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Plaintiff *In Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock and Minors T.S.
and S.S.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANDREW FLORES, an individual, AMY SHERLOCK, on her own behalf and on behalf of her minor children, T.S. and S.S.

Plaintiffs,

vs.

GINA M. AUSTIN, an individual. AUSTIN LEGAL GROUP APC, a California Corporation; JOEL R. WOHLFEIL, an individual; LAWRENCE (AKA LARRY) GERACI, an individual; TAX & FINANCIAL CENTER, INC., a California Corporation; REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual. NINUS MALAN, an individual; MICHAEL ROBERT WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; ELYSSA KULAS, an individual; FERRIS & BRITTON APC, a California Corporation; DAVID DEMIAN, an individual, ADAM C. WITT, an individual,

Case No.: 3:20-cv-00656-BAS-DEB

FIRST AMENDED COMPLAINT FOR:

1. DEPRIVATION OF CIVIL RIGHTS (42 U.S.C.§ 1983);
2. DEPRIVATION OF CIVIL RIGHTS (42 U.S.C.§ 1983);
3. CONSPIRACY TO VIOLATE CIVL RIGHTS (42 U.S.C.§ 1985);
4. NEGLECT TO PREVENT A WRONGFUL ACT (42 U.S.C.§ 1986);
5. DECLARATORY RELIEF; AND
6. DECLARATORY RELIEF.

JURY TRIAL DEMANDED

RISHI S. BHATT, an individual, FINCH, THORTON, and BAIRD, a Limited Liability Partnership, JAMES D. CROSBY, an individual; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; BARTELL & ASSOCIATES, a California Corporation; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; A-M INDUSTRIES, INC., a California Corporation; BRADFORD HARCOURT, an individual; ALAN CLAYBON, and individual; DOUGLAS A. PETTIT, an individual, JULIA DALZELL, an individual, MICHAEL TRAVIS PHELPS, an individual; THE CITY OF SAN DIEGO, a municipality; 2018FMO, LLC, a California Limited Liability Company; FIROUZEH TIRANDAZI, an individual; and DOES 1 through 50, inclusive,

Defendants,

JOHN EK, an individual;
THE EK FAMILY TRUST, 1994 Trust,

Real Parties In Interest.

Plaintiffs Andrew Flores, Amy Sherlock and minors T.S. and S.S., upon information and belief, allege as follows:

INTRODUCTION

1. Plaintiffs seek this Federal Court's protection to enable them to access the State of California (the "State") judiciary to vindicate their rights free of judicial bias, illegal litigation tactics, and acts and threats of violence against themselves and material third-party witnesses.

2. There is a small group of wealthy individuals, attorneys and professionals (the "Enterprise") in the City of San Diego (the "City") that have conspired to create an illegal monopoly in the cannabis market (the "Antitrust Conspiracy").

3. The Enterprise includes attorneys from multiple law firms that are used to create the appearance of competition and legitimacy, while in reality, *inter alia*, the attorneys conspire against some of their own non-Enterprise clients to ensure that virtually all cannabis conditional use permits ("CUPs")[1] in the City go to principals of the Enterprise.

4. At least some of the principals of the Enterprise are criminals with a history of operating illegally in the cannabis black market and being sanctioned by authorities for their criminal behavior. Consequently, as a matter of law, they cannot own a cannabis CUP or license. However, these individuals have the wealth and professional relationships acquired from their illegal operations to finance the hiring of attorneys, political lobbyists, and other professionals to navigate the heavily regulated cannabis licensing process and acquire cannabis CUPs illegally. These illegal tactics include applying for and acquiring cannabis CUPs through proxies - sometimes attorneys - who do not disclose the individuals with a criminal history as the true beneficial owners of the cannabis CUPs acquired.

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

5. The Enterprise also includes at least one City employee and attorney who take acts in furtherance of the Antitrust Conspiracy that include knowingly processing the applications and ratifying the illegal acquisition of cannabis CUPs by these criminals via proxies.

6. The de facto general counsel of the Enterprise is cannabis expert attorney Gina M. Austin. In her own words: "I am an expert in cannabis licensing and entitlement at the state and local levels and regularly speak on the topic across the nation."[2]

7. Austin, together with political lobbyist James Bartell of Bartell & Associates ("B&A"); building-designer Abhay Schweitzer of Techne, Inc.; and Firouzeh Tirandazi, a Development Project Manager for the City's Development Services Department ("DSD") are responsible for submission, processing and/or lobbying of the fraudulent cannabis CUP applications with the City in furtherance of the Antitrust Conspiracy.

8. Austin, Bartell, and Schweitzer are considered the "Dream Team" in the City for individuals who desire to acquire a cannabis CUP.

9. Austin has represented approximately 25 cannabis applications in the City, 23 of which were approved; Bartell has lobbied the City for 20 cannabis applications of which 19 were approved; and Schweitzer has worked with the City on approximately 30-40 cannabis CUP applications.

10. Tirandazi has worked on numerous cannabis applications submitted and/or backed by members of the Dream Team on which she has made decisions contrary to applicable laws and regulations that have violated the constitutional rights of other parties.

11. Chief Deputy City Attorney M. Travis Phelps has been counsel for the City in at least two actions in which he has ratified the unlawful acquisition of cannabis CUPs for principals of the Enterprise.

12. As more fully described below, Plaintiffs are victims of the Enterprise's

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

Antitrust Conspiracy that have been deprived of their interest in cannabis CUPs and their federally-protected right of access to the State and Federal Courts.

13. At various points in time victims of the Enterprise have sought to vindicate their rights against the Enterprise's principals and attorneys. They have been unsuccessful.

14. The Enterprise has been defended by an army of attorneys from numerous high-profile law firms that have blatantly lied to cover-up their client's participation in criminal activities or have deceitfully minced their words and selectively quoted the victims to make them out to be greedy, stupid litigants filing frivolous litigation.

15. In *Stevens*, the court said:

> Though there appears to be no clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that the attorney ***may*** be held liable for damages if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably should have known, would violate the clearly established constitutional or statutory rights of another. *See Buller v. Buechler*, 706 F.2d 844, 852-853 (8th Cir. 1983).

Stevens v. Rifkin, 608 F. Supp. 710, 730 (N.D. Cal. 1984) (emphasis added).

16. This case will require a definitive determination of whether attorneys that knew or should have known that the manner in which they represented their clients, that helped effectuate their client's criminal goals via the judiciaries, may or may not be held jointly liable with their clients.

17. As this and related actions prove, the Enterprise's attorneys and agents have committed multiple acts that constitute a fraud on the court to effectuate the Antitrust Conspiracy and to cover-up their illegal actions. And, because they have used their legal acumen to successfully acquire multiple judgments that judicially ratify their actions, they use those judgements as shields to fail to address the factual allegations and legal arguments that prove those judgments were procured through acts of fraud on the court

and are void for violating the law (e.g., the ownership of cannabis CUPs by individuals who cannot own cannabis CUPs).

18. Setting aside the obvious, that Plaintiffs have not been parties or been in privity with any of the parties in related litigation matters, there are at least two substantive principles of law that require this Court to take *affirmative* action and reach the merits of Plaintiffs' allegations.

19. First, as set forth in the seminal case of *Hazel-Atlas*, the United States Supreme Court held that a court has "***the duty***" to vacate judgments procured through a fraud on the court by attorneys. *Hazel-Atlas Co. v. Hartford Co.* ("*Hazel-Atlas*"), 322 U.S. 238, 249-50 (1944) ("We hold, therefore, that the Circuit Court on the record here presented had both the ***duty and the power*** to vacate its own judgment and to give the District Court appropriate directions.") (fn. omitted, emphasis added); *Fierro v. Johnson*, 197 F.3d 147, 155 (5th Cir. 1999) ("*Hazel-Atlas* allows a judgment to be attacked on the basis of intrinsic fraud that results from corrupt conduct by officers of the court.").

20. Second, as the United States Supreme Court declared in *Epic*, "authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1645 (2018) (quoting *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 77 (1982)). "To deny a remedy to reclaim [property procured through an illegal contract] is to give effect to the illegal contract." *Danebo Lumber Co. v. Koutsky-Brennan-Vana Co.*, 182 F.2d 489, 495 (9th Cir. 1950) (quoting *Parkersburg v. Brown*, 106 U.S. 487, 503).

21. Through illegal acts that constitute a fraud on the court by numerous attorneys, previous judicial judgments have ratified illegal contracts at issue in this case. The illegal acts by attorneys include perjury, falsification of evidence, and the ratification of acts and threats of violence against material third party witnesses with detrimental testimony to members of the Enterprise.

22. Numerous high-profile private and government attorneys have relied on the presumption of integrity the courts afford them as officers of the court to effectuate the

Antitrust Conspiracy or to hide their violation of their affirmative duties to prevents acts in furtherance of the Antitrust Conspiracy via the judiciaries – and that is why their actions are so egregious and must be exposed so the rights of their victims can be vindicated. *Kupferman v. Consolidated Res. Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) ("While an attorney 'should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court. And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court.' [Citation.]") (emphasis added); *accord Synanon Church v. United States*, 579 F. Supp. 967, 975 (D.D.C. 1984).

JURISDICTION AND VENUE

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

24. This action is also brought pursuant to 42 U.S.C. §§1983, 1985, 1986 to redress the deprivation under color of state and local law of rights, privileges, immunities, liberty and property, secured to all citizens by, *inter alia*, the First, Fourth and Fourteenth Amendments to the United States Constitution.

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

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

PARTIES

27. Plaintiff ANDREW FLORES, an individual, was, and at all times mentioned herein is, residing and doing business as a duly licensed attorney in the City and County

of San Diego, California.

28. Plaintiff AMY SHERLOCK, an individual, and at all times herein was and is, residing and working in the City of Carlsbad, County of San Diego, California.

29. Plaintiff MINORS T.S. and S.S., progeny of Amy and Michael Sherlock, are individuals, were, and at all times herein, living and attending school in the City of Carlsbad and of the County of San Diego, State of California.

30. Defendant JOEL R. WOHLFEIL, an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

31. Defendant LARRY GERACI an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

32. Defendant TAX & FINANCIAL CENTER, INC., a California corporation, and at all times relevant to this action was, a California corporation organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

33. Defendant REBECCA BERRY an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

34. Defendant FERRIS & BRITTON APC (i.e., F&B), is a California Professional Corporation, and at all times relevant to this action was, a California Professional Corporation organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego. F&B includes defendants WEINSTEIN, TOOTHACRE AND KULAS.

35. Defendant MICHAEL ROBERT WEINSTEIN an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

36. Defendant SCOTT TOOTHACRE an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

37. Defendant ELYSSA KULAS, an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

38. Defendant DAVID DEMIAN, an individual, was, and at all time mentioned

herein is, a resident of the County of San Diego, State of California.

39. Defendant ADAM WITT, an individual, was, and at all time mentioned herein is, a resident of the County of San Diego, State of California.

40. Defendant RISHI BHATT, an individual, was, and at all time mentioned herein is, a resident of the County of San Diego, State of California.

41. Defendant FINCH, THORTON, and BAIRD, is a California Limited Liability Partnership, organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

42. Defendant ABHAY SCHWEITZER, an individual and dba TECHNE; an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

43. Defendant JIM BARTELL an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

44. Defendant BARTELL & ASSOCIATES, a California corporation, and at all times relevant to this action was, a California Corporation organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

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

46. Defendant AUSTIN LEGAL GROUP APC, a California corporation, and at all times relevant to this action was, a California Professional Corporation organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

47. Defendant NATALIE TRANG-MY NGUYEN an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

48. Defendant AARON MAGAGNA an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

49. Defendant A-M INDUSTRIES, INC., a California corporation, and at all

times relevant to this action was, a California Professional Corporation organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

50. Defendant JESSICA MCELFRESH an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

51. Defendant THE CITY OF SAN DIEGO, a municipality, duly incorporated city government.

52. Defendant FIROUZEH TIRANDAZI, an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

53. Defendant MICHAEL TRAVIS PHELPS, an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

54. Defendant SALAM RAZUKI an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

55. Defendant NINUS MALAN an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

56. Defendant JAMES D. CROSBY an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California

57. Defendant BRADFORD HARCOUT an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

58. Defendant ALAN CLAYBON an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

59. Defendant DOUGLAS A. PETTIT an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

60. Defendant JULIA DALZELL an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

61. Real Party in Interest JOHN EK an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

62. Real Party Interest THE EK FAMILY TRUST, 1994 Trust; 2018FMO, LLC,

a California limited liability company… a California corporation, and at all times relevant to this action was, a California Limited Liability Company organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego;

63. and DOES 3 through 50, inclusive,

GENERAL ALLEGATIONS

I. BACKGROUND

A. Salam Razuki and Ninus Malan

64. Salam Razuki and Ninus Malan are principals of the Enterprise. They were business partners in numerous business ventures for at least a decade before they had a falling out over profits from the cannabis businesses they acquired.

65. Razuki would use Malan as a proxy in cannabis business ventures who would not disclose Razuki as having an interest in the assets acquired.

66. After the parties had a falling out, Razuki sued Malan seeking to acquire his undisclosed ownership interest in their various business ventures.

67. The litigation was expensive.

68. Razuki then sought to have Malan kidnapped to Mexico and murdered.

69. Razuki and his conspirators who planned to kidnap and murder Malan were arrested by the FBI.

70. The Dream Team represented Razuki and Malan in numerous business and legal matters, including in acquiring cannabis CUPs solely in the name of Malan knowing that Razuki had an interest in the cannabis CUPs acquired.

71. The estimated worth of the cannabis related assets acquired by Razuki and Malan is estimated to be approximately $44,000,000.

B. The Associate

72. One of Razuki's cannabis business associates (the "Associate") described in a confidential conversation with an investigative reporter – after Razuki had been arrested and was being held by the FBI – meetings between Razuki and Austin in which they

explicitly discussed their goal of creating a "monopoly" in the City's cannabis market through proxies and the use of sham lawsuits.

C. Gina Austin, Natalie Nguyen and Jessica McElfresh

73. Austin and attorney Natalie Nguyen both attended the Thomas Jefferson School of Law and were both admitted to the California Bar on December 1, 2006.

74. Austin, with approximately two to three years of experience as an attorney, founded her law firm ALG in 2009 through which she has been unprecedently successful in acquiring cannabis CUPs for her clients.

75. Austin has acquired more cannabis CUPs in the City than any other attorney or entity in the City.

76. Austin's success is not because she turned out to be a prodigy in the field of law, but because she engages in and ratifies unlawful actions, including violence, to achieve her goals.

77. McElfresh has represented Razuki in numerous legal actions.[3]

78. McElfresh has numerous shared clients with Austin.[4]

D. Phelps

79. On August 27, 2018, the San Diego City Attorney's office issued a press release recognizing Phelps being awarded "the prestigious 2018 Jefferson B. Fordham Award in Advocacy by the American Bar Association."

80. The press release goes on to describe Phelps' background and experience as follows:

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3 *See People v. Razuki,* San Diego Superior Court, Case No. M227357CE; Kinsee Morlan, *Problems at This Lincoln Park Strip Mall Keep Getting Worse Despite City Intervention*, Voice of San Diego (Aug. 23, 2018) https://www.voiceofsandiego.org/topics/land-use/problems-at-this-lincoln-park-strip-mall-keep-getting-worse-despite-city-intervention/

4 *See, e.g.,* Jonah Valdez, *San Diego DA's Prosecution of Pot Attorney Has Sent Chills Through the Legal Community* (August 9, 2017) https://www.voiceofsandiego.org/topics/news/san-diego-das-prosecution-of-pot-attorney-has-sent-chills-through-the-legal-community/

> Phelps has served in the San Diego City Attorney's Office for almost 17 years. He has developed extensive expertise in pension, land use, and environmental litigation, handling many of the City of San Diego's most high-profile, complex, and often politically sensitive cases. He is admitted to practice in all California State Courts, the U.S. District Court, Southern District of California, and U.S. Court of Appeals, Ninth Circuit.
>
> Phelps currently supervises the Office's Land Use Litigation Unit, overseeing a specialized team of litigators and staff that handle up to 90 active land use cases at any one time.

81. Phelps' knows and understands the requirements with the City for cannabis CUP applications.

II. MRS. SHERLOCK AND MINORS T.S. AND S.S.

A. The Balboa CUP

82. Michael "Biker" Sherlock was a husband, father, professional athlete, and an entrepreneur with interests in various businesses, including in the cannabis sector.

83. Mr. Sherlock partnered with Bradford Harcourt who, unknown to Mr. Sherlock, was a principal of the Enterprise.

84. The parties used the Dream Team to acquire interests in two cannabis permits in 2015 (the "Balboa CUP" and the "Ramona CUP").

85. Thereafter, Sherlock and Harcourt were faced with various litigation and business-related expenses that required Sherlock to deplete his financial resources and even use the college funds for his two sons, S.S. and T.S., to defend the significant investments he made in securing the two CUPs.

86. Unfortunately, Mr. Sherlock passed away on December 3, 2015.

87. Thereafter, Harcourt became the sole owner of the Balboa CUP and held an interest in the Ramona CUP.

88. The transfer of Mr. Sherlock's interest in the cannabis CUPs were accomplished via documents submitted to the Secretary of State weeks after his death.

89. Mr. Sherlock's signatures on the documents were forged.

90. Subsequent to Harcourt acquiring the Balboa CUP, Razuki became the sole owner of the Balboa CUP.

B. The Razuki / Malan / Harcourt Lawsuits

91. On June 6, 2017, San Diego Patients Cooperative Corporation, Inc. ("SDPCC") and Harcourt filed a lawsuit against, *inter alia*, Razuki and Malan alleging they had successfully conspired to defraud them of the Balboa CUP.

92. The Harcourt complaint contains causes of action against Razuki and Malan for, *inter alia*, breach of an oral joint venture agreement allegedly reached in or around August 2016.

93. Among the material allegations in the Harcourt complaint are that (i) Razuki and Harcourt reached an oral joint venture agreement that was to be reduced to writing; (ii) Razuki provided a $50,000 "good faith" payment while the parties were negotiating the joint venture agreement; (iii) however, Razuki then purchased the real property at which the Balboa CUP was issued and then fraudulently represented himself as the owner of the Balboa CUP to the City; (iv) the City then transferred the Balboa CUP to Razuki; and (v) and thereafter Razuki fraudulently represented that $800,000 was the value of the real property, inclusive of a cannabis CUP.

94. On July 10, 2018, Razuki initiated a civil lawsuit against Malan regarding ownership of multiple real estate properties and marijuana businesses after they had a falling out.

C. Harcourt and Allan Claybon of Messner Reeves LLP

95. In early 2020, Flores met with Mrs. Sherlock and showed her documents reflecting that Mr. Sherlock had transferred his interests in the cannabis CUPs and that those documents were submitted to the State at different points weeks after he had passed away.

96. Mrs. Sherlock said the signature on the forms were not Mr. Sherlock's.

97. On February 21, 2020, Flores first contacted Harcourt's attorney, Allan Claybon, and thereafter they spoke and emailed several times.

98. Flores argued it could appear that Harcourt forged Mr. Sherlock's signature to acquire his interest in the cannabis permit and thereby defrauded Mrs. Sherlock and her family as Mr. Sherlock's heirs.

99. Flores provided Claybon a copy of a handwriting experts' report stating Mr. Sherlock's signature were more likely than not, forged.

100. Flores has had a single, simple question for Harcourt that he wished Claybon would address: "how did Mr. Sherlock's interest in the cannabis permit become Harcourts?"

101. On their first call, Claybon was professional and agreed that the "circumstances" were "suspicious" and that he "appreciated" Flores reaching out to him to discuss before initiating litigation.

102. However, when they spoke next, Claybon contradicted himself and described the facts provided by Flores as being baseless speculation.

103. As of the filing of this Complaint, Harcourt has not provided an answer to the simple question posed.

104. However, without admitting guilt, Claybon communicated Harcourt's affirmative defenses in anticipation of this litigation.

105. Specifically: (i) the statute of limitations bars any fraud-based causes of action that Mrs. Sherlock may have against Harcourt; (ii) the statute of limitations was not tolled because Mrs. Sherlock did not "exercise reasonable diligence" because she did not check the State's records after Mr. Sherlock passed away; and (iii) Harcourt and a third-party allege they saw Mr. Sherlock execute the forms pursuant to which he transferred his interest in the cannabis CUPs the day before he passed away. Therefore, per Claybon, these alleged facts conclusively established same and there is no probable cause to allege Harcourt acted unlawfully ("Harcourt's Affirmative Defenses").

106. Claybon has directly accused Flores of being "jaded" for not believing Harcourt's self-serving allegation that he saw Mr. Sherlock execute the forms the day before he passed away.

107. An alleged action that had never been disclosed to Mrs. Sherlock until Flores contacted Claybon regarding the forged signatures.

108. Further, as the email correspondence between Flores and Claybon reflects, Claybon in an articulate, sophisticated, and professional manner consistently pretends to not understand the simplicity of the request made of Harcourt seeking an explanation of how he acquired Mr. Sherlock's interests in the permits.

109. Claybon's purposeful obfuscation of a simple issue is a cover-up of his client's illegal actions. Attached hereto as Exhibit 1 are the last two emails sent by Flores to Claybon regarding this issue reflecting Harcourt and Claybon's bad faith.

III. THE *COTTON I* LITIGATION WAS A SHAM AND THE *COTTON I* JUDGMENT ENFORCES AN ILLEGAL CONTRACT PROCURED THROUGH, *INTER ALIA*, A FRAUD ON THE COURT

A. The Geraci Illegal Marijuana Dispensaries and Judgments

110. Geraci has been sued at least three times by the City for his involvement in illegal marijuana dispensaries (the "Illegal Marijuana Dispensaries").[5]

111. Geraci settled all three cases, collectively paying fines in the amount of $100,000 (the "Geraci Judgments").

112. Geraci did not "coincidentally" lease three real properties to the Illegal Marijuana Dispensaries; he was an operator and beneficial owner. In the *CCSquared* Stipulated Judgment, Geraci judicially admitted that "[t]he address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Ave, San Diego[.]"

B. Negotiations for the Property and the November Document

113. Per Geraci's sworn declaration: "In approximately September of 2015, I

[5] *City of San Diego v. The Tree Club Cooperative* (Case No. 37-2014-00020897-CU-MC-CTL), *City of San Diego v. CCSquared Wellness Cooperative* ("*CCSquared*") (Case No. 37-2015-00004430-CU-MC-CTL), and *City of San Diego v. LMJ 35th Street Property LP, et al.* (Case No. 37-2015-000000972).

began lining up a team to assist in my efforts to develop and operate a [dispensary] in the [City]." (Exhibit No. 2 (Geraci Decl.), ¶ 2.)

114. "I hired… design professional, Abhay Schweitzer of TECHNE[,] 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." (Id.)

115. "In approximately June 2016, [I was introduced to the Property] as a potential site for acquisition and development for use and operation as a [dispensary]." (*Id*. at ¶ 3.)

116. "[I]n approximately mid-July 2016… 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 [a dispensary] site." (*Id.*)

117. "On November 2, 2016, Mr. Cotton and I executed [the November Document.]" (*Id*. at ¶ 5.)

118. "After we signed the [November Document], 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 [November Document]." (*Id.* at ¶ 10.)

119. "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 [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 simply acknowledge that here in a reply***."

(The "Request for Confirmation") (*Id.* at ¶ 10 (emphasis added).)

120. "I responded from my phone 'No no problem at all.'" (The "Confirmation

Email") (Id. (emphasis added).)

121. "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." (*Id.*)

122. "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." (The "Disavowment Allegation"). (*Id.*).

123. Geraci has no evidence other than his self-serving testimony that the Disavowment Allegation took place. (See, gen., *Id.*)

C. The Berry Fraud

124. On October 31, 2016, Berry submitted the Berry application to the City. The Berry Application included Form DS-318 (Ownership Disclosure Statement) and Form DS-3032 (General Application). Attached hereto as Exhibit No. 3. (Ownership Disclosure Statement) and Exhibit No. 4 (General Application).

125. In the General Application, Berry certified the following to be true:

> I certify that I have read this application and state the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit.

(Exhibit 4.)

126. The Ownership Disclosure Statement required Berry to provide a list that:

> … ***must*** include the names and addresses of ***all*** persons who have an interest in the property, ***recorded or otherwise***, and state the type of interest (*e.g.*, tenants who will benefit from the permit, ***all*** individuals who own the

property).

(Exhibit 3) (emphasis added).

127. Berry did not disclose Geraci in any capacity in the Berry Application as required by the plain language of the Ownership Disclosure Statement. (*See id.*)

128. Berry testified at trial in *Cotton I* that the failure to disclose Geraci was purposeful and purportedly because Geraci was an Enrolled Agent with the IRS.

D. Geraci's Complaint and Cotton's Answer

129. On March 21, 2017, Cotton terminated the JVA with Geraci after he had discovered the Berry Fraud and Geraci failed to reduce the JVA to writing.

130. The next day, March 22, 2017, Weinstein emailed Cotton a copy of the *Cotton I* complaint and the F&B Lis Pendens.

131. Geraci/F&B's *Cotton I* complaint ignores the existence of, *inter alia*, Geraci's Confirmation Email.

132. On May 8, 2017, Cotton filed his *Cotton I* answer including an affirmative defense for fraud.

E. Cotton's Pro Se Cross-complaint and F&B's First Demurrer.

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

134. Cotton's cause of action for breach of oral contract materially stated as follows (emphasis added):

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

> Geraci has breached the agreement by, among other actions described herein, alleging the written November [Document] is the final and entire agreement for the Property.

135. Cotton's cause of action against Geraci and Berry for conspiracy materially alleged as follows (emphasis added):

> Berry submitted the [Berry Application] in her name on behalf of Geraci because Geraci has been a named defendant in numerous lawsuits brought by the City of San Diego against him for the operation and management of unlicensed, unlawful and illegal marijuana dispensaries. **These lawsuits would ruin Geraci's ability to obtain a CUP himself [*i.e.*, the Sanctions Issue]**.
>
> Berry knew that she was filing a document with the City of San Diego that contained false statements, specifically that she was a lessee of the Property and owner of the [P]roperty [*i.e.*, the Berry Fraud].
>
> Berry, at Geraci's instruction or her own desire, submitted the [Berry Application] as Geraci's agent, and thereby participated in Geraci's scheme to deprive Cotton of his Property and his ownership interest in the [District Four CUP].

136. On June 16, 2017, F&B filed a demurrer to Cotton's pro se cross-complaint (the "First F&B Demurrer").

137. In the First F&B Demurrer, as to Cotton's cause of action for breach of an oral contract, F&B argued (emphasis added):

> The sixth cause of action for breach of oral contract does not state a cause of action because: a) Cross-Complainant has failed to allege conduct which would be an actual breach; b) **there cannot be an oral contract which contradicts a written contract**; and c) the alleged oral contract for the purchase and sale of the subject real property violates the Statute of Frauds.

138. F&B's arguments are without any factual or legal justification: (a) filing suit

and fraudulently representing a receipt as a purchase contract is a breach of the JVA;[6] (b) evidence of an oral contract that contradicts a written contract is admissible pursuant to *Riverisland*[7]; and (c) an oral joint venture agreement is not subject to the statute of frauds.[8]

139. As to Cotton's cause of action for conspiracy, F&B argued:

> The tenth cause of action for civil conspiracy fails to state a cause of action because there is no such cause of action in California. Rather, conspiracy is a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its preparation. A conspiracy cannot be alleged as a tort separate from the underlying wrong it is organized to achieve.

140. F&B's argument is without justification because, *inter alia*, it assumes the Berry Fraud is not illegal.

F. Cotton's First and Second Amended Cross-complaints prepared and filed by FTB; and Geraci's and Berry's Answers.

141. After *Cotton I* was filed, Joe Hurtado (Cotton's litigation investor in *Cotton I),* on behalf of Cotton, Richard Martin (Plaintiff Flores' predecessor in interest), and himself, met with McElfresh several times to discuss *Cotton I* and her representing Cotton in *Cotton I* and Martin in a CUP application with the City on the Property.

142. McElfresh agreed that the November Document could not a purchase contract as a matter of law because of the Confirmation Email.

143. On or around April 13, 2017, McElfresh – after having met, discussed and charged for her time, in regard to *Cotton I* – emailed Hurtado that "upon further

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[6] Plaintiff notes that although the Illegality Issue means the JVA was illegal when formed, such does not insulate defendants from liability for their fraud. *Timberlake v. Schwank*, 248 Cal.App.2d 708, 711 ("An action for damages for fraud inducing a person to enter into a joint venture does not arise out of the joint venture; exists independently of it; and lies even though there is no dissolution of or accounting in the joint venture.").

[7] *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169.

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

reflection" she would not be able to represent Cotton in *Cotton I*. Further, she recommended Demian of FTB, describing his success in the *Engebretsen v. City of San Diego*, No. D068438, 2016 Cal. App. Unpub. LEXIS 8548 (Nov. 30, 2016) matter, and one other attorney.

144. Notwithstanding her change of course, an attorney-client relationship had already been established between McElfresh and each of Cotton, Hurtado and Martin.[9]

145. Further, McElfresh *did* agree to represent Martin in the CUP application with the City.

146. Based on McElfresh's recommendation, Hurtado reached out to FTB and arranged for a meeting between F&B and Cotton.

147. Further, Hurtado arranged to finance Cotton's representation with FTB if FTB and Cotton came to terms.

148. On June 25, 2017, Cotton entered into an agreement with FTB for their services in representing him in various legal matters related to the Property, including the preparation and submission of a cannabis CUP application with the City.

149. On June 30, 2017, Demian and Witt of FTB substituted in as counsel for Cotton and filed an amended cross-complaint in *Cotton I* (the "FAXC").

150. The FAXC reduced and revised the causes of action from 11 to 7 as follows: (i) breach of contract; (ii) intentional misrepresentation; (iii) negligent misrepresentation; (iv) false promise; (v) intentional interference with prospective economic relations; (vi) negligent interference with prospective economic relations; and (vii) declaratory relief.

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[9] *Miller v. Metzinger* (1979) 91 Cal.App.3d 31, 39-40 ("As our Supreme Court said in *Perkins v. West Coast Lumber Co.* (1900) 129 Cal. 427, 429 [62 P. 57]: 'When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established prima facie.' [….] In *Westinghouse Elec. Corp. v. Kerr-McGee Corp.* (7th Cir. 1978) 580 F.2d 1311, 1319, the court said: 'The fiduciary relationship existing between lawyer and client extends to preliminary consultation by a prospective client with a view to retention of the lawyer, although actual employment does not result.'").

151. FTB's amendments from Cotton's pro se Complaint to their FAXC were without factual or legal justification. The unjustified amendments include:

(i) Dropping Cotton's cause of action for breach of an oral contract;

(ii) Dropping Cotton's cause of action for fraud;

(iii) Dropping Cotton's cause of action for conspiracy against Geraci and Berry;

(iv) Dropping Berry from all causes of action except the seventh for declaratory relief; and

(v) Amending Cotton's factual allegation that the "agreement reached on November 2, 2016 is a valid and binding oral agreement,"[10] to alleging the parties had reached "an agreement to agree" in the future which is not an enforceable agreement.[11]

152. On August 25, 2017, Judge Wohlfeil entered a minute order reflecting that pursuant to the stipulation of F&B and FTB, no new parties could be named and all unserved, non-appearing and fictitiously named parties were dismissed.

153. F&B and FTB's failure to name Martin as an indispensable party as required by law is without justification as FTB had disclosed the Martin Purchase Agreement to F&B and both parties knew Martin was the equitable owner of the Property.[12]

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[10] "In *San Francisco Iron etc. Co. v. American Mill. etc. Co.* (1931) 115 Cal.App. 238, a joint venture was held to be consummated when the minds of the parties meet as to the formation of the contract of joint venture. Also it was held that a joint venture could exist without explication of all details." *Franco W. Oil Co. v. Fariss*, 259 Cal. App. 2d 325, 345 (1968).

[11] "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.' [Citation.]" *Id*. at 316.

[12] *See, e.g., Cotton I*, ROA 115 (F&B opposition to Cotton December 7, 2017 ex parte application for TRO) at 11 ("[I]f Cotton is granted his TRO or PI, then he has every incentive as a co-applicant to torpedo the CUP approval process so that the condition required for Geraci to acquire the Property is not satisfied and Cotton can instead sell the Property to another buyer he has lined up for a purchase price of $2,000,000 (compared to the $800,000 purchase price he will receive from Geraci). In other words, if Cotton is

154. Also, on August 25, 2017, FTB filed a second amended cross-complaint for Cotton (the "SAXC"). This time, FTB dropped the causes of action for intentional and negligent interference with prospective economic relations.

155. The amendments from the FAXC to the SAXC are without factual or legal justification.

156. On November 20, 2017, Geraci filed his Answer to the SAXC.

157. Geraci's fifth affirmative defense in his *Cotton I* Answer states: "[Geraci] currently has insufficient information upon which to form a belief as to the existence of additional and as yet unstated affirmative defenses. [Geraci] reserves the right to assert additional affirmative defenses in the event discovery discloses the existence of said affirmative defenses."

158. On September 9, 2017, Geraci filed a demurrer to Cotton's SAXC (the "Second F&B Demurrer"), which includes the following admission by F&B: "[Geraci] alleges in his Complaint that the [November Document] contains all the material terms and conditions of the agreement for the purchase and sale of the [Property] and is the <u>entire</u> <u>agreement</u> enforceable between the parties." *Cotton I*, ROA 53 at 8 (emphasis added).

159. On November 3, 2017, Judge Wohlfeil held a hearing on Geraci's demurrer to the SAXC having issued a tentative ruling overruling Geraci's demurer.

160. The hearing was a fraud on the court that can be described as a play put on for Judge Wohlfeil by F&B and FTB seeking to have Cotton's case dismissed before it could proceed further.

161. Geraci's demurrer relied on *Beazell v. Schrader* (1963) 59 Cal.2d 577 and *Sterling v. Taylor* (2007) 40 Cal.4th 757, both of which were decided before *Riverisland* in 2013. At the hearing, Weinstein drew Judge Wohlfeil's attention to those "two

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granted his TRO and/or PI but Geraci prevails at trial, Geraci's victory may be a pyrrhic one as Cotton would have a $1.2 million reason to destroy the CUP approval process in order to free Cotton to close the more lucrative deal he has made with another buyer, [Martin], for the purchase and sale of the Property.") (Emphasis in original removed).

California Supreme Court cases" and argued materially as follows:

> So those decisions clearly hold that under the statute of frauds, **extrinsic evidence can't be employed to prove an agreement at odds with the terms of the memorandum**. Put another way, the parol agreement, in this case, alleged oral agreement that Mr. Cotton is alleging of which the written agreement is a memorandum, must be one whose terms are consistent with the terms of the memorandum. So determining whether extrinsic evidence provides the certainty required by the statutes, **[the] Court <u>has</u> to recognize that extrinsic evidence cannot contradict the terms of the writing**.

162. F&B's is arguing the *Pendergrass* line of reasoning. *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258.

163. Demian then appeared to oppose F&B, but in reality, he was informing Judge Wohlfeil that he should dismiss the case because the parties had reached an unenforceable agreement to agree. As argued by Demian:

> [S]everal of the statements of Mr. Weinstein are interesting to me and they point up that our case and our causes of action for breach of contract have merit…. That November [Document] leads with this language: "Darryl Cotton has agreed to sell the property located at," et cetera. Darryl Cotton has agreed. Darryl Cotton does not hereby agree pursuant to the terms of this agreement. If you look at real estate purchase agreements, CAR forms, commercially drafted, they will all say, The seller of the property hereby agrees to sell the property.
>
> Our case is based on the idea that this is a receipt. This is more a receipt than an agreement. This document was signed because Mr. Geraci said, I'm going to give you $10,000. We need to at least put down that **we have this agreement to agree** and have an exchange of this cash in a writing that documents it…. And consistent with all our allegations in our cause of action, **we assert that there was an agreement to reach the final terms of an agreement**.
>
> ***I know I firmly <u>believe</u>*** this complaint states a cause of action that survives the statute of frauds and the standard for general demurrer…. Where there is **a written agreement to agree**, the cause of action can stand…. When you

> have that **agreement to agree**, it's not necessarily an unhinged agreement to agree. You **may** have agreement.

164. At no point has Cotton ever argued anything other than that he and Geraci reached the JVA - "a valid and binding oral agreement."

165. Demian's argument contradicted his own client's judicial admissions.

166. What Demian did was highlight to Judge Wohlfeil that he "firmly believed," not that he "knew," that "a written agreement to agree" "may" be an agreement.

167. Despite the fact that FTB amended Cotton's complaint to include language that the parties had "agreed to agree," Weinstein feigned ignorance that Demian could even argue such a position at the hearing:

> [Demian] is **now** saying they had an agreement to agree. If that's the case, then his case gets -- **the cause of action gets knocked out automatically**. **There's no such thing as [an] agreement to agree**.
>
> It's even in your quotation in the tentative ruling. You were distinguishing in there between agreement to agree and actual agreement to negotiate in good faith towards something. Those are different things. So I need to make that point.

168. Weinstein is correct; Demian is wrong: "There's no such thing as [an] agreement to agree."

169. Had Demian raised the Confirmation Email and argued what any first-year law school student would know to argue, that to prove the existence of a contract requires evidence of mutual assent, *Cotton I* would have been resolved in Cotton's favor then and there and this lawsuit would not be required.

G. The Motion for Partial Adjudication

170. On March 8, 2019, Cotton filed a motion for summary judgment or, alternatively, summary adjudication (the "MSA").

171. In the MSA, Cotton:

> Move[d] for summary adjudication on two issues and the four causes of action in Geraci's Complaint. The first issue is a finding that the November Document is not a fully integrated agreement for the sale of the Property. The second, that Geraci's newly raised affirmative defense – the Disavowment Allegation – is barred as a matter of law []. Lastly, as to Geraci's Complaint, it fails as each of his four claims have an element requiring Geraci prove the November Document is a valid fully integrated agreement for the sale of the Property.

172. At the hearing, in response to questions by specially appearing attorney Ellen Plaskett – whose sole mandate was to have Judge Wohlfeil address the legal import of the Confirmation Email to the November Document - Judge Wohlfeil responded: "… ***the Court cannot and will not adjudicate this case as a matter of law***…"

H. The *Cotton I* Trial

173. All of the parties that testified on Geraci's behalf at trial were (i) Geraci, (ii) Berry, (iii) Austin, (iv) Bartell, (v) Schweitzer, and (vi) Tirandazi.

174. All these parties directly testified or provided supporting testimony for, *inter alia*, the conclusion that Geraci is not barred by law from owning a CUP pursuant to the Berry Application either due to the Sanctions Issue or the Berry Fraud.

175. Geraci cannot legally own a cannabis CUP pursuant to the Berry Application because of, *inter alia*, the Sanctions Issue and the Berry Fraud (hereinafter, collectively, the "Illegality Issue").

176. City attorney Phelps attended the trial.

177. City attorney Phelps prepared Tirandazi for testifying.

178. City attorney Phelps knows or should know that (i) Tirandazi's decision to not cancel the Berry Application at Cotton's request violates the SDMC (as set forth in the Engebretsen decision) and (ii) that the filing of *Cotton I* was a sham.

179. Judge Wohlfeil prohibited Cotton and Hurtado from providing contradicting testimony seeking to oppose Geraci's evidence that the market value of the Property is exponentially greater than $800,000 inclusive of a cannabis CUP.

180. Austin falsely testified that, *inter alia*, (i) she did not speak with Hurtado

regarding the November Document on March 6, 2017 and (ii) that she did not confirm to Hurtado the November Document is not a purchase contract.

181. Judge Wohlfeil prohibited Cotton and Hurtado from testifying about Magagna's attempts to bribe and threaten Corina Young, a material third-party witness to the conspiracy.

182. Just prior to trial Judge Wohlfeil denied Flores' motion to intervene as a successor-in-interest to Richard Martin, who purchased the Property after Cotton canceled the agreement with Geraci and, therefore, an indispensable party.

I. The DQ Motion

183. On January 25, 2018, Judge Wohlfeil stated from the bench that he does not believe that Weinstein, Austin, or Demian are capable of acting unethically against Cotton (Judge Wohlfeil's "Fixed-Opinion" statement).

184. On August 2, 2018, at an ex parte hearing, Flores, making a special appearance for Cotton's then counsel, noted that Cotton was preparing a motion to disqualify Judge Wohlfeil (the "DQ Motion") and Judge Wohlfeil asked for "an offer of proof."

185. Flores responded by reminding him of his Fixed-Opinion statement on January 25, 2018.

186. Judge Wohlfeil responded by saying that he "may" have made the Fixed-Opinion statement because he has known Weinstein since "early on" in their careers when they both started their practices (collectively with the Fixed-Opinion statement, the "Extrajudicial Statements").

187. On September 12, 2018, Cotton filed the DQ Motion.

188. The DQ Motion set forth, *inter alia*, the following facts and arguments: the Extrajudicial Statements, the Illegality Issue, and violations of the SDMC and BPC § 26057.

189. Judge Wohlfeil denied the DQ Motion, but he did not deny he made the Extrajudicial Statements (the "DQ Order").

190. The DQ Order alleges that the basis of the Extrajudicial Statements was formed during the course of the proceedings and, as such, cannot be the basis of disqualification.

191. Judge Wohlfeil also denied the DQ Motion incorrectly stating that he was not in chambers when the DQ Motion was served.

192. Flores personally called Judge Wohlfeil's chambers and requested to speak with Judge Wohlfeil's law clerk. Flores spoke with a law clerk named Calvin, who stated he was a temporary law clerk for Judge Wohlfeil, and who confirmed that Judge Wohlfeil was in chambers.

193. Attached hereto as Exhibit 5 is a true and correct copy of Flores' call log showing he called Judge Wohlfeil's chambers on September 12, 2018 at 3:48 p.m. for approximately 5 minutes. The length of the call is because when Flores spoke with law clerk Calvin, Flores requested that Calvin please go confirm Judge Wohlfeil was in fact present and in chambers as required by code, which he did placing Flores on hold while he confirmed same.

194. The DQ Motion is time stamped 4:22 p.m. and was personally served on law clerk Calvin by Cotton's then attorney.

J. The Motion for New Trial

195. After the trial of *Cotton I*, Cotton specially hired counsel from out of state to file a motion for a new trial (the "MNT").

196. Cotton's specially appearing counsel filed the MNT based primarily on three grounds: (i) even assuming the November Document were a contract, it is illegal and cannot be enforced because of the Sanctions Issue and the Berry Fraud; (ii) the jury in *Cotton I* applied a subjective standard to Geraci's conduct and an objective standard to Cotton's conduct and (iii) Geraci, F&B and Austin used the attorney-client privilege as a shield during discovery and a sword at trial, which prohibited Cotton from having a fair and impartial trial.

197. The F&B opposition to the MNT is without any factual or legal justification.

198. At the MNT hearing, Judge Wohlfeil denied the MNT apparently believing F&B's opposition argument that Cotton had waived the defense of illegality because Cotton had allegedly not previously raised the Sanctions Issue or the Berry Fraud.

199. The following exchange took place between Judge Wohlfeil and Cotton's counsel regarding the defense of illegality, as well as Toothacre's closing comment:

> Cotton's Counsel: … I'll get to the illegality of the contract issue first. The fact is it cuts to the heart of the motion that we filed and the biggest issue. [….]
>
> Judge Wohlfeil: So you are saying the contract is unenforceable?
>
> Cotton's Counsel: Yes.
>
> Judge Wohlfeil: As a matter of law?
>
> Cotton's Counsel: Yes. [The] CUP was a condition precedent to the contract.
>
> Judge Wohlfeil: [….] from the Court's perspective as a matter of law up to this point, you have been asking me to adjudicate the contract in your favor. Now you're asking the Court to adjudicate the contract as a matter of law against the other side. Counsel, shouldn't this have been raised at some earlier point in time?
>
> Cotton's Counsel: … the illegality argument has been raised before and raised in the context of reference to state law and Section [26057] of the California business and professions code…
>
> Judge Wohlfeil: **Even if you are correct, hasn't that train come and gone? The judgment has been entered. You are raising this for the first time?**
>
> Cotton's Counsel: Your Honor, illegality of the contract can be raised any time whether in the beginning or during the case or on appeal. [….]
>
> Judge Wohlfeil: But at some point, doesn't your side waive the right to assert this argument? At some point? [….] Anything else, counsel?

Cotton's Counsel: The other thing I'd like to point out, section [11.0401] of [the] San Diego Municipal Code specifically states that every applicant [must furnish] true and complete information. And that's obviously not what happened here. I think it's undisputed and the reasoning for the failure to disclose, there is no exception to either the San Diego Municipal [C]ode or [state law] [f]or failure to disclose.

Judge Wohlfeil: Thank you, very much.

Cotton's Counsel: Thank you, Your Honor.

Judge Wohlfeil: I am not inclined to change the Court's view. Did either one of you need to be heard?

Toothacre: Just to make a record. One comment with respect to the illegality argument. Obviously, we agree with the comments of the Court but the failure to make these disclosures in the CUP, it doesn't make the contract between Geraci and [C]otton unenforceable. It's one thing to say that the contract or the form wasn't properly filled out, that doesn't make the contract unenforceable. That's all we have for the record.

200. Judge Wohlfeil's comments are contradictory. If Cotton's counsel was "correct" that the illegality had previously been raised, then how can that "train [have] come and gone" for failure to raise?

201. Judge Wohlfeil did not address the other issues raised in the MNT and summarily denied the MNT without providing any reasoning.

