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

14 DARRYL COTTON, an individual,
15 Petitioner/Plaintiff,
16 v.
17 CITY OF SAN DIEGO, a public entity; and
18 DOES 1 through 25,
19 Respondents/Defendants.

20 REBECCA BERRY, an individual; LARRY
21 GERACI, an individual, and ROES 1 through
22 25,
23 Real Parties In Interest.

FILED
Clerk of the Superior Court

DEC -7 2017

By: J. CERDA

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

Judge: Hon. Joel R. Wohlfeil

**REAL PARTIES IN INTEREST, LARRY
GERACI AND REBECCA BERRY,
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
SECOND EX PARTE APPLICATION
FOR ORDER SETTING AN EXPEDITED
HEARING DATE AND BRIEFING
SCHEDULE**

[IMAGED FILE]

DATE: December 7, 2017
TIME: 8:30 a.m.
DEPT: C-73

Petition Filed: October 6, 2017
Hearing Date: January 26, 2018
Trial Date: None

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1 Real Parties in Interest, LARRY GERACI (hereafter "Geraci") and REBECCA BERRY
2 (hereafter "Berry"), submit these points and authorities in opposition to the second ex parte application
3 filed by Petitioner, DARRYL COTTON (hereafter "Cotton" or "Petitioner"), for an order setting an
4 expedited hearing date and briefing schedule on Cotton's motion for issuance of a peremptory writ of
5 mandate.

6 **I. INTRODUCTION**

7 This is Petitioner Cotton's second ex parte application seeking an expedited hearing date and
8 briefing schedule. The first ex parte application was coupled with a request for the ex parte issuance of
9 a peremptory writ. Following ex parte hearings on October 31, 2017, and on November 2, 2017, the
10 Hon. Judge Edward C. Sturgeon (assigned to the case at the time) denied the ex parte application for
11 issuance of a peremptory writ and transferred the action to this Court as a related action was already
12 pending in this department in *Larry Geraci v. Darryl Cotton*, Case No. 37-2017-00010073-CU-BC-
13 CTL. A copy of the transcript of the November 2, 2017, hearing before Judge Sturgeon and of his
14 Minute Order denying the ex parte application makes clear that the denial was on the merits. The Court
15 should deny the requested ex parte relief for a number of reasons:

16 1. This ex parte application is a *de facto* motion for reconsideration under Code of Civil
17 Procedure section 1008 of Judge Sturgeon's prior ruling only twenty (20) days ago denying the first ex
18 parte application seeking the same relief. Binding precedent requires the renewed ex parte application
19 to be rejected in the absence of a supporting affidavit showing new facts, circumstances, or law
20 justifying the renewed ex parte application. (*Even Zohar Construction & Remodeling, Inc. v. Bellaire*
21 *Townhouses, LLC* (2015) 61 Cal.4th 830.) No affidavit has been submitted with the ex parte
22 application showing any new facts, circumstances, or law that have arisen in the mere thirty-five (35)
23 days since the hearing and ruling on the first ex parte application. Thus, this Court is required to deny
24 this ex parte application because it lacks jurisdiction to hear the renewed motion.

25 2. Even if for sake of argument the court determines it has jurisdiction to hear this renewed
26 motion, then Petitioner Cotton is not entitled to the relief requested for the reasons set forth in detail in
27 the opposition papers to the first ex parte application, which are fully incorporated herein by reference.
28 (Real Parties in Interest, Larry Geraci and Rebecca Berry, Request for Judicial Notice in Opposition to

1 Second Ex Parte Application for Issuance of an Order Setting an Expedited Hearing Date and Briefing
2 Schedule, dated November 22, 2017 (hereafter "Oppo RFJN"), ¶¶ 1-7; Real Parties in Interest, Geraci
3 and Berry, Notice of Lodgment in Opposition to Second Ex Parte Application for Issuance of an
4 Alternative Writ of Mandate or for an Order Setting an Expedited Hearing Date and Briefing Schedule,
5 dated November 22, 2017 (hereafter "Oppo NOL"), Exhibits 1-9.)

