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10 Attorneys for Defendant
11 JESSICA MCELFRISH, an individual

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 DARRYL COTTON, an individual,
15 Plaintiff,
16 v.

17 CYNTHIA BASHANT, an individual;
18 JOEL WOHLFEIL, an individual;
19 LARRY GERACI, an individual;
20 REBECCA BERRY, an individual;
21 MICHAEL WEINSTEIN, an individual;
22 JESSICA MCELFRISH, an individual;
23 and DAVID DEMIAN, an individual,
24 Defendants.

CASE NO. 3:18-cv-00325-TWR-DEB

**DEFENDANT JESSICA
McELFRISH'S NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT**

District Judge:
Hon. Todd W. Robinson

Magistrate Judge:
Hon. Daniel E. Butcher

Date: March 16, 2022
Time: 1:30 p.m.
Courtroom: 3A

**[NO ORAL ARGUMENT
REQUESTED]**

25 TO ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN:

26 PLEASE TAKE NOTICE that on March 16, 2022 at 1:30 p.m. in Courtroom
27 3A of the United States District Court for the Southern District of California,

1 Edward J. Schwartz U.S. Courthouse located at 221 West Broadway, San Diego,
2 California 92101, the Hon. Todd W. Robinson presiding, defendant JESSICA
3 McELFRESH (“Ms. McElfresh”) hereby moves this Court for an order dismissing
4 plaintiff DARRYL COTTON’s (“plaintiff”) Second Amended Complaint and each
5 purported claim for relief therein pursuant to Federal Rules of Civil Procedure
6 12(b)(6).

7 The Second Amended Complaint fails to state facts sufficient to state a
8 viable claim upon which relief may be granted against Ms. McElfresh and
9 therefore should be dismissed pursuant to Federal Rule of Civil Procedure
10 12(b)(6).

11 This Motion to Dismiss will be based on this Notice of Motion and Motion,
12 the attached Memorandum of Points and Authorities, Declaration of Laura Stewart,
13 and Request for Judicial Notice in support thereof, as well as the pleadings and
14 other papers filed herein.

15
16 DATED: December 6, 2021

WALSH MCKEAN FURCOLO LLP

17
18 By: /s/ Laura Stewart
19 REGAN FURCOLO
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21 Attorneys for Defendant
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12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 DARRYL COTTON, an individual,
15 Plaintiff,
16 v.

17 GINA M. AUSTIN, an individual;
18 JESSICA MCELFRISH, an individual;
19 and DAVID DEMIAN, an individual;
20 and DOES 1-50, inclusive,
21 Defendants.

CASE NO. 3:18-cv-00325-TWR-DEB

22 MEMORANDUM OF POINTS AND
23 AUTHORITIES IN SUPPORT OF
24 DEFENDANT JESSICA
25 McELFRISH'S MOTION TO
26 DISMISS PLAINTIFF'S SECOND
27 AMENDED COMPLAINT

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant JESSICA McELFRESH (“Ms. McElfresh”), by and through her
3 attorneys of record herein, submits the following Memorandum of Points and
4 Authorities in support of her Motion to Dismiss Plaintiff DARRYL COTTON’s
5 (“plaintiff”) Second Amended Complaint (“SAC”) pursuant to Federal Rule of
6 Civil Procedure 12(b)(6).

7 **I.**

8 **INTRODUCTION**

9 Plaintiff has attempted to cure the defects in his First Amended Complaint
10 against Ms. McElfresh by directing the causes of action for deprivation of civil
11 rights under 42 U.S.C. §1983 and §1985 towards her. The §1983 cause of action is
12 not properly pled against Ms. McElfresh since plaintiff has not alleged a violation
13 of his civil rights and Ms. McElfresh is a private attorney not acting under color of
14 state law. The §1985 cause of action is not properly pled against Ms. McElfresh
15 because it does not allege that she was a part of a conspiracy to prohibit a witness
16 from testifying in federal court. Accordingly, the SAC should be dismissed against
17 Ms. McElfresh.

18 **II.**

19 **STATEMENT OF FACTS**

20 In the SAC, plaintiff alleges he previously brought a lawsuit (referred to as
21 “*Cotton I*”) against Larry Geraci in connection with the sale of the commercial real
22 property plaintiff owns located at 6176 Federal Boulevard in San Diego, which
23 sale was subject to the approval of a cannabis conditional use permit (“CUP”) by
24 the City of San Diego. (SAC, ¶ 54). Plaintiff further alleges that subsequent to his
25 filing a cross-complaint in *Cotton I*, his litigation investor hired Ms. McElfresh, an
26 attorney, to represent him, but Ms. McElfresh said she did “not have the
27 bandwidth” to represent plaintiff and referred him to attorney David Demian.
28 (SAC, ¶¶ 55-56).

1 **A. Allegations Against Ms. McElfresh in the First Cause of Action**
 2 **for Deprivation of Civil Rights (42 U.S.C §1983)**

3 In the first cause of action for deprivation of civil rights (42 U.S.C. §1983),
 4 plaintiff alleges that Ms. McElfresh failed to disclose that she had shared clients
 5 with attorney Gina Austin and Ms. McElfresh referred plaintiff to Mr. Demian's
 6 firm knowing they would take action to sabotage his case. (SAC, ¶¶ 162-163).

7 Plaintiff alleges that Ms. McElfresh violated her fiduciary duties to plaintiff
 8 as her former client by representing Mr. Geraci in the *Cotton I* litigation and the
 9 *Cotton I* judgment awarded Mr. Geraci \$260,109.28 in damages including legal
 10 fees for Ms. McElfresh's representation of Mr. Geraci in advancing the interests of
 11 the CUP application before the City. (SAC, ¶¶ 82, 164).

12 Plaintiff alleges that Ms. McElfresh had been charged with legal violations
 13 in connection with her representation of a cannabis manufacturer in another case
 14 and had entered into a Deferred Prosecution Agreement ("DPA") prohibiting her
 15 from violating any laws except for minor infractions until July 23, 2019. (SAC, ¶¶
 16 25-27). Plaintiff alleges that Ms. McElfresh violated the terms of the DPA by
 17 representing Mr. Geraci before the City in connection with the CUP application
 18 knowing it was illegal for Mr. Geraci to own a CUP. (SAC, ¶ 165).

19 Finally, plaintiff alleges that all of the defendants have violated plaintiff's
 20 civil rights by preventing him from meaningful access to the Courts by covering up
 21 the illegality of Mr. Geraci's ownership of a CUP application and preventing
 22 plaintiff from acquiring his own CUP. (SAC, ¶¶ 182-185).

23 **B. Allegations Against Ms. McElfresh in the Second Cause of Action**
 24 **for Deprivation of Civil Rights (42 U.S.C. §1985)**

25 Plaintiff alleges that Mr. Magagna applied for a CUP and the City approved
 26 it. (SAC, ¶¶ 85-86). Plaintiff further alleges that Ms. Young was a potential
 27 investor who ended up not giving plaintiff money to finance the *Cotton I* litigation
 28 in exchange for an ownership interest in the cannabis operations at plaintiff's

property. (SAC, ¶¶ 122-124, 128). Plaintiff believes Mr. Magagna was co-conspiring with Mr. Geraci against plaintiff and Mr. Magagna bribed and threatened Ms. Young not to testify for plaintiff in the *Cotton I* litigation. (SAC, ¶¶ 127, 134-136, 142, 147, 153). The *Cotton I* lawsuit is how plaintiff is identifying the lawsuit captioned *Larry Geraci v. Darryl Cotton*, San Diego County Superior Court Case No. 37-2017-00010073-CU-BC-CTL. (See First Amended Complaint, page 2, fn. 1, attached to Request for Judicial Notice as Exhibit A and Complaint, Cross-Complaint and Jury Verdict in the *Cotton I* lawsuit attached to the Request for Judicial Notice as Exhibits B, C and D, respectively).

In the second cause of action for deprivation of civil rights (42 U.S.C. §1985), plaintiff alleges “As detailed above, Young has communicated that she will not testify before this Court because of the attempted bribe and threats by Magagna” and all of the defendants “as jointly liable coconspirators and/or joint tortfeasors” attempted to bribe and threaten Ms. Young to prevent her from testifying in this Court. (SAC, ¶¶ 187-188).

III.

LEGAL AUTHORITIES

A. Federal Rule of Civil Procedure 12(b)(6)

Rule 12(b)(6) allows a court to dismiss a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the complaint must contain a “short and plain statement showing that the pleader is entitled to relief,” backed by sufficient facts that make the claim “plausible on its face.” Fed. R. Civ. P. 8(a)(2); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007). Plausibility requires “more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678. Rather, it demands enough factual

1 content for the court to “draw the reasonable inference that the defendant is liable
2 for the misconduct alleged.” *Id.*, citing *Twombly*, 550 U.S. at 556.

3 The court must accept as true “all factual allegations in the complaint” and
4 “construe the pleadings in the light most favorable to the nonmoving party.”
5 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).
6 This presumption does not extend to conclusory allegations, “unwarranted
7 deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536
8 F.3d 1049, 1055 (9th Cir. 2008).

9 While pro se plaintiffs are given wide latitude to amend their pleadings at
10 least once, a pro se complaint should be dismissed without leave to amend “if it is
11 absolutely clear that the deficiencies of the complaint could not be cured by
12 amendment.” *Schucker v. Rockwood*, 846 F.2d 1202, 1203–04 (9th Cir. 1988).
13 Moreover, where the plaintiff has previously filed an amended complaint, the
14 Court's discretion to dismiss without leave to amend is “particularly broad.” *Miller*
15 *v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004).

16 **B. 42 U.S.C. § 1983**

17 Section 1983 provides:

18
19 Every person who, under color of any statute, ordinance, regulation,
20 custom, or usage, of any State or Territory or the District of Columbia,
21 subjects, or causes to be subjected, any citizen of the United States or
22 other person within the jurisdiction thereof to the deprivation of any
23 rights, privileges, or immunities secured by the Constitution and laws,
shall be liable to the party injured in an action at law, suit in equity, or
other proper proceeding for redress

24 42 U.S.C. §1983.

25 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely
26 provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v.*
27 *Connor*, 490 U.S. 386, 393-94 (1989), quoting *Baker v. McCollan*, 443 U.S. 137,
28

144 n.3 (1979); *see also Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 618 (1979); *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006).

“Traditionally, the requirements for relief under [§] 1983 have been articulated as: (1) a violation of rights protected by the Constitution or created by federal statute, (2) proximately caused, (3) by conduct of a ‘person’, and (4) acting under color of state law.” *Crompton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Or, more simply, courts have required plaintiffs to “plead that (1) the defendants are acting under color of state law, and (2) deprived plaintiffs of rights secured by the Constitution or federal statutes.” *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986); *see also Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006); *WMX Techs., Inc. v. Miller*, 197 F.3d 367, 372 (9th Cir. 1999) (en banc); *Ortez v. Washington County, Or.*, 88 F.3d 804, 810 (9th Cir. 1996).

Section 1983 does not provide a cause of action for violations of state law. *See Galen v. County of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007); *Ove v. Gwinn*, 264 F.3d 817, 824 (9th Cir. 2001); *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1391 (9th Cir. 1997); *Lovell v. Poway Unified Sch. Dist.*, 90 F.3d 367, 370 (9th Cir. 1996); *Ybarra v. Bastian*, 647 F.2d 891, 892 (9th Cir. 1981).

Private parties are not acting under color of state law. *See Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991); *see also Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003) (explaining that a lawyer in private practice does not act under color of state law).

C. 42 U.S.C. § 1985

Section 1985 provides:

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the

United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

* * * * *

(3) ... in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. §1985(2) and (3).

As defined in Title 28 U.S.C. § 451, the phrase "court of the United States" in § 1985(2) refers only to Article III courts and certain federal courts created by act of Congress, not to state courts: the constitutional basis for the enactment of § 1985(2) (cl. 1) was Congress's plenary power over the federal courts set forth in U.S. Const. art. 1, § 8, cl. 9. *McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1035, fn. 3 (11th Cir. 2000), citing *Shaw v. Garrison*, 391 F. Supp. 1353, 1975 U.S. Dist. LEXIS 13537 (E.D. La. 1975), aff'd, 545 F.2d 980, 1977 U.S. App. LEXIS 10377 (5th Cir. 1977); *Deretich v. Office of Administrative Hearings*, 798 F.2d 1147, 1986 U.S. App. LEXIS 28091 (8th Cir. 1986).

IV.

ANALYSIS

Plaintiff brings two causes of action against Ms. McElfresh: (1) deprivation of civil rights (42 U.S.C. §1983), and (2) deprivation of civil rights (42 U.S.C. §1985).

The first cause of action for violation of §1983 fails because plaintiff does not allege a violation of any Constitutional right and Ms. McElfresh was not acting under color of state law. The second cause of action for violation of §1985 fails because there are no factual allegations that Ms. McElfresh was part of a conspiracy with Mr. Magagna or anyone else to interfere with a witness testifying in any federal court.

The facts alleged with respect to Ms. McElfresh are that she is an attorney who plaintiff's litigation investor hired to represent plaintiff, but she did "not have the bandwidth" to represent him and referred him to attorney David Demian. (SAC, ¶¶ 55-56). It is further alleged that Ms. McElfresh failed to disclose that she had shared clients with attorney Gina Austin, she referred plaintiff to attorney David Demian's firm knowing they would take action to sabotage his case, she violated her fiduciary duties to plaintiff by representing Mr. Geraci in the *Cotton I* litigation, and she violated the terms of the DPA by representing Mr. Geraci before the City in connection with the CUP application. (SAC, ¶¶ 162-165). Plaintiff also alleges that all of the defendants have violated his civil rights by covering up the illegality of Mr. Geraci's ownership of a CUP application and preventing plaintiff from acquiring his own CUP and by conspiring to bribe and threaten Ms. Young to prevent her from testifying in *Cotton I*. (SAC, ¶¶ 182-185).

Even taking all allegations in the SAC as true, as the Court must do for the purposes of a motion to dismiss, they are not sufficient to allege that any of plaintiff's Constitutional or federal rights were violated or that Ms. McElfresh was

1 acting under color of state law, which is required for a §1983 cause of action. All
2 of the defendants, including Ms. McElfresh, are private attorneys, not state actors.

3 There are also no allegations that Ms. McElfresh conspired with Mr.
4 Magagna or anyone else to keep Ms. Young from testifying in federal court. The
5 allegations are that Ms. Young was prevented from testifying in the *Cotton I*
6 litigation, and *Cotton I* was filed in state court. (See fn. 1 in First Amended
7 Complaint in this action attached to Request for Judicial Notice as Exhibit A and
8 Complaint, Cross-Complaint and Jury Verdict in the *Cotton I* lawsuit attached to
9 the Request for Judicial Notice as Exhibits B, C and D, respectively). According
10 to plaintiff, the relevant information Ms. Young had and plaintiff wanted to present
11 was about the CUP application for plaintiff's property at issue in the *Cotton I* case.
12 (SAC, ¶ 127).

13 **A. Plaintiff Should Not be Granted Leave to Amend**

14 Leave to amend should be denied where amending the challenged pleading
15 could not possibly cure the deficiency. *Schreiber Distributing Co. v. Serv-Well*
16 *Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Where the plaintiff has
17 previously filed an amended complaint, the Court's discretion to dismiss without
18 leave to amend is "particularly broad." *Miller v. Yokohama Tire Corp.*, 358 F.3d
19 616, 622 (9th Cir. 2004).

20 Here, plaintiff has already been given one chance to amend his Complaint.
21 No amendment could cure the defects in the SAC because the only causes of action
22 are causes of action for §§1983 and 1985 violations. The §1983 cause of action
23 does not allege violation of a Constitutional right and cannot be alleged against
24 Ms. McElfresh because she is a private attorney, not a state actor. The §1985
25 cause of action does not allege Ms. McElfresh conspired with anyone to prevent
26 Ms. Young from testifying in federal court.

27 ///

28 ///

V.

CONCLUSION

For these reasons, Ms. McElfresh respectfully requests this Court dismiss Plaintiff's SAC against her without leave to amend.

DATED: December 6, 2021

WALSH MCKEAN FURCOLO LLP

By: /s/ Laura Stewart

REGAN FURCOLO

LAURA STEWART

Attorneys for Defendant

JESSICA MCELFRISH, an individual

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10 Attorneys for Defendant
11 JESSICA MCELFRESH, an individual

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 DARRYL COTTON, an individual,
15 Plaintiff,
16 v.

17 GINA M. AUSTIN, an individual;
18 JESSICA MCELFRESH, an individual;
19 and DAVID DEMIAN, an individual;
20 and DOES 1-50, inclusive,
21 Defendants.

CASE NO. 3:18-cv-00325-TWR-DEB

**DECLARATION OF LAURA
STEWART IN SUPPORT OF
DEFENDANT JESSICA
McELFRESH'S MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT**

District Judge:
Hon. Todd W. Robinson

Magistrate Judge:
Hon. Daniel E. Butcher

Date: March 16, 2022
Time: 1:30 p.m.
Courtroom: 3A

**[NO ORAL ARGUMENT
REQUESTED]**

1 I, LAURA STEWART, declare as follows:

2 1. I am licensed to practice law in the State of California and employed
3 as an associate attorney by Walsh McKean Furcolo LLP, counsel for defendant
4 JESSICA McELFRESH.

5 2. I have personal knowledge of the matters stated herein and if called as
6 a witness, I would competently testify thereto.

7 3. Attached to the Request for Judicial Notice in support of defendant
8 JESSICA McELFRESH's Motion to Dismiss Plaintiff's Second Amended
9 Complaint are true and correct copies of the following documents:

10 **Exhibit A:** First Amended Complaint in this action (*Darryl Cotton v.*
11 *Cynthia Bashant, et al.* 3:18-cv-00325-TWR-DEB).

12 **Exhibit B:** Complaint in the lawsuit captioned *Larry Geraci v. Darryl*
13 *Cotton*, San Diego County Superior Court Case No. 37-2017-
14 00010073-CU-BC-CTL.

15 **Exhibit C:** Cross-Complaint in the lawsuit captioned *Larry Geraci v.*
16 *Darryl Cotton*, San Diego County Superior Court Case No. 37-
17 2017-00010073-CU-BC-CTL.

18 **Exhibit D:** Judgment on Jury Verdict in the lawsuit captioned *Larry Geraci*
19 *v. Darryl Cotton*, San Diego Superior Court Case No. 37-2017-
20 00010073-CU-BC-CTL.

21
22 I declare under penalty of perjury that the foregoing is true and correct.
23 Executed this 6th day of December 2021, in San Diego, California.

24
25 /s/ Laura Stewart
26 LAURA STEWART
27 Attorneys for Defendant
28

1 Regan Furcolo (SBN 162956)
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10 Attorneys for Defendant
11 JESSICA MCELFRISH, an individual

12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 DARRYL COTTON, an individual,
16 Plaintiff,
17 v.

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19 JESSICA MCELFRISH, an individual;
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21 and DOES 1-50, inclusive,
22 Defendants.

CASE NO. 3:18-cv-00325-TWR-DEB

**REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEFENDANT JESSICA
McELFRISH'S MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT**

District Judge:
Hon. Todd W. Robinson

Magistrate Judge:
Hon. Daniel E. Butcher

Date: March 16, 2022
Time: 1:30 p.m.
Courtroom: 3A

**[NO ORAL ARGUMENT
REQUESTED]**

23
24
25 Defendant JESSICA McELFRISH hereby requests that this court take
26 judicial notice of the following documents pursuant to Federal Rule of Evidence
27 201:
28

Exhibit D: Judgment on Jury Verdict in the lawsuit captioned *Larry Geraci v. Darryl Cotton*, San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL.

WALSH MCKEAN FURCOLO LLP

By: /s/ Laura Stewart
 REGAN FURCOLO
 LAURA STEWART
 Attorneys for Defendant
 JESSICA MCELFRISH, an individual
 Email: rfurcolo@wmfllp.com
 Email: lstewart@wmfllp.com

EXHIBIT “A”

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

2020 MAY 13 PM 2: 18

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,
Plaintiff.

vs.

CYNTHIA BASHANT, an individual; JOEL
WOHLFEIL, an individual; LARRY GERACI, an
individual; REBECCA BERRY, an individual;
GINA AUSTIN, an individual; MICHAEL
WEINSTEIN, an individual; JESSICA
MCELFRESH, an individual; and DAVID
DEMIAN, an individual
Defendants.

CASE NO.: 3:18-cv-00325-BAS-MDD

PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR:

1. DEPRIVATION OF CIVIL RIGHTS
(42 U.S.C. § 1983)
2. DEPRIVATION OF CIVIL RIGHTS
(42 U.S.C. § 1983)
3. DECLARATORY RELIEF
4. PUNITIVE DAMAGES

Related Case: 20CV0656-BAS-MDD

Jessica McElfresh is our insured

DEMAND FOR JURY TRIAL

///

///

///

Plaintiff *Pro Se* Darryl Cotton (“Plaintiff,” “Cotton” or “I”) alleges upon information and belief as follows:

INTRODUCTION

1. This action is a collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil in *Cotton I*.¹

2. “Under California law, the ‘well-settled rule [is] that the courts will not aid a party whose claim for relief rests on an illegal transaction.’” *Singh v. Baidwan*, 651 F. App’x 616, 2-3 (9th Cir. 2016) (quoting *Wong v. Tenneco, Inc.*, 702 P.2d 570, 576 (Cal. 1985) (in bank)).

3. “A contract to perform acts barred by California’s licensing statutes is illegal, void and unenforceable.” *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986).

4. *Cotton I* was a breach of contract action filed by Lawrence Geraci against Cotton.

5. Geraci and Cotton reached an oral joint venture agreement (the “JVA”) to develop a cannabis dispensary at Cotton’s real property (the “Property”).

6. However, Geraci had no intention of honoring his agreement with Cotton. In fact, Geraci could not honor his agreement with Cotton because he had been repeatedly sanctioned for his owning/management of illegal marijuana dispensaries and, consequently, is barred as a matter of law from owning a cannabis dispensary (the “Illegality Issue”).

7. To get around the Illegality Issue and still own the cannabis permit at the Property, Geraci applied for a cannabis permit at the Property with the City in the name of his receptionist, Rebecca Berry (the “Berry Application”).

8. In the Berry Application, Berry certified under penalty of perjury she is the sole owner of the cannabis permit being sought (the “Berry Fraud”).

9. At trial in *Cotton I*, Geraci testified he instructed Berry to submit the Berry Application.

10. At trial in *Cotton I*, Berry testified she made the certifications knowing they were false.

¹ “*Cotton I*” means *Larry Geraci vs Darryl Cotton*, San Diego County Superior Court, Case No. 37-2017-00010073-CU-BC-CTL.

1 11. Austin, as Geraci's cannabis attorney and responsible for the Berry Application, testified in
2 *Cotton I* that it is not unlawful for Berry to have submitted the Berry Application with false statements.

3 12. The JVA had a condition precedent, the approval of a marijuana dispensary at the Property

4 13. *Cotton I* was filed by attorney Michael Weinstein of Ferris & Britton without probable cause.

5 14. When Cotton accused Weinstein of being an unethical attorney, Wohlfeil admonished Cotton
6 stating from the bench that he does not believe that Weinstein is even capable of acting unethically.

7 15. Wohlfeil stated that the basis of his belief is based on the fact that both he and Weinstein had
8 started their legal careers at the same time and from the years of Weinstein having practiced before him
9 when he became a judge.

10 16. Unfortunately for Wohlfeil, Weinstein *is* an unethical attorney that cares more about avoiding
11 liability for filing a malicious prosecution action than betraying Wohlfeil's blind trust in him.

12 17. The *Cotton I* judgment is void for being procured via a fraud on the court, the product of judicial
13 bias, and because the alleged contract has an unlawful object and is therefore illegal and cannot be
14 enforced.

15 18. This action will force the judge overseeing this matter to choose between exposing the unethical
16 actions of at least two judges and numerous attorneys or to enforce an illegal contract that rewards a
17 drug dealer for seeking to acquire a cannabis permit under fraudulent pretenses and filing a malicious
18 prosecution action.

19 19. Cotton hopes that the presiding judge in this matter will not retaliate against Cotton for seeking
20 to protect his rights.

21 20. Cotton has painfully come to learn that judges instinctively protect other judges because they
22 operate from the assumption that a pro se litigant making allegations of bias and prejudice after a jury
23 trial are just sore losers. And 99.99% of the time they are probably right.

24 21. However, that probability does not give a judge the right to violate their judicial oath and not
25 vet the facts and arguments they are presented with.

26 22. In complete candid honesty, Cotton has been fighting for over three years to vindicate his rights
27 and he is simply disgusted and exhausted of hearing that he needs to be subservient and denigrate
28

Plaintiff *Pro Se* Darryl Cotton (“Plaintiff,” “Cotton” or “I”) alleges upon information and belief as follows:

INTRODUCTION

1. This action is a collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil in *Cotton I*.¹

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11 liability for filing a malicious prosecution action than betraying Wohlfeil's blind trust in him.

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16 actions of at least two judges and numerous attorneys or to enforce an illegal contract that rewards a
17 drug dealer for seeking to acquire a cannabis permit under fraudulent pretenses and filing a malicious
18 prosecution action.

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20 to protect his rights.

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22 operate from the assumption that a pro se litigant making allegations of bias and prejudice after a jury
23 trial are just sore losers. And 99.99% of the time they are probably right.

24 21. However, that probability does not give a judge the right to violate their judicial oath and not
25 vet the facts and arguments they are presented with.

26 22. In complete candid honesty, Cotton has been fighting for over three years to vindicate his rights
27 and he is simply disgusted and exhausted of hearing that he needs to be subservient and denigrate
28

1 himself before judges even when they violate Cotton's basic rights because they assume he is a pro se
2 "conspiracy nut" litigant.

3 23. Cotton continues pushing forward, trusting not in the ridiculous notions of Justice or the Rule
4 of Law (this case proves those things do not exist), but because he knows that if he keeps filing lawsuits
5 against the unethical attorneys and the judges who have objectively shown bias against Cotton as a pro
6 se litigant that he will eventually get the attention of the media.

7 24. Then, fear of liability will force a judge to finally expose Wohlfeil for the biased judge that he
8 is. A judge who ruined Cotton's life because he chose to trust Weinstein rather than do the job he is
9 paid to do and apply the law to the facts which he had been presented with.

10 JURISDICTION AND VENUE

11 25. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(3), 2283, and 18
12 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for all civil
13 actions arising under the United States Constitution or the laws of the United States, as well as civil
14 actions to redress deprivation under color of state law, of any right immunity or privilege secured by
15 the United States Constitution.

16 26. This action is brought pursuant to 42 U.S.C. §§ 1983 to redress the deprivation under color of
17 state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by
18 the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process
19 of law.

20 27. Venue is proper in this Court because the events described below took place in this judicial
21 district and the real property at issue is located in this judicial district.

22 PARTIES

23 28. Cotton is, and at all times mentioned was, an individual residing within the County of San
24 Diego, California.

25 29. Cotton is, and at all times material to this action was, the sole record owner of the commercial
26 real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").
27
28

30. Upon information and belief Defendant Geraci is, and at all times mentioned was, an individual residing within the County of San Diego, California.

31. Upon information and belief, Defendant Berry is, and at all times mentioned was, an individual residing within the County of San Diego, California.

32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

33. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

34. Upon information and belief, Defendant Jessica McElfresh ("McElfresh") is, and at all time mentioned was, an individual residing within the County of San Diego, California.

35. Upon information and belief, Defendant David Demian ("Demian") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

36. Upon information and belief, Defendant Joel Wohlfeil ("Wohlfeil") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

37. Upon information and belief, Defendant Cynthia Bashant ("Bashant") is, and at all time mentioned was, an individual residing within the County of San Diego, California.

38. Cotton does not know the true names and capacities of the defendants named DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES 1 through 10 are in some way responsible for the events described in this Complaint and are liable to Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the true names and capacities of these parties have been ascertained.

FACTUAL ALLEGATIONS

I. Background

A. Geraci is an intelligent and highly sophisticated businessman who has been sanctioned at least three times for his ownership/management of illegal marijuana dispensaries.

39. Geraci has approximately 40 years of experience providing tax services and has been the owner-manager of Tax & Financial Center, Inc. ("Tax Center") since 2001.

40. Tax Center provides sophisticated tax, financial and accounting services.

1 41. Geraci has been an Enrolled Agent with the IRS since 1999.

2 42. Geraci was a California licensed real estate salesperson for approximately 25 years from 1993-
3 2017.

4 43. Geraci has been sued by the City for his ownership/management of at least three illegal
5 marijuana dispensaries (the "Illegal Marijuana Dispensaries").

6 44. Geraci settled all three cases, collectively paying fines in the amount of \$100,000.

7 45. Geraci did not "coincidentally" lease three real properties to the Illegal Marijuana
8 Dispensaries; he was an operator and beneficial owner. *See, e.g., City of San Diego v. CCSquared*
9 *Wellness Cooperative*, Case No. Case No. 37-2015-00004430-CU-MC-CTL, ROA No. 44 (Stipulated
10 Judgment) at 2:15-16 ("The address where the Defendants were maintaining a marijuana dispensary
11 business at all times relevant to this action is 3505 Fifth Ave, San Diego, CA 92103").

12 B. State and City Cannabis Laws and Regulations

13 46. It is against State and City laws and regulations to apply for a cannabis license or permit in the
14 name of a third party who knowingly and falsely states in the application that they are the applicant for
15 the cannabis license and/or permit being sought.

16 47. It is against the public policy of the State and City to issue cannabis licenses or permits to
17 individuals with a history of engaging in illegal commercial marijuana activity.

18 48. It is against the public policy of the State and City to issue cannabis licenses or permits to an
19 applicant who seeks to acquire a license or permit via unlawful means.

20 49. As an example of applicable State law when the JVA was formed, California Business and
21 Professions Code ("BPC") § 19323, amended by 2016 Cal SB 837 and effective June 27, 2016,
22 mandated the denial of an application for an cannabis license if the applicant had, *inter alia*,
23 purposefully omitted required information, made false representations, been sanctioned for
24 unauthorized commercial marijuana activity in the three years preceding the application, or
25 failed to comply with local ordinances.

26 50. As an example of applicable City laws/regulations, the San Diego Municipal Code ("SDMC")
27 prohibits the furnishing of false or incomplete information in any application for any type of license or
28 permit from the City. SDMC § 11.0401(b) ("No person willfully shall make a false statement or fail to

1 report any material fact in any application for City license, permit, certificate, employment or other
2 City action under the provisions of the [SDMC].”).

3 51. Further, SDMC § 11.0402 provides that “[w]henver in [the SDMC] any act or omission is
4 made unlawful, it shall include causing, permitting, aiding or abetting such act or omission.”

5 52. SDMC § 121.0311 states as follows: “Violations of the Land Development Code shall be
6 treated as *strict liability offenses* regardless of intent.”²

7 53. Thus, applying for a cannabis permit or license, or aiding a party to apply for same, and willfully
8 making a false statement in the application is illegal regardless of intent.³

9 C. Gina Austin

10 54. Attorney Gina Austin attended the Thomas Jefferson School of Law and was admitted to the
11 California Bar on December 1, 2006.

12 55. Austin, with approximately two to three years of experience as an attorney, founded her law
13 firm ALG in 2009.

14 56. Austin, in her own words, is “an expert in cannabis licensing and entitlement at the state and
15 local levels and regularly speak[s] on the topic across the nation.”⁴

16 57. Austin has worked on at least 50 conditional use permit applications with the City.

17 58. Austin has been the single most successful attorney in the City in aiding her clients acquire
18 cannabis permits.

19 59. Austin’s success is not because she is a legal genius, but because she engages in and ratifies
20 unlawful actions against the competition, such as filing sham lawsuits like *Cotton I*.

21 ² The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing §§
22 111.0101-1412.0113). (SDMC § 111.0101(a).)

23 ³ See *City of San Diego v. 1735 Garnet, LLC*, D071332, at *16 (Cal. Ct. App. Oct. 30, 2017) (“[I]n a
24 recent case in which a land owner who leased property to a marijuana dispensary was sued for
25 violations of a Los Angeles Municipal Code (LAMC) section similar to SDMC section 121.0302(a),
26 the appellate court concluded the land owner’s argument that he lacked knowledge of the marijuana
27 dispensary and thus should not be held liable was meritless, when the violation of LAMC section
28 12.21A.1(a), was a *strict liability offense*. [Citation.] The same is true here. The terms of the SDMC
specifically provide that violations of the Land Development Act are to be treated as ‘*strict liability*
offenses.’ (SDMC, § 121.0311.)”).

⁴ *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL, ROA 127 (Declaration of Gina Austin) at ¶ 2.

1 **II. The November Document and the November 3, 2016 Phone Call**

2 60. In early 2016 Geraci contacted Cotton to purchase the Property because it potentially qualified
3 to operate a cannabis dispensary.

4 61. In good faith, Cotton engaged with Geraci in preliminary due diligence.

5 62. On October 31, 2016, Geraci, without Cotton's knowledge or consent, had Berry submit the
6 Berry Application.

7 63. On November 2, 2016, Geraci and Cotton reached the JVA pursuant to which Cotton would
8 sell the Property to Geraci.

9 64. Cotton's consideration for entering into the JVA included (i) a 10% equity position in the
10 dispensary, (ii) on a monthly basis, the greater of \$10,000 or 10% of the net profits of the dispensary,
11 (iii) a \$50,000 non-refundable deposit for Cotton to keep if the permit for a dispensary was not
12 approved at the Property, and (iv) Geraci promised to have his attorney, Gina Austin, promptly reduce
13 the JVA to writing for execution.

14 65. At the meeting Geraci and Cotton executed a three-sentence document drafted by Geraci (the
15 "November Document").

16 66. The November Document was executed with the intent it be a receipt for Cotton's acceptance
17 of \$10,000 in cash towards the \$50,000 non-refundable deposit.

18 67. That same day:

19 (i) Geraci emailed Cotton a copy of the November Document, which in the email
20 attachment Geraci had titled the November Document the 'Geraci – Cotton Contract'.

21 (ii) Upon review and within hours of having received the Geraci email Cotton replied and
22 requested that Geraci confirm in writing the November Document is not a purchase contract reflecting
23 'any final agreement'. (the "Request for Confirmation"); and

24 (iii) Geraci replied and confirmed the November Document is not a purchase contract (the
25 "Confirmation Email"). A true and correct copy of these emails are attached hereto as Exhibit 1.

26 68. The Request for Confirmation and the Confirmation Email prove that Cotton and Geraci did
27 not mutually assent to the November Document being a purchase contract for the Property (the "Mutual
28 Assent Issue").

1 69. On November 3, 2016, Cotton called Geraci to talk about Geraci branding the contemplated
2 dispensary at the Property with his nonprofit 151 Farms organization.

3 70. At 1:41 p.m. on November 3, 2016, Cotton emailed Geraci after they had spoken as follows:

4 Larry, [¶] Per our phone call the name 151 AmeriMeds has not been taken nor has there
5 been any business entity formed from it. If you see this as an opportunity to
6 piggyback some of the work I've done and will continue to do as 151 Farmers with
7 further opportunities as a potential franchise for your dispensary I'd like for you to
8 consider that as the process evolves. [¶] We'll firm it up as you see fit.

9 71. On March 21, 2017, after Geraci repeatedly refused to reduce the JVA to writing as promised,
10 Cotton emailed Geraci and terminated the JVA with Geraci for anticipatory breach.

11 72. In his email terminating the JVA, Cotton specifically informed Geraci that he was selling the
12 Property to a third-party: "To be clear, as of now, you have no interest in my [P]roperty, contingent or
13 otherwise. I will be entering into an agreement with a third-party[.]"

14 73. On March 21, 2017, after terminating the JVA with Geraci, Cotton entered into a written joint
15 venture agreement with Richard Martin.

16 **III. The Cotton I Litigation**

17 74. The next day, March 22, 2017, Weinstein emailed Cotton copies of the *Cotton I* complaint and
18 a lis pendens recorded by F&B on the Property (the "F&B Lis Pendens").

19 75. The *Cotton I* complaint alleges causes of action for (i) breach of contract, (ii) breach of the
20 covenant of good faith and fair dealing, (iii) specific performance, and (iv) declaratory relief.

21 76. All four causes of action are premised on the allegation that the November Document is a fully
22 integrated purchase contract.

23 77. The *Cotton I* complaint alleges that Cotton anticipatorily breached his agreement with Geraci
24 by demanding additional consideration not originally agreed to, including the 10% equity position in
25 the dispensary.
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1 78. Weinstein filed the *Cotton I* complaint relying on the *Pendergrass*⁵ line of reasoning seeking to
 2 use the parol evidence rule as a shield to bar the admission of the Confirmation Email and other
 3 incriminating parol evidence.⁶

4 79. On May 12, 2017, Cotton filed pro se a cross-complaint in *Cotton I* against Geraci and Berry
 5 with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent misrepresentation,
 6 (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied
 7 contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x)
 8 conspiracy, and (xi) declaratory and injunctive relief.

9 80. After dealing with the procedural difficulties of representing himself pro se, Cotton reached an
 10 agreement with a litigation investor to hire counsel to represent him in *Cotton I* and related legal matters
 11 required to acquire a cannabis permit at the Property.

12 81. Cotton's litigation investor reached an agreement with then-prominent and yet to be publicly
 13 disgraced cannabis attorney Jessica McElfresh for her representation of Cotton in *Cotton I*.

14 82. McElfresh did not disclose that Geraci and numerous of Geraci's associates are her clients.

15 83. McElfresh did not disclose that she shares numerous clients with Austin.

16 84. In May 2017, the San Diego County District Attorney's office filed charges against McElfresh
 17 for her efforts in seeking to conceal the illegal cannabis operations of one of her clients from
 18 government inspectors.

19 85. Specifically, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime,
 20 Manufacturing of a Controlled Substance, and Obstruction of Justice.

21 86. McElfresh charged Cotton for her legal services for Cotton in *Cotton I*.

22 87. McElfresh referred Cotton's litigation investor to David Demian of Finch, Thornton & Baird to
 23 represent Cotton in *Cotton I*.

24
 25
 26 ⁵ *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258.

27 ⁶ *See IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 (emphasis added) ("under *Pendergrass*,
 28 external evidence of promises inconsistent with the express terms of a written contract were not
 admissible, even to establish fraud.").

1 88. Neither McElfresh nor Demian disclosed that FTB had shared clients with Geraci and his
2 business.

3 89. FTB twice amended Cotton's pro se complaint with the intent to sabotage Cotton's case.

4 90. Most notably, FTB removed from Cotton's complaint the allegations that Geraci and Berry
5 conspired to acquire a cannabis permit at the Property in Berry's name because Geraci could not own
6 a cannabis permit because of the Illegality Issue.

7 91. Further, FTB removed Cotton's allegation that Geraci and Cotton had reached a valid and
8 binding oral agreement and replaced it with an allegation that Geraci and Cotton had reached an
9 agreement to agree in the future, which is not a valid and enforceable agreement.

10 92. Demian, like Weinstein, Austin and McElfresh, is a criminal with a license to practice law and
11 represents the most vile type of all attorneys – those who would connive to defeat their own client's
12 case.

13 **IV. The Disavowment Allegation**

14 93. From the filing of *Cotton I* in March 2017 until April 2018 Weinstein argued that the statute of
15 frauds and the parol evidence rule barred the Confirmation Email and other parol evidence as proof of
16 the JVA.

17 94. For example, Weinstein argued:

18 Cotton alleges, based on extrinsic evidence [(e.g., the Confirmation Email)], that the
19 actual agreement between the parties contains material terms and conditions in
20 addition to those in the [November Document] as well as a term (a \$50,000 deposit rather
21 than the \$10,000 deposit stated in the [November Document]) that expressly conflicts
22 with a term of the [November Document]. However, such a claim cannot stand as extrinsic
evidence cannot be employed to prove an agreement at odds with the terms of the
written memorandum.

23 95. However, in April 2018, attorney Jacob Austin specially appearing for Cotton filed a motion to
24 expunge the F&B Lis Pendens and cited and argued for the first time in *Cotton I* that Geraci/Weinstein
25
26
27
28

could not use the parol evidence rule to bar the Confirmation Email pursuant to the *Pendergrass* line of reasoning because it had been overruled by *Riverisland* in 2013 (the “Lis Pendens Motion”).⁷

96. In opposition to the Lis Pendens Motion, Geraci submitted a supporting declaration alleging for the first time that (i) he sent the Confirmation Email by mistake because he only read the first sentence of Cotton’s Request for Confirmation email; (ii) that on November 3, 2016 he called Cotton to tell him that he sent the Confirmation Email by mistake; (iii) Cotton agreed with Geraci that the Confirmation Email was sent by mistake and he was not entitled to a 10% equity position in the dispensary; and (iv) Cotton sent the Request for Confirmation **pretending** that Geraci and him had reached an agreement that included a 10% equity position for Cotton (the “Disavowment Allegation”).

97. Pursuant to FRCP 201 Cotton requests the Court take judicial notice of Geraci’s April 9, 2018 declaration attached hereto as Exhibit 2.

98. Geraci’s April 9, 2018 declaration contradicts dozens of his evidentiary and judicial admissions he set forth in his declarations, discovery responses and arguments in briefs prior to then.

99. Even assuming that Geraci’s April 9, 2018 declaration did not contradict his previous judicial and evidentiary admissions, his claim is barred by the statute of frauds and the parole evidence rule.

100. The statute of frauds applies to an agreement for the sale of real property as Geraci alleges, but it does not apply to a joint venture agreement as Cotton alleges.⁸

101. Geraci cannot just pretend the Confirmation Email has no legal effect.

V. The Federal Lawsuits

102. In February 2018, Cotton filed suit and a TRO in federal court against, *inter alia*, Geraci, Weinstein and Austin alleging, *inter alia*, RICO and § 1983 claims (“*Cotton IIP*”).⁹

⁷ *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* (“*Riverisland*”) (2013) 55 Cal.4th 1169, 1182 (“[W]e overrule *Pendergrass* and its progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch* [(1928) 204 Cal. 342, 347]: ‘*It was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.*’”) (emphasis added).

⁸ *Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 (“[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.”).

⁹ *Cotton v. Geraci*, Case No.: 18cv325-GPC(MDD).

1 103. On February 28, 2019, because of *Cotton I*, Judge Curiel stayed *Cotton III* pursuant to
2 the *Colorado River* doctrine.

3 104. In July 2019, Wohlfeil entered judgment against Cotton in *Cotton I* after a jury trial
4 implicitly finding that the November Document is a fully integrated purchase contract that has a lawful
5 object as a matter of law.

6 105. Cotton filed a motion for new trial ("MNT") arguing, *inter alia*, assuming the November
7 Document is a contract, it is an illegal contract that cannot be enforced. (*Cotton I*, ROA No 672.)

8 106. Wohlfeil denied the MNT believing Weinstein's frivolous opposition argument that
9 Cotton had waived the defense of illegality to the enforcement of a contract because Cotton had not
10 allegedly raised the Illegality Issue before in *Cotton I*.

11 107. Factually and legally the arguments are contradicted by the facts and law. Cotton did
12 raise the Illegality Issue before the MNT and even if he had not he cannot waive the defense of
13 illegality. See *City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) ("A party to an
14 illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and *cannot waive* his
15 right to urge that defense.").

16 108. On January 10, 2020, Judge Curiel recused himself from *Cotton III* after Cotton had
17 filed a motion to lift the *Colorado River* stay and a TRO seeking to have Judge Curiel found to be a
18 biased judge that was enforcing an illegal contract and a request for counsel.

19 109. Cotton believes that Judge Curiel realized that with the information contained within
20 his motion to lift the stay, Cotton was not a conspiracy nut and that Wohlfeil was a biased judge and
21 *Cotton I* represents a three-year long egregious miscarriage of justice.

22 110. *Cotton III* was transferred to Judge Bashant and on January 15, 2020 Bashant lifted the
23 *Colorado River* stay, but denied Cotton's in Forma Pauperis request for court appointed counsel.

24 111. On April 9, 2020, Cotton filed an ex parte application seeking reconsideration of
25 Bashant's order denying his request for counsel premised on, *inter alia*, the argument that Cotton
26 needed to prove Judge Wohlfeil is biased.

27 112. Getting any kind of relief from judges against judges is virtually impossible. Judges
28 protect judges.

1 113. On April 16, 2020, Judge Bashant denied Cotton's ex parte application in a typical pro
2 se fashion with a conclusory finding that Cotton had failed to prove "exceptional circumstances," but
3 without describing why.

4 114. Judge Wohlfeil is enforcing an illegal contract and he made statements that manifestly
5 prove he is biased because he stated Weinstein is not capable of acting unethically when the entire
6 *Cotton I* case is undisputable evidence that Weinstein is acting unethically.

7 115. Any reasonable person would find that a judge enforcing an illegal contract and
8 requiring a jury to determine a matter of law does represent exceptional circumstances.

9 116. Cotton now believes that with her recent rulings, Judge Bashant is covering up for
10 Wohlfeil.

11 117. Both Wohlfeil and Bashant served on the San Diego Superior Court for at least seven
12 years together before Bashant was elevated to the federal court.

13 118. Because of the violence and Wohlfeil's action led Martin to believe that he was actively
14 seeking to sabotage Cotton's case Martin sold his interest in the property to Cotton's former attorney,
15 Andrew Flores.

16 119. On April 3, 2020, Andrew Flores filed suit in federal court and an ex parte TRO after
17 Cotton told him that some of his supporters, who had lent him significant money, were considering
18 taking violent action against Geraci's attorneys to bring in law enforcement agencies to investigate this
19 case because Wohlfeil and the City Attorney's are corrupt. (*Flores, et al. v. Austin, et al.*, Case No.20-
20 cv-656-BAS-MDD.)

21 120. On April 20, 2020, Bashant denied Flores' TRO. The opening paragraph states:
22 "Plaintiffs... allege civil rights violations under 42 U.S.C. § 1983, make a 'neglect to perform wrongful
23 act' cause of action, and seek various forms of declaratory relief. The complaint is almost impossible
24 to summarize due to its length and confusing nature."

25 121. Bashant's order also alleges that Flores did not comply with FRCP 65(b) for the issuance
26 of a TRO based, in part, on Bashant's allegation that Corina Young is a "defendant."

27 122. First, according to Bashant, Flores lacks any professional competence as an attorney
28 because he sued for "neglect[ing] to perform wrongful act."

1 123. Flores did not.

2 124. Flores filed a § 1986 cause of action for “neglect to prevent a wrongful act” which is
3 clearly stated in the title page of his complaint.

4 125. Second, Corina Young is a *witness* who has been threatened from providing her
5 testimony. She is not a “defendant.”

6 126. Bashant simply made that up.

7 127. Third, Flores did provide notice, case law and argument for why notice is not required
8 pursuant to FRCP 65.

9 128. Fourth, given the preceding three points, Bashant’s allegation that the Flores’ complaint
10 is “confusing” is meritless as she clearly does not understand even the most basic facts she was
11 presented with.

12 129. The bottom line is that Bashant either knew that statements she attributed to Flores were
13 true or she did not know because she did not take the time to vet Flores’ complaint and TRO.

14 130. If Bashant knew they were false, she did so to purposefully denigrate anyone that seeks
15 to prove that Wohlfeil is a biased judge to Cotton’s great prejudice.

16 131. If Bashant did not know her statements were false, then without justification she is
17 making rulings warranted by law and facts, but in reality, she never even bothered understand the facts
18 and apply the law.

19 132. In either scenario, a reasonable person would conclude that Bashant is a biased judge
20 who is not impartial.

21 **VI. This Complaint**

22 133. The Flores complaint is 177 pages and explains in detail how the *Cotton I* complaint is
23 but one sham action among many filed in furtherance by Geraci and his associates seeking to acquire
24 as many cannabis permits as they can in the City to establish a monopoly.

25 134. Cotton does not have the ability to explain the conspiracy in a clear and succinct manner
26 so he files this amended complaint focused on the fact that the November Document cannot be a
27 contract because it lacks mutual assent, has an unlawful object and Judge Wohlfeil’s statements and
28 actions prove that he is biased.

1 135. Cotton did not have a fair and impartial tribunal.

2 136. Cotton does not have the ability to explain the entire conspiracy which gives rise to
3 RICO, antitrust, obstruction of justice, and fraud causes of action that includes multiple government
4 and private attorneys.

5 137. However, Cotton intends to prepare and file a motion seeking court counsel to amend
6 this Complaint to include all defendants against whom Cotton has valid causes of action.

7 **First Cause of Action -§ 1983**

8 (Plaintiff against Bashant)

9 138. Plaintiff realleges and incorporates herein by reference the allegations in the preceding
10 paragraphs.

11 139. The presence of bad faith can render an exercise of legal judgment judicial misconduct;
12 “Bad faith” in this context means “acts within the lawful power of a judge which nevertheless are
13 committed for a corrupt purpose, i.e., for any purpose other than the faithful discharge of judicial
14 duties.” *Cannon v. Commission on Judicial Qualifications*, 14 Cal.3d 678, 695 (Cal. 1975).

15 140. Cotton has filed judicial complaints against both Wohlfeil and Bashant for their failure
16 to exercise their judicial discretion in bad faith.

17 141. Bashant’s order finding that Cotton did not prove exceptional circumstances when
18 Wohlfeil entered a judgment in *Cotton I* that enforces an illegal contract as a matter of law, coupled
19 with her fabricated statements that she attributed to Flores that undermines the case against Wohlfeil,
20 would lead any reasonable person to believe that she is covering up for Wohlfeil. Or, at the very least,
21 that she is not impartial.

22 142. “Bias exists where a court has prejudged, or reasonably appears to have prejudged, an
23 issue.” *Kenneally v. Lungren*, 967 F.2d 329, 333 (9th Cir. 1992) (quotation and citation omitted).

24 143. Cotton should not have to “hope” that Bashant will not take other unethical and
25 prejudiced actions against him either to continue to cover up for Wohlfeil or to retaliate against him
26 for exposing that she fabricated and attributed multiple statements to Flores that were not true.

27 144. This relief against Bashant is prospective.

28 **Second Cause of Action -§ 1983**

(Plaintiff against Wohlfeil)

145. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

146. Plaintiff seeks to have the *Cotton I* judgment vacated and a new trial in state court where he originally filed his cross-complaint and Wohlfeil should not continue to preside over *Cotton I*.

147. As with Bashant, Cotton should not have to hope that Wohlfeil will not retaliate against him for exposing him for being a biased judge that exposed him for being a judge that thinks the defense of illegality is capable of being waived because Cotton had allegedly not raised the Illegality Issue before the MNT.

148. This relief against Wohlfeil is prospective.

Third Cause of Action – Declaratory Relief

(Plaintiff against the Geraci, Berry, Weinstein, Austin, McElfresh and Demian)

149. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

150. Plaintiff seeks to have the *Cotton I* judgment declared void and vacated for being procured by a fraud on the court, the product of judicial bias, and because it enforces an illegal contract.

Fourth Cause of Action – Punitive Damages

(Plaintiff against all defendants)

151. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

152. “At some point, justice delayed is justice denied.” *Southern Pacific Transp. Co. v. I.C.C.*, 871 F.2d 838, 848 (9th Cir. 1989).

153. Since March 2017, Plaintiff has incurred over \$3,000,000 from 7 different law firms and at least three contract paralegals in legal fees. The law firms are: (i) Finch, Thornton, & Baird; (ii) Law Office of Jacob Austin; (iii) Kerr & Wagstaffe LLP; (iv) Law Office of JoEllen Plaskett; (v) Law Office of Andrew Flores; (vi) California Appellate Law Group; and (vii) Tiffany & Bosco. The three contract paralegals are: (i) Leanne Thomas; (ii) Zoe Villaroman, and (iii) Lori Hatmaker.

154. "Generally, [punitive damages] cases fall into three categories: (1) really stupid defendants; (2) really mean defendants; and, (3) really stupid defendants who could have caused a great deal of harm by their actions but who actually caused minimal harm." *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 453 n. 15 (1993) (citation and quotation omitted).

155. Judges are protected by their judicial immunity.

156. But *Cotton I* at every point, has failed to state a cause of action as filed when Weinstein incorrectly assumed the parol evidence rule would bar the Confirmation Email and as de facto amended, when confronted by *Riverisland*, to alleging that the Confirmation Email was sent by mistake.

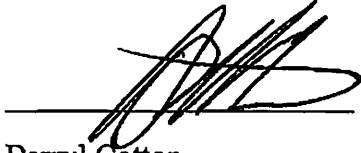
157. Cotton believes it would be an egregious miscarriage of justice to find that defendants can file and maintain a malicious prosecution action that at no point stated a cause of action and rely on the judgments or orders by judges, that were biased against Cotton, to avoid being held liable for Cotton's legal fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That this Court disqualify Bashant from continuing to preside over this matter;
2. That the *Cotton I* judgment be declared void;
3. That the *Cotton I* action be stayed pending resolution of this action;
4. That Wohlfeil be declared bias and prohibited from continuing to preside over Cotton I upon its resumption pending resolution of this Complaint;
5. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than \$7,000,000;
6. Punitive damages against all defendants saved Wohlfeil and Bashant who are protected by their judicial immunity;
7. That this Court appoint Cotton counsel;
8. That this Court grant Cotton's appointed counsel leave to amend this Complaint to include all defendants and set forth all material allegations; and
9. That other relief is awarded as the Court determines is in the interest of justice.

1
2 Dated: May 13, 2020.

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5 Darryl Cotton,

6 Cotton and Cotton Pro Se
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EXHIBIT “B”

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

PLAINTIFF'S COMPLAINT FOR:

- 1. BREACH OF CONTRACT;**
- 2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;**
- 3. SPECIFIC PERFORMANCE; and**
- 4. DECLARATORY RELIEF.**

Plaintiff, LARRY GERACI, alleges as follows:

1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and Defendant COTTON that is the subject of this action was entered into in San Diego County, California, and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County, California (the "PROPERTY").

4. Currently, and at all times since approximately 1998, Defendant COTTON owned the PROPERTY.

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

1 informed and believe and based thereon allege that each of the fictitiously-named defendants is in some
2 way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as
3 herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend
4 this complaint to state the true names and/or capacities of such fictitiously-named defendants when the
5 same are ascertained.

6 6. Plaintiff alleges on information and belief that at all times mentioned herein, each and
7 every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in
8 interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged,
9 were acting, whether individually or through their duly authorized agents and/or representatives, within
10 the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate
11 structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge,
12 permission, and consent of the remaining defendants, and each of them, and that said defendants
13 ratified and approved the acts of all of the other defendants.

14 GENERAL ALLEGATIONS

15 7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a
16 written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated
17 therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

18 8. On or about November 2, 2016, GERACI paid to COTTON \$10,000.00 good faith
19 earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
20 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
21 conditions of the written agreement.

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
28 \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

3 **(For Breach of Contract against Defendant COTTON and DOES 1-5)**

4 10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
5 paragraphs 1 through 9 above.

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

17 12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer
18 damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI
19 in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended
20 to date on the CUP process for the PROPERTY.

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**
23 **against Defendant COTTON and DOES 1-5)**

24 13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
25 paragraphs 1 through 12 above.

26 14. Each contract has implied in it a covenant of good faith and fair dealing that neither
27 party will undertake actions that, even if not a material breach, will deprive the other of the benefits of
28 the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

1 withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the
2 PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON
3 has breached the implied covenant of good faith and fair dealing.

4 15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair
5 dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for
6 return of all sums expended by GERACI in reliance on the agreement, including but not limited to the
7 estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

8 **THIRD CAUSE OF ACTION**

9 **(For Specific Performance against Defendants COTTON and DOES 1-5)**

10 16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
11 paragraphs 1 through 15 above.

12 17. The aforementioned written agreement for the sale of the PROPERTY is a valid and
13 binding contract between Plaintiff GERACI and Defendant COTTON.

14 18. The aforementioned written agreement for the sale of the PROPERTY states the terms
15 and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible
16 to specific performance.

17 19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a
18 writing that satisfies the statute of frauds.

19 20. The aforementioned written agreement for the purchase and sale of the PROPERTY is
20 fair and equitable and is supported by adequate consideration.

21 21. Plaintiff GERACI has duly performed all of his obligations for which performance has
22 been required to date under the agreement. GERACI is ready and willing to perform his remaining
23 obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for
24 a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary
25 thus satisfying that condition precedent, then to pay the remaining \$790,000.00 balance of the purchase
26 price.

27 22. Defendant COTTON is able to specifically perform his obligations under the contract,
28 namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

1 Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that
2 condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for
3 receipt of payment from GERACI or assignee of the remaining \$790,000.00 balance of the purchase
4 price.

5 23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions
6 that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary
7 and to specifically perform the contract upon satisfaction of the condition that such approval is in fact
8 obtained.

9 24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's
10 attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not
11 intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon
12 satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana
13 dispensary and tender the remaining balance of the purchase price.

14 25. The aforementioned written agreement for the purchase and sale of the PROPERTY
15 constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy,
16 and adequate legal remedy is presumed.

17 26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon
18 specifically enforcing the written agreement for the purchase and sale of the PROPERTY from
19 Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

20 **FOURTH CAUSE OF ACTION**

21 **(For Declaratory Relief against Defendants COTTON and DOES 1-5)**

22 27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
23 paragraphs 1 through 14 above.

24 28. An actual controversy has arisen and now exists between Defendant COTTON, on the
25 one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written
26 agreement contains terms and condition that conflict with or are in addition to the terms stated in the
27 written agreement. GERACI disputes those conflicting or additional contract terms.

1 29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the
2 written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants
3 thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or
4 his assignee. Such a declaration is necessary and appropriate at this time so that each party may
5 ascertain their rights, duties, and obligations thereunder.

6 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

7 **On the First and Second Causes of Action:**

8 1. For compensatory damages in an amount in excess of \$300,000.00 according to proof at
9 trial.

10 **On the Third Cause of Action:**

11 2. For specific performance of the written agreement for the purchase and sale of the
12 PROPERTY according to its terms and conditions; and

13 3. If specific performance cannot be granted, then damages in an amount in excess of
14 \$300,000.00 according to proof at trial.

15 **On the Fourth Cause of Action:**

16 4. For declaratory relief in the form of a judicial determination of the terms and conditions
17 of the written agreement and the duties, rights and obligations of each party under the written
18 agreement.

19 **On all Causes of Action:**

20 5. For temporary and permanent injunctive relief as follows: that Defendants, and each of
21 them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and
22 all persons acting in concert with or participating with them, directly or indirectly, be enjoined and
23 restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a
24 Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

25 6. For costs of suit incurred herein; and

26 ///

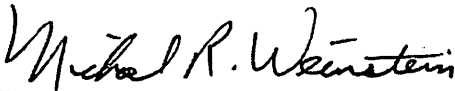
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1 7. For such other and further relief as the Court may deem just and proper.

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3 Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

4
5 By: 
6 Michael R. Weinstein
7 Scott H. Toothacre

8 Attorneys for Plaintiff
9 LARRY GERACI
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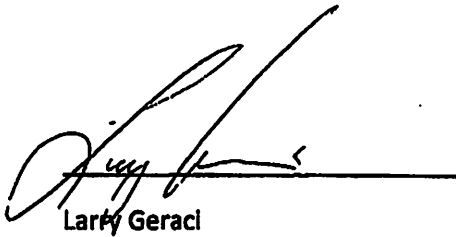
EXHIBIT A

11/02/2016

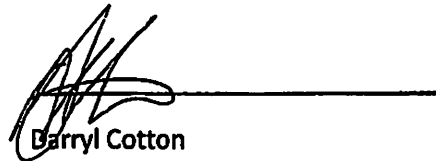
Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

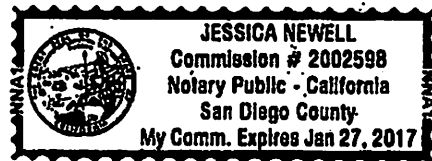
County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Gerao,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Signature Jessica Newell (Seal)

EXHIBIT “C”

ORIGINAL

Darryl Cotton, *In pro se*
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387
Defendant and Cross-Complainant

FILED
CLERK OF SUPERIOR COURT OFFICE 18
SAN DIEGO DIVISION

2017 MAY 12 P 3:49

CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

LARRY GERACI, an individual,
Plaintiff,

vs.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,
Defendant.

DARRYL COTTON, an individual,
Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1
through 10, inclusive,
Cross-Defendants.

CASE NO.: 37-2017-00010073-CU-BC-CTL

Judge: The Honorable Joel Wohlfeil
Dept.: C-73

COTTON'S CROSS-COMPLAINT FOR:

1. QUIET TITLE
2. SLANDER OF TITLE
3. FRAUD / FRAUDULENT
MISREPRESENTATION
4. FRAUD IN THE INDUCEMENT
5. BREACH OF CONTRACT
6. BREACH OF ORAL CONTRACT
7. BREACH OF IMPLIED CONTRACT
8. BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING
9. TRESPASS
10. CONSPIRACY
11. DECLARATORY AND INJUNCTIVE
RELIEF

Defendant and Cross-complainant Darryl Cotton ("Cotton") alleges as follows:

1. Cotton is, and at all times mentioned was, an individual residing within the County of San Diego, California.

2. Plaintiff and Cross-defendant Larry Geraci ("Geraci") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

1 3. Cross-defendant Rebecca Berry ("Berry") is, and at all times mentioned was,
2 an individual residing within the County of San Diego, California.

3 4. Cotton, at all times material to this action, was the sole owner of the
4 commercial property located at 6176 Federal Boulevard in San Diego, California
5 92114 (the "Property"), the subject of this dispute.

6 5. Cotton is the President of Inda-Gro, a manufacturer of environmentally
7 sustainable products, primarily induction lighting systems, that help enhance crop
8 production while conserving energy and water resources.

9 6. Cotton is the President of 151 Farms, a not-for-profit organization he founded
10 in that is focused on providing ecologically sustainable cultivation practices for the
11 food and medical needs of urban communities.

12 7. Cotton, at the Property, operates both his Inda-Gro business and his 151
13 Farms not-for-profit.

14 8. Cotton does not know the true names and capacities of the defendants named
15 DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed
16 and believes that DOES 1 through 10 are in some way responsible for the events
17 described in this Cross-complaint and are liable to Cotton based on the causes of
18 action below. Cotton will seek leave to amend this Cross-complaint when the true
19 names and capacities of these parties have been ascertained.

20 9. Based on the foregoing, jurisdiction is proper in this Court and venue in San
21 Diego County, California.

22 GENERAL ALLEGATIONS

23 10. Geraci contacted Cotton in August of 2016 seeking to purchase the
24 Property from Cotton. Geraci desired to buy the Property because it meets certain
25 requirements by the City of San Diego (the "City") that would allow Geraci to apply
26 for a Conditional Use Permit ("CUP"). If granted, the CUP would permit the operation
27 of a Medical Marijuana Consumer Cooperative ("MMCC") at the Property.

28 11. Subsequent to the initial conversation in August between Geraci and
Cotton, over the course of approximately two months, the parties entered into

1 intense negotiations regarding the sale of the Property. During this period of time, in
2 good-faith anticipation of finalizing the sale of the Property, the parties
3 simultaneously engaged in preliminary due diligence and preparation of the CUP
4 application.

5 12. During the course of the negotiations and preparation of the CUP
6 application, Geraci represented to Cotton, among other things, the following:

7 a. That his due diligence uncovered a critical zoning issue that would
8 prevent the Property from being issued a CUP permit unless he lobbied with the City
9 to have the issue resolved (the "Critical Zoning Issue");

10 b. That he, through his personal and professional relationships, was in a
11 unique position to lobby and influence key City political figures to (i) have the Critical
12 Zoning Issue favorably resolved and (ii) have the CUP application approved once
13 submitted.

14 c. That he was in a position to successfully operate a MMCC because, at
15 that point in time, he owned and was managing several other marijuana dispensaries
16 in the San Diego County area.

17 d. That as an Enrolled Agent for the IRS, and the owner-manager of Tax
18 and Financial Center, Inc. (a tax-related business), he was an individual that Cotton
19 could trust because he operated in a fiduciary capacity on a daily-basis for many
20 high-net worth individuals and businesses.

21 13. On November 2, 2016, after months of negotiations, Geraci and Cotton
22 met at Geraci's office to negotiate the unsettled terms and finalize their agreement
23 for the sale of the Property. The parties agreed to over thirty different terms for the
24 sale of the Property and their intention was to reduce those terms to a writing.

25 14. The consideration for the purchase of the Property consisted of
26 monetary and non-monetary components. Under the terms of the agreement
27 reached, Geraci agreed to provide Cotton, among other things, the following
28 consideration for the Property:

a. The sum of \$800,000;

- b. A 10% equity stake in the MMCC upon the City's approval of the CUP at the Property (the "Business"); and
- c. On a monthly basis, 10% of the profits of the Business for the preceding month or \$10,000, whichever was greater.

15. A condition precedent to closing the sale of the Property was the City's approval of the CUP application.

16. Further, Geraci would pay Cotton a non-refundable deposit in the amount of \$50,000 (the "Non-Refundable Deposit"). Geraci was then to submit a CUP application to the City. If the City granted the application, the sale and transfer of title to the Property to Geraci would be consummated upon Geraci's payment of the \$750,000 balance. However, if the City rejected the CUP application, the sale and transfer of the Property would not proceed and Cotton would be entitled to retain the \$50,000 Non-Refundable Deposit.

17. The transaction was to be effectuated via two agreements: (i) a Real Estate Purchase Agreement and (ii) a Side Agreement. The Real Estate Purchase Agreement was to specify the payment of \$400,000 from Geraci to Cotton for the purchase of the Property.

18. The Side Agreement was to include the additional, remaining \$400,000 payment obligation (such that, in aggregate, the monetary components of the Real Estate Purchase Agreement and the Side Agreement totaled \$800,000). The Side Agreement was also to include various other material terms, including, without limitation, the 10% equity stake and monthly profit sharing (i.e., 10% of profits or a minimum monthly payment of \$10,000).

19. After the parties finalized consideration for the Property, Geraci requested of Cotton that he be given time to put together the \$50,000 Non-Refundable Deposit. Geraci alleged that he needed time as he had limited cash and he would require the cash he did have to immediately fund the costly preparation of the CUP application and lobbying efforts needed to resolve the Critical Zoning Issue.

1 20. Geraci offered to provide Cotton on that day \$10,000 as a show of
2 "good-faith" towards the \$50,000 Non-Refundable Deposit even though the parties
3 did not have a final legal agreement for the sale of the Property. Cotton raised his
4 concern, that he would not receive the balance of the Non-Refundable Deposit if the
5 City denied the CUP application. Geraci promised to pay the balance of the Non-
6 Refundable Deposit prior to submission of the CUP application with the City and
7 stressed the need to immediately resolve the Critical Zoning Issue.

8 21. Cotton agreed and Geraci offered to incur the cost of having his
9 attorney, Gina Austin, "quickly" draft the Real Estate Purchase Agreement and the
10 Side agreement.

11 22. At Geraci's request, the parties executed a three-sentence agreement
12 that Geraci stated was for there to be a record of Cotton's receipt of the \$10,000
13 "good-faith" deposit (the "November 2nd Agreement").

14 23. That same day at 3:11 PM, Geraci emailed Cotton a scanned copy of
15 the notarized November 2nd Agreement.

16 24. Later that day at 6:55 PM, Cotton replied to Geraci, noting:
17 "I just noticed the 10% equity position in the dispensary was
18 not language added into that document. I just want to make
19 sure that we're not missing that language in any final
20 agreement as it is a factored element in my decision to sell the
21 property. I'll be fine if you would simply acknowledge that here
22 in a reply."

23 25. Approximately 2 hours later at 9:13 PM, Geraci replied, stating "No no
24 problem at all." (Exhibit 1.)

25 26. Cotton, having received written confirmation from Geraci regarding the
26 10% equity stake, continued to operate in good-faith under the assumption that
27 Geraci's attorney would draft the appropriate legal agreements reflecting the deal the
28 parties reached.

 27. Thereafter, over the course of the next four months, Cotton continuously
reached out to Geraci regarding the following three issues:

- a. The progress of the Critical Zoning Issue that precluded the submission of the CUP application;
- b. The balance of the Non-Refundable Deposit; and
- c. The status of the drafts of the Real Estate Purchase Agreement and the Side Agreement.

28. During this four-month period Geraci was predominantly unresponsive and failed to make substantive progress on any of his promises.

29. On January 6, 2017, Cotton, exasperated with Geraci for failing to provide any substantive updates on the Critical Zoning Issue or drafts of the legal agreements, texted him "Can you call me. If for any reason you're not moving forward I need to know."

30. That same day Geraci replied via text, stating "I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to call you later today still very sick."

31. Between January 18, 2017 and February 7, 2017, the following text conversation took place between Geraci and Cotton:

Geraci: "The sign off date they said it's going to be the 30th."

Cotton: "This resolves the zoning issue?"

Geraci: "Yes"

Cotton: "Excellent"

Cotton: "How goes it?"

Geraci: "We're waiting for confirmation today at about 4 o'clock"

Cotton: "Whats new?"

Cotton: "Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet."

Geraci: "I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork."

32. Thus, Geraci's communications to Cotton regarding final resolution of the Critical Zoning Issue (the prerequisite to the submission of the CUP application and the latest point at which Cotton would receive the remaining \$40,000 of the Non-Refundable Deposit) was that although imminent, it had not yet been completed.

1 33. On February 15, 2017, Geraci texted Cotton "we are preparing the
2 documents with the attorney and hopefully will have them by the end of this week."

3 34. On February 22, 2017, Geraci texted Cotton "Contract should be ready
4 in a couple days."

5 35. On February 27, 2017, Geraci emailed Cotton a draft Agreement of
6 Purchase and Sale of Real Property for the Property (the "First Draft Real Estate
7 Agreement"). The First Draft Real Estate Agreement completely failed to reflect the
8 agreement that Geraci and Cotton had reached on November 2, 2016. Cotton called
9 Geraci who said it was a miscommunication between him and his attorney Gina
10 Austin and he promised to have her revise the First Draft Real Estate Agreement.

11 36. On March 2, 2017, Geraci emailed Cotton a draft Side Agreement (the
12 "First Draft Side Agreement").

13 37. On March 3, 2017, having reviewed the First Draft Side Agreement,
14 Cotton emailed Geraci stating: "I see no reference is made to the 10% equity position
15 [and] para 3.11 looks to avoid our agreement completely." Paragraph 3.11 of the
16 First Draft Side Agreement states that the parties have no joint venture or
17 partnership agreement of any kind, in complete contradiction of the deal reached
18 between the parties.

19 38. Thereafter, Cotton became increasingly frustrated by Geraci's lack of
20 progress on the outstanding issues. He noted to Geraci during a conversation that he
21 would be looking to get an attorney to revise the inaccurate drafts of the legal
22 agreements provided. Geraci assuaged Cotton by telling him it was a
23 misunderstanding on his attorney's part and that Cotton could speak with her directly
24 regarding any comments to the drafts.

25 39. On March 6, 2017, Geraci, having spoken with Cotton and knowing he
26 contemplated attending a social event at which his attorney Gina Austin would be,
27 texted "Gina Austin is there she has a red jacket on if you want to have a
28 conversation with her."

1 40. On March 7, 2017, Geraci emailed Cotton a revised draft of the Side
2 Agreement (the "Second Draft Side Agreement"). The cover email contained the
3 following language: "... the 10k a month might be difficult to hit until the sixth month...
4 can we do 5k, and on the seventh month start 10k?"

5 41. The Second Draft Side Agreement contained the following language:
6 "Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business
7 after all expenses and liabilities have been paid... Further, Buyer hereby guarantees
8 a profits payment of not less than \$5,000 per month for the first three months the
9 Business is open... and \$10,000 a month for each month thereafter the Business is
10 operating on the Property."

11 42. On or about March 16, 2017, having grown increasingly tired of Geraci's
12 failures to respond to his requests for substantive updates on the Critical Zoning
13 Issue, Cotton reached out directly to the Development Project Manager for the City
14 that is responsible for CUP applications. Cotton discovered from the Development
15 Project Manager that a CUP application had been submitted on his Property on
16 October 31, 2016.

17 a. Cotton specifically recalled that day, October 31, 2016, as it was the day
18 that Geraci had asked Cotton to execute an Ownership Disclosure Statement
19 reflecting that Cotton had leased the Property to an individual named Rebecca Berry.
20 Geraci told Cotton he required the Ownership Disclosure Statement because:

21 i. As the parties did not have a final agreement in place at that time,
22 he needed it to show other professionals involved in the preparation of the CUP
23 application and the lobbying efforts to prove that he had access to the Property; and

24 ii. As a sign of good-faith by Cotton as they had not reached a final
25 agreement and he wanted something in writing to prove Cotton's support of the CUP
26 application at the Property as he needed to immediately spend large amounts of
27 cash to continue with the preparation of the CUP application and the Critical Zoning
28 Issue lobbying efforts.

1 43. Geraci told Cotton that Rebecca Berry is very familiar with medical
2 marijuana operations, is a trusted employee and is involved in his other medical
3 marijuana dispensaries.

4 44. Cotton has never met or directly entered into any type of agreement with
5 Rebecca Berry. Insofar as she is involved with Cotton, she has always been an
6 agent of Geraci and has been effectuating his plans, either in concert with him or at
7 his direction.

8 45. On March 16, 2017, Cotton, after having discovered that Geraci had
9 submitted a CUP application on the Property and, therefore, had been deceiving him
10 for months, emailed Geraci stating:

11 "we started these negotiations 4 months ago and the drafts and our
12 communications have not reflected what agreed upon and are still far from
13 reflecting our original agreement. Here is my proposal, please have your attorney
14 Gina revise the Purchase Agreement and the Side Agreement to incorporate all
15 the terms we have agreed upon so that we can execute final versions and get this
16 closed... Please confirm by Monday 12:00 PM whether we are on the same page
17 and you plan to continue with our agreement ... If, hopefully, we can work through
18 this, please confirm that revised final drafts that incorporate the terms [we agreed
19 to] will be provided by Wednesday at 12:00 PM. I promise to review and provide
20 comments that same day so we can execute the same or next day."

21 46. In response to this email, on the same day, Geraci texted Cotton asking
22 "Can we meet tomorrow[?]"

23 47. On March 17, 2017, Cotton replied via email to Geraci's text request for
24 an in-person meeting stating that:

25 "I would prefer that until we have final agreements that we converse exclusively
26 via email. My greatest concern is that you get a denial on the CUP application
27 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel
28 that you are not dealing with me in good faith, you told me repeatedly that you
could not submit a CUP application until certain zoning issues had been resolved
and that you had spent hundreds of thousands of dollars on getting them
resolved. You lied to me, I found out yesterday from the City of San Diego that
you submitted a CUP application on October 31 2016 BEFORE we even signed
our agreement on the 2nd of November."

1 48. Thereafter, communications increasingly devolved between Geraci and
 2 Cotton as Geraci refused to confirm in writing, at Cotton's repeated requests, the
 3 original terms of their agreement.

4 49. On March 21, 2017, it being apparent to Cotton that Geraci had no
 5 intention of confirming or honoring the agreement they had reached on November
 6 2nd, 2016, Cotton called the Development Project Manager and asked her to
 7 withdraw the CUP application pending on his Property.

8 50. Later that day, the Development Project Manager emailed Cotton stating
 9 that she could not withdraw the CUP application on Cotton's Property as he
 10 requested because Rebecca Berry is the "financial responsible party" on the CUP
 11 application and not Cotton.

12 51. Also, on March 21, 2017, Cotton emailed Geraci letting him know that
 13 he had spoken with

14 "the Development Project Manager for the City of San Diego who is handling CUP
 15 applications. She made it 100% clear that there are no restrictions on my property
 16 and that there is no recommendation that a CUP application on my property be
 17 denied. In fact, she told me that the application had just passed the 'Deemed
 18 Complete' phase and was entering the review process. She also confirmed that
 19 the application was paid for in October, before we even signed our
 20 agreement...[t]his is our last communication, you have failed to live up to your
 21 agreement and have continuously lied to me and kept pushing off creating final
 22 legal agreements because you wanted to push it off to get a response from the
 23 City without taking the risk of losing the non-refundable deposit in the event the
 24 CUP application is denied. **To be clear, as of now, you have no interest in my**
 25 **property...**" (emphasis added.)

26 52. After terminating his agreement with Geraci, Cotton entered into an
 27 agreement with a third-party for the sale of the Property on the same day.

28 53. On March 22, 2017, Cotton was emailed the instant Complaint by
 29 Geraci's attorney, Michael Weinstein, claiming that

30 "[t]he November 2, 2016, written agreement is a valid, binding and enforceable
 31 agreement between Larry Geraci and [me] for the purchase and sale of the
 32 Property according to its terms and conditions... You have been paid \$10,000.00
 33 and, in the event the condition precedent of obtaining CUP approval is satisfied,
 34 then the remaining balance of \$790,000.00 will be due to you from Larry Geraci

1 and you will be obligated to transfer title to Larry Geraci or his assignee."

2 54. On April 29, 2017, Cotton emailed and provided Geraci and Rebecca
3 Berry with drafts of his Answer to Plaintiff's Complaint and his Cross-Complaint.
4 Cotton noted that notwithstanding Geraci's unethical behavior that led to this
5 needless dispute and the overwhelming evidence making clear Geraci's culpability,
6 that he would like to resolve the dispute as quickly and fairly as possible.

7 55. Neither Geraci or Berry replied to Cotton's request to settle the dispute.

8 56. On May 5, 2017, the Court notified Cotton that his Answer & Cross-
9 complaint were rejected because he submitted both pleadings in a single document.
10 Realizing that some time had passed for Geraci, Geraci's attorney and Berry to
11 further review and think about the evidence against them, Cotton emailed Geraci and
12 Berry again seeking to reach a settlement and "work out something reasonable."

13 57. Neither Geraci nor Berry replied to his request to settle the dispute.

14 **Count One**

15 **(Quiet Title)**

16 58. Cotton hereby incorporates by reference all of his allegations contained
17 above as if fully set forth herein.

18 59. This cause of action is directed against plaintiff Larry Geraci and cross
19 defendant Rebecca Berry.

20 60. Cotton is the sole and rightful owner of record of the Property.

21 61. Based on the allegations contained in Geraci's Complaint and the Lis
22 Pendens filed by Geraci on the Property, Geraci has made a claim for title to the
23 Property adverse to Cotton. Further, Ms. Berry has filed a CUP application claiming
24 to be the sole owner of the Property.

25 62. Cotton is entitled to an order barring and forever estopping Geraci and
26 Berry from having or claiming any right or title to the Property.
27
28

Count Two
(Slander of Title)

63. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

64. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

65. Geraci and Berry disparaged Cotton's exclusive valid title by and through the preparing, posting, publishing, and recording of the documents previously described herein, including, but not limited to, the instant Complaint, the Lis Pendens filed on the Property and the CUP application.

66. Geraci knew that such documents were improper in that at the time of the execution and delivery of the documents, Geraci had no right, title, or interest in the Property. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Cotton's legal title to the Property. By posting, publishing and recording documents, Geraci's disparagement of Cotton's legal title was made to the world at large.

67. As a direct and proximate result of Geraci and Berry's conduct in publishing these documents, Cotton's title to the Property has been disparaged and slandered, and there is a cloud on Cotton's title, and Cotton has suffered and continues to suffer damages, including, but not limited to, lost future profits, in an amount to be proved at trial, but in an amount of no less than \$2,000,000.

68. As a further and proximate result of Geraci's conduct, Cotton has incurred expenses in order to clear title to the Property. Moreover, these expenses are continuing and Cotton will incur additional charges for such purpose until the cloud on Cotton's title to the Property has been removed. The amounts of future expenses are not ascertainable at this time, but will be proven at trial.

69. As a further and proximate result of Geraci's conduct, Cotton has suffered humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to his health and

1 well-being, and continues to suffer such injuries on an ongoing basis. The amount of
2 such damages shall be proven at trial.

3 a. By fortuitous happenstance, the Property qualifies to apply for a CUP,
4 which represents a significant windfall for Cotton and has the potential to be a life-
5 changing opportunity for him. Unfortunately, Geraci and Berry have sought to first
6 fraudulently deprive Cotton of the benefits that he bargained for and to which Geraci
7 agreed to on November 2nd, 2016, and, second, Geraci continues to harm Cotton by
8 proceeding with this action when he absolutely knows that the evidence is
9 unequivocal and he will not prevail if this action is seen through.

10 b. Geraci's continuation of this action causes ever increasing damage to
11 Cotton on a daily basis because, simply put, he is indescribably tormented
12 emotionally and physically as he sees a once in a lifetime opportunity, that could put
13 him in a position to provide for his loved ones and support him into retirement, being
14 destroyed by Geraci and Berry's greed and malicious behavior.

15 70. At the time that the false and disparaging documents were created and
16 published by Geraci, Geraci knew the documents were false and created and
17 published them with the malicious intent to injure Cotton and deprive him of his right,
18 title, and interest in the Property, and to obtain the Property for his own use by
19 unlawful means.

20 71. The conduct of Geraci in publishing the documents described above
21 was fraudulent, oppressive, and malicious. Therefore, Cotton is entitled to an award
22 of punitive damages in an amount sufficient to punish Geraci for his malicious
23 conduct and to deter such outrageous misconduct in the future.

24 **Count Three**

25 **(Fraud / Fraudulent Misrepresentation)**

26 72. Cotton hereby incorporates by reference all of his allegations contained
27 above as if fully set forth herein.

28 73. This cause of action is directed against plaintiff Larry Geraci.

1 74. On November 2, 2016, Geraci represented to Cotton, among other
2 things, that:

3 a. He would honor the agreement reached on November 2nd, 2016, which
4 included a 10% equity stake in the Business and a guaranteed monthly equity
5 distribution of \$10,000 a month.

6 b. He would pay the balance of the non-refundable deposit as soon as
7 possible, but at the latest when the alleged critical zoning issue was resolved, which,
8 in turn, he alleged was a necessary prerequisite for submission of the CUP
9 application.

10 c. He understood and confirmed the November 2nd Agreement was not the
11 final agreement for the purchase of the Property.

12 d. That he, Geraci, as an Enrolled Agent by the IRS was someone who
13 was held to a high degree of ethical standards and could be trusted effectuate the
14 agreement reached.

15 75. That the preparation of the CUP application would be very time
16 consuming and take hundreds of thousands of dollars in lobbying efforts.

17 76. Geraci knew that these representations were false because, among
18 other things, Geraci had already filed a CUP application with the City of San Diego
19 prior to that day. His subsequent communications via email and text messages make
20 clear that he continued to represent to Cotton that the preliminary work of preparing
21 the CUP application was underway, when, in fact, he was just stalling for time.
22 Presumably, to get an acceptance or denial from the City and, assuming he got a
23 denial, to be able to deprive Cotton of the \$40,000 balance due on the Non-
24 Refundable Deposit.

25 77. Geraci intended for Cotton to rely on his representations and,
26 consequently, not engage in efforts to sell his Property.

27 78. Cotton did not know that Geraci's representations were false.

28 79. Cotton relied on Geraci's representations.

1 80. Cotton's reliance on Geraci's representations were reasonable and
2 justified.

3 81. As a result of Geraci's representations to Cotton, Cotton was induced
4 into executing the November 2nd Agreement, giving Geraci the only basis of his
5 Complaint and, consequently, among other unfavorable results, allowing Geraci to
6 unlawfully create a cloud on title on the Property. Thus, Cotton has been forced to
7 sell his Property at far from favorable terms.

8 82. Cotton has been damaged in an amount of no less than \$2,000,000.
9 Additional damages from potential future profit distributions and other damages will
10 be proven at trial.

11 83. Geraci's representations were intentional, willful, malicious, outrageous,
12 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with
13 the intent to deprive Cotton of his interest in the Property.

14 84. This intentional, willful, malicious, outrageous and unjustified conduct
15 entitles Cotton to an award of general, compensatory, special, exemplary and/or
16 punitive damages.

17 Count Four

18 (Fraud in the Inducement)

19 85. Cotton hereby incorporates by reference all of his allegations contained
20 above as if fully set forth herein.

21 86. This cause of action is directed against plaintiff Larry Geraci.

22 87. Geraci made promises to Cotton on November 2nd, 2016, promising to
23 effectuate the agreement reached on that day, but he did so without any intention of
24 performing or honoring his promises.

25 88. Geraci had no intent to perform the promises he made to Cotton on
26 November 2nd, 2016 when he made them, as is clear from his actions described
27 herein, that he represented he would be preparing a CUP application, when, in fact,
28 he had already deceived Cotton and submitted a CUP application.

1 89. Geraci intended to deceive Cotton in order to, among things, execute
2 the November 2nd Agreement.

3 90. Cotton reasonably relied on Geraci's promises.

4 91. Geraci failed to perform the promises he made on November 2nd, 2016,
5 notably, his delivery of the balance of the Non-Refundable Deposit and his promise
6 to treat the November 2nd Agreement as a memorialization of the \$10,000 received
7 towards the Non-Refundable Deposit and not the final legal agreement for the
8 purchase of the Property.

9 92. Cotton has suffered and continues to suffer damages because he relied
10 on Geraci's representations and promises in an amount to be determined at trial, but
11 which is no less than \$2,000,000.

12 93. This intentional, willful, malicious, outrageous, and unjustified conduct
13 entitles Cotton to an award of general, compensatory, special, exemplary and/or
14 punitive damages.

15 Count Five

16 (Breach of Contract)

17 94. Cotton hereby incorporates by reference all of his allegations contained
18 above as if fully set forth herein.

19 95. This cause of action is directed against plaintiff Larry Geraci.

20 96. The agreement reached on November 2nd, 2016 is a valid and binding
21 agreement between Cotton and Geraci and the November 2nd Agreement was meant
22 to be the written instrument that solely memorialized the partial receipt of the Non-
23 Refundable Deposit and was not representative of the entirety of the agreement.

24 97. Cotton upheld his end of the bargain, by, among other things, not selling
25 his Property and helping with the preparation of the CUP application.

26 98. Geraci breached the contract by, among other reasons, alleging the
27 November 2nd Agreement is the final agreement between the parties for the
28 purchase of the Property.

1 99. Cotton has suffered and continues to suffer damages because of
2 Geraci's actions that constitute a breach of contract in an amount to be determined
3 at trial, but which is no less than \$2,000,000.

4 **Count Six**

5 **(Breach of Oral Contract)**

6 100. Cotton hereby incorporates by reference all of his allegations contained
7 above as if fully set forth herein.

8 101. This cause of action is directed against plaintiff Larry Geraci.

9 102. The agreement reached on November 2nd, 2016 is a valid and binding
10 oral agreement between Cotton and Geraci.

11 103. Geraci has breached the agreement by, among other actions described
12 herein, alleging the written November 2nd Agreement is the final and entire
13 agreement for the Property.

14 104. Cotton performed his obligations as agreed on November 2nd, 2016;
15 among other things, he did not sell his property and, as a consequence of Geraci's
16 breach of the agreement, is excused from having done so, but, Geraci, is still liable
17 for the remainder of the balance due on the Non-Refundable Deposit.

18 105. Cotton has suffered and continues to suffer damages because of
19 Geraci's actions that constitute a breach of oral contract in an amount to be
20 determined at trial, but which is no less than \$2,000,000.

21 **Count Seven**

22 **(Breach of Implied Contract)**

23 106. Cotton hereby incorporates by reference all of his allegations contained
24 above as if fully set forth herein.

25 107. This cause of action is directed against plaintiff Larry Geraci.

26 108. A cause of action for breach of implied contract has the same elements
27 as does a cause of action for breach of contract, except that the promise is not
28 expressed in words but is implied from the promisor's conduct.

109. The agreement reached on November 2nd, 2016 is a valid and binding agreement between Cotton and Geraci.

110. Geraci fraudulently induced Cotton into executing the November 2nd Agreement, which Geraci now purports is the final agreement between the parties for the purchase of the Property. However, the emails, texts and actions taken by and between Geraci and Cotton make indisputably clear that there was an implied contract that is not the November 2nd Agreement.

111. Geraci has breached the implied contract by, among other actions described herein, alleging the November 2nd Agreement is the final agreement between the parties for the purchase of the Property.

112. Cotton has suffered and continues to suffer damages because of Geraci's actions that constitute a breach of implied contract in an amount to be determined at trial, but which is no less than \$2,000,000.

Count Eight

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

113. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

114. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

115. There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.

116. Geraci breached the implied covenant of good faith and fair dealing when, among other actions described herein, he alleged that the November 2nd Agreement is the final purchase agreement between the parties for the Property.

117. Cotton has suffered and continues to suffer damages because of Geraci's actions that constitute a breach of the implied covenant of good faith and fair dealing.

118. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages in an amount to be determined at trial, but which is no less than \$2,000,000.

Count Nine

(Trespass)

119. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

120. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

121. At relevant times, the Property was owned solely by Cotton and, currently, is still in his sole possession.

122. Geraci, or an agent acting on his behalf, illegally entered the subject Property on or about March 27, 2017, and posted two NOTICES OF APPLICATION on the Property.

123. Geraci's attorney, Michael Weinstein, emailed Cotton on March 22, 2017 stating that Geraci or his agents would be placing the aforementioned Notices upon Cotton's property.

124. Geraci knew that he had fraudulently induced Cotton into executing the November 2nd Agreement and, consequently, he had no valid legal basis to trespass unto Cotton's Property.

125. On March 21, 2017 Cotton emailed Geraci stating that he no longer had any interests in the Property and should not trespass on his Property, yet he continued to do despite being warned not to.

126. Geraci's Notices of Application posted on his Property has caused and continues to damage to Cotton because:

a. It is a trespass upon Cotton's Property by Geraci who has no right to the Property.

b. The posting gives the appearance that Ms. Berry is the only owner of the CUP application for the Property, thereby damaging Mr. Cotton's interest in the CUP application.

c. Cotton has no adequate remedy at law for the injuries currently being suffered in that it will be impossible for Cotton to determine the precise amount of damages that he will suffer if Geraci and/or his agents conduct is not restrained.

127. Cotton has suffered and continues to suffer damages because of Geraci's actions in an amount to be determined at trial, but which is no less than \$2,000,000.

Count Ten
(Conspiracy)

128. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

129. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

a. Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement on October 31st, 2016, alleging that the Ownership Disclosure Statement was necessary because the parties did not have a final agreement in place at that time, he needed it to show other professionals involved in the preparation of the CUP application and the lobbying efforts to prove that he, Geraci, had access to the Property.

b. Geraci wanted something in writing proving Cotton's support of the CUP application at his Property.

c. The Ownership Disclosure Statement is also executed by Berry and denotes Berry is the "Tenant/Lessee." Further, Berry filed a separate document with the City claiming she is the "Owner" of the Property.

130. Geraci represented to Cotton that Berry could be trusted, is a trusted employee, and is familiar with the medical marijuana industry.

131. Cotton has never met or entered into a direct agreement with Berry. Berry knew that she had not entered into a lease of any form with Cotton for the Property and knew that she had no ownership interest in the Property.

132. Upon information and belief, Berry submitted the CUP application in her name on behalf of Geraci because Geraci has been a named defendant in numerous lawsuits brought by the City of San Diego against him for the operation and management of unlicensed, unlawful and illegal marijuana dispensaries. These lawsuits would ruin Geraci's ability to obtain a CUP himself.

133. Berry knew that she was filing a document with the City of San Diego that contained false statements, specifically that she was a lessee of the Property and owner of the property.

134. Berry, at Geraci's instruction or her own desire, submitted the CUP application as Geraci's agent, and thereby participated in Geraci's scheme to deprive Cotton of his Property and his ownership interest in the CUP application.

135. Cotton has suffered and continues to suffer damages because of Geraci and Berrys' actions in an amount to be determined at trial, but which is no less than \$2,000,000.

136. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

Count 11

(Injunctive Relief)

137. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

138. This cause of action is directed against plaintiff Larry Geraci and cross defendant Rebecca Berry.

139. Geraci and Berry have continued to act as owners or parties of interest in the Property, even though both parties know they have no interest in the Property.

1 140. These actions, including applying for the CUP without making clear
2 Cotton's ownership interest in the CUP application, trespassing on the Property to
3 post notices, and filing the lis pendens, has caused Cotton to lose and continue to
4 lose profits, the benefits of his bargain and the Property if their actions are permitted
5 to continue.

6 141. Defendant Cotton does not have a plain, speedy, and adequate remedy
7 in the ordinary course of law as the CUP application is currently under review before
8 the City.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Cotton prays for relief as follows:

- 11 1. That the Court order the Lis Pendens on the Property be released;
12 2. That the Court order, by way of declaratory relief, that there is no purchase
13 agreement between the parties and that Cotton and his successors-in-interest
14 are the owners of the Property;
15 3. That the Court order that Geraci and Berry have no interest in the CUP
16 application;
17 4. That Cotton be awarded damages in the amount of \$2,000,000;
18 5. That Cotton be awarded damages for a loss of profits and other damages in
19 an amount to be proven at trial; and
20 6. That other relief is awarded as the Court determines is in the interest of justice.

21 Dated: May 12, 2017.

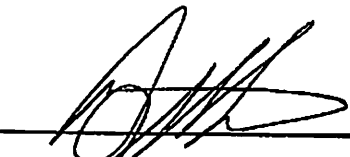
22 
23 _____
24 Darryl Cotton, Defendant in Pro Per
25
26
27
28

Exhibit 1

11/2/16 Email from Geraci to Cotton acknowledging additional terms



Darryl Cotton <indagroddarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcisd.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

Hi Larry,

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

Regards.

Darryl Cotton, President



darryl@inda-gro.com
www.inda-gro.com
Ph: 877.452.2244
Cell: 619.954.4447
Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA. 92114
USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

[Quoted text hidden]

EXHIBIT “D”

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/19/2019 at 11:53:00 AM

Clerk of the Superior Court
By Jessica Pascual, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1
through 10, inclusive,

Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

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

JUDGMENT ON JURY VERDICT
[PROPOSED BY PLAINTIFF/CROSS-
DEFENDANTS]

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,

Cross-Defendants.

[IMAGED FILE]

Action Filed: March 21, 2017
Trial Date: June 28, 2019

This action came on regularly for jury trial on June 28, 2019, continuing through July 16, 2019, in Department C-73 of the Superior Court, the Honorable Judge Joel R. Wohlfeil presiding. Michael R. Weinstein, Scott H. Toothacre, and Elyssa K. Kulas of FERRIS & BRITTON, APC, appeared for Plaintiff and Cross-Defendant, LARRY GERACI and Cross-Defendant, REBECCA BERRY, and Jacob P. Austin of THE LAW OFFICE OF JACOB AUSTIN, appeared for Defendant and Cross-Complainant, DARRYL COTTON.

1 A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified and
2 certain trial exhibits admitted into evidence.

3 During trial and following the opening statement of Plaintiff/Cross-Complainant's counsel, the
4 Court granted the Cross-Defendants' nonsuit motion as to the fraud cause of action against Cross-
5 Defendant Rebecca Berry only in Cross-Complainant's operative Second Amended Cross-Complaint. A
6 copy of the Court's July 3, 2019 Minute Order dismissing Cross-Defendant Rebecca Berry from this
7 action is attached as Exhibit "A."

8 After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court
9 and the cause was submitted to the jury with directions to return a verdict on special issues on two special
10 verdict forms. The jury deliberated and thereafter returned into court with its two special verdicts as
11 follows:

12 **SPECIAL VERDICT FORM NO. 1**

13 We, the Jury, in the above entitled action, find the following special verdict on the questions
14 submitted to us:

15
16 **Breach of Contract**

17
18 1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016
19 written contract?

20 Answer: YES

21
22 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him
23 to do?

24 Answer: NO

25
26 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that
27 the contract required him to do?

28 Answer: YES

1 4. Did all the condition(s) that were required for Defendant's performance occur?

2 Answer: NO

3
4 5. Was the required condition(s) that did not occur excused?

5 Answer: YES

6
7 6. Did Defendant fail to do something that the contract required him to do?

8 Answer: YES

9 or

10 Did Defendant do something that the contract prohibited him from doing?

11 Answer: YES

12
13 7. Was Plaintiff harmed by Defendant's breach of contract?

14 Answer: YES

15
16 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

17
18 8. Did Defendant unfairly interfere with Plaintiffs right to receive the benefits of the contract?

19 Answer: YES

20
21 9. Was Plaintiff harmed by Defendant's interference?

22 Answer: YES

23
24 10. What are Plaintiffs damages?

25 Answer: \$ 260,109.28

26
27 A true and correct copy of Special Verdict Form No. 1 is attached hereto as Exhibit "B."

28 ///

SPECIAL VERDICT FORM NO. 2

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral contract to form a joint venture?

Answer: NO

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Answer: NO

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Given the jury's responses, Question 25 regarding Cross-Complainant's damages became inapplicable as a result of the jury's responses.

///

1 A true and correct copy of Special Verdict Form No. 2 is attached hereto as Exhibit "C."

2
3 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

4 1. That Plaintiff LARRY GERACI have and recover from Defendant DARRYL COTTON
5 the sum of \$260,109.28, with interest thereon at ten percent (10%) per annum from the date of entry of
6 this judgment until paid, together with costs of suit in the amount of \$ 33,612.16 added 10/1/19
7 *af*

8 2. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant
9 REBECCA BERRY; and

10 3. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant
11 LARRY GERACI.

12 **IT IS SO ORDERED.**

13
14 Dated: 8-19, 2019

Joel R. Wohlfeil

Hon. Joel R. Wohlfeil
JUDGE OF THE SUPERIOR COURT
Judge Joel R. Wohlfeil

EXHIBIT A

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

MINUTE ORDER

DATE: 07/03/2019 TIME: 09:00:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil

CLERK: Andrea Taylor

REPORTER/ERM: Margaret Smith CSR# 9733

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: 37-2017-00010073-CU-BC-CTL CASE INIT.DATE: 03/21/2017

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Civil Jury Trial

APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Scott H Toothacre, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).

Jacob Austin, counsel, present for Defendant, Cross - Complainant, Appellant(s).

Darryl Cotton, Defendant is present.

Larry Geraci, Plaintiff is present.

Rebecca Berry, Cross - Defendant is present.

8:55 a.m. This being the time previously set for further Jury trial in the above entitled cause, having been continued from July 2, 2019, all parties and counsel appear as noted above and court convenes. The jurors are not present.

Outside the presence of the jury, Court and counsel discuss exhibits.

9:01 a.m. Court is in recess.

9:03 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are present except for juror no. 4.

An unreported sidebar conference is held. (6 minutes) Juror no. 4 arrives.

9:09 a.m. Attorney Weinstein presents opening statement on behalf of Plaintiff/Cross-Defendant Larry Geraci, et al.

9:55 a.m. Attorney Austin presents opening statement on behalf of Defendant/Cross-Complainant Darryl Cotton.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE NO: 37-2017-00010073-CU-BC-CTL

10:15 a.m. All jurors are admonished and excused for break and Court is in recess.

10:24 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jury is not present.

Outside the presence of the jury, Plaintiff makes a Motion for Non-suit on the Cross-Complaint against Rebecca Berry. The Court hears oral argument. Motion for Non-Suit is denied as to Declaratory Relief claim. Motion for Non-Suit is granted as to Fraud claim.

10:30 a.m. Court is in recess.

10:31 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

10:32 a.m. **LARRY GERACI** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendant:

- 1) Letter of Agreement with Bartell & Associates dated 10/29/15
- 5) Text Messages between Larry Geraci and Darryl Cotton from 7/21/16-5/8/17
- 8) Email to Larry Geraci from Darryl Cotton dated 9/21/16 with attached letter to Dale and Darryl Cotton from Kirk Ross, dated 9/21/16
- 9) Email to Larry Geraci from Darryl Cotton, dated 9/26/16
- 10) Draft Services Agreement Contract between Inda-Gro and GERL Investments, dated 9/24/16
- 14) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/4/16
- 15) Email to Rebecca Berry from Abhay Schweitzer, dated 10/6/16
- 17) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/18/16
- 18) Email thread between Neil Dutta from Abhay Schweitzer, dated 10/19/16
- 21) Email from Larry Geraci to Darryl Cotton, dated 10/24/16
- 30) City of San Diego Ownership Disclosure Statement signed, dated 10/31/16
- 38) Agreement between Larry Geraci or assignee and Darryl Cotton, dated 11/2/16
- 39) Excerpt from Jessica Newell Notary Book, dated 11/2/16
- 40) Email to Darryl Cotton from Larry Geraci attaching Nov. 2 Agreement, dated 11/2/16
- 41) Email from Darryl Cotton to Larry Geraci, dated 11/2/16
- 42) Email to Darryl Cotton from Larry Geraci, dated 11/2/16

11:44 a.m. All jurors are admonished and excused for lunch and Court remains in session.

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit on Breach of Contract claim against Darryl Cotton. The Court hears oral argument. Motion for Non-Suit is denied without prejudice.

11:50 a.m. Court is in recess.

1:19 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are not present.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE NO: 37-2017-00010073-CU-BC-CTL

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit. The Court hears argument. The Motion for Non-Suit is denied without prejudice as pre-mature. Court and counsel discuss scheduling.

1:25 p.m. Court is in recess.

1:33 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

1:34 p.m. Larry Geraci, previously sworn, resumes the stand for further direct examination by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendants:

- 43) Email to Becky Berry from Abhay Schweitzer, dated 11/7/16 with attachment
- 44) Email to Darryl Cotton from Larry Geraci, dated 11/14/16
- 46) Authorization to view records, signed by Cotton, 11/15/16
- 59) Email to Darryl Cotton from Larry Geraci, dated 2/27/17
- 62) Email to Darryl Cotton from Larry Geraci, dated 3/2/17
- 63) Email to Larry Geraci from Darryl Cotton, dated 3/3/17
- 64) Email to Darryl Cotton from Larry Geraci, dated 3/7/17
- 69) Email to Larry Geraci from Darryl Cotton, dated 3/17/17 at 2:15 p.m.
- 72) Email to Larry Geraci from Darryl Cotton, dated 3/19/17 at 6:47 p.m.
- 137) Federal Blvd.- Summary of All Expense Payments, excel spreadsheet

2:29 p.m. An unreported sidebar conference is held. (3 minutes)

2:36 p.m. Cross examination of Larry Geraci commences by Attorney Austin on behalf of Defendant/Cross-Complainant, Darryl Cotton.

2:53 p.m. All jurors are admonished and excused for break and Court is in recess.

3:08 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

3:09 p.m. Larry Geraci is sworn and examined by Attorney Austin on behalf of Defendant/Cross-Complainant, Defendant.

3:47 p.m. Redirect examination of Larry Geraci commences by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

3:48 p.m. The witness is excused.

3:49 p.m. REBECCA BERRY is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

The following Court's exhibit(s) is marked for identification and admitted on behalf of

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE NO: 37-2017-00010073-CU-BC-CTL

Plaintiff/Cross-Complainant:

34) Forms submitted to City of San Diego dated 10/31/16; Form DS-3032 General Application dated 10/31/16

4:00 p.m. Cross examination of Rebecca Berry commences by Attorney Austin on behalf of Defendant/Cross-complainant, Darryl Cotton.

4:15 p.m. The witness is excused.

4:16 p.m. All jurors are admonished and excused for the evening and Court remains in session.

Outside the presence of the jury, Court and counsel discuss scheduling.

4:22 p.m. Court is adjourned until 07/08/2019 at 09:00AM in Department 73.

EXHIBIT B

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,

v.

DARRYL COTTON,
Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

DARRYL COTTON,
Cross-Complainant,

v.

LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

1
2 ☒ Yes ☐ No
3

4 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer
5 no further questions, and have the presiding juror sign and date this form.
6

7 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him
8 to do?
9

10 ☐ Yes ☒ No
11

12 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
13 answer to question 2 is no, answer question 3.
14

15 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that
16 the contract required him to do?
17

18 ☒ Yes ☐ No
19

20 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer
21 no further questions, and have the presiding juror sign and date this form.
22

23 4. Did all the condition(s) that were required for Defendant's performance occur?
24

25 ☐ Yes ☒ No
26

27 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
28 answer to question 4 is no, answer question 5.

1
2 5. Was the required condition(s) that did not occur excused?

3
4 ☒ Yes ☐ No

5
6 If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no,
7 answer no further questions, and have the presiding juror sign and date this form.

8
9 6: Did Defendant fail to do something that the contract required him to do?

10
11 ☒ Yes ☐ No

12
13 or

14
15 Did Defendant do something that the contract prohibited him from doing?

16
17 ☒ Yes ☐ No

18
19 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
20 options is no, do not answer question 7 and answer question 8.

21
22 7. Was Plaintiff harmed by Defendant's breach of contract?

23
24 ☒ Yes ☐ No

25
26 If your answer to questions 4 or 5 is yes, please answer question 8.

27
28 Breach of the Implied Covenant of Good Faith and Fair Dealing

1
2 8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

3
4 ☒ Yes ☐ No

5
6 If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but
7 your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to
8 questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date
9 this form.

10
11 9. Was Plaintiff harmed by Defendant's interference?

12
13 ☒ Yes ☐ No

14
15 If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but
16 your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes,
17 answer no further questions, and have the presiding juror sign and date this form.

18
19 10. What are Plaintiff's damages?

20
21 \$ 260,109.28

22
23 Dated: 7/16/19

24 Signed: [Signature]
Presiding Juror

25
26 After all verdict forms have been signed, notify the bailiff that you are ready to present your
27 verdict in the courtroom.
28

EXHIBIT C

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,

Plaintiff,

v.

DARRYL COTTON,

Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

DARRYL COTTON,

Cross-Complainant,

v.

LARRY GERACI,

Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1 1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral
2 contract to form a joint venture?

3
4 ☐ Yes ☒ No

5
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not
7 answer questions 2 – 7 and answer question 8.

8
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract
10 required him to do?

11
12 ☐ Yes ☐ No

13
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
15 answer to question 2 is no, answer question 3.

16
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant
18 things that the contract required him to do?

19
20 ☐ Yes ☐ No

21
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not
23 answer questions 4 – 7 and answer question 8.

24
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26
27 ☐ Yes ☐ No

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
2 answer to question 4 is no, answer question 5.

3
4 5. Was the required condition(s) that did not occur excused?

5
6 ☐ Yes ☐ No

7
8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not
9 answer questions 6 -- 7 and answer question 8.

10
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12
13 ☐ Yes ☐ No

14
15 or

16
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18
19 ☐ Yes ☐ No

20
21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
22 options is no, do not answer question 7 and answer question 8.

23
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

25
26 ☐ Yes ☐ No

27
28 Please answer question 8.

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

☐ Yes ☒ No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

☐ Yes ☐ No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

☐ Yes ☐ No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

☐ Yes ☐ No

1
2 If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do
3 not answer question 12 and answer question 13.
4

5 12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
6 in causing harm to Cross-Complainant?
7

8 ☐ Yes ☐ No
9

10 Please answer question 13.
11

12 **Fraud - False Promise**
13

14 13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the
15 transaction?
16

17 ☐ Yes ☒ No
18

19 If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do
20 not answer questions 14 -- 18 and answer question 19.
21

22 14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?
23

24 ☐ Yes ☐ No
25

26 If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do
27 not answer questions 15 -- 18 and answer question 19.
28

1 15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

2
3 ☐ Yes ☐ No
4

5 If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do
6 not answer questions 16 – 18 and answer question 19.
7

8 16. Did Cross-Complainant reasonably rely on this promise?

9
10 ☐ Yes ☐ No
11

12 If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do
13 not answer questions 17 – 18 and answer question 19.
14

15 17. Did Cross-Defendant perform the promised act?

16
17 ☐ Yes ☐ No
18

19 If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do
20 not answer question 18 and answer question 19.
21

22 18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in
23 causing harm to Cross-Complainant?
24

25 ☐ Yes ☐ No
26

27 Please answer question 19.
28

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

☐ Yes ☒ No

If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant made it?

☐ Yes ☐ No

If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

21. Did Cross-Defendant have reasonable grounds for believing the representation was true when Cross-Defendant made it?

☐ Yes ☐ No

If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
2 juror sign and date this form.

3
4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5
6 ☐ Yes ☐ No
7

8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do
9 not answer questions 23 -- 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
11 juror sign and date this form.

12
13 23. Did Cross-Complainant reasonably rely on the representation?

14
15 ☐ Yes ☐ No
16

17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror
20 sign and date this form.

21
22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
23 in causing harm to Cross-Complainant?

24
25 ☐ Yes ☐ No
26
27
28

1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

4
5 25. What are Cross-Complainant's damages?

6
7 \$ _____
8
9

10
11 Dated: 7/16/19

Signed: 

Presiding Juror

12
13 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in
14 the courtroom.
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DARRYL COTTON, an individual,
Plaintiff,
v.

GINA M. AUSTIN, an individual;
JESSICA MCELFFRESH, an
individual; and DAVID DEMIAN, an
individual; and DOES 1-50, inclusive,

Defendants.

CASE NO. 3:18-cv-00325-TWR-DEB

DECLARATION OF SERVICE

I, the undersigned, declare:

That I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the service occurred; and my business address is: 550 West C Street, Suite 950, San Diego, California.

On December 6, 2021, I served the following document(s):

1. **DEFENDANT JESSICA McELFFRESH'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT;**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT JESSICA McELFFRESH'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT;**
3. **DECLARATION OF LAURA STEWART IN SUPPORT OF DEFENDANT JESSICA McELFFRESH'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT; and**
4. **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT JESSICA McELFFRESH'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT.**

in the following manner:

- ☒ **By Electronic Transfer – as indicated on the attached service list.**
I caused all of the above-entitled document(s) to be served through CM/ECF addressed to all parties named below. A copy of the Notice of Electronic Filing page will be maintained with the original document(s) in our office.
- ☒ **By First Class Mail – as indicated on the attached service list.** By causing a copy to be placed in a separate envelope, with postage fully prepaid, for each addressee named below and deposited each in the U.S. Mail at San Diego, California.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 6, 2021, at San Diego, California.



Michelle Davis

SERVICE LIST***Darryl Cotton v. Cynthia Bashant, et al.******USDC, Southern District of California Case No. 3:18-cv-00325-BAS-DEB***

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