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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

Darryl Cotton, Plaintiff, vs. LAWRENCE (A/K/A LARRY) GERACI, an indvidual Defendant.	Case No.: 37-2022-00000023-CU-MC-CTL **REPLY IN SUPPORT OF PLAINTIFF'S APPLICATION TO SET ASIDE JUDGMENT** Action Filed: Jan. 3, 2022 Hearing Date: February 25, 2022 Time: 9:00 a.m. Judge: James A Mangione Department: C-75

In his Ex Parte Application to Set Aside Void Judgment (the "Motion"), Mr. Cotton demonstrated that the Cotton I[1] judgment was void because Geraci was sanctioned for unlicensed commercial cannabis activities, which required the denial of any application Geraci would have to submit to the state to operate a marijuana dispensary. Defendant's Opposition to Plaintiff's Motion to Vacate Judgment (the "Response") does not dispute that Geraci was sanctioned or that the California Business & Profession Code ("BPC") prohibited Geraci from lawfully operating a cannabis business as a result of the same. Instead, the Response argues that the Motion is not supported by admissible evidence, the Motion is untimely under § 473(d), res judicata and collateral estoppel prevent Mr. Cotton from obtaining the relief sought, and the "underlying premise for the Motion is patently ridiculous." The arguments in the Response should be rejected because:

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[1] Defined terms have the same meaning given them in the Motion.

1. There is no dispute that the BPC prohibits Geraci from obtaining a license to operate a cannabis dispensary;
2. The pertinent evidence is in the judgment roll and is admissible;
3. The Complaint and Motion are timely because a judgment void on its face, as well as a judgment valid on its face, can be attacked at any time in an independent equitable action;
4. The doctrines of res judicata and collateral estoppel do not apply to void judgments;
5. Geraci's counsel's "patently ridiculous" argument is contradicted by legal authority.

For the reasons set forth more fully below and the Motion, the Court can and should grant the relief sought in the Motion.

I. There is no dispute that the BPC prohibits Geraci from obtaining a license to operate a cannabis dispensary.

Notably absent from the Response is any attempt to dispute the argument that the BPC: (i) required the denial of the application for any person who has been sanctioned by a city for unlicensed commercial medical cannabis activities in the three years immediately preceding the date the application is filed; and (ii) the applicant is required to acquire a CUP prior to applying for a cannabis license. (Mot. at 8: 4-18; *see gen.* Resp.) Neither does the Response dispute that the Geraci Judgments are sanctions against Geraci. (*See gen.* Resp.); *see OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1328-29 (if a party fails to object to the evidence, then it is established and the "court must treat the judgment as void upon its face"). Therefore, Geraci does not dispute that the Cotton I judgment grants relief in violation of the BPC and, as a result, is void. *Paterra v. Hansen* (2021) 64 Cal.App.5th 507, 536; *311 South Spring Street Co. v. Department of General Services* (2009) 178 Cal.App.4th 1009, 1018 ("we define a judgment that is void for excess of jurisdiction to include a judgment that grants relief which the law declares shall not be granted.")

II. The pertinent evidence is in the judgment roll and is admissible.

Without citation to legal authority, the Response argues that Mr. Cotton is not entitled to the relief sought in the Motion because it is not supported by admissible evidence. (Resp. at 2:12-3:2.) But

the determination as to whether a judgment is void on its face is based upon the judgment roll, not extrinsic or admissible evidence. *OC Interior Services*, 7 Cal.App.5th at 1327-28 ("To prove that a judgment is void, the party challenging the judgment is limited to the judgment roll"). As a result, Mr. Geraci's efforts to have the Court deny the Motion because it is not supported by admissible evidence is unavailing.

Even if admissibility of evidence was at issue, Geraci has conceded the truth of the judicial admissions in the Cotton I Complaint and is bound by them. The November Document was attached to the Cotton I Complaint and it expressly stated that Cotton agreed to sell the property to Geraci "on the approval of a Marijuana Dispensary. (CUP for a dispensary)" (Declaration of Michael Weinstein in Opposition to Pl.'s Motion to Vacate Void Judgment, Exhibit 1 (the "Cotton I Complaint") at Exhibit A.) Geraci alleged that he "has engaged and continues to engaged in efforts to *obtain a CUP for a medical marijuana dispensary at the property.*" (Cotton I Compl. at ¶ 9 (emphasis added); *see also id.* at ¶ 15 (alleging Geraci has spent more than $300,000 on the CUP process), ¶ 21 ("Geraci is ready and willing to perform his remaining obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for a medical marijuana dispensary" and paying the balance of the purchase price if he "obtains CUP approval for a medical marijuana dispensary"), ¶¶ 23-24 (alleging Geraci has made efforts to obtain approval of a CUP for a medical marijuana dispensary), p. 6 at lines 20-24 (asking the Court to enter an order enjoining Cotton "from taking any action that interferes with Plaintiff Geraci's efforts to obtain approval of a Conditional Use Permit (CUP) for a medical marijuana dispensary").) Based upon these judicial admissions, Geraci concedes their truth and is bound by the same. *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 47-48 ("A judicial admission is a party's unequivocal concession of the truth of a matter, and removes the matter as an issue in the case.")

Similarly, the Response does not argue that the Geraci Judgments or Cotton I judgment are inadmissible. (*See* Resp. at 2:12-3:2.). The Geraci Judgments: (i) expressly enjoin and restrain Geraci "from engaging in or performing, directly or indirectly," operating or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative; (ii) require Geraci to immediately "cease

maintaining" a marijuana business at the properties; and (iii) required Geraci to pay civil penalties for operating an illegal marijuana dispensary. And the Cotton I judgment enforces a contract whose purpose was to allow Geraci to obtain a CUP and operate a marijuana dispensary at the property. In sum, all the evidence the Court needs to determine that the Cotton I judgment is void on its face is admissible and, more importantly, in the judgment roll.

III. A void judgment can be challenged at any time, and the judgment roll supports the relief sought.

Although the Response argues that the Complaint is untimely under § 473(d), it also acknowledges that "Plaintiff correctly cites long-applicable law that a judgment void upon its face is not extinguished by lapse of time. In fact, a judgment that is void on its face is subject to either direct or collateral attack at any time." (Resp. at 3:12-14 (citing *OC Interior Services*).) The Response then argues that whether the Cotton I judgment is void on its face "clearly cannot be gleaned from the judgment roll." (Resp. at 5:17-18.) The argument ignores what the judgment roll reveals.

The term "judgment roll" includes the pleadings, a copy of the verdict(s) of the jury, the statement of decision of the court, and a copy of the judgment. Code. Civ. P. 670(b). The term "pleadings" means complaints, demurrers, answers, and cross-complaints. Code Civ. P. § 422.10. And an original complaint remains a pleading within the definition of the judgment roll even if it is amended. *Redington v. Cornwell* (1891) 90 Cal. 49, 59-61.

The judgment roll includes all of the documents and allegations necessary to determine that the Cotton I judgment is void on its face. As for the pleadings, the November Document was attached to the Cotton I Complaint and expressly states that Cotton agreed to sell the property to Geraci "on the approval of a Marijuana Dispensary. (CUP for a dispensary)". (Compl., Exhibit 11 at Ex. A.)[2] And as noted

[2] The Response argues that the Court's analysis would be "dependent on considering the [November Document] itself, its meaning, and the intent of Geraci and Cotton in signing it." The interpretation of a contract is a question of law when the language of the document is clear and unambiguous. *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 524-25; *Oakland-Alameda County Coliseum Authority v. Golden State Warriors, LLC* (2020) 53 Cal.App.5th 807, 818-19.

earlier, the Cotton I Complaint also alleges that Geraci "has engaged and continues to engaged in efforts to obtain a CUP *for a medical marijuana dispensary at the property.*" And Geraci actually sought and was awarded damages for the amounts that he spent to obtain a CUP. (*Id.* at ¶¶ 12, 15, p. 6 lines 6-14.)

In Cotton's Cross Complaint, Cotton alleged that "Berry submitted the CUP 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." (Decl. of Michael Weinstein in Opposition to Plaintiff's Motion to Vacate Void Judgment, Exhibit 2 (Cotton's Cross-Complaint) at ¶ 132.) Geraci's legal issues (i.e., the Geraci Judgments) were also raised in the First Amended Cross-Complaint and the Second Amended Cross-Complaint. (*Id.*, First Amended Cross-Complaint at ¶ 12; Second Amended Cross-Complaint at ¶ 12.)

As for the jury verdicts and the Cotton I judgment, they determined that the November Document was a valid and enforceable contract, Geraci's damages (which, according to the Cotton I Complaint, constituted monies "expended to date on the CUP process") totaled $260,109.28[3], and the Court enforced the same by entering judgment against Mr. Cotton.

Notwithstanding the foregoing, the Court can still consider extrinsic evidence. A judgment that is valid on its face is subject to direct attack "in an independent equitable action without time limit" and extrinsic evidence may be presented. *OC Interior Services*, 7 Cal.App.5th at 1328 (internal citations omitted). This action is an independent equitable action and, as a result, the Court may consider extrinsic evidence.

In short, the Cotton I judgment is void because: (i) the November Document required Geraci to obtain a CUP; (ii) the Cotton I Complaint alleged that Geraci pursued a CUP, spent monies to obtain a CUP, and was damaged as a result; (iii) the Cotton I judgment awarded Geraci damages for the monies he spent pursuing a CUP; (iv) the Geraci Judgments sanctioned Geraci for unlicensed commercial

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[3] Costs in the amount of $33,612.16 were also added to the Cotton I judgment.

cannabis activity; and (v) those sanctions prohibited Geraci from operating a marijuana dispensary pursuant to the BPC. Therefore, whether the Cotton I judgment is void on its face can be gleaned from the judgment roll.

IV. Res judicata does not apply to void judgments.

While the response recites the general principles of the doctrines of res judicata and collateral estoppel, it does not address the applicability of those doctrines in relation to void judgments. (*See gen.* Resp. at 6:3-9:14.) The case law is clear - the doctrines of res judicata does not apply to void judgments. *People v. Amaya* (2015) 239 Cal.App.4th 379, 387 ("it is hornbook law that a void judgment has not effect as either res judicata or collateral estoppel"); *Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1239-1240 (cited with approval in *OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318); *see also 311 S. Spring St. Co. v. Dep't of Gen. Sevs.* (2009) 178 Cal.App.4th 1009, 1015. That is because a "void judgment or order is, in legal effect, no judgment." *Rochin*, 67 Cal.App.4th at 1240.

The Response devotes 3 ½ pages to res judicata and collateral estoppel. But nowhere in those pages does the Response address the applicability of the doctrines to void judgments, notwithstanding citations to *OC Interior Services*. (Resp. at 3:12-15.) The foregoing binding legal authority demonstrates that the doctrines of res judicata and collateral estoppel do not bar this Court from determining whether the Cotton I judgment is void.

V. The "patently ridiculous" argument is not supported by any legal authority.

The Response argues that the underlying premise in the Motion is "patently ridiculous" but fails to cite to any legal authority for the same. (Resp. at 9:15-10:23.) Mr. Geraci's counsel's feelings towards Mr. Cotton's ability to file the Complaint and seek the relief sought in the Motion are not a basis to deny the Motion. Both Mr. Cotton and the Response cite to *OC Interior Services*, amongst other legal authority, which entitles Mr. Cotton to collaterally attack the Cotton I judgment at any time. That legal authority allows Mr. Cotton to bring this action and seek the relief sought in the Motion.

Further, there is legal authority that suggests a void judgment can be attacked multiple times. For example, a judgment that is void but affirmed on appeal can still be subsequently attacked collaterally. *See Redlands High School Dist. v. Superior Court of San Bernardino Co.* (1942) 20 Cal.2d 348, 362 (citing cases); *311 S. Spring St. Co.*, 178 Cal.App.4th at 1015. Under *Redlands* and *311 S. Spring St.*, even if Cotton had appealed the Cotton I judgment and lost, the result would not prohibit this proceeding.

VI. Conclusion

For the reason set forth in the Motion, this reply, and the entire record before the Court in this matter, Cotton requests that the Court grant the relief sought in the Motion.

DATED this 17th day of February, 2022.

TIFFANY & BOSCO, P.A.

By _____
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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1455 Frazee Road, Suite 820, San Diego, CA 92108. On 2/17/22, I served the attached document, **REPLY IN SUPPORT OF PLAINTIFF'S APPLICATION TO SET ASIDE JUDGMENT,** on the parties to this action by serving:

James D. Crosby
550 W. C Street, Suite 620
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[] (BY U.S. MAIL) I am readily familiar with the practices of this office for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence placed for collection is deposited with the United States Postal Service with the postage thereon fully prepaid on the same day. On the date stated above, I placed an original or true copy of the foregoing document(s) described herein in an addressed, stamped, sealed envelope for collection and mailing following ordinary business practices.

[X] (BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL) I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows:

BY EMAIL:
James Crosby (crosby@crosbyattorney.com)

BY OVERNIGHT MAIL:
James D. Crosby
550 W. C Street, Suite 620
San Diego, CA 92101

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

Dated: 2/17/22

By: Brianna Birk
Brianna Birk, