IN THE COURT OF APPEAL OF THE S

CASE #: D074587

FOURTH APPELLATE DISTRICT – DIVISION ONE

DARRYL COTTON,

Defendant/Petitioner/Appellant,

v.

THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO,

Respondent.

LARRY GERACI, an individual; REBECCA BERRY, an individual; MICHAEL R. WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; FERRIS & BRITTON APC, a California corporation; GINA M. AUSTIN an individual; AUSTIN LEGAL GROUP APC, a California corporation; JIM BARTELL, an individual; BARTELL & ASSOCIATES, INC., a California corporation; ABHAY SCHWEITZER, an individual and dba TECHNE; AARON MAGAGNA, an individual; THE CITY OF SAN DIEGO, a public entity; M. TRAVIS PHELPS, MICHELLE SOKOLOWSKI, FIROUZEH TIRANDAZI, CHERLYN CAC, as individuals and as employees of THE CITY OF SAN DIEGO,

Real Parties in Interest.

Court of Appeal Case No. _____
(San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL)

and

Court of Appeal Case No. D073766
(San Diego Superior Court Case No. 37-2017-00037675-CU-WM-CTL)

EXHIBITS – VOLUME 3 of 3

[EXHIBITS 13-21, Pages 660 – 1234]

TO PETITION FOR WRIT OF MANDATE, SUPERSEDEAS AND/OR OTHER APPROPRIATE RELIEF

JACOB P. AUSTIN [SBN 290303]
Law Office of Jacob Austin
1455 Frazee Road, #500, San Diego, CA 92108
Telephone: (619) 357-6850; Facsimile: (888) 357-8501; JPA@JacobAustinEsq.com
Attorney for Defendant/Petitioner/Appellant DARRYL COTTON

INDEX OF EXHIBITS TO
PETITION FOR WRIT OF MANDATE, WRIT OF SUPERSEDEAS
AND/OR OTHER APPROPRIATE RELIEF
VOLUME 3 [EXHIBITS 13 – 21, PAGES 660–1234]

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PETITION FOR WRIT OF MANDATE, WRIT OF SUPERSEDEAS
AND/OR OTHER APPROPRIATE RELIEF
VOLUME 3 [EXHIBITS 13 – 21, PAGES 660–1234]

EXHIBIT 13 [ROA 160]

Jacob P. Austin, SBN 290303
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

Attorney for Defendant and Cross-Complainant Darryl Cotton
(Representation Limited to Motion to Expunge *Lis Pendens*)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; REBECCA BERRY, an individual; and DOES 1-10, Inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, and individual, REBECCA BERRY, an individual; and DOES 1 through 10, Inclusive,

Cross-Defendants.

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

EX PARTE APPLICATION BY COTTON FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*) [CCP 405.30 et seq.]; AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI

HEARING DATE: April 5, 2018
HEARING TIME: 8:30 a.m.
DEPT: C-73
JUDGE: The Honorable Joel R. Wohlfeil

COMPLAINT FILED: March 21, 2017
TRIAL DATE: May 11,2018

[IMAGED FILE]

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TO EACH PARTY AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on April 5, 2018 at 8:30 a.m. or as soon thereafter as the matter may be heard in Department C-73 of the above-entitled Court located at 330 West Broadway, San Diego, California 92101, Defendant/Cross-Complainant Darryl Cotton, by and through his counsel Jacob P. Austin, will appear and move this Court *ex parte* for an Order Shortening Time for the hearing on Darryl Cotton's Motion to Expunge Notice of Pendency of Action (*Lis Pendens*) (wherein Mr. Cotton will move for an order (i) expunging the *lis pendens* filed in the above-referenced action and recorded in the official records at Office of the Recorder of San Diego County as Instrument No. 2017-0129756 on March 22, 2017, and (ii) awarding Defendant/Cross-Complainant reasonable attorneys' fees and costs incurred in connection with this motion.); (2) compelling the attendance and testimony of Plaintiff and Cross-Defendant Larry Geraci;

The motion is made upon the grounds that, in light of the evidence presented by Plaintiff, the Complaint lacks "probable validity" which can be established by a preponderance of the evidence.

The motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities, Declarations of Darryl Cotton, and Jacob P. Austin, and the Request for Judicial Notice served and filed herewith, the pleadings and records on file in this action, and upon such other and further oral and documentary evidence which may be presented at the hearing on this Motion.

Pursuant to California Rules of Court, rule 3.1202(a), so far as is known to moving party Cotton, the names, addresses, and telephone numbers of the attorneys and parties in this case are:

Parties	Attorneys
Larry Geraci	Michael R. Weinstein FERRIS & BRITTON, APC 501 West Broadway, Suite 1450 San Diego, CA 92121 Telephone: (619) 233-3131 Fax: (619) 232-9316
Rebecca Berry	Michael R. Weinstein FERRIS & BRITTON, APC 501 West Broadway, Suite 1450 San Diego, CA 92121 Telephone: (619) 233-3131 Fax: (619) 232-9316

Darryl Cotton

Jacob P. Austin
(Representation Limited to Motion to Expunge *Lis Pendens*)
THE LAW OFFICE OF JACOB AUSTIN
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: (619) 357-6850
Fax: (888) 357-8501

This Application is made pursuant to California Code of Civil Procedure section 2025.450 and California Rules of Court, Rules 3.1200 through 3.1207, and 2.5.11, and based upon this Application, the accompanying Memorandum of Points and Authorities, Declaration of Jacob P. Austin and Request for Judicial Notice in support hereof, the pleadings and records on file in this action, and upon such other and further oral and documentary evidence which may be presented at the hearing on this Motion. Timely notice for this Application was given by undersigned counsel to all parties to this action pursuant to California Rules of Court, rule 3.1203(a). (Declaration of Jacob P. Austin at ¶4.)

DATED: April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

By _____
JACOB P. AUSTIN
Attorney for Defendant and Cross-Complainant
DARRYL COTTON
(Representation Limited to Motion to Expunge *Lis Pendens*)

Jacob P. Austin, SBN 290303
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

Attorney for Defendant and Cross-Complainant Darryl Cotton
(Representation limited to Motion to Expunge *Lis Pendens*)

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; REBECCA BERRY, an individual; and DOES 1-10, INCLUSIVE,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

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

Cross-Defendants.

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DARRYL COTTON'S *EX PARTE* APPLICATION FOR ORDERS: (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); AND (2) COMPELLING THE ATTENDANCE AND TESTIMONY OF PLAINTIFF LARRY GERACI

DATE: April 5, 2018
TIME: 8:30 a.m.
DEPT: C-73
JUDGE: Honorable Joel R. Wohfeil

Defendant and Cross-Complainant Darryl Cotton ("Cotton") respectfully requests this Court GRANT Cotton's *Ex-Parte* Application for Order (1) Shortening Time on Cotton's Motion to Expunge Notice of Pendency of Action (*Lis Pendens*) (the "*LP*"); and (2) to Compel the Attendance and Testimony of Larry Geraci pursuant to CCP §405.30 *et seq.*

INTRODUCTION

Summarily, Plaintiff Larry Geraci ("Geraci") filed this action alleging Cotton is in breach of contract for the sale of Cotton's real property (the "Property") to Geraci. In his Complaint, pursuant to which the *LP* was filed, Geraci alleges the following four causes of action: (1) Breach of Contract ("BOC"); (2) Breach of the Covenant of Good Faith and Fair Dealing; (3) Specific Performance; and (4) Declaratory Relief. (RJN 3.) The primary cause of action is the BOC (with the other causes arising therefrom), which is predicated and supported solely on the allegation a document executed on November 2, 2106 is the final written agreement for the purchase of the Property by Geraci (the "Receipt"). As alleged by Geraci in his Complaint: "On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement for the purchase and sale of the [Property] ***on the terms and conditions stated therein***."[1]

However, that day, when the Receipt was executed, Geraci emailed a scanned copy to Cotton at 3:11 PM. Cotton reviewed it and realized it could be misconstrued as being the "final written agreement" for his Property and that it did not contain material terms (*e.g.*, a 10% equity stake in a contemplated business).[2] Thus, at 6:55 PM later that same day, Cotton replied:

> Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the ***10% equity position*** in the dispensary was not language added into that document. I just want to make sure that we're ***not*** missing that language in any ***final agreement*** as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply. [DC Decl. Ex. 1, p.9 (emphasis added).]

At 9:13 p.m., Geraci replied: "***No no problem at all***" [*Id.* (emphasis added) (the "Confirmation Email").] Thus, on the same day that the Receipt was executed, Geraci himself confirmed unequivocally via email that the Receipt, a 3-sentence document, is not the ***final agreement*** for the Property. In March of 2017 Cotton found out that Geraci had fraudulently induced him into executing the Receipt and terminated the agreement with Geraci. Thereafter, Geraci filed this suit alleging the above. Cotton filed a Cross-Complaint

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[1] Request for Judicial Notice ("RJN") Exhibit ("Ex.") 2 (Complaint ("Comp.") ¶4.
[2] Declaration of Darryl Cotton ("DC Decl.") ¶19.

to which Geraci demurred arguing the Statute of Frauds ("SOF") and/or the Parol Evidence Rule ("PER") should, *inter alia*, prevent the admission of the Confirmation Email. This Court properly denied Geraci's demurrer.

However, even assuming, *arguendo*, the Court had ruled otherwise in the first instance, Geraci's reliance on the SOF and the PER is misplaced. First, "The doctrine of estoppel to plead the statute of frauds may be applied where necessary to prevent either unconscionable injury or unjust enrichment." *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 27. Here, as described below, both unconscionable injury and unjust enrichment will occur if Geraci can misrepresent the Receipt as the final agreement for the Property. Second, the PER does not bar evidence of *fraudulent promises* at variance with terms of the writing: "[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud." *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Ass'n* (2013) 55 Cal.4th 1169, 1182 (quoting *Ferguson v. Koch* (1928) 204 Cal. 342, 347).[3]

Despite the ~~fantastical~~ appearance of this case, the facts are the facts and they make it clear that Geraci is mispresenting the Receipt as the final agreement for the Property. He filed this Complaint with no probable cause to procedurally justify the filing of the *LP* on the Property and, thus, achieved his goal of clouding title and preventing the sale of the Property to a *bona fide* third-party purchaser; every day that this meritless litigation continues in the judicial system is a miscarriage of justice. And "reinforce[s] an already too common perception that the quality of justice a litigant can expect is proportional to the financial means at the litigant's disposal." *Neary v. Regents of Univ. of California*, 3 Cal. 4th 273, 287, 834 P.2d 119, 127–28 (1992). Geraci is wealthy (described more fully in the motion to expunge) - he has had at least two law firms and three senior attorneys representing him in this action. Cotton is facing severe financial hardship, especially as his only asset, the Property, is inaccessible as a source of capital because of the *lis pendens* filed against it. (DC Decl. ¶21.)

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[3] Notably, the California Supreme Court in *Riverisland* referenced *Tenzer, supra*, in reaching its holding: "*Tenzer* disapproved a 44–year–old line of cases to bring California law into accord with the Restatement Second of Torts, holding that a fraud action is not barred when the allegedly fraudulent promise is unenforceable under the statute of frauds. Considerations that were persuasive in *Tenzer* also support our conclusion here. The *Tenzer* court decided the Restatement view was better as a matter of policy. [Citation.] ***It noted the principle that a rule intended to prevent fraud, in that case the statute of frauds, should not be applied so as to facilitate fraud.*** [Citation.]" *Riverisland, supra*, at 1183 (emphasis added).

DISCUSSION

COUNSEL'S ETHICAL DILEMMA

As a threshold issue, for the reasons described below, Counsel for Cotton respectfully requests this Court to please understand the incredibly awkward set of circumstances that necessitate this instant *ex-parte* motion and the description of the situation as believes it to be. Counsel believes he is ethically obligated to bring forth this motion in defense of his client to prevent immediate and unjustified irreparable harm. However, in advocating for his client, Counsel wants to be incredibly clear: he does not in any manner or form, directly or indirectly, intend to be disrespectful to this Court. Counsel is aware:

> An attorney's oath requires that he "discharge the duties of an attorney ... to the best of his knowledge and ability." (Bus. & Prof. Code, s 6067.) Among such duties, an attorney is required to "maintain the respect due to the courts of justice and judicial officers," to "employ ... such means only as are consistent with truth," and to "abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged." (Bus. & Prof. Code, §6068, subds. (b), (d) and (f).)

Ramirez v. State Bar (1980) 28 Cal.3d 402, 412 n12.

Prior to specifically stating Counsel's ethical dilemma, Counsel notes the following, declared under penalty of perjury provided in his supporting declaration herewith:

> In preparation for representing Mr. Cotton on his Motion to Expunge the Notice of Action I have, *inter alia*, reviewed (i) every filing in both of Mr. Cotton's actions with Mr. Geraci (Case No. 37-2017-00010073-CU-BC-CTL) and the City of San Diego (37-2017-00037675-CU-WM-CTL); (ii) every document produced to and from Mr. Cotton via discovery; (iii) every single email to and from Mr. Cotton's professional and personal email accounts between October 1, 2016 and March 31, 2017; and (iv) interviewed over 17 individuals who were in constant written communications and/or working with Mr. Cotton on a daily basis during the same time period noted and which gave rise to the events leading and related to this action. [(The "Review of All Evidence") (emphasis added).][4]

Based on his Review of All Evidence, Counsel believes that it is beyond any reasonable doubt to conclude that this action was brought and maintained without any probable cause. There are numerous evidentiary items disclosed in pleadings and via discovery, whose authenticity are undisputed by Geraci, that Counsel believes each of which should dispositively address the instant action in favor of Cotton (more fully

[4] Declaration of Jacob P. Austin ("JA Decl.") ¶3.

described in the motion to expunge the *LP*).[5] Cotton has, in his *pro se* filings, consistently alleged the same (albeit in an inconsistent manner, with his arguments being laced with emotional pleas and non-related facts) arguments and facts.[6] However, because this Court has not issued an Order specifically addressing, identifying or analyzing even one of the pieces of evidence that Counsel believes to be case-dispositive, it is not clear to Counsel, based on review of the record, why this Court has not been persuaded by Cotton's proffered evidence.

In the absence of knowing the reasoning for this Court's decisions, Counsel is left to rely on his review of the record and his understanding of applicable law. Simply and sincerely stated: Counsel finds it incomprehensible, to the point of almost disbelief, that this action has progressed to its current state. Thus, Counsel's ethical dilemma: he cannot reconcile what he believes to be, for the reasons described below, the following five facts:

1. This action was brought by Geraci without probable cause to procedurally justify the filing of the *LP* that was meant to (i) prevent the sale of Cotton's Property to a third-party and (ii) coerce Cotton into settling with Geraci regardless of the merits.

2. This Court has allowed this case to be maintained despite being presented with what Counsel believes to be undisputed and case-dispositive evidence that proves the lack of any probable cause for this action.

3. Based on his Review of All Evidence, counsel for Geraci, specifically Attorney Gina Austin ("Austin"), Scott Toothacre and Mr. Michael Weinstein ("Weinstein"), have acted unethically by, *inter alia*, filing and maintaining this action lacking any probable cause.

4. On January 25, 2018, at an oral hearing on a motion by Geraci to compel certain discovery requests from Cotton, this Court initiated the hearing by stating to Cotton that it was personally acquainted with counsel and did not believe that Austin and Weinstein would act in the unethical manner that Cotton had alleged in his opposition to that motion (DC Decl. ¶20.)

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[5] *See, generally*, RJN 6 (Cotton's opposition to motion to compel his responses to certain discovery requests in which he describes the litigation, its challenges from his perspective and in which he provides emails and texts with Geraci and supporting declarations from noteworthy individuals all of which unilaterally support his contentions).

[6] *Id.*

5. This Court – based on Counsel's personal attendance of this Court's law and motion calendar on numerous occasions – is impartial, patient, fair, and seeks (when requested and possible) to balance the needs of litigants and counsel with the interests of the Court.

Again, Counsel cannot reconcile these facts. Counsel notes that Cotton has filed *pro se* a Complaint in the United States District Court, Southern District of California that is currently pending before The Honorable Gonzalo Curiel (Case No. 3:18-cv-00325). *That* federal action is stayed pending resolution of *this* action. Cotton has alleged causes of action against Geraci, Berry, Austin, Weinstein and Toothacre, and their respective law firms, Ferris & Britton and Austin Legal Group, for, *inter alia*, Civil Conspiracy and RICO. In his federal Complaint, Cotton alleges this Court is biased against him. One of the main foci in the action before Judge Curiel will be whether Geraci and his counsel had probable cause to bring forth and maintain this action.

In *Ramirez, supra*, an attorney was suspended for submitting a brief accusing a judge of bias. To be absolutely and unequivocally clear, Counsel does not believe and is not alleging this Court is biased against Cotton. However, Counsel respectfully notes that if he is correct in his conclusion regarding the lack of probable cause in this case, and based on his Review of All Evidence, then it can *appear* that this Court is biased against Cotton. Thus, restated, Counsel's ethical dilemma is that he *believes* this Court's maintenance of this action is not reasonable in light of the evidence it has been presented; but he neither believes this Court to be biased against Cotton nor that it would allow its alleged relationship with counsel for Geraci, even if true, to affect its impartiality.

Cotton, as described below and as consistently alleged in his *pro se* filed pleadings, believes this Court is under a misunderstanding of the undisputed and case-dispositive nature of some of the evidence which has been presented to it.[7] The testimony from numerous third-parties in attendance does prove that Cotton's former counsel did fail to raise the most material and case-dispositive piece of evidence in this action before this Court at oral hearing on December 7, 2017 on an *Ex Parte* Application for a Temporary Restraining Order.[8] However, Cotton's theory is not tenable because the same evidence has been presented to this Court on numerous other occasions by Cotton since then and the Court still has not been persuaded.

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[7] *See Id.* at p.5, ln.21 – p.11, ln.9.
[8] *Id.* at p.36, ln.20 – p.37, ln.10.

Counsel has struggled intensely with how to approach this issue with the Court and reviewed numerous ethical opinions and cases. Ultimately, Counsel is relying on the following language from an often-cited case in numerous professional responsibility cases and treatises:

> The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously *within the bounds of the law* [citation]. It is the imperative duty of an attorney to respectfully yield to the rulings of the court, *whether right or wrong* [citation]. "[I]f the ruling is adverse, it is not counsel's right to resist it or to insult the judge—his right is only respectfully to preserve his point for appeal." [*Hawk v. Superior Court* (1974) 42 Cal.App.3d 108, 126 (quoting *Sacher v. United States* (1952) 343 U.S. 1, 9, 72 S.Ct. 451, 455, 96 L.Ed. 717).]
>
> A lawyer should comply promptly with all orders and directives of the court, but he has a duty to have the record reflect adverse rulings or judicial conduct which he considers prejudicial to his client's interests and he has a right to make respectful requests for reconsideration of adverse rulings. (Standard 7.1, ABA Standards-Defense Function.) [*Id.* at 130.]

Thus, Counsel respectfully requests that this Court please not misinterpret this motion as intending any disrespect, but that it please look at the evidence and arguments herein (and the Motion to Expunge which more fully lays out the facts and the supporting evidence) with new eyes. Counsel's review of the record reveals what this Court is surely already aware of – Cotton's filings contain numerous very improbable and/or unrelated allegations that make him appear to be paranoid and delusional.[9] With no disrespect intended to Cotton, in Counsel's opinion, his client does in fact have some beliefs which are not supported by reasonable evidence; however, *some* of Cotton's improbable allegations *are* supported by material, credible evidence. As unbelievable as it appears, this case, though originally brought forth as a breach of contract case, is really about fraud, deceit, extra-judicial coercion and intimidation tactics – there is credible, third-party evidence and testimony to support Cotton's Civil Conspiracy and RICO allegations in his federal complaint at least against Geraci.[10] Mr. Cotton was not a paranoid *pro se* litigant. At the very least, in this action, he is demonstrably a victim of a conspiracy meant to deprive him of his Property because, fortuitously as a result of the so-called "Green Rush" (cannabis industry boom) and its geographic location, it has recently become worth millions of dollars.[11]

Lastly, Counsel notes he is almost exclusively a criminal defense attorney and never has engaged in civil proceedings of the type at issue here. He is compelled to bring forth the instant *ex parte* motion seeking

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[9] *See, generally,* RJN 6.
[10] JA Decl. ¶5.
[11] RJN 6, pp. 182-196 (Martin Sale Agreement containing terms and consideration for Mr. Cotton's property that was originally for, *inter alia,* $2,000,000 and a 20% equity stake in the contemplated business.

to shorten time and other relief because he has personally witnessed – and can attest to – the continuously increasing deterioration of Cotton's mental and physical well-being over the last several months as a result of this litigation. Because he believes this action lacks probable cause, the financial, emotional and psychological harm that Cotton has and continues to suffer is simply appalling. Counsel feels ethically compelled to bring forth this motion or risk irreparable harm to his client's physical and mental health. (*See* DC Decl. Ex. 4.)

A. THE COURT MAY GRANT A MOTION TO SHORTEN TIME

Generally, a motion must be served at least sixteen court days before the hearing. (CCP §1005(B). However, the Court may, in its discretion upon a showing of "good cause," shorten the time required for notice of motions. *Id.* As described herein, the Confirmation Email appears to dispositively prove that Geraci is mispresenting the Receipt as the final written agreement. Geraci has not provided any other evidence to support a finding of probable cause for his allegation that the Receipt is the final agreement for the Property. "'[P]robable cause requires evidence sufficient to prevail in the action or at least information reasonably warranting an inference there is such evidence.' [*Puryear v. Golden Bear* (1998) 66 Cal.App.4th 1188, 1195]. To put it another way, probable cause is lacking 'when a prospective plaintiff and counsel do not have evidence sufficient to uphold a favorable judgment or information affording an inference that such evidence can be obtained for trial.'" *Arcaro v. Silva & Silva Ent. Corp.* (1999) 77 Cal App.152, 156–157 (quoting *Puryear, supra,* at 1195). The only evidence ever put forth by Geraci to support his Complaint in almost a year is the Receipt and his own supporting declaration, neither of which provides "evidence sufficient to uphold a favorable judgment" or provides "information affording an inference that such evidence can be obtained for trial" considering Geraci's express representation to the contrary in the Confirmation Email. *Id.*

Cotton underwent an Independent Psychiatric Assessment ("IPA") by Dr. Markus Ploesser. Per Dr. Ploesser:

> It is my professional opinion that Mr. Cotton currently meets criteria of Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and Major Depression (F32.2) . . . the level of emotional and physical distress faced by Mr. Cotton at this time is above and beyond the usual stress on any plaintiff being exposed to litigation. If causative triggers and threats against Mr. Cotton persist, there is a substantial likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental health. [DC Decl. Ex. 4, IPA ¶¶ 29, 32.]

Thus, Cotton has shown good cause as it strongly appears Geraci has no probable cause for this action and Cotton is, understandably, under intense psychological pressure as the victim of a conspiracy to deprive him of his Property via the judiciary system.

B. THE COURT IS SPECIFICALLY EMPOWERED TO COMPEL THE ATTENDANCE AND TESTIMONY OF LARRY GERACI

As stated by the California Supreme Court, "[T]he lis pendens procedure [is] susceptible to serious abuse, providing unscrupulous plaintiffs with a powerful lever to force the settlement of groundless or malicious suits." *Malcolm v. Superior Court* (1981) 29 Cal.3d 518, 524. "Once a lis pendens is filed, it clouds the title and effectively prevents the property's transfer until the litigation is resolved or the lis pendens is expunged." *BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th 952, 967. "Because of the potential for abuse and injustice to the property owner, the Legislature has provided statutory procedures (CCP §405.30 *et seq.*) by which a lis pendens may be removed ('expunged')." Weil & Brown, Cal. Practice Guide, *Civ. Pro. Before Trial* (The Rutter Group 2017) ("Rutter Guide") ¶9:422 (*citing Shah v. McMahon* (2007) 148 Cal.App.4th 526, 529). "[T]he lis pendens procedure provides a means by which a court may dispose of meritless real estate claims at the ***preliminary stage of a case***." *Shah, supra,* at 529 (emphasis added).

CCP §405.30 *et seq.* was enacted to require proactive action by the trial court in the form of a "minitrial" on the merits in the ***preliminary stage of a case***. As explained by the Court in *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, in analyzing the Legislature's intent in revising the *LP* laws in 1992 and enacting CCP §405.32:

> The financial pressure created by a recorded lis pendens provided the opportunity for abuse, permitting parties with meritless cases to use it as a bullying tactic to extract unfair settlements. [¶] The Code Comment thus states that section 405.32 "is intended to disapprove *Malcolm*. . . and other cases which have held that the court on a motion to expunge may not conduct a 'minitrial' on the merits of the case. *This section is intended to change California law and to require judicial evaluation of the merits.*" (Code Com., 14A West's Ann. Code Civ. Proc., foll. §405.32, par. 3, p. 346, italics added.)

Amalgamated, supra, at 1012 (emphasis in original).

In *Hilberg v. Superior Court* (1989) 215 Cal.App.3d 539, 542, the Court stated: "We cannot ignore as judges what we know as lawyers - that the recording of a lis pendens is sometimes made not to prevent conveyance of property that is the subject of the lawsuit, but to coerce an opponent to settle regardless of the merits." (*Citing Malcolm, supra,* at 678.)

CCP §405.30 provides, in relevant part, as follows:

> At any time after notice of pendency of action has been recorded, any party . . . may apply to the court in which the action is pending to expunge the notice . . . Evidence or declarations may be filed with the motion to expunge the notice. ***The court may permit evidence to be received in the form of oral testimony, and may make any orders it deems just to provide for discovery by any party affected by a motion to expunge the notice***. [Emphasis added.]

"If conflicting evidence is presented, the judge must weigh the evidence in deciding whether plaintiff has sustained its burden." Rutter Guide §9:436.2. Materially summarized, Geraci and Cotton are in accord that on November 2, 2016: (i) an agreement was reached for the sale of the Property, and (ii) a document was executed by both parties on that day. However, the parties dispute what that executed document is. Cotton alleges the document, the Receipt, is just a "receipt" meant to memorialize his receipt of $10,000. Geraci, on the other hand, alleges the Receipt is the "final written agreement" for his purchase of the Property and that Cotton is lying about being entitled to, *inter alia,* a 10% equity stake in the Property – a term not contained in the Receipt. Thus, the primary and case-dispositive issue in this action is a determination of whether the Receipt is a "receipt" as Cotton alleges or a "final agreement" for the Property as Geraci alleges. The evidence appears to be dispositively clear – Geraci is fraudulently misrepresenting the Receipt as a final agreement.

Geraci brought forth this suit alleging the Receipt is the final agreement. He also confirmed that the Receipt is not the final agreement in the Confirmation Email and continued to string Cotton along for months with drafts of contracts based on their agreed upon terms. CCP §405.30 *et. seq.*, was specifically enacted for this scenario – "The court may permit evidence to be received in the form of oral testimony, and ***may make any orders it deems just to provide for discovery*** by any party affected by a motion to expunge the notice." *Id. (emphasis added).* Additionally, "A court has inherent equity, supervisory and administrative powers, as well as inherent power to control litigation and conserve judicial resources. Courts can conduct hearings and formulate rules of procedure ***where justice so demands.***" *Lucas v. County of Los Angeles* (1996) 47 Cal.App.4th 277, 284–85 (internal citation omitted; emphasis added).

Here, although the action is framed as a breach of contract cause of action, this case is really about fraud and deceit. And one of the parties is making false representations to this Court. The Court should exercise its power, discover which party is attempting to manipulate the judicial system and sanction them accordingly. To this end, the Court should order the attendance and testimony of Larry Geraci. If Cotton is correct, the fact that the judiciary has been used as a tool of oppression represents an issue of great public concern, on these facts, this is not just a dispute between Geraci and Cotton.

IV. CONCLUSION

Ultimately, Cotton is not requesting that the Court dismiss this action in his favor via this *ex-parte* motion. And, neither is Counsel for Cotton closed to the possibility that evidence and arguments have been made at *ex-parte* hearings which are not in the record or, perhaps, there is a construct of civil law applicable

here with which he is not familiar. Thus, respectfully requested, Cotton asks that this Court recognize his *pro se* status and his inability to have previously researched, prepared and submitted the attached Motion to Expunge Notice of Pendency of Action (*Lis Pendens)* while under the pressure of the instant litigation. Because of the evidence presented herein, the most reasonable conclusion is that Geraci is fraudulently misrepresenting the Receipt and this action is unjust.

Consequently, this Court should exercise its power and grant the relief requested herein to determine if Geraci and/or his counsel have sought to manipulate the judicial system to effectuate a miscarriage of justice. If Cotton is incorrect, Geraci suffers no harm or damage from having this motion granted. However, if Geraci cannot produce evidence other than the Receipt and his self-serving testimony and actions, then every day which passes is unconscionably causing Cotton ongoing financial and psychological harm.

Alternatively, should the Court decide to deny the relief requested herein, Cotton respectfully requests that this Court settle a legal dispute between Weinstein and Counsel for Cotton. This Court granted Geraci's request for a mandatory injunction. Cotton has communicated his intent to file a Notice of Appeal (NOA) and believes that upon its filing, this action will be automatically stayed while the Court of Appeals reviews the appeal. Weinstein has objected, arguing that Cotton must first file a *noticed* motion for a stay with this Court before a filed NOA will *automatically* stay this action. Cotton provided Weinstein case law explicitly stating that a noticed motion is not required if the trial court has already communicated its intention to deny the request, as is the case here.[12] Weinstein did not provide legal authority in opposition for his statement that, if Cotton files an NOA, this case will not be automatically stayed. Should the Court deny this request, Cotton would like to immediately file an NOA to prevent agents of Geraci from having access to, and intruding upon, his Property – the location where he has built his businesses and worked for over 20 years.

DATED: April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

By _____
JACOB P. AUSTIN
Attorney for Defendant and Cross-Complainant
DARRYL COTTON

[12] *See Sun-Maid Raisin Growers of Cal. v. Paul* (1964) 229 Cal.App.2d 368, 374 (A third objection to the proceeding in this court was that the appellants had not first exhausted their right to seek a stay of proceedings in the lower court by failing to show a preliminary application to that end. [Citation.] In this latter connection, the attorney for defendants testified that he had informed the trial judge that he intended to ask him for a stay of proceedings after the entry of the preliminary injunction, but the trial judge told him that he would not grant it. The law does not require a useless act.")

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

Attorney for Defendant and Cross-Complainant Darryl Cotton
[Representation Limited to Motion to Expunge *Lis Pendens*]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; REBECCA BERRY, an individual; and DOES 1-10, Inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, and individual, REBECCA BERRY, an individual; and DOES 1 through 10, Inclusive,

Defendants.

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

DECLARATION OF JACOB P. AUSTIN IN SUPPORT OF DARRYL COTTON'S *EX PARTE* APPLICATION FOR ORDER (1) SHORTENING TIME ON COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*); AND (2) TO COMPEL THE ATTENDANCE AND TESTIMONY OF LARRY GERACI

DATE: April 5, 2018
TIME: 8:30 a.m.
DEPT.: C-73
JUDGE: The Honorable Joel R. Wohlfeil

///

I, Jacob P. Austin, declare as follows:

1. I am an attorney admitted to practice before this Court and all courts in the State of California, counsel of record (limited scope representation – limited to this expungement of Notice of Pendency Action) for Defendant/Cross-Complainant Darryl Cotton ("Cotton"). I make this declaration in support of Cotton's *Ex Parte* Application for Order (1) Shortening Time on Cotton's Motion to Expunge Notice of Pendency of Action (*Lis Pendens*); and (2) Compel the Attendance and Testimony of Plaintiff/Cross-Defendant Larry Geraci pursuant to CCP §405.30 *et. seq.*

2. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would competently testify to them.

3. In preparation for representing Mr. Cotton on his Motion to Expunge the Notice of Action I have, *inter alia*, reviewed (i) every filing in both of Mr. Cotton's actions with Mr. Geraci (Case No. 37-2017-00010073-CU-BC-CTL) and the City of San Diego (37-2017-00037675-CU-WM-CTL); (ii) every document produced to and from Mr. Cotton via discovery; (iii) every single email to and from Mr. Cotton's professional and personal email accounts between October 1, 2016 and March 31, 2017; and (iv) interviewed over 17 individuals who were in constant written communications and/or working with Mr. Cotton on a daily basis during the same time period noted and which gave rise to the events leading and related to this action.

4. On April 3, 2018, I spoke with Mr. Weinstein and reiterated that Mr. Cotton was contemplating seeking a stay and desires to take his case to the Court of Appeals, contingent upon hearing back from Mr. Weinstein regarding putting the handling of the CUP application in the hands of a third-party receiver. Mr. Weinstein provided information on the Soils Testing analysis that Mr. Cotton and I are reviewing and discussing.

5. In February of 2018, Mr. Cotton called me and told me he had been accosted by an individual at his Property who had threatened him and told him to settle with Geraci. I went to Mr. Cotton's property and spoke with two individuals who witnessed the scene. I then went with Mr. Cotton to report the incident to the police.

6. Written notice of this ex parte hearing was given to attorney Michael R. Weinstein via email April 3, 2018 at 10.12 a.m. Mr. Weinstein acknowledged notice and previously Mr. Weinstein had

authorized me to give him notice and serve any pleading by email.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this second day of April 3, 2018, in San Diego, California.

JACOB P. AUSTIN

Jacob P. Austin, SBN 290303
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

Attorney for Defendant and Cross-Complainant Darryl Cotton
[**Representation Limited to This Motion to Expunge *Lis Pendens***]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

vs.

DARRYL COTTON, an individual; REBECCA BERRY, an individual; and DOES 1-10, Inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

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

Cross-Defendants.

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

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF:

DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*);

AND

DARRYL COTTON'S *EX PARTE* APPLICATION FOR ORDERS (1) SHORTENING TIME FOR HEARING ON DARRYL COTTON'S MOTION TO EXPUNGE NOTICE OF PENDENCY OF ACTION (*LIS PENDENS*), AND (2) COMPELLING ATTENDANCE AND TESTIMONY OF LARRY GERACI

Ex Parte Hrg: April 5, 2018 at 8:30 a.m.
Motion Hrg: April 13, 2018 at 9:00 a.m.
Dept: C-73
Judge: Honorable Joel R. Wohlfeil

Defendant and Cross-Complainant Darryl Cotton requests that this Court take judicial notice of the following documents served and filed submitted herewith in support of his Motion to Expunge Notice of Pendency of Action (*Lis Pendens*):

TAB NO.	DOCUMENT TITLE/DESCRIPTION
1.	Verified Petition for Alternative Writ of Mandate [Code Civ. Proc., § 1085] filed by Plaintiff on October 6, 2017
2.	Plaintiff's Complaint for: 1. Breach of Contract; 2. Breach of the Covenant of Good Faith and Fair Dealing; 3. Specific Performance; and 4. Declaratory Relief filed March 21, 2017
3.	City of San Diego, Development Services Department Information Bulletin 170 (October 2017) (City Information Bulletin describing "the application process for a Marijuana Outlet")).
4.	Ownership Disclosure Statement – Form DS-318
5.	City of San Diego Development Services Department Parcel Information Report – Report Number 101 dated March 20, 2018
6.	Verified Memorandum of Points and Authorities in Support of Darryl Cotton's Response to (1) Motion by Plaintiff/Cross-Defendant Larry Geraci and Cross-Defendant Rebecca Berry to Compel the Deposition of Darryl Cotton and (2) Motion by Real Parties in Interest, Larry Geraci and Rebecca Berry, to Compel the Deposition of Darryl Cotton filed January 22, 2018

DATED: April 4, 2018

THE LAW OFFICE OF JACOB AUSTIN

By _____
Jacob P. Austin
Attorney for Defendant and Cross-Complainant
DARRYL COTTON

DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@ftblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@ftblaw.com
FINCH, THORNTON & BAIRD, LLP
ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

Attorneys for Petitioner/Plaintiff Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants,

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

Real Parties In Interest.

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

VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085]

INTRODUCTION

1. Pursuant to Code of Civil Procedure section 1085, petitioner/plaintiff Darryl Cotton ("Cotton") seeks an alternative writ of mandate and a peremptory writ of mandate directing respondents/defendants City of San Diego ("City") and DOES 1 through 25 to: (1) recognize Cotton, the sole record owner of the real property located at 6176 Federal Boulevard, San Diego, California 92105 ("Property"), as the sole applicant with respect to Conditional Use Permit Application – Project No. 520606 ("Cotton Application") for a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the

Property; and (2) process the Cotton Application with Cotton as the sole applicant. In the alternative, Cotton seeks an order to show cause directed to the City as to why the Court should not issue such a writ.

2. The relief sought in paragraph 1 is proper because Cotton has no other plain, speedy, or adequate legal remedy. The relief is necessary because the City's refusal to recognize Cotton as the sole applicant on the Cotton Application is lacking in evidentiary support and inconsistent with the City's legal duty.

JURISDICTION, VENUE, AND PARTIES

3. The Court has jurisdiction over this petition pursuant to Code of Civil Procedure section 1085.

4. Venue is proper in this Court because the City is a public entity located in this judicial district and the property at issue is located in this judicial district.

5. Petitioner/plaintiff Cotton is, and at all times mentioned was, an individual living and doing business in California.

6. Respondent/defendant City is, and at all times mentioned was, a public entity organized and existing under the laws of California.

7. Cotton is informed and believes real party in interest Rebecca Berry ("Berry") is, and at all times mentioned was, an individual living and doing business in the County of San Diego.

8. Cotton is informed and believes real party in interest Larry Geraci ("Geraci") is, and at all times mentioned was, an individual living and doing business in the County of San Diego.

9. Cotton does not know the true names and capacities of the respondents/defendants named as DOES 1 through 25 and, therefore, sues them by fictitious names. Cotton is informed and believes DOES 1 through 25 are in some way responsible for the events described in this petition or impacted by them. Cotton will seek leave to amend this petition when the true names and capacities of these parties have been ascertained.

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San Diego, CA 92121
(858) 737-3100

10. At all times mentioned each respondent/defendant was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation, and/or employment and with the permission of the others.

11. Cotton does not know the true names and capacities of the real parties in interest named as ROES 1 through 25 and, therefore, names them by fictitious names. Cotton is informed and believes ROES 1 through 25 are in some way responsible for the events described in this petition or impacted by them. Cotton will seek leave to amend this petition when the true names and capacities of these parties have been ascertained.

12. At all times mentioned each real party in interest was an agent, principal, representative, alter ego, and/or employee of the others and each was at all times acting within the course and scope of said agency, representation, and/or employment and with the permission of the others.

BACKGROUND

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

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

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

16. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However, Cotton has never met Berry personally and never entered into a lease or any other type of agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who was very familiar with MMCC operations and who was involved with his other MMCC dispensaries. Cotton's understanding was that Geraci was unable to list himself on the application because of Geraci's other legal issues but that Berry was Geraci's agent and was working in concert with him and at his direction. Based upon Geraci's assurances that listing Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton executed the Ownership Disclosure Statement that Geraci provided to him. A true and correct copy of the CUP application, including the Ownership Disclosure Statement, is attached hereto as Exhibit 1.

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

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

> Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)
>
> Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed not to enter into any other contacts on this property.

A true and correct copy of the November 2, 2016 agreement is attached hereto as Exhibit 2. Geraci assured Cotton that the document was intended to merely create a record of Cotton's receipt of the $10,000 "good-faith" deposit and provide evidence of the parties' agreement on the purchase price and good-faith agreement to enter into final integrated agreement documents related to the sale of the Property. A true and correct copy of the November 2, 2016 email is attached hereto as Exhibit 3.

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

20. Over the weeks and months that followed, Cotton repeatedly reached out to Geraci regarding the status of the zoning issue, the payment of the remaining balance of the non-refundable deposit, and the status of the draft documents. For example, between January 18, 2017 and February 7, 2017, the following exchange took place between Geraci and Cotton via text message:

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(858) 737-3100

Geraci: "The sign off date they said it's going to be the 30th."
Cotton: "This resolves the zoning issue?"
Geraci: "Yes"
Cotton: "Excellent"...

Cotton: "How goes it?"
Geraci: "We're waiting for confirmation today at about 4 o'clock"

Cotton: "Whats new?"

Cotton: "Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet."
Geraci: "I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork."

The above communications between Geraci and Cotton regarding the zoning issue conveyed to Cotton that the issue had still not yet been fully resolved at that time. Geraci had previously represented to Cotton that the CUP application could not be submitted until the zoning issue was resolved. As it turns out, Geraci's representations were untrue and he knew they were untrue as he had already submitted the CUP application months prior.

21. With respect to the promised final agreement documents, Geraci continuously failed to timely deliver the documents as agreed. On February 27, 2017, nearly three months after the parties reached an agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase agreement. However, upon review, the draft purchase agreement was missing many of the key deal points agreed upon by the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation, Geraci claimed it was simply due to miscommunication with his attorney and promised to have her revise the agreement to accurately reflect their deal points.

22. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side agreement that was to incorporate other terms of the parties' deal. Cotton immediately reviewed the draft side agreement and emailed Geraci the next day regarding certain missing and inaccurate material terms.

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San Diego, CA 92121
(858) 737-3100

23. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement along with a further request to change material terms of the parties' deal. Cotton, increasingly frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on March 16, 2017 in an email which included the following:

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

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

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

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

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San Diego, CA 92121
(858) 737-3100

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

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

26. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was terminated and that Geraci had no interest in the Property.

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

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

29. On May 12, 2017, Cotton filed a cross-complaint against Berry and Geraci including causes of action for breach of contract, intentional misrepresentation, negligent misrepresentation, and false promise with respect to the purchase agreement and the CUP application.

30. On September 22, 2017, Cotton, through his attorneys, demanded the City remove Berry from the Cotton Application and process it for Cotton. A true and correct copy of the September 22, 2017 letter is attached hereto as Exhibit 4.

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4747 Executive Drive - Suite 700
San Diego, CA 92121
(858) 737-3100

30. The City responded via email on September 29, 2017, but did not agree to remove Berry from the Cotton Application and process it on behalf of Cotton. A true and correct copy of the September 29, 2017 email is attached hereto as Exhibit 5.

FIRST CAUSE OF ACTION

(Writ of Mandate – Against all respondents/defendants and all real parties in interest)

31. Cotton incorporates by reference paragraphs 1 through 30 above as though set forth in full at this point.

32. The City is subject to California law. The City is further responsible for administering the CUP process according to the San Diego Municipal Code ("Municipal Code"), and is obligated to perform the ministerial duties of: (1) recognizing Cotton as the sole applicant for the Cotton Application, as required under Municipal Code sections 112.0102 and 113.0103, and (2) processing the Cotton Application with Cotton as the sole applicant and financially responsible party.

33. As the record owner of the Property, Cotton has a clear, present, legal and beneficial right in seeing that the City follows the Municipal Code and California law and recognizes the correct applicant with respect to the Cotton Application.

34. Cotton has no plain, speedy and adequate remedy in the ordinary course of law, other than the writ by this petition. Cotton has exhausted all available administrative remedies, if any, available to him. The only means by which Cotton may compel the City to follow the Municipal Code and California law is this petition for a writ of mandate.

INDEX OF EXHIBITS

Exhibit	Description
1	CUP application incl. Ownership Disclosure Statement
2	November 2, 2016 agreement
3	Email dated November 2, 2016 between Cotton and Geraci
4	Letter dated September 22, 2017 from Cotton to the City
5	Email dated September 29, 2017 from City to Cotton

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FINCH, THORNTON & BAIRD, LLP
4747 Executive Drive - Suite 700
San Diego, CA 92121
(858) 737-3100

PRAYER FOR RELIEF

WHEREFORE, Cotton prays as follows:

ON ALL CAUSES OF ACTION:

1. For a writ of mandate to be issued under Code of Civil Procedure section 1085, and under seal of this Court, ordering the City to recognize Cotton as the sole applicant with respect to the Cotton Application and to process the Cotton Application with Cotton as the sole applicant;

2. In the alternative, for an order to show cause directed to the City as to why the Court should not issue such a writ; and

3. For such other or further relief the Court deems just.

DATED: October 6, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: _____
DAVID S. DEMIAN
ADAM C. WITT
Attorneys for Petitioner/Plaintiff DARRYL COTTON

2403.002/3BX3380.hjg

FINCH, THORNTON & BAIRD, LLP
4747 Executive Drive - Suite 700
San Diego, CA 92121
(858) 737-3100

VERIFICATION

I, Darryl Cotton, have read this VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE [CODE CIV. PROC., § 1085], and I am familiar with its contents. I am informed and believe the matters stated therein are true and on that basis verify that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct to the best of my knowledge.

Executed on October 6, 2017 in San Diego, California.

Darryl Cotton

FINCH, THORNTON & BAIRD, LLP
4747 Executive Drive - Suite 700
San Diego, CA 92121
(858) 737-3100

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

Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

PLAINTIFF'S COMPLAINT FOR:

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

Plaintiff, LARRY GERACI, alleges as follows:

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

the PROPERTY to him by Defendant COTTON.

FIRST CAUSE OF ACTION

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

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

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

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

SECOND CAUSE OF ACTION

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

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

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

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

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

THIRD CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

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

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

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

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

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First and Second Causes of Action:

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

On the Third Cause of Action:

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

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

On the Fourth Cause of Action:

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

On all Causes of Action:

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

6. For costs of suit incurred herein; and

///

///

///

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

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

EXHIBIT A

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

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

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

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

HOW TO APPLY FOR A CONDITIONAL USE PERMIT

Marijuana Outlet

City of San Diego
Development Services Department
1222 First Avenue, MS 301, San Diego, CA 92101-4101

INFORMATION BULLETIN

170

October 2017

This Information Bulletin describes the application process for a Marijuana Outlet (formerly Medical Marijuana Consumer Cooperative) Conditional Use Permit.

Documents referenced in this Information Bulletin

- San Diego Municipal Code (SDMC) Section 141.0504
- San Diego Municipal Code (SDMC) (Chapter 4, Article 2, Division 15)
- Project Submittal Manual, Section 4
- Information Bulletin 503, Fee/Deposit Schedule For Development & Policy Approvals/Permits
- Information Bulletin 512, How to Obtain Public Noticing Information
- Information Bulletin 580, Potential Historical Resource Review
- Affidavit for Marijuana Outlet/Marijuana Production Facilities for Conditional Use Permit (CUP), DS-190
- Ownership Disclosure Statement, DS-318
- Storm Water Requirements Applicability Checklist, DS-560
- Climate Action Plan Consistency Checklist
- General Application, DS-3032
- Deposit Account/Financially Responsible Party, DS-3242
- List of Approved MO Sites

I. MARIJUANA OUTLETS

All Marijuana Outlets (MO) are regulated by SDMC, Section 141.0504 and Chapter 4, Artide 2, Division 15. This Information bulletin provides general information, regulations and minimum submittal requirements to apply for a Process 3 Conditional Use Permit (CUP) for a MO. For general information, please see https://www.sandiego.gov/development-services.

II. MARIJUANA OUTLET RESTRICTIONS

A. The total number of MOs is limited to four (4) per City Council District.

B. MOs are not allowed within 1,000 feet of the following: resource and population-based City parks; churches; child care centers; playgrounds; City libraries; minor-oriented facilities; other Marijuana Outlets; residential care facilities; or schools (as defined in SDMC Section 141.0504).

C. MOs are not allowed within 100 feet of a residential zone.

D. MOs are allowed only in the following zones: IBT-1-1; IL-3-1; IS-1-1; CC-2-1; CC-2-2; CC-2-3; CC-2-4; CC-2-5; CR-2-1, CO-2-1; CO-2-2; and within the following Planned Districts (PDO): Barrio Logan (Subdistrict D), Carmel Valley (EC & SP), Centre City (WM, I, T & CC), Mission Valley (CO, CV & CR - without residential), and San Ysidro within the Coastal Overlay Zone (Commercial Zones 1, 2 & 3 and I-1 Industrial Zones) until such time the PDO is repealed.

III. OPTIONS FOR SERVICE

MO CUP applications may be submitted by appointment by calling 619-446-5300 or as a Walk-In Service at 1222 1st Avenue, 3rd floor, Check-In Counter.

IV. SUBMITTAL REQUIREMENTS

MO The Development Services Department will not accept, formally review, nor deem complete any MO CUP applications unless the application package satisfies all of the City's minimum project submittal requirements for Conditional Use Permits (see Project Submittal Manual, Section 4) and this Information Bulletin (Section IV, Step A). The Submittal Matrix and the Minimum Submittal Requirements Checklist identify the forms, documents, and plans that are required. The Submittal Matrix is an easy-to-use tool to help you quickly identify the type of items needed for submittal. The Submittal Requirements Checklist provides a

description of the requirement and content of each form, document, and plan details needed. The checklist also provides the applicant with information references regarding the required fees and deposits.

All MO CUP applications will go through a three step completeness review process to ensure that all of the required information is provided to review the project.

A. Step One: Initial Screening

One copy of all items noted in the checklist below must be provided during this first initial screening step:

1. General Application (DS-3032).
2. Deposit Account/Financially Responsible Party Form (DS-3032).
3. Ownership Disclosure Statement (DS-318).
4. Proof of Ownership/Legal Lot Status (Grant Deed).
5. Storm Water Requirements Checklist (DS-560).
6. Photographic Survey photo and CD-R.
7. Site plan with development summary.
8. Floor plan.
9. Elevations if proposing exterior modifications.
10. Historic Resources Information (See Information Bulletin 580) if exterior alterations are proposed on a structure 45 years or older.
11. Fees (see Information Bulletin 503 & Section V of this bulletin).
12. Climate Action Plan (CAP) Consistency Checklist.
13. In addition to the submittal requirements for CUP, the following information is required:
    a. 1000-foot Radius Map.
       i. Provide a one page Assessor's parcel map outlining a 1000-foot radius around the subject property. Include a spreadsheet identifying the use, address, assessor parcel number, and business name for all properties within the 1,000 foot radius.
       ii. The map must also identify residential zones within 100 feet of the property.
    b. Affidavit for MO/MPF for Conditional Use Permit (CUP) (DS-190).

Please note that if all required forms above are not completely filled out and/or signed, the application will be rejected. Once staff has determined that the submittal application contains all of the required information listed above, your application will then go to Step Two, known as Submitted Completeness Review.

B. Step Two: Submitted Completeness Review

If your project application meets the minimum requirements described in Step One above, your project will then go through the Step Two comprehensive review called Submitted Completeness Review. Submitted Completeness Review can take up to 30 (calendar) days to complete. The Public Notice Package will not be required as part of the Submitted Completeness Review, but will be collected at the time of Full Submittal. Upon completion of the Submitted Completeness Review, staff will notify the applicant via email or by postal mail whether the application is ready to be fully submitted or if additional information/clarification is required.

C. Step Three: Full Submittal

When the project is ready for a Full Submittal, staff will provide the applicant with the number of document sets required, including the request for the Public Notice Package. Once staff accepts

the Full Submittal, the project will then be assigned to a project manager and routed to the required reviewers. Once four (4) projects per each council district have obtained final approval from the City's decision-maker, no more applications can be approved.

V. DEPOSIT/FEES

The deposit and fees must be paid at the time of Step One: Initial Screening (see Information Bulletin 503 "Fee Schedule for Development & Policy Approvals/Permits").

VI. PUBLIC SAFETY PERMIT

MOs must obtain a MO/MPF Permit (Form DS-191) from the Development Services Department pursuant to Chapter 4, Article 2, Division 15 of the San Diego Municipal Code. Applications for a MO/MPF Permit will be processed after the approval of the Conditional Use Permit. Subsequent annual MO/MPF Permit renewals or any updated fingerprinting and background checks can be processed by the Development Services Department with the submittal of a General Application Form DS-3032 and fee payment for Single Discipline Preliminary Review (see Information Bulletin 513).

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:
Date:
10-31-2016

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:
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:

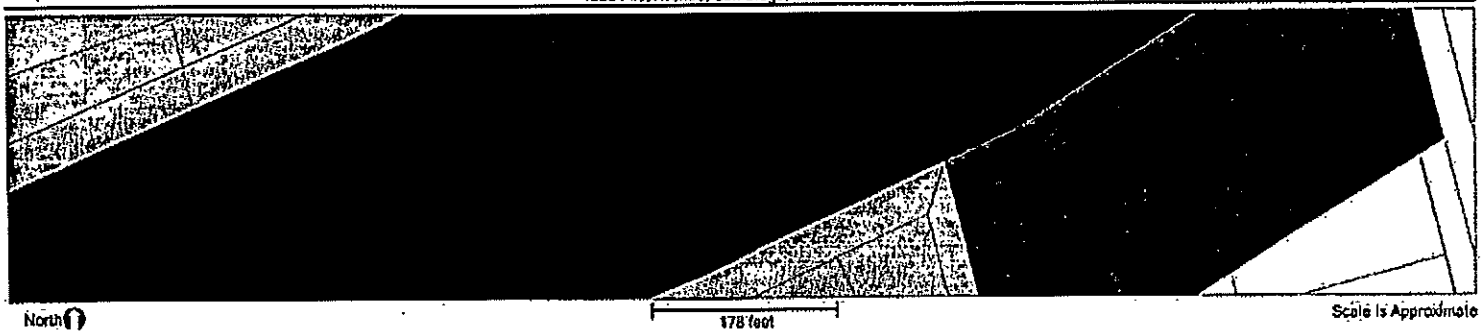
Name of Individual (type or print):
☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
City/State/Zip:
Phone No:
Fax No:
Signature:
Date:

Parcel Information Report

3/20/2018 09:29:03

THE CITY OF SAN DIEGO
Development Services Department
1222 First Avenue, San Diego, CA 92101-4154

Report Number 101



Map Layers Included In Report

Description	Visible	Transparent	Has Intersecting Features
Roads	☑		No
Freeways	☑		No
Parcels	☑	☑	Yes
Lots	☐	☐	No
Base Zones ("Official Zoning Map")	☑	☐	Yes
Community Plan	☐	☐	Yes
Clairemont Mesa Height Limitation Overlay Zone	☐	☐	No
Coastal Height Limitation Overlay Zone	☐	☐	No
Coastal Overlay Zone (Permit Jurisdictions)	☐	☐	No
Earthquake Fault Buffers	☐	☐	No
Elevation Contours (5 foot; 1999)	☐		Yes
MSCP Vegetation	☐	☐	Yes
Multiple Habitat Planning Area	☐	☐	No
Non-Coastal Wetlands	☐	☐	No
Sensitive Coastal Overlay Zone	☐	☐	No
Sensitive Vegetation	☐	☐	No
Slopes 25% or greater (1999)	☐	☐	No
Vernal Pools	☐	☐	No
Airport Land Use Compatibility Overlay Zone	☐	☐	No
Airports: ALUCP Noise Contours (CNEL)	☐	☐	No
Airports: Airport Approach Overlay Zone (SDIA)	☐	☐	No
Airports: Airport Influence Areas	☐	☐	No
Airports: FAA Part 77 Noticing Area	☐	☐	No
Airports: Old SDIA Airport Influence Areas	☐	☐	No
Airports: Old SDIA Noise Contours (CNEL)	☐	☐	No
Airports: Old SDIA Safety Zones (RPZ)	☐	☐	No
Airports: Safety Zones	☐	☐	No
Community Plan Implementation Overlay Zone	☐	☐	No
FEMA Floodways & Floodplains	☐	☐	Yes
Facilities Benefit Assessment	☐	☐	No
Fire: Brush Management	☐	☐	No
Fire: Brush Zones with 300 Foot Buffer	☐	☐	Yes
Fire: Very High Fire Hazard Severity Zones	☐	☐	Yes
First Public Roadway	☐	☐	No
Historic Districts: Existing	☐	☐	No
Historic Districts: Potential	☐	☐	No
Historic Resources: Designated (points)	☐		No
Historic Resources: Potential, Greater North Park	☐	☐	No

APRATHER

Map Layers Included In Report

Description	Visible	Transparent	Has Intersecting Features
Port District Dedicated Streets	☐	☐	No
Port District Granted & Conveyed Lands	☐	☐	No
Prime Industrial Lands	☐	☐	No
Promise Zone	☐	☐	No
Redevelopment Districts	☐	☐	No
Urban Vilage Overlay Zone	☐	☐	No
Geologic Hazards	☐	☐	Yes
Parking Impact Overlay Zone	☐	☐	No
Residential Tandem Parking Overlay Zone	☐	☐	No
Transit Area Overlay Zone	☐	☐	No
Transit Priority Areas	☐	☐	No

Intersecting Features

Parcels

APN	Recordation	Owner Information	Valuation		Other
543-020-0200	Record: 102763 Date:2/27/1998	COTTON DARRYL	Land:	$133,274	Units: 0
	Legal:	6184 FEDERAL BLVD	Imp:	$60,698	Taxable: ☑
Address(es)	BLK 25 LOT 20 PER MAP 2121	SAN DIEGO CA 92114	Total:	$193,972	Own Occ: ☐
6176 FEDERAL BL					

Base Zones ("Official Zoning Map")

Zonename	Ordinance Number	Implementation Date
CO-2-1	O-20580 NS	01/14/2015

Community Plan

Community Plan Name	Code
ENCANTO NEIGHBORHOODS,SOU	11

Elevation Contours (5 foot; 1999)

Elevation
275

MSCP Vegetation

Feature Name	Feature Detail
Urban Developed	Holland 95 Code: 12000 / Holland 90 Code: 12000 / Category: NON-NATIVE VEGETATION

FEMA Floodways, Floodplains

Feature Name	Feature Detail
Flood Designation: FP500	Flood Zone: 0.2 PCT ANNUAL CHANCE FLOOD HAZARD / Special Flood Hazard Area? NO / Floodway? NO

Fire: Brush Zones with 300 Foot Buffer	
Feature Name	**Feature Detail**
300 Foot Buffer Zone	

Fire: Very High Fire Hazard Severity Zones	
Feature Name	**Feature Detail**
Very High Fire Hazard Severity Zone	

Geologic Hazards	
Code	**Hazard**
32	Liquifaction; Low Potential - fluctuating groundwater minor drainages

Darryl Cotton
6176 Federal Avenue
San Diego, CA 92114
619-266-4004 (phone)
619-229-9387 (fax)

PRO PER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual, and DOES 1-10, inclusive,

Defendants.

AND RELATED CROSS-ACTION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants.

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

Real Parties In Interest.

Case Nos.:
37-2017-00010073-CU-BC-CTL
37-2017-00037675-CU-WM-CTL

VERIFIED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DARRYL COTTON'S RESPONSE TO (1) MOTION BY PLAINTIFF/CROSS-DEFENDANT LARRY GERACI AND CROSS-DEFENDANT REBECCA BERRY TO COMPEL THE DEPOSITION OF DARRYL COTTON AND (2) MOTION BY REAL PARTIES IN INTEREST, LARRY GERACI AND REBECCA BERRY, TO COMPEL THE DEPOSITION OF DARRYL COTTON

Date: January 25, 2018
Time: 8:30 a.m.
Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

I. LEGAL INTRODUCTION

I, Darryl Cotton (Cotton or Petitioner), Defendant and Cross-Complainant in the matter against Larry Geraci (Geraci or Respondent) and Rebecca Berry (Berry) and Petitioner/Plaintiff

in the matter against the City of San Diego (City), submit these points and authorities in opposition to the two motions before this Court seeking to compel my deposition (Motions to Compel). As fully argued below, the technical basis of my opposition is that, as a result of the professional negligence of my then-counsel and the facts of this case, when this Court made a factual finding that I am unlikely to prevail on my cause of action for breach of contract and denied my Application for a Temporary Restraining Order (TRO Motion) on December 7, 2017, it "abused its discretion."

Consequently, pursuant to CCP §§ 904.1(a)(6), 923 and the *Emeryville* line of cases, a Writ of Supersedeas and Writ of Mandate is warranted and the Motions to Compel should be denied while my appeals are reviewed by the Court of Appeals (COA).[1] I respectfully submit that the only issue that this Court needs to fully understand to decide these Motions to Compel is whether this Court would have made a different factual finding regarding my likelihood of success on the merits of my cause of action for breach of contract had my then-counsel not been negligent at the oral hearing and raised with this Court a single 1-page email.

II. PLAIN LANGUAGE INTRODUCTION AND RESPECTFUL REQUEST

The real reason I will be before this Court on January 25, 2018, once summarized in this introduction, will make me sound like I am paranoid, suffer from delusions of being the target of numerous conspiracies and will almost assuredly make me lose all credibility with this Court at the very onset. "From Oswald to Elvis, from Ollie to O.J., allegations of conspiracy have become the stuff of tabloid journalism and have the ring of a slug coin. The history of conspiracy, it has been observed, evidences the 'tendency of a principle to expand itself to the limit of its logic.' [Krulewitch v. United States, 336 U.S. 440, 445 (1949) (quoting Benjamin N. Cardozo, The

[1] *See* E. Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E ("Stay" to preserve status quo following denial of TRO or injunction: Where a temporary restraining order or injunction has been denied and the defendant threatens to perform the act in question, a stay of the trial court order obviously will not "preserve the status quo." Here, the appellate court has authority to issue a "stay" (as distinguished from supersedeas) enjoining defendant from doing the action in question pending the appeal. [CCP § 923—court of appeal may "make any order appropriate to preserve the status quo" during pendency of an appeal; *People ex rel. San Francisco Bay Conservation & Develop. Comm'n v. Town of Emeryville*, supra, 69 C2d at 536-539, 72 CR at 792-794].).

Nature of the Judicial Process 51 (1925)).]"[2]

Your Honor, for the first time in my life I understand the concept of cognitive dissonance. I believe myself to be a man of reason and logic. Although I am not an attorney, I can understand the application of laws and principal to facts to analyze a situation and determine whether a cause of action is met. I firmly and completely believe that based on the facts of my case, the law and my reasoning below, that it is very simple and clear that this case brought by Geraci was done in bad-faith in an attempt to acquire my property, the main subject matter of this litigation, through a vexatious lawsuit. Further, that once this Court confirms my allegations of actions taken by counsel during the course of this litigation, that this Court will be absolutely appalled that our judicial system has been used so blatantly and disrespectfully as an instrument of misjustice.

However, despite believing in what I stated in the preceding paragraph 100%, I have been before Judge Sturgeon and this Court on [seven] occasions and not only has there been no outrage, with the exception of one motion, all of my motions have been denied and this Court even made a factual finding that I am unlikely to prevail on the merits of my case. Clearly, I am missing something. I am left to conclude that the reason for this paradox is probably one of two causes.

First, what I <u>believe</u> and <u>hope</u> to be the case, the negligent and/or potentially fraudulent actions by counsel in this action have prevented Judge Sturgeon and this Court from properly focusing on the substantive facts of this case and providing me appropriate lawful relief. Further, due to intense stress and my own lack of ability to properly articulate myself before this Court, I have not been able to communicate clearly and reasonably to this Court when I personally have been before it. I realize that this imposes a burden and makes it more difficult for this Court "to get quickly to the crux of a matter and to craft creative problem-solving orders for [pro se] litigants."[3]

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[2] Governmental Conspiracies to Violate Civil Rights: A Theory Reconsidered. Michael Finch. Montana Law Review Volume 57. Issue 1 Winter 1996. Page 1.

[3] *See* Handling Cases Involving Self-Represented Litigants. Administrative Office of the Courts. January 2007. Page xi. ("[S]elf-represented litigants often have difficulty preparing complete pleadings, meeting procedural

It is for this reason that, although I believe Mr. Weinstein filed the instant Motions to Compel as a vexatious litigation tactic, I am grateful that he did. It gives me a lawful and procedurally appropriate forum to fully explain the substantive issues to this Court and not have Mr. Weinstein be able to have this response stricken or denied on some procedural grounds that elevate form over justice.

As noted above, I am applying for a Writ of Supersedeas: "The issuance of a writ of supersedeas is not based on any statute, code section, or rule of court, but is within the inherent power of the court. Whether or not a writ should issue depends '*upon the special circumstances of each case*' (*West Coast etc. Co. v. Contractors' etc. Board, 68 Cal.App.2d* 1, 6 [155 P.2d 863])." (*internal citations omitted.*)[4] Additionally, pursuant to my appeal for a Writ of Mandate, relevantly and as summarized in the Rutter Guide:

> "Mandate will issue only if the following requirements are met:
>
> [1] No adequate remedy and irreparable injury...
>
> > However, notwithstanding an adequate remedy by appeal, a petition for writ of mandate may be granted in *exceptional circumstances*—e.g., where the issue presented is of great public importance requiring prompt resolution and/or constitutional rights are implicated. [See, e.g., Anderson v. Super.Ct. (1989) 213 CA3d 1321, 1328, 262 CR 405, 410; Silva v. Super.Ct. (Heerhartz) (1993) 14 CA4th 562, 573, 17 CR2d 577, 583; and ¶ 15:6.1 ff.]
>
> [2] ... Additionally, the petitioner must demonstrate an abuse of discretion or respondent's failure to perform a nondiscretionary duty to act."[5]

It is the "special/exceptional circumstances" arising from the acts of counsel in this matter, affecting the judiciary, deceiving this Court and the perception of access to justice by the public in our judicial system that makes what was originally a very simple contractual dispute a case "of great public importance requiring prompt resolution..."[6]

Thus, assuming I am not crazy, I believe that if the irreparable harm that I am facing is

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requirements, and articulating their cases clearly to the judicial officer. These difficulties produce obvious challenges.")

[4] *Sun-Maid Raisin Growers of Cal. v. Paul* (1964) 229 Cal.App.2d 368, 374-375 [40 Cal.Rptr. 352]

[5] B.Common Law Writs, Cal. Prac. Guide Civ. App. & Writs Ch. 15-B (emphasis added.)

[6] Id.

allowed to pass, then as stated by the Supreme Court of California, public confidence in the judiciary will be eroded and this case "will reinforce an already too common perception that the quality of justice a litigant can expect is proportional to the financial means at the litigant's disposal." *Neary v. Regents of Univ. of California*, 3 Cal. 4th 273, 287, 834 P.2d 119, 127–28 (1992).

However, there is the second possibility, which is that I am simply not reasoning well and have had some form of mental or psychological impairment. And I am actually before this Court wasting this Court's precious judicial time and resources. This is, I am forced to conclude, a possibility, because December 12, 2017, when this Court denied my Motion for Reconsideration, was the worst day of my life. As explained below, I was 100% positive that when I appeared before this Court on that day, I would be able to explain my then-counsel's negligence at the December 7, 2017 TRO Motion hearing, this Court would change its position and issue the TRO. Instead, my Motion for Reconsideration was denied and, given my expectations of having "my day in court," I was in so much shock that I suffered a mini-stroke, a TIA, and had to go to the Emergency Room (see **Exhibit 1**; medical records from admission to Mercy Scripps Hospital). The next day, when my financial investor told me, as a result of the denial of my Reconsideration Motion, that he was going to cease funding my business and this litigation because he needed to "cut his losses," I went to his location uninvited and physically assaulted him. (See **Exhibit 2** - Supporting declaration of Joe Hurtado.) He was going to call the police and have me arrested. I will forever be grateful that he did not and instead called a medical doctor who found me to be a danger to myself and others (See **Exhibit 3**; Declaration of Dr. Carolyn Candido stating that I was a danger to myself and others and was suffering from Acute Stress Disorder).

In light of the above, I am open to the fact that I am not thinking clearly and would like to respectfully request that this Court, when determining whether to grant or deny the Motions to Compel, that it please provide a written opinion regarding my allegations of facts, law and reasoning below that make up the "special/exceptional circumstances" of my case and which are

the basis of my appeal. To be completely clear, I fully recognize that, especially if I am simply delusional, this Court has no obligation to me whatsoever to provide any reasoning.[7] But I ask the Court to please believe me when I say that I am incapable of expressing in written words here the everyday anguish I face thinking that I am losing everything of value in my life, that I am letting down my family, friends and business partners of over 20 years, and that I will soon be destitute due to Geraci's vexatious lawsuit and the negligent actions of counsel who failed to live up to their ethical obligations. I fear if I am not thinking clearly and there are legal, valid, and substantive reasons for the things that have happened, I may not be able to fully understand the legal concepts that justify such actions (however personally I disagree with them). A written opinion that I can slowly review and research the legal language and concepts of, analyzing my arguments below, would truly and sincerely be appreciated. It would, as perverse as it sounds, be a source of great solace to me. Understanding that Geraci's lawsuit against me has some modicum of merit would be a great relief to me and would take away what is the unfounded every day, relentless and intense rage I have against Geraci and counsel in this case and the despair that I feel at being unable to access justice because I cannot, with my limited time and resources, navigate the complexities of what is supposed to also be my judicial system.

III. MATERIAL FACTUAL BACKGROUND

A. Summary of Sole Underlying and Case Dispositive Issue in this Matter (the "Real Issue")

In November of 2016, Petitioner and Respondent met and came to an oral agreement for the sale of Petitioner's Property to Respondent (the "November Agreement"). Materially, at the

[7] See Nakamura v. Parker (2007) 156 Cal.App.4th 327, 335–336 [67 Cal.Rptr.3d 286, 290] ("Where, as here, a trial court is not explicitly required by law to state reasons for the decision rendered, the integrity of adjudication does not *necessarily* require an explanation; but that certainly does not mean a court *should* decline to provide any reasons for a ruling. "By and large it seems clear that the fairness and effectiveness of adjudication are *336 promoted by reasoned opinions. Without such opinions the parties have to take it on faith that their participation in the decision has been real, that the arbiter has in fact understood and taken into account their proofs and arguments. A less obvious point is that, where a decision enters into some continuing relationship, if no reasons are given the parties almost inevitably guess at reasons and act accordingly. Here the effectiveness of adjudication is impaired, not only because the results achieved may not be those intended by the arbiter, but also because his freedom of decision in future cases may be curtailed by the growth of practices based on a misinterpretation of decisions previously rendered." (Fuller, The Forms and Limits of Adjudication (1978) 92 Harv. L.Rev. 353, 388.)".)

meeting at which the parties reached the November Agreement, Respondent (i) provided Petitioner with $10,000 in cash to be applied towards a total non-refundable deposit of $50,000 and had Petitioner execute a document to record his receipt of the $10,000 (the "Receipt") and (ii) promised to have his attorney speedily draft and provide final, written purchase agreements for the Property that memorialized all of the terms that made up the November Agreement (the "Final Purchase Agreement").

On the same day the November Agreement was reached, Respondent emailed Petitioner a scanned copy of the Receipt. Petitioner, recognizing the Receipt could be construed as the final purchase agreement for the Property, emailed back asking Respondent to specifically confirm the Receipt was not the final purchase agreement as it failed to incorporate material terms. Respondent replied, acknowledging Petitioner's request for his confirmation and specifically providing said confirmation that the Receipt was not the Final Purchase Agreement (the "Confirmation Email"). (See **Exhibit 4** (contains all 14 emails between Geraci and myself. There are no other written documents or communications between myself and Geraci other than text messages.)

Thereafter, Respondent breached the November Agreement by, *inter alia*, failing to provide (i) the balance of the non-refundable deposit and (ii) the Final Purchase Agreement. Consequently, almost five months later in March of 2017, Petitioner terminated the November Agreement with Respondent for breach. After terminating the November Agreement with Respondent, Petitioner entered into a written real estate purchase agreement with a third-party for the sale of the Property (the "Real Estate Purchase Agreement"). (**Exhibit 5**; the Third-Party Purchase Agreement.)

After Petitioner terminated the November Agreement, Respondent filed the underlying lawsuit seeking to stymie the Real Estate Purchase Agreement and to acquire the Property through a vexatious lawsuit ("Respondent's Lawsuit"). Respondent's Lawsuit is premised solely and exclusively on the allegation that the Receipt is the Final Purchase Agreement. Thus, putting aside an overwhelming amount of additional and undisputed evidence, Respondent's own written

admission in the Confirmation Email stating the Receipt is not the Final Purchase Agreement is completely damning and dispositive. (See **Exhibit 4.**)

Respondent has never, (i) in the almost five months between his sending of the Confirmation Email and the termination of the November Agreement or (ii) in any pleading or oral argument in the two underlying civil matters to date, challenged, disputed, denied or even acknowledged his own written admission in the Confirmation Email that the Receipt is not the Final Purchase Agreement - in complete contradiction of his own complaint. Furthermore, Respondent has neither produced nor even alleged the existence of a single piece of evidence to support his contention that the Receipt is the Final Purchase Agreement.

Respondent's entire and sole superficial litigation strategy has been to rely on the Statute of Frauds ("SOF") and the Parol Evidence Rule ("PER") to prevent the admission of his Confirmation Email. However, the trial court denied Respondent's Demurrer based on the SOF and the PER. Moreover, even if the trial court had held that the SOF and the PER did apply in the first instance, the legal concept of promissory estoppel in California undeniably makes clear that Respondent's reliance is misplaced. The seminal case of *Monarco* makes clear that Respondent's actions in this case would be an unconscionable act and result in his unjust enrichment. Thus, with no just basis for filing Respondent's Lawsuit, the only reasonable conclusion that can be reached is that Respondent did so to unjustly acquire Petitioner's Property through a vexatious lawsuit.

B. Additional Material Background

Petitioner initially, given the simple nature of the Real Issue, believed that he would be able to represent himself pro se against Respondent's Lawsuit. Petitioner prepared and filed an Answer to Respondent's Lawsuit and a Cross-Complaint. Petitioner's Answer and Cross-Complaint were denied by the Court for failing to comply with procedural requirements. Petitioner realized, notwithstanding the simplicity of the Real Issue, that he would be unable to efficiently represent himself in a legal proceeding and entered into an agreement with a third-party to finance the litigation (the "Investor") against Respondent's Lawsuit in exchange for a

portion of the proceeds that he would receive from the Real Estate Purchase Agreement.

Investor did research, interviewed and hired a local law firm that had successfully handled a similar matter for a landlord (the "Similar Lawsuit"). The Investor negotiated with Mr. Demian for Mr. Demian to fully represent Petitioner and to provide his services on a financed agreement of $10,000 a month. The understanding was that the law firm would fully represent Petitioner to have Respondent's Lawsuit adjudicated as quickly and efficiently as possible. Thus, if in any given month the law firm billed more than $10,000, the balance would be carried over and made up for in future months in which there was less than $10,000 a month billed or upon conclusion of Petitioner's legal actions. (See **Exhibit 6**; email with Mr. Demian regarding $10,000 payment and retainer agreement with Mr. Demian.)

The reality was, the law firm did not want to actually do more than $10,000 of work a month. It heavily resisted doing the work necessary and preparing the Shortening Time and TRO Motions. The end result was that Petitioner's counsel was ill-prepared for the hearings and, most egregiously, completely failed to represent Petitioner's interest at the TRO Motion hearing. Specifically, as fully detailed below, Petitioner's TRO motion argued that Petitioner would more likely than not prevail on his Causes of Action for Breach of Contract and Declaratory Relief. Petitioner's moving papers put forth three arguments in support of his likelihood to prevail on his Breach of Contract claim and, essentially, one argument in support of his Declaratory Relief claim.

Summarily, the three arguments in support of his Breach of Contract claim are that (i) the undisputed communications between the parties, including the Confirmation Email, make clear that the Receipt is not the Final Purchase Agreement as Respondent alleges, (ii) that the trial court had already denied Respondent's attempt to utilize the SOF and the PER to prevent the admission of the Confirmation Email when it denied Respondent's Demurrer and (iii) even if the trial court were to have ruled otherwise or change its view, the concept of promissory estoppel would clearly prevent the use of the SOF and the PER to effectuate an unconscionable fraud or unjust enrichment, which would take place here if the Confirmation Email were prevented from

being legally taken notice of here as Respondent argues. The argument in support of the Declaratory Relief claim is based on a property owner's constitutional right to determine who may use his property as he sees fit – the exact same legal reasoning used by Petitioner's then-counsel to prevail in the previous Similar Lawsuit.

C. The TRO Motion Hearing

At the TRO Motion hearing, counsel for Respondent referenced the Receipt and said, essentially, "your Honor, we have a valid contract for the property, end of story." At this point, Petitioner's then-counsel should have, at the very least, raised the Confirmation Email and explained to this Court that there was undisputed evidence that completely contradicted Respondent's own argument and that the Receipt was the final purchase agreement for Petitioner's property. He did not. Instead, he argued solely the constitutional grounds for prevailing on the Declaratory Relief cause of action, which, unsurprisingly, did not persuade this Court. Consequently, this Court made factual findings that I was unlikely to prevail on the merits of my cause of action for breach of contract and that I was facing no Irreparable harm.

The only relief sought by Petitioner via the TRO was that Respondent be enjoined from withdrawing and/or sabotaging the CUP application pending on the property and that a Receiver be appointed to oversee the CUP application pending resolution of Respondent's Lawsuit. Petitioner, for valid reasons below, simply wanted to have Respondent enjoined from sabotaging the CUP application pending resolution of Respondent's Lawsuit and the court addressing the Real Issue. During the TRO Motion hearing, the trial court judge reviewed the proposed order submitted by Petitioner and asked opposing counsel what was wrong with an agreement by Respondent or an order enjoining such action, to which Respondent's counsel replied that there was nothing specific, just the conceptual notion that his client should not be prevented from being able to do as he wished. The court did not pursue this line of reasoning further.

In other words, the very action that Petitioner sought to prevent was *de facto* approved of by the trial court. As explained below, withdrawing and/or sabotaging the CUP application is, from Respondent's perspective, the best and only reasonable course of action to take in order to

mitigate his damages to Petitioner – assuming Petitioner is able to get to a point in the judicial system in which the Real Issue will be reviewed and adjudicated by the court. Thus, having the trial court specifically allow the very course of action that will irreparably harm Petitioner is maddening and a source of every day extreme psychological and emotional distress.

