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Specially appearing attorney for Plaintiff Darryl Cotton

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,
Plaintiff,

v.

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 MCELFRISH, an
individual, and DAVID DEMIAN, an
individual

Defendants.

Case No. 3:18-cv-00325-TWR (DEB)

**DECLARATION OF DARRYL
COTTON IN SUPPORT OF HIS EX
PARTE APPLICATION FOR
APPOINTMENT OF COUNSEL**

Hearing Date: N/A

Hearing Time: N/A

Judge: Hon. Todd W. Robinson

Courtroom: 3A

I, DARRYL COTTON declare:

1. I am over the age of eighteen years, and the Plaintiff in this action.
2. The facts set forth herein are true and correct as of my own personal knowledge.
3. This declaration is submitted in support of my request for appointment of counsel.

1 4. This declaration is also limited to those facts required to support my request
2 for counsel.

3 5. I am the owner-of-record of the real property located at 6176 Federal
4 Boulevard, San Diego, California 92114 (“Property”).

5 6. The Property qualifies for a cannabis conditional use permit (“CUP”).

6 7. In November of 2016 I reached an oral joint venture agreement with Mr.
7 Lawrence Geraci for the sale of the Property to him.

8 8. Pursuant to the terms of the oral joint venture agreement, I would receive,
9 *inter alia*, (i) \$800,000, (ii) a 10% equity ownership of the CUP, and (iii) a minimum of
10 \$10,000 a month.

11 9. The agreement reached was subject to a single condition precedent, Mr.
12 Geraci’s application and approval of a CUP at the Property.

13 10. When we reached the agreement, he provided \$10,000 as a non-refundable
14 deposit in the event the CUP application at the Property was not approved.

15 11. Mr. Geraci had me execute a document to memorialize my receipt of the
16 \$10,000 (the “November Document”).

17 12. Mr. Geraci failed to reduce the oral joint venture agreement to writing.

18 13. I terminated the agreement with Mr. Geraci for his failure to reduce the oral
19 joint venture agreement to writing.

20 14. Subsequently, Mr. Geraci filed an action against alleging the November
21 Document was final sales purchase contract for the Property in *Cotton I*.

22 15. I initially represented myself *pro se* in Cotton I and used various paralegals
23 to help me prepared my submissions to the court.

24 16. Thereafter, I procured a litigation investor who hired attorney Jessica
25 McElfresh to represent me.

26 17. Ms. McElfresh subsequently decided she could not litigate my action
27 because “upon further reflection” she did “not have the bandwidth” to represent me and
28 referred my litigation investor to David Demian of Thornton & Baird (“FTB”).

1 18. I engaged Mr. Demian and Mr. Adam Witt of FTB and they represented me
2 in *Cotton I*.

3 19. FTB amended my complaint twice and removed the allegations that Mr.
4 Geraci could not lawfully own a CUP. Further, he removed my cause of action for
5 conspiracy alleging that Mr. Geraci and Ms. Rebeca Berry conspired to unlawfully
6 acquire the CUP and defraud me of the Property.

7 20. During the course of his representation, Mr. Demian attempted to have me
8 execute a supporting declaration to argue in an ex parte application that Mr. Geraci was
9 acting as my agent when he submitted the CUP application in Ms. Berry's name.

10 21. In late 2017, at a meeting at FTB's office, Mr. Witt, while waiting for Mr.
11 Demian, stated that he had just heard Mr. Demian talking with another partner at FTB
12 and that FTB had shared clients with Mr. Geraci or Mr. Geraci's tax and financial
13 planning business.

14 22. In December of 2017, when Mr. Demian failed to raise certain evidence with
15 the state court at a hearing, he was challenged by my litigation investor for his failure to
16 do so.

17 23. Mr. Demian called me and we spoke and he then emailed me and said he
18 could not represent me and I also told him he was fired for his failure to raise the evidence.

19 24. Mr. Demian admitted he did not raise the evidence and said it was because
20 he had a "bad day."

21 25. I lost at trial in *Cotton I*, the jury finding the November Document is a
22 contract.

23 26. Since then, I have been attempting to vindicate my rights by seeking judicial
24 redress attempting to secure counsel.

25 27. Most of the submissions I have submitted in this action is copied-and-pasted
26 from work submitted by my former attorneys in my actions or related cases, motions
27 submitted to the state and federal courts in other cases, and legal treatises.
28

1 28. I have repeatedly attempted to obtain counsel to represent me in this action
2 but have been unsuccessful. I have spoken to dozens of attorneys who usually won't
3 continue to speak with me for more than 5 to 10 minutes. Of those attorneys that did take
4 a material amount of time with me, but still refused to represent me, included:

- 5 a. JoEllen Plaskett, SBN 214629
- 6 b. Marc D. Mabile, SBN 144799
- 7 c. William A. Cohan, SBN 141804
- 8 d. J. Tony Serra, SBN 32639
- 9 e. Thomas M. Buchenau, SBN 75976
- 10 f. Steven C. Vosseller, SBN 211265
- 11 g. Eugene G. Iredale, SBN 75292
- 12 h. Josh D. Gruenberg, SBN 163281

13 29. Cumulatively, the feedback I receive is that I am being turned down because
14 I am not clear in explaining my case, it appears complex, the number of defendants, the
15 fact that defendants include numerous attorneys, the perception that I am paranoid for
16 alleging I am the victim of a conspiracy, and the allegations of judicial bias.

17 30. My former counsel, the law firm of Tiffany & Bosco, that prepared the
18 Motion for New Trial and knows that the *Cotton I* judgment is void for illegality,
19 originally agreed to substitute in and represent me in this action.

20 31. However, after several months of reviewing and researching the pleadings
21 in this and the related matter, they declined to represent me because of the complex
22 procedural history and the substantive allegations, including bad-faith actions by so many
23 attorneys.

24 32. I don't know why I omitted the City of San Diego as a named defendant in
25 my amended complaint, which I copied from a related matter which does include the City
26 as a defendant.

27 33. I declare that in an amended complaint I will not name the current judicial
28 officers named in my operative complaint. I realize my beliefs that they conspired with

1 Mr. Geraci are born of the extreme distress I have been suffering over the last several
2 years as I have sought to vindicate my rights and my current situation is the result of the
3 actions of Mr. Geraci and his agents.

4 34. Attached hereto as Exhibit 1 is a true and correct copy of my Independent
5 Psychiatric Assessment performed by Dr. Ploesser in March of 2018.

6 35. Attached hereto as Exhibit 2 is a true and correct copy of my Independent
7 Psychiatric Assessment performed by Dr. Ploesser in July of 2021.

8 36. Attached hereto as Exhibit 3 is a true and correct copy of the *Cotton I* trial
9 transcript of July 3, 2019.

10 37. Attached hereto as Exhibit 4 is a true and correct copy of the *Cotton I* trial
11 transcript of July 8, 2019.

12 38. Attached hereto as Exhibit 5 is a true and correct copy of trial exhibit number
13 142 in *Cotton I* reflecting Mr. Geraci's payment to Ms. McElfresh that were part of his
14 damages submitted in *Cotton I* dated December 20, 2018.

15 39. Attached hereto as Exhibit 6 is a true and correct copy of email from Ms.
16 McElfresh on April 13, 2017.

17 40. Attached hereto as Exhibit 7 is a true and correct copy of the draft ex parte
18 application provided to me by Mr. Demian.

19 41. Attached hereto as Exhibit 8 is a true and correct copy of the *Cotton I* trial
20 transcript of July 10, 2019.

21 42. Attached hereto as Exhibit 9 is a true and correct copy of the *Cotton I* trial
22 transcript of July 9, 2019.

23 43. Attached hereto as Exhibit 10 is a true and correct copy of the deposition of
24 Firouzeh Tirandazi on March 14, 2019.

25 44. Attached hereto as Exhibit 11 is a true and correct copy of the *Cotton I*
26 transcript of the motion for new trial held on October 25, 2019.

27
28 I declare under penalty of perjury according to the laws of the United States that

1 the foregoing is true and correct, and that this declaration was executed on August 27,
2 2021 at San Diego, California.

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6 DARRYL COTTON
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Exhibit 1

Case No.:

**IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

DARRYL COTTON
Defendant and Appellant,

v.

The Superior Court of California, County of San Diego, Respondent.
LARRY GERACI, an individual, REBECCA BERRY, an individual,
CITY OF SAN DIEGO, a public entity,
Real Parties in Interest.

Appeal from Orders of the Superior Court, County of San Diego

37-2017-00010073-CU-BC-CTL
37-2017-00037675-CU-WM-CTL

Honorable Joel R. Wohlfeil, Judge Presiding

**INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON;
DECLARATION OF DR. MARKUS PLOESSER
IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION
FOR EXTRAORDINARY WRIT, WRIT OF MANDATE,
OR OTHER APPROPRIATE RELIEF**

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Appellant, Self-Represented

1 I, Markus Ploesser, MD, LLM, DABPN, FRCP(C), declare:

2 1. On March 4, 2018, I interviewed Mr. Darryl Cotton for an Independent
3 Psychiatric Assessment. At the beginning of the assessment, I informed Mr. Cotton
4 that the assessment was being prepared to assist the Court and not to act as an advocate
5 on his behalf. Mr. Cotton expressed his understanding, agreement and proceeded with
6 the interview and assessment.
7

8
9 **DUTY TO COURT**

10 2. I certify that I am aware of my duty as an expert to assist the Court and
11 not to be an advocate for any party. I have prepared this report in conformity with that
12 duty. I will provide testimony in conformity with that duty if I am called upon to
13 provide oral or written testimony.
14

15 3. I am solely responsible for the opinions provided in this report. I reserve
16 the right to amend or alter my opinions should additional relevant information become
17 available after the report completion.
18

19 **QUALIFICATIONS**

20
21 4. I am a psychiatrist licensed in the State of California, Physician and
22 Surgeon License No. A101564 and the Province of British Columbia, License No.
23 31564.
24

25 5. I am Board certified by the American Board of Psychiatry and Neurology
26 in the area of Psychiatry (Certificate No. 60630) and the subspecialty of Forensic
27

28 - 1 -

INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS
PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRIT,
WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

1 Psychiatry (Certificate No. 1903).

2 6. I am a Fellow of the Royal College of Physicians and Surgeons of Canada,
3 with certifications in Psychiatry and Forensic Psychiatry.
4

5 7. I am on the clinical faculty at the University of British Columbia (UBC)
6 in the division of Forensic Psychiatry.

7 8. My prior work experience has included forensic psychiatric evaluation
8 work for the Forensic Psychiatric Hospital and the Forensic Psychiatric Services
9 Commission in Coquitlam, British Columbia. I have written numerous forensic
10 psychiatric assessment reports and testified as an expert witness before the British
11 Columbia Review Board and the Provincial Courts of British Columbia.
12

13 9. I currently work as a psychiatrist for the Department of Corrections for
14 the State of California.
15

16 10. In addition to my medical qualifications, I am also a graduate of Columbia
17 University School of Law in the LLM program.
18

19 11. In preparation for my assessment of Mr. Cotton, I consulted with Dr.
20 Carolyn Candido regarding her medical diagnosis of Mr. Cotton on December 13,
21 2017. Additionally, I reviewed the declaration previously provided by Dr. Candido
22 regarding her diagnosis of Mr. Cotton prepared on January 22, 2018. (Attached hereto
23 as Exhibit 1.)
24

25 12. Prior to my interview with Mr. Cotton, I also discussed the factual
26
27

1 background regarding Mr. Cotton's need for a psychiatric assessment with his legal
2 consultant, Mr. Jacob Austin. Mr. Austin, I was told, is representing Mr. Cotton on a
3 limited basis due to Mr. Cotton's inability to pay for his full legal representation by
4 Mr. Austin.
5

6 CLIENT INTERVIEW

7 13. Mr. Cotton related the following: He is 57 years old. He was born and
8 raised in the Chicago area and has lived in San Diego since 1980. He owns a lighting
9 manufacturing company but reports that over the past approximately 9-12 months he
10 has experienced financial hardship, stress and anxiety originating from a lawsuit
11 against him.
12

13 14. Mr. Cotton denies any history of mental health symptoms predating the
14 current lawsuit. He is taking Keppra 500mg twice daily for a seizure disorder, which
15 he started suffering from around the age of 26. He usually suffers from approximately
16 3 Grand Mal seizures per year. He used to take Dilantin, another anticonvulsant
17 medication. He reports having obtained significant medical benefit from the use of
18 medical cannabis, particularly a high CBD strain which he says has helped to reduce
19 the frequency of his seizures.
20

21 15. Mr. Cotton represents he owns a property meeting certain requirements
22 by the City of San Diego and the State of California that would allow the creation and
23 operation of a Medical Marijuana Consumer Collective.
24
25
26
27

1 16. Mr. Cotton reports that he has and is being subjected to a variety of threats
2 and harassing behaviors that he believes have been directed against him by the plaintiff
3 in the lawsuit.
4

5 17. Mr. Cotton believes that an armed robbery on June 10th, 2017 on his
6 property may have been directed by the plaintiff. He was present at his property at the
7 time of the armed robbery, slamming the door and thereby escaping the robbers inside
8 a building on his property while he called 911. The armed individuals who committed
9 the robbery threatened Mr. Cotton at gun-point before fleeing from the premises. (Mr.
10 Cotton stated the armed-robbery is still unresolved by the police and it was the subject
11 of local news coverage that is still available online.)
12
13

14 18. Mr. Cotton states he followed the armed individuals in his vehicle as they
15 fled from the scene while he was on the phone with 911. He was told by 911 to cease
16 his pursuit due to safety reasons as Mr. Cotton was chasing the armed robbers at high-
17 speed. Mr. Cotton believes he recognized the driver of the getaway vehicle as an
18 employee of the plaintiff.
19
20

21 19. Mr. Cotton appeared particularly intense during his narration regarding
22 one of his employees who was duct-taped and laying face down at gun-point on the
23 ground. Mr. Cotton states that this long-time employee, an electrical-engineer who Mr.
24 Cotton relied upon heavily, quit the next day because of this incident.
25

26 20. Mr. Cotton describes starting to experience increased symptoms of stress
27
28

1 and anxiety since the robbery, above that which was caused by the litigation. He had
2 been in his usual state of health prior. He reports that he is now unable to sleep at night,
3 experiences "mood swings" and episodes of explosive rage without apparent triggers.
4 He experiences nightmares around themes of feeling powerless. The nightmares occur
5 in slight variations, and at times he "sees the robbers in his dreams."
6

7 21. Furthermore, his description of his nightmares include vivid scenes of
8 violence towards the attorneys for plaintiff that he believes are not acting in a
9 professional manner. Mr. Cotton believes that the attorneys representing plaintiff are
10 "in it together" with the plaintiff to use the lawsuit to "defraud" him of his property.
11 This point is one of the main foci of his expressed mental distress.
12

13 22. Mr. Cotton's distress due to his perception of a conspiracy against him by
14 attorneys is amplified by what he believes is the Court's disregard for the evidence and
15 arguments he has presented. He states he has never been provided the reasoning for the
16 denial of any relief he sought. Mr. Cotton expressed that at certain points during the
17 course of the litigation he believed the trial court judge was part of the perceived
18 conspiracy against him.
19

20 23. Mr. Cotton is also under the belief that his former law firm could have
21 resolved this matter at an early stage in the proceedings but chose not to in order to
22 continue billing legal fees.
23

24 24. Mr. Cotton reports no improvement in his mental health symptoms since
25

1 the robbery. He describes that since the robbery there have been additional threats made
2 against him by "agents" of the plaintiff. Specifically, he describes that two associates
3 of plaintiff went to his property on February 3, 2017 under the pretense of discussing
4 potential business opportunities, but when they arrived they were there to indirectly
5 threaten him by informing him that it would be "good" for him to "settle with Geraci."
6

7 25. Mr. Cotton now feels hopeless, helpless, unable to sleep, with decreased
8 appetite, but either no or only minimal changes in weight.
9

10 26. Mr. Cotton states that on December 12, 2017, immediately after a court
11 hearing, he was evaluated in the emergency department of a hospital for a TIA
12 (transitory ischemic attack, a frequent precursor of a stroke).
13

14 27. The day after his emergency department discharge, Mr. Cotton states he
15 assaulted a third-party and that is also the day he was diagnosed with Acute Stress
16 Disorder by Dr. Candido.
17

18 28. Mr. Cotton expressed having experienced suicidal ideation, most recently
19 on December 13th, 2017. He denied symptoms of psychosis, specifically
20 hallucinations.
21

22 OPINIONS AND RECOMMENDATIONS

23 29. It is my professional opinion that Mr. Cotton currently meets criteria of
24 Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and
25 Major Depression (F32.2). He does not present with any objective, observable signs
26
27

1 and symptoms of psychosis.

2 30. Given the absence of a prior mental health history of psychotic disorder
3 (and the physical symptoms that led to a diagnosis of a TIA and Acute Stress Disorder
4 by separate medical doctors), I have no reason to believe that Mr. Cotton's reports of
5 harassment by the plaintiff would be of delusional quality. It is my professional opinion
6 that Mr. Cotton sincerely believes that the plaintiff and his counsel are in a conspiracy
7 against him and that they represent a threat to his life.
8
9

10 31. It is my medical opinion that Mr. Cotton's symptoms are unlikely to
11 improve as long as current stressors (pending litigation, and what Mr. Cotton believes
12 to be threatening behaviors by plaintiff or his "agents") persist. His symptoms are also
13 likely to be significantly reduced if he believes the Court was not ignoring and
14 disregarding him.
15
16

17 32. It is my medical opinion that Mr. Cotton's mental health condition would
18 likely benefit from a rapid resolution of current legal proceedings. In my professional
19 opinion, the level of emotional and physical distress faced by Mr. Cotton at this time
20 is above and beyond the usual stress on any defendant being exposed to litigation. If
21 causative triggers and threats against Mr. Cotton persist, there is a substantial
22 likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental
23 health.
24
25

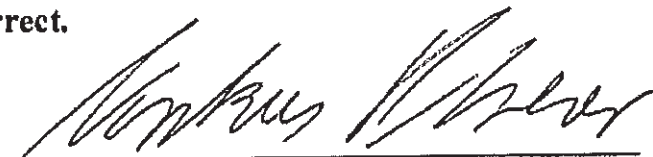
26 ///

1 33. Besides a removal of current stressors, his mental health condition would
2 likely benefit from Cognitive Behavioral Therapy for PTSD and depression, as well as
3 a trial of antidepressant medication.
4

5 I declare under penalty of perjury under the laws of the State of California
6 that the foregoing is true and correct.
7

8 DATED:

9 3/4/2018

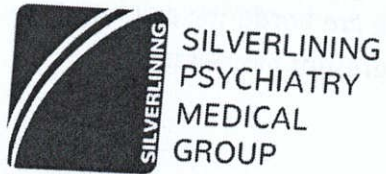

Markus Ploesser, MD, LLM, DABPN, FRCP(C)

10
11 M. PLOESSER, M.D.
12 PSYCHIATRIST
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28 - 8 -

INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS
PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRIT,
WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

Exhibit 2



3252 Holiday Court
Suite 108
La Jolla, California 92037

Tel: 858-230-7585
Fax: 858-658-0857

Re: Cotton, Darryl

July 16, 2021

DOB: 5/29/1960

This letter is prepared as an update to my March 4, 2018 assessment. I am a psychiatrist licensed in the State of California. I am board certified in general and forensic psychiatry, and have conducted hundreds of forensic psychiatric assessments. I am on faculty at UBC, Division of Forensic Psychiatry, and UC Riverside. I have again interviewed Mr. Cotton on July 15, 2021 for a time period of approximately 1 hour.

Mr. Cotton discussed at length numerous actions by Mr. Geraci's attorneys that he believes to constitute illegal acts. He informed me that his legal case was being stalled by "a powerful presence". Mr. Cotton believes that Mr. Geraci is part of a group that has conspired to create a monopoly in the city of San Diego in the cannabis industry. He expressed that the death of an individual named Michael Sherlock was a staged suicide, and that he was in fact murdered. Mr. Cotton expressed that he thinks he has "gone crazy". He obsesses over the case, and had to start taking antidepressant medication (Sertraline 50mg PO daily). He reports that he started seeing a psychiatrist of the name Anthony Bui, MD since January or February 2021. He had stopped sleeping and developed suicidal ideation. His anxiety level remains elevated.

He believes that any attorney representing Mr. Geraci will be part of a conspiracy to perpetuate "the cover up" of a conspiracy that resulted in the loss of his case in state litigation action that "enforces an illegal contract" and is "lawfully void."

It is my medical opinion that Mr. Cotton is unable to process facts and legal issues beyond a basic level, unable to gather relevant evidence in manner called for by litigation, unable to conduct complex legal research, and would be incapable of interacting with any counsel representing Mr. Geraci or associates due to his belief that they are "conspiring" against him. In my professional

opinion Mr. Cotton's obsessional ruminations around his legal case are bordering a delusional quality, which will make it very difficult for him to competently represent himself in civil litigation.

Sincerely

A handwritten signature in dark ink, appearing to read 'Markus Ploesser', written in a cursive style.

M. PLOESSER, M.D.
PSYCHIATRIST

Markus Ploesser, MD

Lic# A101564

Exhibit 3

j.hurtado1@gmail.com

From: Jessica McElfresh jessica@mcelfreshlaw.com
Sent: Thursday, April 13, 2017 10:16 PM
To: Joe Hurtado
Subject: RE: Larry Geraci v. Darryl Cotton - San Diego Superior Court Case No.
Attachments: 37-2015-00017734-CU-WM-CTL_ROA-1_05-27-15_Petition_for_Writ_of_Mandate_1492145929635-2.pdf; 37-2015-00021194-CU-BC-CTL_ROA-1_06-24-15_Complaint_1492145930228.pdf

Hi Joe,

First, I appreciate your reaching out to me about this matter. Second, I am still open to helping with the matter, particularly with the application with needed. Third, I do think you need to consider working with another attorney, if this accelerates to full-blown litigation.

I know your goal here is to basically flush the other guy out and back him down. And, I hope that will succeed. I remain happy to help with that and with the application. However, should this escalate into a filed lawsuit, I do not have the bandwidth for that right now, upon further reflection. I'm waist deep in several applications, which is where I am focusing my time this year and for the foreseeable future. I only see that taking up more of my time as the state rolls out regulations and moves toward licensing.

But, I do have some good news and a suggestion. Another application in D6 had to deal with a strikingly similar situation: landlord and tenant had beef once the application was in progress (there were also some fraud in inducement issues, of a sort), and landlord wishes to take over the application. His attorney ultimately filed for an alternative writ of mandate to have the "tenant" removed from the application, which I believe was ultimately successful. I've attached a copy of their writ. There was also a separate lawsuit for breach of contract, which appears to be ongoing. I've attached a copy of the complaint in that lawsuit. You can look up both matters for additional filings on the San Diego Superior Court Register of actions.

I really, really like the attorney who represented the landlord in this matter, David Demian. He's an excellent attorney – and hey, he already did something similar with results. <http://www.ftblaw.com/attorneys/david-demian/>

You could also consider my friend, Will Moore. <http://www.themoorefirm.net/> He's a wonderful attorney and like me, works hard to keep things affordable.

I'd still be happy to meet on Monday to offer any help or insights, if that'd be helpful, and to assist with flushing out and the application.

Thank you,

Jessica C. McElfresh
Attorney-at-Law

McElfresh Law, Inc.

jessica@mcelfreshlaw.com

Exhibit 4

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X			
2				
3	EXHIBITS		IDENTIFIED /	ADMITTED
4	12	Agreement between Techne and Larry Geraci, dated 10/04/16	174	174
5				
6	16	Executed Letter Agreement between Rebecca Berry and Lundstrom Engineering and Surveying, Inc. re Topographic Survey Proposal, dated 10/6/16	185	185
7				
8	19	Email to Larry Geraci and Neil Dutta from Abhay Schweitzer re Federal Blvd. - Site layout, dated 10/20/16 with two attachments A101 - Site Plan - Existing & A102 - Site Plan - Proposed	194	194
9				
10				
11				
12	20	Email to Larry Geraci from Abhay Schweitzer Re: Federal Blvd. - Site layout, dated 10/24/16 with attached A102 - Site Plan - Proposed - Scheme B	197	197
13				
14				
15				
16	22	Email to Becky Berry from Abhay Schweitzer Fwd Federal Blvd., dated 10/26/16 with attachment Blank City of San Diego Ownership Disclosure Statement, Form DS-318	199	199
17				
18				
19	23	Email to Rebecca Berry from Abhay Schweitzer re Invoice #339 from TECHNE City fees (Federal Blvd), dated 10/26/16 with attached Techne Invoice No. 339, dated 10/26/16	200	200
20				
21				
22	24	Email to Rebecca Berry from Abhay Schweitzer re Federal Blvd. - City Fees breakdown, dated 10/26/16 with attached City of San Diego Information Bulletin 170, How to Apply for a Conditional Use Permit Medical Marijuana Consumer Cooperative	17	17
23				
24				
25				
26				
27				
28				

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)			
2				
3	EXHIBITS		IDENTIFIED / ADMITTED	
4	25	Email to Larry Geraci and Rebecca Berry from Abhay Schweitzer re Federal Blvd - Site Plan and Floor Plan, dated 10/26/16 with attachments	26	26
5				
6				
7	26	CUP Submittal Plans - CUP Completeness Review dated 10/28/2016	210	210
8				
9	28	Land Development Manual Vol 1, Ch 1 Project Submittal Reqts, Sec 4 Development Permits/Approvals June 2015	211	211
10				
11				
12	29	Information Bulletin 515 Geotechnical Study Requirements October 2016	212	212
13				
14	31	Form DS-3242 Deposit Account/Financially Responsible Party dated 10/31/2016	215	215
15				
16	32	CUP Completeness Review - Photographic Survey submitted 10/31/2016	74	74
17				
18	33	CUP Completeness Review - City of SD Receipt for \$8,800 Payment dated 10/31/2016	218	218
19				
20	35	Email to Larry Geraci from Abhay Schweitzer Re: Federal Blvd - Site Plan and Floor Plan, dated 10/31/16	219	219
21				
22	36	Email to Rebecca Berry from Abhay Schweitzer Re: Federal Blvd - Site Plan and Floor Plan, dated 10/31/16	54	54
23				
24	45	Email to Jim Bartell from Abhay Schweitzer re Federal Blvd. MMCC - Completeness Review, dated 11/14/16	35	35
25				
26	47	CUP Completeness Review - Remaining Cycle Issues dated 11/15/2016	227	227
27				
28				

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)		
2			
3	EXHIBITS	IDENTIFIED / ADMITTED	
4	48	Email to Jim Bartell from	229
5		Abhay Schweitzer Re: Update,	229
6		dated 11/29/16	
7	49	Email to Abhay Schweitzer from	39
8		Jim Bartell RE: Federal Blvd -	39
9		Completeness Review corrections,	
10		dated 11/30/16	
11	70	Email to Larry Geraci from Darryl	140
12		Cotton re Contract Review,	140
13		dated 3/19/17	
14	71	Email to Darryl Cotton from	143
15		Larry Geraci re Contract Review,	143
16		dated 3/19/17	
17	73	Email to Darryl Cotton from	141
18		Firouzeh Tirandazi re Federal	141
19		Boulevard MMCC, dated 3/21/17	
20	74	Email to Larry Geraci from	145
21		Darryl Cotton re Contract Review,	145
22		dated 3/21/17	
23	75	Email to Firozeh Tirandazi	148
24		from Darryl Cotton re PTS	148
25		520606 - Federal Blvd MMCC,	
26		dated 3/21/17, with attached	
27		Addendum Nos. 102	
28	76	CAR Commercial Property Purchase	149
		Agreement and Joint Escrow	149
		Instructions, dated 3/21/17	
	77	Addendum No. 2 - MOU re Martin	151
		and Cotton dated 4/15/17	151
	78	Addendum No. 3 - Permit Disclosure	152
		of Agreement in Cotton's Response	152
		to Geraci lawsuit - Martin & Cotton	
		dated 5/12/17	
	84	Email to Darryl Cotton from	154
		Michael Weinstein re Geraci v.	154
		Cotton - Posting of Notice of	
		Application, dated 3/28/17	

Transcript of Proceedings

Geraci vs. Cotton, et al.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 8, 2019

Reported By:
Margaret A. Smith,
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057774

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 (Cross-examination of Gina Austin)

2 BY MR. AUSTIN:

3 Q Good morning.

4 A Good morning.

5 Q Mrs. Austin, you mentioned in direct that
6 you're an attorney in the field of cannabis regulation.
7 Correct?

8 A That's correct.

9 Q And you would consider yourself an expert in
10 that field?

11 A That's correct.

12 Q Have you ever testified as a cannabis expert?

13 A No. Let me take that back. Not -- I have
14 been -- I've had trials where I -- where our office is
15 representing a cannabis client and I am there as the
16 expert to provide background information to the Court
17 but not testifying.

18 Q Okay. So -- all right. You haven't been an
19 expert in trials for background --

20 A Not as a designated expert, no.

21 Q Oh. Not expert. All right.

22 How long have you worked in the area of
23 cannabis regulation?

24 A A little over six years.

25 Q As an expert cannabis attorney, do you have
26 clients that seek out your services to assist them in
27 obtaining permits to get licenses to operate medical
28 outlet -- or marijuana outlets?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

2 Q Do you also do cultivation facilities or
3 manufacturing?

4 A Yes.

5 Q As a good attorney, one of the things you try
6 to do is figure out in particular if a client is
7 eligible for a marijuana license permit before beginning
8 the process. Correct?

9 A As a good attorney? Sure.

10 Q You are aware that certain people are not
11 eligible for or are barred from obtaining certain CUPs.
12 Correct?

13 A Not at the city level, but at the state level,
14 yes.

15 Q At the state level. Is there anything that
16 could bar someone from the city level?

17 A There might be. I haven't seen the -- they
18 have to run a LiveScan, which is a background check,
19 fingerprint similar to what attorneys now have to do.
20 And the City doesn't -- hasn't denied anybody, and they
21 haven't said what they would be looking for. Presuming
22 that it would be the same as what is at the state level,
23 but I -- we haven't seen anybody be denied. So I'm not
24 sure.

25 Q On the state level, do criminal convictions
26 prevent someone from obtaining licenses?

27 A Very rarely. It would be felony and a crime of
28 moral turpitude.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q What if someone has had illegal operations that
2 have resulted in a lawsuits on the property, illegal
3 principals?

4 A So in different jurisdictions, it's different.
5 It's different. But if we're talking about the City of
6 San Diego -- the state only makes you write a
7 rehabilitation plan. They don't preclude you from
8 operating. So you can have a misdemeanor -- and you
9 have to disclose them all. So you have to disclose
10 your -- if you've got a DUI, if you had some petty theft
11 as a teenager or, I guess, over 18, if you -- and we see
12 all of these things. And they simply -- you disclose
13 it, and then you write a rehabilitation to the state,
14 and the state says, okay, here you go.

15 Q So does the City care if someone has been
16 sanctioned for illegal commercial cannabis activity?

17 MR. WEINSTEIN: Objection. Vague as phrased.

18 THE COURT: Overruled.

19 THE WITNESS: Does the City care if somebody
20 has been sanctioned? Yes and no because it just depends
21 on what that was. If that -- if there was -- Urban
22 League had a perfect example. Wilson had been
23 sanctioned for prior activity, and at the time when they
24 first started those back in 2009, there was a --
25 phrasing in the -- in the settlement agreement that said
26 you cannot conduct any cannabis activity unless amended
27 by the Court. And he was still awarded a dispensary.
28 And he ultimately did get it amended, the -- the

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6 Q All right. So it would be fair to say that the
7 first goal of the regulating agencies in the city and
8 the state is to protect the community and keep these
9 types of individuals who had had illegal activity --
10 illegal cannabis activity going on, the goal would be to
11 keep the public safe?

12 A I don't understand that question. Can you
13 rephrase it?

14 Q No. Cancel that. Sorry. Strike that.

15 So on the 6176 property, Mr. Geraci's name was
16 not used on the CUP application. Correct?

17 A That's correct.

18 Q And was the reason because of his tax business?
19 Is that what you were told?

20 A I don't know if I was told.

21 Q Were you given a reason why Rebecca Berry would
22 be used as the agent?

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Geraci vs. Cotton, et al.

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3 occasions for owning property in which illegal marijuana
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5 A No.

6 Q You're not aware of that?

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9 worked with Mr. Geraci on any project other than the
10 6176 CUP?

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18 THE WITNESS: Okay. Yes. I did work with him
19 on -- working on some other land use entitlement
20 projects.

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22 Q Were those marijuana related?

23 A They were not.

24 Q So in the forms that we saw up on the board,
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5 Mr. Geraci has an interest in the CUP because Rebecca
6 Berry was his agent?

7 Q Yes.

8 A Yeah. I believe that they were working
9 together to obtain the CUP.

10 Q So in Exhibit 30, which has already been
11 admitted into evidence, the first page, Part 1, it's
12 fine print. But three lines down, does it not say to
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19 list must include the names and addresses of all persons
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6 name of the person who's -- who's on the form. And we
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Geraci vs. Cotton, et al.

1 owner and a financially interested party. But we didn't
2 get to that point.

3 Q Okay. So as the main attorney on the CUP
4 application, you were involved in pretty much all
5 important conversations?

6 MR. WEINSTEIN: Object. Vague and ambiguous as
7 phrased.

8 THE COURT: Do you -- do you understand the
9 question, Ms. Austin?

10 THE WITNESS: I think he's asking me if I was
11 involved in every conversation.

12 THE COURT: All right. The objection is
13 overruled.

14 Please answer.

15 THE WITNESS: I wasn't involved in every
16 conversation.

17 BY MR. AUSTIN:

18 Q Just the most important ones that would have an
19 effect on the outcome?

20 A I would hope so.

21 Q All right. And you're familiar with Abhay
22 Schweitzer?

23 A Abhay Schweitzer, yes.

24 Q Did you ever have an email conversation with
25 Mr. Schweitzer asking that Mr. Geraci's name not be
26 included in any of the applications?

27 A Maybe. I worked with Abhay on dozens of
28 projects. And this is several years ago. But maybe.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A I think I did a presentation there in 2017 as
2 well. I've done two or three there.

3 Q Okay. I was going to ask you how many. Okay.
4 Perfect.

5 And what was the nature of the speaking event
6 in 2017, if you recall, at Thomas Jefferson?

7 A I don't. It was cannabis related. I don't
8 know what it was about.

9 Q Okay. When Mr. Magagna's CUP was approved,
10 that effectively terminated Mr. Cotton -- or
11 Mr. Geraci's CUP application. Correct?

12 A Correct.

13 Q But is there an appeal process for that?

14 A So when -- so it's a two-step process. It goes
15 to the hearing officer first, and then it goes to
16 planning commission.

17 And so the hearing officer granted, I guess, I
18 think -- I think the hearing officer must have granted.
19 And then Mr. Geraci must have appealed to the planning
20 commission. And then the planning commission would have
21 affirmed. And then that would be the end of it, unless
22 they wanted to litigate.

23 Q Are you aware of any, at least, preliminary
24 attempts, with the hearing officer or -- or anything
25 else that Mr. Geraci's team would have participated in?

26 A I was not involved. So I do not know.

27 Q You were never approached regarding trying to
28 assist with that appeal, then, I -- I assume?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A I was not involved, no.

2 **Q Okay. You've been involved with approximately**

3 **25 CUPs?**

4 A In San Diego?

5 **Q In San Diego.**

6 A Yes.

7 **Q Yes. How many of those were successful?**

8 A The majority of them. I think -- so many of

9 these came in after the fact while we were doing

10 compliance. But we're working with about 25 clients

11 here in San Diego. There have been three in the City --

12 or two in the city proper of San Diego that have not

13 been approved that I worked on from the beginning.

14 **Q So you have roughly a 23 out of 25 success**

15 **rate?**

16 A Yes. Not all of those I started in the

17 beginning, though. So, I mean, I may be working with

18 them at the tail end of it. It may be coming in

19 currently to make -- keep their CUPs. There's a lot of

20 different -- a lot of different things.

21 **Q It's fair to say you were involved on the**

22 **Geraci CUP from the very beginning. Correct?**

23 A Yes. Until your client sued me, in which case

24 I stopped representing him.

25 **Q All right.**

26 MR. AUSTIN: I have no further questions.

27 THE COURT: Redirect?

28 MR. WEINSTEIN: Just one question, your Honor.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 (Redirect examination of Gina Austin)

2 BY MR. WEINSTEIN:

3 Q Business and Professions Code 260 --

4 A Yes.

5 Q -- 57, is that applicable to municipal
6 licenses?

7 A No.

8 Q Is it applicable to state licenses?

9 A Yes.

10 MR. WEINSTEIN: Thank you. That's all, your
11 Honor.

12 THE COURT: Anything else, Counsel?

13 MR. AUSTIN: No, your Honor.

14 THE COURT: May Ms. Austin be excused?

15 MR. WEINSTEIN: Yes, your Honor.

16 MR. AUSTIN: Can she be subject to re-call?

17 THE COURT: Subject to re-call. Thank you very
18 much, Counsel. You're excused for the time being.
19 Thank you very much.

20 THE WITNESS: Just for the Court's information,
21 I have hearings all --

22 THE COURT: That's fine. If you want to step
23 down, we'll chat for just a moment.

24 Ladies and gentlemen, we're going to take our
25 morning break at this time. We're going to take a
26 recess for 15 minutes. Do not form or express an
27 opinion or discuss the case until deliberations. We'll
28 be in recess for 15 minutes.

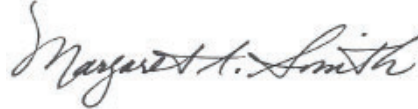
Transcript of Proceedings

Geraci vs. Cotton, et al.

1 I, Margaret A. Smith, a Certified Shorthand
2 Reporter, No. 9733, State of California, RPR, CRR, do
3 hereby certify:

4 That I reported stenographically the proceedings
5 held in the above-entitled cause; that my notes were
6 thereafter transcribed with Computer-Aided
7 Transcription; and the foregoing transcript, consisting
8 of pages number from 1 to 236, inclusive, is a full,
9 true and correct transcription of my shorthand notes
10 taken during the proceeding had on July 8, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 22nd day of July 2019.

13 
14

15 Margaret A. Smith, CSR No. 9733, RPR, CRR
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Exhibit 5

Court's Ex. **142**
Case # 37-2017-00010073-CU-BC-CTL
Rec'd _____
Dept. **C-73** Clk. _____

McElfresh Law

Date	Check #	Amount
12.10.18	4514	1,245.00

1,245.00

McElfresh Law, Inc.

646 Valley Avenue

Suite C2

Solana Beach, California 92075

Phone: 858-756-7107

[Click Here To Pay This Invoice Using Credit Card](#)**INVOICE**

Date: 12/06/2018

Invoice #: 747

Matter: Land Use

File #:

Bill To:

Larry Geraci

5402 Ruffin Road

Suite 200

San Diego, CA

Due Date: 01/05/2019

Payments received after 12/06/2018 are not reflected in this statement.

Professional Services

Date		Details	Hours	Rate	Amount
12/05/2018	JCM	Discussion with Schweitzer regarding tomorrow's appeal; review of letter and PC report	1.00	\$350.00	\$350.00
12/06/2018	JCM	Attendance at Planning Commission hearing for appeal	2.50	\$350.00	\$875.00
For professional services rendered			3.50		\$1,225.00

Additional Charges

Date		Details	Quantity	Rate	Amount
12/06/2018	JCM	Parking for hearing	1	\$20.00	\$20.00
Total additional charges					\$20.00

Invoice Amount	\$1,245.00
----------------	------------



LST Investments LLC: Account Activity Transaction Details

Check number: 00000004514

Post date: 12/17/2018

Amount: -1,245.00

Type: Check

Description: Check

Merchant name: Check

Transaction category: Cash, Checks & Misc: Checks

LST INVESTMENTS LLC 5402 RUFFIN RD STE 200 SAN DIEGO, CA 92123-1301		4514 11-29/1210 CA 81428
Date <u>12-10-18</u>		
Pay to the Order of <u>McElfresh Law, Inc</u>	\$ <u>1245.00</u>	
<u>Twelve hundred forty five and 00/100</u> Dollars		
Bank of America		
ACH RT 121000358		
For <u>Inv 747</u>	<u>[Signature]</u>	
⑆121000358⑆ 001132674480⑆4514		

Exhibit 6

Transcript of Proceedings

Geraci vs. Cotton, et al.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 3, 2019

Reported By:
Margaret A. Smith, CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057773

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 our alternates, Mr. Dunbar. Counsel, I'm inclined to
2 excuse him so we can move forward.

3 Any objection?

4 MR. WEINSTEIN: No objection.

5 MR. AUSTIN: No objection.

6 THE COURT: All right. So Mr. Dunbar will be
7 excused. If he does appear, Madam Deputy, can you let
8 him know he's excused?

9 JUROR: Sir, I'm right here.

10 THE COURT: I'm sorry, Mr. Dunbar. I thought
11 we were -- I was informed that we were still waiting for
12 one more juror. So we do have everybody. I apologize.
13 That must have been an odd experience hearing me talk
14 about you and you're sitting right here.

15 We're getting off to a rough start this
16 morning. We try to be perfect, but it doesn't always
17 happen, folks.

18 All right. So we do have everybody.

19 All right. So very briefly, in just a few
20 moments, Counsel will give their opening statements.
21 When they're done, we'll take our morning break. Even
22 if we're not quite at 10:30, we'll take our 15-minute
23 break. And when we return, we'll start with witnesses
24 and go until noon and continue along that line until the
25 end of the day.

26 Please recall that we're dark tomorrow because
27 of the holiday and will not be returning until next
28 Monday, the 11th. And then you'll have a line-up of

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 witnesses. And the lawyers are working hard to have as
2 many witnesses lined up. Some of them will take a
3 little longer, like the parties. But you'll be seeing a
4 steady stream of witnesses through and including
5 Plaintiff and the defendant's case in chief.

6 So I'll keep you up to date on where we are in
7 the estimate, but as mentioned before, we will get you
8 the case at or before the close of business Thursday,
9 July 18th.

10 So it's now time for counsel to give an opening
11 statement. I mentioned to you yesterday that nothing
12 the lawyers say during the trial is evidence. The only
13 thing you're going to base your decision on ultimately
14 is the evidence and, of course, the law that I give to
15 you. But what they say in their opening statement will
16 give you an idea of what they expect the evidence to
17 consist of, at least from their perspective.

18 So with that in mind, Counsel, whenever you're
19 ready, please give your opening statement.

20 MR. WEINSTEIN: Thank you, your Honor.

21 (Opening statement on behalf of

22 Plaintiff/Cross-Defendant Larry Geraci)

23 MR. WEINSTEIN: Good morning, Mr. Dunbar, and
24 the rest of the jurors. Thank you for your patience
25 through jury selection yesterday. As your Honor has
26 just reminded you, nothing I say is evidence. It's what
27 I believe the evidence will show. So if I make a
28 statement and I don't preface it by saying the testimony

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 will show, it's really in front of every sentence

2 because I'm not a witness.

3 Now, it's my opportunity, as you were

4 pre-instructed yesterday, to present an opening

5 statement. It's really an outline, a road map of what I

6 expect the evidence will show, and it's going to allow

7 you to keep an overview of the case in mind during the

8 later presentation of evidence.

9 Evidence comes in out of order. These facts

10 are going -- the facts you'll hear are going to be new

11 to you for the first time. We've known them for a long

12 time. And as a result, it will take you a while to put

13 them all together. But when it's said and done,

14 hopefully, the overview I've presented to you will help

15 you understand the case as it's presented.

16 Now, as I mentioned in the mini opening

17 yesterday, this case involves a dispute between Larry

18 Geraci and Darryl Cotton concerning an agreement from

19 the purchase and sale of Mr. Cotton's property at 6176

20 Federal Boulevard.

21 Now, Mr. Geraci and Mr. Cotton dispute the

22 terms of the agreement. During my opening, I'll refer

23 to and show you some of the documents. These are some

24 of the exhibits that I anticipate you will see during

25 the evidence portion of the case. It will help me with

26 my overview and help you.

27 But before I jump into the story -- before I do

28 that, the setup is with the screen over here. And we

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 have jurors all the way extending to almost even with
2 me. If anybody at any time has trouble seeing the
3 screen, just give us a heads-up, and we'll make an
4 adjustment and move the attorneys back and forth to make
5 it clear.

6 So, anyway, before I jump into the story, I
7 need to introduce you briefly to some of the persons
8 whose names will come up in the testimony and who may
9 give testimony in the case. And there's eight people in
10 particular. I just want to identify it from the outset.

11 Of course, there's Darryl Cotton, who is the
12 defendant and cross-complainant. He was the seller of
13 the property. Mr. Cotton has developed hydroponic
14 systems for the growing of cannabis. He's very active
15 in the community regarding cannabis issues. You'll
16 learn more about that later.

17 Mr. Geraci, sitting in front of me next to the
18 bench, is the buyer. He owns a tax and financial
19 accounting business called The Tax and Financial Center.
20 He's been doing tax preparation work for about 40 years.
21 So that's basically been his profession his whole
22 career. He's licensed as an enrolled agent. This means
23 he has a federal license that allows him to represent
24 clients before the IRS.

25 And that will become an issue that you will
26 hear about later in the case.

27 Rebecca Berry, who sits to my left, because we
28 don't have room for everybody, who is sitting in the

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 first seat, is also my client, a cross-defendant in the
2 case. She's Mr. Geraci's administrative assistant.
3 She's worked in this business for 14 or 15 years.
4 Ms. Berry, acting as Mr. Geraci's agent, was the
5 applicant on the conditional use permit application that
6 you've heard about so far. And that was submitted to
7 the City of San Diego.

8 This was done with Mr. Cotton's knowledge.

9 She coordinated -- Ms. Berry did --
10 communications regarding the project with Mr. Geraci and
11 the project team that he hired. And along with the
12 project manager, a gentleman by the name of Abhay
13 Schweitzer, was the City's contract for this CUP
14 application.

15 The next person I want to mention is Jim
16 Bartell. Jim Bartell has a public government and media
17 relations business called Jim Bartell & Associates.
18 He's a registered lobbyist. He had been successful in
19 obtaining for his clients approval of CUPs for
20 dispensaries.

21 Mr. Geraci hired Mr. Bartell to be on his team
22 to help the efforts to develop and operate a medical
23 marijuana consumer cooperative, sometimes abbreviated
24 MMCC. And he was hired to do that.

25 Mr. Bartell is expected to testify about his
26 role in attempting to obtain a CUP for a dispensary on
27 the property.

28 I already mentioned Abhay Schweitzer. He owns

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q And are you currently employed?

2 A Yes.

3 Q Before I get there, did you -- did you graduate

4 from high school?

5 A Yes.

6 Q Where?

7 A University High School.

8 Q When?

9 A 1979.

10 Q Okay. And did you attend college at all?

11 A Yes.

12 Q What college did you attend?

13 A Grossmont and San Diego City.

14 Q Did you receive a degree from either of those

15 institutions?

16 A No, I didn't.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom? By whom?

20 A Tax and Financial Center.

21 Q And what type of business is Tax and Financial

22 Center?

23 A We prepare tax returns and bookkeeping services

24 and payroll services.

25 Q And who owns that business?

26 A I do.

27 Q And how long have you owned that business?

28 A I've owned that business since 2001.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q And currently how many employees do you have?

2 A Eight employees.

3 Q Before I forget, how long have you been engaged
4 in preparing taxes for people?

5 A Forty years.

6 Q Now, you said you have eight employees. Are
7 they divided into any departments within your business?

8 A Yes. I've got two employees in accounting, one
9 employee in payroll. I've got two administrators and
10 two more people in bookkeeping.

11 Q So when you say you have two people in
12 accounting, what services do the people in accounting
13 provide?

14 A Bookkeeping.

15 Q For whom?

16 A Businesses.

17 Q Okay. And the other folks are in the tax
18 preparation side of the business?

19 A Yes.

20 Q Okay. And who do they prepare taxes for?

21 A My clients.

22 Q And who -- what types of clients?

23 A Individuals and businesses, small corporations,
24 and small partnerships.

25 Q Okay. Now, do you currently hold any licenses
26 associated with tax preparation?

27 A Enrolled agent.

28 Q Is the answer yes?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

2 Q And what license do you hold?

3 A Enrolled agent.

4 Q What is an enrolled agent?

5 A We are licensed by the Internal Revenue Service

6 to represent clients when they get audited by the IRS.

7 Q And is that a federal, or state license?

8 A That's a federal license.

9 Q And how long have you been licensed by -- as an

10 enrolled agent?

11 A Since 1999.

12 Q Now, have -- do you have a real estate license

13 currently?

14 A Yes. No. No.

15 Q Have you had a real estate license?

16 A Yes.

17 Q What kind of a real estate license?

18 A Salesperson.

19 Q And when did you hold that license?

20 A From 1993 to 2017.

21 Q Okay. And during that period of time, what

22 types of -- or how many transactions have you engaged in

23 where you were acting as a real estate agent?

24 A Probably under 10 since 1993.

25 Q And of those 10, are those residential, or

26 commercial transactions, or both?

27 A Both.

28 Q Now, have you, for your personal investment,

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 bought and sold real property?

2 A Yes, I have.

3 Q Have you served as your own real estate agent
4 in connection with any of those transactions?

5 A No.

6 Q Okay. Do you know Rebecca Berry?

7 A Yes.

8 Q And you see her in this courtroom?

9 A Yes.

10 Q And who is Rebecca Berry?

11 A She's my administrator.

12 Q And how long has she worked for you?

13 A Fourteen years.

14 Q And you said she was an administrator. What's
15 her role as an administrator?

16 A She's the front desk booking -- booking
17 clients' appointments, administering the bills when they
18 come in to the payables department. She's like the
19 gatekeeper of everything that comes into the office.

20 Q Have you ever owned a medical marijuana
21 dispensary?

22 A No, I haven't.

23 Q Have you ever operated or managed a medical
24 marijuana dispensary?

25 A No, I haven't.

26 Q Have you ever told Darryl Cotton that you owned
27 or managed a marijuana dispensary?

28 A No.

Transcript of Proceedings

Geraci vs. Cotton, et al.

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24 marijuana dispensary?

25 A No, I haven't.

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27 or managed a marijuana dispensary?

28 A No.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q In connection with -- we'll get to it. But in
2 connection with the transaction, the sale of -- the
3 purchase and sale of his property, in connection with
4 any communications with Mr. Cotton, did you indicate to
5 him that you operated or owned multiple dispensaries?

6 A No, I didn't.

7 Q Did you talk to him about anybody within your
8 team that managed or operated dispensaries?

9 A No, I didn't.

10 Q Okay. Now, when did you first have any
11 communication with Darryl Cotton?

12 A About mid July.

13 Q And why did you contact -- first of all, what
14 year?

15 A 2016.

16 Q Why did you contact Mr. Cotton or have
17 communication with him in July of 2016?

18 A The team had identified a property on Federal
19 Boulevard that may qualify for a dispensary.

20 Q Okay. And you mentioned the team. What was
21 the team?

22 A Jim Bartell, Abhay Schweitzer, and Gina Austin.

23 Q And when did you form -- for what purposes was
24 that team formed?

25 A They were going to facilitate to proceed to get
26 the CUP on Mr. Cotton's property.

27 Q When did you first hire Mr. Bartell?

28 A In October of 2015.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q Now, at that time, had you had any contact with
2 Mr. Cotton?

3 A No, I didn't.

4 Q So why did you -- well, first of all, can you
5 tell the jury who Mr. Bartell is, to your understanding.

6 A Mr. Bartell is a liaison lobbyist between
7 myself and the City.

8 MR. WEINSTEIN: Okay. I'm going to show the
9 witness a stipulated exhibit, Exhibit 1.

10 THE COURT: Any objection if Exhibit 20 is
11 admitted, Counsel?

12 MR. AUSTIN: No.

13 MR. WEINSTEIN: Exhibit 1. It's Exhibit 1.

14 THE COURT: Exhibit 1?

15 MR. WEINSTEIN: Yes.

16 THE COURT: Oh, I'm sorry. Any objection to
17 the admission of Exhibit 1?

18 MR. AUSTIN: No, your Honor.

19 THE COURT: Exhibit 1 will be admitted.

20 (Premarked Joint Exhibit 1, Letter of Agreement
21 with Bartell & Associates dated 10/29/15, was
22 admitted into evidence.)

23 BY MR. WEINSTEIN:

24 Q Mr. Geraci, there are books up there. If it's
25 easier for you, there are books up there.

26 THE COURT: Counsel, they may have been moved.
27 Do you want to approach?

28 MR. WEINSTEIN: If you need to look at the

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 THE COURT: I'm sorry?

2 MR. AUSTIN: I don't believe that was testified
3 to.

4 THE COURT: Well, so then we don't have
5 evidence of it, at least not a foundation of a start
6 date. So how long was this revenue stream supposed to
7 go on?

8 MR. AUSTIN: Well, presumably, the life span of
9 a CUP is 10 years. And they could be renewed.

10 THE COURT: Did somebody testify to the life
11 span of a CUP?

12 MR. AUSTIN: I believe Mr. Cotton did.

13 THE COURT: All right. All right. Let me go
14 back to you, Counsel.

15 MR. WEINSTEIN: First of all, why -- I'm not
16 saying Mr. Cotton didn't testify to that. I don't
17 remember him testifying to that. But nevertheless, they
18 still have -- there's no evidence that the CUP would
19 ever have been obtained.

20 THE COURT: Well, on that subject, there is
21 evidence from Mr. Bartell --

22 MR. WEINSTEIN: Right.

23 THE COURT: They can rely upon your witnesses'
24 testimony as well.

25 MR. WEINSTEIN: So --

26 THE COURT: Mr. Bartell made an awful good
27 witness and all but said that instead of being 19 for
28 20, he would have been 20 for 20 but for Mr. Cotton's

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 interference.

2 MR. WEINSTEIN: So --

3 THE COURT: In fact, I think you may have
4 elicited it.

5 MR. WEINSTEIN: I did.

6 THE COURT: Counsel, you may have. I'm not
7 picking on you, but that's what I seem to recall to be
8 the up -- so there's evidence, I think, that it's more
9 probable than not that a CUP had been issued and the
10 dispensary opened.

11 MR. WEINSTEIN: Had Mr. Cotton not interfered.

12 THE COURT: Right.

13 MR. WEINSTEIN: So what Mr. Cotton is saying
14 I've put on evidence that the CUP would have been
15 granted had I not interfered. But there's no evidence
16 from his side that he wouldn't have interfered the way
17 he did. I don't think he can -- we have an argument
18 that there's been an excuse of performance, but he
19 doesn't have an argument that getting the CUP was
20 excused.

21 It's -- so --

22 THE COURT: I think, though, what I'm hearing
23 is that he thought he had a deal involving a joint
24 venture, Mr. Geraci refused to memorialize it in that
25 form. And I understand why Mr. Geraci chose not to do
26 so. I understand your theory of the case.

27 But what you're calling interference was --

28 MR. WEINSTEIN: So how -- how does -- what

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 evidence is there of what the damages would have been?

2 THE COURT: Well, Counsel, all is not lost yet
3 from your side. The most that I'm hearing -- well,
4 first of all, I'm not persuaded that there is a rational
5 foundation in the evidence to support a lot of profits
6 claim by Mr. Cotton. There's just too many variables
7 that the jury couldn't possibly -- that are not before
8 the jury that would prevent them from returning a
9 verdict on lost profits.

10 So what you may be down to is, number one, a
11 nominal case of damages, and perhaps something measured
12 by this 10 percent equity stake that there is evidence
13 of.

14 I mean, I know that there are a lot of
15 inferences to be drawn. I have to be very careful that
16 I don't dismiss something where there is some foundation
17 in the evidence that might support an award.

18 Now, folks, your guess is as good as mine as to
19 what the jury is going to do with this. But all of
20 this, I would expect, will become the subject of post
21 trial motions depending upon what the jury does. And
22 I'm not going to be shy taking another look at this
23 depending upon what the jury does. That's not to
24 suggest that I'm going to second-guess -- second-guess
25 the jury. But it's a lot easier to let the juror speak
26 and then we all revisit this topic a second time.

27 For example -- for example -- and I'm not
28 trying to pick on the plaintiff -- well, the

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 THE COURT: As framed, sustained.

2 MR. AUSTIN: Withdrawn. I have no further
3 questions.

4 THE COURT: All right. Redirect.

5 MR. WEINSTEIN: No, your Honor.

6 THE COURT: All right. May Mr. Geraci be
7 excused?

8 MR. WEINSTEIN: Yes, your Honor.

9 THE COURT: Counsel?

10 MR. AUSTIN: Yes, your Honor.

11 THE COURT: Thank you very much, Mr. Geraci.
12 All right. Counsel, your next witness?

13 MR. WEINSTEIN: Rebecca Berry.

14
15 Rebecca Berry,
16 being called on behalf of the Plaintiff/Cross-Defendant,
17 having been first duly sworn, testified as follows:

18

19 THE CLERK: Please state your full name and
20 spell your first and last name for the record.

21 THE WITNESS: Rebecca Ann Berry.

22 THE REPORTER: May the reporter have the
23 spelling of Ann?

24 THE COURT: Could you spell your middle name,
25 please.

26 THE WITNESS: Ann, A-n-n.

27 THE COURT: Thank you.

28 Counsel, please continue.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 MR. WEINSTEIN: Thank you.

2 (Direct examination of Rebecca Berry)

3 BY MR. WEINSTEIN:

4 Q Ms. Berry, are you -- first of all, let's talk
5 about your education. Have you graduated from high
6 school?

7 A Yes.

8 Q And when?

9 A 1967.

10 Q From where?

11 A Granite Hills High School.

12 Q And did you take college after that?

13 A Some college.

14 Q Where at?

15 A Grossmont College.

16 Q And when was that?

17 A 1968 and then 10 years later, I took classes
18 probably in -- no. Fifteen years later. So --

19 Q Okay. And did you get a degree from Grossmont?

20 A No.

21 Q Okay. Other than attending Grossmont, have you
22 attended any -- any schooling since you graduated from
23 high school?

24 A Real estate and as the real estate broker
25 ministerial training.

26 Q Okay. And let's take the latter first. Would
27 you -- did you say ministerial training?

28 A Yes.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q Okay. What training did you have that was
2 ministerial?

3 A Through my church and as a licensed
4 practitioner and counselor.

5 Q Okay. And when -- did you get some type of
6 license with respect to that?

7 A Yes.

8 Q What license is that?

9 A Licensed counselor in 1991 and a minister,
10 1999.

11 Q Okay. And are you still counselor or a
12 minister?

13 A Counselor but not a minister.

14 Q Okay. Now, you had -- you obtained a
15 real estate license?

16 A Yes.

17 Q Is that a -- well, when did you obtain a
18 real estate license?

19 A It's been 10, 12 years.

20 Q From today?

21 A From today.

22 Q Okay. And was it a salesperson's license? A
23 broker's license? What kind of license?

24 A Salesperson's license.

25 Q And have you used that salesperson's license in
26 connection with real estate transactions?

27 A Yes.

28 Q Okay. Now, did you act as a real estate agent

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 or broker with respect to the sale of -- the agreement
2 to sell property that's the subject of this lawsuit?

3 A No.

4 Q Okay. Were you involved at all in the
5 negotiation of -- of that agreement?

6 A No.

7 Q Do you know Darryl Cotton?

8 A No.

9 Q Have you -- when is the first time you ever saw
10 him?

11 A Yesterday in the courtroom.

12 Q Okay. Have you ever spoken to him on the
13 phone?

14 A No.

15 Q Have you ever seen him in the office?

16 A No.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom?

20 A Tax and Financial as the real estate broker and
21 through my church as a teacher and counselor.

22 Q Okay. Let's focus on Tax and Financial.
23 How long have you worked at Tax and Financial
24 Center?

25 A Almost 15 years.

26 Q And what's your current job position at Tax and
27 Financial Center?

28 A I'm an assistant to Larry Geraci, and I manage

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 the office.

2 Q And how long have you been in that position?

3 A Almost 15 years.

4 Q So the entire time you've been there?

5 A Yes.

6 Q Now, in -- as you know, this case -- do you
7 know -- do you understand this case involves an attempt
8 to obtain a CUP conditional use permit to operate a
9 dispensary at a property that Mr. Geraci was attempting
10 to purchase?

11 A Yes.

12 Q Okay. Were you the applicant on that CUP
13 application?

14 A Yes.

15 Q Okay. And as -- as the applicant -- as the
16 applicant, did you understand that you were acting at
17 all times as the agent for and on behalf of Mr. Geraci?

18 A Yes.

19 Q Why -- what was your understanding as to why
20 you were the applicant on that CUP application?

21 A Mr. Geraci has a federal license, and we were
22 afraid that it might affect it at some point.

23 Q What lines -- what federal license is that?

24 A He's an enrolled agent.

25 Q And did you have a discussion with him about
26 the fact that there was a possibility or it was unknown
27 whether him being an applicant on the property would
28 affect his enrolled agent license?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

2 Q All right. Were there any other reasons that
3 you recall that you were the applicant -- chose to be
4 the applicant on the project?

5 A No.

6 Q Were you willing and -- were you willing to be
7 the applicant on the project as Mr. Geraci's agent?

8 A Yes.

9 Q Now, in connection with the CUP application
10 project, were you involved at all in the communications
11 with the City?

12 A Yes.

13 Q Okay. And what was your involvement in
14 communications with the City?

15 A They -- I -- what I would do is if I got any
16 information, I would simply direct it to Mr. Geraci or
17 his team.

18 Q Okay.

19 A And then I made no decisions.

20 Q Okay. And so did you also have any
21 communications with the team that Mr. Geraci had put
22 together to pursue the CUP application?

23 A I had some interaction.

24 Q And -- and which members of the team do you
25 recall having interaction with?

26 A Abhay.

27 Q That's Mr. Schweitzer?

28 A Mr. Schweitzer.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q What did you understand his role as?

2 A He had something -- he was -- he had an
3 architect company or something like that. And so I -- I
4 wasn't really sure. I didn't know who the people were.
5 And so I would just get this information and direct it
6 to Mr. Geraci and the team for their approval.

7 Q Okay. So you would receive information from
8 the team -- from the team in connection with the CUP
9 application?

10 A Yes.

11 Q And then what would you do with that
12 information?

13 A I would forward it to Mr. Geraci for his
14 direction.

15 Q Okay. And then what would happen after you
16 forward it to him for his direction?

17 A He would tell me what to do with it.

18 Q Okay. And then did you carry out his
19 instructions?

20 A Yes.

21 Q Did you make any discussions with respect to
22 the CUP application?

23 A No decisions.

24 Q Now, in connection with the CUP application,
25 did you have to sign forms to be submitted to the City
26 of San Diego?

27 A Yes.

28 Q Okay. Did you prepare those forms?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A No.

2 Q Who prepared those forms?

3 A The team.

4 Q Okay. And, generally, who on the team prepared
5 those forms?

6 A I really don't know because I -- just whoever
7 would give it to me. And -- or through Mr. Geraci, I
8 would sign it and take care of it.

9 MR. WEINSTEIN: Okay. And -- could you bring
10 up Exhibit 34, please.

11 I offer Exhibit 34.

12 THE COURT: Any objection?

13 MR. AUSTIN: No, your Honor.

14 THE COURT: Exhibit 34 will be admitted.

15 (Premarked Joint Exhibit 34, Forms submitted to
16 City of San Diego in relation to 6176 Federal
17 Blvd CUP Application, dated 10/31/16, Form
18 DS-3032 General Application dated 10/31/2016,
19 was admitted into evidence.)

20 BY MR. WEINSTEIN:

21 Q So, Ms. Berry, this is called the general
22 application form. It's the first page of Exhibit 34.

23 Is that your signature at the bottom of the
24 page?

25 A Yes.

26 Q Okay. And did you prepare that form?

27 A No.

28 Q Was it prepared for you?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

2 Q And did you sign it on or about October 31st,
3 2016?

4 A Yes.

5 Q Okay. When you signed that form, was it your
6 understanding that the form had been prepared under the
7 direction of either Mr. Schweitzer or Ms. Austin?

8 A Simply by the team. I did not know who
9 prepared it.

10 Q Okay. Would you go to the next form, please.
11 The next form is a D.S. 190 form, an affidavit for
12 medical marijuana consumer cooperatives for conditional
13 use permit.

14 Was that one of the forms that you were
15 provided to sign for the CUP application?

16 A Yes.

17 Q Did you prepare that form?

18 A Yes.

19 Q Did you --

20 A I'm sorry. I did not prepare it. I'm so
21 sorry.

22 Q Is that your signature and date at the bottom
23 of the page?

24 A Yes.

25 Q When you signed this form, did you understand
26 that it had been prepared by somebody on the team?

27 A Yes.

28 Q And were you involved in making any decisions

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 as to how this form would be filled out?

2 A No.

3 Q Next document. Okay. This next form is
4 deposit account/financially responsible party. Is that
5 another form that you signed in connection with the CUP
6 application?

7 A Yes.

8 Q Okay. And did you date it, sign it on
9 October 31st, 2016?

10 A Yes.

11 Q And did you prepare that form?

12 A No.

13 Q Did you understand it was prepared by somebody
14 on the team?

15 A Probably, yes.

16 Q And did you understand -- have an understanding
17 as to -- well, do you have any responsible --
18 responsibility for deciding how to fill out the form?

19 A No.

20 Q Okay. The last form, please. Okay. This form
21 is called ownership disclosure statement. Would you go
22 to the signature section.

23 And was this a form that you signed in
24 connection with the CUP application?

25 A Yes.

26 Q Okay. And did you prepare this form?

27 A No.

28 Q Did you understand it was prepared by somebody

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 on your team?

2 A Probably.

3 Q Okay. And did you -- were you responsible for
4 making any determinations as to how to fill out this
5 form?

6 A No.

7 Q So in signing these forms, you were relying on
8 the team to properly prepare the forms?

9 A Yes.

10 Q Did you get involved in any discussions that
11 you recall with them about how to fill these forms out?

12 A No.

13 Q So is it fair to say that your role in
14 connection with the application was simply to be the
15 liaison between the team and the City and Mr. Geraci?

16 A Yes.

17 Q Did you ever become aware of any issues related
18 to problems in getting the CUP application processed,
19 that you recall?

20 A I really didn't get that involved. I knew
21 there were things going on, but I didn't really pay that
22 much attention to it. I wasn't really that involved
23 with it.

24 Q Did you get emails concerning issues regarding
25 the CUP application that you simply forwarded on to
26 Mr. Geraci?

27 A Yes.

28 Q And was he the one making decisions with

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 **respect to those issues?**

2 A Yes.

3 MR. WEINSTEIN: Your Honor, may I have a
4 moment.

5 THE COURT: You may.

6 BY MR. WEINSTEIN:

7 Q Just in case I missed it, I know it's been
8 quick. But am I correct you've never spoken to
9 Mr. Cotton?

10 A No.

11 Q Have you ever communicated with him by email if
12 you're aware?

13 A He sent one email, but I've never sent him
14 anything.

15 Q Okay.

16 A I got one email from him.

17 Q And what did you do with that email?

18 A I read the first line or two and forwarded it
19 to Larry.

20 MR. WEINSTEIN: Okay. I think that's all I
21 have, your Honor.

22 THE COURT: All right. Cross-examination.

23 (Cross-examination of Rebecca Berry)

24 BY MR. AUSTIN:

25 Q Good afternoon, Ms. Berry.

26 A Good afternoon.

27 Q So on Exhibit 30, you signed a document saying
28 that --

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Do I need to look it up?

2 Q Yeah, if you could. Exhibit 34. On the first
3 page at the very bottom, is that your signature? I
4 think we've already established that it is.

5 A Yes.

6 Q It's dated October -- October 31st. So at that
7 time, do you -- do you know whether Mr. Cotton and
8 Mr. Geraci had entered into a real estate contract?

9 A No.

10 Q And why were you told to be the applicant on
11 this?

12 A Like I said, it was because Larry -- or
13 Mr. Geraci had a federal license.

14 Q So because of this license, you did not -- let
15 me put this differently.

16 So if you go to page 4 on that same exhibit.

17 A Page 4.

18 Q It's fine print, but in Part 1.

19 A Okay.

20 Q Starting at the third sentence, it says the
21 list must include the names and addresses of all persons
22 who have an interest in the property recorded or
23 otherwise and state the type of property interest,
24 whether --

25 A Okay. So you're saying page 4, part 1 to be
26 completed when property is held. Is that what you're
27 talking about?

28 Q That is the section, yes.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Okay. And then what are you saying?

2 Q The third sentence, starting halfway through
3 the third line down.

4 A Okay.

5 Q The list must include the names and addresses
6 of all persons who have an interest in the property.

7 So why upon signing this did you not include
8 Mr. Geraci's name? Did -- was he not to have any
9 interest in the CUP?

10 A I simply signed this. It was filled out by our
11 team and I signed it. Trusting Mr. Geraci and the team.

12 Q Did it concern you at all that this could
13 potentially either lead to the denial of the application
14 for being incomplete or possibly even legal penalties
15 against you?

16 A No. I didn't -- I was not involved in it.

17 Q So you had no concern?

18 A It didn't even -- no. It didn't even enter my
19 mind.

20 Q So on that same page, it's checked off that
21 you're the tenant/lessee.

22 Do you see that a couple lines above your
23 signature there in the --

24 A Yes.

25 Q Okay. And going back a page to page 3, also
26 October 31st, you say you're the president. What are
27 you the president of?

28 A I believe that I put president because I'm the

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 real estate -- I -- I don't even remember. There -- it
2 was -- it seemed like a good reason to do it.

3 Q Okay. So going back another page, page 1, on
4 this page, you check off the part -- there's two
5 options: There's owner and there's agent. You check
6 off owner. Is that correct?

7 A I did not check that box.

8 Q Someone else checked it?

9 A Yes.

10 Q Okay. Then on page 1, that's where it says
11 you're the applicant. So there's just a lot of
12 contradiction. But it didn't matter to you what was
13 being signed?

14 A I simply signed it and under direction from our
15 team.

16 Q Okay.

17 A And Mr. Geraci.

18 Q Have you ever been the applicant on any other
19 CUPs?

20 A No.

21 Q So you have no involvement with any other CUPs
22 at all?

23 A No.

24 Q Okay. Did Mr. Geraci offer to pay you more to
25 sign these documents?

26 A No mention of any money was ever -- never
27 talked about, any money.

28 Q Even in the event of the CUP application being

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 or broker with respect to the sale of -- the agreement
2 to sell property that's the subject of this lawsuit?

3 A No.

4 Q Okay. Were you involved at all in the
5 negotiation of -- of that agreement?

6 A No.

7 Q Do you know Darryl Cotton?

8 A No.

9 Q Have you -- when is the first time you ever saw
10 him?

11 A Yesterday in the courtroom.

12 Q Okay. Have you ever spoken to him on the
13 phone?

14 A No.

15 Q Have you ever seen him in the office?

16 A No.

17 Q Okay. Now, are you currently employed?

18 A Yes.

19 Q And by whom?

20 A Tax and Financial as the real estate broker and
21 through my church as a teacher and counselor.

22 Q Okay. Let's focus on Tax and Financial.
23 How long have you worked at Tax and Financial
24 Center?

25 A Almost 15 years.

26 Q And what's your current job position at Tax and
27 Financial Center?

28 A I'm an assistant to Larry Geraci, and I manage

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 the office.

2 Q And how long have you been in that position?

3 A Almost 15 years.

4 Q So the entire time you've been there?

5 A Yes.

6 Q Now, in -- as you know, this case -- do you
7 know -- do you understand this case involves an attempt
8 to obtain a CUP conditional use permit to operate a
9 dispensary at a property that Mr. Geraci was attempting
10 to purchase?

11 A Yes.

12 Q Okay. Were you the applicant on that CUP
13 application?

14 A Yes.

15 Q Okay. And as -- as the applicant -- as the
16 applicant, did you understand that you were acting at
17 all times as the agent for and on behalf of Mr. Geraci?

18 A Yes.

19 Q Why -- what was your understanding as to why
20 you were the applicant on that CUP application?

21 A Mr. Geraci has a federal license, and we were
22 afraid that it might affect it at some point.

23 Q What lines -- what federal license is that?

24 A He's an enrolled agent.

25 Q And did you have a discussion with him about
26 the fact that there was a possibility or it was unknown
27 whether him being an applicant on the property would
28 affect his enrolled agent license?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A Yes.

2 Q All right. Were there any other reasons that
3 you recall that you were the applicant -- chose to be
4 the applicant on the project?

5 A No.

6 Q Were you willing and -- were you willing to be
7 the applicant on the project as Mr. Geraci's agent?

8 A Yes.

9 Q Now, in connection with the CUP application
10 project, were you involved at all in the communications
11 with the City?

12 A Yes.

13 Q Okay. And what was your involvement in
14 communications with the City?

15 A They -- I -- what I would do is if I got any
16 information, I would simply direct it to Mr. Geraci or
17 his team.

18 Q Okay.

19 A And then I made no decisions.

20 Q Okay. And so did you also have any
21 communications with the team that Mr. Geraci had put
22 together to pursue the CUP application?

23 A I had some interaction.

24 Q And -- and which members of the team do you
25 recall having interaction with?

26 A Abhay.

27 Q That's Mr. Schweitzer?

28 A Mr. Schweitzer.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q What did you understand his role as?

2 A He had something -- he was -- he had an
3 architect company or something like that. And so I -- I
4 wasn't really sure. I didn't know who the people were.
5 And so I would just get this information and direct it
6 to Mr. Geraci and the team for their approval.

7 Q Okay. So you would receive information from
8 the team -- from the team in connection with the CUP
9 application?

10 A Yes.

11 Q And then what would you do with that
12 information?

13 A I would forward it to Mr. Geraci for his
14 direction.

15 Q Okay. And then what would happen after you
16 forward it to him for his direction?

17 A He would tell me what to do with it.

18 Q Okay. And then did you carry out his
19 instructions?

20 A Yes.

21 Q Did you make any discussions with respect to
22 the CUP application?

23 A No decisions.

24 Q Now, in connection with the CUP application,
25 did you have to sign forms to be submitted to the City
26 of San Diego?

27 A Yes.

28 Q Okay. Did you prepare those forms?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 I, Margaret A. Smith, a Certified Shorthand
2 Reporter, No. 9733, State of California, RPR, CRR, do
3 hereby certify:

4 That I reported stenographically the proceedings
5 held in the above-entitled cause; that my notes were
6 thereafter transcribed with Computer-Aided
7 Transcription; and the foregoing transcript, consisting
8 of pages number from 1 to 215, inclusive, is a full,
9 true and correct transcription of my shorthand notes
10 taken during the proceeding had on July 3, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 22nd day of July 2019.

13
14
15 Margaret A. Smith, CSR No. 9733, RPR, CRR

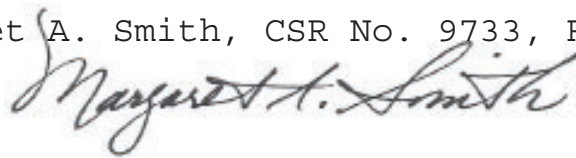
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Exhibit 7

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE 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

MEMORANDUM IN SUPPORT OF DARRYL
COTTON'S EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Date: December 7, 2017
Time: 8:30 a.m.
Dept.: C-73

Complaint Filed: March 21, 2017
Trial Date: May 11, 2018

AND RELATED CROSS-ACTION.

I

INTRODUCTION

Cross-complainant/Defendant Darryl Cotton respectfully requests this Court take immediate action to protect Cotton's interest in the application for conditional use permit to operate a Medical Marijuana Consumer Cooperative or MMCC ("Cotton CUP") on Cotton's

1 property at 6176 Federal Boulevard (“Property”). Cotton is the sole record owner of and
 2 interest holder in the real property to which the Cotton CUP will attach. Cotton and
 3 Plaintiff/Cross-defendant Geraci reached an agreement regarding the sale of the Property in or
 4 around November 2016 (“November Agreement”) which included, among other things, an
 5 agreement for Geraci to pursue the Cotton CUP on Cotton’s behalf. However, Geraci: (1)
 6 breached the November Agreement, (2) defrauded Cotton into signing a writing on November
 7 2, 2016, that Geraci now disingenuously holds out as a completely integrated and binding
 8 agreement, and (3) along with Geraci’s agent, Cross-defendant Ms. Berry, continues to
 9 wrongfully refuse to release the Cotton CUP to Cotton’s sole control.

10 The urgency of this Court’s intervention in this Action is precipitated, in large part, by
 11 the City of San Diego’s change in its handling of the Cotton CUP. On September 29, 2017, the
 12 City emailed that the Cotton CUP was in the unilateral control of Ms. Berry (and therefore by
 13 extension Mr. Geraci), and moreover, that to protect Mr. Cotton’s interest in obtaining a CUP
 14 he would need to file a separate CUP Application and complete the processing of that
 15 application prior to the processing of the Cotton CUP. This email from the City was a
 16 shocking and dramatic shift in the City’s approach to the Cotton CUP as previously
 17 communicated and in conflict with the proper process for handling CUPs. This approach by
 18 the City threatens Cotton with irreparable harm as it infringes on his constitutional right of use
 19 of his property. The Municipal Code provides that only a person with a “right to use” the
 20 property has standing to maintain a CUP application. Cotton is the sole person with a “right to
 21 use” the Property. Since September 29, 2017, Cotton has diligently pursued all avenues at his
 22 disposal to protect and preserve his interest in the Cotton CUP. Specifically, on October 6,
 23 2017, Cotton filed a lawsuit against the City of San Diego seeking to recover control of the
 24 Cotton CUP (“City Action”). Cotton pursued the first available ex parte date on October 31,
 25 2017, which was available with Judge Sturgeon. Judge Sturgeon denied the ex parte request
 26 for alternative writ, and rather than have the peremptory writ request heard before Judge
 27 Sturgeon, the parties agreed to the reassignment of the City Action to this Court. Hearing on
 28

1 the peremptory writ is currently set for January 26, 2017, although Cotton has requested an
 2 earlier hearing date. Cotton also sought a stipulation with Geraci and Berry to govern joint
 3 handling of the CUP in good faith. This offer was refused. (See Decl., ¶____)

4 Accordingly, pursuant to Code of Civil procedure section 527 and Rules of Court, rule
 5 3.1150, Mr. Cotton respectfully requests issuance of a Temporary Restraining Order (“TRO”)
 6 against Geraci and Berry to recognize Mr. Cotton as a co-applicant on the Cotton CUP and
 7 issuance of an order to show cause why a preliminary injunction should not be granted.

8 II

9 FACTUAL BACKGROUND

10 Cotton has at all relevant times been the sole record owner of and interest holder in the
 11 Property, which is located at 6176 Federal Boulevard San Diego, California 92114.
 12 (Declaration of Darryl Cotton (“Cotton Decl.”), ¶ 3; VP Ex. 1.) In or around August 2016,
 13 Geraci first approached Cotton and expressed interest in purchasing the Property because it
 14 was potentially eligible to be used for the operation of a Medical Marijuana Consumer
 15 Cooperative (“MMCC”), (now known as a Marijuana Outlet under the City Municipal Code).
 16 (Cotton Decl. ¶ 4.) A Conditional Use Permit must be issued by the City as a condition to
 17 operation of a MMCC – a process that takes several months. (Cotton Decl. ¶¶ 5-6.) However,
 18 Geraci represented that there was a zoning issue at the Property that must be resolved before
 19 the Cotton Application could be filed. (Cotton Decl. ¶ 6.) Geraci stated that he has special
 20 expertise in acquiring CUP permits for MMCCs and was uniquely qualified to resolve the
 21 zoning issue preventing the filing of the application on Cotton’s Property. (Cotton Decl. ¶ 6.)

22 Over the next several months, Cotton and Geraci engaged in lengthy negotiations over
 23 the terms for potential sale of the Property. (Cotton Decl. ¶¶ 9-14.) On or about October 31,
 24 2016, while negotiations were ongoing, Geraci asked Cotton to execute an Ownership
 25 Disclosure Statement, which is a required part of all CUP applications. (Cotton Decl. ¶ 8.)
 26 Geraci said that Cotton had to sign the form in order to provide Geraci with the ability to
 27 prepare the Cotton Application for the Property. (Cotton Decl. ¶ 8.) The Ownership
 28

1 Disclosure Statement form that Geraci induced Cotton to sign inaccurately stated that Cotton
 2 had leased the Property to Berry. (Cotton Decl. ¶ 8.) In fact, Cotton and Berry have never
 3 entered into any agreement, written or otherwise, with respect to the Property and Cotton has
 4 never met Berry personally. (Cotton Decl. ¶ 8.) Nonetheless, Geraci indicated that Berry was
 5 his trusted employee who was familiar with the MMCC CUP process and that she was
 6 involved in Geraci's other MMCC dispensaries. (Cotton Decl. ¶ 8.) In other words, Geraci
 7 represented that Berry was his agent and would act on his behalf. (Cotton Decl. ¶ 8.) Based on
 8 Geraci's representations, Cotton executed the Ownership Disclosure Statement that Geraci
 9 provided him. (Cotton Decl. ¶ 8.)

10 Over the weeks and months that followed, Cotton repeatedly reached out to Geraci for
 11 information regarding the resolution of the zoning issue, the CUP application, and the status of
 12 the agreement documents Geraci was supposed to have prepared to evidence the parties'
 13 agreement with respect to the Property and the MMCC. (Cotton Decl. ¶ 11.) Geraci
 14 continuously failed to act in good-faith in providing information to Cotton and dealing with
 15 Cotton. (Cotton Decl. ¶¶ 11-13.) For instance, on or about March 16, 2017, Cotton first
 16 discovered that Geraci had filed the Cotton Application back on October 31, 2016, before the
 17 parties had finalized their agreement regarding the Property and in direct contravention of
 18 Geraci's express representations to Cotton that the zoning issued needed to be resolved before
 19 the Cotton Application could be filed. (Cotton Decl. ¶ 13.)

20 Due to Geraci's bad faith actions and breaches of the parties' agreement Cotton
 21 emailed Geraci on March 21, 2017 to confirm that their agreement was terminated and that
 22 Geraci had no interest in the Property. (Cotton Decl., ¶ 13.) On March 21, 2017, but after
 23 terminating his agreement with Geraci, Cotton entered into a real-estate purchase-agreement
 24 with another buyer, RJ, for the subject property. (Cotton Decl. ¶ ____). This purchase-agreement
 25 provided that Cotton would hold a 20% interest in any MMCC operated on the Property. In an
 26 effort to stymie this transaction, Geraci filed a lawsuit (Case No. 37-2017-00010073-CU-BC-
 27 CTL). (Cotton Decl. ¶ ____).

On May 19, 2017, the City wrote that the application would not continue to process until ownership was resolved, as the City's understanding was that ownership had changed. (Cotton Decl. ¶ ____). As a result, Cotton believed that the CUP application was effectively stayed and that he need not do anything more to protect his rights. (Cotton Decl. ¶ ____).

On September 22, 2017, Cotton, through his attorneys, demanded the City allow Cotton to control the CUP application (Cotton Decl. ¶ 17.) On September 29, 2017, the City responded by email to Cotton's letter and refused Cotton's request. Actually, the City did more than just refuse Cotton's request: It announced that it effectively changed the way it was going to process the CUP application. (Cotton Decl. ¶ ____). The City—for the very first time—directed Cotton to begin a new CUP application in his own name and informed him that it would award the CUP application to the party whose application who was first approved. (Cotton Decl., ¶ 18; VP Ex. 5 [email response from Firouzeh Tirandazi.]) The City's revised application procedure meant that Cotton was in an untenable position. The Berry/Geraci controlled Cotton CUP had been pending a year or so before Cotton was informed that he needed to file a second CUP application in his own name to protect his rights. Until this time, Cotton reasonably believed he controlled the CUP application as the record owner of the Property.

Cotton seeks this TRO not out of any ill will or jealousy towards Geraci or Berry, but simply to vindicate his own rights as the owner of the Property. (Cotton Decl. ¶ 21.)

III

LEGAL STANDARD

California Code of Civil Procedure § 527(b)-(c) empowers the Court to issue emergency injunctive relief. In deciding whether Cotton should be provided relief in form of a TRO, the Court considers two interrelated factors. "The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the [restraining order] were denied as compared to the harm that the defendant is likely to suffer if the [order] were issued." (*Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1251 [citing *IT Corp v. County of Imperial* (1983) 35 Cal.3d 63,

69-70.)) Moreover, the Court examines these factors in a sliding-scale fashion so that “the greater the [party’s] showing on one, the less must be shown on the other to support [a restraining order].” (*Ibid* at p. 1252 [quoting *Butt v. State of California* (1992) 4 Cal.4th 668, 678].)

IV

ARGUMENT

A. Cotton Will More Likely Than Not Prevail on the Merits in the Action

Cotton has a high probability of prevailing on the merits of the underlying action, at least as to his breach of contract cause of action against Geraci, and his declaratory relief cause of action against Geraci and Berry.

1. Cotton Will Prevail In His Breach of Contract Cause of Action

“[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting damages to the plaintiff.” (*Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011))

a. Geraci Breached The November Agreement

Cotton and Geraci reached final terms for a binding agreement for sale of the Property in or around November 2, 2017. Cotton’s terms for sale of the Property have been constant and unwavering. Starting with his communication to Geraci by letter dated September 24, 2016, continuing at the parties November 2, 2016, meeting where Geraci agreed to those terms of sale subject to immaterial changes, and continuing through the final communications between Geraci and Cotton in March of 2017. (Cotton Decl., ¶, Ex. “1”) These terms are a nonrefundable deposit of \$50,000, a promise by the purchaser to pursue the CUP on behalf of Cotton in good faith and at the cost of the purchaser, a promise by the purchaser to develop the Property and operate a CUP, for Cotton to receive 10 percent equity interest in the MMCC operation and a minimum of \$10,000 per month, and the agreement to negotiate in good faith for execution of an agreement comprising all the foregoing binding provisions as well as

provisions reasonable and customary for such an agreement (“November Agreement”).

(Cotton Decl., ¶ 9, Exs B-G)

Geraci’s acceptance of these terms, forming a binding contract, is evident from Cotton’s testimony, the conduct of the parties, and the writings exchanged by the parties after the November 2, 2017, meeting, all of which confirm the formation and terms of the November Agreement. (Cotton Decl., ¶ 12, Exhibits _____.) Most notably, Cotton repeatedly sent emails to Geraci in which Cotton reiterated the fact that Geraci promised to pay Cotton a \$50,000 non-refundable deposit, a 10% equity stake in the MMCC, and at least \$10,000 of monthly profits. Geraci, however, never once rejected Cotton’s representations or otherwise claimed a misunderstanding of the terms. (Cotton Decl., ¶ ____, Ex. ____.) Thus, Cotton’s writing and Geraci’s subsequent silence show that Geraci admits the existence of those terms. (See, e.g., *Keller v. Key System Transit Lines* (1954) 129 Cal.App.2d 593, 596 [“The basis of the rule on admissions made in response to accusations is the fact that human experience has shown that generally it is natural to deny an accusation if a party considers himself innocent of negligence or wrongdoing.”] Similarly, in numerous texts exchanged by the parties Geraci did not disavow the materials terms of the November Agreement. Cotton Decl., ¶ ____, Ex. ____.)

Cotton fully performed the terms of the November Agreement. He allowed the Property to be used as the basis for the Cotton CUP application. He repeatedly asked Mr. Geraci to deliver on his promises of presenting a final written agreement and paying the remaining \$40,000 deposit. However, Mr. Geraci, instead, first delayed in delivering draft agreements, and then ultimately delivered draft agreements that did not match the binding terms of the November Agreement. On February 27, 2017, Geraci delivered a draft agreement for the purchase. (Cotton Decl., ¶ ____, Exhibit ____.) On March 2, 2017, Geraci delivered a draft agreement for the side agreement. (Cotton Decl., ¶ ____, Exhibit ____.) None of these agreements were consistent with the binding terms of the November Agreement. On March 21, 2017, Cotton terminated the November Agreement for Geraci’s breaches. (Cotton Decl., ¶ ____, ex ____).

1 Finally, Cotton will be able to show he suffered damages. He has not received the
2 nonrefundable deposit of \$50,000 as he only received a \$10,000 payment. (Cotton Decl., ¶
3 ____.) While Geraci commenced the Cotton CUP, he has refused to restore the CUP to
4 Cotton's sole name, thus causing Cotton damages in an amount to be proven at trial.

5 b. Geraci And Berry's Reliance On The Statute of Frauds and the
6 Parole Evidence Rule Is Misplaced

7 It appears that the Geraci's complaint and his entire defense to the claims of Cotton, is
8 premised on the Statute of Frauds. As discussed above, Geraci's admissions as to the existence
9 of the full binding terms of the November Agreement are damning. His attempt to cling to a
10 five-sentence one page document as the be-all end-all for the parties' deal is not persuasive.
11 The fact is, the five-sentence one page document is, on its face, ambiguous and the terms
12 actually agreed upon by the parties that fill out the November Agreement are reliable, credible,
13 and controlling. Indeed, the Court previously ruled as such on November 6, 2017, when it
14 ruled against Geraci's statute-of-frauds-and-parole-evidence-rule-based demurrer.

15 Moreover, the statute of frauds does not apply and is not permitted to be used for an
16 unconscionable fraud or to unjustly enrich a third party, which would be the result if the Court
17 were now to cancel its previous determination that the Statute of Frauds is no bar to Cotton.
18 (E.g., *Monarco v. Lo Greco* (1950) 35 Cal.2d 621, 623 [holding that the doctrine of estoppel
19 has been "consistently applied by the courts of this state to prevent fraud that would result from
20 refusal to enforce oral contracts in certain circumstances."]) Per the November Agreement
21 Geraci was to pay \$800,000 and ensure Cotton received at least \$10,000 a month from
22 operations of the MMCC which would last for an estimated 10-year period at minimum. This
23 is an obligation of approximately \$2,000,000. Thus, Geraci is estopped from asserting the
24 statute in this case where it would result in a windfall to Geraci of \$1,200,000 – minimum.
25 (Decl. Cotton ____.)

26 2. Cotton Will Prevail On His Declaratory Relief Cause of Action

27 Cotton seeks declaratory relief against Berry and Geraci. Specifically, Cotton requests a
28

1 judicial declaration that (a) defendants have no right or interest whatsoever in the Property, (b)
2 Cotton is the sole interest-holder in the CUP application for the Property submitted on or
3 around October 31, 2016, (c) defendant have no interest in the CUP application for the
4 Property submitted on or around October 31, 2016, and (d) the Lis Pendens filed by Geraci be
5 released.” (*Id.*) Under California Code of Civil Procedure Section 1060, a party to a contract
6 may ask the Court to declare “his or her rights or duties with respect to under . . . in cases of
7 actual controversy relating to the legal rights and duties of the respective parties.”

8 For the reasons argued above, Cotton’s will meet these requirements. Cotton is, and at
9 all times material to this action was, the sole record owner of the real property that is the
10 subject of this dispute (“Property”). (Cotton Dec. ¶ 3.) Neither Berry nor Geraci have any
11 interest in the Property as an owner, licensee, agent, or lessee (Cotton Dec. ¶ 8.) Absent
12 Cotton’s approval at the outset of the application process, neither Berry nor Geraci would have
13 been permitted to file an application for a CUP on the Property. Absent Cotton’s approval at
14 the end of the application process, neither Berry nor Geraci should be permitted to obtain a
15 CUP on the Property.

16 Further, following issuance of a CUP, it runs with the land and may be controlled
17 unilaterally by the land’s owner. This rule was affirmed by the California Supreme Court in
18 *Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th, 362, 370.
19 In *Malibu*, the Court held that a CUP runs with the owner’s land, and such a landowner may
20 compel a public entity to recognize assignment of the CUP to a new lessee.

21 As a consequence, applied here, Cotton is and always has been in control of whose
22 name his application is processed and in whose name the permit must be issued. Cotton’s right
23 to control this CUP is reinforced by the plain language of the Municipal Code which provides
24 at section 113.0103:

25 *Applicant* means any person who has filed an application for a permit, map or other
26 matter **and** that is the record owner of the real property that is the subject of the permit, map,
27 or other matter; the record owner’s authorized agent; or any other person who can demonstrate
28

1 a legal right, interest, or entitlement to the use of the real property subject to the application.
2 (Emphasis added.)

3 Cotton, the sole record owner of the Property, is the only person who qualifies as the
4 applicant on the Cotton Application under this standard. Even assuming the contract interest
5 alleged by Geraci in his complaint is valid, this contract interest does not contain or create a
6 “right to use” the Property.

7 Accordingly, Cotton is likely to prevail on his cause of action for declaratory relief.

8 B. Cotton Will Be Irreparably Harmed if the Court Does Not Grant the Injunction

9 Absent intervention by the Court, Cotton will suffer irreparable harm in the following
10 ways:

11 First, Cotton will continue to suffer from the City’s arbitrary and capricious decision to
12 process the Cotton CUP application without reference to Cotton. Back in May 2017, the City
13 informed Cotton that it would not process the CUP application absent additional information
14 clarifying property ownership. Thus, Cotton was assured involvement in the processing of the
15 CUP by the City. Yet, in September 2017, the City – suddenly—informed Cotton that it would
16 process the CUP application without his input. The City’s email instructs that Cotton must
17 submit a new and separate CUP application, bearing his name alone, in order to protect his
18 rights. Further, Cotton must have this new application processed and approved before the City
19 renders a decision on the already pending Cotton CUP application. This declaration of intent
20 by the City is driving the urgency of this request for the Court to intervene as it creates an
21 untenable situation because it virtually assures that Cottons’ “new” CUP application (which
22 bears his name alone) would not be approved before the City approves Cotton’s “original”
23 CUP application, which also bears Berry’s name. That is because the already-pending Cotton
24 CUP Application was filed 12 months before Cotton could file his new CUP application.

25 If Cotton fails to file a new application and win the “horse race” to the finish line of the
26 already pending Cotton CUP application that is unjustly under the sole control of Geraci, Berry
27 and the City, he will be irreparably harmed. Note, the process for obtaining a CUP is both
28

1 costly and time consuming.

2 Second, the City's approach to this CUP improperly endows Berry and Geraci with
3 power to sabotage the application efforts of Cotton as to his Property. Simply put, the City
4 should not accept information from Berry and Geraci as to a Property in which they have no
5 right to use. Berry and Geraci, at any time, could provide misinformation as to the Property
6 and or mislead the City in order to sabotage the CUP. Cotton should not be subjected to this
7 risk for a day let alone for the many months it will take to resolve the contract and fraud
8 lawsuit pending in the related action.

9 Third, Cotton, as owner of the Property, will be further forced to abdicate his
10 constitutional right as a property owner to determine who may use his property as he sees fit.
11 (See *Loretto v. Teleprompter Manhattan* (1982) 458 U.S. 419, 435 [saying that a landowner's
12 right to exclude others from the use and possession of the property is "one of the most essential
13 sticks in the bundle of rights that are commonly characterized as property."]; see also *Fretz v.*
14 *Burke* (1967) 247 Cal.App.2d 741, 746 [holding that an irreparable harm occurs where one's
15 behavior "constitutes an overbearing assumption by one person of superiority and domination
16 over the rights and property of others."])

17 As such, Cotton will incur irreparable injury if the City does not intervene.

18 C. The Balance of the Equities Weigh in Favor of Cotton

19 The balance of harms factor starkly weights in favor of the Court granting Cotton's request. In
20 contrast to the harm to Cotton, Geraci's claims, even in the unlikely event they prevail, are all
21 subject to adequate remedies at law.

22 V

23 CONCLUSION

24 Based on the foregoing, this Court should issue the TRO and OSC as requested.

25
26
27 DATED: August 24, 2021

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: _____
DAVID S. DEMIAN
ADAM C. WITT
RISHI S. BHATT
Attorneys for Defendant and Cross-Complainant
Darryl Cotton

2403.004/3C88964.amq

Exhibit 8

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 SUPERIOR COURT OF CALIFORNIA
2 COUNTY OF SAN DIEGO, CENTRAL DIVISION
3 Department 73 Hon. Joel R. Wohlfeil
4
5 LARRY GERACI, an individual,)
6 Plaintiff,)
7 vs.) 37-2017-00010073-CU-BC-CTL
8 DARRYL COTTON, an individual;)
9 and DOES 1 through 10,)
10 inclusive,)
11 Defendants.)
12 _____)
13 AND RELATED CROSS-ACTION.)
14 _____)

15
16 Reporter's Transcript of Proceedings
17 JULY 10, 2019
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19
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22
23

24 Reported By:
25 Margaret A. Smith,
26 CSR 9733, RPR, CRR
27 Certified Shorthand Reporter
28 Job No. 10057776

Transcript of Proceedings

Geraci vs. Cotton, et al.

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I N D E X

EXHIBITS	IDENTIFIED / ADMITTED
12 Agreement between Techne and Larry Geraci, dated 10/04/16	174 174
16 Executed Letter Agreement between Rebecca Berry and Lundstrom Engineering and Surveying, Inc. re Topographic Survey Proposal, dated 10/6/16	185 185
19 Email to Larry Geraci and Neil Dutta from Abhay Schweitzer re Federal Blvd. - Site layout, dated 10/20/16 with two attachments A101 - Site Plan - Existing & A102 - Site Plan - Proposed	194 194
20 Email to Larry Geraci from Abhay Schweitzer Re: Federal Blvd. - Site layout, dated 10/24/16 with attached A102 - Site Plan - Proposed - Scheme B	197 197
22 Email to Becky Berry from Abhay Schweitzer Fwd Federal Blvd., dated 10/26/16 with attachment Blank City of San Diego Ownership Disclosure Statement, Form DS-318	199 199
23 Email to Rebecca Berry from Abhay Schweitzer re Invoice #339 from TECHNE City fees (Federal Blvd), dated 10/26/16 with attached Techne Invoice No. 339, dated 10/26/16	200 200
24 Email to Rebecca Berry from Abhay Schweitzer re Federal Blvd. - City Fees breakdown, dated 10/26/16 with attached City of San Diego Information Bulletin 170, How to Apply for a Conditional Use Permit Medical Marijuana Consumer Cooperative	17 17

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)			
2				
3	EXHIBITS		IDENTIFIED / ADMITTED	
4	25	Email to Larry Geraci and Rebecca Berry from Abhay Schweitzer re Federal Blvd - Site Plan and Floor Plan, dated 10/26/16 with attachments	26	26
5				
6				
7	26	CUP Submittal Plans - CUP Completeness Review dated 10/28/2016	210	210
8				
9	28	Land Development Manual Vol 1, Ch 1 Project Submittal Reqts, Sec 4 Development Permits/Approvals June 2015	211	211
10				
11	29	Information Bulletin 515 Geotechnical Study Requirements October 2016	212	212
12				
13	31	Form DS-3242 Deposit Account/Financially Responsible Party dated 10/31/2016	215	215
14				
15	32	CUP Completeness Review - Photographic Survey submitted 10/31/2016	74	74
16				
17	33	CUP Completeness Review - City of SD Receipt for \$8,800 Payment dated 10/31/2016	218	218
18				
19	35	Email to Larry Geraci from Abhay Schweitzer Re: Federal Blvd - Site Plan and Floor Plan, dated 10/31/16	219	219
20				
21				
22	36	Email to Rebecca Berry from Abhay Schweitzer Re: Federal Blvd - Site Plan and Floor Plan, dated 10/31/16	54	54
23				
24	45	Email to Jim Bartell from Abhay Schweitzer re Federal Blvd. MMCC - Completeness Review, dated 11/14/16	35	35
25				
26	47	CUP Completeness Review - Remaining Cycle Issues dated 11/15/2016	227	227
27				
28				

Transcript of Proceedings

Geraci vs. Cotton, et al.

1	I N D E X (continued)		
2			
3	EXHIBITS	IDENTIFIED / ADMITTED	
4	48	Email to Jim Bartell from	229
5		Abhay Schweitzer Re: Update,	229
		dated 11/29/16	
6	49	Email to Abhay Schweitzer from	39
7		Jim Bartell RE: Federal Blvd -	39
8		Completeness Review corrections,	
		dated 11/30/16	
9	70	Email to Larry Geraci from Darryl	140
		Cotton re Contract Review,	140
		dated 3/19/17	
10	71	Email to Darryl Cotton from	143
11		Larry Geraci re Contract Review,	143
		dated 3/19/17	
12	73	Email to Darryl Cotton from	141
13		Firouzeh Tirandazi re Federal	141
14		Boulevard MMCC, dated 3/21/17	
15	74	Email to Larry Geraci from	145
		Darryl Cotton re Contract Review,	145
		dated 3/21/17	
16	75	Email to Firozeh Tirandazi	148
17		from Darryl Cotton re PTS	148
18		520606 - Federal Blvd MMCC,	
		dated 3/21/17, with attached	
		Addendum Nos. 102	
19	76	CAR Commercial Property Purchase	149
20		Agreement and Joint Escrow	149
		Instructions, dated 3/21/17	
21	77	Addendum No. 2 - MOU re Martin	151
22		and Cotton dated 4/15/17	151
23	78	Addendum No. 3 - Permit Disclosure	152
24		of Agreement in Cotton's Response	152
		to Geraci lawsuit - Martin & Cotton	
		dated 5/12/17	
25	84	Email to Darryl Cotton from	154
26		Michael Weinstein re Geraci v.	154
27		Cotton - Posting of Notice of	
		Application, dated 3/28/17	

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Transcript of Proceedings

Geraci vs. Cotton, et al.

1 THE COURT: I'm sorry?

2 MR. AUSTIN: I don't believe that was testified
3 to.

4 THE COURT: Well, so then we don't have
5 evidence of it, at least not a foundation of a start
6 date. So how long was this revenue stream supposed to
7 go on?

8 MR. AUSTIN: Well, presumably, the life span of
9 a CUP is 10 years. And they could be renewed.

10 THE COURT: Did somebody testify to the life
11 span of a CUP?

12 MR. AUSTIN: I believe Mr. Cotton did.

13 THE COURT: All right. All right. Let me go
14 back to you, Counsel.

15 MR. WEINSTEIN: First of all, why -- I'm not
16 saying Mr. Cotton didn't testify to that. I don't
17 remember him testifying to that. But nevertheless, they
18 still have -- there's no evidence that the CUP would
19 ever have been obtained.

20 THE COURT: Well, on that subject, there is
21 evidence from Mr. Bartell --

22 MR. WEINSTEIN: Right.

23 THE COURT: They can rely upon your witnesses'
24 testimony as well.

25 MR. WEINSTEIN: So --

26 THE COURT: Mr. Bartell made an awful good
27 witness and all but said that instead of being 19 for
28 20, he would have been 20 for 20 but for Mr. Cotton's

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 interference.

2 MR. WEINSTEIN: So --

3 THE COURT: In fact, I think you may have
4 elicited it.

5 MR. WEINSTEIN: I did.

6 THE COURT: Counsel, you may have. I'm not
7 picking on you, but that's what I seem to recall to be
8 the up -- so there's evidence, I think, that it's more
9 probable than not that a CUP had been issued and the
10 dispensary opened.

11 MR. WEINSTEIN: Had Mr. Cotton not interfered.

12 THE COURT: Right.

13 MR. WEINSTEIN: So what Mr. Cotton is saying
14 I've put on evidence that the CUP would have been
15 granted had I not interfered. But there's no evidence
16 from his side that he wouldn't have interfered the way
17 he did. I don't think he can -- we have an argument
18 that there's been an excuse of performance, but he
19 doesn't have an argument that getting the CUP was
20 excused.

21 It's -- so --

22 THE COURT: I think, though, what I'm hearing
23 is that he thought he had a deal involving a joint
24 venture, Mr. Geraci refused to memorialize it in that
25 form. And I understand why Mr. Geraci chose not to do
26 so. I understand your theory of the case.

27 But what you're calling interference was --

28 MR. WEINSTEIN: So how -- how does -- what

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 evidence is there of what the damages would have been?

2 THE COURT: Well, Counsel, all is not lost yet
3 from your side. The most that I'm hearing -- well,
4 first of all, I'm not persuaded that there is a rational
5 foundation in the evidence to support a lot of profits
6 claim by Mr. Cotton. There's just too many variables
7 that the jury couldn't possibly -- that are not before
8 the jury that would prevent them from returning a
9 verdict on lost profits.

10 So what you may be down to is, number one, a
11 nominal case of damages, and perhaps something measured
12 by this 10 percent equity stake that there is evidence
13 of.

14 I mean, I know that there are a lot of
15 inferences to be drawn. I have to be very careful that
16 I don't dismiss something where there is some foundation
17 in the evidence that might support an award.

18 Now, folks, your guess is as good as mine as to
19 what the jury is going to do with this. But all of
20 this, I would expect, will become the subject of post
21 trial motions depending upon what the jury does. And
22 I'm not going to be shy taking another look at this
23 depending upon what the jury does. That's not to
24 suggest that I'm going to second-guess -- second-guess
25 the jury. But it's a lot easier to let the juror speak
26 and then we all revisit this topic a second time.

27 For example -- for example -- and I'm not
28 trying to pick on the plaintiff -- well, the

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 I, Margaret A. Smith, a Certified Shorthand
2 Reporter, No. 9733, State of California, RPR, CRR, do
3 hereby certify:

4 That I reported stenographically the proceedings
5 held in the above-entitled cause; that my notes were
6 thereafter transcribed with Computer-Aided
7 Transcription; and the foregoing transcript, consisting
8 of pages number from 1 to 182, inclusive, is a full,
9 true and correct transcription of my shorthand notes
10 taken during the proceeding had on July 10, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 25th day of July 2019.

13 
14

15 Margaret A. Smith, CSR No. 9733, RPR, CRR
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Exhibit 9

Transcript of Proceedings

Geraci vs. Cotton, et al.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 9, 2019

Reported By:
Margaret A. Smith
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057775

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 MR. TOOTHACRE: She.

2 THE COURT: I'm sorry. Is she right outside?

3 MR. TOOTHACRE: I believe so.

4 THE COURT: Madam Deputy, may I ask you to get
5 the next witness.

6 THE BAILIFF: Your Honor, this witness is being
7 accompanied by her attorney.

8 THE COURT: Thank you very much. Counsel, you
9 can make yourself comfortable in the audience section.

10 Ma'am, if you could follow the directions of my
11 clerk, please.

12
13 Firouzeh Tirandazi,
14 being called on behalf of the plaintiff/cross-defendant,
15 having been first duly sworn, testified as follows:

16
17 THE CLERK: Please state your full name and
18 spell your first and last name for the record.

19 THE WITNESS: My name is Firouzeh Tirandazi.
20 F-i-r-o-u-z-e-h. Last name Tirandazi,
21 T-i-r-a-n-d-a-z-i.

22 THE COURT: All right. Counsel, whenever
23 you're ready.

24 MR. TOOTHACRE: Thank you, your Honor.

25 (Direct examination of Firouzeh Tirandazi)

26 BY MR. TOOTHACRE:

27 Q Good morning, Ms. Tirandazi.

28 A Good morning.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q You work for the City. Is that correct?

2 A Correct.

3 Q And when did you begin working for the City?

4 A 1993.

5 Q And you worked from 1993 until approximately

6 2006. Is that correct?

7 A That is correct.

8 Q And what was your position at the City between

9 1993 and 2006?

10 A Associate planner and then development project

11 Manager II.

12 Q Okay. Are both of those positions within the

13 DSD?

14 A No.

15 Q Okay. What department are they in?

16 A Environmental Services Department and then

17 Development Services Department.

18 Q Okay. And did you take a leave of absence in

19 2006?

20 A Yes.

21 Q For what period of time?

22 A I returned to the City in 2015.

23 Q Okay. And what was your position when you left

24 the City in 2006?

25 A Development Project Manager II.

26 Q Okay. And that is in the DSD department.

27 Correct?

28 A Yes.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q And, currently, what's your position?

2 A Development Project Manager III.

3 Q Okay. Is that the highest of the development

4 project managers within the City?

5 A Yes.

6 Q Okay. And what is your work history with the

7 City since you returned in 2015?

8 A Could you clarify the question.

9 Q Yes.

10 What positions have you held since you returned

11 in 2015?

12 A Development Project Manager II and then

13 Development Project Manager III.

14 Q Okay. And do you work with regard to marijuana

15 CUP applications?

16 A Currently, yes.

17 Q Okay. Can you generally give the jury just

18 a 10,000-foot view of what a CUP application with regard

19 to medical marijuana requires.

20 A Submittal requirements, or processing

21 requirements?

22 Q First, submittal.

23 A I'm not involved with submittal. So I wouldn't

24 know.

25 Q Okay. Is the first step at your level a

26 completeness review?

27 A I don't do completeness check.

28 Q Is that in submittals?

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 A That's correct.

2 Q Okay. And what is -- what is the first area or
3 the first phase that you address with regard to CUPs?

4 A I receive the application once it's been deemed
5 complete.

6 Q Okay.

7 A And distribute it for review. So I --

8 Q And who do you distribute it to?

9 A I don't do the distribution. It goes to the
10 typical review disciplines that are involved in reviews
11 of conditional use permits.

12 Q And what are some of those disciplines?

13 A Engineering, transportation, planning, and
14 environmental are the key ones.

15 Q Okay. I will ask you to look at Exhibit 34.
16 It should be in front of you. It's in evidence, your
17 Honor.

18 A The one that's right in front of me? It
19 says --

20 Q Is it open to that?

21 A I don't know. Oh.

22 THE COURT: Counsel, why don't you approach.
23 There are so many volumes up here.

24 THE WITNESS: I don't know which one I'm
25 supposed to look at.

26 BY MR. TOOTHACRE:

27 Q Okay.

28 A I have 65 and --

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 sounds -- it sounds like everyone needs to be listed,
2 when you say even an LLC will include attachments with
3 all names of all people.

4 A I guess I don't understand what you mean by
5 "everyone." This is information that is provided to the
6 City by the applicant. So by submitting this and
7 signing it, they're letting the City know that these are
8 the people of -- the property owner and the permittee.

9 Q Thank you.

10 So I assume you're very familiar with San Diego
11 Municipal Code and ordinances. Correct?

12 A To some extent, I'm familiar.

13 Q To some extent.

14 Well, as they relate to marijuana law and
15 processing of CUPs specifically.

16 A I do. But I still do refer to the Municipal
17 Code.

18 Q Yes. I mean, they are very lengthy. So that
19 only makes sense.

20 Are you familiar with a change to the City --
21 the San Diego City Ordinance 20990 -- or 200797? It was
22 passed in -- it was amended and passed in February 22nd,
23 2017.

24 A Is that the -- what -- do you have a title for
25 that ordinance? Is the one that established the
26 marijuana outlet use?

27 Q That's precisely what it is.

28 A Okay.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q Yes. That's where the ordinance changed
2 from -- changed CUP applications for marijuana consumer
3 cooperatives to the broader term of marijuana outlets.
4 Are you familiar with that?

5 A Yes.

6 Q So within that ordinance, it does specifically
7 say that any dispensary or retail licensing requirements
8 are going to be pursuant to the California Business and
9 Professions Code. Correct?

10 A The state requirements.

11 Q Yes. So, basically, all the ordinances will
12 be -- they'll refer to the California Business and
13 Professions Code when it comes to licensing. Correct?

14 A I don't handle the state licensing
15 requirements. So --

16 Q But it does refer you to the Business and
17 Professions Code of California. Correct?

18 A If that's what it says in the ordinance, then
19 yes.

20 Q Is it your understanding that Mr. Geraci, who
21 is sitting before you, was in fact attempting to acquire
22 this CUP on 6176 for himself?

23 MR. TOOTHACRE: Calls for speculation, your
24 Honor.

25 THE COURT: Overruled.

26 THE WITNESS: I don't -- I don't have an answer
27 for that question.

28

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 BY MR. AUSTIN:

2 Q Is that because his name does not appear
3 anywhere in any of the applications for the 6176
4 property?

5 A That -- that is correct.

6 Q Did you ever have any email communications
7 directly with Mr. Geraci?

8 A I don't recall.

9 Q Do you recall any phone conversations with
10 Mr. Geraci or sit-down meetings?

11 A I don't -- I don't recall phone conversations
12 or sit-down meetings.

13 Q Looking at Mr. Geraci now, do you -- do you
14 believe you've ever met this man?

15 A I don't believe so.

16 Q If he were attempting to acquire a CUP using
17 his secretary as a proxy without ever disclosing his
18 name, does that seem like it would be a violation of
19 San Diego law and California state law?

20 MR. TOOTHACRE: Argumentative, your Honor.

21 THE COURT: Sustained.

22 BY MR. AUSTIN:

23 Q Essentially, anyone with an ownership or
24 financial interest in a marijuana outlet is supposed to
25 be disclosed to the City. Correct?

26 A You know, looking at the ownership disclosure
27 statement, it's the property owner and then also a
28 tenant/lessee would have to be identified.

Transcript of Proceedings

Geraci vs. Cotton, et al.

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3 anywhere in any of the applications for the 6176
4 property?

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7 directly with Mr. Geraci?

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10 Mr. Geraci or sit-down meetings?

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12 or sit-down meetings.

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14 believe you've ever met this man?

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17 his secretary as a proxy without ever disclosing his
18 name, does that seem like it would be a violation of
19 San Diego law and California state law?

20 MR. TOOTHACRE: Argumentative, your Honor.

21 THE COURT: Sustained.

22 BY MR. AUSTIN:

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24 financial interest in a marijuana outlet is supposed to
25 be disclosed to the City. Correct?

26 A You know, looking at the ownership disclosure
27 statement, it's the property owner and then also a
28 tenant/lessee would have to be identified.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q Right. And that is like an introductory
2 application form.

3 But are you familiar with the California
4 Business and Professions Code?

5 A No.

6 Q Okay. Do you know of any situation where
7 someone with previous sanctions against them for illegal
8 cannabis principals would be barred from acquiring a
9 marijuana outlet CUP?

10 MR. TOOTHACRE: Vague and ambiguous and assumes
11 facts, your Honor.

12 THE COURT: Overruled.

13 BY MR. AUSTIN:

14 Q That means you can -- you can answer.

15 A Could you -- I'm sorry. Could you repeat the
16 question?

17 Q Yeah. Absolutely.

18 Is it your understanding that if someone had
19 been sanctioned for illegal cannabis dispensary
20 activity, is it your understanding that they would be
21 barred from acquiring a CUP in San Diego?

22 A I'd have to refer to the Municipal Code. I
23 believe there may be a section in there once you have a
24 conditional use permit, you'd have to go through a
25 background check process.

26 Q Okay. Do you know what that background check
27 process entails?

28 A It's a LiveScan and also specific forms that

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 need to be completed, specific City of San Diego police
2 forms that need to be completed. And it's processed by
3 the San Diego Police Department.

4 Q How many CUPs are allowed in the City of
5 San Diego?

6 A CUPs for --

7 Q Marijuana outlets.

8 A Four per council district.

9 Q And how many council districts are there?

10 A There's nine. So 36 total.

11 Q So 36 total.

12 Would it be fair to say that these are
13 competitively sought after?

14 A Due to the limit, yes.

15 Q Yes. Do you know how many CUPs have been
16 granted for marijuana outlets in San Diego?

17 A Total count, not off the top of my head. I
18 couldn't say.

19 Q Approximately would you say 20, 25, maybe 30?

20 A Maybe 20.

21 Q Maybe 20. So perhaps 16 are still available?

22 A Yeah. Again, I -- I have that data. Just that
23 data isn't with me.

24 Q No problem.

25 Are you aware of how many CUPs are being
26 processed right now for marijuana outlets in the DS --
27 in your -- your department?

28 A Maybe about two or three.

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 I, Margaret A. Smith, a Certified Shorthand
2 Reporter, No. 9733, State of California, RPR, CRR, do
3 hereby certify:

4 That I reported stenographically the proceedings
5 held in the above-entitled cause; that my notes were
6 thereafter transcribed with Computer-Aided
7 Transcription; and the foregoing transcript, consisting
8 of pages number from 1 to 166, inclusive, is a full,
9 true and correct transcription of my shorthand notes
10 taken during the proceeding had on July 9, 2019.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 24th day of July 2019.

13 
14

15 Margaret A. Smith, CSR No. 9733, RPR, CRR
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Exhibit 10

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LARRY GERACI, AN INDIVIDUAL,

PLAINTIFF,

VS.

DARRYL COTTON, AN INDIVIDUAL;
AND DOES 1 THROUGH 10,
INCLUSIVE,

DEFENDANTS.

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

AND RELATED CROSS-ACTION.

DEPOSITION OF
FIROUZEH TIRANDAZI
Lemon Grove, California
Thursday, March 14, 2019

Reported By:
Lorena Barron
CSR No. 12058
NDS Job No. 212544

Firouzeh Tirandazi

March 14, 2019

<p>1 MR. TOOTHACRE: Incomplete hypothetical.</p> <p>2 THE WITNESS: Um, we would need proof to</p> <p>3 demonstrated who is the most current owner of the</p> <p>4 property.</p> <p>5 BY MS. PLASKETT:</p> <p>6 Q And would that delay the processing of the</p> <p>7 application waiting for the proof?</p> <p>8 A We would not be waiting for the proof, I</p> <p>9 guess. We have what we have in our application. We</p> <p>10 assume it's legal and accurate information that's been</p> <p>11 provided to us. And we continue processing the</p> <p>12 application. Until we're notified we have a change of</p> <p>13 ownership, here is our new Ownership Disclosure</p> <p>14 Statement, and here's our new proof of new ownership.</p> <p>15 At that point we would just merely change the</p> <p>16 ownership information.</p> <p>17 Q And if -- can there be two people claiming</p> <p>18 ownership to one CUP application?</p> <p>19 A Again, that's ownership -- we don't have an</p> <p>20 ownership to a CUP application. We have an ownership to</p> <p>21 the property.</p> <p>22 Q In these forms, are all persons with an</p> <p>23 ownership interest in the property mandated to be on the</p> <p>24 forms for this application?</p> <p>25 A Only the Ownership Disclosure Statement. And</p> <p style="text-align: right;">Page 25</p>	<p>1 of the application that is being submitted on his</p> <p>2 property. Whether he is -- and, um, when we get close</p> <p>3 to a hearing, we -- if it's an LLC -- I mean, in this</p> <p>4 case, um, my recollection is that Darryl Cotton was</p> <p>5 identified as the grantee and the sole owner of the</p> <p>6 property.</p> <p>7 So we would not think that there's any other, um,</p> <p>8 individual that would have an interest, because its sole,</p> <p>9 um, person that owned the person as shown on the Grant</p> <p>10 Deed.</p> <p>11 The purpose of that statement is, if you have an</p> <p>12 LLC, or some sort of corporation, um, you would identify</p> <p>13 all officers that are involved with that LLC for disclosure</p> <p>14 purposes so that when the project is taken before a</p> <p>15 decision-maker, they can recuse themselves if there's a</p> <p>16 conflict of interest.</p> <p>17 BY MS. PLASKETT:</p> <p>18 Q Okay. Thank you.</p> <p>19 You had mentioned in the expedited process</p> <p>20 that they do an initial review of everything?</p> <p>21 A Uh-huh.</p> <p>22 Q In this application, this CUP application for</p> <p>23 a medical marijuana outlet or marijuana outlet, would</p> <p>24 there be a review check on the paperwork prior to it</p> <p>25 moving forward? Do they do the same check looking at</p> <p style="text-align: right;">Page 27</p>
<p>1 the, um, the information is only provided on the general</p> <p>2 application form.</p> <p>3 Q Have you, as a DPM 3, ever experienced more</p> <p>4 than one person claiming ownership of property?</p> <p>5 A So, um, ownership of the property. Um, I --</p> <p>6 yes. Only this project.</p> <p>7 Q Of course. This one's jinxed. Okay. Thank</p> <p>8 you.</p> <p>9 But is it mandatory that all parties involved</p> <p>10 be disclosed in this application with an ownership or</p> <p>11 business interest?</p> <p>12 MR. TOOTHACRE: I'm just going to object that</p> <p>13 it calls for a legal conclusion.</p> <p>14 BY MS. PLASKETT:</p> <p>15 Q Is there a law that -- that you know of that</p> <p>16 states that all -- anybody with an ownership interest on</p> <p>17 a property that's -- they're submitting a CUP</p> <p>18 application for a marijuana outlet, is there a law that</p> <p>19 states that all parties must be disclosed to the City?</p> <p>20 A Um...</p> <p>21 MR. TOOTHACRE: Same objection.</p> <p>22 You can answer. I'm preserving the record.</p> <p>23 THE WITNESS: I'm just trying to think</p> <p>24 about -- so the purpose of the Ownership Disclosure</p> <p>25 Statement is that it validates that the owner is aware</p> <p style="text-align: right;">Page 26</p>	<p>1 the document?</p> <p>2 A It's different processes -- no.</p> <p>3 They look at the submittal requirements. All</p> <p>4 of them go through the same process. But the Expedite</p> <p>5 program, they actually provide full sets of plans for</p> <p>6 all the review team for initial review.</p> <p>7 Q So is there anybody that actually reviews when</p> <p>8 somebody puts in a CUP application for a marijuana</p> <p>9 outlet, or any -- does any human being sit down and go</p> <p>10 through the paperwork to see if there's any</p> <p>11 inconsistency?</p> <p>12 A I don't do submittal, so I don't know exactly</p> <p>13 what they do. But that's done through our submittals</p> <p>14 section within the department.</p> <p>15 Q Do you get --</p> <p>16 A It's a submittal completeness check, that</p> <p>17 basically validates the application. For any</p> <p>18 application, what are their required documents. The</p> <p>19 submittal requirements are available on the City's</p> <p>20 website as well, for CUP. What documents need to be</p> <p>21 provided.</p> <p>22 Q And so it's their task to go through these</p> <p>23 documents and look for --</p> <p>24 A Do they have a Grant Deed? Do they have this</p> <p>25 form? Do they have that form? Do they have the correct</p> <p style="text-align: right;">Page 28</p>

Firouzeh Tirandazi

March 14, 2019

<p>1 number sets of plans? That's what they do.</p> <p>2 Q And is there -- is the submittal completeness,</p> <p>3 is there a team of people or one person?</p> <p>4 A It's on the third floor of development</p> <p>5 services department and multiple people are tasked with</p> <p>6 that.</p> <p>7 We're getting applications in daily.</p> <p>8 Q I bet you are.</p> <p>9 A Yeah.</p> <p>10 Q Thank you. Thank you for explaining that,</p> <p>11 because there are a lot of things that I don't</p> <p>12 understand in this process. And I'm trying to</p> <p>13 understand them. So I appreciate your candor and your</p> <p>14 time.</p> <p>15 Okay. Going back from the discussion of</p> <p>16 transferring from one project manager to another project</p> <p>17 manager.</p> <p>18 Do you recall any of the team meetings</p> <p>19 regarding this, the 6176 Federal?</p> <p>20 A I do not recall a team meeting.</p> <p>21 Q Do you recall when you transferred this case,</p> <p>22 this application to Ms. Cac?</p> <p>23 A I think all of my -- again, I don't -- I'm so</p> <p>24 busy, but I honestly -- whenever I transferred into the</p> <p>25 Expedite program, at that point, those were the projects</p> <p style="text-align: right;">Page 29</p>	<p>1 don't retain project applications that are withdrawn,</p> <p>2 that don't go through the process.</p> <p>3 Q Can you remember whether it was Ms. Berry or</p> <p>4 Mr. Cotton who asked that it be withdrawn?</p> <p>5 A I don't. I don't know who asked that it be</p> <p>6 withdrawn. If -- whoever that was identified as the</p> <p>7 applicant typically requests that an applicant should be</p> <p>8 withdrawn. And that is common.</p> <p>9 Q Could Mr. Cotton also withdraw the application</p> <p>10 that was put in by Mr. Berry or by Ms. Berry?</p> <p>11 A No, because the applicant, um, was Ms. Berry.</p> <p>12 Q And only she can withdraw that application?</p> <p>13 A The applicant can.</p> <p>14 Q I have a question, only because of the way I</p> <p>15 think it's on the general application.</p> <p>16 I had read where it said that the owner -- I</p> <p>17 think it's here. I'm not sure what form it is. I've</p> <p>18 got it highlighted, but what it said is that the owner</p> <p>19 or the agent basically have the right to withdraw the</p> <p>20 application, which is different than what you had just</p> <p>21 said to me.</p> <p>22 MR. TOOTHACRE: Vague and ambiguous as to what</p> <p>23 document we're discussing.</p> <p>24 BY MS. PLASKETT:</p> <p>25 Q With regards to only an applicant having the</p> <p style="text-align: right;">Page 31</p>
<p>1 that were transitioned. Um, I don't remember. I don't</p> <p>2 remember the date. Honestly I don't.</p> <p>3 Q Instead of the date, do you remember the</p> <p>4 substance of the conversation?</p> <p>5 A No. I -- no. I mean, the project file would</p> <p>6 have had all of the information in it. And I basically</p> <p>7 transitioned it.</p> <p>8 Q Would I be able to look at the notes that go</p> <p>9 with this file when transition is publicly available?</p> <p>10 A Which project are we talking about?</p> <p>11 Q The 6176 Federal.</p> <p>12 A Okay. Mr. Cotton's?</p> <p>13 Q Mr. Cotton's.</p> <p>14 A So my recollection is that -- again, I wasn't</p> <p>15 involved. But I know that there was another, um -- and</p> <p>16 I didn't process or involve with the other application</p> <p>17 at all. But I know when that was approved, um, the</p> <p>18 applicant of this -- Mr. Cotton's property was asked,</p> <p>19 um, that if they want to move forward to a final</p> <p>20 decision, um, of denial, because they would have not</p> <p>21 been in compliance with the municipal code. Or they</p> <p>22 would like to withdraw the application. And I believe</p> <p>23 they requested that they withdraw the application.</p> <p>24 And when an application is withdrawn,</p> <p>25 everything is, um -- the hard copy is destroyed. We</p> <p style="text-align: right;">Page 30</p>	<p>1 ability to cancel or withdraw a CUP application for a</p> <p>2 marijuana outlet.</p> <p>3 Can I have a -- can I take a break? I can't</p> <p>4 find this. I'm so sorry.</p> <p>5 (Off the record.)</p> <p>6 MS. PLASKETT: Back on the record, please.</p> <p>7 I'm going to submit Exhibit 3, which is a general</p> <p>8 application Form DS3032.</p> <p>9 (Exhibit 3 was marked.)</p> <p>10 BY MS. PLASKETT:</p> <p>11 Q Do you recognize this form?</p> <p>12 A Yes.</p> <p>13 Q And under number, I believe it's 3, it lists</p> <p>14 the property owner as a lessee/tenant, a Rebecca Berry;</p> <p>15 is that correct?</p> <p>16 A Which number are we talking about?</p> <p>17 Q 3.</p> <p>18 A Oh, okay. Yes.</p> <p>19 Q Under No. 4, the permit holder name, this is</p> <p>20 the property owner person or entity that is granted</p> <p>21 authority by the property owner to be responsible for</p> <p>22 scheduling inspections, receiving notices of failed</p> <p>23 inspection, permit expirations or revocation hearings,</p> <p>24 and who has the right to cancel the approval, in</p> <p>25 addition to the property owner. And it lists a</p> <p style="text-align: right;">Page 32</p>

Firouzeh Tirandazi

March 14, 2019

<p>1 STATE OF CALIFORNIA) : ss. 2 COUNTY OF SAN DIEGO) 3 I, LORENA BARRÓN, Certified Shorthand Reporter 4 in and for the State of California, Certificate No. 5 12058, do hereby certify: 6 That the witness in the foregoing deposition was 7 by me first duly sworn to testify the truth, the whole 8 truth, and nothing but the truth in the foregoing cause; 9 that the deposition was taken before me at the time and 10 place herein named; that said deposition was reported by 11 me in shorthand and transcribed, through computer-aided 12 transcription, under my direction; and that the 13 foregoing transcript is a true record of the testimony 14 elicited at proceedings had at said deposition. 15 I do further certify that I am a disinterested 16 person and am in no way interested in the outcome of 17 this action or connected with or related to any of the 18 parties in this action or to their respective counsel. 19 In witness whereof, I have hereunto set my hand 20 this 2nd day of April, 2019. 21 22 _____ LORENA BARRÓN 23 CSR No. 12058 24 25</p>	Page 105
<p>1 ERRATA SHEET 2 3 If any corrections to your deposition are necessary, indicate them on this sheet, giving the change, page 4 number, line number and reason for change. 5 PAGE LINE FROM TO 6 _____ 7 Reason _____ 8 _____ 9 Reason _____ 10 _____ 11 Reason _____ 12 _____ 13 Reason _____ 14 _____ 15 Reason _____ 16 _____ 17 Reason _____ 18 _____ 19 Reason _____ 20 _____ 21 Reason _____ 22 _____ 23 Reason _____ 24 _____ 25 Signature of Deponent _____ Date _____</p>	Page 106

Exhibit 11

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IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT
DEPARTMENT 73 HONORABLE JOEL R. WOHLFEIL, JUDGE

_____)	
LARRY GERACI,)	CASE NO. 37-2017-00010073-
)	CU-BC-CTL
PLAINTIFF,)	
)	
VS.)	OCTOBER 25, 2019
)	
DARRYL COTTON,)	FRIDAY, 9:00 AM
)	
DEFENDANT.)	MOTION FOR A NEW TRIAL
_____)	EX PARTE HEARING

REPORTER'S CERTIFIED TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFF:	MICHAEL R. WEINSTEIN, ESQ. SCOTT H. TOOTHACRE, ESQ. FERRIS & BUTTON, APC 501 BROADWAY SUITE 1450 SAN DIEGO, CA 92101
FOR THE DEFENDANT:	EVAN P. SCHUBE, ESQ. FOR: JACOB AUSTIN, ESQ. PO BOX 231189 SAN DIEGO, CA 92193

REPORTED BY:	ELIZABETH CESENA, CSR 12266 PO BOX 131037, SD, CA 92170 LIZCEZ@GMAIL.COM
--------------	--

1 SAN DIEGO, CALIFORNIA, OCTOBER 25, 2019, FRIDAY, 9:00 AM

2 --000--

3 THE COURT: Item five, Geraci versus Cotton, case
4 number 10073.

5 MR. WEINSTEIN: Good morning, Your Honor.

6 Michael Weinstein and Scott Toothacre on behalf of
7 Mr. Geraci and Ms. Berry, who is not a part of this
8 conference.

9 THE COURT: And Counsel?

10 MR. SCHUBE: Good morning, Your Honor.

11 Evan Schube on behalf of Mr. Cotton.

12 THE COURT: All right. Did I hear you two say
13 that you were submitting?

14 MR. WEINSTEIN: Yeah. We are submitting, Your
15 Honor, with time to respond.

16 THE COURT: All right. Counsel?

17 MR. SCHUBE: Thank you. I'll get to the
18 illegality of the contract issue first. The fact is it
19 cuts to the heart of the motion that we filed and the
20 biggest issue.

21 A couple of items I wanted to raise with the Court, a
22 couple of factual items I wanted to raise with the Court.

23 First one, on Exhibit H of our motion, is a leave to
24 file the application to CUP Applications that were filed.
25 In general application, which is Trial Exhibit 4200, it's
26 states that "Notice of violation is required to be
27 disclosed," and skip back to page four of the same Trial
28 Exhibit, the Ownership Disclosure Statement, it also says,

1 "the name of any person of interest in the property must
2 also be disclosed," and it states to potentially attach
3 pages if needed.

4 THE COURT: So you are saying the contract is
5 unenforceable?

6 MR. SCHUBE: Yes.

7 THE COURT: As a matter of law?

8 MR. SCHUBE: Yes. CUP was a condition precedent
9 to the contract.

10 THE COURT: Counsel, up until this point in time,
11 this case was filed in 017. Your side has been screaming
12 at the Court and filed multiple writs asking me to
13 adjudicate the contract as a matter of law in favor of your
14 side.

15 Now you are asking me in, after an adverse finding, to
16 adjudicate the law for the other side? You are doing a 180.
17 Truly, you are doing a 180.

18 MR. SCHUBE: I came in on a limited scope. I
19 don't have the background.

20 THE COURT: I do. They do. They have been
21 sitting --

22 MR. SCHUBE: But my understanding was there were
23 the motions that were made were based upon my clients
24 understanding of what the agreement is which is not
25 specifically related to the November 2, 2016 agreement that
26 the jury found. Our motion is a bit more limited in that
27 regard. I may be wrong. That's my understanding of the
28 background of the case.

1 THE COURT: Again, from the Court's perspective as
2 a matter of law up to this point. You have been asking me
3 to adjudicate the contract in your favor. Now you're
4 asking the Court to adjudicate the contract as a matter of
5 law against the other side.

6 Counsel, shouldn't this have been raised at some
7 earlier point in time?

8 MR. SCHUBE: Should it have, Your Honor? My
9 personal opinion is that it should have been raised before
10 but it was not and we are where we are and so hence, the
11 reason why we're raising the issue now on a Motion for New
12 Trial.

13 I think what has been referred to before, the
14 illegality argument has been raised before and raised in the
15 context of reference to State Law and Section 2640 of the
16 California Business and Professions Code. I believe what
17 was not conveyed to the Court was that these requirements
18 for these forms, the specific provisions in the San Diego
19 Municipal Code that require those disclosures and require
20 applicant provide information.

21 The information was not provided. And --

22 THE COURT: Even if you are correct, hasn't that
23 train come and gone? The judgment has been entered. You
24 are raising this for the first time.

25 MR. SCHUBE: Your Honor, illegality of the
26 contract can be raised any time whether in the beginning or
27 during the case or on appeal.

28 THE COURT: So it's akin to a jurisdictional

1 challenge?

2 MR. SCHUBE: I don't know if it's akin to a
3 jurisdictional challenge, but the issue can be raised.

4 THE COURT: But at some point, doesn't your side
5 waive the right to assert this argument? At some point?

6 MR. SCHUBE: I am not suggesting we waived that.
7 The Case Law I saw in the motion cited that there is a duty
8 and the duty continues and so I am not aware if there is
9 anything that suggests that we waived that argument.

10 THE COURT: Anything else, Counsel?

11 MR. SCHUBE: The other thing I'd like to point
12 out, Section 11.0401 of San Diego Municipal Code
13 specifically states that "every applicant prior be
14 furnished true and complete information." And that's
15 obviously not what happened here. I think it's undisputed
16 and the reasoning for the failure to disclose, there is no
17 exception to either the San Diego Municipal Code or failure
18 to disclose.

19 THE COURT: Thank you, very much.

20 MR. SCHUBE: Thank you, Your Honor.

21 THE COURT: I am not inclined to change the
22 Court's view. Did either one of you need to be heard?

23 MR. TOOTHACRE: Just to make a record. One
24 comment with respect to the illegality argument.
25 Obviously, we agree with the comments of the Court but the
26 failure to make these disclosures in the CUP, it doesn't
27 make the contract between Geraci and Cotton unenforceable.
28 It's one thing to say that the contract or the form wasn't

1 properly filled out, that doesn't make the contract
2 unenforceable. That's all we have for the record.

3 THE COURT: Counsel, the Court observed this case
4 throughout the entirety, including at trial. Quite
5 frankly, I thought your client did well on the witness
6 stand. Truly.

7 But the jury categorically rejected your side's claim
8 and I am persuaded everybody got a fair trial here. The
9 Court confirms the tentative ruling as the order of the
10 Court. I will direct Plaintiff's side to serve Notice of
11 the Decision. Thank you very much.

12 MR. WEINSTEIN: Thank you, Your Honor.

13 MR. TOOTHACRE: Thank you, Your Honor.

14 (END OF PROCEEDING AT 9:23 AM)

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SAN DIEGO, CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

I, ELIZABETH M. CESENA, CSR 12266, A COURT-APPROVED REPORTER OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, DO HEREBY CERTIFY THAT I REPORTED IN SHORTHAND THE PROCEEDINGS, TO THE BEST OF MY ABILITY, IN THE ABOVE-ENTITLED CAUSE AND THAT THE FOREGOING TRANSCRIPT, NUMBERED FROM PAGES 1 TO 7, IS A FULL, TRUE AND CORRECT TRANSCRIPT OF PROCEEDINGS HELD ON OCTOBER 25, 2019.

SAN DIEGO, CALIFORNIA, DATED THIS 9TH DAY OF JUNE, 2020.



ELIZABETH M. CESENA, CSR 12266
CERTIFIED SHORTHAND REPORTER