

# EXHIBIT 9

**ELECTRONICALLY FILED**Superior Court of California,  
County of San Diego**11/20/2017 at 09:40:00 AM**Clerk of the Superior Court  
By Patrick Gonzaga, Deputy Clerk

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Attorneys for Plaintiff  
LARRY GERACI

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

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**CROSS-DEFENDANT LARRY GERACI'S  
ANSWER TO CROSS COMPLAINANT  
DARRYL COTTON'S UNVERIFIED  
SECOND AMENDED CROSS-  
COMPLAINT**

**[IMAGED FILE]**Filed: March 21, 2017  
Trial Date: May 11, 2018

Cross-Defendant LARRY GERACI answers Cross-Complainant DARRYL COTTON's  
unverified Second Amended Cross-Complaint, dated August 25, 2017, as follows:

**GENERAL DENIAL**

Under the provisions of section 431.30 of the California Code of Civil Procedure, this  
answering Cross-Defendant denies, generally and specifically, each and every and all allegations in the  
Second Amended Cross-Complaint, and the whole thereof, including each and every purported cause of

1 action contained therein, and denies that Cross-Complainant has sustained damages as alleged by  
2 reason of any alleged act, breach, or omission on the party of this answering Cross-Defendant.

### 3 **AFFIRMATIVE DEFENSES**

4 For a further and separate answer to the Second Amended Cross-Complaint, and by way of  
5 affirmative defenses, this answering Cross-Defendant alleges as follows:

#### 6 **FIRST AFFIRMATIVE DEFENSE**

##### 7 **(Failure to State a Cause of Action)**

8 Each of Cross-Complainant's purported causes of action against this answering Cross-  
9 Defendant fails to state facts sufficient to constitute a cause of action against this answering Cross-  
10 Defendant.

#### 11 **SECOND AFFIRMATIVE DEFENSE**

##### 12 **(Statute of Frauds)**

13 Cross-Complainant's purported first cause of action for breach of contract is barred by the  
14 Statute of Frauds (Civ. Code §1624(a)(3).)

#### 15 **THIRD AFFIRMATIVE DEFENSE**

##### 16 **(Failure to State a Cause of Action for Breach of an Agreement to Negotiate)**

17 Cross-Complainant's purported first cause of action for breach of contract, to the extent it  
18 purports to state a cause of action for breach of an agreement to negotiate, fails to allege facts sufficient  
19 to state such a claim under *Copeland v. Baskin Robbins USA*, 96 Cal.App.4th 1251 (2002).

#### 20 **FOURTH AFFIRMATIVE DEFENSE**

##### 21 **(Waiver)**

22 Cross-Complainant's purported second cause of action for intentional misrepresentation is  
23 barred by the doctrine of waiver in that Cross-Complainant has accepted a substantial benefit in the  
24 form of the efforts and substantial expense undertaken by Cross-Defendants to apply for and obtain  
25 approval of a Conditional Use Permit.

#### 26 **FIFTH AFFIRMATIVE DEFENSE**

##### 27 **(Reservation of Right to Assert Further Defense)**

28 This answering Cross-Defendant currently has insufficient information upon which to form a

1 belief as to the existence of additional and as yet unstated affirmative defenses. This answering Cross-  
2 Defendant reserves the right to assert additional affirmative defenses in the event discovery discloses  
3 the existence of said affirmative defenses.

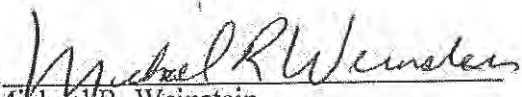
4 **WHEREFORE**, Cross- Defendant LARRY GERACI prays as follows:

5 1. That the Second Amended Cross-Complaint be dismissed and Cross-Complainant take  
6 nothing against this answering Cross-Defendant; and

7 2. Such other and further relief as the Court may deem just and proper.

8 Dated: November 20, 2017

FERRIS & BRITTON,  
A Professional Corporation

9  
10 By:   
11 Michael R. Weinstein  
12 Scott H. Toothacre  
13 Attorneys for Plaintiff  
14 LARRY GERACI  
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# EXHIBIT 10



ORIGINAL

Darryl Cotton, *In pro se*  
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 San Diego, CA 92114  
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 Defendant and Cross-Complainant

FILED  
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 CENTRAL DIVISION

2017 MAY 12 P 3:49

CLERK-SUPERIOR COURT  
 SAN DIEGO COUNTY, CA

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

LARRY GERACI, an individual,  
 Plaintiff,

vs.

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

DARRYL COTTON, an individual,  
 Cross-Complainant,

v.

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

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

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

**COTTON'S CROSS-COMPLAINT FOR:**

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

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

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

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



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

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

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

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

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

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

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

### 22 GENERAL ALLEGATIONS

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

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



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

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

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

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

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

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

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

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

a. The sum of \$800,000;



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

Cotton: "This resolves the zoning issue?"

Geraci: "Yes"

Cotton: "Excellent"

Cotton: "How goes it?"

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

Cotton: "Whats new?"

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

### Count One

#### (Quiet Title)

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

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

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

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

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



**Count Two**  
**(Slander of Title)**

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

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

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

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

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

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

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



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

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

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

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

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

### 24 Count Three

#### 25 (Fraud / Fraudulent Misrepresentation)

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

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



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

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

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

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

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

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

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

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

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

28       79.       Cotton relied on Geraci's representations.



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

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

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

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

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

17 **Count Four**

18 **(Fraud in the Inducement)**

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

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

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

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



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

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

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

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

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

15 **Count Five**  
**(Breach of Contract)**

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

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

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

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

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



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

4 **Count Six**

5 **(Breach of Oral Contract)**

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

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

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

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

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

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

21 **Count Seven**

22 **(Breach of Implied Contract)**

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

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

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



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

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

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

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

#### **Count Eight**

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

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

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

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

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

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



1 118. This intentional, willful, malicious, outrageous, and unjustified conduct  
 2 entitles Cotton to an award of general, compensatory, special, exemplary and/or  
 3 punitive damages in an amount to be determined at trial, but which is no less than  
 4 \$2,000,000.

5 **Count Nine**  
 6 **(Trespass)**

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

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

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

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

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

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

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

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

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



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

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

7           127. Cotton has suffered and continues to suffer damages because of  
8 Geraci's actions in an amount to be determined at trial, but which is no less than  
9 \$2,000,000.

10                               **Count Ten**  
11                               **(Conspiracy)**

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

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

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

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

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

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



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

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

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

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

15 135. Cotton has suffered and continues to suffer damages because of Geraci  
16 and Berrys' actions in an amount to be determined at trial, but which is no less than  
17 \$2,000,000.

