

2017 DEC 28 P 1:37

CLERK-SUPERIOR COURT 28/17 PM 1:37
SAN DIEGO COUNTY, CA

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7 CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

10	DARRYL COTTON, an individual,	)	Case No. 37-2017-00037675-CU-WM-CTL
11)	
12	Petitioner/Plaintiff,	)	RESPONDENT/DEFENDANT CITY
13		)	OF SAN DIEGO'S ANSWER TO
13	- v.	)	PETITIONER'S VERIFIED PETITION
14	CITY OF SAN DIEGO, a public entity; and	)	FOR ALTERNATIVE WRIT OF
15	DOES 1 through 25,	)	MANDATE
16		)	[CODE CIV. PROC. § 1085]
17	Respondents/Defendants,	)	<i>[IMAGED FILE]</i>
18		)	Judge: Hon. Joel R. Wohlfeil
19	REBECCA BERRY, an individual; LARRY	)	Dept.: 73
20	GERACI, an individual; and ROES 1 through	)	Action Date: October 6, 2017
21	25,	)	Trial Date: Not Set
22	Real Parties in Interest.)	
23)	

24 Respondent/Defendant CITY OF SAN DIEGO (City) hereby answers the Verified
25 Petition for Alternative Writ of Mandate (Writ) filed by Petitioner/Plaintiff DARRYL COTTON
26 ("Cotton" or "Petitioner") as follows:
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INTRODUCTION

1. The allegations in Paragraph 1 of the Writ constitute Cotton’s characterization of his lawsuit, a recitation of the relief Cotton requests, and/or legal conclusions to which no response is required.

2. The allegations in Paragraph 2 of the Writ constitute Cotton’s characterization of his lawsuit and/or legal conclusions to which no response is required. To the extent a response is required, City denies all allegations contained therein and denies that Cotton is entitled to any relief.

JURISDICTION, VENUE, AND PARTIES

3. The allegations in Paragraph 3 of the Writ constitute legal conclusions to which no response is required.

4. The allegations in Paragraph 4 of the Writ constitute legal conclusions to which no response is required.

5. Answering Paragraph 5 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

6. The allegations in Paragraph 6 of the Writ constitute legal conclusions to which no response is required. However, to the extent a response may be deemed required, City admits it is a public entity, specifically a municipal corporation established pursuant to Article XI, Section 3, of the California Constitution. The City’s corporate powers are established in Article I of the San Diego City Charter.

7. Answering Paragraph 7 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

8. Answering Paragraph 8 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

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Writ is a true and correct copy of the Conditional Use Permit (CUP) application, including the Ownership Disclosure Statement.

17. Answering Paragraph 17 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

18. Answering Paragraph 18 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

19. Answering Paragraph 19 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

20. Answering Paragraph 20 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

21. Answering Paragraph 21 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

22. Answering Paragraph 22 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

23. Answering Paragraph 23 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

24. Answering Paragraph 24 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

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1 25. Answering Paragraph 25 of the Writ, City is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained therein, and on that basis
3 denies each and every allegation contained therein.

4 26. Answering Paragraph 26 of the Writ, City is without sufficient knowledge or
5 information to form a belief as to the truth of the allegations contained therein, and on that basis
6 denies each and every allegation contained therein.

7 27. Answering Paragraph 27 of the Writ, City is without sufficient knowledge or
8 information to form a belief as to the truth of the allegations contained therein, and on that basis
9 denies each and every allegation contained therein.

10 28. Answering Paragraph 28 of the Writ, City is without sufficient knowledge or
11 information to form a belief as to the truth of the allegations contained therein, and on that basis
12 denies each and every allegation contained therein.

13 29. Answering Paragraph 29 of the Writ, City is without sufficient knowledge or
14 information to form a belief as to the truth of the allegations contained therein, and on that basis
15 denies each and every allegation contained therein.

16 30. City admits the allegations contained in the first Paragraph 30 of the Writ.