Immediately after the TRO hearing, Investor called and informed Petitioner about his then-counsel's failure to raise the Confirmation Email or any of the other arguments in support of his Breach of Contract claim. After speaking with Investor and his then-counsel, Petitioner fired his then-counsel. Thereafter, Petitioner filed his Reconsideration Motion and the aftermath of what happened after its denial is described above in the introduction.

D. Ethical Violations by Counsel

After the denial of my Motion for Reconsideration, I made numerous calls to the State Bar of California and calls to its Ethics Hotline regarding the actions of Mr. Demian. Based on my descriptions of what took place at the TRO Motion hearing, I was directed to various ethics opinions and judicial cases (set forth below), that support the position that Mr. Demian was, at the very least, professionally negligent. Of note, it appears, *all* counsel present violated their ethical duties that day when they failed to raise with your Honor the fact that my counsel had been negligent in raising with this Court the single most material and dispositive piece of evidence that was in the moving papers. As noted in one of the ethics opinions, referencing the following Court of Appeals case:

> "[A]n attorney has a duty not only to tell the truth in the first place, but a duty to '*aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.*' (51 Cal.App. at p. 271, italics added.) Observance of this duty, we might add, prevents the waste of judicial resources, and the opposing party's time and money.[8]

I will, after submission of this pleading to this Court, begin compiling my email records with Mr. Demian, Mr. Weinstein and Ms. Austin and intend to file complaints against each of them with the State Bar of California regarding their actions in this case. As to Mr. Weinstein

[8] *Datig v. Dave Books, Inc.* (1999) 73 Cal.App.4th 964, 980–981 [87 Cal.Rptr.2d 719], as modified on denial of reh'g (Aug. 13, 1999)

and Ms. Austin, for bringing and maintaining a lawsuit with no probable cause. And, as to Mr. Demian, for his professional negligence and, as argued below, potentially fraudulent behavior.

D. Emotional and Financial Pressure

Submitted herewith to this Court is the Secured Litigation Financing Agreement, which, because of confidentiality provisions and with this Court's approval, shall not be made public. However, as detailed therein, because of this litigation, I have been continually forced to sell and negotiate for financing for my businesses, personal, professional and litigation needs. To summarize, on March 21, 2017, when I sold my Property to the Third-Party Buyer, provided the CUP was issued, I was going to receive $2,000,000; a 20% equity stake in the business; and a guaranteed $10,000 a month payment for 10 years (minus agent and transaction fees). Assuming the CUP was not issued, I would have received $100,000 and kept my Property, from which I have run my business and non-profit 151 Farms for over 20 years. As of the day I submit this pleading with this Court, if I fail to prevail in this litigation, given all of the liens against my Property required to finance this litigation, I will be left completely destitute and with no home.[9]

ARGUMENT

A. Due to Counsel's Negligence, the Court Incorrectly Denied my TRO Motion

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

a. Geraci Breached The Agreement Reached on November 2, 2016

Neither party disputes an agreement was reached on November 2, 2016. However, as described above, Geraci's contention that the November Receipt is the full and final agreement between the parties for the purchase of the Property is completely contradicted by his own admission on the same day the November Receipt was executed. *See* Exhibit 4.

As noted, Geraci has never contested the Confirmation Email and, thus, Geraci's

[9] See supporting declarations of Darryl Cotton,

subsequent silence show that he admits the existence of those terms – specifically, that "any final" agreement, would contain my 10% equity stake. (*See, e.g., Keller v. Key System Transit Lines* (1954) 129 Cal.App.2d 593, 596 ["The basis of the rule on admissions made in response to accusations is the fact that human experience has shown that generally it is natural to deny an accusation if a party considers himself innocent of negligence or wrongdoing."].

b. Geraci and Berry's Reliance on the Statute of Frauds and the Parol Evidence Rule Is Misplaced

It appears that Geraci's complaint and his entire defense to my cross-complaint is premised on the Statute of Frauds. As discussed above, Geraci's admission that the November Receipt is not the final agreement is damning and dispositive. His attempt to cling to a 3-sentence one page document as the be-all end-all for our deal is not credible under any reasonable interpretation of the evidence. The fact is, the 3-sentence one page document is, on its face, ambiguous and the terms we actually agreed upon are reflected in our emails and texts, which are reliable, credible, and controlling. Indeed, the Court previously ruled as such on November 6, 2017, when it ruled against Geraci's statute-of-frauds-and-parol-evidence-rule-based demurrer. Thus, with the Court's ruling, there is no legal basis at all on which Geraci can prevail in this action.

Moreover, the statute of frauds does not apply and is not permitted to be used for an unconscionable fraud or to unjustly enrich a third party, which would be the result if the Court were now to cancel its previous determination that the Statute of Frauds is no bar to Cotton. The California Supreme Court is clear on this point – the doctrine of promissory estoppel has been "consistently applied by the courts of this state to prevent fraud that would result from refusal to enforce oral contracts in certain circumstances." (*Monarco v. Lo Greco* (1950) 35 Cal.2d 621, 623.) Per the agreement reached by the parties in November, Geraci was to pay $800,000 and ensure I received at least $10,000 a month from operations of the MMCC which would last for an estimated 10-year period at minimum. This is an obligation of approximately $2,000,000. Thus, Geraci is estopped from asserting the statute in this case as it is both an unconscionable act

and it would result in an unjust enrichment to Geraci of $1,200,000 – minimum.

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

It is clear based on the above that Geraci brought this action with no probable cause attempting to acquire the property through a vexatious lawsuit. However, at some point, any party who brings a lawsuit with no probable cause will realize, as the case progresses, that the trial court will be able to determine what is really going on. At that point, any such party must take what actions they can to mitigate their actions. I realized that, which was the basis of my TRO request. I believed I would ultimately prevail on the merits of my case, but wanted to ensure that Geraci could not withdraw and/or sabotage the CUP application to mitigate his damages to me.

Ahbay Schweitzer is an architect, a building designer and the owner of Techne, a local design firm that was engaged by Larry Geraci to acquire the CUP at the Property. Schweitzer is Geraci's exclusive agent. Per Schweitzer's declaration regarding the issuance of the CUP at the Property, he has:

> "Been engaged in the application process for this CUP application for approximately twelve (12) months so far...[and] [t]here is one major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the next six (6) weeks." (See **Exhibit 7** - Declaration of Abhay Schweitzer.)

Schweitzer executed his declaration on October 20, 2017. Thus, it is possible that Geraci, now realizing that at this point the truth would come out, may already have taken steps to covertly sabotage the CUP application to prevent it from being issued. This is my biggest fear. Though I am distressed every day because of this entire situation, the denial of the TRO is what is driving me literally insane – the fact that every day that has passed since the TRO motion was denied has made it clear to Geraci that he is going to lose and he has had so much time to take covert actions to sabotage the CUP application in a way that will not be possible to discern and will prevent him from being legally liable. By doing so, if I ultimately prevail in this lawsuit, his damages will have been mitigated by ***millions***.

I note, per Mr. Schweitzer's declaration, the second most important and final item that

will be required to issue the CUP is a public hearing which he estimates to take place in March. In other words, Geraci still has the ability to sabotage the CUP application before this matter is even scheduled for trial.

The harm I face is all-encompassing, affecting my professional, personal, and every aspect of my life. Those who are close to me have seen me slowly be worn down, but the mental and psychological stress is real. The negative effect to me and everything of import in my life is read. Please see my supporting declaration submitted herewith, as well as those of (i) Don Casey, (ii) Michael Kevin McShane, (iii) Shawna Salazar, (iv) Sean Major, (v) Cindy Jackson, (vi) James Whitfield, (vii) Michael Scott McKim and (viii) Cheryl Morrow (all attached hereto as **Exhibit 15)**

B. Writ of Supersedeas

"A writ of supersedeas may be granted only upon a showing that (a) appellant would suffer irreparable harm absent the stay, and (b) the appeal has merit. [See *Smith v. Selma Community Hosp.* (2010) 188 CA4th 1, 18, 115 CR3d 416, 432].[10]

As argued above, (i) I will suffer irreparable harm if Geraci is allowed to withdraw and/or covertly sabotage the CUP application and (ii) my appeal has merit because, but for Mr. Demian's incompetence, this Court would have approved my TRO application.[11]

> "CCP § 923 grants the appellate court virtually unlimited discretion to make orders to preserve the status quo in protection of its own jurisdiction, including issuance of a stay order other than supersedeas. [CCP § 923; *People ex rel. San Francisco Bay Conservation & Develop. Comm'n v. Town of Emeryville* (1968) 69 C2d 533, 538-539, 72 CR 790, 793]
>
> (a) [7:274] **"Stay" to preserve status quo following denial of TRO or injunction:** Where a temporary restraining order or injunction has been denied and the defendant threatens to perform the act in question, a stay of the trial court order obviously will not "preserve the status quo." Here, the appellate court has authority to issue a "stay" (as

[10] E.Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E

[11] See Declarations of Darryl Cotton

distinguished from supersedeas) enjoining defendant from doing the action in question pending the appeal. [CCP § 923—court of appeal may "make any order appropriate to preserve the status quo" during pendency of an appeal; *People ex rel. San Francisco Bay Conservation & Develop. Comm'n v. Town of Emeryville*, supra, 69 C2d at 536-539, 72 CR at 792-794]"[12]

At the TRO hearing, your Honor reviewed the proposed TRO order and asked Mr. Weinstein what would be wrong with preventing his client from withdrawing the CUP application on the Property. Mr. Weinstein replied something to the effect that his client should not be prevented from doing as he wishes. (See **Exhibit 8** Declarations of Elizabeth Emerson (stating "At the hearing, the judge asked Mr. Weinstein what would be wrong with preventing the withdrawal of the CUP application. Mr. Weinstein replied something about his client having freedom to do what he wanted.") and Mr. Mass (stating "Mr. Demian, counsel for Mr. Cotton, did not raise any email arguments with the Court.")

In other words, given that Geraci brought forth this action to prevail with vexatious tactics and not anticipating I would be able to secure financial backers to hire counsel, he would at some point realize he will lose this case on the merits. In that case, knowing he would be liable for damages, but that those damages are exponentially higher if the CUP is issued, he would be incentivized to withdraw and/or through subterfuge have the CUP sabotaged so as to limit his liability. Thus, this Court unknowingly *de facto* allowed Geraci to take an action that is in his best interest but is unjust towards me – the destruction of the "fruits" that I would ultimately seek in the Court of Appeals if I lost this action or if he simply delays this action long enough to covertly sabotage the CUP application while he still has exclusive control.

Thus, even assuming I am incorrect about <u>some</u> facts and law above, allowing Geraci to withdraw the CUP as this Court allowed would deprive the COA of its jurisdiction and CCP § 923 is perfectly on point here because it "grants the appellate court virtually unlimited discretion to make orders to preserve the status quo in protection of its own jurisdiction, including issuance of a stay order other than supersedeas."

C. <u>Writ of Mandate</u>

[12] B.Stay by Writ of Supersedeas, Cal. Prac. Guide Civ. App. & Writs Ch. 7-E

A writ of mandate is appropriate where a beneficially interested petitioner has no plain, speedy and adequate remedy at law, and Respondent has a clear, present and ministerial duty, or has abused its discretion. (Code of Civ. Proc., § 1085; *see, e.g. Robbins v. Superior Court* (1985) 38 C3d 199, 205 ("*Robbins.*")) For the reasons argued above, this Court should reverse its position on the TRO Motion and direct the City to transfer control of the CUP application to me. Or, at least, as requested below, appoint a receiver to manage the CUP application until the merits of this action are finally adjudicated and prevent Geraci from sabotaging the CUP application.

D. Ethical Considerations

As noted above, the case law language below cited to in the ethical opinions of the State Bar of California, appears to be completely applicable here to the actions of counsel:

1. Per the Supreme Court of California, "Business and Professions Code section 6128 provides in relevant part: 'Every attorney is guilty of a misdemeanor who ... is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive ... any party.'" "That section [6128] and subdivision impose a duty on attorneys to 'employ ... such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by any artifice or false statement of fact or law.'"[13]

2. The State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2013-189 discusses "Deceitful Conduct" and cites to *Datig v. Dove Books, Inc.*, a Court of Appeals case that states the following (all emphasis in original text):

> ***Defense Counsel Failed to Do His Duty as an Officer of the Court and Acted in Direct Violation of the Trial Court's Local Rules***
>
> Business and Professions Code section 6068 provides, in relevant part: "It is the duty of an attorney to do *all* of the following: [¶] ... [¶] (b) *To maintain the respect due to the courts of justice and judicial officers.* [¶] (c) To *counsel or maintain such actions*, proceedings, or *defenses* only as appear to him or her legal or just, except the defense of a

[13] Silberg v. Anderson (1990) 50 Cal.3d 205, 219 [266 Cal.Rptr. 638, 786 P.2d 365], as modified (Mar. 12, 1990)

person charged with a public offense. [¶] (d) To *employ*, for the purpose of maintaining the causes confided to him or her *such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.*" (Italics added.)

Further, the Rules of Professional Conduct require that a member of the State Bar "[s]hall not seek to mislead the judge, judicial officer, or jury by an artifice or false statement of fact or law." (Rules Prof. Conduct, rule 5-200(B).) (4) " '*Honesty* in dealing with the courts is of paramount importance, and *misleading a judge is, regardless of motives, a serious offense.*' " (*Paine v. State Bar* (1939) 14 Cal.2d 150, 154 [93 P.2d 103], italics added; see also *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162-163 [162 Cal.Rptr. 458, 606 P.2d 765]; *Garlow v. State Bar* (1982) 30 Cal.3d 912, 917 [180 Cal.Rptr. 831, 640 P.2d 1106].) "Counsel should not forget that they are officers of the court, and while it is their duty to protect and defend the interests of their clients, *the obligation is equally imperative to aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.*" (*Furlong v. White* (1921) 51 Cal.App. 265, 271 [196 P. 903], italics added.)

[...] We therefore find it is necessary to state, explicitly, that although a misrepresentation to the court may have been made negligently, not intentionally, it is still a misrepresentation, and once the attorney realizes that he or she has misled the court, even innocently, he or she has an ***affirmative duty*** to immediately inform the court and to request that it set aside any orders based upon such misrepresentation; also, counsel should not attempt to benefit from such improvidently entered orders. As the court stated in *Furlong v. White*, an attorney has a duty not only to tell the truth in the first place, but a duty to "*aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice.*" (51 Cal.App. at p. 271, italics added.) Observance of this duty, we might add, prevents the waste of judicial resources, and the opposing party's time and money.[14]

3. The State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 2013-189 also states:

Even when no duty of disclosure would otherwise exist, "where one does speak he must speak the whole truth to the end that he does not conceal any facts which materially qualify those stated. [Citation.] One who is asked for or volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud." *Cicone v. URS Corp.* (1986) 183 Cal.App.3d 194, 201. See *Goodman*, supra, 18 Cal.3d at pp. 346-347 and *Shafer v. Berger, Kahn, Shafton, Moss, Figler, Simon & Gladstone* (2003) 107 Cal.App.4th 54, 72 [131 Cal.Rptr.2d 777].

See also *Vega*, supra, 121 Cal.App.4th at p. 294 ("it is established by statute 'that intentional concealment of a material fact is an alternative form of fraud and deceit equivalent to direct

[14] Datig v. Dove Books, Inc. (1999) 73 Cal.App.4th 964, 980–981 [87 Cal.Rptr.2d 719], as modified on denial of reh'g (Aug. 13, 1999)

affirmative misrepresentation' [citations omitted] . . . . In some but not all circumstances, an independent duty to disclose is required; active concealment may exist where a party '[w]hile under no duty to speak, nevertheless does so, but does not speak honestly or makes misleading statements or suppresses facts which materially qualify those stated.'" [Fn. omitted.]); *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 97 [111 Cal.Rptr.2d 711]; *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 608 [225 Cal.Rptr. 624].

Footnote 14 states:

Cal. State Bar Formal Opn. No. 1996-146 ("A lawyer acts unethically where she assists in the commission of a fraud by implying facts and circumstances that are not true in a context likely to be misleading."); cf. *Datig*, supra, 73 Cal.App.4th at pp. 980-81 (once attorney realized he had negligently misled the court, the attorney had an affirmative duty to immediately notify the court).

E. Application of Ethical Considerations

Your Honor, this section is the part that makes me sound like a conspiracy nut. Below I describe facts and provide documentation that can be independently verified. I respectfully request that, notwithstanding how outlandish my claims are, you please consider that maybe, just maybe, they are true and that numerous officers of the court have engaged in unethical behavior.

Attorney Gina Austin. First, Austin undisputedly knows that the Receipt is not the final agreement for my Property as she is the attorney that, after November 2, 2016, was drafting various versions of the purchase agreement for my property. She is named numerous times in emails and texts between myself and Geraci. (See **Exhibit 4.**)

On March 6, 2017, Geraci texted me "Gina Austin is there she has a red jacket on it you want to have a conversation with her." (See **Exhibit 9**; all of the text messages between Geraci and myself including the quoted one above, all of which also make clear that Geraci was stringing me along and make numerous drafts to contracts for the purchase of my property ***after*** November 2016.) Austin was the headnote speaker at a local cannabis event on that day. I was unable to make the event, but my Investor Mr. Hurtado was and he spoke with Austin briefly, letting her know that I would not be attending. (See **Exhibit 2**; Declaration of Joe Hurtado, Paragraph 4.)

Second, at the TRO Motion hearing, per the Supreme Court and COA language above, Austin had affirmative duty to inform Your Honor that Mr. Demian had been negligent in failing

to bring to your attention the Confirmation Email.

Based on the ethics language above, it appears to me that Gina Austin has violated numerous ethical duties by bringing and maintaining this action against me when she knows it is completely founded on a lie.

Attorney Michael Weinstein: First, I have an email from myself to Mr. Weinstein that I will not attach here because I do not want this pleading stricken from the record because of Litigation Privilege discussed in the ethics opinions cited above. But, I will bring copies with me to Court on January 25th. These emails to Mr. Weinstein recount the entire history of the dealings between Geraci and me and provide emails, texts and provide him the evidence he needed to know that his client Geraci had no probable cause to bring this lawsuit.

Second, I will not assume that Geraci told Weinstein about the draft purchase agreements that Austin was working on. Assuming it can be argued that Weinstein was not aware of the concept of promissory estoppel at the onset of this litigation and that he believed the SOF and the PER would prevent the Confirmation email, thus providing probable cause for this suit, no later than when this Court denied Geraci's demurrer, Weinstein knew this case had no probable cause and that maintaining it was simply a vexatious tactic to fraudulently acquire my Property.

Third, at the TRO Motion hearing, for the same reasoning put forth above, Weinstein was obligated to inform this Court about Mr. Demian's negligence and provide the Confirmation Email.

Fourth, after the oral hearing in front of your honor on January 18, 2018, Mr. Weinstein approached me to discuss access to the Property for soil samples to continue the CUP application and to discuss a possible settlement of this action regarding the Property and the CUP application. I am not clear what he means, Mr. Weinstein has had the Third-Party Purchase Agreement for since early in this litigation and it has been discussed. He knows I was forced to unconditionally sell my interest in the Property on April 15, 2017, to pay off debts and continue financing this litigation. See **Exhibit 5** ("Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities, his ownership, rights and interests in the property and the

associated CUP application pending before the City of San Diego for $500,000.") As that agreement makes clear, the condition precedent for closing is the successful resolution of this lawsuit. I am assuming that Mr. Weinstein wants me to engage in some kind of legal machinations by which I can void my agreement with the Third-Party Buyer so I can transfer the Property to Geraci. Even if there were some legal mechanism that would allow that (and it does not appear to me that is should be allowed in any circumstance as it would violate the implied covenant of good faith and fair dealing in every contract), I would not do so. Even if lawful, it is not ethical and it would make me just as bad as Geraci – the very idea of which is nauseating.

Attorney David Demian. First, Mr. Demian started off his representation on fraudulent grounds. My Investor, Mr. Hurtado negotiated a monthly $10,000 a month payment with him for his services. It was expressly discussed and negotiated that we would speedily and quickly resolve my legal matters as quickly as possible and that the $10,000 would not be a limitation. However, when he sent me the retainer agreement, it did not contain the $10,000 monthly financing concept. Mr. Hurtado spoke with Mr. Adam Witt, Mr. Demian's junior associate, who informed him that Mr. Demian did not want to put such a provision in the agreement because his partners would not like it. However, that he should not worry because so long as $10,000 was being paid, that my representation would not be impeded. Mr. Hurtado pushed back hard, being a former attorney, he knew that ultimately what mattered was the language. Mr. Witt spoke with Mr. Demian and called Mr. Hurtado and myself back, they proposed, and I am sure that they never would have anticipated that they would find themselves in this position, that execute the retainer agreement and that I note in the cover email our $10,000. I am assuming that they filed the retainer agreement with their firm Mr. Demian did not record the email reflecting our $10,000 a month agreement. At that point, the reasoning that they provided made sense, that so long as $10,000 was paid, that they would continue their services. I understand that businesses carry balances with vendors and clients. However, what is now apparent, is that Mr. Demian did not intend to fully represent me as he promised. He was intending to only do up to $10,000 a month of work. Either that, or he intended to fraud his partners. I do not know the words, but one

way or another, he was defrauding me or his partners. (See Exhibit 6: email to Adam Witt confirming that notwithstanding language in the retainer agreement, only $10,000 would be paid to FTB.)

Second, in his opposition to Geraci's demurrer, Mr. Demian did not raise the affirmative defense of promissory estoppel as articulated by the Supreme Court case of *Monarco*. Rather, it was Mr. Hurtado, who attended the oral arguments for the hearing, that felt that something had to be wrong. Mr. Hurtado did some "Googling" emailed Mr. Demian and approximately 2 weeks after the demurrer hearing emailed Mr. Demian about the concept of promissory estoppel and the *Monarco* case discussing the application to Mr. Cotton's case (*See* Exhibit 10). Mr. Demian included the *Monarco* case/promissory estoppel concept in the TRO motion that he submitted to this Court. In other words, I respectfully submit to this Court that this reflects that Mr. Demian clearly failed to meet his ethical obligations to me by even doing the most basic legal research required to properly represent me before this Court.

Third, Mr. Demian's actions at the TRO Motion hearing. As discussed *ad nauseum* above, he failed to raise the Confirmation Email. After the hearing, when Mr. Demian and the attorney for the City left the courtroom, the attorney for the City told Mr. Demian something to the effect of "you should have won based on the moving papers, but oral argument got you." Mr. Hurtado was standing no more 3 feet away from them when this was stated as he was enraged that Mr. Demian performed so poorly. Per the declarations of Mr. Mass and Ms. Elizabeth, Mr. Hurtado loudly berated Mr. Demian about his poor performance. Per Mr. Hurtado, he berated Mr. Demian for being unprepared and failing so miserably. Mr. Demian actually had the gall to retort to Mr. Hurtado that investing in litigation was always "risky" and, presumably, Mr. Hurtado should be less upset. Notably, and I believe the most actionable item against Mr. Demian, when I replied to Mr. Demian noting that even the City attorney stated that he should have won, he replied by email stating: "Also, as to the City Attorney, she told me my papers and oral argument were excellent. She did not say we should have won." (See Exhibit 11.) Mr. Demian is blatantly lying here, obviously and, at least it appears to me, foolishly attempting to

cloud title. Specifically, the statute allows for a judgement on the merits similar to summary adjudication. Given the facts of my case, this motion should have been pursued by any competent attorney who was aware of these facts. Mr. Austin is a criminal defense attorney who has only agreed to help upon the favorable resolution of my appeal. How is it that a criminal defense attorney within two days of hearing the facts of my case can discover a motion that can quickly and speedily allow this Court to get to the merits of the case, avoiding all of the vexatious tactics employed by Geraci, such as these Motions to Compel that are before the Court and which are completely frivolous (there is absolutely no more information that can be provided through discovery that will contradict the Confirmation Email.) In other words, this provides additional support that Mr. Demian was negligent and/or purposefully fraudulent in his actions towards me as he was seeking not seeking to end this litigation quickly, rather, he was hoping to prolong it to increase his legal fees. As of today, Mr. Demian has been paid approximately $60,000. I note, at $10,000 a month as per our email agreement. And, on January 10, 2018, Mr. Demian emailed me a bill for his services up to the TRO Motion hearing – he is requesting $91,943.45 in addition to the approximate $60,000 he has already received. (See Exhibit 12; invoices from FTB for $91,943.45.)

Your honor, this is not just. His negligence and active deceit are worthy of nothing but contempt. I implore you to exercise your powers to the fullest extent to grant me what relief you can against Mr. Demian for his actions described herein.

The City Attorneys

> "The notion that government might be "conspiring" to violate the rights of citizens is more apt to invite derision than concern... [y]et, when conspiracy is understood simply as an agreement to do wrong, the possibility of that government might conspire against citizens is not only plausible but likely. Contemporary government often operates through bureaucratic consensus, which necessarily involves the joint actions of multiple parties. By its nature then governmental decision-making that goes awry is often amenable to characterization as a "conspiracy." Most practitioners recognize that federal law authorizes civil actions against persons who, acting under color of law, directly violate the civil rights of others. These suits are typically brought under the now familiar section 1983 of title 41.

It is well known from a jurisprudence perspective that the City is anti-cannabis.[15] The

[15] *See* County of San Diego v. San Diego NORML, 165 Cal. App. 4th 798, 81 in which two California counties (San Diego and San Bernardino challenged the California Compassionate Use Act (Proposition 215) and subsequent

create a false record of what took place in order to limit his liability. However, I respectfully submit to this Court, now that you have reviewed the Confirmation Email and the *Monarco* case, it is simply not credible to believe the City attorney told him his oral argument was "excellent." Alternatively, I respectfully request that this Court ask the City attorney on January 25th what she told him after the oral hearing. I believe this to be incredibly important as Mr. Demian without a doubt failed his professional obligations by failing to raise the Confirmation Email. He then failed his ethical obligations by failing to inform the court of his negligence. Lastly, his email stating that Mr. Hurtado is lying and that his oral argument was "excellent" actually crosses the line and goes from negligence to, as noted above, deceit. I implore this Court to get to the bottom of this issue. My retainer agreement with Mr. Demian has an arbitration provision that prevents me from suing him for legal malpractice. "'*Honesty* in dealing with the courts is of paramount importance, and *misleading a judge is, regardless of motives, a serious offense.*' " (*Paine v. State Bar* (1939) 14 Cal.2d 150, 154 [93 P.2d 103], italics added; see also *Di Sabatino v. State Bar* (1980) 27 Cal.3d 159, 162-163 [162 Cal.Rptr. 458, 606 P.2d 765]; *Garlow v. State Bar* (1982) 30 Cal.3d 912, 917 [180 Cal.Rptr. 831, 640 P.2d 1106].) Mr. Demian here is not just seeking to mislead, he is attempting active deceit. This goes beyond serious. Please your honor, as an officer of the court he was beholden to you to do what was right. Instead of making things right, he sent me an email stating he was withdrawing from my case before even speaking with me! He set in motion a set of events that compounded the irreparable harm to me.

Fourth, on December 11, 2017, a day before oral hearing on my Motion for Reconsideration, that I was positive would be approved, I spoke with another local attorney named Jacob Austin as I was looking for new counsel. I had previously been introduced to Mr. Austin, who was tentatively planning to help me with my various legal matters before, unfortunately I ultimately chose to go with Mr. Demian given what appeared to be his superior expertise. Here is what is important to note: Mr. Austin brought to my attention the ability to bring a motion to expunge a *lis pendens* pursuant to a section in the CCP. The purpose of this motion is to speedily address meritless lawsuits that seek to attach real property and unlawfully

City Attorney's Prosecutorial office, though while not germane to these Motions to Compel, but described in my supporting declaration, took advantage of a plea agreement I entered into and extorted $25,000 from me (the consequences of which are described and detailed in the Secured Litigation Investment Agreement). It also appears to me the City's Development Services violated my Constitutional due process rights by failing to provide notice to me and continuing to process the CUP application after explicitly telling me that they would not until they received a grant deed from me, which I never provided, and working with Geraci on the CUP application. Furthermore, that the City, when it filed its Answer to my application for a Writ of Mandate, after the TRO Motion hearing knowing Demian had been negligent, seeking legal fees and accusing me, among other things, of being guilty of "unclean hands," that is also is violating my rights because the City knew there was no probable cause against me.

Thus, it appears to me, that I *could* file a case against the City tomorrow in federal court pursuant to Section 1983 alleging a conspiracy against me by the City because of my pro-cannabis political activism. I have no desire to do so. I want to end this endless, soul-crushing litigation. As described below, I respectfully request this Court's help.

CONCLUSION

The Supreme Court of California case of *Neary v. Regents of University of California* has become my last hope and I have read and re-read this case as it is my only source of strength right now. Ironically, it is for this reason that I have requested from this Court a written opinion regarding what I know are my amateurship attempts at legal formatting, writing and reasoning. If I truly am culpable somehow and Geraci is entitled to my Property, I will similarly carry this Court's decision with me to prevent me from acting out on my anger against Geraci and opposing counsel. (Even if I am crazy, Mr. Demian is worthy of contempt under any scenario.)

The opinion and the dissent in *Neary* discuss the best way to effectuate justice in our society taking into account the practical realities of the world we all live in. I empathize with George Neary, the plaintiff is the case, as did the Supreme Court of California, it stated:

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legislation requiring counties to issue identification cards to qualified patients and primary caregivers, on the ground that these measures were preempted by provisions of the federal Controlled Substances Act.

His plea is sympathetic: "Neary has spent more than twelve years in an expensive, time-consuming, emotionally wrenching, and destructively distracting struggle which has included enough twists, turns, setbacks and victories for a novel. He has finally resolved that struggle through negotiation and voluntary agreement." Thwarting the settlement would frustrate the parties' mutual desire for an immediate end to their now 13-year-old dispute. The parties have pummeled each other long enough and have staggered to their respective corners. We choose to give them help, not the prospect of further battering.

This statement holds great power for me. The Supreme Court recognized Mr. Neary's extraordinary circumstances and the unique situation his case represented to substantive justice. They recognized his plea as being "sympathetic" and I hope this Court can recognize the extraordinary circumstances I am in and do the same for me. *Neary* also states:

> In ordinary civil actions such as the one before us, the parties come to court seeking resolution of a dispute between them. The litigation process they encounter is fraught with complexities, uncertainties, delays, and risks of many kinds. Different judges and juries may respond in different ways to the same evidence and argument. Public judicial proceedings may result in adverse publicity and unwanted disclosure of previously confidential information. Damage awards (or failure to recover) may cause financial hardship or ruin. These observations are not original. "More than a century ago, Abraham Lincoln gave the following advice: 'Discourage litigation. Persuade your neighbors to compromise wherever you can. Point out to them how the nominal winner is often a real loser-in fees, expenses, and waste of time.' This was sage advice then and remains so now." (Lynch, California Negotiation and Settlement Handbook, *supra*, p. vii (foreword by California Supreme Court Chief Justice Malcolm M. Lucas).)[16]

> [...] The primary purpose of the public judiciary is "to afford a forum for the settlement of litigable matters between disputing parties." (*282 *Veckl v. Sorensen* (1959) 171 Cal.App.2d 390, 393 [340 P.2d 1020].) We do not resolve abstract legal issues, even when requested to do so. We resolve real disputes between real people. (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170 [188 Cal.Rptr. 104, 655 P.2d 306].) This function does not undermine our integrity or demean our function. By providing a forum for the peaceful resolution of citizens' disputes, we provide a cornerstone for ordered liberty in a democratic society.

> The Court of Appeal's concern for the integrity of trial court judgments is flawed in other respects. First, the notion that such a judgment is a statement of "legal truth" places too much emphasis on the *result* of litigation rather than its *purpose*. "In all civil litigation, the judicial decree is not the end but the means. At the end of the rainbow lies not a judgment, but some action (or cessation of action) by the defendant that the judgment produces-the payment of damages, or some specific performance, or the termination of some conduct. Redress is sought *through* the court, but *from* the defendant. ... The real value of the judicial pronouncement-what makes it a proper judicial resolution of a 'case

[16] Neary v. Regents of University of California (1992) 3 Cal.4th 273, 280 [10 Cal.Rptr.2d 859, 834 P.2d 119]

> or controversy' rather than an advisory opinion-is in the settling of some dispute *which affects the behavior of the defendant towards the plaintiff.*" (*Hewitt v. Helms* (1987) 482 U.S. 755, 761 [96 L.Ed.2d 654, 661, 107 S.Ct. 2672], original italics.)[17]

Your Honor, I respectfully submit to you the language above and note that Geraci's actions make a mockery of the Supreme Court of California and this Court. Above, the Supreme Court of California discusses the challenges to individuals "[i]n ordinary civil actions" and that the Courts "resolve[s] real disputes between real people," this is not an "ordinary" action in which there is a "real" dispute here. It is a fabricated one. "Redress is sought *through* the court, but ***from*** the defendant." This vexatious lawsuit makes a mockery of the very basis of our judicial system – it is a blatant unlawful attempt by Geraci to acquire my Property ***from*** the Court and our judicial system. Geraci knew this case had no merit, but he brought it anyway knowing my financial predicament, of his partial making by failing to provide funds he promised and that he knew I was relying on, and filing a *lis pendens* to prevent me from entering into other agreements. Had I not entered into an agreement with Mr. Martin the same day I had terminated the agreement with Geraci, given that Weinstein served me the next day with the Complaint and *lis pendens*, I would not have been able to legally enter into that agreement and I would have lost everything by now. But for my desperate need for capital at the time, Geraci stringing me along (as our email communications make clear) and Weinstein's legal practice tactics would have been successful and I would not be before this Court attempting, however inarticulate, to see justice done.

Your Honor it is already after 11:00 am and will already late and running to get this printed to submit this pleading to your Court downtown. Please forgive the failings herein. I would request a continuance, but I cannot, because it although shames me to say this in a permanent public record, I am compelled to do so - there are people depending on me: I have

[17] Neary v. Regents of University of California (1992) 3 Cal.4th 273, 281–282 [10 Cal.Rptr.2d 859, 834 P.2d 119]

become estranged from my partner, I am behind on payroll, debts, and I am living at the Property. This case left me destitute. I do the best I can to keep up appearances, but I cannot run a commercial business with no capital and a *lis pendens* on the Property. I have absolutely no funds. I long ago maxed out any and all financial sources of help. Attached hereto as **Exhibit 13** are the water and electrical bills that are due, which are scheduled to be turned off tomorrow. I have already asked for repeated extensions. I do not know whether I will have electricity when I see you on Thursday. If my father were not the first note holder, I would already not even have a place to stay (see **Exhibit 14**; Declaration of Dale L. Cotton, stating "were this a normal business relationship, I would have foreclosed on this property...")

Please, in the interest of real, substantive justice, investigate my allegations here. I clearly understand how outrageous they seem. Please do not do not elevate form over substance and deny this pleading or the relief you can grant me on procedural, non-substantive grounds. I implore you to use your power to its fullest extent to grant me whatever relief that you can, which I do not even know what it is, so I cannot ask for it. I understand that you must vet my allegations herein as to Gina Austin and Micahel Weinstein. But, as to Mr. Demian, he is clearly culpable for failing to raise the Confirmation Email at the oral hearing, for failing to let you know that he did so in the aftermath, and, blatantly attempting to create a false record to deceive this Court. I ask that you please set in place whatever motion is necessary to sanction him.

> "Violation of statewide rules of court and/or local rules is sanctionable by payment of the opposing party's reasonable expenses and counsel fees. (Cal. Rules of Court, rule 227.) Furthermore, use of sanctions against both attorneys and clients has been commended by our Supreme Court as an appropriate method for dealing with unjustified litigation. (*Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863, 873-874 [254 Cal.Rptr. 336, 765 P.2d 498].) (3c) Based on our review of this record, it appears that defense counsel violated several statewide rules of court and local rules, and that these violations resulted in unnecessary litigation and cost to plaintiff and her attorney in time and money. We therefore remand this matter to the trial court to consider, and, if appropriate, award

sanctions against defendants and/or their attorneys and in favor of plaintiff."[18]

"[I]t is well established that California's Constitution provides the courts, including the Courts of Appeal, with inherent powers to control judicial proceedings. (Cal. Const., art. VI, § 1; *Walker v. Superior Court* (1991) 53 Cal.3d 257, 266-267 [279 Cal.Rptr. 576, 807 P.2d 418]; *Keeler v. Superior Court* (1956) 46 Cal.2d 596, 600 [297 P.2d 967].) To the same effect, Code of Civil Procedure section 128, subdivision (a)(8) authorizes every court '[t]o amend and control its process and orders so as to make them conform to law and justice.' This provision is consistent with and codifies the courts' traditional and inherent judicial power to do whatever is necessary and appropriate, in the absence of controlling legislation, to ensure the prompt, fair, and orderly administration of justice."[19] (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 276–277.)

Your Honor, I conclude with a plea, I realize that you are an arbitrator and must remain impartial. However, this Court is meant to give justice and vindicate the rights of the wronged. At the Court hearing this Thursday, unless Austin desires to perjure herself, you can ask her if she drafted the purchase agreements in early 2017, thereby reflecting her knowledge that the November 2016 agreement was not a final purchase agreement as Geraci and Weinstein allege. At the hearing, you can ask Weinstein why, given this Court's ruling denying his demurrer, he has continued to prosecute this case that has no factual or legal basis. I realize that my requests may be excessive, but, I respectfully note the following in the hopes that it supports my requests here. In *Ross v. Figueroa* (2006) 139 Cal.App.4th 856; 43 Cal. Rptr. 3d 289, the Court of Appeal [explicitly recognized the necessity and approved active judicial behavior in providing affirmative assistance to *pro se* clients] such as myself: "the judge cannot rely on the pro per

[18] Datig v. Dove Books, Inc. (1999) 73 Cal.App.4th 964, 982–983 [87 Cal.Rptr.2d 719], as modified on denial of reh'g (Aug. 13, 1999)

[19]

litigants to know each of the procedural steps, to raise objections, to ask all the relevant questions of witnesses, and to otherwise protect their due process rights."

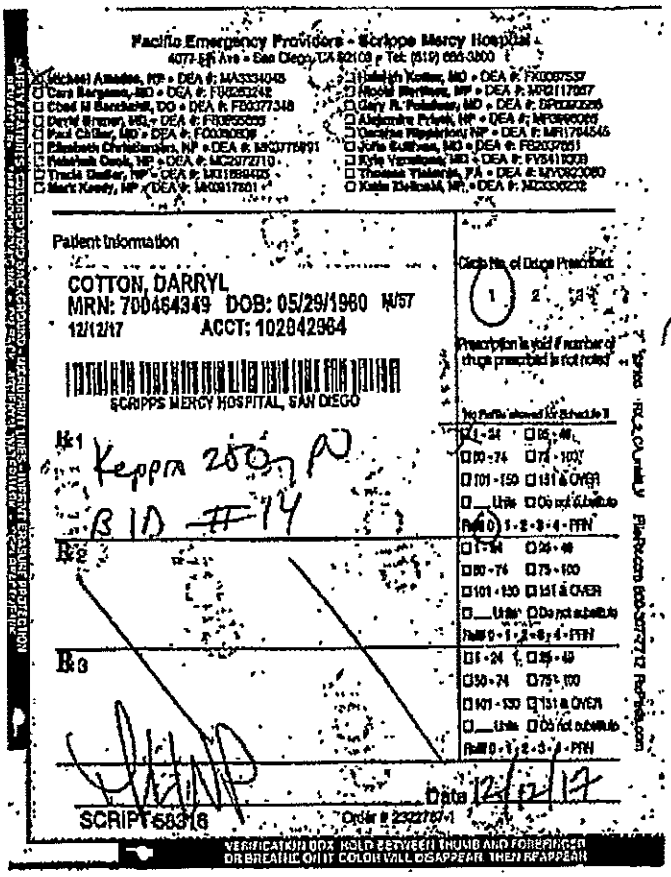
Lastly, I sincerely believe that this case also represents something larger than myself and that if the damage and harm caused to me by Geraci and perpetuated and augmented by the acts of counsel as described above, including their manipulations of this Court, are allowed to pass, then it will prove that the concern articulated by Justice Kennard in *Neary* in 1992 has ceased to be "an already too common perception," but has in fact become reality and "the quality of justice a litigant can expect is proportional to the financial means at the litigant's disposal." *Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 287 (emphasis added).

Dated: January 22, 2017

By: _____
DARRYL COTTON

Verification: I, Darryl Cotton, verify that all statements herein made that declare actions or beliefs as to myself are true and correct and I declare under penalty of perjury under the State of California that the foregoing is true and correct. I also verify and confirm that all exhibits attached hereto are true and correct copies as stated.	By: _____ DARRYL COTTON

EXHIBIT 1



Pacific Emergency Providers - Scripps Mercy Hospital
4077 5th Ave • San Diego, CA 92103 • Tel: (619) 686-3000

Patient Information

COTTON, DARRYL
MRN: 700464349 DOB: 05/29/1960 M/57
12/12/17 ACCT: 102942964

SCRIPPS MERCY HOSPITAL, SAN DIEGO

Rx1 Keppra 250mg PO
BID #14

Rx2

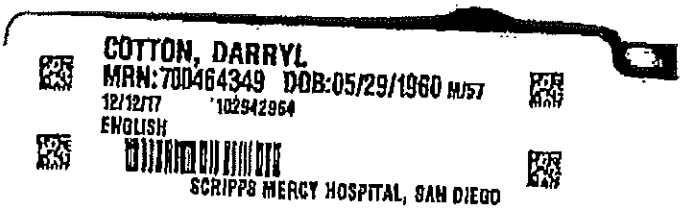
Rx3

Date 12/12/17

SCRIPT 58316

Order # 2327767-1

VERIFICATION DOX HOLD BETWEEN THUMB AND FOREFINGER
OR BREATHE ON IT COLOR WILL DISAPPEAR THEN REAPPEAR



COTTON, DARRYL
MRN: 700464349 DOB: 05/29/1960 M/57
12/12/17 102942964
ENGLISH

SCRIPPS MERCY HOSPITAL, SAN DIEGO


2

EXHIBIT 2

I, Joe Hurtado, declare:

1. I am an individual residing in the County of San Diego and I have personal knowledge of the facts stated below and, if called as a witness, I could and would testify.

2. Between late 2016 and early 2017, the following sequence of events took place: (i) Mr. Darryl Cotton informed me that he sold his property to Mr. Larry Geraci; (ii) Mr. Cotton told me that he expected Mr. Geraci would breach his agreement; (iii) Mr. Cotton asked that I help him locate a new buyer for his property; (iv) I brokered a deal between Mr. Cotton and Mr. Richard Martin for the sale of Mr. Cotton's property to Mr. Martin.

3. The day after the deal with Mr. Cotton and Mr. Martin was reached on March 21, 2017, Mr. Geraci via his counsel, Mr. Michael Weinstein, initiated a lawsuit against Mr. Cotton seeking to enforce a previous agreement between Mr. Cotton and himself (the "Geraci Litigation").

4. Materially, on March 6, 2017, I attended a local cannabis event at which Gina Austin was a speaker. At that event, I introduced myself and, at Mr. Cotton's request, let her know that he would not be attending and speaking with her.

5. Throughout the course of the Geraci Litigation, the following sequence of events took place: (i) Mr. Cotton attempted to represent himself *pro se* in the Geraci Litigation; (ii) Mr. Cotton chose to no longer represent himself in the Geraci Litigation and asked that I help him finance and facilitate his legal representation; (iii) I identified Mr. David Demian and facilitated the full legal representation of Mr. Cotton by Mr. Demian; (iv) Mr. Demian, I believe, failed to live up to his professional obligations by, *inter alia*, (a) failing to discover and/or argue to the Court in the Geraci Litigation the concept of promissory estoppel in response to Mr. Geraci's demurrer to Mr. Cotton's Cross-Complaint; (b) failing to raise with the Court, at the oral hearing for a temporary restraining order ("TRO") applied for by Mr. Cotton, evidence that is material and necessary for the Court's proper adjudication of the issues before it; (c) when confronted by me, outside the courtroom

immediately after the TRO hearing, he acknowledged his failure to raise material arguments and evidence in the moving papers, but denied that the fact that his failure to do so was reflective of any wrongdoing; (d) not informing the Court of his failure to raise said arguments after the TRO hearing; and (e) terminating his representation of Mr. Cotton by email before even speaking with Mr. Cotton immediately after the oral hearing on the TRO.

6. I note that after the TRO hearing, I was approximately 5 feet away from Mr. Demian and the attorney representing the City of San Diego. I expressly heard the attorney for the City of San Diego say something along the lines of: "the moving papers were great" and that Mr. Demian "should have won."

7. Summarily, I originally supported Mr. Cotton to protect my own financial interest and as an investment. However, for various reasons which are being put forth by Mr. Cotton, this litigation has become incredibly more expensive, time consuming and mentally and emotionally challenging than originally envisioned. And which is hard to describe in words.

8. Notably, the day after the Court declined Mr. Cotton's motion for reconsideration of his application for a TRO, thereby confirming that Mr. Cotton was unlikely to prevail in the Geraci Litigation, I informed him that I would be "cutting my losses" and would cease funding him personally and the Geraci Litigation. This took place on December 13, 2017. Thereafter, on the same day, Mr. Cotton came to where I was located uninvited and pleaded with me to continue my support. I refused. Mr. Cotton physically assaulted me. I threatened to call the authorities and Mr. Cotton just sat down and became, for lack of a better expression, neurotic (e.g., speaking to himself, talking to others, being emotional, etc.)

9. Mr. Cotton was speaking and it appeared that he thought he was in the courtroom or at his property on Federal Boulevard. His speech was nonsensical. Understanding his situation, I did not

call the police and instead called a medical doctor I had recently been introduced to, Dr. Candido, and explained the situation to her.

10. Dr. Candido came to the location where Mr. Cotton was located and examined Mr. Cotton.

11. After diagnosing him, Dr. Candido recommended that we take Mr. Cotton to the Emergency Room or call the authorities as she believed him to be a danger to himself and others.

12. I spoke with Dr. Candido and she agreed that so long as Mr. Cotton was not allowed to drive and he could stay at the residence with me under my supervision, it would not be necessary to call the authorities.

13. It is against my recommendation that Mr. Cotton is submitting his response to the Court on the date hereof. I skimmed the very large document that appears to be over 1,000 pages that he intends to file with the Court today and strongly recommended that he request additional time from the Court, suggesting that to file such a document may actually be detrimental to him. However, Mr. Cotton has stated his situation is even more dire than before and that he requires this action to be speedily adjudicated, not just because of his dire financial situation, but for the well-being of his mental and emotional state.

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

Joe Hurtado

1/22/2018

EXHIBIT 3


3

I, Dr. Carolyn Candido, declare:

1. I am a licensed physician in the State of California.
2. On December 13, 2017, I was contacted by Mr. Joe Hurtado who requested I examine a friend of his, Mr. Darryl Cotton, who was speaking incoherently. Mr. Hurtado stated he was concerned that Mr. Cotton may require medical attention but that Mr. Cotton did not want to go to the Emergency Room.
3. I traveled to Mr. Hurtado's residence and met with Mr. Hurtado and Mr. Cotton.
4. Mr. Cotton was in a room by himself and initially did not allow me to examine him. After approximately thirty minutes, Mr. Hurtado spoke with Mr. Cotton who then allowed me to perform a physical examination.
5. Mr. Cotton had an elevated pulse, was speaking incoherently and exhibited signs of anxiety, panic and was expressing suicidal thoughts. His language vacillated from being clear to incoherent. I am unclear as to what he was attempting to express, but from what I could make out, he was in an emotional state due to matters related to some legal matter regarding his property.
6. It is my diagnosis that he was suffering from Acute Stress Disorder and that at that moment in time represented a danger to himself and others. Because of his express statements regarding suicide and other expressions of violence as to unidentified third-parties, I repeatedly requested that Mr. Cotton go to the Emergency Room, which he refused.
7. I communicated with Mr. Hurtado my diagnosis and expressed my concern for Mr. Cotton regarding his statements, to the extent that they were clear, as they reflected an intent to harm himself and others. It was my recommendation that Mr. Cotton not be by himself.
8. After speaking with Mr. Hurtado regarding Mr. Cotton, Mr. Hurtado promised to allow Mr. Cotton to remain at that residence until such time as Mr. Cotton was calm.

9. Since that evening I have not met or spoken with Mr. Cotton.

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

January 22, 2018

Dr. Carolyn Candido


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EXHIBIT 4

Exhibit A

Compilation of all email correspondence between Darryl Cotton and Larry Geraci

Table of Contents

Format: Sender; Receiver; Date; Time

Subject: Automatic reply: test mail
From: Larry Geraci <Larry@tfcsd.net>
To: darryl@dalbercia.us
Date: Thursday, October 20, 2016 10:42:49 AM GMT-08:00

Thank you for your email...

I will be out of the office until Wednesday, October 26th, 2016. If you should need immediate assistance, please contact Becky at: becky@tfcsd.net. You may also contact the office as well.

Thank you.

Subject: Drawing
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Monday, October 24, 2016 11:38:28 AM GMT-08:00

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

From: darryl@dalbercia.us [mailto:darryl@dalbercia.us] **On Behalf Of** Darryl Cotton
Sent: Monday, October 24, 2016 12:37 PM
To: Larry Geraci <Larry@tfcsd.net>
Subject: Test Send

Darryl Cotton, President

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

6176 Federal Blvd.
San Diego, CA. 92114 –
USA

SITE PLAN LEGEND
SITE PLAN NOTES
SITE PLAN - PROPOSED - Scheme B
A102
FEDERAL
BOULEVARD

TECHNE
SITE PLAN LEGEND
SITE PLAN NOTES
SITE PLAN - PROPOSED - Scheme B
A102
FEDERAL
BOULEVARD

Subject: Agreement
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Wednesday, November 2, 2016 2:11:51 PM GMT-08:00

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

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

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

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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State of California
County of San Diego)

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

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

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

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

Subject: Re: Agreement
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Wednesday, November 2, 2016 8:13:54 PM GMT-08:00

No no problem at all

Sent from my iPhone

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

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

Darryl Cotton, President

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

6176 Federal Blvd.
San Diego, CA. 92114
USA

On Wed, Nov 2, 2016 at 3:11 PM, Larry Geraci <Larry@tfcsd.net> wrote:

> *Best Regards,*

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Subject: Federal Blvd need sig ASAP
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Monday, November 14, 2016 10:26:09 AM GMT-08:00

Hi Darryl,

Can you sign and email back to me asap?

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Authorization to view and copy Building Records from the County of San Diego Tax Assessor

I, Darryl Cotton, owner of the property located at 6176 Federal Blvd, San Diego, CA (APN 543-020-02-00) authorize Abhay Schweitzer, Benjamin Peterson, and/or Carlos Gonzalez of TECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

_____

Signature

_____/____/_____

Date

Authorization to view and copy Building Records from the County of San Diego Tax Assessor

I, Darryl Cotton, owner of the property located at 6176 Federal Blvd, San Diego, CA (APN 543-020-02-00) authorize Abhay Schweitzer, Benjamin Peterson, and/or Carlos Gonzalez of TECHNE to view and make copies of the County of San Diego Tax Assessor Building Records.

_____

Signature

_____/____/_____

Date

Subject: Federal Blvd Property
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Monday, February 27, 2017 8:49:16 AM GMT-08:00

Hi Daryl,

Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well.

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made and entered into this _____ day of _____, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("Seller"), and 6176 FEDERAL BLVD TRUST dated _____, 2017, or its assignee ("Buyer").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. DEFINITIONS. For the purposes of this Agreement the following terms will be defined as follows:

a. **"Real Property"**: That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. **"Date of Agreement"**: The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. **"Purchase Price"**: The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars ($400,000.00).

d. **"Due Diligence Period"**: The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. **"Escrow Agent"**: The Escrow Agent is: [NAME]

f. **"Title Company"**: The Title Company is: [NAME]

g. **"Title Approval Date"**: The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. **"Closing", "Closing Date" and "Close of Escrow"**: These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. **"Notices"** will be sent as follows to:

Buyer: 6176 Federal Blvd. Trust
6176 Federal Blvd.

	San Diego, California 92114 Attn: Fax No.: Phone No.:
with a copy to:	Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110,
Seller:	Darryl Cotton Address: City, State, Zip Attn: Fax No.: Phone No.:
Escrow Agent:	[NAME] [ADDRESS]

2. PURCHASE AND SALE. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "Improvements"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "Intangibles"). (Reference herein to the "Property" shall include the Real Property, Improvements, and Intangibles).

3. PURCHASE PRICE AND PAYMENT; DEPOSIT. The Purchase Price will be paid as follows:

a. Deposit. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. Cash Balance. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

4. ESCROW.

a. Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "Escrow") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. Failure to Receive CUP. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "Buyer's Indemnity" (as detailed in Section 8 below).

5. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "Preliminary Title Report"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. Permitted Exceptions. The following exceptions shown on the Preliminary Title Report (the "**Permitted Exceptions**") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("**Mandatory Cure Items**").

c. Title Policy. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. Title and Survey Costs. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("Property Information"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. DUE DILIGENCE. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "Due Diligence Termination Notice") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. COVENANTS OF SELLER. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exists any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "Buyer's Representatives") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. DAMAGE. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. CONDEMNATION. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Sellers loss of income prior to closing.

14. CLOSING

a. Closing Date. The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "Deed").

(14) Assignment of Intangible Property. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) FIRPTA. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. Buyer's Deliveries in Escrow. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) Purchase Price. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. Transfer of Title. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

15. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. At the Closing, Seller shall be charged the following:

(1) All premiums for an ALTA Standard Coverage Title Policy;

(2) One-half of all escrow fees and costs;

(3) Seller's share of prorations; and

(4) One-half of all transfer taxes.

b. Buyer Will Pay. At the Closing, Buyer shall pay:

(1) All document recording charges;

(2) One-half of all escrow fees and costs;

(3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;

(4) One-half of all transfer taxes; and

(5) Buyer's share of prorations.

c. Prorations.

(1) Taxes. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. CLOSING DELIVERIES.

a. Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) Funds. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) Recording. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed after recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. Seller's Default. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OP THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

_____ _____
Seller's Initials Buyer's Initials

c. Escrow Cancellation Following a Termination Notice. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "Escrow Cancellation Charges"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (½) of any Escrow Cancellation Charges.

18. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d, Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

h. Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. Incorporation of Recitals/Exhibits. All recitals set forth hereinabove and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. Legal Advice. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. Memorandum of Agreement. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first set forth above.

BUYER:	SELLER:
6176 FEDERAL BLVD TRUST	DARRYL COTTON.
By: _____	_____
Printed: _____	
Its: Trustee	

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

Date: _____, 2017

By: _____

Escrow Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY
(to be provided by the Title Company)

EXHIBIT "B"

PROPERTY INFORMATION

EXHIBIT "C"

SERVICE CONTRACTS

EXHIBIT "D"

THREATENED OR PENDING LAWSUITS

EXHIBIT "E"

MEMORANDUM OF AGREEMENT

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY ("Agreement") is made and entered into this ____ day of _____, 2017, by and between DARRYL COTTON, an individual resident of San Diego, CA ("Seller"), and 6176 FEDERAL BLVD TRUST dated _____, 2017, or its assignee ("Buyer").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually covenanted and agreed by Seller and Buyer as follows:

1. DEFINITIONS. For the purposes of this Agreement the following terms will be defined as follows:

a. "Real Property": That certain real property commonly known as 6176 Federal Blvd., San Diego, California, as legally described in Exhibit "A" attached hereto and made a part hereof.

b. "Date of Agreement": The latest date of execution of the Seller or the Buyer, as indicated on the signature page.

c. "Purchase Price": The Purchase Price for the Property (defined below) is Four Hundred Thousand Dollars ($400,000.00).

d. "Due Diligence Period": The period that expires at 5:00 p.m., California time, on the date the CUP (defined below) is issued to Buyer or its designated assign.

e. "Escrow Agent": The Escrow Agent is: [NAME]

f. "Title Company": The Title Company is: [NAME]

g. "Title Approval Date": The Title Approval Date shall be twenty (20) days following Buyer's receipt of a Preliminary Title Report and all underlying documents.

h. "Closing", "Closing Date" and "Close of Escrow": These terms are used interchangeably in this Agreement. The closing shall occur on or at 5:00 p.m., California time, on the date fifteen (15) days from the date Buyer or its designated assign is approved by the city of San Diego for a conditional use permit to distribute medical marijuana from the Real Property ("CUP"). Notwithstanding the foregoing, in no event shall Closing occur later than March 1, 2018, unless mutually agreed by the parties.

i. "Notices" will be sent as follows to:

Buyer: 6176 Federal Blvd. Trust
6176 Federal Blvd.

	San Diego, California 92114 Attn: Fax No.: Phone No.:
with a copy to:	Austin Legal Group, APC 3990 Old Town Ave, A-112 San Diego, CA 92110,
Seller:	Darryl Cotton Address: City, State, Zip Attn: Fax No.: Phone No.:
Escrow Agent:	[NAME] [ADDRESS]

2. PURCHASE AND SALE. Subject to all of the terms and conditions of this Agreement and for the consideration set forth, upon Closing Seller shall convey to Buyer, and Buyer shall purchase from Seller, all of the following:

a. The Real Property and all of Seller's interest in all buildings, improvements, facilities, fixtures and paving thereon or associated therewith (collectively, the "Improvements"), together with all easements, hereditaments and appurtenances thereto, subject only to the Permitted Exceptions in accordance with Section 5.b;

b. All other right, title and interest of Seller constituting part and parcel of the Property (hereinafter defined), including, but not limited to, all lease rights, agreements, easements, licenses, permits, tract maps, subdivision/condominium filings and approvals, air rights, sewer agreements, water line agreements, utility agreements, water rights, oil, gas and mineral rights, all licenses and permits related to the Property, and all plans, drawings, engineering studies located within, used in connection with, or related to the Property, if any in Seller's possession (collectively, the "Intangibles"). (Reference herein to the "Property" shall include the Real Property, Improvements, and Intangibles).

3. PURCHASE PRICE AND PAYMENT; DEPOSIT. The Purchase Price will be paid as follows:

a. Deposit. There shall be no Deposit required. It is acknowledged and agreed that Buyer has provided Seller alternative consideration in lieu of the Deposit.

b. Cash Balance. Buyer shall deposit into Escrow the cash balance of the Purchase Price, plus or minus prorations and costs pursuant to Section 15, in the form of cash, bank

cashier's check or confirmed wire transfer of funds not less than one (1) business day prior to the Close of Escrow.

4. ESCROW.

a. Execution of Form Escrow Instructions. Seller shall deposit this Agreement with Escrow Agent upon full execution of same by Buyer and Seller, at which time escrow (the "Escrow") shall be deemed to be opened. Escrow Agent shall thereafter promptly execute the original of this Agreement, provide copies thereof to Buyer and Seller. Immediately upon receipt of such duly executed copy of this Agreement, Escrow Agent shall also notify Seller and Buyer of the opening of Escrow. This Agreement shall act as escrow instructions to Escrow Agent, and Escrow Agent shall hereby be authorized and instructed to deliver the documents and monies to be deposited into the Escrow pursuant to the terms of this Agreement. Escrow Agent shall prepare the Escrow Agent's standard-form escrow agreement (if such a form is required by Escrow Agent), which shall, to the extent that the same is consistent with the terms hereof and approved by Seller and Buyer and not exculpate Escrow Agent from acts of negligence and/or willful misconduct, inure to the benefit of Escrow Agent. Said standard form escrow instructions shall be executed by Buyer and Seller and returned to Escrow Agent within three (3) business days from the date same are received from Escrow Agent. To the extent that Escrow Agent's standard-form escrow agreement is inconsistent with the terms hereof, the terms of this Agreement shall control. Should either party fail to return the standard form escrow instructions to Escrow Agent in a timely manner, such failure shall not constitute a material breach of this Agreement.

b. Close of Escrow. Except as provided below, Escrow shall close no later than the date provided for in Section 1, above.

c. Failure to Receive CUP. Should Buyer be denied its application for the CUP or otherwise abandon its CUP application, it shall have the option to terminate this Agreement by written notice to Seller, and the parties shall have no further liability to one another, except for the "Buyer's Indemnity" (as detailed in Section 8 below).

5. TITLE MATTERS.

a. Preliminary Title Report/Review of Title. As soon as practicable, but in no event later than five (5) business days after the Date of Agreement, Escrow Agent shall have delivered or shall cause to be delivered to Buyer a Preliminary Title Report issued by Title Company covering the Property (the "Preliminary Title Report"), together with true copies of all documents evidencing matters of record shown as exceptions to title thereon. Buyer shall have the right to object to any exceptions contained in the Preliminary Title Report and thereby disapprove the condition of title by giving written notice to Seller on or before the Title Approval Date as defined in Section 1. Any such disapproval shall specify with particularity the defects Buyer disapproves. Buyer's failure to timely disapprove in writing shall be deemed an approval of all exceptions. If Buyer disapproves of any matter affecting title, Seller shall have the option to elect to (i) cure or remove any one or more of such exceptions by notifying Buyer within five (5) business days from Seller's receipt of Buyer's disapproval, or (ii) terminate this Agreement, in which event Buyer shall receive a refund of its Deposit and all accrued interest, and the parties shall have no

further liability to one another, except for the Buyer's Indemnity. Seller's failure to timely notify Buyer of its election, as provided above, shall conclusively be deemed to be Seller's election to terminate this Agreement. For three (3) business days following Seller's actual or deemed election to terminate this Agreement, Buyer shall have the right to waive, in writing, any one or more of such title defects that Seller has not elected to cure or remove and thereby rescind Seller's election to terminate and close Escrow, taking title to the Property subject to such title exceptions.

b. Permitted Exceptions. The following exceptions shown on the Preliminary Title Report (the "Permitted Exceptions") are approved by Buyer:

(1) Real property taxes not yet due and payable as of the Closing Date, which shall be apportioned as hereinafter provided in Section 15;

(2) Unpaid installments of assessments not due and payable on or before the Closing Date;

(3) Any matters affecting the Property that are created by, or with the written consent of, Buyer;

(4) The pre-printed exclusions and exceptions that appear in the Owner's Title Policy issued by the Title Company; and

(5) Any matter to which Buyer has not delivered a notice of a Title Objection in accordance with the terms of Section 5.a hereof.

Notwithstanding the foregoing or anything else to the contrary, Seller shall be obligated, regardless of whether Buyer objects to any such item or exception, to remove or cause to be removed on or before Closing, any and all mortgages, deeds of trust or similar liens securing the repayment of money affecting title to the Property, mechanic's liens, materialmen's liens, judgment liens, liens for delinquent taxes and/or any other liens or security interests ("Mandatory Cure Items").

c. Title Policy. The Title Policy shall be an ALTA Standard Owners Policy with liability in the amount of the Purchase Price, showing fee title to the Property as vested in Buyer, subject only to the Permitted Exceptions. At Buyer's election, the Title Policy to be delivered to Buyer shall be an ALTA Extended Owners Policy, provided that the issuance of said ALTA Policy does not delay the Close of Escrow. The issuance by Title Company of the standard Title Policy in favor of Buyer, insuring fee title to the Property to Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions, shall be conclusive evidence that Seller has complied with any obligation, express or implied, to convey good and marketable title to the Property to Buyer.

d. Title and Survey Costs. The cost of the standard portion of the premium for the Title Policy shall be paid by the Seller. Buyer shall pay for the survey, if necessary, and the premium for the ALTA portion of the Title Policy and all endorsements requested by Buyer.

6. SELLER'S DELIVERY OF SPECIFIED DOCUMENTS. Seller has provided to Buyer those necessary documents and materials respecting the Property identified on Exhibit "B", attached hereto and made a part hereof ("Property Information"). The Property Information shall include, inter alia, all disclosures from Seller regarding the Property required by California and federal law.

7. DUE DILIGENCE. Buyer shall have through the last day of the Due Diligence Period, as defined in Section 1, in which to examine, inspect, and investigate the Property Information, the Property and any other relating to the Property or its use and or Compliance with any applicable zoning ordinances, regulations, licensing or permitting affecting its use or Buyer's intention use and, in Buyers sole discretion) and, in Buyer's sole and absolute judgment and discretion, to determine whether the Property is acceptable to Buyer in its present condition and to obtain all necessary internal approvals. Notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement by giving notice of termination (a "Due Diligence Termination Notice") to Seller on or before the last day of the Due Diligence Period, in which event Buyer shall receive the immediate return of the Deposit and this Agreement shall terminate, except that Buyer's Indemnities set forth on Section 8, shall survive such termination.

8. PHYSICAL INSPECTION; BUYERS INDEMNITIES.

a. Buyer shall have the right, upon reasonable notice and during regular business hours, to physically inspect on a non-intrusive basis, and to the extent Buyer desires, to cause one or more representatives of Buyer to physically inspect on a non-intrusive basis, the Property without interfering with the occupants or operation of the Property Buyer shall make all inspections in good faith and with due diligence. All inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property will be solely Buyer's expense. Seller shall cooperate with Buyer in all reasonable respects in making such inspections. To the extent that a Phase I environmental assessment acceptable to Seller justifies it, Buyer shall have the right to have an independent environmental consultant conduct an environmental inspection in excess of a Phase I assessment of the Property. Buyer shall notify Seller not less than one (1) business day in advance of making any inspections or interviews. In making any inspection or interviews hereunder, Buyer will treat, and will cause any representative of Buyer to treat, all information obtained by Buyer pursuant to the terms of this Agreement as strictly confidential except for such information which Buyer is required to disclose to its consultants, attorneys, lenders and transferees.

b. Buyer agrees to keep the Property free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. Buyer shall indemnify, defend (through legal counsel reasonably acceptable to Seller), and hold Seller, and the Property, harmless from all damage, loss or liability, including without limitation attorneys' fees and costs of court, mechanics' liens or claims, or claims or assertions thereof arising out of or in connection with the entry onto, or occupation of the Property by Buyer, its agents, employees and contractors and subcontractors. This indemnity shall survive the sale of the Property pursuant to the terms of this Agreement or, if such sale is not consummated, the termination of this Agreement. After each such inspection or investigation of the Property,

Buyer agrees to immediately restore the Property or cause the Property to be restored to its condition before each such inspection or investigation look place, at Buyer's sole expense.

9. COVENANTS OF SELLER. During the period from the Date of Agreement until the earlier of termination of the Agreement or the Close of Escrow, Seller agrees to the following:

a. Seller shall not permit or suffer to exist any new encumbrance, charge or lien or allow any easements affecting all or any portion of the Property to be placed or claimed upon the Property unless such encumbrance, charge, lien or easement has been approved in writing by Buyer or unless such monetary encumbrance, charge or lien will be removed by Seller prior to the Close of Escrow.

b. Seller shall not execute or amend, modify, renew, extend or terminate any contract without the prior written consent of Buyer, which consent shall not be unreasonably withheld. If Buyer fails to provide Seller with notice of its consent or refusal to consent, Buyer shall be deemed to have approved such contract or modification, except that no contract entered into by Seller shall be for a period longer than thirty (30) days and shall be terminable by the giving of a thirty (30) day notice.

c. Seller shall notify Buyer of any new matter that it obtains actual knowledge of affecting title in any manner, which was not previously disclosed to Buyer by the Title Report. Buyer shall notify Seller within five (5) business days of receipt of notice of its acceptance or rejection of such new matter. If Buyer rejects such matter, Seller shall notify Buyer within five (5) business days whether it will cure such matter. If Seller does not elect to cure such matter within such period, Buyer may terminate this Agreement or waive its prior disapproval within three (3) business days.

10. REPRESENTATIONS OF SELLER.

a. Seller represents and warrants to Buyer that:

(1) The execution and delivery by Seller of, and Seller's performance under, this Agreement are within Seller's powers and have been duly authorized by all requisite action.

(2) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the right of contracting parties generally.

(3) Performance of this Agreement by Seller will not result in a breach of, or constitute any default under any agreement or instrument to which Seller is a party, which breach or default will adversely affect Seller's ability to perform its obligations under this Agreement.

(4) To Seller's knowledge, without duty of inquiry, the Property is not presently the subject of any condemnation or similar proceeding, and to Seller's knowledge, no such condemnation or similar proceeding is currently threatened or pending.

(5) To Seller's knowledge, there are no management, service, supply or maintenance contracts affecting the Property which shall affect the Property on or following the Close of Escrow except as set forth in Exhibit "C" attached hereto and made a part hereof.

(6) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986 (*i.e.*, Seller is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated).

(7) Seller (a) is not in receivership; (b) has not made any assignment related to the Property for the benefit of creditors; (c) has not admitted in writing its inability to pay its debts as they mature; (d) has not been adjudicated a bankrupt; (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the Federal Bankruptcy Law or any other similar law or statute of the United States or any state, and (f) does not have any such petition described in Clause (e) hereof filed against Seller.

(8) Seller has not received written notice, nor to the best of its knowledge is it aware, of any actions, suits or proceedings pending or threatened against Seller which affect title to the Property, or which would question the validity or enforceability of this Agreement or of any action taken by Seller under this Agreement, in any court or before any governmental authority, domestic or foreign.

(9) Unless otherwise disclosed herein in Exhibit D, to Seller's knowledge without duty of inquiry, there does not exists any conditions or pending or threatening lawsuits which would materially affect the Property, including but not limited to, underground storage, tanks, soil and ground water.

(10) That Seller has delivered to Buyer all written information, records, and studies in Seller's possession concerning hazardous, toxic, or governmentally regulated materials that are or have been stored, handled, disposed of, or released on the Property.

b. If after the expiration of the Due Diligence Period but prior to the Closing, Buyer or any of Buyer's partners, members, trustees and any officers, directors, employees, agents, representatives and attorneys of Buyer, its partners, members or trustees (the "Buyer's Representatives") obtains knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Buyer shall give Seller written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). If at or prior to the Closing, Seller obtains actual knowledge that any of the representations or warranties made herein by Seller are untrue, inaccurate or incorrect in any material respect, Seller shall give Buyer written notice thereof within three (3) business days of obtaining such knowledge (but, in any event, prior to the Closing). In such cases, Buyer, may elect either (a) to consummate the transaction, or (b) to terminate this Agreement by written notice given

to Seller on the Closing Date, in which event this Agreement shall be terminated, the Property Information returned to the Seller and, thereafter, neither party shall have any further rights or obligations hereunder except as provided in any section hereof that by its terms expressly provides that it survives the termination of this Agreement.

c. The representations of Seller set forth herein shall survive the Close of Escrow for a period of twelve (12) months.

11. REPRESENTATIONS AND WARRANTIES BY BUYER.

a. Buyer represents and warrants to Seller that:

(9) Buyer is duly organized and legally existing, the execution and delivery by Buyer of, and Buyer's performance under, this Agreement are within Buyer's organizational powers, and Buyer has the authority to execute and deliver this Agreement.

(10) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, subject to laws applicable generally to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting or limiting the rights of contracting parties generally.

(11) Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Buyer is a party, which breach or default will adversely affect Buyer's ability to perform its obligations under this Agreement.

(12) Buyer (a) is not in receivership or dissolution, (b) has not made any assignment for the benefit of creditors, (c) has not admitted in writing its inability to pay its debts as they mature, (d) has not been adjudicated a bankrupt, (e) has not filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law, or any other similar law or statute of the United States or any state, or (f) does not have any such petition described in (e) filed against Buyer.

(5) Buyer hereby warrants and agrees that, prior to Closing, Buyer shall (i) conduct all examinations, inspections and investigations of each and every aspect of the Property, (ii) review all relevant documents and materials concerning the Property, and (iii) ask all questions related to the Property, which are or might be necessary, appropriate or desirable to enable Buyer to acquire full and complete knowledge concerning the condition and fitness of the Property, its suitability for any use and otherwise with respect to the Property.

12. DAMAGE. Risk of loss up to and including the Closing Date shall be borne by Seller. Seller shall immediately notify Buyer in writing of the extent of any damage to the Property. In the event of any material damage to or destruction of the Property or any portion thereof, Buyer

may, at its option, by notice to Seller given within ten (10) days after Buyer is notified of such damage or destruction (and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election): (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Buyer shall receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Buyer elects (ii) above, Seller will cooperate with Buyer after the Closing to assist Buyer in obtaining the insurance proceeds from Seller's insurers. If the Property is not materially damaged, then Buyer shall not have the right to terminate this Agreement, but Seller shall at its cost repair the damage before the Closing in a manner reasonably satisfactory to Buyer or if repairs cannot be completed before the Closing, credit Buyer at Closing for the reasonable cost to complete the repair. "Material damage" and "Materially damaged" means damage reasonably exceeding ten percent (10%) of the Purchase Price to repair or that entitles a tenant to terminate its Lease.

13. CONDEMNATION. Seller shall immediately notify Buyer of any proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain over Property. Within ten (10) days after Buyer receives written notice from Seller of proceedings in eminent domain that are contemplated, threatened or instituted by anybody having the power of eminent domain, and if necessary the Closing Date shall be extended to give Buyer the full ten (10) day period to make such election, Buyer may: (i) terminate this Agreement and the Earnest Money shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title and interest in and to any condemnation award related to the Real Property, and Buyer shall have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter. Buyer shall not have any right or claim to monies relating to Sellers loss of income prior to closing.

14. CLOSING

a. Closing Date. The consummation of the transaction contemplated herein ("Closing") shall occur on or before the Closing Date set forth in Section 1. Closing shall occur through Escrow with the Escrow Agent. Unless otherwise stated herein, all funds shall be deposited into and held by Escrow Agent. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct the Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statement executed by Seller and Buyer. The Escrow Agent shall agree in writing with Buyer that (1) recordation of the Deed constitutes its representation that it is holding the closing documents, closing funds and closing statements and is prepared and irrevocably committed to disburse the closing funds in accordance with the closing statements and (2) release of funds to the Seller shall irrevocably commit it to issue the Title Policy in accordance with this Agreement.

b. Seller's Deliveries in Escrow. On or prior to the Closing Date, Seller shall deliver in escrow to the Escrow Agent the following:

(13) Deed. A Special Warranty Deed mutually satisfactory to the parties, executed and acknowledged by Seller, conveying to Buyer good, indefeasible and marketable fee simple title to the Property, subject only to the Permitted Exceptions (the "Deed").

(14) Assignment of Intangible Property. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely transfer and assign to Buyer all of Seller's right, title, and interest, in and to the Intangibles, all documents and contracts related thereto, Leases, and any other permits, rights applicable to the Property, and any other documents and/or materials applicable to the Property, if any. Such assignment or similar document shall include an indemnity by Buyer to Seller for all matters relating to the assigned rights, and benefits following the Closing Date.

(3) Assignment and Assumption of Contracts. An assignment and assumption of Leases from Seller to Buyer of landlord's interest in the Leases.

(4) FIRPTA. A non-foreign person affidavit that meets the requirements of Section 1445(b)(2) of the Internal Revenue Code, as amended.

(5) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

c. Buyer's Deliveries in Escrow. On or prior to the Closing Date, Buyer shall deliver in escrow to the Escrow Agent the following:

(1) Purchase Price. The Purchase Price, less the Deposits, plus or minus applicable prorations, deposited by Buyer with the Escrow Agent in immediate funds wired or deposited for credit into the Escrow Agent's escrow account.

(2) Assumption of Intangible Property. A duly executed assumption of the Assignment referred to in Section 14.b(2).

(3) Authority. Evidence of existence, organization, and authority of Buyer and the authority of the person executing documents on behalf of Buyer reasonably required by the Title Company.

(4) Additional Documents. Any additional documents that may be reasonably required for the consummation of the transaction contemplated by this Agreement.

d. Closing Statements. Seller and Buyer shall each execute and deposit the closing statement, such transfer tax declarations and such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the acquisition of the Property in accordance with the terms hereof. Seller and Buyer hereby designate Escrow Agent as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Code and the regulations promulgated thereunder and agree to execute such documentation as is reasonably necessary to effectuate such designation.

e. Title Policy. The Escrow Agent shall deliver to Buyer the Title Policy required hereby.

f. Possession. Seller shall deliver possession of the Property to Buyer at the Closing subject to the Permitted Exceptions, and shall deliver to Buyer all keys, security codes and other information necessary for Buyer to assume possession.

g. Transfer of Title. The acceptance of transfer of title to the Property by Buyer shall be deemed to be full performance and discharge of any and all obligations on the part of Seller to be performed pursuant to the provisions of this Agreement, except where such agreements and obligations are specifically stated to survive the transfer of title.

15. COSTS, EXPENSES AND PRORATIONS.

a. Seller Will Pay. At the Closing, Seller shall be charged the following:

(1) All premiums for an ALTA Standard Coverage Title Policy;

(2) One-half of all escrow fees and costs;

(3) Seller's share of prorations; and

(4) One-half of all transfer taxes.

b. Buyer Will Pay. At the Closing, Buyer shall pay:

(1) All document recording charges;

(2) One-half of all escrow fees and costs;

(3) Additional charge for an ALTA Extended Coverage Title Policy, and the endorsements required by Buyer;

(4) One-half of all transfer taxes; and

(5) Buyer's share of prorations.

c. Prorations.

(1) Taxes. All non-delinquent real estate taxes and assessments on the Property will be prorated as of the Closing Date based on the actual current tax bill. If the Closing Date takes place before the real estate taxes are fixed for the tax year in which the Closing Date occurs, the apportionment of real estate taxes will be made on the basis of the real estate taxes for the immediately preceding tax year applied to the latest assessed valuation. All delinquent taxes and all delinquent assessments, if any, on the Property will be paid at the Closing Date from funds accruing to Seller. All supplemental taxes billed after the Closing Date for periods prior to the

Closing Date will be paid promptly by Seller. Any tax refunds received by Buyer which are allocable to the period prior to Closing will be paid by Buyer to Seller.

(2) Utilities. Gas, water, electricity, heat, fuel, sewer and other utilities and the operating expenses relating to the Property shall be prorated as of the Close of Escrow. If the parties hereto are unable to obtain final meter readings as of the Close of Escrow, then such expenses shall be estimated as of the Close of Escrow based on the prior operating history of the Property.