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

#### 21 Count 11

#### 22 (Injunctive Relief)

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

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

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



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

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

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Cotton prays for relief as follows:

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

21 Dated: May 12, 2017.

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

# EXHIBIT 11



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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

**06/30/2017** at 12:10:00 PM

Clerk of the Superior Court  
By Richard Day, Deputy Clerk

Attorneys for Defendant and Cross-Complainant Darryl Cotton

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

FIRST AMENDED CROSS-COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FALSE PROMISE;
- (5) INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
- (6) NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS; AND
- (7) DECLARATORY RELIEF.

[IMAGED FILE]

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

Complaint Filed: March 21, 2017  
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual;  
REBECCA BERRY, an individual; and  
ROES 1 through 50,

Cross-Defendants.



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

2 1. Venue is proper in this Court because the events described below took place in  
3 this judicial district and the real property at issue is located in this judicial district.

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

6 3. Cotton was at all times material to this action the sole record owner of the  
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114  
8 ("Property") which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci  
10 ("Geraci") is, and at all times mentioned was, an individual residing within the County of San  
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is,  
13 and at all times mentioned was, an individual residing within the County of San Diego,  
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants  
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed  
17 and believes that ROES 1 through 50 are in some way responsible for the events described in  
18 this First Amended Cross-Complaint ("FACC"). Cotton will seek leave to amend this FACC  
19 when the true names and capacities of these cross-defendants have been ascertained.

20 7. At all times mentioned, each cross-defendant was an agent, principal,  
21 representative, employee, or partner of the other cross-defendants, and acted within the course  
22 and scope of such agency, representation, employment, and/or partnership, and with  
23 permission of the other cross-defendants.

#### 24 GENERAL ALLEGATIONS

25 8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the  
26 Property. Geraci desired to buy the Property from Cotton because it meets certain  
27 requirements of the City of San Diego ("City") for obtaining a Conditional Use Permit  
28 ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the Property.



1 The Property is one of a very limited number of properties located in San Diego City Council  
2 District 4 that potentially satisfy the CUP requirements for a MMCC.

3 9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively  
4 regarding the terms of a potential sale of the Property. During these negotiations, Geraci  
5 represented to Cotton, among other things, that:

6 (a) Geraci was a trustworthy individual because Geraci operated in a  
7 fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for  
8 the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial  
9 advisory business;

10 (b) Geraci, through his due diligence, had uncovered a critical zoning issue  
11 that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci  
12 lobbied with the City to have the zoning issue resolved first;

13 (c) Geraci, through his personal and professional relationships, was in a  
14 unique position to lobby and influence key City political figures to have the zoning issue  
15 favorably resolved and obtain approval of the CUP application once submitted; and

16 (d) Geraci was qualified to successfully operate a MMCC because he owned  
17 and operated several other marijuana dispensaries in the San Diego County area.

18 10. Cotton, acting in good faith based upon Geraci's representations during the sale  
19 negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a  
20 CUP application at the Property while the parties negotiated the terms of a possible deal.  
21 However, despite the parties' work on a CUP application, Geraci represented to Cotton that a  
22 CUP application for the Property could not actually be submitted until after the zoning issue  
23 was resolved or the application would be summarily rejected by the City.

24 11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership  
25 Disclosure Statement, which is a required component of all CUP applications. Geraci told  
26 Cotton that he needed the signed document to show that Geraci had access to the Property in  
27 connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of  
28 a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement



1 as an indication of good-faith while the parties negotiated on the sale terms. At no time did  
 2 Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering  
 3 into a final written agreement for the sale of the Property. In fact, Geraci repeatedly  
 4 maintained to Cotton that the zoning issue needed to be resolved before a CUP application  
 5 could even be submitted.

6 12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in  
 7 October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However,  
 8 Cotton has never met Berry personally and never entered into a lease or any other type of  
 9 agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who  
 10 was very familiar with MMCC operations and who was involved with his other MMCC  
 11 dispensaries. Cotton's understanding was that Geraci was unable to list himself on the  
 12 application because of Geraci's other legal issues but that Berry was Geraci's agent and was  
 13 working in concert with him and at his direction. Based upon Geraci's assurances that listing  
 14 Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton  
 15 executed the Ownership Disclosure Statement that Geraci provided to him.

16 13. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to  
 17 negotiate the final terms of their deal for the sale of the Property. At that meeting, the parties  
 18 reached an oral agreement on the material terms for the sale of the Property. The parties  
 19 further agreed to cooperate in good faith to promptly reduce the agreed-upon terms to writing.

20 14. The material terms of the agreement reached by the parties at the November 2,  
 21 2016 meeting included, without limitation, the following key deal points:

22 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the  
 23 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton  
 24 immediately upon the parties' execution of final integrated written agreements and the  
 25 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the  
 26 Property;

27 / / / / /

28 / / / / /



(b) The parties agreed that the City's approval of a CUP application to operate a MMCC at the Property would be a condition precedent to closing of the sale (In other words, the sale of the Property would be completed and title transferred to Geraci only upon the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of the purchase price to Cotton. If the City denied the CUP application, the parties agreed the sale of the Property would be automatically terminated and Cotton would be entitled to retain the entire \$50,000 non-refundable deposit);

(c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the MMCC that would operate at the Property following the City's approval of the CUP application; and

(d) In addition, Geraci agreed that, after the MMCC commenced operations at the Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and Geraci would guarantee that such payments would amount to at least \$10,000 per month.

15. At Geraci's request, the sale was to be documented in two written agreements, a real estate purchase agreement and a separate side agreement, which together would contain all the agreed-upon terms from the November 2, 2016 meeting. At that meeting, Geraci also offered to have his attorney "quickly" draft the final integrated agreements and Cotton agreed.

16. Although the parties came to a final agreement on the purchase price and deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he had limited cashflow and would require the cash he did have to fund the lobbying efforts needed to resolve the zoning issue at the Property and to prepare the CUP application.

17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of "good-faith," even though the parties had not reduced their final agreement to writing. Cotton was understandably concerned that Geraci would file the CUP application before paying the balance of the non-refundable deposit and Cotton would never receive the remainder of the non-refundable deposit if the City denied the CUP application before Geraci paid the



1 remaining \$40,000 (thereby avoiding the parties' agreement that the \$50,000 non-refundable  
 2 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).  
 3 Despite his reservations, Cotton agreed to Geraci's request and accepted the lesser \$10,000  
 4 initial deposit amount based upon Geraci's express promise to pay the \$40,000 balance of the  
 5 non-refundable deposit no later than prior to submission of the CUP application.