6 3. In addition to failing to satisfy the motion for reconsideration requirements, Petitioner
7 has blatantly attempted to substantially deprive Real Parties in Interest of adequate process. This is the
8 second ex parte application seeking identical relief. The moving papers are 276 pages, including
9 exhibits. The Register of Actions reveals that Petitioner scheduled an ex parte hearing for
10 November 16, rescheduled it for November 21, and then rescheduled it again for November 22. On
11 November 21, at 9:37 a.m., Petitioner gave notice of the ex parte hearing scheduled for November 22,
12 but never served his moving papers. Under Judge Wohlfeil's rules, those moving papers would have to
13 have been filed and served by 12 p.m. so, presumably, they were complete or nearly complete at
14 9:37 a.m. on November 21 when Petitioner's counsel provided notice of the ex parte hearing. Then by
15 email at 12:17 p.m., just 2.5 hours after giving notice of the ex parte hearing, Petitioner's counsel
16 canceled the ex parte hearing, stating: "*Due to a conflict in my schedule, I have been compelled to move*
17 *the ex parte to the next available date- I will update you as I have the information and we can discuss*
18 *at that time.*" Petitioner then apparently rescheduled the ex parte hearing for December 7, the next
19 available date, but delayed providing even informal notice of that date until last week, and then gave
20 formal notice the evening of December 5. However, the actual moving papers were not served until
21 yesterday, December 6 at 10:54 a.m. California Rules of Court, rule 3.1206, requires service of the
22 moving papers at the "first reasonable opportunity." Petitioner has known he was going to bring this ex
23 parte application for more than three weeks and was between the lip and cup of filing the ex parte
24 papers on November 21 but then waited 15 days to serve the final moving papers on December 6.

25 4. Having done so, **Petitioner now seeks an expedited schedule that would require Real**
26 **Parties in Interest to file their entire opposition papers in a mere week, by December 14, 2017.**
27 Petitioner has had a minimum of 3+ weeks to prepare its papers and proposed that Real Parties in
28 Interest have only 1 week to put together their opposition, and further proposes that Petitioner have an

1 additional 4 days (until December 18) to file his reply papers with a hearing on December 22, 2017,
2 immediately prior to the Christmas holiday. Moreover, as Petitioner is well aware, **depositions of the**
3 **parties—Darryl Cotton, Larry Geraci, and Rebecca Berry—are already scheduled for December**
4 **11, 12, and 13, which three days fall squarely in the middle of the week proposed for Real Parties**
5 **in Interest to prepare and serve their opposition.** This severely disadvantages Real Parties in
6 Interest in preparing their substantive opposition.

7 5. Petitioner has apparently already obtained a January 26, 2018 hearing date on his motion
8 for a peremptory writ of mandate. Petitioner now seeks to advance that date an entire month until
9 December 22, 2017, but has provided no reason justifying such haste. Real Parties in Interest intend to
10 file their own ex parte application to continue that hearing date until May 11, 2018, which is the Trial
11 date already set by Judge Wohlfeil in the earlier-filed and related action captioned *Larry Geraci v.*
12 *Darryl Cotton.*, Case No. 37-2017-00010073-CU-BC-CTL. The factual issues central to both actions
13 should be determined at the same time by a jury—the two actions should be consolidated and the
14 convenient date of May 11, 2018, already set as the Trial date in that earlier-filed action, can be
15 retained as the Trial date for the consolidated actions.

16 **II. PROCEDURAL BACKGROUND**

17 On October 6, 2017, Cotton filed a verified petition pursuant to Code of Civil Procedure
18 section 1085 seeking an alternative writ of mandate and a peremptory writ of mandate directing
19 respondent, City of San Diego, to: (1) recognize Cotton as the sole applicant with respect to
20 Conditional Use Permit Application—Project No. 52066 (the “CUP Application”¹) for a Conditional
21 Use Permit (“CUP”) to operate a Medical Marijuana Consumer Cooperative (“MMCC”) at 6176
22 Federal Boulevard, San Diego, California 92105 (the “Property”); and (2) process the CUP Application
23 with Cotton as the sole applicant. In the alternative, Cotton seeks an order to show cause directed to
24

25
26 ¹ In his petition, Cotton refers to the CUP Application as the “Cotton Application.” This misleading reference is consistent
27 with his wrongful attempt to hijack the application. Berry was the Applicant. Cotton and Berry did **not** have a principal-
28 agent relationship and Berry did not submit the CUP Application on his behalf. Rather, Berry had a principal-agent
relationship *with Geraci*. Berry submitted the CUP Application on behalf of Geraci who had entered into a written
agreement with Cotton for the purchase of the Property. Thus, Berry was and is a “person who can demonstrate a legal
right, interest, or entitlement to the use of the real property” within the meaning of the Municipal Code. (SDMC,
§§ 112.0102, subd. (a), 113.0103 [defining applicant].)