16. CLOSING DELIVERIES.

a. Disbursements And Other Actions by Escrow Agent. At the Closing, Escrow Agent will promptly undertake all of the following:

(1) Funds. Disburse all funds deposited with Escrow Agent by Buyer in payment of the Purchase Price for the Property as follows:

(a) Deliver to Seller the Purchase Price, less the amount of all items, costs and prorations chargeable to the account of Seller; and

(b) Disburse the remaining balance, if any, of the funds deposited by Buyer to Buyer, less amounts chargeable to Buyer.

(2) Recording. Cause the Special Warranty Deed (with documentary transfer tax information to be affixed after recording) to be recorded with the San Diego County Recorder and obtain conformed copies thereof for distribution to Buyer and Seller.

(3) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

(4) Delivery of Documents to Buyer or Seller. Deliver to Buyer the any documents (or copies thereof) deposited into escrow by Seller. Deliver to Seller any other documents (or copies thereof) deposited into Escrow by Buyer.

17. DEFAULT AND REMEDIES

a. Seller's Default. If Seller fails to comply in any material respect with any of the provisions of this Agreement, subject to a right to cure, or breaches any of its representations or warranties set forth in this Agreement prior to the Closing, then Buyer may:

(1) Terminate this Agreement and neither party shall have any further rights or obligations hereunder, except for the obligations of the parties which are expressly intended to survive such termination; or

(2) Bring an action against Seller to seek specific performance of Seller's obligations hereunder.

b. Buyer's Default - Liquidated Damages. IF BUYER FAILS TO TIMELY COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATION TO SELL THE PROPERTY TO BUYER. BUYER AND SELLER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO FIX OR ESTABLISH THE ACTUAL DAMAGE SUSTAINED BY SELLER AS A RESULT OF SUCH DEFAULT BY BUYER, AND AGREE THAT THE DEPOSITS ARE A REASONABLE APPROXIMATION THEREOF. ACCORDINGLY, IN THE EVENT THAT BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS PROVIDED IN THIS AGREEMENT DUE TO ITS DEFAULT, THE DEPOSIT SHALL CONSTITUTE AND BE DEEMED TO BE THE AGREED AND LIQUIDATED DAMAGES OF SELLER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY. SELLER AGREES TO WAIVE ALL OTHER REMEDIES AGAINST BUYER WHICH SELLER MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY BY REASON OF SUCH DEFAULT BY BUYER. THE LIQUIDATED DAMAGES ARE NOT INTENDED TO BE A FORFEITURE OR PENALTY, BUT ARE INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.

_____ _____

Seller's Initials Buyer's Initials

c. Escrow Cancellation Following a Termination Notice. If either party terminates this Agreement as permitted under any provision of this Agreement by delivering a termination notice to Escrow Agent and the other party, Escrow shall be promptly cancelled and, Escrow Agent shall return all documents and funds to the parties who deposited them, less applicable Escrow cancellation charges and expenses. Promptly upon presentation by Escrow Agent, the parties shall sign such instruction and other instruments as may be necessary to effect the foregoing Escrow cancellation.

d. Other Expenses. If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees due to the Escrow Agent for holding the Deposits and any fees due to the Title Company in connection with issuance of the Preliminary Title report and other title matters (together, "Escrow Cancellation Charges"). If Escrow fails to close for any reason, other than a default under this Agreement, Buyer and Seller shall each pay one-half (½) of any Escrow Cancellation Charges.

18. MISCELLANEOUS.

a. Entire Agreement. This Agreement, together with the Exhibits and schedules hereto, contains all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement together with the Exhibits and schedules hereto.

b. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

c. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

d. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

f. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer will not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Agreement. In the event the transaction contemplated by this Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

g. Interpretation of Agreement. The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

h. Amendments. This Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

i. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Agreement (or a copy by facsimile transmission).

j. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

k. No Third Party Beneficiary. The provisions of this Agreement are not intended to benefit any third parties.

l. Survival. Except as expressly set forth to the contrary herein, no representations, warranties, covenants or agreements of Seller contained herein shall survive the Closing.

m. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

n. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

o. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included,

unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

p. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

q. Procedure for Indemnity. The following provisions govern actions for indemnity under this Agreement. Promptly after receipt by an indemnitee of notice of any claim, such indemnitee will, if a claim in respect thereof is to be made against the indemnitor, deliver to the indemnitor written notice thereof and the indemnitor shall have the right to participate in, and, if the indemnitor agrees in writing that it will be responsible for any costs, expenses, judgments, damages and losses incurred by the Indemnitee with respect to such claim, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the indemnitor, if the indemnitee reasonably believes that representation of such indemnitee by the counsel retained by the indemnitor would be inappropriate due to actual or potential differing interests between such indemnitee and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnitor within a reasonable time of notice of any such claim shall relieve such indemnitor of any liability to the indemnitee under this indemnity only if and to the extent that such failure is prejudicial to its ability to defend such action, and the omission so to deliver written notice to the indemnitor will not relieve it of any liability that it may have to any indemnitee other than under this indemnity. If an indemnitee settles a claim without the prior written consent of the indemnitor, then the indemnitor shall be released from liability with respect to such claim unless the indemnitor has unreasonably withheld or delayed such consent.

r. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

s. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

t. Section 1031 Exchange. Either party may consummate the purchase or sale (as applicable) of the Property as part of a so-called like kind exchange (an "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"), provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of an Exchange be a condition precedent or condition subsequent to the exchanging party's obligations under this Agreement; (b) the exchanging party shall effect its Exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary (c) neither party shall be required to take an assignment of the purchase

agreement for relinquished or replacement property or be required to acquire or hold title to any real property for purposes of consummating an Exchange desired by the other party; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by the non-exchanging party had the exchanging party not consummated the transaction through an Exchange. Neither party shall by this Agreement or, acquiescence to an Exchange desired by the other party, have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the exchanging party that its Exchange in fact complies with Section 1031 of the Code.

u. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Agreement as though fully set forth herein.

v. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be impaired or invalidated, and the parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

w. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

x. Legal Advice. Each party has received independently legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

y. Memorandum of Agreement. Buyer and Seller shall execute and notarize the Memorandum of Agreement included herewith as Exhibit E, which Buyer may record with the county of San Diego, in its sole discretion.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first set forth above.

BUYER:	SELLER:
6176 FEDERAL BLVD TRUST	DARRYL COTTON.
By: _____	_____
Printed: _____	
Its: Trustee	

Escrow Agent has executed this Agreement in order to confirm that the Escrow Agent has received and shall hold the Deposit and the interest earned thereon, in escrow, and shall disburse the Deposit, and the interest earned thereon, pursuant to the provisions of this Agreement.

Date: _____, 2017

By: _____

Escrow Officer

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY
(to be provided by the Title Company)

EXHIBIT "B"

PROPERTY INFORMATION

EXHIBIT "C"

SERVICE CONTRACTS

EXHIBIT "D"

THREATENED OR PENDING LAWSUITS

EXHIBIT "E"

MEMORANDUM OF AGREEMENT

Subject: Statement
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Thursday, March 2, 2017 8:51:11 AM GMT-08:00

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

SIDE AGREEMENT

Dated as of March ___, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars ($400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I

1. Terms of the Side Agreement

1.1. Buyer shall pay Four Hundred Thousand Dollars ($400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1.This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. Buyer shall transmit Payment Price via wire transfer to the following account: _____, with the routing number or swift code of: _____, located at the following bank and address: _____.

3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

3.6. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

3.7. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential any and all material obtained about the other or, in the case of Buyer, about the Property or its operations, this Side Agreement or the transactions contemplated hereby, and shall not disclose such information to any third party. Except as may be required by law, Buyer shall not divulge any such information to other persons or entities including, without limitation, appraisers, real estate brokers, or competitors of Seller. Notwithstanding the foregoing, Buyer shall have the right to disclose information with respect to the Property to its officers, directors, employees, attorneys, accountants, environmental auditors, engineers, potential lenders, and permitted assignees under this Side Agreement and other consultants to the extent necessary for Buyer to evaluate its acquisition of the Property provided that all such persons are told that such information is confidential and agree (in writing for any third party engineers, environmental auditors or other consultants) to keep such information confidential. If Buyer acquires the Property from Seller, either party shall have the right, subsequent to the Closing of such acquisition, to publicize the transaction (other than the parties to or the specific economics of the transaction) in whatever manner it deems appropriate; provided that any press release or other public disclosure regarding this Side Agreement or the transactions contemplated herein, and the wording of same, must be approved in advance by both parties, which approval shall not be unreasonably withheld. The provisions of this section shall survive the Closing or any termination of this Side Agreement. In the event the transaction contemplated by this Side Agreement does not close as provided herein, upon the request of Seller, Buyer shall promptly return to Seller all Property Information and all other documents, reports and records obtained by Buyer in connection with the investigation of the Property.

3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

3.9. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

3.10. Drafts Not an Offer to Enter Into a Legally Binding Contract. The parties hereto agree that the submission of a draft of this Side Agreement by one party to another is not intended by either party to be an offer to enter into a legally binding contract with respect to the purchase and sale of the Property. The parties shall be legally bound with respect to the purchase and sale of the Property pursuant to the terms of this Side Agreement only if and when both Seller and Buyer have fully executed and delivered to each other a counterpart of this Side Agreement (or a copy by facsimile transmission).

3.11. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

3.12. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

3.13. Invalidity and Waiver. If any portion of this Side Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Side Agreement shall he deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

3.14. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
6176 Federal Blvd.
San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall he deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

3.15. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

3.16. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON:

_____

SIDE AGREEMENT

Dated as of March ___, 2017

By and Among

DARRYL COTTON

and

6176 FEDERAL BLVD TRUST

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust ("Buyer"), a California trust. Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer desire to enter into a Purchase Agreement (the "Purchase Agreement"), dated of even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property"); and

WHEREAS, the purchase price for the Property is Four Hundred Thousand Dollars ($400,000); and

WHEREAS, a condition to the Purchase Agreement is that Buyer and Seller enter into this Side Agreement that addresses the terms under which Seller shall move his existing business located on the Property.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I

1. Terms of the Side Agreement

1.1. Buyer shall pay Four Hundred Thousand Dollars ($400,000) to cover Seller's expenses related to moving and re-establishing his business ("Payment Price").

1.2. The Payment Price is contingent on close of escrow pursuant to the Purchase Agreement.

ARTICLE II

2. Closing Conditions

2.1. Within ten (10) business days from the close of escrow on the Property, Buyer shall pay the Payment Price by wire transfer to an account provided by the Seller (see section 2.3); and

2.2. A condition precedent to the payment of the Payment Price is receipt by the Buyer of Seller's written representation that Seller has relocated his business and vacated the Property; and

2.3. If escrow does not close on the Property, the Side Agreement shall terminate in accordance with the terms of the Purchase Agreement and no payment is due or owing from Buyer to Seller.

ARTICLE III

3. General Provisions

3.1.This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

3.2. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

3.3. Wire Instructions. Buyer shall transmit Payment Price via wire transfer to the following account: _____, with the routing number or swift code of: _____, located at the following bank and address: _____.

3.4. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

3.5. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

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3.8. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

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3.11. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

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IF TO BUYER:

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6176 Federal Blvd.
San Diego, California 92114
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided,

however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

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3.16. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

3.17. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto at Closing, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

3.18. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

3.19. Incorporation of Recitals/Exhibits. All recitals set forth herein above and the exhibits attached hereto and referred to herein are incorporated in this Side Agreement as though fully set forth herein.

3.20. Waiver of Covenants, Conditions or Remedies. The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act, under this Side Agreement shall not invalidate this Side Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required, under this Side Agreement. The exercise of any remedy provided in this Side Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Side Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

3.21. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

SELLER:

DARRYL COTTON:

_____

Subject: Re: Statement
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Friday, March 3, 2017 8:22:09 AM GMT-08:00

Larry,

I read the Side Agreement in your attachment and I see that no reference is made to the 10% equity position as per my Inda-Gro GERL Service Agreement (see attached) in the new store. In fact para 3.11 looks to avoid our agreement completely. It looks like counsel did not get a copy of that document. Can you explain?

On Thu, Mar 2, 2017 at 8:51 AM, Larry Geraci <Larry@tfcsd.net> wrote:

> *Best Regards,*
>
> *Larry E. Geraci, EA*
>
> *Tax & Financial Center, Inc*
> *5402 Ruffin Rd, Ste 200*
> *San Diego, Ca 92123*
>
> *Web: Larrygeraci.com*
> ***Bus: 858.576.1040***
> *Fax: 858.630.3900*
>
> ---
>
> Circular 230 Disclaimer
>
> IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it

[redacted]

SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments
5402 Ruffin Road, Ste. 200
San Diego, CA 92103

Attn: Mr. Larry Geraci
Ph: 858.956.4040
E-mail: Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and maneged by your company, GERL Investments.

1) The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for $400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.

2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.

3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.

4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of $400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro $200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, $200,000.00 would become payable and due.

5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and

[redacted]

GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

6) . GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

TOTAL PRICE: Four Hundred Thousand and 00/100 ($ 400,000.00)

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

Sign: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci

SERVICES AGREEMENT CONTRACT

Date: 09/24/16

Customer: GERL Investments
5402 Ruffin Road, Ste. 200
San Diego, CA 92103

Attn: Mr. Larry Geraci
Ph: 858.956.4040
E-mail: Larry@TFCSD.net

Mr. Geraci;

Pursuant to our conversations I have developed this document to act as the Contract between us that will serve to define our relationship, services, and fee's for the development of 6176 Federal Boulevard San Diego, CA. 92114 (hereinafter referred to as the property) as a new dispensary to be owned and managed by your company, GERL Investments.

1) The property is currently owned by me, Darryl Cotton (Cotton-Seller) and occupied by my company, Inda-Gro Induction Lighting Company (Inda-Gro-Tenant). Under separate Contract Cotton has agreed to sell the property to GERL Investments (GERL-Buyer) for $400,000.00 and a 10% equity position in the new licensed cannabis dispensary business being developed at the property by GERL.

2) Upon completion and transfer of property ownership Cotton will immediately cease being the landlord to Inda-Gro and Inda-Gro will become the tenant of GERL.

3) GERL plans to tear down the existing structure(s) and build a new structure for a commercial dispensary. Under this Agreement GERL will allow Inda-Gro to remain in the property at no charge until such time that the plan check with the City of San Diego has been approved and permits have been issued. This process is expected to take 6-9 months. At the time GERL notices Inda-Gro that the permits have been issued Inda-Gro will have 30 days to vacate the property. Inda-Gro agrees to cooperate with GERL architects to access the property during the design phase of this work.

4) Inda-Gro is agreeing to vacate the property in consideration for a relocation fee of $400,000.00 of which payment would be made in two parts. Upon execution of this Contract GERL agrees to pay Inda-Gro $200,000. Upon issuance of the permits and the 30 day notice to vacate the balance, $200,000.00 would become payable and due.

5) Inda-Gro currently operates what we refer to as a 151 Farm. This is a teaching and touring farm that demonstrates urban farming technologies which utilize our lighting systems, controls and water savings strategies utilizing Aquaponics systems. Since it is in the interest of all parties; Inda-Gro, Cotton and

[redacted]

GERL to identify ongoing investment opportunities with both cannabis and non-cannabis related ventures Inda-Gro and Cotton agree to use the current property to highlight the benefits of what having a licensed dispensary is to the community and once relocated Inda-Gro/Cotton would agree to continue to promote the new dispensary as an example of seed to sale retail distribution as well as identify other investment opportunities that develop from interested parties having toured our facilities and wishing to establish similar operations.

6) GERL may wish to have interested parties tour the current and new property for Inda-Gro 151 Farms. This too is acceptable and under this Agreement would be a mutual collaboration and strategic alliance in terms of the farming and cultivation aspects provided by Inda-Gro and the Site Acquisition, Design/Build Construction and Retail Cannabis Services provided by GERL for those future contracts.

TOTAL PRICE: Four Hundred Thousand and 00/100 ($ 400,000.00)

I/we accept the Service Agreement Contract as detailed and do hereby agree to the Terms as set forth herein:

Sign: _____ Print Name: _____ Date: _____
Darryl Cotton, President

Sign: _____ Print Name: _____ Date: _____
Larry Geraci

Subject: Contract Review
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>
Date: Tuesday, March 7, 2017 12:05:43 PM GMT-08:00

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated _____, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller $400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I
SIDE AGREEMENT

1.1. Within 10 days from the closing of the purchase of the Property pursuant to the Purchase Agreement, and conditioned upon Seller being fully vacated from the Property prior to such closing, Buyer shall pay to Seller in cash or cash equivalent, the sum of Four Hundred Thousand Dollars ($400,000.00) to an account to be designated by Seller in writing.

1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the 10th day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than $5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and $10,000.00 a month for each month thereafter the Business is operating on the Property.

ARTICLE II
GENERAL TERMS

2. Entire Agreement. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. Termination. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

2.10. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

2.17. Incorporation of Recitals/Exhibits. All recitals set forth herein above are incorporated in this Agreement as though fully set forth herein.

2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER: SELLER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

DARRYL COTTON:

_____

SIDE AGREEMENT

This Side Agreement ("Side Agreement") is made as of the ___ day of _____ 2017, by and between Darryl Cotton ("Seller") and 6176 Federal Blvd Trust, dated _____, 2017 ("Buyer"). Buyer and Seller are sometimes referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Seller and Buyer have entered into a Purchase Agreement (the "Purchase Agreement"), dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114 (the "Property");

WHEREAS, The Buyer intends to operate a licensed medical cannabis at the property ("Business"); and

WHEREAS, in conjunction with Buyer's purchase of the Property, Buyer has agreed to pay Seller $400,000.00 to reimburse and otherwise compensate Seller for Seller relocating his business located at the Property, and to share in certain profits of Buyer's future Business.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows:

ARTICLE I
SIDE AGREEMENT

1.1. Within 10 days from the closing of the purchase of the Property pursuant to the Purchase Agreement, and conditioned upon Seller being fully vacated from the Property prior to such closing, Buyer shall pay to Seller in cash or cash equivalent, the sum of Four Hundred Thousand Dollars ($400,000.00) to an account to be designated by Seller in writing.

1.2. In addition to the above, conditioned upon the timely closing of the purchase of the Property pursuant to the Purchase Agreement, Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business after all expenses and liabilities have been paid. Profits will be paid on the 10th day of each month following the month in which they accrued. Further, Buyer hereby guarantees a profits payment of not less than $5,000.00 per month for the first three months the Business is open (i.e. profits would be paid in months 2-4 for profits accrued in months 1-3) and $10,000.00 a month for each month thereafter the Business is operating on the Property.

ARTICLE II
GENERAL TERMS

2. Entire Agreement. This Side Agreement, together with the Purchase Agreement and any Exhibits and schedules hereto or thereto, contain all representations, warranties and covenants made by Buyer and Seller and constitutes the entire understanding between the parties hereto with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements, in relation to this Side Agreement are replaced in total by this Side Agreement together with the Purchase Agreement, Exhibits and schedules hereto.

2.1. Time. Time is of the essence in the performance of each of the parties' respective obligations contained herein.

2.2. Termination. If escrow does not close on the Property according to the terms of the Purchase Agreement, the Side Agreement shall terminate and Buyer and Seller shall have no obligations to each other under this Agreement.

2.3. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Side Agreement, the prevailing party shall be entitled to recover all costs and expenses including its attorneys' fees in such action or proceeding in such amount as the court may adjudge reasonable. The prevailing party shall be determined by the court based upon an assessment of which party's major arguments made or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues in the court's decision. If the party which shall have commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

2.4. Assignment. Buyer's rights and obligations hereunder shall be assignable without the prior consent of Seller.

2.5. Governing Law. This Side Agreement shall be governed by and construed in accordance with the laws of the State of California.

2.6. Confidentiality and Return of Documents. Buyer and Seller shall each maintain as confidential this Side Agreement and the transactions contemplated hereby, and shall not disclose such information to any third party, except their respective attorneys.

2.7. Interpretation of Side Agreement. The article, section and other headings of this Side Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine shall include the feminine and the neuter. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.

2.8. Amendments. This Side Agreement may be amended or modified only by a written instrument signed by Buyer and Seller.

2.9. No Partnership. The relationship of the parties hereto is solely that of Seller and Buyer with respect to the Property and no joint venture or other partnership exists between the parties hereto. Neither party has any fiduciary relationship hereunder to the other.

2.10. No Third Party Beneficiary. The provisions of this Side Agreement are not intended to benefit any third parties.

2.11. Invalidity and Wniver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Side Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision, unless made in writing.

2.12. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the parties at the following addresses:

IF TO BUYER:

6176 Federal Blvd. Trust
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

with a copy to:

Austin Legal Group, APC
3990 Old Town Ave, A-112
San Diego, CA 92110

IF TO SELLER:

Darryl Cotton
Address:
City, State, Zip:
Attn:
Fax No.:
Phone No.:

Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one business day after deposit with such courier, (b) sent by telefax or electronic mail, in which case notice shall be deemed delivered upon confirmation of delivery if sent prior to 5:00 p.m. on a business day (otherwise, the next business day), or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

2.13. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday,

Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. California time.

2.14. Brokers. The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction.

2.15. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties hereto, Buyer and Seller each agree to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby.

2.16. Execution in Counterparts. This Side Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Side Agreement. To facilitate execution of this Side Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

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2.18. Legal Advice. Each party has independently received legal advice from its attorneys with respect to the advisability of executing this Side Agreement and the meaning of the provisions hereof. The provisions of this Side Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

IN WITNESS WHEREOF, the parties hereto have executed this Side Agreement, in duplicate originals, by their respective officers hereunto duly authorized, the day and year herein written.

BUYER: SELLER:

6176 FEDERAL BLVD. TRUST

By: _____

Printed: _____

Its: Trustee

DARRYL COTTON:

_____

_____ / _____

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Thursday, March 16, 2017 8:23:52 PM GMT-07:00

Larry,

My apologies ahead of time as I am going to provide frank comments on the agreement so that we can finallze it and get this closed. And, so that you understand where I am coming from, just want to lay out a few of our milestones.

Throughout October we had discussions regarding the sale of my property. We met on 11/2 and agreed upon an $800,000 purchase price, a $50,000 non-refundable deposit, a 10% equity stake with a monthly guaranteed minimum $10,000 payment and to definitive agreements that contained a few other conditions (e.g., I stay at the property if the CUP is issued until construction starts). We executed a good faith agreement that day stating the sale of the property was for the $800,000 and that as a sign of good faith, you were providing a $10,000 deposit towards the required $50,000 non-refundable deposit. That same day you scanned and emailed to me the agreement and I replied and noted that the agreement did not contain the 10% equity stake in the dispensary. I asked you to please respond and confirm via email that a condition of the sale was my 10% equity stake. You did not respond and confirm the 10% as I requested.

Almost 4 months later, on 2/27, you forwarded a draft purchase agreement for the property that again did not contain the agreed upon 10% equity stake, it also does not mention the remaining $40,000 towards the non-refundable deposit. I called you about this and we spoke.

On 3/2, you forwarded a draft Side Agreement that again did not contain the 10% equity stake. I replied the next day on 3/3 raising the 10% equity issue and attaching the draft services agreement that I drafted that contains some of the terms we had agreed upon.

On 3/7, email below, you forwarded a revised Side Agreement that did contain the 10% equity stake, but in the body of the email you requested that the $10,000 minimum monthly payment be held off until month 7 and that months 1-6 be reduced to $5,000 a month. I know from our conversations that you have spent over $300,000 on lobbying and zoning efforts for this property, which has caused you to be strapped for cash. However, I am not in a position to take a $5,000 reduction for 6 months.

The long and short of it, we started these negotiations 4 months ago and the drafts and our communications have not reflected what we agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed.

Please have these terms incorporated into revised drafts:

- The remaining $40,000 deposit, which is nonrefundable in the event you choose to not close on the property if the CUP is denied. And which is to be provided upon execution of the final agreements.
- If the CUP is granted, my business can remain at the property until the city has finalized the plans and construction begins at the property.
- A 10% equity stake with a minimum guaranteed monthly distribution of $10,000, whichever is greater.
- A clause that my 10% equity stake carries with it consent rights for any material decisions. Those items that are to require my consent can be standard minority consent rights, but

basically that my consent is required for large decisions like the issuance of employee bonus and for agreements with suppliers and vendors that are not done on an arm-lengths basis. A friend of mine said that these are standard "Minority Shareholder Protection Rights."
- A provision requiring that upon the creation of the formation and governance documents of the CUP entity, that there is a requirement that the accounting is to be done by a third-party accounting firm that will also be responsible for calculating my 10% monthly equity distributions.
- The incorporation of all the terms in the MOU that I created that Gina references in the draft purchase agreement.
- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Friday, March 17, 2017 2:15:50 PM GMT-07:00

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>
> ---
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> Circular 230 Disclaimer:

Subject: RE: Contract Review
From: Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <indagrodarryl@gmail.com>
Date: Saturday, March 18, 2017 1:43:23 PM GMT-07:00

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Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Sunday, March 19, 2017 9:02:18 AM GMT-07:00

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To: Darryl Cotton <indagrodarryl@gmail.com>
Date: Sunday, March 19, 2017 3:11:22 PM GMT-07:00

Darryl,

At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.

As to lying about the status, read the comment below from the city on Wednesday 3/15/2017. We are addressing this currently with the city. I have been forthright with you this entire process.

To: 'Abhay Schweitzer' <abhay@techne-us.com>
Subject: PTS 520606 - Federal Boulevard MMCC
Importance: High

Good Afternoon,
I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application. Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.
Please notify me at your earliest convenience of your preference.
Regards,

Best Regards,

Larry E. Geraci, EA

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> Circular 230 Disclaimer:
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> IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.
>
> **From:** Darryl Cotton [mailto:indagrodarryl@gmail.com]
> **Sent:** Friday, March 17, 2017 2:16 PM
> **To:** Larry Geraci <Larry@tfcsd.net>
> **Subject:** Re: Contract Review
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> Larry, I received your text asking to meet in person tomorrow. I would prefer that until we have final agreements, that we converse exclusively via email. My greatest concern is that you will get a denial on the CUP application and not provide

the remaining $40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31, 2016 BEFORE we even signed our agreement on the 2nd of November. There is no situation where an oral agreement will convince me that you are dealing with me in good faith and will honor our agreement. We need a final written, legal, binding agreement.

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Again, please respond to this email so that there is a clear record of our conversations from this point forward or at least until we have final executed documents.

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In anticipation of your reply, I remain,

Darryl Cotton

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Larry E. Geraci, EA

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

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Sunday, March 19, 2017 6:47:43 PM GMT-07:00

Larry,

I have not been changing my mind. The only additional requests have been in regards to putting in place third party accounting and other mechanisms to ensure that my interests are protected. I have only done so because you kept providing draft agreements that continuously failed the terms we agreed to.

It is blatantly clear to me now that you have been stringing me along, even now all your responses are to buy more time. So there is no confusion, you have until tomorrow 12:00 PM to provide confirmation as requested below. If you don't, I am emailing the City of San Diego regarding the fact that no third-party has any interest in my property and the application currently pending needs to be denied.

On Sun, Mar 19, 2017 at 3:11 PM, Larry Geraci <Larry@tfcsd.net> wrote:

> Darryl,
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> At this point, you keep changing your mind every time we talk. My attorneys will move forward on the agreement as planned. Any signed written agreement will be followed by the letter of the law. It's not about any deposit, it's about you changing what is not in writing. So there is no confusion, the attorneys will move forward with an agreement.
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> **As to lying about the status, read the comment below from the city on Wednesday 3/15/2017.** We are addressing this currently with the city. I have been forthright with you this entire process.
>
> **To:** 'Abhay Schweitzer' <abhay@techne-us.com>
> **Subject:** PTS 520606 - Federal Boulevard MMCC
> **Importance:** High
>
> Good Afternoon,
>
> I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.
>
> Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.
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> Please notify me at your earliest convenience of your preference.
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> Regards,

Best Regards,

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your attorneys to tell me whether or not you are going to honor our agreement.

I need written confirmation that you will honor our agreement so that I know that you are not just playing for time - hoping to get a response from the City before you put down in writing that you owe me the remainder of the $50,000 nonrefundable deposit we agreed to.

If I do not have a written confirmation from you by 12:00 PM tomorrow, I will contacting the City of San Diego and let them know that our agreement was not completed and that the application pending on my property needs to be denied because the applicant has no right to my property.

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Bus: 858.576.1040

Fax: 858.630.3900

Subject: Re: Contract Review
From: Darryl Cotton <indagrodarryl@gmail.com>
To: Larry Geraci <Larry@tfcsd.net>
Date: Tuesday, March 21, 2017 3:18:36 PM GMT-07:00

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete' phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

On Sun, Mar 19, 2017 at 6:47 PM, Darryl Cotton <indagrodarryl@gmail.com> wrote:

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> > **As to lying about the status, read the comment below from the city on Wednesday 3/15/2017.** We are addressing this currently with the city. I have been forthright with you this entire

process.

To: 'Abhay Schweitzer' <abhay@techne-us.com>
Subject: PTS 520606 - Federal Boulevard MMCC
Importance: High

Good Afternoon,

I am the Development Project Manager assigned to the above referenced project. The project is located in the CO-2-1 (Commercial Office) Zone. Please note that per the San Diego Municipal Code, a Medical Marijuana Consumer Cooperative is not a permitted use in this Zone and staff will be recommending denial of this application.

Pease advise if you wish to continue the processing of the subject application through the full review process, or staff could schedule a hearing immediately with a recommendation of denial. Please note that all costs associated with the processing of the application would be charged to the deposit account and not refunded.

Please notify me at your earliest convenience of your preference.

Regards,

Best Regards,

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- Please have Gina delete the clause in the purchase agreement that says both you and I had our own counsel review the agreement. You told me I could just communicate with Gina and though I tried to engage an attorney, I did not ultimately do so for cost reasons.

The intent of all this is to ensure that the agreement we have agreed upon can be executed and verified. Having said all this, I really want to finalize this as soon as possible - I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the $40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

Ultimately, the main point is that we were supposed to execute our agreements as soon as possible so that I could receive the total $50,000 non-refundable deposit and you would take the risk of the non-approval of the CUP. If this keeps dragging on and we do not finalize and execute our agreements, then you may get a denial from the city on the CUP and then simply walk away. At that point, the property having been denied, no other party would be willing to take on that risk. If you are not willing to take on that risk as originally agreed upon, please let me know as there are other parties who would match your terms and be willing to take on that risk.

Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement. Or, if not, so I can return your $10,000 of the $50,000 required deposit. If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms above will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

In anticipation of your reply, I remain,

Darryl Cotton

On Tue, Mar 7, 2017 at 12:05 PM, Larry Geraci <Larry@tfcsd.net> wrote:

Hi Daryl,

I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month....can we do 5k, and on the seventh month start 10k?

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc

5402 Ruffin Rd, Ste 200

San Diego, Ca 92123

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900


5

EXHIBIT 5

CALIFORNIA ASSOCIATION OF REALTORS®

COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(NON-RESIDENTIAL)
(C.A.R. Form CPA, Revised 12/15)

Date Prepared: 03/21/2017

1. OFFER:
A. THIS IS AN OFFER FROM Richard John Martin II ("Buyer").
[X] Individual(s), [ ] A Corporation, [ ] A Partnership, [ ] An LLC, [ ] An LLP, or [ ] Other _____.
B. THE REAL PROPERTY to be acquired is 6176 Federal Blvd, situated in San Diego (City), San Diego (County), California, 92114-1431 (Zip Code), Assessor's Parcel No. 543-320-02-0 ("Property").
C. THE PURCHASE PRICE offered is Two Million Dollars $ 2,000,000.00
D. CLOSE OF ESCROW shall occur on [X] see Addendum 1 (date) (or [ ] _____ Days After Acceptance).
E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:
A. DISCLOSURE: The Parties each acknowledge receipt of a [X] "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
Listing Agent N/A (Print Firm Name) is the agent of (check one):
[ ] the Seller exclusively; or [ ] both the Buyer and Seller.
Selling Agent N/A (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): [ ] the Buyer exclusively; or [ ] the Seller exclusively; or [ ] both the Buyer and Seller.
C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a [X] "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.
A. INITIAL DEPOSIT: Deposit shall be in the amount of ..... $ _____
(1) Buyer's Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, [ ] cashier's check, [ ] personal check, [ ] other _____ within 3 business days after Acceptance (or _____);
OR (2) [ ] Buyer Deposit with Agent: Buyer has given the deposit by personal check (or _____) to the agent submitting the offer (or to _____), made payable to _____. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or _____).
Deposit checks given to agent shall be an original signed check and not a copy.
(Note: Initial and increased deposit checks received by agent shall be retained in Broker's trust fund log.)
B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of ..... $ _____
within ___ Days After Acceptance (or _____).
If the Parties agree to liquidated damages at this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.
C. [ ] ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or [ ] Buyer shall, within 3 (or _____) Days After Acceptance, Deliver to Seller such verification.
D. LOAN(S):
(1) FIRST LOAN: in the amount of ..... $ 1,800,000.00
This loan will be conventional financing or [ ] Seller Financing (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form AFA), [ ] subject to financing, [ ] Other _____. This loan shall be at a fixed rate not to exceed ____ %, or, [ ] an adjustable rate loan with initial rate not to exceed ____ %. Regardless of the type of loan, Buyer shall pay points not to exceed ____ % of the loan amount.
(2) [ ] SECOND LOAN in the amount of ..... $ _____
This loan will be conventional financing or [ ] Seller financing (C.A.R. Form SFA), [ ] assumed financing (C.A.R. Form AFA), [ ] subject to financing, [ ] Other _____. This loan shall be at a fixed rate not to exceed ____ %, or, [ ] an adjustable rate loan with initial rate not to exceed ____ %. Regardless of the type of loan, Buyer shall pay points not to exceed ____ % of the loan amount.
E. ADDITIONAL FINANCING TERMS: see attached Addendum 1 $ 200,000.00
F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of ..... $ 2,000,000.00
to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
G. PURCHASE PRICE (TOTAL): .....
H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or ___) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. ([ ] Verification attached.)

Buyer's Initials (RJM II) (_____)
Seller's Initials (_____) (_____)

I. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (or [X] is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or ___) Days After Acceptance.

J. LOAN TERMS:
(1) LOAN APPLICATIONS: Within 3 (or ___) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. ([X] Letter attached)
(2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.
(3) LOAN CONTINGENCY REMOVAL:
Within 21 (or ___) Days After Acceptance, Buyer shall, as specified in paragraph 18, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
(4) [X] NO LOAN CONTINGENCY: Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
(5) LENDER LIMITS ON BUYER CREDITS: Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

K. BUYER STATED FINANCING: Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in this Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. SALE OF BUYER'S PROPERTY:
A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.
OR B. [ ] This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. ADDENDA AND ADVISORIES:
A. ADDENDA:
[X] Addendum # 1 (C.A.R. Form ADM)
[ ] Back Up Offer Addendum (C.A.R. Form BUO)
[ ] Court Confirmation Addendum (C.A.R. Form CCA)
[ ] Seismic, Wall and Property Monument Addendum (C.A.R. Form SWPI)
[ ] Short Sale Addendum (C.A.R. Form SSA)
[ ] Other
B. BUYER AND SELLER ADVISORIES:
[X] Buyer's Inspection Advisory (C.A.R. Form BIA)
[ ] Probate Advisory (C.A.R. Form PA)
[ ] Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
[ ] Trust Advisory (C.A.R. Form TA)
[ ] REO Advisory (C.A.R. Form REO)
[ ] Short Sale Information and Advisory (C.A.R. Form SSIA)
[ ] Other

6. OTHER TERMS: see attached Addendum 1, is incorporated as part of contract.

7. ALLOCATION OF COSTS
A. INSPECTIONS, REPORTS AND CERTIFICATES: Unless otherwise agreed, in writing, this paragraph only determines who is to pay for any work recommended or identified in the Report.
(1) [ ] Buyer [ ] Seller shall pay for a natural hazard zone disclosure report, including tax [ ] environmental [ ] Other: ___ prepared by ___
(2) [ ] Buyer [ ] Seller shall pay for the following Report ___ prepared by ___
(3) [ ] Buyer [ ] Seller shall pay for the following Report ___ prepared by ___
B. GOVERNMENT REQUIREMENTS AND RETROFIT:
(1) [ ] Buyer [ ] Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with State and local Law, unless Seller is exempt.

Buyer's Initials ( ) ( )
Seller's Initials ( ) ( )

(2) (i) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.
(ii) ☐ Buyer ☐ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after COE.
(iii) Buyer shall be provided, within the time specified in paragraph 18A, a copy of any required governmental conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of the sale of the Property.

C. ESCROW AND TITLE:
(1) (a) ☐ Buyer ☐ Seller shall pay escrow fee _____
(b) Escrow Holder shall be _____
(c) The Parties shall, within 5 (or ___) Days After receipt, sign and return Escrow Holder's general provisions.
(2) (a) ☐ Buyer ☐ Seller shall pay for owner's title insurance policy specified in paragraph 17E _____
(b) Owner's title policy to be issued by _____
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. OTHER COSTS:
(1) ☐ Buyer ☐ Seller shall pay County transfer tax or fee _____
(2) ☐ Buyer ☐ Seller shall pay City transfer tax or fee _____
(3) ☐ Buyer ☐ Seller shall pay Owners' Association ("OA") transfer fee _____
(4) Seller shall pay OA fees for preparing all documents required to be delivered by Civil Code §4525.
(5) ☐ Buyer ☐ Seller shall pay OA fees for preparing all documents other than those required by Civil Code §4525.
(6) Buyer to pay for any HOA certification fee.
(7) ☐ Buyer ☐ Seller shall pay for any private transfer fee _____
(8) ☐ Buyer ☐ Seller shall pay for _____
(9) ☐ Buyer ☐ Seller shall pay for _____

8. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:
A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph 8B, C or D.
B. ITEMS INCLUDED IN SALE:
(1) All EXISTING fixtures and fittings that are attached to the Property;
(2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms.
(3) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 18A.
(4) Seller represents that all items included in the purchase price are, unless otherwise specified or identified pursuant to 8B(7), owned by Seller. Within the time specified in paragraph 18A, Seller shall give Buyer a list of items not owned by Seller.
(5) Seller shall deliver title to the personal property by Bill of Sale, free and clear of all liens and encumbrances, and without Seller warranty of condition regardless of value.
(6) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase replacement thereof, and insurance proceeds.
(7) LEASED OR LIENED ITEMS AND SYSTEMS: Seller shall, within the time specified in paragraph 18A, (i) disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 16B and C.
C. ITEMS EXCLUDED FROM SALE: Unless otherwise specified, the following items are excluded from sale: _____
_____
D. OTHER ITEMS:
(1) Existing integrated phone and automation systems, including necessary components such as intranet and Internet-connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers) and applicable software, permissions, passwords, codes and access information, are (☐ are NOT) included in the sale.

9. CLOSING AND POSSESSION:
A. Seller-occupied or vacant property: Possession shall be delivered to Buyer: (i) ☐ at 6 PM or (☐ AM/☐ PM) on the date of Close Of Escrow; (ii) ☐ no later than ___ calendar days After Close Of Escrow; or (iii) ☐ at ___ ☐ AM/☐ PM on _____.
B. Seller Remaining in Possession After Close Of Escrow: If Seller has the right to remain in possession after Close Of Escrow, (i) the Parties are advised to sign a separate occupancy agreement such as C.A.R. Form CL; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.
C. Tenant Occupied Units: Possession and occupancy, subject to the rights of tenants under existing leases, shall be delivered to Buyer on Close Of Escrow.
D. At Close Of Escrow: (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.

Buyer's Initials (X ___)(___) Seller's Initials (X ___)(___)

E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and Internet-connected devices included in the purchase price and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.

10. **SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the Civil Code.

11. **SELLER DISCLOSURES:**

A. **NATURAL AND ENVIRONMENTAL DISCLOSURES:** Seller shall, within the time specified in paragraph 18, if required by Law: (i) Deliver to Buyer earthquake guides (and, questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide an NHD disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

B. **ADDITIONAL DISCLOSURES:** Within the time specified in paragraph 18, Seller shall Deliver to Buyer, in writing, the following disclosures, documentation and information:

(1) **RENTAL SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; and (ii) a rental statement including names of tenants, rental units, period of rental, date of last rent increase, security deposits, rental concessions, rebates, or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any concession, rebate, or other benefit, except as set forth in these documents.

(2) **INCOME AND EXPENSE STATEMENTS:** The books and records, including a statement of income and expense for the 12 months preceding Acceptance, Seller represents that the books and records are those maintained in the ordinary and normal course of business, and used by Seller in the computation of federal and state income tax returns.

(3) ☐ **TENANT ESTOPPEL CERTIFICATES:** (If checked) Tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist, and (iii) stating the amount of any prepaid rent or security deposit.

(4) **SURVEYS, PLANS AND ENGINEERING DOCUMENTS:** Copies of surveys, plans, specifications and engineering documents, if any, in Seller's possession or control.

(5) **PERMITS:** If in Seller's possession, Copies of all permits and approvals concerning the Property, obtained from any governmental entity, including, but not limited to, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.

(6) **STRUCTURAL MODIFICATIONS:** Any known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.

(7) **GOVERNMENTAL COMPLIANCE:** Any improvements, additions, alterations or repairs made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals.

(8) **VIOLATION NOTICES:** Any notice of violations of any Law filed or issued against the Property and actually known to Seller.

(9) **MISCELLANEOUS ITEMS:** Any of the following, if actually known to Seller: (i) any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceeding(s) affecting the Property, or the right to use and occupy it; (ii) any unsatisfied mechanic's or materialmen's lien(s) affecting the Property; and (iii) that any tenant of the Property is the subject of a bankruptcy.

C. **WITHHOLDING TAXES:** Within the time specified in paragraph 18A, to avoid required withholding Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law, (C.A.R. Form AS or QS).

D. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at http://www.npms.phmsa.dot.gov/. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

E. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**

(1) **SELLER HAS:** 7 (or ___) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision.

(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has 3 (or ___) Days After Acceptance to request from the OA (C.A.R. Form HOA 1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; and (v) the names and contact information of all OAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 18B(3). The Party specified in paragraph 7, as directed by escrow, shall deposit funds into escrow or direct to OA or management company to pay for any of the above.

12. ☐ ENVIRONMENTAL SURVEY (if checked): Within ____ Days After Acceptance, Buyer shall be provided a phase one environmental survey report paid for and obtained by ☐ Buyer; ☐ Seller. Buyer shall then, as specified in paragraph 18 remove this contingency or cancel this Agreement.

13. SUBSEQUENT DISCLOSURES: In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly deliver a subsequent or amended disclosure or notice in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.

14. CHANGES DURING ESCROW:
A. Prior to Close Of Escrow, Seller may only engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 14B: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
B. (1) 7 (or ☐ ____) Days prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of any Proposed Changes.
(2) Within 5 (or ____) Days After receipt of such notice Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.

15. CONDITION OF PROPERTY: Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
A. Seller shall, within the time specified in paragraph 18A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
B. Buyer has the right to conduct Buyer Investigations of the Property and, as specified in paragraph 18B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
C. Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, or in compliance with current Law, or have had permits issued.

16. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:
A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as provided in this paragraph and paragraph 18B. Within the time specified in paragraph 18B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures, may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2), (iii) review the negotiated sale allocation of deductible; (iv) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance, (v) review and seek approval of leases that may need to be assumed by Buyer; and (vi) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing required to prepare a Post Control Report; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
B. Seller shall make the Property available for all Buyer Investigations. Buyer shall: (i) as specified in paragraph 18B, complete Buyer Investigations and either remove this contingency or cancel this Agreement, and (ii) give Seller at no cost, complete Copies of all such investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's investigations and through the date possession is made available to Buyer.
D. Buyer indemnity and Seller protection for entry upon property: Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations, and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

17. TITLE AND VESTING:
A. Within the time specified in paragraph 18, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 18B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off unless Buyer is assuming those obligations or taking the Property subject to those obligations); and (ii) those matters which Seller has agreed to remove in writing.
C. Within the time specified in paragraph 18A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

19. REPAIRS: Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.

20. FINAL VERIFICATION OF CONDITION: Buyer shall have the right to make a final verification of the Property within 5 (or ___) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 15; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

21. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS: Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, OA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SSBA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

22. BROKERS:

A. COMPENSATION: Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.

B. BROKERAGE: Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify, defend, and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representations in this paragraph.

C. SCOPE OF DUTY: Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

23. REPRESENTATIVE CAPACITY: If one or more Parties is signing the Agreement in a representative capacity and not for himself/herself as an individual then that Party shall be indicated in paragraph 40 or 41 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in his individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within 3 Days after Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

24. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5A, 6, 7, 10, 11D, 17, 18G, 21, 22A, 23, 24, 30, 38, 39, 41, 42 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 22A, or paragraph D of the section titled Real Estate Brokers on page 11 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or ___) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 11 or elsewhere in this Agreement.

Buyer's Initials ( ) ( )
Seller's Initials ( ) ( )

D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

E. Buyer shall receive a standard coverage owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.

18. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. SELLER HAS: 7 (or ___) Days After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5A, 6, 7, 8B(7), 11A, B, C, D and E; 12, 15A and 17A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.

B. (1) BUYER HAS: 17 (or ___) Days After Acceptance, unless otherwise agreed in writing, to (i) complete all Buyer investigations; review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 5B(7) and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property.

(2) Within the time specified in paragraph 18B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.

(3) By the end of the time specified in paragraph 18B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 18A, then Buyer has 5 (or ___) Days After Delivery of any such items, or the time specified in paragraph 18B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

(4) Continuation of Contingency: Even after the end of the time specified in paragraph 18B(1) and before Seller cancels, if at all, pursuant to paragraph 18C, Buyer retains the right in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 18C(1).

C. SELLER RIGHT TO CANCEL:

(1) Seller right to Cancel; Buyer Contingencies: If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

(2) Seller right to Cancel; Buyer Contract Obligations: Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a letter as required by paragraph 3J(1); (iii) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H; or (iv) If in writing assume or accept leases or items specified in 8B(7); (v) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 29; or (vi) Provide evidence of authority to sign in a representative capacity as specified in paragraph 23. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

D. NOTICE TO BUYER OR SELLER TO PERFORM: The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least 2 (or ___) Days After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than 2 Days Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 18.

E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

F. CLOSE OF ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least 3 (or ___) Days After Delivery to close escrow. A DCE may not be Delivered any earlier than 3 Days Prior to the scheduled close of escrow.

G. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, release of funds will require mutual signed release instructions from the Parties, judicial decision or arbitration award. If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursal of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. A Party may be subject to a civil penalty of up to $1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).

B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or _____) Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10C, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 22A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 22A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.

D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.

E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

25. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).**

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

26. DISPUTE RESOLUTION:

A. **MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. **THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.** Exclusions from this mediation agreement are specified in paragraph 26C.

B. **ARBITRATION OF DISPUTES:** The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ / _____ Seller's Initials _____ / _____

Buyer's Initials (_____ / _____) Seller's Initials (_____ / _____)

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

(1) EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) a judicial or nonjudicial foreclosure, or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

(2) PRESERVATION OF ACTIONS: The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.

(3) BROKERS: Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

27. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

28. MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM: If Broker is a participant of a Multiple Listing Service ("MLS") or Property Data System ("PDS"), Broker is authorized to report to the MLS or PDS a pending sale and, upon Close Of Escrow, the terms of the transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.

29. ATTORNEY FEES: In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 28A.

30. ASSIGNMENT: Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AOAA).

31. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.

32. ENVIRONMENTAL HAZARD CONSULTATION: Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/or, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/or, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.

33. AMERICANS WITH DISABILITIES ACT: The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer's or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.

34. COPIES: Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals and other documents that are furnished to the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.

35. EQUAL HOUSING OPPORTUNITY: The Property is sold in compliance with federal, state and local anti-discrimination Laws.

36. GOVERNING LAW: This Agreement shall be governed by the Laws of the State of California.

37. TERMS AND CONDITIONS OF OFFER: This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Broker's compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

38. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.

39. DEFINITIONS: As used in this Agreement:

A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.

B. "Agreement" means this document and any counter offers and any incorporated addenda collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.

Buyer's Initials (X _____)(_____) Seller's Initials (X _____)(_____)

C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
D. "Close Of Escrow" or "COE" means the date the grant deed, or other evidence of transfer of title, is recorded.
E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the Individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 11; regardless of the method used (i.e., messenger, mail, email, fax, other).
J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.

40. AUTHORITY: Any person or persons signing this Agreement represent(s) that such person has full power and authority to bind that person's principal, and that the designated Buyer and Seller has full authority to enter into and perform this Agreement. Entering into this Agreement, and the completion of the obligations pursuant to this contract, does not violate any Articles of Incorporation, Articles of Organization, By Laws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.

41. EXPIRATION OF OFFER: This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless this offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by _____ see Addendum 1 _____, who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by ☐ _____ AM ☐ PM, on _____ (date)).

☐ One or more Buyers is signing the Agreement in a representative capacity and not for himself/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 3-21-17 BUYER _____

(Print name) Rashid John Martin II

Date _____ BUYER _____

(Print name) _____

☐ Additional Signature Addendum attached (C.A.R. Form ASA).

42. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

☐ (If checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED: _____.

☐ One or more Sellers is signing the Agreement in a representative capacity and not for himself/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date 3-21-17 SELLER _____

(Print name) Darryl Cotton

Date _____ SELLER _____

(Print name) _____

☐ Additional Signature Addendum attached (C.A.R. Form ASA).

(____/____) (Do not initial if making a counter offer.) CONFIRMATION OF ACCEPTANCE: A Copy of Signed Acceptance was
(Initials)
personally received by Buyer or Buyer's authorized agent on (date) _____ at _____
☐ AM ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.

Property Address: 6176 Federal Blvd, San Diego, CA 92114-1401 Date: March 31, 2017

REAL ESTATE BROKERS:

A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
B. Agency relationships are confirmed as stated in paragraph 2.
C. If specified in paragraph 3A(2): Agent who submitted this offer for Buyer acknowledges receipt of deposit.
D. **COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) N/A CalBRE Lic. # CalBRE Lic. #
By CalBRE Lic. # Date
By Date
Address City State Zip
Telephone Fax E-mail
Real Estate Broker (Listing Firm) N/A CalBRE Lic. #
By CalBRE Lic. # Date
By CalBRE Lic. # Date
Address City State Zip
Telephone Fax E-mail

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, ☐ a deposit in the amount of $), counter offer numbers ☐ Seller's Statement of Information and , and agrees to act as Escrow Holder subject to paragraph 24 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is

Escrow Holder Escrow #
By Date
Address
Phone/Fax/E-mail
Escrow Holder has the following license number #
☐ Department of Business Oversight, ☐ Department of Insurance, ☐ Bureau of Real Estate

PRESENTATION OF OFFER: ( ) Listing Broker presented this offer to Seller on (date).
Broker or Designee Initials

REJECTION OF OFFER: (X) No counter offer is being made. This offer was rejected by Seller on (date).
Seller's Initials

Buyer's Initials (X) ( )

Seller's Initials (X) ( )

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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by
Broker or Designee

CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15) No. 1

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind); ☒ Other _____
dated March 21, 2017, on property known as 6176 Federal Blvd, San Diego, CA 92114-1401
in which Richard John Martin II is referred to as ("Buyer/Tenant")
and Darryl Cotton is referred to as ("Seller/Landlord").

Memorandum of Understanding

This Memorandum of Understanding ("MOU") is fully incorporated into this purchase agreement.

Seller shall receive a 20% equity stake in the business / MMCC upon approval and completion.

Seller shall receive on a monthly basis, 20% of the profits of the business / MMCC or $10,000, whichever is greater.

The $100,000 earnest money deposit is non-refundable and shall be Seller's to keep even if the CUP application is denied.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date March 21, 2017
Buyer/Tenant X Richard John Martin II
Buyer/Tenant

Date March 21, 2017
Seller/Landlord X Darryl Cotton
Seller/Landlord

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REAL ESTATE BUSINESS SERVICES, INC.
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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by _____ Date _____

CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 2

The following terms and conditions are hereby incorporated in and made a part of the: [X] Purchase Agreement, [ ] Residential Lease or Month-to-Month Rental Agreement, [ ] Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), [ ] Other _____

dated March 21, 2017, on property known as 6176 Federal Blvd, San Diego, CA 92114-1401

in which Richard John Martin II is referred to as ("Buyer/Tenant")

and Darryl Cotton is referred to as ("Seller/Landlord").

Memorandum of Understanding and Agreement

1) This Memorandum of Understanding and Agreement ("MOUA") amends the agreement reached by Buyer and Seller on March 21, 2017.

2) Notwithstanding any language in this purchase agreement to the contrary, the provisions within this MOUA shall be given effect and supersede any conflicting or ambiguous language within this purchase agreement.

3) Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities, his ownership, rights and interests in the property and the associated CUP application pending before the City of San Diego for $500,000.

4) Buyer shall immediately provide seller with a $50,000 non-refundable deposit.

5) The closing of this sale, including the payment of the balance of the purchase price and all the requirements stated herein, shall be completed upon the favorable resolution of the Larry Geraci lawsuit against Seller for the property.

6) In addition, should a CUP application be approved at the property, Buyer shall pay Seller a one-time payment of $1,500,000.

6) In addition, should a CUP application be approved at the property, Buyer shall pay Seller a one-time payment of $1,500,000.

Seller's previous agreement for an equity stake in the business is voided and Seller has no interest in the property or the CUP.

7) CONFIDENTIALITY CLAUSE: SELLER WILL NOT DISCLOSE BUYER'S IDENTITY OR THIS AGREEMENT IN ANY FORM, DIRECTLY OR INDIRECTLY, UNTIL HE HAS RESOLVED THE LEGAL ACTION WITH GERACI. FOR THE AVOIDANCE OF DOUBT, THIS MEANS THAT SELLER WILL NOT INVOLVE OR MENTION BUYER IN ANY FORM TO ANY THIRD-PARTIES, IN ANY LITIGATION PROCEEDINGS OR IN ANY MATTERS REGARDING ALLEGATIONS OF CRIMINAL OR UNLAWFUL ACTIONS. SHOULD SELLER BREACH THIS PROVISION, SELLER HEREBY EXPRESSLY AGREES TO PAY TO BUYER $200,000 FOR BREACH OF THIS PROVISION.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date April 15, 2017

Buyer/Tenant X Richard John Martin II

Buyer/Tenant _____

Date April 15, 2017

Seller/Landlord X Darryl Cotton

Seller/Landlord _____

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Reviewed by _____ Date _____

TAB NO.	DOCUMENT TITLE/DESCRIPTION
1.	Verified Memorandum of Points and Authorities in Support of Darryl Cotton's Response to (1) Motion by Plaintiff/Cross-Defendant Larry Geraci and Cross-Defendant Rebecca Berry to Compel the Deposition of Darryl Cotton and (2) Motion by Real Parties in Interest, Larry Geraci and Rebecca Berry, to Compel the Deposition of Darryl Cotton filed January 22, 2018
2.	Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP) dated October 31, 2016
3.	Plaintiff's Complaint for: 1. Breach of Contract; 2. Breach of the Covenant of Good Faith and Fair Dealing; 3. Specific Performance; and 4. Declaratory Relief filed March 21, 2017
4.	Notice of *Lis Pendens* in the case entitled *Larry Geraci v. Darryl Cotton, et al.* recorded March 22, 2017
5.	Letter from Michael R. Weinstein to Darryl Cotton dated March 22, 2017
6.	Notice of Motion and Motion by Plaintiff/Cross Defendant Larry Geraci for a Preliminary Injunction or Other Order to Compel Access to the Subject Property for Soils Testing filed February 27, 2018
7.	Memorandum of Points and Authorities in Support of Motion by Plaintiff/Cross Defendant Larry Geraci for a Preliminary Injunction or Other Order to Compel Access to the Subject Property for Soils Testing filed February 27, 2018
8.	Declaration of Larry Geraci in Support of Motion by Plaintiff/Cross Defendant Larry Geraci for a Preliminary Injunction or Other Order to Compel Access to the Subject Property for Soils Testing filed February 27, 2018
9.	Declaration of Michael R. Weinstein in Support of Motion by Plaintiff/Cross Defendant Larry Geraci for a Preliminary Injunction or Other Order to Compel Access to the Subject Property for Soils Testing filed February 27, 2018
10.	Declaration of Abhay Schweitzer in Support of Motion by Plaintiff/Cross Defendant Larry Geraci for a Preliminary Injunction or Other Order to Compel Access to the Subject Property for Soils Testing filed February 27, 2018
11.	Notice of Lodgment in Support of Motion by Plaintiff/Cross Defendant Larry Geraci for a Preliminary Injunction or Other Order to Compel Access to the Subject Property for Soils Testing filed February 27, 2018
12.	Proof of Service Via Electronic Mail of RJN Nos. 6 – 11 filed February 27, 2018

Dated: April 2, 2018

THE LAW OFFICE OF JACOB AUSTIN

By_____
Jacob P. Austin
Attorney for Defendant and Cross-Complainant
DARRYL COTTON
[Special Appearance Limited to this Motion to Expunge *Lis Pendens*]

CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15) No. 3

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other

dated March 21, 2017, on property known as 6170 Federal Blvd San Diego, CA 92114-1401

in which Richard John Martin II is referred to as ("Buyer/Tenant")

and Darryl Cotton, is referred to as ("Seller/Landlord").

This addendum is fully incorporated into this purchase agreement and amends the agreement reached between the parties on March 21, 2017, as amended by addendum 2 on April 15th, 2017.

Buyer hereby agrees to permit Seller to disclose this agreement in his response to Gerace's lawsuit.

For the avoidance of doubt, Seller will not have to pay the $200,000 fine for breach of the Confidentiality provision previously agreed to.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date May 12, 2017

Buyer/Tenant X Richard John Martin II

Buyer/Tenant

Date May 12, 2017

Seller/Landlord X Darryl Cotton

Seller/Landlord

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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by ____ Date ____

AMERIFIRST FINANCIAL, INC.

Pre-Approval Letter

Friday, April 14, 2017

TO: Whom it may concern
RE: Richard John (R.J.) Martin II

We are pleased to inform you that the above referenced loan application has been *pre-approved* with the following terms and conditions:

Purchase Price: $2,500,000
Loan Program: Jumbo 30 YEAR FIX
Loan amount: $2,000,000

The following conditions must be satisfied for final loan approval;

1) *Appraiser's certification of value along with a final inspection.*
2) *Acceptable Preliminary Title.*
3) *Following standard investor requirements: Evidence of Hazard Insurance, Flood Certification*
4) *Copy of Fully Executed Purchase Contract and Escrow Instructions*

This approval is based on review of the borrower's credit report in conjunction with documentation provided by the borrower regarding employment, income, assets as applicable to the above loan. These items are sufficient to obtain final loan approval provided there are no changes in the borrower's financial situation as required by the loan program.

Please keep in mind the following:

- Upgrades and modifications that increase the purchase price beyond what is indicated above may invalidate this approval and result in disqualification or re-qualification on an alternative loan program offering.
- This approval does not include any contingencies unless specifically noted above. If the loan approval is contingent on sale of another property but that sale does not occur prior to closing on this property, re-qualification on an alternative loan program may be required to complete the purchase.
- At times market conditions require that loan program guidelines and parameters change, which may affect this approval unless your loan has been locked and will close within that lock period. If this occurs, we will review the borrower's file and notify you of any changes that apply.

Sincerely,

Alexis Roper

Alexis Roper
Sr. Mortgage Loan Officer
619-436-8873
aroper@amerifirst.us
NMLS #583371


6

EXHIBIT 6

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Executed Services Agreement for Representation of Darryl Cotton

Thu, Jun 15, 2017 at 12:18 PM

Darryl Cotton <indagrodarryl@gmail.com>
To: "Adam G. Wolf" <awolf@fbm.com>
Cc: Joe Hurtado <jhurtadodl@gmail.com>

Adam,

Please find attached the executed engagement letter. Per our agreement, notwithstanding the language in the engagement letter, I will be financing this transaction with a total monthly payment of $10,000 a month with the remainder to be paid within 24 months.

As per our phone discussion earlier today please do not respond to my sisters request for information on your representation of me or the status of my 8178 Fedora Blvd property. My sister holds the title on the property and she is trying to make sure I am not represented in the Gerard matter. I told her that you have been retained and I will provide her with a copy of our Services Agreement which is really all she needs as assurance I'm not representing myself in this matter.

Lastly please include Joe Hurtado in all future email correspondence between us.

I truly look forward to working with you and your firm as we work to bring these matters to their ultimate resolutions.

Sincerely,

Darryl Cotton

Service Contract 6-13-17.pdf
216K

FINCH•THORNTON•BAIRD^{LLP}

ATTORNEYS AT LAW

David S. Demian
ddemian@ftblaw.com

File 999.002

June 13, 2017

VIA U.S. AND ELECTRONIC MAIL

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, California 92114
indagrodarryl@gmail.com

Re: *Services Agreement For Representation Of Darryl Cotton*

Dear Mr. Cotton:

We appreciate your decision to retain Finch, Thornton & Baird, LLP. Please forgive the formality of this letter but the California Business and Professions Code requires that we have a written agreement. This letter sets forth the terms of our representation.

1. Description Of Representation And Services. You retain Finch, Thornton & Baird, LLP to represent you in connection with obtaining a conditional use permit ("CUP") for 6176 Federal Boulevard and also to represent you in related civil and forfeiture actions related to the property. We will provide other services as requested and provided we agree to perform such services. All services shall be subject to this agreement.

2. Fees To Be Charged. Our fees will be billed on the basis of time expended at the hourly billing rates of the attorneys, law clerks and legal assistants involved. At the present time, our hourly rates vary from $210.00 to $420.00 for attorneys, $195.00 to $210.00 for law clerks and $75.00 to $125.00 for paralegal and legal assistants. My current hourly rate is $400.00. Adam Witt's current hourly rate is $300.00. These hourly rates are subject to change in the future and typically increase in September of each year. The rate(s) charged will be reflected on the invoices for services rendered. We bill in one-tenth of an hour increments. In order to deliver cost-effective services, when practical, work will be assigned to other qualified attorneys, law clerks or legal assistants with either billing rates lower than mine or some specialized knowledge beneficial to you.

3. Costs And Expenses. We also charge for expenses and costs necessarily incurred to perform our services. Examples of these are Secretary of State fees, California Department of Corporations fees, court filing fees, service of process fees, deposition court reporter and transcript costs, etc. It is our policy to not charge for minor everyday expenses such as photocopies, postage, facsimiles, mileage, phone expenses, etc., unless these expenses become beyond the ordinary. For example, extra large reproductions or photocopying large quantities of documents for discovery, depositions or trial exhibits, etc., are usually costly and we will bill for reimbursement of such expenses or have you pay the vendor directly.

4. Services Of Experts/Consultants. It may become necessary to employ experts or consultants to assist in resolving a matter. We will obtain your approval for the retention of any such consultants or experts, and you may instruct us in writing at any time to terminate their services. The fees of experts and consultants will be in addition to the fees and costs charged for our services. In most circumstances, we will have the experts or consultants bill you directly.

5. Payment Of Legal Fees. For your convenience, we understand that we will be receiving payment for costs, expenses and fees relating to our legal services pursuant to this agreement from Joe Hurtado. Rather than billing you separately, one invoice will be forwarded to Joe.

Rule 3-310(F) of the Rules of Professional Conduct of the State Bar of California requires that we not accept compensation for representing a client from a person other than the client unless: (1) there is no interference with our independent professional judgment or with the attorney-client relationship; (2) information relating to representation of you is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) we obtain your informed written consent to such an arrangement. With regard to Rule 3-310(F), we do not believe there will be any interference with our independence of professional judgment or with the attorney-client relationship between our firm and you as a result of the payment of invoices by Joe because your interests are aligned. Note, you remain liable for all fees and costs if Joe fails to pay. We inform you of these matters and request your written consent to this arrangement. Execution of this agreement constitutes such written consent.

6. Client Responsibilities. We have two primary requests of our clients: (1) that we are kept informed of all information you obtain or discover regarding a matter for which we are retained; and (2) that we receive timely payment for our services and advances. In this regard, we invoice monthly and expect payment within 30 days. Any objection to an invoice must be made in writing within 30 days of the date of your receipt of the invoice or the objection is waived. At our option, late payments will accrue interest at the annual rate of seven percent. As security for the payment of our invoices, you grant us a lien upon any sums recovered (or which you are entitled to recover) as a result of our efforts, including any funds in our client trust account. This lien is in addition to our equitable lien rights.

With regard to our lien rights, Rule 3-300 of the Rules of Professional Conduct of the State Bar of California states:

> "[We] shall not enter into a business relationship with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements has been satisfied:
>
> (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
>
> (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(C) The client thereafter consents in writing to the terms of the transaction or the terms of acquisition."

You granting us a lien is an adverse and/or business relationship and pursuant to the above Rule we recommend you seek advice from an independent lawyer of your choice before granting us the lien and entering into this agreement.

7. Potential Conflicts Of Interest. Representation by us in a particular matter is contingent upon clearance of all conflicts of interest checks. With regard to this matter, Rules 3-310(C) through 3-310(E) of the Rules of Professional Conduct of the State Bar of California state:

Rule 3-310(C):

"[We] shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."

Rule 3-310(E):

"[We] shall not accept employment adverse to a client or former client where, by reason of the representation of the client or former client, [we have] obtained confidential information material to the employment except with the informed written consent of the client or former client."

With regard to Rule 3-310(C), it is our duty not to represent clients whose interests potentially or actually conflict, unless each client provides us with informed written consent to such representation. Our current understanding of the available facts and applicable law leads us to believe the prospect for an actual or potential conflict is low. Accordingly, we believe we can represent you in a manner consistent with the professional standards by which we must abide. If this understanding changes in any material way, we will make appropriate disclosures to each of you so a proper course of action may then be pursued.

Although we believe there is only a limited potential for any conflict of interest, we inform you of potential conflicts that could theoretically arise. We do not foresee such a conflict will arise, but advise of the potential. As discussed, we represent the Green Road, LLC, and its principals and agents (collectively "Green Road") in connection with all aspects of the potential operation of a marijuana dispensary within District 6 of the City of San Diego. Our ability to continue to represent Green Road in all matters that

may arise in the future is critical to our firm, including in connection with potential disputes in which you are adverse to Green Road. Our understanding is that you have an interest in operating a marijuana dispensary in District 6 either directly or indirectly, and that our representation here is focused on obtaining a District 4 dispensary. Accordingly, we do not perceive a conflict here. However, in order to preserve our ability to represent Green Road should a conflict arise in the future, by signing this agreement you agree we may terminate our representation of you at any time of a potential or actual conflict arises between you and Green Road.

In addition, in the even of such a conflict, we may ask your consent to represent you and Green Road concurrently. You each acknowledge that if any party refuses to sign such a waiver our firm reserves the right to terminate our representation of you. Similarly, if we do undertake representation adverse to you, you agree not to seek the disqualification of our firm unless you present court-admissible evidence that our firm (a) has material confidential information from you in the matter in which a conflict is claimed, (b) obtained such material confidential information by virtue of our representation of you, and (c) such information could be used against you in the case in which a conflict is claimed. Note that our withdrawal from representation of you could be expensive (bringing new counsel up to speed), disadvantageous (sending the wrong message to an adversary), or come at an inopportune time.

By execution of this agreement, you acknowledge our warnings of potential conflicts of interest with respect to this matter, and waive any and all conflicts of interest which presently exist, or may hereafter arise, by virtue of our representation. Before consenting to our representation on these terms, we recommend you carefully consider the ramifications of our representation on these terms and consult with counsel of your choice.

8. Disclaimer Of Guarantees. It is impossible for us to make any guarantees regarding the successful termination of a matter and all expressions relative to the merits of your positions are only matters of our opinion and do not constitute a guarantee of a particular result.

9. Client Contact. It is our practice to furnish our clients with copies of all important pleadings and/or correspondence and to give verbal or written status reports from time to time concerning the progress of our representation. We encourage you to contact us if you have any questions concerning the status of our representation.

10. Termination Or Withdrawal. You have the right to terminate our services at any time. We may withdraw from representation upon reasonable written notice to enable you to secure other counsel due to: (1) the dissolution of our firm; (2) the discovery of evidence that your claim, suit or position lacks merit; (3) your non-cooperation or material breach of this agreement; and/or (4) the discovery of an irreconcilable conflict of interest. In the event of termination or withdrawal, we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring the files. Similarly, if at any time, during or after our representation, you request your client files, you agree we may make and retain a duplicate file, and you agree to pay for all costs of duplicating and transferring said files.

11. Retainer. We request a retainer of $10,000.00 as an initial payment for our invoices. The retainer will be placed in the Finch, Thornton & Baird, LLP Client Trust Account, and we are authorized to make disbursements into our firm account to cover amounts we invoice you. Our monthly invoices will show the amount charged against the retainer and the retainer balance. We may request this retainer be replenished monthly or from time to time. The retainer amount is not a representation of the estimated total fees, costs and expenses likely to be incurred in the course of our representation. If we allow the retainer to be depleted, you agree to comply with the billing and payment provisions set forth above. You may pay this retainer by check, payable to Finch, Thornton & Baird, LLP Client Trust Account or by going on our website http://www.ftblaw.com/bill-pay/. Click on the RETAINER PAYMENT button and pay via credit card. Once the retainer is depleted and you receive invoices for a balance due, you may use this same site to make credit card payments, by clicking the INVOICE PAYMENT button.

12. Arbitration. Any dispute relating to fees and costs due pursuant to this agreement shall, at your discretion and upon timely demand, be submitted to binding arbitration before the San Diego County Bar Association pursuant to California Business and Professions Code section 6200, et seq., or should that organization decline to arbitrate the dispute, before the State Bar of California pursuant to California Business and Professions Code section 6200, et seq.

Subject to the foregoing requirements of California Business and Professions Code section 6200, et seq., any controversy or claim arising out of or relating to this agreement shall be resolved by binding arbitration before the American Arbitration Association by a single arbitrator in San Diego, California, in accordance with the Commercial Rules of the American Arbitration Association prevailing at the time of the arbitration and judgment on the award may be entered in any court having jurisdiction. The right to appeal from the arbitrator's award, any judgment entered, or any order made is expressly waived.

13. Conclusion. To confirm this letter accurately reflects our complete and mutual understanding as to the terms of our agreement, please date, sign and return an original agreement along with a check for $10,000.00 in the enclosed addressed and stamped envelope. A duplicate original is enclosed for you. Thank you for the opportunity to be of service.

Very truly yours,

David S. Demian,
Partner

Enclosures

DSD:hkr/3BD2583

cc: Mr. Joe Hurtado (via email only) (w/o encls.)

AUTHORIZATION, CONSENT, AND ACKNOWLEDGMENT:

I have read and understand this services agreement. I acknowledge receiving full disclosure of the terms of the conflicts of entering the transaction described above. I understand I may seek independent counsel before signing this agreement. I consent on behalf of the entity listed below to the representation by Finch, Thornton & Baird, LLP, as described above.

Signature: _____
Darryl Cotton
Dated: 6-15-2017

Finch, Thornton & Baird, LLP is authorized to accept direction as to the representation of you from the following individuals:

Darryl Cotton 6-15-17

Client No. _____

BILLING INFORMATION

(1) Please provide the name of the person to whom our invoices should be addressed.

_____
(Name)

_____
(Title)

_____
(Address)

_____

_____ _____
(Work Phone) (Direct Phone)

_____ _____
(Fax) (Mobile Phone)

_____
(E-mail)

(2) Please provide the name of your accounts payable contact.

_____
(Name)

_____
(Title)

_____
(Address)

_____

_____ _____
(Work Phone) (Direct Phone)

_____ _____
(Fax) (Mobile Phone)

_____
(E-mail)

(3) How would you like to receive your invoices? (Select One) E-mail: ☐ Mail: ☐

(4) Would you like to receive wiring instructions? (Select One) Yes: ☐ No: ☐

FINCH•THORNTON•BAIRD℠
ATTORNEYS AT LAW

4747 Executive Drive ✧ Suite 700 ✧ San Diego, California 92121-3107
Telephone: (858) 737-3100 ✧ Facsimile: (858) 737-3101 ✧ www.ftblaw.com


Z

EXHIBIT 7

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

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave., Ste. A112
San Diego, CA 92110
Telephone: (619) 924-9600
Fax: (619) 881-0045
gaustin@austinlegalgroup.com

Attorneys for Real Parties in Interest
LARRY GERACI and REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants.

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

Real Parties In Interest.

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

Judge: Hon. Eddie Sturgeon

DECLARATION OF ABHAY SCHWEITZER IN SUPPORT OF OPPOSITION TO EX PARTE APPLICATION FOR ISSUANCE OF AN ALTERNATIVE WRIT OF MANDATE OR FOR AN ORDER SETTING AN EXPEDITED HEARING AND BRIEFING SCHEDULE

[IMAGED FILE]

DATE: October 31, 2017
TIME: 8:30 a.m.
DEPT: C-67

Petition Filed: October 6, 2017
Trial Date: None

I, Abhay Schweitzer, declare:

1. I am over the age of 18 and am not a party to this action. I have personal knowledge of the facts stated in this declaration. If called as a witness, I would testify competently thereto. I provide this declaration in support of Real Parties in Interest Rebecca Berry and Larry Geraci's ("Real-Parties") opposition to Petitioner/Plaintiff's request for the ex parte issuance of a writ of mandate or for an order setting an expedited hearing and briefing schedule.

2. I am a building designer in the state of California and a Principal with Techne, a design firm I founded in approximately December 2010. Techne provides design services to clients throughout California. Our offices are located at 3956 30th Street, San Diego, CA 92104. Our firm has worked on approximately 30 medical marijuana projects over the past 5 years, including a number of Conditional Use Permits for Medical Marijuana Consumer Cooperatives (MMCC) in the City of San Diego.("City"). One of these projects was and is an application for a MMCC to be located at 6176 Federal Ave., San Diego, CA 92105 (the "Property").

3. On or about October 4, 2016, Rebecca Berry hired my firm to provide design services in connection with the application for a MMCC to be developed and built at the Property (the "Project"). Those services included, but are not limited to, services in connection with the design of the Project and application for a Conditional Use Permit (the "CUP").]

4. The first step in obtaining a CUP is to submit an application to the City of San Diego. My firm along with other consultants (a Surveyor, a Landscape Architect, and a consultant responsible for preparing the noticing package and radius maps) prepared the CUP application for the client as well as prepared the supporting plans and documentation. My firm coordinated their work and incorporated it into the submittal.

5. On or after October 31, 2016, I submitted the application to the City for a CUP for a medical marijuana consumer cooperative to be located on the Property. The CUP application for the Project was submitted under the name of applicant, Rebecca Berry, whom I was informed and believe was and is an employee and agent of Larry Geraci. The submittal of the CUP application required the submission of several forms to the City, including Form DS-318, that I am informed and believe was

signed by the property owner, Darryl Cotton, authorizing/consenting to the application. A true and correct copy of Form DS-318 that I submitted to the City is attached as Exhibit 3 to Real Parties in Interest Notice of Lodgment in Support of Opposition to Ex Parte Application for Issuance of Alternative Writ of Mandate or for an Order Setting an Expedited Hearing and Briefing Schedule (hereafter "RPI NOL"). Mr. Cotton's signed consent can be found on Form DS-318.

6. On the Ownership Disclosure Statement, I am informed and believe Cotton signed the form as "Owner" and Berry signed the form as "Tenant/Lessee." The form only has three boxes from which to choose when checking – "Owner", "Tenant/Lessee" and "Redevelopment Agency". The purpose of that signed section, Part 1, is to identify all persons with an interest in the property *and must be signed by all persons with an interest in the property.*

7. The CUP application process generally involves several rounds of comments from the City in which the applicant is required to respond in order to "clear" the comment. This processing involved substantial communication back and forth with the City, with the City asking for additional information, or asking for changes, and our responding to those requests for additional information and making any necessary changes to the plans. I have been the principal person involved in dealings with the City of San Diego in connection with the application for a CUP. My primary contact at the City during the process is and has been Firouzdeh Tirandazi, Development Project Manager, City of San Diego Development Services Department, tele (619) 446-5325, the person whom the City assigned to be the project manager for our CUP application.

8. We have been engaged in the application process for this CUP application for approximately twelve (12) months so far.

9. At the outset of the review process a difficulty was encountered that delayed the processing of the application. The Project was located in an area zoned "CO" which supposedly included medical marijuana dispensary as a permitted use, but the City's zoning ordinance did not specifically state that was a permitted use. I am informed and believe that on February 22, 2017, the City passed a new regulation that amended the zoning ordinance to clarify that operating a medical marijuana dispensary was a permitted use in areas zoned "CO." I am informed and believe this

regulation took effect on April 12, 2017, so by that date the zoning ordinance issue was cleared up and the City resumed its processing of the CUP application.

10. The CUP application for this Project has completed the initial phase of the process. This initial phase was completed when the City deemed the CUP application complete (although not yet approved) and determined the Project was located in an area with proper zoning. When this occurred, as required, notice of the proposed project was given to the public as follows: First, on March 27, 2017, the City posted a Notice of Application (or "NOA") for the Project on its website for 30 days and provided the NOA to me, on behalf of the applicant, for posting at the property; Second, the City mailed the Notice of Application to all properties within 300 feet of the subject property. Third, as applicant we posted the Notice of Application at the property line as was required.

11. Since the completion of the initial phase of the process we have been engaged in successive submissions and reviews and are presently engaged still in that submission and review process. The most recent comments from the City were received on October 20, 2017. There is one major issue left to resolve regarding a street dedication. I expect this issue to be resolved within the next six (6) weeks.

