no, answer question 3.

14  
15 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that  
16 the contract required him to do?

17  
18 ☒ Yes ☐ No

19  
20 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer  
21 no further questions, and have the presiding juror sign and date this form.

22  
23 4. Did all the condition(s) that were required for Defendant's performance occur?

24  
25 ☐ Yes ☒ No

26  
27 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your  
28 answer to question 4 is no, answer question 5.



1  
2 5. Was the required condition(s) that did not occur excused?

3  
4 ☒ Yes ☐ No

5  
6 If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no,  
7 answer no further questions, and have the presiding juror sign and date this form.

8  
9 6: Did Defendant fail to do something that the contract required him to do?

10  
11 ☒ Yes ☐ No

12  
13 or

14  
15 Did Defendant do something that the contract prohibited him from doing?

16  
17 ☒ Yes ☐ No

18  
19 If your answer to either option for question 6 is yes, answer question 7. If your answer to both  
20 options is no, do not answer question 7 and answer question 8.

21  
22 7. Was Plaintiff harmed by Defendant's breach of contract?

23  
24 ☒ Yes ☐ No

25  
26 If your answer to questions 4 or 5 is yes, please answer question 8.

27  
28 Breach of the Implied Covenant of Good Faith and Fair Dealing

1  
2 8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

3  
4 ☒ Yes ☐ No

5  
6 If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but  
7 your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to  
8 questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date  
9 this form.

10  
11 9. Was Plaintiff harmed by Defendant's interference?

12  
13 ☒ Yes ☐ No

14  
15 If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but  
16 your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes,  
17 answer no further questions, and have the presiding juror sign and date this form.

18  
19 10. What are Plaintiff's damages?

20  
21 \$ 260,109.28

22  
23 Dated: 7/16/19

Signed: [Signature]

Presiding Juror

24  
25  
26 After all verdict forms have been signed, notify the bailiff that you are ready to present your  
27 verdict in the courtroom.  
28

# **EXHIBIT C**

ORIGINAL

FILED  
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,  
Plaintiff,

v.

DARRYL COTTON,  
Defendant.

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

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

DARRYL COTTON,  
Cross-Complainant,

v.

LARRY GERACI,  
Cross-Defendant.

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

Breach of Contract

0391

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

3  
4 ☐ Yes ☒ No

5  
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not  
7 answer questions 2 - 7 and answer question 8.

8  
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract  
10 required him to do?

11  
12 ☐ Yes ☐ No

13  
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your  
15 answer to question 2 is no, answer question 3.

16  
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant  
18 things that the contract required him to do?

19  
20 ☐ Yes ☐ No

21  
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not  
23 answer questions 4 - 7 and answer question 8.

24  
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26  
27 ☐ Yes ☐ No

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your  
2 answer to question 4 is no, answer question 5.

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

5  
6 ☐ Yes ☐ No

7  
8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not  
9 answer questions 6 -- 7 and answer question 8.

10  
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12  
13 ☐ Yes ☐ No

14  
15 or

16  
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18  
19 ☐ Yes ☐ No

20  
21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both  
22 options is no, do not answer question 7 and answer question 8.

23  
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

25  
26 ☐ Yes ☐ No

27  
28 Please answer question 8.

**Fraud - Intentional Misrepresentation**

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

☐ Yes ☒ No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

☐ Yes ☐ No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

☐ Yes ☐ No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

☐ Yes ☐ No

1  
2 If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do  
3 not answer question 12 and answer question 13.  
4

5 12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor  
6 in causing harm to Cross-Complainant?  
7

8 ☐ Yes ☐ No  
9

10 Please answer question 13.  
11

12 Fraud - False Promise  
13

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

17 ☐ Yes ☒ No  
18

19 If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do  
20 not answer questions 14 - 18 and answer question 19.  
21

22 14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?  
23

24 ☐ Yes ☐ No  
25

26 If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do  
27 not answer questions 15 - 18 and answer question 19.  
28



1 15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

2  
3 ☐ Yes ☐ No

4  
5 If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do  
6 not answer questions 16 – 18 and answer question 19.

7  
8 16. Did Cross-Complainant reasonably rely on this promise?

9  
10 ☐ Yes ☐ No

11  
12 If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do  
13 not answer questions 17 – 18 and answer question 19.

14  
15 17. Did Cross-Defendant perform the promised act?

16  
17 ☐ Yes ☐ No

18  
19 If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do  
20 not answer question 18 and answer question 19.

21  
22 18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in  
23 causing harm to Cross-Complainant?

24  
25 ☐ Yes ☐ No

26  
27 Please answer question 19.

1 **Fraud - Negligent Misrepresentation**

2  
3 19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

4  
5 ☐ Yes ☒ No

6  
7 If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do  
8 not answer questions 20 - 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If  
9 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding  
10 juror sign and date this form.

11  
12 20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant  
13 made it?

14  
15 ☐ Yes ☐ No

16  
17 If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do  
18 not answer questions 21 - 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If  
19 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding  
20 juror sign and date this form.

21  
22 21. Did Cross-Defendant have reasonable grounds for believing the representation was true when  
23 Cross-Defendant made it?

24  
25 ☐ Yes ☐ No

26  
27 If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do  
28 not answer questions 22 - 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding  
2 juror sign and date this form.

3  
4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5  
6 ☐ Yes ☐ No

7  
8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do  
9 not answer questions 23 - 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If  
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding  
11 juror sign and date this form.

12  
13 23. Did Cross-Complainant reasonably rely on the representation?

14  
15 ☐ Yes ☐ No

16  
17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do  
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your  
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror  
20 sign and date this form.

21  
22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor  
23 in causing harm to Cross-Complainant?

24  
25 ☐ Yes ☐ No

1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but  
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and  
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

4  
5 25. What are Cross-Complainant's damages?

6  
7 \$ \_\_\_\_\_  
8  
9

10  
11 Dated: 7/16/19

Signed: 

Presiding Juror

12  
13 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in  
14 the courtroom.  
15  
16  
17  
18  
19  
20  
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28

# Exhibit 8

**TIFFANY & BOSCO**  
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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; and DOES 1-  
10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1 THROUGH  
10, INCLUSIVE,

Cross-Defendants.

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

Judge: The Honorable Joel R. Wohlfeil  
Dept.: C-73

**NOTICE OF MOTION AND MOTION  
FOR NEW TRIAL**

**Hearing Date: October 25, 2019**  
**Time: 9:00 a.m.**  
**Dept: C-73**  
**Judge: The Hon. Joel R. Wohlfeil**

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

**TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:**

**PLEASE TAKE NOTICE** that on October 25, 2019 or as soon thereafter as the matter can be heard in Department C-73 of the above-entitled Court, Defendant/Cross-Complainant DARRYL COTTON ("Cotton") will move this Court for a new trial or a finding that the alleged November 2, 2016 agreement is illegal and void.

///

1           This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points  
2 and Authorities in support hereof, the record of trial and the pleadings and papers on file in this  
3 action, and upon such other oral and documentary evidence as may be presented at the hearing  
4 of this motion.  
5

6 DATED: September 13, 2019

TIFFANY & BOSCO, P.A.

7  
8 By \_\_\_\_\_  
9           EVAN P. SCHUBE  
10          Attorney for Defendant/Cross-Complainant  
11          DARRYL COTTON  
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# Exhibit 9



**TIFFANY & BOSCO**  
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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
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LARRY GERACI, an individual,

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10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

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LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1 THROUGH  
10, INCLUSIVE,

Cross-Defendants.

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

Judge: The Honorable Joel R. Wohlfeil  
Dept.: C-73

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MOTION  
FOR NEW TRIAL**

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

## TABLE OF CONTENTS

INTRODUCTION .....	4
ARGUMENT.....	5
A.    STANDARD FOR MOTION FOR NEW TRIAL.....	4
B.    RELEVANT BACKGROUND.....	4
State Marijuana Laws.....	5
Local Marijuana Laws.....	6
Mr. Geraci's Objective Manifestations.....	8
Mr. Geraci Used the Attorney-Client Privilege as a Shield and a Sword.....	9
C.    THE ALLEGED NOVEMBER 2, 2016 AGREEMENT WAS ILLEGAL.....	10
D.    THE JURY APPLIED AN OBJECTIVE STANDARD TO MR. COTTON, AND A SUBJECTIVE STANDARD TO MR. GERACI.....	12
E.    MR. GERACI USED THE ATTORNEY-CLIENT PRIVILEGE AS A SHIELD AND A SWORD, THEREBY VIOLATING MR. COTTON'S RIGHT TO A FAIR AND IMPARTIAL TRIAL.....	13
CONCLUSION.....	15

## **TABLE OF AUTHORITIES**

### **CASES**

*A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554

*Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129

*Bovard v. American Horse Enterprises, Inc.* (1988) 201 Cal.App.3d 832

*Bustamante v. Intuit, Inc.* (2009) 141 Cal.App.4th 199

*Gray v. Robinson* (1939) 33 Cal.App.2d 177

*Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104

*Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118 Cal. App. 4th 531

*Lewis & Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141

*May v. Herron*, (1954) 127 Cal.App.2d 707

*Pacific Wharf & Storage Co. v. Standard American Dredging Co.* (1920) 184 Cal. 21

*People v. Shelton* (2006) 37 Cal.4th 759, 767

*Reid v. Google, Inc.* (2010) 50 Cal.4th 512

*Ryan v. Crown Castle NG Networks Inc.* (2016) 6 Cal.App.5th 775

*Webber v. Webber* (1948) 33 Cal.2d 153 (5, 13)

*Yoo v. Jho* (2007) 147 Cal.App.4th 1249

### **STATUTES**

#### **Business & Professions Code**

Section 19323(a)

Section 19323(b)(8)

Section 19324

#### **Civil Code**

#### **Code of Civil Procedure**

§657(6)-(7)

#### **Government Code**

1 **Senate Bills**

2 Sen. Bill #643 2015-2016 Reg. Sess.,

3 **San Diego Municipal Code**

4 Ordinance 20356

5 §27.3501

6 §27.3510

7 §27.3563

8 §112.0102(b)

9 §112.0102(c)

10 §112.0501(c)

11 §126.0303

12 §126.303(a)

13 §141.0614

## INTRODUCTION

Mr. Cotton seeks a new trial on three grounds. First, the alleged November 2, 2016 agreement is illegal and void because Larry Geraci's ("Mr. Geraci") failure to disclose his interest in both the Property<sup>1</sup> and the Conditional Use Permit ("CUP") violates local law and policies, as well as state law. More particularly, the San Diego Municipal Code (the "SDMC") requires those disclosures to be made. Further, Mr. Geraci entered into two stipulated judgments with the City of San Diego ("City") that mandated he complied with the City's CUP requirements, which he purposefully failed to do in his performance of the alleged November 2, 2016 agreement. For his claims against Mr. Cotton, Mr. Geraci asks this Court to assist him in violating the SDMC and the policy of AUMA, which the Court is prohibited from doing. As a result, the jury's finding that the alleged November 2, 2016 agreement is a valid contract is contrary to law.

Second, the jury applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's as it relates to the alleged November 2, 2016 agreement and subsequent acknowledgement e-mail. The jury found the parties entered into a contract on November 2, 2016 and discounted the acknowledgement e-mail based upon Mr. Geraci's testimony that he only replied to the first line of Mr. Cotton's e-mail. Mr. Geraci's objective conduct demonstrates that either (i) he agreed to a 10% interest that he later refused existed, or (ii) there was an agreement to agree. Had the jury applied an objective standard to the conduct of *both parties*, it would not – nor could it – have reached the verdict it did. The judgment entered in accordance with the jury's verdict is contrary to law.<sup>2</sup>

Third, Mr. Geraci used the attorney-client privilege as a shield during discovery and a sword at trial, which prohibited Mr. Cotton from receiving a fair and impartial trial. During discovery, Mr. Cotton sought documents and communications by and between Mr. Geraci and Gina Austin ("Ms. Austin") relating to the drafting of various agreements related to the purchase of the Property. Mr. Geraci objected to the request and never produced communications related to the same based upon attorney-client privilege. At trial, however, Mr. Geraci waived the attorney-client privilege, for the first

---

<sup>1</sup> The term "Property" shall mean and refer to the real property located at 6176 Federal Boulevard, San Diego, California.

<sup>2</sup> The "agreement to agree" argument is a defense to the breach of contract claim made by Mr. Geraci. The argument should not, and cannot, be considered a judicial admission to the separate issue of Mr. Cotton's claim as to the oral joint venture agreement.

1 time, and both he and Ms. Austin testified as to their communications. Mr. Cotton was unable to cross-  
2 examine either witness with the relevant documents Mr. Geraci withheld during discovery on the ground  
3 of attorney-client privilege. The requested communications went to one of the central issues of the case  
4 – whether the alleged November 2, 2016 agreement was an agreement, or an agreement to agree. The  
5 use of the attorney-client privilege as a sword at trial was made even more improper given the content  
6 of the testimony by Mr. Geraci and Ms. Austin, both of whom accused Mr. Cotton of a crime – extortion.  
7 As a result, Mr. Cotton did not receive a fair and impartial trial.

## 8 **ARGUMENT**

### 9 **A. STANDARD FOR MOTION FOR NEW TRIAL.**

10 A verdict may be vacated, in whole or in part, and a new trial granted on all or part of the issues,  
11 when either the verdict is contrary to the law, there is an error in law at the trial, there is insufficient  
12 evidence to support the verdict, or an irregularity in the proceedings. Cal. Code Civ. Proc. § 657(6)-(7).  
13 A party may raise illegality of contract on a motion for new trial. *Lewis & Queen v. N.M. Ball Sons*  
14 (1957) 48 Cal.2d 141, 148 (citing *Pacific Wharf & Storage Co. v. Standard American Dredging Co.*  
15 (1920) 184 Cal. 21, 23-24)); *Gray v. Robinson* (1939) 33 Cal.App.2d 177, 182 (irregularity in the  
16 proceedings); *A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566 (litigant cannot claim  
17 privilege during discovery, then testify at trial as to the same matter); *see also Webber v. Webber* (1948)  
18 33 Cal.2d 153, 164 (affidavit not required where motion for new trial “relies wholly upon facts appearing  
19 upon the face of the record”). On a motion for new trial, the Court sits as the 13<sup>th</sup> juror and is “vested  
20 with the plenary power – and burdened with a correlative duty – to independently evaluate the evidence.”  
21 *Ryan v. Crown Castle NG Networks Inc.* (2016) 6 Cal.App.5th 775, 784.

### 22 **B. RELEVANT BACKGROUND.**

#### 23 Mr. Geraci, an IRS Enrolled Agent, Has Two Judgments Prohibiting the Operation 24 of a Marijuana Dispensary Unless He Complies With the SDMC

25 Mr. Geraci has been an enrolled agent with the IRS (“Enrolled Agent”), which “means he has a  
26 federal license that allows him to represent clients before the IRS,” since 1999. (Reporter’s Transcript  
27 of Trial (“RT”) July 3, 2019 at 14:22-16:24; 56:25-57:11, the relevant excerpts of which are attached  
28

1 hereto as **Exhibit A**.<sup>3</sup>) Prior to his involvement with the Property and during the time in which he was  
2 an Enrolled Agent, Mr. Geraci was involved in at least two illegal marijuana dispensaries (the “Illegal  
3 Marijuana Dispensaries”). (*See id.* (Mr. Geraci testifying that he has been an enrolled agent since 1999);  
4 Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon [CCP § 664.6]  
5 (the “Tree Club Judgment”) and Stipulation for Entry of Final Judgment and Permanent Injunction;  
6 Judgment Thereon [CCP § 664.6] (the “CCSquared Judgment”) (collectively referred to herein as  
7 “Geraci Judgments”) true and correct copies of which are attached hereto as **Exhibits B and C**,  
8 respectively, and incorporated herein by this reference.)

9 Pursuant to the terms of the Geraci Judgments, Mr. Geraci could only operate or maintain a  
10 marijuana dispensary after providing written proof to the City that “any required permits or licenses to  
11 operate a marijuana dispensary, collective or cooperative have been obtained from the City of San Diego  
12 as required by the SDMC.” (**Exhibit B** (Tree Club Judgment) at ¶¶ 10(b), 17 (emphasis added); Exhibit  
13 – (CCSquared Judgment) at ¶ 9(b).) Unlike paragraphs 9 through 14, paragraph 10(b) in the Tree Club  
14 Judgment is not limited to the “PROPERTY.” (*See id.*) Unlike paragraphs 8 and 10 in the CCSquared  
15 Judgment, paragraph 9 is not limited to the “PROPERTY.” (**Exhibit C** (CCSquared Judgment).<sup>4</sup>)  
16 Additionally, Mr. Geraci was fined \$25,000 in the Tree Club Judgment and \$75,000 in the CCSquared  
17 Judgment. (**Exhibit B** (Tree Club Judgment) at ¶ 17; **Exhibit C** (CCSquared Judgment) at ¶ 15.)

#### 18 State Marijuana Laws

19 In 2003, the State of California (the “State”) enacted the Medical Marijuana Program Act (the  
20 “MMPA”), which established certain requirements for Medical Marijuana Consumer Cooperatives  
21 (“MMCC”). On October 9, 2015, the State passed the Medical Marijuana Public Safety and  
22 Environmental Protection Act, 2015 California Senate Bill No. 643, California 2015-2016 Regular  
23 Session (hereinafter cited to as “S.B. 643”). Pursuant to S.B. 643, an application must be denied if the  
24 applicant does not qualify for licensure. (S.B. 643 at § 10 (adding Cal. Bus. & Prof. Code § 19323(a),  
25 (b)(8).) An applicant does not qualify if he has been sanctioned by a city for unauthorized commercial  
26

27 <sup>3</sup> For the convenience of the Court and to avoid a multiplicity of exhibits, true and correct copies of all relevant excerpts of  
28 testimony at trial on July 3, 2019 cited herein are contained in **Exhibit A**. Each excerpt of testimony is clearly identified by  
a slipsheet and bookmarked for this Court’s ease of reference and expedient access.

<sup>4</sup> The CCSquared Judgment was a global settlement of two separate civil actions.

1 marijuana activity. (*Id.*) Although Section 12, which added § 19324, provides that an applicant shall  
2 not be denied a state license if the denial is based upon certain conditions, neither of the two conditions  
3 specified applies to § 19323(b)(8). (*Id.* at § 12.) In the Geraci Judgments, the City sanctioned  
4 Mr. Geraci for unauthorized commercial marijuana activity. (*See Exhibits B and C.*)

5 On November 8, 2016, the voters of California approved Proposition 64, the Control, Regulate,  
6 and Tax Adult Use of Marijuana Act (“AUMA”). (Control, Regulate, and Tax Adult Use Of Marijuana  
7 Act, 2016 Cal. Legis. Serv. Prop. 64 (hereinafter cited as “Prop. 64”).) The purpose and intent of  
8 AUMA was to: (i) strictly control the cultivation and sale of marijuana “through a system of state  
9 licensing, regulation, and enforcement; (ii) allow local governments to enforce state laws and  
10 regulations; and (iii) bring marijuana into a regulated and legitimate market to create a transparent and  
11 accountable system. (Prop. 64 at §§ 2, 3.) In order to create more legitimacy and transparency, among  
12 other things, AUMA requires the disclosure of all persons who have an interest in the license. (*Id.* at  
13 § 6.1 (adding §§ 26001(a) (providing broad definition of applicant), 26055(a) (licensing authorities may  
14 issue state licenses only to qualified applicants), and 26057 (prohibiting certain applicants from  
15 obtaining a license).)

#### 16 Local Marijuana Laws

17 After the enactment of the MMPA, the City adopted Ordinance No. 20356 (“Ordinance 20356”).  
18 Pursuant to Ordinance 20356, a CUP is required to operate an MMCC. (*See id.* at § 126.0303(a);  
19 § 141.0614.) In February 2017, the City adopted Ordinance No. 20793, which requires a conditional  
20 use permit for a marijuana outlet. (Ordinance No. 20793) at p. 4 (§ 126.0303).) The approval of a CUP  
21 is governed by Process Three, which requires approval by a hearing officer and allows the hearing  
22 officer’s decision to be appealed to the Planning Commission. SDMC § 112.0501 (providing overview  
23 of Process Three).

24 The City’s CUP requirements mandate the disclosure of anyone who holds an interest in the  
25 relevant property or a CUP. (*See TE 30* (Ownership Disclosure Statement), a true and correct copy of  
26 which is attached hereto as **Exhibit D** and incorporated herein by this reference.) SDMC § 112.0102(b)  
27 (application shall be made on forms provided by city manager and accompanied by all the information  
28 required by the same); SDMC § 112.0102(c) (information requested on forms updated “to comply with



1 revisions to local, state, or federal law, regulation, or policy. As evidenced by the SDMC, there are at  
2 least two reasons for the information mandated by the application forms.

3 The first reason for the disclosure requirements is conflict of interest laws. (RT July 8, 2019 at  
4 33:10-34:1, the relevant excerpts of which are attached hereto as **Exhibit E**;<sup>5</sup> *see also* SDMC § 27.3563  
5 (prohibiting conflicts of interest).) The City’s ethics ordinances (collectively, the “Ethics Ordinances”)  
6 were adopted “to embrace clear and unequivocal standards of disclosure and transparency in government  
7 so as to avoid conflicts of interest.” SDMC § 27.3501. The Ethics Ordinances require, among others,  
8 that a City official disclose his or her economic interests. *Id.* at § 27.3510. The Ethics Ordinances make  
9 it unlawful for any city official to make a municipal decision in which he or she knows, or has reason to  
10 know, that they have a disqualifying financial interest. *Id.* at § 27.3561; *see also id.* at §§ 27.3562-63.  
11 The Ethics Ordinance applies to hearing officers who make decisions on CUP applications. SDMC  
12 § 27.3503 (*see* definitions of “City Official” and “High Level Filer,” the latter includes, by cross-  
13 reference to Govt. Code § 87200, hearing officers).

14 The second reason relates to the requirements for obtaining a license for a Marijuana Outlet  
15 (“MO”), which requires the applicant/responsible persons to undergo background checks after the  
16 issuance of a CUP. SDMC § 112.0102(c); *id.* at §§ 42.1502 (defining responsible persons), 42.1504  
17 (requiring a permit to operate a marijuana outlet), and 42.1507 (requiring background check); (*see also*  
18 RT July 9, 2019 at 113:18-114:3 (Ms. Tirandazi, a City employee, testifying that background checks  
19 are required after the CUP process) the relevant excerpts of which are attached hereto as **Exhibit F**.<sup>6</sup>)

#### 20 Failure to Disclose Ownership Interest and Geraci Judgments

21 Mr. Geraci identified the Property and began talking with Mr. Cotton because the Property “may  
22 qualify for a dispensary.” (**Exhibit A** at 59:18-19.) On October 31, 2016, Ms. Austin – a self-  
23 proclaimed expert in cannabis licensing – e-mailed Abhay Schweitzer instructing him to keep  
24 Mr. Cotton’s name off the CUP application “unless necessary” because Mr. Cotton had “legal issues

25 \_\_\_\_\_  
26 <sup>5</sup> For the convenience of the Court and to avoid a multiplicity of exhibits, true and correct copies of all relevant excerpts of  
27 testimony at trial on July 8, 2019 cited herein are contained in **Exhibit E**. Each excerpt of testimony is clearly identified by  
a slipsheet and bookmarked for this Court’s ease or reference and expedient access.

28 <sup>6</sup> For the convenience of the Court and to avoid a multiplicity of exhibits, true and correct copies of all relevant excerpts of  
testimony at trial on July 9, 2019 cited herein are contained in **Exhibit F**. Each excerpt of testimony is clearly identified by  
a slipsheet and bookmarked for this Court’s ease or reference and expedient access.

1 with the City.” (Trial Exhibit (“TE”) 36, a true and correct copy of which is attached hereto as **Exhibit G**  
2 and incorporated herein by this reference; **Exhibit E** at 11:28-13:23) (Ms. Austin characterizing herself  
3 as a marijuana expert), *Id.* at 54:10-55:11.) On the same date, Mr. Geraci caused a Form DS-3032  
4 General Application (the “CUP General Application”) to be filed with the City. (*See* TE 34, a true and  
5 correct copy of which is attached hereto as **Exhibit H** and incorporated herein by this reference, at 34-  
6 001.) Rebecca Berry (“Ms. Berry”) was identified as the “Lessee or Tenant” and the Permit Holder.  
7 (*Id.*) Mr. Geraci is not identified anywhere in the CUP General Application. (*See id.*) Section 7 of the  
8 CUP General Application requires the disclosure of, among other things, the Geraci Judgments (*id.* at  
9 § 7); however, they were not disclosed. (*See id.*)

10 On the same date, Ms. Berry executed and submitted the Ownership Disclosure Statement to the  
11 City. (*See Exhibit D*). As set forth in the Ownership Disclosure Statement, the list “must include the  
12 names and addresses of all persons who have an interest in the property, recorded or otherwise, and state  
13 the type of interest.” (*Id.*) The Ownership Disclosure Statement also required the disclosure of “Other  
14 Financially Interested Persons.” (*Id.*) The disclosure requirements are mandatory and do not include  
15 exceptions for Enrolled Agents. (*See id.*) Notwithstanding, Mr. Geraci is not identified in the  
16 Ownership Disclosure Statement. (*Id.*)

17 Both Mr. Geraci and Ms. Berry testified that the exclusion of Mr. Geraci was purposeful; he was  
18 not disclosed because he was as an Enrolled Agent. (**Exhibit A** at 193:19-194:5.) Mr. Geraci also  
19 claimed that the lack of disclosure was “for convenience of administration.” (*See Plaintiff/Cross-*  
20 *Defendant Larry Geraci’s Answers to Special Interrogatories, Set Two, Propounded by*  
21 *Defendant/Cross-Complainant Darryl Cotton* (hereinafter, the “Discovery Responses”), a true and  
22 correct copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference, at 12:8-  
23 16.) However, Ms. Austin instructed the consultants to leave Mr. Cotton’s name off the CUP  
24 application unless necessary because of Mr. Cotton’s “legal issues with the City.” Mr. Geraci also had  
25 “legal issues with the City” and he was not disclosed. (**Exhibit E** at 54:24-55:11.)

#### 26 Mr. Geraci’s Objective Manifestations

27 On November 2, 2016, Messrs. Geraci and Cotton executed the alleged November 2, 2016  
28 agreement, which the jury determined constituted a contract. (TE 38, a true and correct copy of which

1 is attached hereto as **Exhibit J** and incorporated herein by this reference.) Shortly after receiving a copy  
2 of the alleged agreement, Mr. Cotton sent an e-mail stating the 10% equity position in the dispensary  
3 was not included in the document and requesting an acknowledgment that a provision regarding the  
4 same would be included in “any final agreement.” (TE 42, a true and correct copy of which is attached  
5 hereto as **Exhibit K** and incorporated herein by this reference.) Mr. Geraci responded, “no problem at  
6 all.” (*Id.*)

7 Mr. Geraci then caused certain draft agreements to be exchanged with Cotton. (*See* TE 59 and  
8 62, true and correct copies of which are attached hereto as **Exhibits L and M**, respectively, and  
9 incorporated herein by this reference.) The draft agreements did not state they were amending a prior  
10 agreement for the purchase of the property, did not reference a prior agreement, and the “Date of  
11 Agreement” was “[t]he latest date of execution of the Seller or the Buyer, as indicated on the signature  
12 page.” (*See e.g.*, **Exhibit L** at 059-003.) The draft agreements included terms that were not included in  
13 the November 2, 2016 document, and provide no indication or reference to the alleged November 2,  
14 2016 agreement. (*See id.*) And none of the documents or communications produced by Mr. Geraci ever  
15 referenced extortion, which was never raised during the course of discovery.

16 Mr. Geraci Used the Attorney-Client Privilege as a Shield and a Sword

17 Mr. Cotton propounded discovery seeking, among other things, documents and communications  
18 by and between Mr. Geraci and Ms. Austin. (*See* **Exhibit I** (Discovery Responses) at 13:1-13, 14:8-  
19 23.) Mr. Geraci refused to produce any documents or communications based upon attorney-client  
20 privilege. (*See id.*) Mr. Geraci waived the attorney-client privilege for the first time and trial, and both  
21 he and Ms. Austin testified as to communications regarding the drafting of a purchase agreement and  
22 statements Mr. Geraci purportedly made that he was being extorted by Mr. Cotton. (**Exhibit E** at 41:10-  
23 26; *see also* **Exhibit A** at 129:22-28 (Mr. Geraci testifying as to the same statements).)<sup>7</sup> The testimony  
24 of Mr. Geraci and Ms. Austin was not previously disclosed due to the attorney-client privilege, but and  
25 it effectively accused Mr. Cotton of a crime. *See* Pen. Code, § 518 (defining extortion).

26 \_\_\_\_\_  
27 <sup>7</sup> “Extortion” is defined as the “...obtaining of property or other consideration from another, with his or her consent, or the  
28 obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.”  
Cal. Pen. Code § 518. None of the evidence suggests any “wrongful use of force or fear” by Mr. Cotton. Multiple statements  
equating Mr. Cotton’s conduct to extortion were inflammatory and prejudicial.

1 **C. THE ALLEGED NOVEMBER 2, 2016 AGREEMENT WAS ILLEGAL.**

2 The Court has a duty to, *sua sponte*, refuse to entertain an action that seeks to enforce an illegal  
3 contract. *May v. Herron*, (1954) 127 Cal.App.2d 707, 710-12 (internal citations and quotations omitted)  
4 (voiding contract where plaintiff sought to recover balance due on contract, which recovery would have  
5 allowed plaintiff to “benefit from his willful and deliberate flouting of a law designed to promote the  
6 general public welfare”). “Whether a contract is illegal ... is a question of law to be determined from  
7 the circumstances of each particular case.” *Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118  
8 Cal. App. 4th 531, 540; *Bovard v. American Horse Enterprises, Inc.* (1988) 201 Cal.App.3d 832, 838.  
9 A contract is unlawful and unenforceable if it is contrary to, in pertinent part, (1) an express provision  
10 of law; or (2) the policy of express law. Cal. Civ. Code § 1667(1)-(3); *Kashani, supra*, at 541 (contract  
11 must have a lawful object to be enforceable). For purposes of illegality, the “law” includes statutes,  
12 local ordinances, and administrative regulations issues pursuant to the same. *Id.* at 542. “All contracts  
13 which have for their object, *directly or indirectly*, to exempt anyone from responsibility for his own ...  
14 violation of law, whether willful or negligent, are against the policy of the law.” Cal. Civ. Code § 1668  
15 (emphasis added). A contract made for the purpose of furthering any matter prohibited by law, or to aid  
16 or assist any party in the violation of the law, is void. *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104,  
17 1109 (voiding a contract entered into for the purpose of avoiding state and federal income tax  
18 regulations). As summarized in *Yoo v. Jho* (2007) 147 Cal.App.4<sup>th</sup> 1249:

19 No principle of law is better suited than that a party to an illegal contract  
20 cannot come into a court of law and ask to have his illegal objects to be  
21 carried out. The courts generally will not enforce an illegal bargain or  
lend their assistance to a party who seeks compensation for an illegal act.

22 *Id.* at 1255 (internal citations and quotations omitted); *see also Kashani, supra*, at 179; Cal. Civ. Code  
23 §§ 1550, 1608. “The test as to whether a demand connected with an illegal transaction is capable of  
24 being enforced is whether the claimant requires the aid of an illegal transaction to establish his case.”  
25 *Brenner v. Haley* (1960) 185 Cal.App.2d 183, 287.

26 *May* is instructive. In *May*, the Newmans and May entered into a contract whereby May agreed  
27 to construct a home for the Newmans. *May, supra*, at 708. However, May could only perform under  
28 the contract by acquiring construction materials through the veteran’s priority status under Federal

1 Priorities Regulation No. 33, which gave preference to veterans in obtaining construction materials. *Id.*  
2 The Newmans transferred title to their property to a veteran and May secured construction materials  
3 because of his veteran's status. *Id.* at 708-09. The Court of Appeals held that the contract between May  
4 and the Newmans, while valid on its face, was illegal because May knew the house was not intended for  
5 occupancy by a veteran and May's conduct in performing his obligations under the contract violated the  
6 federal regulation.

7 Mr. Geraci, like May, violated local laws in pursuit of his performance under the alleged  
8 November 2, 2016 agreement. On October 31, 2016, Mr. Geraci caused to be filed with the City a CUP  
9 application which failed to disclose his ownership interest in the Property, the CUP, or the Geraci  
10 Judgments, despite the City's requirement that each of the foregoing be disclosed. (See **Exhibit H** at  
11 034-001 (§ 7 requires disclosure of Geraci Judgments), *id.* at 034-004 (requires disclosure of all persons  
12 with an interest in the Property and CUP); SDMC § 112.0102(b) (application shall be made on forms  
13 provided by city manager and shall be accompanied by all the information required by the same); SDMC  
14 § 112.0102(c) (information requested on forms updated "to comply with revisions to local, state, or  
15 federal law, regulation, or policy).

16 The non-disclosure was purposeful. (See **Exhibit I** – (Discovery Resp.) at 12:8-16.) Indeed,  
17 efforts were undertaken to exclude any reference to Mr. Cotton in the CUP application because of his  
18 "legal issues" with the City. There are no disclosure exceptions for Enrolled Agents, and neither the  
19 SDMC nor the Geraci Judgments allow Mr. Geraci to comply with some of the CUP requirements.  
20 Applying the test of illegal contracts, Mr. Geraci relied upon the General Application and Ownership  
21 Disclosure Statement to suggest that he complied with the terms of the alleged November 2, 2016  
22 agreement. As a result, Mr. Geraci asks this Court to assist him in violating local laws, which the Court  
23 is prohibited from doing.

24 The alleged November 2, 2016 agreement also violates the policy of express law in the form of  
25 the CUP requirements and AUMA.<sup>8</sup> The policy of the SDMC is disclosure and transparency in  
26

---

27 <sup>8</sup> Although AUMA was adopted days after the alleged November 2, 2016 agreement, pursuant to Ordinance No. O-20793,  
28 all MMCC applications in the City were replaced with the new retail sales category called an MO. Thus, the CUP application  
submitted by Ms. Berry on behalf of Mr. Geraci is subject to AUMA. Furthermore, the text of AUMA was circulated in July  
of 2016 so all of the requirements for potential successful applicants were already known to the public and attorneys  
specializing in cannabis laws and regulations prior to November 2, 2016.

1 government. Similarly, the policy of AUMA is to bring marijuana into a regulated and legitimate market  
2 to create a transparent and accountable system. Mr. Geraci's efforts, which were undertaken both before  
3 and after November 2, 2016, violated both policies. Neither of the policies provides any exceptions for  
4 Enrolled Agents, "convenience of administration," or those persons with "legal issues" – all of which  
5 Mr. Geraci has used to justify his purposeful non-disclosure.

6 **D. THE JURY APPLIED AN OBJECTIVE STANDARD TO MR. COTTON, AND A**  
7 **SUBJECTIVE STANDARD TO MR. GERACI.**

8 Mutual assent is determined under an objective standard applied to the outward manifestations,  
9 the surrounding circumstances, the nature and subject matter of the contract, and subsequent conduct of  
10 the parties; assent is not determined by unexpressed intentions or understandings. *Alexander v.*  
11 *Codemasters Group Limited* (2002) 104 Cal.App.4<sup>th</sup> 129, 141 (disapproved on other grounds in *Reid v.*  
12 *Google, Inc.* (2010) 50 Cal.4<sup>th</sup> 512, 524); *People v. Shelton* (2006) 37 Cal.4<sup>th</sup> 759, 767 (internal citations  
13 and quotations omitted). Agreements to agree are unenforceable because there is no intent to be bound  
14 and the Court may not speculate upon what the parties will agree. *Bustamante v. Intuit, Inc.* (2009) 141  
15 Cal.App.4<sup>th</sup> 199, 213-14 (internal citations and quotations omitted).

16 There was no dispute relating to the parties' objective manifestations. Shortly after receiving a  
17 copy of the alleged November 2, 2016 agreement, Mr. Cotton sent an e-mail stating the 10% equity  
18 position in the dispensary was not included in the document and requested an acknowledgment that the  
19 same would be included in "any final agreement." (See **Exhibit K.**) Mr. Geraci responded "no problem  
20 at all." (*Id.*) Mr. Geraci then had draft final agreements prepared and circulated. The draft agreements:  
21 (i) do not state they were amending a prior agreement; (ii) do not reference a prior agreement; (iii) state  
22 that the "Date of Agreement" was "[t]he latest date of execution of the Seller or the Buyer, as indicated  
23 on the signature page;" (iv) do not provide any indication that a prior agreement was reached between  
24 the parties; and (v) include terms not set forth in the alleged November 2, 2016 agreement. None of the  
25 drafts were signed and none of the documents produced by Mr. Geraci ever referenced extortion.

26 Only two conclusions could have been reached if the appropriate objective standard had been  
27 applied to both Mr. Cotton and Mr. Geraci. The first possible conclusion is that the alleged November 2,  
28 2016 agreement included the 10% interest that Mr. Geraci subsequently refused to acknowledge. The

1 second possible conclusion is that the e-mail exchange subsequent to the alleged November 2, 2016  
2 agreement demonstrated the parties agreed to agree. And, therefore, the alleged November 2, 2016  
3 agreement was not enforceable.

