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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/30/2017 at 08:00:00 AM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants,

CASE NO: 37-2017-00037675-CU-WM-CTL

DECLARATION OF DARRYL COTTON IN
SUPPORT OF EX PARTE APPLICATION
FOR (1) ALTERNATIVE WRIT OF
MANDATE AND ORDER TO SHOW
CAUSE WHY PEREMPTORY WRIT
SHOULD NOT ISSUE, AND (2) THE
SCHEDULING OF A HEARING AND
EXPEDITED SCHEDULE FOR VERIFIED
PETITION FOR WRIT OF MANDATE

[IMAGED FILE]

Assigned to:
Hon. Eddie C. Sturgeon, Dept. C-67

Date: October 31, 2017
Time: 8:30 a.m.
Dept.: C-67

Petition Filed: October 6, 2017
Trial Date: Not Set

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

Real Parties In Interest.

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DECLARATION OF DARRYL COTTON IN SUPPORT OF EX PARTE APPLICATION FOR (1)
ALTERNATIVE WRIT OF MANDATE AND ORDER TO SHOW CAUSE WHY PEREMPTORY WRIT
SHOULD NOT ISSUE, AND (2) THE SCHEDULING OF A HEARING AND EXPEDITED SCHEDULE FOR
VERIFIED PETITION FOR WRIT OF MANDATE

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I, Darryl Cotton, declare as follows:

1. I make this declaration in support of my application for: (1) alternative writ of mandate and order to show cause why peremptory writ should not issue, and (2) the scheduling of a hearing and expedited schedule for verified petition for writ of mandate.

2. All facts stated in this declaration are made on the basis of personal knowledge, and if called as a witness, I could and would competently testify to them.

3. I am, and have been at all relevant times, the sole record owner of the real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").

4. In or about August 2016, Larry Geraci ("Geraci") approached me and expressed interest in purchasing the Property.

5. Geraci said he was interested in the Property because it was potentially eligible to be awarded a conditional use permit ("CUP") by the City of San Diego for the operation of a Medical Marijuana Consumer Cooperative ("MMCC").

6. Geraci indicated that the permitting process would take several months but that he had special skills in obtaining the CUP that would benefit our application. Specifically, he represented there was a zoning issue that needed to be resolved before the CUP application could be filed and that he was uniquely qualified to resolve it. I believed him because Geraci told me he has successfully run other marijuana dispensaries in San Diego County.

7. Over the course of the following weeks and months, Geraci and I continued to discuss the CUP application process and negotiated the terms of the possible sale of the Property.

8. On or around October 31, 2016, Geraci told me that that I had to sign a "Ownership Disclosure Statement" in order to allow Geraci to prepare the CUP application. The form had Rebecca Berry ("Berry") listed as a tenant, even though I have never met her and have never rented my Property to her. Geraci explained that Berry was his trusted employee

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1 who was knowledgeable and involved in the MMCC CUP process and procedure. I believed
2 Geraci and executed the application based on Geraci's representations.

3 9. On November 2, 2016, Geraci and I spoke at his office about our CUP
4 arrangement and the sale of the Property. We executed a very short and incomplete writing
5 that said (a) that Geraci would purchase the Property for \$800,000.00, conditioned on the
6 City's approval of the CUP application, and (b) acknowledged that Geraci paid me a partial
7 deposit of \$10,000.00 as good-faith earnest money towards formalizing and finalizing our
8 purchase and equity agreement ("November Document").

9 10. Later the same day that we executed the November Document, I emailed Geraci
10 and told him that after further review our November Document failed to reflect a key term
11 regarding my equity stake in the MMCC to be operated at the Property. In my email, I
12 reminded Geraci that my ten percent equity in the MMCC was vitally important to me. I also
13 told Geraci to confirm that my equity stake was a term of our agreement. He replied by saying
14 "no problem."

15 11. In the weeks and months after our November meeting, I tried to follow up with
16 Geraci to inquire about the status of the CUP application and our purchase and sale documents.
17 However, Geraci was continuously evasive and non-responsive.

18 12. On or about March 16, 2017, I first discovered that Geraci had filed the CUP
19 application for the Property back on October 31, 2016 – even though he had previously
20 promised he would not do so until after we finalized our purchase agreement (as we had agreed
21 that the remaining \$40,000.00 of his deposit would be payable upon filing the CUP
22 application).

23 13. On March 21, 2017, after becoming frustrated with Geraci's numerous bad faith
24 actions, I sent him notice via email that our agreement with respect to the Property was
25 terminated.

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14. On March 22, 2017, Geraci’s attorney, Michael R. Weinstein (“Weinstein”),
emailed me a copy of a lawsuit Geraci intended to file against me. On March 28, 2017,
Weinstein emailed me and told me that Geraci was moving forward with the CUP process and
that Geraci intended to post notices on the Property.

15. I responded to Weinstein’s email and stated that Geraci is not allowed on the
Property and that Geraci has no rights to the Property because our agreement had been
terminated.

16. I desire to have Geraci’s associate, Berry, immediately removed from my CUP
application on my Property because she was never a tenant of the Property and never had any
rights to the Property whatsoever and her refusal to cede control of the CUP application is
impairing my property rights with respect to my Property.

17. On September 22, 2017, my attorney, David S. Demian, sent a letter to the City
of San Diego demanding that the City remove Berry from the CUP application and process the
CUP in my name alone.

18. On September 29, 2017, the City of San Diego responded and indicated they
would not remove Berry from the CUP. The City continues to refuse my request to remove
Berry from my CUP on my Property even though I have provided evidence that I am the sole
record owner of the Property and confirmed that Berry has no rights to the Property.

19. I am concerned that the City’s failure to honor my request will cause me to lose
the competitive advantage that I will otherwise have in the marketplace because I will be
forced to abandon my year-old application and resubmit under a new, entirely different, and
potentially longer regulatory scheme beginning January 1, 2018.

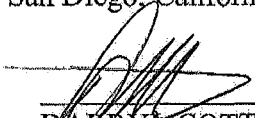
20. I seek the Court’s intervention now to help me protect my property rights and
prevent the waste of my Property’s business potential.

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

Executed this 27 day of October 2017 in San Diego, California.


DARRYL COTTON

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