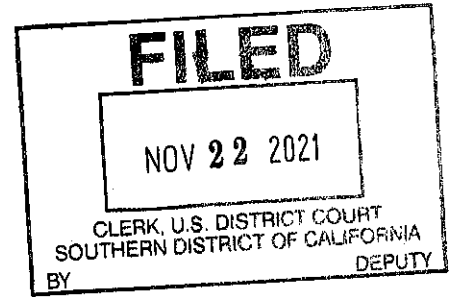


DARRYL COTTON
6176 Federal Boulevard
San Diego, CA 92114
Telephone: (619) 954-4447
Plaintiff Pro Se



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual

Plaintiff,

vs.

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

Defendants,

Case No.: 18CV 325-TWR-DEB

COMPLAINT FOR:

1. DEPRIVATION OF CIVIL RIGHTS
(42 U.S.C. § 1983);
2. DEPRIVATION OF CIVIL RIGHTS
(42 U.S.C. § 1985)

Related Case: 3:20-cv-0656-TWR-DEB

JURY TRIAL DEMANDED

PLAINTIFF'S SECOND AMENDED COMPLAINT

1 Plaintiff Darryl Cotton, ("Plaintiff," "Cotton" or "I") upon information and belief,
2 alleges as follows:

3 INTRODUCTION

4 1. This is a Civil Rights action arising from the actions of defendant seeking to
5 prevent Cotton from meaningfully access to the state and federal courts to prevent him
6 from exposing their unlawful actions as part of a conspiracy in the City and County of
7 San Diego seeking to unlawfully acquire cannabis conditional use permits ("CUP").
8

9 JURISDICTION AND VENUE

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

16 3. This action is also brought pursuant to 42 U.S.C. § 1983 and § 1985 to
17 redress the deprivation under color of state and local law of rights, privileges, immunities,
18 liberty and property, secured to all citizens by, *inter alia*, the First, Fourth and Fourteenth
19 Amendments to the United States Constitution.

20 4. This Court has jurisdiction over Plaintiffs' claims for declaratory and
21 injunctive relief pursuant to Federal Rule of Civil Procedure 65.

22 5. Venue in this judicial district is proper under 28 U.S.C. §1391(b)(2), because
23 a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in
24 this district.

25 PARTIES

26 6. COTTON, an individual, was, and at all times mentioned herein is, residing
27 within the County of San Diego.

28 7. COTTON is, and at all times material to this action, the sole record owner of
the commercial real property located at 6176 Federal Boulevard, San Diego, CA 92114

1 (“Property”).

2 8. Defendant DAVID DEMIAN, an individual, was, and at all time mentioned
3 herein is, a resident of the County of San Diego, State of California.

4 9. Defendant GINA M. AUSTIN, an individual, was, and at all times
5 mentioned herein is, a resident of the County of San Diego, State of California.

6 10. Defendant JESSICA MCELFRISH an individual, was, and at all times
7 mentioned herein is, a resident of the County of San Diego, State of California.

8 11. The true names and capacities, whether individual, corporate, associate or
9 otherwise of Defendants Does 1 through 50, inclusive, are unknown to Plaintiff.

10 12. At all relevant times, each defendant was and is the agent of each of the
11 remaining defendants and, in doing the acts alleged herein, was acting within the course
12 and scope of such agency. Each defendant ratified and/or authorized the wrongful acts of
13 each of the defendants.

14 13. Defendants, and each of them, are individually sued as participants and as
15 aiders and abettors in the unlawful acts, plans, schemes, and transactions alleged in this
16 Complaint. Defendants, and each of them, have participated as members of the conspiracy
17 alleged herein, acted in furtherance of it, aided and assisted in carrying out its purposes,
18 and/or performed acts and made statements in furtherance of the conspiracy.

19 **GENERAL ALLEGATIONS**

20 **I. MATERIAL FACTUAL BACKGROUND**

21 **A. State and City laws**

22 14. At all material times related to this action, California Bus. & Prof. Code
23 (“BPC”) § 19323 et seq.¹ has mandated the denial of an application for a cannabis state
24 license by an applicant who, inter alia, has been sanctioned for unlicensed commercial
25 cannabis activities in the preceding three years; failed to provide required information in
26 an application, including disclosure of all individuals with a direct ownership interest in
27

28 ¹ BPC § 19323 was repealed and replaced by BPC § 26057 by Stats 2017 ch 27 § 2 (SB 94), effective June 27, 2017.

1 the license being applied for; or failed to comply with local government requirements for
2 the issuance of a permit, CUP or license for cannabis activities.

3 15. In San Diego, California, the City of San Diego requires the application for
4 a CUP for commercial cannabis operations requires to disclose anyone who holds an
5 interest in the proposed property or CUP in the application. Attached hereto as Exhibit A
6 is the City's Form DS-318 Ownership Disclosure Statement for CUP application
7 requiring disclosure of "all" parties.

8 16. SDMC § 11.0401(b) prohibits the furnishing of false or incomplete
9 information in an application for a CUP.

10 17. A CUP application by a principal, who cannot lawfully own a CUP, in the
11 name of an agent who falsely states in the application the agent is the sole applicant with
12 an interest in the CUP being applied for violates BPC § 19323 and the SDMC.

13 18. A contract for a party to acquire an ownership interest in a CUP in the name
14 of an agent, who does not disclose the principal in a CUP application because it is illegal
15 for the principal to own a CUP, is illegal and cannot be judicially enforced.

16 **B. Geraci and Razuki have been sanctioned for unlicensed commercial**
17 **cannabis activities.**

18 19. Geraci has been sanctioned at least twice for unlicensed commercial
19 cannabis activities.²

20 20. Geraci was last sanctioned on June 17, 2015.

21 21. Pursuant to BPC § 19323(a),(b)(7), Geraci could not lawfully own a cannabis
22 license or CUP until at least June 18, 2018.

23
24
25
26 ² In (i) *City of San Diego v. The Tree Club Cooperative, et al.*, San Diego Superior Court
27 Case No. 37-2014-0020897-CU-MC-CTL (the "Tree Club Judgment") and (ii) *City of*
28 *San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-00004430-CU-
MC-CTL (the "CCSquared Judgment" and, collectively with the Tree Club Judgment,
the "Geraci Judgments").

22. Razuki was sanctioned for unlicensed commercial cannabis activities on April 15, 2015.³

23. Pursuant to BPC § 19323(a),(b)(7), Razuki could not lawfully own a cannabis license or CUP until at least April 16, 2018.

C. Austin, McElfresh and FTB are experts in CUP applications.

24. Austin is an attorney who is “an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation.”⁴

25. In May 2017, McElfresh was charged with, inter alia, Conspiracy to Commit a Crime, Manufacturing of a Controlled Substance, and Obstruction of Justice for her efforts to conceal her client’s alleged illegal manufacturing operations from government inspectors. (*People v. McElfresh*, San Diego Superior Court, No. CD272111.)

26. In July 2018, McElfresh entered into a Deferred Prosecution Agreement (the “DPA”) that would allow her to plead guilty in twelve months as follows: “On April 28, 2015 [McElfresh] knowingly facilitated the use of a premises without a required permit, in violation of San Diego Municipal Code § 121.0302(a), to wit: an unpermitted marijuana manufacturing and distribution operation by Med West Distribution, LLC.”

27. Pursuant to the DPA, for a period of 12 months, McElfresh was prohibited from violating any other laws (except for minor infractions) until July 23, 2019, or face resumption of all charges filed against her. See Exhibit B

28. On October 18, 2019, McElfresh was interviewed and quoted in a San Diego Union-Tribune article that stated: “McElfresh said she advised her clients to comply with city orders to shut down, partly because operating without local permission could affect their ability to obtain state marijuana licenses in the future.”⁵

³ *City of San Diego v. Stonecrest Plaza, LLC*, Case No. 37-2014-00009664-CU-MC-CTL (the “Stonecrest Judgment”).

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

⁵ See David Garrick, Roughly Two Dozen San Diego Marijuana Cultivators Forced to Shut Down, SAN DIEGO UNION-TRIBUNE (October 18, 2019).

1 29. McElfresh has represented Geraci, Razuki and Malan in various legal
2 matters.

3 30. Demian has represented parties who sought to acquire ownership interests in
4 a CUP application that was submitted by an agent and knows agency law. Attached hereto
5 as Exhibit C is a Court of Appeal decision regarding Demian's representation for a
6 property owner to acquire the rights to a CUP application submitted to the City of San
7 Diego in the name of an agent who later sought to unlawfully deny the property owner
8 his right to the CUP application.

9 II. THE COTTON I LITIGATION

10 A. Lawrence ("Larry") Geraci and Rebecca Berry

11 31. Geraci has approximately 40 years of experience providing tax services and
12 has been the owner-manager of Tax & Financial Center "T&F Center" since 2001. T&F
13 Center provides sophisticated tax, financial and accounting services.

14 32. Geraci has been an Enrolled Agent with the IRS since 1999.

15 33. Geraci was a California licensed real estate salesperson (*i.e.*, a real estate
16 agent) for approximately 25 years from 1993-2017.

17 34. Berry has been a licensed California real estate salesperson or broker since
18 at least 1985.

19 35. In mid-2016, Geraci identified the Property and began negotiating with
20 Cotton for the purchase of the Property because he believed it would qualify for a CUP.

21 36. Austin, Bartell, and Schweitzer were hired by Geraci and responsible for
22 preparing, submitting, and lobbying a CUP application with the City at the Federal
23 Property that was submitted in the name of Geraci's assistant, Berry (the "Berry CUP
24 Application").

25 37. On October 31, 2016, Geraci presented Cotton with an Ownership
26 Disclosure Form, a required component of the City's CUP application.

27 38. Geraci told Cotton that he needed Cotton to execute the form to show to his
28 agents that he had access to the Federal Property as part of his due diligence in

1 determining whether the property qualified for a CUP.

2 39. Cotton executed 4 CUP application documents with the City including the
3 Ownership Disclosure Form. Attached hereto as Exhibit D.

4 40. On November 2, 2016, Cotton and Geraci met at Geraci's office and entered
5 into an oral joint venture agreement whereby Cotton would sell the Federal Property to
6 Geraci (the "JVA").

7 41. The material terms of the JVA were that Cotton would receive (i) \$800,000,
8 (ii) a 10% equity stake in the CUP, (iii) the greater of \$10,000 a month or 10% of the net
9 profits of the contemplated dispensary; and (iv) a \$50,000 non-refundable deposit in the
10 event the CUP application at the Federal Property was not approved. Geraci also
11 promised that his attorney, Austin, would promptly reduce the JVA to writing.

12 42. The JVA was subject to a single condition precedent, the approval of a CUP
13 application with the City at the Property by Geraci.

14 43. Cotton did not know that Geraci had already filed the Berry CUP Application
15 without disclosing Geraci or Cotton.

16 **B. Firouzeh Tirandazi**

17 44. Ms. Firouzeh Tirandazi has worked for the City for approximately 18 years.

18 45. Tirandazi works in DSD and in recent years has worked on or supervised
19 applications for cannabis CUPs.

20 46. On or about May 15, 2017, Cotton, as the owner-of-record of the Property,
21 met with Tirandazi to attempt to have the Berry Application transferred to his name.

22 47. Tirandazi told Cotton that only Berry, as the designated "Financially
23 Responsible Party" in the Berry Application, could cancel or transfer the Berry
24 Application.

25 48. In or about June 2017, Tirandazi was promoted to a Level III Supervisor at
26 DSD and the Berry Application was assigned to Cherlyn Cac.

27 49. Tirandazi had extensive communications with Cotton and knows that Geraci
28 is the true applicant in the Berry CUP Application.

1 50. When Tirandazi was deposed in *Cotton I*, she referenced the Berry CUP
2 Application and that Geraci was applicant.

3 51. At her deposition, Tirandazi was represented by Scott Toothacre of Ferris &
4 Britton, Geraci's law firm.

5 52. No attorney from the City was present at Tirandazi's deposition.
6

7 **C. Finch, Thornton & Baird amended Mr. Cotton's cross-complaint in**
8 **state court to remove the allegations of illegality and the conspiracy**
9 **cause of action against Mr. Geraci and Ms. Berry.**

10 53. In his original pro se cross-complaint in *Cotton I*, Mr. Cotton alleged he
11 reached a final, binding oral joint venture agreement with Mr. Geraci for the sale of the
12 Property⁶ and that Mr. Geraci and Ms. Rebecca Berry conspired to apply for the CUP at
13 the Property in Ms. Berry's name because Mr. Geraci had been sanctioned. ("*Cotton I*
14 *XC*".)

15 54. The *Cotton I XC* set forth a conspiracy cause of action against Mr. Geraci
16 and Ms. Berry.

17 55. Subsequent to filing the *Cotton I XC*, Cotton acquired a litigation investor,
18 Mr. Hurtado, who hired attorney Jessica McElfresh to represent Cotton.

19 56. However, Ms. McElfresh, "upon further reflection" stated that she did "not
20 have the bandwidth" to represent Mr. Cotton and referred Mr. Hurtado to David Demian
21 of Thornton & Baird ("FTB").

22 57. Mr. Demian, a partner, and Adam Witt, an associate, of FTB represented
23 Cotton in *Cotton I*.

24 58. FTB amended Mr. Cotton's operative complaint twice.

25 59. FTB's amendments removed, inter alia, the allegations of illegality against
26 Mr. Geraci and the conspiracy cause of action against Mr. Geraci and Ms. Berry.

27
28 ⁶ See *Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 ("[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.").

1 60. During the course of his representation, Mr. Demian attempted to have
2 Cotton execute a supporting declaration to argue in an *ex parte* application that Mr. Geraci
3 was acting as Cotton's agent when he submitted the CUP application in Ms. Berry's name.

4 61. In late 2017, at a meeting at FTB's office, Mr. Witt, while waiting for Mr.
5 Demian, stated that he had just overheard Mr. Demian talking with another partner at FTB
6 and that FTB had shared clients with Mr. Geraci or Mr. Geraci's tax and financial
7 planning business.

8 62. FTB had never disclosed the conflict of interest.

9 63. In December 2017, Cotton fired Mr. Demian or Mr. Demian quit from
10 Cotton's representation because Mr. Demian failed to raise a case dispositive issue of
11 mutual assent before the *Cotton I* court regarding the alleged contract.

12 64. Had Demian raised the issue of mutual assent, or illegality, the *Cotton I* court
13 would have found that the complaint by Geraci failed to state a claim.

14 65. Mr. Demian admitted he failed to raise the evidence and said it was because
15 he had a "bad day."

16 **D. Judge Wohlfeil finds that the CUP application would have been**
17 **approved at the Property but-for what he believed to be Cotton's**
18 **alleged unlawful interference.**

19 66. At the trial of *Cotton I*, Judge Joel Wohlfeil found that the CUP application
20 would have been approved at the Property but-for what he believed to be Cotton's
21 unlawful interference with the processing of the application with the City: "I think, that
22 it's more probable than not that a CUP had been issued and the dispensary opened..."

23 67. Judge Wohlfeil's finding, presuming the lawful possession of a CUP by Mr.
24 Geraci, was supported in part by the testimony of Ms. Austin, Ms. Berry, and Ms.
25 Firouzeh Tirandazi.

26 68. Ms. Austin testified that an attorney should understand if their client is
27 eligible for a cannabis permit.

28 69. However, her testimony alleged that she was not aware Mr. Geraci had been

1 sanctioned. Further, Ms. Austin's testimony in regard to whether a party who has been
2 sanctioned for unlicensed marijuana activities repeatedly changed while being questioned
3 on the stand. Her testimony included: (i) that the City does not bar any party from being
4 eligible for a license, (ii) that the City "might" bar some parties from being eligible, and
5 (iii) that the City does take into account sanctions depending on what the sanctions are
6 and provided an example in which a party had been sanctioned but had the judgment
7 amended to reflect "no illegal cannabis activity." (See *id.* at 47:10-49:4.)

8 70. Mr. Austin's testimony alleged that she did not know why, or cannot
9 remember why, Mr. Geraci used Ms. Berry as an agent for the CUP application.

10 71. When presented with the Ownership Disclosure Statement, the plain
11 language of which required the disclosure of all persons who have interest in the Property,
12 Ms. Austin was asked: "after reading that, why [did] it seem unnecessary to list Mr.
13 Geraci?"

14 72. Ms. Austin responded: "I don't know that it - - it was unnecessary or
15 necessary. We just didn't do it."

16 73. Further, that, contrary to its title, "the purpose of [the Ownership Disclosure
17 Form] is for conflict of interests."

18 74. Ms. Berry's testimony alleged that while Mr. Geraci was not disclosed
19 because he was an Enrolled Agent, she was not aware that the City's CUP application
20 forms required Mr. Geraci to be disclosed because she did not read them: "I simply signed
21 this. It was filled out by our team and I signed it. Trusting Mr. Geraci and the team."

22 75. As noted, Ms. Tirandazi testified for the City at a deposition and at the trial
23 of *Cotton I.*

24 76. At her deposition, she testified that the purpose of the Ownership Disclosure
25 Form is for the owner of the property to validate they understand that there is an
26 application being submitted on their property and for "conflicts of interests" by the City's
27 decision makers.

28 77. At trial, when was asked if it was her understanding that Mr. Geraci was the

1 individual attempting to acquire a CUP via the CUP application submitted by Ms. Berry,
2 Ms. Tirandazi responded: “I don’t – I don’t have answer for that question.”

3 78. When asked if a party who had been sanctioned for illegal cannabis activity
4 would be barred from acquiring a CUP, she did not answer that question by stating that
5 she would have to refer to the SDMC.

6 79. The City has a duty to enforce the SDMC and ensure that parties who apply
7 for a CUP meet the City’s requirements for a CUP.

8 **E. The *Cotton I* judgment**

9 80. During trial, Cotton moved for a directed verdict arguing BPC § 20657 *et*
10 *seq.* bars Mr. Geraci’s ownership of a CUP, which was summarily denied.

11 81. The *Cotton I* Judgment found, *inter alia*, that “[Mr. Geraci] is not barred by
12 law pursuant to California Business and Professions Code, Division 10 (Cannabis),
13 Chapter 5 (Licensing), § 26057 (Denial of Application) from owning a Marijuana Outlet
14 conditional use permit issued by the City of San Diego.”

15 82. The \$260,109.28 in damages awarded Mr. Geraci include legal fees for Ms.
16 McElfresh’s representation of Mr. Geraci in advancing the interests of the CUP
17 application before the City.

18 83. After trial, Cotton filed a motion for new trial arguing again, *inter alia*, the
19 alleged November 2, 2016, agreement (i.e., the November Document) was an illegal
20 contract and could therefore not be enforced. Mr. Geraci opposed the motion arguing that
21 Cotton had waived the defense of illegality.

22 84. Judge Wohlfeil denied the motion for new trial finding that the defense of
23 illegality had been waived because he believed the defense of illegality had not previously
24 been raised in the action.⁷

25 **F. The Magagna Application**

26
27 ⁷ Judge Wohlfeil: “Counsel, shouldn’t this have been raised at some earlier point in time?... “Even if you
28 are correct [about the illegality], hasn’t that train come and gone? The judgment has been entered. **You are raising this for the first time....** But at some point, doesn’t your side *wave* the right to assert this argument? At some point?”

1 85. On or about March 14, 2018, Magagna submitted the Magagna Application.

2 86. On or about October 18, 2018, the Magagna Application was approved by
3 the City. In other words, the Magagna Application was submitted, processed and
4 approved by the City in approximately 7 months.

5 87. The Berry Application had been submitted to the City on or about October
6 28, 2016, or approximately 1.5 years prior to the Magagna Application being submitted.

7 88. Schweitzer helped Magagna prepare the architectural designs for the
8 Magagna Application.

9 89. After submitting the Magagna Application, Schweitzer, his firm Techne, and
10 his employee, Carlos Gonzales, assisted Magagna responding to the City's comments to
11 the Magagna Application to have it approved.

12 90. On or about November 7, 2018, Gonzales is shown on the City's website as
13 representing Techne and being an "agent" of Magagna for the Magagna Application.

14 91. On or about January 1, 2019, both Gonzalez and Schweitzer are shown on
15 the City's website as representing Techne and being "concerned citizens" for the
16 Magagna Application.

17 92. On January 30, 2019, at Schweitzer' deposition, when confronted with
18 screen shots of the City's website for the Magagna Application on November 7, 2018,
19 listing his employee Gonzales as an "agent" of Magagna for the Magagna Application,
20 Schweitzer testified that neither he nor his firm worked on the Magagna Application and
21 that the City's website showing his employee as an "agent" was a mistake.

22 93. Shortly before the Magagna Application was approved, Schweitzer told
23 Williams, a client of his and Mrs. Austin, that he had worked on the Magagna Application
24 and he, Schweitzer, would have an ownership interest in the District Four CUP.

25 94. As of March 17, 2020, Gonzales is again shown on the City's website as
26 representing Techne and being an "agent" of Magagna for the Magagna Application.

27 95. The changing back of Gonzales to an "agent," after he had been changed to
28 a "concerned citizen," is evidence of the collusion between Geraci/F&B and the City and

1 is representative of F&B's dynamism in fabricating evidence and obfuscating the truth
2 throughout *Cotton I* in preparation for this litigation.

3 4 III. VIOLENCE IN FURTHERANCE OF THE ANTITRUST CONSPIRACY

5 A. **Eulenthius Duane Alexander and Logan Stellmacher**

6 96. Sometime in the summer of 2016, Cotton met Stellmacher when he visited
7 the Property and took a tour of Cotton's 151 Farms.

8 97. Stellmacher represented he worked with Alexander, a high net worth
9 individual with a licensed medical cannabis cultivation facility in the Santa Ysabel Indian
10 Reservation.

11 98. Unbeknownst to Cotton, Alexander and Stellmacher were familiar with
12 Geraci, Bartell and Martinez from other transactions.

13 99. In early 2018, Alexander sponsored and hosted an art gala at San Diego State
14 University organized by Martinez and which Geraci and Stellmacher attended.

15 100. On or about February 3, 2018, Alexander and Stellmacher and an associate
16 went to the Property purportedly to discuss business opportunities.

17 101. However, when they arrived at the Property, they only wanted to discuss the
18 Property and the *Cotton I* litigation. They initially offered to beat Martin's purchase price
19 of \$2,500,000 and guaranteed Cotton a long-term job.