4         Instead, the jury reached the conclusion that the alleged November 2, 2016 agreement was a  
5 contract. In order to do so, the jury must have applied Mr. Geraci's subjective standard. The jury must  
6 have believed Mr. Geraci's unexpressed intentions or understandings (*i.e.*, that he was only responding  
7 to the first line of Mr. Cotton's e-mail and the statements to his counsel that he was being extorted).  
8 According to Mr. Geraci's testimony, he called Cotton the following day to explain. But if the hours  
9 that passed between the November 2, 2016 agreement and Mr. Cotton's e-mail was too late for  
10 Mr. Cotton, the day that passed before Mr. Geraci's call was also too late to explain his subjective intent  
11 as to his response. Therefore, the jury's conclusion that the alleged November 2, 2016 agreement is a  
12 contract stands in direct contrast to the objective standard applied to Mr. Cotton's conduct. The jury  
13 cannot apply objective standards to Mr. Cotton and subjective standards to Mr. Geraci.

14 **E. MR. GERACI USED THE ATTORNEY-CLIENT PRIVILEGE AS A SHIELD AND A**  
15 **SWORD, THEREBY VIOLATING MR. COTTON'S RIGHT TO A FAIR AND**  
16 **IMPARTIAL TRIAL.**

17         "[A]n overt act of the trial court ... or adverse party, violative of the right to a fair and impartial  
18 trail, amounting to misconduct, may be regarded as an irregularity." *Gray, supra*, 33 Cal.App.2d at 182;  
19 *see also Webber, supra*, 33 Cal.2d at 164 (affidavit not required where motion for new trial "relies  
20 wholly upon facts appearing upon the face of the record"). Litigation is not a game, and a litigant cannot  
21 claim privilege during discovery then testify at trial. *A&M Records, supra*, 75 Cal.App.3d at 566. As  
22 the *A&M* Court eloquently put it, "[a] litigant cannot be permitted to blow hot and cold in this manner."  
23 *Id.* At the February 8, 2019 hearing on Mr. Cotton's Motion to Compel Further Responses to Discovery  
24 to which Mr. Geraci asserted Attorney-Client Privilege, the Court acknowledged as much when it stated:  
25 "[T]here is a price to be paid; [Mr. Geraci] can't go back and reopen that area once [he has] narrowed  
26 the scope by asserting privilege." (*See Exhibit J* February 8, 2019 at 21:1-5. The Court subsequently  
27 entered an order prohibiting testimony on matters that Plaintiff asserted attorney-client privilege.  
28 Minute Order dated Feb. 8, 2019 (ROA 455) at p. 3 (prohibiting testimony on matters that Plaintiff

1 asserted privilege in discovery). Mr. Geraci has previously admitted that failure to disclose constitutes  
2 “substantial prejudice.” *Plaintiff Larry Geraci’s Memorandum of Points and Authorities in Opposition*  
3 *to Defendant Darryl Cotton’s Motion to Expunge Lis Pendens* dated April 10, 2018 (ROA 179) at 4:7-  
4 8. (Mr. Geraci claimed that Cotton’s “refusal to participate in discovery has substantially prejudiced  
5 Geraci and Berry in preparation of this case.”).

6 Mr. Cotton propounded discovery seeking, among other things, documents and communications  
7 by and between Mr. Geraci and Ms. Austin related to the purchase of the Property. (See **Exhibit I**  
8 (Discovery Responses) at 13:1-13, 14:8-23.) No documents or communications were produced in  
9 connection with the request based upon attorney-client privilege. Then, at trial, Mr. Geraci waived  
10 privilege and he and Ms. Austin testified as to the very communications Mr. Cotton previously sought.

11 Mr. Geraci’s use of the privilege as a shield and a sword violated Mr. Cotton’s right to a fair and  
12 impartial trial. One of the central arguments Mr. Cotton presented was that the parties agreed to draft a  
13 final agreement. While Mr. Geraci’s conduct was consistent with this argument, he and Ms. Austin  
14 testified at trial that Mr. Geraci’s request for draft agreements was purportedly the result of extortion.  
15 The failure to disclose those documents constitutes, as Mr. Geraci previously admitted, substantial  
16 prejudicial to Mr. Cotton because it prevented Mr. Cotton from cross-examining Mr. Geraci and  
17 Ms. Austin on their inflammatory and prejudicial extortion allegations, as well as proving that the  
18 alleged November 2, 2016 agreement was an agreement to agree. Mr. Geraci cannot be permitted to  
19 “blow hot and cold.”

## 20 CONCLUSION

21 For the reasons set forth herein, Mr. Cotton requests that the Court (i) find that the alleged  
22 November 2, 2016 agreement is illegal and void; or (ii) order a new trial and enable Mr. Cotton to  
23 conduct discovery related to the communications between Messrs. Geraci and Cotton.

24 DATED this 13th day of September, 2019.

25 TIFFANY & BOSCO, P.A.

26  
27 By \_\_\_\_\_  
28 EVAN P. SCHUBE  
Attorneys for Defendant/Cross-Complainant  
Darryl Cotton



# Exhibit 10

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*Attorneys for Defendant/Cross-Complainant Darryl Cotton*

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; and DOES 1-  
10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1 THROUGH  
10, INCLUSIVE,

Cross-Defendants.

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

Judge: The Honorable Joel R. Wohlfeil  
Dept.: C-73

**NOTICE OF ERRATA TO MEMORANDM  
OF POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR NEW TRIAL**

Hearing Date: October 25, 2019  
Time: 9:00 a.m.  
Dept: C-73  
Judge: The Hon. Joel R. Wohlfeil

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

**TO THE COURT, AND TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:**

**PLEASE TAKE NOTICE** that Defendant/Cross-Complainant Darryl Cotton hereby respectfully submits this Notice of ERRATA to his Memorandum of Points and Authorities in Support of Motion or New Trial.

///

///

1 Due to a clerical error, an incomplete draft of the Memorandum of Points and Authorities  
2 in Support of Motion for New Trial was uploaded for electronic filing and service instead of the  
3 true final copy and, as such, the Table of Authorities in the draft was incomplete, the document  
4 was not executed and the exhibits referenced therein were not attached.

5 Attached hereto and incorporated therein by this reference are true and correct copies of  
6 the following which shall constitute in and of themselves the ERRATA to the Memorandum of  
7 Points and Authorities in Support of Motion and Motion for New Trial:

8 **Exhibit A** – The Table of Authorities;

9 **Exhibit B** – The execution page bearing Attorney Schube's signature; and

10 **Exhibit C** – Exhibits A through M, inclusive.

11  
12 DATED: September 14, 2019

TIFFANY & BOSCO, P.A.

13  
14 By



15 EVAN P. SCHUBE  
16 Attorney for Defendant/Cross-Complainant  
17 DARRYL COTTON  
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# **EXHIBIT A**

0423

## **TABLE OF AUTHORITIES**

### **CASES**

<i>A&amp;M Records, Inc. v. Heilman</i> (1977) 75 Cal.App.3d 554.....	5, 14
<i>Alexander v. Codemasters Group Limited</i> (2002) 104 Cal.App.4 <sup>th</sup> 129.....	13
<i>Bovard v. American Horse Enterprises, Inc.</i> (1988) 201 Cal.App.3d 832.....	11
<i>Bustamante v. Intuit, Inc.</i> (2009) 141 Cal.App.4 <sup>th</sup> 199.....	13
<i>Gray v. Robinson</i> (1939) 33 Cal.App.2d 177.....	5, 14
<i>Homami v. Iranzadi</i> (1989) 211 Cal.App.3d 1104.....	11
<i>Kashani v. Tsann Kuen China Enterprise Co.</i> (2004) 118 Cal. App. 4 <sup>th</sup> 531.....	11
<i>Lewis &amp; Queen v. N.M. Ball Sons</i> (1957) 48 Cal.2d 141.....	5
<i>May v. Herron</i> , (1954) 127 Cal.App.2d 707.....	11-12
<i>Pacific Wharf &amp; Storage Co. v. Standard American Dredging Co.</i> (1920) 184 Cal. 21.....	5
<i>People v. Shelton</i> (2006) 37 Cal.4 <sup>th</sup> 759, 767.....	13
<i>Reid v. Google, Inc.</i> (2010) 50 Cal.4 <sup>th</sup> 512.....	13
<i>Ryan v. Crown Castle NG Networks Inc.</i> (2016) 6 Cal.App.5 <sup>th</sup> 775.....	5
<i>Webber v. Webber</i> (1948) 33 Cal.2d 153.....	5
<i>Yoo v. Jho</i> (2007) 147 Cal.App.4 <sup>th</sup> 1249.....	11

### **STATUTES**

#### **Business & Professions Code**

Section 19323(a).....	6
Section 19323(b)(8).....	6-7
Section 19324.....	7
Section 26001(a).....	7

#### **Civil Code**

Section 1550.....	11
Section 1550.....	11
Section 1667(1)(3).....	11
Section 1668.....	11

#### **Code of Civil Procedure**

Section 664.6.....	6
Section 657(6).....	5
Section 657(7).....	5

**Government Code**

Section 87200.....	8
--------------------	---

**Senate Bills**

Sen Bill #420, 2003-2004 Reg. Sess., Medical Marijuana Program Act.....	6
Sen. Bill #643, 2015-2016 Reg. Sess., Medical Marijuana Public Safety Environmental Act.....	4, 6, 7

**State Initiatives**

2016 Cal. Legis. Serv. Prop. 64, Control, Regulate and Tax Use of Marijuana Act.....	7, 12-13
---	----------

**San Diego Municipal Ordinances & Code**

Ordinance No. 20356.....	7
Ordinance No. 20793.....	7, 12
Section 27.3501.....	8
Section 27.3503.....	8
Section 27.3510.....	8
Section 27.3561.....	8
Section 27.3562.....	8
Section 27.3563.....	8
Section 42.1502.....	8
Section 42.1507.....	8
Section 112.0501.....	7
Section 112.0102(b).....	7, 12
Section 112.0102(c).....	7-8, 12
Section 126.0303.....	7
Section 126.0303(a).....	7
Section 141.0614.....	7

# **EXHIBIT B**

1 asserted privilege in discovery). Mr. Geraci has previously admitted that failure to disclose constitutes  
2 “substantial prejudice.” *Plaintiff Larry Geraci’s Memorandum of Points and Authorities in Opposition*  
3 *to Defendant Darryl Cotton’s Motion to Expunge Lis Pendens* dated April 10, 2018 (ROA 179) at 4:7-  
4 8. (Mr. Geraci claimed that Cotton’s “refusal to participate in discovery has substantially prejudiced  
5 Geraci and Berry in preparation of this case.”).

6 Mr. Cotton propounded discovery seeking, among other things, documents and communications  
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10 privilege and he and Ms. Austin testified as to the very communications Mr. Cotton previously sought.


11 Mr. Geraci’s use of the privilege as a shield and a sword violated Mr. Cotton’s right to a fair and  
12 impartial trial. One of the central arguments Mr. Cotton presented was that the parties agreed to draft a  
13 final agreement. While Mr. Geraci’s conduct was consistent with this argument, he and Ms. Austin  
14 testified at trial that Mr. Geraci’s request for draft agreements was purportedly the result of extortion.  
15 The failure to disclose those documents constitutes, as Mr. Geraci previously admitted, substantial  
16 prejudicial to Mr. Cotton because it prevented Mr. Cotton from cross-examining Mr. Geraci and  
17 Ms. Austin on their inflammatory and prejudicial extortion allegations, as well as proving that the  
18 alleged November 2, 2016 agreement was an agreement to agree. Mr. Geraci cannot be permitted to  
19 “blow hot and cold.”

## 20 CONCLUSION

21 For the reasons set forth herein, Mr. Cotton requests that the Court (i) find that the alleged  
22 November 2, 2016 agreement is illegal and void; or (ii) order a new trial and enable Mr. Cotton to  
23 conduct discovery related to the communications between Messrs. Geraci and Cotton.

24 DATED this 15th day of September, 2019.

25 TIFFANY & BOSCO, P.A.

26  
27 By   
28 EVAN P. SCHUBE  
Attorneys for Defendant/Cross-Complainant  
Darryl Cotton



# **EXHIBIT C**

# **EXHIBIT A**

1 SUPERIOR COURT OF CALIFORNIA  
2 COUNTY OF SAN DIEGO, CENTRAL DIVISION  
3 Department 73 Hon. Joel R. Wohlfeil  
4  
5 LARRY GERACI, an individual, )  
6 Plaintiff, )  
7 vs. ) 37-2017-00010073-CU-BC-CTL  
8 DARRYL COTTON, an individual; )  
9 and DOES 1 through 10, )  
10 inclusive, )  
11 Defendants. )  
12 \_\_\_\_\_ )  
13 AND RELATED CROSS-ACTION. )  
14 \_\_\_\_\_ )

15  
16 Reporter's Transcript of Proceedings

17 JULY 3, 2019  
18  
19  
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21  
22  
23  
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25 Reported By:  
26 Margaret A. Smith, CSR 9733, RPR, CRR  
27 Certified Shorthand Reporter  
28 Job No. 10057773

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1	I N D E X	
2		PAGE
3	OPENING STATEMENTS:	
4	On behalf of Plaintiff/Cross-Defendant	14
5	On behalf of Defendant/Cross-Complainant	39
6	WITNESSES:	
7	LARRY GERACI	
8	Direct by Mr. Weinstein	54
9	Cross by Mr. Austin	160
10	REBECCA BERRY	
11	Direct by Mr. Weinstein	190
12	Cross by Mr. Austin	200
13		
14		
15		
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**OPENING STATEMENT BY MICHAEL R. WEINSTEIN  
ON BEHALF OF PLAINTIFF/CROSS-DEFENDANT  
LARRY GERACI  
(RT 14:26 – 16:24, 56:25 – 57:11)**

1 witnesses. And the lawyers are working hard to have as  
2 many witnesses lined up. Some of them will take a  
3 little longer, like the parties. But you'll be seeing a  
4 steady stream of witnesses through and including  
5 Plaintiff and the defendant's case in chief.

6 So I'll keep you up to date on where we are in  
7 the estimate, but as mentioned before, we will get you  
8 the case at or before the close of business Thursday,  
9 July 18th.

10 So it's now time for counsel to give an opening  
11 statement. I mentioned to you yesterday that nothing  
12 the lawyers say during the trial is evidence. The only  
13 thing you're going to base your decision on ultimately  
14 is the evidence and, of course, the law that I give to  
15 you. But what they say in their opening statement will  
16 give you an idea of what they expect the evidence to  
17 consist of, at least from their perspective.

18 So with that in mind, Counsel, whenever you're  
19 ready, please give your opening statement.

20 MR. WEINSTEIN: Thank you, your Honor.

21 (Opening statement on behalf of  
22 Plaintiff/Cross-Defendant Larry Geraci)

23 MR. WEINSTEIN: Good morning, Mr. Dunbar, and  
24 the rest of the jurors. Thank you for your patience  
25 through jury selection yesterday. As your Honor has  
26 just reminded you, nothing I say is evidence. It's what  
27 I believe the evidence will show. So if I make a  
28 statement and I don't preface it by saying the testimony

1 will show, it's really in front of every sentence  
2 because I'm not a witness.

3 Now, it's my opportunity, as you were  
4 pre-instructed yesterday, to present an opening  
5 statement. It's really an outline, a road map of what I  
6 expect the evidence will show, and it's going to allow  
7 you to keep an overview of the case in mind during the  
8 later presentation of evidence.

9 Evidence comes in out of order. These facts  
10 are going -- the facts you'll hear are going to be new  
11 to you for the first time. We've known them for a long  
12 time. And as a result, it will take you a while to put  
13 them all together. But when it's said and done,  
14 hopefully, the overview I've presented to you will help  
15 you understand the case as it's presented.

16 Now, as I mentioned in the mini opening  
17 yesterday, this case involves a dispute between Larry  
18 Geraci and Darryl Cotton concerning an agreement from  
19 the purchase and sale of Mr. Cotton's property at 6176  
20 Federal Boulevard.

21 Now, Mr. Geraci and Mr. Cotton dispute the  
22 terms of the agreement. During my opening, I'll refer  
23 to and show you some of the documents. These are some  
24 of the exhibits that I anticipate you will see during  
25 the evidence portion of the case. It will help me with  
26 my overview and help you.

27 But before I jump into the story -- before I do  
28 that, the setup is with the screen over here. And we



1 have jurors all the way extending to almost even with  
2 me. If anybody at any time has trouble seeing the  
3 screen, just give us a heads-up, and we'll make an  
4 adjustment and move the attorneys back and forth to make  
5 it clear.

6 So, anyway, before I jump into the story, I  
7 need to introduce you briefly to some of the persons  
8 whose names will come up in the testimony and who may  
9 give testimony in the case. And there's eight people in  
10 particular. I just want to identify it from the outset.

11 Of course, there's Darryl Cotton, who is the  
12 defendant and cross-complainant. He was the seller of  
13 the property. Mr. Cotton has developed hydroponic  
14 systems for the growing of cannabis. He's very active  
15 in the community regarding cannabis issues. You'll  
16 learn more about that later.

17 Mr. Geraci, sitting in front of me next to the  
18 bench, is the buyer. He owns a tax and financial  
19 accounting business called The Tax and Financial Center.  
20 He's been doing tax preparation work for about 40 years.  
21 So that's basically been his profession his whole  
22 career. He's licensed as an enrolled agent. This means  
23 he has a federal license that allows him to represent  
24 clients before the IRS.

25 And that will become an issue that you will  
26 hear about later in the case.

27 Rebecca Berry, who sits to my left, because we  
28 don't have room for everybody, who is sitting in the

1 Q And are you currently employed?

2 A Yes.

3 Q Before I get there, did you -- did you graduate

4 from high school?

5 A Yes.

6 Q Where?

7 A University High School.

8 Q When?

9 A 1979.

10 Q Okay. And did you attend college at all?

11 A Yes.

12 Q What college did you attend?

13 A Grossmont and San Diego City.

14 Q Did you receive a degree from either of those

15 institutions?

16 A No, I didn't.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom? By whom?

20 A Tax and Financial Center.

21 Q And what type of business is Tax and Financial

22 Center?

23 A We prepare tax returns and bookkeeping services

24 and payroll services.

25 Q And who owns that business?

26 A I do.

27 Q And how long have you owned that business?

28 A I've owned that business since 2001.

1 Q And currently how many employees do you have?

2 A Eight employees.

3 Q Before I forget, how long have you been engaged  
4 in preparing taxes for people?

5 A Forty years.

6 Q Now, you said you have eight employees. Are  
7 they divided into any departments within your business?

8 A Yes. I've got two employees in accounting, one  
9 employee in payroll. I've got two administrators and  
10 two more people in bookkeeping.

11 Q So when you say you have two people in  
12 accounting, what services do the people in accounting  
13 provide?

14 A Bookkeeping.

15 Q For whom?

16 A Businesses.

17 Q Okay. And the other folks are in the tax  
18 preparation side of the business?

19 A Yes.

20 Q Okay. And who do they prepare taxes for?

21 A My clients.

22 Q And who -- what types of clients?

23 A Individuals and businesses, small corporations,  
24 and small partnerships.

25 Q Okay. Now, do you currently hold any licenses  
26 associated with tax preparation?

27 A Enrolled agent.

28 Q Is the answer yes?

1           A     Yes.

2           Q     And what license do you hold?

3           A     Enrolled agent.

4           Q     What is an enrolled agent?

5           A     We are licensed by the Internal Revenue Service  
6 to represent clients when they get audited by the IRS.

7           Q     And is that a federal, or state license?

8           A     That's a federal license.

9           Q     And how long have you been licensed by -- as an  
10 enrolled agent?

11          A     Since 1999.

12          Q     Now, have -- do you have a real estate license  
13 currently?

14          A     Yes. No. No.

15          Q     Have you had a real estate license?

16          A     Yes.

17          Q     What kind of a real estate license?

18          A     Salesperson.

19          Q     And when did you hold that license?

20          A     From 1993 to 2017.

21          Q     Okay. And during that period of time, what  
22 types of -- or how many transactions have you engaged in  
23 where you were acting as a real estate agent?

24          A     Probably under 10 since 1993.

25          Q     And of those 10, are those residential, or  
26 commercial transactions, or both?

27          A     Both.

28          Q     Now, have you, for your personal investment,

**DIRECT EXAMINATION OF LARRY GERACI**  
**BY MICHAEL R. WEINSTEIN**  
**(RT 58:18-19)**

1           MR. WEINSTEIN: The plaintiffs call Larry  
2   Geraci.

3           THE COURT: All right. Good morning,  
4   Mr. Geraci.

5                         Larry Geraci,  
6   being called on behalf of the plaintiff, having been  
7   first duly sworn, testified as follows:

8  
9           THE CLERK: Please state your full name and  
10   spell your first and last name for the record.

11           THE WITNESS: Larry Geraci. L-a-r-r-y  
12   G-e-r-a-c-i.

13           THE COURT: All right. Thank you very much.  
14           Counsel, whenever you're ready, please begin  
15   your examination.

16           MR. WEINSTEIN: Thank you.

17                         (Direct examination of Larry Geraci)

18   BY MR. WEINSTEIN:

19           Q     **Good morning, Mr. Geraci.**

20           A     Good morning.

21           Q     **How old are you?**

22           A     Fifty-eight.

23           Q     **And are you married?**

24           A     Widowed.

25           Q     **Do you have any children?**

26           A     Five.

27           Q     **What are their ages?**

28           A     33, 28. I have 25, 19 and 12.

1     bought and sold real property?

2           A     Yes, I have.

3           Q     Have you served as your own real estate agent  
4     in connection with any of those transactions?

5           A     No.

6           Q     Okay. Do you know Rebecca Berry?

7           A     Yes.

8           Q     And you see her in this courtroom?

9           A     Yes.

10          Q     And who is Rebecca Berry?

11          A     She's my administrator.

12          Q     And how long has she worked for you?

13          A     Fourteen years.

14          Q     And you said she was an administrator. What's  
15     her role as an administrator?

16          A     She's the front desk booking -- booking  
17     clients' appointments, administering the bills when they  
18     come in to the payables department. She's like the  
19     gatekeeper of everything that comes into the office.

20          Q     Have you ever owned a medical marijuana  
21     dispensary?

22          A     No, I haven't.

23          Q     Have you ever operated or managed a medical  
24     marijuana dispensary?

25          A     No, I haven't.

26          Q     Have you ever told Darryl Cotton that you owned  
27     or managed a marijuana dispensary?

28          A     No.

1           Q     In connection with -- we'll get to it. But in  
2     connection with the transaction, the sale of -- the  
3     purchase and sale of his property, in connection with  
4     any communications with Mr. Cotton, did you indicate to  
5     him that you operated or owned multiple dispensaries?

6           A     No, I didn't.

7           Q     Did you talk to him about anybody within your  
8     team that managed or operated dispensaries?

9           A     No, I didn't.

10          Q     Okay. Now, when did you first have any  
11     communication with Darryl Cotton?

12          A     About mid July.

13          Q     And why did you contact -- first of all, what  
14     year?

15          A     2016.

16          Q     Why did you contact Mr. Cotton or have  
17     communication with him in July of 2016?

18          A     The team had identified a property on Federal  
19     Boulevard that may qualify for a dispensary.

20          Q     Okay. And you mentioned the team. What was  
21     the team?

22          A     Jim Bartell, Abhay Schweitzer, and Gina Austin.

23          Q     And when did you form -- for what purposes was  
24     that team formed?

25          A     They were going to facilitate to proceed to get  
26     the CUP on Mr. Cotton's property.

27          Q     When did you first hire Mr. Bartell?

28          A     In October of 2015.



1           Q     Now, at that time, had you had any contact with  
2     Mr. Cotton?

3           A     No, I didn't.

4           Q     So why did you -- well, first of all, can you  
5     tell the jury who Mr. Bartell is, to your understanding.

6           A     Mr. Bartell is a liaison lobbyist between  
7     myself and the City.

8           MR. WEINSTEIN: Okay. I'm going to show the  
9     witness a stipulated exhibit, Exhibit 1.

10          THE COURT: Any objection if Exhibit 20 is  
11     admitted, Counsel?

12          MR. AUSTIN: No.

13          MR. WEINSTEIN: Exhibit 1. It's Exhibit 1.

14          THE COURT: Exhibit 1?

15          MR. WEINSTEIN: Yes.

16          THE COURT: Oh, I'm sorry. Any objection to  
17     the admission of Exhibit 1?

18          MR. AUSTIN: No, your Honor.

19          THE COURT: Exhibit 1 will be admitted.

20                 (Premarked Joint Exhibit 1, Letter of Agreement  
21     with Bartell & Associates dated 10/29/15, was  
22     admitted into evidence.)

23     BY MR. WEINSTEIN:

24           Q     Mr. Geraci, there are books up there. If it's  
25     easier for you, there are books up there.

26           THE COURT: Counsel, they may have been moved.  
27     Do you want to approach?

28           MR. WEINSTEIN: If you need to look at the

**DIRECT EXAMINATION OF LARRY GERACI**  
**BY MICHAEL R. WEINSTEIN**  
**(RT 129:22-28)**

1     decide to embark upon once you got that demand on  
2     February 7th?

3           A     After -- after the conversation I had with --

4           Q     Yes. How did you decide to proceed?

5           A     I started calling people around to find out  
6     about, first of all, how this is going to work out  
7     because I couldn't see how it could -- it was very  
8     difficult to get past that 10,000. I -- I called an  
9     operator that I knew, and they were saying that is very,  
10    very tough. We tried to figure out how we could get  
11    that to work. And then I -- I called my attorney, Gina  
12    Austin.

13          Q     And what discussion did you have with -- when  
14    did you call her in relation to your phone call with  
15    Mr. Cotton?

16          A     I think it was within a few days. This is in  
17    the middle of tax season. So it's -- I have  
18    appointments every hour. So I'm working 18 hours a day.  
19    So I think I waited a couple days. Or maybe -- I can't  
20    recall exactly. But it was within a few days, I called  
21    Gina Austin.

22          Q     And what did you discuss with Ms. Austin in  
23    that phone call?

24          A     I said that -- on the project we're working on,  
25    I said Mr. Cotton is now demanding \$10,000 a month, and  
26    I am not sure we can even do that. And I said it feels  
27    like Mr. Cotton is extorting me at this point because we  
28    just got this zoning approved.

**DIRECT EXAMINATION OF LARRY GERACI**  
**BY MICHAEL R. WEINSTEIN**  
**(RT 193:19-194:5)**

1 MR. WEINSTEIN: Thank you.

2 (Direct examination of Rebecca Berry)

3 BY MR. WEINSTEIN:

4 Q Ms. Berry, are you -- first of all, let's talk  
5 about your education. Have you graduated from high  
6 school?

7 A Yes.

8 Q And when?

9 A 1967.

10 Q From where?

11 A Granite Hills High School.

12 Q And did you take college after that?

13 A Some college.

14 Q Where at?

15 A Grossmont College.

16 Q And when was that?

17 A 1968 and then 10 years later, I took classes  
18 probably in -- no. Fifteen years later. So --

19 Q Okay. And did you get a degree from Grossmont?

20 A No.

21 Q Okay. Other than attending Grossmont, have you  
22 attended any -- any schooling since you graduated from  
23 high school?

24 A Real estate and as the real estate broker  
25 ministerial training.

26 Q Okay. And let's take the latter first. Would  
27 you -- did you say ministerial training?

28 A Yes.

1 or broker with respect to the sale of -- the agreement  
2 to sell property that's the subject of this lawsuit?

3 A No.

4 Q Okay. Were you involved at all in the  
5 negotiation of -- of that agreement?

6 A No.

7 Q Do you know Darryl Cotton?

8 A No.

9 Q Have you -- when is the first time you ever saw  
10 him?

11 A Yesterday in the courtroom.

12 Q Okay. Have you ever spoken to him on the  
13 phone?

14 A No.

15 Q Have you ever seen him in the office?

16 A No.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom?

20 A Tax and Financial as the real estate broker and  
21 through my church as a teacher and counselor.

22 Q Okay. Let's focus on Tax and Financial.

23 How long have you worked at Tax and Financial  
24 Center?

25 A Almost 15 years.

26 Q And what's your current job position at Tax and  
27 Financial Center?

28 A I'm an assistant to Larry Geraci, and I manage

1 the office.

2 Q And how long have you been in that position?

3 A Almost 15 years.

4 Q So the entire time you've been there?

5 A Yes.

6 Q Now, in -- as you know, this case -- do you  
7 know -- do you understand this case involves an attempt  
8 to obtain a CUP conditional use permit to operate a  
9 dispensary at a property that Mr. Geraci was attempting  
10 to purchase?

11 A Yes.

12 Q Okay. Were you the applicant on that CUP  
13 application?

14 A Yes.

15 Q Okay. And as -- as the applicant -- as the  
16 applicant, did you understand that you were acting at  
17 all times as the agent for and on behalf of Mr. Geraci?

18 A Yes.

19 Q Why -- what was your understanding as to why  
20 you were the applicant on that CUP application?

21 A Mr. Geraci has a federal license, and we were  
22 afraid that it might affect it at some point.

23 Q What lines -- what federal license is that?

24 A He's an enrolled agent.

25 Q And did you have a discussion with him about  
26 the fact that there was a possibility or it was unknown  
27 whether him being an applicant on the property would  
28 affect his enrolled agent license?

1 A Yes.

2 Q All right. Were there any other reasons that  
3 you recall that you were the applicant -- chose to be  
4 the applicant on the project?

5 A No.

6 Q Were you willing and -- were you willing to be  
7 the applicant on the project as Mr. Geraci's agent?

8 A Yes.

9 Q Now, in connection with the CUP application  
10 project, were you involved at all in the communications  
11 with the City?

12 A Yes.

13 Q Okay. And what was your involvement in  
14 communications with the City?

15 A They -- I -- what I would do is if I got any  
16 information, I would simply direct it to Mr. Geraci or  
17 his team.

18 Q Okay.

19 A And then I made no decisions.

20 Q Okay. And so did you also have any  
21 communications with the team that Mr. Geraci had put  
22 together to pursue the CUP application?

23 A I had some interaction.

24 Q And -- and which members of the team do you  
25 recall having interaction with?

26 A Abhay.

27 Q That's Mr. Schweitzer?

28 A Mr. Schweitzer.

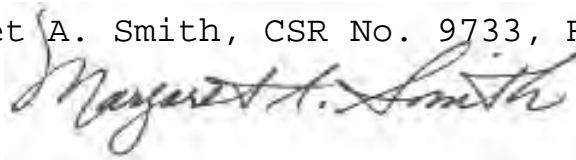


1 I, Margaret A. Smith, a Certified Shorthand  
2 Reporter, No. 9733, State of California, RPR, CRR, do  
3 hereby certify:

4 That I reported stenographically the proceedings  
5 held in the above-entitled cause; that my notes were  
6 thereafter transcribed with Computer-Aided  
7 Transcription; and the foregoing transcript, consisting  
8 of pages number from 1 to 215, inclusive, is a full,  
9 true and correct transcription of my shorthand notes  
10 taken during the proceeding had on July 3, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand  
12 this 22nd day of July 2019.

13  
14  
15 Margaret A. Smith, CSR No. 9733, RPR, CRR

16   
17  
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# **EXHIBIT B**

0453

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

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal  
corporation,

Plaintiff,

v.

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

Defendants.

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

JUDGE: RONALD S. PRAGER

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

IMAGED FILE

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

L:\CEU\CASE.ZNI\762.mk\pleadings\Stip JL 6th, Kacha,  
Geraci.docx

1

STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION

0454

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

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

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

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

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

28       ///

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

#### 15 RETENTION OF JURISDICTION

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

#### 20 RECORDATION OF JUDGMENT

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

#### 23 KNOWLEDGE AND ENTRY OF JUDGMENT

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

26 ///



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

IT IS SO STIPULATED.

Dated: OCT. 21, 2014

JAN I. GOLDSMITH, City Attorney

By

Marsha B. Kerr  
Marsha B. Kerr  
Deputy City Attorney  
Attorneys for Plaintiff

Dated: 7/26, 2014

JL 6<sup>TH</sup> AVENUE PROPERTY, LLC

By

[Signature]  
Member

Dated: 10-21-14, 2014

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

Dated: 9/26, 2014

[Signature]  
Jeffrey Kacha

Dated: 9/26, 2014

[Signature]  
Joseph S. Carnellino, Attorney for  
Defendants JL 6<sup>th</sup> Avenue Property, LLC,  
Lawrence E. Geraci aka Larry Geraci and  
Jeffrey Kacha

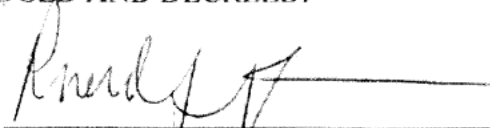
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**ORDER**

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

Dated: 10/27/14



JUDGE OF THE SUPERIOR COURT

**RONALD S. PRAGER**

37-2014-00020897-CU-MC-CTL

# **EXHIBIT C**

0462

**FILED**  
Clerk of the Superior Court

JUN 17 2015

**FILED**  
Clerk of the Superior Court

JUN 17 2015

By: H. CHAVARIN, Deputy  
JUN 11 PM 1:57

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal  
corporation,

Plaintiff,

v.

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

Defendants.

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

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

IMAGED FILE

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

///

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

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

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

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

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

19           5. The legal description of the PROPERTY is:

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

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

#### 24 INJUNCTION

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

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

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

#### 11 COMPLIANCE MEASURES

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

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

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

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

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

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

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

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

8 **MONETARY RELIEF**

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

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

28 ///

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

#### 4 **ENFORCEMENT OF JUDGMENT**

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

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

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

#### 24 **RETENTION OF JURISDICTION**

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



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RECORDATION OF JUDGMENT

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

KNOWLEDGE AND ENTRY OF JUDGMENT

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

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

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

By Marsha B. Kerr

Marsha B. Kerr  
Deputy City Attorney  
Attorneys for Plaintiff

Dated: 6-10, 2015

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

By Jeffrey Kacha

General Partner

Dated: 6-10, 2015

Jeffrey Kacha, an individual

Dated: 6-8, 2015

Lawrence E. Geraci  
Lawrence E. Geraci, aka Larry Geraci, an individual

1 Dated: 6/11/15, 2015

2 By Joseph S. Carmellino

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

7 **JUDGMENT**

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

11 Dated: 6-12-16

12 John S. Meyer JOHN S. MEYER

13 JUDGE OF THE SUPERIOR COURT  
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# **EXHIBIT D**

0470



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

## Ownership Disclosure Statement

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

**Project Title**

Federal Blvd. MMCC

**Project No. For City Use Only**

Court's Ex. **030**

**Project Address:**

6176 Federal Blvd., San Diego, CA 92114

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

Rec'd \_\_\_\_\_

Dept. **C-73** Clk. \_\_\_\_\_

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

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

**Additional pages attached** ☐ Yes ☒ No

Name of Individual (type or print):

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

( 619 ) 954-4447

Fax No:

Signature :

Date:

10-31-2016

Name of Individual (type or print):

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:

Signature :

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature :

Date:

# **EXHIBIT E**

0472

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION  
Department 73 Hon. Joel R. Wohlfeil  
LARRY GERACI, an individual, )  
Plaintiff, )  
vs. ) 37-2017-00010073-CU-BC-CTL  
DARRYL COTTON, an individual; )  
and DOES 1 through 10, )  
inclusive, )  
Defendants. )  
\_\_\_\_\_)  
AND RELATED CROSS-ACTION. )  
\_\_\_\_\_)

Reporter's Transcript of Proceedings

JULY 8, 2019

Reported By:  
Margaret A. Smith,  
CSR 9733, RPR, CRR  
Certified Shorthand Reporter  
Job No. 10057774

1 APPEARANCES

2  
3 FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND  
4 CROSS-DEFENDANT REBECCA BERRY:

5 FERRIS & BRITTON

6 BY: MICHAEL R. WEINSTEIN, ESQUIRE

7 BY: SCOTT H. TOOTHACRE, ESQUIRE

8 BY: ELYSSA K. KULAS, ESQUIRE

9 501 West Broadway, Suite 1450

10 San Diego, California 92101

11 mweinstein@ferrisbritton.com

12 stoothacre@ferrisbritton.com

13 ekulas@ferrisbritton.com

14  
15 FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:

16 ATTORNEY AT LAW

17 BY: JACOB P. AUSTIN, ESQUIRE

18 1455 Frazee Road, Suite 500

19 San Diego, California 92108

20 619.357.6850

21 jpa@jacobbaustinesq.com

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I N D E X

PAGE

WITNESSES:

GINA AUSTIN

Direct by Mr. Weinstein 10

Cross by Mr. Austin 46

Redirect by Mr. Weinstein 65

DARRYL COTTON (UNDER 776)

Cross by Mr. Weinstein 69

ABHAY SCHWEITZER

Direct by Mr. Toothacre 165



**DIRECT EXAMINATION OF GINA M. AUSTIN**  
**BY MICHAEL R. WEINSTEIN**  
**(RT 11:28-13:23)**

1 week, which is Thursday at noon -- we may be approaching  
2 the beginning of the defendant's case in chief.

3 In any event, plaintiff's case in chief,  
4 Counsel, your next witness will be?

5 MR. WEINSTEIN: Gina Austin.

6 THE COURT: She's out in the hallway?

7 MR. WEINSTEIN: I believe so.

8 THE COURT: Madam Deputy, could you retrieve  
9 Ms. Austin, please.

10 Good morning, Ms. Austin. If you could follow  
11 the directions of my deputy and my clerk, please.

12  
13 Gina Austin,  
14 being called on behalf of the Plaintiff/Cross-Defendant,  
15 having been first duly sworn, testified as follows:

16  
17 THE CLERK: Please state your full name and  
18 spell your first and last name for the record.

19 THE WITNESS: Gina Austin, G-i-n-a A-u-s-t-i-n.

20 THE COURT: All right. Whenever you're ready,  
21 Counsel.

22 MR. WEINSTEIN: Thank you, your Honor.

23 (Direct examination of Gina Austin)

24 BY MR. WEINSTEIN:

25 Q Good morning, Ms. Austin.

26 A Good morning.

27 Q We will be showing you some documents on the  
28 screen, but there are books in front of you with tabs if

1     you look at them more closely where you're sitting.