6 18. At the November 2, 2016 meeting, the parties executed a three-sentence  
 7 document related to their agreement at Geraci's request, which read as follows:

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

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

13 Geraci assured Cotton that the document was intended to merely create a record of Cotton's  
 14 receipt of the \$10,000 "good-faith" deposit and provide evidence of the parties' agreement to  
 15 enter into final integrated agreement documents related to the sale of the Property. That same  
 16 day, Geraci emailed Cotton a scanned copy of the executed document. In an email to Geraci  
 17 several hours later following closer review of the document, Cotton wrote:

18 I just noticed the 10% equity position in the dispensary was not  
 19 language added into that document. I just want to make sure that  
 20 we're not missing that language in any final agreement as it is a  
 factored element in my decision to sell the property. I'll be fine if  
 you would simply acknowledge that here in a reply.

21 Approximately two hours later, Geraci replied via email, "No no problem at all."

22 19. Thereafter, Cotton continued to operate in good faith under the assumption that  
 23 Geraci's attorney would promptly draft the fully integrated agreement documents as the parties  
 24 had agreed and the parties would shortly execute the written agreements to document their  
 25 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive  
 26 and continuously failed to make substantive progress on his promises, including his promises  
 27 to promptly deliver the draft agreement documents, pay the balance of the non-refundable  
 28 deposit, and keep Cotton apprised of the status of the zoning issue.



20. Over the weeks and months that followed, Cotton repeatedly reached out to Geraci regarding the status of the zoning issue, the payment of the remaining balance of the non-refundable deposit, and the status of the draft documents. For example, on January 6, 2017, after Cotton became exasperated with Geraci's failure to provide any substantive updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to call you later today still very sick."

21. Between January 18, 2017 and February 7, 2017, the following exchange took place between Geraci and Cotton via text message:

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

Cotton: "This resolves the zoning issue?"

Geraci: "Yes"

Cotton: "Excellent"...

Cotton: "How goes it?"

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

Cotton: "Whats new?"

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

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

The above communications between Geraci and Cotton regarding the zoning issue conveyed to Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had previously represented to Cotton that the CUP application could not be submitted until the zoning issue was resolved, which was key as Geraci's submission of the CUP application was the outside date the parties had agreed upon for payment of the \$40,000 balance of the non-refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he knew they were untrue as he had in fact already submitted the CUP application months prior.

22. With respect to the promised final agreement documents, Geraci continuously failed to timely deliver the documents as agreed. On February 15, 2017, more than two months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the



1 documents with the attorney and hopefully will have them by the end of this week.” On  
 2 February 22, 2017, Geraci again texted Cotton, “Contract should be ready in a couple days.”

3 23. On February 27, 2017, nearly three months after the parties reached an  
 4 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase  
 5 agreement and stated: “Attached is the draft purchase of the property for 400k. The additional  
 6 contract for the 400k should be in today and I will forward it to you as well.” However, upon  
 7 review, the draft purchase agreement was missing many of the key deal points agreed upon by  
 8 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,  
 9 Geraci claimed it was simply due to miscommunication with his attorney and promised to have  
 10 her revise the agreement to accurately reflect their deal points.

11 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side  
 12 agreement that was to incorporate other terms of the parties’ deal. Cotton immediately  
 13 reviewed the draft side agreement and emailed Geraci the next day stating: “I see that no  
 14 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement  
 15 completely.” Paragraph 3.11 of the draft side agreement stated that the parties had no joint  
 16 venture or partnership agreement of any kind, which contradicted the parties’ express  
 17 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a  
 18 condition of the sale of the Property.

19 25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an  
 20 attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci  
 21 dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a  
 22 misunderstanding with his attorney and that Cotton could speak with her directly regarding any  
 23 comments on the drafts.

24 26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement  
 25 along with a cover email that stated: “... the 10k a month might be difficult to hit until the  
 26 sixth month... can we do 5k, and on the seventh month start 10k?”. Cotton, increasingly  
 27 frustrated with Geraci’s failure to abide by the parties’ agreement, responded to Geraci on  
 28 March 16, 2017 in an email which included the following:



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

27. On the same day, Cotton contacted the City's Development Project Manager responsible for CUP applications. At that time, Cotton discovered for the first time that Geraci had submitted a CUP application for the Property way back on October 31, 2016, before the parties even agreed upon the final terms of their deal and contrary to Geraci's express representations over the previous five months. Cotton expressed his disappointment and frustration in the same March 16, 2017 email to Geraci:

I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

28. On March 17, 2017, after Geraci requested an in-person meeting via text message, Cotton replied in an email to Geraci which including the following:

I would prefer that until we have final agreements that we converse exclusively via email. My greatest concern is that you get a denial on the CUP application and not provide the remaining \$40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31 2016 BEFORE we even signed our agreement on the 2nd of November... Please confirm by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

Geraci did not provide the requested confirmation that he would honor their agreement or proffer the requested agreements prior to Cotton's deadlines.



29. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was terminated and that Geraci no longer had any interest in the Property. Cotton also notified Geraci that he intended to move forward with a new buyer for the Property.

30. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"), emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first time that the three-sentence document signed by the parties on November 2, 2016 constituted the parties' complete agreement regarding the Property, contrary to the entire course of dealings between the parties and Geraci's own statements and actions.

31. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci intended to continue to pursue the CUP application and would be posting notices on Cotton's property. Cotton responded via email the same day and objected to Geraci or his agents entering the Property and reiterated the fact that Geraci has no rights to the Property.

32. The defendants' refusal to acknowledge they have no interest in the Property and to step aside from the CUP application has diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to protect his interest in his Property.

### FIRST CAUSE OF ACTION

(Breach of Contract – Against Geraci and ROES 1 through 50)

33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above, as though set forth in full at this point.

34. Geraci and Cotton entered into an oral agreement regarding the sale of the Property and agreed to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting their agreement.

35. Cotton performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions of the oral contract between the parties or has been excused from performance.

/ / / / /

/ / / / /



37. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

(Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

39. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants knew to be false or were made recklessly and without regard for their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

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Drive - Suite 700  
San Diego, CA 92121  
(858) 737-3100



1 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to  
 2 execute the document Geraci now alleges is the fully integrated agreement between the parties  
 3 by representing that (i) the CUP application would not be filed until the zoning issue was  
 4 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at  
 5 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000  
 6 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci  
 7 understood and agreed the document was not intended to be the final agreement between the  
 8 parties for the purchase of the Property and did not contain all material terms of the parties'  
 9 agreement;

10 (c) On multiple occasions, Geraci represented to Cotton that a CUP  
 11 application for the Property could not be submitted until after the zoning issue was resolved;

12 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not  
 13 yet filed a CUP application with respect to the Property when the CUP application had already  
 14 been filed; and

15 (e) On multiple occasions, Geraci represented to Cotton that the preliminary  
 16 work of preparing a CUP application was merely underway, when, in fact, the CUP application  
 17 had already been filed,

18 41. Defendants, through their intentional misrepresentations and the actions taken in  
 19 reliance upon such misrepresentations, have diminished the value of the Property, reduced the  
 20 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and  
 21 attorneys' fees to protect his interest in his Property. As a further result of the intentional  
 22 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable  
 23 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

24 42. The misrepresentations were intentional, willful, malicious, outrageous,  
 25 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent  
 26 to deprive Cotton of his interest in the Property. This intentional, willful, malicious,  
 27 outrageous and unjustified conduct entitles Cotton to an award of general, compensatory,  
 28 special, exemplary and/or punitive damages under Civil Code section 3294.



