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6

F I L E D
San Diego Superior Court

FEB 26 2018

By: _____ Deputy

7 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 DARRYL COTTON, an individual,
11 Petitioner/Plaintiff,

12 v.

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

15 Respondents/Defendants.

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

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

**DECLARATION OF MICHAEL R.
WEINSTEIN IN SUPPORT OF ENTRY
OF PROPOSED JUDGMENT**

[IMAGED FILE]

16 REBECCA BERRY, an individual; LARRY
17 GERACE, an individual, and ROES 1 through
25,

18 Real Parties In Interest.

Petition Filed: October 6, 2017

21 I, Michael R. Weinstein, declare:

22 1. I am an attorney with Ferris & Britton, APC, the attorneys for Real Parties in Interest
23 Larry Geraci and Rebecca Berry. I have personal knowledge of the facts stated in this declaration. If
24 called as a witness, I would testify competently thereto. I provide this declaration in support of the
25 submission by Real Parties in Interest, Rebecca Berry and Larry Geraci, of the Proposed Entry of
26 Judgment lodged concurrently herewith.

27 2. On January 25, 2018, the noticed motion by Petitioner/Plaintiff, Darryl Cotton, for
28 issuance of a peremptory writ of mandate came on for hearing. Petitioner/Plaintiff, Darryl Cotton, was

1 represented by Darryl Cotton, in pro per. Respondent/Defendant, City of San Diego, was represented
2 by M. Travis Phelps, Chief Deputy City Attorney with the Office of the City Attorney. Real Parties in
3 Interest, Larry Geraci and Rebecca Berry, were represented by attorney Michael R. Weinstein of the
4 law firm Ferris & Britton, APC. After review of the written pleadings submitted by the parties and
5 hearing oral argument, the Court issued its order DENYING Petitioner/Plaintiff's motion for issuance
6 of a peremptory writ of mandate.

7 3. On January 25, 2018, on behalf of Real Parties in Interest, I provided formal notice of
8 the ruling by causing to be served on all counsel a Notice of Ruling After Hearing, which was filed
9 with the Court on January 26, 2018. A true and correct copy of the Notice of Ruling After Hearing is
10 attached hereto as Exhibit A.

11 4. On February 9, 2018, by email to all counsel, I provided my draft of the Proposed
12 Judgment for their review and comment as to form. A true and correct copy of my February 9, 2018,
13 email is attached hereto as Exhibit B.

14 5. On February 12, 2018, I received by email the response of the attorney for the City of
15 San Diego, who approved the form of the Proposed Judgment, stating: "Looks fine to me. No
16 comments or proposed edits. Thanks Michael." A true and correct copy of that February 12, 2018,
17 email is attached hereto as Exhibit C.

18 6. Later on February 12, 2018, I was copied on an email from petitioner, Darryl Cotton, in
19 pro per, to the attorney for the City of San Diego. The email makes false and libelous statements about
20 me and my co-counsel, Gina Austin. As it pertains to the Proposed Judgment, Mr. Cotton's email
21 states:

22 "I wanted you to be aware of this because Michael's email below [the February 9 email
23 circulating the Proposed Judgment] is exactly what it appears to be – a pathetic and last
24 minute attempt to try and get the State Court to adjudicate the state action before the
25 federal court can reach my complaint. He did NOT MENTION anything to the Court
26 about how he was going to ask the state court for a judgment. I have numerous
27 witnesses, and they are all drafting declarations right now stating that Michael is blatantly
28 lying – he did not tell the court that judgment is warranted. The record is clear – *ALL* of

1 Michael's pleadings and arguments have specifically stated that this matter should go to
2 trial. **This judgment approach is simply [a] last minute effort to deprive me of**
3 **seeking justice in federal court."**

4 A true and correct copy of Darryl Cotton's February 12, 2018, email is attached hereto as Exhibit D. I
5 bring Mr. Cotton's email to the Court's attention as I view it as an objection to the entry of the
6 Proposed Judgment.

7 7. Darryl Cotton's objection is misplaced and the Proposed Judgment should be entered
8 by the Court.