12. Once the City has cleared all the outstanding issues it will issue an environmental determination and the City Clerk will issue a Notice of Right to Appeal Environmental Determination ("NORA"). I expect the NORA to be issued sometime in late December 2017 or January 2018.

13. The NORA must be published for 10 business days. If no interested party appeals the NORA, City staff will present the CUP for a determination on the merits by a Hearing Officer. The hearing is usually set on at least 30 days' notice so the City's Staff has time to prepare a report with its recommendations regarding the issues on which the hearing officer must make findings. If there is no appeal of the NORA, I expect the hearing before the hearing officer to be held in late January or February 2018.

14. If the NORA is appealed it will be set for hearing before the City Council. It is my opinion that the earliest an appeal of the NORA could be heard before the City Council would be mid-January 2018. In all but one instance, the City Council has denied a NORA appeal related to a medical

marijuana CUP application. The one NORA appeal that was upheld is a project located in a flood zone.

15. If there is a NORA appeal and such appeal is denied by the City Council, then the earliest I would expect the CUP application to be heard by a hearing officer would be March 2018.

16. If there is a NORA appeal and it is upheld by the City Council, the City Council would retain jurisdiction and the CUP application would be heard by the City Council for a final determination at some point after the NORA appeal. In that case the earliest I would expect this to occur would also be March 2018.

17. To date we have not yet reached the stage of a City Council hearing and there has been no final determination to approve the CUP.

18. I have been notified by the City of San Diego that as of October 30, 2017, there has been no other CUP Application submitted concerning on the property.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct. Executed this 30th day of October, 2017.

Dated: 10/30/2017

ABHAY SCHWEITZER


8

EXHIBIT 8

I, Elizabeth Emerson, hereby declare:

1. I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.
2. I am 41 years old and an Air Force veteran. I served my country honorably in military intelligence and held a Top Secret clearance for all seven years of my service.
3. I later served as a police dispatcher in Texas for two years and left on good terms to move to San Diego, where I am now a resident.
4. I worked in Accounts Payable for the law firm of McCarthy & Holthus which I left after two and a half years to start my own bookkeeping, accounting and administrative assistant enterprise. Because of this I now handle the accounting for GreenerLiving, a landscape and lawn maintenance company, which is co-owned by Mr. Tom Maas and Mr. Joe Hurtado.
5. I accompanied Mr. Maas and Mr. Hurtado to the hearing for Mr. Cotton on December 7, 2017 as it was strongly anticipated that this hearing would produce positive results for Mr. Cotton and, thus, for Mr. Hurtado.
6. At the hearing, I was expecting Mr. Demian to mention what Mr. Hurtado repeatedly called the "smoking gun" email in which Mr. Larry Geraci contradicts himself regarding some contract. Mr. Demian did not raise any emails in his oral arguments to the Court.
7. During the hearing, the judge asked Mr. Weinstein what would be wrong with preventing the withdrawal of the CUP application. Mr. Weinstein replied with something about his client having the freedom to do what he wanted.
8. After the hearing concluded, Mr. Hurtado started yelling at Mr. Demian right outside the Courtroom about how it was possible that Mr. Demian could not raise with the Court "the fucking email!" Mr. Hurtado was incredibly agitated and loud and everyone in the hallway was staring at Mr. Hurtado and Mr. Demian.

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

DATED: 01/22/2019

Elizabeth Emerson

DECLARATION OF TOM MAAS

I, Tom Maas, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**

2. I have been the proprietor of several businesses in Minneapolis, MN.

3. I am a co-owner of GreenerLiving, a landscaping company with Mr. Joe Hurtado. We originally started GreenerLiving in Minneapolis, but we relocated to San Diego, where I am now a resident.

5. I accompanied Mr. Hurtado to the hearing for Mr. Cotton on December 7, 2017 to provide support for both Mr. Cotton and Mr. Hurtado. I anticipated, based on the descriptions provided by Mr. Cotton and Mr. Hurtado, that the attorney for Mr. Cotton would prevail that day based primarily on an email sent by Larry Geraci that was called the "smoking gun" by Mr. Hurtado.

6. Mr. Demian, counsel for Mr. Cotton, did not raise any email arguments with the Court.

6. After the hearing, Mr. Hurtado yelled at Mr. Demian for failing to raise the email with the Court in the hallway outside the Courtroom.

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

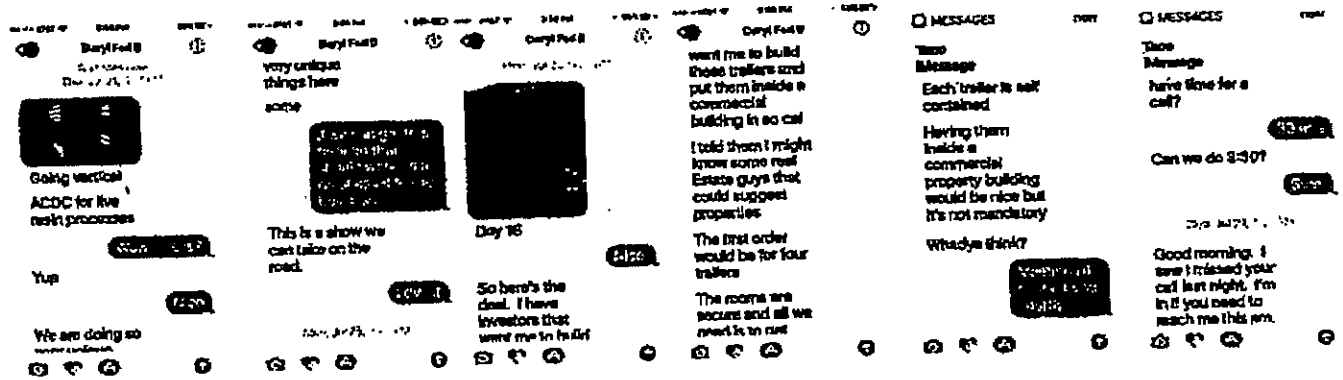
DATED: 1/22/2018

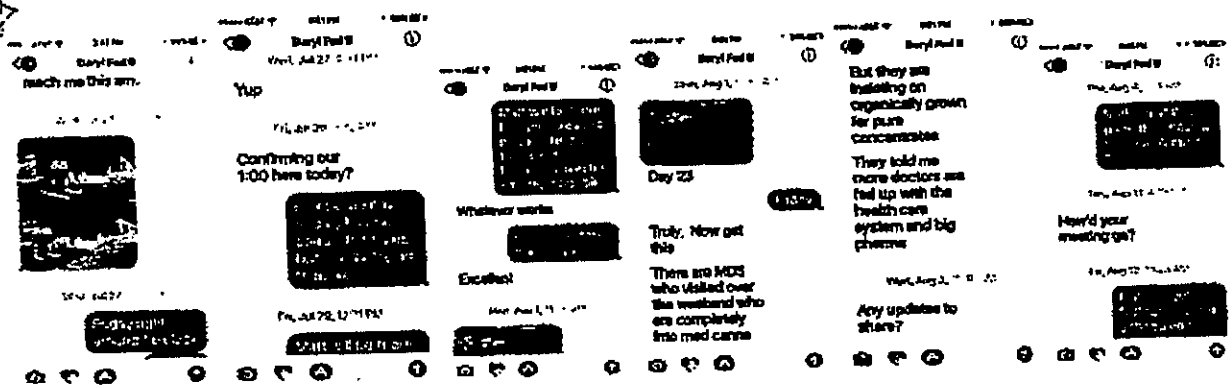
/s/Tom Maas
Tom Maas


9

EXHIBIT 9

READ THIS WAY →





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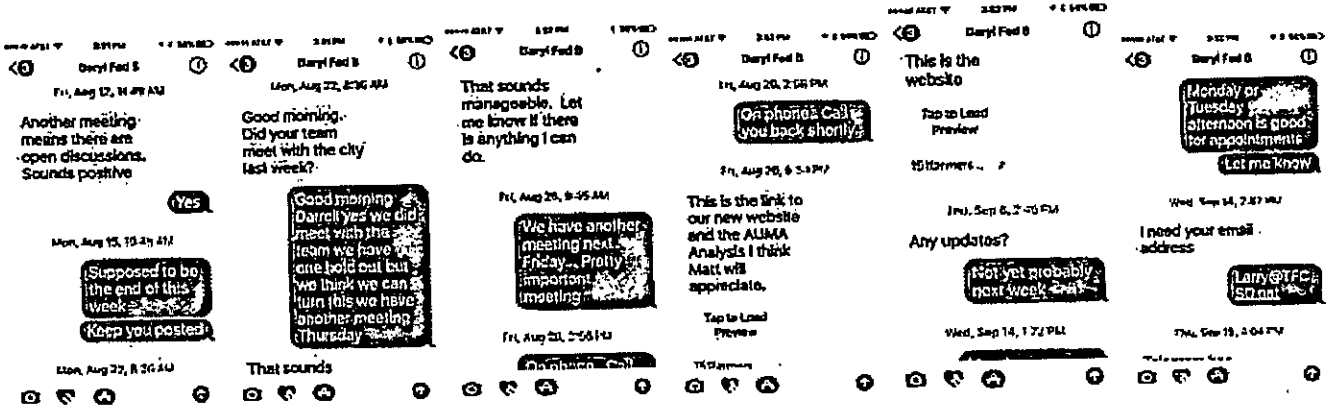

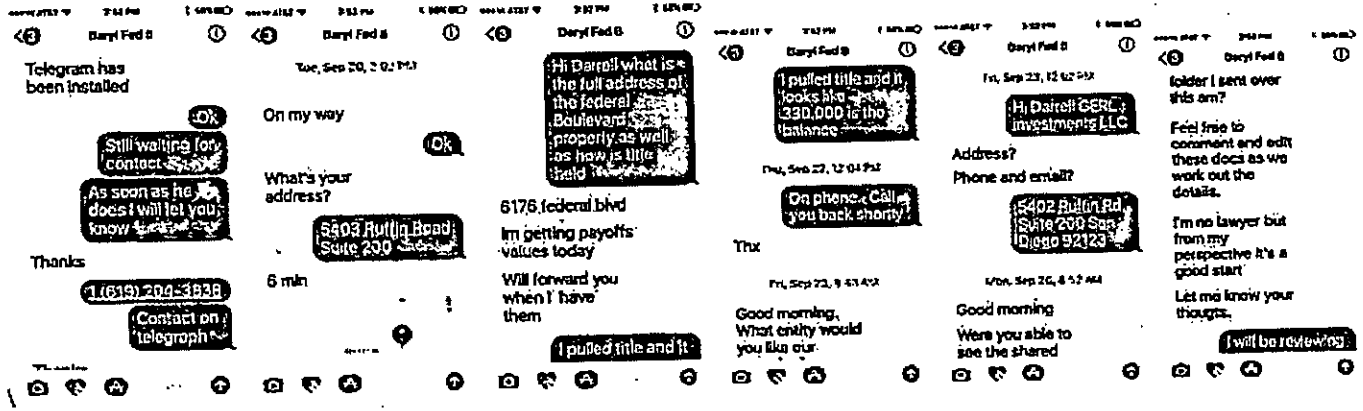

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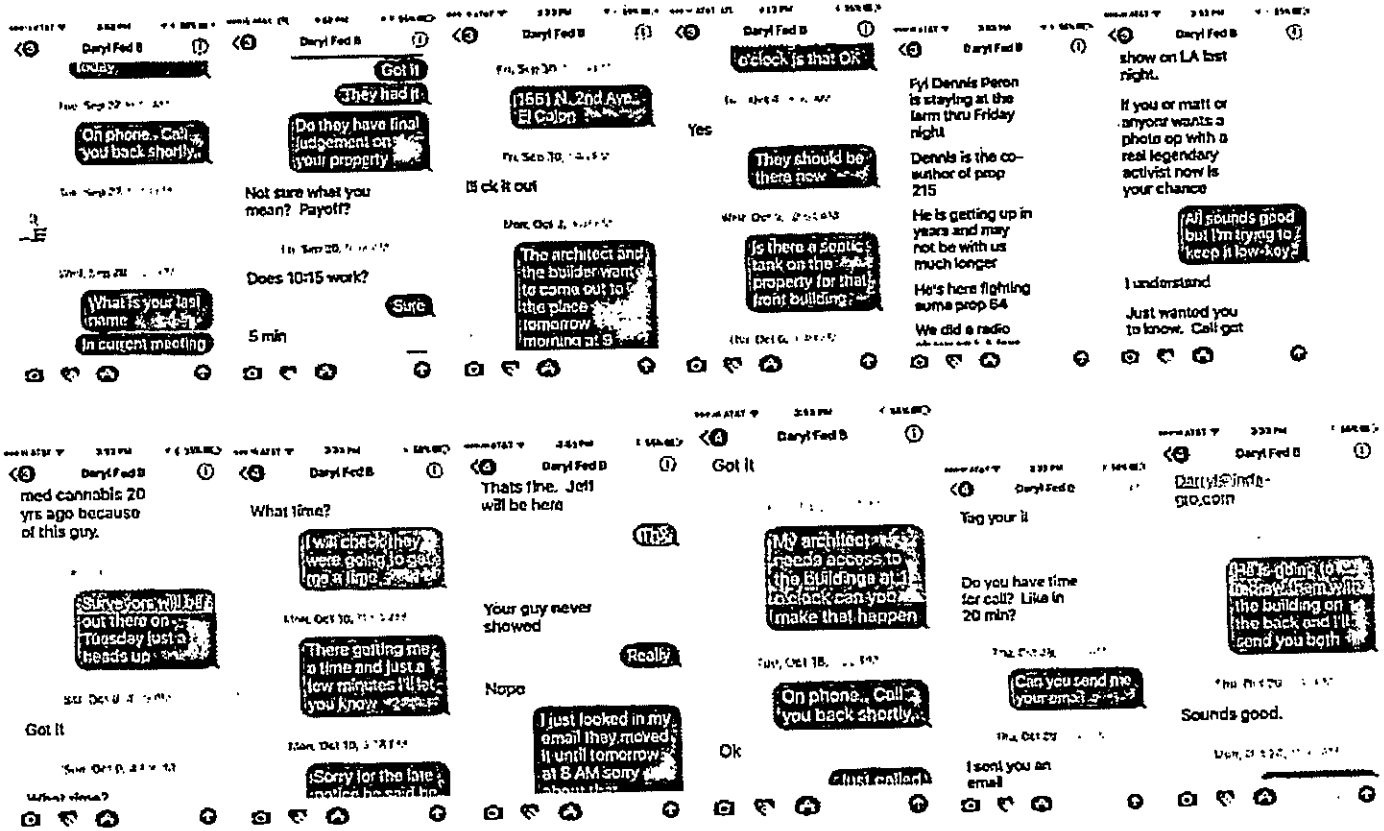

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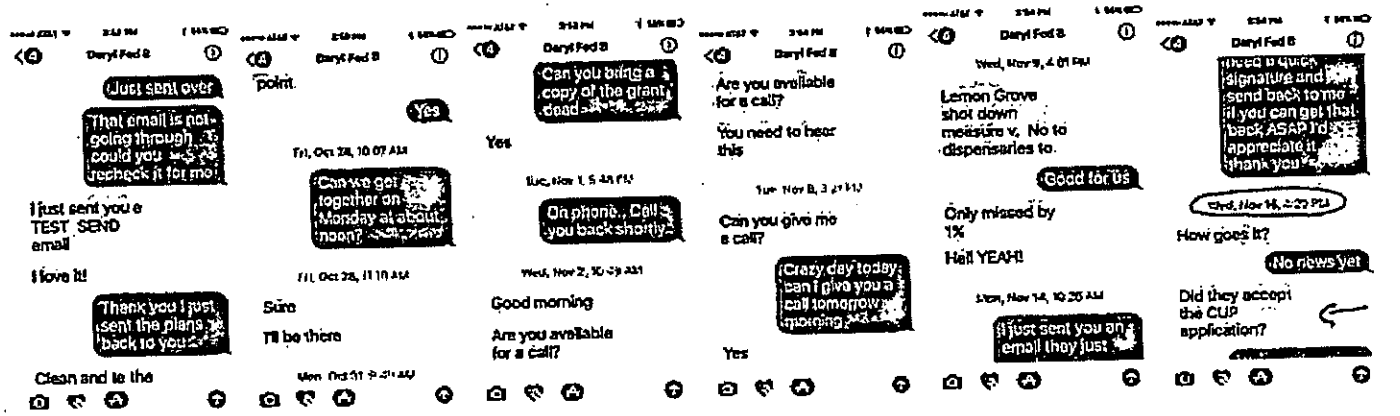

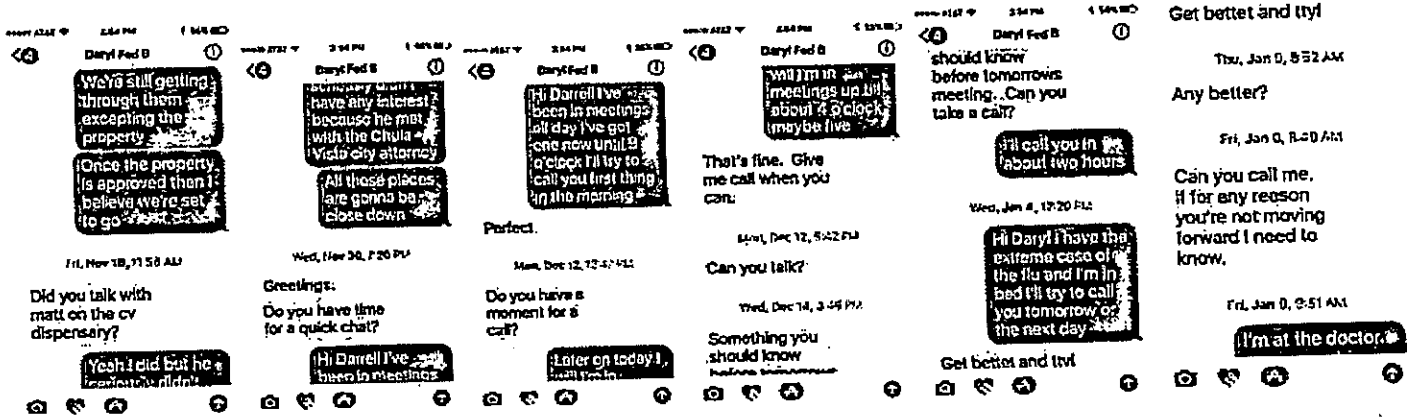

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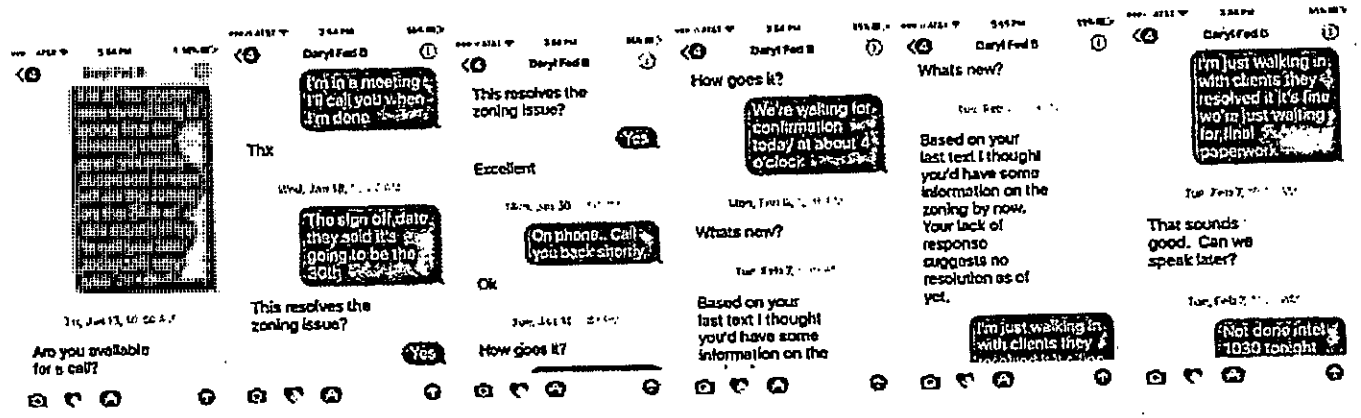

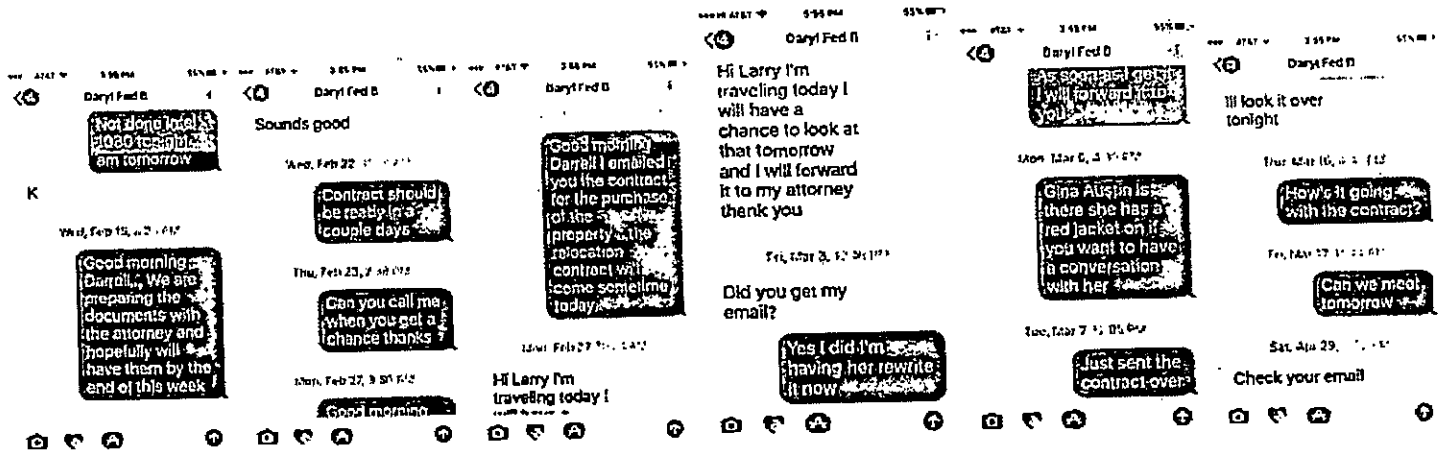

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GER031

6

READ THIS WAY

Darryl Cotton

Just received your email of our conference as forthcoming

Darryl Cotton

email within the next 45 minutes. Otherwise

5/23 notice on hearing to court to file.

5/23 I am cleaning up my documents and am about to head to the court to file. If you want to resolve this, respond to my

READ THIS WAY


10

EXHIBIT 10

Gmail Joe Hurtado <jhurtado1@gmail.com>

Federal - Expedited Schedule / Statute of Frauds

Thu, Nov 16, 2017 at 10:45 AM

Joe Hurtado <jhurtado1@gmail.com>
To: "David M. Damian" <ddamian@wtklaw.com>, "Adam C. Witt" <awitt@wtklaw.com>
Cc: Darryl Cotton <hdrgroduary@gmail.com>

Hi David / Adam,

Expedited Hearing and Briefing Schedule. I'm putting together my notes / thoughts for the request for the motion to expedite. I will forward later today or tomorrow at the latest and hopefully it is helpful. (I have I read every argument and point they make in all of the pleadings to date, we have a logical and persuasive response for every point.)

Statute of Frauds. I came across a case last night that I think would be incredibly supportive if not actually dispositive on the statute of frauds issue we faced in the demurrer. (I was so incredibly frustrated last night thinking I found "the one case" and all I needed to do was Shepardize the case to confirm and find, literally, more recent supporting case law, but I got were treated and Google Scholar hits - I'm calling and signing up with Westlaw or Lexis today.)

The case is Monarco v. Lo Greco (35 Cal. 2d 621, 220 P.2d 737, 1950 Cal. 370). The below includes language copied from the case and online case brief websites and treatises:

Issue. "The controlling question is whether plaintiff is estopped from relying upon the statute of frauds to defeat the enforcement of the oral agreement."

Rule of Law. "The California Supreme Court decided in *Monarco v. Lo Greco* that a party is estopped to assert the Statute of Frauds if he would be unjustly enriched or when unconscionable injury would result to the other party who, in reliance on the oral agreement, was induced to materially change his position."

- "Since the test in *Monarco* is so general, the trial courts have the considerable flexibility to determine whether to enforce the Statute in a given case. While this makes predictability uncertain, it affords the trial court the opportunity to consider the whole spectrum of factors which might be relevant in balancing the adequacy of the fact determination process against the purposes of the Statute. Such freedom for the trial court is justifiable if trial procedure has enhanced to such an extent that it is adequate to protect against the evils which the Statute sought to prevent."

Analysis.

Unjust Enrichment. The evidence is clear that Gerard is attempting to falsely claim the receipt for the $10,000 is actually the final agreement, thereby unjustly enriching himself at the expense of the benefits that Cotton bargained for, inter alia, Cotton's 10% equity stake.

Unconscionable Injury, Because of Gerard, Cotton has:

(a) been unable to make a living. He is unable to operate his businesses, Fleet Systems (electrical contracting) and Dubordo (manufacturing), that operate from the property. This action has created the possibility that he will lose the property and not have any funds to relocate to another property to operate from [i.e., he can't retain his contracts and make a living because if he does and then loses this case, then he has no property to work from, won't be able to uphold his end of the contracts and he would be sitting himself up for severe damages];

(b) been forced to repeatedly renegotiate the terms of the sale of the property with his agent and the buyer of the property, most notably requiring him to give up the 20% equity stake that he originally bargained for with RJ. This represents a perpetual long-term revenue cash flow to Cotton that, while impossible to quantify what it could be in a best case scenario if the business were to be a commercial success, is at the very least a perpetual monthly payment of $10,000.

It appears this case is helpful for us - hopefully this case has not been overturned and/or its validity I got this information from are not inaccurate. Please let me know your thoughts.

Gerard Declaration. When you have a moment, I would appreciate it if you would forward Gerard's supporting declaration to his opposition to our ex parte motion for an expedited hearing/schedule. The PDF forwarded is missing the first three pages of his declaration (attached, missing pages start at page 87).

Thank you, Joe

3C1M54-OPPOSITION TO EX PARTE APPLICA (1).PDF
484K

EXHIBIT 11

Gmail Darryl Cotton <lindagradarryl@gmail.com>

RE: Withdrawal

David S. Demian <ddemian@fbtlaw.com> Thu, Dec 7, 2017 at 11:58 PM
To: Darryl Cotton <lindagradarryl@gmail.com>
Cc: Joe Hurtado <jhurtado1@gmail.com>

Per your request, attached are substitution of attorney forms which must be filed with the Court in all three pending matters. Please sign and email back to us for filing as soon as possible.

With your consent, we will contact Walmart to move next week's depositions to be re-noticed after you have retained new counsel. To avoid any harm to you this must be addressed this week so please advise if you are agreeable.

As to the rest of our conversation, I respectfully disagree with the characterization of the hearing. Also, as to the City Attorney, she told me my papers and oral argument were excellent. She did not say we should have won.

We are preparing final invoices and your files will be made available for you or your new counsel as quickly as possible.

Best,

David

David S. Demian Partner

Finch, Thornton & Baird, LLP Attorneys At Law

4747 Executive Drive, Suite 700 San Diego, CA 92121

T 858.737.3100 D 858.737.3118 M 858.245.2481 F 858.737.3101

fbtlaw.com Bio LinkedIn

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From: Darryl Cotton [mailto:lindagradarryl@gmail.com]
Sent: Thursday, December 07, 2017 12:33 PM
To: David S. Demian <ddemian@fbtlaw.com>
Cc: Joe Hurtado <jhurtado1@gmail.com>
Subject: Re: Withdrawal

David,

I spoke with Joe and he informed me that you were not familiar with the points in the FAA for the TRO motion and that you did not raise them before the Court when they were directly on point and necessary to be raised as a response to Walmart's arguments. Further, during this attorney for the City explicitly told you right after you walked out of the hearing that we should have prevailed on the moving papers!

Our relationship is terminated, but I need it to be clear that it is based on your performance today at the hearing. Joe is already looking for new counsel to represent me and we will be submitting a motion for reconsideration with the Court.

-Darryl

On Thu, Dec 7, 2017 at 11:23 AM, David S. Demian <ddemian@fbtlaw.com> wrote:

Gentlemen: Per my discussion with Joe post-hearing and my voice mail to Darryl it is apparent our withdrawal from the case is the next step. I will be sending the consent form and filing and preparing the file for your delivery. You should immediately seek advice of new counsel.

Please call at any time with questions.

David

David S. Demian Partner

Finch, Thornton & Baird, LLP Attorneys At Law

4747 Executive Drive, Suite 700 San Diego, CA 92121

T 858.737.3100 D 858.737.3118 M 858.245.2481 F 858.737.3101

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3 attachments

Sub of Att - Factsheet Motion.pdf
65K

Sub of Att - Wth Motion.pdf
65K

Sub of Att - Cutsail Motion.pdf
63K


12

EXHIBIT 12

FINCH•THORNTON•BAIRD[LLP]
ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

January 10, 2018
Account No: 2403-003
Statement No: 150904

For Legal Services Rendered through December 31, 2017

Total Balance Due $9,913.95

Re: Forfeiture Action

			Rate	Hours	
12/04/17	ACW	Correspondence with Joe and Darryl regarding upcoming deadline to make payment to City.	330.00	0.20	66.00

Recapitulation

		Rate	Hours	
ACW	Adam C. Witt - Associate	330.00	0.20	66.00
For Current Services Rendered			0.20	$66.00

Expenses/Advances

Date	Description	Amount
12/11/17	One Legal's fee for e-filing substitution of attorney. Inv. No. 11145398 - One Legal LLC	9.95
Total Expenses/Advances		$9.95

Total Current Work	$75.95
Previous Balance	9,838.00
Payments/Adjustments Since Last Bill	-0.00
Balance Due	$9,913.95

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

Payment is due within 30 days of the invoice date.

Please contact us within 10 days of the invoice date with any questions. Thank you.

To pay online visit: http://www.ftblaw.com/bill-pay/

FINCH • THORNTON • BAIRD LLP
ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

January 10, 2018
Account No: 2403-002
Statement No: 150903

For Legal Services Rendered through December 31, 2017

Total Balance Due **$42,020.48**

Re: 6176 Federal Boulevard Conditional Use Permit

			Rate	Hours	
12/01/17	SLH	Analyze status and developments of CUP application (1.0); analyze opposition to ex parte application with respect to same (0.5); prepare public records act request for documents and correspondence with respect to City, Geraci, and related parties (0.5).	300.00	2.00	600.00
12/01/17	RSB	Prepare electronic stipulation to accept pleadings and other documents through email.	225.00	0.20	45.00
12/01/17	ACW	Work on developing strategy for writ and ex parte relief regarding CUP application.	330.00	1.10	363.00
12/01/17	DSD	Further work on ex parte motions and strategy.	415.00	2.40	996.00
12/03/17	DSD	Discussion with Joe on options for saving permit by concurrent actions.	415.00	1.00	415.00
12/04/17	DSD	Analyze case of Monarco in connection with effort acquire CUP; work on application for peremptory writ.	415.00	1.40	581.00
12/04/17	RSB	Revise ex parte application to incorporate Joe Hurtado's analysis.	225.00	1.70	382.50
12/04/17	SLH	Conference to analyze San Diego Municipal Code provisions for application resubmittal.	300.00	0.20	60.00
12/04/17	DSD	Final correspondence to Weinstein regarding stipulation.	415.00	0.40	166.00
12/04/17	DSD	Correspondence to Weinstein as to e-service.	415.00	0.20	83.00
12/04/17	DSD	Analyze mandatory injunction options; work on proposed order.	415.00	0.50	207.50
12/04/17	DSD	Begin work on proposed order.	415.00	0.60	249.00
12/04/17	RSB	Revise ex parte application (0.5) and Cotton's and Demian's declarations to reflect Hurtado's latest insights (0.3).	225.00	0.80	180.00
12/04/17	DSD	Further work on writ application.	415.00	1.20	498.00
12/04/17	ACW	Work on proposal to attorney Weinstein regarding stipulation on CUP application.	330.00	0.80	264.00
12/05/17	DSD	Further work on writ request.	415.00	0.60	249.00
12/05/17	CRS	Review and work on edits to memorandum in support of ex parte for an order shortening time for writ hearing.	355.00	1.70	603.50

			Rate	Hours	
12/05/17	RSB	Finalize writ/ex parte application and all supporting documentation.	225.00	0.60	135.00
12/05/17	DSD	Discussion with Joe on arguments as to damages and injury.	415.00	0.50	207.50
12/05/17	DSD	Analyze and work on arguments as to injury.	415.00	1.80	747.00
12/05/17	DSD	Final motion for peremptory writ.	415.00	1.50	622.50
12/05/17	DSD	Final declaration of Cotton; discussion with Darryl.	415.00	0.20	83.00
12/05/17	DSD	Correspondence to counsels with notice of ex parte.	415.00	0.20	83.00
12/06/17	DSD	Discussion with Joe finalizing motion on writ.	415.00	0.40	166.00
12/06/17	DSD	Finalize motion on writ.	415.00	0.40	166.00
12/06/17	DSD	Revise declaration of Darryl per his comments.	415.00	0.50	207.50
12/06/17	DSD	Further work on P&A to focus on arguments and reduce length.	415.00	0.70	290.50
12/07/17	DSD	Appear at ex parte hearing on writ.	415.00	0.80	332.00

Recapitulation

		Rate	Hours	
DSD	David Demlan - Partner	415.00	15.30	6,349.50
RSB	Rishi S. Bhatt - Associate	225.00	3.30	742.50
SLH	Steven L. Hwang - Associate	300.00	2.20	660.00
CRS	Christopher Sillari - Partner	355.00	1.70	603.50
ACW	Adam C. Witt - Associate	330.00	1.90	627.00
For Current Services Rendered			24.40	$8,982.50

Expenses/Advances

Date	Description	Amount
12/07/17	Vendor fee of ex parte application, memorandum and declaration of David Demlan. Inv. No. 4235732 - Knox Attorney Service	203.95
12/11/17	One Legal's fee for e-filing of substitution of attorney. Inv. No. 11145392 - One Legal LLC	9.95
Total Expenses/Advances		$213.90

Total Current Work	$9,196.40
Previous Balance	32,824.08
Payments/Adjustments Since Last Bill	-0.00
Balance Due	$42,020.48

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

Payment is due within 30 days of the invoice date.

Please contact us within 10 days of the invoice date with any questions. Thank you.

To pay online visit: http://www.ftblaw.com/bill-pay/

FINCH•THORNTON•BAIRD[LLP]
ATTORNEYS AT LAW

4747 Executive Drive, Suite 700 San Diego, CA 92121
T 858.737.3100 F 858.737.3101 ftblaw.com

Mr. Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

January 10, 2018
Account No: 2403-004
Statement No: 150905

For Legal Services Rendered through December 31, 2017

Total Balance Due $40,009.02

Re: adv. Larry Geraci

			Rate	Hours	
12/01/17	RSB	Conference about lodging objections to Geraci's notice of deposition and accompanying production request.	225.00	0.20	45.00
12/01/17	RSB	Perform final analysis on the probability that Cotton will be able to obtain a TRO or a Preliminary Injunction as a way to force Geraci to quickly settle the case.	225.00	0.30	67.50
12/01/17	RSB	Analyze timing of when Cotton's objections to Notice of Deposition are due.	225.00	0.40	90.00
12/01/17	RSB	Further revise discovery responses.	225.00	0.20	45.00
12/01/17	CRS	Review draft discovery responses and work on edits to same.	355.00	1.80	639.00
12/01/17	CRS	Conference regarding objections to deposition notice and requests for documents, and work on strategy for same.	355.00	0.40	142.00
12/01/17	CRS	Conference regarding materials and outline to prepare for depositions.	355.00	0.20	71.00
12/01/17	RSB	Analyze California law regarding the one-year statute of limitations.	225.00	1.20	270.00
12/01/17	CRS	Conference regarding primary contract theory of case and strategy for defense of their alleged contract.	355.00	0.50	177.50
12/01/17	RSB	Conference about dedication of property to the City of San Diego.	225.00	0.20	45.00
12/01/17	CRS	Work on framework for stipulation on CUP and in the alternative, a narrow order for ex parte relief.	355.00	0.80	284.00
12/01/17	RSB	Continue analyzing how to frame the theory of the case for purposes of Cotton's upcoming discovery responses and deposition.	225.00	1.20	270.00
12/01/17	ACW	Work on document production requests in connection with deposition notices to Geraci and Berry.	330.00	1.40	462.00
12/01/17	DSD	Work on case arguments for ex parte and detailed correspondence to Joe and Darryl with strategy for motions.	415.00	3.20	1,328.00
12/01/17	DSD	Conference as to attorney-client privilege issues in case and analyze same.	415.00	0.50	207.50

			Rate	Hours	
12/02/17	RSB	Continue analyzing how attorney-client privilege may apply to Joe Hurtado.	225.00	0.90	202.50
12/03/17	RSB	Draft points and authorities for Cotton's TRO against the City of San Diego.	225.00	3.50	787.50
12/03/17	CRS	Conference regarding application of attorney-client privilege for communications between Darryl and Hurtado.	355.00	0.30	106.50
12/04/17	RSB	Review proposed email to Geraci's attorney, Michael Weinstein, regarding a proposed stipulation pertaining to the CUP application (0.1); provide feedback (0.2)	225.00	0.30	67.50
12/04/17	CRS	Work on strategy for seeking TRO in addition to ex parte relief on the Writ.	355.00	0.80	284.00
12/04/17	RSB	Begin drafting the injunctive order for the Court to sign.	225.00	1.00	225.00
12/04/17	RSB	Review Hurtado's memo regarding the issuance of a TRO.	225.00	0.20	45.00
12/04/17	RSB	Continue drafting injunction.	225.00	1.10	247.50
12/04/17	CRS	Work on revisions to proposed order for ex parte hearing on TRO.	355.00	0.30	106.50
12/04/17	CRS	Work on framework and strategies for memorandum in support of ex parte for TRO.	355.00	1.50	532.50
12/04/17	ACW	Conference to work on strategy for ex parte application for injunctive relief.	330.00	0.30	99.00
12/05/17	RSB	Revise ex parte application.	225.00	1.40	315.00
12/05/17	RSB	Review Hurtado's email regarding lis pendens and attorney fees (0.2); analyze cases cited therein (0.4).	225.00	0.60	135.00
12/05/17	RSB	Revise Cotton declaration to contain the terms of the parties' contract and to contain the Geraci-Cotton email exchange reflecting the same.	225.00	2.50	562.50
12/05/17	RSB	Continue to revise TRO for tomorrow's ex parte hearing.	225.00	3.00	675.00
12/05/17	RSB	Further revise ex parte application materials for tomorrow.	225.00	2.50	562.50
12/05/17	CRS	Work on memorandum in support of TRO and strategize for order in support of same.	355.00	2.00	710.00
12/05/17	RSB	Further work on ex parte application and TRO for tomorrow.	225.00	1.50	337.50
12/06/17	DSD	Work on motion for TRO, arguments on breach of contract.	415.00	2.10	871.50
12/05/17	DSD	Work on motion for TRO, revise declaration of Cotton.	415.00	1.50	622.50
12/05/17	DSD	Work on Declaration of Demian in support of TRO.	415.00	0.50	207.50
12/06/17	DSD	Correspondence to counsels with notice of ex parte.	415.00	0.20	83.00
12/06/17	RSB	Perform last minute revisions to the TRO and ex parte that is going out today.	225.00	1.10	247.50
12/06/17	DSD	Discussion with Joe no ex parte for TRO/PI.	415.00	0.30	124.50
12/06/17	DSD	Further work on motion arguments for writ as to Schweitzer section on CUP timing; work on declaration as to same.	415.00	0.30	124.50
12/06/17	DSD	Review declaration exhibits of Darryl and revise numbering.	415.00	0.50	207.50
12/06/17	CRS	Conference regarding last changes to memorandum in support of TRO.	355.00	0.30	106.50
12/06/17	CRS	Conference regarding objections to deposition notices.	355.00	0.30	106.50
12/06/17	DSD	Prepare responses to document demands by Geraci as part of Darryl deposition; review prior responses and document production; discussion with Darryl as to same.	415.00	0.70	290.50
12/06/17	DSD	Final motion for TRO for filing.	415.00	1.50	622.50
12/06/17	DSD	Appear at ex parte on TR/preliminary injunction (1.0).	415.00	1.00	415.00

			Rate	Hours	
12/06/17	DSD	Appear at ex parte on verified writ.	415.00	1.00	415.00
12/07/17	DSD	Appear at ex parte hearing on TRO.	415.00	0.80	332.00

Recapitulation

		Rate	Hours	
DSD	David Demian - Partner	415.00	14.10	5,851.50
RSB	Rishi S. Bhatt - Associate	225.00	23.30	5,242.50
CRS	Christopher Sillari - Partner	355.00	9.20	3,266.00
ACW	Adam C. Witt - Associate	330.00	1.70	561.00
For Current Services Rendered			48.30	$14,921.00

Expenses/Advances

Date	Description	Amount
11/30/17	Delivery of notice of deposition to Michael Weinstein at Ferris & Britton on November 30, 2017. Inv. No. 3497179 - Golden State Overnight	16.59
12/07/17	Vendor fee for filing ex parte application, memorandum and declaration of David Demian. Inv. No. 4235733 - Knox Attorney Service	148.55
12/11/17	One Legal's fee for e-filing of substitution of attorney. Inv. No. 11145359 - One Legal LLC	9.95
Total Expenses/Advances		$175.09

Total Current Work	$15,096.09
Previous Balance	24,912.93
Payments/Adjustments Since Last Bill	-0.00
Balance Due	$40,009.02

Payments received after January 10, 2018 are not included in this statement.

Please make checks payable to: FINCH, THORNTON & BAIRD, LLP

Payment is due within 30 days of the invoice date.

Please contact us within 10 days of the invoice date with any questions. Thank you.

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13

EXHIBIT 13

SDGE

A Sempra Energy utility®

Account: 1310536032 08 Service Address: 6176 FEDERAL BLVD
Date Mailed: 01/12/18

URGENT NOTICE!
PAYMENT REQUEST

RE-INSTATED SECURITY DEPOSIT

We are requesting a $4,267.00 Security Deposit. Your Security Deposit request, which was previously waived, is now being re-instated as your bills have not been paid on time.

A payment is requested in the amount of $4,267.00 and must be received before the expiration date of 02/01/18 to avoid the disconnection of service.

There will be a charge if collection action is required. Please refer to the back of this notice for additional information.

The bottom portion of this notice must accompany your payment. If you intend to mail your payment, you should do so at least three business days prior to the expiration date of this notice.

You can also make your payment online at no charge. Go to sdge.com/myaccount. We also offer electronic payment services, such as SDG&E Pay-By-Phone and Automatic Pay. For your convenience, you can also pay by using most ATM cards, debit cards, MasterCard® and Visa® credit cards and electronic checks by calling BillMatrix at 1-800-386-0067.

Si necesita ayuda para intepretar este aviso llamenos a 1-800-311-7343.

0008

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS)
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO)

SDGE A Sempra Energy utility®

SERVICE ADDRESS: 6176 FEDERAL BLVD SAN DIEGO 92114

ACCOUNT NUMBER
1310 536 032 3

DATE DUE	Feb 1, 2018
AMOUNT DUE	$4,267.00

Please enter amount enclosed.
$

Write account number on check and make payable to San Diego Gas & Electric.

9726.1.2.108 1 oz.
DARRYL COTTON
6184 FEDERAL BLVD
SAN DIEGO CA 92114-1401

SAN DIEGO GAS & ELECTRIC
PO BOX 25111
SANTA ANA CA 92799-5111

3 7 0000013105360320000426700000004267 00

SDGE

A Sempra Energy utility®

H

NOTICE OF PAST DUE ACCOUNT AND IMPENDING DISCONNECTION
IF YOU HAVE ANY QUESTIONS, PLEASE CALL
1-800-411-SDGE (7343) M-F 7AM - 8PM, SAT 7AM - 6PM

Pay Before Date/Disconnection Policy
Your SDG&E bill is due and payable upon presentation and is past due if not paid within 19 days of the date mailed for residential customers or 15 days for non-residential customers. If your payment has not been received by the "Due Date" shown on your bill, your SDG&E service is subject to disconnection, after proper notice has been provided. If your service is disconnected for non-payment, there may be additional service charges and you will be required to pay all past due SDG&E amounts before service is restored. Your SDG&E service could also be disconnected if the information provided on your application for service is false, incomplete or inaccurate. SDG&E will disconnect your services only for non-payment of those charges owed SDG&E.

Residential customers who are unable to pay their SDG&E bill in full due to a temporary financial hardship or due to a serious illness in the household, need to call SDG&E before the expiration of this notice. Employees, including multilingual staff, are available to assist with payment arrangements.

If SDG&E fails to offer you payment arrangements, you may write to the Consumer Affairs Branch of the California Public Utilities Commission (CPUC), State Office Building, 505 Van Ness Avenue, Room 2003, San Francisco, CA 94102, email: consumer-affairs@cpuc.ca.gov, prior to disconnection of your SDG&E service. The Consumer Affairs Branch will review the complaint and issue its proposed resolution to you and SDG&E. If you are not satisfied, you may appeal the proposed resolution by filing a formal complaint. A more detailed explanation of disconnection policies, including your rights as an SDG&E customer, may be obtained by calling 1-800-411-SDGE (7343) Monday-Friday 7am-8pm, Saturday 7am-6pm; or e-mail: info@sdge.com.

Re-Establishment of Credit/Deposit
If you pay your SDG&E bill after the expiration date of a past due notice, or for non-residential customers, if your SDG&E bill becomes past due and a written notice for disconnection is mailed, you may be required to re-establish your credit by paying a deposit.

Rates And Rules
SDG&E's rate schedules and rules, on file and approved by the CPUC, are available on the Internet at www.sdge.com. Copies of applicable tariffs may also be obtained by calling 1-800-411-SDGE (7343) or visiting any company bill payment office.

Disputed Bills
If you dispute the SDG&E charges on your bill, which may include electric energy charges that reflect electricity provided by the State of California Department of Water Resources (DWR), please request an explanation from SDG&E within five days. If you still believe you have been billed incorrectly, the full amount of the SDG&E charges and DWR charges on this bill should be deposited with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 2003, San Francisco, CA 94102, email: consumer-affairs@cpuc.ca.gov, within 15 days of the mailing date of this past due notice to avoid disconnection of your SDG&E service. Make the remittance payable to the CPUC, not SDG&E.

Residential customers may, in lieu of depositing the full amount of disputed bills with the CPUC, agree to an installment plan with SDG&E. A complaint may still be filed with the CPUC by stating your claim in writing and by providing supporting documentation.

The CPUC will not accept deposits when the dispute appears to be over matters that do not directly relate to the accuracy of the bill. Such matters include the quality of the utility's service, general level of rates, pending rate applications, and sources of fuel power that are used to generate power.

Failure to make the deposit to the CPUC or payment arrangements with SDG&E by the expiration date of a past due notice, may result in the disconnection of your SDG&E service.

SDGE

A Sempra Energy utility

PLEASE NOTE: This deposit less the amount of any unpaid bills will be refunded together with any interest due at the rate determined in accordance with the utility's Rule 7, Deposits, upon discontinuance of service or after the deposit has been held for 12 consecutive months during which time continuous gas and/or electric service has been received, and all bills for such service have been paid within the allowed number of days from the date mailed, in accordance with the Rules as approved by the Public Utilities Commission of the State of California.

No interest will be paid if service was temporarily or permanently disconnected for non-payment of bills within the past 12 months, or the account was past due more than once during the past six months or more than twice during the past 12 months.

Refund will be made by application to the account or by check, in which case endorsement of the check will constitute acknowledgement of receipt of refund and release the utility from any further claims against the deposit covered by this notice.

THE CITY OF SAN DIEGO

WATER & WASTEWATER SERVICES

PUBLIC UTILITIES

ISSUE DATE: Jan 2, 2018

a reminder...

610000247582
ACCOUNT NUMBER

6184 FEDERAL BLVD
SERVICE ADDRESS

Dec 21 2017
PAYMENT DUE DATE

1426 1 AV 0.373
DARRYL G COTTON
6176 FEDERAL BLVD
SAN DIEGO CA 92114-1401

5-1
01426

RETURN THIS PORTION

MAKE CHECK PAYABLE TO CITY TREASURER

0002 1 610000247582 2 0000025041 5 0

$250.41
TOTAL DUE NOW

THE CITY OF SAN DIEGO

WATER & WASTEWATER SERVICES

PUBLIC UTILITIES

a reminder...

JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

ACCOUNT NO. 610000247582 DARRYL G COTTON SERVICE ADDRESS 6184 FEDERAL BLVD	Dec 21 2017 PAYMENT WAS DUE	$250.41 TOTAL NOW DUE

THE CITY OF SAN DIEGO • PUBLIC UTILITIES DEPARTMENT • (619) 515-3500 • KEEP THIS PORTION UW-1457 (9-13)

The City of San Diego • Public Utilities Department

Federal Tax ID# 95-6000776

Payments Information

Make Checks Payable to City Treasurer

Online
www.sandiego.gov/customercare

By Mail
Public Utilities Department
Customer Care Center
PO Box 129020
San Diego, CA 92112-9020

In Person (please bring both portions of bill)

City Treasurer – Cashier
Cash, Check, Debit Card, MasterCard/Visa/Discover Card
Civic Center Plaza
1200 3rd Ave - Lobby

Public Utilities Department
Cash, Check, Debit Card, MasterCard/Visa/Discover Card
525 B Street - Ground Floor

Authorized Payment Agencies
www.sandiego.gov/publicutilities/customerservices

Payment is due on or before the Payment Due Date. If not paid within this time, service may be discontinued.

Disputed Payment Amounts should be paid to avoid interruption of service. Investigations are made upon request. Adjustments, when warranted, are made only after completion of an investigation.

In The Event Service is Discontinued for service to be restored payment must be made and reported to Customer Care (619) 515-3500. Service will be restored before the end of the following business day.

A Payment Return Fee will be assessed for any payment returned by the bank.

Contact Information

www.sandiego.gov/publicutilities/customerservices

Customer Care
(619) 515-3500
(858) 755-7211
(760) 489-8673

Emergency Service & Repairs (24 Hours)
(619) 515-3525
(858) 755-0365
(760) 489-0140

Public Utilities Department
Customer Support Division

Customer Care Walk-In Payment Center
525 B Street - Ground Floor
San Diego, CA 92101
Hours: Monday - Friday 8 a.m. - 5 p.m.

Assistance for speech and hearing impaired customers is available via California relay services at 1-800-735-2929 (TT/TDD). Alternate formats available upon request of qualified individuals with disabilities.

THE CITY OF SAN DIEGO

WATER & WASTEWATER SERVICES

PUBLIC UTILITIES

ISSUE DATE: Jan 2, 2018

a reminder...

610000012730
ACCOUNT NUMBER

6176 FEDERAL BLVD
SERVICE ADDRESS

Dec 21 2017
PAYMENT DUE DATE

1425 1 AV 0.373
FLEET ELECTRICAL CO
C/O DARRYL G COTTON
6176 FEDERAL BLVD
SAN DIEGO CA 92114-1401

5-1
01425

RETURN THIS PORTION

MAKE CHECK PAYABLE TO CITY TREASURER

0002 1 610000012730 0 0000017998 6 0

$179.98
TOTAL DUE NOW

THE CITY OF SAN DIEGO

WATER & WASTEWATER SERVICES

PUBLIC UTILITIES

a reminder...

JUST A FRIENDLY REMINDER...TO LET YOU KNOW WE HAVE NOT RECEIVED YOUR PAYMENT. IF PAYMENT HAS BEEN MADE, PLEASE ACCEPT OUR THANKS. IF NOT, YOUR REMITTANCE TODAY WILL BE APPRECIATED.

FOR RECORDED LISTING OF AUTHORIZED PAYMENT AGENCIES OR TO REPORT A PAYMENT, PLEASE CALL 515-3500.

ACCOUNT NO. 610000012730 FLEET ELECTRICAL CO SERVICE ADDRESS 6176 FEDERAL BLVD	Dec 21 2017 PAYMENT WAS DUE	$179.98 TOTAL NOW DUE

THE CITY OF SAN DIEGO • PUBLIC UTILITIES DEPARTMENT • (619) 515-3500 • KEEP THIS PORTION

UW-1457 (9-13)

The City of San Diego • Public Utilities Department

Federal Tax ID# 95-6000776

Payments Information

Make Checks Payable to City Treasurer

Online
www.sandiego.gov/customercare

By Mail
Public Utilities Department
Customer Care Center
PO Box 129020
San Diego, CA 92112-9020

In Person (please bring both portions of bill)

City Treasurer – Cashier
Cash, Check, Debit Card, MasterCard/Visa/Discover Card
Civic Center Plaza
1200 3rd Ave – Lobby

Public Utilities Department
Cash, Check, Debit Card, MasterCard/Visa/Discover Card
525 B Street - Ground Floor

Authorized Payment Agencies
www.sandiego.gov/publicutilities/customerservices

Payment is due on or before the Payment Due Date. If not paid within this time, service may be discontinued.

Disputed Payment Amounts should be paid to avoid interruption of service. Investigations are made upon request. Adjustments, when warranted, are made only after completion of an investigation.

In The Event Service is Discontinued for service to be restored payment must be made and reported to Customer Care (619) 515-3500. Service will be restored before the end of the following business day.

A Payment Return Fee will be assessed for any payment returned by the bank.

Contact Information

www.sandiego.gov/publicutilities/customerservices

Customer Care
(619) 515-3500
(858) 755-7211
(760) 489-8673

Emergency Service & Repairs (24 Hours)
(619) 515-3525
(858) 755-0385
(760) 489-0140

Public Utilities Department
Customer Support Division

Customer Care Walk-In Payment Center
525 B Street - Ground Floor
San Diego, CA 92101
Hours: Monday - Friday 8 a.m. - 5 p.m.

Assistance for speech and hearing impaired customers is available via California relay services at 1-800-735-2929 (TT/TDD). Alternate formats available upon request of qualified individuals with disabilities.

SDGE
A Sempra Energy utility

ACCOUNT NUMBER 1310 536 032 4
SERVICE FOR:
DARRYL COTTON
6176 FEDERAL BLVD
SAN DIEGO, CA 92114

DATE MAILED Jan 12, 2018
www.sdge.com
1-800-336-SDGE (7343) *English*
1-800-311-SDGE (7343) *Español*
1-877-889-SDGE (7343) *TTY*
M-F, 7am-8pm, Sat, 7am-6pm
24 Hour Emergency Service

Account Summary

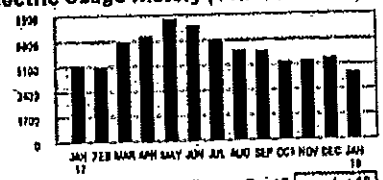
Previous Balance	$2,120.28
Payment Received	- .00
Past Due Balance	$2,120.28
Current Charges	+ 1,098.80
Total Amount Due	$3,219.08

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

.7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

DATE DUE	ON RECEIPT
AMOUNT DUE	$3,219.08

Electric Usage History *(Total kWh used)*



	Jan 17	Dec 17	Jan 18
Total kWh used	5,209	5,531	4,561
Daily average kWh	168.0	172.8	147.1
Days in billing cycle	31	32	31
Change in daily average from last month			- 14.9%
Change in daily average from last year			- 12.4%
Max monthly demand	16.3	17.1	18.0
Max annual demand			22.4

Summary of Current Charges

(See page 2 for details)

	Billing Period	Usage	Amount($)
Electric	Dec 10, 2017 - Jan 10, 2018	4,561 kWh	1,083.96
Delayed Payment Charge (.7% on balance of $2,120.28)			14.84
Total Charges this Month			$1,098.80

Regulatory Notices

- All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

See Time of Use - Electricity Information on page 3.

PLEASE KEEP THIS PORTION FOR YOUR RECORDS (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS)
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO.)

SDGE A Sempra Energy utility

Save Paper & Postage
PAY ONLINE
www.sdge.com

ACCOUNT NUMBER
1310 536 032 4

DATE DUE	ON RECEIPT
AMOUNT DUE	$3,219.08

SERVICE ADDRESS: 6176 FEDERAL BLVD SD 92114

Please enter amount enclosed.
$

Write account number on check and make payable to San Diego Gas & Electric

4723.163.3717.1933536 1 AV 0.373 oz 0.922
DARRYL COTTON
6184 FEDERAL BLVD
SAN DIEGO CA 92114-1401

SAN DIEGO GAS & ELECTRIC
PO BOX 25111
SANTA ANA CA 92799-5111

CY8

4 2 900001310536032000010980000003219080

Detail of Current Charges

Electric Service

Rate: Time of Use - TOU-A-Commercial Climate Zone: Inland

Billing Period: 12/10/17 - 1/10/18 Total Days: 31

Meter Number: 08509045 *(Next scheduled read date Feb 9, 2018)* Cycle: 8

Meter Constant: 1.000 Billing Voltage Level: Secondary

Circuit: 0165 *Your circuit is currently not subject to rotating outage. However, this is subject to change without notice.*

Total Usage: 4,561 *(Usage based on interval data)*

ELECTRIC CHARGES				Amount($)
Customer Charge				30.00
Electricity Delivery *(Details below)*	3,172 kWh			
WINTER USAGE	On-Peak	Off-Peak		
kWh used	427	2,745		
Rate/kWh	$.13007	$.13007		
21 Day Charge	$55.54	+ $357.04	=	412.58
Electricity Delivery *(Details below)*	1,389 kWh			
WINTER USAGE	On-Peak	Off-Peak		
kWh used	201	1,188		
Rate/kWh	$.13738	$.13738		
10 Day Charge	$27.61	+ $163.18	=	190.79

Rate Change This Billing Period:
There was a rate change on day 22 of your Billing Period. Therefore, your charges for the first 21 days were at Rate 1, and the remaining 10 days were at Rate 2.

DWR Bond Charge	4,561 kWh x $.00549	25.04

(Continued on next page)

Other Important Phone Numbers

For emergencies and to report outages, please call 24 hours a day, 7 days a week 1-800-611-7343

To locate underground cables & gas pipes, please call DigAlert, Monday-Friday, 6am-7pm 8-1-1

Payment Options $

Online: It's fast, easy and free. Just register or sign into My Account at https://myaccount.sdge.com

Home banking: If you pay bills online through your bank, check with them to see if you can receive your bill online.

Automatic Pay: Have your payment automatically deducted from your account. For more information, call 1-800-411-SDGE (7343) or visit www.sdge.com

Pay by Phone: Visit www.sdge.com to enroll. Once enrolled for pay by phone option, you may authorize a payment from your checking account any day up to and including the bill due date.

By Mail: Mail your check or money order, along with the payment stub at the bottom of your bill, in the enclosed envelope to SDG&E, PO Box 25111, Santa Ana, CA 92799-5111

ATM/Debit/Credit Card or Electronic Check: You can use most major ATM/Debit cards, MasterCard and Visa credit cards, or the Electronic Check thru BillMatrix. A convenience fee is charged. Contact BillMatrix at 1-800-366-0067 or visit www.sdge.com/epay.

In Person: To find the nearest location and hours of operation, call 1-800-411-SDGE (7343) or visit www.sdge.com.

Need help paying your bill? Call us for programs and services at 1-800-411-SDGE (7343) or visit www.sdge.com.

SDGE
A Sempra Energy utility

ACCOUNT NUMBER 9185 520 600 4
SERVICE FOR
DARRYL COTTON
6184 FEDERAL BLVD
SAN DIEGO, CA 92114

DATE MAILED Jan 12, 2018
www.sdge.com
1-800-336-SDGE (7343) English
1-800-311-SDGE (7343) Español
1-877-889-SDGE (7343) TTY
M-F, 7am-8pm, Sat, 7am-6pm
24 Hour Emergency Service

Savings Alert: California is fighting climate change and so can you! Your bill includes a Climate Credit from a state program to cut carbon pollution while also reducing your energy costs. Find out how at EnergyUpgradeCA.org/credit.

Account Summary

Previous Balance	$837.04
Payment Received	-.00
Past Due Balance	$837.04
Current Charges	+ 728.63
Total Amount Due	$1,565.67

Please disregard past due balance if already paid. Please pay current charges by Jan 27, 2018.

7% Delayed Payment Charge Due If Paid After Feb 6, 2018.

Summary of Current Charges

(See page 2 for details)

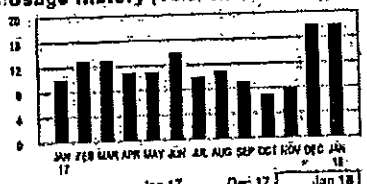
	Billing Period	Usage	Amount($)
Gas	Dec 10, 2017 - Jan 10, 2018	16 Therms	24.59
Electric	Dec 10, 2017 - Jan 10, 2018	1,485 kWh	357.58
Other Charges and Credits			346.46
Total Charges this Month			$728.63

Regulatory Notices

- All customers are required to pay a Competition Transition Charge as part of the charges above, including those who choose an electric service provider other than SDG&E.

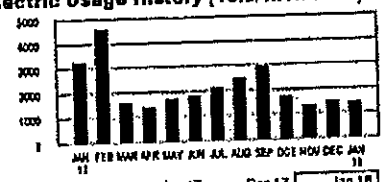
DATE DUE ON RECEIPT
AMOUNT DUE $1,565.67

Gas Usage History *(Total Therms used)*



	Jan 17	Dec 17	Jan 18
Total Therms used	10	16	16
Daily average Therms	.3	.5	.5
Days in billing cycle	30	32	31
Change in daily average from last month			+ 0.0%
Change in daily average from last year			+ 100.0%

Electric Usage History *(Total kWh used)*



	Jan 17	Dec 17	Jan 18
Total kWh used	3,268	1,517	1,485
Daily average kWh	105.4	47.4	47.9
Days in billing cycle	31	32	31
Change in daily average from last month			+ 1.1%
Change in daily average from last year			- 54.6%
Max monthly demand	11.0	6.8	3.9
Max annual demand			15.5

See Time of Use - Electricity information on page 3.

PLEASE KEEP THIS PORTION FOR YOUR RECORDS. (FAVOR DE GUARDAR ESTA PARTE PARA SUS REGISTROS.)
PLEASE RETURN THIS PORTION WITH YOUR PAYMENT. (FAVOR DE DEVOLVER ESTA PARTE CON SU PAGO.)

SDGE A Sempra Energy utility

Save Paper & Postage
PAY ONLINE
www.sdge.com

ACCOUNT NUMBER
9185 520 600 4

DATE DUE ON RECEIPT
AMOUNT DUE $1,565.67

SERVICE ADDRESS: 6184 FEDERAL BLVD SD 92114

Please enter amount enclosed.
$

Write account number on check and make payable to San Diego Gas & Electric

4723.163.3717.1933404 2 AV 0.373 02 1.092

DARRYL COTTON
6176 FEDERAL BLVD
SAN DIEGO CA 92114-1401

SAN DIEGO GAS & ELECTRIC
PO BOX 25111
SANTA ANA CA 92799-5111

CY8

4 2 200009185520600000072863000015656 7

Detail of Current Charges

Gas Service

Rate: GN3-Commercial

Meter Number: 01187950 *(Next scheduled read date Feb 9, 2018)* Cycle: 8

Billing Period	Days	Current Reading	- Previous Reading	= Difference	x Meter Constant	x Therm Multiplier	Total Therms
12/10/17 - 01/10/18	31	435	418	17	1.000	1.047	18

GAS CHARGES ..... Amount($)

Gas Service Rate Change This Billing Period:
There was a rate change on day 22 of your Billing Period. Therefore, your charges for the first 21 days were at Rate 1, and the remaining 10 days were at Rate 2.

Customer Charge 10.00

Gas Service *(Details below)* 18 Therms

	1000 Therms	1001 - 21,000 Therms	Over 21,000 Therms		
Therms used	18				
Rate/Therm	$.41975				
21 of 31 Days	$5.12			=	5.12
Therms used	18				
Rate/Therm	$.32890				
10 of 31 Days	$1.91			=	1.91

Gas Energy Rate Change This Billing Period:
There was a rate change on day 22 of your Billing Period. Therefore, your charges for the first 21 days were at Rate 1, and the remaining 10 days were at Rate 2.

(Continued on next page)

Other Important Phone Numbers

For emergencies and to report outages, please call 24 hours a day, 7 days a week 1-800-811-7343

To locate underground cables & gas pipes, please call DigAlert, Monday-Friday, 6am-7pm 8-1-1

Payment Options $

Online: It's fast, easy and free. Just register or sign into My Account at https://myaccount.sdge.com

Home banking: If you pay bills online through your bank, check with them to see if you can receive your bill online.

Automatic Pay: Have your payment automatically deducted from your account. For more information, call 1-800-411-SDGE (7343) or visit www.sdge.com

Pay by Phone: Visit www.sdge.com to enroll. Once enrolled for pay by phone option, you may authorize a payment from your checking account any day up to and including the bill due date.

By Mail: Mail your check or money order, along with the payment stub at the bottom of your bill, in the enclosed envelope to SDG&E, PO Box 25111, Santa Ana, CA 92799-5111

ATM/Debit/Credit Card or Electronic Check: You can use most major ATM/Debit cards, MasterCard and Visa credit cards, or the Electronic Check thru BillMatrix. A convenience fee is charged. Contact BillMatrix at 1-800-366-0087 or visit www.sdge.com/epay.

In Person: To find the nearest location and hours of operation, call 1-800-411-SDGE (7343) or visit www.sdge.com.

Need help paying your bill? Call us for programs and services at 1-800-411-SDGE (7343) or visit www.sdge.com.


14

EXHIBIT 14

DECLARATION OF DALE L. COTTON

I, Dale Lloyd Cotton, have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I am a self-employed businessman and the First Trust Deed Holder of 6176 Federal Boulevard San Diego, CA 92114; to which the title to that property is held by my son, Darryl Gerard Cotton.

2. Darryl has been under extreme financial pressure from the litigation he is involved in and he has not been making the mortgage payments to me. He has been responsible in keeping me updated through regular communication as to the status of that litigation.

3. That communication has made me very aware of the enormous stresses Darryl is undergoing both emotionally and financially.

4. To be clear: were this a normal business relationship, I would have foreclosed on this property a year ago.

5. But this is not a normal business relationship and I do want to help him and any of my children out to the fullest extent that I can. However, I am not a wealthy man, and this cannot continue.

6. I respectfully request this court to consider what the effects of this needless, protracted litigation has caused to not only Darryl, but to me as well, and please use whatever discretionary authority you have to see that justice will eventually be served in this matter.

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

DATED: 1/21/2013

Dale L Cotton

DALE LLOYD COTTON

my cell
702-380-7010
211 67th St
Mendota, MN USA
61342

SUPPORTING DECLARATION


15

EXHIBIT 15

I, Darryl Gerard Cotton, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. This declaration is being prepared for this lawsuit, litigation matter and should lay out in detail all the pertinent facts and history of me, my business and the chronological events leading to and through the legal proceedings to date.
3. It is the intent of this declaration to prove 6 things: 1) I have had a lifelong passion and interest in electricity and electrical designs; 2) I am a businessman, I have had numerous companies related to electricity; 3) I also have a lifelong interest in plants and crops; 4) I am involved in and proud of my political activism; 5) Larry Geraci is attempting to defraud me of my property and; 6) My former counsel FTB is also likely guilty of fraud.
4. It is important to me that this reflect these issues, therefore I go to great lengths to describe them.
5. I was born in 1960 in Peoria, Ill. My father, Dale Lloyd Cotton, was a Mechanical Engineer who worked for the Electromotive Company (EMD) as a Process Engineer, just outside of Chicago, Ill. My mother, Therese Marie Cotton, was a chemist who worked at various universities. I had one brother, Gregory, and a sister, Christine, from their marriage.
6. Some of my earliest and fondest memories growing up were of having my parents take us to their respective workplaces. At Christmas, EMD would open their entire facility up for tours where everyone could see the factory and all the locomotives in various stages of construction. My father would walk us around and point out where he worked and explain his job of engineering the manufacturing processes that would produce those enormous locomotives that were sold all over the world. Touring that factory, I saw what seemed like

an important part of what society needed in its everyday life of moving goods from one point to another. I was very proud of my dad and the work he did for EMD.

7. Since my father grew up in the farming area of Southern Illinois, at 13 years old I was given a chance to work one summer detasseling corn. It was very hard work, but I stuck with it and learned to appreciate what it takes to get these crops to harvest. Visiting my grandparents, and that summer working in the farms in Mendota, Illinois, sparked my early interest in plants and crop science.

8. When my mother took me to her job, I got a chance to see the work she was doing toward her thesis in Raman Spectroscopy. This is the science that involves determining the molecular identity of an object using light. As light bombards the object, the return or reflection of that light creates a signature in frequency and wavelength that can be characterized in a nondestructive fashion by the object's unique molecular identity. I would often accompany my mother to her labs at Argonne National Labs and Northwestern University to see her equipment and experiments underway. I got to sit in with her and her colleagues when they would discuss advanced physics and particle science. Of course, these topics were well over my head, but I always made sure they at least attempted to explain what they were talking about, in terms I might be able to grasp. In deference to my mother, and because they probably enjoyed the challenge, her colleagues would usually take the time to do so and show me what the equipment was doing in their experiments. I was thrilled to understand, at least in a broad sense, what it was their work entailed.

9. There is no doubt that my interest in electricity and light, came from exposure to the work my mother had been doing, and the efforts she and her colleagues made to explain to their work to me. Later in life, I would, on occasion, accompany her as she gave lectures around the world to other academics on her work, and it became increasingly evident to me, that she was respected as an innovator in her field. I could only hope that I would have an

opportunity to contribute to the world in as meaningful a way as she had. Sadly, my mother died in 1999 but her memory and work will live on forever. It is a goal of mine to emulate her personality, and the way she affected those around her, in the same positive ways she did.

10. At a very young age, I found that I was really interested in politics and what was going on in the world. I even have a vague recollection of being 3 years old and sensing something was horribly wrong when the world seemed to stop with the assassination of John F. Kennedy. We all just stood there, staring at the TV, and the busy street that normally had cars flying down it, was quiet. There was no traffic. Time stood still. After that, having lived through the Vietnam war, Watergate, Nixon, Martin Luther King, and other such events, I can't recall ever not having an interest in politics and the law and their effects on the world we lived in. I found it exciting and fascinating.

11. My parents went through a horrible divorce when I was 13 years old. There was bitter fighting over who would get what and it led to a serious and permanent fracturing of our family. I'll never forget the tug of war and the lawyers coaching us as to what to say so we would be able to support whatever was expected to be said when we stood in front of the judge. Having to pick sides between your parents is not something that you would ever want a child to do but that is essentially what we had to do. What happened is that the boys went to my father and my sister went to my mother. Life as we knew it would never be the same.

12. From the time I was 13 to 15 years old, my brother and I were basically on our own. My dad worked full time, and during his off time, be sought out new relations that would rebuild our household. My brother and I resisted these new women coming into our lives, trying to assume the position that had been our mother's, so we rebelled. We did not make it easy on these women and they would leave. This, coupled with the fact we were acting like normal

teenagers, caused a lot of friction with my dad. Eventually my father farmed out my brother Gregory, who was just 12 years old at the time, to a family down the street from us who agreed to take him in. I lived with my dad until I was 15 years old, when he agreed to my moving out.

13. In 1972 I became aware of a considerable buzz being created by then President Nixon having appointed a commission, known as the Shafer Commission, to study, compile information on, and report back to him what effects cannabis was having on our youth. It was clear to us from Nixon's statements that he did not want to see cannabis become acceptable at any level. He needed federal drug policy to make cannabis use a criminal act. Nixon saw cannabis being used by a bunch of war protesters who would sit around smoking weed and creating havoc, over him and his policies, so he needed it stamped out. He needed a way to give the federal government the tools to do that. To that end, he created the Shafer Commission, whose sole purpose he believed was to come back with findings that supported his beliefs. Nixon needed findings that would claim cannabis was evil, dangerous, and a threat to society. Unfortunately for Nixon, after an exhaustive, comprehensive, and nonpartisan analysis of the effects of cannabis, they came back with just the opposite opinion.

14. When the Shafer Commission came back with their report, they relied on research that had been done by UC San Francisco chemistry students who were interested in finding out why the same strain of cannabis could make one person laugh and another contemplative. They appreciated that there was the potential to use cannabis as medicine and they recommended that further research be done to see what biochemistry was at work. What they discovered was the beginning of why the science of this plant needs to be better understood. Relying on that research, and other studies from around the world, created a situation where Nixon could not accept the findings and would not release the report in the form that he had

received it. Nixon ignored the Commission's recommendations and went on to create the Controlled Substances Act. He eventually resigned and was then pardoned by his replacement, Jerry Ford. One of the first things Ford did was give the Shafer Commission report to Big Pharma so that they could "continue" the research that had been done by others, while it was kept from the public for over 40 years.

15. In 1975 I moved into my own room at a boarding house known as The Stone House. The Stone House was run by a little old lady who went by Marty. Marty was an exceptionally sweet person who had an incredible affection for birds. She had hundreds of finches in the basement and would spend hours with them. What Marty was not always very good at was noticing what her tenants were up to, and by that, I mean, more than a few of her tenants were heroin addicts, who lived there because it was cheap, and Marty loved them unconditionally, as if they were her own.

16. When Marty first met me, she was not ready to rent a room to a 15-year-old boy but since I was personable, had a job working part time for Horton Electric, a local electrical and lighting company, and was going to high school 1 block away from the Stone House, Marty decided to take a chance and let me move into my own room. This was important, not only because I got to understand self-responsibility at a very young age, but also because it gave me the opportunity to see how those other boarders made their living and survived as adults.

17. The Stone House was a large 3 story house and the attic floor was the most desirable of all the floors. This is where, in the evenings, the rooms would open up and there would be free flowing music, conversation, drinking, drugs (only cannabis and psilocybin for me), and discussions on everything imaginable including politics, the Vietnam war, President Nixon, relationships, and girls. People came from all over to attend these evening soirees. They were lively and fun, but they had purpose too. We were in the midst of revolt and

revolution. There was Kent State. There was Watergate. There was George McGovern. There was talk of impeachment. There was the Shafer Commission. There were body bags of soldiers fighting in a war that had no meaning. There were refugees. There was Jimmy Carter. There was Lieutenant Calley. There were lines of people waiting to buy gasoline. There was upheaval. I was taking it all in. Living at the Stone House taught me to think for myself, to question those who would manipulate the system on behalf of their own special interests, to help educate others, as I had been, and finally to cherish the Constitution as it is a living, breathing document that must be the center of our universe and not be taken for granted or the freedom we cherish will be lost forever. The tree of liberty will not be taken down with a single swing of the axe, but in a slow and steady process whereby one day you look up and the tree is gone. As citizens of this great country, we have a responsibility to protect ourselves and those around us from letting that happen. That is the message I took from the Stone House.

18. While Stone House helped form some of my early political ideologies, it also got me to question drugs, both legal and illegal, and the influence they had on people's lives. When the parties died down, it was always just me and the other boarders who had all taken me under their wings and mentored me. I got to see them as they really were. Even though some of them got into things that I would never try, such as heroin, I respected that they were clear to me why they did these drugs and why they would never want to see me doing them. I watched them go through the process of attaining the drugs and the rituals that went with getting the drugs into their systems. While they were certainly consumed by their addictions, they also seemed to care about the young man living in their Stone House and did not want to see me make the same mistakes they had. I respected them and their intellects. However, I saw firsthand how heroin would ravish them and ultimately, they would overdose, and some would even die. It was tough knowing that these drugs took

control of young people who could have been assets to our world. I knew then and there that I would never subject myself to a drug, legal or not, that took over my life. Instead I would always maintain an interest in how drugs could be used to provide relief, repair or prevention of disease without the addictive elements that consumed those who took them.

19. After a couple of years of living in the Stone House, I had saved and was making enough money at Horton Electric to move into my own house. In 1977, at the age of 17, I kissed Marty goodbye, thanked her for everything she had done for me, and moved into my own house.

20. At the time I rented my own house, I had been working part time for Horton Electric for almost 3 years. I initially started out working in the warehouse stocking inventory but, since I was always interested in what those electrical parts did, I'd ask a lot of questions of those who worked there. That got me to understand the business to the point that, at just 16 years old, I got to move up to the electrical sales desk. In that capacity, I got to meet with customers, helped fill orders and realized that building and wiring things was incredibly rewarding.

21. While I appreciated the opportunity to work in electrical sales, I lobbied hard to get transferred to the electrical construction side of the company. I had already been dreaming of someday becoming an electrical contractor. The contracting side of Horton Electric was run by a surly old Irishman by the name of Chris who wanted nothing to do with having a young kid working around him and his electricians, but I didn't give up and I eventually got on his good side. Once I did, it was the best thing that could have happened to me. I got direction. I got focus. This shop was well established and serviced all the surrounding area. Chris was very well respected, and by me representing him, by way of delivering materials and getting to know the union electricians, I had an opportunity to see how the electrical construction side of the business operated. I'm a quick study but there was no way

that, without formal training, I was going to learn the electrical contracting trade unless I got a break. That break came when one of the union electricians I was working with decided that I was worthy of baptism by fire. As much as Chris got to know and rely on me, he knew that my heart was in becoming an electrician and one day running my own business, so he got me onto a union job that needed more electricians than the hall had available at the time. I was given an opportunity to become a walk-on electrician for a huge condominium project being built outside Chicago. While I had some experience in bending conduit and running wire, I was not up to the skill levels that were required to maintain that job. I was not going to lose that job, so I would actually stay after hours to practice bending conduit to improve my production levels. When the project foreman found out I was doing that, he was not happy about it, and told me in no uncertain terms that, if I ever did anything off the clock, I would be terminated. However, he liked that I wanted to succeed and paired me with another walk-on electrician who was so good he was out-producing the union electricians by nearly twice the production per day. John was good. Very good. He had methods and techniques that allowed him alone to finish a one-bedroom condominium, completely piped in conduit and ready for drywall, in one day. I worked with John and learned every technique he had. Within a month, I was knocking out the same production levels he was. John went on to become a union electrician and stayed in Chicago. I could have gone that route too, but I wanted to eventually have my own business as I had seen Chris do at Horton Electric and, since the winters were brutal in Chicago and I had nothing keeping me in the Midwest, I decided to take my skill sets and move to a warmer year round climate. It was in 1980 that I made the decision to pack all my belongings up in a van and move to San Diego.