2             What's your profession?

3             A     I'm an attorney.

4             Q     How long have you been a lawyer?

5             A     Thirteen years.

6             Q     And are you currently employed?

7             A     Yes.

8             Q     By whom?

9             A     Austin Legal Group.

10            Q     And who owns the Austin Legal Group?

11            A     I do.

12            Q     And are you the sole owner?

13            A     Yes.

14            Q     Now, currently how many lawyers do you have  
15     working for you at the law firm?

16            A     Five.

17            Q     And how many were there back in 2016, let's  
18     say, October of 2016?

19            A     Three or four others.

20            Q     Okay. So -- and when you said a moment ago  
21     five, five including yourself?

22            A     Yes.

23            Q     All right. And what areas of law does your  
24     firm generally practice?

25            A     We work corporate mergers and acquisitions,  
26     land use entitlements, cannabis entitlement, and  
27     litigation.

28            Q     And yourself personally, what areas do you

1 focus your practice on?

2 A Currently, almost exclusively in cannabis law.

3 Q And would you explain generally what the area  
4 of cannabis law covers.

5 A It covers land use entitlements. So getting a  
6 dispensary or a manufacturing facility permitted in a  
7 jurisdiction of San Diego. Every city is different. It  
8 includes compliance for those companies so that they're  
9 compliant with the state law as well as the local  
10 jurisdiction law. It has a lot of mergers and  
11 acquisitions since there's been a lot of roll-up in the  
12 industry in the last year.

13 Q And you practice in jurisdictions outside  
14 California?

15 A Yeah. Twenty-five different local  
16 jurisdictions in California and then four other states.

17 Q Okay. Now, have you represented persons or  
18 businesses in connection with regulatory compliance for  
19 getting conditional use permits in the City of  
20 San Diego?

21 A Yes.

22 Q On how many occasions?

23 A At least 50.

24 Q And that includes pending applications?

25 A That includes pending ones, correct.

26 Q And how many of your clients within the City of  
27 San Diego have obtained a CUP license?

28 A I have to count that.

1 Q Do you have an estimate?

2 A Somewhere between 20 and 25.

3 Q Okay. Now, do you consider yourself one of the  
4 experts in the San Diego area as it relates to cannabis  
5 law and regulation?

6 A Yes, I do.

7 Q And do you speak regularly at industry  
8 conferences on subjects related to cannabis law and  
9 regulation?

10 A Yes, I do.

11 Q Can you give me some examples of conferences  
12 you've spoken at.

13 A The most recent -- well, most recently, I did a  
14 law school panel, a panel for the Thomas Jefferson law  
15 school. Before that, I think I was in Chicago speaking  
16 at the Arcview conference. And before that, it would  
17 have been at the NCIA, National Cannabis Industry  
18 Association, conference in Los Angeles.

19 Q And what type of topics have you spoken at  
20 those conferences?

21 A Regulatory compliance issues, corporate  
22 structuring, funding mechanisms, local -- dealing with  
23 local jurisdictions and municipalities.

24 Q And do you know Larry Geraci?

25 A Yes.

26 Q And was Mr. Geraci your client?

27 A Yes.

28 Q Had your firm provided services to him in

**DIRECT EXAMINATION OF GINA M. AUSTIN**  
**BY MICHAEL R. WEINSTEIN**  
**(RT 33:10 – 34:01)**

1 for everything.

2 Q And who was the applicant on this form?

3 A I believe it's Rebecca Berry. Let me check.

4 Q And was she acting as Mr. Geraci's agent, to  
5 your knowledge, in connection with the CUP application?

6 A That's my understanding.

7 Q Was there any -- is there any problem from your  
8 perspective and given your experience with having an  
9 agent be the applicant on a CUP?

10 A No. Because a conditional on it, obviously  
11 makes a difference, I think, of why I said that. The  
12 conditional use permit runs with the land.

13 Q Explain to the jury what that means.

14 A What that means is it doesn't matter who the  
15 applicant is. Ultimately, it's tied to the dirt. So if  
16 the dirt has an entitlement to build a marijuana  
17 dispensary, then it stays there, regardless of whether  
18 or not I decide to do it, you decide to do it, someone  
19 else decides to run it. It's kind of like owning a  
20 home, and if I lease it out to somebody else, it's  
21 still -- I still own it.

22 Q Okay. Would you look at the next form, which  
23 is an Affidavit for Medical Marijuana Consumer  
24 Cooperative Form DS-190.

25 Do you see that?

26 A Yes.

27 Q And what's the purpose of that form?

28 A Let me just make sure. This one is the City

1 wants the applicant to make the representation that they  
2 know that there is no sensitive use or residential use  
3 within 1,000 feet or 100 feet, depending on which, from  
4 the property.

5 Q And in this case, there was one within 100 feet  
6 or less, and there was an offer of dedication. Is that  
7 your --

8 A That's correct.

9 Q And you see that Rebecca -- it looks like  
10 Rebecca signed it at the bottom --

11 A That's correct.

12 Q -- as the business owner?

13 Any problem, from your perspective, in your  
14 experience, with her signing as a CUP applicant, this  
15 form?

16 A No. The City is only interested in that  
17 somebody made that representation. So there are only  
18 two boxes, owner and agent. And so we just pick one  
19 kind of intermittently -- or indiscriminately, owner of  
20 the business, agent of the business, because the City is  
21 not using this for anything other than the verification  
22 of the 1,000 feet and 100 feet.

23 Q And they're going to get plans as well that  
24 will verify that?

25 A That's correct.

26 Q All right. Let's look at the third form.

27 A Yes.

28 Q Okay. That's called a Deposit Account



1     Financially Responsible Party Form, DS-3242. And we see  
2     Rebecca Berry has signed that form?

3           A     That's correct.

4           Q     What's the purpose of that form?

5           A     This form is who's going to be paying, because  
6     you don't have to own the property to make a  
7     application. You just have to have authorization to do  
8     that. But somebody has to be responsible for paying,  
9     and the City wants to know who that is.

10          Q     From your perspective, any problem with  
11     Mr. Geraci being the financially responsible party  
12     signing these forms?

13          A     No.

14          Q     Go to the next form, please.

15                   This is the ownership disclosure statement.

16          A     Yes.

17          Q     Do you see that?

18          A     Yes.

19          Q     Have you seen -- first of all, tell the jury  
20     what is the purpose of this form?

21          A     The purpose of this form, from the City's  
22     perspective, is to determine -- so that council members  
23     and planning commission members can have -- determine  
24     whether or not they have a conflict when they're voting  
25     on a matter. So because these are forms -- or these are  
26     projects that will go before a hearing body, the  
27     ownership is relevant because a council member can't  
28     vote on a project if they are involved in it. And the

1 same with planning commissioners.

2 Q Do you see in the middle -- can you pull it up  
3 for me, please.

4 Above Rebecca Berry's signature, there are  
5 three boxes. One says owner. One says tenant/lessee.  
6 And one says redevelopment agent.

7 Do you see that on the form?

8 A Yes.

9 Q And I apologize, your Honor, for not blowing it  
10 up on the screen.

11 Are there any other boxes on the form above  
12 Rebecca Berry's name?

13 A No.

14 Q It's a preprinted form?

15 A It is a preprinted form.

16 Q And the box checked says tenant/lessee.

17 Do you see that?

18 A Yes.

19 Q And you're aware that Rebecca Berry was not a  
20 tenant on the property?

21 A That's correct.

22 Q Is there a problem from your perspective with  
23 that box being checked on this form?

24 A No.

25 Q Why not?

26 A Again, the City's forms are limited. They have  
27 two boxes, sometimes only three boxes. Also, the  
28 redevelopment agency also doesn't make a whole lot of

1 sense for any applicant that would be applying or using  
2 this form. And so the City's main concern -- this has  
3 come out in the planning commission over the last  
4 several months and council as well -- their main concern  
5 is to know whether or not the person who is involved in  
6 the project that's before them is somebody that they  
7 have a business relationship with and have taken more  
8 than \$500 from in the last year.

9 Q Okay. And this form represents -- or  
10 identifies Rebecca Berry as that person?

11 A That's correct.

12 Q And also identifies Cherlyn Cac, as you see on  
13 the left-hand side of the form?

14 A That's correct.

15 MR. WEINSTEIN: Your Honor, I'd offer  
16 Exhibit 45.

17 MR. AUSTIN: No objection.

18 THE COURT: Any objection?

19 MR. AUSTIN: No objection.

20 THE COURT: Exhibit 45 will be admitted.

21 (Premarked Joint Exhibit 45, Email to Jim  
22 Bartell from Abhay Schweitzer re Federal Blvd.  
23 MMCC - Completeness Review, dated 11/14/16, was  
24 admitted into evidence.)

25 MR. TOOTHACRE: I think it already was.

26 MR. WEINSTEIN: She's going to reboot.

27 THE WITNESS: Okay.

28

**CROSS-EXAMINATION OF GINA M. AUSTIN**  
**BY JACOB P. AUSTIN**  
**(RT 41:10-26)**

1 Do you see that?

2 A Yes.

3 Q Is that just confirmation of what you told us  
4 earlier, that the application was sitting there and  
5 wouldn't be processed through the completeness phase  
6 because of the zoning issues?

7 A Can you rephrase the question.

8 Q Sure.

9 When did you receive this email?

10 A It looks like I received it on November 30th.

11 Q All right. And was that consistent with your  
12 recollection that this -- the application was being  
13 processed through the completeness phase because of the  
14 zoning issue that existed?

15 A Right. The City was -- was conflicted as to  
16 what to do.

17 We met with the City trying to get them to --  
18 knowing that it was going to be corrected in the 11th  
19 code update or hoping that it would be, to not deny this  
20 outright and continue to process it. And it just sat  
21 there as they were trying to figure out what to do with  
22 it.

23 Q Until the zoning issue was resolved in late  
24 February?

25 A That's correct.

26 Q All right. Now, this case involves a signed  
27 document between Mr. Geraci and Mr. Cotton related to  
28 the purchase and sale of Mr. Cotton's property.

1 Do you understand that?

2 A Yes.

3 Q Were you involved in the negotiation of an  
4 agreement that was signed on November 2nd, 2016? In  
5 fact, why don't I have you look at Exhibit 38. That's  
6 already been admitted. That will refresh your memory.

7 A What number did you say?

8 Q Thirty-eight.

9 A No, I was not involved in that.

10 Q Okay. And at some point in time after the --  
11 the zoning ordinance was introduced to the City Council,  
12 were you contacted by Mr. Geraci in connection with  
13 doing any drafting of the new agreement?

14 A Yes, I was.

15 Q What happened?

16 A So I'm not confident on the date. I want to  
17 say it was around probably March, but I could be off by  
18 a couple months here or there of 2017.

19 Mr. Geraci called and said something to the  
20 effect of -- I don't want to give exact words. But it  
21 was something to the effect of I am tired of being  
22 extorted by Darryl Cotton. He wants more money and  
23 more -- more interest than what we agreed to. So I'm  
24 going to -- I want to draft a new agreement. And can  
25 you do that for me? And I said sure. We'll put  
26 something together for you.

27 Q And did you get involved, then, in the attempt  
28 to draft a new agreement to replace the original

1 agreement?

2 A Our office did.

3 Q And it was an attorney in your office?

4 A That's correct.

5 Q Okay. And were you the person that  
6 communicated with that attorney and that was the liaison  
7 with the client?

8 A That's correct.

9 Q All right. Did Mr. Cotton -- Geraci tell you  
10 what terms he wanted in that new agreement?

11 A He did. But I do not recall what they were.

12 Q Okay. What did you do when you heard those  
13 terms from him?

14 A I gave them to an attorney in the office,  
15 Arden Anderson, and said this is what we need done. We  
16 need a new agreement. Please draft.

17 Q Okay. Would you put up Exhibit 59, previously  
18 been admitted.

19 So let me know when you have gotten to  
20 Exhibit 59.

21 A I'm here.

22 Q Okay. So Exhibit 59, that's a cover email.  
23 But I would like to look at the attachment behind the  
24 email.

25 A Yes.

26 Q Okay. On the third page, there's the beginning  
27 of an attachment.

28 A Yeah.

**CROSS-EXAMINATION OF GINA M. AUSTIN**  
**BY JACOB P. AUSTIN**  
**(RT 54:10-55:11)**



1 (Cross-examination of Gina Austin)

2 BY MR. AUSTIN:

3 Q Good morning.

4 A Good morning.

5 Q Mrs. Austin, you mentioned in direct that  
6 you're an attorney in the field of cannabis regulation.  
7 Correct?

8 A That's correct.

9 Q And you would consider yourself an expert in  
10 that field?

11 A That's correct.

12 Q Have you ever testified as a cannabis expert?

13 A No. Let me take that back. Not -- I have  
14 been -- I've had trials where I -- where our office is  
15 representing a cannabis client and I am there as the  
16 expert to provide background information to the Court  
17 but not testifying.

18 Q Okay. So -- all right. You haven't been an  
19 expert in trials for background --

20 A Not as a designated expert, no.

21 Q Oh. Not expert. All right.

22 How long have you worked in the area of  
23 cannabis regulation?

24 A A little over six years.

25 Q As an expert cannabis attorney, do you have  
26 clients that seek out your services to assist them in  
27 obtaining permits to get licenses to operate medical  
28 outlet -- or marijuana outlets?

1 owner and a financially interested party. But we didn't  
2 get to that point.

3 Q Okay. So as the main attorney on the CUP  
4 application, you were involved in pretty much all  
5 important conversations?

6 MR. WEINSTEIN: Object. Vague and ambiguous as  
7 phrased.

8 THE COURT: Do you -- do you understand the  
9 question, Ms. Austin?

10 THE WITNESS: I think he's asking me if I was  
11 involved in every conversation.

12 THE COURT: All right. The objection is  
13 overruled.

14 Please answer.

15 THE WITNESS: I wasn't involved in every  
16 conversation.

17 BY MR. AUSTIN:

18 Q Just the most important ones that would have an  
19 effect on the outcome?

20 A I would hope so.

21 Q All right. And you're familiar with Abhay  
22 Schweitzer?

23 A Abhay Schweitzer, yes.

24 Q Did you ever have an email conversation with  
25 Mr. Schweitzer asking that Mr. Geraci's name not be  
26 included in any of the applications?

27 A Maybe. I worked with Abhay on dozens of  
28 projects. And this is several years ago. But maybe.

1           Q     And Exhibit 36, which I believe has already  
2     been admitted into evidence --

3           THE COURT:   Thirty-six has not yet been  
4     admitted.

5           MR. AUSTIN:   Oh.

6           THE COURT:   Are you offering it?

7           MR. AUSTIN:   Yes, if we could, your Honor.

8           THE COURT:   Any objection to the admission of  
9     Exhibit 36?

10          MR. WEINSTEIN:  No, your Honor.

11          THE COURT:   Exhibit 36 will be admitted.

12          (Premarked Joint Exhibit 36, Email to Rebecca  
13          Berry from Abhay Schweitzer Re: Federal Blvd -  
14          Site Plan and Floor Plan, dated 10/31/16, was  
15          admitted into evidence.)

16          THE WITNESS:  Okay.

17          BY MR. AUSTIN:

18           Q     Okay.  On the first page, towards the bottom,  
19     the email dated October 28th, do you recognize this?

20           A     Yeah.

21           Q     So it purports to be an email you sent to  
22     Mr. Schweitzer.

23           A     Yes.

24           Q     So Item 1, as you have them numbered, can you  
25     read that.

26           A     "I would like to" -- I think I meant file or  
27     fill.  I don't know.  It's misspelled -- "in the tenant  
28     and not the owner on Item No. 3.  Cotton has legal

1 issues with the City, and I don't want to see his name  
2 on the application unless necessary."

3 Q And what legal issues were those?

4 A My understanding is that he had multiple  
5 enforcement actions for illegal cultivation on site.

6 Q Was it multiple, or just one? Do you recall?

7 A I was told multiple.

8 Q Okay. Is that a similar reason why  
9 Mr. Geraci's name was kept off that form?

10 A No. Like I said, I didn't know anything about  
11 that.

12 Q Okay. Are you familiar with the California  
13 Business and Professions Code 26057?

14 A Probably. It sounds like it's part of the  
15 cannabis regulations.

16 Q Yes. I don't -- I don't know if you would like  
17 to read the first paragraph of this to refresh your  
18 recollection or if I can read this section in.

19 THE COURT: What's the exhibit number, Counsel?

20 MR. AUSTIN: What would be the exhibit number  
21 on this?

22 THE COURT: Has that been marked previously as  
23 an exhibit?

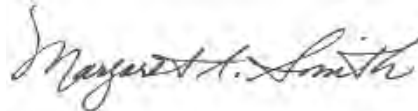
24 MR. AUSTIN: It has not. Could we get judicial  
25 notice of the California business code and  
26 professions -- or Business and Professions Code.

27 THE COURT: Well, have you shown opposing  
28 counsel that document? Why don't you do so.

1 I, Margaret A. Smith, a Certified Shorthand  
2 Reporter, No. 9733, State of California, RPR, CRR, do  
3 hereby certify:

4 That I reported stenographically the proceedings  
5 held in the above-entitled cause; that my notes were  
6 thereafter transcribed with Computer-Aided  
7 Transcription; and the foregoing transcript, consisting  
8 of pages number from 1 to 236, inclusive, is a full,  
9 true and correct transcription of my shorthand notes  
10 taken during the proceeding had on July 8, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand  
12 this 22nd day of July 2019.

13   
14

15 Margaret A. Smith, CSR No. 9733, RPR, CRR  
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# **EXHIBIT F**

1 SUPERIOR COURT OF CALIFORNIA  
2 COUNTY OF SAN DIEGO, CENTRAL DIVISION  
3 Department 73 Hon. Joel R. Wohlfeil  
4  
5 LARRY GERACI, an individual, )  
6 Plaintiff, )  
7 vs. ) 37-2017-00010073-CU-BC-CTL  
8 DARRYL COTTON, an individual; )  
9 and DOES 1 through 10, )  
10 inclusive, )  
11 Defendants. )  
12 \_\_\_\_\_)  
13 AND RELATED CROSS-ACTION. )  
14 \_\_\_\_\_)

15  
16 Reporter's Transcript of Proceedings

17 JULY 9, 2019  
18  
19  
20  
21  
22  
23

24 Reported By:  
25 Margaret A. Smith  
26 CSR 9733, RPR, CRR  
27 Certified Shorthand Reporter  
28 Job No. 10057775

1 APPEARANCES  
2 FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND  
3 CROSS-DEFENDANT REBECCA BERRY:  
4 FERRIS & BRITTON  
5 BY: MICHAEL R. WEINSTEIN, ESQUIRE  
6 BY: SCOTT H. TOOTHACRE, ESQUIRE  
7 BY: ELYSSA K. KULAS, ESQUIRE  
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12 ekulas@ferrisbritton.com  
13  
14 FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:  
15 ATTORNEY AT LAW  
16 BY: JACOB P. AUSTIN, ESQUIRE  
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18 San Diego, California 92108  
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20 jpa@jacobaustinesq.com  
21  
22 FOR FIROUZEH TIRANDAZI:  
23 OFFICE OF THE SAN DIEGO CITY ATTORNEY  
24 BY: M. TRAVIS PHELPS  
25 1200 Third Avenue, Suite 100  
26 San Diego, California 92101  
27 619.533.5800  
28 mphelps@sandiego.gov



1	I N D E X	
2		PAGE
3	WITNESSES:	
4	ABHAY SCHWEITZER	
	Resumed direct by Mr. Toothacre	16
5	Cross by Mr. Austin	60
	Redirect by Mr. Toothacre	81
6		
	FIROUZEH TIRANDAZI	
7	Direct by Mr. Toothacre	84
	Cross by Mr. Austin	108
8		
	JOSEPH HURTADO	
9	Direct by Mr. Austin	131
	Cross by Mr. Toothacre	153
10		
11		
12		
13		
14		
15		
16		
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1 MR. TOOTHACRE: She.

2 THE COURT: I'm sorry. Is she right outside?

3 MR. TOOTHACRE: I believe so.

4 THE COURT: Madam Deputy, may I ask you to get  
5 the next witness.

6 THE BAILIFF: Your Honor, this witness is being  
7 accompanied by her attorney.

8 THE COURT: Thank you very much. Counsel, you  
9 can make yourself comfortable in the audience section.

10 Ma'am, if you could follow the directions of my  
11 clerk, please.

12

13 **Firouzeh Tirandazi,**

14 **being called on behalf of the plaintiff/cross-defendant,**

15 **having been first duly sworn, testified as follows:**

16

17 THE CLERK: Please state your full name and  
18 spell your first and last name for the record.

19 THE WITNESS: My name is Firouzeh Tirandazi.

20 F-i-r-o-u-z-e-h. Last name Tirandazi,

21 T-i-r-a-n-d-a-z-i.

22 THE COURT: All right. Counsel, whenever  
23 you're ready.

24 MR. TOOTHACRE: Thank you, your Honor.

25 (Direct examination of Firouzeh Tirandazi)

26 BY MR. TOOTHACRE:

27 **Q Good morning, Ms. Tirandazi.**

28 **A Good morning.**

1 received.

2 Q On Mr. Geraci's project?

3 A On Mr. Geraci's project, correct.

4 Q So the total Mr. Geraci paid TECHNE for all  
5 their efforts in this project is \$86,631.75?

6 A I believe that's correct.

7 Q Do you believe that without Mr. Geraci's (sic)  
8 interference, you would have beat 6222 to the finish  
9 line?

10 A I think you mean Mr. Cotton.

11 Q I'm sorry. I knew I was going to do it once.  
12 I do mean Mr. Cotton.

13 A I think our chances would have been  
14 significantly better, and I think it would be very  
15 likely that we would have got that approved first.

16 MR. TOOTHACRE: Thank you, Mr. Schweitzer.  
17 Nothing further, your Honor.

18 THE COURT: Cross-examination.

19 MR. AUSTIN: Yes, your Honor.

20 MR. WEINSTEIN: Your Honor, before we proceed  
21 to cross-examination, could I just have the bailiff --  
22 the next witness is probably in the hall and probably  
23 needs to be updated.

24 THE COURT: You can go out there and talk to  
25 him or her. Thank you very much.

26 Cross-examination.

27 \ \ \

28 \ \ \

**CROSS-EXAMINATION OF FIROUZEH TIRANDAZI**  
**BY JACOB P. AUSTIN**  
**(RT 113:18 – 114:03)**

1 sounds -- it sounds like everyone needs to be listed,  
2 when you say even an LLC will include attachments with  
3 all names of all people.

4 A I guess I don't understand what you mean by  
5 "everyone." This is information that is provided to the  
6 City by the applicant. So by submitting this and  
7 signing it, they're letting the City know that these are  
8 the people of -- the property owner and the permittee.

9 Q Thank you.

10 So I assume you're very familiar with San Diego  
11 Municipal Code and ordinances. Correct?

12 A To some extent, I'm familiar.

13 Q To some extent.

14 Well, as they relate to marijuana law and  
15 processing of CUPs specifically.

16 A I do. But I still do refer to the Municipal  
17 Code.

18 Q Yes. I mean, they are very lengthy. So that  
19 only makes sense.

20 Are you familiar with a change to the City --  
21 the San Diego City Ordinance 20990 -- or 200797? It was  
22 passed in -- it was amended and passed in February 22nd,  
23 2017.

24 A Is that the -- what -- do you have a title for  
25 that ordinance? Is the one that established the  
26 marijuana outlet use?

27 Q That's precisely what it is.

28 A Okay.

1           Q     Yes. That's where the ordinance changed  
2     from -- changed CUP applications for marijuana consumer  
3     cooperatives to the broader term of marijuana outlets.  
4     Are you familiar with that?

5           A     Yes.

6           Q     So within that ordinance, it does specifically  
7     say that any dispensary or retail licensing requirements  
8     are going to be pursuant to the California Business and  
9     Professions Code. Correct?

10          A     The state requirements.

11          Q     Yes. So, basically, all the ordinances will  
12     be -- they'll refer to the California Business and  
13     Professions Code when it comes to licensing. Correct?

14          A     I don't handle the state licensing  
15     requirements. So --

16          Q     But it does refer you to the Business and  
17     Professions Code of California. Correct?

18          A     If that's what it says in the ordinance, then  
19     yes.

20          Q     Is it your understanding that Mr. Geraci, who  
21     is sitting before you, was in fact attempting to acquire  
22     this CUP on 6176 for himself?

23                 MR. TOOTHACRE: Calls for speculation, your  
24     Honor.

25                 THE COURT: Overruled.

26                 THE WITNESS: I don't -- I don't have an answer  
27     for that question.

28

1 BY MR. AUSTIN:

2 Q Is that because his name does not appear  
3 anywhere in any of the applications for the 6176  
4 property?

5 A That -- that is correct.

6 Q Did you ever have any email communications  
7 directly with Mr. Geraci?

8 A I don't recall.

9 Q Do you recall any phone conversations with  
10 Mr. Geraci or sit-down meetings?

11 A I don't -- I don't recall phone conversations  
12 or sit-down meetings.

13 Q Looking at Mr. Geraci now, do you -- do you  
14 believe you've ever met this man?

15 A I don't believe so.

16 Q If he were attempting to acquire a CUP using  
17 his secretary as a proxy without ever disclosing his  
18 name, does that seem like it would be a violation of  
19 San Diego law and California state law?

20 MR. TOOTHACRE: Argumentative, your Honor.

21 THE COURT: Sustained.

22 BY MR. AUSTIN:

23 Q Essentially, anyone with an ownership or  
24 financial interest in a marijuana outlet is supposed to  
25 be disclosed to the City. Correct?

26 A You know, looking at the ownership disclosure  
27 statement, it's the property owner and then also a  
28 tenant/lessee would have to be identified.

1 Q Right. And that is like an introductory  
2 application form.

3 But are you familiar with the California  
4 Business and Professions Code?

5 A No.

6 Q Okay. Do you know of any situation where  
7 someone with previous sanctions against them for illegal  
8 cannabis principals would be barred from acquiring a  
9 marijuana outlet CUP?

10 MR. TOOTHACRE: Vague and ambiguous and assumes  
11 facts, your Honor.

12 THE COURT: Overruled.

13 BY MR. AUSTIN:

14 Q That means you can -- you can answer.

15 A Could you -- I'm sorry. Could you repeat the  
16 question?

17 Q Yeah. Absolutely.

18 Is it your understanding that if someone had  
19 been sanctioned for illegal cannabis dispensary  
20 activity, is it your understanding that they would be  
21 barred from acquiring a CUP in San Diego?

22 A I'd have to refer to the Municipal Code. I  
23 believe there may be a section in there once you have a  
24 conditional use permit, you'd have to go through a  
25 background check process.

26 Q Okay. Do you know what that background check  
27 process entails?

28 A It's a LiveScan and also specific forms that



1 need to be completed, specific City of San Diego police  
2 forms that need to be completed. And it's processed by  
3 the San Diego Police Department.

4 Q How many CUPs are allowed in the City of  
5 San Diego?

6 A CUPs for --

7 Q Marijuana outlets.

8 A Four per council district.

9 Q And how many council districts are there?

10 A There's nine. So 36 total.

11 Q So 36 total.

12 Would it be fair to say that these are  
13 competitively sought after?

14 A Due to the limit, yes.

15 Q Yes. Do you know how many CUPs have been  
16 granted for marijuana outlets in San Diego?

17 A Total count, not off the top of my head. I  
18 couldn't say.

19 Q Approximately would you say 20, 25, maybe 30?

20 A Maybe 20.

21 Q Maybe 20. So perhaps 16 are still available?

22 A Yeah. Again, I -- I have that data. Just that  
23 data isn't with me.

24 Q No problem.

25 Are you aware of how many CUPs are being  
26 processed right now for marijuana outlets in the DS --  
27 in your -- your department?

28 A Maybe about two or three.

1 Q Two or three.

2 So the reason that there's 10 available slots  
3 that are not being processed currently, is that because  
4 the restrictions are so difficult to overcome?

5 A I can't answer that. I don't know.

6 Q In regards to the 1,000-foot radius, the  
7 proximity to schools, churches, daycare centers, et  
8 cetera, does that exclude most properties from being  
9 eligible for a CUP?

10 A Again, I can't answer that, but those  
11 restrictions do exist.

12 Q Well, in your -- in your experience, has that  
13 created a lot of difficulty in people acquiring the  
14 CUPs?

15 A Most of the applications that are submitted,  
16 they are in compliance with the separation requirements.  
17 There may have been a few, less than a handful, that  
18 have been denied because the separation requirements  
19 have not been met.

20 Q Is it your understanding that marijuana outlets  
21 are very profitable?

22 A I -- I can't answer that. I don't --

23 Q That's fine.

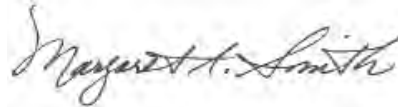
24 So in some of the emails that we saw, Darryl --  
25 or, I mean -- I apologize -- Mr. Cotton, he was  
26 inquiring about having a CUP in his name on the 6176  
27 property. Correct?

28 A I believe he was requesting to be able to

1 I, Margaret A. Smith, a Certified Shorthand  
2 Reporter, No. 9733, State of California, RPR, CRR, do  
3 hereby certify:

4 That I reported stenographically the proceedings  
5 held in the above-entitled cause; that my notes were  
6 thereafter transcribed with Computer-Aided  
7 Transcription; and the foregoing transcript, consisting  
8 of pages number from 1 to 166, inclusive, is a full,  
9 true and correct transcription of my shorthand notes  
10 taken during the proceeding had on July 9, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand  
12 this 24th day of July 2019.

13   
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15 Margaret A. Smith, CSR No. 9733, RPR, CRR  
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# **EXHIBIT G**

**To:** Becky Berry[Becky@tfcgsd.net]  
**Cc:** Larry Geraci[Larry@tfcgsd.net]; Jim Bartell[jim@bartellassociates.com]; Austin, Gina[gaustin@austinlegalgroup.com]  
**From:** Abhay Schweitzer  
**Sent:** Mon 10/31/2016 4:18:12 PM  
**Importance:** Normal  
**Subject:** Re: Federal Blvd - Site Plan and Floor Plan  
**Received:** Mon 10/31/2016 4:18:19 PM

Court's Ex. **036**  
Case # 37-2017-00010073-CU-BC-CTL  
Rec'd \_\_\_\_\_  
Dept. **C-73** Clk. \_\_\_\_\_

Good afternoon Becky,

We successfully submitted the Federal Blvd project for the first step in the Conditional Use Permit process which is called completeness review.

The City of San Diego PTS number is: 520606

During this process the City staff is reviewing the submitted information in order to determine if it is complete enough for the full submittal. Typically this process takes approximately 2 weeks.

We will have the chance to make adjustments to the plans during this period, but it has to remain substantially as submitted. Interior changes are acceptable.

The City changed their total fee amount from \$8,800 to \$8,555 but they accepted your check anyways and just added extra credit to the deposit account. You can see the invoice at the following link: <http://opendsd.sandiego.gov/web/Invoices/Details/734406>

I'll get the actual paper copy of the paid invoice by tomorrow morning showing the full \$8,800 and will email that to you.

Please let me know if you have any questions.

Thank you

ABHAY SCHWEITZER  
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104  
[techno-us.com](http://techno-us.com) [sustainablearchitect.org](http://sustainablearchitect.org)  
o 619-940-5814 m 313-595-5814

On Fri, Oct 28, 2016 at 12:50 PM, Austin, Gina <gaustin@austinlegalgroup.com> wrote:

All,

Here are my comments:

DS3032

1. I would like to file in the tenant and not the owner on Item #3. Cotton has legal issues with the City and I don't want to see his name on application unless necessary.

2. The bottom of the form should be signed by Rebecca unless you have given Abhay written authorization to file. Genereally better to have signed by applicant if possible.

0512

Still need DS-190, DS-318, DS-3242, copy of the grant deed, copy of the lease, and the 100' and 1000' maps.

Are we waiting on the completeness check before we submit the noticing package?

Gina

**From:** Abhay Schweitzer [mailto:[abhay@techne-us.com](mailto:abhay@techne-us.com)]  
**Sent:** Thursday, October 27, 2016 5:31 PM  
**To:** Austin, Gina  
**Cc:** Larry Geraci; Becky Berry; Jim Bartell  
**Subject:** Re: Federal Blvd - Site Plan and Floor Plan

Good afternoon Gina,

Attached you will find the drawings we have completed so far. We are still working on 4 sheets which we will complete tomorrow morning. They are related to accessibility, security and stormwater management. I expect we will have them complete by 10:00am tomorrow.

The package with the separation maps, adjacent uses and so forth is ready and I'll likely have it in my hands tomorrow morning some time.

I'm attaching the forms we have partially completed so far for you to review as well in case you need to see them.

Please let me know if you need anything else meanwhile.

Thank you

ABHAY SCHWEITZER  
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104  
[techne-us.com](http://techne-us.com) [sustainablearchitect.org](http://sustainablearchitect.org)  
o [619-940-5814](tel:619-940-5814) m [313-595-5814](tel:313-595-5814)

On Thu, Oct 27, 2016 at 12:41 PM, Abhay Schweitzer <[abhay@techne-us.com](mailto:abhay@techne-us.com)> wrote:

Hi Gina,

0513



Yes thats me. I'm working to complete everything today and I'll email today once its done.

Thank you

ABHAY SCHWEITZER  
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104  
[techne-us.com](http://techne-us.com) [sustainablearchitect.org](http://sustainablearchitect.org)  
o [619-940-5814](tel:619-940-5814) m [313-595-5814](tel:313-595-5814)

On Thu, Oct 27, 2016 at 11:29 AM, Austin, Gina <[gaustin@austinlegallgroup.com](mailto:gaustin@austinlegallgroup.com)> wrote:

Thanks Abhay. Are you the person completing the submission package? I am under the impression it is getting submitted on Friday. I would like to review all the docs prior to submittal. PDF is fine.

Gina

**From:** Abhay Schweitzer [mailto:[abhay@techne-us.com](mailto:abhay@techne-us.com)]  
**Sent:** Wednesday, October 26, 2016 4:57 PM  
**To:** Larry Geraci; Becky Berry  
**Cc:** Austin, Gina; Jim Bartell  
**Subject:** Federal Blvd - Site Plan and Floor Plan

Good afternoon,

Attached you will find the proposed site plan and floor plan. I added the language that Gina mentioned for the irrevocable offer of dedication. I also made a separate sheet showing the separation after this dedication, which can in around 100'-1" just so that we can a bit of a buffer.

We are on track to submit on Friday for the first step which is the Submitted Completeness Review.

We don't have time to make any changes to the floor plan or site at this stage, but we can make changes after we submit to the City.

With the proposed plan, you would be able to easily accommodate 12-15 clients at one time.

You will notice a storage room at the top left corner of the floor plan. There is a corridor which leads to this room. The room is large enough so that we can add circulation elements for a future second floor addition.

Thank you

ABHAY SCHWEITZER

**Assoc. AIA- Principal**

3956 30th Street. San Diego, CA 92104

[techne-us.com](http://techne-us.com) [sustainablearchitect.org](http://sustainablearchitect.org)

[619-940-5814](tel:619-940-5814) [313-595-5814](tel:313-595-5814)



# **EXHIBIT H**



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

Court's Ex. **034**

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

Rec'd \_\_\_\_\_

Dept. **C-73** Clk \_\_\_\_\_

# General Application

FORM  
**DS-3032**  
AUGUST 2013

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

**2. Project Address/Location:** *Include Building or Suite No.*  
6176 Federal Blvd. **Project Title:** Federal Blvd. MMCC **Project No.:** *For City Use Only* 520604

**Legal Description:** *(Lot, Block, Subdivision Name & Map Number)*  
TR#:2 001100 BLK 25\*LOT 20 PER MAP 2121 IN\* City/Muni/Twp: SAN DIEGO **Assessor's Parcel Number:** 543-020-02

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

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

**Project Description:**  
The project consists of the construction of a new MMCC facility

**3. Property Owner/Lessee Tenant Name:** *Check one* ☐ Owner ☒ Lessee or Tenant Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Rebecca Berry

**Address:** \_\_\_\_\_ **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcscd.net

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

**Address:** \_\_\_\_\_ **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcscd.net

**5. Licensed Design Professional** (if required): (check one) ☒ Architect ☐ Engineer License No.: C-19371  
**Name:** Michael R. Morton AIA **Telephone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City:** San Diego **State:** CA **Zip Code:** 92104 **E-mail Address:** \_\_\_\_\_

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

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

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

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

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

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

**Part I** **Print Name:** Abhay Schweitzer **Signature:** *[Signature]* **Date:** 10/28/2016

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

**8. Applicant Name:** *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☒ Other Person per M.C. Section 112.0102 Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Rebecca Berry

**Address:** \_\_\_\_\_ **City:** San Diego **State:** CA **Zip Code:** 92122 **E-mail Address:** becky@tfcscd.net

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

**Signature:** *[Signature]* **Date:** Oct 31 2016

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Upon request, this information is available in alternative formats for persons with disabilities.

DS-3032 (08-13)

0517

Trial Ex. 034-001



City of San Diego  
Development Services  
1222 First Ave., MS-401  
San Diego, CA 92101  
(619) 446-5000

# Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP)

FORM  
**DS-190**  
MARCH 2014

The purpose of this affidavit is for the property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative (MMCC) to affirm that all uses within 1,000 feet from the subject property line have been identified, including residential zones within 100 feet, as defined in San Diego Municipal Code (SDMC), Sections 113.0103 and 141.0614.