20 102. Cotton declined, noting he was contractually unable to settle with Geraci in
21 a manner that left Geraci the Property.

22 103. Thereafter, Alexander and Stellmacher engaged in direct and indirect threats
23 seeking to coerce Cotton to settle with Geraci.

24 104. Alexander made it a point to highlight that Geraci was a politically
25 influential individual with the City and that the Berry Application was already a "done
26 deal" for Geraci.

27 105. Cotton again informed him that he did not want to settle and could not settle
28 since he was contractually unable to do so pursuant to the Martin Purchase Agreement.

106. Stellmacher then directly threatened Cotton, stating that Geraci's influence

1 with the City extended to having the ability to have the San Diego Police Department raid
2 the Property and have Cotton arrested on planted drugs and fabricated charges.

3 107. Cotton responded that he was compliant with all cannabis laws and there was
4 nothing for him to be arrested for.

5 108. Stellmacher, in turn, responded that if Geraci wanted the San Diego Police
6 “would find something.”

7 109. Cotton became angry, told them he would not settle with Geraci under any
8 circumstances and asked them to leave the Property immediately.

9 **B. Shawn Joseph Miller**

10 110. “Following a jury trial, defendant Shawn Joseph Miller was found guilty on
11 two counts of committing wire fraud, in violation of 18 U.S.C. § 1343, two counts of
12 money laundering, in violation of 18 U.S.C. § 1957, and one count of witness tampering,
13 in violation of 18 U.S.C. § 1512(b)(3).” *U.S. v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008).

14 111. At a pretrial hearing, Miller’s own attorney, fearing for his safety, requested
15 that he be removed as counsel.⁸

16 112. Subsequent to being released, Miller began working as a contract paralegal
17 in the City.

18 113. In or around January 2018, Hurtado attempted to hire Miller as a contract
19 paralegal for Cotton and his then counsel.

20 114. When Hurtado met Miller, he explained the Cotton I litigation and that
21 Geraci was a “mafia like figure.” Further that he was not a party to and did not want to be
22 involved in the litigation because of the evidence of violence by Geraci and that he was
23 concerned for the safety of his family and he needed to do what was in their “best interest.”

24 115. Thereafter, Miller stated that he knew Geraci.

25
26 ⁸ *Id.* at 343 (Miller’s attorney: “The Defendant and I just had a meeting, which
27 deteriorated to a very violent nature.... I was hoping while he sat in jail he would come
28 to his senses but obviously has not. He is hostile to me. I cannot under the ethical situation
even sit at the same trial table with him. So I have all the evidence here that he needs. I
can give it to him and let him represent himself.”).

116. Hurtado told him it would be a conflict of interest to hire Miller and requested Miller not inform Geraci about him. Miller agreed.

117. That same night, at approximately 10:00 p.m., Miller called Hurtado requesting that Hurtado use his influence with Cotton to persuade him to settle with Geraci because Geraci is really “not a bad guy” and that it would be in Hurtado’s “best interest,” which was a direct reference to their earlier conversation and Hurtado’s concerns for the safety of his family.

118. The parties had a heated discussion in which Hurtado accused Miller of threatening him on behalf of Geraci and hung up on Miller.

119. Thereafter, Miller repeatedly called, texted and harassed Hurtado under the guise of seeking to collect payment for work that he alleges he performed at Hurtado’s request.

120. In Cotton I, Geraci responded to a special interrogatory as follows:

SPECIAL INTERROGATORY NO. 35:

Have YOU or YOUR AGENTS requested that Shawn Miller contact Joe Hurtado regarding any matter related to this litigation?

RESPONSE TO SPECIAL INTERROGATORY NO. 35

Not that I am aware. Moreover, I have never requested or authorized any person to do so.

121. Geraci’s response allows for the possibility that if phone records and other evidence prove that Miller threatened and harassed Hurtado under the pretext of seeking to collect a debt, that Miller did so on behalf of Geraci but without Geraci’s knowledge or consent.

C. Magagna

122. On or around October 2, 2017, Young visited the Property and took a tour of 151 Farms.

123. Young went to the Federal Property because she had heard about the property qualifying for a CUP and was looking for an investment opportunity.

124. Young was informed about the *Cotton I* litigation and was given a proposal to invest in the litigation as a means of acquiring an ownership interest in the Federal

1 CUP.

2 125. Young had or did engage Bartell who worked on another CUP application at
3 a different property.

4 126. Young spoke to her attorney, Shapiro, about the potential investment who
5 told her that she should speak to Bartell.

6 127. Bartell told her not to invest in the *Cotton I* litigation because he “owned”
7 the Berry CUP Application and he was getting it denied with the City because “everyone
8 hates Darryl” (the “Bartell Statement”).

9 128. Young did not invest in the *Cotton I* litigation.

10 129. Young was not aware that at the same time the Bartell Statement was made,
11 Geraci was arguing before Judge Wohlfeil in *Cotton I* that Geraci was using his best
12 efforts to have the Berry CUP Application approved, including through the political
13 lobbying efforts of Bartell.

14 130. On or around May 27, 2018, Young met with Cotton and others to discuss a
15 secured loan instead of litigation financing.

16 131. At the meeting, Young was informed by Cotton that he believed that
17 Magagna was a co-conspirator of Geraci who was seeking to help Geraci mitigate his
18 damages by having the Magagna CUP Application approved.

19 132. Young recognized Magagna and told Cotton that Shapiro was also
20 Magagna’s attorney and about the Bartell Statement.

21 133. However, Young stated her belief that Magagna was not a bad-faith actor
22 and called him to speak about what was happening.

23 134. Young met with Magagna and explained Cotton’s belief that he was a
24 coconspirator of Geraci. To her surprise, Magagna did not deny the allegations, instead,
25 he asked her to change her statements and offered her a bribe for doing so. Young refused.

26 135. Despite her refusal, Magagna repeatedly requested that Young communicate
27 with Cotton and tell him that she had “dreamed” the Bartell Statement.

28 136. Young continued to refuse and Magagna became increasingly physically and

1 vocally aggressive with his demands until they parted, demanding Young not say
2 anything about their conversation and to “keep him out of it.”

3 **D. Nguyen, Young’s attorney, promises and fails to provide Young’s**
4 **testimony.**

5 137. Nguyen and Austin both attended law school together at Thomas Jefferson
6 School of Law in San Diego, California, and were both admitted to the California Bar on
7 in December 2006.

8 138. On January 1, 2019, Cotton subpoenaed Young to be deposed on January 18,
9 2019.

10 139. On January 16, 2019, attorney Nguyen, representing Young, unilaterally
11 cancelled the deposition of Young.

12 140. On January 21, 2019, Nguyen promised to provide Young’s sworn testimony
13 confirming, *inter alia*, the Bartell Statement and Magagna’s attempts at bribing and
14 threatening her.

15 141. On June 12, 2019, after having been put off for months by Nguyen, counsel
16 for Cotton emailed Nguyen demanding she provide Young’s promised testimony, to
17 which Nguyen never responded.

18 142. On June 30, 2019, the day before the start of trial in *Cotton I*, Flores spoke
19 with Young who said she had moved out of the City, could not be served, would not
20 testify, and did not want anything to do with Cotton or *Cotton I*.

21 143. Young also told Flores that he needed to be fearful for the safety of himself
22 and his family because Austin and Magagna are “dangerous.”

23 144. In January 2020, Flores spoke with Young and informed her that by failing
24 to provide her promised testimony that he believed she was a coconspirator of Geraci and
25 he intended to file suit against her.

26 145. Young broke down and said she had done nothing illegal and that it was
27 Nguyen who had unilaterally decided not to provide her testimony after Young had
28 already agreed to provide it.

1 146. Young stated that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro
2 paid Young's legal fees to Nguyen, (iii) Nguyen – in an email – told her that it was OK
3 to "ignore" their obligation to provide Young's testimony because "it was too late for
4 Cotton to do anything about it."

5 147. On October 28, 2020, Young, having learned that Cotton intended to sue her
6 for her failure to provide her promised testimony, emailed Cotton the email from Nguyen
7 stating it was "too late" for Cotton to do anything about subpoenaing her for trial at *Cotton*
8 *I*. Attached hereto at Exhibit E is a true and correct copy of that email.

9
10 **E. Gash offers Young a job in Palm Springs, CA that prevents Cotton
11 from subpoenaing Young for trial.**

12 148. The job that Young received that was the catalyst for her moving out of the
13 City, and being unable to be located to be served again for trial, was as a manager at a
14 dispensary called Southern California Organic Treatment (SCOT) in Palm Springs, CA.

15 149. Austin has or is counsel for SCOT.

16 150. Dave Gash and James Yamashita are, respectively, the CEO and CFO of
17 SCOT.

18 151. Public records reveal that Gash (i) was sanctioned for unlicensed cannabis
19 activities along with Ramistella and Yamashita; (ii) was the property manager at the
20 Balboa Property at which the Balboa CUP was issued; and (iii) has been represented by
21 Austin.

22 152. Ramistella was a co-defendant and sanctioned with Geraci in the TreeClub
23 Judgement for unlicensed commercial cannabis activities.

24 153. Based on the relationships between the parties, Plaintiff believes and alleges
25 that the job offer to Young by Gash was made and intended to prevent Cotton from being
26 able to locate and subpoena Young to testify at the trial of *Cotton I* and was an act taken
27 in furtherance, or to prevent the exposure, of the Antitrust Conspiracy.
28

ADDITIONAL SPECIFIC ALLEGATIONS AND CAUSES OF ACTION

FIRST CAUSE OF ACTION - § 1983

(Plaintiff against all defendants)

154. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

155. The right of access to the courts is constitutionally guaranteed. Courts have recognized a number of constitutional provisions insuring this right: the Equal Protection Clause, the First Amendment, the Privileges and Immunities Clause of Article IV, and the Due Process Clauses of the Fifth and Fourteenth Amendments. Access must be adequate, effective, and meaningful.

156. A right of access to the courts claim arises under section 1983 if interference by a state actor either prevents the plaintiff from filing suit or renders ineffective any available remedies. A party can be liable for covering up crucial facts and for actions of delay which cause evidence to become stale or the memories of witnesses to fade.⁹

157. It is illegal for Geraci and Razuki to own cannabis CUPs.

158. Geraci and Razuki sought or acquired CUPs in violation of the law as part of a conspiracy to create an illegal monopoly in the City and County of San Diego, i.e., the Antitrust Conspiracy.

159. As detailed above, in furtherance of the Antitrust Conspiracy, they took unlawful actions aided and abetted by their coconspirators and/or joint tortfeasors who also took actions or omitted to take actions they were under an affirmative duty to undertake.

160. Austin prepared, submitted and lobbied the City for Razuki to own and/or maintain an ownership interest in cannabis assets, including the Balboa CUP, which he cannot lawfully own.

161. Austin prepared, submitted and lobbied the City for the Berry CUP

⁹ The Ninth Circuit recognizes claims based upon a conspiracy to conceal evidence. *Delew v. Wagner*, 143 F.3d 1219, 1223 (9th Cir. 1998).

1 Application knowing it was illegal for Geraci to own a CUP.

2 162. McElfresh failed to disclose her relationship with Austin and that she had
3 shared clients with Austin.

4 163. McElfresh referred Cotton to FTB knowing they would take action to
5 sabotage Cotton's case.