THIRD CAUSE OF ACTION

(Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above, as though set forth in full at this point.

44. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants had no reasonable grounds for believing were true when the statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

45. The negligent misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

/////

/////



1 (c) On multiple occasions, Geraci represented to Cotton that a CUP  
2 application for the Property could not be submitted until after the zoning issue was resolved;

3 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not  
4 yet filed a CUP application with respect to the Property when the CUP application had already  
5 been filed; and

6 (e) On multiple occasions, Geraci represented to Cotton that the preliminary  
7 work of preparing a CUP application was merely underway, when, in fact, the CUP application  
8 had already been filed.

9 46. Defendants, through their negligent misrepresentations and the actions taken in  
10 reliance upon such misrepresentations, have diminished the value of the Property, reduced the  
11 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and  
12 attorneys' fees to protect his interest in his Property. As a further result of the negligent  
13 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable  
14 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

#### 15 FOURTH CAUSE OF ACTION

16 (False Promise – Against Geraci and ROES 1 through 50)

17 47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above,  
18 as though set forth in full at this point.

19 48. On November 2, 2016, among other things, Geraci falsely promised the  
20 following to Cotton without any intent of fulfilling the promises:

21 (a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable  
22 deposit prior to filing a CUP application;

23 (b) Geraci would cause his attorney to promptly draft the final integrated  
24 agreements to document the agreed-upon deal between the parties;

25 (c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the  
26 monthly profits for the MMCC at the Property if the CUP was granted; and

27 (d) Cotton would be a 10% owner of the MMCC business operating at  
28 Property if the CUP was granted.



1           49.     Geraci had no intent to perform the promises he made to Cotton on November  
2     2, 2016 when he made them.

3           50.     Geraci intended to deceive Cotton in order to, among other things, cause Cotton  
4     to rely on the false promises and execute the document signed by the parties at their November  
5     2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the  
6     parties' entire agreement.

7           51.     Cotton reasonably relied on Geraci's promises.

8           52.     Geraci failed to perform the promises he made on November 2, 2016.

9           53.     Defendants, through their false promises and the actions taken in reliance upon  
10    such false promises, have diminished the value of the Property, reduced the price Cotton will  
11    be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to  
12    protect his interest in his Property. As a further result of the false promises, Cotton has been  
13    deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay  
14    prior to filing a CUP application for the Property.

15          54.     The false promises were intentional, willful, malicious, outrageous, unjustified,  
16    done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive  
17    Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and  
18    unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary  
19    and/or punitive damages under Civil Code section 3294.

#### 20                               FIFTH CAUSE OF ACTION

21                               (Intentional Interference with  
22    Prospective Economic Relations – Against Geraci and ROES 1 through 50)

23          55.     Cotton realleges and incorporates by reference paragraphs 1 through 54, above,  
24    as though set forth in full at this point.

25          56.     Cotton has an ongoing prospective business relationship with the City that was  
26    resulting, and would have resulted, in an economic benefit to Cotton based on and in  
27    connection with the approval of the CUP application. In addition, Cotton has an ongoing  
28    prospective business relationship with the new buyer of the Property that was resulting, and



1 would have resulted, in an economic benefit to Cotton based on and in connection with the sale  
2 of the Property.

3 57. Defendants knew of Cotton's ongoing and prospective business relationship  
4 with the City arising from and related to the CUP Application and defendants knew of Cotton's  
5 ongoing and prospective business relationship with the new buyer for the Property.

6 58. Defendants intentionally engaged in acts designed to interfere, and which have  
7 interfered and are likely to continue to interfere, with Cotton's relationship with the City, the  
8 CUP application, and the new buyer, including without limitation, their refusal to acknowledge  
9 they have no interest in the Property and/or the CUP application.

10 59. As a direct and proximate result of the defendants' conduct, Cotton has suffered  
11 and will continue to suffer damages in an amount not yet fully ascertainable and to be  
12 determined according to proof at trial.

13 60. The aforementioned conduct by defendants was despicable, willful, malicious,  
14 fraudulent, and oppressive conduct which subjected Cotton to cruel and unjust hardship in  
15 conscious disregard of Cotton's rights, so as to justify an award of exemplary and punitive  
16 damages in an amount to be determined according to proof at trial, including pursuant to Civil  
17 Code section 3294.

#### 18 SIXTH CAUSE OF ACTION

19 (Negligent Interference with Prospective  
20 Economic Relations – Against Geraci and ROES 1 through 50)

21 61. Cotton realleges and incorporates by reference paragraphs 1 through 60, above,  
22 as though set forth in full at this point.

23 62. Cotton has an ongoing prospective business relationship with the City that was  
24 resulting, and would have resulted, in an economic benefit to Cotton based on and in  
25 connection with the approval of the CUP application. In addition, Cotton has an ongoing  
26 prospective business relationship with the new buyer of the Property that was resulting, and  
27 would have resulted, in an economic benefit to Cotton based on and in connection with the sale  
28 of the Property.



63. Defendants knew or should have known of Cotton's ongoing and prospective business relationship with the City arising from and related to the CUP Application, and defendants knew or should have known of Cotton's ongoing and prospective business relationship with the new buyer for the Property.

64. Defendants failed to act with reasonable care when they engaged in acts designed to interfere, and which have interfered and are likely to continue to interfere, with Cotton's relationship with the City, the CUP application, and the new buyer, including without limitation, their refusal to acknowledge they have no interest in the Property and/or the CUP application.

65. As a direct and proximate result of the defendants' conduct, Cotton has suffered and will continue to suffer damages in an amount not yet fully ascertainable and to be determined according to proof at trial.

#### SEVENTH CAUSE OF ACTION

(Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

66. Cotton realleges and incorporates by reference paragraphs 1 through 65, above, as though set forth in full at this point.

67. An actual controversy has arisen and now exists between Cotton and all defendants concerning their respective rights, liabilities, obligations and duties with respect to the Property and the CUP application for the Property filed on or around October 31, 2016.