The proposed MMCC location must be 100 feet from any residential zone and not within 1,000 feet of the property line of the following:

- |                      |  |
|----------------------|--|
| 1. Public park       | 6. Minor-oriented facility                       |
| 2. Church            | 7. Other medical marijuana consumer cooperatives |
| 3. Child care center | 8. Residential care facility                     |
| 4. Playground        | 9. Schools                                       |
| 5. City library      |  |

## GENERAL INFORMATION

Project Name:

Federal Blvd. MMCC

Project No.: For City Use Only

5201004

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Date Information Verified by Owner or Authorized Agent:

10/28/2016

**DECLARATION:** *The property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative must complete the following section and sign their name where indicated.*

We are aware that the business described above is subject to the Medical Marijuana Consumer Cooperatives (MMCC) regulated by SDMC, Section 141.0614 and Chapter 4, Article 2, Division 15. We hereby affirm under penalty of perjury that the proposed business location is not within 1,000 feet, measured in accordance with SDMC, Section 113.0225, of the property line of any public park, church, child care center, playground, library owned and operated by the City of San Diego, minor-oriented facility, other medical marijuana consumer cooperative, residential care facility, or schools; and is 100 feet from any residential zone as identified on the 1000-foot radius map and spread-sheet submitted with the Conditional Use Permit application.

Property Owner or Authorized Agent Name: Check one ☒ Owner ☐ Agent

Telephone No.:

Mailing Address:

City:

State:

Zip Code:

Signature:

Date:

Business Owner Name:

Rebecca Berry

Telephone No.:

(858) 999-6882

Mailing Address:

5982 Gullstrand Street

City:

San Diego

State:

CA

Zip Code:

92122

Signature:

Rebecca Berry

Date:

Oct 31 2016

Printed on recycled paper. Visit our web site at [www.sandiego.gov/development-services](http://www.sandiego.gov/development-services).

Upon request, this information is available in alternative formats for persons with disabilities.

DS-190 (03-14)

0518



City of San Diego  
Development Services  
Attn: Deposit Accounts  
1222 First Ave., MS-401  
San Diego, CA 92101  
(619) 446-5000

## Deposit Account/Financially Responsible Party

FORM  
DS-3242  
AUGUST 2014

Project Address/Location: 6176 Federal Blvd. San Diego, CA. 92114  
Project No.: 520606 Internal Order No.: For City Use Only

Approval Type: Check appropriate box for type of approval requested:

- ☐ Grading ☐ Public Right-of-Way ☐ Subdivision ☐ Neighborhood Use ☐ Coastal ☐ Neighborhood Development  
☐ Site Development ☐ Planned Development ☒ Conditional Use ☐ Variance ☐ Vesting Tentative Map  
☐ Tentative Map ☐ Map Waiver ☐ Other: \_\_\_\_\_

Is the project subject to a Reimbursement Agreement? ☐ No ☐ Yes

If yes, provide Reimbursement Agreement Application Project Number or Resolution/Ordinance No.: \_\_\_\_\_

**Deposit Trust Fund Account Information:** A deposit into a Trust Fund account with an initial deposit to pay for the review, inspection and/or project management services is required. The initial deposit is drawn against to pay for these services. The Financially Responsible Party will receive a monthly statement reflecting the charges made against the account, and an invoice when additional deposits are necessary to maintain a minimum balance. The payment of the invoice will be required in order to continue processing your project. At the end of the project, any remaining funds will be returned to the Financially Responsible Party.

### FINANCIALLY RESPONSIBLE PARTY

Name/Firm Name:

Address:

E-mail:

Rebecca Berry

5982 Gullstrand Street

City:

State:

Zip Code:

Telephone:

Fax No.:

San Diego

CA

92122

**Financially Responsible Party Declaration:** I understand that City expenses may exceed the estimated advance deposit and, when requested by the City of San Diego, will provide additional funds to maintain a positive balance. Further, the sale or other disposition of the property does not relieve the individual or Company/Corporation of their obligation to maintain a positive balance in the trust account, unless the City of San Diego approves a Change of Responsible Party and transfer of funds. Should the account go into deficit, all City work may stop until the requested advance deposit is received.

☐ This is a continuation of existing Project No.: \_\_\_\_\_ Internal Order No.: \_\_\_\_\_

**NOTE:** Using an existing opened account may be allowed when:

1. Same location for both projects;
2. Same Financially Responsible Party;
3. Same decision process (Ministerial and discretionary projects may not be combined);
4. Same project manager is managing both projects; and
5. Preliminary Review results in a project application.

**Please be advised:** Billing statements cannot distinguish charges between two different projects.

**Please Print Legibly.**

Print Name:

REBECCA BERRY

Title:

PRESIDENT

Signature\*:

Rebecca Berry

Date:

10/31/16

**\*The name of the individual and the person who signs this declaration must be the same. If a corporation is listed, a corporate officer must sign the declaration (President, Vice-President, Chairman, Secretary or Treasurer).**

### FOR CITY USE ONLY

Project Title:

Federal Blvd. mmcc

Date Requested:

10/31/16

☐ Keep existing Project No.: \_\_\_\_\_ as lead or ☐ Use new Project No.: \_\_\_\_\_ as lead

### ACCOUNT CLOSURE AUTHORIZATION

Date Requested:

☐ Completed ☐ Inactive ☐ Withdrawn ☐ Collections

Print Name:

Signature:

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Upon request, this information is available in alternative formats for persons with disabilities.

DS-3242 (08-14)

0519





THE CITY OF SAN DIEGO

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

# Ownership Disclosure Statement

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

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

Federal Blvd. MMCC

**Project Address:**

6176 Federal Blvd., San Diego, CA 92114

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

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

**Additional pages attached** ☐ Yes ☒ No

**Name of Individual (type or print):**

Darryl Cotton

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

6176 Federal Blvd

**City/State/Zip:**

San Diego Ca 92114

**Phone No:**

( 619 ) 954-4447

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

10-31-2016

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

Rebecca Berry

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

5982 Gullstrand St

**City/State/Zip:**

San Diego / Ca / 92122

**Phone No:**

8589996882

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

10-31-2016

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

# **EXHIBIT I**

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

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

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1 through 10,  
inclusive,

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil  
Dept. C-73

**PLAINTIFF/CROSS-DEFENDANT  
LARRY GERACI'S ANSWERS TO  
SPECIAL INTERROGATORIES, SET  
TWO, PROPOUNDED BY  
DEFENDANT/CROSS-COMPLAINANT  
DARRYL COTTON**

**[IMAGED FILE]**

Complaint Filed: March 21, 2017  
Trial Date: January 25, 2018

**PROPOUNDING PARTY: DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON**

**RESPONDING PARTY: PLAINTIFF/CROSS-DEFENDANT LARRY GERACI**

**SET NO: TWO**

Plaintiff/Cross-Defendant LARRY GERACI (hereinafter "Responding Party") responds to the  
second set of Special Interrogatories propounded by Defendant/Cross-Complainant DARRYL COTTON,  
as follows:

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**PRELIMINARY STATEMENT**

These responses are made solely for the purpose of, and in relation to, this action. Each response is given subject to all appropriate objections (including but not limited to objections concerning competency, relevancy, materiality, propriety and admissibility) which would require the exclusion of any evidence contained herein if the evidence was offered in court. All such objections and grounds therefore are reserved and may be interposed at the time of trial.

The party on whose behalf the responses are given has not yet completed its investigation of the facts relating to this action, has not yet completed its discovery in this action, and has not yet completed its preparation for trial or hearing. Consequently, the following responses are given without prejudice to the answering party's right to produce, at the time of trial or hearing, subsequently discovered evidence relating to the proof of any material facts, and to produce all evidence, whenever discovered, relating to the proof of facts subsequently discovered to be material.

Except for facts explicitly admitted herein, no admissions of any nature whatsoever are to be implied or inferred. The fact that any interrogatory herein has been answered should not be taken as an admission, or a concession of the existence, of any facts set forth or assumed by such interrogatory, or that such answer constitutes evidence of any fact thus set forth or assumed. All responses must be construed as given on the basis of present recollection.

**DEFINITIONS**

The terms used herein are defined as set follows:

1. The terms "YOU" and "YOUR" shall mean and refer to Plaintiff and Cross-Defendant LARRY GERACI.

2. The term "COTTON" shall mean and refer to Defendant and Cross-Complainant DARRYL COTTON.

3. The term "BERRY" shall mean and refer to Cross-Defendant REBECCA BERRY.

4. The term "PROPERTY" shall mean and refer to the real property located at 6176 Federal Boulevard, City and County of San Diego, California, 92114.

5. The terms "PERSON" or "PERSONS" shall mean and refer to any natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation or public



entity.

6. The term "AGENTS" shall mean and refer to all PERSONS with whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys, accountants, investigators, experts, insurance companies and their agents and employees, and anyone else acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any such AGENTS received compensation for their services from YOU or any other PERSON.

7. The terms "DOCUMENT" and "DOCUMENTS" shall mean and refer to any and all writings as defined by Evidence Code §250 including but not limited to DOCUMENTS which are handwritten, typed, printed, photocopied, sent electronically such as by electronic mail messages, facsimiles, and every other means of recording any tangible thing and forms of communication and/or representation, including letters, words, pictures, sounds or symbols, or combinations thereof, as well as all ELECTRONICALLY STORED INFORMATION as defined below.

8. The term "ELECTRONICALLY STORED INFORMATION" shall mean and refer to all information and all metadata related thereto stored electronically on a computer hard drive, laptop, external hard drive, CD, DVD or other similar device, server, in the cloud, on a cellular or other type of telephone or otherwise, regardless of whether such ELECTRONICALLY STORED INFORMATION also currently exists in non-electronic form, no matter how produced or maintained, in YOUR actual or constructive possession, in custody or control, or of which YOU have knowledge of its existence regardless whether it was prepared, published or released by YOU or by any third party. ELECTRONICALLY STORED INFORMATION also includes all content, profiles and related metadata posted on the platforms/websites of any social media or other providers or any mobile application, including but not limited to social media providers and/or websites such as Facebook, Twitter, Instagram, Snap Chat, Linkedin, Yelp, YouTube, Tumblr and Wordpress.

9. The term "IDENTIFY" as used herein in any Special Interrogatory seeking information concerning a DOCUMENT or DOCUMENTS is a request that YOU provide:

- a. A description of the DOCUMENT(S);
- b. The date(s) of the DOCUMENT(S);

1 c. The identity of each PERSON who authored and/or signed the DOCUMENT(S);

2 d. The subject matter of the DOCUMENT(S);

3 e. The present location of the DOCUMENT(S); and

4 f. The identity of the custodian of the DOCUMENT(S).

5 10. The term "IDENTIFY" as used herein in any Special Interrogatory seeking information  
6 concerning any oral statement, conversation, discussion or communication is a request that YOU provide:

7 a. The identity of each PERSON who participated in or witnessed the oral statement,  
8 conversation, discussion or communication;

9 b. The date when and place where the oral statement, conversation, discussion or  
10 communication occurred;

11 c. The substance of the oral statement, conversation, discussion or communication; and

12 d. The identity of any and all notes, memoranda or any other DOCUMENTS memorializing,  
13 referring or RELATING TO the subject matter of the oral statement, conversation, discussion or  
14 communication.

15 11. The term "IDENTIFY" as used herein in any Special Interrogatory seeking information  
16 concerning any PERSON or PERSONS is a request that YOU provide:

17 a. The full name of each such PERSON;

18 b. The present or last known address residential and business addresses of each such  
19 PERSON; and

20 c. The employer, position and title of each such PERSON during the time period specified in  
21 YOUR response to the Special Interrogatory.

22 d. If the PERSON is an organization or entity other than a natural person, please provide:

23 (1) The full name and type of the entity or organization;

24 (2) The date of and state in which the entity or organization was formed;

25 (3) The address and telephone number of each principal place of business of the entity or  
26 organization;

27 (4) The nature of the business conducted by the entity or organization;

28 (5) A description of YOUR affiliation or other relationship with the entity or organization;

1 (6) The length of YOUR affiliation or other relationship with the entity or organization;

2 (7) The names, addresses and telephone numbers of each PERSON who is an employee, agent,  
3 representative or affiliate of the entity or organization with whom YOU have had contact; and

4 (8) A description of the nature of YOUR contact with each such PERSON.

5 12. The term "IDENTIFY" as used herein in any Special Interrogatory seeking information  
6 concerning any action YOU took and/or any activity in which YOU engaged is a request that YOU  
7 provide:

8 a. The date(s) on which YOU took or engaged in each such action and/or in activity;

9 b. A description of each such action and/or activity;

10 c. The identity of each PERSON who participated in, witnessed and/or has knowledge of  
11 each such action and/or activity; and

12 d. The identity of any and all notes, memoranda or any other DOCUMENT(S)  
13 memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

14 13. The term "RELATING TO" shall mean and refer to a reference regarding, pertaining to,  
15 describing, discussing, reflecting, mentioning, evidencing, containing, citing, summarizing, analyzing or  
16 bearing any logical or factual relevance to or connection with the subject matter of the Special  
17 Interrogatory.

18 14. The term "COMPLAINT" shall mean and refer to the DOCUMENT entitled "Plaintiffs  
19 Complaint For: 1. Breach of Contract; Breach of the Covenant of Good Faith and Fair Dealing; 3. Specific  
20 Performance; and 4. Declaratory Relief YOU filed in this action on March 21, 2017.

21 15. The term "CITY" shall mean and refer to The City of San Diego, and any and all public  
22 officials, employees and/or any other PERSONS or AGENTS representing the CITY in any capacity  
23 whatsoever.

24 16. The "NOVEMBER DOCUMENT" shall mean and refer to the DOCUMENT executed by  
25 COTTON on November 2, 2016 attached as Exhibit A to YOUR COMPLAINT.

26 17. The term "CONFIRMATION EMAIL" as used herein shall mean and refer to YOUR  
27 November 2, 2016 email sent at 9:13 p.m. in response to COTTON's 6:55 p.m. email in which YOU  
28 stated, "No no problem at all."

1           18.     The term "DISAVOWMENT ALLEGATION" shall mean and refer to YOUR contention  
2 that on November 3, 2016 YOU called COTTON and told him YOU never agreed to give him and equity  
3 position in the business on the PROPERTY to which COTTON acquiesced that he did not have, was not  
4 entitled to, and/or agreed to forego any ownership interest in the business on the PROPERTY by  
5 responding to the effect of "well, YOU don't get what YOU don't ask for."

6           19.     The term "CUP" shall mean and refer to the Conditional Use Permit for the PROPERTY to  
7 be used as a Medical Marijuana Cooperative Collective/Marijuana Outlet ("MO").

8           20.     The term "6176 CUP APPLICATION" shall mean and refer to any and all DOCUMENTS  
9 submitted to the CITY on October 31, 2018 by YOU or YOUR AGENTS to initiate the application  
10 process to obtain CITY approval of the CUP.

11          21.     The term "CUP APPROVAL PROCESS" shall mean and refer to any and all activities  
12 related in any way to the CITY's processing of the CUP following submission of the 6176 CUP  
13 APPLICATION.

14                   **RESPONSES TO SPECIAL INTERROGATORIES**

15 **SPECIAL INTERROGATORY NO. 1:**

16           IDENTIFY all PERSONS YOU have retained or PERSONS who have acted on YOUR  
17 behalf in connection with YOUR "CUP efforts" as alleged in Paragraph 9 of YOUR  
18 COMPLAINT, including but not limited to the architects, engineers, surveyors, construction  
19 professionals, attorneys, lobbyists, consultants and any AGENTS of whatsoever nature, regardless  
20 of whether or not any such PERSONS were compensated for their services.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

22                   Abhay Schweitzer  
23                   TECHNE Design Development  
24                   3856 30<sup>th</sup> Street,  
                    San Diego, California 92104  
                    (619) 940-5814

25                   Jim Bartell  
26                   Bartell and Associates  
27                   53333 Mission Center Road, No. 115  
                    San Diego, California 92108

28                   Gina M. Austin, Esq.  
                    Austin Legal Group

3990 Old Town Avenue, Suite A-112  
San Diego, California 92110  
(619) 923-9600

Lundstrom Engineering and Surveying, Inc.  
5333 Mission Center Road, No. 115  
San Diego, California 92108

SWLA  
4429 Morena Boulevard  
San Diego, California 92117  
(858) 270-8688

Title Pro Information Systems  
13520 Scarsdale Way  
San Diego, California 92128  
(760) 295-3951

Doug Skinner, PG, CEG  
Senior Geologist  
SCST, Inc.  
6280 Riverdale St, San Diego, CA 92120  
(619) 280-4321

Other miscellaneous vendors

**SPECIAL INTERROGATORY NO. 2:**

IDENTIFY all PERSONS of whom YOU are aware who have an established or alleged interest in the CUP or the PROPERTY.

**RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

Objection: The interrogatory is vague and ambiguous as to what is meant by established or alleged interest in the CUP or the property. Additionally, the interrogatory is impermissibly compound.  
[CCP § 2030.060 (c) – (d).]

Subject to and without waiving these objections, Responding Party responds as follows: Larry Geraci; Rebecca Berry, Mr. Geraci's authorized agent for the CUP application; and Darryl Cotton.

**SPECIAL INTERROGATORY NO. 3:**

For each PERSON IDENTIFIED in YOUR response to Special Interrogatory No. 2, describe with specificity when and how YOU first became aware of his or her alleged interest in the CUP or PROPERTY.

///

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

2       Objection: The interrogatory is vague and ambiguous as to what is meant by established or  
3 alleged interest in the CUP or the property. Additionally, the interrogatory is impermissibly compound.  
4 [CCP § 2030.060 (c) – (d).] The interrogatory is also objectionable in that it contains impermissible  
5 subparts under the definition of IDENTIFY. [CCP § 2030.060(f).]

6       Subject to and without waiving these objections, Responding Party responds as follows: Larry  
7 Geraci first became aware that Darryl Cotton had an ownership interest in the property in the months  
8 prior to entering into the agreement to purchase the property on November 2, 2016, referred to in the  
9 definitions as the NOVEMBER DOCUMENT. Mr. Geraci became aware that he had a contractual  
10 interest in the property on November 2, 2016, when Mr. Cotton and I signed the NOVEMBER  
11 DOCUMENT. Larry Geraci was aware that he had an interest in the CUP application at the time the CUP  
12 application was submitted by Applicant, Rebecca Berry, his authorized agent for the CUP application.  
13

14 **SPECIAL INTERROGATORY NO. 4:**

15       In addition to the PROPERTY, do YOU or any entity in which YOU have an interest hold  
16 an equitable or financial interest in any other real property subject to a pending application for or  
17 an approved Conditional Use Permit for marijuana sales or other marijuana-related activities?

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

19       Objection: The interrogatory is vague and ambiguous as to what is meant by “equitable or  
20 financial interest in any other real property...”. Additionally, the interrogatory requests information  
21 which is not relevant to the pending matter and which is not likely to lead to the discovery of matters  
22 relevant to the instant proceeding. [CCP §§ 2017.010, 2030.010Ia); *Kalabla v. Gray* (2002) 95  
23 Cal.App.4<sup>th</sup> 1416, 1417 (citing text).] Additionally, the interrogatory is impermissibly compound.  
24 [CCP § 2030.060 (c) – (d).]

25       Subject to and without waiving these objections, Responding Party responds as follows: No.  
26

27 **SPECIAL INTERROGATORY NO. 5:**

28       If YOUR response to Special Interrogatory No. 4 is in the affirmative, please IDENTIFY

each such real property.

**RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

Not applicable.

**SPECIAL INTERROGATORY NO. 6:**

If YOUR response to Special Interrogatory No. 4 is in the affirmative, please describe with specificity YOUR ownership interest in each real property identified in YOUR response to Special Interrogatory No. 5.

**RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

Not applicable.

**SPECIAL INTERROGATORY NO. 7:**

IDENTIFY each and every term and condition for the sale of the PROPERTY specified in the NOVEMBER DOCUMENT.

**RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

Objection, the NOVEMBER DOCUMENT speaks for itself. The terms and conditions for the sale of the PROPERTY specified in the NOVEMBER DOCUMENT are as follows:

**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 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 the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.**

**/s/**  
**Larry Geraci**

**/s/**  
**Darryl Cotton**

**SPECIAL INTERROGATORY NO. 8:**

IDENTIFY each and every obligation YOU are required to perform as specified in the

1 NOVEMBER DOCUMENT.

2 **RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

3 Objection, the NOVEMBER DOCUMENT speaks for itself.

4 Subject to and without waiving this objection, Responding Party responds as follows: The  
5 obligations Mr. Geraci is required to perform under the November 2, 2016 agreement are:

6 1) Pay a \$10,000.00 deposit.

7 2) Apply for and seek approval of a CUP for operation of a marijuana dispensary at the  
8 property (implicit is the obligation to make good faith efforts);

9 3) If a CUP is approved for the property, pay the \$790,000.00 balance of the purchase price to  
10 Darryl Cotton.

11  
12 **SPECIAL INTERROGATORY NO. 9:**

13 Please describe with specificity each and every "remaining obligation" YOU are required to  
14 perform as specified in the NOVEMBER DOCUMENT.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

16 Objection, the NOVEMBER DOCUMENT speaks for itself.

17 Subject to and without waiving this objection, Responding Party responds as follows: The  
18 obligations Mr. Geraci is required to perform under the November 2, 2016 agreement are:

19 1) Continue to seek approval of a CUP for operation of a marijuana dispensary at the property  
20 (implicit is the obligation to make good faith efforts);

21 2) If a CUP is approved for the property, pay the \$790,000.00 balance of the purchase price to  
22 Darryl Cotton.

23 These obligations are continuing as of the present date.

24  
25 **SPECIAL INTERROGATORY NO. 10:**

26 Please describe with specificity each and every condition that still must be fulfilled to  
27 obtain the CITY approval of the 6176 CUP APPLICATION.

28 ///



1 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

2       Objection: The interrogatory is ambiguous as phrased because the term "condition" has a  
3 specific meaning in the context of a CUP Application, namely, conditions that may be attached to any  
4 approved CUP.

5       Subject to and without waiving this objection, Responding Party responds as follows: The  
6 decision maker for City of San Diego Conditional Use Permits such as this one is the Hearing  
7 Officer. Prior to being scheduled for a hearing with the Hearing Officer, City of San Diego staff  
8 creates a draft version of the Conditional Use permit which incorporates all standard conditions  
9 and conditions related to each specific discipline. As of this date, Plaintiff (through Abhay  
10 Schweitzer of TECHNE) has not yet received such document from the City of San Diego. The  
11 conditions have timing associated with them which range from prior to construction, after  
12 construction or some other time. Some conditions must be satisfied continuously through the life  
13 of the permit, while some are single events. The City of San Diego is responsible for verifying that  
14 the conditions. The proposed conditions would only be satisfied in the event that the Conditional  
15 Use Permit is granted, therefore it is not possible to fulfill those conditions and then  
16 obtain approval of the Conditional Use Permit.

17  
18 **SPECIAL INTERROGATORY NO. 11:**

19       Please describe with specificity each and every issue that still must be resolved to obtain  
20 CITY approval of the 6176 CUP APPLICATION.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

22       Responding Party is unaware of each and every issue that still must be fulfilled to obtain the  
23 City approval of the CUP application as that changes over time and is at the discretion of the City of  
24 San Diego. Nevertheless, as of this date, the City of San Diego Development Services Department  
25 is actively reviewing the latest submittal for this Conditional Use Permit, which was done on  
26 October 31, 2018. The reviews are scheduled to be completed on or about November 30, 2018,  
27 according to the Development Services own schedules for these reviews. The latest submittal,  
28 mentioned above, was done in order to address the Cycle Issues which

1 were received from the Development Services Department as a result of their review of the  
2 previous submittal. Those Cycle Issues, which are set forth in the attached letter dated September  
3 26, 2018, from the City of San Diego Development Services Department to Abhay Schweitzer of  
4 TECHNE, describe in detail every issue that must be resolved in order for the reviewing staff  
5 to recommend approval of the project to the Hearing Officer. Staff does not approve or deny a  
6 project such as this one (Process Three Conditional Use Permit).

7  
8 **SPECIAL INTERROGATORY NO. 12:**

9 Please state with specificity all reasons why YOU, as the potential purchaser of the  
10 PROPERTY, did not submit the 6176 CUP APPLICATION in YOUR own name.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

12 For two main reasons. First, I held a federal license and at the time of submittal of the CUP  
13 Application and the difference between federal and state/local enforcement of laws related to marijuana  
14 gave rise to uncertainty regarding the potential for adverse impact on my federal license. Second, for  
15 convenience of administration during the anticipated application process, I elected to have my assistant  
16 act as my agent in submitting the CUP Application.

17  
18 **SPECIAL INTERROGATORY NO. 13:**

19 IDENTIFY all DOCUMENTS RELATING TO the 6176 CUP APPLICATION submitted  
20 to the CITY which IDENTIFY YOU as a party having an interest in the PROPERTY.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

22 Objection: This interrogatory is unduly burdensome as Responding Party, through his  
23 consultant, Abhay Schweitzer of TECHNE, has made multiple submissions in connection with the  
24 process of applying for and seeking approval of the 6176 CUP Application, nearly all of which were  
25 not reviewed by Responding Party. Notwithstanding and without waiving this objection, Responding  
26 Party will produce all documents provided to the City in connection with its successive resubmissions  
27 that have not been produced previously.

1 **SPECIAL INTERROGATORY NO. 14:**

2 IDENTIFY all DOCUMENTS RELATING TO the 6176 CUP APPLICATION reviewed  
3 by Gina Austin.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 14:**

5 Objection: This interrogatory invades the attorney-client privilege. [Cal. Evid. Code § 954.]  
6 Based on the foregoing objection, Responding Party will not reply to this interrogatory.

7  
8 **SPECIAL INTERROGATORY NO. 15:**

9 IDENTIFY all DOCUMENTS RELATING TO the 6176 CUP APPLICATION drafted or  
10 revised by Gina Austin.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 15:**

12 Objection: This interrogatory invades the attorney-client privilege. [Cal. Evid. Code § 954.]  
13 Based on the foregoing objection, Responding Party will not reply to this interrogatory.

14  
15 **SPECIAL INTERROGATORY NO. 16:**

16 IDENTIFY all DOCUMENTS RELATING TO the 6176 CUP APPLICATION reviewed  
17 by Jim Bartell.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

19 Objection: Plaintiff does not have personal knowledge of all documents related to the CUP  
20 application reviewed by Jim Bartell over the course of the last 2 years. Mr. Bartell has that information  
21 and his deposition can be taken.

22  
23 **SPECIAL INTERROGATORY NO. 17:**

24 Please state with specificity all reasons why YOU emailed Abhay Schweitzer on October 5,  
25 2016 requesting that he revise the TECHNE contract for design services for the PROPERTY dated  
26 October 4, 2016 entitled "Agreement Between Owner and Design Firm" to replace YOUR name as  
27 "Owner" under the contract with BERRY's name.

28 ///

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 17:**

2 For two main reasons. First, I held a federal license and at the time of submittal of the CUP  
3 Application and the difference between federal and state/local enforcement of laws related to marijuana  
4 gave rise to uncertainty regarding the potential for adverse impact on my federal license. Second, for  
5 convenience of administration during the anticipated application process, I elected to have my assistant  
6 act as my agent in submitting the CUP Application.

7  
8 **SPECIAL INTERROGATORY NO. 18:**

9 IDENTIFY all DOCUMENTS RELATING TO the purchase of the PROPERTY reviewed  
10 by Gina Austin.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 18:**

12 Objection: This interrogatory invades the attorney-client privilege. [Cal. Evid. Code § 954.]  
13 Based on the foregoing objection, Responding Party will not reply to this interrogatory.

14  
15 **SPECIAL INTERROGATORY NO. 19:**

16 IDENTIFY all DOCUMENTS RELATING TO the purchase of the PROPERTY drafted or  
17 revised by Gina Austin.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 19:**

19 Objection: This interrogatory invades the attorney-client privilege. [Cal. Evid. Code § 954.]  
20 Subject to and without waiving this objection, Responding Party responds as follows: Gina  
21 Austin did not draft the written agreement entered into on November 2, 2016, for the purchase and sale  
22 of the property (the NOVEMBER DOCUMENT). Responding Party has produced previously all  
23 responsive documents drafted by Ms. Austin or persons employed in her law firm.

24  
25 **SPECIAL INTERROGATORY NO. 20:**

26 Please describe with specificity all activities undertaken by YOU and YOUR AGENTS  
27 related to the CUP APPROVAL PROCESS for the period January 1, 2018 to April 30, 2018.

28 ///

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 20:**

2       Objection: The interrogatory is over-broad and unduly burdensome given the definition of  
3 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with  
4 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but  
5 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,  
6 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else  
7 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any  
8 such AGENTS received compensation for their services from YOU or any other PERSON."

9       To the extent this interrogatory seeks information regarding the activities undertaken by Gina  
10 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code §  
11 954] and attorney work-product doctrine. [    ] To the extent the interrogatory seeks information from  
12 Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section 1, of the California  
13 Constitution. To the extent it calls for opinions and descriptions of the activities of plaintiff's expert  
14 witnesses in this case, this is an improper discovery procedure for obtaining the opinions of experts.  
15 [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4<sup>th</sup> 1416, 1419.]

16       Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as  
17 defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete  
18 in and of itself." [CCP § 2030.060(c)-(d).]

19       Notwithstanding and without waiving these objections, Responding Party responds as follows:  
20 During the specified period of January 1, 2018 to April 30, 2018, Techne, its employees and  
21 contractors lead by Abhay Schweitzer, worked approximately 55.30 hours on the approval of the  
22 referenced CUP. This work included specifically revising its drawings in order to address  
23 the previously received comments from the City of San Diego, coordinating with Geotechnical  
24 consultant, coordinating with Government Relations consultant along with calls and email with the City  
25 of San Diego Development Project Manager. A detailed record of this work is contained within its  
26 client records. Others with knowledge of this work would include persons employed or hired by  
27 the Geotechnical consultant and the Government Relations consultant to perform their work during this  
28 time period.

1 **SPECIAL INTERROGATORY NO. 21:**

2 IDENTIFY all YOUR AGENTS who engaged in activities related to the CUP APPROVAL  
3 PROCESS for the period January 1, 2018 to April 30, 2018.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 21:**

5 Objection: The interrogatory is over-broad and unduly burdensome given the definition of  
6 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with  
7 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but  
8 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,  
9 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else  
10 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any  
11 such AGENTS received compensation for their services from YOU or any other PERSON."

12 Objection: The interrogatory is over-broad and unduly burdensome given the definition of  
13 IDENTIFY in the Interrogatories as: The term "IDENTIFY" as used herein in any Special Interrogatory  
14 seeking information concerning any action YOU took and/or any activity in which YOU engaged is a  
15 request that YOU provide:

- 16 a. The date(s) on which YOU took or engaged in each such action and/or in activity;  
17 b. A description of each such action and/or activity;  
18 c. The identity of each PERSON who participated in, witnessed and/or has knowledge of  
19 each such action and/or activity; and  
20 d. The identity of any and all notes, memoranda or any other DOCUMENT(S)  
21 memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

22 To the extent this interrogatory seeks information regarding the activities undertaken by Gina  
23 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code §  
24 954] and attorney work-product doctrine. [CCP § 2018.030.] To the extent the interrogatory seeks  
25 information from Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section  
26 1, of the California Constitution. To the extent it calls for opinions and descriptions of the activities of  
27 plaintiff's expert witnesses in this case, this is an improper discovery procedure for obtaining the  
28 opinions of experts. [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4<sup>th</sup> 1416, 1419.]

1           Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as  
2 defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete  
3 in and of itself." [CCP § 2030.060(c)-(d).]

4           Subject to and without waiving this objection, Responding Party responds as follows: The  
5 persons primarily responsible for activities related to the CUP APPROVAL PROCESS for the period  
6 January 1, 2018 to April 30, 2018, were: 1) TECHNE, led by Abhay Schweitzer, its employees  
7 and contractors; and 2) Bartell & Associates, let by Jim Bartell, its employees and contractors, and  
8 3) SCST, Inc., represented by Doug Skinner, its employees and contractors. .

9  
10 **SPECIAL INTERROGATORY NO. 22:**

11           IDENTIFY all DOCUMENTS RELATING TO all activities undertaken by YOU and  
12 YOUR AGENTS related to the CUP APPROVAL PROCESS for the period January 1, 2018 to the  
13 April 30, 2018.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 22:**

15           Objection: The interrogatory is over-broad and unduly burdensome given the definition of  
16 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with  
17 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but  
18 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,  
19 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else  
20 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any  
21 such AGENTS received compensation for their services from YOU or any other PERSON."

22           Objection: The interrogatory is over-broad and unduly burdensome given the definition of  
23 IDENTIFY in the Interrogatories as: The term "IDENTIFY" as used herein in any Special Interrogatory  
24 seeking information concerning any action YOU took and/or any activity in which YOU engaged is a  
25 request that YOU provide:

- 26           a.     The date(s) on which YOU took or engaged in each such action and/or in activity;  
27           b.     A description of each such action and/or activity;  
28           c.     The identity of each PERSON who participated in, witnessed and/or has knowledge of

1 each such action and/or activity; and

2 d. The identity of any and all notes, memoranda or any other DOCUMENT(S)  
3 memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

4 To the extent this interrogatory seeks information regarding the activities undertaken by Gina  
5 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code §  
6 954] and attorney work-product doctrine. [CCP § 2018.030.] To the extent the interrogatory seeks  
7 information from Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section  
8 1, of the California Constitution. To the extent it calls for opinions and descriptions of the activities of  
9 plaintiff's expert witnesses in this case, this is an improper discovery procedure for obtaining the  
10 opinions of experts. [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4<sup>th</sup> 1416, 1419.]

11 Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as  
12 defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete  
13 in and of itself." [CCP § 2030.060(c)-(d).]

14 Subject to and without waiving this objection, Responding Party responds as follows:  
15 During the specified period, TECHNE worked on the following drawings relating to activities  
16 undertaken related to the CUP approval process:

17 G001

18 G002

19 TOPOGRAPHIC SURVEY

20 A101

21 A102a

22 A102b

23 A103

24 A104

25 A105

26 A106

27 A107

28 A108



1 A109

2 A201

3 A202

4 A203

5 A301

6 A302

7 Each of these particular drawings are a combination of various files referenced into one final  
8 document or drawing. The references above are only to the final product by indicating the  
9 numbering of each drawing sheet only.

10 In addition, TECHNE is in possession of numerous emails and digital chats both internal  
11 and external to its organization that relate to its working on this CUP approval process. TECHNE  
12 is also in possession of Response letters to each reviewing discipline received from the  
13 Development Services Department

14  
15 **SPECIAL INTERROGATORY NO. 23:**

16 Please describe with specificity the current status of the 6176 CUP APPLICATION.

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 23:**

18 As of November 20, 2018, the City of San Diego is reviewing the latest submittal which  
19 was done on October 31, 2018. The following is a list of the due dates for each individual review,  
20 as published by the Development Services Department:

- 21 1. Planning - Due 11.27.2018 - Completed 11.19.2018  
22 2. Environmental - Due 11.30.2018  
23 3. Landscape - Due 11.27.2018  
24 4. Engineering - Due 11.27.2018  
25 5. Transportation - Due 11.27.2018  
26 6. Community Planning Group - Due 11.27.2018

27 Per TECHNE's communications with the City of San Diego Development Services staff, it has  
28 received written confirmation that the only major issue, related to separation from an adjacent  
Residential Zoned property, has been cleared. The latest submittal addressed this issue along with

1 a host of other minor corrections (cycle issues) per the City's last review. It is anticipated that at  
2 the conclusion of the current review the issues will be cleared at which point the project's  
3 Environmental Reviewer will issue the appropriate environmental determination. Should there be  
4 no appeal filed related to the Environmental Determination, the project will then be scheduled for  
5 a hearing with the Hearing Officer.

6  
7 **SPECIAL INTERROGATORY NO. 24:**

8 IDENTIFY all conditions of approval yet to be completed and outstanding issues to be  
9 resolved by YOU and YOUR AGENTS before the CUP will be eligible for approval by the CITY.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 24:**

11 Objection: The interrogatory is over-broad and unduly burdensome given the definition of  
12 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with  
13 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but  
14 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,  
15 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else  
16 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any  
17 such AGENTS received compensation for their services from YOU or any other PERSON."

18 Objection: The interrogatory is over-broad and unduly burdensome given the definition of  
19 IDENTIFY in the Interrogatories as: The term "IDENTIFY" as used herein in any Special Interrogatory  
20 seeking information concerning any action YOU took and/or any activity in which YOU engaged is a  
21 request that YOU provide:

- 22 a. The date(s) on which YOU took or engaged in each such action and/or in activity;  
23 b. A description of each such action and/or activity;  
24 c. The identity of each PERSON who participated in, witnessed and/or has knowledge of  
25 each such action and/or activity; and  
26 d. The identity of any and all notes, memoranda or any other DOCUMENT(S)  
27 memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

1 To the extent this interrogatory seeks information regarding the activities undertaken by Gina  
2 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code §  
3 954] and attorney work-product doctrine. [CCP § 2018.030.] To the extent the interrogatory seeks  
4 information from Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section  
5 1, of the California Constitution. To the extent it calls for opinions and descriptions of the activities of  
6 plaintiff's expert witnesses in this case, this is an improper discovery procedure for obtaining the  
7 opinions of experts. [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4<sup>th</sup> 1416, 1419.]

8 Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as  
9 defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete  
10 in and of itself." [CCP § 2030.060(c)-(d).]

11 Subject to and without waving these objections, see the responses to SPECIAL  
12 INTERROGATORY NO. 10 and NO. 11 above. Besides what has been detailed, Responding Party's  
13 consultant is not aware of any other outstanding issues that need to be resolved. Responding Party is  
14 currently waiting on confirmation that the issues have been resolved.