9 First, despite Mr. Cotton's assertion to the contrary, I did state to the Court near the conclusion
10 of the January 25, 2018, hearing denying Mr. Cotton's motion for issuance of a peremptory writ of
11 mandate that I would be preparing and submitting a Proposed Judgment **in this writ of mandate**
12 **action**. Not that so advising the Court was a necessary prerequisite to seeking entry of the judgment; I
13 did so simply to make the Court and the parties aware of my intentions.

14 Second, Mr. Cotton is confused because he is conflating the related earlier-filed action in
15 *Geraci v. Cotton* (the "Geraci Lawsuit") with the instant petition for writ of mandate which is the
16 subject of the instant *Cotton v. City of San Diego* action (the "Writ of Mandate Lawsuit"). The court
17 heard and ruled on motions in both actions on January 25, 2018, denying Mr. Cotton's motion for a
18 preliminary injunction in the Geraci Lawsuit and denying the petition for issuance of a peremptory
19 writ of mandate in the Writ of Mandate Lawsuit. The Proposed Judgment submitted herewith
20 concerns the latter Writ of Mandate Lawsuit only.

21 Third, entry of the Proposed Judgment has no effect on the Geraci Lawsuit. That action is
22 scheduled for Trial Call on May 11, 2018. Entry of the Proposed Judgment in this Writ of Mandate
23 Lawsuit is not an end-around the scheduled trial in that other action.

24 8. In the Writ of Mandate Lawsuit, Darryl Cotton sought issuance of a peremptory writ of
25 mandate to compel the City of San Diego to recognize him as the sole and true applicant in
26 connection with the subject CUP Application. Based on the court's January 25, 2018, ruling on the
27 merits denying Mr. Cotton's noticed motion for issuance of a peremptory writ of mandate, the action
28 is disposed of and entry of the Proposed Judgment is proper.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 21st day of February 20, 2018.

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5 MICHAEL R. WEINSTEIN
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11 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

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
DOES 1 through 25,

18 Respondents/Defendants.
19

20 REBECCA BERRY, an individual; LARRY
GERACE, an individual, and ROES 1 through
21 25,

22 Real Parties in Interest.
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FILED
CIVIL BUSINESS OFFICE 18
CENTRAL DIVISION

2018 JAN 26 P 2:54

SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

**NOTICE OF RULING AFTER HEARING
RE:**

**(1) MOTION BY REAL PARTIES IN
INTEREST LARRY GERACI AND
REBECCA BERRY TO COMPEL THE
DEPOSITION OF DARRYL COTTON
AND TO CONTINUE HEARING ON
MOTION FOR PRELIMINARY
INJUNCTION**

**(2) MOTION BY PETITIONER/
PLAINTIFF DARRYL COTTON FOR
ISSUANCE OF A PEREMPTORY
WRIT OF MANDATE**

[IMAGED FILE]

DATE: January 25, 2018
TIME: 8:30 a.m.
DEPT: C-73

Petition Filed: October 6, 2017

1 PLEASE TAKE NOTICE THAT on January 25, 2018, the Court heard the following noticed
2 motions:

3 (1) Motion by Real Parties in Interest, Larry Geraci and Rebecca Berry, to (a) compel the
4 deposition of Darryl Cotton, and (b) continue the January 25, 2018, hearing on the motion by
5 Petitioner/Plaintiff, Darryl Cotton, for issuance of a peremptory writ of mandate; and

6 (2) Motion by Petitioner/Plaintiff, Darryl Cotton, for issuance of a peremptory writ of mandate.
7 Petitioner/Plaintiff, Darryl Cotton, was represented by Darryl Cotton, pro se. Respondent/Defendant,
8 City of San Diego, was represented by M. Travis Phelps, Chief Deputy City Attorney with the Office of
9 the City Attorney. Real Parties in Interest, Larry Geraci and Rebecca Berry, were represented by
10 attorney Michael R. Weinstein of the law firm Ferris & Britton, APC.

