

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 **(Failure to State a Cause of Action)**

4 1. As a first, separate and distinct affirmative defense, each and every purported cause of
5 action alleged in the Petition fails to allege facts sufficient to constitute a cause of action against this
6 Real Party in Interest.

7 **SECOND AFFIRMATIVE DEFENSE**

8 **(Failure to Exhaust Administrative Remedies)**

9 2. As a second, separate and distinct affirmative defense, Petitioner has failed to exhaust
10 his administrative remedies in that he has not submitted and pursued his own separate CUP application.

11 **THIRD AFFIRMATIVE DEFENSE**

12 **(Uncertainty)**

13 3. As a third, separate and distinct affirmative defense, the Petition is uncertain, vague,
14 ambiguous, improper and unintelligible.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **(Petition Barred by Laches)**

17 4. As a fourth, separate and distinct affirmative defense, the Petition is barred by the
18 doctrine of laches.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 **(Petitioner is Barred from the Relief Requested by the Doctrine of Unclean Hands)**

21 5. As a fifth, separate and distinct affirmative defense, Real Party in Interest allege that
22 Petitioner's action is barred by the doctrine of unclean hands.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 **(No Threat of Harm)**

25 6. As a sixth, separate and distinct affirmative defense, Real Party in Interest allege not
26 threat of harm exists sufficient to support a grant of any relief requested in the Petition.

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1 **SEVENTH AFFIRMATIVE DEFENSE**

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

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


7 **PRAYER FOR RELIEF**

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

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

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15 Dated: November 30, 2017

FERRIS & BRITTON
A Professional Corporation

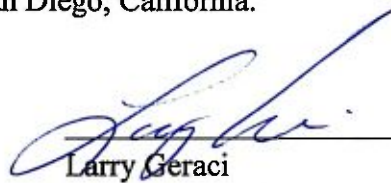
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18 By: 
19 Michael R. Weinstein
20 Scott H. Toothacre
21 Attorneys for Real Party in Interest
22 LARRY GERACI
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VERIFICATION

I, Larry Geraci, have read the foregoing REAL PARTY IN INTEREST LARRY GERACI'S VERIFIED ANSWER TO PETITION FOR ALTERNATIVE WRIT OF MANDATE, and I am familiar with its contents. I am informed and believe the matters stated therein are true and on that basis verify that the matters stated therein are true.

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

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



Larry Geraci