15  
16 **SPECIAL INTERROGATORY NO. 25:**

17 IDENTIFY all actions YOU and YOUR AGENTS are taking to complete the outstanding  
18 conditions of approval and resolve the outstanding the issues IDENTIFIED in your response to  
19 Special Interrogatory No. 24.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 25:**

21 Objection: The interrogatory is over-broad and unduly burdensome given the definition of  
22 AGENTS in the Interrogatories as: "The term "AGENTS" shall mean and refer to all PERSONS with  
23 whom YOU have any type of relationship - personal, professional, contractual or otherwise - including but  
24 not limited to friends, acquaintances, associates, affiliates, consultants, contractors or employees, attorneys,  
25 accountants, investigators, experts, insurance companies and their agents and employees, and anyone else  
26 acting on YOUR behalf or at you instruction in any capacity whatsoever, regardless of whether or not any  
27 such AGENTS received compensation for their services from YOU or any other PERSON."

28 Objection: The interrogatory is over-broad and unduly burdensome given the definition of

1 IDENTIFY in the Interrogatories as: The term "IDENTIFY" as used herein in any Special Interrogatory  
2 seeking information concerning any action YOU took and/or any activity in which YOU engaged is a  
3 request that YOU provide:

- 4 a. The date(s) on which YOU took or engaged in each such action and/or in activity;
- 5 b. A description of each such action and/or activity;
- 6 c. The identity of each PERSON who participated in, witnessed and/or has knowledge of  
7 each such action and/or activity; and
- 8 d. The identity of any and all notes, memoranda or any other DOCUMENT(S)  
9 memorializing, referring or RELATING TO the subject matter of each such action and/or activity.

10 To the extent this interrogatory seeks information regarding the activities undertaken by Gina  
11 Austin, or Ferris & Britton or its attorneys, it invades the attorney-client privilege [Cal. Evid. Code §  
12 954] and attorney work-product doctrine. [CCP § 2018.030.] To the extent the interrogatory seeks  
13 information from Plaintiff's accountants it violates Plaintiff's right to privacy under Article 1, Section  
14 1, of the California Constitution. To the extent it calls for opinions and descriptions of the activities of  
15 plaintiff's expert witnesses in this case, this is an improper discovery procedure for obtaining the  
16 opinions of experts. [CCP § 2034.010 et seq.; see *Kalaba v. gray* (2002) 95 Cal.App.4<sup>th</sup> 1416, 1419.]

17 Additionally, the interrogatory is hopelessly compound given the definition of "Agents" as  
18 defined by Mr. Cotton herein. [Each interrogatory must be "separately set forth" and "full and complete  
19 in and of itself." [CCP § 2030.060(c)-(d).]

20 Subject to and without waiving these objections, Responding Party responds as follows: On  
21 October 31, 2018, TECHNE resubmitted the plans, documents and responses requested by the City of  
22 San Diego Development Services Department in relation to the previous submittal. Since that date,  
23 TECHNE's staff has monitored the review due dates to ensure receipt of a timely response from the  
24 reviewers and development project manager. It is anticipated that the latest submittal, which is under  
25 review, will result in all outstanding issues being cleared.

26  
27 **SPECIAL INTERROGATORY NO. 26:**

28 Please describe with specificity all reasons YOU ceased to have a valid real estate

1 salesperson license issued by the California Bureau of Real Estate.

2 **RESPONSE TO SPECIAL INTERROGATORY NO. 26:**

3 Objection: The interrogatory calls for information which is neither relevant, nor calculated to  
4 lead to the discovery of admissible evidence.

5 Subject to and without waiving this objection, Responding Party responds as follow: I let my  
6 license expire.

7  
8 **SPECIAL INTERROGATORY NO. 27:**

9 Please IDENTIFY all transactions for the purchase and sale of real property in which YOU  
10 have an interest (whether or not your interest is evidenced by a DOCUMENT filed or recorded by/with  
11 any governmental entity) for which BERRY acted as YOUR broker during YOUR licensure as a  
12 California real estate salesperson.

13 **RESPONSE TO SPECIAL INTERROGATORY NO. 27:**

14 Objection: The interrogatory calls for information which is neither relevant, nor calculated to  
15 lead to the discovery of admissible evidence. Based on the foregoing objection, Responding Party will  
16 not respond to this interrogatory.

17  
18 **SPECIAL INTERROGATORY NO. 28:**

19 Please IDENTIFY all real properties in which YOU have an interest for which you have  
20 received notice from law enforcement agencies and/or governmental entities that those properties  
21 are potentially associated with unlicensed marijuana sales.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 28:**

23 Objection: The interrogatory calls for information which is neither relevant, nor calculated to  
24 lead to the discovery of admissible evidence. The interrogatory is also unlimited as to time.

25 Subject to and without waiving this objection, Responding Party responds as follow: None  
26 currently.

27  
28 ///

1 **SPECIAL INTERROGATORY NO. 29:**

2 Please state the approximate number of transactions for the purchase and sale of residential  
3 real property in which YOU represented buyers and/or sellers during YOUR career as a licensed  
4 California real estate salesperson.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 29:**

6 Objection: The interrogatory calls for information which is neither relevant, nor calculated to  
7 lead to the discovery of admissible evidence. Based on the foregoing objection, Responding Party will  
8 not respond to this interrogatory.

9  
10 **SPECIAL INTERROGATORY NO. 30:**

11 Please state the approximate number of transactions for the purchase and sale of  
12 commercial real PROPERTY in which YOU represented buyers and/or sellers during YOUR  
13 career as a licensed California real estate salesperson.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 30:**

15 Objection: The interrogatory calls for information which is neither relevant, nor calculated to  
16 lead to the discovery of admissible evidence. Based on the foregoing objection, Responding Party will  
17 not respond to this interrogatory.

18  
19 **SPECIAL INTERROGATORY NO. 31:**

20 IDENTIFY all transactions for the purchase and sale of real property to which YOU were a  
21 party as a buyer, seller or agent that closed using a maximum of a one-page document containing a  
22 nonstandard real estate condition precedent (e.g., a condition precedent to obtain a Conditional  
23 Use Permit for the subject property to allow the operation of a business) as the complete, final  
24 integrated agreement for the sale of the subject real property in an arms-length transaction.

25 **RESPONSE TO SPECIAL INTERROGATORY NO. 31:**

26 Objection: The interrogatory calls for information which is neither relevant, nor calculated to  
27 lead to the discovery of admissible evidence. Based on the foregoing objection, Responding Party will  
28 not respond to this interrogatory.

1  
2 **SPECIAL INTERROGATORY NO. 32:**

3 IDENTIFY any state or local statute, ordinance or other law which would disqualify YOU  
4 and/or any entity in which YOU have an equitable or financial interest from obtaining a  
5 Conditional Use Permit to operate an MO in San Diego, California.

6 **RESPONSE TO SPECIAL INTERROGATORY NO. 32:**

7 Objection: The interrogatory calls for a legal opinion or conclusion.

8 Subject to and without waiving this objection, Responding Party responds as follow: Larry  
9 Geraci is not aware of any state or local statute, ordinance or other law, which would disqualify him or  
10 any entity in which he has an equitable or financial interest from obtaining a CUP to operate an MO in  
11 San Diego, California.

12  
13 **SPECIAL INTERROGATORY NO. 33:**

14 Please describe with specificity the history of YOUR relationship with Shawn Miller.

15 **RESPONSE TO SPECIAL INTERROGATORY NO. 33:**

16 Objection: The interrogatory calls for information which is neither relevant, nor calculated to  
17 lead to the discovery of admissible evidence. Subject to and without waiving this objection,  
18 Responding Party responds as follow: Larry Geraci does not have any relationship with Shawn Miller.

19  
20 **SPECIAL INTERROGATORY NO. 34:**

21 Please describe with specificity the history of YOUR relationship with Aaron Magagna.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 34:**

23 Objection: The interrogatory calls for information which is neither relevant, nor calculated to  
24 lead to the discovery of admissible evidence. Subject to and without waiving this objection,  
25 Responding Party responds as follow: Larry Geraci does not have any relationship with Aaron  
26 Magagna.

27  
28 ///

1 **SPECIAL INTERROGATORY NO. 35:**

2 Have YOU or YOUR AGENTS requested that Shawn Miller contact Mr. Joe Hurtado  
3 regarding any matter related to this litigation?

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 35:**

5 Not that I am aware. Moreover, I have never requested or authorized any person to do so.  
6

7 **SPECIAL INTERROGATORY NO. 36:**

8 Please explain with specificity all reasons why BERRY, as YOUR AGENT, executed Form  
9 DS-190 of the 6176 CUP APPLICATION as the "Owner" of the PROPERTY.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 36:**

11 This answer assumes the interrogatory is referring to Form DS-290 signed by Rebecca Berry on  
12 October 31, 2016. On that form Rebecca Berry was identified as a business owner, not the property  
13 owner. On that same date Rebecca Berry also signed Form DS-3032 submitted to the CITY as part of  
14 the 6176 CUP APPLICATION, and in box 8 Rebecca Berry was identified as the Applicant who was  
15 an "Other Person per M.C. Section 112.0102."  
16

17 **SPECIAL INTERROGATORY NO. 37:**

18 Please explain with specificity all reasons why BERRY, as YOUR AGENT, executed Form  
19 DS-318 of the 6176 CUP APPLICATION as "Tenant/Lessee" of the PROPERTY.

20 **RESPONSE TO SPECIAL INTERROGATORY NO. 37:**

21 Rebecca Berry understood at the time she signed Form DS-318 that she was the agent of Mr.  
22 Geraci who had an interest in the property and that it was proper for her to sign the form as it had been  
23 drafted for her to sign.  
24

25 **SPECIAL INTERROGATORY NO. 38:**

26 Please explain with specificity all reasons why YOU authorized the submission of the 6176  
27 CUP APPLICATION notwithstanding the conflicting information in Forms DS-190, DS-318 and  
28 DS-3032 regarding BERRY's alleged interest in the PROPERTY.



1 **RESPONSE TO SPECIAL INTERROGATORY NO. 38:**

2       Objection: The interrogatory assumes that Plaintiff authorized the submission of the 6176 CUP  
3 APPLICATION with "conflicting information" and with knowledge of the "conflicting information."  
4 Subject to and without waiving this objection, Responding Party responds as follow: The listed forms  
5 were submitted in the form provided by the consultants.

6  
7 **SPECIAL INTERROGATORY NO. 39:**

8       IDENTIFY each written communication between YOU and COTTON - including but not  
9 limited to emails, text messages or other DOCUMENTS - and the specific language therein that  
10 YOU allege are an attempt to renegotiate the terms of the NOVEMBER DOCUMENT.

11 **RESPONSE TO SPECIAL INTERROGATORY NO. 39:**

12       Responding Party has previously produced all documents evidencing an attempt to negotiate the  
13 NOVEMBER DOCUMENT, all of which were created during the time period of approximately  
14 November 3, 2016, through the filing of the complaint on or about March 21, 2017.

15  
16 **SPECIAL INTERROGATORY NO. 40:**

17       IDENTIFY each written communication between YOU and COTTON - including but not  
18 limited to emails, text messages or other DOCUMENTS - and the specific language therein that  
19 reflects YOU intended to provide for the employment of COTTON in any capacity at any point in  
20 time.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 40:**

22       Responding Party has previously produced all documents that are written communications  
23 between Responding Party and Mr. Cotton regarding any and all matters. Responding Party never  
24 agreed to provide Mr. Cotton employment in any capacity at any point in time.

25  
26 **SPECIAL INTERROGATORY NO. 41:**

27       Please describe with specificity the "alternative consideration in lieu of Deposit" YOU  
28 allege YOU provided to COTTON as set forth in Paragraph 3a of the draft Purchase Agreement

1 (First Draft) YOU emailed to COTTON on February 27, 2017 at 8:49 a.m.

2 **RESPONSE TO SPECIAL INTERROGATORY NO. 41:**

3 Objection: Calls for a legal opinion or conclusion.

4 Subject to and without waiving this objection, Responding Party responds as follows: The First  
5 Draft was prepared by counsel and Responding Party does not know what counsel intended.

7 **SPECIAL INTERROGATORY NO. 42:**

8 Please describe with specificity the date(s), time(s) and circumstance(s) under which  
9 COTTON agreed to accept the "alternative consideration in lieu of Deposit" set forth in Paragraph  
10 3a of the Purchase Agreement (First Draft) YOU emailed to COTTON on February 27, 2017 at  
11 8:49 a.m.

12 **RESPONSE TO SPECIAL INTERROGATORY NO. 42:**

13 Objection: Calls for a legal opinion or conclusion.

14 Subject to and without waiving this objection, Responding Party responds as follows: The First  
15 Draft was prepared by counsel and Responding Party does not know what counsel intended.

17 **SPECIAL INTERROGATORY NO. 43:**

18 IDENTIFY all PERSONS who witnessed YOU provide COTTON the "alternative  
19 consideration in lieu of Deposit" as set forth in Paragraph 3 a of the Purchase Agreement (First  
20 Draft) YOU emailed to COTTON on February 27, 2017 at 8:49 a.m.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 43:**

22 Objection: Calls for a legal opinion or conclusion.

23 Subject to and without waiving this objection, Responding Party responds as follows: The First  
24 Draft was prepared by counsel and Responding Party does not know what counsel intended.

26 **SPECIAL INTERROGATORY NO. 44:**

27 IDENTIFY all DOCUMENTS evidencing that YOU provided COTTON the "alternative  
28 consideration in lieu of Deposit" as set forth in Paragraph 3a of the Purchase Agreement (First

1 Draft) YOU emailed to COTTON on February 27,2017 at 8:49 a.m.

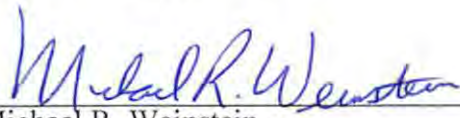
2 **RESPONSE TO SPECIAL INTERROGATORY NO. 44:**

3 Objection: Calls for a legal opinion or conclusion.

4 Subject to and without waiving this objection, Responding Party responds as follows: The First  
5 Draft was prepared by counsel and Responding Party does not know what counsel intended.

6  
7 Dated: November 21, 2018

FERRIS & BRITTON,  
A Professional Corporation

8  
9 By:   
10 Michael R. Weinstein  
11 Scott H. Toothacre  
12 Attorneys for Plaintiff/Cross-Defendant  
LARRY GERACI and Cross-Defendant  
REBECCA BERRY

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I am the Plaintiff and a Cross-Defendant in the above-captioned lawsuit. I have read the foregoing document entitled **PLAINTIFF/CROSS-DEFENDANT LARRY GERACI'S ANSWERS TO FORM INTERROGATORIES, SET TWO, PROPOUNDED BY DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON**. The matters stated in it are true to the best of my knowledge and belief.

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LARRY GERACI

September 26, 2018

Via Email: [abhay@techne-us.com](mailto:abhay@techne-us.com)

Abhay Schweitzer  
Techne  
3956 30th Street  
San Diego, CA 92104

Subject: Federal Blvd MMCC Fourth Assessment Letter; Project No. 520606; Internal Order No. 24007070; Encanto Neighborhoods.

Dear Mr. Schweitzer:

The Development Services Department has completed the third review of the project referenced above, and described as a Process Three, Conditional Use Permit to demolish an existing structure and the construction of a two-story, approximately 2,800-square-foot building, for the operation of a Marijuana Outlet on a site located at 6176 Federal Boulevard in the CO-2-1 Zone within the Encanto Neighborhoods Community Plan area.

Enclosed is a Cycle Issues Report (Enclosure 1), which contains review comments from staff representing various disciplines. The purpose of this assessment letter is to summarize the significant project issues and identify a course of action for the processing of your project.

If any additional requirements should arise during the subsequent review of your project, we will identify the issue and the reason for the additional requirement. To resolve any outstanding issues, please provide the information that is requested in the Cycle Issues Report. If you choose not to provide the requested additional information or make the requested revisions, processing may continue. However, the project may be recommended for denial if the remaining issues cannot be satisfactorily resolved and the appropriate findings for approval cannot be made.

The Development Services Department will generally formulate a formal recommendation for your project subsequent to completion of the following milestones: 1) After the City Council recognized Community Planning Group has provided a formal project recommendation; 2) After all City staff project-review comments have been adequately addressed; and 3) During the final stages of the environmental review process.



As your Development Project Manager, I will coordinate all correspondence, emails, phone calls, and meetings directly with the applicants assigned "Point of Contact." You have been designated as the Point of Contact for this project. Please notify me should the Point of Contact change while I am managing this project.

- I. **REQUIRED APPROVAL:** Your project as currently proposed requires a Process Three, Conditional Use Permit (CUP) for the proposed Marijuana Outlet pursuant to San Diego Municipal Code (SDMC) Section 126.0303(a). The decision to approve, conditionally approve, or deny the project will be made by the Hearing Officer with appeal rights to the Planning Commission.
- II. **SIGNIFICANT PROJECT ISSUES:** The significant project issues are listed below. Resolution of these issues could affect your project. Additional explanation is provided in the Cycle Issues Report. Please carefully review the City staff comments and respond accordingly. Please note the following key issues:
  - Planning Review staff again notes the project site is within 100 feet of residential zoned properties, the RS-1-7 Zone. Per SDMC Section 141.0504(a) (2), Marijuana Outlets shall maintain a separation of 100 feet from a residential zone. Please clarify and respond to the appropriate measurement and indicate on the development plans as required. City staff would recommend denial of the permit if the project does not meet the separation requirement for Residential Zones within 100 feet.
- III. **STUDIES/REQUIRED REPORTS:** A number of documents have been identified as necessary to the project's review. Reference the attached Submittal Requirements Report (Enclosure 2).
- IV. **PROJECT ACCOUNT STATUS:** Our current accounting system does not provide for real-time information regarding account status and majority of the recent City staff charges **have not** been posted on the account; however, our latest data indicates you have deposit account deficit of approximately \$1,400.00. **Please pay the invoice immediately (Enclosure 3).**

During the processing of your project, your application's Financially Responsible Party will continue to receive monthly statements with the break-down of staff charges to your account. The minimum balance required for your application is \$5,000.00, <https://www.sandiego.gov/sites/default/files/dsdib503.pdf>. To avoid project delays due to insufficient account funds, please ensure that your deposit account maintains the minimum account balance at all times.

For your convenience, deposits can be made anytime online through Open DSD, <http://www.sandiego.gov/development-services/opensds/>, and by entering your project number in the "Project ID" field, <http://opensds.sandiego.gov/web/approvals/>. Also, any invoices can be paid online by searching for the invoice number,

<http://opensds.sandiego.gov/web/invoices/> or in person at the Cashier, located on the 3rd Floor of the Development Services Center.

- V. **TIMELINE:** Upon your review of the attached Cycle Issues Report, you may wish to schedule a meeting with staff and your consultants prior to resubmitting the project. Please contact me if you wish to schedule a meeting with staff. During the meeting, we will also focus on key milestones that must be met in order to facilitate the review of your proposal and to project a potential timeline for a hearing date. Your next review cycle should take approximately 18 business days to process.

The SDMC Section 126.0114 requires that a development permit application be closed if the applicant fails to submit or resubmit requested materials, information, fees, or deposits within 90 calendar days. Once closed, the application, plans and other data submitted for review may be returned to the applicant or destroyed. To reapply, the applicant shall be required to submit a new development permit application with required submittal materials, and shall be subject to all applicable fees and regulations in effect on the date the new application is deemed complete.

If you wish to continue processing this project, please note that delays in resubmitting projects and/or responding to City staff's inquiries negatively impact this Department's ability to effectively manage workload, which can lead to both higher processing costs and longer timelines for your project.

- VI. **RESUBMITTALS/NEXT STEPS:** Project re-submittals are done on a walk-in basis. Please check-in on the third floor of the Development Service Center (1222 First Avenue) to be placed on the list for the submittal counter. ***Project re-submittals directly to the Development Project Manager will not be accepted.*** Please be prepared to provide the following:

A. Plans and Reports: Provide the number of sets of plans and reports as shown on the attached Submittal Requirements Report. The plans should be folded to an approximate 8 ½ x 11 inch size.

B. Response to Cycle Issues Report: Prepare a cover letter that specifically describes how you have addressed each of the issues identified in the Cycle Issues Report and any issues identified in this cover letter, if applicable. Or, you may choose to simply submit the Cycle Issues Report, identifying within the margins how you have addressed the issue. If the issue is addressed on one or more sheets of the plans or the reports, please reference the plan, sheet number, report or page number as appropriate. If it is not feasible to address a particular issue, please indicate the reason. Include a copy of this Assessment Letter, Cycle Issues Report and your response letter if applicable, with each set of plans.



C. Pay Invoice: Please pay enclosed invoice prior to your project re-submittal. The re-submittal **cannot** be distributed to City staff when an invoice is outstanding.

- VII. COMMUNITY PLANNING GROUP:** Staff provides the decision maker with the recommendation from your locally recognized community planning group. If you have not already done so, please contact Kenneth Malbrough, Chairperson of the Encanto Neighborhoods Community Planning Group, at (619) 843-6721 to schedule your project for a recommendation from the group. If you have already obtained a recommendation from the community planning group, in your resubmittal, if applicable, please indicate how your project incorporates any input suggested to you by the community planning group.

Information Bulletin 620, "Coordination of Project Management with Community Planning Committees" (available at <http://www.sandiego.gov/development-services>), provides some valuable information about the advisory role the Community Planning Group. Council Policy 600-24 provides standard operating procedures and responsibilities of recognized Community Planning Committees and is available at <http://www.sandiego.gov/city-clerk/officialdocs/index.shtml>.

- VIII. STAFF REVIEW TEAM:** Should you require clarification about specific comments from the staff reviewing team, please contact me, or feel free to contact the reviewer directly. The names and telephone numbers of each reviewer can be found on the enclosed Cycle Issues Report.

- IX. PROJECT ISSUE RESOLUTION CONFERENCE:** Project Issue Resolution (PIR) conferences provide customers an opportunity to have issues heard and considered by executive department management. A PIR will be considered if, after the issuance of the third Assessment Letter for discretionary projects, customers and staff have been unable to resolve project issues. The PIR would address issues such as disagreements between the applicant and staff on interpretations of codes or ordinances, requests for additional information or studies, or project-related processing requirements. Any determinations from a PIR are not binding on any City decision-making body, such as City Council, Planning Commission, or Hearing Officer. Qualifying PIR requests should be coordinated with your Development Project Manager.

In conclusion, please note that information forms and bulletins, project submittal requirements, and the Land Development Code may be accessed on line at <http://www.sandiego.gov/development-services>. Many land use plans for the various communities throughout the City of San Diego are now available on line at <http://www.sandiego.gov/planning/community/profiles/index.shtml>.

To view project details online, visit: <http://www.sandiego.gov/development-services/opensd/>.



Page 5  
Abhay Schweitzer  
September 26, 2018

For modifications to the project scope, submittal requirements or questions regarding any of the above, please contact me prior to resubmittal. I may be reached by telephone at (619) 236-6327 or via e-mail at [CCac@sandiego.gov](mailto:CCac@sandiego.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cherlyn Cac', with a stylized, cursive script.

for

Cherlyn Cac  
Development Project Manager

Enclosures:

1. Cycle Issues Report
2. Submittal Requirements Report
3. Invoice

cc: File  
Kenneth Malbrough, Chairperson, Encanto Neighborhoods Community Planning Group  
Elizabeth Dickson, Planning Department  
Reviewing Staff

0556



# Cycle Issues

9/26/18 9:18 am

Page 1 of 14

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

## Project Information

Project Nbr: **520606** Title: Federal Blvd MMCC  
Project Mgr: Cac, Cheryl (619) 236-6327 ccac@sanidiego.gov



## Review Information

**Cycle Type:** 9 Submitted (Multi-Discipline) **Submitted:** 08/22/2018 Deemed Complete on 08/22/2018  
**Reviewing Discipline:** LDR-Planning Review **Cycle Distributed:** 08/22/2018  
**Reviewer:** Moshirian, Tania **Assigned:** 08/23/2018  
(619) 446-5183 **Started:** 09/13/2018  
Tmoshirian@sanidiego.gov **Review Due:** 09/13/2018  
**Hours of Review:** 1.50 **Completed:** 09/14/2018 **COMPLETED LATE**  
**Next Review Method:** Submitted (Multi-Discipline) **Closed:** 09/19/2018

- The review due date was changed to 09/18/2018 from 09/13/2018 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmmts/Regs.
- We request a 5th complete submittal for LDR-Planning Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 22 outstanding review issues with LDR-Planning Review (20 of which are new issues).
- Last month LDR-Planning Review performed 115 reviews, 89.6% were on-time, and 42.6% were on projects at less than < 3 complete submittals.

## Permits

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	9	CUP Findings: Reference SDMC §126.0305 (a) through (d). An application for a Conditional Use Permit may be approved or conditionally approved only if the decision maker makes the findings for this permit. At the next submittal, provide project support by addressing how the Federal Blvd MMCC makes each CUP finding. (From Cycle 3)

## MMCC Review

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	14	Residential Zone: Federal Blvd is the PROW between the subject site and the residential zone RS-1-7. Federal Blvd is not considered a barrier impeding direct physical access between MMCC and residential zone. The applicant submits Sheet A103, a Site Plan showing a proposed "Irrevocable Offer of Dedication" which Planning determines may satisfy the code requirement for a separation of 100' if supported by LDR Engineering. Without the 10' or greater dedication, Planning will not support this project. [Continued] (From Cycle 3)
<input checked="" type="checkbox"/>	15	Major Issue: LDR Engineering requires a ROW dedication to create a 10 ft curb to PL distance. Additional dedication by Transportation may also be requested but has not yet been determined. In accordance with Section 113.0225(a)(2) a 100 ft separation distance from the RS-1-7 zone to the pre-dedication PL for Federal MMCC does not exist. Also, a ROW dedication > than the 10' C to PL reqmt is shown (Ref: A102). Planning defers to Engineering & Transportation for dedication requirements after which the separation distance can be determined. (From Cycle 3)

## CO-2-1 Dev Reg Review

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	26	Reference Table 131-05D Development Regulation Review for the CO Zones Front Setback: 10' Minimum with a 25' Maximum Front Setback. Two code sections apply which are provided as: 1. [See Section 131.0543(a)]; 2. Footnote 2: See section 131.0543(a)(2).  The front setback is incorrectly applied. See Diagram 131-05B which illustrates how this code section shall be applied. Revise your design to demonstrate the maximum setback applied to 70 percent of the street frontage with the remaining 30 percent not required to observe the maximum setback (From Cycle 3)

## General Plan and Community Pla

Cleared?	Issue Num	Issue Text
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For questions regarding the 'LDR-Planning Review' review, please call Tania Moshirian at (619) 446-5183. Project Nbr: 520606 / Cycle: 9



p2k v 02.03.38

Tim Daly 446-5356

0557





# Cycle Issues

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

9/26/18 9:18 am

Page 2 of 14

L64A-003A

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	38	Policy guidance is provided by the GP and CP for commercial uses. Please consider the following elements in your next submittal: 1. Development of new infill buildings should take into account green building practices and sustainability; 2. Designing for defensible space; 3. Incorporate Urban Design policy as it relates to character and identity of the existing urban form, including public spaces and village design, neighborhood and community gateways and linkages, building types and massing, streetscape and pedestrian orientation, and other unique aspects of the Encanto community. (From Cycle 3)

## Second Review

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	42	Issue 2 - The project scope has changed from the first review. The project is proposing a 2 story 2,798 SF building with the proposed demolition of an existing one story 2,086 SF office building on the premises. The proposed Marijuana outlet will occupy the proposed 2 story building. Additional issues have been added for the change in scope. (Information Only - No Response Required) (From Cycle 6)
<input type="checkbox"/>	A 43	Issue 9 - LDR-Planning must recommend denial of the project as it does not meet the separation requirement for Residential Zones within 100 Feet. (From Cycle 6)
<input checked="" type="checkbox"/>	44	Issue 14/15 - Plans identify an Irrevocable Offer of Dedication (IOD). The IOD does not constitute as the property line. Per SDMC 113.0246 the measurement is taken from the public right-of-way. Per engineering comments, it appears the public right-of-way will start 10 feet from the curb. Please revise plans to show the separation distance from the property line to the Residential zone. (From Cycle 6)
<input checked="" type="checkbox"/>	46	Issue 26 - The proposed project does not meet the front setback requirements. Please review issue 26. The building has to span at least 70% of street frontage while meeting both min and max setback requirements. (From Cycle 6)
<input checked="" type="checkbox"/>	49	Issue 29 - The project is not at 26' in height on the Cover Sheet. However, please show clearly on the elevations. Review Chapter 11 Rules for Calculation and Measurements on measuring height (SDMC 113.0270) (From Cycle 6)
<input checked="" type="checkbox"/>	56	Issue 38 - Please demonstrate/provide a response how the project will meet the requirements. (From Cycle 6)
<input type="checkbox"/>	A 60	Marijuana Outlets are prohibited within 1,000 feet of certain uses. City staff relies on information provided by applicants to determine what uses are within 1,000 feet. The applicant is also required to sign an affidavit that indicates that the information provided is accurate. In addition, City staff uses resources available on the internet, on the City's Project Tracking System, and personal knowledge of the area. (Cont Below) (From Cycle 6)
<input type="checkbox"/>	G 61	City staff is also expecting the public to identify conflicts throughout the processing of the use permit. The 1000 ft distance is measured in accordance with Section 113.0225. [Information Item - No Response Required] (From Cycle 6) <b>ACKNOWLEDGED.</b>

## Draft Conditions

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	62	G002 - Please remove MMCC Conditional Use Permit Notes. Please only include draft conditions per SDMC 141.0504(b) - (m) and additional draft conditions.  Additional Draft conditions can be located under Issues 63/64/21/22 (From Cycle 6)
<input checked="" type="checkbox"/>	63	The Owner/Permittee shall install a combination of full-height bullet resistant glass, plastic or laminate shield and bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, at the reception area. (From Cycle 6)
<input checked="" type="checkbox"/>	64	The Owner/Permittee shall install full-height bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, in common areas with other tenants, reception area and vault room. (From Cycle 6)

## 3rd Review

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	65	Issue 14/44 - The proposed project site is located within 100' of a residential zone. The IOD does not constitute as the property line. Please see Issue 44. Please correctly identify the property line. (From Cycle 7)
<input checked="" type="checkbox"/>	66	Issue 26/46 - The property line is not from the IOD. An IOD is an offer of dedication and per engineering comments no IOD is needed at this time. However, there is a dedication required to achieve the 10' curb to PL dimension. Therefore, the new PL, based on Staff's measurement will not satisfy the 100' separation. The new PL will not be to the IOD line. (Cont below) (From Cycle 7)
<input checked="" type="checkbox"/>	67	Sheet C-1 shows the proposed RVW, which should constitute as the new PL. Please revise measurements. (From Cycle 7)
<input checked="" type="checkbox"/>	68	Issue 26/46 - Per property line dimensions provided, a minimum of 42.41' (70% * 60.58) MUST meet the maximum setback of 25'. The plans are still showing greater than 30 % of the building is located behind the 25' setback line. Please revise. The setbacks can be taken from the existing PL. (From Cycle 7)

For questions regarding the 'LDR-Planning Review' review, please call Tania Moshirian at (619) 446-5183. Project Nbr: 520606 / Cycle: 9







# Cycle Issues

9/26/18 9:18 am

Page 3 of 14

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

L64A-003A

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	71	Issue 29/49 - The height needs to be taken to the highest point, this includes the mechanical enclosures. Please revise height. It appears the height will comply with regulations, however, it needs to correctly be shown on the plans. (From Cycle 7)
<input checked="" type="checkbox"/>	74	Issue 38/56 - No Response provided. (From Cycle 7)
<input checked="" type="checkbox"/>	75	The CAP checklist provided is still showing MMCC. Per notes on plans it is understood that this is moving forward as an MO. Please revise. (From Cycle 7)

## 4th Review

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	80	Scope Change: The proposed project is a Conditional Use Permit (CUP) for a Marijuana Outlet (MO) at 6176 Federal Boulevard. Applicant is proposing to demolish the existing approximately 2,090 sq. ft. building and operate the proposed MO within a new approximately 3,012 sq. ft. building. (New Issue)
<input type="checkbox"/>	A 81	Dedication: Per Engineering comment 45, the project will be proposing a dedication for a 14' curb to PL. Sheet C-1 shows a 14' curb to PL. However the Site Plan and Sheet A102b (where it shows the distance measurement to the residential zone) shows a curb to PL of 14.27. The separation measurement is being taken from the new PL with a curb to PL of 14.27, which is incorrect. Please clarify and show a the distance measurement based on a 14' curb to PL. (New Issue)
<input type="checkbox"/>	A 82	Armed Guard: An armed guard will not be a requirement. However, plans show that a armed guard will be provided. Is the applicant proposing additional security measures? (New Issue)
<input type="checkbox"/>	B 83	Trash Enclosure: The layout of the parking/trash enclosure location has been revised from the last submittal. Sheet C-1 and Landscape plans are showing the trash enclosures at a different location then what is proposed on the site plan. Please ensure consistency. (New Issue) <b>SEND UPDATED SITE PLAN TO CONSULTANTS TO MATCH</b>

## Draft Conditions

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	G 84	The Owner/Permittee shall provide lighting to illuminate the interior of the Marijuana Outlet, façade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties. (New Issue)
<input type="checkbox"/>	G 85	The sale of marijuana shall be prohibited without a valid license from the State authorizing such activity. (New Issue)
<input type="checkbox"/>	G 86	The Marijuana Outlet must comply with Chapter 4, Article 2, Division 15 of the San Diego Municipal Code, including obtaining a Marijuana Outlet Permit, and Background Checks and Reporting Convictions. (New Issue)
<input type="checkbox"/>	G 87	Consultations by medical professionals shall not be a permitted accessory use at this Marijuana Outlet. (New Issue)
<input type="checkbox"/>	G 88	The Owner/Permittee shall install and maintain operable security cameras and a metal detector for security to the satisfaction of Development Services Department. The security cameras shall have and use a recording device that maintains the recordings for a minimum of 30 days. This Marijuana Outlet shall also include alarms and two security guards. The security guards shall be licensed by the State of California. Two security guards must be on the premises during business hours.
		(Cont below) (New Issue)
<input type="checkbox"/>	G 89	Two security guards must be on the premises during business hours. At least one security guard must be on the premises 24 hours a day, seven days a week. The security guards should only be engaged in activities related to providing security for the Marijuana Outlet, except on an incidental basis. (New Issue)
<input type="checkbox"/>	G 90	The Owner/Permittee shall install a combination of full-height bullet resistant glass, plastic or laminate shield and bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, at the reception area. (New Issue)
<input type="checkbox"/>	G 91	The Owner/Permittee shall install full-height bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, at all walls adjoining common areas and other tenants, and vault room. (New Issue)
<input type="checkbox"/>	G 92	All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Ground signs shall not be pole signs. A primary sign shall be posted on the outside of the Marijuana Outlet and shall only contain the name of the business, which shall contain only alphabetic characters, and shall be limited to two colors. (New Issue)
<input type="checkbox"/>	G 93	The Owner/Permittee shall post and maintain a sign showing the name and emergency contact phone number of an operator or manager in a location visible from outside the Marijuana Outlet in font size at least two inches in height. (New Issue)
<input type="checkbox"/>	G 94	The Marijuana Outlet shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week. (New Issue)
<input type="checkbox"/>	G 95	The use of vending machines which allow access to marijuana and marijuana products except by a responsible person, as defined in the SDMC Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to marijuana and marijuana products without a human intermediary. (New Issue)

For questions regarding the 'LDR-Planning Review' review, please call Tania Moshirian at (619) 446-5183. Project Nbr: 520606 / Cycle: 9



p2k v 02.03.38

Tim Daly 446-5356

0559



# Cycle Issues

9/26/18 9:18 am

Page 4 of 14

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

<u>Issue</u>		<u>Issue Text</u>
<u>Cleared?</u>	<u>Num</u>	
<input type="checkbox"/>	<b>G</b> 96	The Owner/Permittee shall maintain the Marijuana Outlet, adjacent public sidewalks, and areas under the control of the Owner/Permittee, free of litter and graffiti at all times. (New Issue)
<input type="checkbox"/>	<b>G</b> 97	The Owner/Permittee shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed from the premises within 24 hours. (New Issue)
<input type="checkbox"/>	<b>G</b> 98	The Owner/Permittee shall provide a sufficient odor absorbing ventilation and exhaust system capable of eliminating excessive or offensive odors causing discomfort or annoyance to any reasonable person of normal sensitivities standing outside of the structural envelope of this Marijuana Outlet facility in compliance with SDMC Section 142.0710. (New Issue)
<input type="checkbox"/>	<b>G</b> 99	Medical marijuana, recreational marijuana, or marijuana products, in any form, shall not be consumed anywhere within the property. (New Issue)







# Cycle Issues

9/26/18 9:18 am

Page 5 of 14

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

## Review Information

<b>Cycle Type:</b> 9 Submitted (Multi-Discipline)	<b>Submitted:</b> 08/22/2018	Deemed Complete on 08/22/2018
<b>Reviewing Discipline:</b> LDR-Environmental	<b>Cycle Distributed:</b> 08/22/2018	
<b>Reviewer:</b> Lindquist, Rachael (619) 446-5129 Rlindquist@sandiego.gov	<b>Assigned:</b> 08/23/2018	
	<b>Started:</b> 09/17/2018	
<b>Hours of Review:</b> 3.00	<b>Review Due:</b> 09/18/2018	
<b>Next Review Method:</b> Submitted (Multi-Discipline)	<b>Completed:</b> 09/18/2018	<b>COMPLETED ON TIME</b>
	<b>Closed:</b> 09/19/2018	

The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.  
 We request a 5th complete submittal for LDR-Environmental on this project as: Submitted (Multi-Discipline).  
 The reviewer has requested more documents be submitted.  
 Your project still has 10 outstanding review issues with LDR-Environmental (5 of which are new issues).  
 Last month LDR-Environmental performed 137 reviews, 83.9% were on-time, and 30.5% were on projects at less than < 3 complete submittals.