202. Judge Wohlfeil's position that Cotton did not raise the Sanctions Issue or the Berry Fraud prior to the MNT is factually incorrect - it was repeatedly alleged in *Cotton I* including in Cotton's pro se cross-complaint, as one of the main foci seeking Judge Wohlfeil's disqualification in the DQ Motion,[13] in opposition to a motion in limine by

[13] *Cotton I*, ROA 292 at 33:11-13 ("Judge Wohlfeil has ratified [Geraci's] attempt to pursue an interest in the Property and by extension the CUP even though [Geraci] cannot legally own an interest in a Marijuana Outlet under state law.").

F&B seeking to exclude the Geraci Judgements,[14] it was the basis of a motion by Cotton seeking leave to amend his answer to include an affirmative defense of antitrust laws based on the Enterprise's Antitrust Conspiracy,[15] and the subject of a motion for directed verdict by Cotton at trial.[16]

203. It is impossible to reconcile Judge Wohlfeil's statements from the bench at the MNT hearing with the record of *Cotton I*; especially as the record of the Illegality Issue being raised prior to the MNT in *Cotton I* was described in Cotton's Reply to the MNT.

204. Judge Wohlfeil's statements at the MNT hearing could lead a reasonable person to believe that he did not read Cotton's MNT and the Reply, and only read F&B's opposition to the MNT.

205. Contrary to Judge Wohlfeil's ruling, as set forth in greater detail in the Reply to the MNT, as a matter of law the defense of illegality cannot be waived. *City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) ("A party to an illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and cannot waive his right to urge that defense."); *see Erhart v. BOFI Holding, Inc.*, No. 15-cv-02287-BAS-NLS, at *12 (S.D. Cal. Feb. 14, 2017) ("No principle of law is better settled than that a party to an illegal contract cannot come into a court of law and ask to have his illegal

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[14] *Cotton I,* ROA 581 (Cotton's opposition to F&B's motion in limine seeking to bar the Geraci Judgments arguing they are not material and irrelevant) at 2:12-15 ("[I]t is Cotton's contention that because of the various disclosure laws with not only the City for the CUP but also with the State for final approval Mr. Geraci knew he would never be able to meet this condition without utilizing a proxy to do so. Therefore, in this context the fact that Mr. Geraci was sanctioned is relevant. Additionally, it is material that Mr. Geraci never disclosed these facts to Cotton and it is his contention that this was part of his scheme to deprive him of his property.").

[15] *Cotton I*, ROA 596 (July 1, 2019 Minute Order) ("Defense counsel make a motion to amend answer to add Anti-Trust Enterprise defense for conspiracy, Court hears oral argument. The motion to amend answer is denied.").

[16] *Cotton I*, ROA 615 at 5:21-22 ("Despite Ms. Austin's Testimony Mr. Geraci's Prior Sanctions, and His Intentional Failure to Disclose his Interest, Bar Him From Ownership of [a] Marijuana [Outlet].").

objects carried out[.]") (quoting *Lee On v. Long*, 37 Cal. 2d 499, 502 (1951)).

IV. COTTON II[17]

206. On October 6, 2017, FTB filed on behalf of Cotton a Verified Petition for Alternative Writ of Mandate against the City - naming Geraci and Berry as real parties in interest - demanding the City remove Berry from the Berry Application and recognize Cotton as the sole applicant ("*Cotton II*"). Attached to the *Cotton II* petition were, *inter alia*, the Request for Confirmation and the Confirmation Email in Exhibit 3. Attached hereto as Exhibit 6.

207. Geraci and Berry filed verified answers that were also verified by Austin who was their attorney of record for *Cotton II*.

208. Geraci, in his answer, judicially admits he sent the Confirmation Email.

209. Thus, Geraci, Berry, and Austin, as attorneys or real estate agents/brokers knew that the Confirmation Email is evidence that the parties did not mutually assent to the November Document being a fully integrated contract as alleged in Geraci's *Cotton I* complaint.

210. The City was represented by Phelps who argued the City was a third-party to a private dispute.

211. Phelps knew that the City had a ministerial duty to ensure that CUP applications were processed in accordance with the SDMC.

212. Phelps knew or should have known that Berry had no right to the use of the Property because her alleged agency violates the statute of frauds and the equal dignity rule.

213. Phelps knew or should have known that Geraci could not own a cannabis CUP as a matter of law because of the Illegality Issues.

214. Judge Wohlfeil denying Cotton's petition is void for, *inter alia*, enforcing an

[17] *Cotton v City of San Diego*, San Diego Superior Court Case No 37-2017-00037675-CU-WM-CTL.

illegal contract.

V. COTTON III[18]

215. On February 9, 2018, Cotton, proceeding pro se, filed a federal complaint against Geraci, Berry, Austin, ALG, Weinstein, F&B, and the City alleging eighteen causes of action under federal and state law as well as declaratory and injunctive relief ("*Cotton III*").

216. The *Cotton III* complaint is essentially the same as Cotton's pro se cross complaint in *Cotton I*.

217. At that point in time, Cotton was not aware that McElfresh (i) was also an attorney for Geraci and Razuki, (ii) had shared clients with Austin, or (iii) that FTB, who she referred Cotton to, had shared clients with Geraci.

218. The motions to dismiss the *Cotton III* complaint are sham defenses that constitute a fraud on the court.

219. Any reasonable attorney would have concluded that *Cotton I* was a sham action that failed to state a cause of action.

VI. COTTON IV[19]

220. On December 6, 2018, Cotton and Hurtado, through counsel filed a federal complaint alleging various causes of action against inter alia, Geraci, Berry, F&B, ALG, and a legal malpractice claim against FTB.

221. On March 8, 2019, Cotton filed the MSA in *Cotton I*.

222. On March 26, 2019, attorney James D. Crosby as attorney-of-record for Geraci and Berry filed their answer to Cotton's *Cotton IV* complaint.

223. The answer admits that Geraci sent the Confirmation Email but does not set forth affirmative defenses of fraud or mistake.

224. Flores was initially dumbfounded when he first read the answer Crosby filed

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[18] *Cotton v. Geraci* (S.D. Cal. Feb. 28, 2018) Case No.: 18cv325-GPC(MDD) ("*Cotton V*").

[19] *Cotton v. Geraci* (S.D. Cal. May. 14, 2019) Case No.: 18cv2751-GPC(MDD) ("*Cotton VI*").

because the MSA was pending before Judge Wohlfeil seeking to have the court specifically address the fact that the Disavowment Allegation is substantively an affirmative defense of fraud and mistake.

225. The Answer filed by Crosby is a sham defense and committed a fraud on the Court because it perpetuates the fraud on the court in the *Cotton I* action that the Disavowment Allegation does not substantively constitute affirmative defenses that were waived for not being raised in Geraci's *Cotton I* answer.

226. Crosby, by filing the *Cotton IV* answers on behalf of Geraci/Berry, became a conspirator/accessory-after-the fact to a criminal scheme that includes making misrepresentations to the State and Federal courts and acts and threats of violence against innocent third-parties and their families.

227. Crosby's actions only became understandable when Flores began his investigations into Crosby and discovered that (i) Crosby is a solo-practitioner who has an office in the same office building as F&B and (ii) was previously represented by F&B in a legal matter that resulted in a judgement in his favor in excess of $500,000.[20] And, given that Crosby was willing to represent Geraci/Berry and file a sham defense, Crosby relies to a material degree on business from F&B.

228. F&B's use of Crosby as a proxy to commit a fraud on the Federal Court is the Enterprise's defining modus operandi.

229. On May 14, 2019, Judge Curiel dismissed the *Cotton IV* complaint with prejudice.

230. On March 26, 2019 in *Cotton & Hurtado v. Larry Geraci et al*, Case No. 318-cv-027510-GPC-MDD the law firm of PETTIT, KOHN, INGRASSIA LUTZ & DOLIN PC, representing Defendants GINA M. AUSTIN AND AUSTIN LEGAL GROUP, filed a Motion to Dismiss the complaint.

231. On May 3, 2019 in *Cotton & Hurtado v. Larry Geraci et al*, Case No. 318-

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[20] *See Crosby v. Neuman*, San Diego Superior Court, Case No. 37-2010-00057331-CU-CO-NC, ROA 140.

cv-027510-GPC-MDD the law firm of LEWIS BRISBOIS BISGAARD & SMITH LLP, representing Defendants FINCH THORNTON & BAIRD. DAVID DEMIAN AND ADAM WITT filed a Motion to Dismiss the complaint.

232. On May 3, 2019 in *Cotton & Hurtado v. Larry Geraci et al,* Case No. 318-cv-027510-GPC-MDD the law firm of GORDON & REES SCULLY MANSHUKANI, representing Defendants MICHAEL R. WEINSTEIN, SCOTT TOOTHACRE AND FERRIS BRITTON APC, filed a Motion to Dismiss the complaint.

233. On May 5, 2020 in *Cotton v. Larry Geraci et al*, Case No. 318-cv-00325-BAS-MDD the law firm of PETTIT KOHN INGRASSIA LUTZ & DOLIN, representing Defendants GINA M. AUSTIN AND AUSTIN LEGAL GROUP M WITT, filed a Motion to Dismiss the complaint.

234. On June 26, 2020 in *Cotton v. Larry Geraci et al,* Case No. 318-cv-00325-BAS-MDD the law firm of KJAR, McKENNA & STOCKALPER LLP, representing Defendant MICHAEL WEINSTEIN, filed a Motion to Dismiss the complaint.

235. On June 30, 2020 in *Flores et al v. Gina M. Austin et al*, Case No. 320-cv-00656-BAS-DEB the law firm of KJAR, McKENNA & STOCKALPER LLP, representing Defendants MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL PRENDERGRAST AND FERRIS & BRITTON, filed a Motion to Dismiss the complaint.

VII. COTTON V

236. This suit is the fifth suit to be filed that alleges that Geraci and his conspirators have committed a fraud on the court by filing and/or maintaining a lawsuit that alleges that Geraci can lawfully own a cannabis CUP via the Berry Application.

237. To date, other than Judge Wohlfeil who found the defense of illegality had been waived, over ten judges have failed to address the legality of Geraci's ownership of a cannabis CUP via the Berry Application. And, thus, the validity of the *Cotton I* judgment.

238. Numerous parties who financed or lent money to Cotton and/or are victims of the Enterprise are scared to vindicate their rights in a court of law because they believe that the State and Federal judiciaries are motivated to cover-up the knowing or negligent actions of the City and the judiciaries role in allowing the instant situation to develop.

239. On January 21, 2019, Nguyen promised to provide Young's testimony confirming, inter alia, Magagna's attempts at bribing and threatening her.

240. Nguyen never provided Young's testimony as promised.

241. The *Cotton I* trial was held without Young's testimony regarding statements made by Bartell reflecting he was acting in bad faith or Magagna's attempts at bribing and threatening her.

242. In or around June 2019, Young told Flores that he needed to be careful, as he had become the equitable owner of the Property and would seek to vindicate his rights in a court of law, because Austin and Magagna are dangerous.

243. In or around January 2020, Young told Flores that Nguyen had unilaterally decided to not provide Young's testimony before the *Cotton I* trial because it was too late for Cotton to do anything about it.

VIII. COTTON'S PRO SE EMAILS TO ATTORNEYS

244. On December 24, 2019, Cotton sent an email to numerous parties including the attorneys named herein after he realized that McElfresh had represented Geraci in supposedly appealing the granting of the cannabis CUP at issue in *Cotton I* to Magagna. Attached hereto as Exhibit 7 (exclusive of exhibits).

245. Cotton's email outlines the conspiracy by Geraci as alleged herein, describes McElfresh's role, and demands that various attorneys abide by their affirmative ethical duties to the judiciaries and expose Geraci's conspiracy.

246. On May 29, 2020, Cotton sent a second email to a larger group outlining in detail allegations of Geraci's "sham" lawsuit as described herein. Attached hereto as Exhibit 8 (exclusive of exhibits).

ADDITIONAL SPECIFIC ALLEGATIONS AND CAUSES OF ACTION

FIRST CAUSE OF ACTION - § 1983

(Flores against Judge Wohlfeil)

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

248. "The Due Process Clause entitles a person to an impartial and disinterested tribunal." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980). In addition, "justice must satisfy the appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954); *Exxon Corp. v. Heinze*, 32 F.3d 1399, 1403 (9th Cir. 1994) ("[T]he Constitution is concerned not only with actual bias but also with 'the appearance of justice.'"). "Bias exists where a court has prejudged, or reasonably appears to have prejudged, an issue." *Kenneally v. Lungren*, 967 F.2d 329, 333 (9th Cir. 1992) (quotation and citation omitted).

A. The Extrajudicial Statements

249. The DQ Order alleges that the basis of the Extrajudicial Statements were formed during the course of the proceedings and, as such, cannot be the basis of disqualification. In support of this position, Judge Wohlfeil quotes *Liteky v. United States* for the following proposition: "[O]pinions formed by the judge on the basis of facts introduced or events occurring during current or prior proceedings are not grounds for a recusal motion unless they display a similar degree of favoritism or antagonism." 510 U.S 540, 555.

250. However, *Liteky* describes "extrajudicial" as "clearly [meaning] a source outside the judicial proceeding at hand-which would include as extrajudicial sources earlier judicial proceedings conducted by the same judge (as are at issue here)." *Id*. at 545.

251. Thus, although *Liteky* is directly applicable and controlling his reliance is inapposite and by itself ***mandated*** his recusal.

252. The Extrajudicial Statements directly reflect the reality of *Cotton I* - Judge Wohlfeil had pre-judged that *Cotton I* has been filed with probable cause because he knew the attorneys that filed and maintained *Cotton I*.

B. Service of the DQ Motion

253. Judge Wohlfeil alleges that Cotton did not serve the DQ Motion. Flores provides herewith his cell phone record as evidence that he confirmed with Judge Wohlfeil's clerk that Judge Wohlfeil was in chambers minutes before the DQ Motion was served.

254. A reasonable third party could believe that it appears that Judge Wohlfeil falsely stated that he was not served with the DQ Motion, particularly when coupled with his misrepresentation of the Extrajudicial Statements as not being extrajudicial.

C. Refusal to adjudicate Questions of Law

255. As explicitly stated at the MSA hearing, Judge Wohlfeil refused throughout *Cotton I* to address various case-dispositive questions of law. While the refusal to address questions of law by itself is not a basis to determine judicial bias, when coupled with the Extrajudicial Statements issue above, it is.

256. For example, the Request for Confirmation cannot be interpreted in any manner to be an attempt to "renegotiate" by Cotton or an "extortionate" scheme as alleged by Geraci and F&B. *Doe I v. Wal-Mart Stores*, Inc., 572 F.3d 677, 681 (9th Cir. 2009) ("Contract interpretation is a question of law…").

257. "When a dispute arises over the meaning of contract language under California law, the first question that must be decided is 'whether the language is reasonably susceptible to the interpretation urged by the party. ***If it is not, the case is over***.'" *Hindin/Owen/Engelke, Inc. v. Four Seasons Healthcare, Inc.*, 267 F. App'x 648, 649 (9th Cir. 2008) (quoting *Oceanside 84 v. Fid*, Fed. Bank, 56 Cal.App.4th 1441, 1448, 66 Cal.Rptr.2d 487 (Cal.Ct.App. 1997) (emphasis added)).

258. There is simply no justification for *Cotton I* to have ever been filed, much less a judgment issued, based on Geraci's allegation that the Request for Confirmation can reasonably be read to be a "renegotiation" or "extortionate" tactic by Cotton.