11 PLEASE TAKE FURTHER NOTICE THAT, having reviewed the written pleadings submitted
12 in support and opposition to the motions and hearing oral argument, the Court ruled as follows:

13 (1) The Court confirmed its tentative ruling as the final ruling of the court, set forth in and
14 attached hereto as Exhibit A, GRANTING Real Parties in Interests' motion to compel
15 Petitioner/Plaintiff to a deposition and ordering Petitioner/Plaintiff to submit to a deposition
16 within twenty (20) days of the hearing, and DENYING Real Parties in Interests' motion to
17 continue the January 25, 2018, hearing on Petitioner/Plaintiff's motion for issuance of a
18 peremptory writ of mandate, subject to the following modification: Petitioner/Plaintiff must
19 submit to a deposition within twenty (20) days of the hearing absent further leave of the
20 court or agreement of the parties. By close of business on Friday, January 26, 2018,
21 Petitioner/Plaintiff shall provide to attorney Weinstein two dates within the next 20 days on
22 which Petitioner/Plaintiff is available for a full-day deposition (9 a.m. to 5 p.m., with a 1-
23 hour lunch break) to be taken at Aptus Court Reporting Service, which is located at 600
24 West Broadway, Suite 300, San Diego, CA 92101. Attorney Weinstein shall then select one
25 of those two dates for the deposition and shall serve an amended deposition notice providing
26 notice of the selected date.

1 (2) The Court confirmed its tentative ruling as the final ruling of the court, set forth in and
2 attached hereto as Exhibit A, DENYING Petitioner/Plaintiff's motion for issuance of a
3 peremptory writ of mandate.
4

5 Dated: January 25, 2018

FERRIS & BRITTON, APC

6
7 By: Michael R. Weinstein
8 Michael R. Weinstein
9 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY
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EXHIBIT A

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - January 22, 2018

EVENT DATE: 01/25/2018

EVENT TIME: 09:00:00 AM

DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

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

CASE TITLE: COTTON VS CITY OF SAN DIEGO [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition

CAUSAL DOCUMENT/DATE FILED:

The Motion (ROA # 60, 61) of Real Parties in Interest LARRY GERACI and REBECCA BERRY, to (1) compel the deposition of Petitioner / Plaintiff DARRYL COTTON ("Plaintiff"), and (2) continue the January 25, 2018, hearing on Plaintiff's Motion for issuance of a peremptory writ of mandate, is GRANTED IN PART AND DENIED IN PART.

The Motion to compel Plaintiff to submit to a deposition is GRANTED. Plaintiff shall submit to a deposition within twenty (20) days of the hearing of this Motion.

The Motion to continue the hearing of Plaintiff's Motion for issuance of a peremptory writ of mandate, is DENIED.

The Petition (ROA # 38, 42) of Plaintiff / Petitioner DARRYL COTTON ("Plaintiff") for writ of mandate, is DENIED.

The Court initially notes that its December 7, 2017 order denying the ex parte application for an order shortening time to hear this Motion (ROA # 42) invited the filing of moving and opposition papers per Code. However, no additional papers were filed. As a result, this ruling is premised the original Petition for writ of mandate, and briefing and evidence presented to the Court prior to both ex parte hearings.

A traditional writ of mandate under Code of Civil Procedure section 10858 is a method for compelling a public entity to perform a legal and usually ministerial duty. Klajic v. Castaic Lake Water Agency (2001) 90 Cal. App. 4th 987, 995. The Court reviews an administrative action, pursuant to Code of Civil Procedure section 1085, to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. Id.

A record owner, or "[a]ny person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application" may submit an application for a permit. SDMC 112.0102. Plaintiff argues that the City has a ministerial duty to process the CUP Application with Petitioner as the sole applicant; however, Petitioner cannot demonstrate that he was the only person who possessed the right to use the subject property. Whether someone other than the "record owner" possesses a valid

right to apply for and obtain the CUP is disputed. Evidence exists demonstrating an agreement for the purchase and sale of the subject property, which could confer a legal right and entitlement to the use of the property.