## Project Issues

### LDR-Planning

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	G 7	EAS will coordinate with LDR-Planning regarding MMCC Ordinance issues and project community plan consistency. (From Cycle 3) <b>ACKNOWLEDGED.</b>

### LDR- Landscape

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	G 8	Landscape staff has requested additional information regarding amount and type of landscaping. (From Cycle 3) <b>ACKNOWLEDGED.</b>

## Determination

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	G 9	All disciplines have also requested plan revisions. Until all requested information is submitted and all issues are cleared, EAS is unable to make an environmental determination. Please be aware that the environmental review may change in response to any project changes and/or new information. Additionally, the new information may lead to the requirement of new and/or additional technical studies. (From Cycle 3) <b>ACKNOWLEDGED.</b>

## October 2017 Review

### Revised Project Scope

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	10	The project has a revised scope. The applicant now proposes a two-story 2798.9-square-foot building instead of a 1,995 square foot building. (From Cycle 6)

### Revised Project Issues

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	12	Outstanding issue remain with LDR-Landscape, Engineering, Geology, Transportation, and Planning reviewing disciplines. (From Cycle 6)

## July 2018 Review

### Project Issues

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	B 13	CAP Checklist: The checklist is not filled out correctly. Please change the description of the project to say Marijuana Outlet as indicated in the project scope. All answers should either have "Yes" checked off if the project is implementing those design measures, or a "N/A" answer if it does not apply. Please see link below and resubmit. <a href="https://www.sandiego.gov/sites/default/files/city_of_san_diego_cap_checklist.pdf">https://www.sandiego.gov/sites/default/files/city_of_san_diego_cap_checklist.pdf</a> (From Cycle 7)
<input type="checkbox"/>	G 15	This project is subject to Tribal Consultation under AB 52. EAS staff will distribute notification to the local Kumeyaay community for possible consultation on this project. Please note that a request for consultation must be submitted by the tribe within 30days of initial notification. This issue area will be evaluated further once a response from the local tribes has been received. (From Cycle 7) <b>ACKNOWLEDGED.</b>

For questions regarding the 'LDR-Environmental' review, please call Rachael Lindquist at (619) 446-5129. Project Nbr: 520606 / Cycle: 9



p2k v 02.03.38

Tim Daly 446-5356

0561



# Cycle Issues

9/26/18 9:18 am

Page 6 of 14

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

L64A-003A

## Determination

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	G 16	EAS cannot make a determination on the project until all issues in the current review cycle, in previous cycles, and all issues with other reviewers are addressed. (From Cycle 7) <b>ACKNOWLEDGED.</b>

## September 2018 Review

### Historical Resources

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	17	Archaeological Resources - Staff determined that due to the soil conditions and the low potential for archaeological resources to occur on or adjacent to the site, no further evaluation is required and impacts to archaeological resources would not rise to a level of significance. EAS has no further comment. (New Issue)
<input type="checkbox"/>	G 18	Tribal Cultural Resources - With updated information, EAS can now distribute notification to local tribes to see if there is a request for AB 52 consultation on this project. EAS will update applicant with response in the next review. Please note that a request for consultation must be submitted by the tribe within 30 days of initial notification. This issue area will be evaluated further once a response from the local tribes has been received. (New Issue) <b>ACKNOWLEDGED.</b>

### Project Scope

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	G 19	*Revised* The project proposes to demolish an existing one-story commercial building to construct a 3,012 sq. ft. two-story building for a proposed Marijuana Outlet (MO). (New Issue) <b>CORRECT</b>

### CAP Checklist

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	B 21	LDR-Transportation has made comments regarding the CAP Checklist. Please refer to their review and address. Please resubmit. (New Issue)

### CEQA

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	G 20	Please address all issues in the current review, previous review cycles, and in all other review disciplines before EAS can make a final environmental determination on the project. (New Issue) <b>PLEASE SEE RESPONSES TO THE ABOVE CURRENT AND PREVIOUS CYCLE ISSUES</b>







# Cycle Issues

9/26/18 9:18 am

Page 7 of 14

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

## Review Information

<b>Cycle Type:</b> 9 Submitted (Multi-Discipline)	<b>Submitted:</b> 08/22/2018	Deemed Complete on 08/22/2018
<b>Reviewing Discipline:</b> LDR-Engineering Review	<b>Cycle Distributed:</b> 08/22/2018	
<b>Reviewer:</b> Schultz, Louis	<b>Assigned:</b> 08/28/2018	
(619) 557-7908	<b>Started:</b> 09/14/2018	
Lschultz@sandiego.gov	<b>Review Due:</b> 09/13/2018	
<b>Hours of Review:</b> 6.00	<b>Completed:</b> 09/14/2018	COMPLETED LATE
<b>Next Review Method:</b> Submitted (Multi-Discipline)	<b>Closed:</b> 09/19/2018	

- The review due date was changed to 09/18/2018 from 09/18/2018 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Change In Project Scope.
- We request a 5th complete submittal for LDR-Engineering Review on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 11 outstanding review issues with LDR-Engineering Review (11 of which are new issues).
- Last month LDR-Engineering Review performed 130 reviews, 90.0% were on-time, and 31.0% were on projects at less than < 3 complete submittals.

### 1st Review

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	1	The Engineering Review Section has reviewed the subject development and have the following comments that need to be addressed prior to a Public Hearing. Upon resubmittal, we will complete our review of the Conditional Use Permit.
		(From Cycle 3)

### 2nd Review

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	28	In reference to previous issue 16: Revise Site Plan, Sheet A102. Revise the property line and the amount of dedication and irrevocable offer of dedication (IOD). Accordingly, dedicate (not IOD) to provide 10 feet curb to property line distance along the entire site's frontage. Also, provide 4 feet of IOD along the site's entire frontage for future parkway distance requirements. Please correct plans and development summary to correctly show and state the above.
		(From Cycle 6)

### 3rd Review

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	32	All previous unchecked comments must be addressed.
		(From Cycle 7)
<input checked="" type="checkbox"/>	33	Revise Cover Sheet, Sheet G001. Remove all Storm Water Quality Notes except comment 7. This is an entitlement review and construction BMPs are not reviewed at this time.
		(From Cycle 7)
<input checked="" type="checkbox"/>	34	Revise WPCP Plan, Sheet A103. Add a justification for all "No" answers.
		(From Cycle 7)
<input checked="" type="checkbox"/>	35	Drainage- Why is site runoff being sent through adjacent property instead of Federal Boulevard Right-of-Way? Drainage through adjacent properties requires a Private Drainage Easement and is not recommended.
		(From Cycle 7)
<input checked="" type="checkbox"/>	36	Additional comments may be recommended pending further review or any redesign of this project. These comments are not exclusive. Should you have any questions or comments, please call Katie Franke at mfranke@sandiego.gov.
		(From Cycle 7)

### 4th Review

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
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For questions regarding the 'LDR-Engineering Review' review, please call Louis Schultz at (619) 557-7908. Project Nbr: 520606 / Cycle: 9



p2k v 02.03.38

Tim Daly 446-5356

0563





# Cycle Issues

9/26/18 9:18 am

Page 8 of 14

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

L64A-003A

Issue		Issue Text
Cleared?	Num	
<input type="checkbox"/>	SON 37	Revise the Site Plan and Grading Plan C-1 - The visibility area triangles for the proposed driveway have been located within the proposed right of way. Per San Diego Municipal Code Diagram 113-02SS, the visibility triangles should be located at the property line.
	(New Issue)	
<input type="checkbox"/>	G 38	Revise the Site Plan to show and dimension the proposed driveway 3 feet offset from the side property line as shown on the Grading Plan C-1. <b>SHOW DIMENSION ON PROPOSED SITE PLAN</b>
	(New Issue)	
<input type="checkbox"/>	G 39	Revise the Site Plan to show the driveway extending perpendicular from the street all the way to the proposed property line. The driveway cannot be angled in the proposed right of way. <b>REVISE THE DRIVEWAY TO BE PERPENDICULAR FROM THE STREET.</b>
	(New Issue)	
<input type="checkbox"/>	B/G 40	Revise the Site Plan - Approximately 5 feet of the proposed 24 foot driveway does not lead to a drive isle and conflicts with the designated accessible path. Consider site modifications to realign the drive isle with the proposed driveway. <b>TALK TO ME TO DISCUSS</b>
	(New Issue)	
<b>Draft Conditions</b>		
		<b>PLEASE ADD THESE DRAFT CONDITIONS TO SHEET G002 WITH A NEW HEADING FOR ENGINEERING</b>
Issue		Issue Text
Cleared?	Num	
<input type="checkbox"/>	G 41	The project proposes to export no material from the project site. Any excavated material that is exported, shall be exported to a legal disposal site in accordance with the Standard Specifications for Public Works Construction (the "Green Book"), 2015 edition and Regional Supplement Amendments adopted by Regional Standards Committee.
	(New Issue)	
<input type="checkbox"/>	G 42	The drainage system proposed for this development, as shown on the site plan, is private and subject to approval by the City Engineer.
	(New Issue)	
<input type="checkbox"/>	G 43	Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the construction of a current City Standard 24 ft wide driveway, adjacent to the site on Federal Blvd., satisfactory to the City Engineer.
	(New Issue)	
<input type="checkbox"/>	G 44	Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the reconstruction of the curb, gutter, and sidewalk, adjacent to the site on Federal Blvd., as shown on exhibit A, satisfactory to the City Engineer.
	(New Issue)	
<input type="checkbox"/>	G 45	Prior to the issuance of any building permits, the Owner/Permittee shall dedicate and improve an additional 4.47 feet to 7.10 feet of right of way on Federal Boulevard to provide a 14 foot curb-to-property-line distance, satisfactory to the City Engineer.
	(New Issue)	
<input type="checkbox"/>	G 46	Prior to the issuance of any construction permit, the Owner/Permittee shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC, into the construction plans or specifications.
	(New Issue)	
<input type="checkbox"/>	G 47	Prior to the issuance of any construction permit the Owner/Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Part 2 Construction BMP Standards Chapter 4 of the City's Storm Water Standards.
	(New Issue)	



# Cycle Issues

9/26/18 9:18 am

Page 9 of 14

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

## Review Information

<b>Cycle Type:</b> 9 Submitted (Multi-Discipline)	<b>Submitted:</b> 08/22/2018	Deemed Complete on 08/22/2018
<b>Reviewing Discipline:</b> LDR-Transportation Dev	<b>Cycle Distributed:</b> 08/22/2018	
<b>Reviewer:</b> Novoa, Carlos	<b>Assigned:</b> 08/23/2018	
(619) 446-5493	<b>Started:</b> 09/13/2018	
CNovoa@sandiego.gov	<b>Review Due:</b> 09/13/2018	
<b>Hours of Review:</b> 6.00	<b>Completed:</b> 09/13/2018	<b>COMPLETED ON TIME</b>
<b>Next Review Method:</b> Submitted (Multi-Discipline)	<b>Closed:</b> 09/19/2018	

- The review due date was changed to 09/18/2018 from 09/18/2018 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmnts/Regs.
- We request a 5th complete submittal for LDR-Transportation Dev on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 6 outstanding review issues with LDR-Transportation Dev (5 of which are new issues).
- Last month LDR-Transportation Dev performed 93 reviews, 86.0% were on-time, and 22.1% were on projects at less than < 3 complete submittals.

### 10/17 Review:

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	9	PLANS/PARKING-The proposed accessible space would block the access to the refuse and recyclable area. Please revise your design to remove the conflict and allow access to both. (From Cycle 6)
<input checked="" type="checkbox"/>	10	FRONTAGE-Please see Engineering Review comments number 16 and 28 and revise the property line and the amount of dedication and irrevocable offer of dedication (IOD). Accordingly, dedicate (not IOD) to provide 10 feet curb to property line distance along the entire site's frontage. Also, provide 4 feet of IOD along the sites entire frontage for future parkway distance requirements. Please correct plans and development summary to correctly show and state the above. (From Cycle 6)

### 7/11/18 Review:

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	11	PROJECT: The proposed project is a Conditional Use Permit (CUP) for a Marijuana Outlet (MO) at 6176 Federal Boulevard. Applicant is proposing to demolish the existing approximately 2,090 sq. ft. building and operate the proposed MO within a new approximately 2,800 sq. ft. building on an approximately 1.3 acres lot in CO-2-1 zone within Encanto Community Plan Area based on the submitted plans. (From Cycle 7)
<input checked="" type="checkbox"/>	12	Trip Generation: The proposed 2800 square foot Marijuana Outlet is expected to generate approximately 700 average daily trips (ADT), at a rate of 250 trips per 1,000 square feet; with 64 AM peak hour trips (32 in, 32 out) and 112 PM peak hour trips (64 in, 64 out). An access analysis study will be required. Please contact LDR - Transportation to scope the study. (From Cycle 7)
<input checked="" type="checkbox"/>	13	Access: The proposed accessible path of travel is not acceptable. Revise the plans to include an accessible pedestrian path which does not encroach into the drive aisle or driveway. Revise plan submittal accordingly. (From Cycle 7)
<input checked="" type="checkbox"/>	14	Turnaround: The accessible parking aisle cannot be used as a turnaround space. Revise plan submittal accordingly. (From Cycle 7)
<input type="checkbox"/>	B 15	Please revise CAP to be consistent with the current scope and plan submittal (From Cycle 7)

### 9/13/18 Review:

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	G 16	PREVIOUS UNCLEARED ISSUES: Please address all uncleared issues from previous cycles as well. These issues are still applicable to the project and have not been resolved. <b>ACKNOWLEDGED.</b> (New Issue)
<input type="checkbox"/>	G 17	CHANGE OF SCOPE: Applicant is now proposing to demolish the existing approximately 2,090 sq. ft. building and operate the proposed MO within a new approximately 3,011 sq. ft. building. <b>CORRECT</b> (New Issue)

For questions regarding the 'LDR-Transportation Dev' review, please call Carlos Novoa at (619) 446-5493. Project Nbr: 520606 / Cycle: 9



p2k v 02.03.38

Tim Daly 446-5356

0565





# Cycle Issues

9/26/18 9:18 am

Page 10 of 14

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

<u>Issue</u>		<u>Issue Text</u>
<u>Cleared?</u>	<u>Num</u>	
<input type="checkbox"/>	<b>M</b> 18	ACCESS ANALYSIS STUDY: We have reviewed the Transportation Access Analysis Study for the 6176 Federal Boulevard Marijuana Outlet project prepared by Mizuta Traffic Consulting. Our comments were forwarded to the Development Project Manager, EAS, and the applicants Traffic Engineer on (9/13/2018). The applicant should address all comments prior to re-submittal. (New Issue)
<input type="checkbox"/>	<b>B</b> 19	CAP CHECKLIST: Per strategy 3, number 4, since the project is a not residential project, the project must provide more short- and long-term bicycle parking spaces than required per the City's Municipal Code. Revise The CAP and Plans accordingly (New Issue)
<input type="checkbox"/>	<b>G</b> 20	ADDITIONAL COMMENTS (INFORMATION ONLY, NO ACTION REQUIRED): Pending a redesign and/or comments from other reviewing disciplines, LDR-Transportation staff reserves the right to provide additional comments on subsequent review cycles. (New Issue) <b>ACKNOWLEDGED.</b>





# Cycle Issues

9/26/18 9:18 am

Page 11 of 14

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

## Review Information

<b>Cycle Type:</b> 9 Submitted (Multi-Discipline)	<b>Submitted:</b> 08/22/2018	Deemed Complete on 08/22/2018
<b>Reviewing Discipline:</b> LDR-Geology	<b>Cycle Distributed:</b> 08/22/2018	
<b>Reviewer:</b> Mills, Kreg	<b>Assigned:</b> 08/23/2018	
(619) 446-5295	<b>Started:</b> 09/11/2018	
Kmills@sandiego.gov	<b>Review Due:</b> 09/13/2018	
<b>Hours of Review:</b> 2.00	<b>Completed:</b> 09/11/2018	<b>COMPLETED ON TIME</b>
<b>Next Review Method:</b> Conditions	<b>Closed:</b> 09/19/2018	

- The review due date was changed to 09/18/2018 from 09/18/2018 per agreement with customer.
- We request a 5th complete submittal for LDR-Geology on this project as: Conditions.
- The reviewer has requested more documents be submitted.
- Your project still has 1 outstanding review issues with LDR-Geology (3 of which are new issues).
- Last month LDR-Geology performed 81 reviews, 87.7% were on-time, and 68.5% were on projects at less than < 3 complete submittals.

## 520606-3 (4/6/2017)

### COMMENTS:

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	3	The geotechnical investigation report must contain a site-specific geologic/geotechnical map that shows the distribution of fill and geologic units, location of exploratory excavations, location of cross-sections, and proposed construction. Circumscribe the limits of anticipated remedial grading on the geologic/geotechnical map to delineate the proposed footprint of the project.  (From Cycle 3)
<input checked="" type="checkbox"/>	5	The project's geotechnical consultant should provide a conclusion regarding if the proposed development will destabilize or result in settlement of adjacent property or the right of way.  (From Cycle 3)
<input checked="" type="checkbox"/>	6	The project's geotechnical consultant should provide a statement as to whether or not the site is suitable for the intended use.  (From Cycle 3)

## 520606-7 (7/2/2018)

### REVIEW COMMENTS:

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	14	The previous review comments that have not been cleared remain applicable.  (From Cycle 7)

## 520606-9 (9/11/2018)

### INFORMATION:

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	15	REFERENCES REVIEWED:  Responses to City Review Comments (Cycle 7), Two-Story Commercial Building, 6176 Federal Boulevard, San Diego, California, prepared by SCST, Inc., dated August 20, 2018 (their project no. 180126N)  Development Plans, 6176 Federal Boulevard, San Diego, California 92114, prepared by Techne, dated August 21, 2018 (their project no. 1626); Civil Plans prepared by Snipes-Dye Associates, dated August 20, 2018 (their job no. E0057X)
<input checked="" type="checkbox"/>	16	(New Issue) REVIEW COMMENTS:  The Geology Section has reviewed the referenced geotechnical documents. Based on that review, the project's geotechnical consultant has adequately addressed the geologic site conditions at this time for the purposes of environmental review of the proposed development.  (New Issue)

For questions regarding the 'LDR-Geology' review, please call Kreg Mills at (619) 446-5295. Project Nbr: 520606 / Cycle: 9



p2k v 02.03.38

Tim Daly 446-5356

0567



# Cycle Issues

9/26/18 9:18 am

Page 12 of 14

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

L64A-003A

## PROPOSED DRAFT CONDITIONS:

PLEASE ADD DRAFT CONDITIONS PER GEOLOGY TO SHEET G002

Cleared?	Issue Num	Issue Text
----------	-----------	------------

<input type="checkbox"/>	G 17	GEOLOGY REQUIREMENTS:
--------------------------	------	-----------------------

Prior to the issuance of any construction permits (either grading or building permit), the Owner/Permittee shall submit a geotechnical investigation report prepared in accordance with the City's "Guidelines for Geotechnical Reports" that specifically addressed the proposed construction plans. The geotechnical investigation report shall be reviewed for adequacy by the Geology Section of Development Services prior to the issuance of any construction permit.

(New Issue)







# Cycle Issues

9/26/18 9:18 am

Page 13 of 14

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

## Review Information

<b>Cycle Type:</b> 9 Submitted (Multi-Discipline)	<b>Submitted:</b> 08/22/2018	Deemed Complete on 08/22/2018
<b>Reviewing Discipline:</b> LDR-Landscaping	<b>Cycle Distributed:</b> 08/22/2018	
<b>Reviewer:</b> Neri, Daniel	<b>Assigned:</b> 09/04/2018	
(619) 687-5967	<b>Started:</b> 09/19/2018	
Dneri@sandiego.gov	<b>Review Due:</b> 09/13/2018	
<b>Hours of Review:</b> 2.00	<b>Completed:</b> 09/19/2018	<b>COMPLETED LATE</b>
<b>Next Review Method:</b> Submitted (Multi-Discipline)	<b>Closed:</b> 09/19/2018	

- The review due date was changed to 09/18/2018 from 09/18/2018 per agreement with customer.
- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmnts/Regs.
- We request a 5th complete submittal for LDR-Landscaping on this project as: Submitted (Multi-Discipline).
- The reviewer has requested more documents be submitted.
- Your project still has 4 outstanding review issues with LDR-Landscaping (3 of which are new issues).
- Last month LDR-Landscaping performed 59 reviews, 83.1% were on-time, and 40.0% were on projects at less than < 3 complete submittals.

## 2nd Review - 9/29/2017

Cleared?	Issue	
	Num	Issue Text
<input checked="" type="checkbox"/>	13	Site Design Change: Per applicant response to comments, the project has been completely redesigned from the previous submission. Staff has cleared all previous issues and provided new comments below to respond to the new landscape/site plan.
		(From Cycle 6)
<input checked="" type="checkbox"/>	14	Street Trees [142.0409]: Tree species shall be selected from the Neighborhood Street Tree list as shown in the Encanto Community Plan. Acceptable species include: Platanus racemosa, Jacaranda mimosifolia, Callistemon citrinus, and Olea europaea "Swan Hill". Applicant has selected Quercus agrifolia, which is not on the approved community plan list. Please provide a written response for selecting the Quercus. Staff will need to confer with Long Range Planning.
		(From Cycle 6)
<input checked="" type="checkbox"/>	15	Street Yard Bioswale: Please clearly show the limit of the bioswale in the Street Yard. Staff needs to understand the location, and whether this is a fully lined bioswale, as this will affect tree placement.
		(From Cycle 6)
<input checked="" type="checkbox"/>	16	Remaining Yard: The remaining yard is the area between the Property Line and the 10-ft. setback lines along the west and north property lines. Therefore, this area shall be correctly represented on the Landscape Area Calculation Diagram, and the correct square footage must be used to calculate the required Remaining Yard Planting Area and Points.
		(From Cycle 6)
<input checked="" type="checkbox"/>	17	Remaining Yard - Required Planting Area: Note that per 142.0403, only those planting areas that measure 30-sq. ft. or greater, with no dimension less than 3-ft, can be counted towards required planting area.
		(From Cycle 6)
<input checked="" type="checkbox"/>	18	Parking Stall Dimensions: Please clearly mark the required 18-ft parking stall dimension, and clearly show how much of the required depth is in the allowable landscape overhang area.
		(From Cycle 6)
<input checked="" type="checkbox"/>	19	VUA Trees: As the depth of the parking stall is partially made up of the allowable landscape overhang area, please adjust the trees to line up with the parking stall striping, such that the trees are not directly in front of a parked vehicle. This will reduce the likelihood of damage as the tree will be between stalls.
		(From Cycle 6)
<input checked="" type="checkbox"/>	20	VUA/Planting Area Protection: Please show a raised 6-inch curb or wheel stops to demonstrate that the planting area is protected from vehicles.
		(From Cycle 6)

For questions regarding the 'LDR-Landscaping' review, please call Daniel Neri at (619) 687-5967. Project Nbr: 520606 / Cycle: 9



p2k v 02.03.38

Tim Daly 446-5356

0569



# Cycle Issues

9/26/18 9:18 am

Page 14 of 14

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	21	General Note #2 (Sht. LDP-1): Please revise to read: "Maintenance: All required landscape areas shall be maintained by owner. Landscape and irrigation areas in the public right-of-way shall be maintained by owner. The landscape areas shall be maintained free of debris and litter, and all plant material shall be maintained in a healthy growing condition. Diseased or dead plant material shall be satisfactorily treated or replaced per the conditions of the permit."
<input checked="" type="checkbox"/>	22	(From Cycle 6) General Note #6 (Sht. LDP-1): Please revise to specify 3-inches of mulch, as required by 142.0413(c), rather than 2-inches.
		(From Cycle 6)

## 3rd Review - 7/9/2018

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	<del>SAM</del> 3	Applicant resubmitted plans with an old landscape plan dated 10.28.16, before the site design changes. Staff is unable to complete review as no issues have been addressed.
		(From Cycle 7)

## 4th Review - 9/19/2018

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	<del>SAM</del> 24	Site Plan vs. Landscape Plan/Grading Plan (A102a, A102b, LDP-1): Site Plan does not match site layout in Landscape Plan or Grading Plan. Plans must match.
		(New Issue)
<input type="checkbox"/>	<del>SAM</del> 25	Locations of Sewer Laterals (Sht. C-1, LDP-1): Locations of utilities does not correspond. Civil and Landscape trades must be coordinated. Note that placement of utilities may not preclude the placement of required trees. Therefore, the separation distances must be carefully identified on this discretionary permit. Any change to location of utilities during ministerial review will not be supported and will delay permit process.
		(New Issue)
<input type="checkbox"/>	<del>SON</del> 26	Legend (C-1): Symbols for Existing Sewer and Exisint Water are mixed up an do not correspond.
		(New Issue)







# Cycle Issues

9/26/18 9:19 am

Page 1 of 1

L64A-003A

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

## Project Information

Project Nbr: **520606** Title: Federal Blvd MMCC  
Project Mgr: Cac, Cheryln (619) 236-6327 ccac@sandiego.gov



## Review Information

**Cycle Type:** 11 Community Planning Group (Sub) **Submitted:** Deemed Complete on 09/26/2018  
**Reviewing Discipline:** Community Planning Group **Cycle Distributed:**  
**Reviewer:** Daly, Tim **Assigned:** 09/26/2018  
(619) 446-5356 **Started:** 09/26/2018  
TPDaly@sandiego.gov **Review Due:** 10/17/2018  
**Hours of Review:** 0.50 **Completed:** 09/26/2018 **COMPLETED ON TIME**  
**Next Review Method:** Submitted (Multi-Discipline) **Closed:** 09/26/2018

- The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
- We request a 5th complete submittal for Community Planning Group on this project as: Submitted (Multi-Discipline).
- Your project still has 2 outstanding review issues with Community Planning Group (all of which are new).
- Last month Community Planning Group performed 84 reviews, 57.1% were on-time, and 36.1% were on projects at less than < 3 complete submittals.

## Encanto

Issue		
Cleared?	Num	Issue Text
<input type="checkbox"/> A	4	Please contact the Chair for the Encanto Neighborhoods Community Planning Group, (as identified in the assessment letter) to make arrangements to present your project for review at their next available meeting. This Community Planning Group is officially recognized by the City as a representative of the community, and an advisor to the City in actions that would affect the community. The Development Services Department has notified the group of your request and has sent them a copy of your project plans and documents. (New Issue)
<input type="checkbox"/> A	5	Prior to scheduling your project for public hearing, please provide a copy of the full group's final recommendation, including the vote count and any additional conditions recommended by the group. (New Issue)







# Submittal Requirements

9/26/18 9:31 am

Page 1 of 1

L64A-001

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

## Project Information

Project Nbr: **520606** Title: Federal Blvd MMCC  
Project Mgr: Cac, Cherlyn (619)236-6327 ccac@sandiego.gov



## Review Cycle Information

Review Cycle: 12 Submitted (Multi-Discipline) Opened: 09/26/2018 9:29 am Submitted:  
Due: Closed:

## Required Documents:

<u>Package Type</u>	<u>Pkg Qty</u>	<u>Document Type</u>	<u>Qty Needed</u>
Development Plans	7	Applicant Response to Issues	7
Climate Action Plan Consistency Checklist	4	Climate Action Plan Consistency Checklist	4
Development Plans	7	Site Development Plans	7
Traffic Study	3	Traffic Study	3





# Invoice

9/26/18 9:17 am

Page 1 of 1

L64A-007

THE CITY OF SAN DIEGO  
Development Services Department  
1222 First Avenue, San Diego, CA 92101-4154

Invoice Number: 861532



Status: Invoiced

Issued: 09/26/2018 9:16 am Daly, Tim

Voided:

Customer: Berry, Rebecca

Development: 327754 Devel Num 327754

Project: 520606 Federal Blvd MMCC

PM: Cac, Cherlyn

(619)236-6327



Project Fees:

<u>Fee Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Fee Amount</u>
Deposit Account	14,245.00	Dollars	\$-14,245.00
Deposit Account	20,645.00	Dollars	\$20,645.00

Approval Total: \$6,400.00

Job Total: \$6,400.00

Project Total: \$6,400.00

Invoice Total: \$6,400.00



# **EXHIBIT J**

Court's Ex.	<b>038</b>
Case #	37-2017-00010073-CU-BC-CTL
Rec'd	
Dept.	<b>C-73</b> Clk.

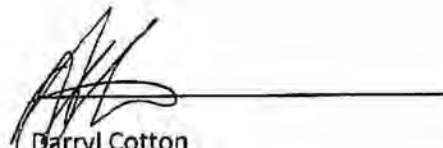
11/02/2016

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

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

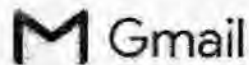
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jessica Newell (Seal)



# **EXHIBIT K**



Darryl Cotton &lt;indagroddarryl@gmail.com&gt;

---

**Agreement**

---

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton &lt;darryl@inda-gro.com&gt; wrote:

Hi Larry,

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

Regards.

Darryl Cotton, President



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

6176 Federal Blvd.  
San Diego, CA. 92114  
USA

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

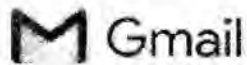
[Quoted text hidden]

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

# **EXHIBIT L**

0579





Darryl Cotton &lt;Indagroddarryl@gmail.com&gt;

---

**Federal Blvd Property**

---

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

Mon, Feb 27, 2017 at 8:49 AM

Hi Daryl,

Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.

*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:

<https://mail.google.com/mail/u/0/?ui=2&ik=505cbcf73f&view=pt&msg=15a8079e39521b...> 4/26/2017

**0580** BER0091

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

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 **17-0226 Fed Blvd Comm Purchase v3 (First Draft).pdf**  
347K

## **AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY**

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("**Seller**"), and 6176 FEDERAL BLVD TRUST dated \_\_\_\_\_, 2017, or its assignee ("**Buyer**").

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. **DEFINITIONS.** For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property"**: That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. **"Date of Agreement"**: The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. **"Purchase Price"**: The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars (\$400,000.00).

d. **"Due Diligence Period"**: The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. **"Escrow Agent"**: The Escrow Agent is: [NAME]

f. **"Title Company"**: The Title Company is: [NAME]

g. **"Title Approval Date"**: The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. **"Closing", "Closing Date" and "Close of Escrow"**: These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. **"Notices"** will be sent as follows to:

Buyer: 6176 Federal Blvd. Trust  
6176 Federal Blvd.

San Diego, California 92114

Attn:

Fax No.:

Phone No.:

with a copy to:

Austin Legal Group, APC  
3990 Old Town Ave, A-112  
San Diego, CA 92110,

Seller:

Darryl Cotton  
Address:  
City, State, Zip  
Attn:  
Fax No.:  
Phone No.:

Escrow Agent: [NAME]  
[ADDRESS]

2. PURCHASE AND SALE. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "**Improvements**"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "**Intangibles**"). (Reference herein to the "**Property**" shall include the Real Property, Improvements, and Intangibles).

3. PURCHASE PRICE AND PAYMENT; DEPOSIT. The Purchase Price will be paid as follows:

a. Deposit. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. Cash Balance. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

4. ESCROW.

a. Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "**Escrow**") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. Failure to Receive CUP. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "**Buyer's Indemnity**" (as detailed in Section 8 below).

5. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "**Preliminary Title Report**"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. Permitted Exceptions. The following exceptions shown on the Preliminary Title Report (the "**Permitted Exceptions**") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("**Mandatory Cure Items**").

c. Title Policy. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. Title and Survey Costs. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("Property Information"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. DUE DILIGENCE. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "Due Diligence Termination Notice") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. COVENANTS OF SELLER. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.



(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated ).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exist any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "**Buyer's Representatives**") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. DAMAGE. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. CONDEMNATION. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Seller's loss of income prior to closing.

#### 14. CLOSING

a. Closing Date. The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the “**Deed**”).

(14) Assignment of Intangible Property. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) FIRPTA. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. Buyer's Deliveries in Escrow. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) Purchase Price. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the “**Reporting Person**” for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. Transfer of Title. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

15. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. At the Closing, Seller shall be charged the following:

- (1) All premiums for an ALTA Standard Coverage Title Policy;
- (2) One-half of all escrow fees and costs;
- (3) Seller's share of prorations; and
- (4) One-half of all transfer taxes.

b. Buyer Will Pay. At the Closing, Buyer shall pay:

- (1) All document recording charges;
- (2) One-half of all escrow fees and costs;
- (3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;
- (4) One-half of all transfer taxes; and
- (5) Buyer's share of prorations.

c. Prorations.

(1) Taxes. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. CLOSING DELIVERIES.

a. Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) Funds. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) Recording. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed after recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. Seller's Default. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

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Seller's Initials

\_\_\_\_\_  
Buyer's Initials

c. Escrow Cancellation Following a Termination Notice. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "**Escrow Cancellation Charges**"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (1/2) of any Escrow Cancellation Charges.

#### 18. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.



h. Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "**Exchange**") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

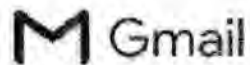
w. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. Legal Advice. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. Memorandum of Agreement. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

SIGNATURE PAGE FOLLOWS

# **EXHIBIT M**



Darryl Cotton &lt;indagroddarryl@gmail.com&gt;

---

**Statement**

---

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

Thu, Mar 2, 2017 at 8:51 AM

*Best Regards,*

*Larry E. Geraci, EA*

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

*Web: Larrygeraci.com*

***Bus: 858.576.1040***

***Fax: 858.630.3900***

Court's Ex. **062**  
Case # 37-2017-00010073-CU-BC-CTL  
Rec'd \_\_\_\_\_  
Dept. **C-73** Clk. \_\_\_\_\_

---

Circular 230 Disclaimer:

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

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 **17-0227 Side Agreement unsigned.docx**  
35K

## **SIDE AGREEMENT**

**Dated as of March \_\_, 2017**

**By and Among**

**DARRYL COTTON**

**and**

**6176 FEDERAL BLVD TRUST**

This Side Agreement ("Side Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

### **RECITALS**

**WHEREAS**, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

**WHEREAS**, the purchase price for the Property is Four Hundred Thousand Dollars (\$400,000); and

**WHEREAS**, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

### **ARTICLE I**

#### **1. Terms of the Side Agreement**

1.1. Buyer shall pay Four Hundred Thousand Dollars (\$400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

## ARTICLE II

### 2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

## ARTICLE III

### 3. General Provisions

3.1. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. Buyer shall transmit Payment Price via wire transfer to the following account: \_\_\_\_\_, with the routing number or swift code of: \_\_\_\_\_, located at the following bank and address: \_\_\_\_\_.

3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.