259. Another dispositive issue, Geraci's complaint fails as a matter of law because Geraci admits, *inter alia*, that the "good faith" deposit referenced in the November Document is actually non-refundable. Thus, the November Document cannot be a fully

integrated contract as alleged in Geraci's complaint. *Founding Members v. Newport Beach* (2003) 109 Cal. App. 4th 944, 954 ("Whether a contract is integrated is a question of law when the evidence of integration is not in dispute."); *Brandwein v. Butler*, 218 Cal. App. 4th 1485, 1510 (Cal. Ct. App. 2013) ("The crucial threshold inquiry, therefore, and one for the court to decide, is whether the parties' intended their written agreement to be fully integrated.").

D. The Waiver of the Defense of Illegality

260. Judge Wohlfeil denied the MNT finding that the defense of illegality had been waived for failure to raise prior to the MNT.

261. That is factually contradicted by the record of *Cotton I*.

262. Cotton alleged that Berry and Geraci conspired to illegally acquire a cannabis CUP at the Property via the Berry Fraud in his pro se complaint before it was illegally amended by FTB.

263. Further, as argued in the MNT, a "party to an illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and cannot waive his right to urge that defense." *City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959).

E. Denial of Flores' motion to intervene as an indispensable party.

264. Judge Wohlfeil's denial of Flores' motion to intervene in the *Cotton I* action deprives Flores of his constitutional right to not be deprived of his property without due process. *Truax v. Corrigan*, 257 U.S. 312, 332 (1921) ("The due process clause requires that every man shall have the protection of his day in court.").

265. Judge Wohlfeil's ruling denying Flores' motion to intervene in *Cotton I* deprives Flores of his constitutional right to bring forth a claim to prove a "conspiracy deprived [Flores] of [his] federally-protected due process right of access to the courts." *Bell*, 746 F.2d at 1261.

SECOND CAUSE OF ACTION - § 1983

(Plaintiffs against all Defendants, (except Judge Wohlfeil))

266. Plaintiffs reallege and incorporate herein by reference the allegations in the

preceding paragraphs.

267. Geraci and his agents conspired to defraud Cotton of the Property.

268. Geraci and his agents conspired to illegally acquire the cannabis CUP at the Property.

269. When Cotton discovered the Berry Fraud, Geraci and his agents filed and/or maintained *Cotton I*, *Cotton II*, *Cotton III* and *Cotton IV* on the false allegation that Geraci could lawfully own a cannabis CUP via the Berry Application.

270. All submissions by all parties that supported or failed to inform the courts that the November Document could not be a legal contract because it lacks mutual assent and a lawful object are sham defenses that constitute a fraud on the court.

271. All reasonable attorneys would have checked the pleadings in the various cases and also learned of the acts and threats of violence taken against, *inter alia*, Young.

272. Any reasonable attorney knowing that *Cotton I* is a sham would know that there was a high probability that the allegations of violence against Young were likely to be true.

273. These actions by Geraci, his agents, including his attorneys and Tirandazi and Phelps are acts in furtherance of the Antitrust Conspiracy.

274. The Antitrust Conspiracy could not have been effectuated without the knowing and critical complicity of Tirandazi and Phelps.

275. "It is clear that defendants who were engaged in purely private conduct may be found liable under § 1983 if it is established that they have acted in concert with another party against whom a valid claim can be stated." *Briley v. California*, 564 F.2d 849, 858 (9th Cir. 1977).

276. "When executive action like a discrete permitting decision is at issue, only egregious official conduct can be said to be arbitrary in the constitutional sense: it must amount to an abuse of power lacking any reasonable justification in the service of a legitimate governmental objective." *Shanks v. Dressel*, 540 F.3d 1082, 1088 (9th Cir. 2008) (quotations and citations omitted).

277. Tirandazi was responsible for processing the Berry Application. Tirandazi should have cancelled the Berry Application when Cotton demanded that the Berry Application be transferred to him. *Engebretsen v. City of San Diego*, No. D068438, 2016 Cal. App. Unpub. LEXIS 8548 (Nov. 30, 2016) (emphasis added).

278. Berry never showed any legal right to the use of the Property.

279. Berry's oral allegation that she was acting as an agent of Geraci when she submitted the Berry Application violates the statute of frauds, the equal dignities rule, State and City disclosure requirements, and the plain language of Ownership Disclosure Statement. *See* Civ. Code § 1624(4); *id.* § 2309[21]; SDMC §11.0401(b) ("No person willfully shall make a false statement or fail to report any material fact in any application for City license, permit, certificate, employment or other City action under the provisions of the [SDMC]"); SDMC § 121.0311 ("Violations of the Land Development Code shall be treated as **strict liability** offenses regardless of intent.") (Emphasis added).

280. Thus, every attorney named herein is liable for causing, permitting, aiding or abetting the Enterprise's Antitrust Conspiracy or failing to take affirmative action when lawfully required to do so. SDMC § 11.0402 ("Whenever in [the SDMC] any act or omission is made unlawful, it shall include causing, permitting, aiding or abetting such act or omission.").

281. "The purpose of the statute of frauds is to prevent fraud and perjury as to extrajudicial agreements by requiring enforcement of the more reliable evidence of some writing signed by the party to be charged." *Kohn v. Jaymar-Ruby, Inc.* (1994) 23 Cal.App.4th 1530, 1534.

282. Phelps is an experienced land use attorney for the City.

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[21] *Martindell v. Bodrero*, 256 Cal.App.2d 56, 61 (Cal. Ct. App. 1967) ("It is well established that parol evidence is not admissible to relieve from liability an agent who signs personally without disclosing the name of the principal on the face of the instrument."); *Hollywood Nat. Bank v. International Bus. Mach*, 38 Cal.App.3d 607, 617 (Cal. Ct. App. 1974) ("[W]here the writing is unambiguous on its face, extrinsic evidence is inadmissible to show that a person acted purely as an agent.").

283. Phelps knows that Geraci cannot own a cannabis CUP via the Berry Application.

284. To this day, despite being served with various submissions in various legal proceedings, submitting arguments and taking part in numerous cases, and being emailed repeatedly by Cotton with evidence, Phelps has failed to inform the Courts that Geraci cannot own a cannabis CUP via the Berry Application because of, *inter alia*, the Illegality Issues.

285. Thus, the City is liable. *Trevino v. Gates*, 99 F.3d 911, 920 (9th Cir. 1996) ("We have found municipal liability on the basis of ratification when the officials involved adopted and expressly approved of the acts of others who caused the constitutional violation.").

286. Similarly, Phelps and every other attorney named here has violated their affirmative duties to the Court to prevent a miscarriage of justice and, consequently, have committed a fraud on the State and Federal Courts. *U.S. v. Shaffer Equipment Co.*, 11 F.3d 450, 457-58 (4th Cir. 1993) ("The [justice] system can provide no harbor for clever devices to divert the search, mislead opposing counsel or the court, or cover up that which is necessary for justice in the end. ***It is without note, therefore, that we recognize that the lawyer's duties to maintain the confidences of a client and advocate vigorously are trumped ultimately by a <u>duty</u> to guard against the corruption that justice will be dispensed on an act of deceit***.") (Emphasis added).

THIRD CAUSE OF ACTION – § 1985

(Plaintiffs against all Defendants, except Judge Wohlfeil)

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

288. "§ 1985… create[es] a cause of action based on a conspiracy which deprives one of access to justice or equal protection of law." *Bell*, 746 F.2d at 1233.

289. In order to establish a claim under the first part of § 1985(2), "the plaintiff must show (1) a conspiracy between two or more persons, (2) to deter a witness by force,

intimidation or threat from attending court or testifying freely in any pending matter, which (3) results in injury to the plaintiff." *David v. U.S.*, 820 F.2d 1038, 1040 (9th Cir. 1987)

290. First, the filing and/or maintaining of various legal matters arguing that Geraci can own a cannabis CUP via the Berry Application is evidence of the Antitrust Conspiracy.

291. Second, in furtherance of the Antitrust Conspiracy, Magagna attempted to bribe and then threatened Young to prevent her from providing testimony that would establish the existence of the Enterprise and the Antitrust Conspiracy.

292. Nguyen's unilateral decision to not provide Young's testimony, as her attorney, prevented Young from testifying freely and constitutes a fraud on the court. *Ty Inc. v. Softbelly's, Inc.*, 517 F.3d 494, 498 (7th Cir. 2008) ("Trying improperly to influence a witness is fraud on the court and on the opposing party…).

293. Third, Plaintiffs are injured because Young's testimony, if found by a jury to be true, would evidence the Enterprise and the Antitrust Conspiracy that has deprived Plaintiffs of their interest in cannabis CUPs.[22]

294. The acts and threats of violence and witness intimidation against Young took place while *Cotton III* was pending in Federal Court with a RICO cause of action.

295. Thus, those acts and threats of violence by Magagna and improper witness intimidation by Nguyen are acts taken in both the State and Federal Courts.

FOURTH CAUSE OF ACTION – § 1986

(Plaintiffs against all Defendants, (excluding Judge Wohlfeil))

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

297. "[§] 1986 predicates liability upon (1) knowledge that any of the

[22] Plaintiffs note there are numerous other acts of violence taken or ratified by defendants, but which have not been alleged herein to focus on the acts and threats of violence against Young.

conspiratorial wrongs are about to be committed, (2) power to prevent or to aid in preventing the commission of those wrongs, (3) neglect to do so, where (4) the wrongful acts were committed, and (5) the wrongful acts could have been prevented by reasonable diligence." *Bell v. City of Milwaukee* (7th Cir. 1984) 746 F.2d 1205, 1233.

298. The named defendants to this cause of action knew that the Enterprise was taking steps in furtherance of the Antitrust Conspiracy, which included the filing and maintain of various legal actions alleging that Geraci could lawfully own a cannabis CUP via the Berry Application, the acts and threats by Magagna, and the witness intimidation by Nguyen against Young.

299. The defendants named in this cause of action had the power to prevent the unlawful actions described herein.

300. The defendants named in this cause of action failed to act.

301. The unlawful acts described herein were committed.

302. The unlawful acts described herein could have been prevented by reasonable diligence, which for the most part under these facts would have been to simply tell the truth to either the State or Federal Courts.

FIFTH CAUSE OF ACTION – DECLARATORY RELIEF

(Plaintiffs against Harcourt and Claybon)

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

304. An actual controversy has arisen and now exists between Mrs. Sherlock and minors T.S. and S.S., on one hand, and Harcourt and Claybon on the other.

305. Mrs. Sherlock claims that the facts alleged herein provide probable cause to bring suit, in state court, against Harcourt and Claybon for taking actions in furtherance of the Antitrust Conspiracy that defrauded Mrs. Sherlock and her minor children of their interest in the Balboa CUP and the Ramona CUP that would have transferred to them after Biker's death.

306. Harcourt and Claybon have already communicated Harcourt's Affirmative

Defenses disputing Mrs. Sherlock's position.

307. An actual, present and justiciable controversy has therefore arisen and now exists between the Plaintiffs and defendants named in this cause of action with regard to the transfer of Mr. Sherlock's interests in the Balboa CUP and the Ramona CUP to Harcourt.

308. A judicial determination of this controversy is necessary and appropriate in order for the parties to ascertain their rights, duties, and obligation regarding this dispute.

SIXTH CAUSE OF ACTION – DECLARATORY RELIEF

(Plaintiffs against all Defendants)

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

310. An actual controversy has arisen and now exists between Plaintiffs and the defendants named in this cause of action.

311. Plaintiffs claim that the judgments reached in *Cotton I*, *Cotton II* and *Cotton IV* are void for being the product of judicial bias and being procured by acts and/or omissions that constitute a fraud upon the court taken in furtherance of the Antitrust Conspiracy.

312. Plaintiffs are informed and believe, and therefore allege, that defendants dispute this position.

313. An actual, present and justiciable controversy has therefore arisen and now exists between Plaintiffs and Defendants named in this cause of action concerning the validity of the judgements in question and (i) their acts or failure to act that contributed to the procurement of those judgments and (ii) their knowledge that those judgments are void.

314. A judicial determination of this controversy is necessary and appropriate in order for the parties to ascertain their rights, duties, and obligation regarding this dispute.

PRAYER FOR RELIEF

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

1. The judgments in *Cotton I*, *Cotton II*, and *Cotton IV* be declared void;
2. A declaration that Plaintiffs be allowed to join *Cotton I* as indispensable parties;[23]
3. A declaration that Flores be allowed to join *Cotton II* as an indispensable party;
4. An order that *Cotton I* and *Cotton II* be stayed pending resolution of this federal action;
5. A declaration that no ruling, order or judgment issued by Judge Wohlfeil may be used by defendants to justify any action in this matter due to judicial bias;
6. A declaration finding that the defendants have violated Plaintiff's rights under the Constitution and laws of the United States and the Constitution and laws of the State of California;
7. An award of compensatory and general damages in an amount to be proven at trial;
8. An award of consequential damages in an amount to be proven at trial;
9. An award of statutory damages, as permitted by law;
10. An award of punitive damages, as permitted by law, to punish the defendants and make examples of them; and
11. Reasonable attorneys' fees and costs as allowed by law.

Dated: July 7, 2020

Law Offices of Andrew Flores

By /s/ Andrew Flores

Plaintiff *In Propria Persona*, and
Attorney for Plaintiffs
AMY SHERLOCK, Minors T.S. and
S.S.

[23] Plaintiffs will collectively file suit in state court against defendants for, *inter alia*, violations of the Cartwright Act, the Bane Act, and/or negligent acts or omissions that furthered the Antitrust Conspiracy in violation of 42 U.S.C § 1986.

EXHIBIT 1

From: Andrew flores
Sent: Monday, March 9, 2020 3:47 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate [NON-PRIVLIGED CONVERSATION]

THIS COMMUNICATION IS NOT PRIVLIGED.

Mr. Claybon, the language in *Stevens* applies to CRA statutes that do not require a political class for protection.

I am only writing to confirm the obvious: your continued feigned ignorance, the core issue here is an understanding of how Mr. Harcourt acquired Mr. Sherlock's interest in the Balboa CUP.

YOUR RESPONSE DISINGENJOYUSLY CONTINUES TO IGNORE THIS SIMPLE REQUEST WHILE PRETENTING THAT IT IS SOMEHOW DIFFICULT FOR MR. HARCOURT TO RESPONSE WITH A SIMPLE ANSWER: "I BOUGHT IT" OR "HE GAVE IT TO ME."

Your bad faith is manifest and I will be bringing suit against you, your firm and your client as early as this week. Please stop threatening me with the implication that I am the individual that is acting in bad faith. It is my belief that your stalling is an attempt for your client to manufacture evidence to legitimize his defrauding Mrs. Sherlock of her interest in the Balboa CUP.

I am open to legitimate conversations, not feigned ignorance as reflected by our email chain below. Please understand that while you continue to maintain that it is reasonable for Mr. Harcourt to not explain how he acquired Mr. Sherlock's interest, I view you as a criminal and co-conspirator of Mr. Harcourt that is using his expertise of the law to maliciously injure Mrs. Sherlock and her children. As already noted, a court will decide whether these communications and the facts set forth herein constitute probable cause to accuse you of such.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

CONFIDENTIALITY NOTICE:
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From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, March 4, 2020 7:14 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Mrs. Sherlock demanded to know Mr. Harcourt's explanation for how he ended up owning 100% of the Balboa CUP after evidence was discovered that Mrs. Sherlock was unlawfully deprived of her interest in the Balboa CUP as Mr. Sherlock's heir (as fully described below). That demand is not unreasonable. It takes no effort for Mr. Harcourt to respond with a simple statement as to whether he purchased Mr. Sherlock's interest or Mr. Harcourt disavowed his interest in the Balboa CUP for some reason. Your feigned ignorance of the simplicity of this issue is apparent and your refusal to provide an explanation is unreasonable.

I am writing to make two points. First, as I noted, I went to the City and the documents that Mr. Harcourt references in his complaint pursuant to which the City transferred him sole ownership of the Balboa CUP are not in the City's file. Thus, your allegation that you "believe" the documents are "publicly accessible" has no factual basis. I have exercised due diligence and have not come across any such documents, if you know where they are publicly available, please let me know.

Second, as noted, your description of Mrs. Sherlock's demand based on the facts and arguments set forth below as "unreasonable" lacks probable cause. Even if Mr. Harcourt is not responsible for forging Mr. Harcourt's signature or engaged in unlawful conduct, that does not explain why he is refusing to provide a simple explanation given the facts. In my professional opinion, you have crossed the line from zealous advocacy of your client to being a co-conspirator of Mr. Harcourt seeking to defraud Mrs. Sherlock. *See Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) ("Though there appears to be no clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that the attorney may be held liable for damages if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably should have known, would violate the clearly established constitutional or statutory rights of another.") (citing *Buller v. Buechler*,706 F.2d 844, 852-853 (8th Cir. 1983).

Based on the language in *Stevens*, I will be forced to protect Mrs. Sherlock's rights by filing suit against your personally and your firm as co-conspirators of Mr. Harcourt. And we will let a Court determine which one of us is unreasonable in light of our positions described below. Please consider this notice of my intent to file suit and a TRO against, *inter alia*, Mr. Harcourt, you, and your firm for conspiring to defraud Mrs. Sherlock of her interest in the Balboa CUP.

If you have any case law that contradicts *Stevens* and which allows you to unilaterally ignore Mrs. Sherlock's demand, particularly as the core basis of this suit is the belief that Mr. Harcourt fabricated documents and your refusal is potentially allowing him time to fabricate additional evidence to legitimize the transfer, please provide it and I will reconsider my position in light of any such authority.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

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
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/10/2018 at 11:10:00 AM
Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual, Plaintiff, v. DARRYL COTTON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2017-00010073-CU-BC-CTL Judge: Hon. Joel R. Wohlfeil Dept.: C-73 **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/ Larry Geraci** **/s/ 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

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

THE CITY OF SAN DIEGO

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*

Court's Ex. 030
Case # 37-2017-00010073-CU-BC-CTL
Rec'd _____
Dept. C-73 Clk. _____

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 : Rebecca Berry
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 4

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

THE CITY OF SAN DIEGO

General Application

FORM DS-3032
AUGUST 2013

Part I (Must be completed for all permits/approvals)

1. **Approval Type:** *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way; ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☑ Other: CUP

2. **Project Address/Location:** *Include Building or Suite No.* 6176 Federal Blvd.
Project Title: Federal Blvd. MMCC
Project No.: *For City Use Only* 520606
Legal Description: *(Lot, Block, Subdivision Name & Map Number)* TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO
Assessor's Parcel Number: 543-020-02
Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land
Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land
Project Description: The project consists of the construction of a new MMCC facility

3. **Property Owner/Lessee Tenant Name:** *Check one* ☐ Owner ☑ Lessee or Tenant Telephone: Fax:
Rebecca Berry
Address: 5982 Gullstrand Street City: San Diego State: CA Zip Code: 92122 E-mail Address: becky@tfcsd.net

4. **Permit Holder Name** - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.
Name: Rebecca Berry Telephone: Fax:
Address: 5982 Gullstrand Street City: San Diego State: CA Zip Code: 92122 E-mail Address: becky@tfcsd.net

5. **Licensed Design Professional** (if required): (check one) ☑ Architect ☐ Engineer License No.: C-19371
Name: Michael R Morton AIA Telephone: Fax:
Address: 3956 30th Street City: San Diego State: CA Zip Code: 92104 E-mail Address:

6. **Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals)** -
a. Year constructed for all structures on project site: 1951
b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A
c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☑ Yes ☐ No
d. Does the project include any foundation repair, digging, trenching or other site work? ☑ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer Signature: (agent) Date: 10/28/2016

7. **Notice of Violation** - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☐ No ☐ Yes, copy attached

8. **Applicant Name:** *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☑ Other Person per M.C. Section 112.0102 Telephone: Fax:
Rebecca Berry
Address: 5982 Gullstrand Street City: San Diego State: CA Zip Code: 92122 E-mail Address: becky@tfcsd.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature: Rebecca Berry Date: Oct 31 2016

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
Upon request, this information is available in alternative formats for persons with disabilities.

DS-3032 (08-13)

F. Tirandazi
EXHIBIT NO. 3
3-14-19
L. Barrón, CSR

E3

EXHIBIT 5

Voice 6192462844

61
485
1374

(858) 254-9224 Mar 18
This is Lori. This is Ch... 01:59

(619) 450-7073 Sep 12, 2018
Outgoing call

N

Natasha Lead Counsel Dec 30, 2013
Hey Andrew. Sometim... 00:21

(760) 726-2171 Jul 10, 2013
This is a message for ... 00:36

(619) 450-7073

(619) 450-7073

Type	Time	Date	Duration
Outgoing call	3:48 PM	Wednesday, Sep 12, 2018	4 min 55 s

EXHIBIT 6

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Agreement

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

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President

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

6176 Federal Blvd.
San Diego, CA. 92114
USA

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[Quoted text hidden]

EXHIBIT 7

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

(no subject)

Darryl Cotton <indagrodarryl@gmail.com> Tue, Dec 24, 2019 at 2:29 PM
To: Ken.Feldman@lewisbrisbois.com, "mphelps (mphelps@sandiego.gov)" <MPhelps@sandiego.gov>, "David S. Demian" <ddemian@ftblaw.com>, "Austin, Gina" <gaustin@austinlegalgroup.com>, JOHNS CRANE - John Ek <johnek@aol.com>, akohn@pettitkohn.com, natalie@nguyenlawcorp.com, crosby@crosbyattorney.com
Cc: aferris@ferrisbritton.com, "Rishi S. Bhatt" <rbhatt@ftblaw.com>, "Adam C. Witt" <awitt@ftblaw.com>, Jake Austin <jacobaustinesq@gmail.com>, Andrew Flores <afloreslaw@gmail.com>, CynthiaM@vanstlaw.com, corina.young@live.com, biancaaimeemartinez@gmail.com, "Hoy, Cheri" <choy@sandiego.gov>, "Sokolowski, Michelle" <msokolowski@sandiego.gov>, ekulas@ferrisbritton.com, dbarker@ferrisbritton.com, jorge.delportillo@sdcda.org, gbraun@sandiego.gov, Joe Hurtado <j.hurtado1@gmail.com>, pfinch@ftblaw.com, "Jason R. Thornton" <jthornton@ftblaw.com>, jbaird@ftblaw.com, stoothacre@ferrisbritton.com, matthew@shapiro.legal, "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>, Cherlyn Cac <Ccac@sandiego.gov>, abhay@techne-us.com, jim@bartellassociates.com, jessica@mcelfreshlaw.com, Chris Williams <Chris@xmgmedia.com>

I am sending this email on Christmas Eve to let everyone know that this past year, like the year before and the year before that, has been another one full of crushing personal and professional hardship for me brought on by the litigation and conspiracies you've all played a part in the theft of my property and the Fraud Upon the Court which you all, to some degree or another, have played a part in. If you are receiving this email it's because you should know that yesterday I filed an *Ex Parte* motion to unstay my *Pro Se* complaint in federal court
Case No: 18-cv-0325-GPC-MDD and look to have what you have all been a party to presented to a competent judge.

So while you all enjoy your Christmas with your friends, family and colleagues and welcome in the New Year, rest assured I will not be doing so. What you have subjected me to has cost me, in addition to a $261K judgement I now owe Geraci on a sham lawsuit, everything I have ever held dear to me as people I have known and loved abandoned me over what they have come to decide has been my error in judgement. My failure to make a deal. My failure to read the tea leaves and as shown in this Flowchart I created, Geraci v Cotton Flowchart my failure to bend to superior forces. What I have expected them to believe and rely on is not only extraordinary it is, if you hadn't experienced it firsthand, unbelievable so I guess I can't really blame them for giving up on me. But I can blame everyone who has received this email for what's happened to me and for that I want you to be aware of the following;

Attorney Kenneth Feldman; I have been told today that it is impossible for you to be as unethical every other attorney included in this email (except DA Jorge DelPortillo). Let me break down the conspiracy for you, it begins and ends with attorney Jessica McElfresh, who emailed her client about how she was obstructing justice and got charged with obstruction of justice. She had to enter a plea agreement, **see attachment (1),** with District Attorney Jorge DelPortillo, cc'ed herein that specifically would have prevented her from representing Geraci in the 6220 appeal, yet she did so anyway.

I first went to McElfresh to defend me in the suit against Geraci, not knowing she was a co-conspirator of Austin. I PAID for her services, I have the billing statements. She referred me to David Demian of Finch, Thornton & Baird, who along with McElfresh, are the two most corrupt and reprehensible individuals that stand out even among a vile group of violent criminals and deceitful professionals who violate their fiduciary duties to their clients and the courts.

BOTH OF THEM WERE MY ATTORNEYS IN REPRESENTING ME AGAINST GERACI!

Demian never told me he had shared client's with Geraci's firm, Tax & Financial Center, Inc. Any doubt about Demian being deceitful and corrupt has been stripped away by his actions when he represented me. All you have to do is review my pro se complaint against Geraci and Berry and compare it to the first and second amended complaints filed by FTB on my behalf! Without authorization Demian dropped the conspiracy charge against Geraci and Berry and he also dropped the allegations that Geraci cannot own a marijuana CUP because he had previously been sanctioned for illegal activity. Only an attorney seeking to sabotage his case would have dropped those allegations, they are case dispositive and he cannot come up with any evidence to rationalize those actions! Geraci and Berry both testified to those very facts at trial.

Demian also sent me an email saying I "should" say that Geraci was acting as my agent when he submitted the CUP on my property without disclosing his or my interest in the property and he did so in Berry's name without disclosing Geraci's name.

Demian I will not settle with you under any conditions and there will be a day where you will be on the stand along with your criminal associates who aided and abetted you in this scheme, Witt and Bhatt will also be held accountable. As well as the other Partners at FTB who knew about what was going on and helped you cover it up by hiring Feldman. You all have had your chances to come clear and chose not to. Wherever you go for the rest of your careers I will make sure everyone you work with knows that you are the type of attorneys that conspire against their own clients and lack the integrity and morals. You are exponentially worse than the criminals you protect, you literally pervert the justice system and make it impossible for normal people to use the justice system to achieve justice.

Contrary to Austin's testimony at trial, it is not legal for Geraci to own a MO CUP - the only reason they got away with it is because Judge Wohlfeil is the Forrest Gump of state judges, who based on his limited intellect is being paid far beyond what he is worth at $167K annum salary. Mr. Feldman, you pay your first year associates more than he makes after 30 years of practicing law. By the time this is over, he will be revealed for the true puppet he is being played by Weinstein and to stupid to know it. You know you cannot rely on a judges order when you know it was procured by fraud.

I can not forgive Wohlfeil for what he put me, my and my family through as a result of his incompetence. I'm not even a lawyer and I know that a contract requires MUTUAL ASSENT and a LAWFUL OBJECT! Weinstein made Wohlfeil look like a puppet dancing on his strings, too dumb to even understand what was going on in front of him. He's a disgrace of a judge. I wonder how many innocent people Wohlfeil screwed over by his incompetence because he was played by smarter attorneys like Weinstein? It is a truly depressing thought.

Feldman, you filed a motion to dismiss that you knew was helping hide FTB's malicious acts of conspiring against their own client! You teach classes on ethics, if you fail to do the ethical action immediately and inform Judge Curiel, I am naming you personally in my amended complaint. Pursuant to 42 USC Section 1986. Your failure to act is evidence of your guilt.

I would also ask you to keep in mind that Ferris & Briton is a cesspool of legal 'professionals' that exists for aiding their unethical clients who want to take unethical actions and is corrupt all the way through from their managing partner, Weinstein, to their "I was forced to take part in a malicious prosecution action by Weinstein" associates Toothacre and Kulas, their deceitful paralegal Debra Barker, who falsified proofs of service to break the attorney-client privilege with my attorneys, to even their scumbag client, attorney James Crosby.

Feldman, don't you think it is strange that Geraci's counsel before Judge Curiel, the only attorney STUPID enough enough to file an Answer, is a solo practitioner who works in the same building as Ferris & Briton and is their former client for whom they got a judgement in the hundreds of thousands of dollars! Here see **attachment (2)** Crosby's federal answer. Only someone that F&B had leverage over would be stupid enough to file an Answer in the federal action when the MSJ in state court was pending and NOT assert fraud or mistake as an affirmative defense. Crosby is the stupidest attorney among all the attorneys here - the idiot perpetuated a fraud upon Judge Curiel, I can't wait to see him try to explain, the way Weinstein does, that it is a "coincidence" that Geraci hired him or some other reason for why Geraci's allegations of November 3, 2016, don't constitute affirmative defenses of fraud or mistake.

Berry submitted the CUP as part of a fraudulent scheme by not disclosing Geraci as the true owner of the CUP being sought - she testified to this in open court. Geraci has been sanctioned. Austin testified that it is legal for Geraci to have a CUP. But if that was true, Demian would not have dropped those allegations from my complaint. And McElfresh, if not a scumbag attorney that destroys lives, would not have represented Geraci in the appeal and she would have raised the daycares in the appeal. But she did not. Neither did Abhay, because it was a sham appeal to make it look like Geraci wanted Magagna's CUP denied, when in reality he needed it denied to mitigate his damages to me by millions! McElresh is simply a criminal and shes going to go to jail now that there is evidence she breached her plea agreement. Unless the City wants to cover this up and allows her to knowingly break the law and not hold her accountable in an effort to sweep all this underneath the rug. Whoever gives those orders at the City is probably the corrupt individual at the City behind the scenes.

Attachment (3) is a settlement offer from Ferris & Britton **AFTER** Emperor Wohlfeil denied my MSJ. Any reasonable attorney right now would know that having just defeated an MSJ, saying that it is **'economical'** to transfer the whole case to federal court **makes no sense!** You get your judgement in state court and then you raise Res Judicata in federal court. You don't go through the time and cost of discovery all over again in federal court.

Gina Austin:
At trial you called Joe a liar, but Chris Williams knows that you spoke with him at his event and that you confirmed the November Document is not a sales contract. Joe and Chris, I am sorry about calling you out on this, **but I am not going to stand by and do nothing** and you both have testimony I need and that proves Austin committed perjury when she said she would not speak to Joe at your Chris's event because of attorney-client privilege. There is no privilege as there was no litigation at that time, but even if there was, she broke it by discussing it with both of you. And Chris, you hired Austin to speak at that event and she was your attorney and so was Abhay, so your testimony is going to make it clear that Austin is perjuring herself as well as Abhay.

Attorney Matt Shapiro: I have proof you sell weed for Magagna. **Magagna threatened Corina Young because she knows that you sell weed for him.** Nguyen, Young's attorney, PROMISED to provide Young's testimony that Magagna had threatened her and that Bartell was going to get the CUP at my property denied by the City. Magagna has been represented by Austin AND Abhay Schweitzer (Geraci's Point for the CUP Contract at my 6176 proerty) on the 6220 Federal Blvd. - **attached (4) Ex 147-059** are Abhay's (TECHNE) own billing statements which shows he researched the Cuddles Day academy and absolutely knew they were located within 1,000 feet of the two daycares.