22. When I arrived in San Diego, I immediately got a job for the U.S. Navy working as an electrician in the Public Works Center (PWC). While this was considered a temporary

position, my electrical skills and acumen put me in demand among the career, civil service electricians and allowed me to travel to many of the Southern CA naval bases while working on, and often being given a supervisory role in, some of the most sensitive and high-profile projects going at the time.

23. I had been working for PWC for 2 years when, in 1982, I was given an opportunity to make better money as the Electrical Superintendent for Dave Baker of Westland Electric. In this capacity, I would be responsible for running multiple large commercial projects. Dave hired me for this position because he knew, from people he knew at PWC, that I was knowledgeable, organized, liaisoned well with our customers, and delegated authority, which resulted in my projects being completed on time and on budget.

24. In 1983, I met Debra Holly and we started dating. We never married but stayed together for 14 years, during which time we had 2 beautiful daughters, Kimberly and Kristina. It was during those early years that Debra encouraged me to follow my dreams of owning and operating my own electrical contracting firm.

25. In late 1985, I started suffering from occasional nocturnal epileptic seizures. While it is unknown as to what exactly is responsible for these seizures, it is believed that lack of sleep and stress are significant contributing factors. I was originally prescribed Dilantin which worked but was known to cause problems within the liver and, since I also have the Hepatitis C virus, I was very concerned about the effects a prescription drug would have on my liver.

26. In 1987 I made the decision to start my own electrical contracting business and Fleet Electric, CA License Number 514234, began business out of my home in North Park. I managed to run and grow that business so that I needed to move into a larger space. In 1992 I moved our business out of my home and into a commercial rental property at 6184 Federal Blvd, which I currently maintain for my business.

27. In 1996 I first became aware of Dennis Peron as he was getting attention as one of the original co-authors of Prop 215, which, with its passage, had made cannabis legal in CA for treating certain medical conditions. While at the time I was uncertain as to how effective cannabis might be in the treatment of my seizures, I did appreciate that it was now being recognized as a possible alternative option to the prescription drugs I was taking. I resolved to follow the research that developed relative to the genetics and dosing levels that could be relied on to help combat these seizures.

28. In 1997, the owner of the property at 6176 Federal Blvd contacted me and asked if I would be interested in acquiring his property, which is adjacent to mine, at 6184 Federal Blvd, if the terms were favorable. This was a deal that worked for both of us and I purchased the 6176 Federal Blvd property in my name.

29. In 2000 I expanded my license to include a General Contracting classification and was issued CA Contractors license number 757758. Since the new license allowed us to do work beyond just electrical, I renamed the company Fleet Services and proceeded to operate under that license until 11/30/2012 when I decided I would cease contracting and devote my full attention to my efforts in energy efficient horticultural lighting and controls.

30. In 2002 I started Fleet Systems as a compliment to my Fleet Services contracting business. Fleet Systems provided emergency and backup power generation for both permanent and rental power applications. Fleet Systems became dealers and authorized service centers for many major brands including Kohler, Baldor, and Cummins. Within 4 years of our startup; our Fleet Systems Maintenance Contracts Division had acquired a majority of the major key accounts such as hospitals, casinos, office buildings, and hotels in San Diego whereby the annual generator service contracts were an integral part of our portfolio. Recognizing this, the local Kohler Distributor, Bay City Electric Works, made an offer to purchase Fleet Systems and I accepted their offer. It was agreed that we would

retain the Fleet Systems name so that we could continue to provide mobile power systems service on news vans, semi-trucks and RV systems, services that we still provide.

31. In 2005 I expanded our generator equipment business into Mexico with the opening of Fleet Systems de Mexico. This was good timing for us because at the time we opened our facility in Ensenada, MX there were sizeable rentals and sales contracts available. In addition, many of our US manufacturers whose power systems we were already servicing had maquiladora operations in this region which made it relatively easy to support them with equipment and personnel from our San Diego facility. With the sale of Fleet Systems in 2007 we ceased operations in Mexico.

32. In 2010 I started Inda-Gro as an induction plant lighting manufacturer. Inda-Gro was one of the very first companies to identify induction lighting as a viable, energy-efficient plant lighting technology that could compete with the existing HID lighting technology that dominated the plant lighting market.

33. It is through the ongoing research I have done at Inda-Gro that we have seen significant developments in plant photobiology with self-published and other researchers' papers.

34. From 2010 onward I worked primarily on the manufacturing and distribution side of Inda-Gro lights. Since our products relied on a well-established Tesla Coil technology which was being applied in a new way to provide lighting for plants, it required that growers be convinced that our products could deliver the crop quality and yields to which they had become accustomed under HID lighting systems. The only way that was going to happen with a new technology was if we had "partner growers" who would provide meaningful data as to their comparative results or if we had our own farm running continuously that would allow for people to see the plants and lighting systems in operation. Couple those visits with time/date stamped images posted on Facebook of previous grows and crop results and the

consumer now has the ability to make an informed decision as to what Inda-Gro brings to the market.

35. My experiences with having "partner growers" providing me with any reliable, meaningful data was a challenge. More often than not, they would take one of my lights with the promise that they would tell me how it performed. The majority of the time I would get little to nothing back in return. Clearly this did not work for me and my plans to improve our products by tracking real time plant performance values.

36. In 2011 I decided to no longer rely on "partner growers" as the design developments required more reliable feedback in a timely fashion and I began to focus entirely on our inhouse T&D garden operations for indoor and greenhouse lighting applications. It was at this time I started both Youtube and Facebook channels to publish our work with time/date stamped images and videos.

37. In 2012, in addition to the lighting and controls research and development underway, I was given the opportunity to procure several different genetics of cannabis that I wanted to grow for the treatment of my seizures. It was during this time that I became very interested in combining the engineering work we were doing with our Inda-Gro products with the plant sciences to generate organically grown cannabis products that would not only be healthier but, by combining certain genetics, prove to be better at combating my seizure disorder.

38. Aquaponics is not widely used in cannabis cultivation. However, I was attracted to this method of cultivation because of the organic nature under which the plants had to be grown. Nothing could be placed on the plants that could harm the fish. This appealed to me since, if I were to continue to use cannabis in combination with prescription drugs to treat my seizures, I wanted to be sure that the cannabis I consumed was free of any potentially toxic elements. A balanced aquaponic system relies on healthy fish and their waste being

the primary nutrients for the plants. This is a presentation I developed that goes into detail as to how this method of cultivation may be employed for cannabis crop cultivation.

39. I experimented with several methods that would allow aquaponics to be used in cannabis cultivation and found a reliable technique that gave the cannabis plants their main nutrient requirements from the flood and drain fish water but which also allowed us to top feed the trace minerals that cannabis and other flowering plants need in a top water feed that does not water to the point that water combines with the fish water. This practice is referred to as decoupled or dual root zone feeding for the plants.

40. As a result of my posting this work on Facebook media I eventually came to the attention of Pentair Aquaponic Eco-Systems. PentairAES is the largest manufacturer of aquaculture products in the world. It was Dr. Huy Tran, PhD, the Director of Research for Pentair at the time, who reached out to me to learn more about us and our products and to explore if induction grow lights would be a good fit for the industry and their product line. After discussing the science involved in our products and learning more about us, Dr. Tran decided to recommend our induction lights be used in the Pentair product line under their own label. His recommendations were accepted by management and I began filling induction grow light orders for PentairAES.

41. After entering into that agreement with PentairAES, I expanded sales of our induction grow lights but I also benefited from the incredible insight and knowledge that Dr. Tran and other advanced academics within Pentair, such as Dr. Jason Dannaher, have been able to provide me with in regard to how aquaponics can grow a wide range of crops in a wide range of environments while using 5-10% of the water that a traditional soil crop would consume. I also was pleased to discover from the research we were doing into plant lighting and aquaculture that the benefits we found in organically grown food crops quality extended to cannabis crop quality.

42. Cannabis that I had been acquiring through local retail cannabis dispensaries would not always be guaranteed to be free of contaminant pesticides, fungicides, aerocides or even nutrients. When I would procure concentrates of the same genetics for my condition, the percentage of residual solvent elements would be increased by 10-20X what it would have been in flower form. While I want the benefits of medical grade cannabis to combat my seizure disorder, I refuse to take in chemicals that I know to be unhealthy and even life threatening.

43. In March 2015 I found a commercial property available for rent in the Barrio Logan section of San Diego. The landlord understood that I was to rent this property for the purposes of developing what I began referring to as a 151 Farm. The concept, which originally began with our R&D work on Federal Blvd, was that urban farms would grow 1 pound of cannabis to 5 pounds of food for 1 community. I went forward with the Barrio Logan project because it afforded us a larger footprint than I had available at the Federal Blvd property. The size of this property allowed us to have indoor, greenhouse and outdoor plants that were grown in a soilless aquaponic system of recirculating water. In our trials of systems and procedures I grew lettuce, hops, peppers and medical cannabis. I maintained our progress on social media with time/date stamped photos and welcomed those who had an interest in our work to visit us for tours.

44. While I initially sought out others in the hydroponics industry to co-develop the 151 Barrio Logan project, it became apparent that, even though they may have endorsed the efforts, they were never willing to contribute any time or money to see that the project was maintained. While I consider Barrio Logan a success, ultimately the work and money involved to maintain it became too much to bear and I had to shut it down and return those operations to the 6176 Federal Blvd location where it continues to operate to this day.

45. Over the years I became increasingly aware of all the research being done in other countries on the medical benefits of cannabis. I watched with great interest as medical doctors and scientists from every realm of the sciences collaborated in finding out more about this plant and how it interacts with our endocannabinoid systems. What this ongoing research has shown is that at the botanical level there are mysteries about this plant and its broad phenotype expressions that exist amongst the wide-ranging genetics that will combine to promote homeostasis or a balancing of the mind/body relationship.

46. Other elements of the plant have been clinically proven to reduce blood flow to cancer cells. Today there exists greater empirical evidence than ever before as to how this plant can benefit us and why its cultivation and access need to be sensibly managed. Based on my personal experiences, that of those I've seen benefit from this plant and the research that supports its medical use, I will remain committed to lending my voice to see that laws and policies are in place at the federal level which would include the re/declassification of cannabis and that at the local and state levels those who need access to this plant for their medical conditions are able to do so.

47. In late 2015 I was contacted by researchers at the National Algae Association who had seen my work whereby I had taken one of our induction grow lamps and designed a waterproof housing that allowed the lamp to be put underwater without any type of housing over it. This put the lamp's energy, intensity and spectrums at depths in the tank where it is difficult for light to travel at distance to meet with the macroalgae being grown.

48. The particular algae we were interested in cultivating with our lamps was the Haematococcus Pluvialis algae or "HP" for short. HP is known to be very high in the super antioxidant astaxanthin. Research indicated that by installing the lamps in the tank we would be able to increase the concentration levels of astaxanthin and decrease times to

harvest. From my perspective, anything I could do to help improve any crop production value which, when extracted, would benefit the patient, was worthy of pursuit.

49. Because of my work on the AquaPAR submersible induction lamps to decrease times to harvest and increase HP concentration levels, I was invited to give a presentation at The National Algae Convention.

50. One of my greatest personal motivations in starting my own 151 Farms Urban Aquaponics Gardens was that I could gain personal knowledge by creating these gardens and learn what would and would not work when growing a wide variety of food and plant-based medicines in this fashion as well as develop our lighting and control products.

51. The reason this work at this particular time was especially appealing to me is that botanical plant substances can help alleviate certain medical conditions in patients when combined with the ability to optimize crop production values in a given area using controlled environmental conditions whereby the plants can develop in the lowest times to harvest across all plant species.

52. When optimizing plant production values, what matters most is that the research supports whatever the benefits to the patients may be based on control factors such as the plant genetics, the type of cultivation systems and procedures being used that allows for organically grown plant-based products to be grown in a repeatable fashion. It is for this reason I began to introduce a wider variety of crops, known for treating medical conditions, into our 151 Farms so they could be available to those who would seek them out in their fresh unadulterated form from their local garden. Other factors that contributed to my support for and development of 151 Farms included; The ability to co-cultivate fish and plants in a soilless urban garden setting.

53. There is an opiate epidemic in the United States which has now reached epic proportions. The need for fresh, organically grown, unprocessed foods and plant-based medicine has never been greater.

54. A whole host of medical conditions, such as high blood pressure, diabetes, Alzheimer's, obesity, and cancer, can be directly attributed to the consumption of processed foods.

55. The availability of fresh unprocessed foods is severely restricted in urban settings. This leads more people to purchase food products that have longer shelf lives from the stores in their neighborhoods. Consequently, the percentage of diet-related diseases is disproportionately higher in regions where access to unprocessed food is limited.

56. Why is having locally-sourced, organically grown medical cannabis plant genetics so important to patients? Research has shown improved efficacy from the EXTRACTION of essential oils from cannabis plants when that extraction is done from a just harvested plant. This extraction process is referred to as a live resin extraction. A cultivation process whereby the just harvested plant can be converted into that essential oil is critical to the finished product quality. What is equally important is that the plants are grown in a controlled environment whereby the full phenotype expression can occur. This is a function of broad spectrum lighting. It's also important that the plant genetics are known and stable to realize these benefits in a repeatable process. Finally, it is important that the plants have not been subject to pesticides, aerocides, fungicides or residual nutrients that may contain heavy metals or plant growth regulators which in an extracted process could be 10-20X what those levels would be in a flower form. Cannabis grown and processed in this way allows the patient to take lower doses that, when coupled with diet and some form of exercise incorporated into a daily regimen, help to, at a minimum, improve their quality of life and reduce or even eliminate the medical conditions that existed prior to their introduction to naturopathic treatments. The benefits of a 151 Farm are that the source plant material for

medical grade cannabis can be made available to those within the community nearest to where it has been grown.

57. If you're familiar with the term Community Supported Agriculture (CSA), a 151 Farm utilizes Cannabis Supported Community Agriculture (CSCA) as a way to pay it forward within our communities by providing housing and jobs for all skill levels and donating a portion of the food being grown to local food banks.

58. The negative impact that our drug laws and policies have had in non-white communities has been disproportionately larger than for those who live in predominantly white communities. These drug policies have led to higher percentages of incarceration, lost jobs, crime and other negative effects for those individuals and their communities.

59. With the increased opportunities coming from the mainstream and legalization of cannabis within these communities, it is morally imperative that under these new laws, cannabis related business opportunities be given to those who have been most affected by those previous drug policies and laws. 151 Farms provides a distinct and transparent pathway for those opportunities.

60. It is necessary to meet with government officials and interact with them on a regular basis to see that organic urban farming and medical cannabis patient's needs are being considered. Letting your voice be heard, not being passive, leading by example, and being part of the dialogue to be part of the solution are all parts of what being a 151 Farmer means when it comes to exacting change in an ever-changing industry.

61. For me personally, knowing that I am able to grow my own medical grade cannabis with particular genetics that help to prevent my seizures is comforting, but I would also like to know that I can purchase medical grade cannabis which is free of toxic elements, should I become unable to grow in the future. This got me looking into how the State of CA regulates pesticides and toxicity limits on medical cannabis products that are cultivated and

produced under the authority of Prop 215. What I found is that as far as the State of CA is concerned, since 1996, when Prop 215 was passed, there have never been any limits on pesticides and toxicity because the California Department of Pesticide Regulations (CDPR) got their limits from those established by the FDA and EPA. The problem CDPR had with setting state levels was that it relied on a federal agency to provide data and NO federal agencies will perform the pesticide and toxicity studies on a product that is listed as a Schedule One drug. Under the Controlled Substance Act cannabis is seen as having NO medicinal value whatsoever, it is subject to severe safety measures and it is listed as having a higher potential for abuse than heroin, which is listed as a less dangerous, schedule two drug.

62. With one side blaming the other and me as the medical cannabis patient caught in the middle, I began researching why the federal government still considered cannabis as having NO medicinal value. What I found that seriously contradicted that position was that in 2003 the Department of Health and Human Services was granted patent number US 6,630,507 B1 which cites the antioxidant and neuroprotective benefits of cannabinoids which are to be derived from cannabis.

63. If, after reviewing this patent, there is still any doubt in your mind as to what research supports it and the benefits of cannabis, I would encourage you to look at the 'other publications' as listed in the upper right-hand portion of the patent. Here you will see the studies from accredited scientists and institutions that from 1965 to 1981 have done their own research to support this singular patent issued in 2003 and the benefits that this plant represents to the medical patient. Yet today, 15 years later, cannabis remains a Schedule One drug. The federal government's scheduling hypocrisy regarding cannabis as having NO medicinal value is astounding!

64. As a medical cannabis patient myself and having lived for 2 years in the Stone House where I saw firsthand the ravages of heroin, I simply cannot understand the hypocrisy between these two positions. It is one of the reasons I have been so vocal about trying to enact common sense laws and regulations as to how cannabis is grown and how it can be accessed by those who require it medically.

65. Another area of great concern to me is why any state government would not have established pesticide and toxicity levels of substances that may come in contact with cannabis before they allow the sale of cannabis products within that state. For food and drugs other than cannabis, these levels are typically established by the federal government but since cannabis is listed as a federal schedule one substance, the California Department of Pesticide Regulation, which would normally set these limits, has had a hands-off policy for setting these limits, citing lack of federal direction.

66. With the passing of Prop 215 in 1996, California has had 20 years to set pesticide and toxicity limits on cannabis grown in state and never provided those limits to the cultivators or to the medical cannabis patients. It was left up to the consumer to decide if they were comfortable with the amount of heavy metals and other potentially toxic substances that could be found in the plant materials and if they were willing to consume that product. Even though it is necessary that there be established limits that require that the testing of that product and the information regarding what was in that product be made available to the consumer, more often than not those test results were not available, and the medical cannabis patient was left to chance what was in the plant material they were ingesting. With recent tests showing that over 84% of the cannabis being tested has tested positive for what are considered harmful levels of pesticides, the fact that the State of CA has left this responsibility to the medical cannabis patient consumer for the last 20 years is unconscionable.

67. With the passing of Proposition 64, "The Control, Regulate and Tax the Adult Use of Marijuana Act" (AUMA) the state has now accepted their responsibility to set these limits. However, the limits have not yet been set and are expected to be released at some point in the near future.

68. With the passing of AUMA nothing has changed in the federal scheduling of cannabis. It's still Schedule One. Why has the state agreed to establish these guidelines now when they were unwilling or unable to set them in protection of the medical cannabis patient before the passage of AUMA? It's simple. The state never took their responsibilities to the medical cannabis patient seriously under Prop 215 since it did not increase revenue for them.

69. I felt strongly then and still feel today that, while Prop 215 was certainly not perfect, it could have been improved upon if the legislature had seen fit to do so. The legislature failed the medical cannabis patient and now they are in charge of a regulatory system that is supposed to be responsible and equitable to the medical and so called "recreational" cannabis communities. To say I have my doubts as to how they will manage this on behalf of the medical cannabis patient would be, to put it mildly, a massive understatement.

70. I have always had a hard time accepting, and have staunchly opposed, any laws or regulations that purport that cannabis can be structured for "recreational" use. It is my belief that has been proven to be the case in Washington, Oregon and Colorado that when "recreational" laws are introduced the medical cannabis patient's rights are infringed upon as the non-profit medical cannabis industry virtually disappears while everyone chases the for-profit "recreational" market.

71. When these so called "recreational" laws are passed they attempt to equate cannabis to other "recreational" drugs such as alcohol or tobacco. Because of that, I stand opposed to a recreational classification for cannabis since both alcohol and tobacco have proven to be cancer causing, lead to addiction and cause death. Cannabis, in any of its forms, has none of

these deleterious effects. As cited in the DEA 2017 Drugs of Abuse (page 75) there has never been a reported case where someone has died or suffered permanent harm from the effects of cannabis. The same cannot be said of alcohol or tobacco.

72. In or around March of 2016 I became aware that an initiative, Proposition 64, The Control, Regulate and Tax the Adult Use of Marijuana Aot (AUMA) had made the California 2016 ballot. With the passage of AUMA, cannabis would be made available in CA in a "recreational" form to anyone over the age of 21 who wishes to purchase it without the need of a physician's recommendation.

73. Over the course of the next couple of months I read this initiative and considered what it's passing would mean for the cannabis market in general and the medical cannabis patient in particular. I regularly watched and participated in online debates on the merits of AUMA and found my position to oppose the passing of AUMA only being reinforced as I learned more about how the general public saw AUMA in a positive light without having an in depth understanding of what its passage would mean to those who would be most impacted by it: medical cannabis patients.

74. Since AUMA was a long and complex initiative, one that the average reader found to be confusing and difficult to read through in its entirety, I took the initiative to create a condensed version that included a Table of Contents, a link to the Proposition in its original form and comments that invited discussion as to the purposes that were specifically included in the Proposition. I then posted that AUMA analysis on the 151 Farmers website, which was created to explain our ideologies and act as an archive for the papers and research that help propel forward the need for urban gardens and how cannabis and those laws that affect cannabis are an important element in those farms' success.

75. From that AUMA analysis I began a campaign that included interviews and numerous social media posts on behalf of myself and others and conducted seminars as to what the passing of

AUMA would mean to the medical cannabis patient. Within these presentations and posts I would always reference the AUMA analysis and a certain section of the initiative that was to be voted on.

76. I used social media and the AUMA analysis to create not only discussions about the specific elements within AUMA but also what organizations endorsed it and why they chose to do so. One organization that supported the passing of AUMA was the California Medical Association (CMA). With its 41,000 physician members, the CMA has never supported cannabis for any medical purposes, but they were endorsing AUMA for "recreational" purposes. I found that position to be hypocritical by pointing out the following: 1) The CMA never endorsed cannabis for its possible benefits as a drug to be used for certain medical conditions; 2) The CMA has never been on record supporting research on how cannabis could be used to treat certain medical conditions; 3) Has the CMA endorsed laws that make other recreational drugs legally available to those over 21 years of age? Of course not. I believe that the CMA and other likeminded organizations will endorse any cannabis law that minimizes the benefits of cannabis for medical use and which allows the states to construct laws that tax and regulate cannabis in a recreational form so that it does not compete with pharmaceutical drugs.

77. Once I had a better understanding of AUMA I felt compelled to reach as wide an audience as possible to express my concerns. While I was already reaching a fairly large audience with my posts, seminars and press conferences, it was somewhat limited to a core group who already followed me. If I wanted to reach a much larger audience I needed to get the support of those who had a much larger following. I did that with a campaign that included radio, tv, press conferences, seminars and an outreach to cannabis activists who had their own followings.

78. In September 2016 I reached out to Dennis Peron to introduce myself. Over the course of various phone and text messages we shared our concerns over what the passage of AUMA may mean to the medical cannabis patients' rights which were granted to them under Prop 215.

79. Dennis and I both agreed that should AUMA pass, those medical cannabis patients' rights that had previously been made available to them under Prop 215 were likely to be eroded and infringed upon as we have seen happen in other states where recreational cannabis was added to what had previously been strictly medical cannabis. Dennis and I agreed to collaborate to the extent we would try to educate the voters as to what the details within AUMA would mean to the medical cannabis patient should it pass.

80. In October 2016, Dennis Peron, with the help of friends, was able to travel from his home in San Francisco and visit our 151 Farm here in San Diego. While Dennis was here we invited other activists to visit our farm and meet him to discuss how we all might help in his efforts to protect the patients' rights that had been granted under Prop 215.

81. During that visit, Dennis gave me access to his personal Facebook page where I began presenting elements of AUMA on his behalf, daily or every other day, that came directly from the Prop 64 language. Those posts ended up creating a lot of debate and discussion among those who followed Dennis's page. At the time we could only hope they would seriously consider what they would be getting if AUMA passed.

82. Also during that visit, Dennis and I were invited to be interviewed for a radio show on our mutually declared positions as to the threats that the passing of AUMA would represent to the medical cannabis patients' rights granted under Prop 215. We agreed and those interviews were done in Irvine, CA and sponsored by WeedMaps for SpeakEasy radio.

83. In addition to my work on social media, I also kept up the 151 Farms website which is where I created a paper, in collaboration with Dennis Peron and other likeminded activists,

that addressed how, with the passing of AUMA, the medical cannabis patients' rights which had been granted under Prop 215, would most likely be lost. With the posting of this paper just prior to the November 8, 2016 elections, we stated why cannabis could never be considered "recreational" and it was subsequently released to a wide audience through numerous social media platforms.

84. In November 2016 California voters approved Proposition 64, the Adult Use of Marijuana Act, as a way to make cannabis available to anyone over the age of 21 for recreational purposes. Under AUMA, the state will incorporate the medical cannabis patients' rights and access to medical grade cannabis within a regulatory structure that will "streamline" (their words) recreational and medical cannabis licensing beginning January 1, 2018.

85. Under AUMA the state has been given the right to modify the original voter approved proposition with a ⅔ majority vote of the house. This is the first time that a voter approved initiative has given the state the right to change it without another initiative to replace it. I find this to be a slippery-slope whereby, for example, the ⅔ majority might someday just vote that a simple majority can carry a change in the law. I seriously doubt the constitutionality of any initiative that undermines this most basic tenet of voter approved Initiatives.

86. With the passing of AUMA we shall see what its effect will be on the medical cannabis patient. I stand prepared to exercise any and all of my constitutional rights in seeking protection for those medical cannabis patients, cultivators and processors who have been harmed should AUMA not take into account their unique needs and circumstances. From a medical cannabis patient's perspective these are the questions I feel need to be asked: 1) Will the passing of AUMA have a negative impact on patients' rights to cannabis?; 2) Will it affect the availability of medical grade cannabis?; 3) Will the price of cannabis go up to where it is now unaffordable for the medical cannabis patient?; 4)Will the opportunities to

continue research and development of cannabis genetics for specific medical conditions be limited to only those who would qualify under a for-profit regulatory framework controlled by a state government that has historically taken a laissez-faire attitude toward cannabis and its use for medical purposes?

87. Under AUMA, has the state given voice to a medical cannabis association that can speak on behalf of those who are representative of that group of cannabis buyers that is distinctly different from those that would purchase for recreational reasons? If so, who are they?

88. Since 2015, the 151 Farms at 6176 Federal Blvd has had many people from very diverse backgrounds come tour our operations. I have always treated these visitors as Friends of the Farm and hope to inspire them once they have seen what we represent.

89. If a Friend of the Farm is interested in visiting us on more than one occasion, they become a 151 Ambassador. That is, they can lead their own tour groups and help spread the word about what we do here. These relationships have spawned some remarkable personal connections that have continued to bring attention to our cause.

90. The list of 151 Ambassadors has grown. Over the years we have welcomed a large and diverse range of people to our farm who have come from all over the world. Our motto is: We Need More Gardens Not Less. Come Visit Us! Leave your Bias at the Gate and I Promise You Will Learn Something!

91. With that message we have seen politicians, members of the media, medical doctors, researchers, judges, lawyers, entrepreneurs, veterans, law enforcement, activists, teachers, students, policy makers, community leaders and more. It seems that people identify with community and appreciate a place where they can come together and feel like they can contribute and make a difference. If they have something tangible to wrap their heads around that includes a roadmap that allows them to recreate what they've seen, the possibilities are endless. At 151 Farms that has been my goal and it all starts with a plant.

92. We have had such a huge diversity of talented and motivated people come visit our farm and go on to become 151 Ambassadors that there are simply too many to list. Here are 3 noteworthy 151 Ambassadors that, due to their dedication and commitment, I would like to present as representatives of our cause:

a. Coach Don Casey, former NBA Coach and currently serving as the National Trustee Board Member for the ALS Foundation. Coach Casey has been instrumental in seeing that ALS patients who seek medical cannabis understand that many doctors support the use of cannabis as a way to improve their quality of life. I developed The Casey Cut in honor of Coach Casey as a tribute to his many years of work on behalf of ALS patients.

b. Ms. Linda Davis, Americans for Safe Access, in her tireless efforts to bring medical cannabis patients the 151 Farms message of how important it is to have organically grown, pesticide free cannabis to treat their medical conditions.

c. Sgt. Sean Major, former Marine Corps servicemember, who came to 151 Farms as the only active duty military member in the entire Department of Defense who has ever been given the authorization to treat combat related brain injuries by cultivating cannabis. Having grown cannabis prior to enlisting in the Marine Corps, Sean believed that the psychological issues he was having as a result of his tours in Afghanistan could be managed if he were allowed to cultivate cannabis while gaining accreditation from a school that taught cannabis cultivation as a post military career opportunity. Sean has continued to work tirelessly on behalf of veterans who suffer from combat related injuries so that they might have access to medical grade cannabis to treat their conditions.

93. In July 2015, Mr. Ramiz Audish came to our offices at Inda-Gro and asked if he could take a tour of our farm. Ramiz, who preferred to be called Ray, was a well-spoken, clean cut young man who had heard about what we were doing and wanted to see the operations for himself. Ray was quite complimentary of everything we were doing with both Inda-Gro and 151 Farms and suggested some ideas to improve our operations. I was interested in hearing what he had to say.

94. Ray first asked under what authority I was growing the cannabis on our site. I pointed him to the Physician's Recommendations I had posted for those personal medical cannabis needs as established under Proposition 215 and SB 420 guidelines.

95. I told Ray that in addition to the posted Physician's Recommendations, we had recently completed a cannabis cultivation application with the Outliers Collective, a duly licensed collective located in El Cajon, CA. In that process the owners of Outliers and two Sheriff's Deputies who specialize in cannabis compliance came out to our farm. I gave them a tour of our operations and, while they complimented the quality and organic nature of our cannabis, they told us they could not certify us as an approved vendor for Outliers since the City of San Diego would not grant a license for cannabis plant counts that would allow us to grow commercially at our location. With that, we were denied approved vendor status with Outliers Collective. Both Outliers and I were very disappointed, but I did feel better when, after having toured our facility, the Sheriff's Deputies told me that I was operating within Prop 215 and SB 420 guidelines.

96. Confident that I was meeting the letter of the law as a cannabis cultivator, Ray said that he felt the only other thing I lacked was a medical marijuana consumer collective (MMCC) or retail dispensary at this location. Ray told me that he had experience in owning and running these MMCC businesses. I did not have an understanding of the retail MMCC laws in San Diego, but Ray told me he was well versed in these laws. Ray explained to me that our

location was appealing to him because it was unique in that City of San Diego zoning allowed for an MMCC type of business at this location. I told him that my interests in the property were not in running an MMCC business but were in lighting and the development and expansion of our 151 Farms.

97. Ray was undeterred by my resistance and insisted that he would be entirely responsible for the MMCC business and would acquire the licensing and permits necessary to maintain compliance for it. His pitch was that the dispensary would bring more attention to what I was doing at 151 Farms and that by working together we would present to the community a sustainable, organically grown "Seed to Sale" model of what our 151 Farm represented. That concept appealed to me and with that I considered his offer under the following conditions:

a. I would first visit one of his other MMCC businesses to see for myself how it was being run. The business he took me to was in Mira Mesa and I was impressed with how well it was built out and how well it appeared to be run.

b. Ray's and my businesses would be clearly divided with separate entrances and addresses.

c. I would have nothing to do with his business because, unlike Ray, who had operated retail cannabis dispensaries, I knew nothing of what it took to be licensed and compliant for this type of business.

d. Ray assured me that his intentions were to become a long-term tenant and that he would prove his value by not interfering with my current business operations and by signing a short term, 6-month lease while he went about acquiring the necessary licensing and permits to operate his business.

e. Ray agreed to these terms and the Lease Agreement was executed on July 20, 2015 and was set to expire on December 20, 2015.

98. With our Agreement in place, Ray began operating his MMCC business, which he called Pure Meds. The following statements reference my observations and opinions of Ray and the business from July 2015 until February 2016:

a. Ray was a good tenant who paid his rent on time and never presented any problems for me as a landlord.

b. Ray was at the property daily and ran what appeared to me to be a transparent, successful and well managed business.

c. Ray had licensed and armed security with controlled access and paid attention to the details that I initially feared would detract from my Inda-Gro and 151 Farms business. The concerns I had were that the retail business would attract people who would hang around outside the business or attract criminal elements. That never happened. In fact, just the opposite occurred. Pure Meds attracted repeatable local customers who appreciated that they could acquire their medical grade cannabis products without traveling great distances or having to deal with an underground resource.

d. The operation of Pure Meds did in fact increase the interest in 151 Farms and our Inda-Gro lighting products.

e. Prior to witnessing how Pure Meds operated, I had no firsthand knowledge of how a retail MMCC would or should operate. During the course of his 6 month lease I had a chance to form some opinions that were, for the most part, positive. While the retail side of the business still did not inspire me to get involved, I was satisfied that those who had the experience and resources necessary to manage the day to day operations of the business would be an asset to me and my goals with 151 Farms.

f. When the end of the lease came up, I asked Ray if he planned on staying and what the status was on his licensing with the City. He told me that it was in process and

that he would have the license within the next 90 days. I had no reason not to believe Ray as he had been a man of his word in everything he had promised me before. In addition, I, as a landlord, did not see myself as some sort of traffic cop who was expected to make sure Ray paid all his taxes and operated in accordance with all the laws and regulations that his type of business required. If Ray did not secure the necessary operating permits I knew that the City would not allow him to operate and would shut down his business. With that, I agreed to let him stay on the property on a month to month basis for 90 days, at which time, if he had the license to operate, I would give him a 1-year lease. That was satisfactory to Ray and we continued with our relationship.

99. In February 2016 I was served with a lawsuit by the City of San Diego that charged me with running an illegal cannabis dispensary. I was very surprised to receive this lawsuit because it listed me as the owner/manager of Pure Meds and that was never the case. Had the City noticed me by letter that my tenant, Pure Meds, was not in compliance with the MMCC licensing requirements and that my property was not in an area that could ever be zoned for an MMCC Conditional Use Permit, I would have taken action and would have served Ray with an Unlawful Detainer. At the time I was served this lawsuit, Ray was no longer renting under a lease and he was certainly not in compliance with our Agreement that he operate in accordance with city rules and regulations for his business.

100. Ray was not named in that lawsuit because the City was unable to identify who the actual tenant/operator of Pure Meds was. When I showed the lawsuit to Ray, he offered to pay for my legal defense until the case was adjudicated as long as he was able to continue operations. He told me that this was not the first time he had seen this happen and that he was certain that his lawyer could get the case dismissed or obtain a negotiated settlement. He told me he would start a petition that his patients would sign asking the City

to allow Pure Meds to remain open. I accepted that offer and was prepared to see where this would go once the lawyers for both sides got together and worked out the details. In less than 30 days Ray provided me with 19 pages and some 200 signatures of patients that wanted Pure Meds to remain open. At the time I thought there might be a pretty good chance of negotiating something with the City that allowed him to stay open but of course I didn't know what would come of it since a rezoning had taken place.

101. The only way I discovered that my property had been rezoned was by my having been named in that lawsuit. Within the lawsuit it states that my property had been in an MMCC compliant zone prior to January 13, 2016 at which time the City of San Diego rezoned the property, for unknown reasons, so that it would no longer be eligible to operate as an MMCC. Prior to the rezoning neither I nor any of my neighbors that I spoke with had been noticed that this rezoning was to occur. When I requested the public information as to what notification had been given to the property owners that this rezoning was to be considered, the information I received from the city proved that there had been virtually no notice given to any of the property owners and the notices that were given talked obliquely of a general development plan that included a shopping center approximately 2 miles from our properties.

102. The City next sought a Temporary Restraining Order on me to keep me off the property. These TRO motions are usually summarily granted to the City but in my case, when I showed up to court to argue that I was NOT the owner of Pure Meds and was instead the owner of the PROPERTY and that I had just found out from the details given in that lawsuit about the rezoning issue on my PROPERTY, the Judge asked the City Attorney if that was in fact the case and the City Attorney admitted that it was. With that, the Judge asked me directly if I would be willing to cooperate with the City Attorney in identifying who the owner of Pure Meds was, to which I responded that I had no problem doing so. The

Judge then denied the TRO. I would have thought my agreeing to cooperate with the City Attorney in this matter would have satisfied the City Attorney but she and her boss were quite upset with the denial of the TRO and argued after the decision had been made that I was a threat and that the Judge should reconsider. The Judge would not alter his decision and I was able to continue operating my business while I decided what to do next with Ray and Pure Meds.

103. With the TRO having been denied, the City asked for and received a warrant to come onto the property and seize anything related to what they determined was illegal drug activity.

104. On April 6, 2016, approximately 30 armed police officers rushed onto my property and placed me and my 3 employees who were on site in handcuffs.

105. I never resisted and offered to open every door or cabinet that I had access to as they requested. I told them that had they requested a tour of the property, I would have given them one. I regularly conduct these tours and believed that I was operating in compliance with the laws as defined by Prop 215 and SB 64. Everything that the officers wanted to see within my areas of operational control was made available to them. I never denied that there was cannabis being grown and processed on my property but I had the Physician's Recommendations posted for the plants and materials on hand and believed I was operating legally within the limits set forth under these laws. With that, the officers counted and inventoried all of the items, which included company computers, that they felt they might be able to use to prosecute me should they choose to.

106. When it came to the officers gaining access into Pure Meds, I told them that I did not have a key to that area as it was sublet. When they asked me who the owner of Pure Meds was, I told them his name was Ray and I did not know his real name as I had forgotten it. The officers asked me if I could get them his real name and I told them that I could but it

would require me finding the lease I had with him which was on the computer they had just confiscated as evidence. The officer noted that the information was available on my computer and a locksmith was called to gain access into Pure Meds.

107. During the approximately 3 hours the officers were on site conducting their investigation, I pleaded with them not to kill the mother plants that had been hybridized and genetically adapted to grow in an aquaponic system. These were high CBD (to be differentiated from the more hallucinogenic THC) strains that we were developing that were showing promise in a high nitrogen system without the need for trace mineral supplements. It had taken us nearly 3 years to accomplish that task.

108. Some of the officers appeared sympathetic to what I was telling them. They admitted they had never seen an aquaponics cultivation system like ours in the past. I took the time to explain to them what our purpose was and, although they still had a job to do, I could tell they were interested in what we were doing. For example, I was asked by one of the officers how these products might work for dogs that might have seizures. Another officer told me his mother had fibromyalgia and asked if an organically grown CBD product would offer her some relief. I don't fault the officers for what happened that day. I saw them on the phone trying to see if they could get permission to avoid killing the mother plants. Whoever they were talking to, though, denied that permission and the plants were all, every single one, killed and taken in for evidence. I was heartbroken. We lost some very solid genetics that day.

109. The officers eventually removed the handcuffs and left without arresting me or anyone from my company. I was told that a Pure Meds guard was briefly detained on a weapons and cocaine charge but when they found that the gun was properly registered and it was not cocaine after all, the guard was released from custody.

110. After the officers left we were all pretty shaken up but I got everyone together and told them that we had done nothing wrong and we were going to return to our normal activities as soon as possible. With that, I invited local TV stations onto the property who were congregating outside our yard watching the police action occur. I got them to set their cameras up outside of our fish tanks and I conducted interviews so I could tell listeners our side of the story. I wanted people to know what we stood for as a 151 Farm and not see us as just another one of the illegal pot shops that were springing up everywhere and getting all the media attention.

111. The next day I got a phone call from Ray who told me he was sorry this had happened and that he wanted to resume operations as quickly as possible. He told me these raids were common practice and the normal way things were conducted until the case went to trial. He told me that these types of businesses would typically continue to run for up to another 6 months before they were permanently shut down or a settlement was reached that allowed them to continue to operate.

112. I asked him if he had, in fact, ever made an attempt to apply for an MMCC CUP and he told me that, while he had originally intended to, he never did. I told Ray that had he done what he had originally promised by applying for the CUP, he would have had a very good chance at being awarded the CUP since the zoning allowed for it at the time he began renting from me. It was the lawsuit that was filed which first informed me that my property had been eligible for a CUP and then, for whatever reason, the property was rezoned to make it ineligible for a CUP shortly before the case against me was filed. Naturally I was very upset with what Ray had put me through and was even MORE upset that his actions had reduced the value of my property if the city having rezoned my property right after Pure Meds began business made it permanently ineligible for any future MMCC business to operate.

113. Since Ray had never attempted to apply for the CUP after he told me that he would, I told him that he could no longer continue to operate his business on my property. Ray was given one week to remove his remaining possessions from the property before I disposed of them. He was not happy that I wasn't going to let him reopen. He offered me considerably more money to which I said "no" and that my decision was final. He begrudgingly accepted that and the next day he had people come and remove his remaining items. Ray never set foot on my property again.

114. After the raid, I never heard from anyone with the City who wanted any additional information from me regarding Ray. I believed that whatever information they needed they had found on my computer and they didn't need my assistance.

115. After a couple of months the City decided to charge me personally with exceeding the allowable plant counts by adding in the clones that I had not included in our counts because they were not rooted. I was arrested and booked into jail at which point I bailed out and got prepared for my arraignment.

116. A few days prior to my arraignment, I called the City Attorney assigned to my case and told him that I was going to plead Not Guilty based on the fact that the clones they had added into the plant counts were not viable since they had not yet rooted. He considered this and decided to drop the charges at least for the time being but he did reserve the right to recharge me in the future if additional information was presented.

117. I got a letter from the District Attorney stating that after a review of the evidence they had decided not to prosecute me but that the City of San Diego still held the option of doing so.

118. On March 15, 2017 I received notice that the City of San Diego would be charging me with 4 misdemeanor counts relative to my operations, 1 day before the statute of limitations would have ran. I retained the legal services of Mr. Robert Bryson and went to

the arraignment on April 5, 2016 where *the plan was for me to plead Not Guilty* and take it to trial if necessary.

119. Prior to the day of arraignment and entering my plea, I had not seen the report or any evidence that had been used to bring these 4 misdemeanor charges against me. The City Attorney met with Mr. Bryson and me in the hallway and presented us with the case file for our review. This was the first time that I became aware that Ray had been arrested and was awaiting trial on charges of his own. From the evidence I could see that Ray's other locations had been shut down and that he had made agreements with the City that, to avoid charges, he would agree to not operate an unlicensed MMCC business within the City of San Diego in the future. Clearly with his Pure Meds operations on my property he had violated those agreements.

120. After Mr. Bryson and I had spent about 30 minutes reviewing the documents, we asked to speak to Deputy City Attorney Mark Skeels, who was handling the matter. What Mr. Skeels told us was, that since Pure Meds did not reopen after the raid, which was what usually happened, the City was willing to offer me a deal in order to settle the matter without it going to trial.

121. Mr. Skeels told me that if I would agree to forfeit the $30,000 in cash that had been seized from Pure Meds during the raid and plead guilty to one misdemeanor charge of a Health and Safety Code section HS 11366.5 (a) violation, the other 3 charges would be dropped. As Mr. Skeels explained to me, pleading guilty to this single charge was my accepting that there had been a code violation on the property and I would be on probation for 3 years to assure that I would not violate this Code again. Mr. Skeels agreed that Mr. Bryson could take some time to consider this offer.

122. After discussing with Mr. Bryson that this offer seemed reasonable providing there was language added into the plea agreement that for the 3 years I would be on probation and

because I agreed to waive my 4th amendment rights, I would maintain my Prop 215 medical cannabis cultivation rights and not be subject to what was still unknown medical cannabis cultivation limits as would be defined in Prop 64.

123. Mr. Skeels asked why I wanted that language in the Plea Agreement and I told him that I had no problem proving over the 3 year course of my probation that as a medical cannabis patient, who cultivated cannabis at my property and planned on continuing to do so, I was in compliance with Prop 215 but that, based on what I knew of the Pro p 64 law which was due to take effect on January 1, 2018, I wanted whoever was inspecting me and my property to hold me to a recreational standard that may, as the guidelines under Prop 64 were not yet finalized, conflict with a medical standard. The language in the Plea Agreement would be as much for my benefit as for that of any inspecting authority who would visit me over the course of the 3 years' probation.

124. Mr. Skeels considered this and agreed that as far as he and the City were concerned, adding language to the Plea Agreement to that effect was not a problem and that it would indeed provide for clarification of enforcement standards for those authorities who would be tasked with inspecting me and the property for Prop 215 compliance during the course of my 3 years' probation.

125. Having agreed to that, I suggested that Mr. Skeels also add language to the Plea Agreement that would include a limit of up to 4 Physician's Recommendations for those patients for whom I was growing cannabis. Mr. Skeels told us that adding language to that effect was not necessary because the Prop 215 statute didn't set a limit on Physician's Recommendations. He also told us that we simply needed to have those Physician's Recommendations available for inspection and that they had to be current. Mr. Skeels told us that all the Plea Agreement needed to state was that I would be retaining my rights under

Prop 215. With that, we agreed to the terms of the Plea Agreement and Mr. Skeels left us to await his return with the finalized Plea Agreement.

126. When he returned a short time later, Mr. Bryson and I reviewed the Plea Agreement and saw that the language we had discussed about my retaining my rights under Prop 215 had been added. With that, Mr. Skeels then reviewed every element of the Plea Agreement with us and had me initial each box that was required. Once this was completed, we went before the Honorable Judge Rachel Cano.

127. While reviewing the Plea Agreement from the bench, Hon. Judge Cano spoke to me directly and asked why the Prop 215 language had been added into the Plea Agreement. I explained that with the obvious conflicts for me between Prop 215 and Prop 64, that I, as a medical cannabis patient who cultivated cannabis at this property, needed the standard I would operate under to be defined in this agreement or it would be subject to interpretation by any inspecting authority who would visit me during the course of my 3 years' probation. Judge Cano considered this and agreed that it was a simple and straightforward solution to what she and even the City saw as a way of bringing clarity to these evolving standards. With that, she accepted the Plea Agreement and I believed we were done.

128. In a wild turn of events that I can only describe as the most duplicitous bait and switch imaginable... Within days of Mr. Skeels convincing my attorney and I through his *assurances of the terms* of our plea agreement, the City filed a *Lis Pendens* on my property (April 18, 2017 – Over 1 year after the incident took place.) and began the process of selling it as a seized property asset, which I now became aware was what I had unknowingly agreed to in the Misdemeanor Health and Safety 11336 (a) code charge to which I had pled guilty in the Plea Agreement I had entered into with the City on April 5, 2017.

129. I immediately contacted Mr. Bryson and asked if he had known that, when I agreed to enter into this Plea Agreement, that it meant I was forfeiting my building and land to the

City. That had NEVER been discussed prior to my accepting the Plea Agreement. In fact, prior to accepting the Plea Agreement, Mr. Skeels had gone out of his way to go over the Plea Agreement in detail with us and had even added the language of how I would retain my Prop 215 rights over the course of my 3 years' probation. If Mr. Skeels knew then that I was giving up my building and land under this Plea Agreement, why wasn't it brought up at that time? Both Mr. Bryson and Mr. Skeels are officers of the court. Both had an obligation to tell me that's what my agreeing to a misdemeanor guilty plea of HS 11336 (a) meant and neither one did that. In fact, the last area of refuge I would have had prior to this Plea Agreement being accepted by the court would have been if Judge Cano had mentioned to me that the language we had added into the Plea Agreement where I retained my Prop 215 rights was meaningless in light of the fact that pleading guilty to this one charge meant I was not going to own the property anyway.

130. Mr. Bryson was as shocked as I was when he realized what we had agreed to. He told me that he had no idea that losing the building and land would be the consequence of entering into that deal with Mr. Skeels. With that, he wrote me a Declaration that stated that he was not aware and had he known that my losing the building and land was the consequence of entering into that Plea Agreement with the City, he would have advised against signing it. I received that Declaration from Mr. Bryson and dismissed him from any future representation.

131. I then reached out to Mr. Skeels and asked if he was aware that my agreeing to this single misdemeanor charge meant I would be giving up my property. He told me that he was not aware that that was the consequence either, but he would look into it and get back to me. I never heard back from him.

132. I then sought out and retained new counsel with attorney David Demian of the law firm Finch, Thorton &and Baird (FTB) representing me in this matter.

133. In a phone call between Mr. Demian and Mr. Skeels that was made on speaker phone from a conference room at the FTB offices, thus allowing me to hear what was being discussed, I learned what Mr. Skeels's real position on the Asset Forfeiture matter that my Plea Agreement had represented was. Mr. Skeels informed Mr. Demian that he too was on speaker phone as there were other attorneys from his office listening in on the conversation.

134. Mr. Skeels's stated position during that call was that we had a deal in that Plea Agreement and it would stand. According to him, my only options were to elect to withdraw the Plea Agreement, after which the City would take me to trial on the 4 misdemeanor charges that I was originally charged with, or to agree to pay the City $100,000 and all charges would be dropped. What I was hearing was extortion, plain and simple.

135. Mr. Demian told Mr. Skeels that the $100,000 payment he was seeking was unacceptable and that the only thing that might work on my behalf would be to find a lesser amount in the interest of offsetting the legal fees I would have to incur in order to defend the 4 misdemeanor charges. Mr. Skeels asked what that amount might be and Mr. Demian responded with a counteroffer of $5,000, referring to that amount as a nuisance payoff that he had been authorized to submit on my behalf. Mr. Skeels rejected the counteroffer and told Mr. Demian to get back to him if and when we were serious.

136. What was clear to me during that conversation was that the City wanted a payout and what they had seized during the raid was not enough. The HS code section violation to which I had pled guilty was not widely understood. This was a new tool for the City to use to shut down illegal dispensaries and Mr. Skeels knew it. He was not willing to negotiate because he felt he didn't have to. Mr. Skeels had Mr. Demian on speaker phone in his office so he could make a point to those listening in on his side that the City did in fact have the upper hand in these negotiations and that Real Property Asset Forfeiture was a tactic they

could employ in other cases where a landlord rented to a tenant who was not licensed to run a MMCC business. At one point in the conversation when Mr. Demian questioned Mr. Skeels's authority and skills in negotiating a settlement on behalf of the City, Mr. Skeels got upset that Mr. Demian would even question his professional qualifications. Mr. Demian, sensing that he had offended Mr. Skeels, immediately began apologizing and told Mr. Skeels that he would confer with me and respond with another offer. Mr. Skeels told Mr. Demian that the new offer would need to be near the $100,000 mark or it would be rejected, and we would be wasting precious time and the property would be sold out from underneath me as the law allowed.

137. After that conversation, Mr. Demian admitted he was not the best person to represent me in further negotiations in this matter with Mr. Skeels. I needed to retain co-counsel who had experience in successfully negotiating with Mr. Skeels. They had to be able to defend me in this matter should we go to trial and that would start with them withdrawing my Plea Agreement based on my having been enticed to do enter it under fraudulent representation and incompetent counsel. With Mr. Bryson's declaration in which he admitted not knowing what the consequences of HS 11336 (a) were, I was hopeful that if the threat of withdrawing the Plea Agreement came from the right lawyer, that Mr. Skeels would want to settle the matter without going to trial. With that in mind, I engaged the legal services of attorney Stephen G. Cline in anticipation of the Plea Agreement being withdrawn and my taking this matter to trial should Mr. Skeels and I not come to terms.

138. Mr. Cline reached out to Mr. Skeels by phone and told him that unless the City was willing to settle this matter for a much lower amount than the $100,000 they were seeking, he had every intention of going before Judge Cano to request a withdrawal of the Plea Agreement. Mr. Cline was prepared to defend his request based on the fact that the Real Property (building and land) Asset Forfeiture was not listed in the records of items seized in

the raid, nor was there ever any posting by either the officers or the City Attorney that the building and land were considered part of the seized items. In addition, the TRO that the City had requested had been denied which meant that I was not party to my tenant's business operations, I had incompetent legal representation when I entered into the Plea Agreement and finally, neither Mr. Skeels nor Judge Cano had made me aware that the consequence of signing the Plea Agreement was the forfeiture of my Real Property, which was valued at approximately $500,000 based on fair market value comparisons and up to 10 times that should it ever qualify for a licensed MMCC business.

139. I did not feel that Judge Cano would react well to what Mr. Cline was prepared to present to her if we did not reach a settlement and, if Mr. Skeels could be persuaded to relax his demands, it may not be necessary to do so.

140. After consideration, Mr. Skeels suggested that the amount be reduced to $50,000. Mr. Cline told him he would convey that message to me and get back to him. I felt that $50,000 was still outrageous in light of the reasons that Mr. Cline had presented to Mr. Skeels earlier, but when I considered the potential legal fees should this matter go to trial, I told Mr. Cline to return to Mr. Skeels with an offer of $10,000 but with an authorization limit of $25,000 should an increase be necessary.

141. Mr. Skeels rejected the offer of $10,000 and said we would have to agree to an amount closer to the $50,000 they were seeking, or this would go to trial. With that, Mr. Cline provided Mr. Skeels with our best and final offer of $25,000 and advised Mr. Skeels that, should that amount be unacceptable, we were prepared to go to trial and win based on the merits of our case.

142. Mr. Skeels accepted the $25,000 offer and the matter was turned back over to David Demian at FTB for finalization of the terms and document exchange. On October 4, 2017 a Stipulation for Judgement was executed showing the listed seized items from the raid and a

$25,000 payment for full satisfaction on my Real Property, which they had listed as 6176-6184 Federal Blvd. I only own the 6176 Federal Blvd property but the Stipulated Judgement also covered the rental property I had next door.

143. On January 2, 2018 I made the $25,000 payment to the City per the terms of the Stipulated Judgement using borrowed money.

144. What I take from this is that Mr. Skeels has now set a precedent in that a City can include the Real Property of the land owner in their seized assets regardless of whether or not that landowner had anything to do with the business their tenant was operating. While he wanted as much as he could get from me, it was more important to show those other prosecuting attorneys that this was a way of forcing landlords to assure their tenants were properly licensed when it comes to an MMCC dispensary. Landlords are now going to have to be those traffic cops which means that if the tenant has a license and then loses it during the course of the tenancy, that landlord may face the same asset seizure and forfeiture actions that I did, whether or not they were aware of their tenant's actions.

LARRY GERACI

145. In late September 2016 I received a phone call from Mr. Larry Geraci. I had never met or heard of Mr. Geraci prior to that call. The purpose of Mr. Geraci's call was to inform me that he had become aware of my property from what he had seen from the Pure Meds situation and he wanted to know if I would be interested in selling him the property for the purposes of opening a licensed MMCC.

146. I told Mr. Geraci that the City had rezoned the property and that it was my understanding that it would no longer qualify for an MMCC business. Mr. Geraci told me that that was not necessarily the case and he would like me to consider what he had to say in a meeting that would be held at his office. I agreed to the meeting and met him in his office within a few days of his initial call.

147. I found that Mr. Geraci was a professional Financial Planner who operated out of nice offices in the Kearny Mesa area of San Diego. He told me that his core business was Financial and Tax Planning and that he represented clients in his professional capacity as an Enrolled Agent. Mr. Geraci was also a real estate investor/developer and one of his investments was buying specific properties in locations that can be converted into MMCC retail cannabis businesses.

148. I asked Mr. Geraci how many MMCC businesses he had in operation and he told me that he had multiple MMCC businesses whereby he would finance the purchase of the property and pay for the licensing to get the business MMCC compliant. Once completed, he would have others own and operate the MMCC business and he would get an ongoing equity position in that business. Mr. Geraci told me he preferred to remain in the background on these transactions since the perception of him being directly involved in cannabis business may harm his other business enterprises. That did not come as a surprise to me and I accepted that statement on face value.

149. Regarding the rezoning of my property, which from my understanding would now make my property ineligible for an MMCC business, Mr. Geraci told me that he had special knowledge and influence that would allow him to get my property through that process by having it rezoned back into an MMCC compliant zone and then submitting the CUP application so the MMCC could be run on that specific property. If anyone else had been telling me this, I would have not believed them but Mr. Geraci appeared to have the relationships, experience and financial wherewithal to make something like this happen. As he was a licensed financial professional who is held to the highest fiduciary standards, I was interested in pursuing these negotiations with him to see where they might lead.

150. At the time we were discussing his special relationships that would assist in getting my property rezoned to an MMCC compliant zone, I was completely unaware that the City

of San Diego, which had rezoned my property to an ineligible MMCC compliant zone in January of 2016 while they were building a case against me and Pure Meds, had, once Pure Meds was shut down, once again rezoned the area and my property in April of 2016 without notifying me or any of the other property owners in the area.

151. *Mr. Geraci had to have already known this prior to our first meeting in early October 2016 that included discussing his special relationships that could have my property rezoned. He didn't need any special relations as the rezone had already occurred. That's why he knew from the moment he met me that he could get the CUP Application accepted. He just wasn't positive he could get it approved. For that reason, he lied to me about needing to get the rezoning done before he could even submit the CUP Application. Mr. Geraci was a fraud from the moment I met him. I just didn't know that at the time.*

152. During that first meeting, Mr. Geraci told me that, due to the issue I had had with having rented to an illegal dispensary, I would need to sell the property to him and he would submit the CUP application in one of his employee's names, Rebecca Berry, because she had a clean record and would not be denied once the process began.

153. Mr. Geraci asked me how much I would want for the property and I told him I would agree to $800,000 as long as I got an equity position in the monthly MMCC sales that amounted to $10,000 or 10% of the net profits, whichever was greater and he agreed to that.

154. During October 2016 I met with Mr. Geraci at his office on several more occasions. We discussed in detail how, in addition to whatever he was willing to do to purchase and develop my 6176 property, I was interested in having him assist me in identifying other properties where I could expand my work with 151 Farms. Like Ray before him, I wanted him to understand that the only reason I wanted to sell the property was so that I could afford to move into a larger property. I had no interest in owning or

managing an MMCC business so if that side of the equation worked for him, within the terms and conditions we agreed to, I could stay focused on my goals with 151 Farms. It was to be a win/win situation for the both of us. Mr. Geraci agreed to that and I told him I would draft a Memorandum of Understanding (MOU) that would act as a working document to memorialize this conversation and serve as the basis of our agreement once his lawyer had prepared it.

155. We had orally agreed to, among other things, a sales price of $800,000 for the property contingent upon him obtaining the MMCC CUP approval from the City of San Diego and that was memorialized in the MOU I created and sent to Mr. Geraci. Upon approval of the MMCC CUP, the payments would be split into $400,000 for me and another $400,000 for Inda-Gro for relocation of the business. The terms for the relocation of the business were spelled out in a second working document I called the Service Contract. That Service Contract was sent along with the MOU and required that Mr. Geraci, if he were to actually acquire the property upon Approval of the CUP Application, would grant Inda-Gro the right to remain on the property at no rent until the plans were completed and accepted by the City of San Diego Development Services and he was ready to begin construction on the new MMCC. While Mr. Geraci never acknowledged either of my working documents in writing, he told me over the phone that he was fine with them and that they would be incorporated into a contract that his lawyer would prepare and I could make changes to the contract before we consummated our deal.

156. While I was waiting for his lawyer to send me the contract, Mr. Geraci asked me to come into his office on October 31, 2016. It was at this meeting that Mr. Geraci asked me to sign a City of San Diego CUP application form which listed Rebecca Berry as the qualifying applicant. Rebecca Barry was not present when I signed this and to my knowledge I have never even met her. Mr. Geraci told me he wanted this signed in preparation for when the

rezoning had been completed and the CUP Application could be submitted. According to him, it would not and could not be submitted until the rezoning had taken place.

157. During our phone calls Mr. Geraci told me that the terms I had outlined in the MOU and Service Agreement were acceptable and that he would have his lawyer prepare a contract that would include these terms and that a $50,000 non-refundable deposit which would not be contingent on the City of San Diego MMCC CUP approval would be paid at the time we signed that contract.

158. Mr. Geraci told me that, in anticipation of the contract, he would like to immediately begin the process of getting the property rezoned so that the CUP application could be submitted, and he could pay me the entire $50,000 as we had agreed.

159. Mr. Geraci told me that he would like me to stop by his office and sign a receipt for $10,000 which would be applied toward the $50,000 earnest money. He also told me that this signed receipt would allow him and/or his agents to begin the process of getting the City to rezone the property. The plan that Mr. Geraci had was that the rezoning might take 4-6 weeks and he did not want to pay the entire $50,000 until the rezoning had occurred and the CUP application could be submitted. This seemed reasonable to me and we set a meeting for November 2, 2016 in his office.

160. On November 2, 2016 when I arrived at the scheduled meeting with Mr. Geraci, he told me that he had already begun the initial process of getting the property rezoned and that the CUP application may be ready in as little as 2 weeks. With that, he had me sign a 3 sentence document that I considered a receipt which stated the $800,000 sales price and that I was accepting the $10,000 in a cash payment from him. He had a Notary Public certify that it was my signature on the document. What I was signing was not any sort of contract that held the terms we had discussed in my MOU and Service Agreement. It was most certainly not a Real Estate Contract as required by California law and Mr. Geraci, who held

CA Real Estate License number 01141323, knew that. During our meeting Mr. Geraci did not try to represent this as a final contract but as a receipt to get the rezoning process underway. I did not sense that he was trying to pull one over on me and felt that, in a professional capacity, he would not attempt something like that. I believed him and looked forward to seeing him make the things happen he said he and he alone had the skill sets to do. Nonetheless, when I got back to my office, I felt as though I should send him an email that would memorialize what was said to me when I signed that receipt.

161. Within hours of having signed the receipt I sent Mr. Geraci that email in which I asked him to acknowledge, in an email response, that what I just signed was not meant to be a final contract between us. Shortly thereafter I received his response stating that he had "no problem, no problem at all" acknowledging that this was not the final contract. Mr. Geraci's response to my email reassured me that he was operating in good faith and that the process, in the order he had described to me, had begun.

162. On November 15, 2016 Mr. Geraci asked me to sign another document that would allow me, as the property owner, to authorize his architect, Mr. Abhay Schweitzer, to view and copy records at the County of San Diego Tax Assessor's Office of Building Records. Signing that document requested by Mr. Geraci further led me to believe that I was the property owner until such time that the CUP Application was granted and I would sell the property to Mr. Geraci.

163. Over the course of the next several weeks I would, through phone conversations and various texts and emails, of which I have copies, inquire as to how the rezoning process was coming along. Mr. Geraci always responded that, while they were making progress, the rezoning had not yet been completed. He told me to be patient and that it would happen. He also said that he had a team working on this and that he had spent large sums of money, in all the right places, to see that the property would get rezoned. Again, I had no reason to

doubt him since he had professional credentials and fiduciary duties that I believed would have prevented him from lying. One thing, however, was certain. The original 2 weeks had expired, and I had not yet been paid the remaining $40,000 that he had promised.

164. In February 2017 I had several other parties contact me and inquire if my property was available for purchase. Those parties told me that my property was unique in that it fit the necessary requirements for an MMCC business. Each of these parties also told me that they too had special skills and connections that would ensure that this property was approved for an MMCC business. This made me wonder how many more people in the cannabis business had found out about my property. Had Mr. Geraci managed to get the rezoning done and just not told me so he wouldn't have to pay the $40,000 balance on the non-refundable deposit? Since I didn't know for sure what I had in Mr. Geraci, I told those interested in the property to submit written offers of which I received two that were worth considerably more than the offer that Mr. Geraci had made me. If I found that Mr. Geraci was not acting in good faith, I would have other offers to fall back on if the situation required it.

165. In February 2017, after still not receiving the contract that Mr. Geraci had promised me in November 2016, I demanded that he send it to me. It was becoming obvious that he was engaging in delay tactics and I wasn't sure why.

166. This got him moving and in late February 2017 I got a contract that his lawyer, Gina Austin of the Austin Law Group, had prepared on his behalf which I guess he expected me to sign without reading. This contract missed most of the elements that were in the MOU and Service Agreement, not the least of which was that in consideration for the sales price I had set, I would receive 10% of the store's monthly net profits or $10,000 per month, whichever was greater. My radar was on full alert.

167. I texted Mr. Geraci to ask if his lawyer had even read my MOU and the Service Agreement, the terms of which Mr. Geraci had agreed to include in the final contract, and he told me that she must have made a mistake and missed them in that draft. Mr. Geraci apologized and told me that he had not read the contract that Ms. Austin had prepared and that she had the working documents necessary to prepare our contract. With that, Mr. Geraci assured me that the revised version would include those terms and to expect it within a few days.

168. On March 3, 2016, I received the Side Agreement to his Contract and, while it did include more of the MOU and Service Agreement terms that Mr. Geraci and I had agreed to in our conversations, it still fell woefully short of what had been agreed to in my working documents which, per Mr. Geraci, his counsel had to work from. Ms. Austin had incorporated the 10% or $10,000 language but there was still highly prejudicial language in the Side Agreement that I found unacceptable and was in no way was in the spirit of our early negotiations. For example, Ms. Austin called the $10,000 payment "the total agreed to amount" and stated that even that would have to be returned to Mr. Geraci in the event the CUP Application was not approved. This was not going well.

169. In addition to the obvious problems I was seeing from the contracts that Ms. Austin had prepared, Mr. Geraci was now requesting that we reduce the agreed upon $10,000 a month to $5,000 a month for 6 months until after the store had opened and they started to get some market share. It was now apparent to me that I needed to get to the bottom of this and verify whatever it was that Mr. Geraci had been telling me. What more evidence could there possibly be showing that the monthly equity stake was an integral term of the agreement we actually made months prior!?!

170. At this point it didn't matter what Mr. Geraci told me. What the contract prepared by Ms. Austin now proffered was that the $10,000 paid by Mr. Geraci was the total deposit

amount that was going to be paid. It was apparent that no matter what, Mr. Geraci was not to be trusted and he was running the clock and using his lawyer, Ms. Austin, as tools to defraud me of my property as the terms we had originally agreed upon were no longer acceptable to him. Nonetheless I had to know the current status of my property zoning to see where I stood.

171. Around March 15, 2017 I decided to call the City of San Diego Development Services to find out for myself if my property had been rezoned back to an MMCC compliant zone or if, as Mr. Geraci kept telling me, it was still in process and the CUP had not yet been submitted. What I found out was astounding!

172. Ms. Firouzeh Tirandazi, Development Project Manager for the City of San Diego Development Services told me that my property had been rezoned to an MMCC compliant zone in April 2016.

173. Mr. Geraci had been lying to me since the beginning. When he had me sign the CUP application listing Rebecca Berry as the qualifying applicant in October 2016 he knew then that the rezoning had occurred and that he could submit the CUP Application immediately. And that's exactly what he did.

174. Per Ms. Tirandazi, the CUP Application with Ms. Berry's name on it that Mr. Geraci had me sign *was submitted on October 31, 2016, just days before I signed his receipt of the $10,000 which I was paid on November 2, 2016.* Mr. Geraci had needed me to sign that document so he could, at some point in the future, argue that the document I signed on November 2, 2016 was the one and only contract. Mr. Geraci had never intended to honor the terms to which we had agreed in my MOU and Service Agreement.

175. After my call to Ms. Tirandazi, I contacted Ms. Berry and Mr. Geraci to tell them that I had contacted her and now knew that Mr. Geraci had been lying to me all along and

that I had just discovered his fraud. Mr. Geraci contacted me by text to ask for a face-to-face meeting.

176. On March 17, 2017 in an email I sent to Mr. Geraci, I declined his request for another face-to-face meeting and stipulated that all future communications between us be in writing. I demanded that he honor the terms of our MOU and Service Agreement, that the $40,000 balance of the non-refundable $50,000 be paid immediately and that, regarding the $10,000 or 10% of the net profits, whichever was greater, we agree to use a 3rd party accountant to assure proper distribution. I required that Mr. Geraci accept these terms in writing no later than March 20, 2017 at 12:00 or I would cease any further business with him.

177. On March 21, 2017, having received no response from Mr. Geraci, I sold my property to Richard J. Martin for $2,000,000 and a guaranteed 20% equity in a new MMCC business should it be established. The non-refundable earnest money was $100,000, which I have long since expended to use to pay legal fees I had incurred in the matter with Mr. Geraci. Unlike Mr. Geraci's so called contract, the sales contract with Mr. Martin was done on a notarized Commercial Property Purchase Agreement with an Addendum that acknowledged my MOU and the terms I set forth within it.

178. Also on March 21, 2017, after selling the property to Mr. Martin, I went to Development Services to meet with Ms. Tirandazi in person to see if the CUP application that they were processing with Ms. Berry's name on it could be transferred to me or an assignee of mine. Ms. Tirandazi told me that the current CUP Application they had in process for Ms. Berry had been signed by me and that the only way it could be reassigned was if Ms. Berry relinquished her rights to it or a court ordered them to reassign it. I knew that getting Mr. Geraci and Ms. Berry to relinquish their rights to the current CUP application in process was not an option so I asked Ms. Tirandazi if I could submit another

CUP application to run concurrent with the application in Ms. Berry's name. This way my application would already be in process once the City figured out that neither Mr. Geraci nor Ms. Berry had a Grant Deed in their name. Ms. Tirandazi told me that the City of San Diego's policy was that only one CUP application per address would be accepted and that, as Ms. Berry's was already being processed, I could not submit one at that time. Since I now knew that Mr. Geraci and Ms. Berry were not going to get final approval on the CUP without a Grant Deed in their name, I had to consider my legal options.

179. On March 22, 2017 I received a letter from Mr. Geraci's new attorney, Michael Weinstein, informing me that as a result of my having contacted Ms. Tirandazi to see about having Ms. Berry's CUP application reassigned, Mr. Geraci had instructed Mr. Weinstein to file a *Lis Pendens* on my property and a lawsuit against me seeking to have me honor what Mr. Geraci now considered to be the "end all be all contract" I had signed with him on November 2, 2016. While Mr. Weinstein threatened me with the great harm that would befall me should this matter go to trial, he also encouraged me to negotiate with them as he stated there was still time to do so. Because I had not received a response from Mr. Geraci by the deadline I had given him of March 20, 2017 and having subsequently sold the property to Mr. Martin, I had no intention of negotiating anything further with either Mr. Geraci or Mr. Weinstein.

180. Until I could resolve the CUP issue with the City of San Diego for what would now be the new property owner, Mr. Martin, I needed to see if there was a way to maintain the status of Ms. Berry's CUP application, so I wouldn't waste time submitting another application after Ms. Berry's application was deemed incomplete because the Grant Deed would never be in her or Mr. Geraci's name. As far as my hope to negotiate settlement involving Mr. Geraci relinquishing his rights to Ms. Berry's CUP, telling Mr. Weinstein that I had sold the property to Mr. Martin was not a good strategy.

181. On May 9, 2017 in an email Mr. Weinstein suggested a settlement whereby Mr. Geraci would, among other things, increase his offer to purchase the property to $925,000 and pay the $50,000 non-refundable earnest money but I would have no equity position in the new dispensary and, while Ms. Berry's CUP application was being processed, I would agree to cease all cannabis related cultivation activity on the property within 2 days of signing this agreement.

182. I found the May 9, 2017 settlement offer confusing. Why did Mr. Geraci care if I was cultivating cannabis on site? That had never come up before and now it was a condition of the "improved" settlement offer. Beyond that, Mr. Geraci proved that no matter who he had representing him, he was not to be trusted. There was no mention of the 10% equity position with a $10,000 a month guaranteed minimum that was preeminent in our original negotiations. What Mr. Weinstein's settlement offer suggested to me was that, while his client was at his core a snake, something else was motivating him to be concerned about what my current activities entailed. I had seen and heard enough.

183. On May 12, 2017 I filed a *Pro Se* cross complaint thinking that that might convince Mr. Geraci to back down from what, in my mind, was an unwinnable situation for him regarding the purchase of my property. It did not, however, have that effect so I requested that David Demian represent me and take the case over.

184. On June 29, 2017 I filed a Notice of Substitution naming David Demian as new counsel on my behalf.

185. On September 28, 2017 Mr. Weinstein filed a Notice of Demurrer/Motion to Strike which was his attempt to limit the underlying agreements of my case to the single 3 sentence document I had signed on November 2, 2016 as the only document that should be

considered. He did not want anything else that transpired between me and Mr. Geraci to be considered.

186. On October 24, 2017 Judge Wohlfield issued a Tentative Ruling denying the Demurrer which was good news for me since my supporting documents against Mr. Geraci were primarily supported by the written communications that occurred after the November 2, 2017 document was signed.

187. With the Demurrer having been denied, my next concern was that the likelihood of Mr. Geraci getting the property after all the evidence was heard had to be of grave concern to him. If he were not to acquire the property, then all the work he was doing on the CUP application would be for naught and he would suffer financially. It is not unreasonable to think that Mr. Geraci might try to cut his losses by having Ms. Berry's CUP, which he completely controlled, purposely denied by instructing his agent(s) to create a scenario wherein that would be the result. In other words, if Mr. Geraci can't have this MMCC dispensary, no one else will either.

188. Should Mr. Geraci decide to sabotage Ms. Berry's CUP application, it would create a huge financial loss for both me and for Mr. Martin. I had to do something to protect my interests in the property by seeking protection from the court. By having the court appoint a Receiver who would give them oversight into what was happening on Ms. Berry's CUP, it would assure that the CUP process is followed and maintained. If Mr. Geraci felt he was going to prevail on the Breach of Contract claim he had against me, he would have not been opposed to my seeking a Temporary Restraining Order against him that would afford me this protection. That was not the case.

189. On December 7, 2017 Mr. Demian had a Writ of Mandate seeking to shorten the time to trial and a Temporary Restraining Order hearing whereby I would be protected if Mr. Geraci decided it was in his best financial interests to sabotage Ms. Berry's CUP as

opposed to losing the Breach of Contract case he had against me now that his Demurrer had been denied and all of the evidence subsequent to the November 2, 2017 document would come into consideration. We believed that while our request for a Writ of Mandate may not be granted, the TRO would be granted.

190. Mr. Demian had 4 or 5 relevant arguments contained within his Points and Authorities in his TRO motion that were cogent and compelling to the court in granting the TRO (none of the *relevant arguments towards granting the requested relief* were apparently raised by him). Furthermore, Mr. Weinstein should have had no opposition to our request for a TRO if Mr. Geraci actually believed he would prevail in the Breach of Contract suit against me and he would be awarded the property under the terms of the November 2, 2017 document I signed. If, on the other hand, Mr. Geraci actually believed that he would lose the Breach of Contract suit now that all the evidence would be heard then Mr. Geraci knew he had to vigorously oppose our request for a TRO or he would not have an opportunity to sabotage Ms. Berry's CUP which was in process with the City of San Diego Development Services and in his complete control.

191. In making his decision on the TRO motion, Judge Wohlfield listened to the oral arguments raised by Mr. Weinstein and Mr. Demian. Mr. Demian only raised the least relevant point in his oral arguments before Judge Wohlfield, stating that we should be granted the TRO based entirely on the constitutional protections that are fundamental to property owners maintaining control of their property. The only reason Mr. Demian raised that singular point and not the others is because this was the point he was most familiar with from having successfully argued it in a similar case for another client. Mr. Demian was not prepared to argue the other, more pertinent issues relevant to my case in front of the court. Had Mr. Demian's oral arguments included a reference to Judge Wohlfied's previous ruling on the Demurrer and shown the real harm in not having the TRO for his client's court

supervised protection, it would have been simply a matter of Judge Wohlfield supporting his previous position in denying the Demurrer and looking at ANY of the supporting evidence that Mr. Demian would have asked him to reference prior to making his decision. Mr. Demian did none of that while Mr. Weinstein successfully argued that the TRO was not necessary as it could potentially harm Ms. Berry's CUP process and that Mr. Geraci was going to win the Breach of Contract case based solely on the November 2, 2017 document that I had signed.

192. Judge Wohlfield denied the TRO on the grounds that Mr. Demian had not provided him with sufficient evidence to warrant the court's protection of me prior to this matter being settled in trial.

193. Immediately after the hearing, Mr. Joe Hurtado who, as my litigation investor, was present to ensure that both my and Mr. Martin's legal interests were being protected, met Mr. Demian in the hallway outside the courtroom. Mr. Hurtado was livid. Having the TRO denied due to the incompetence Mr. Demian had shown in the courtroom was egregious. For Mr. Demian not to bring the essential elements of the motion to Judge Wohlfield's attention while Mr. Weinstein successfully argued their Breach of Contract case was, according to Mr. Hurtado, "the worst performance he had ever seen by a lawyer!" Mr. Demian looked down at his shoes and mumbled something about how he had tried and had to leave to go to another meeting.

194. After Mr. Demian left, Mr. Hurtado called to tell me what had happened. I was livid too. There was no excusing Mr. Demian's performance. I immediately called Mr. Demian to hear for myself what he felt went wrong and he told me that "it did not go as he had hoped." With that Mr. Demian told me he thought this would be a good time for me to seek alternative counsel and informed me he would be withdrawing from the case.

195. On December 12, 2017, representing myself, I had a hearing in front of Judge Wohlfield for a Motion to Reconsider his ruling on the TRO. While I am not an attorney, I was fully prepared to argue the supporting elements of the motion that Mr. Demian had not raised and felt it would give the court the opportunity to see why I had an immediate interest in seeking court supervised protection through the TRO.

196. I arrived at the hearing and was immediately told by Judge Wohlfield, before I could even speak, that he was denying my Motion for Reconsideration on procedural grounds. I was not allowed to say anything. Mr. Weinstein applauded the denial stating that the Writ of Mandate was due to be heard on January 26, 2017 and having a TRO granted prior to that hearing was unnecessary. What I was not given the opportunity to say was that the reason I was there and representing myself was that if the court didn't intervene on my behalf immediately, the harm that Mr. Geraci could cause me would be done before that hearing.

197. When I walked out of the courtroom I felt like the world was closing in around me. I started feeling dizzy and had a hard time standing or even speaking. I thought it was temporary but since I was prone to seizures, I decided to go the hospital and have myself checked out. I did and was told was that I had suffered a Transient Ischemic Attack (TIA). A TIA is a mini-stroke which is caused when stress creates loss of blood to the brain. I am hoping I don't ever have another one of these as I felt helpless in its grasp.

198. I did not agree with Judge Wohlfield's decision. I did not feel that he had considered the elements which supported my urgency to be granted the TRO. In the interest of protecting myself from the harm Mr. Geraci was capable of inflicting on me, I had no choice but to seek an Appellate Court ruling on my TRO motion wherein they would consider all the facts and supporting evidence that Judge Wohlfield had not considered when denying me that protection.

199. On December 18, 2017 I filed a Notice with the Court that I will be appealing Judge Wohlfield's decision and will be requesting that the matter be expedited due to its urgency.

200. With everything I have been going through legally, the stresses that I find myself under have affected my health and those opportunities that I might have pursued for myself, my loved ones and my employees. I no longer sleep through the night and have anxiety attacks that are difficult to manage. I have had heart palpitations. I find that my focus and attention to the details necessary to run my business have suffered. My personal and professional relationships are in jeopardy.

201. In addition to the legal issues I'm dealing with, I have tried to maintain my Inda-Gro lighting business by introducing a new LED Grow light to our lineup for which I have applied for a provisional patent. Developing this new light and the software and controls that will run it have been somewhat cathartic in that it takes my mind off of the legal issues I'm confronting but by no means am I able to give Inda-Gro the attention it deserves when I'm consumed with the stresses I face daily as a result of Mr. Geraci and the pressure he has put on me.

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

DATED: 1-20-18

DARRYL COTTON

I, DON CASEY, hereby declare as follows:

I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. In my career, I have been a collegiate basketball coach at Temple University, an NBA coach for the Los Angeles Clippers and the New Jersey Nets. I have also worked as an assistant coach with the Chicago Bulls (1982–1983) and Boston Celtics (1990–1996).

2. From 1993-2000 I was the vice-chairman of the President's Council on Physical Fitness and Sports and was personally appointed by President Clinton.

3. Currently I am a board member and National Trustee for the ALS Foundation[1].

4. After meeting and befriending Mr. Cotton, he has been working extensively on developing a very specifically genetically engineered strain of cannabis designed for those suffering from ALS.

5. He is calling this strain the "Casey Cut" as a tribute to my mother who died of ALS in 1969; it was a joint endeavor to help those suffering from this neurodegenerative disease.

6. Because of Darryl's efforts to aid those with ALS, I strongly support him and 151 Farms. I have brought ALS patients to whom Darryl has provided cannabis products at no charge in an attempt to alleviate their pain and suffering.

7. The goal of developing a highly concentrated cannabidiol strain of cannabis has the purpose of helping alleviate the pain and adverse effects ALS patients contend with while working to help repair the underlying neurodegenerative conditions that these patients suffer from.

[1] Based in Washington, D.C., the ALS Association coordinates the federal and state advocacy programs, works directly with Congress, the White House, other federal agencies and other national organizations, and provides training and support for ALS Association advocates.

8. About a year ago Darryl told me he was selling his property for 2 million dollars. Now, I am finding out that not only is that not happening, there is litigation holding up his business prospects.

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

DATED: 2/21/17

Don Casey

I, MICHAEL KEVIN MCSHANE, declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I have been HIV positive for over 30 years.
3. In 2009 I developed debilitating skin cancer. That is when I became familiar with the medical cannabis community.
4. I have elected to treat my HIV and cancer exclusively through using cannabis oil extracts and other cannabis-based derivatives.
5. Mr. Cotton has wonderful ethics and his moral compass is unparalleled. Having become familiar with people of all walks of life in the marijuana industry, I find Mr. Cotton to be in stark contrast to many of the characters I have come across. I have found most establishments are not actually patient-oriented and some seem borderline criminal. Greed, profit and self-serving platitudes are the rule despite the reality of patients' needs and the purpose behind Prop. 215 and the spirit behind people's support for Prop 64.
6. Let me be clear, *Mr. Cotton is fully committed to helping people* with a laser-focus on the *medicinal purposes* and benefits of cannabis specifically tailored to increasing the therapeutic benefits to those of us with chronic and terminal diseases.
7. Just this week I have had a severe flare up with my cancer and I don't know if I will be alive long enough to hear the results of Mr. Cotton's case. But what I do know is that Mr. Cotton and his dedication to helping people that are suffering is genuine and the relief that he helps provide is a comfort and a service that at this time hospitals simply do not provide.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

1/4/2018
(Date)

/s/Michael McShane
(MICHAEL KEVIN MCSHANE)

I, Shawna Salazar, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I met Darryl in 1999 when he was the proprietor of Fleet Electrical and I was hired to work as a dispatcher for his company.
3. Over time I got to know Darryl on a personal level and we became close to the point where we began dating and our relationship evolved into a personal one.
4. I am proud to say that we have now been in an exclusive personal relationship for over 17 years and I continue to work with him in his business ventures as my assistance is required.
5. As I know Darryl on both a personal and professional level, I am in a unique position to speak to how passionate he is in any venture he decides to pursue.
6. In 2010 he began focusing much of his attention and resources towards plant lighting and opened Inda-Gro, which manufactured induction grow lights. I saw that company grow in size and stature until he recognized that induction technology was being phased out and decided to expand the product line into LED plant lighting.
7. It has always been personally rewarding to see Darryl create these products and see his pride in knowing that the plant quality is improved based on his designs. This is especially true when it comes to medical cannabis since Darryl uses it personally to help combat his own condition of nocturnal seizures.
8. Many people have toured 151 Farms. This farm was created to not only prove our new products but to show the community how energy and water savings can be employed in an urban garden environment. Darryl's dream has always been to take this model to a larger audience and expand to a larger facility.
9. When Darryl told me in September 2016 about the property being sold to a businessman named Larry Geraci, I was at first hesitant as to what the impact would be on our business

and the employees that worked here. Darryl relieved me of those concerns when he told me that with the Geraci purchase we not only would we have a good deal on the property but that because Geraci was involved in other real estate ventures he would help to make us aware of a larger property that would serve to meet our future needs. Sadly, that has not been the case.

10. The stresses that the failed Geraci negotiations and subsequent litigation have put Darryl under have been indescribably hard to watch.

11. I have seen Darryl go from a happy, outgoing person to one who at times will stare into space and mumble to himself. He is short tempered and not available to those who used to be closest to him.

12. He spends most of his days and even nights at the office trying to fix what he sees as beyond his control.

13. He is fearful of losing everything he has worked for and nothing anyone says or does can bring him any consolation. Frankly, it is a horrible thing to watch and it has led to us not having much of a relationship any more.

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

DATED: 1/20/18

Shawna Salazar

I, SEAN MAJOR, declare as follows:

1. I was a sergeant in the United States Marine Corps. I served from 2009 to 2016 including a tour in Afghanistan.
2. I suffered 4 major traumatic brain injuries while in the service and currently suffer from PTSD.
3. Currently, I am prescribed more than 20 different variations of pills. Of all the medications, I find the holistic approach to reap the most benefits. I find far more relief in medical grade cannabis geared towards increasing the yield of cannabinoids proven to have a multitude of medical benefits rather than just high THC to get people "high." This type of medicine is what I see as the most promising future area for further medical and therapeutic research.
4. I believe high-CBD medical cannabis is safer and more effective for veterans' recuperation than pharmaceutical options, and both I, and Darryl Cotton want to raise awareness and foster change.
5. In October 2015 I became the first, *and to-date only*, active duty Marine to be approved to use cannabis to treat my medical conditions. Since being granted an approval to use cannabis cultivation as a way to help combat the stresses that I have dealt with after having returned from active service I have been devoted to spreading awareness.
6. Currently, I am in production of a documentary television program that is to be distributed through Netflix.
7. I have had multiple news outlets write articles about me and I speak nationally about organically grown cannabis, the Veteran community, and the positive benefits of cannabis on medical/psychological conditions that affect our wounded warriors.
8. I became acquitted to Darryl Cotton and 151 Farms after hearing the positive things Mr. Cotton is doing in developing sustainable gardens that combine healthy foods to be donated to the community with hops for San Diego's vibrant beer community and medical grade

cannabis for people like myself with legitimate medical needs that are not being adequately addressed by big pharmaceutical companies.

9. I reached out to Darryl and 151 Farms as a way to get involved with their work in growing medical cannabis for those who require it.

10. I have seen first-hand the care Mr. Cotton puts into his passion, which is helping people understand and receive, natural, non-pharmacological healing.

11. Mr. Cotton uses a sustainable method of using a "closed system" irrigation involving fish, to plants (cannabis and vegetables) and he donates the grown food back to poor communities in San Diego.

12. For all the above reasons I see what Mr. Cotton is doing as a service to his community and he is setting an example to the rest of the state on how card-carryings medical recommendation patients should be prioritized while also being socially engaged and aware.

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

DATED: January 22, 2018

/s/Sean Major
Sean Major

I, Cindy Jackson, hereby declare as follows:

I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I have worked as a bookkeeper for Darryl Cotton since 1997. In that time, I have seen him grow from a small, sole proprietor, electrical contractor employing around 6 employees to becoming an incorporated, Union-shop employing more than 90 electricians and a successful equipment rental company.
2. When the economy slowed down in the mid-2000s the need for both companies' products and services dwindled. As a result, Darryl sold off the rental equipment and began to focus on his other passion: plant lighting.
3. In 2010, Darryl created Inda-Gro, and became a manufacturer of induction grow lights. His focus was on creating lights and controls to improve plant response in both quality and yield.
4. This company was especially important to him as it relates to cannabis cultivation since he has needed it to combat some of his own personal medical conditions.
5. In addition to being a businessman of the highest ethical standards, Darryl has always been interested in patients' rights and their access to medical cannabis. It is for this reason he has invested countless hours and money into seeing that all those who require fresh food and medical grade cannabis have the tools and the legal resources to do so.
6. Having known Darryl for as long as I have, I can honestly say that the Darryl I used to know is not the same person that I see today.
7. Ever since Darryl met Larry Geraci, he was led to believe that the purchase of the property at 6176 Fed. Blvd. would help Darryl expand operations and pursue greater opportunities.
8. The current legal entanglements with Mr. Geraci have caused Darryl and those of us who have been loyal to him and his causes stresses that are impossible to fully describe.

9. These extreme stresses, brought on by this litigation, are causing Darryl great physical, emotional, and financial harm that affects his ability to conduct business or plan on future endeavors. If there is any remedy that the court might provide to protect Mr. Cotton and his rights within the law, I would pray that the court do so.

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

DATED: 1/22/18

Cindy Jackson

I, James Whitfield, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I am 67 years old, a Navy veteran and I served my country for 20 years, 3 months and 14 days. As a result of my military service, I suffer from severe back, neck and leg pain.
3. Pharmaceutical drugs have not been at all useful in the repair or recovery of my painful conditions.
4. The one thing that does provide me with a great deal of relief is the regular use of organically grown medical cannabis which I began using rather than the opiates that had been prescribed to me. All the painkillers I was given were addictive and kept me from being able to maintain a solid and consistent coherency.
5. I have known Darryl Cotton and 151 Farms for nearly 20 years now. I support their ongoing efforts to educate others on the importance of having fresh food and cannabis available to those who seek it.
6. It has been extremely important for me to have access to fresh food and genetically specific cannabis to help alleviate my pain and suffering. As such, cannabis remains an important lifeline for me on a daily basis.
7. I fully support Darryl Cotton and his efforts to promote laws, policies and regulations that serve to protect patients' rights and access to medical-grade cannabis as a treatment for medical, physical and psychological conditions.

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

DATED: 1/18/18

James Whitfield

I, Michael Scott McKim, hereby declare:

1. **I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.**
2. I am a San Diego native.
3. I am a heavy equipment operator and have been a cannabis farmer for 20 years.
4. I have been the senior farm manager at many licensed mid-to-large cannabis farms in Northern California. As such, I have gained tremendous insight into the evolving business of cannabis as well as how the plant is grown and processed.
5. I left Northern California to look for likeminded farmers that value organically grown plants that would not potentially harm the medical cannabis patient as I became aware that the industry is becoming increasingly about making a profit and that plant quality and patients' needs are no longer priorities.
6. I was introduced to Darryl Cotton and 151 Farms in August 2017. I was so impressed with his passion, education and vision that I immediately offered to help him in any way I could.
7. Darryl has worked tirelessly in promoting these urban farms as a way to educate the community about the benefits of organically grown food, hops and medicine.
8. Darryl is a man of his word and he is driven by a sense of purpose that you rarely see in people. It is his vision to expand 151 Farms to larger markets that has given me a good sense of my own future opportunities.
9. I can see that Darryl is in a stressful legal battle with someone who apparently seeks to take advantage of Darryl by acquiring his property and benefitting from the notoriety that Darryl has created with 151 Farms in the urban farming community.
10. Recently Darryl has become extremely stressed out and not as available as he used to be. Clearly something must be done and I hope that there are legal mechanisms that can protect Darryl and those of us who share his passion and dreams.

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

DATED: 1-20-18

Michael Scott McKim

I, Cheryl Morrow, hereby declare:

I have personal knowledge of the facts I state below, and if I were to be called as a witness, I could competently testify about what I have written in this declaration.

1. I am Editor-in-Chief of the San Diego Monitor News and have proudly been a consistent community supporter for 27 years. I have witnessed numerous valued activities with 151 Farms personally and have become a strong advocate.
2. Since Darryl Cotton and 151 Farms have come to my awareness, I have frequented the farm and have recommended the farm's usage to many San Diego residents with health issues. It only makes sense to support a system that gives alternatives of fresh food and environmental solutions as well as promoting health benefits to a community that has been ravaged by poor health options and poor food options. The public has grown dependent on our sound wellness options in pursuit of a healthier lifestyle and I have knowledge of these options as an urban garden advocate along with my many years in the cosmetics industry.
3. I have grown to trust Darryl Cotton with his superior knowledge on medical cannabis law and I respect his abiding by state and local government requirements. Ethically speaking, I feel that 151 Farms is the best model in the country and should be considered a model for all cannabis endeavors. Individuals who seek interest in this industry should seek out what Darryl Cotton has done with his undying courage and extremely time-consuming devotion.
4. I have seen many changes in growing techniques over the last few years and 151 Farms is the product of many farms that are adding value to their communities all over the world. I have seen people from abroad take tours of the farm who have been astounded by 151 Farms' sophistication while delivering compassion for its patients.
5. It is obvious that the legal actions have taken a toll on Darryl's passion regarding the day to day operations of the farm. However, Darryl is a model citizen in my opinion. My entire family has great respect for those who roll up their sleeves to be a part of the solutions and

not just problems. 151 Farms is a community asset. I have gained a wealth of knowledge about my own health preservation, so in saying all of this... God helps those who help themselves.

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

DATED: 1-22-2018

/s/ Cheryl Morrow
Cheryl Morrow

EXHIBIT 14 [ROA 166]

Darryl Cotton
San Diego, CA 92108
Telephone: 619.357.6850
Facsimile: 888.357.8501
JPA@JacobAustinEsq.com

Pro Per Defendant and Cross-Complainant

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual, Plaintiff, vs. DARRYL COTTON, an individual and DOES 1-10, Inclusive, Defendants.	CASE NO. 37-2017-00010073-CU-BC-CTL DARRYL COTTON'S DECLARATION IN SUPPORT OF HIS OPPOSITION TO *EX PARTE* APPLICATION BY PLAINTIFF/ CROSS-DEFENDANT LARRY GERACI FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR MONETARY AND ESCALATING/TERMINATING SANCTIONS
DARRYL COTTON, an individual, Cross-Complainant, vs. LARRY GERACI, and individual, REBECCA BERRY, an individual; and DOES 1 through 10, Inclusive, Cross-Defendants.	DATE: April 10, 2018 TIME: 8:30 a.m. DEPT: C-73 JUDGE: The Honorable Joel R. Wohlfeil

I, Darryl Cotton ("Cotton"), declare:

1. I am the owner of record of the real property located at 6176 Federal Boulevard, San Diego County, California (the "Property").

2. I believe that, upon conclusion of hearing on my Motion to Expunge Notice of Pendency of Action (*Lis* Pendens) on Friday, April 13, 2018 (the "LP Motion"), this Court finally will understand

that this case ***is*** as simple as it appears. In fact, I believe this Court will be angered that attorney Michael Weinstein ("Weinstein") even brought forth the instant motion seeking sanctions which, in light of the fact that this case lacks probable cause, will make it clear that this motion is a vexatious litigation tactic meant to unduly pressure me.

3. I believe that Weinstein's written communications to me clearly telegraph his intent to use this Court's rulings which have allowed this action to progress to this stage, notwithstanding the complete lack of probable cause, as a *defense* to a cause of action against his firm for malicious prosecution: this court on numerous occasions has denied my injunction applications, granted Geraci's injunction applications, and made factual findings that I am unlikely to prevail on my cause of action for breach of contract and that Geraci is likely to prevail on his cause of action for breach of contract against me.

4. I believe this Court's rulings are based on a grave misunderstanding of key evidence in this case – most notably the Confirmation Email (described more fully in the LP Motion) – and this Court has and is severely prejudicing me because those rulings will serve, *inter alia*, as a legal defense to my cause of action against Weinstein's law firm for malicious prosecution when I prevail in this matter.

INTRODUCTION

5. There is no easy way to put this and, even now, I am hesitant to be direct with this Court for fear of retaliation. But, euphemistically put, I believe this Court has not properly recognized the undisputed and the case-dispositive nature of the evidence it has been presented with before.

6. Previously, I thought this Court was knowingly and actively biased against me because it communicated to me, *inter alia*, that it was well-acquainted with counsel Weinstein. I now understand that such is not the case. I now believe this Court is simply doing the best it can with the realities of an overburdened judicial system which has attorneys like Weinstein practicing before it and *pro se* litigants such as myself who do not know how to succinctly and logically bring across the facts and legal reasoning of their case free of emotion.

7. On January 25, 2018, after a hearing before this Court, it became apparent this Court did not understand that the *authenticity* of the most material piece of evidence in this case is NOT disputed. After the hearing, I emailed Weinstein regarding the Court's misunderstanding. Attached as Exhibit A is a true and correct copy of that email.

8. The next day, January 26, 2018, Weinstein replied by stating: "***I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.***" I believe that Weinstein's response was meant to create a record seeking to insulate himself from liability. Attached as Exhibit B is a true and correct copy of that email from Weinstein.

9. I replied to Weinstein the dame day. Attached as Exhibit C is a true and correct copy of that email.

10. Over the last year I have literally begged this Court to get an understanding of the Confirmation Email and its role in this legal action throughout my pleadings. At more than one oral hearing, my one and only question to this Court was to please address the Confirmation Email: Each of my requests was denied without this Court providing any reasoning for said denial.

11. On March 12, 2018, my counsel, Jacob Austin, emailed Weinstein. Attached as Exhibit D is a true and correct copy of that email forwarded to me by Mr. Austin (Mrs. Austin's email begins at page 4).

12. Later that day, Weinstein replied to Mr. Austin's email. Mr. Weinstein's response is also in Exhibit D and starts at page 1.

13. I now believe that this Court operates with the best of intentions, however, I believe this Court's actions, albeit unpurposeful, are still severely prejudicial towards me and it does not change the fact that I am facing daily personal and professional hardship as a result of what I believe to be a meritless litigation. I think the judiciary system has and is unjustly being used as a tool of oppression against me (*e.g.*, the instant motion seeking sanctions in this case with no probable cause is the perfect example).

14. I believe Judge Wohlfeil to be a good man, as I have now personally observed him constantly seek to see justice done on numerous occasions when I have gone to his court. If I had to guess – a guess supported by every attorney and person who has reviewed the pleadings and evidence in this matter – I believe Judge Wohlfeil simply thinks I am a crazy *pro se* and this case cannot possibly be as simple as it appears.

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15. I am 57 years old, and I have people and loved ones who depend on me. If I lose my Property, I have no other means by which to have gainful employment and provide for my loved ones and the people who depend on me.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 9, 2018 at San Diego, California.

DARRYL COTTON

EXHIBIT A

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Depositions

Thu, Jan 25, 2018 at 3:33 PM

Darryl Cotton <indagrodarryl@gmail.com>
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

If I really am crazy, I apologize to you. I really do. If I am not, this will eventually all come out and your actions in this matter will be incredibly clear. I note the the State Bar let me know about "Malicious Prosecution" causes of action. If I prevail in this matter, again, assuming I am not crazy and the Confirmation Email is taken into account by the COA, then you can be assured I will be using this email as evidence that you knew you had an affirmative duty to Judge Wohlfeil about letting him know that the Confirmation Email is ***not*** disputed and you did not. Again, only if I am crazy. It is not lost on me that I have yet again been before the Court and I still lost (He has never mentioned or referenced the Confirmation Email, I keep hoping he just thinks I am a crazy pro se and don't know what I am doing). At some point I have to realize no matter how sure I am about something, that maybe, I really am not thinking well. If the COA comes back with a reasoned decision taking into account and describing why the Confirmation Email (along with the other communications from Geraci, which include the drafts of purchase agreements prepared by Gina Austin months after November of 2016) does not dispositively address this action in my favor, I shall personally and sincerely offer my apologies. If not, I will eventually, no matter how much it costs me personally financially and emotionally, see you and Gina in Court for malicious prosecution. And there will be no situation where I settle. I want to see you both on the stand responding to this email and why you did not tell Judge Wohlfeil about his incorrect assumption that would have dispositively addressed this case in my favor much sooner and saved me an incredible amount financial and emotional harm.

In anticipation of your reply I remain.

Darryl Cotton

EXHIBIT B

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

RE: Depositions

Michael Weinstein <MWeinstein@ferrisbritton.com> Fri, Jan 26, 2018 at 9:56 AM
To: Darryl Cotton <indagrodarryl@gmail.com>

Mr. Cotton,

You have chosen "the last day possible" for your deposition. By my calculation, that would be Wednesday, February 14, 2018 (20 days from today). I will serve an amended deposition notice scheduling your deposition for February 14. Thank you.

As for the remainder of your email, you are way off the mark. I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.

Trial Call is May 11, 2018. At the trial the disputed facts in this case will be presented through admissible witness testimony and a decision will be made by the judge or jury. That is the way the process works. And that is where I, on behalf of my client, will present and argue my case. I will not do so in emails to you.

I wish you no ill will. Please be assured that I will continue to conduct myself in an ethical and civil matter in all my dealings with you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Thursday, January 25, 2018 3:34 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com
Subject: Depositions

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

If I really am crazy, I apologize to you. I really do. If I am not, this will eventually all come out and your actions in this matter will be incredibly clear. I note the the State Bar let me know about "Malicious Prosecution" causes of action. If I prevail in this matter, again, assuming I am not crazy and the Confirmation Email is taken into account by the COA, then you can be assured I will be using this email as evidence that you knew you had an affirmative duty to Judge Wohlfeil about letting him know that the

Confirmation Email is ***not*** disputed and you did not. Again, only if I am crazy. It is not lost on me that I have yet again been before the Court and I still lost (He has never mentioned or referenced the Confirmation Email, I keep hoping he just thinks I am a crazy pro se and don't know what I am doing). At some point I have to realize no matter how sure I am about something, that maybe, I really am not thinking well. If the COA comes back with a reasoned decision taking into account and describing why the Confirmation Email (along with the other communications from Geraci, which include the drafts of purchase agreements prepared by Gina Austin months after November of 2016) does not dispositively address this action in my favor, I shall personally and sincerely offer my apologies. If not, I will eventually, no matter how much it costs me personally financially and emotionally, see you and Gina in Court for malicious prosecution. And there will be no situation where I settle. I want to see you both on the stand responding to this email and why you did not tell Judge Wohlfeil about his incorrect assumption that would have dispositively addressed this case in my favor much sooner and saved me an incredible amount financial and emotional harm.

In anticipation of your reply I remain.

Darryl Cotton

EXHIBIT C

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Re: Depositions

Fri, Jan 26, 2018 at 12:19 PM

Darryl Cotton <indagrodarryl@gmail.com>
To: Michael Weinstein <MWeinstein@ferrisbritton.com>, info@austinlegalgroup.com

Weinstein,

You are correct, you have not "made any misrepresentation to the court about the facts or the law." However, you know that he has made rulings premised on his incorrect belief that there is "disputed" evidence and, as such, you have an ***Affirmative Duty*** to tell Judge Wohlfeil about his mistaken belief upon which he has made numerous incorrect rulings. I wonder what Judge Wohlfeil is going to think about you and Gina when he eventually realizes that you allowed him to continuously, over the course of months and many motions and oral hearings, issue rulings that show he does not understand that, at least to this date, you have not disputed the Confirmation Email. He has issued orders on that mistaken belief and you have taken advantage of that mistaken belief.

This email by you is a blatant attempt to create a false record to cover your ass. This is why our judicial system fails miserably to achieve justice. I read the Ethics Opinion, I understand it. The violation here is not that you made a misrepresentation to the Court about facts or law, but that you have an Affirmative Duty to correct the judge and the rulings he has made based on an incorrect understanding of ***dispositive*** evidence. Again, his ruling is clear, he thinks the Confirmation Email is disputed, it is NOT. You are manipulating Judge Wohlfeil by not bringing this to his attention, hoping I run out of resources before the truth of your actions can come to light. And this email just proves it. You are playing word games, thinking I don't understand the nuances. You are no better than Demian. You are the absolutely the worst kind of unethical attorney there is. It is because of unethical attorneys like you, that manipulate the judicial system, that our system is so flawed. Gina conspired with Geraci from the beginning. But you, you keep doubling down, keeping on maintaining this vexatious lawsuit.

I am attaching here the California States Bar Ethics opinion regarding Deceitful Conduct that has all the language needed for you to know, to the extent you may try to argue that you previously did not know, that you have an AFFIRMATIVE DUTY to tell Judge Wohlfeil that the Confirmation Email is dispositive and this case should be resolved in my favor. I don't think that you will, you are in too deep. I dare you to show this email to Judge Wohlfeil and bring to his attention the dispositive nature of the Confirmation Email so that he finally understands you have been manipulating him by ***OMISSION***. It would be great to see you argue to him that you have allowed him to abuse his discretion on numerous occasions by stating that you "have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law."

Per his stated opinions about you and counsel at the last oral hearing, he thinks you would not take these sorts of actions, don't you think he is going to be pissed once he finds out that after he went out of his way to make you seem like a nice, ethical guy that you actually continued to actively deceive him?

When you opposed the motions for stay, you had no problem citing case law and language to me via email. But, in response to this email, you have decided not to do so because you have no defense. Judge Wohlfeil did not read and/or take my opposition serious. It is a mess. But you did. I know you did. And you know what I tried to convey is true.

"No ill will" towards me? What kind of bullshit is that. I have lost everything. I have been to the ER for a stroke. I have been driven near insane and assaulted people, been disrespectful to people that I care about. I have lost my business and my property. Do you have any idea how I feel knowing that whether I win or lose I lost this property? I have had to negotiate away millions to keep this litigation financed. I have had to demean myself in public records. You are so good at distracting the judge that I don't even have legal representation anymore even though my cause of action is not just meritorious, the evidence makes it clear it is dispositive. No "ill will" towards me? I cannot say the same about you! When this is over, I hope that I can convince the Judge to have you prosecuted criminally for your actions here!!

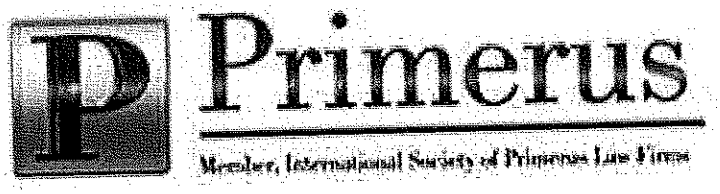
Darryl Cotton

On Fri, Jan 26, 2018 at 9:56 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Cotton,
>
> You have chosen "the last day possible" for your deposition. By my calculation, that would be Wednesday, February 14, 2018 (20 days from today). I will serve an amended deposition notice scheduling your deposition for February 14. Thank you.
>
> As for the remainder of your email, you are way off the mark. I have not, in any pleading or oral argument, made any misrepresentation to the court about the facts or the law.
>
> Trial Call is May 11, 2018. At the trial the disputed facts in this case will be presented through admissible witness testimony and a decision will be made by the judge or jury. That is the way the process works. And that is where I, on behalf of my client, will present and argue my case. I will not do so in emails to you.
>
> I wish you no ill will. Please be assured that I will continue to conduct myself in an ethical and civil matter in all my dealings with you.
>
> Respectfully,
>
> Michael R. Weinstein
> mweinstein@ferrisbritton.com
> Ferris & Britton, A Professional Corporation
> 501 West Broadway, Suite 1450

San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard



From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Thursday, January 25, 2018 3:34 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: info@austinlegalgroup.com
Subject: Depositions

Mr. Weinstein,

As to the date for depositions, I choose the last day possible as I am planning to file my appeal ASAP and hope the Court of Appeals will issue an order before I have to be deposed.

The Judge started off his hearing with how well he knows all counsel in these matters as you have all been before him on numerous occasions and how he doubts you would do anything along the lines I described in my pleading. Great. Your prior relationship somehow means I am wrong. I am sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on that one email from Geraci that I refer to as the Confirmation Email.

I note that his minute order for today makes no reference to the Confirmation Email despite my repeated requests in my Opposition that he explain how the Confirmation Email does not dispositively resolve this matter. I am assuming, if I am not actually crazy, that he just thinks I am crazy and has not really read my pleadings. This is the third hearing that the Confirmation Email has been in front of him and he has ruled in a manner that shows that he has not taken it into account. I note that in his minute order, he states there is "disputed" evidence, and you KNOW that neither you nor Gina Austin in the City matter have ever disputed that Confirmation Email. It would appear to me, if I am not crazy, that you have an ***affirmative duty***, based on the case law and California State Bar opinions referenced in

my pleading, to inform Judge Wohlfeil about his erroneous assumption. Or, you can choose to dispute the authenticity of the Confirmation Email after almost a year of not doing so.

If I really am crazy, I apologize to you. I really do. If I am not, this will eventually all come out and your actions in this matter will be incredibly clear. I note the the State Bar let me know about "Malicious Prosecution" causes of action. If I prevail in this matter, again, assuming I am not crazy and the Confirmation Email is taken into account by the COA, then you can be assured I will be using this email as evidence that you knew you had an affirmative duty to Judge Wohlfeil about letting him know that the Confirmation Email is ***not*** disputed and you did not. Again, only if I am crazy. It is not lost on me that I have yet again been before the Court and I still lost (He has never mentioned or referenced the Confirmation Email, I keep hoping he just thinks I am a crazy pro se and don't know what I am doing). At some point I have to realize no matter how sure I am about something, that maybe, I really am not thinking well. If the COA comes back with a reasoned decision taking into account and describing why the Confirmation Email (along with the other communications from Geraci, which include the drafts of purchase agreements prepared by Gina Austin months after November of 2016) does not dispositively address this action in my favor, I shall personally and sincerely offer my apologies. If not, I will eventually, no matter how much it costs me personally financially and emotionally, see you and Gina in Court for malicious prosecution. And there will be no situation where I settle. I want to see you both on the stand responding to this email and why you did not tell Judge Wohlfeil about his incorrect assumption that would have dispositively addressed this case in my favor much sooner and saved me an incredible amount financial and emotional harm.

In anticipation of your reply I remain.

Darryl Cotton

CAL 2013-189 [11-0002] v.1.pdf
233K

EXHIBIT D

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Fwd: Follow Up to December 7th Ex Parte Hearings

Jake Austin <jpa@jacobaustinesq.com> Mon, Mar 12, 2018 at 5:46 PM
To: Darryl Cotton <indagrodarryl@gmail.com>

---------- Forwarded message ---------
From: Michael Weinstein <MWeinstein@ferrisbritton.com>
Date: Mon, Mar 12, 2018 at 4:27 PM
Subject: RE: Follow Up to December 7th Ex Parte Hearings
To: Jake Austin <jpa@jacobaustinesq.com>

Dear Mr. Austin,

I am glad to hear that you are substituting in as counsel. I look forward to working with you as this matter proceeds to trial. Fyi, the Trial Readiness Conference is April 27, 2018, and Trial Call is May 11, 2018.

You have asked that my client (i) withdraw his "pending motions before the Court for the execution of the proposed judgment you have submitted and renotice the pending motion for a TRO" so that you may substitute in and file an opposition on behalf of Mr. Cotton, and (ii) that we submit a joint request to the Court for a written opinion analyzing the arguments put forward in the motion for a TRO.

My client is unwilling to do so, as further explained below.

As you know, there are two lawsuits between the parties. Mr. Cotton has often confused the different issues and different relief sought in those two cases—and has failed to grasp the procedural differences.

The Geraci Lawsuit. The earlier filed action was filed by my client and is entitled *Larry Geraci v. Darryl Cotton* (hereafter the "Geraci Lawsuit."). Mr. Cotton has filed a cross-complaint in that action against Larry Geraci and Rebecca Berry. Both the complaint and cross-complaint are set for Trial Call on May 11, 2018. Since its inception that case has been before Judge Wohlfeil.

The Writ of Mandate Lawsuit. The later-filed action was filed by your client against the City of San Diego, and my clients were named as Real Parties in Interest (hereafter the "Writ of Mandate Lawsuit"). In that action Mr. Cotton sought specific relief by way of writ of mandate, namely, Mr. Cotton sought the issuance of a writ of mandate compelling the City of San Diego to recognize Mr. Cotton as the sole applicant on my clients' pending CUP Application. Mr. Cotton first sought that relief by ex parte application before Judge Sturgeon (to whom the case was originally assigned); Judge Sturgeon denied the ex parte request and transferred the case to Judge Wohlfeil. Mr. Cotton again sought that same relief by ex parte application before Judge Wohlfeil; Judge Wohlfeil denied the ex parte request but scheduled the petition for a hearing. Mr. Cotton then fired his attorney, Mr. Demian, and sought ex parte reconsideration of the denial of his ex parte application for issuance of a writ of mandate; that motion for reconsideration was denied by Judge Wohlfeil. (Mr. Cotton then appealed the ex parte rulings, which appeals he subsequently abandoned.) Mr. Cotton's petition for writ of mandate was subsequently heard on the papers submitted at a noticed hearing on October 25, 2017, and the court denied Mr. Cotton's petition. I circulated a proposed Judgment to all counsel (Mr. Cotton was pro per) and, thereafter, submitted the proposed Judgment to Judge Wohlfeil.

Your email asks me to withdraw my pending motion for entry of the proposed Judgment. There is and was no such motion pending (and thus no hearing date). As noted above, the City of San Diego, the Respondent, and my clients, Real Parties in Interest, prevailed in that action. As a matter of course, and after circulating the proposed Judgment to all counsel for review and comment, a proposed Judgment was submitted to Judge Wohlfeil. I checked the Register of Actions today and Judge Wohlfeil signed the proposed Judgment and it was entered on March 7, 2018. Mr. Cotton believes each of the judges (Judge Sturgeon and Judge Wohlfeil) ruled incorrectly the many times he brought the issue before them—my understanding is that his only available recourse now is to appeal the entered Judgment to the Fourth District Court of Appeal.

The Geraci Lawsuit Cont'd.

Although judgment has been entered in the Writ of Mandate Lawsuit, this has no impact on the Geraci Lawsuit, which continues forward.

In the Geraci Lawsuit my client has two pending motions to be heard on October 23, 2018: (1) a motion to compel the deposition of Darryl Cotton and to compel written discovery responses; and (2) a motion for a preliminary injunction or other order to compel access to the subject property for soils testing necessary to obtain approval of the CUP permit.

As to the former motion: Mr. Cotton has known about yet refused to provide written discovery responses that were due on December 29, 2017 (after I granted him a requested extension until that time). The written discovery requests are not voluminous. Mr. Cotton was originally scheduled (by notice and agreement) to have his deposition taken on December 11, 2017. Then he fired his lawyer

on approximately December 7 or 8, and would not make himself available for deposition on December 11. I understood those circumstances and took the deposition off calendar. Mr. Cotton thereafter failed to appear twice at noticed depositions—the latter time defying a court order granted after I brought a first motion to compel. This second motion to compel his deposition (and seeking sanctions this time) is scheduled for October 23, 2018. There are no valid grounds for opposing the motion. Mr. Cotton has avoided appearing for his deposition for nearly 3 months so far. This action is going to trial in 60 days, i.e., Trial Call is May 11, 2018. You have given me no valid reason why I should withdraw the motion. If Mr. Cotton wants additional time to file an opposition, then you can seek that relief ex parte. But I do not know why you would do so as there are no grounds for opposing the motion.

As to the latter motion: A CUP runs with the land. Soils testing is necessary to obtain approval of the CUP. Mr. Cotton, realizing that, at one point voluntarily agreed to allow the soils testing but has since reneged. I have no idea why as the soils testing and granting of a CUP will benefit him if he ultimately prevails at trial in two months. Mr. Cotton has constantly harped that he is worried my client will torpedo the CUP process, but he has no evidence that is the case. My client has spent substantial sums during the more than one year the CUP Application has been pending to obtain approval. Now Mr. Cotton appears to himself want to torpedo or at least delay the process—for no apparent rational reason so far as I can discern. If Mr. Cotton wants additional time to file an opposition, then you can also seek that relief ex parte. But, again, I do not know why Mr. Cotton would want to oppose the motion as soils testing is necessary to obtain approval of the CUP. Instead, he should simply allow the soils testing.

I do not have any reason to doubt that Mr. Cotton is experiencing emotional distress. That happens to litigants to one extent or another in all lawsuits. That undoubtedly explains the many vitriolic and expletive-laced emails that Mr. Cotton has sent me over the last several months (for which Mr. Cotton recently apologized). Much of the emotional distress is his own doing. Instead of submitting to a deposition and undertaking steps to prepare for a trial on the merits in the Geraci Lawsuit, Mr. Cotton has used that time instead, among other things, to pursue ill-advised motions in these two cases. He insists the email he refers to is "dispositive" of all those motions. **That email was submitted by Mr. Cotton (and/or his attorneys) into evidence in support of all of his many ex parte applications for temporary restraining orders/preliminary injunction and in support of his petition for writ of mandate.** Mr. Cotton is entitled to believe the court got those rulings wrong. Despite his beliefs to the contrary, the court did not and should not have viewed the email as dispositive and correctly ruled on those motions. He has also pursued ill-advised appeals of trial court rulings, which he has since abandoned.

Finally, I feel compelled to address your comments about Gina Austin, which are way off base. Ms. Austin has made no misrepresentations to the court. No declaration signed under penalty of perjury by Gina Austin has been submitted as evidence to the Court in any proceeding in any of the two cases. She has appeared as counsel in the Writ of Mandate case and argued with me in opposition to Mr. Cotton's first ex parte application for issuance of a writ of mandate heard by Judge Sturgeon. That is it —legal argument. She will be a witness at trial of the Geraci Lawsuit but so far has not submitted any written or other testimony. So I just do not understand your position in that regard.

If you schedule an ex parte, I authorize you to give me notice of the date and time by email and I authorize you to serve any pleadings by email.

Please feel free to call me if you want to discuss any matter related to the case.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

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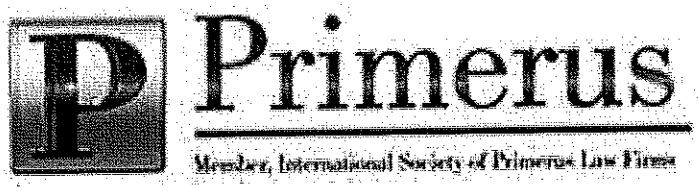


From: jacobaustinesq@gmail.com [mailto:jacobaustinesq@gmail.com] **On Behalf Of** Jake Austin
Sent: Monday, March 12, 2018 11:25 AM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Subject: Re: Follow Up to December 7th Ex Parte Hearings

Mr. Weinstein,

I am writing to inform you that I will shortly be substituting in as counsel for Mr. Cotton and to make a request.

First, however, I want to note the following: in preparation for representing Mr. Cotton I have reviewed (i) every filing in both of Mr. Cotton's actions with Mr. Geraci and the City of San Diego, (ii) every document produced to and from Mr. Cotton via discovery, (iii) every single email to and from Mr. Cotton's professional and personal email accounts between October of 2016 and March of 2017 and (iv) interviewed over 17 individuals who were in constant written communications and/or working with Mr. Cotton on a daily basis during the same time period noted and whose testimony will be direct or circumstantial evidence that Mr. Cotton intended the document executed in November of 2016 to be a "receipt" (as he calls it in most of his pleadings) and that Ms. Austin knew the "November Document" was meant to be just a "receipt."

In short, based on my review of all the evidence noted above, it does appear that Mr. Cotton is correct in his allegations that Ms. Austin has made misrepresentations to the court and I will shortly be filing motions to have her respond to this evidence. However, as you are aware from the Independent Psychiatric Assessment by Dr. Ploesser, Mr. Cotton is facing immediate and irreparable mental harm from what he sincerely believes to be a conspiracy by Mr. Geraci, Ms. Berry and Ms. Austin to unlawfully acquire his property. There is more than probable cause, based on my review of the evidence above, to support such a conclusion. I am primarily a criminal defense attorney and if there was a situation where I had to defend Ms. Austin against criminal charges related to her misrepresentations to the court, I would recommend she quickly strike a deal to mitigate punishment.

As you are aware, Judge Wohlfeil has never provided a written or verbal opinion analyzing what Mr. Cotton refers to as the "Confirmation Email." Mr. Cotton believes that Judge Wohlfeil is under a misunderstanding regarding the "undisputed" nature of the Confirmation Email. This perceived misunderstanding is a contributing factor to the irreparable mental harm that Mr. Cotton is facing per Dr. Ploesser.

Based on the foregoing, I am requesting that (i) you please withdraw your pending motions before the Court for the execution of the proposed judgment you have submitted and renotice the pending motion for a TRO so that I may substitute in and file an Opposition on behalf of Mr. Cotton and (ii) that we submit a joint request to the Court for a written opinion analyzing the arguments put forward in the motion for a TRO. In light of the opinion of Dr. Ploesser, the potential for Mr. Cotton's mental harm would be greatly reduced if he perceived the court to be taking all the arguments into account, and he felt you were being a reasonable attorney.

Mr. Weinstein, to be completely forthright, the record and evidence regarding the culpability of Ms. Austin in this matter is clear. And I am sending this email and request as a professional courtesy to you because I want to gauge your response before making any assumptions regarding your own personal and professional ethics in this matter. I will not lightly bring forth any allegations against another attorney to the court.

On one hand you must zealously advocate on behalf of your client, on the other, you must stay within the bounds of ethical and legal obligations to the court that supersede those of your client's. In this case, Mr. Cotton is clearly facing irreparable harm and granting the instant request, while causing a delay of a few weeks, will result in little, if any, harm to your client. Not granting the instant request allows for the possibility that a miscarriage of justice will take place and Mr. Cotton will likely end up with irreparable mental harm.

I hope you can appreciate this request. I could have simply made certain allegations against you. But, again, unlike the overwhelming evidence against Ms. Austin, the record and evidence supporting the

allegations made against you previously by Mr. Cotton are less clear. Thus, this request which is reasonable. An unreasonable response will let me know what to expect from you moving forward.

Please let me know by 5:00 PM today whether you will grant this request.

Sincerely,

Jacob Austin

Law Office of Jacob Austin

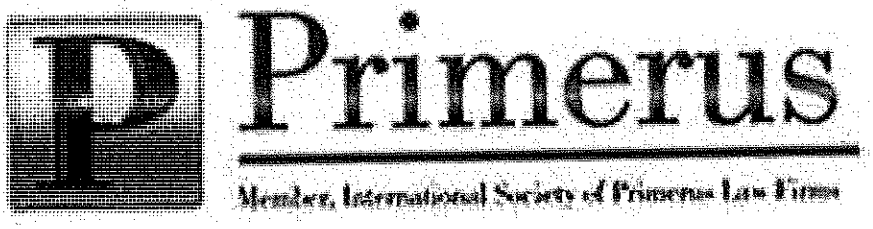
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

On Wed, Dec 20, 2017 at 9:48 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Austin,
>
> As a follow up to my earlier reply, attached please find a courtesy copy of the deposition notice served by mail today scheduling Mr. Cotton's deposition for Friday, January 5, 2018.
>
> Respectfully,
>
> Michael R. Weinstein
> mweinstein@ferrisbritton.com
> Ferris & Britton, A Professional Corporation
> 501 West Broadway, Suite 1450
> San Diego, CA 92101-7901
> www.ferrisbritton.com
> Tel (619) 233-3131
> Fax (619) 232-9316
>
> Vcard



From: jacobaustinesq@gmail.com [mailto:jacobaustinesq@gmail.com] **On Behalf Of** Jake Austin
Sent: Tuesday, December 19, 2017 8:35 PM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Re: Follow Up to December 7th Ex Parte Hearings

Mr. Weinstein,

Please bear with me, first, I did not know Mr. Cotton would reach out to you this morning or that he would include me in this email chain. I was in court when this series of communications started.

Second, I am only assisting Mr. Cotton in a limited capacity on his appeal. I will not be representing him in the two underlying actions. Having said that, I would appreciate the professional courtesy if you would communicate through me until I get caught up to speed on what has happened in the two underlying matters and the *ex parte* motions that are the basis of his appeal.

I can verify that Mr. Cotton went to the Emergency Room after his motion for reconsideration was denied and, several days later, was seen by a medical doctor after he was involved in some kind of altercation. Mr. Cotton believes that the denial of his *ex parte* motions were wrong as a legal matter. I cannot speak to that, but, again, he believes it, and every time he starts discussing the case, Mr. Geraci, and yourself he becomes noticeably, physically high-strung and incredibly emotionally agitated to the point that he becomes incoherent.

Thus, please allow me some time to get my head around the matters here before responding substantively and, if it is the case that the appeal for Mr. Cotton has no basis, I will be happy to explain the matter to him so that he may hopefully redirect his intense emotions elsewhere.

I will get back to you as soon as I can but as I just took on my limited representation of him and my calendar this week is already over-booked, I doubt I will be able to respond substantively before sometime next week.

As to the notices of appeal, those have been filed. Please see attached.

Sincerely,

Jacob

Law Office of Jacob Austin

1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA

Phone: (619) 400-1468

(619) 357-6850

Facsimile: (888) 357-8501

On Tue, Dec 19, 2017 at 11:48 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Austin,
>
> Please telephone me to discuss this matter (or email me if you prefer). I believe your client is terribly misinformed.
>
> First, please: a) confirm whether you represent Mr. Cotton, and b) whether your representation is limited to the "appeal" of the denials of his three ex parte applications. If, contrary to what Mr. Cotton has represented, you are going to be representing him in the two underlying actions before Judge Wohlfeil, then please immediately serve and file signed Substitutions of Attorney forms.

Second, a) no judgment directing issuance of a writ of mandate has been entered, and b) no mandatory injunction has been issued. Quite the opposite, as Mr. Cotton's ex parte applications to obtain those things were denied. Thus, The Rutter Group citations and cases cited by Mr. Cotton are not applicable.

My understanding is that an appeal from the denial of a TRO (or the denial of a preliminary injunction) does not deprive the trial court of jurisdiction to proceed to try the case on the merits. (See *Gray v. Bybee,* 60 Cal.App.2d at 564, 571.) Rather, there is no automatic stay and Mr. Cotton must request a stay of the trial court proceedings if he wishes to stay the underlying proceedings while his appeal is pending. I am not aware of any appeal let alone any granting of a request for a stay. Unless and until that happens the underlying cases proceed accordingly.

If you are filing an "appeal," whether by interlocutory writ or otherwise, please notify me the moment you do. In the meantime, if you have any legal authority to support Mr. Cotton's assertion that any contemplated "appeals" will automatically stay the underlying actions, then please provide that authority to me as soon as possible.

If you agree that there is no automatic stay, please advise Mr. Cotton immediately. I need to be able to deal immediately with the attorney in the underlying actions. If that is you, then that would be great—just appear by filing your Substitution and I will deal only with you. If that is not you, then I will deal directly with Mr. Cotton.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

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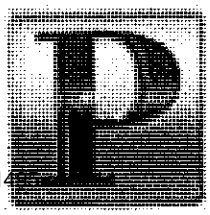

Primerus

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Tuesday, December 19, 2017 10:06 AM

To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: Jake Austin <jacobaustinesq@gmail.com>
Subject: Re: Follow Up to December 7th Ex Parte Hearings

Michael,

You are obviously will do anything that Geraci tells you to do, even if for some reason it is lawful, you are blatantly lying to me and purposefully putting more intense and undue pressure on me when you I had a TIA. . Unfortunately for you, I can read:

In the Rutter California Practice Guide it says "An appeal automatically stays proceedings on a judgment directing issuance of a writ of mandate. [Hayworth v. City of Oakland (1982) 129 CA3d 723, 727, 181 CR 214, 217; Johnston v. Jones (1927) 74 CA 272, 273, 239 P 862]" It also says that "All mandatory injunctions are automatically stayed by appeal. Otherwise, the result upon a final adjudication could be a "barren victory" (i.e., a reversal on appeal might be "futile" if the action were already performed). [Byington v. Super.Ct. (1939) 14 C2d 68, 70, 92 P2d 896, 897; URS Corp. v. Atkinson/Walsh Joint Venture (2017) 15 CA5th 872, , CR3d , (2017 WL 4251127, *6); Agricultural Labor Relations Bd. v. Super.Ct. (Sam Andrews' Sons) (1983) 149 CA3d 709, 716-717, 196 CR 920, 925-926]"

The appeals stay the actions.

Do NOT contact me again or I will contact the California Bar and let them know that you are blatantly lying to me and that I have informed you that I have counsel who is helping me and who I have instructed you to contact directly. I have not done any research into this, but even if I am representing myself, it is my right to designate someone to act as my agent. You are clearly the worst kind of lawyer and will do anything for money and I won't believe anything you say.

DO NOT RESPOND. I DO NOT WANT TO HEAR FROM YOU AS YOU ARE PUTTING ME IN EMOTIONAL AND PHYSICAL DISTRESS. THIS IS NOT MELODRAMA OR ALARMISM ON MY PART. THIS IS REAL.

Darryl Cotton

On Tue, Dec 19, 2017 at 9:11 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

Dear Darryl,

If you have retained Mr. Jacob Austin in a limited capacity to assist you in appealing the denial of the three ex parte applications, then you are still representing yourself in all other respects in connection with the two underlying lawsuits. As of the present moment, those underlying actions are ongoing as no appeal has yet been filed and, if and when those appeals are filed, the underlying actions will not automatically be stayed.

Put another way, the two underlying lawsuits are still moving forward. I need to take your deposition. In my December 12th email I provided you with available dates for your deposition from which to choose. If you do not advise me by the end of the day which date you prefer, then I will pick from one of those dates and notice your deposition for that date.

In addition, as I also indicated in my December 12th email, you have an obligation to: a) serve amended notices of hearing reflecting the scheduling of the hearings on the motion for preliminary injunction and the motion for peremptory writ of mandate for January 25, 2018, at 9 a.m. in Department 73; b) prepare a proposed Order denying the ex parte application for a TRO containing the judge's findings that i) Defendant Cotton has not carried his burden to show it is more likely than not that he will prevail on the merits, and ii) Defendant Cotton has not carried his burden to show irreparable harm; and c) prepare a proposed Order denying the ex parte application for an order shortening time, which order should include the court's having denied Petitioner Cotton's request for judicial notice of his Verified Petition for Writ of Mandate as well as the court's having denied Real Parties in Interest Geraci/Cotton's request for judicial notice. I have not yet been served with amended notices or provided proposed Orders for my review. You are still obligated to do so.

Thank you.

Michael Weinstein

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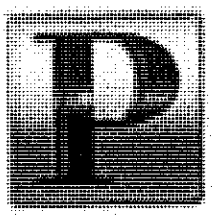

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From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Tuesday, December 19, 2017 8:47 AM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Cc: Jake Austin <jacobaustinesq@gmail.com>

Subject: Re: Follow Up to December 7th Ex Parte Hearings

Michael,

I have decided to appeal the denial of my three ex-parte applications. I have engaged Jacob Austin, who is included in this email, in a limited capacity to help me on my appeal.

Please direct all future correspondence solely to Jacob directly from here onward.

Best regards,

Darryl

On Wed, Dec 13, 2017 at 8:00 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Darryl,
>
> I am sorry to hear about your TIA and hope you are feeling better now.

I grant your request for an extension of time for you to respond to the pending discovery requests from December 13th until December 29th. Please be aware that I will not be able to extend the deadline again as I need those responses.

I will wait for await your response on Monday on which of the dates would work for your deposition.

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
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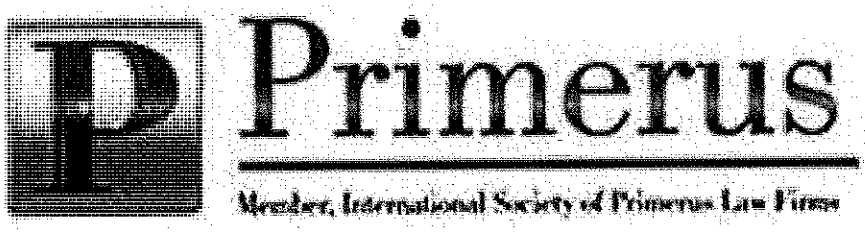

From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Tuesday, December 12, 2017 7:24 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Re: Follow Up to December 7th Ex Parte Hearings

Michael,

First, please know that I understand your role and your duuty is to Gerraci and I have no personal ill will towards you in any way shape or form. If anything, I wish you were my attorney, David turned out to be an incredible disappointmsent.

really, My family actually sent me to the emergency room today after the hearing because I suffered a TIA, essentially a mini-stroke, and I was apparently speaking but not making sense wioth mye words.

Because of the judge's ruling finding that I am not likely to prevail on the meritsss of my casee, my financial backerr, who has at least until this point been financing my legal rrepresentation, told me today that we need to meet on Thursday or Friday and dissscuss whether we continue to proceed and under what terms

I wousld appreciate if I can get back to you on Monday on which dates would work for deposition and if we can push back the dates on delivery of discovery to COB on the 29th. I do not want to push back the OSC hearing becasue the jjudge shuld finally focus on the facts of the case then.

I am meeting with attorneys this week, in case I lose my financial backing, to see if I can find one that will take this matter on on a contingency basis.

Thank you in advance and I appreciate your professional courtesy.

Sincerrely,

Darryl

On Tue, Dec 12, 2017 at 10:30 AM, Michael Weinstein <MWeinstein@ferrisbritton.com> wrote:

> Mr. Cotton,
>
> There are three outstanding issues we need to discuss now that you are representing yourself.
>
> 1. Your Deposition

Last Friday Mr. Demian sent me the Substitution of Attorney forms that were going to be filed with the Court substituting you in as your own attorney (in pro per) in place of Mr. Demian. Mr. Demian also confirmed that you were unable to attend the deposition that was scheduled for Monday, December 11.

I still need to schedule and take your deposition and I need to do so sufficiently in advance of the January 11, 2018, date my clients' opposition papers are due to the pending motions for a preliminary injunction and motion for a peremptory writ of mandate.

I am available to take your deposition on either of the following dates: December 28, December 29, January 3, January 4, or January 5. Please advise me by reply email by 5 p.m. on Thursday, December 14, which of those available dates you prefer for your deposition. If I do not hear from you by then regarding your preferred date, then I will simply schedule and notice your deposition from among those 5 dates.

2. Your Discovery Responses

Please be reminded that on or before tomorrow, Wednesday, December 13, 2017, your written responses are due to the attached pending discovery requests previously served on you by mailing them to your then attorneys on November 8, 2013. Copies are attached for your ease of reference.

3. The Amended Notices of Hearing and the Proposed Orders Re Your December 7th Ex Parte Hearings

At the conclusion of the two ex parte hearings on December 7, Judge Wohlfeil ordered David Demian, as your attorney, to: a) serve amended notices of hearing reflecting the scheduling of the hearings on the motion for preliminary injunction and the motion for peremptory writ of mandate for January 25, 2018, at 9 a.m. in Department 73; b) prepare a proposed Order denying the ex parte application for a TRO containing the judge's findings that i) Defendant Cotton has not carried his burden to show it is more likely than not that he will prevail on the merits, and ii) Defendant Cotton has not carried his burden to show irreparable harm; and c) prepare a proposed Order denying the ex parte application for an order shortening time, which order should include the court's having denied Petitioner Cotton's request for judicial notice of his Verified Petition for Writ of Mandate as well as the court's having denied Real Parties in Interest Geraci/Cotton's request for judicial notice. The obligation to prepare and file the amended notices of hearing and to prepare and file the proposed Orders now falls to you as you have

substituted in as your own attorney. If you have any questions about these obligations, then you may wish to ask Mr. Demian about them.

Also, please be aware that you should send the proposed Orders to me for my review and comment before submitting them to the court. (You are not required to send me the amended notices of hearing for my review in advance of your filing them with the court.)

Thank you.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
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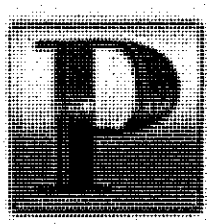
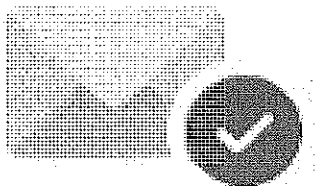


From: Darryl Cotton [mailto:indagrodarryl@gmail.com]
Sent: Monday, December 11, 2017 2:19 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>
Subject: Geraci Notice of Ex Parte Hearing 12-12-17

Michael,

I have decided to replace my legal counsel in the Geraci matter and will be representing myself tomorrow in front of Judge Wohlfeil. Please see the attached pleadings.

Darryl Cotton



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Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

EXHIBIT 15 [ROAs 52-53]

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

Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil

NOTICE OF DEMURRER AND DEMURRER BY CROSS-DEFENDANT LARRY GERACI TO SECOND AMENDED CROSS-COMPLAINT BY DARRYL COTTON

[IMAGED FILE]

DATE: **November 3, 2017**
TIME: **9:00 a.m.**
DEPT: **C-73**

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

TO EACH PARTY AND THEIR ATTORNEYS OF THE RECORD:

PLEASE TAKE NOTICE that, on November 3, 2017, at 9:00 a.m. or as soon thereafter as the matter may be heard in Department C-73 of this Court, located at 330 West Broadway, San Diego, California, 92101, Plaintiff and Cross-Defendant, LARRY GERACI (hereafter "Geraci"), will and hereby does move the Court to sustain his demurrer to the Second Amended Cross-Complaint filed on August 25, 2017, by Defendant and Cross-Complainant, DARRYL COTTON (hereafter "Cotton" or

"Cross-Complainant"), on each of the grounds set forth below.

DEMURRER

The Cross-Complaint's alleged first, second, third, and fourth causes of action, and each of them, fail to state facts sufficient to constitute a cause of action against Geraci (Code Civ. Proc., § 430.10(e)) on the grounds and for the reasons set forth below and explained in detail in the accompanying Memorandum of Points and Authorities.

FIRST CAUSE OF ACTION

1. The first cause of action for breach of contract fails to state a cause of action against Geraci because Cross-Complainant alleges an oral agreement (or partly oral, partly written agreement) for the purchase and sale of the subject real propertied that is barred by the applicable statute of frauds.

2. The first cause of action for breach of contract fails to state a cause of action because it fails to allege facts resulting in an actionable breach. (Cal. Code Civ. Proc. § 430.10(e).)

SECOND CAUSE OF ACTION

3. The second cause of action for intentional misrepresentation does not state a cause of action because it fails to allege facts which, if true, are sufficient to establish the element of justifiable reliance. (Cal. Code Civ. Proc. § 430.10(e).)

THIRD CAUSE OF ACTION

4. The third cause of action for negligent misrepresentation does not state a cause of action because it fails to allege facts which, if true, are sufficient to establish the element of justifiable reliance. (Cal. Code Civ. Proc. § 430.10(e).)

5. The third cause of action for negligent misrepresentation fails to state a cause of action because under California law, a party cannot plead both a cause of action for negligent misrepresentation and promissory fraud. (Cal. Code Civ. Proc. § 430.10(e).)

FOURTH CAUSE OF ACTION

6. The fourth cause of action for false promise does not state a cause of action because it fails to allege facts which, if true, are sufficient to establish the element of justifiable reliance. (Cal. Code Civ. Proc. § 430.10(e).)

For each of such reasons, Geraci moves for an order of this Court sustaining the demurrers to

the first, second, third, and fourth causes of action without leave to amend unless Cross-Complainant can make a sufficient offer of proof that he can cure the pleading deficiencies.

The demurrers are based upon this Notice of Demurrer and Demurrer, the supporting Memorandum of Points and Authorities, the supporting Declaration of Michael R. Weinstein, the records and files in this action, and such further matters that may be properly presented prior to or at the time of hearing on the motion.

NOTICE IS FURTHER GIVEN that a tentative ruling is issued the day before the date set forth for hearing, this court follows rule 3.1308(a)(2) and no notice of intent to appear is required to appear for argument. The tentative ruling shall be made available at 3:30 p.m. on the court day prior to the scheduled hearing. The tentative ruling may direct the parties to appear for oral argument, and may specify the issues on which the court wishes the parties to provide further argument. The tentative ruling may be obtained by calling the court tentative ruling number at (619) 450-7381 or by navigating to the court's website www.sandiego.courts.ca.gov.

Dated: September 28, 2017

FERRIS & BRITTON,
A Professional Corporation

By 
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

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

Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

Judge: Hon. Joel Wohlfeil

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CROSS-DEFENDANT LARRY GERACI'S DEMURRER TO SECOND AMENDED CROSS-COMPLAINT BY DARRYL COTTON

[IMAGED FILE]

DATE: **November 3, 2017**
TIME: **9:00 a.m.**
DEPT: **C-73**

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

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Plaintiff and Cross-Defendant LARRY GERACI (hereafter "Geraci") respectfully submits these points and authorities in support of his Demurrer to Cross-Complainant DARRYL COTTON's (hereafter "Cotton" or "Cross-Complainant) Second Amended Cross-Complaint filed on August 25, 2017 (hereafter "SAXC").

I. RELIEF REQUESTED AND SUMMARY OF THE ARGUMENTS

The SAXC alleges five causes of action by Cotton against Geraci: the first cause of action for breach of contract; the second cause of action for intentional misrepresentation; the third cause of action for negligent misrepresentation; the fourth cause of action for false promise; and the fifth cause of action for declaratory relief. Each of the five causes of action against Geraci arises out of, or relates to, a dispute concerning a contract for the purchase and sale of real property between Geraci and Cotton. Geraci demurs to the first, second, third, and fourth causes of action asserted against him upon the following grounds:

1. The first cause of action for breach of contract fails to state a cause of action because Cotton alleges an oral agreement (or partly oral, partly written agreement) for the purchase and sale of the subject real property that is barred by the applicable Statute of Frauds. (Civ. Code, § 1624(a)(3).)

2. The first cause of action for breach of contract fails to state a cause of action because it fails to allege a necessary element of that cause of action – actionable breach.

3. Each of the misrepresentation claims, the second, third, and fourth causes of action for the torts of intentional misrepresentation, negligent misrepresentation, and false promise, respectively – do not state a cause of action as Cotton has not alleged facts which, if true, are sufficient to establish the element of justifiable reliance.

4. Under California law there cannot be a promissory fraud cause of action and a negligent misrepresentation cause of action based upon the same set of identical facts.

II. FACTUAL ALLEGATIONS

The relevant factual allegations supporting Cotton's first cause of action for breach of contract are found in the paragraphs of the SAXC, as follows:

> 8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it meets certain requirements of the City of San Diego ("City") for obtaining a Conditional Use

Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the Property. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property . . ..

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

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

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

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

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

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

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

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

17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit but Geraci offered to pay $10,000 towards the $50,000 total deposit immediately as a show of "good-faith," even though the parties had not reduced their final agreement

to writing. Cotton was understandably concerned that Geraci would file the CUP application before paying the balance of the non-refundable deposit and Cotton would never receive the remainder of the non-refundable deposit if the City denied the CUP application before Geraci paid the remaining $40,000 (thereby avoiding the parties' agreement that the $50,0000 non-refundable deposit was intended to shift to Geraci some of the risk of the CUP application being denied). Despite his reservations, Cotton agreed to Geraci's request and accepted the lesser $10,000 initial deposit amount based upon Geraci's express promise to pay the $40,000 balance of the non-refundable deposit prior to submission of the CUP application, at the latest.

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

> Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,00.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)
>
> Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed not to enter into any other contacts[sic] on this property.

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

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

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

Paragraphs 19-28 set forth a litany of factual allegations that can be summarized as follows: The written agreement signed November 2, 2016, did not contain all of the material terms and conditions of the agreement that Cotton alleges were really agreed to on November 2, 2016. After signing that incomplete written agreement[1], the parties had numerous oral and written communications

[1] Plaintiff and Cross-Defendant Geraci alleges in his Complaint that the written agreement signed November 2, 2016, contains all the material terms and conditions of the agreement for the purchase and sale of the subject real property and is the entire agreement enforceable between the parties. Defendant and Cross-Complainant Cotton contends that written agreement signed November 2, 2016, sets forth only some of the material terms and conditions agreed to by the parties on November 2nd and some different and additional material terms and conditions not reflected in a signed writing were agreed to by the parties.

about documenting in a signed writing all the material terms and conditions Cotton alleges had been agreed to orally on November 2nd, but never did so. In other words, there is no written agreement signed by Cotton and Geraci containing all of the material terms and conditions Cotton alleges were agreed to on November 2nd. In addition, one of those material terms and conditions Cotton claims was orally agreed to ($50k earnest money) directly contradicts the November 2, 2016, written agreement which clearly states that $10k would be paid as earnest money and acknowledges that such payment has been received.

III. LEGAL STANDARD ON DEMURRER

When a complaint, or any cause of action in a complaint, fails to state facts sufficient to constitute a cause of action, the court may grant a demurrer. (Code Civ. Proc., § 430.30.) The court considers the allegations on the face of the complaint and any matter of which it must or may take judicial notice under the Code of Civil Procedure section 430.30(a). (*Groves v. Peterson* (2002) 100 Cal.App.4th 659; Code Civ. Proc., § 430.30(a).) In reviewing the sufficiency of a complaint against a demurrer, the court treats the demurrer as admitting all material facts properly pleaded. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (citing to *Serrano v. Priest* (1971) 5 Cal.3d 584, 591); *Adelman v. Associated Ins. Co.* (2001) 90 Cal.App.4th 352, 359.) However, contentions, deductions, or conclusions of fact or law are insufficient to constitute a cause of action. (*Id.*)

The court may grant a demurrer with or without leave to amend when it is obvious from the facts alleged that the plaintiff could not state a cause of action. (See *Hillman v. Hillman Land Co.* (1947) 81 Cal.App.2d 174, 181; see generally *Carney v. Simmonds* (1957) 49 Cal.2d 84, 97; see *Smiley v. Citibank* (1995) 11 Cal.4th 138, 164; Code Civ. Proc., § 430.30(j).) The party seeking leave to amend their pleading bears the burden of establishing that there is a reasonable possibility that the defect can be cured by amendment. (See *Blank v. Kirwan, supra,* 39 Cal.3d at p. 318; *Gould v. Maryland Sound Industries* (1995) 31 Cal.App.4th 1137, 1153.)

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IV. LEGAL ARGUMENT

A. THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT FAILS TO STATE A CAUSE OF ACTION

1. Cotton's Allegations of an Oral, or of a Partly Oral or Partly Written Agreement, Violate the Applicable Statute of Frauds – Civ. Code § 1624(a)(3)

A contract coming within the statute of frauds is invalid unless it is memorialized by a writing subscribed by the party to be charged or by the party's agent. (Civ. Code, § 1624; *Secrest v. Security National Mortgage Loan Trust,* (2008) 167 Cal.App.4th 544) An agreement for the sale of real property or an interest in real property comes within the statute of frauds. (Civ. Code, § 1624(a)(3).) Here, both parties allege, and therefore it is undisputed, that they signed a November 2, 2016, written agreement. This written agreement between the parties is the controlling evidence under the statute of frauds. Cotton alleges, based on extrinsic evidence, that the actual agreement between the parties contains material terms and conditions in addition to those in the written agreement as well as a term (a $50,000 deposit rather than the $10,000 deposit stated in the written agreement) that expressly conflicts with a term of the November 2, 2016 agreement. However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the written memorandum. (*Beazell v. Schrader* (1963) 59 Cal.2d 577.)

The controlling law is set forth in *Sterling v. Taylor* (2007) 40 Cal.4th 757, as follows:

> We emphasize that a memorandum of the parties' agreement is controlling evidence under the statute of frauds. Thus, extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the memorandum. This point was made in *Beazell v. Schrader* (1963) 59 Cal.2d 577, 30 Cal.Rptr. 534, 381 P.2d 390. There, the plaintiff sought to recover a 5 percent real estate broker's commission under an oral agreement. (*Id.* at p. 579, 30 Cal.Rptr. 534, 381 P.2d 390.) The escrow instructions, which specified a 1.25 percent commission, were the "memorandum" on which the plaintiff relied to comply with the statute. However, he contended the instructions incorrectly reflected the parties'' actual agreement, as shown by extrinsic evidence. (*Id.* at p. 580, 30 Cal.Rptr. 534, 381 P.2d 390.) The *Beazell* court reject this argument, **holding that under the statute of frauds, "the parol agreement of which the writing is a memorandum must be one whose terms are consistent with the terms of the memorandum."** (*Id.* at p. 582, 30 Cal.Rptr. 534, 381 P.2d 390.) Thus, in determining whether extrinsic evidence provides the certainty required by the statute, courts must bear in mind that **the evidence cannot contradict the terms of the writing.** (Bold added.)

Sterling v. Taylor, supra, 40 Cal.4th at p. 771-772.

See also *Ukkestad v. RBS Asset Finance, Inc.* (2015) 235 Cal.App.4th 156 ("In the context of a case arising from a dispute over the certainty of the terms of sale of real property, our Supreme court recently endorsed a "flexible, pragmatic view," under which uncertain written contractual terms comply with the statute of frauds as long as the can be made certain by reference to extrinsic evidence, **and as long as the evidence is not used to contradict the written terms**. (*Sterling, supra,* 40 Cal.4th at p. 771, fn. 13.).) See also, *Jacobs v. Locatelli* (2017) 8 Cal.App.5th 317, 325 ("As a result of *Sterling*, it is indisputably the law that "when ambiguous terms in a memorandum are disputed, extrinsic evidence is admissible to resolve the uncertainty." (*Sterling, supra*, 40 Cal.4th at p. 767.) The agreement must still provide the essential terms, and it is "clear that extrinsic evidence cannot supply those required terms." (*Ibid.*))

In the instant case, the only writing signed by both parties is the November 2, 2016 written agreement, which explicitly provides for a $10,000 down payment ("earnest money to be applied to the sales price"); in fact, the agreement acknowledges receipt of that down payment. Cotton is alleging that the oral agreement provided for a down payment of $50,000, which is in direct contradiction of the written term of a $10,000 down payment.

2. The First Cause of Action for Breach of Contract Fails as a Matter of Law as It Does Not Allege Actionable Breach

"To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) plaintiff's performance of the contract or excuse for nonperformance, (3) defendant's breach, and (4) resulting damage to the plaintiff." (*Richman v. Hartley,* (2014) 224 Cal.App.4th 1182, 1186.) "It is Hornbook law that an agreement to make an agreement is nugatory, and that this is true of material terms of any contract." (*Roberts v. Adams* (1958) 164 Cal.App.2d 312, 314.) "[N]either law nor equity provides a remedy for a breach of an agreement to agree in the future." (*Id.* at p. 316)

The pertinent allegations regarding Cotton's breach of contract cause of action are found in the SAXC as follows:

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

and hinder the process of negotiations, and failing to timely or constructively response to Cotton's requests and communications.

It is basic contract law that a breach of contract occurs when a party to a contract deliberately refuses to do that which he or she has agreed and is required to under the contract. (*Spangenberg v. Spangenberg* (1912) 19 Cal.App. 439.) A contract may be breached by "nonperformance," meaning an unjustified failure to perform a material contractual obligation when performance is due, it may be breached by repudiation, or it may be breached by a combination of the two. (*Central Valley General Hosp. v. Smith* (2009) 162 Cal.App.4th 501.)

The written contract entered on November 2, 2012 reads as follows:

> Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)
>
> Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed not to enter into any other contacts (sic) on this property. (SAXC ¶18)

Cotton has not alleged that Geraci breached any obligations set forth in the November 2, 2016 written agreement. Cotton has not alleged Geraci failed to pay the $10k earnest money (in fact, the written agreement acknowledges it has been paid). And Cotton has not alleged the CUP Application has been approved and Geraci has failed to tender the remaining balance of the purchase price.

Instead, Cotton alleges that on November 2, 2016, the parties orally agreed to other and different material terms and conditions not set forth in the November 2, 2016, written agreement, including an obligation to negotiate in good faith to reduce these other and different material terms and conditions to a signed writing, and that Geraci breached the alleged agreement by failing to negotiate in good faith to do so. (SAXC, ¶ 36.)

This alleged failure to negotiate in good faith to reduce these other and different material terms and conditions to a signed writing cannot as a matter of law constitute an actionable breach. It is simply an admission by Cotton that these alleged other and different material terms and conditions were never reduced to a writing sign by both Cotton and Geraci, and, therefore, the alleged oral (or

partly oral, partly written) agreement alleged by Cotton is barred by the Statute of Frauds. Cotton cannot bootstrap around the Statute of Frauds by alleging that Geraci's failure to negotiate in good faith to reduce these other and different material terms and conditions to a signed writing was itself an actionable breach of an otherwise unenforceable contract.

B. THE SECOND, THIRD AND FOURTH CAUSES OF ACTION FAIL TO STATE A CAUSE OF ACTION

1. Each of the misrepresentation claims, the 2nd, 3rd and 4th causes of action for intentional misrepresentation, negligent misrepresentation, and false promise, do not state a cause of action. Cotton has not alleged facts which, if true, are sufficient to establish the element of justifiable reliance.

In order to state a cause of action for intentional misrepresentation, negligent misrepresentation, or false promise, the plaintiff must allege reasonable reliance on defendant representations. (CACI Nos. 1900, 1902, and 1903.) An essential element for a claim of promissory fraud is a specific allegation of reliance that is reasonable. (*Behnke v. State Farm* (2011) 196 Cal.App.4th 1443, 1452 (noting "justifiable reliance" and "reasonable reliance" by the promisee are an essential element).) Stated differently, to recover for fraud, Plaintiff must show it reasonably relied on the defendant's misrepresentations. A Plaintiff cannot recover if reliance was not justified or reasonable. (*Wagner v. Benson* (1980) 101 Cal.App.3d 27, 36 ("plaintiffs' reasonable reliance on the alleged misrepresentation is an essential element of fraud").) "The law is well established that actionable misrepresentations must pertain to past or existing material facts. Statements or predictions regarding future events are deemed to be mere opinions which are not actionable." (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469.)

"[T]here are two causation elements in a fraud cause of action. First, the plaintiff's actual and justifiable reliance on the defendant's misrepresentation must have caused him to take a detrimental course of action. Second, the detrimental action taken by the plaintiff must have caused his alleged damage." (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1062.)

"Actual reliance occurs when a misrepresentation is "'an immediate cause of [a plaintiffs] conduct, which alters his legal relations,'" and when, absent such representation, "'he would not, in all reasonable probability, have entered into the contract or other transaction."' (*Engala v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 976-977.)

"'Besides actual reliance, [a] plaintiff must also show "justifiable" reliance, i.e., circumstances were such to make it *reasonable* for [the] plaintiff to rely on defendant's statements without an independent inquiry or investigation.' [Citation.] The reasonableness of the plaintiff's reliance is judged by reference to the plaintiff's knowledge and experience. (5 Witkin, Summary of Cal. Law, Torts, § 808, p. 1164.) "Except in the rare case where the undisputed facts leave no room for a reasonable difference of opinion, the question of whether a plaintiff's reliance is reasonable is a question of fact." [Citations.]' [Citation."] (*Ocm Principal Opportunities Fund v. Cibc World Markets Corp.* (2007) 157 Cal.App.4th 835, 864-865.)

When a promise contradicts the express terms of the contract, proving justifiable reliance is an uphill battle. (*Pacific State Bank v. Greene* (2003) 110 Cal.App.4th 375, 393.) This is because of the general principle that a party who signs a contract "cannot complain of unfamiliarity with the language of the instrument" (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal .3d 699, 710), the defrauded party must show a reasonable reliance on the misrepresentation that excuses the failure to familiarize himself with the contents of the document. (Rest.2d Contracts, §§ 164, 166; *California Trust Co. v. Cohn* (1932) 214 Cal. 619.) For instance, a "party's *unreasonable* reliance on the other's misrepresentations, resulting in a failure to read a written agreement before signing it, is an insufficient basis, under the doctrine of fraud in the execution ... " for permitting that party to void the agreement. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996)14 Cal.4th 394, 423.) Thus, the particular circumstances of the contract's execution, including the prominent and discernible provisions of the contents of the writing in issue, must make it reasonable for the party claiming fraud to have nonetheless relied on the mischaracterization. This is not an easily met burden of proof.

More importantly for purposes of this demurrer, Cotton has not alleged facts which, if true, are sufficient to support a finding of reasonable reliance. This is self-evident considering that the misrepresentations Cotton is claiming reliance upon are in direct conflict with the clear, unambiguous written agreement signed by Cotton. It does not appear Cotton can amend to allege a factual scenario by which Cotton would be able to establish reasonable reliance on alleged misrepresentations made by Geraci.

Furthermore, Cotton has admitted that he was ***hesitant, understandably concerned and despite his hesitation, concerns and reservations*** he agreed to Geraci's terms. (SAXC ¶17) It is difficult to reconcile Cotton's hesitation, concerns and reservations in dealing with Geraci with his claim to have reasonably relied on Geraci's representations. Rather it appears that Cotton did not trust Geraci's alleged representations and entered the agreement regardless of his misgivings regarding Geraci. Such reliance cannot be said to have been reasonable in light of Cotton's admissions in his pleadings.

2. The Third Cause of Action for Negligent Misrepresentation Fails to State a Claim Upon Which Relief May Be Granted Because Intentional Fraud and Negligent Misrepresentation Base On the Same Facts Cannot Co-Exist

Cross-Complainant's Fourth Cause of Action labeled "False Promise", is for a type of fraud often referred to as "promissory fraud;" i.e., a promise made without the intent to perform. (SAXC, ¶¶ 47-54) Cross-Complainant's Third Cause of Action for Negligent Misrepresentation and Fourth Cause of Action for promissory fraud, rely upon the same exact facts (SAXC ¶¶ 43, 47), incorporating by reference all previous allegations of the complaint], and attempt to plead the "false promise" cause of action alternatively with the "negligent misrepresentation" cause of action. While pleading alternative legal theories based on the same facts is usually acceptable, in this instance Cross-Complainant's Third Cause of Action fails because California law clearly holds that a promise made without the intent to perform cannot form the basis for a claim of negligent misrepresentation.

Cross-Complainant's Third Cause of Action (Negligent Misrepresentation) is on all fours with, and is governed by, the decision in *Tarmann v. State Farm* (1991) 2 Cal.App.4th 153. There, plaintiff alleged claims for fraud and negligent misrepresentation based on her contention that the defendant insurer had falsely promised that it would pay for repairs to her automobile upon their completion. When the insurance company in fact declined to pay, plaintiff brought an action alleging that the insurer's representations about payment were either intentionally or negligently false.

The trial court sustained Defendant's demurrer to the negligent misrepresentation claim without leave to amend, and the Court of Appeal affirmed. In so doing, it began its analysis by noting that "to be actionable, a negligent misrepresentation must ordinarily be as to past or existing material facts. [P]redictions as to future events, or statements as to future action by some third party, are deemed opinions, and not actionable fraud. [Citations omitted]." (*Tarmann, supra,* 2 Cal.App.4th at p. 158.)

There is no question that Cotton alleged that the basis of his allegations regarding fraud were that Geraci promised to take certain actions in the future. (See SAXC ¶¶ 45(c), 45(b), 48(a), 48(b), 48(c), 48(d).)

The Court went on to compare the elements of fraud and negligent misrepresentation, as follows:

> To maintain an action for deceit based on a false promise, one must specifically allege and prove, among other things, that the promisor did not intend to perform at the time he or she made the promise and that it was intended to deceive or induce the promise to do or not to do a particular thing. [Citations omitted]. Given this requirement, an action based on a false promise is simply a type of intentional misrepresentation, i.e., actual fraud. *The specific intent requirement also precludes pleading a false promise claim as a negligent misrepresentation, i.e., 'the assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.'* (Civil Code Section 1710, subd. (2).) Simply put, making a promise with an honest but unreasonable intent to perform is wholly different from making one with no intent to perform and, therefore, does not constitute a false promise. Moreover, we decline to establish a new type of actionable deceit: the negligent false promise. In light of our discussion, the trial court properly sustained the demurrer to [Plaintiff's] cause of action for negligent misrepresentation." *Tarmann, supra, 2* Cal.App.4th at 159 (emphasis added.)

Cross-Complainant cannot have it both ways. His allegations that Plaintiff made promises about future actions without the intent to perform simply cannot support a claim for negligent misrepresentation. The Demurrer to the Third Cause of Action, as in *Tarmann*, should be sustained without leave to amend.

V. LEAVE TO AMEND

The Court may grant a demurrer with or without leave to amend, and the burden is on the party seeking leave to amend their pleading to establish that the pleading is capable of amendment. (See *Hillman v. Hillman Land Co., supra,* 81 Cal.App.2d at p. 181; see generally *Carney v. Simmonds, supra,* 49 Cal.2d at p. 97; see *Smiley v. Citibank, supra,* 11 Cal.4th at p. 164; see *Blank v. Kirwan, supra,* 39 Cal.3d at p. 318; *Gould v. Maryland Sound Industries, supra,* 31 Cal.App.4th at p. 1153; Code Civ. Proc., § 430.30; Cal. Rules of Court, rule 3.1320(g).) A plaintiff does not meet its burden unless it advises the trial court of new information that would contribute to a meaningful amendment. (See e.g. *Ross v. Creel Printing & Publishing Co.* (2002) 100 Cal.App.4th 736, 749.)

This Court should grant the motion *without leave to amend unless* Cross-Complainant makes an offer of proof that he can in good faith allege facts establishing the elements of each of the remaining

claims.

VI. CONCLUSION

For the foregoing reasons and subject to a sufficient offer of proof, Geraci's demurrers to each of the causes of action should each be sustained without leave to amend.

Dated: September 28, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Scott H. Toothacre
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

EXHIBIT 16 [ROA 183]

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

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

NOTICE OF LODGMENT IN SUPPORT OF PLAINTIFF LARRY GERACI'S OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

[IMAGED FILE]

Hearing Date: **April 13, 2018**
Hearing Time: **9:00 a.m.**

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

Plaintiff, LARRY GERACI, hereby lodges the following documents as exhibits to this Notice of Lodgment ("NOL") in support of his Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens:

Ex. No.	Exhibit Description	Evidentiary Foundation
1.	Ownership Disclosure Statement (Form DS-318) signed by Darryl Cotton and Rebecca Berry, dated October 31, 2016,	Declaration of Larry Geraci, ¶ 8; Declaration of Abhay Schweitzer, ¶ 5
2.	Written real estate purchase and sale agreement between Larry Geraci and Darryl Cotton dated November 2, 2016 (the "Nov 2nd Written Agreement")	Declaration of Larry Geraci, ¶ 5
3.	Geraci's AT&T Call Detail	Declaration of Larry Geraci, ¶ 10
4.	Email to Darryl Cotton from Firouzeh Tirandazi, dated March 21, 2017 at 8:54 a.m.	Declaration of Larry Geraci, ¶ 14
5.	Email to Larry Geraci from Darryl Cotton, dated March 21, 2017 at 3:18 p.m.	Declaration of Larry Geraci, ¶ 15
6.	Email to Firouzeh Tirandazi from Darryl Cotton, dated March 21, 2017 at 3:25 p.m.	Declaration of Larry Geraci, ¶ 16
7.	Text Message to Larry Geraci from Darryl Cotton, dated November 16, 2016	Declaration of Larry Geraci, ¶ 23
8.	Purchase and Sale Agreement between Darryl Cotton and Richard John Martin II, dated March 21, 2017	Declaration of Michael R. Weinstein, ¶ 2

Dated: April 10, 2018

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Plaintiff and Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

EXHIBIT 1

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 No. *For City Use Only*

Project Title

Federal Blvd. MMCC

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 : Date: 10-31-2016

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 : 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):
☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency
Street Address:
City/State/Zip:
Phone No: Fax No:
Signature : Date:

EXHIBIT 2

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

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

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

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 3

TAX AND FINANCIAL CENTER
5402 RUFFIN RD STE 200
SAN DIEGO, CA 92123-1301

Bill Cycle Date: 11/02/16 - 12/01/16
Account: 835642301
Foundation Account: FAN 02761582
Invoice: 835642301X12092016

Visit us online at: **www.att.com/business**

858 956-4040
TAX AND FINANCIAL CENTER

Call Detail

Time	Place Called	Number Called	Rate Code	Feature Code	Min	Airtime Charges	LD/Addl Charges
Wednesday, 11/02							
08:48a	SNDG S CA	619-[redacted]	SDDV		2	0.00	0.00
09:01a	LA JOL CA	858-[redacted]	SDDV		4	0.00	0.00
09:04a	LA JOL CA	858-[redacted]	SDDV		2	0.00	0.00
09:06a	SNDG S CA	619-[redacted]	SDDV		2	0.00	0.00
09:09a	SNDG M CA	858-[redacted]	SDDV		15	0.00	0.00
01:12p	SNDG M CA	858-[redacted]	SDDV		6	0.00	0.00
01:18p	CORONA CA	619-[redacted]	SDDV		12	0.00	0.00
01:30p	INCOMI CL	619-954-4447	SDDV		11	0.00	0.00
01:50p	SNDG S CA	619-[redacted]	SDDV		2	0.00	0.00
01:52p	SNDG S CA	619-954-4447	SDDV		2	0.00	0.00
01:55p	INCOMI CL	858-[redacted]	SDDV		2	0.00	0.00
02:12p	SNDG S CA	619-[redacted]	SDDV		2	0.00	0.00
02:15p	LA JOL CA	858-[redacted]	SDDV		3	0.00	0.00
02:17p	SNDG S CA	619-[redacted]	SDDV		1	0.00	0.00
02:24p	INCOMI CL	858-[redacted]	SDDV		3	0.00	0.00
02:27p	SNDG S CA	619-[redacted]	SDDV		1	0.00	0.00
02:36p	INCOMI CL	619-[redacted]	SDDV		1	0.00	0.00
02:45p	CORONA CA	619-[redacted]	SDDV		3	0.00	0.00
02:47p	SNDG L CA	858-[redacted]	SDDV		3	0.00	0.00
03:15p	INCOMI CL	858-[redacted]	SDDV		5	0.00	0.00
03:20p	CORONA CA	619-[redacted]	SDDV		2	0.00	0.00
03:21p	INCOMI CL	619-[redacted]	SDDV		2	0.00	0.00
03:23p	CORONA CA	619-[redacted]	SDDV		2	0.00	0.00
03:24p	SNDG M CA	858-[redacted]	SDDV		7	0.00	0.00
03:31p	ESCOND CA	760-[redacted]	SDDV		1	0.00	0.00
03:32p	INCOMI CL	619-[redacted]	SDDV		9	0.00	0.00
03:41p	SNDG M CA	858-[redacted]	SDDV		1	0.00	0.00
03:45p	BLOCKED	000-[redacted]	SDDV		1	0.00	0.00
04:05p	INCOMI CL	619-[redacted]	SDDV		2	0.00	0.00
04:15p	INCOMI CL	619-[redacted]	SDDV		2	0.00	0.00
04:16p	LA JOL CA	858-[redacted]	SDDV		1	0.00	0.00
04:17p	SNDG S CA	619-[redacted]	SDDV		5	0.00	0.00
04:28p	INCOMI CL	619-[redacted]	SDDV		9	0.00	0.00
04:39p	INCOMI CL	702-[redacted]	SDDV		1	0.00	0.00
04:44p	INCOMI CL	917-[redacted]	SDDV		1	0.00	0.00
07:09p	LA JOL CA	858-[redacted]	SDDV		6	0.00	0.00
Thursday, 11/03							
08:59a	INCOMI CL	858-[redacted]	SDDV		4	0.00	0.00
09:34a	SNDG M CA	858-[redacted]	SDDV		14	0.00	0.00
09:48a	SNDG L CA	858-[redacted]	SDDV		10	0.00	0.00
11:09a	SNDG M CA	858-[redacted]	SDDV		3	0.00	0.00
12:40p	SNDG S CA	619-954-4447	SDDV		3	0.00	0.00
12:43p	LA JOL CA	858-[redacted]	SDDV		6	0.00	0.00
01:25p	INCOMI CL	619-[redacted]	SDDV		1	0.00	0.00
01:32p	CORONA CA	619-[redacted]	SDDV		1	0.00	0.00
01:33p	CORONA CA	619-[redacted]	SDDV		8	0.00	0.00
01:47p	SNDG S CA	619-[redacted]	SDDV		1	0.00	0.00
01:55p	INCOMI CL	858-[redacted]	SDDV		2	0.00	0.00
02:22p	CORONA CA	619-[redacted]	SDDV		1	0.00	0.00
Thursday, 11/03							
02:27p	INCOMI CL	619-[redacted]	SDDV		1	0.00	0.00
02:29p	LA JOL CA	858-[redacted]	SDDV		3	0.00	0.00
02:38p	LA JOL CA	858-[redacted]	SDDV		2	0.00	0.00
02:43p	ESCOND CA	760-[redacted]	SDDV		1	0.00	0.00
03:03p	INCOMI CL	858-[redacted]	SDDV		1	0.00	0.00
03:11p	INCOMI CL	619-[redacted]	SDDV		1	0.00	0.00
04:19p	CORONA CA	619-[redacted]	SDDV		1	0.00	0.00
05:21p	INCOMI CL	619-[redacted]	SDDV		1	0.00	0.00
05:42p	INCOMI CL	619-[redacted]	SDDV		3	0.00	0.00
05:44p	INCOMI CL	619-[redacted]	SDDV		1	0.00	0.00
05:45p	INCOMI CL	858-[redacted]	SDDV		3	0.00	0.00
05:49p	SNDG M CA	858-[redacted]	SDDV		1	0.00	0.00
05:52p	CORONA CA	619-[redacted]	SDDV		2	0.00	0.00
05:55p	CORONA CA	619-[redacted]	SDDV		1	0.00	0.00
06:06p	INCOMI CL	858-[redacted]	SDDV		3	0.00	0.00
06:44p	INCOMI CL	858-[redacted]	SDDV		2	0.00	0.00
07:19p	INCOMI CL	858-[redacted]	SDDV		1	0.00	0.00
07:28p	INCOMI CL	858-[redacted]	SDDV		2	0.00	0.00
08:00p	LA JOL CA	858-[redacted]	SDDV		1	0.00	0.00
08:01p	LA JOL CA	858-[redacted]	SDDV		2	0.00	0.00
08:27p	LA JOL CA	858-[redacted]	SDDV		1	0.00	0.00
08:48p	CORONA CA	619-[redacted]	SDDV		3	0.00	0.00
10:03p	INCOMI CL	619-[redacted]	SDDV		13	0.00	0.00
10:16p	SNDG M CA	858-[redacted]	SDDV		3	0.00	0.00
Friday, 11/04							
09:14a	SNDG M CA	858-[redacted]	SDDV		1	0.00	0.00
09:38a	LA JOL CA	858-[redacted]	SDDV		15	0.00	0.00
09:53a	SNDG S CA	619-[redacted]	SDDV		4	0.00	0.00
10:52a	LA JOL CA	858-[redacted]	SDDV		1	0.00	0.00
10:53a	INCOMI CL	858-[redacted]	SDDV		2	0.00	0.00
11:02a	INCOMI CL	619-[redacted]	SDDV		1	0.00	0.00
12:06p	ESCOND CA	760-[redacted]	SDDV		8	0.00	0.00
12:14p	SNDG M CA	858-[redacted]	SDDV		6	0.00	0.00
12:20p	CORONA CA	619-[redacted]	SDDV		2	0.00	0.00
12:36p	INCOMI CL	405-[redacted]	SDDV		1	0.00	0.00
12:37p	SNDG S CA	619-[redacted]	SDDV		1	0.00	0.00
12:37p	INCOMI CL	619-[redacted]	SDDV		1	0.00	0.00
12:53p	INCOMI CL	714-[redacted]	SDDV		2	0.00	0.00
12:58p	INCOMI CL	714-[redacted]	SDDV		4	0.00	0.00
01:08p	LA JOL CA	858-[redacted]	SDDV		2	0.00	0.00
01:10p	EL CAJ CA	619-[redacted]	SDDV		8	0.00	0.00
01:22p	INCOMI CL	714-[redacted]	SDDV		3	0.00	0.00
02:39p	INCOMI CL	619-[redacted]	SDDV		3	0.00	0.00
02:42p	OKLA C OK	405-[redacted]	SDDV		2	0.00	0.00
03:06p	SNDG M CA	858-[redacted]	SDDV		2	0.00	0.00
03:08p	OKLA C OK	405-[redacted]	SDDV		1	0.00	0.00
03:09p	CORONA CA	619-[redacted]	SDDV		2	0.00	0.00
03:11p	INCOMI CL	619-[redacted]	SDDV		8	0.00	0.00
03:33p	INCOMI CL	619-[redacted]	SDDV		10	0.00	0.00
04:04p	LA JOL CA	858-[redacted]	SDDV		9	0.00	0.00
05:05p	INCOMI CL	619-[redacted]	SDDV		1	0.00	0.00
07:35p	OCSD C CA	760-[redacted]	SDDV		1	0.00	0.00
07:36p	CORONA CA	619-[redacted]	SDDV		1	0.00	0.00
07:37p	OCSD C CA	760-[redacted]	SDDV		1	0.00	0.00

EXHIBIT 4

To: dcotton@fleetsystems.net[dcotton@fleetsystems.net]
Cc: Becky Berry[Becky@tfcsd.net]; brianna@bhpsonline.com[brianna@bhpsonline.com]
From: Tirandazi, Firouzeh
Sent: Tue 3/21/2017 8:54:01 AM
Importance: Normal
Subject: Federal Boulevard MMCC
Received: Tue 3/21/2017 8:54:07 AM

Good Morning Mr. Cotton,

As a follow-up to our conversation this morning regarding your potential interest as property owner in withdrawing the above referenced CUP application, I just noticed that you are not the financial responsible party for the subject application. As such, I will also need written acknowledgement from Ms. Rebecca Berry, the applicant, who is the financial responsible party, to withdraw the subject CUP application.

As requested, here is a link to the 2/14 Council docket and supporting material - Item No. 51:
http://dockets.sandiego.gov/sirepub/pubmtgframe.aspx?meetid=3410&doctype=Agenda

Regards,

Firouzeh Tirandazi
Development Project Manager
City of San Diego
Development Services Department

(619)446-5325
sandiego.gov

OpenDSD Now: Pay Invoices and Deposits Online

EXHIBIT 5

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Contract Review

Darryl Cotton <indagrodarryl@gmail.com> Tue, Mar 21, 2017 at 3:18 PM
To: Larry Geraci <Larry@tfcsd.net>

Larry, I have been in communications over the last 2 days with Firouzeh, the Development Project Manager for the City of San Diego who is handling CUP applications. She made it 100% clear that there are no restrictions on my property and that there is no recommendation that a CUP application on my property be denied. In fact she told me the application had just passed the "Deemed Complete' phase and was entering the review process. She also confirmed that the application was paid for in October, before we even signed our agreement.

This is our last communication, you have failed to live up to your agreement and have continuously lied to me and kept pushing off creating final legal agreements because you wanted to push it off to get a response from the City without taking the risk of losing the non-refundable deposit in the event the CUP application is denied.

To be clear, as of now, you have no interest in my property, contingent or otherwise. I will be entering into an agreement with a third-party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you.

Darryl Cotton

[Quoted text hidden]

EXHIBIT 6

To: Tirandazi, Firouzeh[FTirandazi@sandiego.gov]
Cc: Becky Berry[Becky@tfcsd.net]; brianna@bhpsonline.com[brianna@bhpsonline.com]; Larry Geraci[Larry@tfcsd.net]
From: Darryl Cotton
Sent: Tue 3/21/2017 3:25:24 PM
Importance: Normal
Subject: Re: PTS 520606 - Federal Blvd MMCC
Received: Tue 3/21/2017 3:25:29 PM

Hello Firouzeh,

As a follow-up to our recent conversations, the potential buyer, Larry Gerasi (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property.

Thank you again for your help.

Best,

Darryl Cotton

On Thu, Mar 16, 2017 at 4:55 PM, Tirandazi, Firouzeh <FTirandazi@sandiego.gov> wrote:

Hello Mr. Cotton,

As requested, please find attached the Ownership Disclosure Statement signed by you (property owner), and Rebecca Berry (tenant/lessee) on October 31, 2016, submitted with the above referenced project application. I have copied Ms. Berry and the project Point of Contact (Bree Harris) on this email as well.

The project was deemed complete March 13, 2017 and is currently in the first review cycle. As property owner, if you wish to withdraw this application, please notify me in writing.

Regards,

Firouzeh Tirandazi

Development Project Manager

City of San Diego

Development Services Department

(619)446-5325

sandiego.gov

OpenDSD Now: Pay Invoices and Deposits Online

EXHIBIT 7

Sent To:
Daryl Fed B(16199544447)

I just sent you an email they just need a quick signature and send back to me if you can get that back ASAP I'd appreciate it thank you

Nov 14, 2016 10:26:47

Nov 16, 2016 16:20

From:
Daryl Fed B(16199544447)

How goes it?

Nov 16, 2016 16:20:21

Sent To:
Daryl Fed B(16199544447)

No news yet

Nov 16, 2016 16:25:47

From:
Daryl Fed B(16199544447)

Did they accept the CUP application?

Nov 16, 2016 16:26:37

Sent To:
Daryl Fed B(16199544447)

We're still getting through them excepting the property

Nov 16, 2016 16:30:19

Sent To:
Daryl Fed B(16199544447)

Once the property is approved then I believe we're set to go

Nov 16, 2016 16:30:33

Nov 18, 2016 11:58

From:
Daryl Fed B(16199544447)

Did you talk with matt on the cv dispensary?

Nov 18, 2016 11:58:05

Nov 18, 2016 12:26

Sent To:
Daryl Fed B(16199544447)

Yeah I did but he seriously didn't have any interest because he met with the Chula Vista city attorney

Nov 18, 2016 12:26:07

Sent To:
Daryl Fed B(16199544447)

All those places are gonna be close down

Nov 18, 2016 12:26:13

Nov 30, 2016 19:26

From:
Daryl Fed B(16199544447)

Greetings.

Nov 30, 2016 19:26:18

EXHIBIT 8

CALIFORNIA ASSOCIATION OF REALTORS®

COMMERCIAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

(NON-RESIDENTIAL)
(C.A.R. Form CPA, Revised 12/15)

Date Prepared: 03/21/2017

1. OFFER:
   A. THIS IS AN OFFER FROM Richard John Martin II ("Buyer").
   X Individual(s), ☐ A Corporation, ☐ A Partnership, ☐ An LLC, ☐ An LLP, or ☐ Other ____
   B. THE REAL PROPERTY to be acquired is ____ 6176 Federal Blvd ____, situated in San Diego (City), San Diego (County), California, 92114-1401 (Zip Code), Assessor's Parcel No. 543-020-02-00 ("Property").
   C. THE PURCHASE PRICE offered is Two Million ____ Dollars $ 2,000,000.00 ____.
   D. CLOSE OF ESCROW shall occur on X ____ see Addendum 1 ____ (date) (or ____ Days After Acceptance).
   E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.
2. AGENCY:
   A. DISCLOSURE: The Parties each acknowledge receipt of a X "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).
   B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:
   Listing Agent: ____ N/A ____ (Print Firm Name) is the agent of (check one): ☐ the Seller exclusively; or ☐ both the Buyer and Seller.
   Selling Agent ____ N/A ____ (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): ☐ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the Buyer and Seller.
   C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a X "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).
3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.
   A. INITIAL DEPOSIT: Deposit shall be in the amount of ____ $ ____
   (1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, ☐ cashier's check, ☐ personal check, ☐ other ____ within 3 business days after Acceptance (or ____).
   OR (2) ☐ Buyer Deposit with Agent: Buyer has given the deposit by personal check (or ____) to the agent submitting the offer (or to ____), made payable to ____. The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or ____).
   Deposit checks given to agent shall be an original signed check and not a copy.
   (Note: Initial and increased deposit checks received by agent shall be recorded in Broker's trust fund log.)
   B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of ____ $ ____ within ____ Days After Acceptance (or ____).
   If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.
   C. ☐ ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or ☐ Buyer shall, within 3 (or ____) Days After Acceptance, Deliver to Seller such verification.
   D. LOAN(S):
   (1) FIRST LOAN: in the amount of ____ $ 1,800,000.00
   This loan will be conventional financing or ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing, ☐ Other ____. This loan shall be at a fixed rate not to exceed ____ %, or, ☐ an adjustable rate loan with initial rate not to exceed ____ %. Regardless of the type of loan, Buyer shall pay points not to exceed ____ % of the loan amount.
   (2) ☐ SECOND LOAN in the amount of ____ $ ____
   This loan will be conventional financing or ☐ Seller financing (C.A.R. Form SFA), ☐ assumed financing (C.A.R. Form AFA), ☐ subject to financing, ☐ Other ____. This loan shall be at a fixed rate not to exceed ____ % or ☐ an adjustable rate loan with initial rate not to exceed ____ %. Regardless of the type of loan, Buyer shall pay points not to exceed ____ % of the loan amount.
   E. ADDITIONAL FINANCING TERMS: see attached Addendum 1 ____
   F. BALANCE OF DOWN PAYMENT OR PURCHASE PRICE in the amount of ____ $ 200,000.00
   to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
   G. PURCHASE PRICE (TOTAL): ____ $ 2,000,000.00
   H. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within 3 (or ____) Days After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (☐ Verification attached.)

Buyer's Initials (X ____) (____)
Seller's Initials (X ____) (____)

I. **APPRAISAL CONTINGENCY AND REMOVAL.** This Agreement is (or [X] is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 14B(3), in writing, remove the appraisal contingency or cancel this Agreement within 17 (or ___) Days After Acceptance.

J. **LOAN TERMS:**

(1) LOAN APPLICATIONS: Within 3 (or ___) Days After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. [X] Letter attached.

(2) LOAN CONTINGENCY: Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above is a contingency of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs are not contingencies of this Agreement.

(3) LOAN CONTINGENCY REMOVAL:

Within 21 (or ___) Days After Acceptance, Buyer shall, as specified in paragraph 14, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.

(4) [X] NO LOAN CONTINGENCY: Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.

(5) LENDER LIMITS ON BUYER CREDITS: Any credit to Buyer from any source for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.

K. **BUYER STATED FINANCING.** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.

4. **SALE OF BUYER'S PROPERTY:**

A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.

OR B. [ ] This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).

5. **ADDENDA AND ADVISORIES.**

A. ADDENDA:

[X] Addendum # 1 (C.A.R. Form ADM)	
[ ] Back Up Offer Addendum (C.A.R. Form BUO)	[ ] Court Confirmation Addendum (C.A.R. Form CCA)
[ ] Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)	
[ ] Short Sale Addendum (C.A.R. Form SSA)	[ ] Other

B. BUYER AND SELLER ADVISORIES:

[X] Buyer's Inspection Advisory (C.A.R. Form BIA)	
[ ] Probate Advisory (C.A.R. Form PA)	[ ] Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
[ ] Trust Advisory (C.A.R. Form TA)	[ ] REO Advisory (C.A.R. Form REO)
[ ] Short Sale Information and Advisory (C.A.R. Form SSIA)	[ ] Other

6. **OTHER TERMS:** *see attached Addendum 1, is incorporated as part of contract*

7. **ALLOCATION OF COSTS**

A. **INSPECTIONS, REPORTS AND CERTIFICATES.** Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; it does not determine who is to pay for any work recommended or identified in the Report.

(1) [ ] Buyer [ ] Seller shall pay for a natural hazard zone disclosure report, including tax [ ] (environmental) Other ___ prepared by ___

(2) [ ] Buyer [ ] Seller shall pay for the following Report ___ prepared by ___

(3) [ ] Buyer [ ] Seller shall pay for the following Report ___ prepared by ___

B. **GOVERNMENT REQUIREMENTS AND RETROFIT:**

(1) [ ] Buyer [ ] Seller shall pay for smoke alarm and carbon monoxide device installation and water heater bracing, if required by Law. Prior to Close Of Escrow ("COE"), Seller shall provide Buyer written statement(s) of compliance in accordance with state and local Law, unless Seller is exempt.

(2) (i) __ Buyer __ Seller shall pay the cost of compliance with any other minimum mandatory government inspections and reports if required as a condition of closing escrow under any Law.
(ii) __ Buyer __ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards required as a condition of closing escrow under any Law, whether the work is required to be completed before or after Close Of Escrow.
(iii) Buyer shall be provided, within the time specified in paragraph 18A, a copy of any required government conducted or point-of-sale inspection report prepared pursuant to this Agreement or in anticipation of the sale of the Property.

C. **ESCROW AND TITLE:**
(1) (a) __ Buyer __ Seller shall pay escrow fee _____
(b) Escrow Holder shall be _____
(c) The Parties shall, within 5 (or ___) Days After receipt, sign and return Escrow Holder's general provisions.
(2) (a) __ Buyer __ Seller shall pay for owner's title insurance policy specified in paragraph 17E _____
(b) Owner's title policy to be issued by _____
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

D. **OTHER COSTS:**
(1) __ Buyer __ Seller shall pay County transfer tax or fee _____
(2) __ Buyer __ Seller shall pay City transfer tax or fee _____
(3) __ Buyer __ Seller shall pay Owners' Association ("OA") transfer fee _____
(4) Seller shall pay OA fees for preparing all documents required to be delivered by Civil Code §4525.
(5) __ Buyer __ Seller shall pay OA fees for preparing all documents other than those required by Civil Code §4525.
(6) Buyer to pay for any HOA certification fee.
(7) __ Buyer __ Seller shall pay for any private transfer fee _____
(8) __ Buyer __ Seller shall pay for _____
(9) __ Buyer __ Seller shall pay for _____

8. **ITEMS INCLUDED IN AND EXCLUDED FROM SALE:**

A. **NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in paragraph 8B, C or D.

B. **ITEMS INCLUDED IN SALE:**
(1) All EXISTING fixtures and fittings that are attached to the Property;
(2) EXISTING electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar power systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water features and fountains, water softeners, water purifiers, security systems/alarms;
(3) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 18A;
(4) Seller represents that all items included in the purchase price are, unless otherwise specified or identified pursuant to 8B(7), owned by Seller. Within the time specified in paragraph 18A, Seller shall give Buyer a list of fixtures not owned by Seller;
(5) Seller shall deliver title to the personal property by Bill of Sale, free and clear of all liens and encumbrances, and without Seller warranty of condition regardless of value;
(6) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds;
(7) **LEASED OR LIENED ITEMS AND SYSTEMS:** Seller shall, within the time specified in paragraph 18A, disclose to Buyer if any item or system specified in paragraph 8B or otherwise included in the sale is leased, or not owned by Seller, or specifically subject to a lien or other encumbrance, and (ii) Deliver to Buyer all written materials (such as lease, warranty, etc.) concerning any such item. Buyer's ability to assume any such lease, or willingness to accept the Property subject to any such lien or encumbrance, is a contingency in favor of Buyer and Seller as specified in paragraph 16B and C.

C. **ITEMS EXCLUDED FROM SALE:** Unless otherwise specified, the following items are excluded from sale: _____

D. **OTHER ITEMS:**
(1) Existing integrated phone and automation systems, including necessary components such as intranet and Internet connected hardware or devices, control units (other than non-dedicated mobile devices, electronics and computers), and applicable software, permissions, passwords, codes and access information, are __ are NOT) included in the sale.

9. **CLOSING AND POSSESSION:**

A. **Seller-occupied or vacant property:** Possession shall be delivered to Buyer (i) __ at 6 PM or ___ AM / PM, on the date of Close Of Escrow; (ii) __ no later than ___ calendar days After Close Of Escrow; or (iii) __ at ___ AM / PM on _____.

B. **Seller Remaining in Possession After Close Of Escrow:** If Seller has the right to remain in possession after Close Of Escrow: (i) the Parties are advised to sign a separate occupancy agreement such as C.A.R. Form CL; and (ii) the Parties are advised to consult with their insurance and legal advisors for information about liability and damage or injury to persons and personal and real property; and (iii) Buyer is advised to consult with Buyer's lender about the impact of Seller's occupancy on Buyer's loan.

C. **Tenant Occupied Units:** Possession and occupancy, subject to the rights of tenants under existing leases, shall be delivered to Buyer on Close Of Escrow.

D. **At Close Of Escrow:** (i) Seller assigns to Buyer any assignable warranty rights for items included in the sale; and (ii) Seller shall Deliver to Buyer available Copies of any such warranties. Brokers cannot and will not determine the assignability of any warranties.

E. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys, passwords, codes and/or means to operate all locks, mailboxes, security systems, alarms, home automation systems and internet and Internet connected devices included in the purchase price and garage door openers. If the Property is a condominium or located in a common interest subdivision, Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.

10. **SECURITY DEPOSITS:** Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the Civil Code.

11. **SELLER DISCLOSURES:**

A. **NATURAL AND ENVIRONMENTAL DISCLOSURES:** Seller shall, within the time specified in paragraph 18, if required by Law: (i) Deliver to Buyer earthquake guides (and questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide an NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation Area); Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

B. **ADDITIONAL DISCLOSURES:** Within the time specified in paragraph 18, Seller shall Deliver to Buyer, in writing, the following disclosures, documentation and information:

(1) **RENTAL SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; and (ii) a rental statement including names of tenants, rental rates, period of rental, date of last rent increase, security deposits, rental concessions, rebates, or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any concession, rebate, or other benefit, except as set forth in these documents.

(2) **INCOME AND EXPENSE STATEMENTS:** The books and records, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business, and used by Seller in the computation of federal and state income tax returns.

(3) ___ **TENANT ESTOPPEL CERTIFICATES:** (If checked) Tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.

(4) **SURVEYS, PLANS AND ENGINEERING DOCUMENTS:** Copies of surveys, plans, specifications and engineering documents, if any, in Seller's possession or control.

(5) **PERMITS:** If in Seller's possession, Copies of all permits and approvals concerning the Property, obtained from any governmental entity, including, but not limited to, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.

(6) **STRUCTURAL MODIFICATIONS:** Any known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.

(7) **GOVERNMENTAL COMPLIANCE:** Any improvements, additions, alterations or repairs made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals.

(8) **VIOLATION NOTICES.** Any notice of violations of any Law filed or issued against the Property and actually known to Seller.

(9) **MISCELLANEOUS ITEMS.** Any of the following, if actually known to Seller: (i) any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceeding(s) affecting the Property or the right to use and occupy it, (ii) any unsatisfied mechanic's or materialman's lien(s) affecting the Property; and (iii) that any tenant of the Property is the subject of a bankruptcy.

C. **WITHHOLDING TAXES.** Within the time specified in paragraph 18A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).

D. **NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES.** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at **http://www.npms.phmsa.dot.gov/**. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.

E. **CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**

(1) SELLER HAS: 7 (or ___) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision.

(2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has **3 (or ___) Days** After Acceptance to request from the OA (C.A.R. Form OA): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; and (v) the names and contact information of all OAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 16B(3). The Party specified in paragraph 7 as directed by escrow, shall deposit funds into escrow or direct to OA or management company to pay for any of the above.

12. [ ] **ENVIRONMENTAL SURVEY** (If checked) Within ____ **Days** After Acceptance, Buyer shall be provided a phase one environmental survey report paid for and obtained by [ ] Buyer [ ] Seller. Buyer shall then, as specified in paragraph 18, remove this contingency or cancel this Agreement.

13. **SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly Deliver a subsequent or amended disclosure or notice in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.**

14. **CHANGES DURING ESCROW:**
   A. Prior to Close Of Escrow, Seller may only engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 14B: (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
   B. (1) 7 (or ____) **Days** prior to any Proposed Changes, Seller shall Deliver written notice to Buyer of any Proposed Changes.
   (2) Within 5 (or ___) **Days** After receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes in which case Seller shall not make the Proposed Changes.

15. **CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
   A. Seller shall, within the time specified in paragraph 18A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
   B. Buyer has the right to conduct Buyer Investigations of the property and, as specified in paragraph 18B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
   C. **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**

16. **BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
   A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 18B. Within the time specified in paragraph 18B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms. Any inspection for wood destroying pests and organisms shall be prepared by a registered Structural Pest Control company; shall cover the main building and attached structures; may cover detached structures; shall NOT include water tests of shower pans on upper level units unless the owners of property below the shower consent; shall NOT include roof coverings; and, if the Property is a unit in a condominium or other common interest subdivision, the inspection shall include only the separate interest and any exclusive-use areas being transferred, and shall NOT include common areas; and shall include a report ("Pest Control Report") showing the findings of the company which shall be separated into sections for evident infestation or infections (Section 1) and for conditions likely to lead to infestation or infection (Section 2); (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property including the availability and cost of flood and fire insurance; (v) review and seek approval of leases that may need to be assumed by Buyer; and (vi) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing required to prepare a Pest Control Report; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
   B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 18B, complete Buyer Investigations and either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all such Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
   C. Seller shall have water, gas, electricity and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.
   D. **Buyer indemnity and seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.

17. **TITLE AND VESTING:**
   A. Within the time specified in paragraph 18, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 18B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within 7 Days After Acceptance, give Escrow Holder a completed Statement of Information.
   B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
   C. Within the time specified in paragraph 18A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

Buyer's Initials (X ____) (______) Seller's Initials (X ____) (______)

D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.

E. Buyer shall receive a standard coverage owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.

18. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).

A. **SELLER HAS: 7 (or ___) Days** After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 5A, 6, 7, 8B(7), 11A, B, C, D and E, 12, 15A and 17A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.

B. (1) **BUYER HAS: 17 (or ___) Days** After Acceptance, unless otherwise agreed in writing, to (i) complete all Buyer investigations, review all disclosures, reports, lease documents to be assumed by Buyer pursuant to paragraph 6B(7) and other applicable information, which Buyer receives from Seller, and approve all matters affecting the Property; and (ii) Deliver to Seller and Escrow Holder Buyer's written removal of all contingencies (or cancellation of this Agreement).

(2) Within the time specified in paragraph 18B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR). Buyer's request.

(3) By the end of the time specified in paragraph 18B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 18A, then Buyer has **5 (or ___) Days** After Delivery of any such items, or the time specified in paragraph 18B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

(4) **Continuation of Contingency**: Even after the end of the time specified in paragraph 18B(1) and before Seller cancels, if at all, pursuant to paragraph 18C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 18C(1).

C. **SELLER RIGHT TO CANCEL:**

(1) **Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

(2) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited, (ii) Deliver a letter as required by paragraph 3J(1), (iii) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H, or (iv) In writing assume or accept liens or items specified in 6B(7), (v) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 25, or (vi) Provide evidence of authority to sign in a representative capacity as specified in paragraph 23. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

D. **NOTICE TO BUYER OR SELLER TO PERFORM.** The NBP or NSP shall (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2 (or ___) Days** After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than **2 Days** Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 18.

E. **EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES:** If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer investigations and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

F. **CLOSE OF ESCROW:** Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller, and (ii) give the other Party at least **3 (or ___) Days** After Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** Prior to the scheduled close of escrow.

G. **EFFECT OF CANCELLATION ON DEPOSITS.** If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, **release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award.** If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form SDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within **10 Days** After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursal of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. **A Party may be subject to a civil penalty of up to $1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**

Buyer's Initials (X) ( ) Seller's Initials (X) ( )

19. **REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.
20. **FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final verification of the Property within 5 (or ___) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 15; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).
21. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments; interest; rents; HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow; premiums on insurance assumed by Buyer; payments on bonds and assessments assumed by Buyer; and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer, and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
22. **BROKERS:**
    A. **COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separately written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
    B. **BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify, defend, and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representation in this paragraph.
    C. **SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
23. **REPRESENTATIVE CAPACITY:** If one or more Parties is signing the Agreement in a representative capacity and not for himself/herself as an individual then that Party shall so indicate in paragraph 40 or 41 and attach a Representative Capacity Signature Disclosure (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within **3 Days** After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code 18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).
24. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
    A. **The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder,** which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5A, 6, 7, 10, 11D, 17, 18G, 21, 22A, 23, 24, 30, 38, 39, 41, 42 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 22A, or paragraph D of the section titled Real Estate Brokers on page 11 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 7C. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within 3 (or ___) Days, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 7, 11 or elsewhere in this Agreement.

B. A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within 3 Days After Acceptance (or _____). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 10D, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.

C. Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 22A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 22A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.

D. Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.

E. A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within 3 Days after mutual execution of the amendment.

25. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.

B. LIQUIDATED DAMAGES: If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, signed release instructions from both Buyer and Seller, judicial decision or arbitration award. AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R. FORM RID).

Buyer's Initials _____ Seller's Initials _____

26. DISPUTE RESOLUTION:

A. MEDIATION: The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 26C.

B. ARBITRATION OF DISPUTES: The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 26C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials _____ Seller's Initials _____

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

(1) EXCLUSIONS: The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

(2) PRESERVATION OF ACTIONS: The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.

(3) BROKERS: Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

27. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

28. MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM: If Broker is a participant of a Multiple Listing Service ("MLS") or Property Data System ("PDS"), Broker is authorized to report to the MLS or PDS a pending sale and, upon Close Of Escrow, the terms of this transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.

29. ATTORNEY FEES: In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys' fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 26A.

30. ASSIGNMENT: Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld, unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AOAA).

31. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.

32. ENVIRONMENTAL HAZARD CONSULTATION: Buyer and Seller acknowledge: (i) Federal, state and local legislation imposes liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Brokers, has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.

33. AMERICANS WITH DISABILITIES ACT: The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations of existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer's or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.

34. COPIES: Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals and other documents that are furnished to the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.

35. EQUAL HOUSING OPPORTUNITY: The Property is sold in compliance with federal, state and local anti-discrimination Laws.

36. GOVERNING LAW: This Agreement shall be governed by the Laws of the state of California.

37. TERMS AND CONDITIONS OF OFFER: This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counter offer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.

38. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**

39. DEFINITIONS: As used in this Agreement:

A. **"Acceptance"** means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.

B. **"Agreement"** means this document and any counter offers and any incorporated addenda (collectively forming the binding agreement between the Parties). Addenda are incorporated only when Signed by all Parties.

C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
D. "Close Of Escrow" or "COE" means the date the grant deed, or other evidence of transfer of title, is recorded.
E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 1, regardless of the method used (i.e., messenger, mail, email, fax, other).
J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.

40. **AUTHORITY:** Any person or persons signing this Agreement represent(s) that such person has full power and authority to bind that person's principal, and that the designated Buyer and Seller has full authority to enter into and perform this Agreement. Entering into this Agreement, and the completion of the obligations pursuant to this contract, does not violate any Articles of Incorporation, Articles of Organization, By Laws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.
41. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by ____ *see Addendum 1* ____ who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by ____ AM ☐ PM on ____ (date)).

☐ One or more Buyers is signing this Agreement in a representative capacity and not for himself/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 3-21-17 BUYER _____

(Print name) *Richard John Martin II*

Date _____ BUYER _____

(Print name) _____

☐ Additional Signature Addendum attached (C.A.R. Form ASA).

42. **ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

☐ (if checked) SELLER'S ACCEPTANCE IS SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED _____.

☐ One or more Sellers is signing this Agreement in a representative capacity and not for himself/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date 3-21-17 SELLER _____

(Print name) *Darryl Cotton*

Date _____ SELLER _____

(Print name) _____

☐ Additional Signature Addendum attached (C.A.R. Form ASA).

(____ / ____) (Do not initial if making a counter offer.) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was (Initials) personally received by Buyer or Buyer's authorized agent on (date) _____ at _____ AM ☐ PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.**

REAL ESTATE BROKERS:

A. **Real Estate Brokers are not parties to the Agreement between Buyer and Seller.**
B. **Agency relationships are confirmed as stated in paragraph 2.**
C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.
D. **COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) N/A CalBRE Lic #
By CalBRE Lic # Date
By CalBRE Lic # Date
Address City State Zip
Telephone Fax E-mail
Real Estate Broker (Listing Firm) N/A CalBRE Lic #
By CalBRE Lic # Date
By CalBRE Lic # Date
Address City State Zip
Telephone Fax E-mail

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked a deposit in the amount of $
counter offer numbers , Seller's Statement of Information and
and agrees to act as Escrow Holder subject to paragraph 24 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is

Escrow Holder Escrow #
By Date
Address
Phone/Fax/E-mail
Escrow Holder has the following license number #
Department of Business Oversight, Department of Insurance, Bureau of Real Estate.

PRESENTATION OF OFFER: ( ) Listing Broker presented this offer to Seller on (date).
Broker or Designee Initials

REJECTION OF OFFER: ( ) ( ) No counter offer is being made. This offer was rejected by Seller on (date).
Seller's Initials

Buyer's Initials (X) ( )
Seller's Initials (X) ( )

Reviewed by
Broker or Designee

CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15) No. 1

The following terms and conditions are hereby incorporated in and made a part of the ☐ Purchase Agreement ☐ Residential Lease or Month-to-Month Rental Agreement ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other _____
dated March 21, 2017 on property known as 6176 Federal Blvd San Diego, CA 92114-1401
in which Richard John Martin II is referred to as ("Buyer/Tenant")
and Darryl Cotton is referred to as ("Seller/Landlord").

Memorandum of Understanding

This Memorandum of Understanding ("MOU") is fully incorporated into this purchase agreement.

Seller shall receive a 20% equity stake in the business / MMCC upon approval and completion.

Seller shall receive on a monthly basis, 20% of the profits of the business / MMCC or $10,000, whichever is greater.

The $100,000 earnest money deposit is non-refundable and shall be Seller's to keep even if the CUP application is denied.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date March 21, 2017 Date March 21, 2017

Buyer/Tenant X Richard John Martin II Seller/Landlord X Darryl Cotton

Buyer/Tenant Seller/Landlord

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Reviewed by _____ Date _____

CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15) No. 2

The following terms and conditions are hereby incorporated in and made a part of the: X Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), ☐ Other

dated March 21, 2017, on property known as 6176 Federal Blvd San Diego, CA 92114-1401

in which Richard John Martin II is referred to as ("Buyer/Tenant")

and Darryl Cotton is referred to as ("Seller/Landlord")

Memorandum of Understanding and Agreement

1) This Memorandum of Understanding and Agreement ("MOUA") amends the agreement reached by Buyer and Seller on March 21, 2017.

2) Notwithstanding any language in this purchase agreement to the contrary, the provisions within this MOUA shall be given effect and supersede any conflicting or ambiguous language within this purchase agreement.

3) Seller hereby transfers and sells to Buyer, with all the associated rights and liabilities, his ownership, rights and interests in the property and the associated CUP application pending before the City of San Diego for $500,000.

4) Buyer shall immediately provide seller with a $50,000 non-refundable deposit.

5) The closing of this sale, including the payment of the balance of the purchase price and all the requirements stated herein, shall be completed upon the favorable resolution of the Larry Geraci lawsuit against Seller for the property

6) In addition, should a CUP application be approved at the property, Buyer shall pay Seller a one-time payment of $1,500,000. Seller's previous agreement for an equity stake in the business is voided and Seller has no interest in the property or the CUP.

7) CONFIDENTIALITY CLAUSE. SELLER WILL NOT DISCLOSE BUYER'S IDENTITY OR THIS AGREEMENT IN ANY FORM, DIRECTLY OR INDIRECTLY, UNTIL HE HAS RESOLVED THE LEGAL ACTION WITH GERACI. FOR THE AVOIDANCE OF DOUBT, THIS MEANS THAT SELLER WILL NOT INVOLVE OR MENTION BUYER IN ANY FORM TO ANY THIRD-PARTIES, IN ANY LITIGATION PROCEEDINGS OR IN ANY MATTERS REGARDING ALLEGATIONS OF CRIMINAL OR UNLAWFUL ACTIONS SHOULD SELLER BREACH THIS PROVISION, SELLER HEREBY EXPRESSLY AGREES TO PAY TO BUYER $200,000 FOR BREACH OF THIS PROVISION.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date April 15, 2017

Buyer/Tenant X Richard John Martin II

Buyer/Tenant

Date April 15, 2017

Seller/Landlord X Darryl Cotton

Seller/Landlord

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525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by ____ Date ____

CALIFORNIA ASSOCIATION OF REALTORS

ADDENDUM

(C.A.R. Form ADM, Revised 12/15) No. 3

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Purchase Agreement ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind) ☐ Other

dated March 21, 2017, on property known as 6176 Federal Blvd San Diego, CA 92114-1401

in which Richard John Martin II is referred to as ("Buyer/Tenant") and Darryl Cotton is referred to as ("Seller/Landlord").

This addendum is fully incorporated into this purchase agreement and amends the agreement reached between the parties on March 21, 2017, as amended by addendum 2 on April 15th, 2017.

Buyer hereby agrees to permit Seller to disclose this agreement in his response to Geraci's lawsuit

For the avoidance of doubt, Seller will not have to pay the $200,000 fine for breach of the Confidentiality provision previously agreed to.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date May 12, 2017

Buyer/Tenant X
Richard John Martin II

Buyer/Tenant

Date May 12, 2017

Seller/Landlord X
Darryl Cotton

Seller/Landlord

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Reviewed by Date

EXHIBIT 17 [ROA 58]

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

Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

Judge: Hon. Joel Wohlfeil

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CROSS-DEFENDANT LARRY GERACI'S DEMURRER TO SECOND AMENDED CROSS-COMPLAINT BY DARRYL COTTON

[IMAGED FILE]

DATE: **November 3, 2017**
TIME: **9:00 a.m.**
DEPT: **C-73**

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

Plaintiff and Cross-Defendant LARRY GERACI (hereafter "Geraci" or "Plaintiff") respectfully submits these reply points and authorities in support of his demurrer to Defendant and Cross-Complainant DARRYL COTTON'S (hereafter "Cotton" or "Cross-Complainant") Second Amended Cross-Complaint filed on August 25, 2017 (hereafter "SAXC") and in response to Cotton's opposition arguments.

///

I. INTRODUCTION

Cotton's Opposition to Geraci's Demurrer to the Second Amended Cross-Complaint (hereinafter "Opposition") is unpersuasive as to the issues raised in the Demurrer.

Contrary to the allegations in his prior pleadings and, in particular, the subject SAXC, Cotton argues that the agreement between the parties is comprised of the November 2, 2016 written agreement (hereafter "Written Agreement") and certain November emails (hereafter "November Emails") which were *incorporated* into that document and together *evidence* the basic terms of the agreement. (Opposition, 2:17-23.). Cotton's argument fails for a number of reasons: 1) the emails were not integrated into the Written Agreement; 2) even if the November Emails were integrated into the Written Agreement, they are not signed by Geraci, and therefore are barred by the statute of frauds; 3) the November Emails do not in and of themselves evidence an agreement between the parties; and 4) Geraci has done everything required of him under the Written Agreement and therefore has not breached the contract itself nor the implied covenant of good faith and fair dealing.

As to Cotton's causes of action for intentional and negligent misrepresentation and false promise, Cotton cannot overcome his own admissions in his pleadings that he was hesitant and understandably concerned, and despite his hesitation, concerns, and reservations he agreed to Geraci's terms. (SAXC ¶ 17.) Given these admissions, Cotton has failed to allege reasonable and justifiable reliance. At a minimum, he has not pleaded facts which would lead one to conclude he acted in reasonable and justifiable reliance on any statements made by Geraci.

Finally, Cotton argues that the *Tarmann v. State Farm* (1991) 2 Cal.App.4th 153 case cited by Geraci should be disregarded because it discussed the *proof* necessary to prevail on a negligent misrepresentation claim rather than the *pleading requirements* for such a claim. That argument is erroneous. The *Tarmann* case arose on demurrer and the Court specifically stated that "[t]he specific intent requirement [of pleading intentional fraud] precludes pleading a false promise claim as a negligent misrepresentation . . .." Cotton cannot plead intentional fraud and negligent misrepresentation.

///

///

II. LEGAL ANALYSIS

A. No Integration of Emails with Written Contract

"Under California law, parties may validly incorporate by reference into their contract the terms of another document." (*Baker v. Aubry* (1989) 216 Cal.App.3d 1259, 1264.) The reference to the incorporated document must be clear and unequivocal and the terms of the incorporated document must be known or easily available to the contracting parties. (*Spellman v. Securities, Annuities & Ins. Services, Inc.* (1992) 8 CalApp.4th 452, 457; *Chan v. Drexel Burnham Lambert, Inc.* (1986) 178 Cal.App.3d 632, 641; *Baker v. Aubry, supra,* 216 Cal.App.3d at p. 1264; *Slaught v. Bencomo Roofing Co.* (1994) 25 Cal.App.4th 744.)

Neither the actual November 2, 2016 Written Agreement signed by the parties nor the November Emails, which Cotton alleges "*evidence*" the basic terms of the contract, contain any language of incorporation let alone language making a clear and unequivocal reference to the allegedly incorporated document. The Written Agreement signed by the parties does not make any reference to those emails being incorporated into the Written Agreement. Therefore, the emails are not incorporated into the signed contract as a matter of law.

B. Statute of Frauds

Cross-Complainant argues that the SAXC "alleges the existence of a written agreement that is not subject to the Statute of Frauds." (Opposition, 2:1-2.) This argument misses the mark.

A contract coming within the statute of frauds is invalid unless it is memorialized by a writing subscribed by the party to be charged or by the party's agent. (Civ. Code, § 1624.) And it is clear that an agreement for the sale and purchase of real property comes within the statute of frauds. (Civ. Code, § 1624(a)(3).) Cotton's claims alleged in the SAXC unquestionably arises out of an agreement regarding the sale and purchase of real property.

Cross-Complainant further argues that the parties executed an ambiguous document (the Written Agreement) and exchanged emails (the November Emails) which were *incorporated* into that document. Cross-Complainant asserts summarily that the Written Agreement and November Emails "combine to *evidence* the following basic terms of agreement, all as alleged in the SAXC." (Opposition, 2:22-23, emphasis added.) This argument also misses the mark.

First, the terms and conditions of the Written Agreement, a one-page document which is attached to both the underlying Complaint and the SAXC, *are clear and unambiguous*.

Cotton clearly alleges in all of his prior cross-complaints, including the instant SAXC, that "[o]n *November 2, 2016*, Geraci and Cotton met at Geraci's office ... [and] the parties reached an agreement on the material terms for the sale of the Property." (SAXC ¶ 13.) At that November 2, 2016 meeting the parties executed the Written Agreement, which states the following material terms and conditions:

> Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)
>
> Ten Thousand dollars (cash) has been given in good faith earnest money "to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed not to enter into any other contacts on this property.

(SAXC ¶ 18.) These terms and conditions could not be more clear and unambiguous.

Cotton goes on to attempt to allege an oral agreement, or a partly written and partly oral agreement, entered into on that November 2, 2016, date with the alleged oral terms and conditions adding to and/or varying from the terms set forth in the writing in the Written Agreement. Those allegations cannot, as a matter of law, survive the Statute of Frauds.

The Written Agreement is the controlling evidence under the statute of frauds. Cotton alleges, based on extrinsic evidence, that the actual agreement between the parties contains material terms and conditions in addition to those in the written agreement as well as a term (a $50,000 deposit rather than the $10,000 deposit stated in the written agreement) that expressly conflicts with a term of the November 2, 2016 agreement. However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the written memorandum. (*Beazell v. Schrader*, (1963) 59 Cal.2d 577.) Cotton's *argument* that the $10,000 deposit term in the Written Agreement is ambiguous and can be reconciled with his allegation of an agreement for a $50,000 deposit is absurd. Nowhere in his allegations are facts from which it can be inferred that they are anything except conflicting and contradictory terms.

Second, Cross-Complainant asserts that the November Emails ". . . are subscribed to by Geraci and are therefore outside the purview of the statute of frauds." (Opposition, 4:12-13.) Apparently,

Cross-Complainant is arguing that the signature block at the bottom of the emails containing Geraci's name is tantamount to a signed agreement which would satisfy the statute of frauds, i.e., some sort of electronic signature within the meaning of Uniform Electronic Transactions Act ("UETA"), Civil Code section 1633.7. Cross-Complainant is mistaken.

Civil Code section 1633.7(a) provides:

> (a) A record or signature may not be denied legal effect of enforceability solely because it is in electronic form.
> (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
> (c) If a law requires a record to be in writing, an electronic record satisfied the law.
> (d) If a law requires a signature, an electronic signature satisfies the law."

"An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner . . .." (Civ. Code, § 1633.9(a); see also *Ni v. Slocum* (2011) 196 Cal.App.4th 1636, 1647 ["the Legislature has, through these provisions, expressed general approval of the use of electronic signature in commercial and governmental transactions"].)

Civil Code section 1633.2(h) defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record." UETA applies, however, only when the parties ***consent to conduct the transaction by electronic means.*** (Civ. Code, § 1633.5(b).) "Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct . . .." (*Ibid.*) "A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means . . .." (Civ. Code, § 1633.5(c).)

However, while attributing the name on an e-mail to a particular person and determining that the printed name is "[t]he act of [this] person" is a necessary prerequisite to considering it a valid signature, it is insufficient, by itself, to establish that it is an "electronic signature." (Civ. Code, § 1633.9(a).) Subdivision (h) of section 1633.2 states that "[e]lectronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and ***executed or adopted by a person with the intent to sign the electronic record.***" (Emphasis added. See also Cal. Civ. Jury Inst. No. 380 [party suing to enforce an agreement formalized by electronic means must

prove "based on the context and surrounding circumstances, including the conduct of the parties, that the parties agreed to use [e.g., e-mail] to formalize their agreement"].) By Cross-Complainant's own allegations, that was not the case. Rather, cotton alleges the parties intended to finalize the entire agreement in a formal, signed agreement, not via emails. And he alleges that never happened because Geraci refused to include in the Written Agreement the additional and varying terms and conditions agreed to orally on November 2, 2016.

"Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct . . .." (Civ. Code, § 1633.5(b).) The absence of an explicit agreement to conduct the transaction by electronic means is not, by itself, determinative, however, it is a relevant factor to consider. (See *JBB Investment Partners, LTD v. Fair* (2014) 232 Cal.App.4th 974.

There is no allegation that there was an express agreement between the parties to conduct negotiations electronically and be bound by electronic signatures. Nothing contained within the emails supports a conclusion that the parties agreed that Geraci's printed name at the bottom of emails was intended to be a legally binding signature. Nor does anything in the November Email exchange indicate that the parties agreed to conduct a transaction by electronic means. Thus, the emails do not amount to an electronic signature under the UETA, and if they are part of the agreement, they violate the statute of frauds.

C. Nor is Geraci's Signature Block on the E-Mails a "Signature" Under Law of Contract

A typed name at the end of an e-mail is not, by itself, a signature under case law. "[I]t is a universal requirement that the statute of frauds is not satisfied unless it is proved that the name relied upon as a signature was placed on the document or adopted by the party to be charged *with the intention of authenticating the writing.*" (*Marks v. Walter McCarty Corp.* (1929) 33 Cal.3d 814, 820.)

There are no factual allegations that directly allege or from which it can be inferred that Geraci intended his brief email statements to be a legally binding contract.

Moreover, Cross-Complainant alleges that "[t]he parties further agreed to cooperate in good faith to properly reduce the complete agreement, including all of the agreed-upon terms [as alleged by

Cotton in ¶ 14], to writing." (SAXC ¶ 13.) The SAXC makes clear this never happened. The only writing signed was the Written Agreement containing the material terms and conditions set forth therein.

D. The SAXC Does Not Allege Actionable Breach

The actionable breach of which Cross-Complainant complains is "He breached *at least* one material term of it, *viz.,* the promise to negotiate in good faith to deliver a proposed final agreement, the promise to deliver a 10 percent interest in the property, and failing to pay the amounts due for the 50,000.00 deposit. (SAXC, p. 11. ¶ 36.)" (Opposition, 6:10-12). Cross-Complainant goes on to assert that "Without question, the SAXC alleges just such a breach, namely, that Geraci intentionally delayed further negotiations, that Geraci failed to deliver purchase documents, and that Geraci failed to full pay the agreed-upon $50,000 deposit. (SAXC, p. 11, ¶36)." (Opposition, 6:21-24.)

The flaw in Cross-Complainant's reasoning is that none of these alleged obligations were contained within the legally binding, signed written contract. Rather, these are terms and conditions that Cross-Complainant would like to have added to the legally binding, signed written contract. Plaintiff has performed everything required of him so far under the Written Agreement and Cross-Complainant cannot and has not alleged otherwise.

E. Cotton Cannot Overcome His Own Admissions That He Acted, Not on Geraci's Representations, But In Spite of His Hesitations and Concerns Over Geraci's Representations – Hence No Reasonable or Justifiable Reliance

As to Cotton's causes of action for intentional and negligent misrepresentation and false promise, Cotton cannot overcome his own *admissions* in his pleadings that he was hesitant, understandably concerned and despite his hesitation, concerns and reservations he agreed to Geraci's terms. (SAXC ¶ 17.) Given these admissions, Cotton has failed to allege reasonable and justified reliance. At a minimum he has not pleaded facts which would lead one to conclude he acted in reasonable and justified reliance on any statements made by Geraci.

F. Cotton Alleges that Geraci Made Numerous *Contemporaneous* Representations of Fact that Geraci Had No Reasonable Ground for Believing True – This Allegations Are Belied by the Fact That They Occurred After the Written Agreement Was Signed.

Cotton argues that Geraci made many contemporaneous representations such as "[o]n multiple

occasions, Geraci represented to Cotton that *Geraci had not yet filed* a CUP application with respect to the Property when [in reality] the CUP application had already been filed" and that "[o]n multiple occasions Geraci represented to Cotton that the preliminary work of preparing a *CUP application was merely underway, when, in fact, the CUP application had already been filed."* (SAXC, p. 14, ¶ 45(d)-(e) [emphasis added.])" (Opposition, 10:15-21.)

With regard to each of these alleged misrepresentations, they all occurred after the Written Agreement was signed by both parties and after the November Emails, which Cotton now claims are part of the agreement between the parties "evidencing' the basic terms of the contract. As such, Cotton has failed to allege that: 1) he reasonably and justifiably relied on these "false representations" as they were not yet made; 2) that these false representations caused harm or damage; and 3) that Cotton's justified and reasonable reliance on these false representations caused him harm or damage, all required to prove Cotton's fraud claims. [CACI 1900, 1902, and 1903.]

III. CONCLUSION

For the foregoing reasons and subject to a sufficient offer of proof, Geraci's demurrers to each of the causes of action should each be sustained without leave to amend.

Dated: October 27, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R Weinstein
Michael R. Weinstein
Scott H. Toothacre
Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

EXHIBIT 18 [ROA 192]

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 04/13/2018 TIME: 09:00:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Andrea Taylor
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017
CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

---

EVENT TYPE: Motion Hearing (Civil)
MOVING PARTY: Darryl Cotton
CAUSAL DOCUMENT/DATE FILED: Motion to Expunge Lis Pendens, 04/04/2018

APPEARANCES
Michael R Weinstein, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).
Scott H Toothacre, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).
Darryl Cotton, self represented Defendant, present.
Attorney Jacob Austin specially appearing on behalf of Defendant Darryl Cotton.

The Court hears oral argument and confirms the tentative ruling as follows:The Motion (ROA # 161) of Defendant / Cross-Complainant Darryl Cotton ("Defendant") for an order expunging the *lis pendens* recorded in the office of the Recorder of San Diego County as Instrument Number 2017-0129756 and filed in the above-referenced action on March 22, 2017, and an order awarding Defendant reasonable attorneys' fees and costs, on the grounds that the Complaint lacks "probable validity" which can be established by a preponderance of the evidence in light of the evidence presented by Plaintiff LARRY GERACI ("Plaintiff"), is DENIED.

The Court must expunge a lis pendens where: (a) the action does not involve a "real property claim" (Code Civ. Proc. 405.31); or (b) the claimant has not demonstrated the "probable validity" of the claim (Code Civ. Proc. 405.32). Code Civ. Proc. 405.30. "Real property claim" means a cause of action "which would, if meritorious, affect ... title to, or the right to possession of, specific real property ...." Code Civ. Proc. 405.4. The question of whether pleadings state a real property claim is tested by a demurrer-like analysis that centers on the adequacy of the pleading. Gale v. Superior Court (2004) 122 Cal. App. 4th 1388, 1395. It is strictly a binary process: If you properly plead a real property claim, you can file a notice of lis pendens; if you don't, you can't. Id.

"Probable validity" means that it is more likely than not that the claimant will obtain a judgment against the defendant on the claim. Code Civ. Proc. 405.3. To avoid a motion to expunge, the burden is on the lis pendens claimant (Plaintiff) to establish the "probable validity" of the real property claim "by a

preponderance of the evidence." Code Civ. Proc. 405.32. If conflicting evidence is presented, the Court must weigh the evidence in deciding whether Plaintiff has sustained its burden. Edmon & Karnow, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2017) at ¶ 9:436.2.

It is undisputed this action involves a real property claim, and this Motion is limited to the issue of probable validity regarding each cause of action within the Complaint. Specifically, Defendant contends that the November 2, 2016 writing does not evidence the complete agreement between the parties. Instead, an oral agreement existed that the parties agreed would be reduced to writing in the near future. Defendant contends Plaintiff has not complied with the terms of the expanded oral agreement, and that he (Defendant) did not breach the existing oral agreement. The subject November 2, 2016 agreement is notarized, and reads as follows:

"11/02/2016
"Agreement between Larry Geraci or assignee and Darryl Cotton:
"Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)
"Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property."

This document appears to set forth all essential terms for an agreement, and the fact that it is notarized supports Plaintiff's contention that it is a complete agreement between the parties. On the other hand, the documents Defendant offers in support of this Motion were created after November 2, 2016, and appear to be unsuccessful attempts to negotiate changes to the original agreement. It is possible that Plaintiff fraudulently induced Defendant to enter into the November 2nd agreement with the false promise of a future agreement regarding a $50,000.00 non-refundable deposit and a 10 percent equity stake in the marijuana dispensary. However, the combined evidence presented in support and opposition to this Motion results in the conclusion that it is more likely than not that the November 2, 2016 writing contains the terms of the agreement between the parties.

Defendant's Request for judicial notice is DENIED. Plaintiff's objections (ROA # 186) are SUSTAINED.

Plaintiff's evidentiary objections (ROA # 185) are OVERRULED.

Counsel to give notice of today's ruling.

Joel R. Wohlfeil

Judge Joel R. Wohlfeil

EXHIBIT 19 [ROAs 243-247]

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

LARRY GERACI, an individual,

Plaintiff,

vs.

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

Defendants.

AND RELATED CROSS-ACTION.

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

NOTICE OF MOTION AND MOTION BY DEFENDANT DARRYL COTTON FOR JUDGMENT ON THE PLEADINGS

Date: July 13, 2018
Time: 8:30 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

PLEASE TAKE NOTICE that on July 13, 2018 at 8:30 a.m., or as soon thereafter as the matter can be heard in Department C-73 of the above-entitled Court, Defendant/Cross-Complainant DARRYL COTTON ("Defendant") will move this Court for entry of a judgment in this case on the pleadings.

This motion is made pursuant to Code of Civil Procedure §438(c)(1)(B)(iii) on the grounds that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendant, and there is no possibility that Plaintiff can amend his Complaint to do so.

This motion is based upon this Notice of Motion and Motion; and the supporting Memorandum of Points and Authorities, Declarations of Defendant and Jacob P. Austin, and Request for Judicial Notice served and filed herewith, the pleadings and papers on file in this action, and upon such other oral and documentary evidence as may be presented at the hearing on this motion.

DATED: June 20, 2018

THE LAW OFFICE OF JACOB AUSTIN

By _____
JACOB P. AUSTIN
Attorney for Defendant/Cross-Complainant
DARRYL COTTON

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LARRY GERACI, an individual,

Plaintiff,

vs.

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

Defendants.

AND RELATED CROSS-ACTION.

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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT DARRYL COTTON'S MOTION FOR JUDGMENT ON THE PLEADINGS

Date: July 13, 2018
Time: 9:00 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

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Defendant/Cross-Complainant Darryl Cotton ("Defendant") brings forth this motion for Judgment on the Pleadings ("MJOP") pursuant to Code of Civil Procedure ("CCP") § 438. Defendant's MJOP should be granted because, *inter alia*, Plaintiff Larry Geraci's ("Plaintiff") judicial admissions – in his sworn declaration provided in this action in April of 2018 – are subject to judicial notice and establish that Plaintiff's Complaint cannot state a cause of action as a matter of law pursuant to the parol evidence rule ("PER").

Defendant's real property (the "Property") qualifies for a Conditional Use Permit ("CUP") with the City of San Diego (the "City") that would allow the operations of a Marijuana Outlet - a retail cannabis store (the "Business"). In November of 2016, Defendant and Plaintiff entered into an oral joint-venture agreement (the "JVA") pursuant to which, *inter alia,* (i) Defendant would sell his Property to Plaintiff and (ii) Plaintiff would finance the acquisition of the CUP with the City and the development of the Business at the Property. However, Plaintiff breached the JVA by attempting to deprive Defendant of a bargained-for 10% equity position in the Business and Defendant terminated the JVA. Thereafter, Plaintiff brought forth this suit in ***March 2017*** alleging the parties never entered into the JVA and that a three-sentence document executed in ***November 2016*** (the "November Document") is a completely integrated agreement for Defendant's Property.[1] For over a year Plaintiff has argued that his own written promise in an email, ***specifically confirming*** the November Document is "not" a "final agreement" (the "Confirmation Agreement"), is barred by the PER and the statute of frauds ("SOF"). This had been Plaintiff's sole position on this issue *until* April 9, 2018**.** Declaration of Darryl Cotton ("Cotton Decl.") ¶ 4.

On April 4, 2018, Defendant filed a Motion for Expungement of Notice of Pendency of Action (*Lis Pendens*) (the "LP Motion"). (ROA # 161.) The LP Motion argued, for the *first time in this action*, that neither the PER nor the SOF can "***be used as a shield to prevent the proof of [one's own] fraud***" – in this case, that Plaintiff could not bar his own Confirmation Agreement proving his own fraud. Cotton Decl. ¶ 5. As explained by the Supreme Court in the seminal case of *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169 at 1183:

> [W]e overrule *Bank of America etc. Assn. v. Pendergrass*, *supra,* 4 Cal.2d 258, and its progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch,* [204 Cal. 342, 347]: '***[I]t was never intended that the parol evidence rule should be used as a shield to prevent***

[1] Request for Judicial Notice ("RJN"), Exhibit ("Ex.") 1 (the Complaint).

> ***the proof of fraud***.' [¶] This court took a similar action in *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18 (*Tenzer*). *Tenzer* disapproved a 44-year-old line of cases to bring California law into accord with the Restatement Second of Torts, holding that a fraud action is not barred when the allegedly fraudulent promise is unenforceable under the statute of frauds. Considerations that were persuasive in *Tenzer* also support our conclusion here. The *Tenzer* court decided the Restatement view was better as a matter of policy. (*Tenzer*, *supra*, 39 Cal.3d at p. 29.) ***It noted the principle that a rule intended to prevent fraud, in that case the statute of frauds, should not be applied so as to facilitate fraud***. (*Id*. at p. 30.) (Emphasis added).

For the first time since he filed suit, in support of his opposition to the LP Motion, Plaintiff filed a sworn declaration executed on April 9, 2018 ("Plaintiff's Declaration")[2] in which he: (i) *admits* that he sent the Confirmation Agreement, but (ii) alleges that it was a *mistake* because he only meant to respond to the first sentence of Defendant's email (thanking him for meeting earlier that day) and not the second, third or fourth sentences in which Defendant specifically requested that Plaintiff respond and confirm a "final agreement" would contain his bargained-for "10% equity position" in the Business as it was "a factored element in [his] decision to sell the [P]roperty;" and (iii) alleges that on November 3, 2016, he called Defendant who ***orally agreed*** with Plaintiff that the November Document ***is*** the final complete integrated agreement for the sale of the Property (the "Oral Disavowment").[3] Cotton Decl. ¶ 6.

Defendant, pursuant to CCP §439, reached out to meet and confer with Plaintiff's counsel regarding this MJOP prior to filing. Defendant noted that per Plaintiff's judicial admissions in his declaration, dismissal of Plaintiff's Complaint is mandated pursuant to the PER. Plaintiff's counsel responded; his position is that the PER/SOF bar his client's Confirmation Agreement; however, should this Court admit the Confirmation Agreement, then Defendant's counsel contends Plaintiff's Oral Disavowment is sufficient evidence to create "a material factual dispute" requiring a trial.[4] In other words, if Plaintiff can't prevent the admission of his own writing ***proving*** his own fraud, then he will use his NEW parol evidence – the Oral Disavowment – to ***disprove*** his fraud. This is manifestly absurd and an obvious fabrication in *response* to the principles articulated in *Riverisland* and *Tenzer* in the LP Motion.

FACTUAL AND PROCEDURAL BACKGROUND

As alleged in Plaintiff's Complaint filed on March 21, 2017:

(i) "On November 2, 2016, [Plaintiff] and [Defendant] entered into a written agreement for

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[2] RJN Ex. 2 (Larry Geraci Declaration).
[3] *Id*. at p. 6, ln. 21 – p. 7, ln. 16.
[4] Declaration of Jacob Austin, Ex. D.

the purchase and sale of the [Property] on the terms and conditions stated therein." (RJN 1 at ¶7.);

(ii) "On or about November 2, 2016, [Plaintiff] paid to [Defendant] $10,000 good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until the license, known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and conditions of the written agreement." (RJN 1 at ¶8.); and

(iii) "[Defendant] has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, [Defendant] has stated that, contrary to the written terms, the parties agreed to a down payment… of $50,000… [and] he is entitled to a 10% ownership interest in the [Property.]" (RJN 1 at ¶11.)

On April 9, 2018, Plaintiff's Declaration was filed - it is a masterfully crafted response to the principles of *Riverisland* and *Tenzer,* filled with extraneous self-serving factual allegations whose primary goal is to introduce the fabricated Oral Disavowment. The only material statements buried in Plaintiff's declaration are his (i) ADMISSION that he sent the Confirmation Agreement; (ii) ADMISSIONS to alleged terms reached with Defendant relating to the sale of the Property that would be included in the November Document if it were a completely integrated agreement; and (iii) Oral Disavowment. The material statements from Plaintiff's Declaration are:

(i) "On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated: [¶] […] I just noticed the ***10% equity position*** in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any ***final agreement*** as it is a factored element in my decision to sell the property. **I'll be fine if you simply acknowledge that here in a reply**." (Geraci Declaration p. 6, ln. 25 - p. 7, ln. 1);

(ii) "[A]fter 9:00 p.m. […] I responded from my phone '***No no problem at all***.'" (Geraci Decl. p. 7, ln. 4-5);

(iii) "The next day I read the entire email and I telephoned Mr. Cotton…During that telephone call I told Mr. Cotton that a 10% equity position in the dispensary was not part of our agreement… Mr. Cotton's response was to say something to the effect of "well, you don't get what you don't ask for." (Geraci Decl. p. 7, ll. 6-14);

(iv) "I agreed to pay him for the property into two parts: $400,000 as payment for the property and $400,000 as payment for relocation of his business. As this would benefit him for tax purposes but would not affect the total price or any other terms and conditions of the purchase." (Geraci Decl. p. 5, ll.16-19);

(v) "Prior entering into the Nov 2nd written agreement, […] I discussed with [Mr. Cotton] that my assistant Rebecca Berry would act as my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as the Applicant on my behalf" (Geraci Decl. p. 5, ln. 24 – p.6, ln 1);

(vi) "As a purchaser, I was willing to bear the substantial expense of applying for and obtaining the CUP approval and understood that if I did not obtain approval then

I would not close the purchase and would lose my investment"(Geraci Decl. p. 2, ll. 25 - p. 3, ln. 1); and

(vii) "Mr. Cotton then asked for a $10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement." (Geraci Decl. p.4- ll. 12-13)

Summarized, Plaintiff would have this court disregard the clear language in his Confirmation Agreement to strike an unambiguous integrated term - Defendant's equity position - based on his Oral Disavowment with Defendant on November 3, 2016. A factually and legally unsupported position. *See Sass v. Hank* (1951) 108 Cal.App.2d 207, 214 ("***[A]n important covenant cannot be stricken from a written contract solely upon the ipse dixit of a party thereto***.") (emphasis added).

LEGAL STANDARD

> [A MJOP] is the equivalent of a general demurrer. [Citation.] This motion tests whether the allegations of the pleading under attack support the pleader's cause if they are true. [Citation.] [¶] [I]n order for judicial notice to support a motion for judgment on the pleadings by **negating** an express allegation of the pleading, the notice must be of something that cannot reasonably be controverted. [Citations.] The same is true of evidentiary admissions or concessions. [¶] Judicial notice may conclusively defeat the pleading as where it establishes res judicata or collateral estoppel. ***The pleader's own concession may have this same conclusive effect.***[5] [¶] In these limited situations, the court, in ruling on a [MJOP], properly looks beyond the pleadings. But it does so only because the party whose pleading is attached will as a matter of law, or law's equivalent of judicial notice of a fact not reasonably subject to contradiction, fail in the litigation.

Columbia Casualty Co. v. Northwestern Nat. Ins. Co. (1991) 231 Cal.App.3d 457, 468 (emphasis added).

"A trial court has no discretion in granting or denying a [MJOP]." *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 603. "On a pure question of law, trial courts have no discretion. They must, without choice, apply the law correctly." *Id*.

ARGUMENT

The sole and dispositive issue in this MJOP is whether the November Document is a completely integrated agreement. "'Whether a contract is integrated is a question of law when the evidence of integration is not in dispute.' [Citations.]" *Kanno v. Marwit Capital Partners II, L.P.* (*Kanno*) (2017) 18 Cal.App.5th 987, 1001 (emphasis added). "The crucial issue in determining whether there has been an integration is

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[5] *See Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 485 ("[A] court may take judicial notice of a party's admissions or concessions, but only in cases where the admission 'cannot reasonably be controverted,' such as in answers to interrogatories or requests for admission, or in affidavits and ***declarations*** filed on the party's behalf. [Citations.]") (emphasis added); *Lueras v. BAC Home Loans Servicing, LP* (*Lueras*) (2013) 221 Cal.App.4th 49, 93-94 (analyzing numerous opinions for appropriateness and effect of judicial admissions in briefs, arguments, and other documents submitted to the court and concluding: "***In sum, we are not permitted to turn a blind eye to [a party's] admissions[.]***") (emphasis added).

whether the parties intended their writing to serve as the exclusive embodiment of their agreement." *Masterson v. Sine* (1968) 68 Cal.2d 222, 225.

I. The November Document and the Confirmation Agreement Are Both Partially Integrated Agreements Relating to the Same Transaction.

The 4th DCA's November 29, 2017 opinion in *R.W.L. Enterprises v. Oldcastle, Inc.* (2017) 17 Cal.App.5th 1019 ("*Oldcastle*"), is directly controlling on this specific issue: whether the November Document and the Confirmation Agreement should be construed, as a matter of law, as part of the same transaction pursuant to CCP § 1642. The *Oldcastle* Court held, *inter alia*, that the trial court erred in awarding fees based on construing the credit application together with the dealer agreement pursuant to CCP § 1642. A reference in one agreement did not "clearly" and "unequivocally" demonstrate an intent to incorporate a future arrangement and took into consideration, notably, an integration clause and the fact the agreements were executed years apart from each other. In reaching its decision, Justice Huffman articulated the principles under which two agreements should be held to be part of the same transaction pursuant to CCP § 1642:

> "Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together." (Civ. Code, § 1642.) Although the statute refers expressly to several "contracts," the language has been broadened by case law to apply to instruments or writings that are not on their own contracts. (1 Witkin, Summary of Cal. Law (11th ed. 2017) Contracts, § 770, p. 826; *Harm v. Frasher* (1960) 181 Cal.App.2d 405, 413 [5 Cal. Rptr. 367].) Civil Code section 1642 "'is most frequently applied to writings executed contemporaneously, but it is likewise applicable to agreements executed by the parties at different times if the later document is in fact a part of the same transaction.'" (*Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 814 [Citation].)

Oldcastle, supra, at 1027-1028.

Unlike in *Oldcastle*, here, the November Document ***does not*** have an integration clause, the Conformation Agreement and the November Document were executed by the same parties, on the same day, within hours of each other, relate to the same subject matter and the Confirmation Agreement was sent ***by*** Plaintiff at Defendant's specific request for confirmation of a term that was not included in the November Document. Both documents here were "executed contemporaneously" and can only reasonably lead to the conclusion that they both should relate to the same transaction – the sale of the Property from Defendant to Plaintiff for which he would receive an equity position. Further, of great import in *Oldcastle* was the fact that the two agreements were executed nine years apart – one in 2001 and one in 2010 and there was no clear

reference between them. Here, the November Document and the Confirmation Agreement were executed within hours of each other. *Oldcastle, supra,* 1031 ("[H]ere, where the two writings were executed nine years apart, we believe an integration clause in the later writing weighs heavily against a finding that the parties intended to add terms to their prior agreement.").

The *Oldcastle* Court further explained that, "**For the terms of another document to be incorporated into the document executed by the parties *the reference must be clear and unequivocal*[.]**" [Citation.] (italics in original, emphasis in bold added). "**The contract need not recite that it 'incorporates' another document, so long as it 'guide[s] the reader to the incorporated document**." [Citation.] (emphasis added). To be construed together, the separate instruments must be "so interrelated as to be considered one contract." [Citation.] This standard compels our result. *Oldcastle, supra,* at 1027-1028.

Here, it is undisputed that Defendant's email requesting confirmation of his equity position clearly and directly references the November Document. Plaintiff wrote: "I just noticed the 10% equity position in the dispensary was not language added into ***that document*** [(*i.e.*, the November Document)]. I just want to make sure that we're not missing ***that language*** [(*i.e.*, the 10% equity position)] in any ***final agreement*** as it is factored element in my decision to sell the property." (Geraci Decl. p. 6, ll. 25 - p. 7, ln. 1) Thus, Defendant's reference is "***clear and unequivocal.***" *Id*.

Versaci, relied on in *Oldcastle* heavily, is also instructive here – the question in *Versaci* was whether a college superintendent's 2002–2003 performance goals were part of his 2001 employment contract so as to be subject to a California Public Records Act request. The court concluded that a "mere reference" in the employment contract to the fact that goal-setting would be part of the evaluation process "does not clearly and unequivocally evidence the parties' intent to incorporate the yet to be determined goals into the contract." *Versaci* at p. 817. In contrast, here, Defendant's email to Plaintiff seeking confirmation is not a "mere reference" nor is the language forward-seeking in any manner; Defendant is clearly and plainly requesting CONFIRMATION of a *previously established term* of an agreement reached between the parties that would be reduced to writing in a forthcoming *final agreement*.

Lastly, as noted in *Oldcastle*, "[w]hen the parties to a written contract have agreed to it as an 'integration'—a complete and final embodiment of the terms of an agreement—parol evidence cannot be used to add to or vary its terms.' [*Masterson, supra,* at 225]" *Oldcastle*, *supra*, at 1023, fn. 3. Here, Plaintiff's

admissions in his declaration provide a great deal of support for the conclusion the November Document is not a complete integrated agreement. Included in Plaintiff's Declaration are five judicial admissions that support this conclusion because if it was, then these terms would have been "naturally" included (*Masterson, supra,* at 227): (i) Plaintiff agreed to split the payment of the $800,000 into two $400,000 payments, one for the property and another to relocated Defendant's business; (Geraci Decl. p. 5, ll.16-19) (ii) Plaintiff and Defendant agree that Plaintiff will use a third party (Rebecca Berry) as an agent for the application of the CUP prior to the signing of the November Document; (Geraci Decl. p. 5, ln. 24 – p. 6, ln.1) (iii) Plaintiff confirmed and acknowledged a 10% equity position in the dispensary for Defendant; (Geraci Decl. p. 7, ll. 4-5), (iv) It was the intention of the parties to make the $10,000 deposit to be non-refundable; (Geraci Decl. p. 4, ll. 12-13) and (v) Plaintiff admitted that he agreed to pay ALL of the cost associated with the CUP process. (Geraci Decl. p. 2, ln. 25 - p. 3, ln 1.) All of these elements were stated by Plaintiff in his sworn affidavit. These are material terms to the November Document that had the parties intended to have a completely integrated agreement, would have been easy to add.

II. The Parol Evidence Rule Does Not Bar the Confirmation Agreement, But Does Bar the Oral Disavowment.

The Fourth District Appellate Court's ("4th DCA") December 22, 2017 opinion by in *Kanno* is directly and fully controlling here. In *Kanno*, plaintiff sued defendants for breach of oral contract, specific performance, and promise without intent to perform in connection with a transaction that was documented by three writings, each of which had an extensive integration clause. A jury found in favor of plaintiff on his claim for breach of an oral agreement. The trial court held that the PER did not bar plaintiff's oral agreement. On appeal, as described in appellant's opening paragraph:

> The question presented by this appeal is whether a complex written $23.5 million transaction to purchase all of the assets of plaintiff's company-negotiated by Sheppard Mullin for plaintiff and Paul Hastings for defendants and including multiple separate integrated agreements comprising two binders of materials-can be anything other than a fully integrated agreement.[6]

The 4th DCA affirmed the judgment. The 4th DCA found that the oral agreement was not made unenforceable by the PER notwithstanding the integration clauses in the three completely integrated agreements. In reaching its decision, the 4th DCA "address[ed] the definition, meaning, and scope of the parol evidence rule under

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6 *Kanno v.Marwit Capital*, 2016 CA App. Ct. Briefs LEXIS 857.

California law…. to determine whether the three written agreements were intended as partial integrations (final expressions), complete integrations (complete and exclusive statements), or not integrated writings at all." *Kanno*, 18 Cal.App.5th at 991. As described by Judge O'Leary in *Kanno*:

> [CCP §] 1856 creates two levels of contract integration or finality: (1) the parties intended the writing to be the final expression of their agreement; and (2) the parties intended the writing to be the complete and exclusive statement of the terms of their agreement. [¶] If a writing falls within level 1 (the writing is a final expression) then a prior or contemporaneous oral agreement is admissible if it does not contradict the writing, and evidence of consistent additional terms may be used to explain or supplement the writing. (§ 1856, subd. (a).) *Ibid.* [¶] If a writing falls within level 2 (complete and exclusive statement) then evidence of consistent additional terms may not be used to explain or supplement the writing. (§ 1856, subd. (b).)

In other words, as further clarified in *Kanno* and commonly referred to in many other opinions, Level 1 refers to a "partially integrated agreement" and Level 2 is a "completely integrated agreement."[7] For consistency, hereinafter, the references shall be to "partial" and "complete" integration. Here, Plaintiff alleges that the November Document is a completely integrated agreement. The Court in *Kanno*, specifically laid out the facts required to determine if a contract is partially or fully integrated:

> ***The issue of contract integration may be analyzed by addressing four questions***: "(1) does the written agreement appear on its face to be a complete agreement; obviously, the presence of an 'integration' clause will be very persuasive, if not controlling, on this issue; (2) does the alleged oral agreement directly contradict the written instrument; (3) can it be said that the oral agreement might naturally have been made as a separate agreement or, to put it another way, if the oral agreement had been actually agreed to, would it certainly have been included in the written instrument; and (4) would evidence of the oral agreement be likely to mislead the trier of fact." (Citing *Banco Do Brasil, S.A. v. Latian, Inc.* (1991) 234 Cal.App.3d 973, 1002–1003.)

Kanno, supra, at 1007 (emphasis added).

A. Applying the Parol Evidence Rule to the November Document.

1. Does the November Document appear on its face to be a complete agreement? "We start by asking whether the [November Document] appears on its face to be a final expression of the parties' agreement with respect to the terms included in that agreement. [Citation.]" *Id*. at 1007. Unlike in *Kanno*,

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[7] ("Some clarification of terms is in order. Case law sometimes uses the term 'integration' to mean a complete integration, *i.e.*, the second level of integration. Justice Traynor did so in *Masterson v. Sine*, *supra*, at 225. To be consistent with California statute, we use the term 'final expression' to mean the level of integration referred to in section 1856, subdivision (a), and the term 'complete and exclusive statement' to mean the level of integration referred to in section 1856, subdivision (b). A final expression corresponds to a ***partially integrated agreement*** under section 210, subdivision (2) of the Restatement Second of Contracts, and a complete and exclusive statement corresponds to a ***completely integrated agreement*** under section 210, subdivision (1) of the Restatement Second of Contracts.") (emphasis added).) *Kanno, supra,* at 1000.

the November Document does not appear to be so because it is not "lengthy, formal, detailed… and has [no] integration clause." *Id*. "The integration clause is a factor, and persuasive, but it is not controlling." *Id*. The lack of an integration clause weighs in favor of Defendant. Further, the November Document is three sentences long, is missing many essential terms when compared to even a standard real estate purchase agreement, much less one that has a condition precedent requiring the approval of a CUP by the City for the Business, and has grammar and spelling mistakes (*e.g.*, "contacts" instead of "contracts").

"To determine whether the [November Document] is the final expression [(*i.e.*, partially integrated)] or the complete and exclusive statement [(*i.e.*, completely integrated)] of the parties' agreement, [the court] must look beyond the four corners of the agreement." *Id*. As noted above, Plaintiff's judicial admissions provide dispositive support for the conclusion that the November Document is not a complete integrated agreement.

The *Kanno* Court noted an exchange between the parties: "[plaintiff] insisted that [defendant] 'promise this to me.' [Defendant] paused and then said, '***[o]kay, [plaintiff], I promise***.'" *Id*. at 1009 (emphasis added). Relying heavily on that exchange, it found that "[t]he evidence supports a finding that the parties intended the terms of the [oral agreement] to be part of their [written] agreement." *Ibid*. Here, the case is even stronger for Defendant: Defendant emailed Plaintiff asking him to confirm in writing (*i.e.*, promise) that a "final agreement" would contain his "equity position" and Plaintiff replied, "***No no problem at all***." (Geraci Decl. p. 6, ll.25 a – p. 7, ln. 1.)

Thus, as in *Kanno*, "[t]he presence of [two] agreements therefore is persuasive evidence the parties did not intend the [November Document] to be the 'complete and exclusive statement' of the parties' agreement." *Id*. at 1008. Furthermore, by the Plaintiffs own admission there have been agreements made both prior to the November Document and thereafter that were relating to the same transaction. Namely that the Plaintiff would use an agent for the CUP and that the payment for the property would be reduced to $400,000 with a $400,000 relocation fee.

Lastly, of note on this issue, the November Document is three-sentences long and misspells the word "contract" (*i.e.*, contact). It is an undisputed fact that Plaintiff was a real estate agent for over 25 years (suspiciously allowing his license to expire the same month he filed this lawsuit against Defendant and

AFTER Defendant had threatened to report Plaintiff to the California Board of Realtors)[8]. In sum, the November Document does not appear to be a final complete integrated agreement.

2. Does the alleged oral agreement directly contradict the written instrument?

Plaintiff's Disavowment is that the parties never reached a JVA and that Defendant's email, requesting written assurance of performance, is an attempt to renegotiate the deal reached which is fully reflected in the November Document. As such, Plaintiff's Oral Disavowment directly contradicts the written, integrated term providing for Defendant's "10% equity position" that would be reduced to writing in a forthcoming "final agreement" and is thus barred by the PER.

Conversely, the Confirmation Agreement, sent by Plaintiff at Defendant's specific request for written confirmation of a material term, does not vary or contradict the terms in the November Document. This Court has already ruled and stated exactly the same in denying Plaintiff's demurrer to Defendant's cross-complaint.[9] Notwithstanding this Court's explicit ruling, Plaintiff continues to argue the November Document is not ambiguous and, consequently, the Confirmation Agreement is barred as it seeks to vary and contradict the terms in the November Document. In other words, he argues the two documents should be read separately.

3. Can it be said that the oral agreement might naturally have been made as a separate agreement or, to put it another way, if the oral agreement had been actually agreed to, would it certainly have been included in the written instrument?

The November Document was meant to be a "receipt." The Confirmation Agreement was meant to be just that – a confirmation of the most material term reached in the JVA – Defendant's equity position – to provide assurance to Defendant while a "final agreement" that reduced the JVA to writing was being prepared by Plaintiff's counsel.

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[8] RJN 4 (State of California Bureau of Real Estate License Information for Larry E Geraci).

[9] RJN 3 (11/6/2017 Minute Order denying Plaintiff's general Demurrer (ROA # 52)) at p.1. ("[Plaintiff] argues that the [November Document] is contradicted by the alleged oral agreement, and as a result violates the statute of frauds. [Plaintiff] argues: "In the instant case, the only writing signed by both parties is the November 2, 2016 [November Document], which explicitly provides for a $10,000 down payment ('earnest money to be applied to the sales price'); in fact, the agreement acknowledges receipt of that down payment. [Defendant] is alleging that the oral agreement provided for a down payment of $50,000, which is in direct contradiction of the written term of a $10,000 down payment." However, ***this argument lacks merit because the* [November Document] attached to the SAC-C is unclear. *The acknowledgement as to payment of $10,000 does not necessarily mean that the total deposit was not, in fact, $50,000 (such that $40,000 remained due). As alleged, there is no conflict***.") (emphasis added).

The *Kanno* defendants also sought to create a dispute between documents related to the same transaction by arguing that some terms contained in some agreements were contradictory; however, the Court held that because some of the agreements in dispute were "silent on the matter … does not directly contradict" other agreements which did contain such a term. *Id*. at 1010. In other words, Plaintiff is urging this Court to do exactly what a party in *Kanno* failed to do – namely, to interpret the silence of a term in one document as being contradicted if not reflected in another document. In this case, the mere fact that the Confirmation Agreement provides for an equity position and the November Document does not – pursuant to *Kanno* –does not result in a conflict which would bar introduction of the Confirmation Agreement.

> [I]n determining the issue of integration, the collateral agreement will be examined only insofar as it does not directly contradict an express term of the written agreement; "***it cannot reasonably be presumed that the parties intended to integrate two directly contradictory terms in the same agreement***." [Citation.] In the case of prior or contemporaneous representations, the collateral agreement must be one which might naturally be made as a separate contract, *i.e.*, if in fact agreed upon need not certainly have appeared in writing.'" (*Banco Do Brasil, S.A. v. Latian, Inc.* (1991) 234 Cal.App.3d 973, 1002 [Citation], disapproved on other grounds in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Assn.* (2013) 55 Cal.4th 1169, 1182 [Citation].)

Kanno, supra, at 999-1001 (emphasis added).

This is the gravamen of this motion. Plaintiff's Confirmation Agreement and his Oral Disavowment contain "two directly contradictory terms [that are part of] the same agreement [*i.e.*, the JVA]." *Id*. Thus, Plaintiff's Oral Disavowment is barred.

Defendant notes that "even in situations where the court concludes that it would not have been natural for the parties to make the alleged collateral oral agreement, parol evidence of such an agreement should nevertheless be permitted if the court is convinced that the unnatural actually happened in the case being adjudicated." *Masterson, supra,* at 228, fn. 1.; *Kanno, supra*, at 1009. However, in this case, given that this Court can judicially notice that Plaintiff was a California Licensed Real Estate Agent for over 25 years[10]; is an Enrolled Agent with the IRS; and the fact that Plaintiff did <u>not</u> raise the Oral Disavowment for over a year until confronted with *Riverisland* and *Tenzer*, there is no evidence to support the "unnatural" happened here.

To be clear, for the unnatural to have happened here, that would require at a minimum: (i) Defendant to have sent an email to Plaintiff ***<u>pretending</u>*** that a deal had been reached in which he was ***<u>already</u>*** promised

[10] RJN 4 (State of California Bureau of Real Estate license information for Larry E Geraci).

a very specific "10% equity position;" (ii) Plaintiff to have ***mistakenly*** confirmed in writing Defendant's pretend position; (iii) Plaintiff, a licensed Real Estate Agent at the time for over 25 years, to not have ever sought in any manner to document the fact that he mistakenly sent the Confirmation Agreement; (iv) for Plaintiff to have realized, over a year after filing suit, that he should raise the Oral Disavowment; and (vi) that he did so, coincidentally, in response to Defendant's motion citing controlling case law that would prevent Plaintiff from using the PER as a shield to bar proof of his own fraud (*i.e.*, the Confirmation Agreement).

That is exactly what Plaintiff is arguing. This is a factually and legally flawed position. The Court must make a preliminary determination of the credibility of the evidence, as described by the Supreme Court in *Masterson*, "[e]vidence of oral collateral agreements should be excluded only when the fact finder is likely to be misled. **The rule must therefore be based on the credibility of the evidence**." *Masterson v. Sine* (1968) 68 Cal.2d 222, 227 (emphasis added). There is nothing credible about Plaintiff's Oral Disavowment.

4. Mislead the trier of fact. Evidence of a collateral oral agreement should be excluded if it is likely to mislead the fact finder. *Masterson, supra,* at 227. Here, the November Document and the confirmation email would not mislead the trier of fact.

B. Applying the Parol Evidence Rule to Plaintiff's Oral Disavowment

1. The more complete the agreement appears to be on its face, the more likely it was intended as a "final expression" of the agreement. As noted above, the November Document has no integration clause and its absence supports a finding that November Document is not completely integrated. *Wallis v. Farmers Group, Inc.* (1990) 220 CA3d 718, 730, 269 CR 299, 305 (disapproved on other grounds in *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389, 394).

Where a written contract is not the parties' complete and final agreement, evidence of a separate oral agreement is admissible on any matter on which the written agreement is silent and that is *not inconsistent with its written terms. Masterson, supra,* at 226-228. Here, Plaintiff's Oral Disavowment is inconsistent with the written terms in the Confirmation Agreement. The plain language in the Confirmation Agreement reflects that the parties did not intend for either the November Document or the Confirmation Agreement to be a final agreement as they both clearly contemplated a "final agreement" that would provide for Defendant's equity position. However, the Confirmation Agreement clearly reflects that the parties intended the Confirmation Agreement to be a final and complete agreement with respect to a particular term - Defendant's equity position.

Masterson, *supra,* at 225. As such, the PER bars extrinsic evidence as to those matters determined to be partially integrated. *Wallis v. Farmers Group, Inc.* (1990) 220 Cal.App.3d 718, 730, (disapproved on other grounds in *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389, 394 & fn. 2). "Parol evidence may not be offered to contradict the terms of even a partially integrated writing." *Esbensen v. Userware Int'l, Inc.* (1992) 11 Cal.App.4th 631, 638. Thus, here, Plaintiff's Oral Disavowment is barred.

2. In determining whether a writing was intended as a final expression of the parties' agreement, "collateral oral agreements" that contradict the writing cannot be considered. *Banco Do Brasil, supra,* 1002-1003. In *Banco Do Brasil, g*uarantors claimed bank had orally agreed to extend a $2 Million line of credit, but this directly contradicted their written guaranty stating their obligation was "absolute and unconditional." The claimed oral agreement could not be considered in determining whether the writing was an integration. Similarly, here, Plaintiff Oral Disavowment directly contradicts his written confirmation that he would provide Defendant an equity position in a forthcoming "final agreement."

3. Where a "collateral" oral agreement is alleged, the court must determine whether the subject matter is such that it would "certainly" have been included in the written agreement had it actually been agreed upon; or would "naturally" have been made as a separate agreement. *Masterson*, *supra,* at 227. Here, had Defendant actually agreed to the Oral Disavowment, it would be natural for Plaintiff, a California Licensed Real Estate Agent for over 25 years, to have memorialized Defendant's alleged agreement with him that the November Document was a completely integrated agreement. It is not *natural* to assume that Plaintiff has allowed over a year since he filed this suit before raising this allegation. *Id.*

4. Evidence of a collateral oral agreement should be excluded if it is likely to mislead the fact finder. *Masterson, supra,* at 227. Here, there is no support for Plaintiff's Oral Disavowment and light of his undisputed communications and judicial admissions, it would lead to mislead a fact finder. Once it is found that the parties intended the writing to be the "final expression" of their agreement (*i.e.*, an integration), contrary expressions of intent are excluded. A party is not permitted to escape its obligations "by showing he did not intend to do what his words bound him to do." *Brant v. California Dairies* (1935) 4 Cal.2d 128, 134. In this case, Plaintiff clearly originally sought to deprive Defendant of the equity position that he had bargained for. Lastly, and directly on point here, while extrinsic evidence is admissible to show what the

parties *meant by what they said*, it is inadmissible to show the parties meant something *other than* what they said. *See Larsen v. Johannes* (1970) 7 Cal.App.3d 491, 500.

For all the reasons set forth above, the PER bars Plaintiff's Oral Disavowment.

III. Plaintiff's "Mistake"

The bottom line is that Plaintiff's Confirmation Agreement is fatal to his Complaint. His argument in opposition – the Oral Disavowment – is that he sent it by mistake. "When the terms of an instrument have been reduced to writing and are not ambiguous, any extrinsic evidence is excluded unless the validity of the agreement is in dispute or a mistake or imperfection of the writing is put in issue. [CCP §§ 1856, 1625.]" *Brant v. California Dairies, Inc*., 4 Cal.2d 128, 134. Plaintiff will no doubt oppose this motion based on his alleged mistake, but should not be successful in his attempt – his judicial admissions and his Confirmation Agreement reflect his ***intent***. Thus, the evidence he offers cannot be admitted under that paradigm. A contract cannot be varied by the undisclosed intention of one of the parties. *Bell v. Minor*, 88 Cal.App.2d 879, 882 "***[W]here the terms of an agreement are set forth in writing, and the words are not equivocal or ambiguous, the writing or writings will constitute the contract of the parties, and one party is not permitted to escape from its obligations by showing that he did not intend to do what his words bound him to do***." *Brant, supra,* at 134.

"[T]he law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. It judges of his intention by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts, judged by a reasonable standard, manifest an intention to agree in regard to the matter in question, that agreement is established, and it is immaterial what may be the real but unexpressed state of his mind on that subject." *Crow v. P.E.G. Constr. Co.* (1957) 156 Cal.App.2d 271, 278-279. Plaintiff is simply attempting to renege on his obligations to Defendant and is before this court asking it to ignore the plain, clear language of his Confirmation Agreement and simply ignore the Confirmation Agreement. *Crow*, *supra,* at 278 ("In other words, when the language of a contract is plain and unambiguous it is not within the province of a court to rewrite or alter by construction what has been agreed upon.").

CONCLUSION

The reality is that the facts in this matter are incredibly simple – Plaintiff and Defendant reached an oral joint venture agreement and, at some point thereafter, Plaintiff chose to renege on the deal he had reached

with Defendant and sought to deprive Defendant of a bargained-for equity position. Plaintiff's judicial admissions confirming he sent the Confirmation Agreement and other material terms not in the November Document prove it is not a complete integrated agreement and, thus, are fatal to Plaintiff's Complaint.

Lastly, Defendant wants to be **emphatically** clear with this Court about Plaintiff's Oral Disavowment: it is a blatant lie. The details in Plaintiff's declaration that Defendant stated "well, you don't get what you don't ask for" and "looking pretty good-we all should make some money here" are complete fabrications. They are contradicted by ***every*** piece of undisputed evidence created before the inception of this lawsuit and reflect Plaintiff's willingness to ***falsify evidence*** to manipulate this Court to reach a favorable result for himself. This Court must recognize the patently obvious motivation behind Plaintiff's lies, if this suit is adjudicated in Defendant's favor pursuant to the PER, then Defendant shall have a cause of action for malicious prosecution against Plaintiff. *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 349 ("***[W]e hold that terminations based on the parol evidence rule are favorable for malicious prosecution purposes***."). The fact that Plaintiff raised the Oral Disavowment over a year after filing suit, and *only* when confronted with controlling case law preventing his use of the PER as a shield to bar proof of his own fraud, leads to only one logical and reasonable conclusion – it is a malicious and manipulative lie.

DATED: June 20, 2018

THE LAW OFFICE OF JACOB AUSTIN

By _____
JACOB P. AUSTIN
Attorney for Defendant/Cross-Complainant DARRYL COTTON

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LARRY GERACI, an individual,

Plaintiff,

vs.

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

Defendants.

AND RELATED CROSS-ACTION.

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

DECLARATION OF JACOB P. AUSTIN IN SUPPORT OF DEFENDANT DARRYL COTTON'S MOTION FOR JUDGMENT ON THE PLEADINGS

Date: July 13, 2018
Time: 8:30 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

I, JACOB P. AUSTIN, declare:

1. I am the attorney of record for Defendant and Cross-Complainant, DARRYL COTTON ("Cotton" or "Defendant") in this action (hereinafter, the "Litigation").

2. The facts set forth herein are true and correct as of my own personal knowledge, except those facts which are stated upon information and believe; and, as to those facts, I believe them to be true. If called upon to do so, I could and would competently testify to the matters stated herein.

3. This declaration is submitted in support of Darryl Cotton's Motion for Judgment on the Pleadings.

4. On May 29, 2018 at 1:18 p.m., I emailed Plaintiff's counsel, Michael Weinstein, to meet and confer with him regarding this motion as required by Code of Civil Procedure § 439, to advise him concerning certain evidence which I had just discovered, and to inquire whether he would be willing to stipulate to the filing of an amended cross-complaint based upon the new evidence and testimony. Later that afternoon, I followed up with a second email to Mr. Weinstein at 3:10 p.m. to clarify one point I had made in my previous email. True and correct copies of my May 29, 2018 email messages to Mr. Weinstein are attached hereto as Exhibit A.

5. Mr. Weinstein responded on May 30, 2018 stating, *inter alia,* that (a) he did not understand my explanation of the basis for filing a motion for judgment on the pleadings based upon the content of his client's declaration dated April 9, 2018 filed in opposition to Defendant's Motion to Expunge the Lis Pendens on his Property ("LP Opp. Dec."), (b) the LP Opp. Dec. "contains evidence consistent with the notice allegation pleaded in the complaint, (c) Defendant's dispute of "those factual allegations is irrelevant on a motion for judgment on the pleadings, (d) if I filed "such a motion, then please be aware that we may seek sanctions against you and [Defendant]," and he was not willing to "stipulate to an order providing leave for [Defendant] to file an amended Cross-Complaint [as] there is no basis for doing so at this late stage and will only serve *[sic]* to derail and delay the trial date." A true and correct copy of my Mr. Weinstein's May 30, 2018 email message to is attached hereto as Exhibit B.

6. In my June 1, 2018 response to Mr. Weinstein's email, I further articulated the facts upon which I intended to base the Motion for Judgment on the Pleadings. *See* ¶¶4-7 of the true and correct copy of my June 1, 2018 e-mail is attached hereto as Exhibit C.

7. On June 4, 2018, Mr. Weinstein responded that (a) I had met my obligation to meet and confer with regard to filing the Motion for Judgment on the Pleadings, (b) his client would oppose both that motion and any motion I might file for leave to amend the Cross-Complaint, (c) his position was that my entire analysis was flawed and he would address my arguments in his oppositions, (d) the LP Opp. Dec. "supports the claim regarding the written agreement that was reached on November 2, 2016," and (e) "[t]hose issues will be decided at trial." Mr. Weinstein further expounded on his interpretation of the parol evidence rule and the statute of frauds the application of same in connection with the November Document, the parties never agreed to the 10% equity position for Defendant, and his client's

allegation concerning the content of he had with Defendant on November 3, 2018 was parol evidence consistent with the November Document and, as such, was not barred by the statute of frauds. A true and correct copy of Mr. Weinstein's June 4, 2018 email is attached hereto as Exhibit D.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 20, 2018 at San Diego, California.

JACOB P. AUSTIN

EXHIBIT A

Gmail Jake Austin <jacobaustinesq@gmail.com>

Geraci v. Cotton matter

Jake Austin <jpa@jacobaustinesq.com> Tue, May 29, 1:18 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Mr. Weinstein,

Based on Mr. Geraci's last declaration filed with the Court in the *lis pendens* pleadings, I will be submitting a motion for Judgment on the Pleadings scheduled to be heard on June 22, 2018. I will have moving papers to you on or before June 1, 2018.

Also, yesterday, I was at a meeting with Mr. Cotton and Ms. Corina Young, who is a client of Mr. Jim Bartell. Ms. Young, approximately six months ago or so, was at a meeting with Mr. Bartell and asked him about her intent to invest in Mr. Cotton's CUP venture – Mr. Cotton was attempting to sell off a portion of his remaining interest in the property, with the disclosure that the property was under litigation, to finance his litigation defense. Mr. Bartell informed Ms. Young that he was getting Mr. Cotton's CUP application denied and that it was "because everyone hates Darryl."

Further, at that meeting with Ms. Young was her attorney, Mr. Matthew Shapiro. Mr. Shapiro has a strong relationship with Mrs. Austin. Mr. Shapiro's client, Mr. Aaron Magagna, is also the applicant on a CUP application filed last month on a property within 1,000 feet of Mr. Cotton's property that, if approved, would result in Mr. Cotton never being able to get a CUP application approved on his property.

Two months ago, before I became attorney-of-record and Mr. Shapiro knew I was associated with this case (and I personally know he has a strong relationship with Mrs. Austin), he sat down, at a hearing in the Geraci v. Cotton matter in front of Judge Wohlfeil, next to Mr. Cotton and his litigation investor in plain clothes. I walked in to the courtroom after he had been eavesdropping on them for a considerable amount of time. I asked him why he was there, he informed me that he was there to prepare for a case in front of Judge Wohlfeil for a client. Over this weekend, I asked him to produce the case number of the matter before Judge Wohlfeil and he asked for time. When I pressed him, explicitly stating that I believed he was buying time to find an attorney that has a case in front of Judge Wohlfeil to associate himself with, he admitted he was there to observe the Geraci v. Cotton matter, but that it was "truly a coincidence" he sat in the immediate vicinity of Mr. Cotton. To be clear, he explicitly lied to me at first and only told the truth when asked to provide proof of his alleged reason for being in front of Judge Wohlfeil.

Further, during the conversation with Ms. Young, Mr. Cotton was probing to make it very clear

regarding the wording and intent of her conversation with Mr. Bartell. He is incredibly livid, Mr. Cotton asked Ms. Young to provide her testimony. She refused the request once she understood that her testimony would provide evidence of a conspiracy between Mr. Geraci, Mr. Bartell and Mrs. Austin, on one hand, and Mr. Aaron Magagna and Mr. Shapiro on the other (the individuals that benefit from Mr. Bartell's use of his political influence to get a denial on Mr. Cotton's property). She stated she would not get involved in any litigation because, in addition to not wanting to be involved in litigation for any reason, she has a significant amount of capital invested in another CUP application that Mr. Bartell was hired to facilitate its approval and she is scared that he will retaliate against her if she provides her testimony or appears to be a "snitch." Mr. Cotton is currently seeking the assistance of a private investigator to locate Ms. Young with the intent of subpoenaing her to be deposed.

Additionally, please see attached, an email exchange between myself and Mr. Shapiro regarding this factual allegation – that he was present at a meeting with Mrs. Young and Mr. Bartell and that Mr. Bartell made the aforementioned statement. Mr. Shapiro does not deny it.

Lastly, Mr. Cotton believes that the engineering company hired by Mr. Geraci to make a recommendation to the City of San Diego has been unduly influenced into making a denial recommendation. On the day of the soils sample, the company was supposed to bore to 50 feet at two locations, however, they only got to 9 and 13 feet before the drills bits broke because the property is essentially on a big rock. The geologist for the engineering company explicitly stated that there are absolutely no problems and they would recommend an approval. Mr. Cotton himself took many pictures while they were there and called me contemporaneously during the procedure letting me know the good news (he had anticipated that Mr. Geraci was using the soils sample as a ruse to have the CUP application denied). However, Mr. Cotton followed-up with the geologist last week to get a copy of the report and she sounded extremely anxious and scared, would not confirm the depths reached were only 9 and 13 feet and insinuated that the company would be recommending a denial.

Thus, based on:

(i) Mr. Geraci's latest declaration with new sworn factual allegations;

(ii) Ms. Young's statements regarding Mr. Bartell that I personally witnessed and will attest to;

(iii) Mr. Shapiro's (a) lie to me regarding his reasoning for sitting down next to Mr. Cotton and his litigation investor, (b) his indirect admission that he was present and heard Mr. Bartell state he was getting Mr. Cotton's CUP application denied, (c) the fact that the competing CUP application is a client of Mr. Shapiro, and (d) the fact that he has a deep relationship with Mrs. Austin (an adverse party to Mr. Cotton); and

(iv) the engineering company's apparent intent to go back on an explicit representation to recommend an approval (that appears to have been coerced);

Mr. Cotton will be seeking to amend his Cross-Complaint.

Please let me know if you would agree to stipulate to an amendment. Mr. Cotton will be seeking to amend his Cross-Complaint to, *inter alia,* respond to the new factual allegations raised by Mr. Geraci and to add as co-defendants the engineering company, Mr. Shapiro, Mr. Magana, and Mr. Bartell. He will also, at a minimum, be bringing forth a cause of action for conspiracy for the reasons stated above.

Also, please consider this notice for an ex-parte TRO scheduled for June 6, 2018 seeking to have the Court appoint a receiver to manage the CUP application. I realize that Mr. Cotton has made this request before, but I believe that with the newly discovered facts and Mr. Geraci's latest factual allegations in his declaration, Mr. Cotton will be able to meet his burden and prove to the court that more likely than not he will prevail on the merits of his cause of action for breach of contract. I will forward the moving papers as soon as they are ready, but no later than 12:00 PM on June 5, 2018.

Lastly, I will have an updated disclosure response to you this week.

-Jacob

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

Gmail - Federal Blvd. CUP Application.pdf

Geraci v. Cotton matter

Jake Austin <jpa@jacobaustinesq.com> Tue, May 29, 2018 at 3:10 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Mr. Weinstein,

I am following up on the below regarding one point - I just finished a lengthy conversation with Mr. Shapiro. We are going to attempt to settle the potential dispute between Mr. Cotton and Mr. Magagna. But, I want to stress the following – Mr. Shapiro explicitly admits to being at the meeting with Mr. Bartell and Ms. Young and that Mr. Bartell did comment on Mr. Cotton's CUP application. However, he alleges he does not remember clearly what Mr. Bartell said regarding Mr. Cotton's CUP application. I told him that Ms. Young was completely clear, remembered the conversation in detail as she had hoped it would be a good investment, and provided detailed responses to Mr. Cotton's questions before she realized that her testimony had a material impact on a litigation matter.

Mr. Shapiro responded by insinuating that Ms. Young is not a reliable witness for any number of reasons, including the allegation that she smokes marijuana and cannot be trusted.

Needless to say, irrespective of whether the issue with Mr. Shapiro and Mr. Magagna is resolved without litigation, his confirmation of the meeting and the fact that Mr. Bartell did make a statement regarding Mr. Cotton's CUP application is supporting evidence of the conspiracy that Mr. Cotton has been alleging for months.

Jacob

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

EXHIBIT B

Gmail

Jake Austin <jacobaustinesq@gmail.com>

Geraci v. Cotton matter

Michael Weinstein <MWeinstein@ferrisbritton.com> Wed, May 30, 10:01 AM
To: Jake Austin <jpa@jacobaustinesq.com>

Dear Mr. Austin,

I do not intend to address your client's allegations below of a conspiracy. It is without merit and based on irrational speculation. I will address the pertinent questions.

First, thank you for notifying me in advance of the motion set for June 22, 2018. Frankly, I do not understand the basis for a renewed motion for judgment on the pleadings. Mr. Cotton sought this once before and it was denied. I do not understand your statement that you will be submitting such a motion "[b]ased on Mr. Geraci's last declaration filed with the Court in the *lis pendens* pleadings." That declaration contains evidence consistent with the notice allegations pleaded in the complaint. That Mr. Cotton disputes those factual allegations is irrelevant on a motion for judgment on the pleadings. If you file such a motion, then please be aware we may seek sanctions against you and Mr. Cotton.

Second, please be advised that we will not stipulate to an order providing leave for Mr. Cotton to file an amended Cross-Complaint. There is no basis for doing so at this late stage and will only serve to derail and delay the trial date as it will add new parties and legal theories to the case. You will need to file a motion seeking leave to amend if that is what your client desires to do.

Third, thank you for the notice of the June 6 ex parte. This ex parte motion to appoint a receiver to manage the CUP application has been heard and denied previously. Please be advise that the motion is not properly heard on an ex parte basis and should be the subject of a noticed motion. My clients will object to the relief being sought on an ex parte basis. In addition, like before, the motion has no merit. If you bring such a motion, I suggest you do so by noticed motion.

Fourth, I look forward to receiving the "updated disclosure response" later this week.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450

San Diego, CA 92101-7901

EXHIBIT C

Geraci v. Cotton matter

Jake Austin <jpa@jacobaustinesq.com> Fri, Jun 1, 2018 at 4:41 PM
To: Michael Weinstein <MWeinstein@ferrisbritton.com>

Mr. Weinstein,

Pursuant to CCP §439, prior to filing a motion for judgment on the pleadings, it was incumbent upon me to have given you 5 days' notice prior to the filing of the motion in order to afford us the opportunity to meet and confer in that regard. Thus, because I failed to provide you the notice required by statute, I have rescheduled the hearing date on the motion for July 13, 2018 at 9:00 a.m.

In order to facilitate an effective and productive meet and confer, my interpretation of the facts and law relevant to this case, and the evidence in support thereof, are set forth below.

Additionally, as noted below, it also is my intent to seek leave of court to amend Mr. Cotton's Cross-Complaint to add, *inter alia,* a cause of action for conspiracy and additional defendants. Please understand that it is not my desire to pursue this course of action; however, while Mr. Cotton can be a challenging individual, he does not deserve to unjustly lose everything of value in his life.

As it currently stands, it is my position that Mr. Geraci brought forth a meritless lawsuit. In light of his declaration filed in opposition to Mr. Cotton's motion to expunge the *lis pendens* filed on his property, I feel this position is now even stronger than ever. In his declaration, Mr. Geraci explicitly confirms that he wrote the email which confirms he would provide Mr. Cotton a "10% equity position," but allegedly did so by accident and the next day he clarified as such via a telephone conversation with Mr. Cotton - it is suspect that Mr. Geraci raises this material factual allegation for the very first time ***nearly 13 months after this case was initiated***, that fact that he did so in response to our moving papers, citing the controlling case law of *Riverisland* and *Tenzer* raised for the first time in this matter, also provides reason to be suspicious of its credibility.

While the parol evidence rule (PER) allows the admission of his written confirmation, it likewise bars as a matter of law his allegation that he called Mr. Cotton the next day and they ***orally agreed*** that Mr. Cotton was not entitled to a 10% equity position. Accordingly, it is my position that dismissal of Mr. Geraci's Complaint is likewise warranted as a matter of law.

Please feel free to correct me if you disagree with my reasoning and point me to the ***evidence*** with which your reasoning is supported.

In your clients' opposition to Mr. Cotton's motion to expunge the *lis pendens,* you alleged that Mrs. Austin drafted agreements in an attempt to appease Mr. Cotton, which did not materialize – *i.e.,* "Ultimately, Mr. Cotton was extremely unhappy with Mr. Geraci's refusal to accede to Mr. Cotton's demands and the failure to reach an agreement regarding his possible involvement with

the *operation* of the business to be operated at the Property...."

In that vein, would you please be so kind as to identify which draft agreement prepared by Mrs. Austin provided for an "operation" role for Mr. Cotton in the business? I have reviewed the documents and, although I cannot remember every provision, I certainly don't recall any language to support your factual statement that the purpose of the draft agreements sent to Mr. Cotton was to attempt to revise the alleged agreement reached on November 2, 2016 to include a role for Mr. Cotton in the "operations" of the contemplated business. At least to me, these arguments appear to lack any evidentiary support whatsoever, and are contradicted by the written communications between Messrs. Geraci and Cotton.

Pursuant to *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, it appears to me that if Mr. Cotton is granted judgment on the pleadings and your client's complaint is dismissed pursuant to the PER, potential exposure to liability for a malicious prosecution cause of action lies. (*Id.* at 349 ("Accordingly, we hold that terminations based on the parol evidence rule are favorable for malicious prosecution purposes.")

Thus, please understand that while I personally do not want to (i) file an ex parte TRO and (ii) seek leave to amend Mr. Cotton's Cross-Complaint to, *inter alia*, allege a conspiracy based on Mr. Shapiro and Ms. Young's testimony, the evidence and my ethical obligations to Mr. Cotton compel me to do so.

Although I am confident in my reasoning based on the facts and evidence, I do look forward to any arguments and facts you have that provide just cause to not bring forth these motions with the Court.

Thus, please provide your specific reasoning for why the PER does not bar Mr. Geraci's oral allegation that Mr. Cotton agreed to forgo the 10% equity position that Mr. Geraci confirmed, at Mr. Cotton's request, in the Confirmation Email.

Also, please point me to locations in the draft agreements forwarded to Mr. Cotton that supports your arguments that the agreements sent by Mrs. Austin were meant to include a role for Mr. Cotton in the "operations" of the contemplated business.

Absent any evidence, I cannot change my course of conduct based on your unsupported legal claims below and I interpret your threat of sanctions against me as seeking to unduly intimidate me into failing to ethically and zealously advocate for the best interests of my client.

Best,
Jacob

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard

EXHIBIT D

Geraci v. Cotton matter

Michael Weinstein <MWeinstein@ferrisbritton.com> Mon, Jun 4, 8:34 AM
To: Jake Austin <jpa@jacobaustinesq.com>
Cc: Scott Toothacre <SToothacre@ferrisbritton.com>

Dear Mr. Austin,

Please accept my confirmation that you have fulfilled your meet and confer obligation with respect to your client's stated intention to file a second motion for judgment on the pleadings.

You have also stated your client's intention to file a motion seeking leave of court to amend Mr. Cotton's Cross-Complaint to add, *inter alia,* a cause of action for conspiracy and additional defendants.

My client will oppose both motions. My position is that your entire analysis is flawed. I will address whatever arguments you make in detail in my opposition briefs after you file the respective motions. For now, I will address just a few points.

You continue to insist that Mr. Geraci brought forth a meritless lawsuit and that Mr. Geraci's declaration filed in opposition to Mr. Cotton's motion to expunge the *lis pendens* strengthens that position. We disagree. Mr. Geraci's declaration supports the claim regarding the written agreement that was reached on November 2, 2016. Those issues will be decided at trial.

You state that the parol evidence rule (PER) allows the admission of his written confirmation and likewise bars as a matter of law his allegation that he called Mr. Cotton the next day and they ***orally agreed*** that Mr. Cotton was not entitled to a 10% equity position. Again, we disagree and contend that you are misapplying the parol evidence rule. First, our view is that the statute of frauds bars the latter email because it is parol evidence that is being offered to ***explicitly contradict*** the terms of the written agreement entered into on November 2. Second, Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016, resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10% equity position. Rather, Mr. Geraci's position is that there was ***never*** an oral agreement between them that Mr. Cotton would receive a 10% equity position. Even assuming for the sake of argument that the November 2 email is not barred by the parol evidence rule and admissible, the telephone call the next day is parol evidence that Mr. Geraci never agreed to a 10% equity position and, therefore, it is ***consistent*** with the November 2 written agreement and not barred by the statute of frauds.

A motion for judgment on the pleadings is like a demurrer in that the Court looks to the four corners of the pleading in the Complaint. California is a notice pleading jurisdiction. Mr. Geraci's Complaint sufficiently alleges all elements of the various causes of action alleged therein. Mr. Geraci's declaration filed in opposition to Mr. Cotton's motion to expunge the lis pendens does nothing to alter that analysis. In addition, even if Mr. Cotton brought a motion for summary judgment/summary adjudication, which he has not done, the declaration would be evidence creating a material factual dispute that would defeat such a motion. Your client's intended motion for judgment on the pleadings

is frivolous and will be denied for the same reasons that it was denied the first time it was filed. As for the motion for leave of court to amend the Second Amended Cross-Complaint to add a cause of action for conspiracy and additional defendants is simply a further transparent attempt to delay the trial in this action. By bringing in new defendants the trial will have to be continued to give them the opportunity to defend. That would substantially prejudice Mr. Geraci. Quite frankly, I do not see how such delay would be in Mr. Cotton's best interest either. The court should not allow that to happen.

I look forward to receiving service of your client's moving papers for each motion.

Respectfully,

Michael R. Weinstein
mweinstein@ferrisbritton.com
Ferris & Britton, A Professional Corporation
501 West Broadway, Suite 1450
San Diego, CA 92101-7901
www.ferrisbritton.com
Tel (619) 233-3131
Fax (619) 232-9316

Vcard

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92108
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LARRY GERACI, an individual,

Plaintiff,

vs.

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

Defendants.

AND RELATED CROSS-ACTION.

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

DECLARATION OF DARRYL COTTON IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

Date: July 13, 2018
Time: 8:30 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

I, DARRYL COTTON, declare:

1. I am over the age of eighteen years, and the Defendant and Cross-Complainant in this action.

2. The facts set forth herein are true and correct as of my own personal knowledge, except for those facts which are stated upon information and believe; and, as to those facts, I believe them to be true. If called upon to do so, I could and would competently testify to the matters stated herein.

3. This declaration is submitted in support of my Motion for Judgment on the Pleadings served and filed herewith.

4. My real property (the "Property") qualifies for a Conditional Use Permit ("CUP") with the City of San Diego (the "City") that would allow the operations of a Marijuana Outlet - a retail cannabis store (the "Business"). In November of 2016, I and Larry Geraci ("Plaintiff") entered into an oral joint-venture agreement (the "JVA") pursuant to which, *inter alia,* (i) I would sell my Property to Plaintiff and (ii) Plaintiff would finance the acquisition of the CUP with the City and the development of the Business at the Property. However, Plaintiff breached the JVA by attempting to deprive me of a bargained-for 10% equity position in the Business and I terminated the JVA. Thereafter, Plaintiff brought forth this suit in ***March 2017*** alleging we never entered into the JVA and that a three-sentence document executed in ***November 2016*** (the "November Document") is a completely integrated agreement for my Property. For over a year Plaintiff has argued that his own written promise in an email, ***specifically confirming*** the November Document is "not" a "final agreement" (the "Confirmation Agreement"), is barred by the PER and the statute of frauds ("SOF").

5. On April 4, 2018, I, via counsel, filed a Motion for Expungement of Notice of Pendency of Action (*Lis Pendens*) (the "LP Motion"). (ROA # 161.) The LP Motion argued, for the *first time in this action*, that neither the PER nor the SOF can "***be used as a shield to prevent the proof of [one's own] fraud***" – in this case, that Plaintiff could not bar his own Confirmation Agreement proving his own fraud.

6. *For the first time since he filed suit,* in support of his opposition to the LP Motion, Plaintiff filed a sworn declaration executed on April 9, 2018 ("Plaintiff's Declaration") in which he: (i) *admits* that he sent the Confirmation Agreement, but (ii) alleges that it was a *mistake* because he only meant to respond to the first sentence of my email (thanking him for meeting earlier that day) and not the second, third or fourth sentences in which I specifically requested that Plaintiff respond and confirm a "final agreement" would contain my bargained-for "10% equity position" in the Business as it was a factored element in my decision to sell the property; and (iii) alleges that on November 3, 2016, he called me and I allegedly ***orally agreed*** with him that the November Document ***is*** the final complete integrated agreement for the sale of the Property (the "Oral Disavowment").

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I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 20, 2018 at San Diego, California.

DARRYL COTTON

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
1455 Frazee Road, #500
San Diego, CA 92118
Telephone: (619) 357-6850
Facsimile: (888) 357-8501
E-mail: JPA@JacobAustinEsq.com

Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LARRY GERACI, an individual,

Plaintiff,

vs.

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

Defendants.

AND RELATED CROSS-ACTION.

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

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT DARRYL COTTON'S MOTION FOR JUDGMENT ON THE PLEADINGS

Date: July 13, 2018
Time: 8:30 a.m.
Dept: C-73
Judge: The Hon. Joel R. Wohlfeil

Defendant and Cross-Complainant Darryl Cotton requests that this Court take judicial notice of the documents set forth below served and filed submitted herewith in support of his Motion for Judgment on the Pleadings.

RJN NO.	DOCUMENT TITLE/DESCRIPTION
1.	Plaintiff's Complaint for: 1. Breach of Contract; 2. Breach of the Covenant of Good Faith and Fair Dealing; 3. Specific Performance; and 4. Declaratory Relief filed March 21, 2017 [SDSC ROA 1]

RJN NO.	DOCUMENT TITLE/DESCRIPTION
2.	Declaration of Larry Geraci in Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens filed April 10, 2018 [SDSC ROA 180]
3.	Notice of Entry of November 6, 2017 Minute Order re Hearing on Demurrer by Plaintiff Larry Geraci dated November 9, 2017
4.	License information taken from the records of the State of California Bureau of Real Estate for Larry E. Geraci as of June 9, 2018 at 9:55:59 a.m. (http://www2.dre.ca.dov/PublicASP/pplinfo.asp?License_id=01141323)

Dated: June 2, 2018

THE LAW OFFICE OF JACOB AUSTIN

By 

Jacob P. Austin
Attorney for Defendant and Cross-Complainant
DARRYL COTTON

EXHIBIT 1

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

Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

PLAINTIFF'S COMPLAINT FOR:

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

Plaintiff, LARRY GERACI, alleges as follows:

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

the PROPERTY to him by Defendant COTTON.

FIRST CAUSE OF ACTION

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

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

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

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

SECOND CAUSE OF ACTION

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

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

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

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

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

THIRD CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

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

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

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

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

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First and Second Causes of Action:

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

On the Third Cause of Action:

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

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

On the Fourth Cause of Action:

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

On all Causes of Action:

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

6. For costs of suit incurred herein; and

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///

///

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

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

EXHIBIT A

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

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

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

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 2

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

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual, Plaintiff, v. DARRYL COTTON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2017-00010073-CU-BC-CTL Judge: Hon. Joel R. Wohlfeil Dept.: C-73 **DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS** **[IMAGED FILE]** **Hearing Date: April 13, 2018** **Hearing Time: 9:00 a.m.** Filed: March 21, 2017 Trial Date: May 11, 2018
DARRYL COTTON, an individual, Cross-Complainant, v. LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE, Cross-Defendants.	

I, Larry Geraci, declare:

1. I am an adult individual residing in the County of San Diego, State of California, and I am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts and if called as a witness could and would so testify.

2. In approximately September of 2015, I began lining up a team to assist in my efforts to develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical

marijuana dispensary) in San Diego County. At the time, I had not yet identified a property for the MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE. I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. In addition, I hired a land use attorney, Gina Austin of Austin Legal Group.

3. The search to identify potential locations for the business took some time, as there are a number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities, or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a potential site for acquisition and development for use and operation as a MMCC. And in approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might meet the requirements for an MMCC site.

4. For several months after the initial contact, my consultant, Jim Bartell, investigated issues related to whether the location might meet the requirements for an MMCC site, including zoning issues and issues related to meeting the required distances from certain types of facilities and residential areas. For example, the City had plans for street widening in the area that potentially impacted the ability of the Property to meet the required distances. Although none of these issues were resolved to a certainty, I determined that I was still interested in acquiring the Property.

5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I was willing to bear the substantial expense of applying for and obtaining CUP approval and understood that if I did not obtain CUP approval then I would not close the purchase and I would lose my

investment. I was willing to pay a price for the Property based on what I anticipated it might be worth if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale conditional upon CUP approval because if the condition was satisfied he would be receiving a much higher price than the Property would be worth in the absence of its approval for use as a medical marijuana dispensary. We agreed on a down payment of $10,000.00 and a purchase price of $800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-Defendant, Larry Geraci's Notice of Lodgment in Support of Opposition to Motion to Expunge Lis Pendens (hereafter the "Geraci NOL"). I tendered the $10,000 deposit to Mr. Cotton as acknowledged in the Nov 2nd Written Agreement.

6. In paragraph 5 of his supporting declaration, Darryl Cotton states:

> "On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale of the Property (the "November Agreement"). The November Agreement consisted of the following: If the CUP was approved, then Geraci would, inter alia, provide me: (i) a total purchase price of $800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of $10,000. If the CUP was denied, I would keep an agreed upon $50,000 non-refundable deposit ("NRD") and the transaction would not close. In other words, the issuance of a CUP at the Property was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would keep my Property and the $50,000 NRD."

Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of the sale of the Property and we reached an agreement on the final terms of the sale of the Property. That agreement was not oral. We put our agreement in writing in a simple and straightforward written

agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement, Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

> **11/02/2016**
>
> **Agreement between Larry Geraci or assignee and Darryl Cotton:**
>
> **Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd., CA for a sum of $800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary.)**
>
> **Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.**
>
> **__/s/_____ __/s/_____**
> **Larry Geraci Darryl Cotton**

I never agreed to pay Mr. Cotton a $50,000.00 non-refundable deposit. At the meeting, Mr. Cotton stated he would like a $50,000 non-refundable deposit. I said "no." Mr. Cotton then asked for a $10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement. After he signed the written agreement, I paid him the $10,000 cash as we had agreed. If I had agreed to pay Mr. Cotton a $50,000 deposit, it would have been a very simple thing to change "$10,000" to $50,000" in the agreement before we signed it.

I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never agreed to pay Mr. Cotton a minimum monthly equity distribution of $10,000. If I had agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution of $10,000, then it would have also been a simple thing to add a sentence or two to the agreement to say so.

What I did agree to was to pay Mr. Cotton a total purchase price of $800,000, with the balance of $790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the Property and the $10,000. So that is how the agreement was written.

7. In paragraph 6 of his supporting declaration, Darryl Cotton states:

> "At the November 2, 2016, meeting we reached the November Agreement, Geraci: (i) provided me with $10,000 in cash towards the NRD of $50,000, for which I executed a document to record my receipt thereof (the "Receipt"); (ii)

promised to have his attorney, Gina Austin ("Austin"), ***promptly*** reduce the oral November Agreement to written agreements for execution; and (iii) promised to not submit the CUP to the City until he paid me the balance of the NRD."

I did pay Mr. Cotton the $10,000 cash after we signed the Nov 2nd Written Agreement. As stated above, I never agreed to a $50,000 deposit and, if I had, it would have been a simple thing to state that in our written agreement.

Mr. Cotton refers to the written agreement (i.e., the Nov 2nd Written Agreement) as a "Receipt." Calling the Agreement a "Receipt" was never discussed. There would have been no need for a written agreement before a notary simply to document my payment to him of $10,000. In addition, had the intention been merely to document a written "Receipt" for the $10,000 payment, then we could have identified on the document that it was a "Receipt" and there would have been no need to put in all the material terms and conditions of the deal. Instead, the document is expressly called an "Agreement" because that is what we intended.

I did not promise to have attorney Gina Austin reduce the oral agreement to written agreements for execution. What we did discuss was that Mr. Cotton wanted to categorize or allocate the $800,000. At his request, I agreed to pay him for the property into two parts: $400,000 as payment for the property and $400,000 as payment for the relocation of his business. As this would benefit him for tax purposes but would not affect the total purchase price or any other terms and conditions of the purchase, I stated a willingness to later amend the agreement in that way.

I did not promise to delay submitting the CUP to the City until I paid the alleged $40,000 balance of the deposit. I agreed to pay a $10,000 deposit only. Also, we had previously discussed the long lead-time to obtain CUP approval and that we had already begun the application submittal process as discussed in paragraph 8 below.

8. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the CUP application and approval process and that his consent as property owner would be needed to submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as

the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the subject Property with the intent to record an encumbrance against the property. The Ownership Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of a CUP would be a condition of the purchase and sale of the Property.

9. As noted above, I had already put together my team for the MMCC project. My design professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of the Project and the CUP application and approval process. Mr. Schweitzer was responsible for coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration (Declaration of Abhay Schweitzer in Support of Opposition to Motion to Expunge Lis Pendens) has been submitted concurrently herewith and describes in greater detail the CUP Application submitted to the City of San Diego, which submission included the Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

10. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr. Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. This literally occurred the evening of the day he signed the Nov 2nd Written Agreement.

On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated:

> Hi Larry,
>
> Thank you for meeting today. Since we examined the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored

> element in my decision to sell the property. I'll be fine if you simply acknowledge that here in a reply.

I receive my emails on my phone. It was after 9:00 p.m. in the evening that I glanced at my phone and read the first sentence, "Thank you for meeting with me today." And I responded from my phone "No no problem at all." I was responding to his thanking me for the meeting.

The next day I read the entire email and I telephoned Mr. Cotton because the total purchase price I agreed to pay for the subject property was $800,000 and I had never agreed to provide him a 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the Call Detail from my firm's telephone provider showing those two telephone calls is attached as Exhibit 3 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above the $800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect of "well, you don't get what you don't ask for." He was not upset and he commented further to the effect that things are "looking pretty good—we all should make some money here." And that was the end of the discussion.

11. To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to participate in different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding the operation of such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary discussions related to his desire to be involved in the *operation* of the business (not related to the purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits) in exchange for his providing various services to the business—but we never reached an agreement as to those matters related to the operation of my future MMCC business. Those discussions were not related to the purchase and sale of the Property, which we never agreed to amend or modify.

12. Beginning in or about mid-February 2017, and after the zoning issues had been resolved, Mr. Cotton began making increasing demands for compensation in connection with the sale. We were several months into the CUP application process which could potentially take many more months to

successfully complete (if it could be successfully completed and approval obtained) and I had already committed substantial resources to the project. I was very concerned that Mr. Cotton was going to interfere with the completion of that process to my detriment now that the zoning issues were resolved. I tried my best to discuss and work out with him some further compensation arrangement that was reasonable and avoid the risk he might try to "torpedo" the project and find another buyer. For example, on several successive occasions I had my attorney draft written agreements that contained terms that I that I believed I could live with and hoped would be sufficient to satisfy his demands for additional compensation, but Mr. Cotton would reject them as not satisfactory. Mr. Cotton continued to insist on, among other things, a 10% equity position, to which I was not willing to agree, as well as on minimum monthly distributions in amounts that I thought were unreasonable and to which I was unwilling to agree. Despite our back and forth communications during the period of approximately mid-February 2017 through approximately mid-March 2017, we were not able to re-negotiate terms for the purchase of the property to which we were both willing to agree. The Nov. 2nd Written Agreement was never amended or modified. Mr. Cotton emailed me that I was not living up to my agreement and I responded to him that he kept trying to change the deal. As a result, no re-negotiated written agreement regarding the purchase and sale of the property was ever signed by Mr. Cotton or me after we signed and agreed to the terms and conditions in the Nov 2d Written Agreement.

13. Ultimately, Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the failure to reach agreement regarding his possible involvement with the *operation* of the business to be operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr. Cotton made clear that he had no intention of living up to and performing his obligations under the Agreement and affirmatively threatened to take action to halt the CUP application process.

14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr. Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application. That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to

Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as Exhibit 4 to the Geraci NOL.

15. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his property and that "I will be entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 5 to the Geraci NOL.

16. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "… the potential buyer, Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached as Exhibit 6 to the Geraci NOL. Mr. Cotton's email was false as we had a signed agreement for the purchase and sale of the Property – the Nov 2nd Written Agreement.

17. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

18. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to enforce the Nov 2nd Written Agreement.

19. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue our CUP Application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP application, we have completed the initial phase of the CUP process whereby the City deemed the CUP application complete (although not yet approved) and determined it was located in an area with proper zoning. We have not yet reached the stage of a formal City hearing and there has been no final determination to approve the CUP. The current status of the CUP Application is set forth in the

Declaration of Abhay Schweitzer.

20. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m. email (referenced in paragraph 15 above - see Exhibit 5 to the Geraci NOL) stating that he would be "entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. We have learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, Richard John Martin II.

21. Although he entered into this alternate purchase agreement with Mr. Martin as early as March 21, 2017, to our knowledge in the nine (9) months since, neither Mr. Cotton nor Mr. Martin or other agent has submitted a separate CUP Application to the City for processing. During that time, we continued to process our CUP Application at great effort and expense.

22. During approximately the last 17 months, I have incurred substantial expenses in excess of $150,000 in pursuing the MMCC project and the related CUP application.

23. Finally, Mr. Cotton has asserted from the outset of his lawsuit and, again, in paragraph 16 of his supporting declaration, that he did not discover until March 16, 2017, that I had submitted the CUP Application back on October 31, 2016. That is a blatant lie. I kept Mr. Cotton apprised of the status of the CUP application and the problems we were encountering (e.g., an initial zoning issue) from the outset. Attached as Exhibit 7 is a true and correct copy of a text message Mr. Cotton sent me on November 16, 2016, in which he asks me, "Did they accept the CUP application?" Mr. Cotton was well aware at that time that we had already submitted the CUP application and were awaiting the City's completion of its initial review of the completeness of the application. Until the City deems the CUP application complete it does not proceed to the next step—the review of the CUP application.

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/ / /

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of April, 2018.

LARRY GERACI

EXHIBIT 3

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
David S. Demian, SBN 220626 Adam C. Witt, SBN 271502
Finch, Thornton & Baird, LLP
4747 Executive Drive, Suite 700
San Diego, California 92121
TELEPHONE NO.: (858) 737-3100 FAX NO. *(Optional)*: (858) 737-3101
E-MAIL ADDRESS *(Optional)*: ddemian@ftblaw.com; awitt@ftblaw.com
ATTORNEY FOR *(Name)*: Defendant and Cross-Complainant Darryl Cotton

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **SAN DIEGO**
STREET ADDRESS: 330 W. Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego, California 92101
BRANCH NAME: Central Division

PLAINTIFF/PETITIONER: Larry Geraci

DEFENDANT/RESPONDENT: Darryl Cotton, et al.

NOTICE OF ENTRY OF JUDGMENT OR ORDER

CASE NUMBER:
37-2017-00010073-CU-BC-CTL
[IMAGED FILE]

(Check one): ☒ **UNLIMITED CASE** (Amount demanded exceeded $25,000) ☐ **LIMITED CASE** (Amount demanded was $25,000 or less)

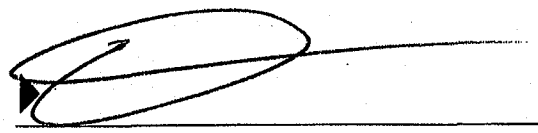
TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: November 6, 2017

2. A copy of the judgment, decree, or order is attached to this notice.

Date: November 9, 2017

David S. Demian
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)



(SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
CIV-130 [New January 1, 2010]

NOTICE OF ENTRY OF JUDGMENT OR ORDER

PLAINTIFF/PETITIONER: Larry Geraci DEFENDANT/RESPONDENT: Darryl Cotton, et al.	CASE NUMBER: 37-2017-00010073-CU-BC-CTL

PROOF OF SERVICE BY FIRST-CLASS MAIL

NOTICE OF ENTRY OF JUDGMENT OR ORDER

(NOTE: You cannot serve the Notice of Entry of Judgment or Order *if you are a party in the action. The person who served the notice must complete this proof of service.)*

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify):*
   4747 Executive Drive, Suite 700, San Diego, California 92121

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one):*
   a. ☐ deposited the sealed envelope with the United States Postal Service.
   b. ☒ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
   a. on *(date):* November 9, 2017
   b. from *(city and state):* San Diego, California

4. The envelope was addressed and mailed as follows:
   a. Name of person served:
   SEE ATTACHED SERVICE LIST.
   Street address:
   City:
   State and zip code:

   c. Name of person served:
   Street address:
   City:
   State and zip code:

   b. Name of person served:
   Street address:
   City:
   State and zip code:

   d. Name of person served:
   Street address:
   City:
   State and zip code:

   ☒ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached 1.

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

Date: November 9, 2017

Alexandria M. Quindt
(TYPE OR PRINT NAME OF DECLARANT)

▶ _____
(SIGNATURE OF DECLARANT)

SERVICE LIST

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

ATTORNEYS FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI, AND CROSS-DEFENDANT REBECCA BERRY

Exhibit 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 11/06/2017 TIME: 03:04:00 PM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Juanita Cerda
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT:

CASE NO: **37-2017-00010073-CU-BC-CTL** CASE INIT.DATE: 03/21/2017
CASE TITLE: **Larry Geraci vs Darryl Cotton [Imaged]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

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APPEARANCES

After entertaining the arguments of counsel and taking the matter under submission on 11/3/17, the Court confirms the tentative ruling overruling the general demurrer to causes of action 1-4 in the Second Amended Cross-Complaint.

Tentative (as confirmed by the Court)

The general Demurrer (ROA # 52) of Plaintiff and Cross-Defendant LARRY GERACI ("Cross-Defendant" or "Geraci") to causes of action 1 - 4 in the Second Amended Cross-Complaint ("SAC-C") filed on August 25, 2017, by Defendant and Cross- omplainant DARRYL COTTON ("Cotton" or "Cross-Complainant"), is OVERRULED.

Cross-Defendant's Answer to the SAC-C must be filed and served within twenty (20) days of this hearing.

1st COA: BREACH OF CONTRACT

Cross-Defendant argues that the written memorandum is contradicted by the alleged oral agreement, and as a result violates the statute of frauds. Cross-Defendant argues: "In the instant case, the only writing signed by both parties is the November 2, 2016 written agreement, which explicitly provides for a $10,000 down payment ('earnest money to be applied to the sales price'); in fact, the agreement acknowledges receipt of that down payment. Cotton is alleging that the oral agreement provided for a down payment of $50,000, which is in direct contradiction of the written term of a $10,000 down payment." However, this argument lacks merit because the written memorandum attached to the SAC-C is unclear. The acknowledgement as to payment of $10,000 does not necessarily mean that the total deposit was not, in fact, $50,000 (such that $40,000 remained due). As alleged, there is no conflict. In addition, it is not clear whether the statute of frauds applies to an agreement to negotiate a real estate agreement in good faith.

Cross-Defendant also argues that this cause of action does not allege an actionable breach. This

argument also lacks merit. Numerous California cases have expressed the view the law provides no remedy for breach of an "agreement to agree" in the future. Copeland v. Baskin Robbins U.S.A. (2002) 96 Cal. App. 4th 1251, 1256. On the other hand, in an appropriate case, a party may seek to enforce a valid, enforceable contract to negotiate the terms of an agreement in good faith. Id. at 1257. "Persons are free to contract to do just about anything that is not illegal or immoral. Conducting negotiations to buy and sell ice cream is neither." Id. (footnote omitted). The SAC-C sufficiently alleges breach of an agreement to negotiate in good faith.

2nd COA: INTENTIONAL MISREPRESENTATION
3rd COA: NEGLIGENT MISREPRESENTATION
4th COA: FALSE PROMISE

Cross-Defendant argues that the SAC-C does not allege facts which are sufficient to establish the element of justifiable reliance because "the misrepresentations Cotton is claiming reliance upon are in direct conflict with the clear, unambiguous written agreement signed by Cotton." This argument lacks merit.

Reasonable reliance on the alleged misrepresentation is an essential element of fraud. Wagner v. Benson (1980) 101 Cal. App. 3d 27, 36 ("At trial, reliance may be demonstrated to be unreasonable in light of plaintiffs' intelligence and experience."). The agreement to conduct further negotiations toward a comprehensive agreement does not necessarily conflict with the very short acknowledgement of a pending sale and the receipt of "good faith earnest money." This element is sufficiently alleged, and this is an issue of fact that cannot be determined via this Demurrer.

Cross-Defendant also argues that "promises about future actions without the intent to perform simply cannot support a claim for negligent misrepresentation." An action based on a false promise is a type of intentional misrepresentation, i.e., actual fraud. Tarmann v. State Farm Mut. Auto. Ins. Co. (1991) 2 Cal. App. 4th 153, 159. The specific intent requirement precludes pleading a false promise claim as a negligent misrepresentation. Id. Making a promise with an honest but unreasonable intent to perform is wholly different from making one with no intent to perform and, therefore, does not constitute a false promise. Id. On the other hand, "[w]hen a pleader is in doubt about what actually occurred or what can be established by the evidence, he or she may plead in the alternative and make inconsistent factual allegations." Edmon & Karnow, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2017) at ¶ 6:242. For example: A Complaint seeking damages for fraud may properly allege both intentional misrepresentation and negligent misrepresentation. Id. 6:243. Each version of the facts or each legal theory should be pleaded in a separate cause of action in the Complaint. Id. at 6:244. This argument lacks merit because this cause of action is alleged as an alternative to the claim of false promise. Sufficient facts are alleged supporting negligent misrepresentation.

IT IS SO ORDERED

Judge Joel R. Wohlfeil

EXHIBIT 4

STATE OF CALIFORNIA
BUREAU OF REAL ESTATE

The license information shown below represents public information taken from the Bureau of Real Estate(CalBRE) database at the time of your inquiry. It will not reflect pending changes which are being reviewed for subsequent database updating. Also, the license information provided includes formal administrative actions that have been taken against licensees pursuant to the Business and Professions Code and/or the Administrative Procedure Act. All of the information displayed is public information. Although the business and mailing addresses of real estate licensees are included, this information is not intended for mass mailing purposes.

License information taken from records of the Bureau of Real Estate on 6/9/2018 9:55:59 AM

License Type:	SALESPERSON
Name:	Geraci, Larry E
Mailing Address:	C/O 5402 RUFFIN RD STE 200 SAN DIEGO, CA 92123
License ID:	01141323
Expiration Date:	03/04/17
License Status:	EXPIRED
Salesperson License Issued:	07/09/92 (Unofficial -- taken from secondary records)
Former Name(s):	NO FORMER NAMES
Employing Broker:	NO CURRENT EMPLOYING BROKER
Comment:	NO DISCIPLINARY ACTION
	NO OTHER PUBLIC COMMENTS
	>>>> Public information request complete <<<<

EXHIBIT 20 [ROA 253]

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - July 12, 2018

EVENT DATE: 07/13/2018 EVENT TIME: 09:00:00 AM DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

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

CASE TITLE: LARRY GERACI VS DARRYL COTTON [IMAGED]

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

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings, 06/20/2018

The Motion (ROA # 247) of Defendant / Cross-Complainant DARRYL COTTON ("Defendant") for entry of a judgment in this case on the Complaint of Plaintiff LARRY GERACI ("Plaintiff"), is DENIED.

Defendant's Request (ROA # 246) for judicial notice is GRANTED IN PART and DENIED IN PART. The Court takes judicial notice of Exh's "1 - limited to the date on which Plaintiff's Complaint was filed, 3 and 4," and the Court declines to take judicial notice of the balance of the Request.

Even assuming judicial notice of the facts stated within Plaintiff's previous declaration (ROA # 180) is permissible (see, e.g., Arce v. Kaiser Foundation Health Plan, Inc. (2010) 181 Cal. App. 4th 471, 485), these facts do not necessarily negate all four of the causes of action set forth within the Complain. Resolution of this matter is dependent on extrinsic facts that cannot be determined via this Motion.

EXHIBIT 21

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

DEPARTMENT 73 HONORABLE JOEL R. WOHLFEIL

LARRY GERACI, an individual, Plaintiff, VS. DARRYL COTTON, an individual; and DOES 1 through 10, inclusive, Defendants. AND RELATED CROSS-ACTION.	Case No. 37-2017-00010073-CU-BC-CTL

REPORTER'S TRANSCRIPT
JUNE 14, 2018
PAGES 1 - 6

APPEARANCES:

FOR THE PLAINTIFF: MICHAEL WEINSTEIN, ATTORNEY AT LAW

FOR THE DEFENDANTS: ANDREW FLORES, ATTORNEY AT LAW

DAVID W. RHOADS, CSR (13508) COURT REPORTER

SAN DIEGO, CALIFORNIA, JUNE 14, 2018, MORNING SESSION

--OOO--

PROCEEDINGS

THE COURT: Can I have your appearances.

MR. WEINSTEIN: Michael Weinstein for plaintiff Larry Geraci cross-defendants, Larry Geraci and Rebecca Berry.

MR. FLORES: Andrew Flores on behalf of the defendant --

MR. COTTON: Darryl Cotton, your Honor.

THE COURT: So Counsel, did you get the papers?

MR. WEINSTEIN: At 3:48 p.m., as usual.

And I don't know counsel. So this is --

THE COURT: Are you good, Mr. Austin?

MR. FLORES: Your Honor, I'm actually making a special appearance for Mr. Austin. He's feeling a little under the weather today. He couldn't be here. He's actually -- basically ran himself into the ground in the last couple of weeks. Very busy. Got sick.

THE COURT: All right. Thank you. It's not uncommon for counsel to make a special appearances.

MR. WEINSTEIN: No objection.

THE COURT: So Mr. Austin is in of record -- I'm going to let counsel speak on behalf of Mr. Cotton. So having said that, recognizing that you didn't get the papers until late yesterday afternoon, comments?

MR. WEINSTEIN: Yes, we oppose the ex parte application. I think it should be the subject of a noticed motion if it's going to be heard at all.

They have a motion on calendar, a hearing date of July 13 --

THE COURT: Let me stop you. Is that the same subject, meaning an application for appointment of receiver?

MR. FLORES: I do not believe it's the same --

MR. WEINSTEIN: It's not. It's a hearing date for a motion to file -- for leave to file an amended cross-complaint.

But my thought is they could maybe have this for then, and we could have the time to file our opposition.

THE COURT: I don't know if you need to go any further. That was my inclination.

This is a lottery leave that you're asking that the Court issue on an ex parte application. I'm not inclined to go there today. I've heard there's an objection. And I would be inclined to deny this without prejudice, emphasis upon without prejudice, subject to a noticed motion.

And this is on the June 14 -- you've already secured a hearing date for July 13. I don't know why you couldn't file and serve this in the normal course and provide everyone notice under the Code.

Correct me if I'm mistaken.

MR. WEINSTEIN: That's correct. They have till June 20 to file the moving papers.

THE COURT: You know those things better than I do, Counsel.

So denied without prejudice.

MR. FLORES: Your Honor, if I may. The reason why this motion was filed the way it is because of the emergency situation that's going on. This currently competing CUP that's also within the jurisdiction of the subject property, if that CUP gets granted, then the CUP for this property will not be granted.

There's a 1,000-yard or feet regulation that does not allow them to have two competing CUP's for the purpose that they're applying for the CUP for. Furthermore, your Honor, Defendant received an e-mail on June 1. There's been no activity on the CUP -- subject property since January.

That being said, if the other CUP gets granted and there's no receiver to push forward with the CUP on the subject proper, then that CUP will be lost forever.

THE COURT: Well, but there's a lot of threshold issues that need to be resolved in favor of your side before we get to the point where the Court would be persuaded to issue this relief based upon the exigent or emergency circumstances you're describing.

I'm just not inclined to go there on an ex parte application. I'm not persuaded you've carried your burden that would warrant good cause that -- which

would constitute good cause which would warrant relief on an ex parte application.

I did review your papers, Counsel. So the Court denies the application without prejudice and expects that you will file and serve your papers. And I will probably see you on July 13, if not earlier.

Thank you very much.

MR. WEINSTEIN: Thank you, your Honor.

MR. FLORES: Thank you, your Honor.

(END OF PROCEEDINGS JUNE 14, 2018.)

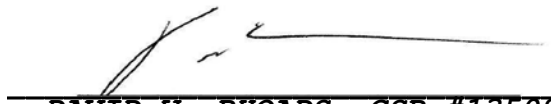
STATE OF CALIFORNIA)

) SS:

COUNTY OF SAN DIEGO)

I, DAVID W. RHOADS, CSR, CERTIFICATE NO. 13508, A REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, HEREBY CERTIFY THAT I REPORTED IN MACHINE SHORTHAND THE PROCEEDINGS IN THE WITHIN CASE, AND THAT THE FOREGOING TRANSCRIPT, CONSISTING OF PAGES NUMBERED FROM 1 - 6, IS A FULL, TRUE AND CORRECT TRANSCRIPTION OF THE PROCEEDINGS IN THIS CASE.

DATED AT SAN DIEGO, CALIFORNIA THIS 14TH DAY OF AUGUST, 2018.



DAVID W. RHOADS, CSR #13508
COURT REPORTER