3.6. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

3.11. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. Invalidity and Waiver. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust  
6176 Federal Blvd.  
San Diego, California 92114  
Attn:  
Fax No.:  
Phone No.:

with a copy to:

Austin Legal Group, APC  
3990 Old Town Ave, A-112  
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton  
Address:  
City, State, Zip:  
Attn:  
Fax No.:  
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

**BUYER:**

**6176 FEDERAL BLVD. TRUST**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Its: Trustee

**SELLER:**

**DARRYL COTTON:**

\_\_\_\_\_

# Exhibit 11

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

7 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and  
Cross-Defendant REBECCA BERRY  
8

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

11 LARRY GERACI, an individual,

12 Plaintiff,

13 v.  
14

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

16 Defendants.  
17

18  
19 AND RELATED CROSS-ACTION  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**09/23/2019** at 03:18:00 PM

Clerk of the Superior Court  
By Adriana Iye Anzalone, Deputy Clerk

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

Judge: Hon. Joel R. Wohlfeil

**PLAINTIFF/CROSS-DEFENDANTS'  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANT/CROSS-COMPLAINANT'S  
MOTION FOR NEW TRIAL**

**[IMAGED FILE]**

**DATE: October 25, 2019**  
**TIME: 9:00 a.m.**  
**DEPT: C-73**

Filed: March 21, 2017  
Trial Date: June 28, 2019  
Notice of Entry  
of Judgment: August 20, 2019

**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
<b>I. INTRODUCTION/SUMMARY OF ARGUMENT.....</b>	<b>6</b>
<b>II. STANDARDS FOR NEW TRIAL MOTION BASED ON C.C.P § 657(6).....</b>	<b>9</b>
<b>A. Cotton's New Trial Motion is Limited to the Statutory Ground that the Verdict was "Against the Law" under C.C.P. § 657(6) .....</b>	<b>9</b>
<b>B. The Correct Standard for a New Trial Motion Based on the Statutory Ground that the Verdict was "Against the Law" .....</b>	<b>9</b>
<b>III. ARGUMENT.....</b>	<b>10</b>
<b>A. MR. COTTON'S ILLEGALITY ARGUMENTS FAIL.....</b>	<b>10</b>
1. Mr. Cotton Has Waived and Abandoned the "Illegality" Argument.....	10
2. The Contract at Issue in This Case is Not Illegal.....	13
3. B&P Code Does Not Bar Mr. Geraci From Applying for a CUP.....	13
4. It Is Common Practice For CUP Applicants To Use Agents During The Application Process .....	14
<b>B. MR. COTTON'S ARGUMENT THAT THE VERDICT IS AGAINST THE LAW BECAUSE THE JURY DISREGARDED THE JURY INSTRUCTIONS FAILS.....</b>	<b>15</b>
<b>C. MR. COTTON'S ARGUMENT THAT HE WAS DENIED A FAIR TRIAL AS THE RESULT OF ERRORS RELATING TO THE USE OF THE ATTORNEY-CLIENT PRIVILEGE DURING DISCOVERY AND AT TRIAL ALSO FAILS.....</b>	<b>17</b>
<b>IV. CONCLUSION.....</b>	<b>20</b>

**TABLE OF AUTHORITIES**

**PAGE(S)**

**CASES**

<i>A&amp;M Records, Inc. v. Heilman</i> (1977) 75 Cal.App.3d 554.....	19, 20
<i>Apra v. Aureguy</i> (1961) 55 Cal.2d 827.....	10
<i>Bristow v. Ferguson</i> (1981) 121 Cal.App.3d 823.....	11
<i>Cassim v. Allstate Ins. Co.</i> (2004)33 Cal.4 <sup>th</sup> 780.....	16
<i>Chodosh v. Palm Beach Park Association</i> 2018 WL 6599824.....	11
<i>Coombs v. Hibberd</i> (1872) 43 Cal. 452.....	20
<i>De Felice v. Tabor</i> (1957) 149 Cal.App.2d 273.....	9
<i>Fergus v. Songer</i> (2007) 150 Cal.App.4 <sup>th</sup> 552.....	10
<i>Fomco, Inc. v. Joe Maggio, Inc.</i> (1961) 55 Cal.2d 162.....	10
<i>Hernandez v. County of Los Angeles</i> (2014) 226 Cal.App.4 <sup>th</sup> 1599.....	17
<i>Hoffman-Haag v. Transamerica Ins. Co.</i> (1991) 1 Cal.App.4 <sup>th</sup> 10.....	15
<i>Horn v. Atchison, T. &amp; S.F.Ry. Co.</i> (1964) 61 Cal.2d 602.....	6, 12
<i>Kralyevich v. Magrini</i> (1959) 172 Cal.App.2d 784.....	10
<i>Lewis Queen v. N.M. Ball Sons</i> (1957) 48 Cal.2d 141.....	10



**TABLE OF AUTHORITIES-Continued**

**PAGE(S)**

<i>Lewith v. Rehmke</i> (1935) 10 Cal.App.2d 97.....	7
<i>McCown v. Spencer</i> (1970) 8 Cal.App.3d 216.....	10
<i>Malkasian v. Irwin</i> (1964) 61 Cal.2d 738.....	6, 9
<i>Manufacturers' Finance Corp. v. Pacific Wholesale Radio</i> (1933) 130 Cal.App.239.....	15
<i>Marriage of Beilock</i> (1978) 81 Cal.App.3d 713.....	10
<i>Miller v. National American Life Ins. Co.</i> (1976) 54 Cal.App.3d 331.....	12
<i>Morris v. Purity Sausage Co.</i> (1934) 1 Cal.App.2d 120.....	7
<i>Mosesian v. Pennwalt Corp.</i> (1987) 191 Cal.App.3d 851.....	9
<i>O'Malley v. Carrick</i> (1922) 60 Cal.App. 48.....	10
<i>People v. Ault</i> (2004) 33 Cal.4 <sup>th</sup> 1250.....	9
<i>People v. McKeinnon</i> (2011) 52 Cal.4 <sup>th</sup> 610.....	16
<i>Peterson v. Peterson</i> (1953) 121 Cal.App.2d 1.....	7
<i>Quantification Settlement Agreement Cases</i> (2011) 201 Cal.App.4 <sup>th</sup> 758.....	10
<i>Ryan v. Crown Castle NG Networks Inc.</i> (2016) 6 Cal.App.5th 775.....	9

///

**TABLE OF AUTHORITIES-Continued**

**PAGE(S)**

<i>Sepulveda v. Ishimaru</i> (1957) 149 Cal.App.2d 543.....	12
<i>Treber v. Sup. Ct</i> (1968) 68 Ca.2d 128.....	17
<i>Tagney v. Hoy</i> (1968) 260 Cal.App.2d 372.....	10

**STATUTES**

**Business & Professions Code**

Section 26000.....	14
Section 26001(y).....	14
Section 26501.....	12
Section 26057.....	11, 13
Section 26057(b).....	13, 14
Section 26057(b)(7).....	18

**Code of Civil Procedure**

Section 569.....	9, 17
Section 657(1).....	9, 17
Section 657(5).....	9
Section 657(6).....	9, 10, 17
Section 657(7).....	9, 10, 17

**Evidence Code**

Section 352.....	12
------------------	----

**California Constitution**

Art. VI, §13.....	
-------------------	--

**OTHER**

Civil Trials and Evidence, Post Trial Motions, The Rutter Group ¶ 18:134.1.....	17
Civil Trials and Evidence, Post Trial Motions, The Rutter Group ¶ 18:201.....	17

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff/Cross-Defendants submit this Memorandum of Points and Authorities in Opposition  
3 to Defendant/Cross-Complainant's Motion for New Trial.

4 **I. INTRODUCTION/SUMMARY OF ARGUMENT**

5 This case came to jury trial on July 1, 2019 and took place over the ensuing three-week period,  
6 consisting of 9 trial days. Mr. Cotton received a fair trial. The jury unanimously found in favor of Mr.  
7 Geraci and against Mr. Cotton on his causes of action for Breach of Contract and Breach of the  
8 Covenant of Good Faith and Fair Dealing and awarded damages to Mr. Geraci. (See Special Verdict  
9 Form, ROA #635.)<sup>1</sup> Cotton now requests this Court to set aside the verdict.<sup>2</sup>

10 As a threshold matter, Mr. Cotton's supporting documents were not timely filed and served.  
11 CCP § 569(a) provides that "Within 10 days of filing the notice, the moving party *shall serve upon all*  
12 *other parties* and file any brief *and accompanying documents*, including affidavits in support of the  
13 motion. ...". Here, Mr. Cotton's Notice of Intent to Move for New Trial was served and filed on  
14 September 3, 2019. The ten-day period to file his brief and accompanying documents expired on  
15 September 13th. While Mr. Cotton timely filed his *unsigned* Memorandum of Points and Authorities  
16 just before midnight on September 13th, that filing did not include any accompanying documents.  
17 Instead, on Monday, September 16th, (3-days late) Mr. Cotton filed two documents entitled "Errata"

18  
19  
20 <sup>1</sup> The jury also unanimously found in favor of Mr. Geraci and against Mr. Cotton on all of Mr. Cotton's claims set forth in  
21 his cross-complaint. (See Special Verdict Form, ROA# 636.) Mr. Cotton does not challenge the jury verdict nor seek a  
22 new trial in connection with his cross-claims; his memorandum of points and authorities in support of his new trial motion  
23 does not argue any grounds for a new trial on his cross-claims. Even if for the sake of argument Mr. Cotton intended to  
move for a new trial on those claims, that motion would fail for the same reason as his new trial motion fails as to the  
verdict against him on Mr. Geraci's claims.

24 <sup>2</sup> Mr. Cotton's counsel, Jacob Austin, did not raise an objection to the admission of any exhibits or the examination with  
25 regard to any exhibits. Attorney Austin only made two objections throughout the trial, neither of which have any impact on  
26 the pending motion. "In an appeal ... from a judgment after denial of a motion for new trial, the failure of ... counsel to  
27 object or except may be treated as a waiver of the error." (5 Witkin, Cal. Procedure (1983 pocket sup.) Attack on Judgment  
28 in Trial Court, § 119, p. 307; *Malkasian v. Irwin* (1964) 61 Cal. 2d at p. 747; see *Horn v. Atchison, T. & S.F.Ry. Co.* (1964)  
61 Cal.2d 602, 610, cert. den. Sub nom. *Atchison, Topeka & Santa Fe Railway Co. v. Horn*, 380 U.S. 909 [13 L. Ed. 2d  
796, 85 S. Ct. 892] ["In the absence of a timely objection the offended party is deemed to have waived the claim of error  
through his participation in the atmosphere which produced the claim of prejudice." (*Sabella v. Sothern Pac. Co.* (1969)  
70 Cal.2d at p. 319.)

1 which contained the accompanying documents in support of his motion.<sup>3</sup> Affidavits or declarations  
2 filed too late may be disregarded. (See *Morris v. Purity Sausage Co.* (1934) 1 Cal.App.2d 120; *Lewith*  
3 *v. Rehmk* (1935) 10 Cal.App.2d 97, 105; *Peterson v. Peterson* (1953) 121 Cal.App.2d 1, 9.)

4 As to the merits of his motion for new trial, Mr. Cotton's asserts three grounds:

5 First Mr. Cotton contends the November 2, 2016 agreement was illegal and void because Mr.  
6 Geraci failed to disclose his interest in both the Property and the Conditional Use Permit ("CUP").  
7 Mr. Cotton erroneously contends the agreement violates local law and policies, as well as state law.  
8 The statutes upon which Mr. Cotton relies were not even in effect at the time the November 2, 2016  
9 contract was entered.<sup>4</sup> Even if that is disregarded, the contract was otherwise legal as discussed *infra*.

10 Additionally, Mr. Cotton has waived the "illegality" argument for two reasons: (1) he never  
11 raised illegality as an affirmative defense; and (2) with regard to the "illegality" argument, Attorney  
12 Austin represented to the Court at the conclusion of evidence and in response to the Court's inquiries  
13 if there were any other exhibits Mr. Austin wished to admit into evidence: "I'm willing to not argue  
14 the matter if your Honor is inclined not to include it. We can just – forget about it." (Reporter's  
15 Transcript herein after referred to as "RT") (Plaintiff/Cross-Defendants Notice of Lodgment in  
16 Opposition to Motion for New Trial ("Plaintiff NOL") (RT, July 10, 2019, p. 69:15-72:26, Ex. 6 to  
17 Plaintiff NOL)

18 Even assuming the illegality argument has not been waived, the argument that the November 2,  
19 2016 contract is illegal fails. Mr. Geraci's stipulated judgments with the City of San Diego, and the

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21 <sup>3</sup> Mr. Cotton's Errata claims that "[d]ue to a clerical error, an incomplete draft of the Memorandum of Points and  
22 Authorities in Support of the Motion for New Trial was uploaded for electronic filing and service instead of the true final  
23 copy and, as such, the table of Authorities in the draft was incomplete, the document was not executed and the exhibits  
24 referenced therein were not attached." The signature page for the Memorandum of Points & Authorities attached to the  
Errata is dated, *September 15, 2019*, (2 days after the papers were filed and served) which belies Mr. Cotton's claim that  
the motion was complete, filed and served in a timely manner and that the failure to transmit the signature page and  
accompanying documents was a "clerical error. Indeed, it suggests Mr. Cotton's filing was untimely.

25 <sup>4</sup> In making his illegality argument, Mr. Cotton cites to B&P Code §§ 26000 (Effective June 27, 2017); 26055 (Effective  
26 July 2019); and 26057(a) (Effective January 1, 2019). The contract in question was entered November 2, 2016. The  
27 general rule that judicial decisions are given retroactive effect is basic in our legal tradition. In *Evangelatos v. Superior*  
28 *Court* (1988) 44 Cal.3d 1188, 1207, the California Supreme Court observed: "[t]he principle that statutes operate only  
prospectively, while judicial decisions operate retrospectively, is familiar to every law student." (*United States v. Security*  
*Industrial Bank* (1982) 459 U.S. 70, 79, 103 S.Ct. 407, 413, 74 L.Ed.2d 235.) The statutes cited by Mr. Cotton in support  
of his "illegality" argument were not in effect until after, sometimes years after, entering the contract in question.

1 use of an agent in application process for the CUP, do not render the contract illegal. Indeed, as set  
2 forth herein, several witnesses testified that it is common practice for an applicant on a CUP  
3 application for a medical marijuana dispensary to utilize an agent in that process.

4 Second, Mr. Cotton argues the verdict is against law because the jury disregarded the jury  
5 instructions and applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr.  
6 Geraci's conduct as related to the November 2, 2016 Agreement, the "confirmation email" and the  
7 "disavowment" allegation. To the contrary, there is no legal basis to conclude that the jury disregarded  
8 the jury instructions and applied an objective standard to Mr. Cotton and a subjective standard to Mr.  
9 Geraci's conduct. That is simply Mr. Cotton's interpretation of the facts and evidence which he would  
10 like to substitute for the jury's unanimous verdict.

11 Third, Mr. Cotton contends that Mr. Geraci used the attorney-client privilege as a shield during  
12 discovery and as a sword during trial, which prohibited Mr. Cotton from receiving a fair and impartial  
13 trial.<sup>5</sup> Mr. Cotton has misrepresented the facts, circumstances and the Minute Order issued by the  
14 Court in connection with the attorney-client privilege issues during discovery and the waiver of those  
15 issues at trial. In spite of asserting the attorney-client privilege with regard to the documents drafted  
16 by Gina Austin's office, and contrary to Cotton's arguments herein, those documents were produced to  
17 Mr. Cotton during discovery. (Cross-Defendant Rebecca Berry's Responses to Request, For  
18 Production of Documents, Set One, Ex. 1 to Plaintiff NOL; and Plaintiff/Cross-Defendant Larry  
19 Geraci's Amended Responses to Special Interrogatories, Set Two, Ex. 2 to Plaintiff NOL) The  
20 documents were also listed on the Joint TRC Exhibit List and admitted into evidence at trial without  
21 objection. (Trial Exhibits 59, 62, Ex. 7 to Plaintiff NOL; RT July 3, 2019, 129:22-133:27, Ex. 3 to  
22 NOL; Joint Exhibit List, Ex. 10 to Plaintiff NOL) Mr. Cotton's counsel did not raise any evidentiary  
23 objections to the waiver of attorney-client privilege either with regard to the documentary evidence or  
24 the testimonial evidence. As such, Mr. Cotton's claim that he was unable to cross-examine either Mr.  
25 Geraci or Ms. Austin with the relevant documents (Cotton's P's & A's, p. 5:1-3) is without merit.

27  
28 <sup>5</sup> This is a C.C.P. § 657(7) issue regarding evidentiary rulings, a ground *not* set forth in the Notice of Intent to Move for New Trial. (See *Treber v. Sup. Ct* (1968) 68 Ca.2d 128, 131; *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4<sup>th</sup> 1599, 1601-1605.) (Practice Guide: Civil Trials and Evidence, Post Trial Motions, (The Rutter Group 2010) ¶ 18:201.)]

1 Indeed, armed with those documents during discovery, Mr. Cotton never took the depositions of Mr.  
2 Geraci nor Attorney Gina Austin. And he in fact questioned the witnesses about those documents  
3 during trial. (RT July 8, 2019, p. 58:3-60:10, Ex. 4 to Plaintiff NOL)

4 Finally, as a matter of law, a new trial may only be granted when the verdict constitutes a  
5 miscarriage of justice. (Calif. Const., Art. VI, §13.) “If it clearly appears that the error could not have  
6 affected the result of the trial, the court is bound to deny the motion.” [*Bristow v. Ferguson* (1981) 121  
7 Cal.App.3d 823, 826; *Mosesian v. Pennwalt Corp.* (1987) 191 Cal.App.3d 851, 866-867, (disapproved  
8 on other grounds in *People v. Ault* (2004) 33 Cal.4<sup>th</sup> 1250, 1272.)] Mr. Cotton has not demonstrated  
9 the claimed errors likely affected the result of the trial.

## 10 **II. STANDARDS FOR NEW TRIAL MOTION BASED ON C.C.P. § 657(6)**

### 11 **A. Cotton’s New Trial Motion is Limited to the Statutory Ground that the Verdict** 12 **was “Against Law” under C.C.P. § 657(6)**

13 In his Notice of Intent to Move for New Trial dated September 13, 2019, Mr. Cotton gave  
14 notice that he was bring the motion pursuant to C.C.P. § 657(6) on the ground that “the verdict is  
15 against the law.” (ROA#656.) Yet in his brief, he asserts that his motion for new trial is made on the  
16 grounds of “irregularity of proceedings” under C.C.P. § 657(1) and “against the law” under (C.C.P. §  
17 657(7), *neither of which grounds were set forth in his Notice of Intention to Move for New Trial*.  
18 (Cotton P’s&A’s, p. 5:10-21) A notice of intention to move for a new trial is deemed to be a motion  
19 for new trial *on the grounds stated in the notice*. (C.C.P. §659.) It is well-established that a new trial  
20 order “can be granted only on a ground specified in the motion.” (*Malkasian v. Irwin* (1964) 61 Cal.2d  
21 738, 745; *De Felice v. Tabor* (1957) 149 Cal.App.2d 273, 274.)

22 Mr. Cotton also asserts that “the Court sits as the 13<sup>th</sup> juror and is “vested with the plenary  
23 power – and burdened with a correlative duty – to independently evaluate the evidence,” (incorrectly  
24 citing to *Ryan v. Crown Castle NG Networks Inc.* (2016) 6 Cal.App.5th 775, 784, which concerned  
25 C.C.P. § 657(5), not § 657(6). Rather, the “against law” ground differs from the “insufficiency of the  
26 evidence” ground in that there is no weighing of evidence or determining credibility. The “against  
27 law” ground applies only when the evidence is without conflict in any material point and insufficient  
28 as a matter of law to support the verdict. (*McCown v. Spencer* (1970) 8 Cal.App.3d 216, 229.)

1           **B.       The Correct Standard for a New Trial Motion Based on the Statutory Ground**  
2                   **that the Verdict is “Against Law”**

3           The statutory ground under C.C.P. §657(6) that the verdict is “against law” is of very limited  
4 application. (*Tagney v. Hoy* (1968) 260 Cal.App.2d 372, citing *Kralyevich v. Magrini* (1959) 172  
5 Cal.App.2d 784 [“A decision can be said to be ‘against law’ only: (1) where there is a failure to find  
6 on a material issue; (2) where the findings are irreconcilable; and (3) where the evidence is insufficient  
7 in law and without conflict in any material point.”<sup>6</sup> C.C.P. § 657(6) is not a ground to have the court  
8 reconsider its rulings. The “against law” ground applies only when the evidence is without conflict in  
9 any material point and insufficient *as a matter of law* to support the verdict. (*McCown v. Spencer*  
10 (1970) 8 Cal.App.3d 216, 229; see *Fergus v. Songer* (2007) 150 Cal.App.4<sup>th</sup> 552, 567-569 [finding  
11 verdict was not “against law” because it was supported by substantial evidence]; *Marriage of Beilock*  
12 (1978) 81 Cal.App.3d 713, 728.) C.C.P. § 657(6) does not cover errors that fall within the other  
13 sections of C.C.P. § 657, such as § 657(7). (*O'Malley v. Carrick* (1922) 60 Cal.App. 48, 51)

14           **III.     ARGUMENT**

15           **A.       MR. COTTON'S ILLEGALITY ARGUMENTS FAIL**

16                   **1. Mr. Cotton Has Waived and Abandoned the “Illegality” Argument**

17           Mr. Cotton failed to raise “illegality” as an affirmative defense in his Answer to Plaintiff's  
18 Complaint (ROA#17). Normally, affirmative defenses not raised in the answer to complaint or cross-  
19 complaint are waived. (E.g., *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4<sup>th</sup> 758,  
20 813.) As stated above, Mr. Cotton did not plead “illegality” as an affirmative defense; therefore, Mr.  
21 Cotton cites *Lewis Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141, 146-148), for the proposition that  
22 illegality can be raised “at any time.” That is a correct statement of the law, however, that rule is not  
23 unqualified. Two California Supreme Court cases decided after *Lewis & Queen – Fomco, Inc. v. Joe*  
24 *Maggio, Inc.* (1961) 55 Cal.2d 162, and *Apra v. Aureguy* (1961) 55 Cal.2d 827 – both rejected post-  
25

26           <sup>6</sup> Mr. Cotton did not set forth any failure by the court as to a finding on some material issue. Mr. Cotton also did not  
27 establish findings that are irreconcilable. Mr. Cotton further did not establish that the evidence is insufficient in law and  
28 without conflict on any material point. Other challenges as to the application of law in this case would be governed  
by C.C.P. § 657(7) not cited in Mr. Cotton's Notice of Intention to Move for New Trial and, therefore, are not reviewable  
herein. For these reasons alone, Mr. Cotton's arguments for a new trial should be rejected by this Court.

1 trial defenses of illegal contract because the illegality defense had not been raised in the trial court.  
2 (See *Fomco*, *supra*, 55 Cal.2d at p. 166; 55 Cal.2d at p. 831.) In fact, language in *Fomco* suggests that  
3 the high court actually rejected *Lewis & Queen's* dicta that the issue of illegal contract could be raised  
4 for the first time on appeal. (See *Chodosh v. Palm Beach Park Association* 2018 WL 6599824)

5 At trial the “illegality” issue appears to have first come up in response to questions being posed  
6 by Attorney Austin in his examination of witnesses. Attorney Weinstein argued Attorney Austin was  
7 asking questions of witnesses which implied it was illegal for Mr. Geraci to operate a legally permitted  
8 dispensary. Attorney Weinstein pointed out, and the Court agreed, that the two civil judgments on  
9 their face did not bar Mr. Geraci from operating a legally permitted dispensary. (RT, July 9, 2019, p.  
10 120:20-121:24, Ex. 5 to Plaintiff NOL) Attorney Weinstein went on to argue that Business &  
11 Professions Code Section 26057 was *permissive* and not mandatory and that it dealt with state  
12 licenses, not a City CUP. The Court was troubled by the fact that Attorney Austin had not filed a trial  
13 brief addressing this issue, nor had Attorney Austin filed any memorandum of points and authorities  
14 on the issue. The Court concluded: “So for the time being, I’m tending to agree with the plaintiff’s  
15 side without the defense having given me something I can look at and absorb.” (RT, July 9, 2019, p.  
16 120:20-123:6, Ex. 5 to Plaintiff NOL)

17 Later that day, Attorney Austin called Joe Hurtado to the stand. Joe Hurtado had a vested  
18 interest in the case as he was financing Mr. Cotton’s litigation expenses and attorneys’ fees. (RT July  
19 9, 2019, p. 150:13-18, Ex. 5 to Plaintiff NOL) Attorney Austin improperly attempted to elicit expert  
20 testimony from Joe Hurtado, that it was his opinion that Mr. Geraci did not qualify for a CUP under  
21 the Business & Professions Code. (RT, July 9, 2019, 151:22-28, Ex. 5 to Plaintiff NOL) During  
22 Attorney Austin’s examination of Mr. Hurtado, the Court initiated a side-bar at which Mr. Hurtado’s  
23 proposed testimony was discussed. The Court permitted Mr. Hurtado to testify to hearsay  
24 conversations with Gina Austin and hearsay conversations with anyone else on Mr. Geraci’s team. At  
25 the conclusion of Mr. Hurtado’s testimony, and after excusing the jury, the Court permitted the parties  
26 to make a record of that side bar. (RT, July 9, 2019, p. 155:8-158:18, Ex. 5 to Plaintiff NOL) The  
27 Court expressed to Attorney Austin that to the extent Mr. Hurtado wanted to express legal opinions, he  
28 was not going to permit such testimony. In response, Attorney Austin admitted that “perhaps Mr.



1 Hurtado should have been designated as an expert...". (RT, July 9, 2019, p. 157:13-15, Ex. 5 to  
2 Plaintiff NOL) Mr. Hurtado was not designated as an expert witness and his opinion testimony was  
3 properly excluded.

4 The "illegality" issue was again raised on July 10, 2019, when Attorney Austin offered Trial  
5 Exhibit 281 into evidence, which was a copy of Business & Professions Code § 26051; and requested  
6 the Court take judicial notice of the two lawsuits in which Mr. Geraci was a named party. The Court  
7 sustained Attorney Weinstein's objections to Business & Professions Code § 26051 being admitted  
8 into evidence. As to the request for judicial notice of the two prior cases against Mr. Geraci, Attorney  
9 Weinstein raised an Evidence Code § 352 objection.

10 The Court stated:

11 Putting aside whether the probative value is substantially outweighed by undue prejudice  
12 or any other of the 352 factors including but not limited to cumulativeness, as I read these  
13 judgments, Mr. Geraci is not barred from trying to obtain whatever permission he would  
14 need or anybody would need from operating a marijuana dispensary. And I thought that  
was your theory at one point.

15 And if that were your theory, I'm not seeing anything, well, inside the four corners of  
16 these judgments that prohibit Mr. Geraci from, for example, doing the deal that he had  
proposed to do with Mr. Cotton.

17 Attorney Austin replied to the Court: "I think there was a change in the law, which would –  
18 would change that. *But I'm willing to not argue the matter if your Honor is inclined not to include*  
19 *it. We can just – forget about it.*" The Court then sustained the objections and declined to take  
20 judicial notice of Mr. Geraci's two prior judgments. (RT, July 10, 2019, p. 69:15-72:26, Ex. 6 to  
21 Plaintiff NOL) [trial court could properly deny a motion for new trial based on a waiver of the issue  
22 during trial. (*Miller v. National American Life Ins. Co.* (1976) 54 Cal.App.3d 331, 346; *Horn v. Atchison,*  
23 *T. & S.F.Ry. Co.*, (1964) 61 Cal.2d 602; *Sepulveda v. Ishimaru*, (1957) 149 Cal.App.2d 543, 547]

24 It is clear in the instant case, that Attorney Austin abandoned his "illegality" argument; i.e.,  
25 Mr. Austin's statement to the Court: "I think there was a change in the law, which would – would  
26 change that. *But I'm willing to not argue the matter if your Honor is inclined not to include it. We*  
27 *can just – forget about it.*" (RT, July 10, 2019, p. 72:10-13, Ex. 6 to Plaintiff NOL) Having waived  
28 this issue during the trial, Mr. Cotton is precluded from urging it as a ground for granting a new trial.

1                   **2. The Contract at Issue in This Case is Not Illegal.**

2           Even if the statutes Mr. Cotton relies upon were in effect on November 2, 2016 when the  
3 contract was entered (which they were not) and there were no waiver of the “illegality” issue (which  
4 there was), the November 2, 2016 agreement remains a legal contract.

5           The stipulated judgments on their face permit Mr. Geraci to apply for a CUP. In Case Number  
6 37-2014-00020897-CU-MC-CTL, paragraph 8a enjoins Mr. Geraci from “Keeping, maintaining,  
7 operating, or allowing the operation of an *unpermitted marijuana dispensary ...*”. (Italics, Bold  
8 Added.) Paragraph 8(b) specifically sates “*Defendants shall not be barred in the future from any*  
9 *legal and permitted use of the PROPERTY.*” (Italics, Bold Added.)

10          In Case Number 37-2015-00004430-CU-MC-CTL, Paragraph 7 prevents Defendant from  
11 “Keeping, maintaining, operating or allowing any commercial, retail, collective, cooperative or group  
12 establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to,  
13 any marijuana dispensary, collective or cooperative organized anywhere in the City of San Diego  
14 *without first obtaining a Conditional Use Permit pursuant to the San Diego Municipal Code.*”  
15 (Italics, bold added)

16          It was this language in the two stipulated judgments that led this Court to state: “I’m not  
17 seeing anything, well, inside the four corners of these judgments that prohibit Mr. Geraci from, for  
18 example, doing the deal that he had proposed to do with Mr. Cotton.” To which, Attorney Austin  
19 stated “*We can just – forget about it.*” (RT, July 10, 2019, p. 69:8-15, Ex. 6 to Plaintiff NOL)

20                   **3. The B&P Code Does Not Bar Mr. Geraci From Applying for a CUP**

21          Setting aside waiver and the fact that the two stipulated judgments, on their face, permit Mr.  
22 Geraci to obtain a CUP, there is no mandatory provision in the Business & Professions Code which  
23 would bar Mr. Geraci from lawfully obtaining a CUP.

24          Section 26057(b)(7) of the California Business & Professions Code provides that “[t]he  
25 licensing authority *may* deny the application for licensure or renewal of a **state license** if ... [t]he  
26 applicant, or any of its officers, directors or owners, has been sanctioned by a licensing authority or a  
27 city, county, or city and county for unauthorized commercial cannabis activities, has had a license  
28 suspended or revoked under this division in the three years immediately preceding the date the

1 application is filed with the licensing authority.” (Cal. Bus. & Prof. Code § 26057(b)(7) [*emphasis*  
2 *added*].) Section 26057 is part of a larger division known as the Medicinal and Adult-Use Cannabis  
3 Regulation and Safety Act, which has the purpose and intent to “control and regulate the cultivation,  
4 distribution, transport, storage, manufacturing, processing, and sale” of commercial medicinal and  
5 adult-use cannabis. (Cal. Bus. & Prof. Code § 26000.) Under this division, a “license” refers to a  
6 “state license issued under this division, and includes both an A-license and an M-license, as well as a  
7 laboratory testing license.” (Cal. Bus. & Prof. Code § 26001(y).)

8 In this case, the CUP is not a state license. Even if this statute were to apply to a CUP, the  
9 permissive nature of the authority would not *require* the denial of a CUP license because it is up to the  
10 discretion of the licensing authority to make such a decision based on the conditions provided in  
11 section 26057(b). (Cal. Bus. & Prof. Code § 26057(b).) In addition, attorney Gina Austin testified at  
12 trial the statute would not prevent Mr. Geraci from obtaining a CUP. (RT, July 8, 2019, p. 55:12-  
13 57:21, Ex. 4 to Plaintiff NOL)

14 **4. It Is Common Practice For CUP Applicants To Use Agents During The**  
15 **Application Process.**

16 Mr. Cotton argues that Mr. Geraci did not disclose his interest on the Ownership Disclosure  
17 Statement and that therefore Mr. Geraci is asking this Court to assist him in violating local laws, which  
18 the Court is prohibited from doing. (Cotton P’s & A’s, p. 12:16-23)

19 Rebecca Berry, the CUP applicant, signed the CUP forms as Mr. Geraci’s agent. This was  
20 disclosed to Mr. Cotton from the outset. Prior to Mr. Cotton signing the Ownership Disclosure  
21 Statement he knew that Ms. Berry was going to be acting as Mr. Geraci’s agent for purposes of the  
22 CUP. (RT, July 8, 2019, p. 99:15-19, Ex. 4 to Plaintiff NOL; and Trial Exhibit 30, Ex. 8 to Plaintiff  
23 NOL) In fact it was Mr. Cotton’s belief that Ms. Berry had to sign the Ownership Disclosure  
24 Statement as a Tenant Lessee. (RT, July 8, 2019, pp. 101:26-102:7, Ex. 4 to Plaintiff NOL; and Trial  
25 Exhibit 30, Ex. 8 to Plaintiff NOL)

26 Abhay Schweitzer testified that there is no problem with that (Ms. Berry signing as an agent  
27 for Mr. Geraci) because, from the City’s perspective, the City is only interested in having someone  
28 make the representation that they are the responsible party for paying for the permitting process. (RT,

July 8, 2019, p. 31:22-33:13, Ex. 4 to Plaintiff NOL) And as to the Ownership Disclosure statement, the City's Form is limited, only permitting three choices, none of which fit the circumstances in this case; thus attorney Gina Austin testified that there was no problem from her perspective with Ms. Berry checking tenant/lessee. (RT, July 8, 2019, p. 33:14-35:11, Ex. 4 to Plaintiff NOL) Mr. Schweitzer testified that it is not unusual for an agent to be listed as the owner on the form. (RT, July 9, 2019, p. 60:20-27, Ex. 5 to Plaintiff NOL)

During Mr. Austin's cross-examination of Firouzeh Tirandazi, a City Project Manager III (the highest classification of Project Managers at the City of San Diego), he tried to get her to testify that "anyone with an ownership or financial interest in a marijuana outlet is supposed to be disclosed to the City." Ms. Tirandazi testified that they (the City) are only looking for the property owner and the tenant/lessee. (RT, July 9, 2019, p. 112:23-28; Ex. 5 to Plaintiff NOL) Ms. Tirandazi was unfamiliar with the California Business & Professions Code vis-à-vis the CUP application process. (RT, July 9, 2019, p. 113:1-5, Ex. 5 to Plaintiff NOL)

**B. MR. COTTON'S ARGUMENT THAT THE VERDICT IS AGAINST THE LAW  
BECAUSE THE JURY DISREGARDED THE JURY INSTRUCTIONS FAILS.**

Mr. Cotton contends the verdict is contrary to law because, he argues, the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's conduct as related to the November 2, 2016 Agreement, the "confirmation email" and the "disavowment" allegation. To the contrary, there is no legal basis to conclude that the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton and a subjective standard to Mr. Geraci's conduct. That is simply Mr. Cotton's interpretation of the facts and evidence which he would like to substitute for the jury's unanimous verdict.

If the jury has been instructed correctly and returns a verdict contrary to those instructions, the verdict is "against law." (See *Manufacturers' Finance Corp. v. Pacific Wholesale Radio* (1933) 130 Cal.App.239, 243.) A new trial motion based on the "against law" ground permits the moving party to raise new legal theories for the first time; i.e., the trial judge gets a second chance to reexamine the judgment for errors of law. (*Hoffman-Haag v. Transamerica Ins. Co.* (1991) 1 Cal.App.4<sup>th</sup> 10, 15.)

Mr. Cotton asks this Court to accept *his* interpretation of the evidence; disregard the jury's

1 evaluation and interpretation of the evidence; and grant him a new trial based upon *his* theory of what  
2 the evidence shows. Specifically, Mr. Cotton urges that there was no disputed evidence relating to the  
3 parties' objective manifestations regarding the contract formation. (Cotton P's&A's, p. 13:16-17.)  
4 This is yet another iteration of Mr. Cotton's mantra in numerous motions throughout the litigation that  
5 the "disavowment allegation" was case dispositive.

6 The unanimous verdict of a sophisticated jury militates strict adherence to the principle that  
7 courts "credit jurors with intelligence and common sense and presume they generally understand and  
8 follow instructions." (*People v. McKeinnon* (2011) 52 Cal.4<sup>th</sup> 610, 670 ["defendant manifestly fails to  
9 show a reasonable likelihood the jury misinterpreted and misapplied the limiting instruction"].) The  
10 Court's instructions to the jury, which, "absent some contrary indications in the record," must be  
11 presumed heeded by the jury. (*Cassim v. Allstate Ins. Co.* (2004)33 Cal.4<sup>th</sup> 780 at 803.)

12 The Court gave CACI Nos. 302 – Contract Formation Essential Factual Elements; 303 –  
13 Breach of Contract – Essential Factual Elements; and a host of other instructions regarding contract  
14 formation, interpretation and breach. Those instructions were correct statements of the applicable law.  
15 Mr. Cotton's counsel did not object to any of those instructions. Mr. Cotton has not overcome the  
16 presumption that the jury heeded the Court's instructions. He fails to show a reasonable likelihood the  
17 jury misinterpreted and misapplied the jury instructions related to contract formation.

18 In support of his argument, Mr. Cotton argues that Mr. Geraci had draft "final" agreements  
19 prepared and circulated by Attorney Gina Austin, and therefore, the argument goes, the November 2,  
20 2016 Agreement could not have been the final agreement between the parties. This argument simply  
21 ignores the testimony of Larry Geraci that he felt he was being extorted by Mr. Cotton and did not  
22 want to lose all of the money he had invested in the project and therefore he instructed his attorney,  
23 Gina Austin to draft some agreements, attempting to negotiate some terms that Mr. Cotton might be  
24 happy with. Those draft agreements were prepared by Gina Austin's office and forwarded to Mr.  
25 Cotton. (Trial Exhibit 59, 62, Ex. 7 to Plaintiff NOL; RT July 3, 2019, 129:22-133:27, Ex. 4 to NOL)  
26 Mr. Cotton refused to accept those terms and no new agreement was reached. Mr. Geraci became fed-  
27 up and filed the instant lawsuit to protect his investment based on the November 2, 2016 written  
28 agreement the parties had entered into.

1 Mr. Cotton sets forth a number of factors which he claims support his interpretation of the  
2 evidence that the November 2, 2016 agreement was not the final agreement of the parties. (Cotton Ps  
3 &As, p. 13:16-25.) However, Mr. Cotton fails to acknowledge that each of the alleged factors he  
4 claims support his argument, are equally supportive of Mr. Geraci's and Attorney Gina Austin's  
5 testimony that Mr. Geraci felt he was being extorted by Mr. Cotton and requested Gina Austin to  
6 please draft new contracts so he would not lose his investment. (RT July 8, 2019, p. 41:10-26, Ex. 4 to  
7 Plaintiff NOL.) Consistent with their testimony, the November 2, 2016, written agreement was neither  
8 amended nor superseded by a new agreement.

9 **C. MR. COTTON'S ARGUMENT THAT HE WAS DENIED A FAIR TRIAL AS**  
10 **THE RESULT OF ERRORS RELATING TO THE USE OF THE ATTORNEY-**  
11 **CLIENT PRIVILEGE DURING DISCOVERY AND AT TRIAL ALSO FAILS.**

12 Mr. Cotton contends that Mr. Geraci used the attorney-client privilege as a shield during  
13 discovery and as a sword during trial, which prevented Mr. Cotton from receiving a fair and impartial  
14 trial. This is a C.C.P. § 657(7) issue regarding evidentiary rulings, a ground *not* set forth in Mr.  
15 Cotton's Notice of Intent to Move for New Trial. (See *Treber v. Sup. Ct* (1968) 68 Ca.2d 128, 131;  
16 *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4<sup>th</sup> 1599, 1601-1605.) (Practice Guide: Civil  
17 Trials and Evidence, Post Trial Motions, (The Rutter Group 2010) ¶ 18:201.)]