Attachment (5) are the emails between Shapiro and Jake showing what a duplicitous individual Shapiro is when he admits that he lied about working for Magagna, and then when he realized he could not cover up the lie, began to assassinate his clients character with statements to Jake that Young is a pothead whose testimony can't be trusted.

Attached (6) is Abhays testimony from trial (attached 4 pages 70-71) is a fraudulent attempt to deny he knew about the Daycares. Schweitzer and McElfresh knew when they prepared the appeal that Magagna's location did not qualify, but they left that out of the appeal. The SDMC that prohibits daycares within 1,000 feet daycares. They both knowingly failed to do so at the public hearings even when someone mentioned the daycares at the public hearing.

Attorney Michael Weinstein: bad move trying to inflate Geraci's damages to cover up his bribes to corrupt City officials that you could not put in the public record.

Attached is a site map report commissioned from Title Pro showing the two day care centers being within 1,000 feet of the 6220 property! The City knew about the two daycare because someone raised it at the public hearing. Attorney Phelps for the City is not stupid, he is just as guilty by not raising these issues to the courts attention by not speaking up, helping a crime be committed in an attempt to cover up the City's corrupt actions in this matter. What a coincidence the City filed a forfeiture action on my property a month after Geraci files a lawsuit, then makes me an offer which I did not know at the time made me legally ineligible to own an interest in a MO CUP.

Attorney Michael Phelps: You are perhaps my greatest disappointment in all of this. Scumbag attorneys like Austin, McElfresh and Weinstein are to be expected, but I reviewed my emails with you and it's obvious to me you knew Geraci's case was frivolous, so when I communicated I was being threatened you should have told the judges that there was a high likelihood that it was Geraci and his agents! You let them take violent actions against me, my family, and people close to me - I am going to make it my goal to report all my communications with you to the state bar when this is over so that after their crimes are proven, it will be clear that you have a callous disregard for the safety and lives of innocent individuals, not just my own, and you lose your law license. Wohlfeil may be an idiot, but you are a malicious individual that is not fit for the job you hold.

It offends deeply that you sat at my trial the entire time as a "public servant" when you were there helping Geraci defraud me of my property using the courts. I rank you third in unethical despicable attorneys only behind McElfresh and Demian.

It was not until after trial that my attorney Andrew Flores came to the full realization you were all conspiring against me and he could prove it, he is the real owner of the 6220 MO CUP. He found the evidence of McElfresh in the damages receipts submitted by Geraci at trial. That was the first time we reviewed FTB's actions and realized it is not that FTB is stupid, it is that that they they are corrupt. **I went to McElfresh, a co-conspirator of Austin, for legal representation, and she referred me to FTB. One unlucky decision that has led to all this shit.**

6220 Property Owner John Ek, As you know I reached out to you is a series of phone calls and emails back in May 2018 to warn you about the litigation going on between Geraci and myself and the suspicious nature that Aaron Magagna had contacted you and began a competing CUP application on your property. I've broken down the hearing and approval process that occurred for The Magagna/DSD 6220 CUP Approval Process for you to consider in greater detail. The only reason I'm taking the time to bring you up to speed on this is because I HAVE known you for better that 20 years and in my heart of hearts want to believe you are not actively participating in this scheme with these people.

Bianca Martinez, I have our messages and so does Joe about how Geraci promised you 10% in the CUP at my property then he screwed you. I know you have already spoken with Geraci and his attorneys, Andrew says there is no way you sent those messages about needing a "green light" to engage in settlement discussions unless you were coached by an attorney. And unless you told them that Joe was seeing Dr. Ploesser how else would they know to ask him if he had seen him? You are low, disclosing someone else's mental health to get what you want. I am just letting you know that if you deny those allegations, I am going to subpoena Matt and he will not lie for you and he knows how Bartell sexually harassed you, how Geraci screwed you over the 10%. If you lie, I will name you as a defendant as well AND subpoena your boyfriend Matt. There is no way he is going to risk committing perjury and ratifying a criminal conspiracy by denying you have made those statements for years. If he does, I will name him as a defendant too and see if he is willing to help you cover up your lies on the stand in federal court.

Attorney Natalie Nguyen: As you've already been made aware, I filed the TRO today. Note that in relief for prayer I am going to name you in my amended complaint. You knew I NEEDED Young's testimony, you PROMISED to provide it, then you just VIOLATED ethical duties to the court and ignored emails from my attorneys while you made time for Young to

move out of the city so we could not serve her and compel her to testify. This was after you unilaterally canceled two depositions without consent. That makes you a criminal. My attorney Jake Austin has all your emails **attachment (7)** lined up and that you are helping deny me equal protection of the laws by obstructing justice does not get any clearer.

I DARE YOU TO RESPOND TO THIS EMAIL AND SAY THAT YOU NEVER PROMISED TO PROVIDE YOUNG'S TESTIMONY REGARDING MAGAGNA'S THREATS TO YOUNG.

With the exception of Andrew and Jorge, you are all disgraces as attorneys that are the main reasons why everyone hates attorneys. You will literally allow the lives of families of innocent individuals to be threatened by Geraci and his gang of thugs rather than do what is right.

In closing I want everyone to know there is no situation where I ever give up. You are all attorneys so you should understand this: Emperor Wohlfeil acted in excess of his jurisdiction by issuing a judgment that enforces an illegal contract. It is void. Any and all orders issued pursuant to that judgment are void. Res Judicata will NEVER apply no matter how many lawsuits are brought and denied by the inept Judge Wohlfeil. Sooner or later, me, Andrew, or someone else will get the federal court to look at this substantively and you can't rely on an order from a biased judge that is void on its face to justify your action or failure to take action when you knew my civil rights were being violated.

Attached as Exhibit 8 is an image I commissioned from Title Pro showing that 6220 is within 1,000 feet of two daycares. Someone at the City is corrupt - the City did not accidentally approve a marijuana business! By now I hope you all realize that I will not rest until I am vindicated which means you are all going to be exposed sooner or later.

Darryl Cotton

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8 attachments

1) McElfresh Deferred Prosecution Agreement.pdf
166K

2) Geraci Answer to Federal Complaint.pdf
89K

3) 06-10-19-Settlement-Offer-2.pdf
320K

4) TECHNE BILLING STATEMENTS Ex 147-059.pdf
2717K

5) 05-27-18-Shapiro-emails.pdf
328K

6) SCHWEITZER TESTIMONY re RADIUS CK pages 70-71.pdf
940K

7) Nguyen-emails.pdf
846K

8) Title Pro 6176 Image-8-09-19.pdf
232K

EXHIBIT 8

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Re:

Darryl Cotton <indagrodarryl@gmail.com> Fri, May 29, 2020 at 1:26 PM
To: Ken.Feldman@lewisbrisbois.com, "mphelps (mphelps@sandiego.gov)" <MPhelps@sandiego.gov>, "David S. Demian" <ddemian@ftblaw.com>, "Austin, Gina" <gaustin@austinlegalgroup.com>, JOHNS CRANE - John Ek <johnek@aol.com>, akohn@pettitkohn.com, Natalie Nguyen <natalie@nguyenlawcorp.com>
Cc: aferris@ferrisbritton.com, "Rishi S. Bhatt" <rbhatt@ftblaw.com>, "Adam C. Witt" <awitt@ftblaw.com>, Jake Austin <jacobaustinesq@gmail.com>, Andrew Flores <afloreslaw@gmail.com>, CynthiaM@vanstlaw.com, corina.young@live.com, biancaaimeemartinez@gmail.com, "Hoy, Cheri" <choy@sandiego.gov>, "Sokolowski, Michelle" <msokolowski@sandiego.gov>, ekulas@ferrisbritton.com, dbarker@ferrisbritton.com, jorge.delportillo@sdcda.org, gbraun@sandiego.gov, Joe Hurtado <j.hurtado1@gmail.com>, pfinch@ftblaw.com, "Jason R. Thornton" <jthornton@ftblaw.com>, jbaird@ftblaw.com, stoothacre@ferrisbritton.com, matthew@shapiro.legal, "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>, Cherlyn Cac <Ccac@sandiego.gov>, Abhay Schweitzer <abhay@techne-us.com>, jim@bartellassociates.com, jessica@mcelfreshlaw.com, Chris Williams <Chris@xmgmedia.com>, edeitz@grsm.com, tdupuy@gordonrees.com, dpettit@pettitkohn.com, jdalzell@pettitkohn.com, feldman@lbbslaw.com, Tim.Vandenheuvel@doj.ca.gov, oomordia@sandiego.gov, jhemmerling@sandiego.gov, mskeels@sandiego.gov, cityattorney@sandiego.gov, jgsandiego@yahoo.com, ncarnahan@chulavistaca.gov, Cynthiam@vanstlaw.com, aclaybon@messner.com, arden@austinlegalgroup.com, Quintin Shammam <quintin@shammamlaw.com>, steve.cline@sdcounty.ca.gov, crosby@crosbyattorney.com, Robert Bryson II <rtbrysonlaw@gmail.com>, dharmim@dmehtalaw.com, elyssakulas@gmail.com, Ken Malbrough <kmalbrough@att.net>, Amy Sherlock <amyjosherlock@gmail.com>, Kym Kemp <mskymkemp@gmail.com>

All;

It may not be considered sound legal advice to communicate with the parties I'm in litigation with but I'm not an attorney and although I've requested court appointed counsel it has been denied. I don't have the means to hire an attorney so I will continue to take these matters on as a self-represented litigant until I've exhausted every avenue available to me in my attempts to find justice.

Today is my 60th birthday. This gives me time to reflect. It has now been 3.5 years when on November 2, 2016, I signed a 3 sentence document **(See A achment 1)** with Larry Geraci that in my mind was meant to acknowledge receipt of a $10K cash deposit he was giving me that day while I awaited what Geraci had promised would be a final written contract that his attorney, Gina Austin was in the process of preparing which would memorialize our discussions and our oral agreements for the sale of my property and the joint venture terms as it related to Geraci acquiring a City of San Diego Cannabis License and what was to be my interest in that joint venture.

Most everyone reading this email knows that within hours of my having signed that document, Geraci emails at 3:11 pm that signed and notarized document as an attachment which he titles "Cotton-Geraci Contract". Geraci describing that document as a "Contract" between us bothered me to the extent that I replied to his email that same day @ 6:55 pm to request that he acknowledge in a reply to my email that the document we signed earlier that day was not the final expression of our contract as I put it in my email; "in any final agreement" would contain but in the 11/02/16 document did not. His response to my email came back hours later when at 9:13 pm, he replied with "No no problem at all**" (See A achment 2).** At that time and with his response, I had every reason to believe Geraci, being a busy guy, was working on having Gina Austin reduce the terms and conditions to written form as had been agreed to. This is the essence of the litigation as it pertains to Geraci and me.

The arrogance of what has occurred since then with the way the law and courts have been used as a sword to deny me of my rights is an unprecedented abuse of the power. It is my intention to see these abuses exposed. The majority of you receiving this email are attorneys and as officers of the court should be ashamed of yourself. You have knowingly conspired to deny the fact that there was NEVER mutual consent between Geraci and myself. The document I signed on 11/02/16 was NOT, as the March 21, 2017 Geraci lawsuit against me claims, a fully integrated contract with all the terms and conditions contained within and as I came to find out later, Geraci was, as a result of his past sanctions for operating unlicensed marijuana dispensaries, ineligible to own a cannabis license which makes ANY agreement we would have entered into illegal anyway!

The Geraci lawsuit was a sham lawsuit that his counsel skillfully kept alive with an inept and corrupt judge who should not be on the bench. Judge Wohlfeil allowed this case to go on to trial and presented to a jury a question of law not of disputed facts. Clearly, with the relative legal simplicity of the matter being described, I cannot get justice at the state court level so it will be up to the federal courts to be the final adjudicator of the facts.

It's now been 5 months since my Christmas Eve email was sent to you all. With today's birthday email I am expanding the list of recipients to include other attorneys who had a relationship with this case and who also neglected to perform their duties to me and the courts. This correspondence is meant to provide you with an update as to what has been occurring since the Christmas email so that at some point in the future you will not be able claim you were unaware of these developments.

One of my previous attorney's in the Geraci v Cotton matter was Andrew Flores. While representing me, Flores became intimately familiar with my case and formed the opinion that Geraci and his attorneys engaged in filing a sham lawsuit that had no legal merit. Flores was so resolute in his belief that when the opportunity came to purchase my property so that he could pursue a cannabis license he did so. As the new owner of my property, Flores had a right to be heard during the state court matter but Judge Wohlfiel denied him that right stating that Flores did not have standing, Whatever. I'm not surprised by anything Judge Wohlfeil says since hes an imbecile. However, Flores did not let that ruling stop him from filing a complaint in federal court that in addition to mine, lays out in proper legal form, what he has suffered as a result of the Geraci litigation. I have attached a copy of the Flores complaint for your review **(See A achment 3).** What I lack as a Pro Se litigant, Flores and his co-plaintiffs have provided the courts with a less emotional rendering of what is at stake here. DO NOT LATER CLAIM YOU WERE NOT PROVIDED THE FACTS. THE FLORES COMPLAINT MAKE CITATIONS TO THE JUDICIAL AND EVIDENTIARY ADMISSIONS MADE BY GERACI AND HIS ATTORNEYS.

To Petit Kohn, I received your second attempt yesterday to see my federal case dismissed against your client Gina Austin. You have not integrity or ethics, you are literally crack whores that will do anything for money, including seeking to destroy my life. One way or another, I will make sure you are exposed. You are breaking the law to ruin my life. Whatever you are getting paid to defend Austin, a drug dealer, won't be worth what you will pay when Petit Kohn is exposed as an unethical firm.

In my First Amended Complaint **(See A achment 4)** it is now the second time Petit Kohn is seeking to dismiss my case but in doing so they completely ignore the fact that their client, Gina Austin lied on the stand and said it was not illegal for Geraci to submit an application for a cannabis license with the City under fraudulent pretenses and testify it is not illegal to do so. Which, along the same lines, leads me to another deplorable human being, Deputy City Attorney Michael Phelps, who will have to testify under oath as to why the City of San Diego had no obligation in enforcing its own cannabis regulations or even just basic SDMC requirements that CUP applications not be submitted with false information. How many innocent people's lives have these attorneys allowed to be destroyed in violation of the oath they took? Do you even remember that oath? Probably just words on a piece of paper like the rest of the unethical attorneys here.

To be clear, any attorney or firm that has made the conscience decision to break the law or protect their client who has broken the law, will be named as a defendant and if I have anything to say about it will be sanctioned and you will lose your law license. Nothing short of that will be justice.

Over the course of the last 5 months I have had conversations with the FBI and DOJ attorneys as it relates to both the Flores case and mine. There have been other local governments that have engaged in pay to play cannabis licensing schemes that are very similar in scope as to what my case represents. They are looking at both of our cases as it relates to criminal conduct that arises from Continuing Criminal Enterprises conduct that has become prevalent in the acquisition of these licenses with the latest case I can cite to having happened in Calexico, CA**, (See A achment 5),** whereby the mayor and a councilman have been brought up on bribery charges for doing the exact same thing that has happened to me in the processing of the Geraci CUP application and which I now have three years' worth of evidence, trial transcripts and depositions to support my claims. To be clear, I will willingly assist any agency (S**ee A achment 6)** in exposing the corruption that exists amongst lawyers, lobbyists and/or local and state government when it comes to how these licenses are illegally procured.