17 30(2). Answering the second Paragraph 30 of the Writ, City responds as follows: City
18 admits it responded via email on September 29, 2017, and admits it did not remove Real Party in
19 Interest Rebecca Berry from the Cotton Application and process it on behalf of Cotton. City
20 informed Cotton's counsel that Cotton may submit his own application for a Conditional Use
21 Permit (CUP) for a Medical Marijuana Consumer Cooperative at the 6176 Federal Boulevard
22 property. City also admits that Exhibit 5 to the Writ is a true and correct copy of the September
23 29, 2017, email from Firouzeh Tirandazi, Development Project Manager in the City's
24 Development Services Department.

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1 **FIRST CAUSE OF ACTION**

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

3 31. Answering Paragraph 31 of the Writ, City incorporates by reference each of its
4 responses to Paragraph 1 through 30, inclusive, of the Writ as set forth above as if each of said
5 responses were fully set forth herein.

6 32. Answering Paragraph 32 of the Writ, City responds as follows: The allegations in
7 Paragraph 32 of the Writ constitute Cotton’s characterization of his lawsuit and legal conclusions
8 to which no response is required. However, to the extent a response may be deemed required,
9 City admits it is a public entity, specifically a municipal corporation established pursuant to
10 Article XI, Section 3, of the California Constitution. The California Constitution grants charter
11 cities, such as the City, the power to make and enforce all ordinances and resolutions with
12 respect to “municipal affairs.” Cal. Const., art, XI, § 5(a). The City’s corporate powers are
13 established in Article I of the San Diego City Charter. However, the City is subject to state law
14 on matters considered to be of “statewide concern.” The City further admits that it is responsible
15 for administering the CUP process according to the San Diego Municipal Code (SDMC). Except
16 as specifically admitted hereinabove, City denies any and all remaining allegations contained
17 therein.

18 33. The allegations in Paragraph 33 of the Writ constitute Cotton’s characterization of
19 his lawsuit and/or legal conclusions to which no response is required. To the extent a response is
20 required, City denies any and all allegations contained therein.

21 34. The allegations in Paragraph 34 of the Writ constitute Cotton’s characterization of
22 his lawsuit and/or legal conclusions to which no response is required. To the extent a response is
23 required, City denies any and all allegations contained therein.

24 Answering the Prayer, City denies that Petitioner Darryl Cotton is entitled to any relief in
25 any form whatsoever.

26 **AFFIRMATIVE DEFENSES**

27 As separate, distinct, and affirmative defenses to Petitioner Darryl Cotton’s Writ on file
28 herein, City alleges as follows:

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I

The facts alleged in the Writ, and each cause of action alleged therein, fail to state a cause of action against the City or its agents or employees.

II

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part by Petitioner's failure to exhaust his administrative remedies.

III

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part because the claims asserted therein are not ripe for review.

IV

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part because Petitioner has a plain, speedy, and adequate remedy available in the ordinary course of law.

V

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part because the City has no duty to perform the act Petitioner seeks to compel.

VI

No relief may be obtained by Petitioner under the Writ by reason of the doctrine of unclean hands.

VII

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part by the doctrine of laches.

VIII

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part by the applicable statute of limitations.

IX

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part because Petitioner is estopped by his own conduct to claim the requested relief against City.

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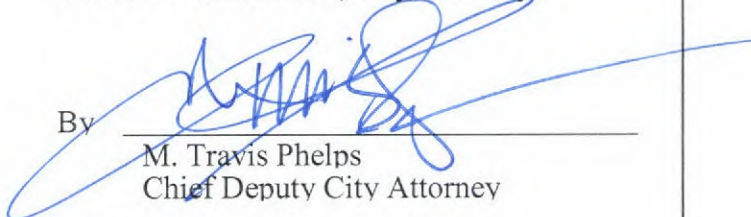
City presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses available. City reserves the right to assert additional affirmative defenses in the event discovery or further analysis indicates that additional unknown or unstated affirmative defenses would be applicable. City will move to amend its answer, if necessary, to allege such separate and additional defenses after they have been ascertained or according to proof at trial.

WHEREFORE, Respondent and Defendant City of San Diego prays as follows:

- 1. That the Writ be denied and Petitioner takes nothing by way of his Writ;
- 2. That Petitioner be denied each and every demand and prayer for relief contained in his Writ;
- 3. That the Writ be dismissed in its entirety with prejudice, and judgment be entered in favor of the City;
- 4. That City be awarded all costs of suit incurred herein including reasonable attorneys' fees; and
- 5. That City be awarded such other and further relief as the Court may deem just and proper.

Dated: December 27, 2017

MARA W. ELLIOTT, City Attorney

By 

M. Travis Phelps
Chief Deputy City Attorney

Attorneys for Respondent/Defendant
CITY OF SAN DIEGO

FILED
CIVIL BUSINESS OFFICE 11
CENTRAL DIVISION

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DEC 28 '17 PM 1:35

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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2 GEORGE F. SCHAEFER, Assistant City Attorney,
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9 Attorneys for Respondent/Defendant
10 CITY OF SAN DIEGO

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

12 DECLARATION
13 OF SERVICE

14 Case No. 37-2017-00037675-CU-WM-CTL
15 Case Name: *Cotton v. City of San Diego, et al.*
16 Judge: Hon. Joel R. Wohlfeil/Dept.: C-73

17 **[IMAGED FILE]**

18 I, the undersigned, declare that I am, and was at the time of service of the papers herein
19 referred to, over the age of eighteen years and not a party to the action; and I am employed in the
20 County of San Diego, California, in which county the within-mentioned service occurred. My
21 business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

22 I served the foregoing documents, in this action, described as:

- 23 • **RESPONDENT/DEFENDANT CITY OF SAN DIEGO'S ANSWER TO**
24 **PETITIONER'S VERIFIED PETITION FOR ALTERNATIVE WRIT**
25 **OF MANDATE**

26 on the following interested parties in this action:

27 Darryl Cotton
28 6176 Federal Blvd.
San Diego, CA 92114
Tel: (619) 634-1561

Petitioner in Pro Per

Michael R. Weinstein, Esq.
Scott H. Toothacre, Esq.
FERRIS & BRITTON
501 West Broadway, Suite 1450
San Diego, CA 92101
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LARRY GERACI, an individual

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6 Fax: (619) 881-0045
7 gaustin@austinlegalgroup.com

8 **Attorneys for Real Parties in Interest**
9 **REBECCA BERRY, an individual and**
10 **LARRY GERACI, an individual**

11 **(BY U.S. MAIL)** I served the individual(s) named by placing a true and correct copy of
12 the documents in a sealed envelope and placed it for collection and mailing with the
13 United States Postal Service this same day, at my address shown above, following
14 ordinary business practices. [CCP § 1013(a)]

15 I further declare that I am readily familiar with the business' practice for collection and
16 processing of correspondence for mailing with the United States Postal Service; and that
17 the correspondence shall be deposited with the United States Postal Service this same day
18 in the ordinary course of business.

19 **(BY FAX)** On December 27, 2017, I transmitted the above-described documents by
20 facsimile machine to the fax number(s) set forth above or as stated on the attached
21 service list. The transmission originated from facsimile phone number (619) 533-5856
22 and was reported as complete and without error. The facsimile machine properly issued a
23 transmission report, a copy of which is attached hereto. [CCP § 1013(e); CRC Rule 2008]

24 **(BY E-MAIL)** I caused to be served by electronically mailing a true and correct copy
25 through electronic mail system to the e-mail addressee(s) set forth above, or as stated on
26 the attached service list per agreement in accordance with Code of Civil Procedure
27 section 1010.6. [CCP § 1010.6]

28 **(BY ELECTRONIC SERVICE)** By submitting an electronic version of the
document(s) to One Legal, LLC through the user interface at www.onelegal.com.

(BY OVERNIGHT DELIVERY) I served the individual(s) named by placing a true
and correct copy of the documents in a sealed envelope(s) to be delivered overnight via
an overnight delivery service in lieu of delivery by mail to the addressee(s) listed above,
or as stated on the attached service list: [CCP § 1013]

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed this 28th day of December 2017, at San Diego,
California.



MARIA COOK