18 Preliminarily, under C.C.P. § 657(1), evidentiary rulings by which relevant evidence was  
19 erroneously excluded (or conversely, irrelevant evidence erroneously admitted) may be grounds for a  
20 new trial if prejudicial to the moving party's right to a fair trial. [Civil Trials and Evidence, Post Trial  
21 Motions, The Rutter Group 18:134.1] A motion for new trial on this ground *must* be made on  
22 affidavits. Mr. Cotton has failed to file any affidavits in support of his motion for new trial

23 Alternatively, erroneous evidentiary rulings (admitting or excluding evidence may be  
24 challenged under C.C.P. §657(7) as an "Error in law, occurring at the trial and excepted to by the party  
25 making the application." Mr. Cotton has *not* moved for a new trial based on either C.C.P. § 657(1) or  
26 C.C.P. §657(7). Instead, in his Notice of Intent to Move for New Trial (p. 2:8-11), Mr. Cotton has  
27 sought a new trial on the sole ground that the verdict is "against law" pursuant to C.C.P. § 657(6). A  
28 notice of intention to move for a new trial is deemed to be a motion for new trial *on the grounds stated*

1 *in the notice.* (C.C.P. §659.) Mr. Cotton cannot assert grounds for new trial not stated in the Notice.

2 As to the merits of the argument, Mr. Cotton has misrepresented the facts, circumstances and  
3 the Minute Order issued by the Court in connection with the attorney-client privilege issues during  
4 discovery and the waiver of those issues at trial.

5 Mr. Cotton claims there was a Court order prohibiting testimony on matters that Plaintiff  
6 asserted attorney-client privilege. (Mr. Cotton's P's & A's, p. 14:26-28) In support of this contention,  
7 Mr. Cotton Cites to the Court's Minute Order dated February 8, 2019 (ROA#455 at p. 3.) This  
8 misrepresents what that Court Order states. It actually states:

9 Plaintiff's objections on the basis of privilege to REQUEST FOR PRODUCTION NO.  
10 29 are SUSTAINED; however, the scope of the request appears to seek relevant  
11 documents. Given Plaintiff's election to assert the privilege and/or doctrine in discovery,  
the Court will **HEAR** on the scope of the testimony Plaintiff will be not be permitted to  
provide at trial on the subject of the DISAVOWMANET ALLEGATION."

12 Clearly, the Court said it would hear and determine the scope of the testimony allowed; it did  
13 not prohibit testimony as alleged by Mr. Cotton. Thereafter, Mr. Cotton's attorney drafted the Notice  
14 of Ruling which only prevents Rebecca Berry from testifying on the matter of the disavowment  
15 allegation. It does not bar any other witness from so testifying. (ROA# 455, p. 2.)

16 In addition, Mr. Cotton asserts that Mr. Geraci used the attorney-client privilege as a shield and  
17 a sword, thereby violating Mr. Cotton's right to a fair and impartial trial. This argument fails on many  
18 levels, and has otherwise been waived by Mr. Cotton's failure to object to either the documentary  
19 evidence or the testimonial evidence.<sup>7</sup> In fact, Mr. Cotton's attorney conducted substantial  
20 examination of witnesses on these very topics.

21 Mr. Cotton has waived this argument for the following reasons:

22 1. He never took the depositions of Mr. Geraci or Gina Austin for ascertain this  
23 information from them;

24 2. In response to Mr. Cotton's requests for the production of all documents relating to the  
25 purchase of the property drafted or revised by Gina Austin [RFPs Nos. 18, 19], Mr. Geraci objected on  
26 the grounds of attorney-client privilege; however, in response to RFP 19, he added that "**Responding**

27  
28 <sup>7</sup> "Failure to object to the reception of a matter into evidence constitutes an admission that it is competent evidence."  
(*People v. Close* (1957) 154 Cal.App.2d 545, 552; *People v. Wheeler* (1992) Cal.4<sup>th</sup> 284, 300.)

1 *Party has produced previously all responsive documents drafted by Ms. Austin or persons employed*  
2 *in her law firm.”*

3 3. Indeed, all such responsive documents had been produced and were marked as Trial  
4 Exhibits 59 and 62 which were admitted at trial with Mr. Cotton’s Attorney’s representations that he  
5 had no objections to the admission of the documents. (RT July, 3, 2019, pp. 130:18-26; 132:2-7, Ex. 3  
6 to Plaintiff NOL.) Mr. Cotton testified that he received Exhibit 59 on February 27, 2017, and Exhibit  
7 62 on March 2, 2017. (RT July 8, 2019, pp. 137:1-138:6, Ex. 4 to Plaintiff NOL.) In fact Mr. Cotton  
8 responded to Mr. Geraci regarding those documents. (RT July 8, 2019, pp. 138:2-141:4, Ex. 4 to  
9 Plaintiff NOL; and Trial Exhibits 63 and 70, Ex. 9 to Plaintiff NOL)

10 4. Larry Geraci testified regarding these exhibits and the surrounding circumstances. Mr.  
11 Cotton’s attorney noted he had no objection to the admission of those exhibits (RT July 3, 2019, pp.  
12 130:18-26; 132:2-7, Ex. 3 to Plaintiff NOL) and he did not object to the testimony.

13 5. Attorney Gina Austin testified regarding these exhibits and the surrounding  
14 circumstances and Mr. Cotton’s attorney made no objections. (RT July 8, 2019, p. 41:10-26, Ex. 4 to  
15 Plaintiff NOL)

16 6. Mr. Cotton’s attorney cross-examined Gina Austin regarding the draft agreements  
17 drafted by Ms. Austin’s office. (RT July 8, 2019, p. 58:3-60:10, Ex. 4 to Plaintiff NOL)

18 Having failed to make any objections whatsoever to any of the documentary and testimonial  
19 evidence of which he now complains, Mr. Cotton has waived any argument that the material should  
20 not have been admitted.

21 Mr. Cotton cites *A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 556 for the  
22 proposition that a litigant cannot claim privilege during discovery and then testify at trial. The *A&M*  
23 *Records* case is clearly distinguishable from the case at bar. In that case, a defendant accused of  
24 distributing pirated records failed to produce at his deposition documents requested by the plaintiff  
25 “and also refused to answer any questions of substance on the constitutional ground (5<sup>th</sup> Amendment)  
26 that his answers might tend to incriminate him.” (*A&M Records, supra*, 75 Cal.App.3d at p. 654.) The  
27 trial court ordered the defendant to turn over the requested documents by a specified date before trial,  
28 or the defendant would be barred from introducing them at trial, and the court also precluded the



1 defendant "from testifying at trial respecting matters [and] questions ... he refused to answer at his  
2 deposition[.]" (*Id.* at p. 655.) The order limit[ed] the scope of [the defendant]'s testimony only, and  
3 not that of any other witness" at his company. (*Ibid.*)

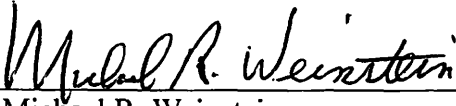
4 First and foremost, this case does not involve a situation where a party claims the 5<sup>th</sup>  
5 Amendment privilege against self-incrimination and then waives it at trial, so the *A & M Records* case  
6 has no application to the case at bar. The Court held that a litigant cannot assert his constitutional  
7 privilege against self-incrimination in discovery and then waive the privilege and testify at trial. (*Ibid.*)  
8 By analogy, and without citation, Mr. Cotton seeks to extend this reasoning to the attorney-client  
9 privilege being asserted during discovery and then waived at trial. This argument is inapplicable to  
10 this case where the attorney-client documents were produced to Mr. Cotton; were responded to by Mr.  
11 Cotton; were offered and admitted at trial with no objection by Mr. Cotton; the witnesses (Larry  
12 Geraci and Gina Austin) testified without any objection being made; and where Mr. Cotton's own  
13 attorney conducted extensive examination of that witness with regard to the relevant communications  
14 between Ms. Austin and her client, Mr. Geraci. And Mr. Cotton himself was examined regarding  
15 these exhibits.

16 **IV. CONCLUSION**

17 This Court ensured that Mr. Cotton received a fair trial from a fair and impartial jury. The jury  
18 paid careful attention, sifted through the evidence, and carefully came to an appropriate verdict. For  
19 the above-stated reasons, the Court should deny Mr. Cotton's motion for a new trial. "There must be  
20 some point where litigation in the lower courts terminates" because otherwise "the proceedings after  
21 judgment would be interminable". (*Coombs v. Hibberd* (1872) 43 Cal. 452, 453.) It is time to end this  
22 litigation in the trial court and respect the jury's judgment.

23 FERRIS & BRITTON  
24 A Professional Corporation

25  
26 Dated: September 23, 2019

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

# Exhibit 12

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*Attorneys for Defendant/Cross-Complainant Darryl Cotton*

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; and DOES 1-  
10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA  
BERRY, an individual, and DOES 1 THROUGH  
10, INCLUSIVE,

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil  
Dept.: C-73

**REPLY IN SUPPORT OF MOTION FOR  
NEW TRIAL**

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

Hr'g Date: October 25, 2017  
Time: 9:00 a.m.  
Dept.: C-73

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1 In his *Memorandum of Points and Authorities in Support of Motion for New Trial* (the “Motion  
2 for New Trial”), Mr. Cotton demonstrated that: (1) Mr. Geraci failed to comply with the City’s and the  
3 State’s CUP requirements and, therefore, the alleged November 2, 2016 agreement is illegal; (2) the  
4 jury applied an objective standard to Mr. Cotton and a subjective standard to Mr. Geraci; and (3) Mr.  
5 Geraci used the attorney-client privilege as a shield during discovery and a sword at trial. In his  
6 *Opposition to Defendant/Cross-Complainant’s Motion for New Trial* (the “Response”), Mr. Geraci  
7 attacks the merits of the arguments on three separate grounds.

8 First, the Response argues that the illegality argument was waived because it was not raised in  
9 the Answer. The argument fails because Mr. Cotton reserved the right to assert all affirmative defenses  
10 in paragraph 16 of his Answer, illegality cannot be waived, and the Court has a duty, *sua sponte*, to  
11 address the argument.

12 Second, the Response argues that the alleged November 2, 2016 agreement is not illegal because  
13 neither the Geraci Judgments<sup>1</sup> nor the California Business & Professions Code (“BPC”) prohibit Mr.  
14 Geraci from obtaining a CUP. The Motion for New Trial demonstrated that: (i) the SDMC and the  
15 BPC required the disclosure of both Mr. Geraci’s interest and the Geraci Judgments; (ii) Mr. Geraci  
16 filed the CUP application with the City on or about October 31, 2016; (iii) the General Application and  
17 Ownership Disclosure Statement failed to disclose the Geraci Judgments and Mr. Geraci’s interest,  
18 respectively; and, as a result, (iv) the alleged November 2, 2016 agreement was illegal when it was  
19 entered into. The Response attempts to get around the non-disclosure issue by relying upon testimony  
20 from fact witnesses that it is “common practice” for CUP applicants to use agents during the application  
21 process. The Response does not identify any legal authority that suggests “common practice” is a  
22 defense to illegality.

23 Similarly, the Response also advanced several excuses as to why Mr. Geraci’s interest was not  
24 disclosed. The excuses included: (i) Mr. Geraci’s status as an enrolled agent; (ii) “convenience of  
25 administration;” and (iii) the City’s forms only allowed Ms. Berry to sign as an owner, tenant, or  
26 “Redevelopment Agency.” The Response does not provide any legal authority that the foregoing allows  
27

28 <sup>1</sup> Defined terms have the same meaning given them in the Motion for New Trial unless otherwise defined herein; with the exception of “AUMA” and “Prop. 64,” which refer to the same legislation and are referred to herein solely as AUMA.

1 Mr. Geraci to escape the disclosure requirements or policies of the SDMC or BPC. And the Ownership  
2 Disclosure Statement states that additional pages may be attached to disclose interests in the property  
3 and permit, while the General Application requires the applicant to check a box (yes or no) to disclose  
4 the Geraci Judgments. The arguments are legally and factually unsupported.

5 For the reasons set forth in the Motion for New Trial and below, the relief sought in the Motion  
6 for New Trial should be granted.

7 **I. The Court should consider the attachments and the attorney-client privilege argument.**

8 Mr. Geraci argues that the attachments to the Motion for New Trial should be disregarded.  
9 (Resp. at 6:10-7:3.) With the exception of motions “clearly without merit,” judges “permit the moving  
10 party to file and serve a supporting memorandum beyond the ten-day time limit, particularly when the  
11 late filing will not prejudice the opposing party or adversely affect the judge's ability to decide the  
12 motion within the [75]-day time limit.” Cal. Judges Benchbook Civ. Proc. After Trial § 2.76.<sup>2</sup> The  
13 attachments to the Motion for New Trial were part of the record, discovery, or in the public domain (*e.g.*  
14 City Ordinances). The exhibits were attached for convenience, the exhibits were part of the record or  
15 were legal authority, there is no prejudice to Mr. Geraci, and as a result they should be considered.

16 Mr. Geraci also argues that the Motion for New Trial must be limited to the “against law”  
17 grounds set forth in the *Notice of Intent to Move for New Trial* (the “Notice”) and, as a result, the  
18 arguments related to the use of the attorney-client privilege as a sword and a shield should be excluded.  
19 (Resp. at 9:11-21; *id.* at pp. 17-19.) The attorney-client privilege argument should be considered  
20 because the argument and facts also relate to the jury’s application of an objective standard to Mr.  
21 Cotton’s conduct and a subjective standard to Mr. Geraci’s conduct. (*See* Resp. at pp. 15-17.) Indeed,  
22 the Response argues that Mr. Cotton’s objective/subjective argument “ignores the testimony of Larry  
23 Geraci that he felt he was being extorted” and “the alleged factors [Mr. Cotton] claims support his  
24 argument, are equally supportive of Mr. Geraci’s and Attorney Gina Austin’s testimony that Mr. Geraci  
25 felt he was being extorted.” (Resp. at 16:20-24; 17:3-6.)

26  
27  
28 <sup>2</sup> CCP § 660 was amended in 2018, extending the time limit from 60 to 75 days.

1 **II. Mr. Cotton did not waive the illegality argument.**

2 In the Response, Mr. Geraci argues that Mr. Cotton waived the illegality argument. (Resp. at  
3 10-12.) Mr. Geraci presents three arguments in support of the waiver argument. For his first argument,  
4 Mr. Geraci argues that Mr. Cotton “failed to raise ‘illegality’ as an affirmative defense in his Answer.”  
5 (Resp. at 10:17-18.) Mr. Cotton expressly reserved the right to assert affirmative defenses in paragraph  
6 16 of his Answer. (ROA # 17, ¶ 16.) Moreover, a party to an illegal contract cannot waive the right to  
7 assert the defense. *City Lincoln-Mercury Co. v. Lindsey* (1959) 52 Cal.2d 267, 273-74 (internal citations  
8 omitted); *Wells v. Comstock* (1956) 46 Cal.2d 528, 531-32 (“no person can be estopped from asserting  
9 the illegality of the transaction”). The argument also ignores the well-established rule that “even though  
10 the defendants in their pleadings do not allege the defense of illegality if the evidence shows the facts  
11 from which the illegality appears it becomes ‘the duty of the court *sua sponte* to refuse to entertain the  
12 action.’” *May v. Herron* (1954) 127 Cal.App.2d 707, 710 (quoting *Endicott v. Rosenthal* (1932), 216  
13 Cal. 721, 728).

14 For his second argument, Mr. Geraci argues that Mr. Cotton cannot raise illegality in the Motion  
15 for New Trial because *Fomco, Inc. v. Joe Maggio, Inc.* (1961) 55 Cal.2d 162 and *Apra v. Aureguy* (1961)  
16 55 Cal.2d 827 “both rejected post-trial defenses of illegal contract because the illegality defense had not  
17 been raised in the trial court.” (Resp. at 10:23-11:4.) In *Fomco*, the Court noted that “[t]he defense of  
18 illegality was not raised in the trial of the action, and no evidence was introduced on the subject.”  
19 *Fomco*, 55 Cal.2d at 165. The Court then distinguished *Lewis & Queen* on the grounds that “the issue  
20 of illegality was first raised *during the trial* and not for the first time on a motion for new trial.” *Id.* at  
21 165 (emphasis in original). Similarly, in *Apra*, the Court relied upon *Fomco* in holding that “questions  
22 not raised in the trial court will not be considered on appeal.” *Apra*, 55 Cal.2d at 831. Here, the  
23 Response acknowledges that the issue of illegality was raised several times during the trial and evidence  
24 of Mr. Geraci’s failure to disclose his ownership interest was before the Court. (Resp. at pp. 11-12);  
25 *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1112 (“Whether the evidence comes from one side  
26  
27  
28

1 or the other, the disclosure is fatal to the case.”) As a result, *Fomco* and *Apra* are distinguishable, *Lewis*  
2 & *Queen* is controlling, and Mr. Cotton can raise illegality in the Motion for New Trial.<sup>3</sup>

3 For his third argument, Mr. Geraci argues Mr. Cotton waived the illegality issue when Attorney  
4 Austin stated that he was willing not to argue an evidentiary objection made after a request to take  
5 judicial notice of the Geraci Judgments. (Resp. at 12:17-23.) In support of the argument, Mr. Geraci  
6 relies on *Miller v. National American Life Ins. Co.* (1976) 54 Cal.App.3d 331; *Horn v. Atchison, T. &*  
7 *S.F.Ry. Co.* (1964) 61 Cal.2d 602; and *Sepulveda v. Ishimaru* (1957) 149 Cal.App.2d 543. The reliance  
8 is misplaced. The language quoted in the Response relates to Attorney Austin’s efforts to have the Court  
9 take judicial notice of the Geraci Judgments; the statements cannot be construed as a waiver of the  
10 illegality argument in its entirety.

11 Additionally, the Geraci Judgments, and testimony related thereto, was the subject of a motion  
12 in limine, which was “a sufficient manifestation of objection to protect the record.” (See ROA 581.0;  
13 ROA 596); *Boston v. Penny Lane Centers, Inc.* (2012) 170 Cal.App.4<sup>th</sup> 936, 950; Cal Evid. Code § 353.  
14 Further, the illegality issue was also the subject of Mr. Cotton’s motion for a directed verdict (ROA #  
15 615 at 5:21-22 (arguing the Geraci Judgments prohibit Mr. Geraci from obtaining a CUP, or  
16 owing/operating a marijuana dispensary).) And, in any event, *Miller* held that while “waiver and  
17 estoppel normally preclude reversal on appeal from a judgment...[] they do not restrict the discretion of  
18 the trial judge to grant a new trial” and *City Lincoln-Mercury* held the illegality defense cannot be  
19 waived. *Miller*, 54 Cal.App.3d at 346; *City Lincoln-Mercury*, 52 Cal.2d at 273-74. Mr. Cotton has not  
20 waived the illegality argument.

21 **III. The Response does not address the SDMC,<sup>4</sup> which requires the disclosure of Mr. Geraci’s**  
22 **interest and the Geraci Judgments, or the underlying policy of transparency.**

23 The Response does not dispute that: (i) the SDMC required the disclosure of Mr. Geraci’s  
24 interest and the Geraci Judgments; (ii) the Geraci Judgments required Mr. Geraci to comply with the

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25 <sup>3</sup> Although Rule 8.115 of the Cal. Rules of Court restricts citation to unpublished decisions, the Response cites to *Chodosh v.*  
26 *Palm Beach Park Association* 2018 WL 6599824. In *Chodosh*, the issue of illegality “was raised at trial – even if obliquely as part of a  
27 shotgun blast of allegations of illegality...The issue having been raised at the trial level, its consideration at the appellate level comes  
28 within *Lewis & Queen* and outside the rule of *Fomco* and *Apra*.” *Id.* at \*6 (emphasis in original).

<sup>4</sup> The Motion for New Trial cited to SDMC §§ 112.0102(c), 42.1502, 42.1504, and 42.1507. (See Mot. for New Trial at 8:14-19.)  
Although the Motion for New Trial referenced the code provisions in the context of “marijuana outlets,” the provisions were in effect since

1 requirements of the SDMC;<sup>5</sup> (iii) Mr. Geraci purposefully failed to disclose his interest; and (iv) the  
2 non-disclosure was made prior to (and after) the alleged November 2, 2016 agreement was entered into.  
3 (Mot. for New Tr. at 7:17-9:25, 12:7-23; *see gen. Resp.*) The Response also does not dispute that  
4 transparency is one of the underlying policies of the SDMC - as evidenced by, among other things, the  
5 Ownership Disclosure Statement and required background check. (Mot. for New Tr. at 12:24-13:5; *see*  
6 *gen. Resp.*) And, finally, the Response does not address, let alone distinguish, *May v. Herron* (1954)  
7 127 Cal.App.2d 707. (Mot. for New Tr. at 11:1-13:5; *see gen. Resp.*)

8 Although the Response does not challenge the foregoing facts or law, the Response argues that  
9 the use of agents is “common practice” and, therefore, the alleged November 2, 2016 agreement is not  
10 illegal. (Resp. at 14:14-15:13.) There are several problems with the argument. First, the Response does  
11 not cite to any legal authority for the proposition that “common practice” makes an illegal contract legal.  
12 (*See id.*) None exists.

13 Second, the argument relies upon the testimony of *fact* witnesses. It is axiomatic that a fact  
14 witness cannot take the place of the Court to determine the illegality of a contract. It is the Court’s duty  
15 to determine illegality. *See May, supra* at 710 (it is the Court’s duty to determine illegality). Third,  
16 even if “common practice” did make an illegal contract legal, Mr. Schweitzer’s testimony as a fact  
17 witness cannot be construed so broadly as to provide an opinion on what is “common practice” for all  
18 CUP applications across the City.<sup>6</sup>

19 Fourth, the Response reasserted the allegation that the non-disclosures were the result of a  
20 limitation of the City’s forms. (Resp. at 15:1-4.)<sup>7</sup> The Ownership Disclosure Statement, however,  
21 requires the disclosure of all persons who have an interest in the Property/CUP and states: “Attach  
22 additional pages if needed.” (Mot. for New Tr., Exhibit D (Ownership Disclosure Statement) at Part I.)  
23 And the General Application required the Geraci Judgments to be disclosed by checking one of two

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24  
25 2011. With the adoption of ordinance No. O-20795 in April 2017, the term “medical marijuana consumer cooperatives” was replaced  
with “marijuana outlets.”

26 <sup>5</sup> The Response acknowledges the Geraci Judgments require Mr. Geraci to obtain a CUP “*pursuant to the San Diego Municipal*  
*Code.*” (Resp. at 13:14) (emphasis in original).

27 <sup>6</sup> Mr. Schweitzer’s testimony excluded the fact that the ownership disclosures are also required for the Hearing Officer. (July 8  
Tr. at 33:19-34:1.)

28 <sup>7</sup> The Response also suggests that Ms. Tirandazi testified that the City is “only looking for the property owner and the  
tenant/lessee.” (Resp. at 15:10-11.) The cited portion of the transcript suggests that she looked at the Ownership Disclosure Statement  
and stated that it was the property owner and a tenant/lessee that would have to be identified. The forms contradict the testimony.



boxes (yes or no) and instructed a copy of the same be attached. (*Id.* at Exhibit H.) The purported shortfalls of the City’s forms do not exist or otherwise obviate the disclosure requirements.

Fifth, the argument ignores correspondence from Ms. Austin to Mr. Schweitzer instructing him to keep Mr. Cotton’s name off the CUP application “unless necessary” because Mr. Cotton had “legal issues” with the City. (*Id.* at 8:22-9:3.) Sixth, the argument ignores the testimony from Mr. Geraci and Ms. Berry that Mr. Geraci’s interest was not disclosed purposefully because of his status as an enrolled agent and administrative convenience. (*Id.* at 9:17-19.) Finally, the argument conflates the use of an agent to complete forms with the SDMC’s requirements to disclose Mr. Geraci’s interest and the Geraci Judgments. The two issues are separate and distinct, and the use of an agent to complete a form does not somehow change the disclosure requirements.

The purpose of the illegality rule “is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a higher interest – that of the public, whose welfare demands that certain transactions be discouraged.” *May, supra* at 712 (quoting *Takeuchi v. Schmuck* (1929) 206 Cal. 782, 786). The Court cannot give effect to the alleged November 2, 2016 agreement because to do so would condone Mr. Geraci, and others, to knowingly and purposefully circumvent the requirements of the SDMC.

**IV. AUMA is applicable and its express policy and laws supports the conclusion that the alleged November 2, 2016 agreement is illegal.**

As to AUMA’s application, the provisions of AUMA were circulated to the public in July 2016, adopted by the voters on November 8, 2016, and became effective on November 9, 2016. With the adoption of AUMA, Mr. Geraci’s CUP application, initially filed for a medical marijuana cooperative, was processed as an application for a marijuana outlet. (*See* Mot. for New Tr., Exhibit I (letter from City dated September 26, 2018 referencing CUP for “Marijuana Outlet”).) Because AUMA’s policies were known at the time of the alleged November 2, 2016 agreement and Mr. Geraci pursued a CUP for a marijuana outlet after AUMA became effective, AUMA’s policies are applicable and consistent with the SDMC’s policy of transparency and disclosure. *See Industrial Development & Land Co. v. Goldschmidt* (1922) 56 Cal.App. 507, 509 (“A contract in its inception must possess the essentials of having competent parties, a legal object, and a sufficient consideration. Lacking any one of these, no binding obligations

1 result; hence a contract which contemplates the doing of a thing which is unlawful at the time of the  
2 making thereof is void. For the same reason a contract which contemplates the doing of a thing, at first  
3 lawful but which afterward and during the running of the contract term becomes unlawful, is affected in  
4 the same way and ceases to be operative upon the taking effect of a prohibitory law.”). AUMA is  
5 applicable.

6 The Response does not dispute that one of the express policies of AUMA was to bring marijuana  
7 “into a regulated and legitimate market [by creating] a transparent and accountable system.” (Mot. for  
8 New Tr. at 7:5-15.) Further, AUMA sought to limit those persons involved in the marijuana industry by,  
9 among other things, prohibiting an applicant who has been sanctioned by a city for unauthorized  
10 commercial marijuana activities from obtaining a state license. *See* AUMA at §§ 3 (Purpose and Intent),  
11 6 (adding § 26057(b)(7). In furtherance of that policy, AUMA states that the licensing authority shall  
12 deny an application if the applicant does not qualify and, by adding § 26057(b)(7), prohibited an applicant  
13 from obtaining a license if they have been sanctioned for unauthorized commercial marijuana activity.  
14 AUMA at § 6.1 (adding § 26057(a)-(b)). While pursuing a CUP for a MO, Mr. Geraci failed to disclose  
15 his interest and the Geraci Judgments – a direct conflict with AUMA’s express policies.

16 The Response argues § 26057(b) does not bar Mr. Geraci from obtaining a state license because  
17 the statute is discretionary. (Resp. at 13-14.) The argument conflicts with two pillars of statutory  
18 construction. The interpretation would render meaningless §§ 26057(a) and 26059. *People v. Hudson*  
19 (2006) 38 Cal.4<sup>th</sup> 1002, 1010 (interpretations that render statutory terms meaningless are to be avoided)  
20 (internal citations omitted). Section 26057(a) mandates the denial of an application for a state license if  
21 the *applicant* does not qualify, while § 26059 prohibits the State from denying an applicant based solely  
22 on two grounds – none of which are applicable here. Mr. Geraci’s interpretation renders §§ 26057(a)  
23 and 26059 meaningless.

24 The interpretation also applies the same meaning to two separate words. *In re Austin P.* (2004)  
25 118 Cal.App.4<sup>th</sup> 1124, 1130 (“When different terms are used in parts of the same statutory scheme, they  
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28

1 are presumed to have different meanings.”). The mandatory provisions of Section 26057(a) apply to  
2 the *applicant*<sup>8</sup> or premises, while the permissive provisions of 26057(b) apply to the *application*.

3 Here, it is undisputed that Ms. Berry was the named applicant on the CUP application, Ms. Berry  
4 was applying for the CUP solely as Mr. Geraci’s agent, and Mr. Geraci was and always had been the  
5 party pursuing the operation of a marijuana dispensary at the Property. As the central purpose of the  
6 alleged November 2, 2016 agreement was Mr. Cotton’s operation of a marijuana dispensary at the  
7 Property, and his interest was never disclosed, the alleged agreement violated applicable state law and  
8 policy and cannot be enforced. *Homami, supra* at 1109.

9 **V. The jury failed to apply an objective standard to both parties, and the Response confirms**  
10 **as much.**

11 In the Response, Mr. Geraci argues that the subjective/objective standard argument “is simply  
12 Mr. Cotton’s interpretation of the facts” and then goes on to argue that Mr. Geraci “*felt* he was being  
13 extorted.” (Resp. at 16:20-24, 17:3-6) (emphasis added.) The objective manifestations set forth in the  
14 November 2, 2016 e-mail correspondence, the actions of Mr. Geraci thereafter, and the content of the  
15 draft agreements are not in dispute. The issue before the Court is whether Mr. Geraci’s subjective intent,  
16 beliefs, and feelings can be considered by the jury.

17 First, in explaining his November 2, 2016 e-mail confirming he would provide Mr. Cotton a 10%  
18 equity position in the contemplated marijuana dispensary, Mr. Geraci testified that he did not read the  
19 entirety of Mr. Cotton’s e-mail. However, a party cannot claim he did not read an offer before accepting  
20 it. *See Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1587 (plaintiff’s claim that he did  
21 not read the agreement before signing it did not raise a triable issue of mutual assent) (internal citations  
22 omitted).

23 Second, the Response argues that Mr. Geraci felt he was being extorted and that the facts  
24 supporting Mr. Cotton’s argument are “equally supportive of Mr. Geraci’s and [Ms.] Austin’s testimony  
25 that Mr. Geraci *felt* he was being extorted by Mr. Cotton and requested [Ms.] Austin to please draft new  
26 contracts.” (Resp. at 17:4-6) (emphasis added.) A person’s undisclosed feelings is subjective and should  
27

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28 <sup>8</sup> The applicable term “applicant” was defined in § 26001(a)(1), which does not make the terms “applicant” and “application” synonymous.

1 have been disregarded been disregarded by the jury. *Stewart, supra* at 1587 (a party's subjective intent  
2 is irrelevant). Moreover, none of the documents or communications produced at trial reference or  
3 otherwise suggest extortion. Mr. Geraci's subjective and inflammatory feelings have no application to  
4 the issues.

5 It is worth noting here that, as it relates to Mr. Geraci using attorney-client privilege as a sword  
6 and a shield, the Response argues that *documents* were produced. (Resp. at 18:24-19:9) (emphasis  
7 added.)<sup>9</sup> The issue is not about the production of documents; it is the withholding of *communications*  
8 that were then used at trial to introduce evidence of Mr. Geraci's subjective and inflammatory feelings.

9 Third, the Response argues that Mr. Cotton waived the argument because he did not depose Ms.  
10 Austin and that, in any event, Mr. Cotton had the opportunity to cross examine Ms. Austin. (Resp. at  
11 18:22-23, 19:16-17.) As to the former, Mr. Geraci claimed privilege during discovery so attempting to  
12 take Ms. Austin's deposition would have been a futile act, which the law does not require. *Cates v.*  
13 *Chiang* (2013) 213 Cal.App.4<sup>th</sup> 791. As to the latter, any attempt to cross-examine Ms. Austin at trial  
14 would have been pointless because no communications were disclosed and, therefore, there was no  
15 ability to impeach the testimony of either Mr. Geraci or Ms. Austin. Mr. Geraci asserted privilege during  
16 discovery then waived the privilege at trial - he cannot blow hot and cold. *A&M Records, Inc. v. Heilman*  
17 (1977) 75 Cal.App.3d 554, 566.<sup>10</sup>

18 If an objective standard was applied to both parties, based on the evidence admitted, the jury  
19 could have only reached one of two conclusions. The first conclusion is that the parties' agreement  
20 included at the very least the terms of the alleged November 2, 2016 agreement *and* the 10% interest  
21 that Mr. Geraci confirmed via e-mail. As Mr. Geraci failed and refused to recognize Mr. Cotton's 10%  
22 interest, he breached the same and cannot maintain his claim. The second conclusion the jury could  
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24 <sup>9</sup> The Response argues that the Motion for New trial makes a misrepresentation to the Court regarding an order prohibiting  
25 testimony on matters that Plaintiff asserted attorney-client privilege. (*See* Mot. for New Trial at 14:23-15:1; Resp. at 18:5-12.). At the  
26 February 8, 2019 hearing, the Court stated unequivocally that Mr. Geraci "can't go back and reopen that area once [he has] narrowed the  
27 scope by asserting privilege." The subsequent order sustained the objection asserting privilege, but allowed some testimony on the relevant  
28 documents. The statement in the Motion for New Trial is not a misrepresentation particularly given the Court's statements at the hearing  
that there is a "price to be paid" for asserting privilege.

<sup>10</sup> Mr. Geraci attempts to distinguish *A&M Records* based upon the type of privilege asserted. (Resp. at 20:4-6.) There is no  
meaningful distinction between the use of the 5<sup>th</sup> Amendment or attorney-client privilege as a sword and a shield, and the Response does  
not cite to any case law to supporting the distinction. The "blow hot and cold" doctrine has a long and broad application when parties  
attempt to take inconsistent positions. *See e.g. McDaniels v. General Ins. Co. of America* (1934) 1 Cal.App.2d 454, 459-60. There is no  
suggestion or authority that the doctrine would not apply here.

1 have reached, based upon the November 2, 2016 e-mail correspondence and subsequent exchange of  
2 draft agreements, is that the parties had an agreement to agree – which is not enforceable. The jury  
3 found neither.

4 Instead, the jury applied a subjective standard to Mr. Geraci. Mr. Geraci defended his November  
5 2, 2016 e-mail and subsequent exchange of draft agreements on two subjective grounds – his testimony  
6 that he did not read the entire e-mail and his feeling/belief that he was being extorted. This was improper  
7 and a new trial is warranted.

8 **VI. CONCLUSION**

9 The Motion for New Trial should be granted. The alleged November 2, 2016 agreement is illegal  
10 as it fails to comply with express provisions of the SDMC, as well as the policies of the SDMC and  
11 AUMA. Second, the jury applied an objective standard to Mr. Cotton's conduct and a subjective  
12 standard to Mr. Geraci's. Thus, for the reasons set forth in the Motion for New Trial and this Reply, the  
13 relief sought in the Motion for New Trial should be granted.

14 DATED this 30<sup>th</sup> day of September, 2019.

15 TIFFANY & BOSCO, P.A.

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18 By:



19 EVAN P. SCHUBE  
20 Attorneys for Defendant/Cross-Complainant  
21 Darryl Cotton  
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- ☐ The documents served are listed in an attachment. (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

- 0641

SHORT TITLE:

Larry Geraci v. Darryl Cotton

CASE NUMBER:

37-2017-00010073-CU-BC-CTL

**ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)***(This attachment is for use with form POS-050/EFS-050.)***NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:**Name of Person ServedElectronic Service AddressDate of Electronic Service*(If the person served is an attorney,  
the party or parties represented should  
also be stated.)*Jacob P. Austin, Esq., Atty  
for Darryl Cotton

jpa@jacobaustinesq.com

Date: 09/30/2019

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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Date: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit  
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1 FERRIS & BRITTON  
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2 Michael R. Weinstein (SBN 106464)  
Scott H. Toothacre (SBN 146530)  
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stoothacre@ferrisbritton.com  
6

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

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**10/25/2019 at 11:08:00 AM**

Clerk of the Superior Court  
By E- Filing, Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 LARRY GERACI, an individual,

11 Plaintiff,

12 v.

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

14 Defendants.

15 

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DARRYL COTTON, an individual,

16 Cross-Complainant,

17 v.

18 LARRY GERACI, an individual, REBECCA  
19 BERRY, an individual, and DOES 1  
THROUGH 10, INCLUSIVE,

20 Cross-Defendants.  
21 

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

Judge: Hon. Joel R. Wohlfeil

**NOTICE OF RULING AFTER HEARING  
ON MOTION BY DEFENDANT AND  
CROSS-COMPLAINANT, DARRYL  
COTTON, FOR NEW TRIAL**

**[IMAGED FILE]**

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

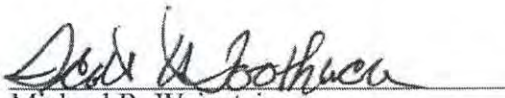
22  
23 On October 25, 2019, at 9:00 a.m., in Department C-73 of the above-titled court, the Court  
24 heard the Motion by Defendant/Cross-Complainant, Darryl Cotton, for New Trial. Plaintiff/Cross-  
25 Defendant, Larry Geraci, and Cross-Defendant, Rebecca Berry, were represented by attorney Michael  
26 R. Weinstein and Scott H. Toothacre of the law firm Ferris & Britton, APC. Defendant/Cross-  
27 Complainant, Darryl Cotton, was represented by attorney Evan P. Schube of the law firm of Tiffany &  
28 Bosco, P.A.

1       **PLEASE TAKE NOTICE THAT**, having reviewed the written pleadings and evidence  
2 submitted in connection with the motion and after hearing oral argument, the Court confirmed as the  
3 final ruling of the Court its Tentative Ruling of October 22, 2019 (ROA #696), a copy of which is  
4 attached as Exhibit A and made a part hereof.

5  
6 Dated: October 25, 2019

FERRIS & BRITTON,  
A Professional Corporation

7  
8  
9 By:



Michael R. Weinstein  
Scott H. Toothacre

10 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI  
11 and Cross-Defendant REBECCA BERRY  
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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
HALL OF JUSTICE  
TENTATIVE RULINGS - October 22, 2019

EVENT DATE: 10/25/2019      EVENT TIME: 09:00:00 AM      DEPT.: C-73  
JUDICIAL OFFICER: Joel R. Wohlfel

CASE NO.: 37-2017-00010073-CU-BC-CTL

CASE TITLE: LARRY GERACI VS DARRYL COTTON [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for New Trial, 09/13/2019

The Motion (ROA # 672) of Defendant / Cross-Complainant DARRYL COTTON ("Cotton") for a new trial or a finding that the alleged November 2, 2016 agreement is illegal and void, is DENIED.

The evidentiary objections (ROA # 679) of Plaintiff / Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY, are OVERRULED.

Event ID: 2150212

TENTATIVE RULINGS  
Page: 1

Calendar No.: