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

Court's Ex. 038
Case # 37-2017-00010073-CU-BC-CTL
Rec'd
Dept. C-73 Clk.

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

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

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

WITNESS my hand and official seal.

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

Signature _____ (Seal)

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcsd.net> Wed, Nov 2, 2016 at 9:13 PM
To: Darryl Cotton <darryl@inda-gro.com>

Court's Ex. 042
Case # 37-2017-00010073-CU-BC-CTL
Rec'd
Dept. C-73 Clk.

No no problem at all

Sent from my iPhone

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

Hi Larry,

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

Regards.

Darryl Cotton, President

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

6176 Federal Blvd.
San Diego, CA. 92114
USA

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[Quoted text hidden]

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Andrew@FloresLegal.Pro

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

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., JANE DOE, an individual,

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; RACHEL M. PRENDERGAST, an individual;

Case No.: '20CV0656 JLS LL

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;
6. DECLARATORY RELIEF;
7. DECLARATORY RELIEF

JURY TRIAL DEMANDED

COMPLAINT

FERRIS & BRITTON APC, a California Corporation; DAVID S. DEMIAN, an individual, ADAM C. WITT, an individual, 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; MATTHEW WILLIAM SHAPIRO, an individual; MATTHEW W. SHAPIRO, APC, 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, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; BIANCA MARTINEZ; an individual; THE CITY OF SAN DIEGO, a municipality; 2018FMO, LLC, a California Limited Liability Company; FIROUZEH TIRANDAZI, an individual; STEPHEN G. CLINE, an individual; JOHN DOE, an individual; and DOES 2 through 50, inclusive,

Defendants,

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

Real Parties In Interest.

COMPLAINT

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

INTRODUCTION

1. "History teaches us that every so often those that keep their mouths shut, and eyes and ears closed in the face of evil are called to account. In a way [their] culpability is greater than most others. [They] really should have known better. By [their] inaction [they] facilitated the spread of the disease. As Edmund Burke stated in a letter to William Smith dated January 19, 1795, '**[t]he only thing necessary for the triumph of evil is for good men to do nothing**.'" *United States v. Loc. 560, Intern. Bro. of Teamsters* (D.N.J. 1984) 581 F. Supp. 279, 298 (emphasis added).

2. The gravamen of this case is about unethical attorneys who conspired with their clients to take unlawful action. And the third-party government and private attorneys who, having knowledge and power to prevent the harm caused by the unethical attorneys, failed to take action to prevent their unlawful actions. The third-party attorneys thereby ratified the unlawful actions, including allowing severe suffering to be effectuated *through* the state and federal judiciaries upon innocents, and became jointly liable with the unethical attorneys and their clients.

3. Plaintiffs seek this federal court's protection to enable them to access the state court to vindicate their rights free of judicial bias, unlawful litigation tactics, and acts and threats of violence against themselves and material third-party witnesses.

I. PLAINTIFFS

4. Flores is an attorney whose approximate ten-year practice has predominantly been criminal defense. Flores knows criminals; over the course of his practice he has come to easily recognize the language and actions used by prosecutors and defense attorneys seeking to expose or hide unlawful acts. As such, he is keenly aware of the transparent prevarication used by attorneys seeking to disguise their client's unlawful actions in the face of evidence reflecting their guilt.

5. Plaintiffs dare file suit against the numerous defendants named in this action

seeking this federal court's help primarily for the following two reasons.

6. First, because Plaintiffs have come to understand what any first-year law school student knows: to prove the existence of a contract, there must be evidence of mutual assent. *See Jacks v. CMH Homes, Inc.*, 856 F.3d 1301, 1304 (10th Cir. 2017) ("As every first-year law student knows, an agreement or mutual assent is of course essential to a valid contract.") (quotation and citation omitted).

7. Second, the belief that conspiracies cannot survive the light of day even if the conspirators include government officials, members of the judiciary, international law firms, and high-net worth individuals. "No man in this country is so high that he is above the law." *Butz v. Economou*, 438 U.S. 478, 506 (1978) (quoting *United States v. Lee*, 106 U.S. 196, 220 (1882)).

8. Flores. In mid-2017, Flores became acquainted with *Geraci v. Cotton* ("*Cotton I*")[1] when he was asked by a colleague to cover for him and make a special appearance on behalf of Darryl Cotton.

9. On November 2, 2016, Lawrence Geraci and Cotton reached an oral joint venture agreement (the "JVA") to develop a cannabis dispensary (the "Business") at Cotton's real property located at 6176 Federal Boulevard, San Diego California 92114 (the "Property"). On that day, Geraci and Cotton executed a three-sentence document drafted by Geraci (the "November Document"). The November Document is a receipt for Cotton's acceptance of $10,000 in cash towards a total $50,000 agreed-upon non-refundable deposit. That same day, (i) Geraci emailed Cotton a copy of the November Document; (ii) upon review, Cotton replied and requested that Geraci confirm in writing the November Document is not a purchase contract (the "Request for Confirmation"); and (iii) Geraci replied and confirmed the November Document is not a purchase contract (the "Confirmation Email").

10. The Request for Confirmation and the Confirmation Email prove that Cotton

[1] *Larry Geraci vs Darryl Cotton*, San Diego County Superior Court, Case No. 37-2017-00010073-CU-BC-CTL.

and Geraci did not mutually assent to the November Document being a purchase agreement for the Property (the "Mutual Assent Issue").

11. What Cotton did not know was that Geraci could not actually provide a "final agreement" reflecting they were joint venturers. Geraci could not lawfully own an interest in a cannabis CUP because he had been repeatedly sanctioned for the owning/management of illegal marijuana dispensaries (the "Sanctions Issue"). *See, e.g.*, *City of San Diego v. CCSquared Wellness Cooperative*, Case No. Case No. 37-2015-00004430-CU-MC-CTL, ROA No. 44 (Stipulated Judgment) at 2:15-16 ("The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Ave, San Diego[.]").

12. In March 2017, Geraci's attorneys, the law firm of Ferris & Britton ("F&B"), filed *Cotton I* alleging the November Document is a fully integrated[2] purchase contract for Geraci's purchase of the Property. F&B filed *Cotton I* relying on outdated case law to provide probable cause for seeking to use the parol evidence rule (i) to bar the admission of the Confirmation Email as proof of the JVA and (ii) as a shield to bar the proof that Geraci and F&B conspired to commit a fraud on the court by fraudulently representing a receipt as a purchase contract (the "*Cotton I* Conspiracy").

13. Cotton is a blue-collar individual with no wealth or legal background. Over a year into the case, an attorney specially appeared for Cotton, hired by a litigation investor, who confronted F&B for the first time with a 2013 California Supreme Court decision dispositively preventing F&B from arguing there is *legal probable cause* to rely on the parole evidence rule to bar the admission of the Confirmation Email. Thus, removing <u>any</u> probable cause for the filing of *Cotton I* because of the Mutual Assent Issue.

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[2] "In contract law, 'integration' means the extent to which a writing constitutes the parties' final expression of their agreement. To the extent a contract is integrated, the parol evidence rule precludes the admission of evidence of the parties' prior or contemporaneous oral statements to contradict the terms of the writing, although parol evidence is always admissible to interpret the written agreement." *Esbensen v. Userware Internat., Inc.*, 11 Cal. App. 4th 631, 636-37 (Cal. Ct. App. 1992).

14. In response, in April 2018, Geraci, F&B and Geraci's other attorney, Gina Austin (Mrs. Austin) of Austin Legal Group, APC ("ALG"), colluded to fabricate factual evidence to provide *factual probable cause* for the filing of *Cotton I*. Specifically, that (i) Cotton sent the Request for Confirmation pretending that he and Geraci had reached an oral agreement that included a "10% equity position" for Cotton, but was in reality an attempt at "renegotiating" the deal they had reached hours earlier that day; (ii) Geraci only read the first sentence of the Request for Confirmation (*i.e.*, "Thank you for meeting today."); (iii) Geraci sent the Confirmation Email by mistake because he did not read all of the Request for Confirmation; (iv) on November 3, 2016, Geraci realized he sent the Confirmation Email by mistake and called Cotton to explain same; and (v) Cotton "was not upset" and *orally agreed* with Geraci that he is not entitled to the 10% equity position Geraci confirmed in the Confirmation Email (the "Disavowment Allegation").

15. Simply stated and understood, *Cotton I* is a "sham" action filed and maintained without probable cause by numerous attorneys on behalf of Geraci to prevent the sale of the Property to Flores and his predecessor-in-interest.[3]

16. Flores knows - as a result of over 3,500 hours of investigations, interviews, research and working on *Cotton I* and related litigation matters over the course of almost two years - that Geraci is a sophisticated businessman who is politically influential, intelligent, and a ruthless criminal. This is not an exaggeration set forth in a complaint to sensationalize the issue. Geraci has directed acts and threats of violence against Cotton,

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[3] As material to this action, a "sham" action or pleading includes, first, the filing of a single suit that is "(1) objectively baseless, and (2) a concealed attempt to interfere with the plaintiff's business relationships." *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180, 1184 (9th Cir. 2005) (citation and quotation omitted). Second, "in the context of a judicial proceeding, if the alleged anticompetitive behavior consists of making intentional misrepresentations to the court, litigation can be deemed a sham if 'a party's knowing fraud upon, or its intentional misrepresentations to, the court deprive the litigation of its legitimacy.'" *Id*. (citation omitted). And, third, a defensive pleading may also be a sham "because asking a court to deny one's opponent's petition is also a form of petition; thus, we may speak of a 'sham defense' as well as a 'sham lawsuit.'" *Id*.

his litigation investors and supporters, and third-party witnesses in an effort to coerce Cotton into settling *Cotton I.*

17. Geraci filed *Cotton I* as part of a small group of wealthy individuals and attorneys (the "Enterprise") in the City that have conspired to create an unlawful monopoly in the cannabis market (the "Antitrust Conspiracy"). 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 even against some of their own non-Enterprise clients to ensure that all cannabis conditional use permits ("CUPs")[4] in the City go to principals of the Enterprise.

18. Flores purchased and became the equitable owner of the Property because all the parties with an interest in the Property, who could have brought this suit, had grounds to believe that the presiding judge in *Cotton I*, Judge Wohlfeil, and certain City employees were part of and/or knowingly ratifying the sham action and the extra-judicial threats and acts of violence against Cotton, people close to him, and the individuals financially supporting him.

19. During the course of his investigations and work in and related to *Cotton I*, Flores became acquainted with Jane Doe ("Jane") and Amy Sherlock and her children who have been harmed by the Enterprise and undertook their representation.

20. Jane. Jane relied on the representations of defendant attorneys Mrs. Austin of ALG and David Demian of Finch, Thornton & Baird ("FTB") to provide financial and other support to Cotton, his legal team and his supporters.

21. Mrs. Sherlock. Michael "Biker" Sherlock was a husband, father, professional athlete, and an entrepreneur with interests in various businesses, including in the cannabis sector. Mr. and Mrs. Sherlock were victims of the Enterprise. Biker partnered with Bradford Harcourt who, unknown to Biker, is or was a principal of the

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[4] "[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.

Enterprise, and used agents of the Enterprise to acquire interests in two cannabis permits in 2015 (the "Balboa CUP" and the "Ramona CUP"). Thereafter, Biker and Harcourt were faced with various litigation and business-related expenses that required Biker 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 permits. Unfortunately, Biker passed away on December 3, 2015.

22. Thereafter, Harcourt became the sole owner of the Balboa CUP and held an interest in the Ramona CUP. Mrs. Sherlock was never informed of any agreements whereby Biker provided his consent to sell or transfer his interest in the cannabis permits. The entity owned by Biker that acquired the Balboa CUP was dissolved with a form filed with the California Secretary of State three weeks after he passed away (the "Dissolution Form"). Mrs. Sherlock does not recognize her husband's alleged signature on the Dissolution Form.

23. Mr. Manny Gonzales is a handwriting fraud expert, with over 40 years of experience - including as a special investigator of the Division of Trial Counsel for the State Bar of California and who has testified as an expert in over 170 cases - provided an analysis that concluded with a high degree of certainty that Biker's signature was forged on the Dissolution Form (and could be conclusively decided so if he had access to the original filed with the state).

24. As of the filing of this complaint, Harcourt's attorney, Allan Claybon of Messner Reeves LLP, has repeatedly refused to provide an explanation as to how Harcourt came to own Biker's interest in the two cannabis permits. However, Claybon has communicated Harcourt's affirmative defenses in anticipation of litigation: (i) the statute of limitations bars any fraud-based causes of action that Mrs. Sherlock may have; (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 Biker passed away; and (iii) Harcourt and a third-party allege they saw Biker execute the Dissolution Form the day before he passed away, therefore, per Claybon, their testimony legally and

conclusively establishes same and there is no probable cause to allege Harcourt acted unlawfully ("Harcourt's Affirmative Defenses").

II. JUDGE WOHLFEIL

25. Unfortunately, there is a complicated threshold issue with a temporal aspect that must be addressed and there is no easy way to do so. Although Cotton was the target of a conspiracy by Geraci's attorneys, his own attorneys (who had pre-existing and undisclosed relationships with Geraci), and City attorneys and employees (who have worked for years with Geraci and his team of experts, which include Mrs. Austin who has been hired by the City and markets the fact the City is her client), he did not set forth the facts as to each of those parties that prove they took unlawful action. Instead he argued the conclusion and came across as a stereotypical pro se litigant with delusions of persecution (*i.e.*, a "conspiracy nut") and he lost all credibility with Judge Wohlfeil.

26. Judge Wohlfeil in *Cotton I* issued a judgment against Cotton that was procured by a fraud on the court, is the product of judicial bias, and is void for being an act in excess of his jurisdiction as it enforces an illegal contract.

27. Additionally, after judgment was entered in *Cotton I*, and a motion by Cotton was pending in federal court accusing Judge Wohlfeil of bias, it can appear that Judge Wohlfeil finally understood that he had made an egregious mistake in assuming Cotton was a conspiracy nut. The facts support the appearance that Judge Wohlfeil conspired with someone in the San Diego Superior Court's Clerk's Office (the "City Clerk") to reject – 18 months after they were submitted – the documents then pending in federal court that evidence his judicial bias against Cotton.

28. *Plaintiffs do not allege that Judge Wohlfeil is actually corrupt*. It could be a coincidence that the Clerk's Office took 18 months to reject those specific documents. However, even without taking into account other evidence and arguments, based on the timing and substance of the documents deleted from the public record – *i.e.*, the *Cotton I* register of actions (the "ROA") – a reasonable third party could believe that Judge Wohlfeil conspired with the City Clerk to remove evidence from the *Cotton I* ROA that

proved he was biased against Cotton throughout *Cotton I* (the "ROA Conspiracy").

29. Plaintiffs believe that matters have reached this optically implausible stage primarily for two reasons. First, because Judge Wohlfeil has a fixed-opinion of private attorneys Mrs. Austin of ALG, Demian of FTB, and Michael Weinstein of F&B such that he does not believe they are capable of acting unethically and would not file or maintain a sham lawsuit or connive against their own client's interest (Judge Wohlfeil's "Fixed-Opinion").[5] Consequently, Judge Wohlfeil came to believe that Cotton was a "conspiracy nut" and thereafter, with the exception of one discovery hearing, he never vetted any of Cotton's submissions; rather, he simply relied upon the opposition arguments and testimony of F&B and Mrs. Austin (the "Opposition Theory").

30. The second reason being that Judge Wohlfeil simply refuses to believe it is possible for there to be a criminal conspiracy that includes corrupt City employees and attorneys.

III. THE LEGALIZATION OF CANNABIS AND PUBLIC CORRUPTION

31. "**California is awash in cannabis cash. Some is being used to bribe public officials**." This is the title of an article published by the *Los Angeles Times* on March 17, 2019 describing numerous cases of government corruption in the multi-billion-dollar legal cannabis market in the state. There are corrupt city, county and law enforcement officials across the state who have been and are being bribed by private parties to unlawfully acquire permits to operate cannabis businesses and/or divert law enforcement efforts from shutting down illegal cannabis operations.

32. On August 15, 2019, the Federal Bureau of Investigation (the "FBI") published a report as part of its *FBI, This Week* audio series titled "**Public Corruption**

[5] Cotton and his litigation investors hired four different attorneys from four different law firms, at different times, to specially appear before Judge Wohlfeil and argue that *Cotton I* was filed without probable cause by Geraci's attorneys because, *inter alia*, the Mutual Assent Issue. At none of the hearings did Judge Wohlfeil address the Mutual Assent Issue.

Threat Emerges in Marijuana Industry."[6] The report highlights that "corruption is more prevalent in western states where the licensing is decentralized - meaning the level of corruption can span from the highest to the lowest level of public officials."

33. As a recent and local example, on November 22, 2019, the FBI arrested the Captain of the Rancho San Diego County Sherriff's Office, Morad Marco Garmo, for, among other things, running a gun trafficking business and informing an illegal marijuana dispensary of impending raids by law enforcement agencies.[7] Notably, the complaint describes Garmo sending a photo text to an individual, identified as "San Diego County employee," of a cease and desist letter sent by the City to an illegal marijuana dispensary. When asked by the San Diego County employee to whom the letter was sent, Garmo replied: "Chaldeans I know[,] can we push it back?" The San Diego County employee replied, "Yes you can" - thus, evidencing collusion between a City employee with the authority to direct investigations of violations of the law and the Captain of a Sherriff's Office charged with enforcing the law.

34. Flores has spoken with the FBI multiple times regarding the actions giving rise to this action. In February 2020, Flores spent over three hours with two FBI Special Agents regarding the specific facts alleged herein and Flores' personal concern regarding potential violence against certain defendant attorneys named in this suit. (At their request, Flores has not named the FBI Special Agents herein.) On March 12, 2020, Flores and one of the FBI Special Agents spoke regarding the instant complaint and Flores promised to provide a copy of this complaint when filed.

35. Plaintiffs do not allege or mean to imply that corrupt government pay-to-play cannabis conspiracies are common. However, at this point in time while the cannabis

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[6] This report is available at the FBI's website at: https://www.fbi.gov/ (March 13, 2020).

[7] *United States v. Mordad Marco Garmo*, Case No.: 19-CR-04768-GPC (S.D. Cal. Nov. 21, 2019).

industry is still transitioning from an illegal market, deals primarily in cash,[8] and is very profitable, such conspiracies are quite plausible. *See Extrajudicial Involvement in Marijuana Enterprises*, 2017 Cal. Jud. Ethics Op. LEXIS 1 (The California Supreme Court Committee on Judicial Ethics finding: "The profits to be gained from the marijuana industry in California are substantial and investors are flocking to this lucrative industry.").

IV. DEMAND FOR REAL PROPERTIES THAT QUALIFY FOR CANNABIS CUPS IN THE CITY

36. Since at least 2011 when the City allowed the operations of a dispensary (a physical store that sells cannabis) by a medical marijuana consumer collective ("MMCC"), there has been a freneticism in the real estate market for properties that qualify for a cannabis CUP from the City.

37. The City has authorized a maximum number of 36 CUPs for cannabis dispensaries and 40 CUPs for cannabis cultivation/processing.

38. In regard to dispensaries, the City has stringent requirements that include a minimum 1,000 feet separation from, *inter alia*, schools, child care centers, churches, and other dispensaries. Because of the limited supply of real properties that qualify under the City's regulations, the City has been forced to allow some land use variances in the appropriate circumstances.

39. For example, on or about August 11, 2016, the City's Planning Commission approved a dispensary at 3455 Camino Del Rio South (Project No. 368346) even though

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[8] *See, e.g.*, Altman, A., *Time* (Special Edition), Marijuana: The Medical Movement (2018), *Pot's Money Problem* at 78-83 ("[M]arijuana moguls look more like criminals than capitalists. They lease secret off-site warehouses to store their money and pay their employees with cash-stuffed envelopes. Some outfit their homes with false walls and safes bolted to the floors. They tote tens of thousands of dollars around and foot five-figure tax bills with wads of 20s. To avert robberies, stores will often stagger delivery schedules, hire decoy drivers and employ armed guards to monitor dozens of on-site surveillance cameras. Shunned by proper banks, they run their shops as makeshift substitute.").

it was located within 1,000 feet of a public park. At the public hearing, in response to opposition to the approval, Commissioner Anthony Wager stated:

> I don't find that any of the 14 marijuana dispensaries we have approved so far have been this idealist utopia of perfect parking, perfect space. We still have a mandate to somehow come up with 36 different dispensaries … and we're not going to be able to achieve that. … We're reaching the ceiling. … We're trying our best to fit square pegs into round holes.

40. On or about July 20, 2017, the City Planning Commission approved a dispensary at 2425 Camino Del Rio South (Project No. 514308). The dispensary was located within 1,000 feet of two schools. However, pursuant to "path of travel" measurements that considered barriers such as Texas Street, the project was compliant with the 1,000 feet minimum separation requirement.

41. At the hearing, Chairman Stephen Haase noted that the Planning Commission should not entertain opposition arguments based on illegal ways of access to the project, stating, "I'm troubled by any testimony that encourages illegal behavior like jaywalking or jumping fences, things like that…. When we measure distance … it ought to be the safe path."

42. On or about October 1, 2019, the Director of the City's Development Services Department ("DSD"), Elyse W. Lowe, sent a memorandum to Kevin L. Faulconer on the subject entitled "Marijuana/Cannabis Permitting Update." The memorandum states that the City had allowed for the issuance of 36 dispensary CUPs (4 per City Council District), but had only approved 23. Furthermore, in some districts, such as City Council District Four where the Property is located, there were no other dispensary CUP applications pending, reflecting that only one property can qualify in the district due to the regulatory requirements.

V. THE ENTERPRISE AND THE DREAM TEAM

43. 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. These individuals were perfectly positioned to acquire the limited

and highly coveted cannabis permits in the City once the cannabis industry started to become legalized because they had the wealth and operational knowledge acquired from their illegal operations to finance the hiring of attorneys, political lobbyists and other professionals. However, because some had public records of illegal cannabis activities disqualifying them from owning a legal cannabis business, they required assistance from attorneys and other professionals to navigate the heavily regulated cannabis licensing process via unlawful means, including but not limited to applying for and acquiring the necessary cannabis permits through proxies - sometimes attorneys - who would not disclose the individuals with a criminal history as the true beneficial owners of the cannabis permits for which they applied.

44. Some of these individuals still continue to operate in the illegal black market using their legal licensed cannabis operations as fronts for their illegal operations.

45. The de facto general counsel of the Enterprise is Mrs. 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."[9]

46. Mrs. 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 DSD responsible for overseeing cannabis CUP applications, make up the core group that facilitates the Enterprise's acquisition of cannabis CUPs in furtherance of the Antitrust Conspiracy.

47. Mrs. Austin, Bartell, and Schweitzer are considered the local "Dream Team" for individuals who desire to acquire a cannabis CUP from the City.

48. In *Cotton I*, Mrs. Austin testified that she has represented approximately 25 cannabis applications in the City, 23 of which were approved; Bartell testified that out of 20 cannabis applications for which he has lobbied the City, 19 were approved; and Schweitzer testified that he has worked with the City on approximately 30-40 cannabis

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

applications.

49. Tirandazi has worked on numerous cannabis applications submitted by the Dream Team on which she made decisions contrary to applicable laws and regulations to the benefit of the clients of the Dream Team.

VI. THE CHILD CARE ISSUE

50. When it became clear that Cotton could not settle *Cotton I* in a manner that would allow Geraci to acquire the Property, because Cotton had sold the Property to Flores' predecessor-in-interest, Geraci/F&B needed a contingency plan in case *Cotton I* was exposed as a sham to argue they are not responsible for the millions in consequential damages arising from and related to the filing and maintaining of *Cotton I*.

51. The *Cotton I* Conspiracy culminated in the City's knowing and unlawful approval of a cannabis CUP (the "District Four CUP") within 1,000 feet of the two Child Care Centers.[10]

52. On or about October 18, 2018, the City approved, at Tirandazi's recommendation, an application for a cannabis CUP at 6220 Federal Blvd., San Diego, CA 92114 ("6220 Federal") submitted by Aaron Magagna (the "Magagna Application").

53. Magagna is a principal of the Enterprise.

54. Attached hereto as Exhibit 1 is a report commissioned by Title Pro Information Systems showing that the District Four CUP was issued within 1,000 feet of the Child Care Centers in violation of state law and San Diego Municipal Code ("SDMC") § 141.0504(a)(1) (the "Child Care Issue").

VII. DEFENDANTS' JOINT LIABILITY

55. Without considering amounts arising from emotional distress, exemplary or punitive damages, the minimum compensatory damages suffered by Plaintiffs is at least approximately $9,500,000. If Plaintiffs are successful in having this Court ensure their safe access to state court and they prevail on their RICO and/or antitrust causes of action

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[10] The Child Care Centers mean (i) Village Kids Child Care at 2156 Oriole Street, San Diego CA 92114 and (ii) Cuddles Academy Child Care at 2156 Oriole Street, San Diego CA 92114.

allowing for treble damages, defendants are jointly liable for no less than $28,500,000.

56. Plaintiffs do not believe, as Cotton has alleged pro se in multiple legal proceedings (while under severe mental and emotional strain), that there is some kind of "master" conspiracy. Rather, groups of defendants each had motive to take unlawful action and, as various events and legal actions progressed, defendants came to understand each other's unlawful actions and realized they were joint, concurrent, and/or successive tortfeasors. Consequently, defendants had motive to cover up, or at the very least not expose, each other's crimes in order to hide and limit their joint liability. *See Roth v. Rhodes*, 25 Cal. App. 4th 530, 544 (1994) (joint and several liability rule of conspiracy applies to antitrust claims brought under Cartwright Act).

JURISDICTION AND VENUE

57. Jurisdiction is also 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.

58. 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.

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

60. 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

61. 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.

62. 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.

63. 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.

64. Plaintiff JANE DOE, an individual, was and at all material times mentioned herein, residing and doing business in the City of El Cajon and of the County of San Diego, State of California.

65. 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.

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

67. 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.

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

69. 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.

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

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

72. Defendant RACHEL M. PRENDERGAST an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

73. 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 defendant Weinstein, Toothacre and Kulas.

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

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

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

77. 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.

78. 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.

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

80. 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.

81. 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.

82. 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.

83. Defendant MATTHEW WILLIAM SHAPIRO an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

84. Defendant MATTHEW W. SHAPIRO 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.

85. 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.

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

87. 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.

88. Defendant SHAWN MILLER an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

89. Defendant LOGAN STELLMACHER an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

90. Defendant EULENTHIAS DUANE ALEXANDER, an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

91. Defendant BIANCA MARTINEZ an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

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

93. Defendant THE CITY OF SAN DIEGO, a municipality,

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

95. Defendant STEPHEN G. CLINE, an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

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

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

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

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

100. Defendant JOHN DOE (GET AWAY DRIVER) an individual, was, and at all times mentioned herein is, a resident of the County of San Diego, State of California.

101. 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.

102. 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.

103. and DOES 3 through 50, inclusive,

GENERAL ALLEGATIONS

104. At this point in time, Plaintiffs allege there were originally three separate conspiracies that evolved and made all defendants joint tortfeasors as they directly or tacitly worked in concert and sought to cover-up their respective crimes. First, the Enterprise's Antitrust Conspiracy. Second, a conspiracy by the City to unlawfully record

a lis pendens on properties at which dispensaries were operated without the appropriate cannabis CUP; which the City did to extort fines from the property owners (the "City Conspiracy"). Third, the ROA Conspiracy.

105. In regard to the Antitrust Conspiracy, there are three general categories of defendants. The first category are the individuals who operate illegal cannabis businesses on a day-to-day basis with their day-to-day attorneys and corrupt City employees that help effectuate their efforts to monopolize the cannabis industry (*e.g.*, Geraci, Magagna, Mrs. Austin, Tirandazi). The second category are attorneys who represent the first category defendants and knowingly aid their clients in effectuating their crimes via the judiciaries (*e.g.*, Weinstein of F&B and Demian of FTB). And the third category are top-tier attorneys that were brought in by the second category attorneys and their clients to defend them in federal court when Cotton filed a lawsuit against them. These top-tier attorneys knew, or should have known, that their actions in defending their clients in federal court - for ongoing unlawful actions taken in then-ongoing state court proceedings - violated the constitutional and statutory rights of Plaintiffs and others.[11]

106. **To date, there have been <u>ten</u> judges that have had the Mutual Assent Issue before them.[12] The issue of Mutual Assent Issue has never been addressed by any judge.**

107. Unfortunately, this is the result of a waterfall effect that is taking place with

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[11] *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. *See Buller v. Buechler*,706 F.2d 844, 852-853 (8th Cir. 1983).").

[12] Judge Wohlfeil and Judge Sturgeon in state court; Cotton filed two writs appealing Judge Wohlfeil's orders that were before Justices Huffman, Irion, Dato, McConnell, and Benke; and Cotton's federal actions have been before Judge Curiel (who recused himself after making several rulings), Judge Whelan (who also recused himself after receiving the case from Judge Curiel), and one is presently before Judge Bashant.

Judge Wohlfeil's Fixed-Opinion at the origin.

108. Judge Wohlfeil's Fixed-Opinion prevents him from realizing that F&B filed *Cotton I* without any probable cause. In turn, Plaintiffs are forced to assume in the absence of any other information, every other Judge does not believe that Judge Wohlfeil would fail to understand the Mutual Assent Issue and Cotton and his attorneys are misrepresenting the facts. Thus, no matter how many times Cotton and his attorneys have attempted to have other Judges realize Judge Wohlfeil's Fixed-Opinion is judicial bias against Cotton, all they have accomplished is being marginalized and put in the "conspiracy nut" category along with Cotton.

109. Plaintiffs are forced herein to not just prove three separate conspiracies, but also provide sufficient facts to fight the procedural history in this matter that would appear to reflect that Judge Wohlfeil was impartial in *Cotton I*; as ratified by nine other Judges that had the same Mutual Assent Issue before them.

110. Thus, to meet the heightened pleading standards required to meet the sham exception to the *Noerr-Pennington* doctrine, and the heightened pleading standards applicable to allegations of judicial bias and multiple conspiracies against multiple parties, including underlying antitrust violations as motive, Plaintiffs set forth their allegations in seven parts.

111. Part I summarizes material State of California and City cannabis laws and regulations.

112. Part II summarizes the backgrounds and relationships by and among the material parties to this action not described elsewhere in the complaint.

113. Part III summarizes material litigation matters that have a direct and significant impact on this action.

114. Part IV summarizes various cannabis CUP applications in which the Enterprise has been involved and related litigation disputes over ownership of the cannabis CUPs. (The Enterprise's downfall is going to be their unbounded greed; in addition to engaging in fraudulent and violent actions against third parties, the members

also suffer from severe infighting that manifests in litigation as well as taking violence against each other.)

115. Part V discusses the *Cotton I* Conspiracy and related litigation matters providing facts that reflects how the Enterprise works simultaneously through sham litigation and extra-judicial acts and threats of violence in furtherance of the Antitrust Conspiracy.

116. Part VI summarizes Biker's acquisition of the Balboa CUP and the Ramona CUP and the connections between the current owners of those permits and the Enterprise.

117. Part VII summarizes the threats and acts of violence against Cotton, people close to him, his financial supporters, and material third party witnesses seeking to prevent Flores (and his predecessor) from seeking legal redress and vindicating his rights to the Property and the District Four CUP.

PART I – STATE AND CITY CANNABIS LAW & REGULATIONS

I. STATE LAW

118. Non-Profit Medical Cannabis Entities. Proposition 215, or the Compassionate Use Act of 1996 (the "CUA"), was a statewide voter initiative authored by, among others, Dennis Peron. The CUA decriminalized the personal possession and cultivation of medical marijuana in the State.

119. In 2003, the State enacted the Medical Marijuana Program Act (the "MMPA"), clarifying the scope and application of the CUA, and establishing certain requirements for, *inter alia*, nonprofit entities that would come to be known as Medical Marijuana Consumer Cooperatives (*i.e.*, MMCCs).

120. For-Profit Medical Cannabis Entities. In 2015, the State enacted three bills—Assembly Bills 243 and 246 and Senate Bill 643 ("SB 643")—that collectively established a comprehensive State regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery, and testing of medicinal cannabis in California. This regulatory scheme was known as the Medical Cannabis Regulation and Safety Act ("MCRSA"). MCRSA authorized a

person who obtained a state license and, if required, the relevant local permit, to engage in commercial medical cannabis activity pursuant to the license/permit.

121. SB 643 added § 19323 (Denial of application for licensure or renewal) to the Cal. Bus. & Prof. Code ("BPC"), which mandated that an application for an MMCC be denied if the applicant did not qualify for licensure. SB 643 at § 10 (adding BPC § 19323).

122. BPC § 19323 was amended in 2016 by Cal SB 837, effective June 27, 2016. As amended, it is the original applicable regulatory language at issue in this action when the November Document was executed. It then-read, materially, as follows (emphasis added):

> (a) A licensing authority ***shall*** deny an application if the ***applicant*** or the premises for which a state license is applied does not qualify for licensure under this chapter [3.5 (Medical Cannabis Regulation and Safety Act)] or the rules and regulations for the state license.
>
> (b) A licensing authority ***may*** deny an ***application*** for licensure or renewal of a state license, or issue a conditional license, if any of the following conditions apply:
>
> > (1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter or the rules and regulations for the state license…
> >
> > (2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5 [("§480")].
> >
> > (3) The applicant has failed to provide information required by the licensing authority.
> >
> > (7) The applicant… has been sanctioned by a licensing authority or a city… for unlicensed commercial medical cannabis activities… in the three years immediately preceding the date the application is filed with the licensing authority.

123. BPC § 480 set forth the following relevant criteria that mandated denial of an MMCC application pursuant to BPC § 19323(a),(b)(2):

(i) The applicant has "[d]one any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another." BPC § 480(a)(2); and

(ii) "[T]he applicant knowingly made a false statement of fact that is required to be revealed in the application for the license." BPC § 480(d).

124. For-Profit Recreational Cannabis Entities. On November 8, 2016, the voters of California approved Proposition 64, the Adult Use of Marijuana Act ("AUMA"). AUMA became effective November 9, 2016 and legalized recreational, for-profit cannabis sales starting in January 2018.

125. The intent of AUMA was, *inter alia*, to ensure a comprehensive regulatory system that takes production and sales of cannabis away from an illegal market and curtails the illegal diversion of cannabis from to other states or countries.

126. AUMA's findings and declarations included the following statement: "By bringing marijuana into a regulated and legitimate market, [AUMA] creates a transparent and accountable system. This will help police crackdown on the underground black market that currently benefits violent drug cartels and transnational gangs, which are making billions from marijuana trafficking and jeopardizing public safety." AUMA at § 2(H) (emphasis added).

127. Pursuant to AUMA, the Bureau of Cannabis Control ("BCC") "shall have the exclusive authority to create, issue, renew, discipline, suspend, or revoke licenses for the… sale of marijuana within the state." AUMA § 6.1 (adding BPC § 26012(a)(1)) (emphasis added).

128. AUMA required that an applicant for a cannabis license meet the requirements for a state license under AUMA and, if any, comply with applicable local laws and ordinances.

129. AUMA added § 26057 to the BPC, which was substantively identical to BPC § 19323, setting forth the criteria mandating denial of certain cannabis applications.

130. Thus, for a short period of time, there were two regulatory frameworks for cannabis: MCRSA for medical and AUMA for non-medical/recreational use.

131. However, pursuant to 2017 Cal SB 94 ("SB 94"), effective June 27, 2017, MCRSA was repealed and AUMA amended to consolidate the regulation of medical and non-medical cannabis activities pursuant to a single regulatory framework by the state.

132. SB 94 increased the disclosure requirements for applicants seeking a state license. SB 94 stated:

> In order to strictly control the cultivation, processing, manufacturing, distribution, testing, and sale of cannabis in a transparent manner that allows the state to fully implement and enforce a robust regulatory system, licensing authorities **must** know the identity of those individuals who have a significant financial interest in a licensee, or who can direct its operation. Without this knowledge, regulators would not know if an individual who controlled one licensee also had control over another. To ensure accountability and preserve the state's ability to adequately enforce against all responsible parties the state **must** have access to key information.

SB 94 § 1(f).

133. SB 94 amended BPC § 26052 to state, in material part: "Any person or trade association may bring an action to enjoin and restrain any violation of this section for the recovery of damages." BPC § 26052(c).

134. Materially summarized, even as the cannabis regulatory scheme created by the state evolved, it has always sought to prohibit organized crime/criminals from entering the cannabis market, transparency in the application process and operations for cannabis entities, and to prevent the creation of monopolies. To effectuate these goals, the state has always required, *inter alia*, the disclosure of all parties with a material ownership interest and/or control of cannabis entities. Further, it has always mandated the denial of applications from individuals who fail to comply with the state's requirements (which include by reference and incorporation compliance with, if any, local requirements necessary for the operation of cannabis entities).

II. CITY LAW

135. General Permit and CUP Requirements. Since at least August 1993, SDMC has prohibited the furnishing of false or incomplete information in any application for any type of permit or CUP from the City. *See* 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].").

136. SDMC § 11.0402 provides that "[w]henever in [the SDMC] any act or omission is made unlawful, it shall include causing, permitting, aiding or abetting such act or omission."

137. Thus, applying for a cannabis permit or CUP, or aiding a party to apply for same, and willfully making a false statement in the application is illegal.

138. SDMC § 121.0302(a) states as follows: "It is unlawful for any person to maintain or use any premises in violation of any of the provisions of the Land Development Code, without a required permit, contrary to permit conditions, or without a required variance."

139. The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing §§ 111.0101-1412.0113). (SDMC § 111.0101(a).)

140. SDMC § 121.0311 states as follows: "Violations of the Land Development Code shall be treated as **strict liability** offenses regardless of intent." (Emphasis added.)

141. Medical Cannabis CUP Requirements. On April 27, 2011, the City passed Ordinance No. 20043 ("O-20043"). Pursuant to O-20043, an MMCC could operate a dispensary in the City if organized as an MMCC with the state and provided that it acquired the appropriate permit and CUP from the City. Ordinance 20356 set the maximum number of MMCCs allowed as 4 per City Council District (for a maximum possible total of 36 in the City) and required that any MMCC keep a minimum distance of 1,000 feet from certain locations, including schools, parks, child care centers and other dispensaries.

142. O-20043 required all persons defined as *responsible persons* to undergo

fingerprinting and background checks. O-20043 broadly defined a *responsible person* to include any person who is responsible for the "operation, management, direction, or policy of an [MMCC]."

143. Recreational Cannabis CUP Requirements. On February 22, 2017, in response to the passage of AUMA, the City adopted Ordinance No. O-20793 ("O-20793"). O-20793 amended the City's cannabis regulations and permitted the retail sale of cannabis for recreational use in dispensaries (then called "Marijuana Outlets" and now called "Cannabis Outlets") with the appropriate CUP from the City.

144. Pursuant to O-20793 all applicants for cannabis CUPs must comply with the requirements of AUMA set forth in the BPC. *See* SDMC § 113.0103 (defining a Cannabis Outlet as a "retail establishment operating with a [CUP]… in accordance with dispensary or retailer requirements pursuant to the [BPC].").

III. AGENCY INTERPRETATION OF STATE LAW

145. On January 15, 2019, the BCC issued an addendum providing its final reasoning for the adoption of regulations pursuant to AUMA after providing opportunities for public comments (the "BCC Final Statement of Reasons").[13] In the BCC Final Statement of Reasons in Appendix A (hereinafter, "Appendix A") the BCC sets forth its reasoning and position on the following three material requirements.

146. The BCC summarized comments regarding certain application requirements as follows:

> Commenter objects to the paperwork-oriented minutiae about every aspect of a cannabis business, and states that has caused huge parts of the existing black-market cannabis industry to be unable or unwilling to participate in the legal market. Commenter states that he believes the reasoning behind the detailed regulations is that the public wants safety around cannabis, but the reasoning is faulty.

The BCC responded in relevant part as follows:

[13] An online copy of the BCC Final Statement of Reasons can be found at the BCC website (https://bcc.ca.gov) under the Laws and Regulations section. (March 13, 2020.)

> The [BCC] disagrees with this comment. [AUMA] requires that the [BCC] only issue licenses to qualified applicants and that the Bureau deny an application if either the applicant or the premises do not qualify for licensure. ([BPC §§] 26055 and 26057.) In order to determine if an applicant is qualified for licensure, [AUMA] requires that an application contain certain information about the premises, the owner, and the commercial cannabis business and its operations. ([BPC §] 26051.5.) The [BCC] cannot waive the requirements of [AUMA] and must fulfill its duty under [AUMA].

Appendix A at 9.

147. The BCC summarized comments regarding the disclosure of prior convictions as follows:

> Commenters state that the information required in the application regarding an applicant's prior convictions is too cumbersome. Commenters object to the inclusion of juvenile convictions and states that overall the [BCC] should not have access to dismissals or expunged records. One commenter requested the [BCC] disregard dismissals. Another commenter stated that requirements to declare juvenile convictions for alcohol, dangerous drugs, or other controlled substances is an obstacle to licensure.

The BCC responded in relevant part as follows:

> The [BCC] disagrees with this comment. [BPC §] 26051.5 provides the [BCC] with the ability to obtain and receive criminal history information from the Department of Justice and the Federal Bureau of Investigation for an applicant for any state cannabis license. Further, [BPC §] 26057 provides that the [BCC] ***shall*** deny an application if the ***applicant*** does not qualify for licensure and that the [BCC] may deny an application when the applicant has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made. Further, the section provides that if the [BCC] determines that the applicant is otherwise suitable to be issued a license, then the [BCC] shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation, and shall evaluate the suitability of the applicant to be issued a license based on the evidence found in the review.

Appendix A at 27-28 (emphasis added).

148. Thus, applications from applicants with certain convictions must be denied.

149. And applicants with convictions that do not specifically require their denial must be disclosed in the application so that the BCC can conduct a review and then determine whether to issue a state license.

150. Cal. Code Regs. tit. 16 § 5026(a) provides that: "A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued."

151. The BCC summarized two comments regarding § 5026 as follows:

> [First comment:] Home day care centers should be excluded from this provision, as many localities have them.
>
> [Second comment:] Suggest revising subsection (a) as follows:
>
> > A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, licensed day care center, or youth center that ~~is~~ was in existence at the time ~~the license is issued~~ applicant commenced operations.

152. The BCC responded two both comments identically as follows:

> The [BCC] disagrees with this comment. Section 5026 of the regulation is consistent with the premise's location limitations identified in [BPC §] 26054.

Appendix A at 102-103, 108.

153. No later than January 15, 2019, all cannabis professionals and licensing agencies, including the City's DSD, have known or should have known that the definition of a "day care center" includes home day cares as well as unlicensed day cares.

PART II – MATERIAL RELATIONSHIPS AMONG THE DEFENDANTS

154. A civil conspiracy can be inferred from evidence showing a course of conduct on the part of the defendants that is "teeming with fraudulent representations and replete with intrigue, deception and duplicity[.]" *Anderson v. Thacher* (1946) 76 Cal. App. 2d 50, 73. It can also be inferred from circumstantial evidence of dealings between the defendants (*see Rogers v. Grua* (1963) 215 Cal. App. 2d 1, 9) and from statements made by one who claimed merely to be an advisor rather than a conspirator from which it could be inferred that he or she had joined in the unlawful scheme (*see Wetherton v. Growers Farm Labor Ass'n* (1969) 275 Cal. App. 2d 168, 176–177).

A. Salam Razuki and Ninus Malan

155. Salam Razuki and Ninus Malan 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 as principals of the Enterprise; and Razuki then sought to have Malan kidnapped and murdered.

156. The anticompetitive tactics and agents Razuki and Malan used in furtherance of the Antitrust Conspiracy have been used by them in their other business ventures.

157. Razuki and Haith Razuki are the owners of Stonecrest Plaza located at 3690 Murphy Canyon Road in San Diego, California 92123. They also own a Chevron branded gas station and car wash that operate at Stonecrest Plaza (the "Chevron Gas Station").

158. Across the street from the Chevron Gas Station is an ARCO gas station located at 3770 Murphy Canyon Road, San Diego, California 92123 (the "ARCO Gas Station").

159. Stonecrest Village is a 318-acre community near the Chevron Gas Station and the ARCO Gas Station.

160. On or about October 13, 2016, the City Council approved a CUP application from the owners of the ARCO Gas Station to expand their gas pumps from 8 to 12 and to build a car wash (the "ARCO Project").

161. On or about October 27, 2016, Claus Antonio Norby Cedillo ("Norby") filed

an appeal of the approval of the ARCO Project (the "ARCO Appeal"). In the ARCO Appeal, Norby stated his address is in Bonita, CA 91902. The grounds for the appeal was an allegation that a traffic study had not been conducted by the City.

162. Bartell, allegedly representing a coalition that includes residents of Stonecrest Village, engaged Urban Systems Associates to provide a traffic impact report of the ARCO Project (the "Traffic Report"). Bartell then used the Traffic Report to lobby for the ARCO Appeal alleging the ARCO Project would impermissibly increase traffic.

163. On March 16, 2017, the San Diego Reader published an article by Marty Graham titled "Murphy Canyon gas-station grapple." The article quotes Bartell as saying "[w]e are concerned about the impact of increased traffic on the neighborhood… Our traffic study showed significant impacts, contrary to the City's study."

164. A memo prepared by a Senior Traffic Engineer for DSD regarding the Traffic Report states: "City staff finds the Urban Systems analysis to be inaccurate, and does not constitute substantial evidence that the project would result in a significant impact." For example, the Traffic Report "failed to accurately compare the existing conditions to the project conditions by excluding U turns from the existing condition scenario."

165. In other words, the ARCO Appeal supported by the Traffic Report and Bartell's lobbying efforts is a sham.

166. The representative of the ARCO Gas Station, Alex Mucino, is quoted in the article by Graham saying he does not believe Bartell is authentically representing Stonecrest Village: "I can't prove [Bartell is] being funded by the competition [*i.e.*, Razuki], but that's what I think."

167. Unfortunately for the owners of the ARCO Gas Station, the sham Traffic Report and the sham ARCO Appeal nonetheless triggered a review of the ARCO Project necessitating a new environmental impact study that would cost approximately $500,000.

168. On or about April 5, 2017, Mucino submitted a letter to DSD withdrawing

the ARCO Project. The letter notes that the ARCO Appeal was likely funded by Razuki and "the likely losers will be our customers who will not be able to enjoy competitive prices, product quality and diversity proposed by our [ARCO] Project. The stifling of competition will neither be good for consumers nor good for business."

169. At the City Council hearing on April 25, 2017 at which the ARCO Project was withdrawn, Councilmember Scott Sherman stated: "Well [Razuki,] this sure seems like a backhanded way to stop the people across the street from competing with you. I'm at a loss for words, I really am."

170. On April 28, 2017, Bartell submitted a Lobbying Firm Quarterly Disclosure Report with the City in which he disclosed he lobbied for Razuki Investments LLC in support of the ARCO Appeal.

171. On May 4, 2017, the San Diego Reader published an investigative news article titled "Dueling car washes on Aero Drive" by Julie Stalmer.

172. Although in her article Stalmer appears to be worried about libel, her article effectively describes how her investigate efforts revealed that Razuki had multiple individuals pretend they were not associated with him and make false statements to the City Council in support of the ARCO Appeal.

173. The article describes that at the April 25, 2017 hearing, one Ninus Malan "said he worked in a law office above the [ARCO Gas Station]. He complained about not being able to talk outside with clients because of the noise from below." Malan urged the ARCO Appeal be approved because the proposed car wash would create too much noise.

174. Also, Norby, who filed the ARCO Appeal and stated his address as being in Bonita, spoke to the City Council alleging he was a resident of, and speaking on behalf of the community at, Stonecrest Village.

175. In sum, Bartell used his political influence to lobby certain City officials that resulted in the City imposing a $500,000 cost on a competitor of Razuki, arising from the ARCO Appeal filed by Norby who lied about his residence, supported by a sham Traffic

Report commissioned by Razuki and testimony by Malan alleging he works at a law office at the ARCO Gas Station above the proposed car wash.

B. The Associate

176. One of Razuki's cannabis business associates (the "Associate") stated in a confidential conversation with an investigative reporter – after Razuki had been arrested and was being held by the FBI – that he does not believe Biker committed suicide and that he believes that Razuki had something to do with his death.[14]

177. The Associate describes meetings between Razuki and Mrs. Austin in which they explicitly discussed their goal of creating a "monopoly" in the City's cannabis market through proxies and the use of lawsuits.

178. Furthermore, the Associate stated that the Enterprise uses Mexican gangs that commit violent acts on the Enterprise's behalf to further their goals when disputes arise in the operations of their marijuana ventures.

179. The Associate was an intermediary between Razuki and the Mexican gangs with whom he has a relationship with because his cousin is a member in one of the Mexican gangs.

180. On June 11, 2019, Flores emailed Assistant United States Attorney Shital Thakkar prosecuting *Razuki III* (defined below) to inform him that Flores had possession of an audio recording of the Associate summarizing the above (the "Associate's Recording") and that he intended to file a civil complaint against Razuki.

181. Flores described that he was concerned that the release of the Associate's Recording would pose a danger to the Associate's life and/or affect potentially ongoing criminal investigations directly or related to Razuki. AUSA Thakkar never responded.

182. Flores shall submit the Associate's Recording to the judge overseeing this matter and allow the court to determine when and how to release the recording that will

[14] Plaintiffs do not allege that Razuki was actually involved in Biker's death. However, this information is material and relevant because the Associate, who worked with Razuki, *believes* that Razuki could have been responsible.

potentially expose the Associate to danger and/or affect ongoing criminal investigations.

C. Gina Austin and Natalie Nguyen

183. As noted, Mrs. Austin is the de facto general counsel for the Enterprise and, via her firm, ALG, is responsible for coordinating and effectuating the Enterprise's Antitrust Conspiracy by acquiring the limited number of cannabis CUPs, including through the use of proxies.

184. The use of proxies accomplishes at least two goals. First, it allows the acquisition of the cannabis CUPs by individuals who would otherwise be barred as a matter of law from obtaining them and, second, it hides the monopoly.

185. Mrs. Austin's duties on behalf of the Enterprise include the coordinating and overseeing of other professionals required to obtain marijuana permits, including other attorneys, architects, building design specialists, and political lobbyists.

186. Mrs. Austin is known as one of the premier attorneys in San Diego for acquiring marijuana permits. Mrs. Austin is often sought out by individuals who are aware of real properties that are or may become available and which potentially qualify for a cannabis permit. When non-Enterprise individuals seek her counsel regarding real properties that may qualify for a cannabis permit, Mrs. Austin would provide the location of the real property to principals of the Enterprise so they could seek to acquire the real properties before the non-Enterprise members could. Or, alternatively, acquire a nearby property and submit a competing CUP application.

187. During the meetings with members of the Enterprise she would discuss (i) what current projects the principals were working on; (ii) where other cannabis applications had been filed and whether a principal could file a competing application; (iii) whether Mrs. Austin could facilitate slowing down the other application via litigation or expedite the processing of a new application to acquire the permit first; (iv) the timelines of her non-Enterprise client's projects; and (v) the identity and financial circumstances of her non-Enterprise clients.

188. Mrs. Austin and Natalie Nguyen both attended the Thomas Jefferson School

of Law together and were both admitted to the California Bar on December 1, 2006.

189. Mrs. Austin, with approximately two-three years of experience as an attorney, founded her law firm ALG in 2009.

190. Through ALG, Mrs. Austin has been the single most successful attorney in the City in the intense competition for cannabis CUPs; competition that includes private equity firms and other wealthy individuals and entities that are represented by national and international law firms.

191. Mrs. Austin's success is not because she is a legal genius, but because she engages in and ratifies unlawful actions, including bribery of public officials and violence, against the competition.

D. Lawrence ("Larry") Geraci and Rebecca Berry

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

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

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

195. Geraci ceased being a real estate agent because Cotton threatened to report him to the California Bureau of Realtors for attempting to defraud him of his Property.

(i) In *Cotton I*, Cotton propounded the following special interrogatory to Geraci: "[D]escribe with specificity all reasons why YOU ceased to have a valid real estate salesperson licensed issued by the California Bureau of Real Estate"

(ii) Geraci/F&B's entire response was: "I let my license expire" and failed to respond to the question of <u>why</u> he let it expire.

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

197. Geraci and Berry testified that Geraci directed Berry to file an application for a cannabis CUP at the Property in her name and that she did so as his agent (the "Berry

Application").

198. Geraci and Berry testified that the reason Berry did not disclose Geraci in the Berry Application is because he is an Enrolled Agent with the IRS (the "Berry Fraud").

199. Geraci and Berry were aware of the statute of frauds at all material times to this action and know that Berry's alleged agency was required to be memorialized in writing pursuant to the equal dignities rule (the "Agency Issue"). Civ. Code § 1624(4); *id*. § 2309.[15]

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

E. Firouzeh Tirandazi and Cherlyn Cac

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

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

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

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

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[15] Flores notes that neither Geraci, Berry, F&B nor the City have ever disclosed any writing that reflected Berry was acting as Geraci's agent in submitting the Berry Application. Assuming the Enterprise and the City collude to allege it was provided to the City and argue they "coincidentally" forgot to disclose same in over three years and multiple litigation actions, the parol evidence rule bars its admission. *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.").

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

206. Both Tirandazi and Cac were aware of the Child Care Centers and the Child Care Issue when the Magagna Application was approved.

207. Both Tirandazi and Cac have taken steps to hide their knowledge of the Child Care Centers and the Child Care Issue in preparation for this litigation to allege they were not aware of same.

F. Matthew Shapiro

208. Shapiro is an attorney that markets himself as being "San Diego's most infamous marijuana lawyer" and advertises his services by stating he has "stolen hundreds of pounds of weed from the police."

209. Shapiro has represented Magagna in various legal matters and has worked extensively with Mrs. Austin for years in furtherance of the Antitrust Conspiracy, including by making special appearances for her.

210. Shapiro acts as a broker for Magagna, selling the marijuana that Magagna grows at legal cultivation facilities to his clients and illegal marijuana dispensaries who he targets with his marketing.

211. Shapiro also represents Corina Young who, as more fully described below, was successfully threatened by Magagna to prevent her from providing her testimony against Geraci and his agents in *Cotton I*.

212. When Shapiro was informed that Young had made comments that reflect Magagna is a co-conspirator, he immediately called his own client a "pot head" and stated "nothing she says can be trusted" and that he could wreck her credibility.

G. Bianca Martinez

213. Martinez is a political lobbyist that was working for Bartell at B&A in early 2016.

214. Geraci had hired Bartell/B&A to lobby for various projects and Martinez got to know Geraci and his staff through her work at B&A.

215. While Martinez was working at B&A, Geraci and Bartell had a standing

offer to, among others, Martinez, that any party that found a real property that was acquired and at which a dispensary was operated would receive as compensation a 10% equity position in that dispensary.

216. In early 2016, Martinez identified the Property to Geraci and Bartell as a location that could qualify for a cannabis CUP.

i. *Martinez goes to the Property*

217. In late 2017, Martinez was no longer working for Bartell at B&A and went to the Property.

218. Martinez approached Cotton wanting to facilitate the sell or partnership of the Business at the Property.

219. Martinez was livid when she found out that Geraci had approached Cotton and entered into an agreement with him for the Property without providing for her 10% because she identified the Property to him and Bartell.

220. Martinez told Cotton that she had identified the Property a year prior and Cotton responded that Geraci had provided sworn declarations that an individual named Neil Dutta was the individual that identified the Property to him.

221. Martinez then told Cotton about (i) the 10% promise from Geraci/Bartell; (ii) that Dutta is a business partner of Geraci in illegal marijuana dispensaries; (iii) that she quit B&A after Bartell sexually harassed her and failed to compensate her as promised on other projects; and (iv) although she began some kind of legal proceeding against Bartell for sexual harassment, she ceased the proceeding because Bartell was "too powerful" in the City and she would not be able to work as a political lobbyist if she continued in her action against him.

222. Later, as she became involved in *Cotton I* and learned who the parties were, she disclosed that attorney Shamman works with Mrs. Austin and Geraci on cannabis related matters.

223. Martinez also stated that Geraci has an ownership interest in the Balboa CUP and that she and Geraci's own staff believe Geraci's actions contributed to Biker's

suicide.

ii. *Martinez goes back to Geraci/Bartell*

224. After Cotton introduced Martinez to Hurtado, and Martinez agreed to become Cotton's "Bartell" – a political lobbyist with DSD – Hurtado provided transaction advisory services to Martinez on other projects she was working on. However, none of the deals that he worked on with Martinez ever came to fruition.

225. Also, during this time, Hurtado got to know Martinez' boyfriend and loaned him $4,000.

226. On April 6, 2018, after Cotton communicated his knowledge of the Magagna Application and that he believed that Magagna was a conspirator of Geraci, Martinez sent the following messages to Cotton:

> Martinez: ... Bartell screwed me out of pay and bonuses and is deceitful so I wouldn't put it past them.
> Martinez: ... I'll help as much as you need me to. I hate to see ethical abiding citizens being screwed. It's not right.

227. However, around this time, the relationship between Hurtado and Martinez became strained and they had a falling out. Hurtado did not want to continue to collaborate with Martinez regarding potential ventures and Martinez was offended.

228. Hurtado found out that while Martinez represented herself to be an expert in cannabis laws, compliance and operations, and a "female-version" of Bartell, in fact, she only had a superficial understanding of cannabis regulations, did not understand the underlying economics, and did not wield the political influence that Bartell did.

229. After the falling out between Hurtado and Martinez, Cotton and Martinez remained on good terms, but only communicated sporadically.

230. On or about August 08, 2018, Martinez messaged Cotton in relevant part as follows (emphasis added):

> Martinez: I've actually got a really good win-win proposition for you on federal. I've been holding back on re-engaging but I think I can help both parties. **If you agree, I can contact him. Not the other way around.**

Give me the green light to Engage and I can work on it ASAP. I've got a great [solution] for both.

We can set up a call also you and I and [I] want to know what you'd like.

Cotton: There's a competing CUP within 300 ft of my property.

Martinez: I know and this is why this needs to happen fast.

Cotton: I just spoke with Jacob, he said I should not talk about federal or any settlement discussions. I'm sorry Jacob is about to file a lawsuit against bartell specifically and it does not look good if I talk to you. So, let's talk about your projects, but we can't discuss federal or bartell or any settlement.

Martinez: That's fine so you're not open to a settlement at This Point? Wow what's going on with Bartell?

Martinez: I'm more concerned with the cup filed down the street catching up as far as timeline. ***So much time and money already spent to lose this to someone who came in of the street to try and take this from both you and Larry***

Martinez: I just looked into the estimated timelines and it looks like the other project is now 6 weeks ahead of you to be approved for their CUP. We should meet ASAP. Please advise.

231. Martinez is an opportunist and after it became clear that she was not a "Bartell," and would not get an equity position in the Business from Cotton, she reestablished her relationships with Geraci and Bartell to leverage the situation for personal profit.

232. This belief is supported by, *inter alia*, three facts. First, prior to the falling out between Martinez and Hurtado, Martinez was livid at Bartell for sexually harassing her and Geraci/Bartell for entering into an agreement with Cotton and reneging on their promise to provide her a 10% equity position for finding the Property.

233. However, after the falling out with Hurtado, in her communications to

Cotton seeking to mediate a settlement with Geraci, she lacked the animus she had before and makes it appear that Geraci is also a victim of Magagna (*e.g.*, Magagna is going to "take this from you and Larry").

234. Second, Martinez is not a legally sophisticated party. A review of the messages she sent Cotton clearly reflect she was coached by an attorney to articulate in her communications with Cotton that she needed Cotton's consent before allegedly reaching out to Geraci to mediate a settlement.[16]

235. Third, on or about March 4, 2019, Martinez reached out again to Cotton this time to allegedly discuss business opportunities.

236. However, at that point in time, Martinez and Bartell's social media accounts showed that Martinez was an employee of B&A and she was Facebook friends with Magagna.

237. Cotton did not meet with Martinez.

iii. *Hurtado Dispute*

238. In August 2018, when Martinez reached out to Cotton to mediate a settlement, Cotton showed Hurtado the messages.

239. Hurtado became convinced that Martinez had become an agent of Geraci.

240. Thereafter, Hurtado emailed Martinez and her boyfriend and demanded that they pay back the $4,000 he had loaned her boyfriend at Martinez' request.

241. On or about August 2, 2018, the boyfriend responded: "Hi Joe, this is the first I've heard of this so thank you for updating me. I gave Bianca back the loan like you said I could but that's the last I've heard of it."

242. In other words, Martinez received the $4,000 in trust to be paid back to Hurtado, but she kept the money for herself.

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[16] *See* California Rules of Professional Conduct Rule 2-100 (Communication with a Represented Party) ("[W]hile representing a client, a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.").

243. Martinez keeping the $4,000 provided to her in trust is embezzlement.

244. Flores was then engaged by Hurtado to send Martinez a demand letter for the $4,000. During the course of that representation, Hurtado provided Flores with a communication between himself and Martinez.

245. On August 2, 2018, Martinez wrote Hurtado:

> As you are aware of, I am an owner of 10% of that CUP [at the Property]. And regardless of the outcome [of *Cotton I*] and who the CUP gets approved under. We had many discussions where you agreed to have your new investors honor my 10% ownership.

246. Martinez is under the false impression that because she found the Property for Geraci, and Cotton never submitted a cannabis application at the Property for her to lobby for, she is still somehow owed a 10% equity position in the Business irrespective of who acquires it.

247. Flores and Martinez emailed and spoke numerous times, Martinez promised to pay back the $4,000, but she never did.

H. Quintin Shamman

248. Quintin Shammam is an attorney that works in the cannabis sector and is an agent of the Enterprise.

249. Shamman knows that successful illegal marijuana dispensaries can make over $100,000 a day at or greater than 50% profit margins. Further, that unlicensed dispensaries pay the property owners at which they operate rent that is multiples of the market rate. Also, that the dispensary owners indemnify the property owners against the fines and costs required to keep unlicensed dispensaries open via litigation.[17]

250. On or about May 29, 2018, the Voice of San Diego published an article titled "Liquor Store Owners Are Getting Into the Pot Game" by Jesse Marx. The article

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[17] *See, e.g.*, Kinsee Morlan, *Illegal Pot Shops Are Opening Faster Than San Diego County Can Shut Them Down*, Voice of San Diego (Jan. 24, 2018) https://www.voiceofsandiego.org/topics/government/county-cant-enforce-pot-dispensary-ban/

discusses the overlap between members of the Neighborhood Market Association (the "NMA") and the operations of illegal marijuana dispensaries at real properties owned by or associated with members of the NMA.

251. Notably, the article discusses and quotes Shammam as follows:

> Attorney Quintin Shammam, who has represented several landlords in illegal marijuana dispensary cases, said his clients weren't checking their sites as often as the city would have liked and that left them vulnerable. His clients would never have entered the illegal marijuana marketplace willingly, he argued, because they need to be on the good side of city regulators long-term. Damaging that relationship, he said, would not be worth "***a little extra rent***."

252. Shammam's defense of property owners is a knowing and false representation of the true economics and dynamics between property owners and unlicensed dispensaries.

253. Currently, Shamman is a proxy for the true and undisclosed owner in an application for a cannabis CUP in the City of La Mesa and is represented by McElfresh.

I. McElfresh

254. In addition to the other relationships set forth herein, McElfresh has represented Razuki in numerous legal actions.[18] On August 23, 2018, the Voice of San Diego published an article regarding various problems at a Lincoln Park strip mall owned by Razuki and managed by Malan. The article describes Razuki being charged in a 25-count complaint relating to his maintenance of the property in question and various other legal matters and quotes McElfresh as Razuki's attorney.

255. McElfresh has numerous shared clients with Mrs. Austin. On or about August 10, 2017, while a criminal case against McElfresh was pending (described below), Mrs. Austin was quoted in various San Diego news publications saying "[w]e have several

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18 *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/

clients who may also be in the files that were seized by the DA [in the case against McElfresh]."[19]

256. McElfresh has had two cannabis licenses issued in her name. The first on December 27, 2018 (license no. C11-0000491-LIC) and the second on June 25, 2019 (license no. C11-18-0000767-TEM).

257. As of March 30, 2020, the first is "inactive" and the second was "canceled."

258. Plaintiffs believe and allege that discovery will provide evidence that McElfresh acted as a proxy and acquired those licenses for the true and undisclosed owners. And, they were transferred and/or canceled in anticipation of this litigation naming McElfresh.

J. The Original Litigation Investors and the Crowd Source Investors

259. There have been various litigation matters regarding the Property that have been ongoing since March 2017. It has completely exhausted the personal finances of Cotton, his original litigation investors (the "Original Litigation Investors") who, with the exception of Jane Doe ("Jane"), memorialized their agreements in a Secured Litigation Financing Agreement (the "SLFA"). These matters have also exhausted the resources of numerous blue-collar, private parties who Cotton "crowd sourced" for capital promising them high rates of return when he prevails in his legal actions (the "Crowd Source Investors").

260. The Crowd Source Investors are made up primarily of blue-collar individuals who have been working with Cotton's 151 Farms nonprofit that operates at the Property. They include veterans who have physical disabilities and PTSD, patients undergoing chemotherapy and radiation treatments for cancer, individuals suffering from AIDS and

[19] *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/

ALS,[20] families with children who suffer from epilepsy, and lifelong political activists for the legalization of medical cannabis.

261. While the Crowd Source Investors are not attorneys, they all supported Cotton because they understand that it is not legal for Geraci to send the Confirmation Email (*i.e.*, sign a document) and over a year later in litigation claim to have not read the Request for Confirmation before sending the Confirmation Email.

262. Most have been provided with or had the *Stewart* case explained by Cotton. In *Stewart*, "[Stewart] asserted that he did not read the settlement agreement before signing it" and appealed the grant of a motion for summary judgment against him. *Stewart v. Preston Pipeline Inc.* (2005), 134 Cal.App.4th 1565, 1586-87. "[Stewart] claimed that (1) there was no mutual consent and (2) there was a triable issue of material fact as to whether he was entitled to rescind the agreement due to unilateral mistake." *Id*. The California Court of Appeal found that "[n]either claim has merit." Id. The *Stewart* court explained:

> "'It is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of its terms on the ground that he failed to read the instrument before signing it.' [Citations.[21]]
>
> [Stewart] has cited no California cases (and we are aware of none) that stand for the ***extreme proposition*** that a party who fails to read a contract but nonetheless objectively manifests his assent by signing it — absent fraud or

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[20] *See, e.g., Cotton v. Geraci, et al.* ("*COTTON III*") 18CV0325 GPC MDD, ECF No. 1, Exhibit 15.4 (Declarations of Kevin McShane, Charles "Sonny" Findlay, Don Casey (Former NBA Basketball Coach) and Sean Major (Former Sgt. USMC) in support of Cotton's Federal Complaint).

[21] "As [the United States Supreme Court] explained many years ago: 'It will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written. But such is not the law. A [party] ***must*** stand by the words of his contract; and, if he will not read what he signs, he alone is responsible for his omission.' (*Upton v. Tribilcock* (1875) 91 U.S. 45, 50.)" *Stewart* at 1589 n. 30 (emphasis added).

> knowledge by the other contracting party of the alleged mistake — may later rescind the agreement on the basis that he did not agree to its terms. To the contrary, California authorities demonstrate that a contracting party is not entitled to relief from his or her alleged unilateral mistake under such circumstances. [Citations.]

Stewart, 134 Cal.App.4th at 1588-89 (emphasis added).

263. As detailed below, the Crow Source Investors understand that Geraci/F&B do not argue fraud, overreaching, or excusable neglect. Geraci argues the same "extreme proposition" that Stewart did, that he should not be bound because he allegedly did not read the entire Request for Confirmation before sending the Confirmation Email. As in *Stewart*, Geraci's claim should have fared no better.

264. Unfortunately, the basic principles articulated in *Stewart* has led multiple parties, including multiple attorneys from different law firms, to believe that Judge Wohlfeil is corrupt because they believe it is impossible for a judge to not understand this basic concept (*i.e.*, the Mutual Assent Issue) or that Plaintiffs' Opposition Theory is possible.

265. As of the filing of this Complaint, some of the Crowd Source Investors are contemplating taking violent action against some of the defendant attorneys who have actively taken steps to defraud them, most probably Mrs. Austin, McElfresh, Weinstein, Toothacre, Demian and Witt.

K. The Enterprise, the Enterprise's Agents

266. The principals of the Enterprise include (i) Geraci, (ii) Malan, (iii) Razuki, (iv) Magagna, and (v) Harcourt (the "Principals").

267. The agents of the Enterprise include (i) Berry, (ii) Mrs. Austin, (iii) F&B, (iv) FTB, (v) McElfresh, (vi) Nguyen, (vii) Bartell, (viii) Schweitzer, (viii) Crosby, (ix) Shapiro, (x) Miller, (xi) Stellmacher, (xii) Alexander, (xiii) Tirandazi, (xiv) Cline, (xv) the Getaway Driver (defined below), and (xvi) Martinez (the "Agents").

268. Mrs. Austin has represented Geraci, Berry, Razuki, Malan, Magagna, Quintin George Shamman, Keith Henderson, Chris Williams and Craig Rofhok in applications for cannabis CUPs.

269. Mrs. Austin, McElfresh, Shapiro, and Shamman, attorneys, have worked together on multiple cannabis applications in which they knew that the true owners were not disclosed.

270. Even if only via negligence, there are at least two City attorneys who have aided the Enterprise's Antitrust Conspiracy because they were parties to litigation that should have been dispositively resolved in favor of Cotton by, *inter alia*, the Mutual Assent Issue and they failed to inform the court: Will and Phelps.

PART III - MATERIAL LITIGATION

I. THE PAROL EVIDENCE RULE AND *RIVERISLAND*

271. As a general legal matter, once parties reach and reduce their agreement to a written contract, the written contract becomes the agreement. The parol evidence rule can be a complicated legal theory, but in essence it protects the agreement reached by parties to a contract and prevents them from later saying they agreed to something else than what is in the contract. "A short and vernacular explanation of the parol evidence rule would be that a party to a written contract cannot be permitted to urge that a contract means something which its written terms simply cannot mean." *Ri-Joyce, Inc. v. New Motor Vehicle Bd.*, 2 Cal.App.4th 445, 452 (Cal. Ct. App. 1992).

272. However, there are exceptions to the parol evidence rule to introduce evidence – called extrinsic or parol evidence – to urge an interpretation that conflicts with the terms of a writing or contract. As material here, one of the exceptions is to prove fraud.

273. The fraud exception is generally justified in three ways. First, if fraud is present, there cannot be mutual assent between the parties so there can be no valid, legal contract and the parol evidence rule does not apply. Second, from an individual and practical perspective, it is unlikely a party would allow evidence of his fraud to appear on the face of the written document. Thus, the exception allows extrinsic evidence to prove fraud because it is unlikely to be found on the face of the alleged contract. Third, from a public policy perspective, parol evidence of fraud is allowed because otherwise parties would be able to engage in fraudulent transactions without fear of being held to account

by the judicial system even if sued.

274. In 1935, the California Supreme Court in *Pendergrass* limited the fraud exception to the parol evidence rule by barring parol evidence if offered to prove an oral promise "directly at variance with the promise of the writing." *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258, 263.

275. At the time, it seemed like a good idea that if someone signed something, they should not be allowed later to argue that they were promised something that directly contradicted what they signed. Essentially, it was a "tough luck" line of reasoning - parties should not sign something if they do not know what they are signing.

276. In 2013, however, the California Supreme Court's unanimous decision in *Riverisland* overruled *Pendergrass* and declared that the parol evidence rule does not bar extrinsic/parol evidence to prove an oral agreement even if it directly contradicts the terms of an alleged contract. *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169, 1182 ("[W]e overrule *Pendergrass* and its progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch* [(1928) 204 Cal. 342, 347]: '***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.***'") (emphasis added).

277. As described in the *Riverisland* decision, "Oral promises made without the promisor's intention that they will be performed could be an effective means of deception if evidence of those fraudulent promises were never admissible merely because they were at variance with a subsequent written agreement." *Id*. at 1177 (citation and quotation omitted).

278. In other words, "*Pendergrass* provided drafting parties a loophole to make misrepresentations and then disclaim them later in writing.[22]" Michelle P. LaRocca, *Note – Reflections on Riverisland: Reconsideration of the Fraud Exception to the Parol*

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[22] Footnote citing Alicia W. Macklin, Note, *The Fraud Exception to the Parol Evidence Rule: Necessary Protection for Fraud Victims or Loophole for Clever Parties?*, 82 S. Cal. L. Rev. 809, 810 (2009).

Evidence Rule ("*Riverisland Note*"), 65 Hastings L.J. 581, 583 (2014).

279. The *Riverisland Note* describes an example of fraud allowed under *Pendergrass*: "the drafter asks the non-drafter to sign what the drafter says is a receipt for items delivered, but is actually a contract for the sale of more items." *Id*. at 592 (emphasis added).

280. In sum, in California from 1935 to 2013 – for over 75 years – Machiavellian attorneys could counsel their unethical clients to defraud unsophisticated parties by making an oral agreement they did not intend to keep and having them sign a receipt that was drafted to look like a purchase contract that contradicted the oral agreement reached. This type of fraud was de facto lawful because "under *Pendergrass*, external evidence of promises inconsistent with the express terms of a written contract were not admissible, even to establish fraud." *IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 (emphasis added).

II. THE SAN DIEGO MUNICIPAL CODE AND *ENGEBRETSEN*

281. Rick Engebretsen was a property owner, like Cotton, who reached an agreement with a third party to apply for a cannabis CUP at his real property.

282. In *Engebretsen v. City of San* Diego, Engebretsen sought a writ of mandate to compel the City to recognize him as the sole applicant for a CUP to operate a dispensary on his real property and process the application accordingly.[23] Engebretsen alleged he was the sole record owner and interest holder of the real property throughout the application process. Although real party in interest Radoslav Kalla was listed as the applicant for the CUP (the "Kalla Application"), Engebretsen alleged that Kalla was acting on Engebretsen's behalf as an agent, Kalla never had an independent legal right to use Engebretsen's real property, and Engebretsen had since revoked Kalla's agency, requiring the City to transfer the application to Engebretsen.

283. In April 2015, the City informed Engebretsen that it recognized Kalla as the financially responsible party for the Kalla Application, against Engebretsen's wishes.

[23] Superior Court of San Diego County, Case No. 37-2015-00017734-CU-WM-CTL.

Also, the City would not accept Engebretsen as the financially responsible party for the Kalla Application without Kalla's signature. Later that month, the City's hearing officer approved the Kalla Application for issuance of a CUP to operate a dispensary, with Kalla listed as the applicant and prospective CUP holder.

284. In May 2015, David Demian and Adam Witt of FTB filed a verified petition for a writ of mandate on behalf of Engerbretsen directing the City to: (1) recognize Engebretsen as the sole applicant on the Kalla Application and (2) process the Kalla Application with Engebretsen as the sole applicant.

285. The City filed a statement of nonopposition. The trial court granted the writ.

286. On appeal, as material here as it informed Cotton's decision to hire FTB and which they touted as reflective of their legal competence, the court found:

> Engebretsen showed that the City must process and issue applications for [CUPs] consistent with relevant laws and procedures. [Citations.] The City's ordinances provide that the persons "deemed to have the authority to file an application [are]: [¶] (1) The *record owner* of the real property that is the subject of the permit, map, or other matter; [¶] (2) The property owner's authorized agent; or [¶] (3) Any other person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application." (SDMC, §§ 112.0102, subd. (a), 113.0103 [defining *applicant*].) The City's ordinances thus ensure that [CUPs] will only be granted to individuals having the right to use the property in the manner for which the permit is sought. (SDMC, §§ 112.0102, subd. (a), 113.0103; [Citations.] **Any other interpretation would raise serious <u>constitutional</u> questions concerning property rights.** [Citations.]
>
> Engebretsen demonstrated he was the only person who possessed the right to use [his real property], Kalla never independently possessed such a right, Kalla was acting for Engebretsen's benefit in completing the [Kalla Application] (Civ. Code, § 2330), and Engebretsen had terminated Kalla's agency. **Under the circumstances, the City had a ministerial duty to process the CUP application for Engebretsen, the [p]roperty owner**.

Engebretsen v. City of San Diego, No. D068438, 2016 Cal. App. Unpub. LEXIS 8548 (Nov. 30, 2016) (emphasis added).

287. The Engebretsen decision by the Court of Appeals was filed on or around November 30, 2016. As of such date, because of *Engebretsen*, the City had actual and constructive knowledge of what its nondiscretionary duties were under the SDMC to property owners in similar situations as Engebretsen (the "Engerbretsen Mandate").

288. On or about May 15, 2017, when Tirandazi told Cotton that she could not cancel or transfer the Berry Application because Cotton was not the "Financially Responsible Party," she knew she was violating the Engerbretsen Mandate.

III. McElfresh and MedWest

289. Attorney defendant Jessica McElfresh was or is counsel for Med West Distribution, LLC ("Med West").

290. In May 2017, the San Diego County District Attorney's office filed charges against the owner of Med West, James Slatic, four of Med West's employees, and McElfresh arising from the alleged illegal production of concentrated cannabis oil.

291. McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime, Manufacturing of a Controlled Substance, and Obstruction of Justice for her efforts to conceal Med West's manufacturing operations from government inspectors.[24]

292. Materially, the complaint against her alleged that:

> On December 24, 2015, [McElfresh] emailed JAMES SLATIC about [an] inspection that occurred on April 28, 2015. McElfresh told Slatic that the inspectors "were clearly suspicious." McElfresh continued to say "I had to keep a very, very close eye on the retired SDPD investigator… Gary Jaus…. He's a very smart man, and I had to walk a very fine line between being very nice and trying too hard to keep him focused on me." McElfresh continued to say "I didn't flirt (wouldn't have worked), but I just kept focusing on the papers…. I'm convinced they walked away knowing it wasn't a dispensary in the typical sense… but it probably seemed like something other than just paper. That just wasn't what they were under mandate to look for, and hey, we did a very good job." McElfresh continued to say "they've been there once and went away, operating under the theory that no actual marijuana is there. We did a really, really good job giving them plausible deniability – and it was

[24] *People v. McElfresh*, San Diego Superior Court No. CD272111.

clear to them it wasn't a dispensary. But, I think they suspected it was something else more than paper."

293. In November 2017, Slatic and the four Med West employees pleaded guilty to two misdemeanor charges: (1) delaying/obstructing a police officer; and (2) the illegal possession of marijuana for sale.

294. On July 23, 2018, McElfresh entered into a Deferred Prosecution Agreement (the "DPA") that would allow her to plead guilty in twelve months to an infraction (the equivalent of a speeding ticket) as follows: "On April 28, 2015 [McElfresh] knowingly facilitated the use of a premises without a required permit, in violation of San Diego Municipal Code § 121.0302(a), to wit: an unpermitted marijuana manufacturing and distribution operation by Med West Distribution, LLC."[25]

295. McElfresh's case was prosecuted by Deputy District Attorney Jorge Del Portillo. As described by Portillo in a court filing: "In that email, [McElfresh] essentially admitted she orchestrated a charade for city inspectors."

296. Pursuant to the DPA, for a period of 12 months, McElfresh was prohibited from violating any other laws (with the exception of traffic tickets) until July 23, 2019 or face resumption of all charges filed against her.

IV. THE GERACI ILLEGAL MARIJUANA DISPENSARIES AND JUDGMENTS

297. Prior to his involvement with the Property, Geraci was sued by the City for his involvement in three illegal marijuana dispensaries (the "Illegal Marijuana Dispensaries").[26] Geraci settled all three cases, collectively paying fines in the amount of $100,000 (the "Geraci Judgments").

298. Geraci did not "coincidentally" lease three real properties to the Illegal Marijuana Dispensaries; he was an operator and beneficial owner.

PART IV – CANNABIS CUP APPLICATIONS

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[25] *Id.* filed July 23, 2018.

[26] *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).

I. THE BALBOA CUP

299. In or around April 2013, Biker initiated the process of obtaining a cannabis CUP with the City at 8863 Balboa Avenue, Unit E, San Diego, California 92123 ("8863 Balboa").

300. Biker's partner in this business endeavor was Harcourt.

301. On or around July 9, 2015, the City's Planning Commission approved a cannabis CUP at 8863 Balboa in Biker's name (the "Balboa CUP").

302. On December 3, 2015, Biker passed away.

303. Razuki is the current owner of the Balboa CUP.

304. *Harcourt v. Razuki ("Razuki I")*.[27] On June 6, 2017, San Diego Patients Cooperative Corporation, Inc. ("SDPCC") and Harcourt filed a lawsuit against, *inter alia*, Razuki, Malan, and Henderson alleging they had successfully conspired to defraud them of the Balboa CUP.

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

306. The *Razuki I* complaint sets forth the following material allegations:

> After [Mr. Sherlock] passed away in or around December 2015, HARCOURT submitted documentation to the City of San Diego in order to remove Mr. Sherlock as the MMCC's responsible person, and HARCOURT then finalized the recording of the CUP with the City of San Diego under SDPCC. Moreover, HARCOURT identified himself as the MMCC's responsible person.
>
> As a result of the nearly three (3) year process to obtain, secure, and record CUP No. 1296130 with the City of San Diego, Plaintiffs incurred costs and expenses in the amount of approximately $575,000.00.
>
> On or around August 31, 2016, Defendants RAZUKI and RAZUKI INVESTMENTS, through their agent HENDERSON, prepared a written draft

[27] *San Diego Patients Cooperative Corporation, Inc v. Razuki Investments, LLC*, San Diego Superior Court Case No. 37-2017-00020661-CU-CO-CTL.

> joint venture agreement outlining the basic terms of the joint venture and/or partnership, and provided it to HARCOURT.
>
> In or around September 30, 2016, Defendants RAZUKI and RAZUKI INVESTMENTS made a payment of $50,000.00 to HARCOURT as a show of good faith in moving forward with the joint venture and/or partnership.
>
> On or around October 18, 2016, the grant deed reflecting the transfer of the [real property (at which the Balboa CUP was issued)] to Defendant RAZUKI INVESTMENTS LLC was recorded with the San Diego County Recorder.
>
> On information and belief, following the [purchase of the real property by Razuki], Defendants RAZUKI and RAZUKI INVESTMENTS directed, authorized and/or ratified a representative and/or agent to take the following actions without the knowledge or consent of Plaintiffs: (i) contact the San Diego Development Services Department; (ii) falsely claim that the representative and/or agent represented Defendants RAZUKI and RAZUKI INVESTMENTS and Plaintiff SDPCC; and (iii) request that the cooperative identified on the city permit be changed to BALBOA AVE and that the responsible person name be changed to NINUS MALAN. On information and belief, the city [CUP] was then modified to indicate that BALBOA AVE was affiliated with the MMCC at the Property.
>
> Moreover, despite the parties' agreements, as well as the various representations made by Defendants RAZUKI and RAZUKI INVESTMENTS, RAZUKI and RAZUKI INVESTMENTS: (i) failed to comply with the terms of the Lease; (ii) failed to execute a joint venture and/or partnership agreement, operating agreement, and/or promissory note concerning the MMCC; (iii) **falsely misrepresented to third parties that their $800,000.00 purchase of the Property included the rights to operate an MMCC on the Property**; and (iv) interfered with Plaintiff SDPCC's rights concerning the Property and CUP.

307. Materially summarized, Razuki and Harcourt reached an oral joint venture agreement that was to be reduced to writing. Razuki provided a $50,000 "good faith" payment while the parties were negotiating the joint venture agreement. 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. The City then transferred the Balboa CUP to Razuki. Thereafter, Razuki represented that $800,000 was the value of the real property, <u>inclusive</u> of a dispensary CUP.

308. *Razuki v. Malan* ("*Razuki II*").[28] On July 10, 2018, Razuki initiated a civil lawsuit against his business partner Malan regarding ownership of multiple real estate properties and marijuana businesses after they had a falling out.

309. But-for *Razuki II*, it would not be public knowledge that Razuki held an interest in the cannabis businesses that are the subject of *Razuki II*, as his ownership interests were not disclosed during the application process.[29]

310. Razuki directly admitted in a sworn declaration submitted in *Razuki II* that the reason he was not disclosed, and used Malan as a proxy, was because he had been sanctioned for operating illegal dispensaries.[30]

311. The *Razuki II* action also revealed that the Dream Team knowingly helped Razuki acquire interests in cannabis CUPs from the City without disclosing his ownership interest, exactly as they did with Geraci in the Berry Application.

312. On July 17, 2018, Judge Sturgeon appointed a receiver, Michael Essary, to manage the marijuana related assets that were subject of the dispute. (*Razuki II*, ROA 20.)

313. On September 4, 2018, Mrs. Austin executed a declaration in support of

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[28] *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL.

[29] *See id.* at ROA 1 at 5:15-6:1 ("The oral agreement between Razuki and Malan was simple: Razuki would provide the initial investment to purchase the property and Malan would manage the property (*e.g.* ensure upkeep and acquire tenants). After Razuki was paid back for his initial investment, Razuki would receive seventy-five percent (75%) of any profits while Malan would receive twenty-five percent (25%) of any profits…. However, on paper, Malan owned one hundred percent (100%)…").

[30] *Id.* at ROA 79 6:1-8 ("Pursuant to the settlement agreement, I was enjoined from '[k]eeping, maintaining, operating, or allowing the operation of any 'unpermitted use' at any property in the City of San Diego. Additionally, I was enjoined from '[k]eeping or maintaining any violations of the San Diego Municipal Code at ... any other property in the City of San Diego.' […] Because of this settlement agreement, I was concerned with having my name on any title associated with a marijuana operation. This is why Malan would put his name on title for the LLCs related to our marijuana operations. I always assumed he would honor the oral agreement and Settlement Agreement that would entitle me to 75% ownership of all the Partnership Assets.").

Malan's request seeking to terminate the court appointed receiver. In the declaration, Mrs. Austin argued "[t]here is no need for Mr. Essary to manage or control any part of the state application process… So long as Ninus Malan and Balboa Ave Cooperative are the identified 'owners' and applicants for the state licensing for the Balboa Dispensary there is no need to change any information at the state level. However, if a consultant is needed, I am willing to provide the necessary assistance…. If Mr. Essary remains the receiver, he would be deemed an 'owner' of the Balboa Dispensary and an additional application would need to be filed pursuant to Section 5024(c) of Title 16 Division 42 of the California Code of Regulations." (*Razuki II*, ROA 127.)

314. On or about September 7, 2018, Judge Sturgeon denied Mrs. Austin's request to terminate the receiver.

315. On May 17, 2019, Mr. Essary submitted an ex parte application seeking the termination of the operator at one of the cannabis businesses put in receivership. The application and the supporting evidence detail "***extensive illegal black-market cannabis operations***" by Jerry Baca, Bobby Sanz, Chris Hakim and Malan. (*Razuki II*, ROA 699 at 2:14-17 (emphasis added).)

316. In other words, a cannabis business operating pursuant to a CUP acquired by Mrs. Austin for Malan, the acquisition of which was funded by Razuki, is being used as a front for illegal operations as found by a third-party court appointed receiver. A receiver that Mrs. Austin opposed, sought to have terminated, and offered to personally replace.

317. *US. v. Razuki ("Razuki III")*.[31] On or around November 15-16, 2018, the FBI arrested Razuki, Sylvia Gonzalez and Elizabeth Juarez for conspiring to kidnap and kill Malan because of *Razuki II*. The value of the assets that are the subject of *Razuki II* are estimated to be approximately $40,000,000.[32]

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[31] *US. v. Salam Razuki*, No. 18MJ5915 (S.D. Cal. Nov. 19, 2018).

[32] *Id*. at ROA 1 at 3:14-16 ("Gonzalez said the civil dispute between her, Razuki, and N. M. was over $44 million dollars."); *Id*. at 7:17-21 ("During his interview, Razuki admitted the existence of the ongoing civil lawsuit… involving approximately $40 million.").

318. *Malan v. Razuki* ("*Razuki IV*").[33] On August 7, 2019, Malan filed suit against, *inter alia*, Razuki, Gonzales, and Juarez for, *inter alia*, (i) interference with the exercise of his civil rights to engage in civil litigation (*i.e.*, *Razuki II*) and (ii) intentional infliction of emotional distress related to their conspiracy to have him kidnapped and murdered.

II. THE RAMONA CUP

319. On or about January 13, 2015, Biker and Renny Bowden applied for a San Diego County Sheriff's Department Medical Marijuana Collective Operations Certificate ("Operations Certificate") at 1210 Olive Street, Ramona, CA 92065 ("1210 Olive").

320. Schweitzer worked on the application for the Operations Certificate.

321. Plaintiffs believe and thereon allege that Mrs. Austin and Bartell also worked on or lobbied for the Operations Certificate application.

322. On or about January 16, 2015, the Sherriff's Department approved the application.

323. On or about May 24, 2017, Bowden and Harcourt sought and were granted an annual renewal for the Operations Certificate at 1210 Olive.

324. As of March 16, 2020, the BCC website lists Alexander as the owner of the state license pursuant to which the dispensary at 1210 Olive is operating.

325. Alexander, as more fully described below, threatened Cotton on behalf of Geraci to settle *Cotton I*.

III. THE NATIONAL CUP

326. Alan Austin of Austin and Associates (an architecture firm) and Mrs. Austin (they are husband and wife) represented Magagna in an application with the City for a Marijuana Production Facility ("MPF") at 3279 National Ave., San Diego CA 92113 ("3279 National" and the "National MPF Application").

327. Alan Austin paid DSD Invoice No. 812579 in the amount of $8,566.00 as part of the National MPF Application.

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[33] *Malan v. Razuki, et. al.*, San Diego Superior Court, Case No. 37-2019-00041260-CU-PO-CTL.

328. On or about February 26, 2018, the National MPF Application was accepted by DSD with Magagna being listed as the proposed CUP holder.

329. On or about March 19, 2018, the National MPF Application was reviewed by Mr. Tyler Sherer of DSD's LDR-Planning Group. He analyzed and provided a report regarding the distances from the proposed National MPF and residential zones, schools, and churches and found that the National MPF location could not meet the minimum distance requirements and he recommended the project be denied.

330. On or about February 12, 2019, Tirandazi issued a report to the City's Hearing Officer for the National MPF Application recommending it be approved along with three deviations because 3279 National is 760 feet from a church (Iglesia Puerto Seguro Church), 800 feet from an elementary school (Rodriguez Elementary School), and 15 feet from a residential zoned area.

331. On or about February 20, 2019, the City approved the National MPF Application.

IV. THE BERRY APPLICATION

332. In or around mid-2016, Geraci first contacted Cotton because the Property "may qualify for a dispensary."

333. Both Geraci and Berry testified that on October 31, 2016, Geraci had Berry file for a dispensary CUP at the Property (*i.e.*, the Berry Application).

334. Geraci is not disclosed in the Berry Application.

335. Both Geraci and Berry testified that Berry's failure to disclose Geraci in the Berry Application was purposeful; he was not disclosed because he was an Enrolled Agent with the IRS (*i.e.*, the Berry Fraud).

336. The Berry Application included four forms that contained material representations by Berry.

337. First, in Form DS-3032 (General Application)), Berry certified that (a) she is the "Lessee or Tenant" of the Property, (b) that she is the "Permit Holder," and (c) that she "understand[s] [she] is responsible for knowing and complying

with the governing policies and regulations applicable to [a dispensary]." Section 7 of DS-3032 required the Berry disclose any "Notice of Violation," which is defined to includes a Geraci Judgments.

338. Second, in Form DS-190 (Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit), Berry declared that she (a) is the "Owner" of the Property, (b) the "Business Owner," and (c) is aware a dispensary is subject to the SDMC's dispensary requirements.

339. Third, in Form DS-3242 (Deposit Account / Financially Responsible Party), Berry stated she is the "financially responsible party" for the dispensary and the "President" of the entity seeking the cannabis CUP.

340. Fourth, in Form DS-318 (Ownership Disclosure Statement), Berry stated she was a "tenant/lessee" of the Property. Form DS-318 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)." (Emphasis added.)

341. Pursuant to Evidence Code Section 452(d)(1), Plaintiffs request that the Court take judicial notice of the four DSD forms in the preceding four paragraphs (the "Berry Forms") that were submitted into evidence at trial in *Cotton I* as exhibit 34.

342. The Berry Application was submitted pre-AUMA and sought a medical cannabis CUP from the City and was subject to BPC § 19323.

343. After the passage of AUMA, the Berry Application was switched to a recreational cannabis CUP application and was subject to BPC §26057.

V. THE MAGAGNA APPLICATION

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

345. Magagna is not an engineer, architect or building-designer.

346. Shapiro is Magagna's attorney for the Magagna Application and incorporated A-M Industries, the named entity in the Magagna Application.

347. Shapiro told Jacob that Magagna personally prepared and submitted the Magagna Application himself including the architectural drawings.

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

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

350. Either Alan Austin or Schweitzer helped Magagna prepare the architectural designs for the Magagna Application.

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

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

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

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

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

356. As of March 17, 2020, Gonzales is <u>again</u> shown on the City's website as representing Techne and being an "agent" of Magagna for the Magagna Application.

357. The changing back of Gonzales to an "agent," after he had been changed to

a "concerned citizen," is evidence of the collusion between Geraci/F&B and the City and is representative of F&B's dynamism in fabricating evidence and obfuscating the truth throughout *Cotton I* in preparation for this litigation.

VI. THE LA MESA CUP

358. There are two competing applications for a cannabis CUP in the City of La Mesa (the "La Mesa CUP").

359. On or about May 23, 2017, Mrs. Austin submitted a cannabis application for Shamman (the "Shamman Application").

360. Shamman is a proxy for the true and undisclosed owner.

361. On or about August 23, 2017, McElfresh submitted a competing application for Evergreen, LLC (the "Evergreen Application").

362. The property owner on which the Evergreen Application was submitted is represented by Shapiro.

363. The Evergreen Application team included McElfresh, Bartell and Schweitzer.

364. On or about March 4, 2019, in anticipation of the Evergreen Application approval, Mrs. Austin filed a writ of mandate seeking to have the Shamman Application heard first and to delay the final hearing on the Evergreen Application (the "Evergreen Writ").[34]

365. The Evergreen Writ is before Judge Wohlfeil.

366. On or about March 6, 2019, the Evergreen Application was approved.

367. For the reasons set forth herein, Flores believes that at the conclusion of the Evergreen Writ litigation, the La Mesa CUP will ultimately go to Shamman for the Enterprise. The basis for such will appear to be a good faith mistake or error by McElfresh, Bartell or Schweitzer.

368. A review of the record reveals that Judge Wohlfeil's Fixed-Opinion of Mrs.

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[34] *La Mesa Alternative Health Inc. v. City of La Mesa*, San Diego Superior Court Case No. 37-2019-00011634-CU-WM-CTL.

Austin is manifesting itself in the Evergreen Writ action.

369. On or about December 31, 2019, Evergreen filed a motion seeking a protective order quashing several deposition notices and other discovery requests. In opposition, Mrs. Austin made several motions.

370. On January 24, 2020, Judge Wohlfeil denied all of Evergreen's motions, granted all of Mrs. Austin's motions, and the totality of the reasoning set forth by Judge Wohlfeil in his Minute Order is "for the reasons set forth in [Mrs. Austin's] opposing papers." *Evergreen Writ*, ROA 218.

PART V – LITIGATION RELATED TO THE PROPERTY

I. THE *CITY I-III* ACTIONS

371. *City I*.[35] In or around July 2015, Cotton leased a suite at the Property to an MMCC called PureMeds. Cotton believed PureMeds could lawfully operate at the Property as an MMCC.

372. On or about February 18, 2016, the City filed the *City I* complaint seeking injunctive and other relief to enjoin the operation of PureMeds at the Property.

373. On or about February 24, 2016, the City filed an ex parte application for a TRO against Cotton seeking to enjoin the operation of PureMeds at the Property.

374. On or about March 3, 2016, the City's request for a TRO was denied because the court found that Cotton was not the owner/operator of PureMeds, and Cotton had reason to believe that a dispensary could lawfully operate at the Property. In part, because the Property had previously been zoned to allow for the operations of a dispensary and the City had changed the zoning of the Property without providing notice of the change to Cotton.

375. However, the court required, and Cotton agreed, to cooperate with the City to identify the owner of PureMeds.

376. The City never contacted Cotton to identify the owner of PureMeds.

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[35] *City of San Diego v. Cotton*, San Diego Superior Court Case No. 37-2016-00005526-CU-MC-CT ("*City I*").

377. *City II*.[36] Instead, on or about March 30, 2016, the City applied for and was granted a search warrant, based on an unidentified complainant, to locate marijuana and related paraphernalia at the Property.

378. On April 6, 2016, the San Diego Police Department Special Task Force effectuated the March 30, 2016 search warrant at the Property.

379. Thereafter, the *Office of the District Attorney* informed and provided Cotton a "rejection letter" stating they would not be filing charges against him with regard to the raid on the Property. Notably, it specifically reflects that the case was not referred to the *City Attorney's Office* for further prosecution.

380. In or around mid-April 2016, Audish took Cotton to see attorney Shamman because he wanted Cotton to allow him to reopen PureMeds at the Property. Shamman explained to Cotton that he could ensure that PureMeds stayed open at the Property through various legal maneuvers with no liability for Cotton for at least six months. Shamman described his actions as normal for the cannabis industry and something he did for his other clients constantly. Shamman described how his clients' unlicensed cannabis dispensaries would be shut down and be reopened within days under different names and nonprofit entities.

381. Audish offered to pay double the rent to Cotton if he allowed him to reopen PureMeds at the Property.

382. Cotton refused Shammam's and Audish's proposal.

383. PureMeds did not reopen.

384. On March 15, 2017, after Cotton demanded the JVA be reduced to writing reflecting Geraci's ownership of a cannabis CUP and two weeks before the statute of limitations ran, the *City Attorney's Office* filed the *City II* complaint charging Cotton and Audish with various Health & Safety Code ("H&S") and SDMC violations based on the execution of the April 6, 2016 search warrant.

385. It is unclear what the catalyst was for the City's Attorney Office to prosecute

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[36] *People v. Audish, Cotton*, San Diego Superior Court Case No. M230071 ("*City II*").

Cotton after the Office of the District Attorney's had initially rejected prosecuting Cotton and had not referred the matter to the City's Attorney Office in the first place.

386. Cotton believes that it was the Geraci's influence with the City.

387. Plaintiffs believe and allege the City was motivated by the City Conspiracy.

388. The investigative report by the San Diego Police Department regarding the raid is designated as Incident # 16-040009011 (the "SDPD Report"). The SDPD Report confirms or concludes the following:

(i) The owner of PureMeds is not Cotton, but his lessee, Audish;[37]

(ii) Cotton is the owner and operator of Inda-Gro, a lighting manufacturing company, that operates lawfully at the Property and was not associated with PureMeds;[38] and

(iii) James Whitfield lives at the Property "inside of a white RV parked in the middle of the [P]roperty." In the SDPD Report, the investigator interviewed Whitfield and summarized his interview, in relevant part, as follows: "I asked Whitfield where he lived. Whitfield stated he lived inside of the RV in the front lot. Based on my previous observations and Whitfield's lack of knowledge of cultivation and marijuana cooperatives, I did not believe Whitfield was intentionally growing marijuana plants as a part of a collective or as a care provider."

389. Cotton retained attorneys Dharmi Mehtra and Robert Bryson to represent him in *City II*, which was being prosecuted by Deputy City attorney Mark Skeels.

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[37] SDPD Investigator's Report #16-040009011 at 10 ("A lease found during the search identified the lease of the property as Ramiz AUDISH. Based on the lease and several follow-ups, I believe AUDISH is the business owner of Pure Meds.").

[38] *Id*. at 11-12 ("A female answered the phone and identified the business as 'IndaGro'…. I conducted a computer check of IndaGro and found the business webpage for Indagro products. The business advertised Induction Lighting Systems and offered specialized lighting systems for a range, of $480.00 to $1435.00 for their products. The page does not advertise the growth of any marijuana plants nor does it make any mention of the use specifically for marijuana plants. The CEO of the company was identified as Darryl COTTON.").

390. On April 5, 2017, at his arraignment, Cotton pled guilty to one misdemeanor count of H&S § 11366.5(a), allowing a building to be used to manufacture, store, or distribute a controlled substance.

391. The plea agreement was negotiated by Bryson and Skeels and included the following handwritten provision: "Mr. Cotton retains all legal rights pursuant to Prop. 215."

392. When Judge Rachel Cano accepted the plea agreement, she asked about the nature of the Prop. 215 provision, to which Cotton replied by informing her of his 151 Farmers nonprofit that operates at the Property.

393. In other words, the negotiations with Skeels, the plain language of the Prop. 215 provision in the plea agreement, and the discussion with Judge Cano who accepted the plea, all reflected the parties' mutual assent and understanding that Cotton would continue to own the Property at which he operates his 151 Farmers nonprofit entity.

394. *City III*.[39] On April 5, 2017, City attorney Nicole Carnahan filed the *City III* complaint initiating a civil forfeiture action against, *inter alia*, the Property pursuant to Cotton's guilty plea of H&S § 11366.5(a) in *City II*.

395. On or about April 18, 2017, the City recorded a lis pendens on the Property pursuant to *City III* (the "City Lis Pendens").

396. Skeels subsequently demanded $100,000 to expunge the City Lis Pendens.

397. Skeels alleges that he did not know that Carnahan was going to file the *City III* forfeiture action on the same day he and Cotton entered into the *City II* plea agreement.

398. It is unclear from the record why Skeels was demanding the $100,000 when Carnahan filed the *City III* complaint.

399. On or about May 9, 2017, Cotton's *City II* attorney Bryson executed a declaration provided to the City explaining that in his negotiations with Skeels they did not discuss or contemplate the forfeiture of the Property and that he had never informed

[39] *People v. $30,609.00 IN U.S. Currency and Real Property – 6176-6184 Federal Boulevard, San Diego* ("*City III*").

Cotton such was a possibility of him pleading guilty.

400. Cotton should have been made aware that the consequence of pleading guilty would be the potential forfeiture of the Property. *Brady v. United States*, 397 U.S. 742, 748 ("[W]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences.").

401. At that time the Property was under contract for a minimum consideration for Cotton in the amount of approximately $4,000,000 pursuant to the agreement with Flores' predecessor in interest (the "Martin Purchase Agreement").

402. As more fully described below, Cotton engaged FTB to represent him in, *inter alia*, *City III*. However, when FTB could not answer basic questions regarding the *City III* action, Cotton sought to engage Jacob, who focuses on criminal defense, to represent him in the *City III* matter.

403. FTB opposed Cotton's plan and recommended that FTB be allowed to engage attorney Stephen Cline, a criminal defense specialist, to act as co-counsel with FTB and negotiate with the City regarding *City III*.

404. On October 3, 2017, on the advice of FTB and Cline as being just and proper, Cotton agreed to pay $25,000 to settle *City III* with the City to expunge the City Lis Pendens.

405. Having read the *City II* and City *III* complaints and the plea agreement, it took Flores about ten minutes of legal research to understand that the City Lis Pendens was unlawfully recorded.

406. Setting aside other procedural and substantive due process arguments, pursuant to H&S § 11470(g), the Property is not subject to forfeiture as a result of Cotton's plea agreement in *City II*.

407. As of March 26, 2020, the treatise California Criminal Defense Practice § 145.01A states:

> Unlike any of the other categories of forfeitable property, real property is subject to forfeiture only if it is owned by a person who has been convicted of

> violating Health and Safety Code Section 11366, 11366.5, or 11366.6 with respect to that property. [H&S § 11470(g).[40]] Further, no real property is subject to forfeiture if it is used as a family residence or for other lawful purposes, or if it is owned by two or more persons, one of whom had no knowledge of its unlawful use. *Id*. (emphasis added).

408. In *City I*, Judge John Meyer found that Cotton did not own or operate PureMeds and Cotton had reason to believe that a dispensary could lawfully operate at the Property because he was not given notice of any change in zoning by the City.

409. In *City II*, the SDPD Report made its conclusions, supported by investigations and interviews, clear on at least three issues that bring it within the ambit of H&S § 11470(g): (i) Cotton is not the owner/operator of PureMeds; (ii) Cotton lawfully operated Inda-Gro at the Property; and (iii) Whitfield, who has no involvement with PureMeds, lives on the Property and it is his primary residence.

410. Attorneys Skeels, Carnahan, Demian and Cline knew or should have known what would take any reasonable attorney a nominal amount of time to research and understand – the Property is not subject to forfeiture pursuant to Cotton's *City II* plea agreement because of H&S § 11470(g).

411. Furthermore, the City, FTB and Cline knew that Cotton had unconditionally sold the Property to Martin on April 15, 2017 – 3 days before the City recorded the City Lis Pendens – when they demanded the $25,000 in October 2017.

412. Per his website, defendant attorney Cline permanently closed down his law practice on July1, 2018 for reasons he "will not go into."

413. As of March 29, 2020, Cline is listed on the California Bar Website as being employed by the San Diego County Public Defender's Office.

414. Based on the above, Plaintiffs believe and allege that Cline engaged in

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[40] "The real property of any property owner who is convicted of violating Section 11366, 11366.5, or 11366.6 with respect to that property. However, property which is used as a family residence or for other lawful purposes, or which is owned by two or more persons, one of whom had no knowledge of its unlawful use, ***shall not*** be subject to forfeiture." H&S § 11470(g) (emphasis added).

unethical practices and was forced to close down his practice.

415. Cline colluded with FTB and purposefully counseled Cotton to pay $25,000 to increase the financial and emotional pressure on Cotton and his supporters seeking to coerce Cotton to settle and deprive Martin of the District Four CUP.

II. COTTON I PRE-TRIAL AND COTTON II

A. Negotiations for the Property in 2016

416. In early 2016 through mid-2017, in addition to Geraci, Cotton was approached by at least 20 parties who wanted to purchase the Property, partner to develop a dispensary at the Property and/or facilitate the sale/partnership of the Property for a dispensary. As material to this complaint, the five most notable parties are clients and/or have long established relationships with the Dream Team: (i) Christopher Williams; (ii) Keith Henderson; (iii) Craig Rofhok; (iv) Corina Young; and (v) Bianca Martinez.

417. The first four are or were clients of Mrs. Austin, Bartell and/or Schweitzer. The fifth, Martinez, was an employee of Bartell and worked with Geraci directly.

418. Each personally approached Cotton at the Property on their own initiative, with the exception of Rofhok who was already acquainted with Cotton via his 151 Farms organization.

419. The initial asking price by Cotton proposed to each of them for a joint venture included the following consideration for Cotton: (i) $1,000,000, (ii) a 51% interest in the dispensary, (iii) a $50,000 non-refundable deposit, and (iv) the buyer would be responsible for all related permit acquisition and development costs for the Business (the "Asking Price").

420. Rofhok is a sophisticated businessman who owns or owned an attorney headhunting company, a legal cannabis delivery business, and has an interest in legal cannabis businesses.

421. Rofhok is, or was, an equity owner of Mankind Cannabis Dispensary, a licensed dispensary in the City.

422. In early 2017, Mankind was selling a 49% interest in Mankind for approximately $7,000,000.

423. Rofhok was marketing the sale and told Cotton and Hurtado about the sale and the price Mankind was seeking; without taking into account a premium for a controlling share, the approximate valuation for that cannabis business in the City is approximately $14,000,000.

424. Terry Nafso and Rafi Gorges are successful local businessmen who were introduced to Cotton by Rofhok, are not believed to be Mrs. Austin's clients, and who desired to purchase the Property and/or partner with Cotton. They met at the Property numerous times with Cotton with and without Rofhok. Their testimony will confirm the Asking Price.

425. Williams is a local businessman with various interests including in the cannabis industry.

426. In addition to seeking to purchase the Property himself, Williams also brought Rakesh "Rocky" Goyal, the owner of Apothekare (a licensed dispensary in the City), to the Property to negotiate with Cotton in early 2017 for the purchase of the Property in the event Geraci did not reduce the JVA to writing.

427. Williams and Goyal can both testify and confirm the Asking Price.

428. Geraci convinced Judge Wohlfeil in *Cotton I* that the value of the Property, inclusive of a cannabis CUP, is $800,000 as noted in the November Document.

B. Preliminary Draft Agreements

429. In or around mid-2016, Geraci contacted Cotton and expressed his interest to Cotton in acquiring the Property. Geraci and Cotton negotiated regarding the terms of the potential sale of the Property.

430. During their negotiations, Geraci discussed with Cotton an alleged zoning issue that would have to be resolved before a CUP application could be submitted on the Property (the "Zoning Issue").

431. Cotton, acting in good faith based upon Geraci's representations during the negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a CUP application and resolution of the alleged Zoning Issue at the Property

while the parties continued to negotiate the terms of a possible deal.

432. On or around September 24, 2016, wanting to get a final agreement in writing, Cotton drafted preliminary documents to reflect the terms that he and Geraci had been discussing at that point in time.

433. Per Geraci's professional tax advice, Cotton sought to effectuate the joint venture via two documents which Geraci said would be advantageous from a tax perspective (the "Preliminary Agreements"). One document being a purchase contract for the Property and the second being a side agreement for all other terms, including Cotton's equity ownership in the dispensary.

434. The Preliminary Agreements reflect the terms the parties were discussing as of September 26, 2016, which included a 10% equity position for Cotton in the dispensary, and which were shared with Geraci.

C. The Preparation and Submission of the Berry Application

435. On October 5, 2016, Geraci directed Schweitzer via email to replace his name on the contract between himself and Schweitzer for the preparation of the Berry Application. Geraci requested his name be substituted with Berry's name.

436. In other words, the contract for Schweitzer's services would reflect that Berry, and not Geraci, was his client.

437. Schweitzer complied and provided an updated contract for his services reflecting Berry as his client with no mention of Geraci being the actual client.

438. On October 27, 2016, Mrs. Austin replied to an email sent by Schweitzer providing drafts of documents to be submitted as part of the Berry Application, stating: "Thanks Abhay. Are you the person completing the submission package? I am under the impression it is getting submitted on Friday. I would like to review all the docs prior to submittal. PDF is fine."

439. Later the same day, Schweitzer replied: "Hi Gina, Yes that's me. I'm working to complete everything today and I'll email today once [it's] done."

440. On October 28, 2016, Mrs. Austin replied and provided comments to the

draft of the Berry Application, including "Still need… DS-318..."

441. On October 31, 2016, Geraci asked Cotton to execute Form DS-318 (Ownership Disclosure Statement), which is a required component of all CUP applications.

442. Geraci told Cotton that he needed the executed Ownership Disclosure Statement to show that he had access to the Property in connection with his lobbying efforts to resolve the Zoning Issue and his eventual preparation of a CUP application.

443. At no time did Geraci indicate to Cotton that the CUP application would be filed prior to the parties entering into a final written agreement for the sale of the Property.

444. Geraci also repeatedly maintained to Cotton that the Zoning Issue needed to be resolved before a CUP application could even be submitted to the City.

445. Additionally, the Ownership Disclosure Statement that Geraci provided to Cotton to sign incorrectly indicated that Cotton had leased the Property to Berry.

446. Cotton had never met Berry personally and never entered into a lease or any other type of agreement with her.

447. At the time, Geraci told Cotton that Berry was a trusted employee who was very familiar with dispensary operations because she helped manage his dispensaries.[41]

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[41] On November 8, 2018, Berry responded via discovery in the *Cotton I* action to the following Request for Admission as follows:

> **REQUEST FOR ADMISSION NO. 6:** Admit that you have helped manage marijuana dispensaries that have been enjoined for operating without appropriate approvals by the CITY in the last five years.
>
> **RESPONSE TO REQUEST FOR ADMISSION NO. 6:** Objection: the request is vague and ambiguous as to the phrase "helped manage" marijuana dispensaries that have been enjoined from operating without appropriate approvals." Additionally, the request is neither relevant to the subject matter of the action nor reasonably calculated to lead to the discovery of admissible evidence. (CCP§2017.101.) The request also infringes on the witness [sic] 5th amendment right against self-incrimination.

448. Geraci represented that he was unable to list himself as the applicant on the application because of his status as an Enrolled Agent with the IRS, but that Berry was working as their agent on behalf of their joint venture.

449. Based upon Geraci's assurances that listing Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton executed the Ownership Disclosure Statement.

450. On October 31, 2016, the Berry Application was submitted to the City.

451. On or about February 27, 2018, prior to F&B being confronted with *Riverisland*, Schweitzer executed a declaration stating that the purpose of Part 1 of the Ownership Disclosure Statement "is to identify all persons with an interest in the [P]roperty *and must be signed by all persons with an interest in the [P]roperty*." *Cotton I*, ROA 119 ¶ 6 (emphasis in original).

452. On or about January 30, 2019, the deposition of Schweitzer was taken.

453. When Schweitzer was presented with and asked if he prepared the Berry Application, he testified: "I don't recall if myself personally prepared this document. I believe this document was prepared by my firm."

454. On or about March 3, 2019, Bartell's deposition was taken.

455. Bartell testified that he consulted with Weinstein before his deposition.

456. During his deposition, Bartell was asked: "When lobbying -- is it legal to lobby for a CUP marijuana outlet application when… the name on the project is not the owner's name?" Bartell responded: "I don't know."

457. Mrs. Austin, Bartell and Schweitzer were all part of numerous email chains discussing the drafting, comments and revisions to the Berry Application. Despite their alleged representations of not knowing or remembering, the Dream Team collectively, knowingly, and deliberately aided and abetted Geraci's illegal attempt to acquire an

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Cotton I, ROA 364 (Declaration of Jacob Austin in Support of Motion to Compel Further Responses from Rebecca Berry), Ex. 2 (Berry Responses to Requests for Admissions) at 6:18-27.

interest in a cannabis CUP without disclosing his ownership interest.

D. The Soils Analysis Issue

458. On November 15, 2016, DSD issued a review of the Berry Application, which included as a required item a geotechnical report for the Property (the "Soils Analysis").

459. On February 22, 2017, Schweitzer submitted responses to the City regarding the Berry Application addressing issues raised by DSD, which did not include a Soils Analysis.

460. On or about February 24, 2017, Schweitzer sent an update to Geraci, the Dream Team, and others regarding the "Completeness Review" of the Berry Application, which stated: "***N.A. Geotechnical study [i.e., Soils Analysis] has been removed from the CUP submittal***." [Emphasis added.]

461. The Soils Analysis ceased being an issue with the City per Schweitzer no later than February 24, 2017.

462. The strategic importance of the Soils Analysis to Geraci is that it requires a private geologist to make a subjective recommendation to the City in its report that the City follows.

463. After Cotton found litigation investors and it became clear that *Cotton I* could be exposed as a sham, Geraci's agents used their influence with certain City employees to make it appear that the Soils Analysis had been "newly" raised by the City as a requirement in order to have the geologist recommend a denial.

464. On February 27, 2018, Geraci submitted a declaration in support of his motion seeking a court order forcing Cotton to allow a geologist unto the Property to perform the Soils Analysis. In his declaration, Geraci alleges: "I have been advised by Abhay Schweitzer that another issue has ***recently arisen*** in connection with the processing of the [Berry] Application and our attempts to obtain approval of and issuance of the CUP, namely, we have been required by the City to perform soils testing at the subject property." *Cotton I*, ROA 117 at ¶ 18.

465. The allegations in Geraci's February 27, 2018 declaration are directly contradicted by Schweitzer's February 22, 2017 email provided by Geraci in discovery.

466. The geologist performed the Soils Analysis with Cotton present and told him there would be no issue with her recommending an approval.

467. When Cotton followed-up with her shortly thereafter for a copy of the report, she was nervous and insinuated her company would be issuing a denial.

468. Cotton sent a detailed email to the geologist memorializing their conversations and threatening to sue her if she issued a denial contrary to her representations to him and informing her of Geraci's unlawful actions. The geologist did not issue a denial.

469. F&B made Cotton's opposition to granting Geraci access the Property to perform the Soils Analysis the vanguard at trial in *Cotton I* to argue that Cotton is responsible for the Magagna Application being approved before the Berry Application because he allegedly "interfered" with and delayed the required Soils Analysis (the "Soils Analysis Issue").

E. The November Document and the November 3, 2016 Email

470. For about six months after Geraci first contacted Cotton, the parties negotiated for Geraci's potential purchase of the Property and a possible joint venture.

471. To this end, as noted, Cotton drafted and shared the Preliminary Agreements.

472. However, Geraci never provided any edits or comments to the Preliminary Agreements nor did he provide draft agreements of his own.

473. On November 1, 2016, Cotton was still negotiating with various parties for the potential sale of the Property or partnership to develop a dispensary at the Property.

474. On November 1, 2016, Cotton met with Henderson and they discussed a potential joint venture and the parties beginning the due diligence process that Cotton had already begun with Geraci.

475. On November 2, 2016 at around 9:05 a.m., Cotton emailed Henderson: "Hi Keith, I would be interested in continuing our discussion from yesterday. If you are

agreeable, I would ask that you sign and return the attached [non-disclosure agreement ("NDA")] so that we may do so."

476. Plaintiffs believe and allege that Henderson, a client of Mrs. Austin, contacted her to review the NDA from Cotton and/or to inform her about the need to engage in preliminary due diligence as he was in negotiations for the Property.

477. Plaintiffs believe and allege that Mrs. Austin then contacted Geraci to let him know that Henderson had engaged Cotton in negotiations for the Property.

478. This was a huge problem for Geraci and the Dream Team as they had already submitted the Berry Application on October 31, 2016 and if Cotton sold to Henderson their fraud would be exposed.

479. On November 2, 2016 at around 9:58 a.m., Cotton received the executed NDA from Henderson.

480. On November 2, 2016 at around 11:07 a.m., Geraci called Cotton requesting they meet later that day at his office to finalize their agreement.

(i) At trial, regarding this call, Geraci testified he called because: "we want to submit this, get this – the CUP is going to be submitted, and I'd like to get something in writing."

(ii) Geraci's trial testimony alleges he called to execute the November Document because he wanted to submit the Berry Application. This testimony is perjury as the Berry Application had already been submitted two days prior on October 31, 2016 without Cotton's knowledge or consent.

481. When Cotton and Geraci met later that day at T&F Center, they executed the November Document that was notarized by one of Geraci's employees at T&F Center.

482. There are only 16 emails between Geraci and Cotton between the execution of the November Document in November 2016 and the filing of *Cotton I* in March 2017. There are approximately 240 texts between Geraci and Cotton during the same time

period.[42]

483. The texts and emails unequivocally provide support for a uniform, single narrative: that Cotton and Geraci communicated and acted as joint venturers and the November Document was executed with the intent it be a receipt.

484. On November 2, 2016, after the parties executed the November Document, Geraci emailed Cotton a copy of the November Document at around 3:11 p.m., in an email with the subject being "Contract," which states in full:

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

485. At around 6:55 p.m., Cotton replied to the same email as follows:

> Hi Larry, [¶] Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the [P]roperty 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***.

(*i.e.*, the "Request for Information") (emphasis added).

486. On November 2, 2016 at around 9:13 p.m., Geraci replied: "***No no problem at all***" (*i.e.*, the Confirmation Email).

487. On November 3, 2016 at around 12:36 p.m., Cotton called Geraci, who did not pick up.

488. On November 3, 2016 at around 12:40 p.m., Geraci called Cotton back and

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[42] Filed concurrently with this Complaint is Plaintiffs' ex parte application seeking, *inter alia*, that Magagna be prevented from selling/transferring the District Four CUP pending resolution of the instant action. All of the emails and texts between Geraci and Cotton are attached to the request for judicial notice as, respectively, Exs. 12 and 15.

they spoke for approximately three minutes.

489. On November 3, 2016 at around 1:41 p.m., Cotton emailed Geraci as follows (emphasis added):

> Larry, [¶] ***Per our phone call*** the name 151 AmeriMeds has not been taken nor has there been any business entity formed from it. If you see this as an opportunity to piggyback some of the work I've done and will continue to do as 151 Farmers with further opportunities as a potential franchise for your dispensary I'd like for you to consider that as the process evolves. [¶] We'll firm it up as you see fit.

(the "November 3, 2016 Email").

490. As reflected by the 1:41 p.m. email referencing the 12:40 p.m. call, Cotton was excited about collaborating with Geraci and was hoping Geraci would brand the dispensary at the Property as a 151 Farmers organization.

F. The Zoning Issue

491. During their negotiations, Geraci represented to Cotton that through his personal and professional relationships, he was in a unique position to lobby and influence key City political figures to (i) have the Zoning Issue favorably resolved and (ii) have the cannabis CUP application on the Property approved once submitted.

492. Prior to their falling out Cotton repeatedly requested updates from Geraci and became increasingly exasperated with Geraci's failure to provide any substantive responses to his inquiries on the alleged Zoning Issue, which was supposedly preventing Geraci from providing Cotton the $40,000 balance due as part of the non-refundable deposit.

493. Between January 6, 2017 and February 7, 2017, the following text exchanges took place between Cotton and Geraci that reflect Cotton's belief that the Zoning Issue needed to be resolved before a CUP application could even be submitted on the Property:

> COTTON: **Can you call me? If for any reason you're not moving forward I need to know[?]**
>
> GERACI: I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to call you later today still very sick

GERACI: The sign off date they said it's going to be the 30th
COTTON: **This resolves the zoning issue?**
GERACI: Yes
COTTON: Excellent....
COTTON: How goes it?
GERACI: We're waiting for confirmation today at about 4 o'clock
COTTON: What's new?
COTTON: Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet.
GERACI: I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork.

G. The Draft Agreements provided by Geraci; The Memorandum of Understanding with Martin

494. Geraci failed to have Mrs. Austin promptly reduce the JVA to writing as promised on November 2, 2016.

495. Several weeks after the November Document was executed, Cotton renewed discussions with third parties on a contingency basis and asked Hurtado to help him locate a new buyer for the Property if Geraci breached the JVA.

496. On February 27, 2017, Geraci emailed Cotton a draft purchase contract for the Property ("Draft Agreement I"). However, it did not reflect the JVA. Among other things, it did not provide for Cotton's 10% equity stake or the $40,000 balance towards the non-refundable deposit.

497. Draft Agreement I states that in lieu of a down deposit, Geraci had already provided "alternative consideration."

498. After numerous discovery fights with F&B in *Cotton I*, Geraci was forced to admit that (i) the "alternative consideration" in Draft Agreement I is the $10,000 "good faith earnest money" deposit referenced in the November Document and (ii) the $10,000 "good faith earnest money deposit" deposit is actually a "non-refundable" deposit.[43]

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[43] After being confronted with *Riverisland*, F&B had to reconcile the November Document with the parol evidence that would not be barred under *Pendergrass*. F&B was forced to argue that the "good faith earnest money" deposit stated in the November

499. On March 2, 2017, Geraci emailed Cotton a draft agreement entitled Side Agreement that had a provision stating that Geraci and Cotton were not partners ("Draft Agreement II").

500. The next day, the following communications between the parties began with Cotton emailing Geraci as follows:

> Larry, [¶] I read the Side Agreement in your attachment and I see that no reference is made to the 10% equity position… In fact para 3.11 [stating we are not partners] looks to avoid our agreement completely… Can you explain?

501. Cotton texted Geraci later that day: "Did you get my email?"

502. Geraci replied one minute later: "Yes I did I'm having her rewrite it now[.] As soon as I get it I will forward it to you" (the "Partnership Confirmation Text").

503. On March 6, 2017, Geraci, knowing that Mrs. Austin was the keynote speaker at a cannabis event hosted by Williams and that Cotton planned to attend, texted Cotton: "Gina Austin is there she has a red jacket on if you want to have a conversation with her."

504. Cotton did not make the event, but Hurtado did. At Cotton's request, Hurtado spoke with Mrs. Austin regarding Cotton's concern that the JVA had not been reduced to writing in over four months and noted that other parties were interested in the Property.

Document is the <u>same thing</u> as a "non-refundable deposit." Their prevarication is transparent:

> **REQUEST FOR ADMISSION NO. 20:** Admit that the $10,000 YOU paid COTTON on November 2, 2016 is a non-refundable deposit.
>
> **RESPONSE TO REQUEST FOR ADMISSION NO. 20:** Admitted, subject to the following: The $10,000 paid to COTTON on November 2, 2016, was a non-refundable deposit to be applied to the sales price of $800,000 ***if and when*** the CUP was approved by the CITY. [Emphasis added.]

505. Mrs. Austin acknowledged the delay to Hurtado, inherently confirming the November Document is not a purchase contract, and stated that she would have a revised draft to Cotton shortly.

506. Hurtado communicated this representation by Mrs. Austin to Jane – at that point a prestigious attorney that Hurtado believed to be reputable – and relied on that representation to support and invest in *Cotton I*.

507. The very next day, on March 7, 2017, Geraci emailed Cotton a revised Side Agreement that was drafted by Mrs. Austin ("Draft Agreement III" and, collectively with Draft Agreement I and II, the "Draft Agreements").

508. In the March 7, 2017 cover email, Geraci wrote:

> Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month... can we do 5k, and on the seventh month start 10k?

(the "$10,000 Request Email").

509. Draft Agreement III provided for Cotton to receive 10% of the net profits of the dispensary, not a 10% equity position as agreed per the JVA.

510. Cotton was frustrated with Geraci's repeated failure to accurately reduce the JVA to writing. At this point, Cotton became confident that Geraci was seeking to deprive him of his bargained-for equity position.

511. At this point, Cotton still did not understand it was illegal for Geraci to own a cannabis business because of the Sanctions Issue.

512. On March 15, 2017, Hurtado reached a contingent agreement with Flores' predecessor-in-interest for the purchase of the Property that was reduced to writing in a Memorandum of Understanding (the "MOU").[44]

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[44] The MOU was subsequently amended and incorporated into the SLFA that was provided under seal by Cotton to Judge Curiel on or about February 9, 2018 in *Cotton III* (defined below). Additionally, Cotton has stated he provided the court additional material documents as part of the same submission, but he does not remember what those documents are.

513. The MOU provides that in the event the Property becomes available, *i.e.*, Geraci breaches the JVA, Martin would provide, *inter alia*, the following consideration for the Property: (i) $2,500,000; (ii) a 49% ownership stake in the dispensary; and (iii) the greater of 49% of the net profits or $20,000 on a monthly basis once the Business was operating.

514. On March 16, 2017, Cotton emailed Geraci:

> We started these negotiations 4 months ago and the drafts and our communications have not reflected what [was] agreed upon and are still far from reflecting our original agreement.… please confirm that revised final drafts that incorporate the [JVA] terms will be provided by Wednesday at 12:00 PM, I promise to review and provide comments that same day so we can execute the same or next day.

515. On March 17, 2017, Geraci responded by requesting an in-person meeting with Cotton via text: "can we meet in person[?]"

516. Cotton replied via email, materially, as follows:

> I would prefer that until we have final agreements that we converse exclusively via email. My greatest concern is that you get a denial on the CUP application and not provide the remaining $40,000 non-refundable deposit…. We need a final written, legal, and binding agreement…. Please confirm by 12:00 PM Monday that you are honoring our agreement and will have final drafts… by Wednesday at 12:00 PM.

517. On March 18, 2017 at around 1:43 p.m., Geraci responds to Cotton's email: "I have an attorney working on the situation now. I will follow up by Wednesday with the response as their timing will play a factor."

518. Geraci's communication was his attempt to delay Cotton from selling the Property to a third-party while F&B was preparing to file *Cotton I* falsely alleging the November Document is a purchase contract for the Property.

519. Cotton's ignorance of the possibility that the November Document could even be represented as a purchase contract is obvious from his reply.

520. On March 19, 2017 at around 9:02 a.m., Cotton replied: "I understand that

drafting the agreements will take time, but you don't need to consult with your attorneys to tell me whether or not you are going to honor our agreement…. If I do not have written confirmation from you by 12:00 PM tomorrow, I will [be] contacting the City of San Diego and let them know that our agreement was not completed[.]"

521. On March 21, 2017, after Geraci repeatedly failed to reduce the JVA to writing and refused to provide written assurance of performance (*i.e.*, that he would reduce the JVA to writing), Cotton terminated the agreement with Geraci for anticipatory breach.[45]

522. In his termination of the JVA, Cotton specifically informed Geraci that he was selling the Property to a third-party: "To be clear, as of now, you have no interest in my [P]roperty, contingent or otherwise. I will be entering into an agreement with a third-party[.]"

523. On March 21, 2017, after terminating the JVA with Geraci, Cotton entered into the Martin Purchase Agreement.

H. Geraci's Complaint and Cotton's Answer

524. The next day, March 22, 2017, Weinstein emailed Cotton a copy of the *Cotton I* complaint and the F&B Lis Pendens.[46]

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[45] "[I]f a party to a contract expressly or by implication repudiates the contract before the time for his or her performance has arrived, an anticipatory breach is said to have occurred. [Citations.] The rationale for this rule is that the promisor has engaged not only to perform under the contract, but also not to repudiate his or her promise." *Romano v. Rockwell Internat., Inc.*, 14 Cal. 4th 479, 489 (Cal. 1996).

[46] "Once a lis pendens is filed, it clouds the title and effectively prevents the property's transfer until the litigation is resolved or the lis pendens is expunged." *BGJ Associates, LLC v. Superior Court*, 75 Cal. App. 4th 952, 967 (Cal. Ct. App. 1999). "Courts have long recognized that '[b]ecause the recording of a lis pendens place[s] a cloud upon the title of real property until the pending action [is] ultimately resolved . . ., the lis pendens procedure [is] susceptible to serious abuse, **providing unscrupulous plaintiffs with a powerful lever to force the settlement of groundless or malicious suits**." *Id*. at 969 (quoting *Malcolm v. Superior Court* (1981) 29 Cal.3d 518, 523, fn. 2, and 524) (emphasis added); *see also Hilberg v. Superior Court*, 215 Cal.App.3d 539, 542 ("We cannot ignore

525. The *Cotton I* complaint alleges causes of action for (i) breach of contract, (ii) breach of the covenant of good faith and fair dealing, (iii) specific performance, and (iv) declaratory relief.

526. All four causes of action are premised on the allegation that the November Document is a fully integrated purchase contract.

527. The *Cotton I* complaint alleges that Cotton anticipatorily breached his agreement with Geraci by demanding additional consideration not originally agreed to. Specifically:

> On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement for the purchase and sale of the [Property] on the terms and conditions stated therein….
>
> [Cotton] has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, [Cotton] has stated that, contrary to the written terms, the parties agreed [Cotton] is entitled to a 10% ownership interest in the [Property].

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

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

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

530. 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

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as judges what we know as lawyers — that the recording of a lis pendens is sometimes made not to prevent conveyance of property that is the subject of the lawsuit, but to coerce an opponent to settle regardless of the merits."). "**The financial pressure exerted on the property owner may be considerable, forcing him to settle not due to the merits of the suit but to rid himself of the cloud upon his title**. The potential for abuse is obvious." *BGJ Associates*, *supra*, at 969 (emphasis added).

and injunctive relief.

531. 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.

532. 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].

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

534. 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.

535. Post-*Riverisland*, 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;[47] (b) evidence of an oral contract that contradicts a written contract is admissible pursuant to *Riverisland*; and (c) an oral joint venture agreement is not subject to the statute of frauds.[48]

536. 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.

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

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

538. After *Cotton I* was filed, Hurtado, on behalf of Cotton, Martin 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.

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

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[47] 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.").

[48] *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.").

540. On or around April 13, 2017, McElfresh emailed Hurtado that "upon further reflection" she would not be able to represent Cotton in *Cotton I*. Further, she recommended Demian of FTB, describing his success in the *Engerbretsen* matter, and one other attorney.

541. Notwithstanding her change of course, an attorney-client relationship had already been established between McElfresh and each of Cotton, Hurtado and Martin.[49]

542. Further, McElfresh *did* agree to represent Martin in the CUP application with the City. Attached hereto as Exhibit 2 is an email chain between Hurtado, McElfresh and Martin reflecting McElfresh's agreement to work for Martin.

543. Based on McElfresh's recommendation, Hurtado reached out to FTB and arranged for a meeting between F&B and Cotton and a financing agreement in the event FTB and Cotton came to terms.

544. In May 2017, McElfresh was arrested in the Med West matter.

545. On June 25, 2017, Cotton entered into an agreement with FTB for their services in representing him in (i) *Cotton I*, (ii) *Cotton II*, (iii) *City III*, and (iv) in the preparation and submission of a cannabis CUP application with the City.

546. 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").

547. 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)

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[49] *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.'").

negligent interference with prospective economic relations; and (vii) declaratory relief.

548. 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,"[50] to alleging the parties had reached "an agreement to agree" in the future which is not an enforceable agreement.[51]

549. 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.

550. 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.[52]

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[50] "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).

[51] "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.

[52] *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 cooperator 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

551. During a phone conversation with Demian early in his representation of *Cotton I*, Hurtado and Jane communicated their fears that Geraci was a "drug-lord and violent figure" and they did not want to become named parties both because of Geraci and also because they did not want to be publicly associated with the cannabis industry.

552. Demian unambiguously represented that there was no reason or need to name Martin, Hurtado or Jane in *Cotton I*.

553. In the same conversation, Demian agreed the Confirmation Email means the November Document is not a purchase contract.

554. 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.

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

556. The deleted causes of action would have eventually alerted Judge Wohlfeil to the fact that Martin was required to be a named party to the action as an indispensable party.

557. In *Cotton I* discovery, Cotton produced Martin's pre-approval letter for $2,500,000 for the Property as required by the MOU.

558. Martin had the financial resources to hire experienced counsel if named as a party to *Cotton I*.

559. On November 20, 2017, Geraci filed his Answer to the SAXC, which does not raise the Disavowment Allegation either as a "new matter"[53] or sets forth affirmative

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to the $800,000 purchase price he will receive from Geraci). In other words, if Cotton is 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).

[53] *See* CCP § 431.30(b) ("In addition to denials, the answer should contain whatever affirmative defenses or objections to the complaint that defendant may have, and that

defenses of fraud or mistake.

560. The Disavowment Allegation substantively constitutes affirmative defenses that were required to be pled in Geraci's answer as a "new matter," fraud and/or mistake, which he waived for failing to raise (the "Affirmative Defenses Issue").

561. 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."

562. 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).

563. 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.

564. 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.

565. 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 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**

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would otherwise not be in issue under a simple denial. Such defenses or objections are referred to as 'new matter.'").

> **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**.

566. F&B's is arguing the *Pendergrass* line of reasoning.

567. 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.

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

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

570. 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.

571. 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.

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

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

574. But-for Demian's deceit, Judge Wohlfeil would not be a named party to this action.

K. Cotton II[54]

575. 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 as "Exhibit 3".

576. Mrs. Austin, on November 30, 2017, filed a Verified Answer to *Cotton II* for Geraci that "admits that Exhibit 3 to the Verified Petition is a true and correct copy of

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

certain emails exchanged between [Geraci and Cotton.]"

577. Geraci's response in his verified answer is a judicial admission he sent the Confirmation Email.

578. On January 25, 2018, Judge Wohlfeil entered an ordered denying Cotton's *Cotton II* petition for two reasons:

> [Cotton] cannot demonstrate that he was the only person who possessed the right to use the [Property]… In addition, [Cotton] has not exhausted his administrative remedy by submitting his own separate CUP application.

579. These are F&B's arguments and lack any factual or legal justification.

580. First, Judge Wohlfeil's order makes a vague reference to "evidence" that Berry had a right to file the Berry Application on the Property, but does not address what any of that evidence is, much less the Mutual Assent Issue.

581. Second, "Failure to exhaust administrative remedies is excused if it is clear that exhaustion would be futile." *Jonathan Neil & Assoc., Inc. v. Jones*, 33 Cal. 4th 917, 936 (2004), as modified (Oct. 20, 2004).

582. The City via both its DSD employees and multiple attorneys have taken the position and represented to Judge Wohlfeil that it is lawful for Geraci to own a cannabis CUP via the Berry Application notwithstanding the Illegality Issue and the Engerbretsen Mandate.

583. Certain City employees are corrupt, including Tirandazi and Phelps.

584. Filing a competing CUP would be futile.

585. City attorney Phelps approved the *Cotton II* judgment provided by Weinstein thereby ratifying Geraci/F&B's pre-*Riverisland* contention the Confirmation Email is barred by the parol evidence rule.

L. Demian's Deceit

586. On December 5, 2017, Demian emailed Cotton and Hurtado a draft of the ex parte application intended to be filed for a December 7, 2017 hearing. Hurtado responded and provided comments.

587. That same day, Demian replied to Hurtado's email/comments as follows

(emphasis added):

> Thank you for the comments. The one issue I do want to discuss is the first – the others we can incorporate. The first issue is critical to deposition and other testimony. I am glad you pointed out this issue. Very very important to me we not lose Darryl's credibility on some ***misunderstanding***. The [language in] our brief [now reads as follows]:
>
> "…Geraci to pursue the Cotton CUP on Cotton's behalf"
>
> Joe's comment: ***Darryl was supposed to be the minority 10% owner in this joint venture***. The language here makes it seem as if Geraci is acting solely as Darryl's agent in submitting the CUP and that Darryl would be the sole beneficiary of the CUP. Not sure if material, but thought I would raise in case it is worth clarifying.
>
> My thoughts: [¶] what was supposed to happen on termination of the deal as happened? It sounds like it was not discussed or agreed upon by the parties.
>
> There would have been many options, including: (1) Geraci releases the permit back to Darryl and Darryl does not owe him any money for his costs in chasing the permit; (2) Geraci does not assign the permit to you and it is rejected by the City at the end as Geraci has no interest in the property, but you would have to reapply for your own permit as City says now; or (3) Geraci releases the permit to you and you pay him back the costs he spent on the permit; (4) there was ***no agreement*** so the court must decide what to do in that vacuum.
>
> I suspect it [was not] discussed, let me [know] if I am wrong. So the declaration ***should*** be number 4. In the brief, I can argue for option 1, BUT I DO NOT WANT YOU TO DECLARE TO ANYTHING NOT EXACTLY WHAT WAS AGREED.

588. DEMIAN'S USE OF ALL CAPS AT THE END OF THE EMAIL seeking to create a defense for his deceit does not negate the facts: (i) his first three recommendations continue to argue that Geraci <u>was</u> acting as Cotton's agent, thus, completely contradicting Cotton's verified pro se cross-complaint, every communication he had received from Cotton, and the comments Hurtado had <u>just</u> provided to him; and

(ii) the fourth recommendation is seeking that Cotton judicially admit that an "agreement" had not been reached (*i.e.*, the parties had an "agreement to agree").

589. There is no factual or legal justification for Demian to have drafted a TRO and supporting documentation that argues:

(i) Geraci was acting as Cotton's agent;

(ii) Cotton "should" provide a declaration that "no agreement" had been reached;

(iii) Cotton's declaration should make one factual admission, but that Demian would argue a different position in the brief to Judge Wohlfeil (collectively, "Demian's Deceit").

590. Had Cotton followed Demian's legal advice and admitted that Geraci was acting as his agent in having Berry file the Berry Application, then any reasonable attorney would have used Cotton's admission to argue, *inter alia*, Cotton's Illegality Issue and the Berry Fraud are meritless as Cotton admitted those actions were taken on his behalf.

591. Demian cannot produce any evidence of any kind, other than self-serving testimony by himself and others at FTB, to support his assertion there was a "misunderstanding" resulting in him believing that Geraci was acting as Cotton's agent.

592. On or about December 24, 2019., Cotton emailed, *inter alia*, Demian, certain partners at FTB who had been involved in the litigation, and their counsel Kenneth Feldman of Lewis and Brisbois, and provided them, *inter alia*, documents, emails, and testimony transcripts that prove the *Cotton I* judgment was procured via fraud on the court and is the product of judicial bias.[55]

593. FTB committed a fraud on the court by conniving at the defeat of their own client. *See Estate of Sanders*, 40 Cal. 3d 607, 614 (1985) (defining extrinsic fraud as including "where an attorney fraudulently… assumes to represent a party and connives at his defeat…") (quoting *United States v. Throckmorton* (1878) 98 U.S. 61, 65-66).

[55] Attached here to as Exhibit 3 is a true and correct copy of the December 24, 2019 email, excluding the attachments.

M. The December 7, 2017 hearing

594. On December 7, 2017, Judge Wohlfeil held a hearing simultaneously on two ex parte applications by Cotton, one in each of *Cotton I* and *Cotton II*. Cotton's *Cotton I* ex parte application sought to, *inter alia*, have Geraci and Berry transfer the Berry Application to Cotton. Cotton's *Cotton II* ex parte application sought to, *inter alia*, have the City transfer the Berry Application to Cotton.

595. Both ex parte applications were filed against FTB's recommendations at the insistence of Cotton and Hurtado.

596. Both ex parte applications have the same foundational and case-dispositive issue: does Geraci have a right to the Property because of the November Document?

597. Demian represented Cotton in both ex parte applications.

598. Mrs. Austin and Weinstein represented Geraci and Berry in both ex parte applications.

599. City attorney Jana Will represented the City in the *Cotton II* ex parte application.

600. Judge Wohlfeil started the hearing by stating that the ex parte applications submitted by FTB "broke the record" for being the largest filings he had ever received on an ex parte basis.

601. Judge Wohlfeil also said that he did not read "everything."

602. Judge Wohlfeil then substantively communicated that he had not read anything and needed counsel to explain the material points of their positions.

603. Weinstein argued the November Document is a fully integrated agreement because it looks like a fully integrated agreement.

604. Any reasonable attorney would have opposed Weinstein's argument by raising at least one of the following arguments: the Mutual Assent Issue, the Sanctions Issue, the Berry Fraud, fraud (*i.e.*, *Riverisland*), or promissory estoppel.

605. Demian did not raise any of those arguments.

606. Demian's <u>sole</u> argument at the hearing was focused on the constitutional

right of a property owner to exclude a third-party from his property.

607. Demian's argument did not address the threshold issue of whether the November Document granted Geraci a right to the Property in the first place.

608. Obviously, Judge Wohlfeil denied both ex parte applications. Both of Judge Wohlfeil's minute orders denying the ex parte applications state that he took into account the papers filed in support of the ex parte applications.

609. Unfortunately, these were false statements and Judge Wohlfeil's original sin; understandably, he probably thought it was impossible for the material facts or law to be materially mispresented as he had before him four attorneys from four different legal entities (the City, ALG, F&B and FTB) representing three different groups of parties (Geraci, Cotton, and the City).

N. After the December 7, 2017 hearing

610. After the hearing, Hurtado was standing by the door when Demian walked out of Judge Wohlfeil's courtroom talking to City attorney Will.

611. Will stated to Demian that he "should have won" based on the briefs.

612. Hurtado then started berating Demian for failing to raise the Confirmation Email for what he then believed to be simple gross incompetence. *See Cotton I*, ROA 104, Ex. 8 (Declaration of Elizabeth Emerson executed on January 22, 2018 at ¶8 ("After the hearing concluded, Mr. Hurtado started yelling at Mr. Demian right outside the Courtroom about how it was possible that Mr. Demian could not raise with the Court 'the fucking email!' Mr. Hurtado was incredibly agitated and loud and everyone in the hallway was staring at Mr. Hurtado and Mr. Demian.").

613. For several minutes, Demian was not able to provide any coherent response to Hurtado's demands for an explanation for his failure to raise the Confirmation Email.

614. After a few minutes, Demian stated that investing in litigation is risky.

615. His comment was not responsive to Hurtado's demands for an explanation for how he failed to raise the Confirmation Email, however, it laid the groundwork for Demian's argument that any of Hurtado's financial losses would be his own fault for

financing Cotton's litigation in the first place.

616. Hurtado became more upset realizing the implication of Demian's only coherent statement and Demian then mumbled he had another meeting while looking at his feet and walked away.

617. Demian left the courthouse, called Cotton, and left him a voicemail quitting as his counsel.

618. Cotton had not spoken with Hurtado when he called Demian back. Demian admitted that he had a "bad day" and did not raise the Confirmation Email.

619. However, Demian told Cotton that he did not understand Hurtado's anger over what Demian alleged was a minor issue. According to Demian, they could have addressed any failings as part of another motion down the line, but that he could no longer continue as counsel for Cotton because Hurtado's anger and beratement were unjustified.

O. The January 25, 2018 Hearing – Cotton the "Conspiracy Nut"

620. On January 17, 2018, Cotton submitted an ex parte application seeking leave to (i) file a memorandum in excess of 15 pages in opposition to Geraci's motion to compel Cotton's deposition and (ii) submit ex parte and under seal the SLFA.

621. On January 18, 2018, Weinstein opposed Cotton's request to file the SLFA under seal. Judge Wohlfeil granted Cotton leave to file a 30-page brief, but denied Cotton's request to file the SLFA ex parte and under seal.

622. After the January 18, 2018 hearing, Weinstein approached Cotton and offered his "sincere" apologies for the "situation" that Cotton was in and stated that he was working with Geraci to put together a settlement offer.

623. On January 22, 2018, Cotton filed a document in opposition to Geraci's motions to compel Cotton's deposition (the "Verified Memorandum").

624. The Verified Memorandum describes the January 18, 2018 settlement offer by Weinstein:

> Mr. Weinstein approached me to discuss access to the Property for soil samples to continue the [Berry Application] and to discuss a possible settlement of this action regarding the Property and the [Berry Application]. I

> am not clear what he means, Mr. Weinstein has had the [Martin Purchase Agreement] since early in this litigation and it has been discussed. He knows I was forced to unconditionally sell my interest in the Property on April 15, 2017, to pay off debts and continue financing this litigation… As [the Martin Purchase Agreement] makes clear, the condition precedent for closing is the successful resolution of this lawsuit. I am assuming that Mr. Weinstein wants me to engage in some kind of legal machinations by which I can void my agreement with [Martin] so I can transfer the Property to Geraci. Even if there were some legal mechanism that would allow that (and it does not appear to me that is should be allowed in any circumstance as it would violate the implied covenant of good faith and fair dealing in every contract), I would not do so. Even if lawful, it is not ethical and it would make me just as bad as Geraci - the very idea of which is nauseating.

625. The Verified Memorandum was procedurally supposed to be oppositions to Geraci's motions to compel Cotton's deposition. Instead, Cotton in pro se fashion used 30 pages to argue his entire case, most of which was criticizing the actions of the attorneys at the December 7, 2017 hearing.

626. The Verified Memorandum will is a critical piece of evidence in this action because it reflects Cotton's genuine, blue-collar attempt to achieve justice. And, consequently, the malevolence of all defendants who knowingly supported the *Cotton I* Conspiracy in furtherance of the Antitrust Conspiracy and depriving Flores of the District Four CUP.

627. In the Verified Memorandum Cotton questions his own sanity and is open to the possibility that he is "crazy" because Judge Wohlfeil had not already adjudicated *Cotton I* in his favor. It describes how he attacked his litigation investor, Hurtado, after he told Cotton that he was going to "cut his losses" and cease financing *Cotton I*. The supporting declarations and exhibits evidence the great emotional, mental and financial distress that has and is still being inflicted upon Cotton since March 2017.

628. In what comes across as pro se emotional gibberish, but is actually and tragically an accurate reflection of the American judicial system, the Verified Memorandum concludes with the following paragraph:

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

629. Cotton's plight is proof of what is "reality" - it takes wealth to access justice in America.

630. On January 25, 2018, Judge Wohlfeil began the hearing by telling Cotton that he does not believe the allegations Cotton set forth in his Verified Memorandum describing, *inter alia*, the unethical actions taken by attorney defendants Mrs. Austin, Weinstein or Demian. Judge Wohlfeil stated that he personally knows the attorneys as they have been practicing before him for years and he does not believe they are capable of acting unethically (*i.e.*, Judge Wohlfeil's Fixed-Opinion).

631. It is Plaintiffs' belief that it was at this point that Judge Wohlfeil cemented in his mind the idea that Cotton was a "conspiracy nut." Thereafter, with the exception of one discovery hearing, Plaintiffs believe and allege Judge Wohlfeil never read the submissions by Cotton.

632. On January 25, 2018, after the hearing, Cotton sent an email to Weinstein and Mrs. Austin, which materially states as follows:

> Your prior relationship [with Judge Wohlfeil] somehow means I am wrong. I'm sure you have read my opposition, so you know my thoughts, I am either crazy or I have just never been able to get the judge to focus on the one email from Geraci that I refer to as the Confirmation Email.

P. Jacob Austin; The Lis Pendens Motion & *Riverisland*

633. After Cotton fired FTB for Demian's pretend gross incompetence, Cotton

entered into an agreement with Jacob to draft, file and then specially appear for Cotton on a motion to expunge the F&B Lis Pendens. Further they agreed that Jacob would help Cotton do research and assist him in his legal defense on a limited scope basis.

634. On March 12, 2018, prior to F&B fabricating the Disavowment Allegation, Jacob emailed Weinstein and noted that his review of the evidence in *Cotton I* led him to the belief that Mrs. Austin was conspiring with Geraci to misrepresent a receipt as a contract and that she had made knowing false representations to the court.

635. Later that day, Weinstein responded:

> Austin has made no misrepresentations to the court. No declaration signed under penalty of perjury by Gina Austin has been submitted as evidence to the Court in any proceeding in any of the two cases [*Cotton I* and *II*]. She has appeared as counsel in [*Cotton II*] and argued with me in opposition to Cotton's first ex parte application for issuance of a writ of mandate heard by Judge Sturgeon. That is it—legal argument. She will be a witness at trial [in *Cotton I*] but so far has not submitted any written or other testimony. So I just do not understand your position in that regard.[56]

636. Mrs. Austin argued the November Document is a fully integrated contract; she was attorney of record for Geraci and Berry and verified their verified answers to Cotton's *Cotton II* petition, which includes Geraci's judicial admission he sent the Confirmation Email.

637. Weinstein's arguments defending Mrs. Austin are frivolous.

638. On April 4, 2018, Jacob filed a motion to expunge the F&B Lis Pendens recorded on the Property (the "Lis Pendens Motion"). The Lis Pendens Motion cited *Riverisland* and argued that Geraci could not use the parol evidence rule as a shield to bar the parol evidence, including his own Confirmation Email, as proof of his own fraud.

639. The Lis Pendens Motion was a de facto motion for summary judgment. Had Cotton prevailed, the F&B Lis Pendens would have been expunged, and the sale to Martin would have closed.

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[56] *See Cotton I*, ROA 166, Ex. D (complete emails between Jacob and Weinstein).

640. On April 9, 2018, Geraci executed a declaration in opposition to the Lis Pendens Motion that raised the Disavowment Allegation for the first time. *Cotton I*, ROA 180.

641. On April 10, 2018, Judge Wohlfeil denied Cotton's Lis Pendens Motion and his arguments in his order are substantively identical to those raised by F&B's opposition and contradicted by the actual evidence he was presented with.

642. For example, his order states (i) the November Document "appears" to be an agreement, (ii) "the documents [Cotton] offers in support of this Motion were created after November 2, 2016"; and (iii) "the [Draft Agreements]… appear to be unsuccessful attempts to negotiate changes to the original agreement."[57]

643. The following observations provide support for the Opposition Theory:

(i) That the November Document "appears" to be an agreement is the one and only specious fact that Geraci has on his side because he drafted a receipt to look like a purchase contract. However, Judge Wohlfeil's order does not address *Riverisland* or the Mutual Assent Issue.

(ii) Judge Wohlfeil stating the Request for Confirmation and the Confirmation Email were "created after November 2, 2016" is factually incorrect. That Judge Wohlfeil used this language from F&B's opposition, contradicted by the undisputed evidence, reflects he did not personally review the evidence and trusted F&B's description of the evidence.

(iii) The language in the Draft Agreements reflect they were original agreements and not amendments. There is not a single sentence in the Draft Agreements for Judge Wohlfeil to rely on that would provide factual support for the conclusion that they even "appear" to be attempts at renegotiations as F&B argued in their brief.[58]

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[57] *Geraci v. Cotton*, 37-2017-00010073-CU-BC-CTL, ROA 192 (emphasis added).

[58] On November 8, 2018, Geraci/F&B responded via discovery in the *Cotton I* action to the following Request for Admissions materially as set forth below:

Further, the Draft Agreements all contain highly custom and atypical confidentiality clauses that allow the marketing of a dispensary at the Property, but prevent disclosure of the parties who own the Property (Mrs. Austin was seeking to prevent Cotton from disclosing Geraci's ownership of Property in violation of applicable disclosure laws).

Q. Jacob Austin; The California Court of Appeal Petition

644. Cotton filed multiple appeals and petitions for writ of mandate from Judge Wohlfeil's rulings, some were completed and some he abandoned because he did not have the financial resources to complete them.

645. On August 30, 2018, Jacob on behalf of Cotton filed a petition for a writ of mandate in the Court of Appeal, Fourth Appellate District, Division One (the "COA Petition") arising from Judge Wohlfeil's denial of (i) Cotton's ex parte application for the appointment of a receiver to manage the Berry Application (the "Receiver Motion") and (ii) Cotton's motion for judgment on the pleadings (the "MJOP Motion"). (Electronically field on August 30, 2018 by Jose Rodriguez, Deputy Clerk, Case No. D074587.)

646. In support of the COA Petition was an Independent Psychiatric Assessment ("IPA") by Dr. Marcus Ploesser. Dr. Ploesser works as a psychiatrist for the Department of Corrections for the State of California in addition running a private practice.

647. The IPA unambiguously reflects the intense mental and emotional distress

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> **REQUEST FOR ADMISSION NO. 25:** Admit that none of the DRAFT AGREEMENTS contains any language therein describing or mentioning that the DRAFT AGREEMENTS are amending the agreement YOU and COTTON reached on November 2, 2016
>
> **REQUEST FOR ADMISSION NO. 26:** Admit that none of the DRAFT AGREEMENTS contains any language therein describing or mentioning that the DRAFT AGREEMENTS are renegotiations of the agreement YOU and COTTON reached on November 2, 2016.

Geraci/F&B responded to both RFAs identically as follows: "the DRAFT AGREEMENTS, had any been signed, contained provisions that would have replaced any prior agreements related to the subject matter." Transparent prevarication.

that Cotton has been undergoing as a result of *Cotton I*.

648. The Receiver Motion alleged, and if true also proved, that Young had been threatened by Magagna and that Bartell was a knowing conspirator of Geraci seeking to deprive Cotton of the Property via a sham action.

649. The MJOP Motion alleged, and if true also proved, that the November Document is not a fully integrated contract as alleged in the *Cotton I* complaint as a matter of law.

650. The COA Petition argued, *inter alia*, that (i) Judge Wohlfeil had abused his discretion by repeatedly finding the November Document was a fully integrated agreement and went through a detailed analysis of the parol evidence rule; (ii) the Disavowment Allegation is barred by the parol evidence rule; (iii) the Disavowment Allegation is barred by the statute of frauds; and (iv) Geraci's Disavowment Allegation was fabricated in response to *Riverisland* and is contradicted by Geraci's previous judicial admissions.

651. Any reasonable attorney reviewing the COA Petition would know that *Cotton I* was filed and maintained without probable cause.

652. Even without a legal background, the COA Petition explains the facts and arguments simply and concisely such that any reasonable party who read it would understand that *Cotton I* was filed as part of an unlawful scheme meant to deprive Cotton of the Property and the District Four CUP.

653. The COA Petition named and was served on the following real parties in interest: (i) Weinstein, (ii) Toothacre, (iii) F&B, (iv) Mrs. Austin (as Magagna's attorney), (v) Mrs. Austin (as Geraci's attorney), (vi) ALG, (vii) Bartell, (viii) B&A, (ix) Schweitzer, (x) Techne, (xi) Magagna, (xii) Phelps (as the City's attorney), (xiii) the City of San Diego, (xiv) Michelle Sokolowski (Deputy Director, City of San Diego DSD), (xv) Tirandazi, and (xvi) Cherlyn Cac (Development Project Manager for DSD responsible for the Berry Application <u>and</u> the Magagna Application).

654. On September 10, 2018 the COA Petition was denied by Presiding Justice

McConnell and Associate Justices Benke and Irion summarily without explanation.

R. The DQ Motion

655. On September 12, 2018, Cotton filed a motion to disqualify Judge Wohlfeil from continuing to preside over *Cotton I* pursuant to "(i) California Code of Civil Procedure ('CCP') § 170. 1 (a)(6)(A)(iii) on the grounds that a 'person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial,' and (ii) CCP § 170.1 (a)(6)(B) on the grounds that the facts demonstrate '[b]ias or prejudice toward a lawyer in the proceeding.'" *Cotton I*, ROA 292 (the "DQ Motion") at 2:2-5.

656. On January 25, 2018, Judge Wohlfeil made his Fixed-Opinion statement; and on August 2, 2018, when asked by Flores about his Fixed-Opinion, 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, the "Extrajudicial Statements").

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

658. Materially, as it supports the position that Judge Wohlfeil conspired with the City Clerk for the ROA Conspiracy, Cotton argued:

> [Geraci] is before Judge Wohlfeil as part of a demonstrably unlawful scheme to acquire the CUP at issue here. [Geraci] is prohibited from owning a CUP by numerous applicable City of San Diego and State of California laws and regulations that disqualify individuals who (i) have been sanctioned for being involved in illegal marijuana commercial businesses (ii) and for failing to comply with the applicable disclosure obligations as part of the CUP application process (meant to prevent disqualified individuals from acquiring an interest in a CUP for marijuana-related operations)….
>
> To date, Judge Wohlfeil has never addressed why he allows this action to continue when even [Geraci] has admitted to the facts above that prove he and his agents have violated numerous applicable disclosure laws and

> regulations….
>
> Mrs. Austin is [Geraci's] attorney who is responsible for overseeing the [Berry Application] for [Geraci]. Thus… a third-party could reasonably entertain the notion that Judge Wohlfeil is avoiding this issue to "protect" Mrs. Austin from the legal repercussions of violating numerous applicable disclosure laws and regulations and aiding and abetting her client in a scheme whose unlawful goal is to help her client acquire a prohibited interest in a marijuana related CUP. **Alternatively, that Judge Wohlfeil believes Mrs. Austin to be ethical to a degree that he cannot impartially review the evidence he is presented with that proves otherwise….**
>
> [Cotton's counsel] respectfully notes that he is at a loss to understand Judge Wohlfeil's actions. He does not believe Judge Wohlfeil has intended to specifically harm [Cotton], but, his actions are unjustified and are resulting in severe prejudice to [Cotton]. **[Geraci] and his attorneys are intelligent individuals who, as a result of Judge Wohlfeil's actions, had and continue to have the luxury of covering up their tracks and taking actions to unjustly mitigate their liability to [Cotton]**. That Judge Wohlfeil's bias/fixed-opinion leads him to believe the preceding sentence is unfounded or some form of litigation-hyperbole is why [Cotton's counsel] is compelled to bring forth this [DQ Motion] in defense of his client's rights.

659. Judge Wohlfeil denied the DQ Motion, but he did not deny he made the Extrajudicial Statements (the "DQ Order"). *Cotton I*, ROA 297.

660. 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. 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.

661. 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.

662. Thus, although *Liteky* is applicable and controlling, Judge Wohlfeil's reliance is inapposite and mandated his recusal.

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

664. 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.

665. Attached hereto as Exhibit 4 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.

666. The DQ Motion is time stamped 4:22 p.m. and was personally served on law clerk Calvin by Jacob.

667. The supporting evidence for the DQ Motion included the COA Petition.

668. The majority of the factual allegations and legal arguments in this Complaint have been copied and pasted from the DQ Motion and its supporting documents.

S. The Deposition of Tirandazi

669. On March 14, 2019, the deposition of Tirandazi was taken at Flores' office.

670. Tirandazi was represented by Toothacre of F&B.

671. Flores saw and heard Toothacre and Tirandazi discussing how Tirandazi should respond to questions.

672. Subsequent to her deposition, F&B denied representing Tirandazi.

673. Any reasonable party reviewing Tirandazi's deposition transcript would

conclude that F&B was acting as Tirandazi's counsel at her deposition.

674. Further, and more reflective of the truth than inherently partial testimony, Tirandazi was deposed in her capacity as a DSD employee for the City and she was not represented by a City attorney.

675. If F&B is to be believed, Tirandazi decided to attend a deposition without any legal representation; in a suit in which she had been accused of taking illegal actions in furtherance of a criminal conspiracy that included F&B.

676. At her deposition, Tirandazi was questioned why she failed to cancel the Berry Application at Cotton's request. The following material exchange took place regarding this topic:

> Q: When they -- when Mr. Cotton was wanting to cancel Ms. Berry's CUP on the property, was it canceled?
> A: No.
> Q: Did the City continue working on it?
> A: Yes.
> ….
> Q: [In Form DS-3032] [u]nder [section] No. 4, the 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… and **who has the right to cancel the approval, in addition to the property owner**. And it lists a municipal code [SDMC § 113.0103]. Is this the correct reading of that [section] No. 4, permit holder name?
> A: **That is correct.**
> Q: You had just stated that only the applicant can withdraw or cancel an application. This general application, [section] No. 4, contradicts that. It says that the property owner -- my reading is that the property owner can also cancel withdraw. Is that true?
> A: **I can't speak to that. That's not how we have interpreted that**. It's whoever that has been given the right to process the application on behalf of the property owner.

677. Tirandazi's contradicting herself, first confirming the clear language that a property owner can cancel a CUP application, then feigning ignorance in understanding the plain language she had just confirmed.

678. Tirandazi's testimony, particularly in light of the Engerbretsen Mandate,

reflects her criminal complicity and is an act in furtherance of the Antitrust Conspiracy.

679. And, again, no matter the labels that the attorneys for the Enterprise will use in opposition, any person that reviews her deposition transcript will come to the conclusion that Toothacre was at her deposition as her counsel and defended her. In other words, even if it cannot be proven she was the recipient of the ~$270,000 that is unaccounted for in Geraci's "political contributions" (described below), she has been paid by the Enterprise with Toothacre's professional services for her unlawful actions.

680. The City's failure to send an attorney to defend Tirandazi was a purposeful act meant to help the City deny knowledge of actions that any attorney would know or should know meant that *Cotton I* was filed as a sham (*e.g.*, the Illegality Issue).

T. Jacob becomes Cotton's attorney of record.

681. Jacob became Cotton's attorney-of-record sua sponte on April 27, 2018 at a hearing at which Judge Wohlfeil had signaled his intent to grant Geraci's motion for terminating sanctions. *See Cotton I*, ROA 222 (order denying terminating sanctions); *id.*, ROA 224 (Jacob's substitution of attorney form). But-for Jacob stating to Judge Wohlfeil that he would immediately become Cotton's attorney-of-record and would ensure that Cotton abided by his discovery obligations (which up to that point Cotton had refused to take part in under the belief that he did not have to because the case was a sham), the instant complaint exposing the *Cotton I* Conspiracy would never have been filed.

682. Pursuant to BPC § 6068(h), "[i]t is the duty of an attorney… [n]ever to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed."

683. Jacob knew (i) that he did not have the experience (the trial of *Cotton I* was his first trial), (ii) that he would need to set aside most of his time to fully represent Cotton and he would not get any more compensation on a monthly basis (he had already agreed to finance his services for specific motions and special appearances), and (iii) that he lacked the support staff (he is a solo-practitioner) to fight back against F&B/ALG and their unethical practices; which by then indisputably included fabricating evidence (*e.g.*,

the Disavowment Allegation). However, Jacob still undertook the responsibility to represent Cotton rather than let Geraci and F&B manipulate Judge Wohlfeil into entering a terminating sanction and thereby defile the judiciary by making it the instrument by which Geraci unlawfully acquired the Property.

U. F&B's Videotaped Deposition of Cotton

684. On May 14, 2018, Weinstein and Toothacre deposed Cotton for over eight hours. Cotton was questioned in great detail regarding, *inter alia*, his telephonic, text and email communications between him and Geraci immediately before, the day of, and after November 2, 2016. However, at no point during that deposition did Weinstein or Toothacre ask Cotton any questions regarding the purported phone call that took place on November 3, 2016.

685. Any reasonable attorney representing Geraci would have asked Cotton about the alleged November 3, 2016 phone call in which Cotton allegedly agreed with Geraci that he was not entitled to a 10% equity position.

V. Cotton's Motion for Summary Judgement or, Alternatively, Summary Adjudication (the "MSA").

686. On March 8, 2019, Cotton filed a motion for summary judgment or, alternatively, summary adjudication (the "MSA"). The MSA is one of the strongest pieces of evidence supporting Plaintiffs' Opposition Theory.

687. 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.

688. F&B opposed judicial notice of Geraci's verified answer to the *Cotton II* petition which contained his judicial admission he sent the Confirmation Email, but not the Disavowment Allegation. F&B argued:

> Geraci admitted that he sent the [Confirmation Email]; however, that is merely evidence that he sent the email and, on its face, is not evidence of any factual matter beyond the fact that he sent the email. ***The absence of an allegation in a pleading does not prove or disprove the existence of any fact***. Having no evidentiary value, the matter is irrelevant to Cotton's Motion for Summary Judgment/Summary Adjudication and judicial notice should be denied.

689. In regard to the Disavowment Allegation, F&B took the inherently contradictory position that substantively it was not an affirmative defense, but that Geraci could still testify about the Disavowment Allegation for its "evidentiary value" as if it were an affirmative defense:

> Cotton asserts that the "Disavowment Allegation" is barred as a matter of law because an affirmative defense is waived if not pleaded. Cotton's mistake here is that the "Disavowment Allegation" is not an affirmative defense. The "Disavowment Allegation" is Attorney Austin's characterization and argument regarding the facts. There is no allegation in the pleadings or in the evidence which references a "Disavowment Allegation." Geraci has not raised this as an affirmative defense and does not intend to do so. However, this in no way strips Geraci's testimony regarding the events and circumstances surrounding the November [Document] and the November 2 email exchange and November 3 telephone call with Cotton of its ***evidentiary value*** or in some other way precludes its admission into evidence.

690. Weinstein's argument is without factual or legal justification.

691. The MSA is one of the strongest pieces of evidence in support of the Opposition Theory because Weinstein argued in opposition for the <u>first</u> and <u>last</u> time that the November Document is <u>not</u> a fully integrated purchase contract!

692. This admission contradicts everything Geraci argued before and after the MSA and contradicts the judgment entered by Judge Wohlfeil in *Cotton I*.

693. On May 23, 2019, Judge Wohlfeil held a hearing on the MSA and, for the first time, addressed the November Document and held it is "ambiguous."

694. Judge Wohlfeil Minute Order ignores the fact that Cotton moved for partial adjudication on six issues and states that Cotton's "motion for summary judgment against

[Geraci] is DENIED."

695. At the hearing, in response to questions by specially appearing attorney 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***…"

696. But that is exactly what Judge Wohlfeil's duty was. *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."). Neither the November Document, the Request for Confirmation nor the Confirmation Email, have ever been disputed.

697. Furthermore, it was his duty, and Cotton's right, that he address that issue as a crucial threshold issue in the litigation. *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.").

W.The Deposition of Hurtado

698. On April 17, 2019, the deposition of Hurtado was taken by attorney Toothacre. Hurtado was represented by specially appearing attorney JoEllen Plaskett. Also in attendance were Cotton and Jacob who asserted various privileges during the deposition.

699. It was a very hostile deposition that started with a verbal altercation between Hurtado and Toothacre.

700. Cotton's website has a section titled "Canna-Greed. Stay Awake. Stay Aware. My Story" where he has kept track of, *inter alia*, the litigation against him, posted every pleading and motion and evidence he has regarding the case, and described the extra-judicial attempts to threaten him into settling the litigation.[59]

701. Cotton's website first describes Hurtado helping Cotton after Cotton

[59] *See* https://151farmers.org/2017/10/23/canna-greed-stay-awake-stay-aware-my-story/ (March 30, 2020).

terminated the agreement with Geraci. Toothacre did not know that Hurtado had already been negotiating with Cotton and on behalf of Cotton with third parties for months before November 2, 2016 for the Property to develop the Business.

702. A review of the non-privileged/confidential parts of the transcript makes it apparent that there were various factual issues that F&B thought were discrepancies or were facts that were in their favor. However, Hurtado contextualized them and explained their relation to other facts, bringing across that F&B had exponentially misunderstood the quality and quantity of evidence that Cotton would be able to present.

703. For example, Hurtado engaged with numerous parties who were willing to partner on the Property for at or near the Asking Price.

704. Also, at the deposition of Cotton, Cotton testified that he had not received any payments towards the purchase price of the Property from Martin as required by the Martin Purchase Agreement. However, as the SLFA memorialized, Martin decided to pull back from the purchase because of, *inter alia*, Geraci's criminal background and the *Cotton I* litigation. Hurtado and Jane paid the $50,000 non-refundable deposit due to Cotton when the Martin Purchase Agreement was amended. Subject to Cotton prevailing in *Cotton I*, Martin would reimburse Hurtado and Jane and the sale to Martin would close as originally contemplated. However, if Cotton was not successful, Cotton was obligated to pay that $50,000 amount back to Hurtado and Jane and was thus a loan secured by an interest in the Property.

705. In other words, there *was* consideration and the Martin Purchase Agreement is a valid agreement that Geraci and F&B/Toothacre unlawfully interfered in.

706. Toothacre visibly started shaking in the deposition when it became clear that the consequential damages were in the millions, there were numerous third party witnesses that could testify as to the legitimacy of the valuation, and Hurtado directly told him that he intended to report him to the California State Bar and do everything he could to see him criminally prosecuted for his actions once the truth was exposed.

707. At a certain point, Toothacre ceased his aggressive and offensive posturing

and started making repeated self-denigrating comments to the effect that he was only an "employee" of F&B, that Weinstein is "the boss," that he's "only doing what I am told," and that he was not responsible for the filing and maintaining of *Cotton I*.

708. The consequences of Hurtado's deposition included: (i) Toothacre seeking to absolve himself of guilt for maintaining a sham action by arguing the Nuremberg defense, an admission of guilt ("Toothacre's Nuremberg Admission"); (ii) F&B had a paralegal, Prendergrast, falsify a proof of service on a fabricated discovery request to breach the attorney-client privilege between Hurtado and Cotton; (iii) F&B made Cotton a settlement offer to continue the litigation to exert continued financial and emotional distress on Hurtado, Jane and Cotton's supporters; (iv) Geraci sent someone, probably Miller, to threaten Hurtado and Jane at Jane's residence; (v) prior to trial, F&B moved to bar Cotton from admitting Toothacre's Nuremberg Admission as evidence; and (vi) the revelation that Martinez had reconciled with Geraci and his agents and disclosed confidential information regarding Hurtado.

i. *Toothacre's Nuremberg Admission*

709. The deposition of Hurtado concluded with the following exchange between Toothacre and Hurtado:

> Toothacre: Thank you, Hurtado. I'm very sorry for [confidential and privileged matter].
> Hurtado: If that was true, Toothacre, you would cease your prosecution of this action.
> Toothacre: **It's not my case.**
> Hurtado: **You put your name on it.**
> Toothacre: **I didn't.**
> Hurtado: Your names on the letterhead. You literally sound like the Nazi guy: "I'm just following orders."

710. Flores spoke with attorney Plaskett, who is familiar with Toothacre in a professional capacity from irregular interactions over the course of twenty years.

711. Plaskett confirmed that Toothacre started physically shaking in response to Hurtado's testimony and that in her experience she believed him to be a seasoned litigator

that would not react like that absent very extreme circumstances. Furthermore, that Toothacre stressed the position that he cannot be held liable for maintaining *Cotton I* without probable cause despite being an attorney-of-record since the inception of the case and having subpoenaed, and being in the process of deposing, Hurtado.

ii. *Prendergrast: False Certification of Proof of Service*

712. During the deposition of Hurtado various privileges were asserted by Hurtado, Plaskett, Cotton and Jacob regarding communications between Hurtado, themselves and third parties.

713. On April 25, 2019, eight days after the deposition of Hurtado, F&B emailed Jacob falsely alleging that a set of special written interrogatories had been served over 7 months before on September 24, 2018 (the "F&B Interrogatories").

714. Pursuant to CCP § 2030.260(a), a party has 30 days to respond to written interrogatories.

715. "A party that fails to serve a timely response to the discovery request waives 'any objection' to the request, 'including one based on privilege' or the protection of attorney work product." *Sinaiko Hlth v. Pacific Hlth*, 148 Cal.App.4th 390, 403-4 (Cal. Ct. App. 2007) (citing CCP §§ 2030.290(a), 2031.300(a)).

716. F&B had their paralegal Rachel M. Prendergrast falsely certify that she sent the F&B Interrogatories on September 24, 2018 in order to allow F&B to then allege that Cotton's failure to timely serve responses waived all privileges in regard to his communications with Hurtado and Cotton (the "Prendergrast Fraud").

717. In email and phone conversations with Jacob, Weinstein responded with feigned righteous indignation at the idea that F&B would undertake the Prendergrast Fraud, <u>identical</u> to his feigned outrage when he is accused of fabricating the Disavowment Allegation, but admitted that he has no actual evidence the F&B Interrogatories were sent other than evidence that is capable of being fabricated (*e.g.*, Prendergrast's proof of service).

718. Weinstein also alleged it was a "coincidence" that F&B decided to follow-

up on the F&B Interrogatories for the first time over 7 months after they were allegedly sent and 8 days after the deposition of Hurtado at which various privileges were asserted between Cotton and Hurtado (and which would have been waived by operation of law had Jacob not made an issue of the Prendergrast Fraud).

iii. *F&B's Settlement Offer*

719. On May 23, 2019, Judge Wohlfeil stated at the MSA hearing for the first time that he found the November Document to be "ambiguous."

720. On May 28, 2019, Toothacre demanded additional discovery production from Hurtado threatening that if not produced he will file an ex parte application "seeking the imposition of sanctions against [Hurtado]."

721. On May 29, 2019, Hurtado emailed Toothacre a letter requesting that Toothacre provide in writing the probable cause for maintaining *Cotton I* justifying the discovery demands he was making of Hurtado in light of Judge Wohlfeil's finding, for the first time in *Cotton I*, that the November Document is "ambiguous" at the MSA hearing. Therefore, among other things, the Confirmation Email would not barred and would be admitted to interpret the November Document which leads to the Mutual Assent Issue. Hurtado requested that Toothacre respond by May 30, 2019 at 5:00 p.m.

722. On May 30, 2019, at 5:24 p.m., Hurtado emailed Toothacre:

> Toothacre, it is after 5:00 PM, please reply and let me know if you want me to produce the discovery. It will take time to make corrections to my deposition and look for additional documents that are responsive to your requests, but are needless for the reasons set forth in my letter.
>
> You cannot threaten me with sanctions and then just ignore me. If you believe you have probable cause to maintain the action and seek discovery from me, say so.

723. On May 31, 2019, Toothacre responded with one sentence: "Yes, please provide the discovery as soon as you are able."

724. Hurtado replied to Toothacre's email as follows (emphasis added):

> You have failed to respond to my request for your probable cause to maintain this action in light of Judge Wohlfeil's ruling finding the [November

> Document is] ambiguous, and you still demand that I provide discovery. I see Weinstein is included so I assume you have set up your favorite defense, that you are just following orders, like a Nazi war criminal. **You're going to burn in hell one day for what you are putting my family through Toothacre.**

725. There are highly confidential and privileged issues that are material to the interaction between Hurtado and Toothacre that were disclosed during Hurtado's deposition.

726. Any reasonable person upon understanding what Toothacre knew to be true, when he demanded additional discovery from Hurtado on May 31, 2019, will know Toothacre to be an unscrupulous attorney that sought to purposefully inflict severe mental, financial and emotional harm with his unfounded demand for discovery (for which he could not and did not articulate probable cause to demand).

727. Seven days later, on June 7, 2019, Toothacre emailed Jacob a settlement offer as follows:

> In an effort to resolve the state court matter without incurring the significant additional expense of trial, I propose the parties agree as follows:
>
> (a) dismiss the entire state court action without prejudice (thus, the claims in Geraci's operative complaint and in Cotton's operative cross-complaint will be dismissed without prejudice); and (b) the parties each waive costs.
>
> This would end the state court case and avoid the trial before Judge Wohlfeil (and the time and expense associated with it). The settlement would not affect the federal court action. Upon dismissal your client could choose to proceed as he sees fit in the federal court action (*e.g.*, seek to lift the stay of that action and proceed with his federal court lawsuit before Judge Curriel [sic]) with none of the parties giving up their rights to assert claims or defenses in that federal court action.
>
> Please let me know as soon as practicable whether or not your client is willing to settle the state court action on these terms and conditions. As you know, fees and costs are rapidly escalating as we prepare for trial.

728. The settlement offer by Toothacre is not privileged for at least three reasons.

729. First, it evidences that F&B offered the settlement agreement to continue to

exert emotional and financial distress on Cotton's supporters, including Hurtado (and not to prove Geraci's liability in the breach of contract action with Cotton). Second, *Cotton I* is a sham. Third, it is an act taken in furtherance of the Antitrust Conspiracy.

730. Plaintiffs do not believe that any attorney representing Geraci, F&B or any other defendant will take the risk of presenting the *Cotton I* judgment to this federal court and argue that it is not the product of a fraud on the court or judicial bias.

731. Any attorneys that do are ratifying the Enterprise's Antitrust Conspiracy, will become jointly liable with the Enterprise and, by their own affirmative action, be seeking to perpetuate a fraud on this federal court.

iv. *F&B's MIL Re: Toothacre's Nuremberg Admission*

732. On or about June 21, 2019, F&B, realizing that Toothacre's Nuremberg Admission is a tacit admission that F&B filed and maintained *Cotton I* without probable cause, moved to prevent Toothacre's Nuremberg Admission at trial.

733. F&B argued that Cotton raising the Toothacre Nuremberg Admission was an "ad hominem" attack that was "inflammatory and prejudicial" and cited in support, *inter alia*, *Martinez v. State of California Dept. of Trans.* (2018) 238 Cal.App.4th 559, 567 for the following statement: "Insinuation that a party has a Nazi decal was particularly egregious attorney misconduct."

734. F&B's reliance on *Martinez* is frivolous for at least two reasons.

735. First, the *Martinez* case states that the Nazi reference *during trial* was egregious because it was "a gratuitous, out-of-the-blue attempt to link Martinez to the Nazis." *Id*. at 564. Hurtado's statement was made at the end of a long, denigrating and unlawful deposition by Toothacre. Toothacre, after realizing that Hurtado's responses meant that Cotton would be owed millions in consequential damages if he ever got a judge to take his case seriously, started making comments seeking to absolve himself of liability despite being an attorney-of-record for Geraci since the inception of *Cotton I*. Thus, Hurtado's comment was neither "gratuitous" nor "out-of-the-blue" and F&B's use of *Martinez* is reflective of their unethical litigation tactics. *Martinez* admonished counsel

for the unjustified reference to Nazis. Yet, F&B did exactly what the *Martinez* court admonished, unjustifiably used the Nazi reference to seek to exclude material and relevant testimony that evidences F&B conspired with Geraci to file a sham lawsuit.

736. Second, the description of Toothacre's statements as a "Nazi" admission of guilt is factually and legally warranted; it is not a purposeful inflammatory ad hominem attack as F&B argued.[60] During the Nuremberg trials after World War II, several Nazis claimed they were not guilty of the tribunal's charges because they had been acting at the directive of their superiors. Since then, that argument has become popularly known as the "Nuremberg defense," in which the accused states they were "only following orders." Subsequent to the Nuremberg trials, it became a recognized valid legal defense pursuant to the Rome Statute of the International Criminal Court ("ICC") (an international treaty to which the United States was a signatory). An individual is able to present a legal defense and absolve themselves of liability in the ICC by arguing, exactly as Toothacre repeatedly and offensively did at the deposition of Hurtado, that they were "just following orders." The Nuremberg defense is not a valid defense under California law – Toothacre's instinctive attempt to distance himself from F&B and put the blame on Weinstein only serves to emphasize his knowing guilt.

737. Judge Wohlfeil did not allow Cotton or Hurtado to testify as to Toothacre's Nuremberg Admission at trial; thus, this evidence was not taken into account by the jury in reaching its judgment in *Cotton I*.

v. *Martinez' Disclosure of Hurtado and Dr. Ploesser*

738. During the deposition of Hurtado, Toothacre asked Hurtado if he had personally met with Dr. Ploesser.

739. That Hurtado had personally seen Dr. Ploesser was a fact known to six and only six individuals: (i) Dr. Ploesser, (ii) Hurtado, (iii) Jacob, (iv) Cotton, (v) Martinez, and (vi) Martinez's boyfriend.

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[60] *See Florida v. Bostick*, 501 U.S. 429, 443 (1991) (Justice Thurgood Marshall in a U.S. Supreme Court opinion criticizing police tactics quoting Florida "is not Hitler's Berlin, nor Stalin's Moscow, nor is it white supremacist South Africa.").

740. The only way F&B could have known that Hurtado had personally seen Dr. Ploesser was if Martinez informed Geraci or one of his agents.

741. Martinez's disclosure of Hurtado seeing Dr. Ploesser is an unethical, even if not illegal, disclosure of a private and confidential relationship that has nothing to do with the determination of whether the November Document was executed with the intent it be a receipt or a purchase contract on November 2, 2016.

III. THE COTTON I TRIAL AND COTTON III-V

A. The *Cotton I* Trial

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

743. 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 due to the Illegality Issue.

744. Tirandazi and Schweitzer falsely testified they were not aware or could not remember the existence of the Child Care Centers.

745. City attorney Phelps attended the trial.

746. City attorney Phelps prepared Tirandazi for testifying.

747. City attorney Phelps knows that Tirandazi supported the approval of the Magagna Application even though the Child Care Centers are within 1,000 feet of 6220 Federal in violation of the SDMC and state law.

748. Geraci cried on the stand when he testified the communications from Cotton to him, reflecting they were joint venturers, were actually Cotton "extorting" him and that Cotton had "betrayed" their friendship.

749. At this point in Geraci's testimony, Weinstein looked at the jury and asked Geraci if he needed a "moment to compose" himself as he allegedly dealt with the intense emotion of recalling Cotton's betrayal of their friendship.

750. Once the facts alleged herein are vetted, and the truth is established, Geraci's crying proves that not only will Geraci use violence against families in furtherance of his illegal goals, but that he is also willing to undertake public self-degrading acts to avoid

being held legally and financially liable.

751. Any future statements of alleged regret or contrition by Weinstein will be false as reflected by this scripted act he put on for Judge Wohlfeil and the jury.

752. Geraci testified the value of the Property, inclusive of a cannabis CUP, is $800,000.

753. Judge Wohlfeil prohibited Cotton and Hurtado from providing contradicting testimony to prove the value of the Property with a cannabis CUP is exponentially greater than $800,000.

754. Judge Wohlfeil prohibited Cotton and Hurtado from testifying as to Toothacre's Nuremberg Admission.

755. Mrs. Austin falsely testified that, *inter alia*, (i) she did not speak with Hurtado regarding the November Document on March 6, 2017, (ii) that she did not confirm to Hurtado the November Document is not a purchase contract, (iii) that Geraci is not barred from owning a cannabis CUP pursuant to the Berry Application notwithstanding the Illegality Issue.

756. Judge Wohlfeil prohibited Jacob from calling Williams to testify and impeach Mrs. Austin's testimony that she did not speak with Hurtado on March 6, 2017 about the November Document.

757. Judge Wohlfeil prohibited Cotton and Hurtado from testifying about Magagna's threats against Young preventing her from testifying at that trial (described below).

758. Judge Wohlfeil's refusal to address the Mutual Assent Issue and the Illegality Issue means that he represented to the jury that (i) the November Document is a fully integrated purchase contract as pled in Geraci's complaint and (ii) that it is not illegal for Geraci to own a cannabis CUP pursuant to the Berry Application notwithstanding (a) the Illegality Issue, or (b) the lack of a writing memorializing the alleged agency between Geraci and Berry in violation of the statute of frauds and the equal dignities rule.

B. The Motion for New Trial

759. After the trial of *Cotton I*, Cotton specially hired counsel from out of state to file a motion for a new trial (the "MNT"). 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 (semantics attempting a different approach at having Judge Wohlfeil address the Mutual Assent Issue); and (iii) Geraci, F&B and Mrs. 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.

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

761. 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.

762. 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.

763. 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?

764. Judge Wohlfeil did not address the other issues raised in the MNT and

summarily denied the MNT without providing any reasoning.

765. 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, in the COA Petition, as one of the main foci seeking Judge Wohlfeil's disqualification in the DQ Motion,[61] in opposition to a motion in limine by F&B seeking to exclude the Geraci Judgements,[62] 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,[63] and the subject of a motion for directed verdict by Cotton at trial.[64]

766. 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.

767. 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

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[61] *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.").

[62] *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.").

[63] *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.").

[64] *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].").

opposition to the MNT (*i.e.*, the Opposition Theory).

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

C. Cotton III[65]

769. On February 9, 2018, Cotton, proceeding pro se, filed a federal complaint against Geraci, Berry, Mrs. 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 also concurrently filed a motion for leave to proceed in forma pauperis ("IFP"), an ex parte application for a TRO (the "*Cotton III TRO*"), and a motion for appointment of counsel.

770. The basis of Cotton's factual allegations in the *Cotton III* complaint are mostly a combination of Cotton's factual allegations in his original pro se cross-complaint in *Cotton I* and the *Cotton II* petition.

771. Material additional allegations included that the City is prejudiced against him because of his "political activism for the legalization of medical cannabis." *Cotton III*, ECF No. 1 at ¶10. Also, that Wohlfeil is biased against him and "has not seemed interested in reading any of [his] prior submissions [*i.e.*, the Opposition Theory]." *Id.* at ¶ 296.

772. On February 28, 2018, Judge Curiel stayed *Cotton III* pursuant to the *Colorado River* doctrine, granted Cotton's IFP motion and denied his motion for

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

appointment of counsel as moot.

773. On December 23, 2019, after Judge Wohlfeil entered the judgment in *Cotton I*, Cotton filed an ex-parte application seeking Judge Curiel to find, *inter alia*, that Judge Wohlfeil is biased. In support of that application, Cotton provided Judge Curiel the MNT, the opposition and reply, as well as the transcript from the MNT hearing and the DQ Motion.

774. On January 9, 2020 Judge Curiel recused himself without explanation.

775. Cotton believes that Judge Curiel recused himself because he realized that Cotton is not a "conspiracy nut" and had provided him all the facts that mandated federal intervention and staying *Cotton I* as a result of judicial bias in February 2018.

D. Cotton IV[66]

776. On December 6, 2018, Cotton and Hurtado, through counsel, Jacob, filed a federal complaint alleging various causes of action against Geraci, Berry, Weinstein, Toothacre, F&B, Mrs. Austin, ALG, Miller, and a legal malpractice claim against FTB, Demian and Witt.

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

778. 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.

779. Flores was initially dumbfounded when he first read the answer Crosby filed because the MSA was pending before Judge Wohlfeil seeking to have the court specifically address the Affirmative Defenses Issue.

780. The Answer filed by Crosby is a "sham defense" and perpetuated the fraud on the court committed in state court and carried it over to federal court.

781. 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

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

innocent third-parties and their families.

782. 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.[67]

783. F&B's use of Crosby as a proxy to commit a fraud on the federal court is the Enterprise's defining modus operandi.

784. Flores was going to represent Hurtado in *Cotton IV*, but an issue arose that prevent Flores from representing Hurtado and the parties amended their agreement.

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

E. Cotton V

786. This is the fifth lawsuit to be filed arising in part from the Enterprise's actions seeking to deprive Flores, or his predecessor in interest, of the District Four CUP.

787. Some of the actions and evidence that the Antitrust Conspiracy exists and includes corrupt City employees took place at the trial of *Cotton I*.

i. *The $300,000 Public Corruption Issue*

788. The *Cotton I* complaint filed on March 21, 2017 alleges Geraci "estimates he has incurred expenses to date of more than $300,000 on the CUP process[.]"

789. Prior to the dispute between Geraci and Cotton, Geraci told Cotton that he makes political contributions to numerous City politicians and that he had already started "greasing the wheels" to have the alleged Zoning Issue resolved and a cannabis CUP application approved at the Property.

790. However, according to the evidence submitted by Geraci at trial in *Cotton I*, prior to the filing of the *Cotton I* complaint, Geraci had only spent approximately $32,000 and there is no mention or evidence of any "political contributions" by Geraci.

791. In July 2019 in *Cotton I*, Geraci was awarded a total of approximately

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

$260,000 in damages in connection with the Berry Application, with the majority of those costs being incurred months and years after the filing of the *Cotton I* complaint.

792. The approximate $270,000 missing from Geraci's evidence of damages prior to March 2017 are the "political contributions" that were unlawful bribes to City employees that Geraci cannot admit to.

793. Geraci is the owner-manager of T&F Center and has been an Enrolled Agent with the IRS for over 40 years; Geraci knows accounting.

794. Geraci will not be able to provide a reasonable explanation for why he alleged expenses of $300,000 or more in March 2017 but could only prove approximately $32,000 in July 2019.

795. The chart below breaks down the expenses incurred by Geraci according to the evidence he submitted at trial in *Cotton I* (Geraci Trial Exhibit No. 137) as follows: (i) before the filing of *Cotton I*, (ii) between the filing of *Cotton I* and the approval of the Magagna Application, and (iii) after the approval of the Magagna Application.

Vendor Name	Up to 03/21/17	03/21/17 - 10/18/18	Post 10/18/18
Austin Legal	2,592.00	4,230.11	0.00
Bartell and Associates	9,011.05	58,595.25	6,136.05
City Treasurer	0.00	6,000.00	7,500.00
Lundstrom Engineering	4,400.00	0.00	0.00
McElfresh Law	0.00	0.00	1,245.00
Mituza Traffic Consulting	0.00	4,200.00	0.00
Sam Wade Landscape Architects	1,500.00	4,447.91	2,301.16
SCST	0.00	2,265.50	0.00
Snipes-Dye	0.00	12,147.50	0.00
TECHNE	14,800.00	35,876.24	35,955.51
Title Pro	0.00	300.00	0.00
Totals	**32,303.05**	**128,062.51**	**53,137.72**
Percentage of Total Expenses	**12.4%**	**49.2%**	**20.4%**

796. Geraci's own judicial admissions evidence there is public corruption (the "Public Corruption Issue").

ii. *McElfresh & FTB*

797. In mid-November 2019, Flores discovered McElfresh's role after the trial of *Cotton I* when he was reviewing F&B's trial exhibits and working through the discrepancies described in the Public Corruption Issue.

798. Learning of McElfresh's role, connecting FTB to Geraci and thereafter her relationships with Mrs. Austin and Razuki, was Flores' first "smoking gun" moment in his professional career. It is the gateway fact in understanding that Cotton is not a "conspiracy nut," but actually a victim of a conspiracy by multiple attorneys from multiple law firms that included his own attorneys at FTB.

799. Among other issues, it reconciled the most perplexing issue for Flores at that point in time in his investigations. On one hand, F&B via discovery turned over incriminating emails clearly proving that Berry, Gina, Bartell, and Schweitzer knowingly aided Geraci in unlawfully applying for a cannabis CUP without disclosing his interest in the Berry Application. This would appear to reflect F&B acts with integrity. But, on the other hand, F&B clearly conspired with Geraci to commit a fraud upon the court by filing a sham action and fabricating the Disavowment Allegation in response to *Riverisland*.

800. The reason F&B turned over the damning evidence to FTB was because FTB is a conspirator and was conniving at the defeat of Cotton's case.

iii. *The Magagna Appeal by McElfresh / Schweitzer*

801. On or about December 6, 2018, McElfresh represented Geraci at the appeal hearing of the approval of the Magagna Application (the "Magagna Appeal").

802. At trial in *Cotton I*, McElfresh's invoices for representing Geraci at the Magagna Appeal were included in the supporting documentation computing Geraci's damages.

803. Prior to the December 6, 2018 hearing, McElfresh and Schweitzer consulted for the preparation of the Magagna Appeal and discussed the Child Care Centers. *See e.g. Cotton I*, Trial Exhibit No. 147 at 147-059:¶¶7-8 (Techne Invoice 685 stating they "verify

and research if there is or has been a cuddles day care or any church near the zone of the project."

804. On or about November 15, 2019, Flores brought to Hurtado's attention that McElfresh represented Geraci at the Magagna Appeal.

805. Hurtado knew that McElfresh knew that Geraci could not legally own a cannabis CUP because of the Sanctions Issue and that she knew the import of the Confirmation Email to the November Document.

806. On November 25, 2019, after Hurtado had reviewed his emails with McElfresh and FTB, he called Deputy District Attorney Del Portillo and left him a voicemail letting him know that he had evidence that McElfresh had breached the DPA during the 12-month term. On December 3, 2019, Hurtado called Del Portillo again.

807. On December 6, 2019, Hurtado was considering contacting the Department of Justice believing that Del Portillo was purposefully seeking to avoid prosecuting McElfresh due to corruption.

808. However, Flores has interacted with Del Portillo throughout the course of his career, he has had multiple clients in cases prosecuted by Del Portillo. Flores knows Del Portillo to be an ethical and straightforward attorney.

809. On December 6, 2019, Flores called and spoke with Del Portillo with Hurtado on the line and let him know about McElfresh breaching the DPA by representing Geraci in the Magagna Appeal.

810. Succinctly explaining the Enterprise and the Antitrust Conspiracy in a credible manner was not something that could be done in that single phone call. Therefore, the parties agreed that as soon as Flores finished the instant complaint, he would provide it to Del Portillo. Further, he would provide documentation and evidence proving the allegations as to McElfresh.

811. McElfresh breached the DPA by (i) violating her fiduciary duty to Cotton, Martin and Hurtado by representing Geraci at the Magagna Appeal because she knew that (ii) *Cotton I* was a sham action because of the Mutual Assent Issue; (iii) Geraci cannot

own a cannabis CUP via the Berry Application because of the Illegality Issue; and (iv) the Magagna Application should have been denied because of the Child Care Issue, which she purposefully failed to raise in the Magagna Appeal.

812. McElfresh's DPA is contractual in nature and must be addressed by contract law standards.[68] The DPA provides that if McElfresh "fails to meet any of the terms and conditions, prosecution of all charges will resume."

813. The fact that evidence of McElfresh's breach of the DPA during the period of deferment was not discovered until after the period of deferment provides no basis for failing to hold her accountable for the breach and the crimes she committed that constituted the breach.[69]

814. If Del Portillo is prevented by his superiors from prosecuting McElfresh for her breach of the DPA - thereby inherently refusing to investigate Tirandazi's and Phelps unlawful acts - then such is evidence that someone with material influence in the City is seeking to cover-up the Antitrust Conspiracy and the City's knowing or negligent role in it.

iv. *The Damages Issue: Judge Wohlfeil did not conspire with the Enterprise.*

815. At trial, Judge Wohlfeil found that absent Cotton's interference, the Berry Application would have been approved and a dispensary opened at the Property (the "Damages Issue"). The Damages Issue is the strongest reason for why Plaintiffs do not believe that Judge Wohlfeil, while favorably biased in favor of Mrs.

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[68] "[D]eferred prosecution agreements are similar to plea agreements in that both are considered 'contractual in nature and must be measured by contract law standards.' *United States v. Sutton*, 794 F.2d 1415, 1423 (9th Cir. 1986)." *United States v. Goldfarb* (N.D. Cal. Sep. 5, 2012) No. C 11-00099 WHA, at *3.

[69] *Cf. State v. Kaczmarski* (Wis. Ct. App. 2009) 320 Wis. 2d 811, 822 ("We conclude that the deferred prosecution agreement unambiguously provides that, in the event that [defendant] breaches the agreement, the district attorney may resume prosecuting [defendant] only during the deferral period. The agreement plainly states that, if [defendant] violates the agreement, 'the District Attorney may, *during the period of deferred prosecution* . . . prosecute you for this offense.' (Emphasis added.)").

Austin/Weinstein/Demian, is not actually corrupt and conspiring with them.

816. The Catch-22 that F&B found itself in the *Cotton I* trial is that it needed to convince Judge Wohlfeil and the jury that Geraci believed the November Document was a purchase contract, the Dream Team was working to have the Berry Application approved (reflecting their belief that it was lawful for Geraci to own a CUP despite the Illegality Issue), and but-for Cotton's interference the Berry Application would have been approved.

817. However, they did not want there to be an actual finding by Judge Wohlfeil that the Berry Application would actually have been approved.

818. This is because F&B needed to plan for the possibility that *Cotton I* would later be exposed as a sham on appeal or via collateral attack. If that were the case then Geraci/F&B would be liable to Cotton for the lost profits he would have been owed but-for their fraud and deceit.

819. Put another way: <u>if</u> Cotton was responsible for the delay in the processing of the Berry Application that allegedly allowed the Magagna Application to catch up and get approved before the Berry Application, <u>then</u> any reasonable attorney representing Geraci would seek consequential damages, including lost profits from a dispensary at the Property that would have been realized but-for Cotton's alleged unlawful interference. But F&B did not.

820. The following exchange between Weinstein and Judge Wohlfeil at the trial of *Cotton I* regarding the Damages Issue would be amusing if not for all the violence that Weinstein has directed, encouraged and ratified with his superior legal acumen:

> <u>MR. WEINSTEIN</u>: First of all […] there's no evidence that the CUP would ever have been obtained.
> <u>THE COURT</u>: Well, on that subject, there is evidence from Mr. Bartell--
> <u>MR. WEINSTEIN</u>: Right.
> <u>THE COURT</u>: They can rely upon your witnesses' testimony as well.
> <u>MR. WEINSTEIN</u>: So --

> THE COURT: Mr. Bartell made an awful good witness and all but said that instead of being 19 for 20, he would have been 20 for 20 but for Mr. Cotton's interference. [….]
> MR. WEINSTEIN: So –
> THE COURT: In fact, I think you may have elicited it.
> MR. WEINSTEIN: I did.
> THE COURT: Counsel, you may have. I'm not picking on you, but that's what I seem to recall to be the up -- so there's evidence, I think, **that it's more probable than not that a CUP had been issued and the dispensary opened**.
> MR. WEINSTEIN: Had Mr. Cotton not interfered.
> THE COURT: Right.

821. Weinstein did too good a job convincing Judge Wohlfeil and the jury that the Dream Team was working on the Berry Application in good faith.

822. F&B's failure to seek consequential damages and Judge Wohlfeil's finding that the Berry Application would have been approved at the Property, but-for Cotton's alleged unlawful interference, evidences F&B's bad faith and that Judge Wohlfeil is not conspiring with F&B.

PART VI – MR. AND MRS. SHERLOCK / HARCOURT'S AFFIRMATIVE DEFENSES

823. On December 21, 2015, 18 days after Biker's death, a Certificate of Cancellation for Leading Edge Real Estate, LLC ("LERE") was filed with the state that was executed by Harcourt and allegedly Biker (the "Signature Date Issue").

824. As described above, Martinez stated that Geraci had an ownership interest in the Balboa CUP.

825. This led Plaintiff Flores to investigate the Balboa CUP and discover after review of the litigation referenced herein that, though Biker applied for and was granted the Balboa CUP, somehow upon his death on December 3, 2015 it ended up being owned by Harcourt and thereafter Razuki and also allegedly Malan.

826. Flores, while investigating the connection between Geraci, Razuki and Malan discovered that that Balboa CUP was originally granted to Biker as an owner of LERE to which Harcourt was a partner.

827. Flores then discovered that LERE has been dissolved. Flores was able to

obtain a copy of the Certificate of Cancellation filed with the Secretary of State and discovered the Signature Date Issue.

828. Shortly thereafter, Flores discovered a Certificate of Cancellation for a company named Full Circle Finance Company, LLC, field December 8, 2015, or five days after Biker's death allegedly signed by Harcourt and Biker.

829. In or around January 2020, Flores met with Mrs. Sherlock and showed her the form filed with California Secretary of State dissolving LERE that was purportedly executed by Biker and pointed out the Signature Date Issue.

830. Mrs. Sherlock said the signature on the form was not Biker's.

831. Further, that she did not understand why, if her husband had an interest in the Balboa Permit, would it not have been transferred to her or why she was not notified.

832. Mrs. Sherlock was unaware that Biker was ever actually granted the Balboa CUP and believed that it was lost due to litigation or some other process.

833. Because it was possible the Biker *could* have, in theory, signed the documents before his death, Flores engaged handwriting expert Manny Gonzalez of Alliance Forensic Sciences, LLC, who has had over 40 years of forensic document experience. Mr. Gonzalez concluded that the signature of Biker on the Dissolution Form of LERE was more likely than not a forgery (and could be determined to be conclusively a forgery if he had access to the original).

834. On February 21, 2020, Flores first contacted Harcourt's attorney, Allan Claybon of Messner Reeves LLP, and thereafter they spoke and emailed several times.

835. Flores argued it could appear that Harcourt forged Bikers' signature to acquire his interest in the cannabis permit and thereby defrauded Mrs. Sherlock and her family as Biker's heirs. Flores provided Claybon a copy of the handwriting experts' report.

836. Flores has had a single, simple question for Harcourt: "how did Bikers' interest in the cannabis permit become yours?

837. 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.

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

839. As of the filing of this Complaint, Harcourt has not provided an answer to this simple question. However, without admitting guilt, Claybon communicated Harcourt's Affirmative Defenses in anticipation of this litigation.

840. Claybon has directly accused Flores of being "jaded" for not believing Harcourt's self-serving allegation that he saw Biker execute the form dissolving the LLC *the day before* he passed away. An alleged action that had never been disclosed to Mrs. Sherlock until Flores contacted Claybon in good faith presuming Harcourt would be able to provide a reasonable explanation.

841. Claybon argues that the allegations by Harcourt and the third-party who allegedly saw Biker execute the form the day before he passed away conclusively establishes the truth of the matter and negates the evidentiary value of the professional handwriting expert and Mrs. Sherlock's familiarity with Biker's signature. Therefore, Mrs. Sherlock has no probable cause and is acting in bad faith in bringing forth this suit.

842. 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 Biker's interest in the permit. It is exasperating and transparent prevarication. Attached hereto as Exhibit 5 are the last two emails sent by Flores to Claybon regarding this issue.

843. In March 2020, Flores was provided documents by the Office of the County Counsel that revealed that (i) the property owner at which the Ramona CUP operates and Renny Bowden, who were college roommates, were the owners of the Operating Certificate of the Ramona Permit at least as late as 2018; and (ii) the individual listed as the owner of the Ramona Permit currently with the BCC is Eulenthias Duane Alexander,

who is an agent of Geraci that was sent to threaten Cotton to settle *Cotton I*.

844. Prior to receiving these documents Flores spoke with Senior Deputy County Counsel Timothy M. White, who provided the name and contact email for the permit holder. The name provided was Renny Bowden, however, the email provided was for Bradford@EquityCapital.us.

845. Cotton and Mrs. Sherlock have repeatedly visited and contacted the office of San Diego Mayor Kevin Faulconer regarding the District Four CUP, the Balboa CUP and the Ramona CUP.

846. As of the date of this filing, neither Cotton nor Mrs. Sherlock have ever received a response from Mayor Faulconer's office.

PART VII – VIOLENCE IN FURTHERANCE OF THE ANTITRUST CONSPIRACY

847. At a certain point after *Cotton I* was filed, it became apparent that Cotton is an indomitable individual – he had not and would not succumb to the mental, emotional or financial pressure of defending against a sham action by a wealthy individual, filed by unethical attorneys who engage in illegal litigation tactics, and which was being presided over by a biased judge.

F. The Armed Robbery

848. Jeff Hagler is a veteran – a Navy Officer - who served honorably in the U.S. armed services. He has a degree in electrical engineering and was an employee of Cotton's company Inda-Gro at the Property where he designed and built induction and LED-based lighting systems.

849. On June 10, 2017, Hagler was caught in Geraci's line-of-fire when Geraci directed three armed and masked assailants to rob and threaten individuals at the Property. The assailants held Hagler at gun point, threatened him with a pistol in his face, tied his hands and feet behind him, forced him to the floor and robbed him of his personal possessions (the "Armed Robbery"). Hagler quit work at Inda-Gro the next day.

850. Cotton arrived during the Armed Robbery, saw Hagler tied up on the floor, had a gun pointed to his face, and he ran to contact the authorities.

851. When the assailants ran from the Property and got into a car that was waiting for them, Cotton chased them in his own vehicle.

852. Cotton chased them at high speeds down Federal Blvd. while he called 911 and provided the police the license plate number.

853. Cotton was ordered by the 911 dispatcher to cease pursuing the assailants at high speed because of the potential risk to the public.

854. Approximately one hour later a man was apprehended by the Chula Vista Police, who matched the description of the getaway driver, returning a rental car that matched the license plate provided by Cotton on the 911 call (the "Getaway Driver").

855. Cotton's former business, Fleet Systems, was an authorized dealer for Kohler brand generators. Many of the local news company vans have had Kohler brand generators installed at the Property by Fleet Systems.

856. When the report of the Armed Robbery went to the local news outlets a driver of one of the news vans recognized the Property address, as he had taken his news van to be serviced there and reached out to Cotton. The driver was able to send him an unpublished picture of the police detaining the Getaway Driver.[70]

857. The picture was unpublished at the request of the SDPHD because there was an "active" investigation.

858. SDPD Detective Eric Pollom was assigned to the Armed Robbery.

859. On or about June 10, 2017, Detective Pollom told Cotton that the Getaway Driver had not been arrested as part of a strategy to start an investigation for the "big fish" – the individual responsible for directing the Armed Robbery.

860. Flores, as part of his due diligence in preparing for this suit, reviewed reports

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[70] Attached hereto as Exhibit 6 is a true and correct copy of the photo of the photo of the individual being detained by police offers after the Armed Robbery returning the rented vehicle with the matching license plate number provided by Cotton on the 911. The picture was taken at the Enterprise Rent-A-Car in Chula Vista, California

by the SDPD[71] and the CVPD regarding the Armed Robbery. The reports provided by the SDPD and the CVPD (which are heavily redacted) are notable because they do not note or describe the existence of the Getaway Driver, much less that he had been detained by the police.

861. On September 13, 2018, Flores and Cotton met with Detective Eric Pollom and Sergeant Chris Cameron to inquire about the status of the investigation into Armed Robbery and the Getaway Driver.

862. When Cotton asked about the status of the Getaway Driver, Detective Pollom denied that the police had taken the Getaway Driver into custody.

863. Flores and Cotton then showed Detective Pollom and Sergeant Cameron the unpublished image of police officers detaining the Getaway Driver at the car rental agency.

864. Detective Pollom was stunned by the picture and asked Cotton how he had acquired that picture?

865. Cotton replied that it came from a local news company and that it was sent to him on the same day of the Armed Robbery.

866. Detective Pollom then appeared to remember that the Getaway Driver had been detained but stated he could not provide details about the investigation.

867. Sergeant Cameron at that point said "just so you guys know, I was not the Sergeant went this happened, this did not happen on my watch."

868. On January 9, 2019, in response to emails from Cotton, Detective Pollom emailed Cotton "[t]he case is currently inactive. There have been no new leads since we spoke."

869. Cotton believes, and informed Detective Pollom, the Getaway Driver is someone he had seen at Geraci's T&F Center during one of his meetings with Geraci.

870. The Getaway Driver was recognized by individuals in the cannabis

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[71] The reports by the SDPD were created by Officers Gibson and Shields (Incident No. 17060016585).

community as someone who operates illegal marijuana dispensaries in Chula Vista, but would not provide his name for fear of violent retaliation once they realized their disclosure of his name would be used to name him in this suit.

871. Nothing in Flores' experience as a criminal defense attorney can provide a reasonable explanation for why Detective Pollom, knowing the identity of the Getaway Driver, who in turn knew the identity of the assailants, would allegedly put the Armed Robbery case into inactive status because there have been no "new leads."

G. Eulenthius Duane Alexander and Logan Stellmacher

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

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

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

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

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

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

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

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

880. Alexander made it a point to highlight that Geraci was a politically influential individual with the City and that the Berry Application was already a "done

deal" for Geraci.

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

882. Stellmacher then directly threatened Cotton, stating that Geraci's influence with the City extended to having the ability to have the San Diego Police Department raid the Property and have Cotton arrested.

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

884. Stellmacher, in turn, responded that if Geraci wanted the San Diego Police "would find something."

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

886. On or about February 8, 2018, Cotton emailed Weinstein, Mrs. Austin and Phelps to inform them that he would be filing a federal lawsuit that, *inter alia*, describes the threats by Alexander and Stellmacher.

887. Approximately 30 minutes after that email was sent, Stellmacher called Cotton to emphatically tell him that he was no longer associating with Alexander or Geraci. Stellmacher stated that he was out on bail or some kind of probation for drug charges in Texas and could not be implicated in any criminal activity.

888. At that point in time, on Geraci's side, no individuals other than Weinstein and Mrs. Austin knew that Cotton was getting ready to file a federal complaint describing Stellmacher as an agent of Geraci in a criminal conspiracy.

889. Either Weinstein or Mrs. Austin immediately informed Geraci, or one of his agents, thus prompting Stellmacher's call to Cotton.

890. On February 9, 2018, Cotton filed his pro se federal complaint, *Cotton III*, in which he describes Alexander and Stellmacher's threats. However, at that point in time, Cotton did not know Alexander or Stellmacher's last names, so they were referred to as Duane and Logan, respectively, in *Cotton III*.

891. On February 12, 2018, Stellmacher repeatedly called Cotton and Cotton emailed City attorney Phelps about his concern for his safety.

892. City attorney Phelps responded: "Mr. Cotton: If you are scared or concerned for your safety I recommend you contact the appropriate authorities."

893. On or about February 17, 2018, Stellmacher showed up uninvited to the Property and threatened Cotton for describing his actions in *Cotton III*. However, he also demanded that he be kept out of the litigation from then on.

894. Cotton confronted Stellmacher with what he alleged in *Cotton III*, his belief that he and Alexander were working as agents of Geraci to coerce him into settling *Cotton I* when they threatened him at the Property.

895. Stellmacher alleged that Alexander and him had encouraged Cotton to settle with Geraci out of goodwill for his own benefit.

896. Over a year later, after the Magagna Application had been approved, on May 14, 2019, Stellmacher showed up unannounced at the Property again and said that it was "good" that the "whole mess was over now" that the District Four CUP had been issued at 6220 Federal.

897. Stellmacher's statement presupposed that there were no more potential repercussions from the *Cotton I* litigation that was still ongoing and that Magagna was not associated with Geraci.

898. Stellmacher requested that Cotton help him acquire 20 pounds of marijuana.

899. Stellmacher went out of his way to say that the 20 pounds were for a non-medical transaction and that he would provide Cotton a significant premium for arranging for the marijuana because he knew that Cotton needed the money.

900. Cotton told him that he would not engage in any illegal activity and told him to leave the Property.

901. Stellmacher was sent by Geraci in an attempt to set up Cotton for an illegal sale of marijuana to make him appear to be like Geraci, an individual who operates illegal marijuana dispensaries, because the trial of *Cotton I* was less than two months away and

there was a possibility that Judge Wohlfeil's Fixed-Opinion could be pierced.

902. Cotton has a demonstrable lifelong passion for the political advocacy of the legalization of medical marijuana that has been public and documented.

903. In contrast, Geraci's only documented involvement with marijuana is with the Illegal Marijuana Dispensaries and *Cotton I*.

904. Geraci's filing of *Cotton I* and his actions seeking to acquire the District Four CUP, including crying on the stand, leave no room for doubt about his character, integrity, and what he is willing to do to acquire cannabis CUPs and avoid liability.

905. If a jury ever reaches the issue of how much money Geraci and his joint tortfeasors should be made to pay Cotton for the harm they have inflicted on him or ratified over the course of years, making Cotton appear to be someone who operates illegal marijuana dispensaries like Geraci would make Cotton an unsympathetic victim to the jury and greatly limit those damages.

906. Frankly, a brilliant and unethical legal strategy. However, despite Cotton's dire financial circumstances, he has stayed true to his medical cannabis activities and has not engaged in any of the non-medical and highly profitable deals that he has been unprecedently approached with since mid-2018.

H. Shawn Joseph Miller

907. Miller is an agent of Geraci who has repeatedly threatened, harassed and intimidated the families of Hurtado and Jane. Miller has a long-documented history of violence and criminal behavior.

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

909. At a pretrial hearing, Miller's own attorney, fearing for his safety, requested that he be removed as counsel. *Id.* at 343 (Miller's attorney: "The Defendant and I just had a meeting, which deteriorated to a very violent nature…. I was hoping while he sat in

jail he would come to his senses but obviously has not. He is hostile to me. I cannot under the ethical situation even sit at the same trial table with him. So I have all the evidence here that he needs. I can give it to him and let him represent himself.”).

910. The Court of Appeal decision emphasized that the trial court “citing Miller's criminal history and propensity for fraud, sentenced Miller to an above-Guidelines term…” *Id*. at 344 (emphasis added).

i. *January 2018*

911. In early January 2018, Cotton, having fired FTB for what was then believed to be Demian’s gross incompetence, was acting pro se and required paralegal support. Additionally, Jacob, who had been retained on a limited representation basis and was working his way through discovery and the motions filed in *Cotton I* and *Cotton II* in preparation for the filing of the Lis Pendens Motion, also needed paralegal support.

912. Jacob had an office in Mission Valley, Cotton operated at the Property, and Hurtado’s office was at his residence which was approximately 32 miles from Jacob’s office and took approximately 50-70 minutes to reach depending on traffic.

913. Jane’s residence was central to all parties.

914. Jane agreed to allow a floor of her residence to be used as a temporary office for Cotton, Jacob, Hurtado and paralegals to meet to work on Cotton’s litigation.[72]

915. On and around January 17, 2018, Hurtado contacted a few paralegals including Miller.

916. Jacob recognized Miller from his website, SBJM Consulting, as Miller also worked in the same office building as Jacob in Mission Valley and previously worked with one of his colleagues.

917. On or about January 17, 2018, Miller went to Jane’s residence to meet with Hurtado and Jacob. However, because Miller was running late, Jacob had to leave as Miller was arriving, but Jacob confirmed it was Miller from his office building.

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[72] The disclosure that Jane’s residence was used as a location for work by Cotton and other individuals for litigation purposes is not a direct or implied waiver of any applicable privilege. Neither is any other disclosure in this Complaint.

918. Hurtado provided Miller the pleadings in *Cotton I* and explained the paralegal support that Cotton and Jacob required. Hurtado noted his financing role and that he did not want to be directly involved because, *inter alia*, Geraci appeared to be a "mafia-like figure" and was definitely a criminal. Hurtado explained that, at the very least, Geraci was involved in illegal marijuana operations on a commercial scale and had the wealth to persuade an ostensibly reputable law firm, F&B, to engage in a malicious prosecution action to deprive Cotton of the Property by misrepresenting a receipt as a purchase contract.

919. Hurtado informed Miller that he would run a background check on him.

920. Miller then stated he personally knew Geraci and that in full disclosure he himself was on parole.

921. Hurtado then informed Miller that there was a conflict of interest that precluded him from financing his employment for Cotton and Jacob. However, Hurtado requested that Miller not disclose their conversation to Geraci. Hurtado specifically emphasized to Miller that he was ethically obligated to keep their conversation confidential from Geraci, which Miller acknowledged and said he understood.

922. Despite Miller's expressed understanding, approximately two hours later at around 10:00 p.m., Miller called Hurtado requesting that Hurtado use his influence with Cotton to persuade him to settle with Geraci because Geraci is really "not a bad guy."

923. Furthermore, Miller said that it would be in Hurtado's "best interest."

924. This comment scared Hurtado because it had potentially two meanings. First, earlier that evening Hurtado told Miller he always had to do what was in the "best interest" of his family. Second, it is the same expression used by Stellmacher when threatening Cotton, leading to the possibility that the language, if not an indirect threat to his family, originated directly from Geraci.

925. Hurtado immediately accused Miller of violating his ethical obligations by contacting Geraci. Miller denied the accusation.

926. Hurtado responded that it made no sense for Miller to call him two hours

after he had left, seek to have Cotton settle the case, and attribute to Geraci positive character traits after Hurtado explained that Geraci was indisputably a criminal.

927. Miller ignored Hurtado's statements regarding Geraci's criminal actions and responded that he had just been "thinking about it" and said it was just "too bad" that a resolution could not be reached because, again, Geraci was not a "bad guy."

928. Hurtado told Miller to never contact him again and hung up.

929. The next day, Hurtado went to the El Cajon Police Department to file a report and spoke with the officer on duty – Officer J. McDaniels. Officer McDaniels informed Hurtado that without an explicit threat, he could not file a police report.

930. Officer McDaniels recommended that Hurtado speak with Miller's parole officer. Hurtado went to the parole office but was informed that even if Miller could be identified (there were over a dozen in the system) he needed to file a report with the police.

931. Hurtado went back to the El Cajon police department, explained the situation with the parole office, and was again told he could not file a police report.

932. As a consequence of his interaction with Miller and the police's inability to help, Hurtado decided to distance himself and disengaged for a period of time from Cotton and the litigation.

ii. *February 2018*

933. On February 9, 2018, Cotton pro se filed *Cotton III* and the *Cotton III TRO*.

934. Cotton described in the *Cotton III TRO* how Hurtado had been threatened by Miller, was intimidated by Geraci, and refused to provide Cotton supporting testimony.[73]

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[73] *Cotton III*, ECF No. 3 (*Cotton III TRO*) at 15:25-16:5 ("As of today, February 9, 2018, when I submit this, I feel hounded and conspired against. I have alienated my friends, employees, family, supporters and even the litigation investors who stand to gain the most if I prevail in this legal action stay as far away as possible. They fear that Geraci may take unlawful retaliation against them. One of my litigation investors is a former attorney who has worked at Goldman Sachs, Lathamand Watkins and he is even a former federal judicial clerk in the 9th district court. He stopped helping me in mid-January when a third party, a convict out on parole, called him late at night at his home and threatened him by telling him that it would be in his 'best interest' to use his influence on me to get

935. Plaintiffs believe that disclosure by Cotton that Hurtado was fearful of Miller was the catalyst for the Enterprise to then repeatedly use Miller to intimidate Hurtado.

936. On or about February 21, 2018, someone with a phone number unknown to Cotton called him asking for "Joe."

937. Cotton began to tell the caller that he had the wrong number, but before he could finish the caller asked, "is this Darryl?" The caller then told Cotton that "Joe" was his attorney and that Joe owed him for services rendered for Cotton. Cotton hung up.

938. Cotton then called Hurtado to inform him of the call and gave the number from his caller I.D. to Hurtado. Hurtado then called the number, recognized Miller's voice and hung up.

939. Hurtado sent a text message to Miller telling him to not contact him.

940. Miller then sent Hurtado a series of texts stating that, *inter alia*, Hurtado was harassing <u>him</u> and that Hurtado had not paid him for his services.

941. For example, Miller texted: "Stop calling my office and hanging up. Please or [I] will have to get a civil harassment restraining order. Please pay [your] bill."

iii. *April 2018*

942. On April 4, 2018 Cotton filed the Lis Pendens Motion first arguing *Riverisland*.

943. On April 7, 2018, Miller texted Hurtado: "at what address do you want me to serve papers on you? The address w[h]ere we met [(Jane's residence)] is not your office anymore, like you told me it was."

944. The fact that Miller referred to Jane's residence and that Miller knew Hurtado was no longer working at Jane's residence was a turning point for Jane and Hurtado.

945. Miller's text directly reflects that Miller had been observing Jane's residence.

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me to settle with Geraci."). Cotton meant to say that Hurtado clerked in the United States District Court, Northern District of California.

946. Jane was terrified when she was informed of Miller's text.

947. Hurtado realized that Geraci had the influence to have a convict out on parole risk incarceration for stalking and harassment. Therefore, Geraci was a criminal of a higher order of magnitude than he previously believed.

948. On April 26, 2018, Cotton's ex parte application for an extension to file a writ of mandate from the state court's denial of the Lis Pendens Motion was heard and approved by Judge Wohlfeil.

949. On April 29, 2018, Miller texted: "Read the [Fair Debt Collection Practices Act] I have a right to contact you. This is an attempt to collect a debt and any information contained will be used for that reason."

950. Relatedly, when Miller appealed his criminal conviction, he "argue[d] that his statement to [the] witness… that he would sue her for defamation if she spoke with the FBI regarding its investigation of [him] cannot be considered a 'threat' within the meaning of § 1512 because he has the legal right to initiate legal proceedings." *Miller*, 531 F.3d at 351.

951. The Court of Appeal disagreed:

> [Miller's] argument, however, is seriously flawed because it rests upon an inaccurate assumption. Although Miller claims that he has the right to file a defamation claim against [the witness], "there is no constitutional right to file frivolous litigation." *Wolfe v. George*, 486 F.3d 1120, 1125 (9th Cir. 2007) (observing that "[j]ust as false statements are not immunized by the First Amendment right to freedom of speech, . . . baseless litigation is not immunized by the First Amendment right to petition"). The problem with his argument is that Miller threatened to sue [the witness] for defamation solely on the basis of her cooperation with the FBI, regardless of the veracity of [the witness'] statements to investigators. Miller has no right to institute baseless legal proceedings for the purpose of harassment, and cannot hide behind the First Amendment to shield him from prosecution under § 1512.

Miller, 531 F.3d at 351.

952. Miller is seeking to hide his unlawful harassment and threatening actions against Jane and Hurtado exactly as he did before, but instead of using the First Amendment as a pretext for his threats he is using the FDCPA.

953. Miller cannot provide any evidence that Hurtado ever hired him to undertake any work or that Hurtado ever initiated contact with him.

iv. *June 2019*

954. On May 30, 2019, Hurtado emailed Toothacre demanding that Toothacre provide the probable cause for the discovery demands he was making of Hurtado in light of Judge Wohlfeil's findings that the November Document is ambiguous.

955. On or around June 3, 2019 at around 8:00 p.m., a white sedan pulled into the driveway at Jane's residence with its lights on and the engine running.

956. Jane's mother saw the car in the driveway and informed Jane. Jane informed Hurtado who went outside and approached the car. The car lurched towards Hurtado and then pulled out of the driveway and drove away.

957. Hurtado believes, and Plaintiffs thereon allege, the white sedan was driven by Miller.

v. *Geraci's discovery response regarding Miller*

958. Miller's motivation for threatening Hurtado and Jane and their families is made clear by Geraci's own response regarding Miller.

959. In *Cotton I*, Geraci responded to special interrogatory No. 35 as follows:

> **SPECIAL INTERROGATORY NO. 35:**
> Have YOU or YOUR AGENTS requested that Shawn Miller contact Joe Hurtado regarding any matter related to this litigation?
>
> **RESPONSE TO SPECIAL INTERROGATORY NO. 35**
> Not that I am aware. Moreover, I have never requested or authorized any person to do so.

960. Geraci/F&B's Machiavellian response allows for the possibility that if (i) it can be established that Miller did threaten Jane and Hurtado and their families and (ii) that Geraci was in contact with Miller at that time, then Geraci's purposefully vague answer allows for an after-the-fact "explanation" that Miller threatened Hurtado and his family purportedly of his own volition (or at the direction of an agent of Geraci), but that it was done without Geraci's knowledge or consent.

961. Any reasonable attorney in F&B's position would know that Geraci's response evidences that Miller did threaten Hurtado and his family and Geraci was involved.

962. The response, drafted by F&B, reflects F&B's knowing complicity in the violence undertaken by Geraci to avoid liability and their evil disregard for the mental, financial, and physical safety of Cotton and his supporters, including Jane and Hurtado.

I. Corina Young

963. On or around October 2, 2017, Young visited the Property and took a tour of 151 Farms. She went to the Property because she had heard about the Property qualifying for a cannabis CUP.

964. Young introduced herself to Cotton and informed him she was looking for investment opportunities in cannabis businesses.

965. Cotton called Hurtado and he went to the Property to meet Young.

966. Hurtado explained the Property qualified for a cannabis CUP, but there was a legal dispute that needed to be resolved that required financing (*i.e.*, *Cotton I*).

967. Young was interested in investing in the litigation as a means of acquiring an ownership interest in the contemplated Business at the Property.

i. *The Bartell Statement*

968. Around mid-October 2017, Young's attorney, Shapiro, took Young to consult with Bartell regarding the potential investment and likelihood of a cannabis CUP being issued at the Property.

969. At the meeting, Bartell responded by stating he "owned" the Berry Application with the City and that he was getting it denied "because everyone hates Darryl" (the "Bartell Statement").

970. Young was not aware that at the same time the Bartell Statement was made, Geraci/F&B were arguing to Judge Wohlfeil that Geraci was using his best efforts to have the Berry Application approved, including through the political lobbying efforts of Bartell.

971. Young did not communicate the Bartell Statement to Cotton or Hurtado but

let them know she had decided to not pursue investing in *Cotton I*.

ii. *Magagna's Attempted Bribery & Threats*

972. On or about May 17, 2019, Hurtado sent Young an investment proposal to finance *Cotton I* not as a litigation investment, but as a loan secured by a note on the Property.

973. On or around May 27, 2018, Young met with Hurtado at Jane's residence to discuss the investment proposal. When they met, Cotton and Jacob were also at Jane's residence.

974. Jacob and Cotton had discovered that Shapiro represented Magagna and Shapiro had previously sat next to Cotton and Hurtado in plain clothes at a hearing before Judge Wohlfeil.

975. Thereafter, when confronted, Shapiro stated he was in Judge Wohlfeil's chambers because he had a client before Judge Wohlfeil, but was forced to admit he lied when Jacob demanded the party and case number.

976. On May 272, 2018, when Young arrived at Jane's residence, Cotton had a picture of Magagna on a computer screen.

977. Young recognized Magagna and explained that she had been introduced to him by Shapiro.

978. Cotton communicated that they believed Magagna to be a co-conspirator of Geraci and were contemplating taking legal action. Young defended Magagna, arguing he was not someone who would do something unethical and that there must be a misunderstanding.

979. Young, attempting to mediate the situation, contacted Magagna and he requested they meet.

980. When they met, Young explained the situation as she understood it, that her testimony regarding the Bartell Statement somehow provided evidence that supported Cotton's case against Geraci.

981. Furthermore, that because of his relationship with Shapiro, and because

Shapiro was at the meeting with Bartell when he made the Bartell Statement, they believed Magagna was a knowing co-conspirator of Geraci helping him to mitigate his liability to Cotton by acquiring the District Four CUP at 6220 Federal.

982. To her surprise, Magagna did not deny the allegations, instead, he asked her to change her statements and offered to bribe her for doing so. Young refused. Despite her refusal, Magagna repeatedly requested that Young go back to Cotton, Jacob and Hurtado and change her statements by saying that she "dreamed" the Bartell Statement. Young continued to refuse and Magagna continuously pressured her to change her testimony until they parted.

983. Over the course of the next several days, Magagna continued to contact Young, but started aggressively demanding that Young change her statements to "keep him out of it," and to not disclose that he sells his "legal" marijuana to Shapiro's clients.

984. Young became intensely frightened at Magagna's turn to aggressiveness, something he had not exhibited before during their relationship, and told him that she would not get involved at all in the case.

985. Young met with Hurtado and asked him to help her stay out of the *Cotton I* litigation. However, Hurtado explained that she was the proverbial "smoking gun" directly connecting Geraci to Magagna via Shapiro and Bartell. Furthermore, that because she had made those statements in front of Jacob and Cotton, even if he, Hurtado, was not willing to volunteer his testimony, he could not contradict their testimony regarding her statements.

986. Young confided in him that she was scared of Magagna because she believed him to be involved with organized crime. That Magagna had a licensed cultivation facility and that Shapiro brokered deals for Magagna to his clients, who were primarily criminals, and for which Shapiro would be paid $100 for every pound of marijuana sold.

iii. *Attorney Natalie Nguyen – Promised Testimony*

987. On June 1, 2018, Hurtado spoke with Young and she was in an agitated and fearful state. Young made comments that reflected she had investigated Geraci, and she

had confirmed that he was a dangerous individual, and she started to imply she would not be able to testify.

988. Hurtado then communicated via text with Young. Those text messages make clear that: (i) Bartell made the Bartell Statement; (ii) Bartell at that point in time had already been hired by Young to help her acquire a cannabis CUP at another real property and she was concerned that if she provided her testimony, adverse to Bartell, he sabotage her marijuana application as he was doing with Cotton; (iii) Shapiro gets paid for illegal marijuana sales he brokers for Magagna; (iv) Shapiro and Magagna had both been to Young's home; (iv) Magagna had attempted to bribe and threatened her; and (v) Young was worried for her physical safety.[74]

989. On January 1, 2019, Jacob subpoenaed Young to be deposed on January 18, 2019. On January 16, 2019, attorney Nguyen, representing Young, unilaterally cancelled the deposition of Young.

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

991. On June 12, 2019, after having been put off for months by Nguyen, Jacob emailed Nguyen demanding she provide Young's promised testimony, to which Nguyen never responded.

992. On June 30, 2019, the day before the start of trial in *Cotton I*, Hurtado and Flores spoke with Young who said she had moved out of the City, could not be served, would not testify, and did not "want anything" to do with Cotton or *Cotton I*. Young also told Flores that he needed to be fearful for the safety of himself and his family because, *inter alia*, Austin and Magagna are "dangerous."

993. In January 2020, Flores believed he was done preparing the complaint for the instant action and intended to name Young as a co-conspirator of Geraci. Flores spoke

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[74] Mr. Hurtado provided a declaration in *Cotton I*, attaching the text messages with Young. *Cotton I*, ROA 237, Ex. 5.

with Young and was direct, informing her that by failing to provide her testimony she was a co-conspirator of Geraci, and he would seek to have her held civilly liable. Further, that it was possible after the civil action was concluded, and factual findings had been made, that such could lead to a criminal action against her.

994. Young broke down and said she had done nothing illegal and that it was Nguyen's sole decision to not provide Young's testimony.

995. Young alleged that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro paid Nguyen's legal fees for defending Young, (iii) Nguyen – in an email – told her that it was OK to "ignore" their obligation to provide Young's testimony because "it was too late for Cotton to do anything about it" (the "Young Allegations").

996. At that point, Flores was skeptical because he could not believe that Nguyen would so blatantly violate her ethical duties and ratify the violence against Young, which was before Flores discovered that Nguyen and Mrs. Austin attended law school together.

997. Nguyen's failure to provide Young's promised testimony perpetuated the *Cotton I* Conspiracy, which she knew would cause severe mental, financial, and emotional distress to Cotton and his supporters, and severely prejudice Cotton's case.

ADDITIONAL SPECIFIC ALLEGATIONS AND CAUSES OF ACTION

FIRST CAUSE OF ACTION - § 1983

(Plaintiffs against Judge Wohlfeil and the City Clerk)

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

999. "42 U.S.C. § 1983 is derived from Section 1 of the Ku Klux Klan Act of 1871… Generally, [§] 1983 creates a cause of action for deprivation of rights secured by the 'Constitution and [federal] laws' perpetrated under color of state law." *Bell v. City of Milwaukee*, 746 F.2d 1205, 1232 (7th Cir. 1984) (citing § 1983).

1000. "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).

1001. The following actions, among others, taken by Judge Wohlfeil and/or the City Clerk could lead a reasonable person to believe that *Cotton I* was not adjudicated before "an impartial and disinterested tribunal" and/or Judge Wohlfeil is biased because he prejudged that *Cotton I* was filed and maintained with probable cause:

(i) Judge Wohlfeil's stated Fixed-Opinion;

(ii) Judge Wohlfeil's DQ Order denying the DQ Motion alleging the Extrajudicial Statements are not extrajudicial.

(iii) Judge Wohlfeil's DQ Order stating that neither he nor his law clerk were served with the DQ Motion.

(iv) Judge Wohlfeil's adjudication of the MSA as if it was solely a motion for summary judgment thereby violating Cotton's right to move for partial adjudication to narrow the issues and lower the burden of associated legal fees and costs for trial in a sham action.

(v) Judge Wohlfeil's statements at the MNT hearing reflecting his alleged belief that Cotton had not previously raised the Illegality Issue in *Cotton I*.

(vi) Judge Wohlfeil's statements at the MNT hearing copying FTB's frivolous argument in opposition that the defense of illegality can and had been waived by Cotton.

(vii) The City Clerk's rejection of the DQ Motion's supporting documents 18 months after they were submitted and while pending in federal court as evidence in support of a motion by Cotton of Judge Wohlfeil's bias.

(viii) Judge Wohlfeil's findings at the trial of *Cotton I* regarding the November Document: (1) "I agree with the proposition that the three-sentence paragraph… three-sentence contract on November 2 was not an integrated contract" and (2) "I do not

consider the 11/2/16 agreement to be an agreement."[75]

1002. Judge Wohlfeil's findings at trial provide support for the Opposition Theory; he did not understand that his findings translated into a judgment in favor of Cotton. *See Chodosh v. Palm Beach Park Ass'n*, 2018 WL 6599824 at *6 ("Indeed, the trial judge found as a matter of fact there were no certificates of occupancy, he just didn't think that absence could translate into a judgment in appellants' favor.").[76]

1003. Judge Wohlfeil's ruling denying Flores' motion to intervene in *Cotton I* as an indispensable party deprives Flores of his constitutional rights to the Property and the District Four CUP as the equitable owner of the 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.").

1004. Flores has a right to invoke "the federal district court's jurisdiction under § 1983 to restrain the state judiciary from conducting private tort litigation in a way that… violate[s] his constitutional rights." *Miofsky v. Superior Court of California*, 703 F.2d 332, 338 (9th Cir. 1983).

1005. 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.

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[75] Attached hereto as Exhibit 7 at 81:14-6 and 88:26-28, respectively, are material excerpts of the July 10, 2019 Trial Transcript with Judge Wohlfeil's statements finding the November Document is not an integrated purchase contract.

[76] Ironically, *Chodosh* is an unpublished opinion that is prohibited from being cited in state court by F&B. *California Rules of Court, Rule 8.115*. F&B violated the rule and cited to *Chodosh* in a desperate (and successful) attempt to find language to misrepresent the law to Judge Wohlfeil regarding the Illegality Issues in their opposition to the MNT. The great irony is that F&B alerted Plaintiffs to an unpublished opinion that they would not have otherwise reviewed, that they can reference in this matter to prove F&B's unethical litigation tactics, and proves that Plaintiffs most ridiculous-sounding allegation is possible: a judge may preside over a case for years, hold trial, and make factual findings that he does not understand require adjudication in favor of a party as a matter of law.

SECOND CAUSE OF ACTION - § 1983

(Flores against the City and Tirandazi)

1006. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

1007. Local governments are "persons" under § 1983 and may be liable for causing a constitutional deprivation. *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690 (1978)). A "local governmental entity may be liable if it has a policy of inaction and such inaction amounts to a failure to protect constitutional rights." *Lee v. City of Los Angeles*, 250 F.3d 668, 681 (9th Cir. 2001) (citation and quotation omitted).

1008. Tirandazi's decisions (i) to not cancel the Berry Application at Cotton's request, (ii) to not transfer the Berry Application to Martin at Cotton's request, (iii) to allow Cotton/Martin to submit a competing CUP application on the Property but force them to compete against the Berry Application, and (iv) approving the Magagna Application, when she knew about the Child Care Issue, violated Flores' constitutional rights to the Property and the District Four CUP (the "Tirandazi Decisions").

1009. Tirandazi's Decisions were reviewed, approved, and ratified by other City officials, including Tirandazi's supervisors and City attorneys.

1010. But-for the Tirandazi Decisions, taken while acting as an employee of the City, Flores would be the actual owner of the District Four CUP.

1011. Equal Protection. "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001) (citation and quotation omitted).

1012. Numerous cases by the United States Supreme Court "have recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges [they have] been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*,

528 U.S. 562, 564 (2000).

1013. Flores is a class of one as the successor-in-interest to Martin's rights to the District Four CUP as the equitable owner of the Property.

1014. There is no rational basis for the City's decision to not transfer the Berry Application to Martin upon Cotton's demand in accordance with the SDMC, as articulated in the Engerbretsen Mandate, and treat Martin differently than any other applicant for a CUP with the City.

1015. There is no rational basis for the City's decision to allow the Berry Application to be processed after being informed about the Illegality Issue.

1016. Substantive Due Process. "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).

1017. The Tirandazi Decisions constitute egregious official conduct made in contradiction of applicable laws and regulations, an abuse of power, and lack any reasonable justification.

1018. Procedural Due Process. "The Due Process Clause of the Fourteenth Amendment provides: '[N]or shall any State deprive any person of life, liberty, or property, without due process of law.' Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (emphasis in original).

1019. Judge Wohlfeil found that the Berry Application would have been approved and the District Four CUP issued at the Property but-for Cotton's alleged unlawful interference.

1020. Cotton's interference was not unlawful.

1021. Flores has a right to the District Four CUP that would have been granted at the Property had the City complied with the SDMC.

1022. Tirandazi testified the decision to not cancel the Berry Application at Cotton's request was a deliberate act she took in her position as a supervisor of DSD and after consulting with her supervisors at DSD.

1023. The doctrine of qualified immunity does not protect "the plainly incompetent or those who knowingly violate the law." *Burns v. Reed*, 500 U.S. 478, 495 (1991) (citation omitted).

1024. Tirandazi testified she understood the plain language of the Ownership Disclosure Form providing that the owner of real property has the right to cancel the CUP application on his property.

1025. Tirandazi is not incompetent; she is feigning an inability to understand the plain language in the Ownership Disclosure Form to knowingly violate the law.

1026. Ratification. Multiple City employees and attorneys in multiple proceedings and litigation actions, over the course of years, have allowed the perpetuation and ratified the lie that Berry was allegedly acting as Geraci's agent when she submitted the Berry Application and that same is not illegal because of the Illegality Issue.

1027. "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.

1028. City attorney Phelps knew the legal import of the statute of frauds and the equal dignities rule when he approved the *Cotton II* judgment.

1029. The City has ratified the very fraud and perjury that the statute of frauds is meant to prevent. And by doing so the City also ratified the *Cotton I* sham action based on the same lie and thereby also ratified and emboldened the violence undertaken by Geraci in seeking to prevent Flores from acquiring the District Four CUP. *See 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.").

1030. The Principals and the Agents took, ratified, and/or supported the Armed Robbery, the threats by Alexander and Stellmacher against Cotton, the acts and threats of violence by Miller against Hurtado and Jane and their families, and the acts and threats by Magagna against Young in furtherance of the Antitrust Conspiracy. *See Briley v. California*, 564 F.2d 849, 858 (9th Cir. 1977) ("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.").

THIRD CAUSE OF ACTION - § 1983

(Plaintiffs against the City)

1031. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

1032. "Obstructing access to the courts is a constitutional violation." *Victorianne v. Cnty. of San Diego*, No. 14cv2170 WQH (BLM), at *15 (S.D. Cal. Feb. 3, 2016) (citing *Bell*, *supra*, at 1261 ("conspiracy to cover up a [crime], thereby obstructing legitimate efforts to vindicate the [crime] through judicial redress, interferes with the due process right of access to courts. . . . This constitutional right is lost where . . . police officials shield from the public and the victim's family key facts which would form the basis of the family's claims for redress.").

1033. Detective Pollom's failure to adequately investigate the Armed Robbery was done so in his capacity as an SDPD officer.

1034. On September 13, 2018, Detective Pollom first denied the Getaway Driver had been detained.

1035. But-for Flores and Cotton physically showing Detective Pollom the image of the Getaway Driver being detained by police officers and informing Detective Pollom that Cotton had received the image on June 6, 2017, directly from a local news channel, Detective Pollom would have maintained the false assertion that the SDPD did not know the identity of the Getaway Driver to cover up the fact that the SDPD knew the identity

of the Getaway Driver.

1036. Sergeant Cameron's statement after Cotton showed the picture of the Getaway Driver being detained by the police - "just so you guys know, I was not the Sergeant when this happened, this did not happen on my watch" – is suspect and provides further cause to believe that Detective Pollom failed to properly investigate.

1037. Plaintiffs believe and thereon allege that Detective's Pollom's failure to investigate the Armed Robbery would have established a relationship between the Getaway Driver and the assailants who committed the Armed Robbery and Geraci or his agents.

1038. Such would be supporting evidence of the existence of the Enterprise and its use of violence in preventing access to individuals who seek to vindicate their rights in the judiciary.

1039. Detective Pollom's "failure to adequately investigate [the Armed Robbery] interfered with the rights of [Plaintiffs] to access the courts." *Id*.

1040. Plaintiffs believe and thereon allege that Detective Pollom's failure to adequately investigate the Armed Robbery was motivated by one or more of the following improper reasons:

(i) The City's animus against Cotton as a political dissident with a long history of political activism in support of the legalization of cannabis;[77]

(ii) The City's understanding that the City would be jointly liable for Geraci's damages because of the City's unlawful filing of the City Lis Pendens in furtherance of the City Conspiracy making it at the very least a concurrent joint tortfeasor with Geraci;

(iii) The City's understanding that the actions of, *inter alia*, Tirandazi and Phelps in the Property related litigation and the Berry and Magagna Applications were egregiously unlawful and warrant severe sanctions. Thus, if the City helped Cotton

[77] *See Cty. of San Diego v. San Diego Norml*, 165 Cal.App.4th 798 (Cal. Ct. App. 2008) (suit by City challenging the state's cannabis regulatory scheme legalizing cannabis arguing it is illegal pursuant to the federal Controlled Substances Act).

establish the Armed Robbery was taken at the direction or consent of Geraci, then it would be increasing the likelihood of its own unlawful actions being exposed and simultaneously increasing the amount of damages it would be jointly liable for;

(iv) The political influence of Geraci and his agents with certain individuals with the City whose identities are unknown to Plaintiffs at this time; and/or

(iv) The SDPD's training program was not adequate to train its detectives as under the facts the Getaway Driver should have been arrested and the Armed Robbery investigated.

1041. Detective Pollom's failure to adequately investigate the Armed Robbery, coupled with Judge Wohlfeil's and City attorney Phelps' actions and omissions, has contributed to the perception that Geraci has influence with the City and the SDPD.

1042. Numerous material third party witnesses do not believe they can access the courts for justice and fear retribution by the City, the SDPD, and having their character and integrity assassinated by F&B, like they did against Cotton, Jacob and Hurtado, for speaking the truth.

FOURTH CAUSE OF ACTION – § 1985

(Plaintiffs against Geraci, Malan, Razuki, Magagna, Berry, Mrs. Austin, Weinstein, Toothacre, McElfresh, Nguyen, Bartell, Crosby, Miller, Stellmacher, Alexander, Tirandazi, the John Doe (Getaway Driver) , Does 3-5 (Armed Robbers)

1043. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

1044. "§ 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. "The debates surrounding the passage of the [Ku Klux Klan Act of 1871] expressed concern that conspiratorial and unlawful acts of the Klan went unpunished because Klan members and sympathizers controlled or influenced the administration of state criminal justice." *Id*.

1045. "The current version of Section 1985 creates a federal right of action for damages against conspiracies which deter by force, intimidation, or threat a party or

witness in federal court (Section 1985(2), first portion) and against conspiracies which obstruct the due course of justice with intent to deny equal protection (Section 1985(2), second portion). It also creates an action against conspiracies which deprive persons of equal protection or other federal rights or privileges (Section 1985(3))." *Id*.

1046. Geraci and his agents have known that Martin was the equitable owner of the Property since the Martin Purchase Agreement was disclosed in *Cotton I* via discovery in mid-2017.

1047. Geraci and his agents have known that Flores purchased Martin's rights in the Martin Purchase Agreement since he filed his motion to intervene on June 26, 2019.

1048. Geraci and his agents have known that there are investors who have invested in Cotton's legal defense secured by the Property since Cotton attempted to submit the Secured Litigation Financing Agreement ex parte and under seal to Judge Wohlfeil in January 2018.

1049. Geraci and his agents have known that Cotton filed *Cotton III* in federal court in February 2018 and any issues and claims adjudicated in state court regarding the Property and the District Four CUP would have, absent unlawful action (e.g., a fraud on the court), preclusive effect in *Cotton III* in which he alleged a RICO cause of action.

1050. "[T]he essential allegations of a [§] 1985(2) claim of witness intimidation are (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." *Miller v. Glen Helen Aircraft*, Inc., 777 F.2d 496, 498 (9th Cir. 1985) (quoting *Chahal v. Paine Webber Inc.*, 725 F.2d 20, 23 (2d Cir. 1984)).[78]

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[78] In *Chalal*, the Second Circuit analyzed that while § 1985(2) "does not define the term 'witness.' However, Congress' purpose, which was to protect citizens in the exercise of their constitutional and statutory rights to enforce laws enacted for their benefit, is achieved by interpreting the word 'witness' liberally to mean not only a person who has taken the stand or is under subpoena but also one whom a party intends to call as a witness.

1051. Geraci and his agents conspired with the Getaway Driver and the Armed Robbers to commit the Armed Robbery to, *inter alia*, deter by force Cotton, Hagler, and his supporters from testifying in *Cotton I*, *Cotton III*, and this action.

1052. Geraci and his agents conspired with Stellmacher and Alexander to threaten Cotton to prevent him from, *inter alia*, testifying in *Cotton I*, *Cotton III*, and this action.

1053. Geraci and his agents conspired with Miller to, *inter alia*, repeatedly intimidate Jane, Hurtado and their families to prevent them from testifying in *Cotton I*, *Cotton III*, and this action.

1054. Geraci and his agents conspired with Magagna to, *inter alia*, threaten Young to prevent her from testifying in *Cotton I*, *Cotton III*, and this action.

1055. Plaintiffs have suffered injury as a result of these actions that includes an inability to acquire the testimony of these individuals for this action because they have been intimidated by the acts and threats of violence.

FIFTH CAUSE OF ACTION – § 1986

(Plaintiffs against Mrs. Austin, McElfresh, Weinstein, Toothacre, Kulas, Prendergast, Demian, Witt, Bhatt, Crosby, Shapiro, Nguyen, Tirandazi, the City, and Cline)

1056. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

1057. "Section 1986 imposes liability on every person who knows of an impending violation of section 1985 but neglects or refuses to prevent the violation." *Karim-Panahi v. Los Angeles Police Dept*, 839 F.2d 621, 626 (9th Cir. 1988).

1058. "[§] 1986 predicates liability upon (1) knowledge that any of the 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

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Deterrence or intimidation of a potential witness can be just as harmful to a litigant as threats to a witness who has begun to testify." *Chahal*, 725 F.2d at 24 (emphasis added).

diligence." *Bell v. City of Milwaukee* (7th Cir. 1984) 746 F.2d 1205, 1233.

1059. The named defendants to this cause of action knew that the Enterprise was taking steps in furtherance of the Antitrust Conspiracy, which included the *Cotton I* Conspiracy, the Armed Robbery, the threats by Alexander and Stellmacher against Cotton, the acts and threats of violence by Miller against Hurtado and Jane and their families, and the acts and threats by Magagna against Young.

1060. The defendants named in this cause of action had the power to prevent the unlawful actions described herein.

1061. The defendants named in this cause of action failed to act to prevent the unlawful actions that were carried out and still fail to do so. Cotton's email sent on December 27, 2019, provided all parties the facts and documents pursuant to which any reasonable party would have known the conspiracy against Cotton, but which they all failed to take action on.

1062. 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 Judge Wohlfeil or Judge Curiel.

SIXTH CAUSE OF ACTION – VIOLATION OF THE BANE ACT (CC § 52.1)

(Plaintiffs against Geraci, Malan, Razuki, Magagna, Miller, Stellmacher, Alexander, the John Doe (Getaway Driver), and Does 3-5(Armed Robbers))

1063. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

1064. The parties named to this cause of action intentionally interfered with the civil rights of Plaintiffs by threats, intimidation, or coercion.

1065. The parties named to this cause of action directed, took and/or ratified threats of violence against Cotton, Jane, Hurtado and Young causing Plaintiffs to reasonably believe that if they exercised their rights to access the court that violence would be taken against them.

1066. Plaintiffs reasonably believe that the parties to this named cause of action

have the ability to carry out the threats.

1067. The defendants named to this cause of action instructed their agents JOHN DOE and DOES 3-5 to commit the Armed Robbery at the Property for the purpose of intimidating and discouraging Cotton and his supporters from continuing the litigation in *Cotton I*. DOE and DOES 3-5 had the apparent ability to carry out the threats.

1068. Plaintiffs were harmed because witnesses and other similarly situated individuals did not testify in Cotton I and will not come forward now believing there is a conspiracy that will carry through on their threats of violence that has created a reasonable fear that they or their families will be harmed if they testify or exercise their civil rights to the detriment of the named defendants to this cause of action.

1069. The conduct of the defendants named to this cause of action was and is a substantial factor in causing Plaintiffs' harm.

SEVENTH CAUSE OF ACTION – DECLARATORY RELIEF

(Mrs. Sherlock and Minors T.S. and S.S against Harcourt and Claybon)

1070. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

1071. An actual controversy has arisen and now exists between Mrs. Sherlock and minors and Harcourt and Claybon. Mrs. Sherlock claims that the facts alleged herein provide probable cause to bring suit, in state court, against Harcourt and Claybon, as part of the Antitrust Conspiracy to defraud 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.

1072. Harcourt and Claybon have already communicated Harcourt's Affirmative Defenses disputing Mrs. Sherlock's position.

1073. 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.Biker's interest to Harcourt.

1074. 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.

EIGHT CAUSE OF ACTION – DECLARATORY RELIEF

(Plaintiffs against Mrs. Austin, ALG, Geraci, Berry, T&F, McElfresh, Weinstein, Toothacre, Kulas, Prendergrast, F&B Crosby, Bartell, B&A, Schweitzer, Shapiro, Matthew W. Shapiro APC, Nguyen, Magagna, 2018FMO LLC, A-M Industries Inc, Miller, Stellmacher, Alexander, Martinez, Tirandazi, Cline, Demian, Witt, Bhatt, FTB, and Ek)

1075. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

1076. An actual controversy has arisen and now exists between Plaintiffs and the defendants named in this cause of action. Plaintiffs claim that the judgments reached in *Cotton I* and *Cotton II* were procured by acts and/or omissions that constitute a fraud upon the court, are a product of judicial bias, and are void for being an act in excess of Judge Wohlfeil's jurisdiction as they enforce an illegal contract.

1077. Plaintiffs are informed and believe, and therefore allege, that defendants named in this cause of action dispute this position.

1078. 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 their acts or failure to act that contributed to the procurement of those judgments.

1079. 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.

NINTH CAUSE OF ACTION – DECLARATORY RELIEF

(Flores against Mrs. Austin, ALG, Weinstein, Toothacre, F&B, Demian, Witt and F&B)

1080. Flores realleges and incorporates herein by reference the allegations in the preceding paragraphs.

1081. "***The right to sue and defend in the courts is the alternative of force***." *Bell,*

746 F.2d at 1263 (quoting *Chambers v. Baltimore Ohio R.R*, 207 U.S. 142, 148 (1907) (emphasis added)).

1082. Attorney Flores has, since mid-2018, represented to Cotton, the Original Litigation Investors, the Crowd Source Investors, Jane and other third parties that his professional and unmitigated legal opinion is that *Cotton I* is a textbook example of a sham action/malicious prosecution having been filed for an ulterior purpose: to prevent the sale of the Property to his predecessor-in-interest, Martin.

1083. Flores has described defendant attorneys Mrs. Austin, Weinstein, Toothacre, Demian and Witt as the most "unethical attorneys" he has ever come across or even read about in his career (the "Unethical Attorneys").

1084. Mrs. Austin drafted the Draft Documents seeking to deprive Cotton of the benefit of the terms he negotiated in the JVA with Geraci; Cotton sought to engage McElfresh to represent him against Mrs. Austin/Geraci; McElfresh referred Cotton to FTB; FTB amended Cotton's complaint and engaged in, *inter alia*, Demian's Deceit conniving to sabotage Cotton's case; F&B then colluded with Geraci/Mrs. Austin and fabricated the Disavowment Allegation when confronted with *Riverisland*; McElfresh represented Geraci in the Magagna Appeal and did not raise the Child Care Issue; and Weinstein and Mrs. Austin used her "expert" testimony to capitalize on Judge Wohlfeil's Fixed-Opinion to blatantly lie that Geraci can own a cannabis CUP despite the Illegality Issues.

1085. There is nothing complicated about what has taken place; the only reason these crimes have not been exposed is because of Judge Wohlfeil's Fixed-Opinion and the City's attorneys' failures to abide by their affirmative ethical duties to the Court to cover up and/or limit the City's liability.

1086. The judgment entered by Judge Wohlfeil against Cotton does not change Flores' position, especially as he has reviewed all the evidence and transcripts of the trial of *Cotton I*; but-for the Damages Issue and the transcript from the MNT hearing (supporting the Opposition Theory), Flores would believe Judge Wohlfeil is corrupt.

1087. Unfortunately, in mid-2018 through mid-2019, Flores never imagined that Judge Wohlfeil would fail to understand, *inter alia*, the Mutual Assent Issue or enter a judgment that enforces an illegal contract.

1088. Consequently, back then Flores had been candid in his view of the Unethical Attorneys; they are the primary individuals responsible for the filing and maintaining of *Cotton I*, a case that should never have been and that should have been dispositively addressed in Cotton's favor in the preliminary stages.

1089. Unfortunately, Flores described that in his approximate ten years of criminal defense work, during which he has come across murderers, drug addicts, cartel associates, pedophiles and sociopathic criminals, he has never come across any other individuals that can match the Unethical Attorneys in sheer willful malevolence. They have knowingly caused more harm to innocent people than any criminal Flores has come across during his professional career.

1090. These attorneys, over the course of years, have used their superior legal expertise to manipulate and defraud innocents via the judiciaries, have slandered and destroyed the reputation and assassinated the character of anyone who dared to expose their actions, while hypocritically holding themselves out to be of great integrity and moral character.

1091. The Unethical Attorneys are maters at taking advantage of the presumption of integrity that the judiciaries afford them by virtue of the fact that they have a license to practice law.

1092. As matters stand today, some of the Crowd Source Investors believe that their rights will never be vindicated and that these attorneys will not be held to account for the losses they have suffered because of these attorneys' unethical actions.

1093. It is possible that some of these individuals, in their own words, may be willing to become "martyrs" and take violent action against these attorneys.

1094. Flores has reason to believe that some of these parties have contemplated taking vigilante justice, being arrested, and using as their defense the unjustified rulings

by Judge Wohlfeil to bring attention to the miscarriage of justice that is *Cotton I*. These parties believe, that in their defense to a criminal action, Judge Wohlfeil's rulings could be reviewed and findings could be made that they were contrary to law as such would be mitigating evidence of, *inter alia*, the motivation for any unlawful acts they take against these attorneys.

1095. In other words, these individuals believe they have no other recourse at law to expose a criminal conspiracy that has caused severe harm to them and their families.

1096. Flores, Cotton, and parties close to him have gone to numerous law enforcement and governmental agencies - including San Diego City Attorney, San Diego County District Attorney, the United States Attorney, the San Diego Police Department, the FBI, and the California State Bar - and repeatedly raised the issues and evidence of violence.

1097. Nothing has been done. As the record in *Cotton I* makes clear, Judge Wohlfeil has repeatedly been provided with credible evidence that violence has been undertaken against innocents. He has done nothing.

1098. Flores personally described to Judge Wohlfeil the violence against Young at the hearing on his motion to intervene and offered to produce the Associate Recording as evidence of Mrs. Austin's role in the Antitrust Conspiracy. Judge Wohlfeil refused.

1099. Because Judge Wohlfeil has never even addressed the allegations of violence, from the perspective of non-attorney third parties, they believe that he is, if not complicit, then at the very least knowingly ratifying the violence against them.

1100. The Unethical Attorneys, compared to Cotton's Crowd Source Investors, are wealthy and while the *Cotton I* and related litigation matters have had no effect on their home life, their actions have and are causing immense suffering to the families of blue-collar men and woman. These individuals sacrificed believing in the representations of Cotton, his agents, and the general belief that a state judge would act impartially.

1101. What the Unethical Attorneys fail to realize - especially Demian as Cotton has posted Demian's Deceit email on his website (and you don't have to be an attorney

to understand Demian sought to destroy his own client's life) - is that they have taken or ratified unlawful action outside of the judiciary to harm innocent families and now these families have no reason to trust the court system or believe that justice will ever be achieved.

1102. The Unethical Attorneys have prevented these individuals from having their rights vindicated and have left them with what they believe to be their only alternative: violence.

1103. In mid-2019, Flores stopped going to the Property and meeting with the Cotton's Crowd Source Investors because he did not want to hear some of their discussions.

1104. However, Flores met with the Crowd Source Investors in anticipation of litigation and, prior to Judge Wohlfeil's ruling on Cotton's Motion to Bind (*Cotton I*, ROA 511), which convinced numerous parties that Judge Wohlfeil was corrupt, he would potentially have represented these parties in litigation.

1105. Flores contacted the California State Bar Ethics Hotline and expressed his concerns regarding potential violence, and he was informed that the attorney-client privilege still applies to these individuals.

1106. In February 2020, Cotton told Flores that some of the Crowd Source Investors have started to meet without him.

1107. In March 2020, Flores was informed that the Crowd Source Investors know where Weinstein lives and that he has a wife and two daughters in Mission Valley and that Alan Austin has a business in El Cajon. They also believe they have discovered where Demian lives.

1108. That they know this is the main catalyst for Flores filing this rushed Complaint.

1109. Flores' position is this: if anybody takes violent action against the Unethical Attorneys, it is due to their own illegal actions and malicious activities that have purposefully destroyed the lives of Cotton's investors and supporters.

1110. The damage they have caused, particularly right now amidst the Coronavirus pandemic that has left many of them without income is intensifying their hate for the Unethical Attorneys.

1111. The savings they could otherwise have relied on or, had justice take its due course, the principal plus interest they were promised, could have helped them through these unprecedented difficult times. For these blue collar individuals, who are not wealthy and do not have financial reserves, this capital is the difference that is putting their families through needless suffering during these difficult times.

1112. The Unethical Attorneys believe themselves to be above the law and, in fact, their superior legal knowledge has actually placed them above the law. The consequences of such may be that the Crowd Source Investors will similarly act outside the law.

1113. Thus, Flores is informed and believes, and thereon alleges, that the Unethical Attorneys would dispute his description of them and would claim that Flores' statements are a contributing cause to any potential violence against them.

1114. At no point has Flores ever condoned, supported, and/or in any manner communicated that taking violence was appropriate, just or lawful.

1115. Flores specifically described that he would not continue to meet with some of them, and asked them to communicate same to the rest of Cotton's supporters/investors, because he cannot be part of or involved in any type of unlawful action.

1116. An actual, present and justiciable controversy has therefore arisen and now exists between the Flores and the Unethical Attorneys concerning whether Flores is liable to defendants for any potential/actual violence against them in light of his statements.

1117. A judicial determination of this controversy is necessary and appropriate in order for the parties to ascertain their rights, duties and obligations regarding this dispute.

PRAYER FOR RELIEF

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

1. The judgments entered in *Cotton I* and *II* be vacated;

2. A declaration that Plaintiffs be allowed to join *Cotton I* as indispensable parties;[79]
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 action 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;
11. Reasonable attorneys' fees and costs as allowed by law;
12. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining Magagna, the City and their agents from selling or otherwise transferring the District Four CUP until the conclusion of this action;
13. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining all defendants from directing, supporting and/or approving in any manner the intimidating, threatening, or otherwise attempting to dissuade any potential witness from testifying or otherwise providing a statement in this matter;
14. Any other injunctive relief as required to effectuate the relief requested herein; and
15. Such other and further relief as the Court deems fair, equitable, and just.

Dated: April 3, 2020 Law Offices of Andrew Flores

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[79] 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.

By /s/ Andrew Flores

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

EXHIBIT 1

Use Code	Zone	YrBlt	Units	SqFt	SiteAmt	Phone	SiteDt
1 Parcel: 543-020-02-00 Privacy: Site: 6176 FEDERAL BLVD*SAN DIEGO CA 92114							
Owner: COTTON, DARRYL Mail: 6184 FEDERAL BLVD*SAN DIEGO CA 92114							
STORES, RETAIL OUTLET	C	1961		918	$141,000F		02/27/1998
2 Parcel: 543-020-04-00 Privacy: Site: FEDERAL BLVD*SAN DIEGO CA 92114							
Owner: OWNER NAME UNAVAILABLE Mail: FEDERAL BLVD*SAN DIEGO CA 92114							
VACANT COMMERCIAL	C						03/25/2019
3 Parcel: 544-011-64-00 Privacy: Site: 2156 ORIOLE ST*SAN DIEGO CA 92114							
Owner: DEJOHNETTE, MICHELLE Mail: 2156 ORIOLE ST*SAN DIEGO CA 92114							
SINGLE FAMILY RESIDENCE	R1	1980	1	1,506	$490,000F		04/15/2005
4 Parcel: 544-012-04-00 Privacy: Site: 2145 ORIOLE ST*SAN DIEGO CA 92114							
Owner: HANSHEW, MEGAN Mail: 2145 ORIOLE ST*SAN DIEGO CA 92114							
SINGLE FAMILY RESIDENCE	R1	1960	1	1,764	$225,000F		06/30/2010

Path of Travel Distances Shown Between Properties

As Per SDMC 113.0225(c)

EXHIBIT 2

From: R.J. Martin <[redacted]>
Sent: Friday, May 12, 2017 10:52 AM
To: Jessica McElfresh
Cc: Joe Hurtado
Subject: Re: Federal - CUP Application - Introduction

Joe,

Thank you for the email introduction.

Jessica,

Thank you for reaching out and your willingness to work with us on our CUP application. Mahalo!

Please contact me if you have any questions or need additional information @ [redacted] or [redacted]

--R.J. Martin

[redacted]

On Thu, May 11, 2017 at 1:48 PM, Jessica McElfresh [redacted] wrote:

> Hi Joe and R.J.,
>
> R.J., it would be a pleasure to work with you towards the CUP. I currently represent four of the open and operating licensed dispensaries in the City of San Diego, as well as licensees in other jurisdictions. Please feel free to give me an initial call if I can answer some questions for you.
>
> Joe, yes, agreed, always nice to work with professionals 😉
>
> Take care,
>
> Jessica C. McElfresh
>
> Attorney-at-Law
>
> McElfresh Law, Inc.
>
> jessica@mcelfreshlaw.com
>
> www.criminallawyersandiego.com/
>
> Office: [redacted]
>
> Cell: [redacted]

Fax: [redacted]

Appointments:

12555 High Bluff Drive, Suite 390

San Diego, CA 92130

Mailing:

P.O. Box 230363

Encinitas, CA 92023

WARNING: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. It contains information from McElfresh Law, Inc., which may be privileged, confidential and exempt from disclosure under applicable law. Dissemination or copying of this e-mail and/or any attachments by anyone other than the addressee or the addressee's agent is strictly prohibited. If this electronic transmission is received in error, please notify Jessica C. McElfresh immediately at (858) 756-7107. Thank you.

From: Joe Hurtado [redacted]
Sent: Thursday, May 11, 2017 4:46 PM
To: R.J. Martin [redacted] Jessica McElfresh [redacted]
Subject: Federal - CUP Application - Introduction

R.J.,

Following-up on our conversation right now, wanted to make a quick intro to Jessica, one of the very few attorneys to get a CUP application approved in San Diego.

Once the mess with Darryl gets cleared, it is my strong recommendation that you retain Jessica to take over the CUP application.

Jessica, thank you again for the update today and your counsel over the last week, I cannot emphasize enough how nice it is to work and interact with professionals.

Best, Joe

EXHIBIT 3

Gmail

(no subject)

2 messages

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

---

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

Darryl Cotton <indagrodarryl@gmail.com> Fri, Apr 3, 2020 at 12:33 PM
To: Andrew Flores <afloreslaw@gmail.com>, Joe Hurtado <j.hurtado1@gmail.com>

[Quoted text hidden]

---

8 attachments

1) McElfresh Deferred Prosecution Agreement.pdf
166K

2) Geraci Answer to Federal Complaint.pdf
89K

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940K

7) Nguyen-emails.pdf
846K

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

EXHIBIT 4

Voice

6192462844

61

485

1374

N

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

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

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 5

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:
This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying,

disclosure or distribution of this information may be subject to legal restriction or sanction. Please notify the sender, by electronic mail or telephone, of any unintended recipients and delete the original message without making any copies.

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 6

EXHIBIT 7

Geraci vs. Cotton, et al.

Reporter's Transcript of Proceedings

July 10, 2019

aptus COURT REPORTING
www.aptusCR.com / 866.999.8310

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

Department 73 Hon. Joel R. Wohlfeil

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

Reporter's Transcript of Proceedings

JULY 10, 2019

Reported By:
Margaret A. Smith,
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057776

APPEARANCES
FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND
CROSS-DEFENDANT REBECCA BERRY:
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BY: MICHAEL R. WEINSTEIN, ESQUIRE
BY: SCOTT H. TOOTHACRE, ESQUIRE
BY: ELYSSA K. KULAS, ESQUIRE
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mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
ekulas@ferrisbritton.com

FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:
ATTORNEY AT LAW
BY: JACOB P. AUSTIN, ESQUIRE
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San Diego, California 92108
619.357.6850
jpa@jacobaustinesq.com

I N D E X

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DARRYL COTTON	
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Redirect by Mr. Austin	60
Recross by Mr. Weinstein	62
LARRY GERACI (On rebuttal)	
Direct by Mr. Weinstein	65

I N D E X

EXHIBITS		IDENTIFIED	ADMITTED
85	Email to Michael Weinstein from Darryl Cotton re Geraci v. Cotton - Posting of Notice of Application, dated 3/28/17	52	59

THE COURT: All right. If the evidence had ended as of yesterday, we would be having a very different discussion than I expect we'll have this morning.

As of this time yesterday, I understood Plaintiff's theory in the case. But I was not clear on what Plaintiff's (sic) theory was.

From Mr. Geraci's perspective, this was a straight-on purchase of real estate, which requires a writing. Now, I agree with the defense -- well, let me back up.

I disagree with the defendant's position that -- well, let me rephrase that.

I agree with the proposition that the three-sentence paragraph -- three-sentence contract on November 2 was not an integrated contract. I do think, though, that there's enough there that a jury could return a verdict in favor of Mr. Geraci on his breach of contract claim, given his theory.

Now, today, we heard evidence of a joint venture, the terms of which are not entirely clear to the Court. But, folks, if the Court of Appeal were looking at this record, I'm of the view that they would see enough that would allow Mr. Cotton's theory, based upon an oral joint venture agreement to go to the jury, which does not require a writing for him to contribute his property to what he's characterizing as a venture.

There's more the Court could say, but that may

Mr. Geraci made the statement that Mr. Cotton would get a 10 percent stake in what they're characterizing as an oral joint venture.

MR. WEINSTEIN: All right. So that's a -- there was -- there was testimony by Mr. Cotton that that's what they discussed. Mr. Geraci has denied that. But for purposes of this motion, we rely on Mr. Cotton's testimony.

It's -- ultimately, you can't have a fraud claim that's based on mere nonperformance of the representation. Otherwise, every contract claim, dispute over a contract, would be a tort claim. And there -- there has to be -- the -- I suppose that the -- there's nothing in -- there's no written representation, obviously, because they came in documents that Mr. Cotton prepared that Mr. Geraci undispute -- indisputably didn't sign. So those representations in the written documents can't be attributed to him.

So what he's really saying is he promised to sign an agreement containing these terms and he never did. That -- that -- I don't believe can convert a contract claim to a tort claim. I don't believe it's sufficient.

I know there's -- the Tenzer versus Superscope case is the one that comes to mind.

THE COURT: Well, I'm not so concerned about this because I do not consider the 11/2/16 agreement to be an agreement.

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

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

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

Margaret A. Smith

Margaret A. Smith, CSR No. 9733, RPR, CRR

ANDREW FLORES
California State Bar Number 272958
Law Office of Andrew Flores
945 4th Avenue, Suite 412
San Diego, CA 92101
Telephone: 619.256.1556
Facsimile: 619.274.8253
Andrew@FloresLegal.Pro

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

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(Hon. Dana M. Sabra)

ANDREW FLORES, an individual, AMY SHERLOCK, on her own behalf and on behalf of her minor children, T.S. and S.S., JANE DOE, an individual, 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	Case No. 20-CV-0656-DMS-LL **NOTICE OF ERRATA ON PLAINTIFF'S COMPLAINT EXHIBIT 6**

NOTICE OF ERRATA ON PLAINTIFF'S COMPLAINT EXHIBIT 6

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; RACHEL M. PRENDERGAST, an individual; FERRIS & BRITTON APC, a California Corporation; DAVID S. DEMIAN, an individual, ADAM C. WITT, an individual, 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; MATTHEW WILLIAM SHAPIRO, an individual; MATTHEW W. SHAPIRO, APC, 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, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; BIANCA MARTINEZ; an individual; THE CITY OF SAN DIEGO, a municipality; 2018FMO, LLC, a California Limited Liability Company;

FIROUZEH TIRANDAZI, an individual; STEPHEN G. CLINE, an individual; JOHN DOE, an individual; and DOES 2 through 50, inclusive,

Defendants,

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

Real Parties In Interest.

TO THE COURT AND TO COUNSEL OF RECORD FOR ALL PARTIES:

PLEASE TAKE NOTICE that Plaintiffs Andrew Flores, Amy Sherlock, and Jane Doe hereby respectfully submit this Notice of Errata on Plaintiff's Complaint. Exhibit 6 appears to have been resized upon upload. Attached hereto is an updated Exhibit 6 to the Complaint, reduced in size.

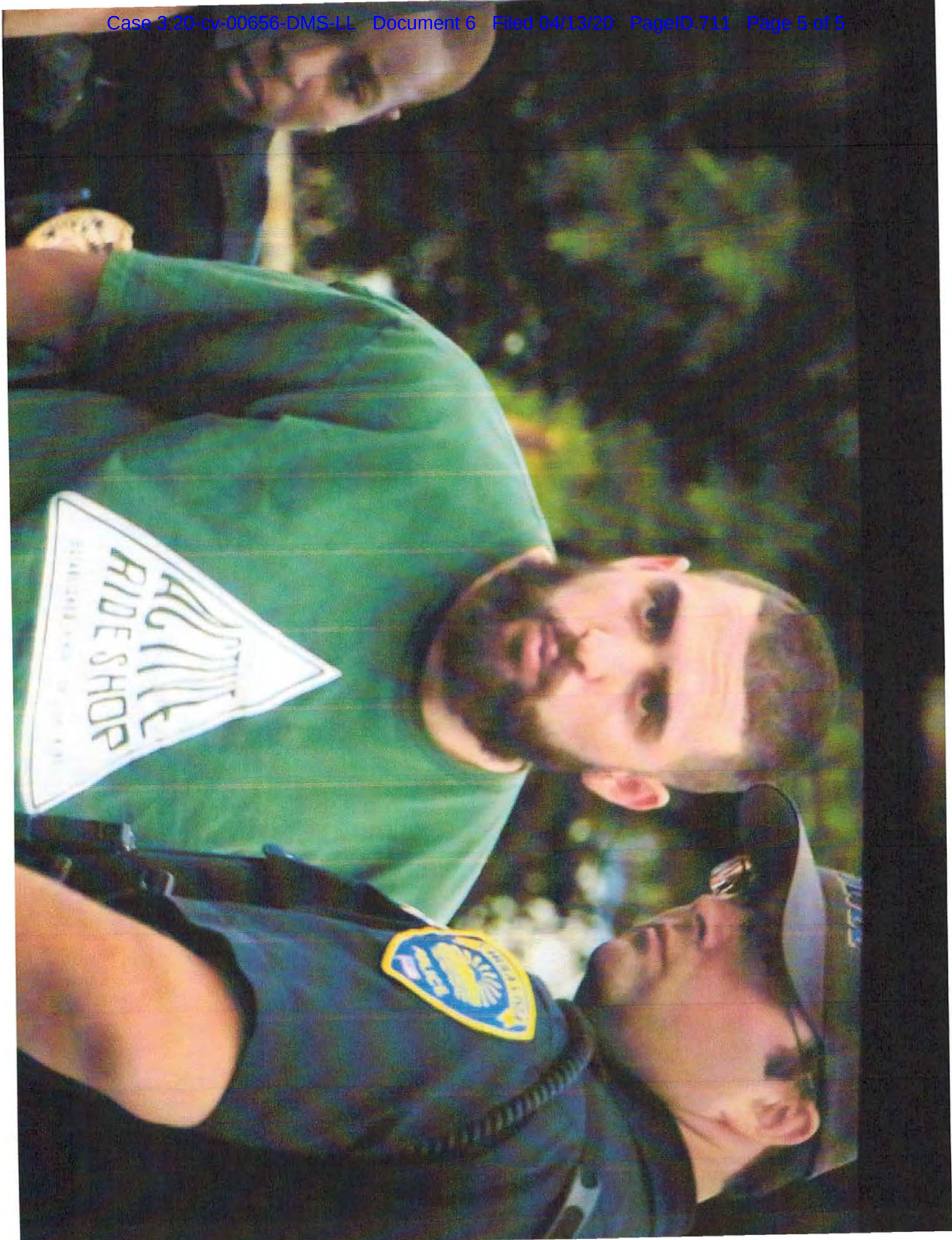
DATED: April 13, 2020

THE LAW OFFICE OF ANDREW FLORES

By /s/ Andrew Flores

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

EXHIBIT 6


RIDE SHOP

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff *Pro Se*

2020 MAY 13 PM 2:18
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

vs.

CYNTHIA BASHANT, an individual; JOEL WOHLFEIL, an individual; LARRY GERACI, an individual; REBECCA BERRY, an individual; GINA AUSTIN, an individual; MICHAEL WEINSTEIN, an individual; JESSICA MCELFRESH, an individual; and DAVID DEMIAN, an individual

Defendants.

CASE NO.:3:18-cv-00325-BAS-MDD

PLAINTIFF'S 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. DECLARATORY RELIEF
4. PUNITIVE DAMAGES

Related Case: 20CV0656-BAS-MDD

DEMAND FOR JURY TRIAL

///

///

///

Plaintiff *Pro Se* Darryl Cotton ("Plaintiff," "Cotton" or "I") alleges upon information and belief as follows:

INTRODUCTION

1. This action is a collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil in *Cotton I*.[1]

2. "Under California law, the 'well-settled rule [is] that the courts will not aid a party whose claim for relief rests on an illegal transaction.'" *Singh v. Baidwan*, 651 F. App'x 616, 2-3 (9th Cir. 2016) (quoting *Wong v. Tenneco, Inc.*, 702 P.2d 570, 576 (Cal. 1985) (in bank)).

3. "A contract to perform acts barred by California's licensing statutes is illegal, void and unenforceable." *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986).

4. *Cotton I* was a breach of contract action filed by Lawrence Geraci against Cotton.

5. Geraci and Cotton reached an oral joint venture agreement (the "JVA") to develop a cannabis dispensary at Cotton's real property (the "Property").

6. However, Geraci had no intention of honoring his agreement with Cotton. In fact, Geraci could not honor his agreement with Cotton because he had been repeatedly sanctioned for his owning/management of illegal marijuana dispensaries and, consequently, is barred as a matter of law from owning a cannabis dispensary (the "Illegality Issue").

7. To get around the Illegality Issue and still own the cannabis permit at the Property, Geraci applied for a cannabis permit at the Property with the City in the name of his receptionist, Rebecca Berry (the "Berry Application").

8. In the Berry Application, Berry certified under penalty of perjury she is the sole owner of the cannabis permit being sought (the "Berry Fraud").

9. At trial in *Cotton I*, Geraci testified he instructed Berry to submit the Berry Application.

10. At trial in *Cotton I*, Berry testified she made the certifications knowing they were false.

---

[1] "*Cotton I*" means *Larry Geraci vs Darryl Cotton*, San Diego County Superior Court, Case No. 37-2017-00010073-CU-BC-CTL.

11. Austin, as Geraci's cannabis attorney and responsible for the Berry Application, testified in *Cotton I* that it is not unlawful for Berry to have submitted the Berry Application with false statements.

12. The JVA had a condition precedent, the approval of a marijuana dispensary at the Property

13. *Cotton I* was filed by attorney Michael Weinstein of Ferris & Britton without probable cause.

14. When Cotton accused Weinstein of being an unethical attorney, Wohlfeil admonished Cotton stating from the bench that he does not believe that Weinstein is even capable of acting unethically.

15. Wohlfeil stated that the basis of his belief is based on the fact that both he and Weinstein had started their legal careers at the same time and from the years of Weinstein having practiced before him when he became a judge.

16. Unfortunately for Wohlfeil, Weinstein ***is*** an unethical attorney that cares more about avoiding liability for filing a malicious prosecution action than betraying Wohlfeil's blind trust in him.

17. The *Cotton I* judgment is void for being procured via a fraud on the court, the product of judicial bias, and because the alleged contract has an unlawful object and is therefore illegal and cannot be enforced.

18. This action will force the judge overseeing this matter to choose between exposing the unethical actions of at least two judges and numerous attorneys or to enforce an illegal contract that rewards a drug dealer for seeking to acquire a cannabis permit under fraudulent pretenses and filing a malicious prosecution action.

19. Cotton hopes that the presiding judge in this matter will not retaliate against Cotton for seeking to protect his rights.

20. Cotton has painfully come to learn that judges instinctively protect other judges because they operate from the assumption that a pro se litigant making allegations of bias and prejudice after a jury trial are just sore losers. And 99.99% of the time they are probably right.

21. However, that probability does not give a judge the right to violate their judicial oath and not vet the facts and arguments they are presented with.

22. In complete candid honesty, Cotton has been fighting for over three years to vindicate his rights and he is simply disgusted and exhausted of hearing that he needs to be subservient and denigrate

himself before judges even when they violate Cotton's basic rights because they assume he is a pro se "conspiracy nut" litigant.

23. Cotton continues pushing forward, trusting not in the ridiculous notions of Justice or the Rule of Law (this case proves those things do not exist), but because he knows that if he keeps filing lawsuits against the unethical attorneys and the judges who have objectively shown bias against Cotton as a pro se litigant that he will eventually get the attention of the media.

24. Then, fear of liability will force a judge to finally expose Wohlfeil for the biased judge that he is. A judge who ruined Cotton's life because he chose to trust Weinstein rather than do the job he is paid to do and apply the law to the facts which he had been presented with.

JURISDICTION AND VENUE

25. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§§ 1331, 1343(3), 2283, and 18 U.S.C. § 1964 which 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.

26. This action is brought pursuant to 42 U.S.C. §§ 1983 to redress the deprivation under color of state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process of law.

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

PARTIES

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

29. Cotton is, and at all times material to this action was, the sole record owner of the commercial real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").

30. Upon information and belief Defendant Geraci is, and at all times mentioned was, an individual residing within the County of San Diego, California.

31. Upon information and belief, Defendant Berry is, and at all times mentioned was, an individual residing within the County of San Diego, California.

32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

33. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

34. Upon information and belief, Defendant Jessica McElfresh ("McElfresh") is, and at all time mentioned was, an individual residing within the County of San Diego, California.

35. Upon information and belief, Defendant David Demian ("Demian") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

36. Upon information and belief, Defendant Joel Wohlfeil ("Wohlfeil") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

37. Upon information and belief, Defendant Cynthia Bashant ("Bashant") is, and at all time mentioned was, an individual residing within the County of San Diego, California.

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

FACTUAL ALLEGATIONS

I. Background

A. Geraci is an intelligent and highly sophisticated businessman who has been sanctioned at least three times for his ownership/management of illegal marijuana dispensaries.

39. Geraci has approximately 40 years of experience providing tax services and has been the owner-manager of Tax & Financial Center, Inc. ("Tax Center") since 2001.

40. Tax Center provides sophisticated tax, financial and accounting services.

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

42. Geraci was a California licensed real estate salesperson for approximately 25 years from 1993-2017.

43. Geraci has been sued by the City for his ownership/management of at least three illegal marijuana dispensaries (the "Illegal Marijuana Dispensaries").

44. Geraci settled all three cases, collectively paying fines in the amount of $100,000.

45. Geraci did not "coincidentally" lease three real properties to the Illegal Marijuana Dispensaries; he was an operator and beneficial owner. *See, e.g., City of San Diego v. CCSquared Wellness Cooperative*, Case No. Case No. 37-2015-00004430-CU-MC-CTL, ROA No. 44 (Stipulated Judgment) at 2:15-16 ("The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Ave, San Diego, CA 92103").

B. State and City Cannabis Laws and Regulations

46. It is against State and City laws and regulations to apply for a cannabis license or permit in the name of a third party who knowingly and falsely states in the application that they are the applicant for the cannabis license and/or permit being sought.

47. It is against the public policy of the State and City to issue cannabis licenses or permits to individuals with a history of engaging in illegal commercial marijuana activity.

48. It is against the public policy of the State and City to issue cannabis licenses or permits to an applicant who seeks to acquire a license or permit via unlawful means.

49. As an example of applicable State law when the JVA was formed, California Business and Professions Code ("BPC") § 19323, amended by 2016 Cal SB 837 and effective June 27, 2016, mandated the denial of an application for an cannabis license if the applicant had, *inter alia*, purposefully omitted required information, made false representations, been sanctioned for unauthorized commercial marijuana activity in the three years preceding the application, or failed to comply with local ordinances.

50. As an example of applicable City laws/regulations, the San Diego Municipal Code ("SDMC") prohibits the furnishing of false or incomplete information in any application for any type of license or permit from the City. 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].").

51. Further, SDMC § 11.0402 provides that "[w]henever in [the SDMC] any act or omission is made unlawful, it shall include causing, permitting, aiding or abetting such act or omission."

52. SDMC § 121.0311 states as follows: "Violations of the Land Development Code shall be treated as ***strict liability offenses*** regardless of intent."[2]

53. Thus, applying for a cannabis permit or license, or aiding a party to apply for same, and willfully making a false statement in the application is illegal regardless of intent.[3]

C. Gina Austin

54. Attorney Gina Austin attended the Thomas Jefferson School of Law and was admitted to the California Bar on December 1, 2006.

55. Austin, with approximately two to three years of experience as an attorney, founded her law firm ALG in 2009.

56. Austin, in her own words, is "an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation."[4]

57. Austin has worked on at least 50 conditional use permit applications with the City.

58. Austin has been the single most successful attorney in the City in aiding her clients acquire cannabis permits.

59. Austin's success is not because she is a legal genius, but because she engages in and ratifies unlawful actions against the competition, such as filing sham lawsuits like *Cotton I.*

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[2] The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing §§ 111.0101-1412.0113). (SDMC § 111.0101(a).)

[3] *See City of San Diego v. 1735 Garnet*, LLC, D071332, at *16 (Cal. Ct. App. Oct. 30, 2017) ("[I]n a recent case in which a land owner who leased property to a marijuana dispensary was sued for violations of a Los Angeles Municipal Code (LAMC) section similar to SDMC section 121.0302(a), the appellate court concluded the land owner's argument that he lacked knowledge of the marijuana dispensary and thus should not be held liable was meritless, when the violation of LAMC section 12.21A.1(a), was a ***strict liability offense***. [Citation.] The same is true here. The terms of the SDMC specifically provide that violations of the Land Development Act are to be treated as '***strict liability offenses***.' (SDMC, § 121.0311.)").

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

II. The November Document and the November 3, 2016 Phone Call

60. In early 2016 Geraci contacted Cotton to purchase the Property because it potentially qualified to operate a cannabis dispensary.

61. In good faith, Cotton engaged with Geraci in preliminary due diligence.

62. On October 31, 2016, Geraci, without Cotton's knowledge or consent, had Berry submit the Berry Application.

63. On November 2, 2016, Geraci and Cotton reached the JVA pursuant to which Cotton would sell the Property to Geraci.

64. Cotton's consideration for entering into the JVA included (i) a 10% equity position in the dispensary, (ii) on a monthly basis, the greater of $10,000 or 10% of the net profits of the dispensary, (iii) a $50,000 non-refundable deposit for Cotton to keep if the permit for a dispensary was not approved at the Property, and (iv) Geraci promised to have his attorney, Gina Austin, promptly reduce the JVA to writing for execution.

65. At the meeting Geraci and Cotton executed a three-sentence document drafted by Geraci (the "November Document").

66. The November Document was executed with the intent it be a receipt for Cotton's acceptance of $10,000 in cash towards the $50,000 non-refundable deposit.

67. That same day:

(i) Geraci emailed Cotton a copy of the November Document, which in the email attachment Geraci had titled the November Document the 'Geraci – Cotton Contract".

(ii) Upon review and within hours of having received the Geraci email Cotton replied and requested that Geraci confirm in writing the November Document is not a purchase contract reflecting 'any final agreement'. (the "Request for Confirmation"); and

(iii) Geraci replied and confirmed the November Document is not a purchase contract (the "Confirmation Email"). A true and correct copy of these emails are attacked hereto as Exhibit 1.

68. The Request for Confirmation and the Confirmation Email prove that Cotton and Geraci did not mutually assent to the November Document being a purchase contract for the Property (the "Mutual Assent Issue").

69. On November 3, 2016, Cotton called Geraci to talk about Geraci branding the contemplated dispensary at the Property with his nonprofit 151 Farms organization.

70. At 1:41 p.m. on November 3, 2016, Cotton emailed Geraci after they had spoken as follows:

> Larry, [¶] Per our phone call the name 151 AmeriMeds has not been taken nor has there been any business entity formed from it. If you see this as an opportunity to piggyback some of the work I've done and will continue to do as 151 Farmers with further opportunities as a potential franchise for your dispensary I'd like for you to consider that as the process evolves. [¶] We'll firm it up as you see fit.

71. On March 21, 2017, after Geraci repeatedly refused to reduce the JVA to writing as promised, Cotton emailed Geraci and terminated the JVA with Geraci for anticipatory breach.

72. In his email terminating the JVA, Cotton specifically informed Geraci that he was selling the Property to a third-party: "To be clear, as of now, you have no interest in my [P]roperty, contingent or otherwise. I will be entering into an agreement with a third-party[.]"

73. On March 21, 2017, after terminating the JVA with Geraci, Cotton entered into a written joint venture agreement with Richard Martin.

III. The *Cotton I* Litigation

74. The next day, March 22, 2017, Weinstein emailed Cotton copies of the *Cotton I* complaint and a lis pendens recorded by F&B on the Property (the "F&B Lis Pendens").

75. The *Cotton I* complaint alleges causes of action for (i) breach of contract, (ii) breach of the covenant of good faith and fair dealing, (iii) specific performance, and (iv) declaratory relief.

76. All four causes of action are premised on the allegation that the November Document is a fully integrated purchase contract.

77. The *Cotton I* complaint alleges that Cotton anticipatorily breached his agreement with Geraci by demanding additional consideration not originally agreed to, including the 10% equity position in the dispensary.

78. Weinstein filed the *Cotton I* complaint relying on the *Pendergrass*[5] line of reasoning seeking to use the parol evidence rule as a shield to bar the admission of the Confirmation Email and other incriminating parol evidence.[6]

79. 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.

80. After dealing with the procedural difficulties of representing himself pro se, Cotton reached an agreement with a litigation investor to hire counsel to represent him in *Cotton I* and related legal matters required to acquire a cannabis permit at the Property.

81. Cotton's litigation investor reached an agreement with then-prominent and yet to be publicly disgraced cannabis attorney Jessica McElfresh for her representation of Cotton in *Cotton I*.

82. McElfresh did not disclose that Geraci and numerous of Geraci's associates are her clients.

83. McElfresh did not disclose that she shares numerous clients with Austin.

84. In May 2017, the San Diego County District Attorney's office filed charges against McElfresh for her efforts in seeking to conceal the illegal cannabis operations of one of her clients from government inspectors.

85. Specifically, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime, Manufacturing of a Controlled Substance, and Obstruction of Justice.

86. McElfresh charged Cotton for her legal services for Cotton in *Cotton I*.

87. McElfresh referred Cotton's litigation investor to David Demian of Finch, Thornton & Baird to represent Cotton in *Cotton I*.

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[5] *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258.

[6] *See IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 (emphasis added) ("under *Pendergrass*, external evidence of promises inconsistent with the express terms of a written contract were not admissible, even to establish fraud.").

88. Neither McElfresh nor Demian disclosed that FTB had shared clients with Geraci and his business.

89. FTB twice amended Cotton's pro se complaint with the intent to sabotage Cotton's case.

90. Most notably, FTB removed from Cotton's complaint the allegations that Geraci and Berry conspired to acquire a cannabis permit at the Property in Berry's name because Geraci could not own a cannabis permit because of the Illegality Issue.

91. Further, FTB removed Cotton's allegation that Geraci and Cotton had reached and valid and binding oral agreement and replaced it with an allegation that Geraci and Cotton had reached an agreement to agree in the future, which is not a valid and enforceable agreement.

92. Demian, like Weinstein, Austin and McElfresh, is a criminal with a license to practice law and represents the most vile type of all attorneys – those who would connive to defeat their own client's case.

IV. The Disavowment Allegation

93. From the filing of *Cotton I* in March 2017 until April 2018 Weinstein argued that the statute of frauds and the parol evidence rule barred the Confirmation Email and other parol evidence as proof of the JVA.

94. For example, Weinstein argued:

> Cotton alleges, based on extrinsic evidence [(e.g., the Confirmation Email)], that the actual agreement between the parties contains material terms and conditions in addition to those in the [November Document] as well as a term (a $50,000 deposit rather than the $10,000 deposit stated in the [November Document]) that expressly conflicts with a term of the [November Document]. However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the written memorandum.

95. However, in April 2018, attorney Jacob Austin specially appearing for Cotton filed a motion to expunge the F&B Lis Pendens and cited and argued for the first time in *Cotton I* that Geraci/Weinstein

could not use the parol evidence rule to bar the Confirmation Email pursuant to the *Pendergrass* line of reasoning because it had been overruled by *Riverisland* in 2013 (the "Lis Pendens Motion").[7]

96. In opposition to the Lis Pendens Motion, Geraci submitted a supporting declaration alleging for the first time that (i) he sent the Confirmation Email by mistake because he only read the first sentence of Cotton's Request for Confirmation email; (ii) that on November 3, 2016 he called Cotton to tell him that he sent the Confirmation Email by mistake; (iii) Cotton agreed with Geraci that the Confirmation Email was sent by mistake and he was not entitled to a 10% equity position in the dispensary; and (iv) Cotton sent the Request for Confirmation **pretending** that Geraci and him had reached an agreement that included a 10% equity position for Cotton (the "Disavowment Allegation").

97. Pursuant to FRCP 201 Cotton requests the Court take judicial notice of Geraci's April 9, 2018 declaration attached hereto as Exhibit 2.

98. Geraci's April 9, 2018 declaration contradicts dozens of his evidentiary and judicial admissions he set forth in his declarations, discovery responses and arguments in briefs prior to then.

99. Even assuming that Geraci's April 9, 2018 declaration did not contradict his previous judicial and evidentiary admissions, his claim is barred by the statute of frauds and the parole evidence rule.

100. The statute of frauds applies to an agreement for the sale of real property as Geraci alleges, but it does not apply to a joint venture agreement as Cotton alleges.[8]

101. Geraci cannot just pretend the Confirmation Email has no legal effect.

V. <u>The Federal Lawsuits</u>

102. In February 2018, Cotton filed suit and a TRO in federal court against, *inter alia*, Geraci, Weinstein and Austin alleging, *inter alia*, RICO and § 1983 claims ("*Cotton III*").[9]

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[7] *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169, 1182 ("[W]e overrule *Pendergrass* and its progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch* [(1928) 204 Cal. 342, 347]: '***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.***'") (emphasis added).

[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.").

[9] *Cotton v. Geraci*, Case No.: 18cv325-GPC(MDD).

103. On February 28, 2019, because of *Cotton I*, Judge Curiel stayed *Cotton III* pursuant to the *Colorado River* doctrine.

104. In July 2019, Wohlfeil entered judgment against Cotton in *Cotton I* after a jury trial implicitly finding that the November Document is a fully integrated purchase contract that has a lawful object as a matter of law.

105. Cotton filed a motion for new trial ("MNT") arguing, *inter alia*, assuming the November Document is a contract, it is an illegal contract that cannot be enforced. (*Cotton I*, ROA No 672.)

106. Wohlfeil denied the MNT believing Weinstein's frivolous opposition argument that Cotton had waived the defense of illegality to the enforcement of a contract because Cotton had not allegedly raised the Illegality Issue before in *Cotton I*.

107. Factually and legally the arguments are contradicted by the facts and law. Cotton did raise the Illegality Issue before the MNT and even if he had not he cannot waive the defense of illegality. *See 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.").

108. On January 10, 2020, Judge Curiel recused himself from *Cotton III* after Cotton had filed a motion to lift the *Colorado River* stay and a TRO seeking to have Judge Curiel found to be a biased judge that was enforcing an illegal contract and a request for counsel.

109. Cotton believes that Judge Curiel realized that with the information contained within his motion to lift the stay, Cotton was not a conspiracy nut and that Wohlfeil was a biased judge and *Cotton I* represents a three-year long egregious miscarriage of justice.

110. *Cotton III* was transferred to Judge Bashant and on January 15, 2020 Bashant lifted the *Colorado River* stay, but denied Cotton's in Forma Pauperis request for court appointed counsel.

111. On April 9, 2020, Cotton filed an ex parte application seeking reconsideration of Bashant's order denying his request for counsel premised on, *inter alia*, the argument that Cotton needed to prove Judge Wohlfeil is biased.

112. Getting any kind of relief from judges against judges is virtually impossible. Judges protect judges.

113. On April 16, 2020, Judge Bashant denied Cotton's ex parte application in a typical pro se fashion with a conclusory finding that Cotton had failed to prove "exceptional circumstances," but without describing why.

114. Judge Wohlfeil is enforcing an illegal contract and he made statements that manifestly prove he is biased because he stated Weinstein is not capable of acting unethically when the entire *Cotton I* case is undisputable evidence that Weinstein is acting unethically.

115. Any reasonable person would find that a judge enforcing an illegal contract and requiring a jury to determine a matter of law does represent exceptional circumstances.

116. Cotton now believes that with her recent rulings, Judge Bashant is covering up for Wohlfeil.

117. Both Wohlfeil and Bashant served on the San Diego Superior Court for at least seven years together before Bashant was elevated to the federal court.

118. Because of the violence and Wohlfeil's action led Martin to believe that he was actively seeking to sabotage Cotton's case Martin sold his interest in the property to Cotton's former attorney, Andrew Flores.

119. On April 3, 2020, Andrew Flores filed suit in federal court and an ex parte TRO after Cotton told him that some of his supporters, who had lent him significant money, were considering taking violent action against Geraci's attorneys to bring in law enforcement agencies to investigate this case because Wohlfeil and the City Attorney's are corrupt. (*Flores, et al. v. Austin, et al.*, Case No.20-cv-656-BAS-MDD.)

120. On April 20, 2020, Bashant denied Flores' TRO. The opening paragraph states: "Plaintiffs… allege civil rights violations under 42 U.S.C. § 1983, make a 'neglect to perform wrongful act' cause of action, and seek various forms of declaratory relief. The complaint is almost impossible to summarize due to its length and confusing nature."

121. Bashant's order also alleges that Flores did not comply with FRCP 65(b) for the issuance of a TRO based, in part, on Bashant's allegation that Corina Young is a "defendant."

122. First, according to Bashant, Flores lacks any professional competence as an attorney because he sued for "neglect[ing] to perform wrongful act."

123. Flores did not.

124. Flores filed a § 1986 cause of action for "neglect to **prevent** a wrongful act" which is clearly stated in the title page of his complaint.

125. Second, Corina Young is a ***witness*** who has been threatened from providing her testimony. She is not a "defendant."

126. Bashant simply made that up.

127. Third, Flores did provide notice, case law and argument for why notice is not required pursuant to FRCP 65.

128. Fourth, given the preceding three points, Bashant's allegation that the Flores' complaint is "confusing" is meritless as she clearly does not understand even the most basic facts she was presented with.

129. The bottom line is that Bashant either knew that statements she attributed to Flores were true or she did not know because she did not take the time to vet Flores' complaint and TRO.

130. If Bashant knew they were false, she did so to purposefully denigrate anyone that seeks to prove that Wohlfeil is a biased judge to Cotton's great prejudice.

131. If Bashant did not know her statements were false, then without justification she is making rulings warranted by law and facts, but in reality, she never even bothered understand the facts and apply the law.

132. In either scenario, a reasonable person would conclude that Bashant is a biased judge who is not impartial.

VI. This Complaint

133. The Flores complaint is 177 pages and explains in detail how the *Cotton I* complaint is but one sham action among many filed in furtherance by Geraci and his associates seeking to acquire as many cannabis permits as they can in the City to establish a monopoly.

134. Cotton does not have the ability to explain the conspiracy in a clear and succinct manner so he files this amended complaint focused on the fact that the November Document cannot be a contract because it lacks mutual assent, has an unlawful object and Judge Wohlfeil's statements and actions prove that he is biased.

135. Cotton did not have a fair and impartial tribunal.

136. Cotton does not have the ability to explain the entire conspiracy which gives rise to RICO, antitrust, obstruction of justice, and fraud causes of action that includes multiple government and private attorneys.

137. However, Cotton intends to prepare and file a motion seeking court counsel to amend this Complaint to include all defendants against whom Cotton has valid causes of action.

First Cause of Action -§ 1983

(Plaintiff against Bashant)

138. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

139. The presence of bad faith can render an exercise of legal judgment judicial misconduct; "Bad faith" in this context means "acts within the lawful power of a judge which nevertheless are committed for a corrupt purpose, i.e., for any purpose other than the faithful discharge of judicial duties." *Cannon v. Commission on Judicial Qualifications*, 14 Cal.3d 678, 695 (Cal. 1975).

140. Cotton has filed judicial complaints against both Wohlfeil and Bashant for their failure to exercise their judicial discretion in bad faith.

141. Bashant's order finding that Cotton did not prove exceptional circumstances when Wohlfeil entered a judgment in *Cotton I* that enforces an illegal contract as a matter of law, coupled with her fabricated statements that she attributed to Flores' that undermines the case against Wohlfeil, would lead any reasonable person to believe that she is covering up for Wohlfeil. Or, at the very least, that she is not impartial.

142. "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).

143. Cotton should not have to "hope" that Bashant will not take other unethical and prejudiced actions against him either to continue to cover up for Wohlfeil or to retaliate against him for exposing that she fabricated and attributed multiple statements to Flores that were not true.

144. This relief against Bashant is prospective.

Second Cause of Action -§ 1983

(Plaintiff against Wohlfeil)

145. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

146. Plaintiff seeks to have the *Cotton I* judgment vacated and a new trial in state court where he originally filed his cross-complaint and Wohlfeil should not continue to preside over *Cotton I.*

147. As with Bashant, Cotton should not have to hope that Wohlfeil will not retaliate against him for exposing him for being a biased judge that exposed him for being a judge that thinks the defense of illegality is capable of being waived because Cotton had allegedly not raised the Illegality Issue before the MNT.

148. This relief against Wohlfeil is prospective.

Third Cause of Action – Declaratory Relief

(Plaintiff against the Geraci, Berry, Weinstein, Austin, McElfresh and Demian)

149. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

150. Plaintiff seeks to have the *Cotton I* judgment declared void and vacated for being procured by a fraud on the court, the product of judicial bias, and because it enforces an illegal contract.

Fourth Cause of Action – Punitive Damages

(Plaintiff against all defendants)

151. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

152. "At some point, justice delayed is justice denied." *Southern Pacific Transp. Co. v. I.C.C*, 871 F.2d 838, 848 (9th Cir. 1989).

153. Since March 2017, Plaintiff has incurred over **$3,000,000** from 7 different law firms and at least three contract paralegals in legal fees. The law firms are: (i) Finch, Thornton, & Baird; (ii) Law Office of Jacob Austin; (iii) Kerr & Wagstaffe LLP; (iv) Law Office of JoEllen Plaskett; (v) Law Office of Andrew Flores; (vi) California Appellate Law Group; and (vii) Tiffany & Bosco. The three contract paralegals are: (i) Leanne Thomas; (ii) Zoe Villaroman, and (iii) Lori Hatmaker.

154. "Generally, [punitive damages] cases fall into three categories: (1) really stupid defendants; (2) really mean defendants; and, (3) really stupid defendants who could have caused a great deal of harm by their actions but who actually caused minimal harm." *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 453 n. 15 (1993) (citation and quotation omitted).

155. Judges are protected by their judicial immunity.

156. But *Cotton I* at every point, has failed to state a cause of action as filed when Weinstein incorrectly assumed the parol evidence rule would bar the Confirmation Email and as de facto amended, when confronted by *Riverisland,* to alleging that the Confirmation Email was sent by mistake.

157. Cotton believes it would be an egregious miscarriage of justice to find that defendants can file and maintain a malicious prosecution action that at no point stated a cause of action and rely on the judgments or orders by judges, that were biased against Cotton, to avoid being held liable for Cotton's legal fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That this Court disqualify Bashant from continuing to preside over this matter;
2. That the *Cotton I* judgment be declared void;
3. That the *Cotton I* action be stayed pending resolution of this action;
4. That Wohlfeil be declared bias and prohibited from continuing to preside over Cotton I upon its resumption pending resolution of this Complaint;
5. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than $7,000,000;
6. Punitive damages against all defendants saved Wohlfeil and Bashant who are protected by their judicial immunity;
7. That this Court appoint Cotton counsel;
8. That this Court grant Cotton's appointed counsel leave to amend this Complaint to include all defendants and set forth all material allegations; and
9. That other relief is awarded as the Court determines is in the interest of justice.

Dated: May 13, 2020.

Darryl Cotton,

Cotton and Cotton Pro Se

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Cotton, Darryl.

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
In Pro Per

DEFENDANTS
Bashant, Cynthia, O'Donnell, Joel, Pfrang, Lawrence, Berry, Rebecca, Austin, Gina, M., Weinstein, Michael, R., McElfresh, Jessica, Demien, David.

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

2020 MAY 13 PM 2:18
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 U.S.C. 1983

Brief description of cause:
Deprivation of Civil Rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Bashant DOCKET NUMBER 20CV0656-BAS-MDD

DATE 05/13/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

FILED
May 21 2020
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY s/ dianaj DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID ROMERO (1),
BRUNO SUAREZ-SOTO (2),

Defendants.

Case No. '20 CR1215 CAB

I N F O R M A T I O N

Title 18, U.S.C., Sec. 371 - Conspiracy to Commit Federal Program Bribery; Title 18, U.S.C., Sec. 981(1)(1)(C), and Title 28, U.S.C., Sec. 2461(c)– Criminal Forfeiture

The United States Attorney charges:

Introductory Allegations

1. The City Council was the governing body of the City of Calexico, California, and consisted of five Council Members, elected to overlapping four-year terms. The City Council was responsible for setting policy and appointing commissions and committees that study the present and future needs of the City of Calexico.

2. During the one-year period beginning July 1, 2019 to June 30, 2020, the City of Calexico, California received over $10,000 in federal funding.

NWP:San Diego
5/19/20

3. RS Global Solutions LLC was a California corporation whose principal place of business was in Calexico, California and was doing business as a consulting firm.

4. Defendant DAVID ROMERO was a resident of Calexico, California and an elected member of the City Council of Calexico, California. ROMERO was also the Mayor Pro Tem, set to assume the rotating position of Mayor of Calexico, California in July 2020.

5. Defendant BRUNO SUAREZ-SOTO was a resident of Calexico, California and a Member or Manager of RS Global Solutions LLC. From at least January 14, 2020, SUAREZ-SOTO also served as a Commissioner on the City of Calexico Economic Development and Financial Advisory Commission. Among other things, the responsibility of this Commission included promoting business and community growth, and following through with prospective developers to help them invest in the City of Calexico.

6. PERSON A was a resident of Calexico, California and a relative of DAVID ROMERO. PERSON A was a Member or Manager of RS Global Solutions LLC.

7. Undercover Law Enforcement Officer 1 (UC-1) was a Special Agent with the Federal Bureau of Investigation (FBI).

City of Calexico Permit Process for Sale and Distribution of Cannabis

8. On November 8, 2016, Proposition 64, also known as the Adult Use of Marijuana Act, legalized the sale and distribution of cannabis in California as a matter of state law.

9. In 2017, the State of California created a single regulatory scheme for both medicinal and non-medicinal cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"). The MAUCRSA provides local jurisdictions with control over whether to allow non-commercial and commercial cannabis activities. The MAUCRSA

also establishes a regulatory structure for cultivation, processing, manufacturing, tracking, quality control, testing, inspection, distribution, and retail sale of commercial cannabis, including medicinal and adult-use cannabis.

10. The City of Calexico approved an ordinance concerning permits for cultivating, manufacturing and distributing marijuana. Each business is also required to get a license or permit from the state to operate. The City of Calexico issues Commercial Cannabis Regulatory Permits for qualified applications in the following areas: Cultivator; Manufacturer; Testing Laboratory; and Distributor. Title 17, Article X of the Calexico, California Code of Ordinances, sets forth the specific regulations and processes. In particular, Section 17.11.1040 (Conditional use permit or development agreement required), sets forth the total number of permits that the city council may authorize in each category, including cultivation, manufacturing, testing, distribution and transportation.

11. On January 1, 2018, the City of Calexico began issuing permits. Section 17.11.1040 was amended on multiple occasions. Most recently, on November 20, 2019, the City Council passed Ordinance Number 1206, which amended Section 17.11.1040 to increase the number of potential cannabis retailer, non-storefront retailer, and microbusiness permits from seven (7) to twelve (12).

Count 1

Conspiracy to Commit Federal Program Bribery

18 U.S.C. § 371

12. The allegations set forth in paragraphs 1-11 above are realleged and incorporated by reference as if fully set forth herein.

13. Beginning on a date unknown but no later than December 19, 2019, up until at least January 30, 2020, in the Southern District of California, the defendants, DAVID ROMERO and BRUNO SUAREZ-SOTO, and others known and unknown, did knowingly conspire, confederate, and agree together and with each other to commit offenses against the United States in violation of Title 18, United States Code, Section 666, to wit: to corruptly solicit and demand, and accept and agree to accept, a thing of value from a person, intending to be influenced and rewarded in connection with a transaction and a series of transactions of the City of Calexico, California involving $5,000 or more, in violation of Title 18, United States Code, Section 666(a)(1)(B).

PURPOSE OF THE CONSPIRACY

14. The purpose of the conspiracy was for defendants DAVID ROMERO and BRUNO SUAREZ-SOTO to solicit and accept bribes paid in exchange for official acts undertaken by ROMERO and at his direction, and thereby enrich themselves and their associates.

MANNER AND MEANS

15. The manner and means used to accomplish the objectives of the conspiracy included, among others, the following:

a. Defendants DAVID ROMERO and BRUNO SUAREZ-SOTO would create a shell consulting corporation, RS Global Solutions LLC, that would be incorporated in the name of SUAREZ-SOTO and PERSON A, a relative of ROMERO, and appear to be a legitimate consulting firm, but in truth would be used to conceal their activities in collecting bribe money in exchange for official acts;

b. Defendants ROMERO and SUAREZ-SOTO would directly solicit, and coordinate with others to solicit, the payment of bribes, in exchange for official acts pertaining to the issuance of permits for cannabis

businesses by the City of Calexico, including fast-tracking and guaranteeing the issuance of those permits;

c. Defendants ROMERO and SUAREZ-SOTO would attend meetings with individuals and groups desiring to open state and locally authorized cannabis businesses in the City of Calexico, and during those meetings would solicit bribes in exchange for fast-tracking and guaranteeing the issuance of permits for those businesses;

d. Defendants ROMERO and SUAREZ-SOTO would hold SUAREZ-SOTO out as a legitimate consultant offering bona fide consulting services to assist with the permit application process, when in truth the payments solicited from cannabis permit applicants were extracted in exchange for the exercise of public authority by ROMERO and others acting at his direction;

e. Defendants ROMERO and SUAREZ-SOTO would offer to revoke or unduly delay cannabis business permit applications filed by applicants who had not paid bribes, in order to ensure favored treatment for later-filed applications submitted by individuals who had paid or agreed to pay bribes to ROMERO and SUAREZ-SOTO;

f. Defendants ROMERO and SUAREZ-SOTO would offer to direct other office-holders at the City of Calexico to ensure that applicants who had paid them bribes received favored treatment, including expedited and guaranteed approval of their applications for cannabis business permits; and

g. Defendants ROMERO and SUAREZ-SOTO would falsely represent, if questioned by investigators, that the payments they solicited were made solely to SUAREZ-SOTO for his consulting services and not in exchange for official acts; they would furthermore falsely

deny that any guarantees were made to ensure official acts in exchange for payments.

OVERT ACTS

16. In furtherance of the conspiracy and to effect its objects, the following overt acts, among others, were committed within the Southern District of California, on or about the dates below:

a. On or about May 27, 2019, DAVID ROMERO and BRUNO SUAREZ-SOTO filed and caused to be filed registration papers with the California Secretary of State for RS Global Solutions LLC. PERSON A was listed as the company's manager or member, along with SUAREZ-SOTO, but in truth the company was controlled by ROMERO and SUAREZ-SOTO and was intended to be used as a vehicle to launder the bribes they would solicit and receive from cannabis permit applicants.

b. On December 19, 2019, ROMERO and SUAREZ-SOTO attended a meeting with UC-1 at a restaurant in Calexico, California to discuss an application for a retail cannabis dispensary license that UC-1 said that he wished to file with the City of Calexico. During the meeting, SUAREZ-SOTO offered to provide services to UC-1 in exchange for a fee of $35,000; as part of those services, SUAREZ-SOTO claimed that "we guarantee the processing with the city" and "it guarantees you a . . . top spot in the queue" of permit applicants.

c. Later during the same meeting, UC-1 asked for clarification whether the payment of $35,000 would "get us in front of the line" of applicants. SUAREZ-SOTO answered, "Hell yeah." ROMERO added that he "didn't want to say it in front of everybody, but it will."

d. During the same meeting, ROMERO offered that he could ensure UC-1's application a favorable place in the queue, and that he furthermore had the authority to revoke other applicants' permits.

ROMERO added that it would be preferable for UC-1 to make the payment and start the process sooner, because "the closer you are [to the top of the list], the easier it is for me to be able to manipulate that."

e. Towards the conclusion of the December 19, 2019 meeting, when UC-1 asked if ROMERO and SUAREZ-SOTO might later ask for more than the $35,000 payment, ROMERO assured him that it would not, because "This is done. Set and sealed." ROMERO explained that he and SUAREZ-SOTO would require the money to be paid up front, however, because they had done similar work for other people, and those people had not paid the agreed-upon fee after the favors had been rendered. SUAREZ-SOTO later added, "This isn't our first rodeo." ROMERO and SUAREZ-SOTO agreed to accept payment of the $35,000 from UC-1 in two installments, however: half up front, and half "when it's a for sure thing."

f. On January 9, 2020, ROMERO and SUAREZ-SOTO attended a second meeting with UC-1 at a restaurant in El Centro, California. During the meeting, ROMERO reminded UC-1 how difficult it was to work with the City of Calexico, and how fortunate it was that UC-1 was working with ROMERO. SOTO later added that ROMERO would cut through "so much bullshit [red] tape that exists" with the City.

g. Later during the meeting, ROMERO described the checklist that would be necessary to complete for UC-1's application to be approved by the City of Calexico. Discussing the City department whose approval was necessary for UC-1's application to proceed, ROMERO explained that the people who have to approve UC-1's license were "my best friends at the entire City Hall." When UC-1 asked if they had already signed off, ROMERO responded "Fuck, yeah!" and laughed. When UC-1 later clarified that these services were included as part of the package in exchange for the payment of $35,000, SUAREZ-SOTO agreed that they were, and ROMERO

added that the payment "handles all of our services, which includes everything that we just talked about."

h. At the conclusion of the January 9, 2020 meeting, in the parking lot outside the restaurant, with ROMERO looking on, UC-1 handed SUAREZ-SOTO $17,500 in cash and explained that he divided the first installment of the bribe into two envelopes: one with $8,800 and one with $8,700. UC-1 asked whether "we're good," and ROMERO responded, "Trust me" and added, "In my line of business, I can't fuck up. Which means he [SUAREZ-SOTO] can't fuck up."

i. On January 30, 2020, ROMERO and SUAREZ-SOTO met again with UC-1 at a restaurant in El Centro, California. During the meeting, when UC-1 asked about the status of his application in the queue of applicants, ROMERO volunteered that he could talk to a City department and "make sure to put everybody else on hold . . . but you." ROMERO reiterated that he was going to "pull strings," but insisted that "we would need the second half" of the $35,000 payment.

j. At the conclusion of the January 30, 2020 meeting, in the parking lot outside the restaurant, UC-1 handed envelopes of cash containing another $17,500 to SUAREZ-SOTO, with ROMERO looking on, to fulfill the agreed-upon second installment payment of the bribe.

k. Following the conclusion of the meeting, ROMERO and SUAREZ-SOTO were approached by FBI agents and federal task force officers. ROMERO and SUAREZ-SOTO agreed to be separately interviewed.

l. During an interview, ROMERO falsely told FBI agents that he had no agreement with UC-1; falsely denied that any guarantees were made to UC-1; and falsely stated that UC-1's arrangement was with SUAREZ-SOTO's company, RS Global Solutions LLC, and not with ROMERO.

m. During an interview, SOTO falsely told federal task force officers that no guarantees were made to UC-1; falsely stated that the agreed-upon fee to be paid by UC-1 was $25,000; and falsely denied receiving any prior payments from UC-1.

All in violation of Title 18, United States Code, Section 371.

CRIMINAL FORFEITURE

17. The allegations contained in Count 1 of this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

18. Upon conviction of the offense set forth in Count 1 of this Information, defendants DAVID ROMERO (1) and BRUNO SUAREZ-SOTO (2) shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all property, real or personal, which constitutes or is derived from proceeds traceable to the violations.

19. If any of the property described above, as a result of any act or omission of the defendants:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty, the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

DATED: May 21, 2020.

ROBERT S. BREWER, JR.
United States Attorney

By: _____
NICHOLAS W. PILCHAK
Assistant U.S. Attorney

_____
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Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. SALAM RAZUKI (1), SYLVIA GONZALES (2), and ELIZABETH JUAREZ (3), Defendants.	Criminal Case No. 18CR5260-CAB **NOTICE BY THE UNITED STATES OF POTENTIAL WITNESSES AND EXHIBITS**

COMES NOW, UNITED STATES OF AMERICA, by and through its counsel Robert S. Brewer, Jr., United States Attorney, and Fred Sheppard and Shital Thakkar, Assistant United States Attorneys, and pursuant to the Court's Scheduling Order, hereby gives notice that the United States may call the following individuals as witnesses in this matter and offer the following exhibits:

POTENTIAL WITNESSES

Adam Ruiz
Alan Stevens
Alex Esconde
Alexander De-Armas
Alexis Vallejo
Alfonso Frias
Andre Slay
Andrew Flores
Angela Pennington
Angela Tsuida
Anna Padilla
Anthony Avilla
Ariel Faniel
Armando Milan
Ashlyn Seeley
Aslyn Seeley
Benjamin Bote
Bethany Gonzales
Bianca Gomez
Bianca Romero
Breanna Chavez
Brenan Oliver
Brenna Odoski
Brian Loveland
Brianna Gonzales
Byron Malan
Carlos Angeles
Carlos Marques
Carlos Mercado
Celena Shorees
Chris Hakim
Chris Morris
CHS 1
CHS 2
Chuck Shapiro
Claudia Taitague
Conor Loughman
Cory Altuna
Custodian of Records or other representative from Alternative Health Sunrise
Custodian of Records or other representative from AT&T

Custodian of Records or other representative from Flow Kana
Custodian of Records or other representative from Indiva Advisers
Custodian of Records or other representative from Super 5 Consulting Group
Custodian of Records or other representative from Wells Fargo Bank
Daniel Watts
Danielle Keeler
Darrell Cotton
David Farida
David Pender
Dean Bornstein
Dennise Gurfinkiel
Domenico Rigor
Eddie Martinez
Eduardo Martinez
Eileen Lara
Eileen Orozco
Elsy Iriarte
Eric Rauterkaus
Eric Van Houten
Fernando Pelayo
G. A. Reimers
Giovanna Loren Contreras
Greg Minter
Haitham Razuki
Hannah Chalpin
Hannah Mantel
Heidi Whitman
Ian Pennington
Jackie Cruz
Jacqueline Cruz
Jairo Santiago
Jake Austin
James Huynh
Jamie Fernandes
Javier Nunez
Jerry Baca
Jesse Crim
Jesse Stoda
Jessica Davalos
John Gomez

John Miller
John Roberts
Joseph Rothrock
Josh Johnson
Julian Sitto
Kathleen Romo
Keith Watts
Kristine Lopez
Louis Guluppo
Mackenzie Marden
Marilyn Muse
Marisa Bagnas
Mark (Mishel) Yousif
Mark Gonyea
Mark Haas
Mark Merckling
Marwan Kalasho
Matthew Botkin
Matthew Coughlin
Matthew Roper
Michael J. Crawford
Michael McDonald
Michael Olsen
Michael Reynoso
Michelle Hart
N.M.
Nathaniel Dingle
Nicholas Nigro
Nicolette Fernandes
Nicolette Fernnandes
Jean Garzanti
Pedro Bernal
Peter Yousif
Rachana Scott
Rachel Rowin
Regina Ho
Rohanna Nitara-Tracy
Ruby Palos
Rulon McVay
Sami Harmis
Sami Younan

Sarah George Razuki
Sarah Lawand
Scott Chanrachana
Stephanie Finnicum
Stephen Moore
Steve Aragon
Steve Elia
Sylvia Gonzales
Tereza Coral Malan
Theresa Talplacido
Timothy Lavelle
Tony Hobson
Tyler Brunhart
Tyler Stevens
Victor Hernandez
Victoria Anders
William Gardner
Yariel Cruz
Yolanda Loya
Yvonne Hernandez
Yvonne Lucas
Zuzana Drahosova

EXHIBITS

- Recordings of telephone calls and meetings with the defendants
- Surveillance photographs and video of meetings with the defendants
- Photographs from execution of search warrants
- Physical evidence, including data and video, seized during course of search warrants
- Physical evidence seized during the arrest of the defendants
- Communications and records thereof seized from the defendants' cellular telephones, tablets, and email accounts
- Records of telephone calls involving the defendants
- Recordings of interviews of defendants
- Recordings of telephone calls, copies of written correspondence, and visitor lists for the defendants while in custody
- Currency and documents provided by the defendants to law enforcement agents or individuals operating at their behest during course of investigation
- Business records from Goldn Bloom Dispensary, Super 5 Consulting Group, Alternative Health Sunrise, Wells Fargo Bank, Indiva Advisers, and Flow Kana
- Civil court pleadings and/or transcripts from civil litigation involving the defendants and the victim
- Overhead maps and diagrams of the various locations where meetings took place as well as where search warrants were executed

DATED: April 3, 2020

Respectfully submitted,
ROBERT S. BREWER, Jr.
United States Attorney

s/ Fred Sheppard
Fred Sheppard
Assistant U.S. Attorney

s/ Shital H. Thakkar
Shital Thakkar
Assistant U.S. Attorney