In addition, Plaintiff has not exhausted his administrative remedy by submitting his own separate CUP application. He cannot be recognized as the "sole applicant" (see Petition at page 10, line 5) when he has not, in fact, submitted a separate application. The City may very well have a ministerial duty to accept and process Petitioner's CUP application in lieu of any competing application, but this duty does not arise in the absence of the filing of such an application.

The Motion (ROA # 94, 95) of Plaintiff and Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY ("Cross-Defendants") to (1) compel the deposition of Defendant and Cross-Complainant DARRYL COTTON ("Defendant"), and (2) continue the January 25, 2018, hearing on Defendant's Motion for a preliminary injunction, is GRANTED IN PART AND DENIED IN PART.

The Motion to compel Defendant to submit to a deposition is GRANTED. Defendant shall submit to a deposition within twenty (20) days of the hearing of this Motion.

The Motion to continue the hearing of Defendant's Motion for a preliminary injunction, is DENIED.

Defendant and Cross-Complainant DARRYL COTTON'S Motion for a preliminary injunction is DENIED.

The Court initially notes that its December 7, 2017 order denying the ex parte application for a TRO and setting this hearing (ROA # 72) invited the filing of moving and opposition papers. However, no additional papers were filed. As a result, this ruling is premised on the briefing and evidence presented to the Court prior to the ex parte hearing.

The Court considers two interrelated questions in deciding whether to issue a preliminary injunction: (1) is Plaintiff likely to suffer greater injury from a denial of the injunction than Defendant is likely to suffer from its grant; and (2) is there a reasonable probability that Plaintiff will prevail on the merits. Robbins v. Superior Court (1985) 38 Cal.3d 199, 206; Code Civ. Proc. 526(a). The Court's determination must be guided by a "mix" of the potential-merit and interim-harm factors. Butt v. State of California (1992) 4 Cal. 4th 668, 678. A preliminary injunction is appropriate when pecuniary compensation would not afford adequate relief; or where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief. Code Civ. Proc. 526(a). The burden is on the moving party to show all elements necessary to support issuance of a preliminary injunction. O'Connell v. Superior Court (2006) 141 Cal. App. 4th 1452, 1481. A preliminary injunction amounts to a mere interlocutory order to maintain the status quo pending a determination of the action on its merits. Varian Medical Systems, Inc. v. Delfino (2005) 35 Cal. 4th 180, 191.

Regarding the probability of prevailing, a record owner, or "[a]ny person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application" may submit an application for a permit. SDMC §112.0102. Defendant and Cross-Complainant Cotton argues that the City must process the CUP Application with him as the sole applicant. However, disputed evidence exists suggesting that Cotton was not the only person who possesses the right to use the subject property. Whether someone other than the "record owner" possesses a valid right to apply for and obtain the CUP is disputed. Evidence exists demonstrating an agreement for the purchase and sale of

the subject property, which could confer a legal right and entitlement to the use of the property.

In addition, Defendant and Cross-Complainant Cotton is not likely to prevail because the evidence demonstrates that he has not submitted his own separate and competing CUP application. He cannot be recognized as the sole applicant when he has not, in fact, submitted an application. A determination regarding the City's obligation to accept and process Cotton's CUP application in lieu of any competing application cannot be made in the absence of the filing of such an application.

Finally, Defendant and Cross-Complainant Cotton is unlikely to sustain irreparable harm because pecuniary compensation would afford adequate relief. Plaintiff can prosecute a claim premised on the lost revenue from operation of a medical marijuana dispensary. Although calculating such revenue may be somewhat complicated and require an expert opinion, this is far from an impossible task.

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10 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY
11

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

14 DARRYL COTTON, an individual,
15 Petitioner/Plaintiff,

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17 CITY OF SAN DIEGO, a public entity; and
DOES 1 through 25,
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20 REBECCA BERRY, an individual; LARRY
GERACI, an individual, and ROES 1 through
21 25,

22 Real Parties In Interest.
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FILED
BUSINESS OFFICE 18
CENTRAL DIVISION

2018 JAN 26 P 2:54

CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

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

Judge: Hon. Joel R. Wohlfeil

PROOF OF SERVICE

[IMAGED FILE]

Petition Filed: October 6, 2017

1 I, Anna K. Lizano, declare that: I am over the age of 18 years and not a party to the case; I am
2 employed in, or am a resident of, the County of San Diego, California; and my business address is:
3 501 West Broadway, Suite 1450, San Diego, California 92101.

4 On, January 25, 2018, I served the following document:

- 5 1. **NOTICE OF RULING AFTER HEARING RE: (1) MOTION BY REAL**
6 **PARTIES IN INTEREST LARRY GERACI AND REBECCA BERRY TO**
7 **COMPEL THE DEPOSITION OF DARRYL COTTON AND TO CONTINUE**
8 **HEARING ON MOTION FOR PRELIMINARY INJUNCTION (2) MOTION BY**
9 **PETITIONER/PLAINTIFF DARRYL COTTON FOR ISSUANCE OF A**
10 **PEREMPTORY WRIT OF MANDATE.**

11 **[X] EMAIL.** Based on an agreement of the parties to accept service by email, I caused the document
12 to be sent to the person at approximately 4:00 p.m. on the date above, to the following email addresses:

13 Darryl Cotton
14 indagrodarryl@gmail.com

15 M. Travis Phelps
16 mphelps@sandiego.gov

17 I did not receive, within a reasonable time after the transmission, any electronic message or other
18 indication that the transmission was not successful.

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

21 Dated: January 25, 2018

22 
23 _____
24 Anna K. Lizano

Michael Weinstein

From: Michael Weinstein
Sent: Friday, February 09, 2018 5:18 PM
To: 'Darryl Cotton'; MPhelps@sandiego.gov
Cc: 'Austin, Gina'
Subject: Darryl Cotton v. City of San Diego - Writ of Mandate Proceeding
Attachments: 00443322.docx

Dear Mr. Cotton and Mr. Phelps,

As I mentioned to the court following the hearing on January 25, 2018, based on the court's ruling and order denying the motion for issuance of a peremptory writ of mandate, the Respondent, City of San Diego, and the Real Parties in Interest, Larry Geraci and Rebecca Berry, are entitled to have Judgment entered in their favor in this action.

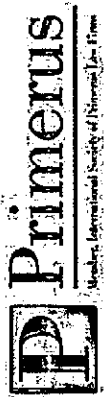
Attached please find my draft of a proposed Judgment for your review and comment as to the form of the Judgment. If I do not receive any comments from you by the close of business on Friday, February 16, 2018, then I will submit the proposed Judgment to the court and request that it be signed by Judge Wohlfeil and entered. If I do receive comments from you as to the form of the Judgment, I will either make the requested changes or, if I disagree, I will submit my proposed Judgment to the court along with your comments so that the judge will have everyone's comments in deciding what form of Judgment should be entered.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
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Vcard



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Michael Weinstein

From: Phelps, M. Travis <MPhelps@sandiego.gov>
Sent: Monday, February 12, 2018 9:36 AM
To: Michael Weinstein
Subject: RE: Darryl Cotton v. City of San Diego - Writ of Mandate Proceeding

Looks fine to me, no comments or proposed edits. Thanks Michael.

M. Travis Phelps
Chief Deputy City Attorney
Office of the San Diego City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101

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Fax (619) 533-5856
mphelps@sandiego.gov

CONFIDENTIAL COMMUNICATION

This email and any attachments are for the exclusive use of the intended recipient. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. Receipt by an unintended recipient does not constitute a waiver of any applicable privilege. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this in error, please notify us immediately by return email and delete this message and its attachments from your computer system.

From: Michael Weinstein [mailto:MWeinstein@ferrisbritton.com]
Sent: Friday, February 09, 2018 5:18 PM
To: Darryl Cotton <indagrodarryl@gmail.com>; Phelps, M. Travis <MPhelps@sandiego.gov>
Cc: Austin, Gina <gaustin@austinlegalgroup.com>
Subject: Darryl Cotton v. City of San Diego - Writ of Mandate Proceeding

Dear Mr. Cotton and Mr. Phelps,

As I mentioned to the court following the hearing on January 25, 2018, based on the court's ruling and order denying the motion for issuance of a peremptory writ of mandate, the Respondent, City of San Diego, and the Real Parties in Interest, Larry Geraci and Rebecca Berry, are entitled to have Judgment entered in their favor in this action.

Attached please find my draft of a proposed Judgment for your review and comment as to the form of the Judgment. If I do not receive any comments from you by the close of business on Friday, February 16, 2018, then I will submit the proposed Judgment to the court and request that it be signed by Judge Wohlfeil and entered. If I do receive comments from you as to the form of the Judgment, I will either make the requested changes or, if I disagree, I will submit my proposed Judgment to the court along with your comments so that the judge will have everyone's comments in deciding what form of Judgment should be entered.

Thank you.

Respectfully,

Michael R. Weinstein
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Michael Weinstein

From: Darryl Cotton <indagrodarryl@gmail.com>
Sent: Monday, February 12, 2018 10:08 AM
To: Michael Weinstein
Cc: MPhelps@sandiego.gov; Austin, Gina
Subject: Re: Darryl Cotton v. City of San Diego - Writ of Mandate Proceeding

Mr. Phelps,

I want to make you aware that on Saturday February 3, 2018. Two males and a female came to visit me and they first told me they had nothing to do with Geraci, but that they were willing to buy the property/CUP from me. When I told them that I could not, they threatened me in various ways, including by telling me that Geraci has "deep and influential ties" with the "City" and the CUP was definitely going through because of Geraci's influence - his exact words were, the "CUP is a done deal" but that it will only go to Geraci. That if the CUP were to be transferred to me, that he would use his influence with the City to sink the CUP.

One of the individuals, named Duane, is a high net worth individual that recently sponsored a high-end art gala at San Diego State University that was attended by several hundred people. The second individual I want name because he is a former military special forces operative. He threatened me including by telling me that Geraci can use his influence with the City to have my location raided by the SDPD and have me arrested. I told them that I had an agreement in place with the City that allowed me to operate under Prop 215 guidelines and I was in compliance with that agreement. An agreement that also waives my 4th Amendment rights which gives SDPD that ability to enter my property at any time and assure that I am operating in compliance with that agreement. Being arrested as a threat to cooperate with Geraci was not going to be an influence in my decision to pursue him for his criminal behavior when it comes to me or his attempts to steal my property.

That happened on 2/3/18. I provided notice to counsel here, you and Michael and Gina, AND ONLY THE THREE PEOPLE ON THIS EMAIL on February 8, 2018 at 3:01 PM. Exactly 31 minutes later, the ex-special forces guy called me and emphatically told me he was done with Duane, Geraci and that he had nothing to do with what was going on and begged me not to name him or involve him in the federal lawsuit that he knew I was about to file. It is because I do not want to piss this guy off who I know is incredibly dangerous that I am not naming him.

Mr. Phelps, again, I only told counsel here. No one else knew I was filing. That means Michael and/or Gina immediately contact Geraci and/or Duane/Special Forces and told them about my filing in Federal Court. I did file this last Friday. Once the Court approves my in propria status, the US Marshalls will serve summons and copies of the Complaint and the TRO.

Mr. Phelps, Michael and Gina are full on criminals. They have crossed the line. The actions I describe here are 100% true and I can prove it. I have witnesses they visited me, I have video from my property cameras showing they visited me, I have numerous emails, texts and calls I made right after to numerous people after they visited me describing in detail the threats they made.

I have named Michael, Gina and Toothacre as defendants in the federal suit as being co-conspirators and part of Geraci's criminal enterprise that is seeking to unlawfully acquire the property and CUP. The two individuals were at my place threatening me at the behest of Geraci, or maybe even Michael and Gina, we can let the Federal Court sort it out.

I wanted you to be aware of this because Michael's email below is exactly what it appears to be - a pathetic and last minute attempt to try to get the State Court to adjudicate the state action before the federal court can reach my complaint. He did NOT MENTION anything to the Court about how he was going to ask the state court for a judgment. I have numerous witnesses, and they are all drafting declarations right now stating that Michael is blatantly lying - he did not tell the court that judgment is warranted. The record is clear - ALL of Michael's pleadings and arguments have specifically stated that this matter should go to trial. **This judgment approach is simply last minute effort to attempt to deprive me of seeking justice in federal court.**

Please take the above into account when dealing with Michael and Gina, at this point, they are going to do whatever they can do to make themselves not be part of Geraci's criminal enterprise. I have filed RICO charges, Geraci ships marijuana out of state and that can be proved. Michael and Gina, even if they were not aware of the out of state shipping, under RICO, are liable for helping Geraci's criminal enterprise seek to unlawfully acquire my property for the same criminal enterprise.

Again, please do not allow Geraci to sabotage the CUP.

On Fri, Feb 9, 2018 at 5:17 PM, Michael Weinstein <MWWeinstein@ferrisbritton.com> wrote:

Dear Mr. Cotton and Mr. Phelps,

As I mentioned to the court following the hearing on January 25, 2018, based on the court's ruling and order denying the motion for issuance of a peremptory writ of mandate, the Respondent, City of San Diego, and the Real Parties in Interest, Larry Geraci and Rebecca Berry, are entitled to have Judgment entered in their favor in this action.

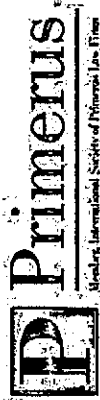
Attached please find my draft of a proposed Judgment for your review and comment as to the form of the Judgment. If I do not receive any comments from you by the close of business on Friday, February 16, 2018, then I will submit the proposed Judgment to the court and request that it be signed by Judge Wohlfeil and entered. If I do receive comments from you as to the form of the Judgment, I will either make the requested changes or, if I disagree, I will submit my proposed Judgment to the court along with your comments so that the judge will have everyone's comments in deciding what form of Judgment should be entered.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
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Vcard



This message contains confidential information. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute this information. If you have received this message in error, please advise (619) 233-3131 or return it promptly by mail.

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10 Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

FILED
San Diego Superior Court

FEB 26 2018

By: _____, Deputy

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
DOES 1 through 25,

18 Respondents/Defendants.

19
20 REBECCA BERRY, an individual; LARRY
GERACI, an individual, and ROES 1 through
21 25,

22 Real Parties In Interest.
23
24
25
26
27
28

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

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

PROOF OF SERVICE

[IMAGED FILE]

Petition Filed: October 6, 2017

1 I, Anna K. Lizano, declare that: I am over the age of 18 years and not a party to the case; I am
2 employed in, or am a resident of, the County of San Diego, California; and my business address is:
3 501 West Broadway, Suite 1450, San Diego, California 92101.

4 On, February 21, 2018, I served the following documents:

- 5 **1. LETTER TO CLERK OF DEPARTMENT C-73 ENCLOSING PROPOSED**
6 **JUDGMENT;**
- 7 **2. [PROPOSED] JUDGMENT AFTER ORDER DENYING MOTION FOR**
8 **ISSUANCE OF PEREMPTORY WRIT OF MANDATE; and**
- 9 **3. DECLARATION OF MICHAEL R. WEINSTEIN IN SUPPORT OF ENTRY OF**
10 **PROPOSED JUDGMENT.**

11 **[X] EMAIL.** Based on an agreement of the parties to accept service by email, I caused the documents
12 to be sent to the parties at approximately 1:00 p.m. on the date above, to the following email addresses:

13 Darryl Cotton
14 indagrodarryl@gmail.com


15 M. Travis Phelps
16 mphelps@sandiego.gov

17 Gina Austin
18 gaustin@austinlegalgroup.com

19 I did not receive, within a reasonable time after the transmission, any electronic message or other
20 indication that the transmission was not successful.

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

23 Dated: February 21, 2018

24
25
26
27
28


Anna K. Lizano