I really am astonished at how such a tiny little property like mine and a relatively simply business transaction has resulted in where we find ourselves today. Don't lay the blame on me for where we're at today. Blame Geraci and all those who were in on this fraud. I have absolutely no choice to defend my legal rights as failure is not an option as a failure would be leaving me with nothing to show after a lifetimes work. I am not, nor have I ever been, the source of your problems.

On Tue, Dec 24, 2019 at 2:29 PM Darryl Cotton <indagrodarryl@gmail.com> wrote:

> I am sending this email on Christmas Eve to let everyone know that this past year, like the year before and the year before that, has been another one full of crushing personal and professional hardship for me brought on by the litigation and conspiracies you've all played a part in the theft of my property and

the Fraud Upon the Court which you all, to some degree or another, have played a part in. If you are receiving this email it's because you should know that yesterday I filed an *Ex Parte* motion to unstay my *Pro Se* complaint in federal court
Case No: 18-cv-0325-GPC-MDD and look to have what you have all been a party to presented to a competent judge.

So while you all enjoy your Christmas with your friends, family and colleagues and welcome in the New Year, rest assured I will not be doing so. What you have subjected me to has cost me, in addition to a $261K judgement I now owe Geraci on a sham lawsuit, everything I have ever held dear to me as people I have known and loved abandoned me over what they have come to decide has been my error in judgement. My failure to make a deal. My failure to read the tea leaves and as shown in this Flowchart I created, Geraci v Cotton Flowchart my failure to bend to superior forces. What I have expected them to believe and rely on is not only extraordinary it is, if you hadn't experienced it firsthand, unbelievable so I guess I can't really blame them for giving up on me. But I can blame everyone who has received this email for what's happened to me and for that I want you to be aware of the following;

Attorney Kenneth Feldman; I have been told today that it is impossible for you to be as unethical every other attorney included in this email (except DA Jorge DelPortillo). Let me break down the conspiracy for you, it begins and ends with attorney Jessica McElfresh, who emailed her client about how she was obstructing justice and got charged with obstruction of justice. She had to enter a plea agreement, **see attachment (1),** with District Attorney Jorge DelPortillo, cc'ed herein that specifically would have prevented her from representing Geraci in the 6220 appeal, yet she did so anyway.

I first went to McElfresh to defend me in the suit against Geraci, not knowing she was a co-conspirator of Austin. I PAID for her services, I have the billing statements. She referred me to David Demian of Finch, Thornton & Baird, who along with McElfresh, are the two most corrupt and reprehensible individuals that stand out even among a vile group of violent criminals and deceitful professionals who violate their fiduciary duties to their clients and the courts.

BOTH OF THEM WERE MY ATTORNEYS IN REPRESENTING ME AGAINST GERACI!

Demian never told me he had shared client's with Geraci's firm, Tax & Financial Center, Inc. Any doubt about Demian being deceitful and corrupt has been stripped away by his actions when he represented me. All you have to do is review my pro se complaint against Geraci and Berry and compare it to the first and second amended complaints filed by FTB on my behalf! Without authorization Demian dropped the conspiracy charge against Geraci and Berry and he also dropped the allegations that Geraci cannot own a marijuana CUP because he had previously been sanctioned for illegal activity. Only an attorney seeking to sabotage his case would have dropped those allegations, they are case dispositive and he cannot come up with any evidence to rationalize those actions! Geraci and Berry both testified to those very facts at trial.

Demian also sent me an email saying I "should" say that Geraci was acting as my agent when he submitted the CUP on my property without disclosing his or my interest in the property and he did so in Berry's name without disclosing Geraci's name.

Demian I will not settle with you under any conditions and there will be a day where you will be on the stand along with your criminal associates who aided and abetted you in this scheme, Witt and Bhatt will also be held accountable. As well as the other Partners at FTB who knew about what was going on and helped you cover it up by hiring Feldman. You all have had your chances to come clear and chose not to. Wherever you go for the rest of your careers I will make sure everyone you work with knows that you are the type of attorneys that conspire against their own clients and lack the integrity and morals. You are exponentially worse than the criminals you protect, you literally pervert the justice system and make it impossible for normal people to use the justice system to achieve justice.

Contrary to Austin's testimony at trial, it is not legal for Geraci to own a MO CUP - the only reason they got away with it is because Judge Wohlfeil is the Forrest Gump of state judges, who based on his

limited intellect is being paid far beyond what he is worth at $167K annum salary. Mr. Feldman, you pay your first year associates more than he makes after 30 years of practicing law. By the time this is over, he will be revealed for the true puppet he is being played by Weinstein and to stupid to know it. You know you cannot rely on a judges order when you know it was procured by fraud.

I can not forgive Wohlfeil for what he put me, my and my family through as a result of his incompetence. I'm not even a lawyer and I know that a contract requires MUTUAL ASSENT and a LAWFUL OBJECT! Weinstein made Wohlfeil look like a puppet dancing on his strings, too dumb to even understand what was going on in front of him. He's a disgrace of a judge. I wonder how many innocent people Wohlfeil screwed over by his incompetence because he was played by smarter attorneys like Weinstein? It is a truly depressing thought.

Feldman, you filed a motion to dismiss that you knew was helping hide FTB's malicious acts of conspiring against their own client! You teach classes on ethics, if you fail to do the ethical action immediately and inform Judge Curiel, I am naming you personally in my amended complaint. Pursuant to 42 USC Section 1986. Your failure to act is evidence of your guilt.

I would also ask you to keep in mind that Ferris & Briton is a cesspool of legal 'professionals' that exists for aiding their unethical clients who want to take unethical actions and is corrupt all the way through from their managing partner, Weinstein, to their "I was forced to take part in a malicious prosecution action by Weinstein" associates Toothacre and Kulas, their deceitful paralegal Debra Barker, who falsified proofs of service to break the attorney-client privilege with my attorneys, to even their scumbag client, attorney James Crosby.

Feldman, don't you think it is strange that Geraci's counsel before Judge Curiel, the only attorney STUPID enough enough to file an Answer, is a solo practitioner who works in the same building as Ferris & Briton and is their former client for whom they got a judgement in the hundreds of thousands of dollars! Here see **attachment (2)** Crosby's federal answer. Only someone that F&B had leverage over would be stupid enough to file an Answer in the federal action when the MSJ in state court was pending and NOT assert fraud or mistake as an affirmative defense. Crosby is the stupidest attorney among all the attorneys here - the idiot perpetuated a fraud upon Judge Curiel, I can't wait to see him try to explain, the way Weinstein does, that it is a "coincidence" that Geraci hired him or some other reason for why Geraci's allegations of November 3, 2016, don't constitute affirmative defenses of fraud or mistake.

Berry submitted the CUP as part of a fraudulent scheme by not disclosing Geraci as the true owner of the CUP being sought - she testified to this in open court. Geraci has been sanctioned. Austin testified that it is legal for Geraci to have a CUP. But if that was true, Demian would not have dropped those allegations from my complaint. And McElfresh, if not a scumbag attorney that destroys lives, would not have represented Geraci in the appeal and she would have raised the daycares in the appeal. But she did not. Neither did Abhay, because it was a sham appeal to make it look like Geraci wanted Magagna's CUP denied, when in reality he needed it denied to mitigate his damages to me by millions! McElresh is simply a criminal and shes going to go to jail now that there is evidence she breached her plea agreement. Unless the City wants to cover this up and allows her to knowingly break the law and not hold her accountable in an effort to sweep all this underneath the rug. Whoever gives those orders at the City is probably the corrupt individual at the City behind the scenes.

Attachment (3) is a settlement offer from Ferris & Britton **AFTER** Emperor Wohlfeil denied my MSJ. Any reasonable attorney right now would know that having just defeated an MSJ, saying that it is **'economical'** to transfer the whole case to federal court **makes no sense!** You get your judgement in state court and then you raise Res Judicata in federal court. You don't go through the time and cost of discovery all over again in federal court.

Gina Austin:
At trial you called Joe a liar, but Chris Williams knows that you spoke with him at his event and that you confirmed the November Document is not a sales contract. Joe and Chris, I am sorry about calling you out on this, **but I am not going to stand by and do nothing** and you both have testimony I need and

that proves Austin committed perjury when she said she would not speak to Joe at your Chris's event because of attorney-client privilege. There is no privilege as there was no litigation at that time, but even if there was, she broke it by discussing it with both of you. And Chris, you hired Austin to speak at that event and she was your attorney and so was Abhay, so your testimony is going to make it clear that Austin is perjuring herself as well as Abhay.

Attorney Matt Shapiro: I have proof you sell weed for Magagna. **Magagna threatened Corina Young because she knows that you sell weed for him.** Nguyen, Young's attorney, PROMISED to provide Young's testimony that Magagna had threatened her and that Bartell was going to get the CUP at my property denied by the City. Magagna has been represented by Austin AND Abhay Schweitzer (Geraci's Point for the CUP Contract at my 6176 proerty) on the 6220 Federal Blvd. - **attached (4) Ex 147-059** are Abhay's (TECHNE) own billing statements which shows he researched the Cuddles Day academy and absolutely knew they were located within 1,000 feet of the two daycares.

Attachment (5) are the emails between Shapiro and Jake showing what a duplicitous individual Shapiro is when he admits that he lied about working for Magagna, and then when he realized he could not cover up the lie, began to assassinate his clients character with statements to Jake that Young is a pothead whose testimony can't be trusted.

Attached (6) is Abhays testimony from trial (attached 4 pages 70-71) is a fraudulent attempt to deny he knew about the Daycares. Schweitzer and McElfresh knew when they prepared the appeal that Magagna's location did not qualify, but they left that out of the appeal. The SDMC that prohibits daycares within 1,000 feet daycares. They both knowingly failed to do so at the public hearings even when someone mentioned the daycares at the public hearing.

Attorney Michael Weinstein: bad move trying to inflate Geraci's damages to cover up his bribes to corrupt City officials that you could not put in the public record.

Attached is a site map report commissioned from Title Pro showing the two day care centers being within 1,000 feet of the 6220 property! The City knew about the two daycare because someone raised it at the public hearing. Attorney Phelps for the City is not stupid, he is just as guilty by not raising these issues to the courts attention by not speaking up, helping a crime be committed in an attempt to cover up the City's corrupt actions in this matter. What a coincidence the City filed a forfeiture action on my property a month after Geraci files a lawsuit, then makes me an offer which I did not know at the time made me legally ineligible to own an interest in a MO CUP.

Attorney Michael Phelps: You are perhaps my greatest disappointment in all of this. Scumbag attorneys like Austin, McElfresh and Weinstein are to be expected, but I reviewed my emails with you and it's obvious to me you knew Geraci's case was frivolous, so when I communicated I was being threatened you should have told the judges that there was a high likelihood that it was Geraci and his agents! You let them take violent actions against me, my family, and people close to me - I am going to make it my goal to report all my communications with you to the state bar when this is over so that after their crimes are proven, it will be clear that you have a callous disregard for the safety and lives of innocent individuals, not just my own, and you lose your law license. Wohlfeil may be an idiot, but you are a malicious individual that is not fit for the job you hold.

It offends deeply that you sat at my trial the entire time as a "public servant" when you were there helping Geraci defraud me of my property using the courts. I rank you third in unethical despicable attorneys only behind McElfresh and Demian.

It was not until after trial that my attorney Andrew Flores came to the full realization you were all conspiring against me and he could prove it, he is the real owner of the 6220 MO CUP. He found the evidence of McElfresh in the damages receipts submitted by Geraci at trial. That was the first time we reviewed FTB's actions and realized it is not that FTB is stupid, it is that that they they are corrupt. **I went to McElfresh, a co-conspirator of Austin, for legal representation, and she referred me to FTB. One unlucky decision that has led to all this shit.**

6220 Property Owner John Ek, As you know I reached out to you is a series of phone calls and emails back in May 2018 to warn you about the litigation going on between Geraci and myself and the suspicious nature that Aaron Magagna had contacted you and began a competing CUP application on your property. I've broken down the hearing and approval process that occurred for The Magagna/DSD 6220 CUP Approval Process for you to consider in greater detail. The only reason I'm taking the time to bring you up to speed on this is because I HAVE known you for better that 20 years and in my heart of hearts want to believe you are not actively participating in this scheme with these people.

Bianca Martinez, I have our messages and so does Joe about how Geraci promised you 10% in the CUP at my property then he screwed you. I know you have already spoken with Geraci and his attorneys, Andrew says there is no way you sent those messages about needing a "green light" to engage in settlement discussions unless you were coached by an attorney. And unless you told them that Joe was seeing Dr. Ploesser how else would they know to ask him if he had seen him? You are low, disclosing someone else's mental health to get what you want. I am just letting you know that if you deny those allegations, I am going to subpoena Matt and he will not lie for you and he knows how Bartell sexually harassed you, how Geraci screwed you over the 10%. If you lie, I will name you as a defendant as well AND subpoena your boyfriend Matt. There is no way he is going to risk committing perjury and ratifying a criminal conspiracy by denying you have made those statements for years. If he does, I will name him as a defendant too and see if he is willing to help you cover up your lies on the stand in federal court.

Attorney Natalie Nguyen: As you've already been made aware, I filed the TRO today. Note that in relief for prayer I am going to name you in my amended complaint. You knew I NEEDED Young's testimony, you PROMISED to provide it, then you just VIOLATED ethical duties to the court and ignored emails from my attorneys while you made time for Young to move out of the city so we could not serve her and compel her to testify. This was after you unilaterally canceled two depositions without consent. That makes you a criminal. My attorney Jake Austin has all your emails **attachment (7)** lined up and that you are helping deny me equal protection of the laws by obstructing justice does not get any clearer.

I DARE YOU TO RESPOND TO THIS EMAIL AND SAY THAT YOU NEVER PROMISED TO PROVIDE YOUNG'S TESTIMONY REGARDING MAGAGNA'S THREATS TO YOUNG.

With the exception of Andrew and Jorge, you are all disgraces as attorneys that are the main reasons why everyone hates attorneys. You will literally allow the lives of families of innocent individuals to be threatened by Geraci and his gang of thugs rather than do what is right.

In closing I want everyone to know there is no situation where I ever give up. You are all attorneys so you should understand this: Emperor Wohlfeil acted in excess of his jurisdiction by issuing a judgment that enforces an illegal contract. It is void. Any and all orders issued pursuant to that judgment are void. Res Judicata will NEVER apply no matter how many lawsuits are brought and denied by the inept Judge Wohlfeil. Sooner or later, me, Andrew, or someone else will get the federal court to look at this substantively and you can't rely on an order from a biased judge that is void on its face to justify your action or failure to take action when you knew my civil rights were being violated.

Attached as Exhibit 8 is an image I commissioned from Title Pro showing that 6220 is within 1,000 feet of two daycares. Someone at the City is corrupt - the City did not accidentally approve a marijuana business! By now I hope you all realize that I will not rest until I am vindicated which means you are all going to be exposed sooner or later.

Darryl Cotton

6 attachments

- **(1) The November Document.pdf**
  366K
- **(2) Confirmation Email.pdf**
  447K
- **(3) Flores v Austin et al .pdf**
  2293K
- **(4) Cotton v Geraci et al First Amendeded Complaint.pdf**
  1394K
- **(5) USA v Romero and Suarez-Soto.pdf**
  258K
- **(6) USA v Razuki Witness List.pdf**
  157K