68. A declaration of rights is necessary and appropriate at this time in order for the parties to ascertain their respective rights, liabilities, and obligations because no adequate remedy other than as prayed for exists by which the rights of the parties may be ascertained.

69. Accordingly, Cotton respectfully requests a judicial declaration of rights, liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole interest-holder in the CUP application for the Property submitted on or around October 31, 2016, (c) defendants have no interest in the CUP application for the Property submitted on or around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.



1 PRAYER FOR RELIEF

2 WHEREFORE, Cotton prays for relief as follows:

3 ON THE FIRST CAUSE OF ACTION:

4 1. For general, special, and consequential damages in an amount not yet fully  
5 ascertained and according to proof at trial, but at least \$40,000; and

6 2. For compensatory and reliance damages in an amount not yet fully ascertained  
7 and according to proof at trial.

8 ON THE SECOND CAUSE OF ACTION

9 1. For general, special, and consequential damages in an amount not yet fully  
10 ascertained but at least \$40,000;

11 2. For compensatory and reliance damages in an amount not yet fully ascertained  
12 and according to proof at trial; and

13 3. For punitive and exemplary damages in an amount just and reasonable to punish  
14 and deter defendants.

15 ON THE THIRD CAUSE OF ACTION

16 1. For general, special, and consequential damages in an amount not yet fully  
17 ascertained but at least \$40,000; and

18 2. For compensatory and reliance damages in an amount not yet fully ascertained  
19 and according to proof at trial.

20 ON THE FOURTH CAUSE OF ACTION

21 1. For general, special, and consequential damages in an amount not yet fully  
22 ascertained but at least \$40,000;

23 2. For compensatory and reliance damages in an amount not yet fully ascertained  
24 and according to proof at trial; and

25 3. For punitive and exemplary damages in an amount just and reasonable to punish  
26 and deter defendants.

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1 ON THE FIFTH CAUSE OF ACTION

2 1. For general, special, and consequential damages in an amount not yet fully  
3 ascertained but at least \$40,000;

4 2. For compensatory and reliance damages in an amount not yet fully ascertained  
5 and according to proof at trial; and

6 3. For punitive and exemplary damages in an amount just and reasonable to punish  
7 and deter defendants.

8 ON THE SIXTH CAUSE OF ACTION

9 1. For general, special, and consequential damages in an amount not yet fully  
10 ascertained but at least \$40,000; and

11 2. For compensatory and reliance damages in an amount not yet fully ascertained  
12 and according to proof at trial.

13 ON THE SEVENTH CAUSE OF ACTION

14 1. For a judicial declaration that defendants have no right or interest whatsoever in  
15 the Property;

16 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP  
17 application for the Property submitted on or around October 31, 2016, defendants have no right  
18 or interest in said CUP application, and that defendants are enjoined from further pursuing  
19 such CUP application for the Property; and

20 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be  
21 released.

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1 ON ALL CAUSES OF ACTION

2 1. For interest on all sums at the maximum legal rates from dates according to  
3 proof;

4 2. For costs of suit; and

5 3. For such other relief as the Court deems just.

6 DATED: June 30, 2017

Respectfully submitted,

7 FINCH, THORNTON & BAIRD, LLP

8  
9 By: 

10 DAVID S. DEMIAN

ADAM C. WITT

11 Attorneys for Defendant and Cross-Complainant  
12 Darryl Cotton  
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Attorneys for Defendant Darryl Cotton

FILED  
CIVIL BUSINESS OFFICE 9  
CENTRAL DIVISION

2017 JUL -7 A 9 33

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

**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

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

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

Complaint Filed: March 21, 2017  
Trial Date: Not Set

I, Holly J. Glavinic, declare that:

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California, where the mailing occurred; and my business address is 4747 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I caused to be served the following document(s): FIRST AMENDED CROSS-COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as follows:

/////

/////



1 Michael R. Weinstein, Esq.  
2 Scott H. Toothacre, Esq.  
3 Ferris & Britton  
4 A Professional Corporation  
5 501 West Broadway, Suite 1450  
6 San Diego, California 92101  
7 Telephone: (619) 233-3131  
8 Facsimile: (619) 232-9316  
9 Email: mweinstein@ferrisbritton.com  
10 stoothacre@ferrisbritton.com

ATTORNEYS FOR PLAINTIFF AND  
CROSS-DEFENDANT LARRY GERACI

7 Michael R. Weinstein, Esq.  
8 Scott H. Toothacre, Esq.  
9 Ferris & Britton  
10 A Professional Corporation  
11 501 West Broadway, Suite 1450  
12 San Diego, California 92101  
13 Telephone: (619) 233-3131  
14 Facsimile: (619) 232-9316  
15 Email: mweinstein@ferrisbritton.com  
16 stoothacre@ferrisbritton.com

ATTORNEYS FOR CROSS-DEFENDANT  
REBECCA BERRY

13 I then sealed the envelope(s) and, with the postage thereon fully prepaid, either  
14 deposited it/each in the United States Postal Service or placed it/each for collection and  
15 mailing on July 6, 2017, at San Diego, California, following ordinary business practices.

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

18 Executed on July 6, 2017.

19   
20 Holly J. Glavinic

21  
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27  
28 2403.004/POS.hjg



# EXHIBIT 12



DAVID S. DEMIAN, SBN 220626  
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ADAM C. WITT, SBN 271502  
E-MAIL: awitt@fblaw.com

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Attorneys for Defendant and Cross-Complainant Darryl Cotton

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

SECOND AMENDED CROSS-COMPLAINT  
FOR:

- (1) BREACH OF CONTRACT;
- (2) INTENTIONAL MISREPRESENTATION;
- (3) NEGLIGENT MISREPRESENTATION;
- (4) FALSE PROMISE; AND
- (5) DECLARATORY RELIEF.

[IMAGED FILE]

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

Complaint Filed: March 21, 2017  
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;  
REBECCA BERRY, an individual; and  
ROES 1 through 50,

Cross-Defendants.

////



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

2 1. Venue is proper in this Court because the events described below took place in  
3 this judicial district and the real property at issue is located in this judicial district.

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

6 3. Cotton was at all times material to this action the sole record owner of the  
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114  
8 ("Property") which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci  
10 ("Geraci") is, and at all times mentioned was, an individual residing within the County of San  
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is,  
13 and at all times mentioned was, an individual residing within the County of San Diego,  
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants  
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed  
17 and believes that ROES 1 through 50 are in some way responsible for the events described in  
18 this Second Amended Cross-Complaint. Cotton will seek leave to amend this Second  
19 Amended Cross-Complaint when the true names and capacities of these cross-defendants have  
20 been ascertained.

