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County of San Diego
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11

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 Party In Interest.
24

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

Judge: Hon. Joel Wohlfeil

**REAL PARTY IN INTEREST REBECCA
BERRY'S VERIFIED ANSWER TO
PETITION FOR WRIT OF MANDATE**

[IMAGED FILE]

Filed: October 6, 2017

Trial Date: None

25 Real Party in Interest, REBECCA BERRY ("Geraci" or "Real Party in Interest"), answers,
26 paragraph by paragraph, the allegations set forth in the Verified Petition for Alternative Writ of
27 Mandate [Code Civil. Proc., § 1085] filed by Petitioner/Plaintiff, DARRYL COTTON ("Cotton"), as
28 follows:

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 does not have insufficient information
23 and belief to answer the allegations therein and, on that basis, denies the allegations.

24 14. In response to paragraph 14, Real Party in Interest does not have insufficient information
25 and belief to answer the allegations therein and, on that basis, denies the allegations.

26 15. In response to paragraph 15, Real Party in Interest does not have insufficient information
27 and belief to answer the allegations therein and, on that basis, denies the allegations, except as follows:
28 Real Party in Interest admits she knew that Cotton would also be signing the Ownership Disclosure

1 Statement that she was signing.

2 16. In response to paragraph 16, Real Party in Interest does not have insufficient information
3 and belief to answer the allegations therein and, on that basis, denies the allegations, except as follows:
4 Real Party in Interest admits that Cotton had never met Berry and had never entered into a lease or
5 other agreement with Berry. Real Party in Interest admits that Berry was Geraci's agent and was
6 working on his behalf and at his direction; and Real Party in Interest admits that a true and correct copy
7 of the CUP application, including the Ownership Disclosure Statement, is attached as Exhibit 1 to the
8 Verified Petition.

9 17. In response to paragraph 17, Real Party in Interest does not have insufficient information
10 and belief to answer the allegations therein and, on that basis, denies the allegations.

11 18. In response to paragraph 18, Real Party in Interest does not have insufficient information
12 and belief to answer the allegations therein and, on that basis, denies the allegations.

13 19. In response to paragraph 19, Real Party in Interest does not have insufficient information
14 and belief to answer the allegations therein and, on that basis, denies the allegations.

15 20. In response to paragraph 20, Real Party in Interest does not have insufficient information
16 and belief to answer the allegations therein and, on that basis, denies the allegations.

17 21. In response to paragraph 21, Real Party in Interest does not have insufficient information
18 and belief to answer the allegations therein and, on that basis, denies the allegations.

19 22. In response to paragraph 22, Real Party in Interest does not have insufficient information
20 and belief to answer the allegations therein and, on that basis, denies the allegations.

21 23. In response to paragraph 23, Real Party in Interest does not have insufficient information
22 and belief to answer the allegations therein and, on that basis, denies the allegations.

23 24. In response to paragraph 24, Real Party in Interest does not have insufficient information
24 and belief to answer the allegations therein and, on that basis, denies the allegations.

25 25. In response to paragraph 25, Real Party in Interest does not have insufficient information
26 and belief to answer the allegations therein and, on that basis, denies the allegations.

27 26. In response to paragraph 26, Real Party in Interest does not have insufficient information
28 and belief to answer the allegations therein and, on that basis, denies the allegations.

1 27. In response to paragraph 27, Real Party in Interest does not have insufficient information
2 and belief to answer the allegations therein and, on that basis, denies the allegations.

3 28. In response to paragraph 28, Real Party in Interest does not have insufficient information
4 and belief to answer the allegations therein and, on that basis, denies the allegations.

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

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

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

10 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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VERIFICATION

I, Rebecca Berry, have read the foregoing REAL PARTY IN INTEREST REBECCA BERRY'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 28, 2017 in San Diego, California.



Rebecca Berry