6 164. McElfresh violated her fiduciary duties to Cotton as her former client by
7 representing Geraci regarding the same subject matter in which she represented Cotton.

8 165. McElfresh violated the terms of her DPA by representing Geraci before the
9 City in furtherance of the Berry CUP Application knowing it was illegal for Geraci to
10 own a CUP.

11 166. FTB failed to disclose its prior relationship with Geraci or his tax consulting
12 business.

13 167. FTB purposefully amended Cotton's pleadings as set forth above to sabotage
14 his case seeking to prevent exposure of Geraci's illegal attempt to own a CUP via the
15 Berry CUP Application.

16 168. FTB sought to have Cotton admit to facts they knew not to be true by
17 attempting to have him declare that Cotton was the party responsible for having the Berry
18 CUP Application submitted and not Geraci.

19 169. FTB sought to sabotage Cotton's case by arguing before the *Cotton I* court
20 that Cotton and Geraci had never reached an agreement, but instead reached an
21 "agreement to agree", which contradicted Cotton's pro se complaint and every statement
22 ever said to FTB.

23 170. FTB told Cotton that Judge Wohlfeil's comments did not constitute judicial
24 bias and were not the basis for having Judge Wohlfeil disqualified.

25 171. Nguyen's failure to provide Young's testimony, in direct contradiction of
26 her own client's promise and willingness to do so, constitutes obstruction of justice and
27 violated Cotton's right to meaningful access to the Court.

28 172. The City has an affirmative duty to enforce the SDMC, which includes

1 denying applications for CUPs that do not qualify under the SDMC.

2 173. The City should not process or allow retention of any CUP by a party who
3 violates the SDMC by applying for a CUP and failing to disclose all parties with an
4 interest in the CUP.

5 174. The City should not have processed the Berry CUP Application in the name
6 of Berry because Berry had no right to the Federal Property.

7 175. The City should not have processed the Berry CUP Application in the name
8 of Berry because Geraci was the true owner and the City knew he was not disclosed.

9 176. The City should have prevented Cotton from submitting a competing
10 application at the Federal Property for months.

11 177. The delay by the City allowed time for the Magagna CUP Application to be
12 processed.

13 178. At the trial of *Cotton I*, Tirandazi committed perjury by stating that she was
14 not aware that Geraci was the true owner of the Berry CUP Application.

15 179. As detailed above, to prevent Hurtado from financing Cotton, Geraci and/or
16 his agents had Miller repeatedly threaten Hurtado and his family.

17 180. As detailed above, to prevent Young from testifying as to the Bartell
18 Statement at the *Cotton I* trial, Magagna attempted to bribe and then threatened her.

19 181. In acting as alleged in this Complaint, defendants' are responsible for their
20 own actions and as well as those of their coconspirators and/or joint tortfeasors, which
21 actions have violated Cotton's Civil Rights.

22 182. Specifically, but not limited to, defendants' agreement to prevent Cotton
23 from meaningful access to the Courts by covering up the illegality of Geraci's ownership
24 of a CUP via the Berry CUP Application.¹⁰

25 183. Defendants' actions continue to prejudice Cotton as Cotton has still not been
26

27 ¹⁰ See *Delew v. Wagner*, 143 F.3d 1219, 1223 (9th Cir. 1998) ("in order to satisfy color of state law
28 requirement under civil conspiracy theory, plaintiff need only have shown that there was an
understanding between civilian and officers to deprive plaintiff of her rights") (citing *Adickes v. S.H.
Kress & Co.*, 398 U.S. 144, 152, 26 L. Ed. 2d 142, 90 S. Ct. 1598 (1970)).

1 able to vindicate his rights and is still before the Courts seeking to vindicate his rights.

2 184. Also, by causing delays to Cotton's ability to submit a competing CUP at the
3 Federal Property.¹¹

4 185. As set forth above, defendants' actions constitute a substantive due process
5 violation in preventing Cotton from acquiring a CUP and to his Federal Property, which
6 are federally protected property rights.

7 186. Because Cotton had his litigation pending in this Federal Court, defendants'
8 actions against Hurtado and Young also constitute obstruction of justice.

9 **SECOND CAUSE OF ACTION - § 1985**

10 (Plaintiff against all defendants)

11 187. Plaintiffs reallege and incorporate herein by reference the allegations in the
12 preceding paragraphs.

13 188. As detailed above, Young has communicated that she will not testify before
14 this Court because of the attempted bribe and threats by Magagna.

15 189. The acts taken by defendants, as jointly liable as coconspirators and/or joint
16 tortfeasors, include the attempted bribery and threats against Young to prevent her from
17 testifying in this federal court.

18
19 **PRAYER FOR RELIEF**

20 Wherefore, Plaintiffs request that the Court grant the following relief:

- 21 1. An award of compensatory and general damages in an amount to be proven at trial;
22 2. An award of consequential damages in an amount to be proven at trial;
23 3. An award of statutory damages, as permitted by law;
24 4. An award of punitive damages, as permitted by law, to punish the defendants and
25

26 ¹¹ "[I]f state officers conspire . . . in such a way as to defeat or prejudice a litigant's rights
27 in state court, that would amount to a denial of equal protection of the laws by persons
28 acting under color of state law." *Dinwiddie v. Brown*, 230 F.2d 465, 469 (5th Cir.), cert.
denied, 351 U.S. 971, 76 S. Ct. 1041, 100 L. Ed. 1490 (1956).

1 make examples of them;

2 5. Reasonable attorneys' fees and costs as allowed by law; and

3 6. Such other and further relief as the Court deems fair, equitable, and just.

4
5 Dated: November 22, 2021

6
7 By  _____

8
9 Plaintiff *In Propria Persona*, Darryl Cotton



**City of San Diego
Development Services**
1222 First Ave., MS 302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

**FORM
DS-318**

October 2017

Approval Type: Check appropriate box for type of approval(s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☐ Conditional Use Permit ☐ Variance
☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other _____

Project Title: _____ **Project No. For City Use Only:** _____

Project Address: _____

Specify Form of Ownership/Legal Status (please check):

☐ Corporation ☐ Limited Liability -or- ☐ General - What State? _____ Corporate Identification No. _____
☐ Partnership ☐ Individual

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the owner(s), applicant(s), and other financially interested persons of the above referenced property. A financially interested party includes any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver or syndicate with a financial interest in the application. If the applicant includes a corporation or partnership, include the names, titles, addresses of all individuals owning more than 10% of the shares. If a publicly-owned corporation, include the names, titles, and addresses of the corporate officers. (A separate page may be attached if necessary.) If any person is a nonprofit organization or a trust, list the names and addresses of **ANY** person serving as an officer or director of the nonprofit organization or as trustee or beneficiary of the nonprofit organization. A signature is required of at least one of the property owners. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Property Owner

Name of Individual: _____ ☐ Owner ☐ Tenant/Lessee ☐ Successor Agency

Street Address: _____

City: _____ State: _____ Zip: _____

Phone No.: _____ Fax No.: _____ Email: _____

Signature: _____ Date: _____

Additional pages Attached: ☐ Yes ☐ No

Applicant

Name of Individual: _____ ☐ Owner ☐ Tenant/Lessee ☐ Successor Agency

Street Address: _____

City: _____ State: _____ Zip: _____

Phone No.: _____ Fax No.: _____ Email: _____

Signature: _____ Date: _____

Additional pages Attached: ☐ Yes ☐ No

Other Financially Interested Persons

Name of Individual: _____ ☐ Owner ☐ Tenant/Lessee ☐ Successor Agency

Street Address: _____

City: _____ State: _____ Zip: _____

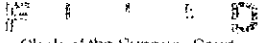
Phone No.: _____ Fax No.: _____ Email: _____

Signature: _____ Date: _____

Additional pages Attached: ☐ Yes ☐ No

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Upon request, this information is available in alternative formats for persons with disabilities.

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 Attorneys for Plaintiff


 Clerk of the Superior Court

JUL 23 2018

By: X. LUGO, Deputy

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

THE PEOPLE OF THE STATE OF
 CALIFORNIA,

Plaintiff,

vs.

JESSICA CLAIRE MCELFRISH,

Defendant.

Case No.: CD272111
 DA No.: AEE604

**DEFERRED PROSECUTION
 AGREEMENT**

Date: 7/23/2018
 Time: 9:00 a.m.
 Dept: 2004

DEFERRED PROSECUTION AGREEMENT

Defendant Jessica C. McElfresh, by and through her counsel, Eugene G. Iredale, and the People of the State of California, by and through their attorneys Summer Stephan, District Attorney, and Jorge Del Portillo, Deputy District Attorney, enter into this Deferred Prosecution Agreement (DPA).

A. AGREEMENT

Upon completion of the terms and conditions as set forth in this agreement, Defendant Jessica Claire McElfresh will be permitted to plead guilty to a violation of San Diego Municipal Code section 121.0302(a), as an infraction, in 12 months. This section will be charged as an infraction and added as Count 14. The People will amend the complaint to add this charge and dismiss the balance of the complaint on the same day the Defendant will enter her plea, so long

1 as the terms and conditions are met. The Defendant will be required to pay a fine of \$250 per San
2 Diego Municipal Code section 12.0201.

3
4 **B. TERMS AND CONDITIONS**

5 To obtain the benefits of this plea bargain, the Defendant must complete the following
6 terms and conditions:

- 7 1. Complete the California State Bar Ethics School.
8 2. Take the Multistate Professional Responsibility Exam and obtain a passing score of 86
9 or higher.
10 3. Complete 80 hours of volunteer work with a registered nonprofit organization that is
11 not affiliated with marijuana.
12 4. Not violate any laws, minor traffic violations excluded.
13

14 **C. STATEMENT OF FACTS**

15 On the date of the plea, the Defendant will make the following admission under penalty of
16 perjury:

17 On the date of the plea, the Defendant will agree to the following statement of facts: On
18 April 28, 2015, the defendant knowingly facilitated the use of a premises without a required
19 permit, in violation of San Diego Municipal Code section 121.0302(a), to wit: an unpermitted
20 marijuana manufacturing and distribution operation by MedWest Distribution, LLC.
21

22 **D. WAIVERS**

23 The Defendant agrees to continue to waive her right to a speedy preliminary hearing. The
24 parties agree to vacate the preliminary hearing set for July 23, 2018. The parties agree to schedule
25 a readiness conference in 12 months to enter the plea.

26 The Defendant also agrees to waive any objection to the delay of prosecution and its
27 consequences, including but not limited to: the fading of a witness's memory, the expiration of
28 evidence, and the inability to secure a witness's attendance.

29 ///

1 **E. CONSEQUENCES**


2 If the Defendant fails to meet any of the terms and conditions, prosecution of all charges
3 will resume.
4

5 **F. DECLARATIONS**


6 By signing this DPA, the Defendant makes the following declarations under penalty of
7 perjury:

- 8 1. I have not been induced to enter this DPA by any promise or representation of any kind
9 except as outlined above.
10 2. I am entering this DPA freely and voluntarily, without fear or threat to me or anyone closely
11 related to me.
12 3. I am sober and my judgement is not impaired. I have not consumed any drug, alcohol or
13 narcotic within the past 24 hours.
14

15 DATED: 7-23-18


JESSICA C. McELFRESH
Defendant

16
17
18 DATED: 23 July 2018


EUGENE G. IREDALE
Attorney for Defendant
Jessica Claire McElfresh

19
20
21
22 DATED: 7/23/18


JORGE DEL PORTILLO
Deputy District Attorney

Engbreetsen v. City of San Diego

Court of Appeal of California, Fourth Appellate District, Division One

November 30, 2016, Opinion Filed

D068438

Reporter

2016 Cal. App. Unpub. LEXIS 8548 *; 2016 WL 6996218

RICK **ENGEBRETSSEN**, Plaintiff and Respondent, v.
CITY OF SAN DIEGO, Defendant; RADOSLAV KALLA
et al., Real Parties in Interest and Appellants.

Notice: NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

Prior History: [*1] APPEAL from a judgment of the Superior Court of San Diego County, No. 37-2015-00017734-CU-WM-CTL, Joel M. Pressman, Judge.

Disposition: Affirmed.

Core Terms

lease, equitable estoppel, ministerial duty, property owner, statement of decision, trial court, negotiations, parties, holder, conditional use permit, supporting evidence, mandamus relief, terminated, financial responsibility, substantial evidence, agency relationship, application process, writ of mandate, possessed, Tenant

Counsel: Sharif Faust Lawyers, Matthew J. Faust for Real Parties in Interest and Appellants.

Finch, Thornton and Baird, David S. Demian, for Plaintiff and Respondent.

No appearance by Defendant.

Judges: HALLER, Acting P. J.; AARON, J., IRION, J. concurred.

Opinion by: HALLER, Acting P. J.

Opinion

Plaintiff Rick **Engbreetsen** sought a writ of mandate to compel the City of San Diego (City) to recognize him as the sole applicant for a conditional use permit (CUP) to operate a medical marijuana consumer cooperative (MMCC) on his property (the Property) and process the application accordingly. **Engbreetsen** alleged he was the sole record owner and interest holder of the Property throughout the application process. Although real party in interest Radoslav Kalla was listed as the applicant for the CUP, **Engbreetsen** alleged that Kalla was acting on **Engbreetsen's** behalf as an agent, Kalla never had an independent legal right to use the Property, and **Engbreetsen** had since revoked Kalla's agency. The City did not oppose **Engbreetsen's** writ petition.

The trial court granted the writ, and in a statement of decision, [*2] discussed its basis for finding that (1) Kalla was acting as **Engbreetsen's** agent in pursuing the CUP; (2) Kalla did not have any independent authority to pursue it or legal interest in the Property; (3) **Engbreetsen**, as the principal, terminated Kalla's agency and became the only proper applicant; and (4) the City had a ministerial duty to process the application in **Engbreetsen's** name.

On appeal, Kalla and real party in interest Matthew Compton contend the trial court's principal-agent finding is not supported by sufficient evidence, mandamus was not a proper remedy, and the court did not address and consider their equitable estoppel defense in the statement of decision. We conclude substantial evidence supports the court's factual finding of an agency relationship, **Engbreetsen** established a proper basis for a writ of mandate, and the court implicitly rejected Kalla and Compton's estoppel defense. Therefore, we affirm the judgment.

Engebretsen v. City of San Diego

FACTUAL AND PROCEDURAL BACKGROUND

Engebretsen's Property and the Initial Application for a CUP to Operate an MMCC

Engebretsen's Property, on Carroll Road in San Diego, is located in a City district where up to four properties within the district may be used to [*3] operate medical marijuana consumer cooperatives. Engebretsen was the sole record owner of the Property in fee simple. In early 2014, Engebretsen retained Paul Britvar to submit an application on Engebretsen's behalf for a CUP to operate an MMCC and seek out prospective parties to lease or purchase the Property. The scope of Engebretsen and Britvar's principal-agent relationship is well documented and undisputed in this case.

The Land Development Code (LDC), within the San Diego Municipal Code (SDMC), governs the City's CUP application process and sets forth the individuals who are authorized to file an application. (SDMC, § 112.0102.) On an initial CUP application form, Britvar certified he was the "Authorized Agent of Property Owner." On a required ownership disclosure form, he listed Engebretsen as the sole owner and interest holder in the Property. Compton, as vice president of Bay Front LLC, signed a separate form naming the company as the financially responsible party to cover the City's costs in processing the application.

Engebretsen Authorizes Kalla to Continue the CUP Application Process

Up until August 2014, Kalla and Compton were dealing with Britvar over lease and/or purchase negotiations, [*4] but Kalla and Compton wished to negotiate directly with Engebretsen. Engebretsen began communicating primarily with Kalla. Thereafter, Engebretsen terminated Britvar's agency and orally authorized Kalla as his agent to continue the CUP application process while they attempted to negotiate a lease or purchase agreement for the Property. In October 2014, unknown to Engebretsen, Britvar assigned his "interest" in the CUP application to Kalla.

On October 23, 2014, Kalla filed a revised application form with the City for the CUP to operate an MMCC on the Property (the Application). As Britvar had done, Kalla marked himself as the "Authorized Agent of Property Owner" in the "Applicant" box on the Application; Engebretsen is listed on the same form as the "Property Owner." Kalla signed the Application and

certified the correctness of the supplied information. Kalla did not indicate he was a property owner, tenant, or "other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application." With the Application, Kalla also filed an updated ownership disclosure form signed by Engebretsen, again showing Engebretsen as the sole owner and [*5] interest holder in the Property.

Between November 2014 and February 2015, Kalla and Engebretsen negotiated directly with each other on possible terms for the lease or purchase of the Property. Engebretsen sent Kalla a letter of intent for the lease of the Property (First LOI). The First LOI provides: "Tenant agrees to pay for all costs and fees related to obtaining the CUP." Further, the First LOI states: "Lease Agreement shall be contingent upon Landlord obtaining CUP and Tenant obtaining any other governmental permits and licenses required for Tenant's Use."¹ Kalla did not sign the First LOI.

In response to the First LOI, Kalla provided Engebretsen with a letter of intent for a lease and purchase option (Second LOI). Kalla's Second LOI states: "Lease Agreement shall be contingent upon Tenant on behalf of Landlord obtaining CUP and Tenant obtaining any other governmental permits and licenses required for Tenant's Use." Engebretsen did not sign the Second LOI. The parties continued to exchange multiple letters [*6] of intent and proposed leases in good faith, but could not reach an agreement. In general, Engebretsen preferred to structure the deal as a lease while Kalla and Compton preferred an outright purchase/sale.

Engebretsen Revokes Kalla's Agency, and the City Refuses to Process the Application in Engebretsen's Name

Because negotiations with Kalla reached an impasse, Engebretsen contacted the City in March 2015 to be recognized as the sole applicant on the Application. The City responded that it did not consider Engebretsen to be the applicant. Engebretsen next met with a City representative to discuss removing Kalla's name from the Application, but the City refused. Subsequently, Engebretsen repeatedly met or communicated with City

¹Within the exchanged documents, the "Landlord" or "Seller" is defined as Engebretsen and the "Tenant" or "Buyer" is defined as Kalla, Compton, and/or a company under their control.

Engebretsen v. City of San Diego

representatives, including through his counsel, to convey that he was the sole owner and interest holder in the Property, he had terminated Kalla's agency, Kalla had no independent legal right to pursue the Application, and Engebretsen would be the financially responsible party. The City continuously refused to follow Engebretsen's instructions.

In April 2015, the City informed Engebretsen that Compton had designated Kalla as the new financially responsible party [*7] for the Application, against Engebretsen's wishes. The City would not accept Engebretsen as the financially responsible party for the Application without Kalla's signature. Later that month, the City's hearing officer approved the Application for issuance of a CUP, with Kalla listed as the applicant and prospective permit holder. The Application was the fourth and last one approved by the City for a CUP to operate an MMCC in the district where the Property is located. A third party appealed the Application approval decision for unrelated reasons, and the hearing on that appeal was set to be heard by the City's Planning Commission on June 25, 2015.

Engebretsen's Petition for Writ of Mandate

In May 2015, Engebretsen filed a verified petition for writ of mandate directing the City to: (1) recognize Engebretsen as the sole applicant on the Application and (2) process the Application with Engebretsen as the sole applicant. The court set the matter for trial on an expedited basis. The City filed a statement of nonopposition to Engebretsen's petition for writ of mandate.

On June 16, 2015, the court conducted a trial and heard testimony from Kalla and Compton. Kalla testified he and Compton "believed [*8] [they] had a lease contract on the property" based on Britvar's representations, but admitted that negotiations with Engebretsen "fell completely apart" and the parties never actually executed a lease agreement. Compton confirmed he and Kalla had no lease agreement on the Property and they agreed to be financially responsible for the Application because they thought they "were going to be able to lease" the Property. The City took no position at trial.

After closing argument, the court gave its tentative ruling from the bench, granting Engebretsen's petition for a writ of mandate. As part of the ruling, Engebretsen would have to pay the City the amounts Kalla and Compton had paid for the Application's processing, so

the City could then reimburse Kalla and Compton. In making its ruling, the court noted the undisputed facts that Engebretsen was the record owner of the Property and Kalla and Compton did not enter into a lease or purchase agreement for the Property. The court commented that Kalla and Compton had not shown they had "any interest in [the] property whatsoever," and had "moved forward absent a legally binding agreement under any circumstances." Kalla and Compton requested a [*9] statement of decision on several disputed issues, and the court directed counsel for Engebretsen to draft a proposed statement. Following the trial, the court issued a minute order summarizing its ruling.

On June 23, 2015, Kalla and Compton filed a notice of appeal. The next day, the court ordered that the notice of appeal would not operate as a stay of execution on the judgment and writ to be issued.

On July 20, 2015, the court filed its statement of decision (SOD). Kalla and Compton did not object to the SOD, propose any revisions, or otherwise inform the trial court that the SOD failed to address an issue. On August 18, 2015, the court rendered its judgment, which attached and incorporated the SOD by reference, and issued the writ of mandate.²

DISCUSSION

I. Standard of Review

When an appellate court reviews a trial court's judgment on a petition for a writ of mandate, it applies the substantial evidence test to the trial court's findings of fact and independently reviews the trial court's [*10] conclusions on questions of law, which include the interpretation of a statute and its application to the facts. (*Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 995, 109 Cal. Rptr. 2d 454 (*Klajic*).) The substantial evidence test applies to both express and implied findings of fact. (*Rey Sanchez Investments v. Superior Court* (2016) 244 Cal.App.4th 259, 262, 197 Cal. Rptr. 3d 575.) "'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651, 51 Cal. Rptr. 2d 907.) When reviewing the trial court's factual findings, we ask whether it was "reasonable for a trier of

²We denied Kalla and Compton's request for judicial notice dated February 19, 2016, of a separate lawsuit filed by Engebretsen against them. Accordingly, that matter is not part of the record on appeal.

Engebretsen v. City of San Diego

fact to make the ruling in question in light of the whole record." (*Id. at p. 652.*)

II. The Trial Court Properly Issued a Writ of Mandate

Kalla and Compton contest the court's finding of an agency relationship, the propriety of mandamus relief, and the court's implied rejection of their equitable estoppel defense.

A. The Court's Finding Regarding the Existence of an Agency Relationship Is Supported by Substantial Evidence

Kalla and Compton argue insufficient evidence supported the trial court's factual finding that Kalla acted as Engebretsen's agent in pursuing a CUP application and the court placed undue weight on the application form submitted by Kalla to the City.