21 7. At all times mentioned, each cross-defendant was an agent, principal,  
22 representative, employee, or partner of the other cross-defendants, and acted within the course  
23 and scope of such agency, representation, employment, and/or partnership, and with  
24 permission of the other cross-defendants.

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GENERAL ALLEGATIONS

8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it meets certain requirements of the City of San Diego ("City") for obtaining a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the Property. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. During these negotiations, Geraci represented to Cotton, among other things, that:

(a) Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;

(b) Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci lobbied with the City to have the zoning issue resolved first;

(c) Geraci, through his personal and professional relationships, was in a unique position to lobby and influence key City political figures to have the zoning issue favorably resolved and obtain approval of the CUP application once submitted; and

(d) Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area.

10. Cotton, acting in good faith based upon Geraci's representations during the sale negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a CUP application at the Property while the parties negotiated the terms of a possible deal. However, despite the parties' work on a CUP application, Geraci represented to Cotton that a CUP application for the Property could not actually be submitted until after the critical zoning issue was resolved or the application would be summarily rejected by the City.



11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership Disclosure Statement, which is a required component of all CUP applications. Geraci told Cotton that he needed the signed document to show that Geraci had access to the Property in connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement as an indication of good-faith while the parties negotiated on the sale terms. At no time did Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering into a final written agreement for the sale of the Property. In fact, Geraci repeatedly maintained to Cotton that the critical zoning issue needed to be resolved before a CUP application could even be submitted.

12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However, Cotton has never met Berry personally and never entered into a lease or any other type of agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who was very familiar with MMCC operations and who was involved with his other MMCC dispensaries. Cotton's understanding was that Geraci was unable to list himself on the application because of Geraci's other legal issues but that Berry was Geraci's agent and was working in concert with him and at his direction. Based upon Geraci's assurances that listing Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton executed the Ownership Disclosure Statement that Geraci provided to him.

13. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to negotiate the final terms of their deal for the sale of the Property. The parties reached an agreement on the material terms for the sale of the Property. The parties further agreed to cooperate in good faith to promptly reduce the complete agreement, including all of the agreed-upon terms, to writing.

14. The material terms of the agreement reached by the parties at the November 2, 2016 meeting included, without limitation, the following key deal points:

////



1 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the  
 2 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton  
 3 immediately upon the parties' execution of final integrated written agreements and the  
 4 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the  
 5 Property;

6 (b) The parties agreed that the City's approval of a CUP application to  
 7 operate a MMCC at the Property would be a condition precedent to closing of the sale (in other  
 8 words, the sale of the Property would be completed and title transferred to Geraci only upon  
 9 the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of  
 10 the purchase price to Cotton; if the City denied the CUP application, the parties agreed the sale  
 11 of the Property would be automatically terminated and Cotton would be entitled to retain the  
 12 entire \$50,000 non-refundable deposit);

13 (c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the  
 14 MMCC that would operate at the Property following the City's approval of the CUP  
 15 application; and

16 (d) Geraci agreed that, after the MMCC commenced operations at the  
 17 Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and  
 18 Geraci would guarantee that such payments would amount to at least \$10,000 per month.

19 15. At Geraci's request, the sale was to be documented in two final written  
 20 agreements, a real estate purchase agreement and a separate side agreement, which together  
 21 would contain all the agreed-upon terms from the November 2, 2016 meeting. At that meeting,  
 22 Geraci also offered to have his attorney "quickly" draft the final integrated agreements and  
 23 Cotton agreed.

24 16. Although the parties came to a final agreement on the purchase price and  
 25 deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come  
 26 up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he  
 27 had limited cashflow and would require the cash he did have to fund the lobbying efforts  
 28 needed to resolve the zoning issue at the Property and to prepare the CUP application.



1           17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit  
2 but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of  
3 "good-faith," even though the parties had not reduced their final agreement to writing. Cotton  
4 was understandably concerned that Geraci would file the CUP application before paying the  
5 balance of the non-refundable deposit and Cotton would never receive the remainder of the  
6 non-refundable deposit if the City denied the CUP application before Geraci paid the  
7 remaining \$40,000 (thereby avoiding the parties' agreement that the \$50,000 non-refundable  
8 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).  
9 Despite his reservations, Cotton agreed to Geraci's request and accepted the lesser \$10,000  
10 initial deposit amount based upon Geraci's express promise to pay the \$40,000 balance of the  
11 non-refundable deposit prior to submission of the CUP application, at the latest.

12           18. At the November 2, 2016 meeting, the parties executed a three-sentence  
13 document related to their agreement on the purchase price for the Property at Geraci's request,  
14 which read as follows:

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

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

20 Geraci assured Cotton that the document was intended to merely create a record of Cotton's  
21 receipt of the \$10,000 "good-faith" deposit and provide evidence of the parties' agreement on  
22 the purchase price and good-faith agreement to enter into final integrated agreement documents  
23 related to the sale of the Property. Geraci emailed Cotton a scanned copy of the executed  
24 document the same day. Following closer review of the executed document, Cotton wrote in  
25 an email to Geraci several hours later (still on the same day):

26           I just noticed the 10% equity position in the dispensary was not language added  
27 into that document. I just want to make sure that we're not missing that  
28 language in any final agreement as it is a factored element in my decision to sell  
the property. I'll be fine if you would simply acknowledge that here in a reply.



1 Approximately two hours later, Geraci replied via email, "No no problem at all."

2 19. Thereafter, Cotton continued to operate in good faith under the assumption that  
3 Geraci's attorney would promptly draft the fully integrated agreement documents as the parties  
4 had agreed and the parties would shortly execute the written agreements to document their  
5 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive  
6 and continuously failed to make substantive progress on his promises, including his promises  
7 to promptly deliver the draft final agreement documents, pay the balance of the non-refundable  
8 deposit, and keep Cotton apprised of the status of the zoning issue.

9 20. Over the weeks and months that followed, Cotton repeatedly reached out to  
10 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the  
11 non-refundable deposit, and the status of the draft documents. For example, on January 6,  
12 2017, after Cotton became exasperated with Geraci's failure to provide any substantive  
13 updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I  
14 need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine  
15 the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month  
16 I'll try to call you later today still very sick."

17 21. Between January 18, 2017 and February 7, 2017, the following exchange took  
18 place between Geraci and Cotton via text message:

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

20 Cotton: "This resolves the zoning issue?"

21 Geraci: "Yes"

22 Cotton: "Excellent"...

23 Cotton: "How goes it?"

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

25 Cotton: "Whats new?"

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

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

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1 The above communications between Geraci and Cotton regarding the zoning issue conveyed to  
 2 Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had  
 3 previously represented to Cotton that the CUP application could not be submitted until the  
 4 zoning issue was resolved, which was key because Geraci's submission of the CUP application  
 5 was the outside date the parties had agreed upon for payment of the \$40,000 balance of the  
 6 non-refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he  
 7 knew they were untrue as he had already submitted the CUP application months prior.

8 22. With respect to the promised final agreement documents, Geraci continuously  
 9 failed to timely deliver the documents as agreed. On February 15, 2017, more than two  
 10 months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the  
 11 documents with the attorney and hopefully will have them by the end of this week." On  
 12 February 22, 2017, Geraci again texted Cotton, "Contract should be ready in a couple days."

13 23. On February 27, 2017, nearly three months after the parties reached an  
 14 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase  
 15 agreement and stated: "Attached is the draft purchase of the property for 400k. The additional  
 16 contract for the 400k should be in today and I will forward it to you as well." However, upon  
 17 review, the draft purchase agreement was missing many of the key deal points agreed upon by  
 18 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,  
 19 Geraci claimed it was simply due to miscommunication with his attorney and promised to have  
 20 her revise the agreement to accurately reflect their deal points.

21 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side  
 22 agreement that was to incorporate other terms of the parties' deal. Cotton immediately  
 23 reviewed the draft side agreement and emailed Geraci the next day stating: "I see that no  
 24 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement  
 25 completely." Paragraph 3.11 of the draft side agreement stated that the parties had no joint  
 26 venture or partnership agreement of any kind, which contradicted the parties' express  
 27 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a  
 28 condition of the sale of the Property.



25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a misunderstanding with his attorney and that Cotton could speak with her directly regarding any comments on the drafts.

26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement along with a cover email that stated: "... the 10k a month might be difficult to hit until the sixth month... can we do 5k, and on the seventh month start 10k?". Cotton, increasingly frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on March 16, 2017 in an email which included the following:

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

27. On the same day, Cotton contacted the City's Development Project Manager responsible for CUP applications. At that time, Cotton discovered for the first time that Geraci had submitted a CUP application for the Property way back on October 31, 2016, before the parties even agreed upon the final terms of their deal and contrary to Geraci's express representations over the previous five months. Cotton expressed his disappointment and frustration in the same March 16, 2017 email to Geraci:

I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the \$40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

28. On March 17, 2017, after Geraci requested an in-person meeting via text message, Cotton replied in an email to Geraci which including the following:



1 I would prefer that until we have final agreements that we converse exclusively  
 2 via email. My greatest concern is that you get a denial on the CUP application  
 3 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I  
 4 feel that you are not dealing with me in good faith, you told me repeatedly that  
 5 you could not submit a CUP application until certain zoning issues had been  
 6 resolved and that you had spent hundreds of thousands of dollars on getting  
 7 them resolved. You lied to me, I found out yesterday from the City of San  
 8 Diego that you submitted a CUP application on October 31 2016 BEFORE we  
 9 even signed our agreement on the 2nd of November... Please confirm by 12:00  
 10 PM Monday that you are honoring our agreement and will have final drafts  
 11 (reflecting completely the below) by Wednesday at 12:00 PM.

12 Geraci did not provide the requested confirmation that he would honor their agreement or  
 13 proffer the requested agreements prior to Cotton's deadlines.

14 29. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was  
 15 terminated and that Geraci no longer had any interest in the Property. Cotton also notified  
 16 Geraci that he intended to move forward with a new buyer for the Property.

17 30. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"),  
 18 emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first  
 19 time that the three-sentence document signed by the parties on November 2, 2016 constituted  
 20 the parties' complete agreement regarding the Property, contrary to the parties' further  
 21 agreement the same day, the entire course of dealings between the parties, and Geraci's own  
 22 statements and actions.

23 31. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci  
 24 intended to continue to pursue the CUP application and would be posting notices on Cotton's  
 25 property. Cotton responded via email the same day and objected to Geraci or his agents  
 26 entering the Property and reiterated the fact that Geraci has no rights to the Property.

27 32. The defendants' refusal to acknowledge they have no interest in the Property  
 28 and to step aside from the CUP application has diminished the value of the Property, reduced  
 the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and  
 attorneys' fees to protect his interest in his Property.

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FIRST CAUSE OF ACTION

(Breach of Contract – Against Geraci and ROES 1 through 50)

33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above, as though set forth in full at this point.

34. Geraci and Cotton entered into an agreement to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting the terms for a purchase and sale of the Property and a side agreement for Cotton to obtain an equity position in the MMCC to operate at the Property. This agreement is comprised of (a) the November 2, 2016 document signed by Geraci and Cotton, and (b) the November 2, 2016 email exchange between Geraci and Cotton including other agreed-upon terms and the parties' agreement to negotiate and collaborate in good faith on final deal documents. True and correct copies of the agreement are attached hereto as Exhibits 1 and 2, respectively.

35. Cotton performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions of the contract between the parties or has been excused from performance.

36. Under the parties' contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable final purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

37. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

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SECOND CAUSE OF ACTION

(Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

38. Cotton realleges and incorporates by reference paragraphs 1 through 37, above, as though set forth in full at this point.

39. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants knew to be false or were made recklessly and without regard for their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

40. The intentional misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

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(c) On multiple occasions, Geraci represented to Cotton that a CUP application for the Property could not be submitted until after the zoning issue was resolved;

(d) On multiple occasions, Geraci represented to Cotton that Geraci had not yet filed a CUP application with respect to the Property when the CUP application had already been filed; and

(e) On multiple occasions, Geraci represented to Cotton that the preliminary work of preparing a CUP application was merely underway, when, in fact, the CUP application had already been filed.

41. Defendants, through their intentional misrepresentations and the actions taken in reliance upon such misrepresentations, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to protect his interest in his Property. As a further result of the intentional misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

42. The misrepresentations were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages under Civil Code section 3294.

### THIRD CAUSE OF ACTION

(Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above, as though set forth in full at this point.

44. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants had no reasonable grounds for believing were true when the statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and



proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

45. The negligent misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

(c) On multiple occasions, Geraci represented to Cotton that a CUP application for the Property could not be submitted until after the zoning issue was resolved;

(d) On multiple occasions, Geraci represented to Cotton that Geraci had not yet filed a CUP application with respect to the Property when the CUP application had already been filed; and

(e) On multiple occasions, Geraci represented to Cotton that the preliminary work of preparing a CUP application was merely underway, when, in fact, the CUP application had already been filed.

46. Defendants, through their negligent misrepresentations and the actions taken in reliance upon such misrepresentations, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and



attorneys' fees to protect his interest in his Property. As a further result of the negligent misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

#### FOURTH CAUSE OF ACTION

(False Promise – Against Geraci and ROES 1 through 50)

47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above, as though set forth in full at this point.

48. On November 2, 2016, among other things, Geraci falsely promised the following to Cotton without any intent of fulfilling the promises:

- (a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable deposit prior to filing a CUP application;
- (b) Geraci would cause his attorney to promptly draft the final integrated agreements to document the agreed-upon deal between the parties;
- (c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the monthly profits for the MMCC at the Property if the CUP was granted; and
- (d) Cotton would be a 10% owner of the MMCC business operating at Property if the CUP was granted.

49. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016 when he made them.

50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to rely on the false promises and execute the document signed by the parties at their November 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire agreement.

51. Cotton reasonably relied on Geraci's promises.

52. Geraci failed to perform the promises he made on November 2, 2016.

53. Defendants, through their false promises and the actions taken in reliance upon such false promises, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to



1 protect his interest in his Property. As a further result of the false promises, Cotton has been  
 2 deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay  
 3 prior to filing a CUP application for the Property.

4 54. The false promises were intentional, willful, malicious, outrageous, unjustified,  
 5 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive  
 6 Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and  
 7 unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary  
 8 and/or punitive damages under Civil Code section 3294.

#### 9 FIFTH CAUSE OF ACTION

10 (Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

11 55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above,  
 12 as though set forth in full at this point.

13 56. An actual controversy has arisen and now exists between Cotton and all  
 14 defendants concerning their respective rights, liabilities, obligations and duties with respect to  
 15 the Property and the CUP application for the Property filed on or around October 31, 2016.

16 57. A declaration of rights is necessary and appropriate at this time in order for the  
 17 parties to ascertain their respective rights, liabilities, and obligations because no adequate  
 18 remedy other than as prayed for exists by which the rights of the parties may be ascertained.

19 58. Accordingly, Cotton respectfully requests a judicial declaration of rights,  
 20 liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration  
 21 that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole  
 22 interest-holder in the CUP application for the Property submitted on or around October 31,  
 23 2016, (c) defendants have no interest in the CUP application for the Property submitted on or  
 24 around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief as follows:

ON THE FIRST CAUSE OF ACTION:

1. For general, special, and consequential damages in an amount not yet fully ascertained and according to proof at trial, but at least \$40,000; and
2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE SECOND CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;
2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and
3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

ON THE THIRD CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000; and
2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE FOURTH CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;
2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and
3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

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1 ON THE FIFTH CAUSE OF ACTION

2 1. For a judicial declaration that defendants have no right or interest whatsoever in  
3 the Property;

4 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP  
5 application for the Property submitted on or around October 31, 2016, defendants have no right  
6 or interest in said CUP application, and that defendants are enjoined from further pursuing  
7 such CUP application for the Property; and

8 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be  
9 released.

10 ON ALL CAUSES OF ACTION

11 1. For interest on all sums at the maximum legal rates from dates according to  
12 proof;

13 2. For costs of suit; and

14 3. For such other relief as the Court deems just.

15 DATED: August 25, 2017

Respectfully submitted,

16 FINCH, THORNTON & BAIRD, LLP

17  
18 By: 

DAVID S. DEMIAN

ADAM C. WITT

19 Attorneys for Defendant and Cross-Complainant  
20 Darryl Cotton

21  
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23  
24  
25  
26  
27 2403.004/3BQ6279.hkr



EXHIBIT 1



11/02/2016

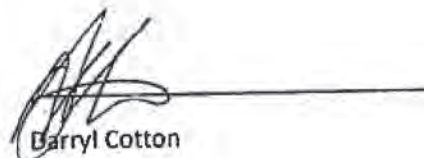
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton



## ACKNOWLEDGMENT

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

State of California

County of San Diego

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

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

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

WITNESS my hand and official seal.

Signature Jessica Newell (Seal)





**EXHIBIT 2**



6/7/2017

Gmail - Agreement



Darryl Cotton <indagrodarryl@gmail.com>

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## Agreement

2 messages

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

Wed, Nov 2, 2016 at 3:11 PM

*Best Regards,*

*Larry E. Geraci, EA*

*Tax & Financial Center, Inc  
5402 Ruffin Rd, Ste 200  
San Diego, Ca 92123*

*Web: Larrygeraci.com*

***Bus: 858.576.1040***

***Fax: 858.630.3900***

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Circular 230 Disclaimer:

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6/7/2017

Gmail - Agreement

 Cotton & Geraci Contract.pdf  
71K

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President



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

6176 Federal Blvd.  
San Diego, CA. 92114  
USA

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[Quoted text hidden]



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 ADAM C. WITT, SBN 271502  
 E-MAIL: awitt@ftblaw.com

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Attorneys for Defendant and Cross-Complainant Darryl Cotton

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

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

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

Complaint Filed: March 21, 2017  
 Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;  
 REBECCA BERRY, an individual; and  
 ROES 1 through 50,

Cross-Defendants.

I, Heidi Runge, declare that:

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California, where the mailing occurred; and my business address is 4747 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence

PROOF OF SERVICE BY MAIL



1 will be deposited with the United States Postal Service this same day in the ordinary course of  
 2 business. I caused to be served the following document(s): SECOND AMENDED CROSS-  
 3 COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as  
 4 follows:

5 Michael R. Weinstein, Esq.  
 6 Scott H. Toothacre, Esq.  
 7 Ferris & Britton  
 8 A Professional Corporation  
 9 501 West Broadway, Suite 1450  
 10 San Diego, California 92101  
 11 Telephone: (619) 233-3131  
 12 Facsimile: (619) 232-9316  
 13 Email: mweinstein@ferrisbritton.com  
 14 stoothacre@ferrisbritton.com

ATTORNEYS FOR PLAINTIFF AND  
 CROSS-DEFENDANT LARRY GERACI

11 Michael R. Weinstein, Esq.  
 12 Scott H. Toothacre, Esq.  
 13 Ferris & Britton  
 14 A Professional Corporation  
 15 501 West Broadway, Suite 1450  
 16 San Diego, California 92101  
 17 Telephone: (619) 233-3131  
 18 Facsimile: (619) 232-9316  
 19 Email: mweinstein@ferrisbritton.com  
 20 stoothacre@ferrisbritton.com

ATTORNEYS FOR CROSS-DEFENDANT  
 REBECCA BERRY

21 I then sealed the envelope(s) and, with the postage thereon fully prepaid, either  
 22 deposited it/each in the United States Postal Service or placed it/each for collection and  
 23 mailing on August 25, 2017, at San Diego, California, following ordinary business practices.

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

26 Executed on August 25, 2017.

27   
 Heidi Runge

28 2403.004/Proof.hr