1 the City as to why the Court should not issue such a writ. In his petition, Cotton names Larry Geraci
2 and Rebecca Berry as real parties in interest. The action was assigned to the Hon. Eddie C. Sturgeon in
3 Department C-67.

4 On October 6, 2017, at the time the instant Petition for Writ of Mandate was filed, there was
5 already a prior action pending before this Court (Judge Wohlfeil) between Larry Geraci and Darryl
6 Cotton, captioned *Larry Geraci v. Darryl Cotton*, Case No. 37-2017-00010073-CU-BC-CTL (the
7 “Geraci Lawsuit”). In the Geraci Lawsuit, Geraci has sued Cotton for, among other things, breach of
8 contract and specific performance of a written agreement entered into between them on November 2,
9 2016 for the purchase and sale from Cotton to Geraci of the Property (the “Nov 2nd Written
10 Agreement”). The CUP Application that is the subject of the instant writ petition is for that Property.
11 **That prior action is already set for trial on May 11, 2018, and the central issue in that case is the**
12 **validity and enforceability of that Nov 2nd Written Agreement. That is also the central issue in**
13 **the instant writ petition as it provides the basis for the Geraci/Berry’s contention that Berry is an**
14 **“other person who can demonstrate a legal right, interest, or entitlement to the use of the real**
15 **property subject to the [CUP] application.” (SDMC, §§ 112.0102, subd. (a)(3), 113.0103 [defining**
16 **applicant].) The writ petition is an attempt to hijack the CUP Application validly and properly**
17 **submitted by Berry, on behalf of Geraci, to the City of San Diego, which application has been in**
18 **process for approximately twelve (12) months already and for which Geraci has already incurred**
19 **expenses in excess of \$150,000. It is also an attempt to circumvent the prior ongoing action set for trial**
20 **on May 11, 2018.**

21 On October 30, 2017, Cotton filed his first ex parte application seeking the ex parte issuance of
22 an alternative writ of mandate or for an order setting an expedited hearing date and briefing schedule on
23 the petition. The ex parte hearing was set for October 31, 2017. On October 31, 2017, at the hearing,
24 Real Parties in Interest filed their opposition papers. (Oppo NOL, Exs. 1-9; Oppo RFJN, ¶¶ 1-7.)
25 Judge Sturgeon heard oral argument on October 31, 2017 and then continued the matter until
26 November 2, 2017, so he could consider the moving papers, opposition papers, and hear additional
27 argument. On November 2, 2017, Judge Sturgeon heard additional argument and then ruled on the
28 merits, denying the first ex parte application. Judge Sturgeon also ordered the action transferred to

1 Judge Wohlfeil in light of the pending Related Action. (See Transcript of November 2, 2017 Ex Parte
2 Hearing, Oppo NOL, Ex. 8; see Minute Order dated November 2, 2017, denying the ex parte relief,
3 Oppo NOL, Ex. 9.)

4 A mere thirty-five (35) days have transpired since Judge Sturgeon denied Petitioner's ex parte
5 application, and now Petitioner has filed a second ex parte application seeking identical relief.
6 Petitioner now seeks a second bite at the apple but has not complied with the requirements for a motion
7 for reconsideration. No declaration or affidavit has been submitted with the ex parte application
8 moving papers showing any new facts, circumstances, or law that have arisen in the brief period of time
9 since Judge Sturgeon denied the identical relief.

10 **III. SUMMARY OF ARGUMENTS IN OPPOSITION**

11 **A. This second ex parte application should be denied because Petitioner has failed to**
12 **satisfy the requirements for a motion for reconsideration and, therefore, this Court**
13 **lacks jurisdiction to hear this motion**

14 This ex parte application is a *de facto* motion for reconsideration under Code of Civil Procedure
15 section 1008 of Judge Sturgeon's prior ruling only thirty-five (35) days ago denying the first ex parte
16 application seeking the same relief. Binding precedent requires the renewed ex parte application to be
17 rejected in the absence of a supporting affidavit showing new facts, circumstances, or law justifying the
18 renewed ex parte application. (*Even Zohar Construction & Remodeling, Inc., v. Bellaire Townhouses,*
19 *LLC* (2015) 61 Cal.4th 830, 840 ["Section 1008 expressly applies to all renewed applications for orders
20 the court has previously refused. Section 1008 by its terms "*specifies the court's jurisdiction with*
21 *regard to ... renewals of previous motions, and applies to all applications ... for the renewal of a*
22 *previous motion, whether the order deciding the previous matter or motion is interim or final. No*
23 *application ... for the renewal of a previous motion may be considered by any judge or court unless*
24 *made according to this section.'* (*Id.*, subd. (e), italics added.)"].) Importantly, the Supreme Court
25 recognized that section 1008 does not impair a court's inherent constitutional power to correct its own
26 rulings but reaffirmed its prior decision in *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108,
27 "explaining that the Legislature intended section 1008 to embody 'a distinction *with* a difference. ...
28 [A] party may not file a written *motion* to reconsider that has procedural significance if it does not
satisfy the requirements of section ... 1008,' and '[u]nless the requirements of section ... 1008 are

1 satisfied, any action to reconsider a prior interim order must formally begin with the court *on its own*
2 *motion.*’ (Le Francois, at p. 1108, 29 Calr.Rpr.3d 249, 112 P.3d 636.)” (*Even Zohar Construction &*
3 *Remodeling, Inc., supra*, 61 Cal.4th at 844.) Here, no affidavit has been submitted with the ex parte
4 application showing any new facts, circumstances, or law that have arisen in the mere thirty-five (35)
5 days since the hearing and ruling on the first ex parte application. For that reason alone, this Court is
6 required to deny this ex parte application as it lacks jurisdiction to hear this renewed motion.

7 **B. Even if the court determines it has jurisdiction to hear the renewed motion (which**
8 **it should not), at any subsequent hearing the Court should deny on the merits**
9 **Petitioner’s motion for a peremptory writ of mandate for the reasons stated by**
10 **Judge Sturgeon and based on the opposition papers submitted in connection with**
11 **the first ex parte application**

12 In connection with the first ex parte application, Real Parties in Interest submitted extensive
13 papers containing its opposition arguments and evidence, which are incorporated fully herein by this
14 reference. (Oppo NOL, Exs. 1-7; Oppo RFJN, ¶¶ 1-9.) Real Parties in Interest renew some of those
15 additional arguments, which are summarized below.

16 1. Petitioner has failed to exhaust his administrative remedies. He has failed to apply for a
17 separate CUP Application, which the City has said it would concurrently process. Until the City makes
18 a final determination approving the Berry CUP Application or any separate CUP application filed by
19 Cotton, Cotton has not exhausted his administrative remedies and the matter is not ripe for
20 determination.

21 2. Petitioner can point to no irreparable harm he will suffer by denial of the writ of
22 mandate. As already noted, a CUP runs with the land. If the CUP Application submitted by Berry
23 is ultimately approved, *then that will benefit, not harm, Cotton, should Cotton ultimately prevail on the*
24 *merits regarding Nov 2nd Written Agreement that is being litigated in the Geraci Lawsuit.* As also
25 already noted, the change in the law effective January 1, 2018, does not create any harm to Mr. Cotton,
26 let alone irreparable harm, as a license may only be issued from the state after the City has approved a
27 project.

28 3. Petitioner argues that the City has a ministerial duty to process the CUP Application
with Cotton as the sole applicant and, thus, to replace Berry with him or otherwise recognize him as the
sole applicant. That argument is flawed, however, because Cotton cannot demonstrate that he was the

1 only person who possessed the right to use the Property. The City's ordinances provide that the
2 persons "deemed to have the authority to file an application [are]: [¶] (1) The record owner of the real
3 property that is the subject of the permit, map, or other matter; [¶] (2) The property owner's authorized
4 agent; or [¶] (3) **Any other person who can demonstrate a legal right, interest, or entitlement to**
5 **the use of the real property subject to the application.**" (SDMC, §§ 112.0102, subd. (a), 113.0103
6 [defining applicant].) Thus, the Municipal Code makes clear that the "record owner" is not the only
7 person deemed to have authority to file an application. The evidence will show that Cotton and Berry
8 did not have a principal-agent relationship and Berry did not submit the CUP Application on his behalf.
9 Rather, Berry had a principal-agent relationship with Geraci. Berry submitted the CUP Application on
10 behalf of Geraci who had entered into a written agreement with Cotton for the purchase of the Property.
11 In other words, Berry can demonstrate a "legal right, interest, or entitlement to the use of the real
12 property subject to the application" (SDMC, § 112.0102, subd. (a)(3).) Berry was and is entitled to
13 pursue the CUP Application on behalf of her principal, Geraci, who has a contractual interest in the
14 Property by virtue of his agreement with Cotton to purchase the Property.

15 **C. The Court should reject any ex parte attempt to obtain an expedited hearing date**
16 **and briefing schedule for the motion for a peremptory writ.**

17 The Court should deny any ex parte attempt to obtain the issuance of a writ of mandate on an
18 expedited hearing schedule. The matter needs to be fully heard and Real Parties in Interest should be
19 given adequate time to prepare for the hearing or trial. To do otherwise would be a denial of due
20 process and fundamental fairness.

21 Petitioner has already obtained a hearing date of January 26, 2018. Petitioner now seeks by this
22 application to advance that hearing date to December 22, 2017, and proposes the following briefing
23 schedule: Petitioner's moving papers to be filed today, December 7; Real Parties in Interest's
24 opposition papers be filed on December 14, only one week after this ex parte hearing; and Petitioner's
25 reply papers to be filed on December 18, 2017. That is totally inadequate and fundamentally unfair.

26 As shown in the opposition to the first ex parte application, Petitioner indicated to the City as
27 far back as May 15, 2017, that he intended to seek this relief. And then he waited five (5) months to
28 do so! Now he is asking that Real Parties in Interest have only one week to put together its opposition.

1 Having delayed seeking relief, Petitioner Cotton now blatantly attempts to substantially deprive Real
2 Parties in Interest of adequate process.

3 This is the second ex parte application seeking identical relief. The moving papers are 276
4 pages, including exhibits. The Register of Actions reveals that Petitioner scheduled an ex parte hearing
5 for November 16, rescheduled it for November 21, and then rescheduled it again for November 22. On
6 November 21, at 9:37 a.m., Petitioner gave notice of the ex parte hearing scheduled for November 22,
7 but never served his moving papers. Under Judge Wohlfeil's rules, those moving papers would have to
8 have been filed and served by 12 p.m. so, presumably, they were complete or nearly complete at 9:37
9 a.m. on November 21 when Petitioner's counsel provided notice of the ex parte hearing. Then by email
10 at 12:17 p.m., just 2.5 hours after giving notice of the ex parte hearing, Petitioner's counsel canceled
11 the ex parte hearing, stating: "*Due to a conflict in my schedule, I have been compelled to move the ex*
12 *parte to the next available date- I will update you as I have the information and we can discuss at that*
13 *time.*" Petitioner then apparently rescheduled the ex parte hearing for December 7, 2017, the next
14 available date, but delayed providing even informal notice of that date until last week, and then gave
15 formal notice the evening of December 5. However, the actual moving papers were not served until
16 yesterday, December 6 at 10:54 a.m. California Rule of Court, rule 3.1206, requires service of the
17 moving papers at the "first reasonable opportunity." Petitioner has known it was going to bring this ex
18 parte application for more than three weeks and was between the lip and cup of filing the ex parte
19 papers on November 21 but then waited 15 days to serve the final moving papers on December 6.

20 Petitioner now seeks an expedited schedule that would require Real Parties in Interest to file
21 their entire opposition papers in a mere week, by December 7, 2017. Petitioner has had a minimum of
22 3+ weeks to prepare its papers and proposed that Real Parties in Interest have only 1 week to put
23 together their opposition, and further proposes that Petitioner have an additional 1 week (until
24 December 14) to file his reply papers with a hearing on December 22, 2018, immediately prior to the
25 Christmas holiday. Moreover, as Petitioner is well aware, the depositions of the parties—Darryl
26 Cotton, Larry Geraci, and Rebecca Berry—are already scheduled for December 11, 12, and 13, which
27 three days fall squarely in the middle of the week that Petitioner proposes for Real Parties in Interest to
28 prepare and serve their opposition. It is fair to say this was all done to disadvantage Real Parties in

1 Interest in preparing a substantive opposition to the motion.

2 Petitioner seeks by this application to advance the January 26, 2018, hearing date on his motion
3 for a peremptory writ of mandate by an entire month until December 22, 2017, but has provided no
4 reason justifying such haste. Real Parties in Interest intend to file their own ex parte application to
5 continue that hearing date until May 11, 2018, which is the Trial date already set by the Court in the
6 Geraci Lawsuit, the earlier- filed related action. **The factual issues central to both actions should be
7 determined at the same time by a jury—the two actions should be consolidated and the
8 convenient date of May 11, 2018, already set as the Trial date in the earlier filed action, can be
9 retained as the Trial date for the consolidated actions.**

10 **D. Petitioner has Provided No Legitimate Basis for Hearing the Writ Proceeding on**
11 **an Expedited Basis.**

12 First, Petitioner argues that what it characterizes as “drastic changes” made by the City on
13 September 29, 2017, in the way it would process CUP applications necessitates an expedited hearing.
14 (Petitioner’s Points and Authorities, 2:1-18.) That is simply untrue. As shown in the opposition to the
15 first ex parte application, Petitioner indicated to the City as far back as May 15, 2017, that he intended
16 to seek the relief sought by this petition. And then he waited five (5) months to do so! (Oppo NOL,
17 Ex. 6 and Ex 8 thereto.) He could have filed his Petition in May 2017 but failed to do so. He could
18 have initiated a parallel CUP Application in his own name in May 2017 but failed to do so. And
19 importantly, he offers no logical nexus that would explain for how expediting the hearing date is
20 necessary to remedy his complaints regarding the City.

21 Second, Petitioner argues that he is harmed by being forced to abdicate his control as to who
22 may beneficially use the Property. (Petitioner’s Points and Authorities, 2:10-12.) In fact, Cotton
23 continues to own, possess, and use the property. Moreover, he entered into the Nov 2nd Agreement
24 providing Geraci a contractual interest in the Property in exchange for valuable consideration. The
25 determination of the Geraci Lawsuit will decide whether Cotton remains the owner or must specifically
26 perform his obligation to transfer the property to Geraci. Moreover, as conceded in petitioner’s points
27 and authorities, a CUP runs with the land. Thus, if the CUP Application pursued by Geraci’s agent,
28 Berry is approved *it will run with the land and ultimately benefit, not harm Cotton* if he ultimately

1 prevails on the merits regarding Nov 2nd Written Agreement that is being litigated in the Geraci
2 Lawsuit.

3 Third, Petitioner argues that failure to expedite the hearing “puts him at risk that his adversaries
4 will derail the processing of [Berry’s CUP Application] out of spite or nefarious reasons.” (Petitioner’s
5 Points and Authorities, 2:13-15.) Petitioner has offered no evidence that this has occurred or from
6 which it can be inferred it will occur. Real Parties in Interest have been diligently pursuing the CUP
7 Application and have every incentive to continue to do so—after all, under the November 2nd
8 Agreement, unless and until the CUP is approved Geraci cannot satisfy the condition necessary for him
9 to be entitled to complete his purchase of the Property from Cotton.

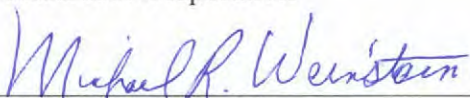
10 Fourth, Petitioner argues that Geraci’s “contract interest” is not an interest in real property
11 sufficient to maintain standing for a CUP. (Petitioner’s Points and Authorities, 2:15-18.) As
12 demonstrated in detail in the opposition to the first ex parte application, that is an incorrect statement
13 and interpretation of the law. (See Oppo NOL, Ex. 1 at 13:20-14:23.) Judge Sturgeon rejected that
14 argument during the first ex parte hearing when he denied issuance of a peremptory writ (see
15 November 22 hearing transcript, Oppo NOL, Ex. 8) and this Court should reject the argument as well.

16 **IV. CONCLUSION**

17 This second ex parte application for an expedited hearing date and briefing schedule attempts to
18 place Real Parties in Interest in a disadvantageous position by giving them a mere week to prepare
19 opposition papers and to deprive Geraci of the jury trial to which he is entitled regarding his claim for
20 specific performance of the Nov 2nd Agreement. The Court should deny Cotton’s request and, instead,
21 should consolidate this matter with the Geraci Lawsuit and try those actions together on the May 11,
22 2018, Trial Date.

23 Dated: December 7, 2017

FERRIS & BRITTON,
A Professional Corporation

24
25 By: 
26 Michael R. Weinstein
27 Scott H. Toothacre
28 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

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LARRY GERACI and REBECCA BERRY

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

14 DARRYL COTTON, an individual,
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17 CITY OF SAN DIEGO, a public entity; and
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21 GERACI, an individual, and ROES 1 through
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25
26
27
28

Case No. 37-2017-00037675-CU-WM-CTL
Judge: Hon. Joel R. Wohlfeil
REAL PARTIES IN INTEREST, LARRY GERACI AND REBECCA BERRY, REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO SECOND EX PARTE APPLICATION FOR AN ORDER SETTING AN EXPEDITED HEARING DATE AND BRIEFING SCHEDULE
[IMAGED FILE]
DATE: December 7, 2017
TIME: 8:30 a.m.
DEPT: C-73
Petition Filed: October 6, 2017
Hearing Date: January 26, 2018
Trial Date: None

FILED
Clerk of the Superior Court
DEC - 7 2017
By: J. CERDA

1 Real Parties in Interest, LARRY GERACI and REBECCA BERRY, hereby request that the
2 court take judicial notice under the provisions of Evidence Code sections 451 and/or 452 of the
3 following pleadings previously filed in the above-captioned action:

4 1. Real Parties in Interest, Larry Geraci and Rebecca Berry, Memorandum of Points and
5 Authorities in Opposition to Ex Parte Application for Issuance of an Alternative Writ of Mandate or for
6 an Order Setting an Expedited Hearing and Briefing Schedule, filed October 31, 2017 (Dkt. Entry
7 No. 17).

8 2. Declaration of Larry Geraci in Support of Opposition to Ex Parte Application for
9 Issuance of an Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing
10 Schedule, filed October 31, 2017 (Dkt. Entry No. 17).

11 3. Declaration of Abhay Schweitzer in Support of Opposition to Ex Parte Application for
12 Issuance of an Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing
13 Schedule, filed October 31, 2017 (Dkt. Entry No. 17).

14 4. Declaration of Michael R. Weinstein in Support of Opposition to Ex Parte Application
15 for Issuance of an Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and
16 Briefing Schedule, filed October 31, 2017 (Dkt. Entry No. 17).

17 5. Real Parties in Interest Larry Geraci and Rebecca Berry Request for Judicial Notice in
18 Opposition to Ex Parte Application for Issuance of an Alternative Writ of Mandate or for an Order
19 Setting an Expedited Hearing and Briefing Schedule, filed October 31, 2017 (Dkt. Entry No. 17).

20 6. Real Parties in Interest Larry Geraci and Rebecca Berry Notice of Lodgment in
21 Opposition to Ex Parte Application for Issuance of an Alternative Writ of Mandate or for an Order
22 Setting an Expedited Hearing and Briefing Schedule, filed October 31, 2017 (Dkt. Entry No. 17).

23 7. Proof of Service dated October 31, 2017, and filed November 1, 2017 (Dkt. Entry
24 No. 25).

25 8. Transcript of Ex Parte Hearing, dated November 2, 2017, before Judge Eddie C.
26 Sturgeon.

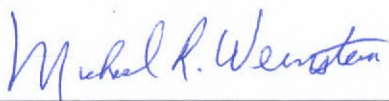
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1 9. Minute Order by Judge Eddie C. Sturgeon, entered November 2, 2017, denying the ex
2 parte request (Dkt. Entry No. 23).

3
4 Dated: December 7, 2017

Respectfully submitted,
FERRIS & BRITTON
A Professional Corporation

5
6 By: 
7 Michael R. Weinstein
8 Scott H. Toothacre
9 Attorneys for Real Parties in Interest
10 LARRY GERACI and REBECCA BERRY