"An agent is one who represents another, called the principal, in dealings with third persons." [*11] (*Civ. Code, § 2295.*) "Any person may be authorized to act as an agent, including an adverse party to a transaction." (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1579, 36 Cal. Rptr. 2d 343.) Agency may be implied from the circumstances and conduct of the parties. (*Ibid.*) Indicia of an agency relationship include the agent's power to alter legal relations between the principal and others and the principal's right to control the agent's conduct. (*Valley Investments, L.P. v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 826, 106 Cal. Rptr. 2d 689.) "The existence of an agency relationship is a factual question for the trier of fact whose determination must be affirmed on appeal if supported by substantial evidence." (*Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 965, 56 Cal. Rptr. 3d 177 (*Garlock*).)

Here, substantial evidence supports the court's finding that Kalla was acting as Engebretsen's agent in completing the Application. Kalla certified on the Application form that he was Engebretsen's authorized agent, thereby representing and binding Engebretsen in dealings with the City regarding the CUP application. Kalla had no other basis or authority to complete a CUP application for the Property—he was neither a property owner nor a legal interest holder. In addition, Engebretsen declared under penalty of perjury that he orally authorized Kalla as his agent to continue the application process initiated by agent Britvar. Other evidence suggests [*12] that Kalla understood the CUP was for Engebretsen's benefit as the Property owner until Kalla executed a lease or purchase agreement.

Furthermore, Engebretsen consistently believed he was able to terminate Kalla's agency with respect to the Application at any time, as a principal is entitled to do. (See *Malloy v. Fong* (1951) 37 Cal.2d 356, 370, 232 P.2d 241 ["The power of the principal to terminate the services of the agent gives him the means of controlling the agent's activities."].) Kalla and Compton essentially ask us on appeal to reweigh or draw alternative inferences from the evidence, which we may not do. (*Garlock, supra*, 148 Cal.App.4th at p. 966.) The court's agency finding was reasonable.

B. Engebretsen Established a Proper Basis for Mandamus Relief

Kalla and Compton contend that Engebretsen did not establish a basis for mandamus relief because the City did not have a ministerial duty to recognize Engebretsen as the applicant and Engebretsen possessed a plain, speedy, and adequate legal remedy.

1. Writs of Mandate Generally

Under *Code of Civil Procedure* section 1085, subdivision (a), the trial court may issue a writ of mandate "to any . . . person . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use [*13] and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that . . . person."

"A traditional writ of mandate under *Code of Civil Procedure* section 1085 is a method for compelling a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court reviews an administrative action pursuant to *Code of Civil Procedure* section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. [Citations.] 'Although mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of discretion. [Citation.] In determining whether an agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld.'" (*Klajic, supra*, 90 Cal.App.4th at p. 995, fn. omitted; *California Public Records Research, Inc. v. County of Stanislaus* (2016)

Engbreetsen v. City of San Diego

246 Cal.App.4th 1432, 1443, 201 Cal. Rptr. 3d 745.)

2. The City Had a Ministerial Duty

Kalla and Compton argue the City did not have ministerial duty in this case because [*14] (1) there is no City procedure for amending a CUP application, (2) allowing amendments may allow "dangerous or untrustworthy" people to operate an MMCC, and (3) a writ of prohibition was the appropriate remedy to stop the City from processing the Application in Kalla's name. We reject these arguments.

To obtain mandamus relief, Engbreetsen was required to demonstrate that the City had a "clear, present, ministerial duty" to perform the requested action. (Alliance for a Better Downtown Millbrae v. Wade (2003) 108 Cal.App.4th 123, 129, 133 Cal. Rptr. 2d 249.) "A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists." (*Ibid.*) An act is not ministerial when it involves the exercise of discretion or judgment. (County of San Diego v. State of California (2008) 164 Cal.App.4th 580, 596, 79 Cal. Rptr. 3d 489.)

Courts have concluded that city and county employees are engaged in ministerial acts when ascertaining whether procedural requirements have been met. (E.g., Billig v. Voges (1990) 223 Cal.App.3d 962, 968-969, 273 Cal. Rptr. 91 [clerk correctly rejected referendum petition because it did not comply with Elections Code]; Palmer v. Fox (1953) 118 Cal.App.2d 453, 455-456, 258 P.2d 30 [compelling county engineer to process building permit application where plaintiffs submitted all required paperwork]; see also Shell Oil Co. v. City and County of San Francisco (1983) 139 Cal.App.3d 917, 921, 189 Cal. Rptr. 276 (Shell Oil) [compelling city to process a lessee's application for a conditional use permit because lessee was [*15] an "owner" under the city's relevant ordinance].)

In this case, Engbreetsen showed that the City must process and issue applications for conditional use permits consistent with relevant laws and procedures.³ (SDMC, § 112.0102, subds. (a) & (b).) The City's ordinances provide that the persons "deemed to have

the authority to file an application [are]: [¶] (1) The record owner of the real property that is the subject of the permit, map, or other matter; [¶] (2) The property owner's authorized agent; or [¶] (3) Any other person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application." (SDMC, §§ 112.0102, subd. (a), 113.0103 [defining *applicant*].) The City's ordinances thus ensure that conditional use permits will only be granted to individuals having the right to use the property in the manner for which the permit is sought. (SDMC, §§ 112.0102, subd. (a), 113.0103; see Shell Oil, supra, 139 Cal.App.3d at p. 921; see generally 66A Cal.Jur.3d Zoning And Other Land Controls § 427 [summarizing California cases].) Any other interpretation would raise serious constitutional questions concerning property rights. (Shell Oil, at p. 921; see also County of Imperial v. McDougal (1977) 19 Cal.3d 505, 510, 138 Cal. Rptr. 472, 564 P.2d 14 [holding that conditional use permits "run with the land"].)

Engbreetsen demonstrated he was the only person who possessed the right to use the Property, Kalla never independently possessed such a right, Kalla was acting for Engbreetsen's benefit in completing the Application (Civ. Code, § 2330), and Engbreetsen had terminated Kalla's agency. Under the circumstances, the City had a ministerial duty to process the CUP application for Engbreetsen, the Property owner.

Regarding Kalla and Compton's remaining arguments, there is no evidence in the record that requiring the City to process the Application in Engbreetsen's name would lead to dangerous MMCC operations.⁴ Finally, Kalla and Compton have not cited any authority to support their position that a writ of prohibition was an available remedy. A writ of prohibition "arrests the proceedings of any tribunal, corporation, board, or person *exercising judicial functions*, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." (Code Civ. Proc., § 1102, italics added.) A writ of prohibition may not restrain ministerial or nonjudicial [*17] acts, including an administrative decision to grant a permit. (Whitten v. California State Board of Optometry (1937) 8 Cal.2d 444, 445, 65 P.2d 1296; F.E. Booth Co. v. Zellerbach (1929) 102 Cal.App. 686, 687, 283 P. 372.) The trial court did not err in concluding the City had a

³ "[A] conditional use permit grants an owner [*16] permission to devote a parcel to a use that the applicable zoning ordinance allows not as a matter of right but only upon issuance of the permit." (Neighbors in Support of Appropriate Land Use v. County of Tuolumne (2007) 157 Cal.App.4th 997, 1006, 68 Cal. Rptr. 3d 882.)

⁴ As Engbreetsen also points out, a different section of the SDMC requires background checks for people operating or working at an MMCC (SDMC, § 42.1507), which is unaffected by provisions of the LDC.

Engebretsen v. City of San Diego

ministerial duty to process the Application in Engebretsen's name.

3. Engebretsen Did Not Have an Adequate Legal Remedy

Kalla and Compton next argue that Engebretsen possessed an adequate legal remedy of filing and/or pursuing a new CUP application, precluding mandamus relief.⁵ This argument lacks merit.

A writ of mandate generally will not issue when the plaintiff possesses a "plain, speedy and adequate remedy in the ordinary course of law." (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 114, 40 Cal. Rptr. 2d 839, 893 P.2d 1160.) Here, Engebretsen showed he did not possess such a remedy. The City refused [*18] to process the Application in Engebretsen's name, and it approved the Application with Kalla named as the prospective permit holder. Also, the City would not be issuing any more conditional use permits to operate MMCC's within the same city district. (SDMC, § 141.0614.) If the CUP was granted to Kalla, Engebretsen had no other immediate means to obtain a CUP for his Property from the City. Moreover, Engebretsen showed that the parties needed a determination in time to respond to an unrelated appeal of the City's decision to approve the Application. The court did not err in granting mandamus relief.

C. The Court Did Not Commit Reversible Error in Connection with Kalla and Compton's Equitable Estoppel Defense

At trial, Kalla and Compton opposed the issuance of a writ of mandate under a theory of equitable estoppel. Specifically, their counsel argued that Engebretsen was estopped from obtaining the CUP in his name because Kalla and Compton relied on Engebretsen's promises to sign a lease. Under *Code of Civil Procedure section 632*, Kalla and Compton requested a statement of decision on the court's "finding and reasoning as to the application of equitable estoppel" in the case.

The SOD did not explicitly address equitable estoppel, but instead [*19] sets forth in significant detail the

factual background supporting the court's implicit rejection of the theory. Kalla and Compton did not object to the SOD below or argue it was deficient for failing to address an issue. On appeal, they contend the trial court erred in not addressing their equitable estoppel defense in its SOD and that the evidence supports their defense. We conclude they waived the argument regarding a deficient SOD and substantial evidence supports the court's implied rejection of their defense.

1. Kalla and Compton Waived or Forfeited Their Claim Regarding the Court's Failure to Address Equitable Estoppel in the Statement of Decision

In a court trial, "first, a party must request a statement of decision as to specific issues to obtain an explanation of the trial court's tentative decision (§ 632); second, if the court issues such a statement, a party claiming deficiencies therein must bring such defects to the trial court's attention to avoid implied findings on appeal favorable to the judgment (§ 634)." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134, 275 Cal. Rptr. 797, 800 P.2d 1227 (*Arceneaux*).) *Code of Civil Procedure section 634* "clearly refers to a party's need to point out deficiencies in the trial court's statement of decision as a condition of avoiding such implied findings, rather [*20] than merely to request such a statement initially as provided in *section 632*." (*Arceneaux*, at p. 1134.) "[I]f a party does not bring such deficiencies to the trial court's attention, that party waives the right to claim on appeal that the statement was deficient in these regards, and hence the appellate court will imply findings to support the judgment." (*Id.* at pp. 1133-1134.)

Here, Kalla and Compton did not bring any alleged deficiencies in the SOD to the trial court's attention. If they had, the SOD could have been corrected and made part of the record on appeal. Accordingly, Kalla and Compton have waived or forfeited their argument relating to the court's alleged failure to address equitable estoppel, and we will imply all necessary findings to support the court's judgment. (*Agri-Systems, Inc. v. Foster Poultry Farms* (2008) 168 Cal.App.4th 1128, 1135, 85 Cal. Rptr. 3d 917.)

2. The Court's Implied Rejection of Kalla and Compton's Equitable Estoppel Defense Is Supported by Substantial Evidence

Substantial evidence supports the court's implied rejection of Kalla and Compton's equitable estoppel defense. (See *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970, 153 Cal. Rptr.

⁵Kalla and Compton also assign error to the trial court's omitting to address the issue of alternative legal remedies in its SOD. As we discuss, *infra*, they waived the argument by failing to object to the SOD or pointing out the alleged deficiency to the trial court. Regardless, any error was harmless because Engebretsen sufficiently stated a basis to obtain writ relief.

Engebretsen v. City of San Diego

3d 135 ["the appellate court applies the doctrine of implied findings and presumes the trial court made all necessary findings supported by substantial evidence"].) "Generally speaking, four elements must be present in order to apply the [*21] doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 257, 80 Cal. Rptr. 3d 876 (*Golden Gate*).) The defense does not apply when even one element is missing. (*Ibid.*)

Here, it was virtually undisputed that the parties engaged in arm's-length, good faith negotiations for several months, but they simply could not reach a suitable lease or purchase agreement. The record supports that Kalla and Compton pursued the Application despite knowing they had not yet signed any agreement with Engebretsen, the Property owner. As a result, Kalla and Compton were not "ignorant of the true facts." (*Golden Gate, supra*, 165 Cal.App.4th at p. 259.) Similarly, Engebretsen only sought to be recognized as the sole applicant when he realized that the parties could not reach a mutually acceptable agreement. Consequently, Kalla and Compton failed to establish that equitable estoppel prevented the City from recognizing Engebretsen as the CUP applicant.

DISPOSITION

The judgment [*22] is affirmed. Engebretsen shall recover his costs on appeal.

HALLER, Acting P. J.

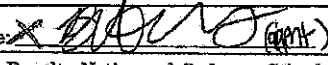

WE CONCUR:

AARON, J.

IRION, J.

EXHIBIT D

 City of San Diego Development Services 1222 First Ave., MS-302 San Diego, CA 92101 (619) 446-5000 <small>THE CITY OF SAN DIEGO</small>	Court's Ex. _____ Case # 17-2017-0010073-CU-EC-CTL Recd. _____ Dep. C-73 OK	General Application	FORM DS-3032 AUGUST 2013
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------	--------------------------------	----------------------------------------

Must be completed for all permits/approvals	1. Approval Type: <i>Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes</i> <input type="checkbox"/> Electrical/Plumbing/Mechanical <input type="checkbox"/> Sign <input type="checkbox"/> Structure <input type="checkbox"/> Grading <input type="checkbox"/> Public Right-of-Way; <input type="checkbox"/> Subdivision <input type="checkbox"/> Demolition/Removal <input type="checkbox"/> Development Approval <input type="checkbox"/> Vesting Tentative Map <input type="checkbox"/> Tentative Map <input type="checkbox"/> Map Waiver <input checked="" type="checkbox"/> Other: CUP				
	2. Project Address/Location: <i>Include Building or Suite No.</i> 6176 Federal Blvd.		Project Title: Federal Blvd. MMCC		Project No. for City Use Only 520606
	Legal Description: <i>(Lot, Block, Subdivision Name & Map Number)</i> TR#2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO				Assessor's Parcel Number: 543-020-02
	Existing Use: <input type="checkbox"/> House/Duplex <input type="checkbox"/> Condominium/Apartment/Townhouse <input checked="" type="checkbox"/> Commercial/Non-Residential <input type="checkbox"/> Vacant Land				
	Proposed Use: <input type="checkbox"/> House/Duplex <input type="checkbox"/> Condominium/Apartment/Townhouse <input checked="" type="checkbox"/> Commercial/Non-Residential <input type="checkbox"/> Vacant Land				
	Project Description: The project consists of the construction of a new MMCC facility				
	3. Property Owner/Lessee Tenant Name: <i>Check one</i> <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Lessee or Tenant Telephone: _____ Fax: _____ Rebecca Berry				
	Address: _____ City: San Diego State: CA Zip Code: 92122 E-mail Address: becky@tfcscd.net 5982 Gullstrand Street				
	4. Permit Holder Name - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103. Name: Rebecca Berry Telephone: _____ Fax: _____ Address: _____ City: San Diego State: CA Zip Code: 92122 E-mail Address: becky@tfcscd.net 5982 Gullstrand Street				
	5. Licensed Design Professional (if required): (check one) <input checked="" type="checkbox"/> Architect <input type="checkbox"/> Engineer License No.: C-19371 Name: Michael R Morton AIA Telephone: _____ Fax: _____ Address: _____ City: San Diego State: CA Zip Code: 92104 E-mail Address: _____ 3956 30th Street				
6. Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) - a. Year constructed for all structures on project site: 1951 b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No d. Does the project include any foundation repair, digging, trenching or other site work? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.					
Part I Print Name: Abhay Schweitzer Signature:  Date: 10/28/2016					
7. Notice of Violation - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? <input type="checkbox"/> No <input type="checkbox"/> Yes, copy attached					
8. Applicant Name: <i>Check one</i> <input type="checkbox"/> Property Owner <input type="checkbox"/> Authorized Agent of Property Owner <input checked="" type="checkbox"/> Other Person per M.C. Section 112.0102 Rebecca Berry Telephone: _____ Fax: _____ Address: _____ City: San Diego State: CA Zip Code: 92122 E-mail Address: becky@tfcscd.net 5982 Gullstrand Street					
Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project. Signature:  Date: Oct 31 2016					

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DS-3032 (08-13)



City of San Diego
Development Services
1222 First Ave., MS-401
San Diego, CA 92101
(619) 446-5000

Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP)

FORM
DS-190
MARCH 2014

The purpose of this affidavit is for the property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative (MMCC) to affirm that all uses within 1,000 feet from the subject property line have been identified, including residential zones within 100 feet, as defined in San Diego Municipal Code (SDMC), Sections 113.0103 and 141.0614.

The proposed MMCC location must be 100 feet from any residential zone and not within 1,000 feet of the property line of the following:

- | | |
|----------------------|--------------------------------------------------|
| 1. Public park | 6. Minor-oriented facility |
| 2. Church | 7. Other medical marijuana consumer cooperatives |
| 3. Child care center | 8. Residential care facility |
| 4. Playground | 9. Schools |
| 5. City library | |

GENERAL INFORMATION

Project Name:

Federal Blvd. MMCC

Project No.: For City Use Only

520000

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Date Information Verified by Owner or Authorized Agent:

10/28/2016

DECLARATION: *The property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative must complete the following section and sign their name where indicated.*

We are aware that the business described above is subject to the Medical Marijuana Consumer Cooperatives (MMCC) regulated by SDMC, Section 141.0614 and Chapter 4, Article 2, Division 15. We hereby affirm under penalty of perjury that the proposed business location is not within 1,000 feet, measured in accordance with SDMC, Section 113.0225, of the property line of any public park, church, child care center, playground, library owned and operated by the City of San Diego, minor-oriented facility, other medical marijuana consumer cooperative, residential care facility, or schools; and is 100 feet from any residential zone as identified on the 1000-foot radius map and spreadsheet submitted with the Conditional Use Permit application.

Property Owner or Authorized Agent Name: Check one ☒ Owner ☐ Agent

Telephone No.:

Mailing Address:

City:

State:

Zip Code:

Signature:

Date:

Business Owner Name:

Rebecca Berry

Telephone No.:

(858) 999-6882

Mailing Address:

5982 Gullstrand Street

City:

San Diego

State:

CA

Zip Code:

92122

Signature:

Rebecca Berry

Date:

Oct 31 2016

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DS-190 (03-14)

	City of San Diego Development Services Attn: Deposit Accounts 1222 First Ave., MS-401 San Diego, CA 92101 (619) 446-5000	Deposit Account/Financially Responsible Party	FORM DS-3242 August 2014

Project Address/Location: 6176 Federal Blvd. San Diego, CA. 92114		Project No. <u>520606</u>	Internal Order No. <u>For City Use Only</u>
Approval Type: Check appropriate box for type of approval requested: <input type="checkbox"/> Grading <input type="checkbox"/> Public Right-of-Way <input type="checkbox"/> Subdivision <input type="checkbox"/> Neighborhood Use <input type="checkbox"/> Coastal <input type="checkbox"/> Neighborhood Development <input type="checkbox"/> Site Development <input type="checkbox"/> Planned Development <input checked="" type="checkbox"/> Conditional Use <input type="checkbox"/> Variance <input type="checkbox"/> Vesting Tentative Map <input type="checkbox"/> Tentative Map <input type="checkbox"/> Map Waiver <input type="checkbox"/> Other: _____			
Is the project subject to a Reimbursement Agreement? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, provide Reimbursement Agreement Application Project Number or Resolution/Ordinance No.: _____			
Deposit Trust Fund Account Information: A deposit into a Trust Fund account with an initial deposit to pay for the review, inspection and/or project management services is required. The initial deposit is drawn against to pay for these services. The Financially Responsible Party will receive a monthly statement reflecting the charges made against the account, and an invoice when additional deposits are necessary to maintain a minimum balance. The payment of the invoice will be required in order to continue processing your project. At the end of the project, any remaining funds will be returned to the Financially Responsible Party.			
FINANCIALLY RESPONSIBLE PARTY			
Name/Firm Name: Rebecca Berry		Address: 5982 Gullstrand Street	E-mail:
City: San Diego	State: CA	Zip Code: 92122	Telephone: Fax No.:
Financially Responsible Party Declaration: I understand that City expenses may exceed the estimated advance deposit and, when requested by the City of San Diego, will provide additional funds to maintain a positive balance. Further, the sale or other disposition of the property does not relieve the individual or Company/Corporation of their obligation to maintain a positive balance in the trust account, unless the City of San Diego approves a Change of Responsible Party and transfer of funds. Should the account go into deficit, all City work may stop until the requested advance deposit is received.			
<input type="checkbox"/> This is a continuation of existing Project No.: _____ Internal Order No.: _____			
NOTE: Using an existing opened account may be allowed when: 1. Same location for both projects; 2. Same Financially Responsible Party; 3. Same decision process (Ministerial and discretionary projects may not be combined); 4. Same project manager is managing both projects; and 5. Preliminary Review results in a project application.			
Please be advised: Billing statements cannot distinguish charges between two different projects.			
Please Print Legibly.			

Print Name: <u>REBECCA BERRY</u>	Title: <u>PRESIDENT</u>
Signature*: <u>Rebecca Berry</u>	Date: <u>10/31/16</u>
*The name of the individual and the person who signs this declaration must be the same. If a corporation is listed, a corporate officer must sign the declaration (President, Vice-President, Chairman, Secretary or Treasurer).	
FOR CITY USE ONLY	
Project Title: <u>Federal Blvd mmcc</u>	Date Requested: <u>10/31/16</u>
<input type="checkbox"/> Keep existing Project No. _____ as lead, or <input type="checkbox"/> Use new Project No. _____ as lead	
ACCOUNT CLOSURE AUTHORIZATION	
Date Requested: _____	<input type="checkbox"/> Completed <input type="checkbox"/> Inactive <input type="checkbox"/> Withdrawn <input type="checkbox"/> Collections
Print Name: _____	Signature: _____

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DS-3242 (08-14)



City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other _____

Project Title

Federal Blvd. MMCC

Project No. For City Use Only

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Part I - To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached ☐ Yes ☒ No

Name of Individual (type or print):

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

6176 Federal Blvd

City/State/Zip:

San Diego Ca 92114

Phone No:

(619) 954-4447

Fax No:

Signature:

[Signature]

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:

Name of Individual (type or print):

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

5982 Gullstrand St

City/State/Zip:

San Diego / Ca / 92122

Phone No:

8589996882

Fax No:

Signature:

[Signature]

Date:

10-31-2016

Name of Individual (type or print):

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

Street Address:

City/State/Zip:

Phone No:

Fax No:

Signature:

Date:



Darryl Cotton <indagrodarryl@gmail.com>

Testimony

Corina Young <corina.young@live.com>
To: Darryl Cotton <indagrodarryl@gmail.com>

Wed, Oct 28, 2020 at 12:22 PM

Darryl,

I am not involved. Please do not include me in your lawsuit. Please do not post this email online.

Attached are emails from my attorney at the time.

Corina

2 attachments

 **Email #1.pdf**
299K

 **Email 2.pdf**
133K

FW: Geraci v. Cotton [Deposition Subpoena - Corina Young]

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>

Tue 7/2/2019 12:01 PM

To: 'Corina Young' <corina.young@live.com>

📎 1 attachments (10 KB)

190627.Tentative Rulings on Motions in Limine.pdf;

Good morning Corina,

I hope this email finds you well. I haven't heard back from you so I assume you are occupied with other importance.

As an update, below is the last email from Cotton's attorney. In light of the trial dates, I presumed he was bluffing so I just ignored him.

The court issued its ruling on the parties' Motions in Limine in the Geraci v. Cotton trial last week. If you are bored or curious, it is attached for your review. The Trial was supposed to start July 1 but it looks as if someone (likely Cotton's attorney) filed an appeal and so trial was taken off calendar. I'll keep you apprised of this but for the moment, there's nothing you really need to do.

Yours,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>

Sent: Wednesday, June 12, 2019 6:45 PM

To: Natalie T. Nguyen <natalie@nguyenlawcorp.com>

Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Ms. Nguyen,

Trial on the Geraci v. Cotton case in which your client, Corina Young, is a material witness is immediately impending and you have yet to deliver on any of the items we had previously agreed upon.

At this point in time it is too late to rely on you to uphold your promises without a proper demand. I need you to provide a declaration by end of week or I will have to file a motion for sanctions against you personally, and re-issue a subpoena.

Let me know by the end of the day Friday if you will provide the declaration requested or not so I can proceed accordingly.

Jacob

Law Office of Jacob Austin

P.O. Box 231189

San Diego, CA 92193 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

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On Tue, May 28, 2019 at 10:20 AM Jake Austin <jpa@jacobaustinesq.com> wrote:

Ms. Young's original deposition was scheduled for Jan. 18th and we agreed to your request that she provide a declaration instead. It has been over 4 months and we have yet to receive anything. Please provide an update.

Jacob

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P.O. Box 231189

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On Fri, May 3, 2019 at 12:04 PM <natalie@nguyenlawcorp.com> wrote:

Good morning Jake,

Thanks for following up. Let me check and get back to you soon.

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>

Sent: Thursday, May 2, 2019 11:56 AM

To: Natalie T. Nguyen <natalie@nguyenlawcorp.com>

Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Please give me an update, this is important to my client's case.

Jacob

Law Office of Jacob Austin

P.O. Box 231189

San Diego, CA 92193 USA

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Facsimile: (888) 357-8501

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On Tue, Apr 16, 2019 at 6:15 PM Jake Austin <jpa@jacobaustinesq.com> wrote:

Hello Natalie,

As you recall we have been trying to work out an affidavit or a deposition for three months now, can you kindly give me an update on Ms. Young?

Jacob

Law Office of Jacob Austin

P.O. Box 231189

San Diego, CA 92193 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

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On Thu, Mar 7, 2019 at 1:45 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

Ms. Young is out of town on March 11 so she will not be able to attend the deposition as noticed. Our Objection to the Deposition Notice is attached.

Despite her limited availability, we maintain the intention to provide you with a written statement as previously agreed. I hope to have it ready sometime next week.

Best regards,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>

Sent: Thursday, February 28, 2019 2:05 PM

To: natalie@nguyenlawcorp.com

Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hello,

I haven't heard from you for awhile so just so you know my office is generating a subpoena for a deposition. We hope we do not need a deposition so if you can provide an affidavit that would be greatly appreciated. Also can we agree to accept electronic service from one another moving forward?

Jacob

On Mon, Jan 21, 2019 at 3:09 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

I closely reviewed the Declaration of Joe Hurtado and the text message exchange attached thereto. I also discussed your proposal:

“Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

with Ms. Young and she's accepted the same. We will provide a sworn written testimony by Ms. Young as described above.

Best regards,

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: Natalie T. Nguyen <natalie@nguyenlawcorp.com>

Sent: Thursday, January 17, 2019 5:23 PM

To: 'Jake Austin' <jpa@jacobaustinesq.com>

Subject: RE: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hi Jacob,

Thank you for taking the time to lay it all out for me. My grasp of this case is limited to the online register of action, the minute order to continue trial, and the deposition subpoena. However, I'm only representing a third-party witness so I see no reason to be embroiled in the case. Perhaps it's best this way.

I quickly scanned the attachment you sent, mostly the text message exchange. I gather there's some complicated history between the parties. In any event, I don't see an issue with a providing a sworn statement.

I intend to review your email and attachment more closely tomorrow and discuss your proposal with Mr. Young. I will reach back out to you after that.

Best regards,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 11440 West Bernardo Court, Suite 210 | San Diego, CA 92127

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobastinesq.com>
Sent: Thursday, January 17, 2019 4:55 PM
To: natalie@nguyenlawcorp.com
Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hello Natalie,

This is an awkward situation, so I will be direct. Your client has repeatedly communicated that she is hostile to my client and will not provide her deposition to material matters that are crucial to my client. Thus, your unilateral decision to cancel the deposition because I did not respond with an alternative to her deposition is procedural improper and, in light of her long history of seeking to avoid being deposed, is suspect.

I can inform you that one of the parties on our side went through Stage III cancer and so we are aware of the challenges that dealing with cancer treatments takes on a patient and their loved ones. However, because of that, we also know that there will never be a "good" time in that context to be deposed.

I am not sure how deeply you are aware of the facts in this matter, so I will not assume you are purposefully being antagonistic and will not file a motion to compel your client's attendance and seek sanctions.

With that said, we understand your client is in a tough situation, which is what makes her testimony highly relevant and credible to our case. In your prior email you state that we can discuss "alternatives to her sitting for the deposition" and since it wasn't a request to reschedule, I have been racking my brain for an alternative to having her go through a deposition which I know could be tedious and stressful on its own. I also know that she may be hesitant to discuss certain subjects and may rely on the right against self-incrimination in some of her responses. I am not sure how familiar you are with the underlying case, but it is my belief that Ms. Young has not been involved in the acts that underline the causes of action and it is not my intention to name her in any lawsuit or anything to that effect.

To be specific, the facts which we hope to elicit from Ms.

Young have already been provided *by* her in her text messages with Mr. Hurtado. Attached hereto is a declaration from Mr. Hurtado that in turn has exhibits of text messages between him and Ms. Young regarding the subjects that we desire to depose Ms. Young on. The only additional facts we would want established, beyond those in her text messages, is a description of how long and how many interactions she has had with the parties at issue in this litigation and in the text messages.

What should be clear is that Ms. Young has known the parties associated with Mr. Geraci significantly longer and has established professional relationships with them, as opposed to the limited number of times she has met Mr. Cotton and Mr. Hurtado with whom she only had a couple of interactions with (setting aside her communications related to not wanting to be involved in this litigation to Mr. Hurtado).

Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

Please confirm if your client is willing to provide such sworn testimony. If not, please let me know if your client is available to be deposed any day next week between Wednesday through Friday.

Please note that the trial calendar requires us to file a motion for summary judgement on or before February 8, 2019. As you know, getting transcripts back and drafting an MSJ is time

consuming, so, unfortunately, we are not in a position to push back her deposition for any prolong period of time.

Thus, if you cannot agree to providing her sworn testimony as described above, or having her deposition taken sometime next week, in the interests of my client's case, I will be forced to file an ex-parte application seeking to compel her deposition.

Lastly, again, my apologies for this direct and confrontational email. However, given Ms. Young's repeated statements, the nearing MSJ deadline, and the actions by the attorneys for Mr. Geraci, which I have already gone on record of stating and believing to be tantamount to fraud, I hope you can appreciate that I am attempting to manage this situation for Ms. Young as best as possible. The bottom line is that Ms. Young's testimony provides damaging evidence against her own attorney and agents and I realize the uncomfortable position she is in.

I am open to alternatives and discussions, but Ms. Young's testimony is material and crucial. If you would like to discuss this issue further, I will make myself available to you.

Jacob

On Tue, Jan 15, 2019 at 1:05 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 2260 Avenida de la Playa | La Jolla, CA 92037

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E: natalie@nguyenlawcorp.com

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On Wed, Jan 16, 2019 at 3:39 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

I did not receive a response from you. Please note that for the reasons set forth in my email below, Ms. Young is unable and will not attend the deposition you set for this Friday, January 18, 2019, at 10:00 am. Please kindly contact my office before setting another deposition date.

Best regards,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: natalie@nguyenlawcorp.com

From: natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>

Sent: Tuesday, January 15, 2019 1:05 PM

To: JPA@jacobaustinesq.com

Subject: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Importance: High

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

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Geraci v Cotton

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>

Mon 7/22/2019 11:24 AM

To: 'Corina Young' <corinayoung@live.com>

 1 attachments (80 KB)

Invoice_656_491294_g8e.pdf;

Hi Corina,

I hope this email finds you very well.

I just wanted to let you know that the trial in Geraci v Cotton went forward and was completed. Therefore, you don't have to worry about providing any declaration or testimony on this case. Attached is your final invoice; no payment is due from you and we will close our file.

It was a pleasure working with you. Good luck on all your future endeavors!

PS. The jury found in favor of Geraci.

Natalie T. Nguyen, Esq.

NGUYEN LAW CORPORATION

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: natalie@nguyenlawcorp.com

1 **DARRYL COTTON**
2 **6176 Federal Boulevard**
3 **San Diego, CA 92114**
4 **Telephone: (619) 954-4447**

5 **Plaintiff *Pro Se***

6 **UNITED STATES DISTRICT COURT**
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8 **DARRYL COTTON, an individual**
9 **Plaintiff,**

10 **vs.**

11 **GINA AUSTIN, an individual; JESSICA**
12 **MCELFRESH, an individual; DAVID DEMIAN,**
13 **an individual; and DOES 1-100, inclusive**

14 **Defendants.**

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

CERTIFICATE OF SERVICE

PLAINTIFF'S SECOND AMENDED
COMPLAINT

Related Case: 20-cv-0656-BAS-MDD

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing documents(s):

- 1. PLAINTIFF'S SECOND AMENDED COMPLAINT.**
- 2. EXHIBITS 1-2**

Were served on this date to party/counsel of record:

[x] BY EMAIL SERVICE:

David Demian to Attorney Corinne Bertsche @ Corinne.Bertsche@lewisbrisbois.com

Jessica McElfresh to Attorney Laura E. Stewart @ lstewart@wmflp.com

Gina Austin to Attorney Michelle Lynn Propst @ mpropst@pettitkohn.com

Executed on November 22, 2021, at San Diego, California



Plaintiff: DARRYL COTTON

In pro se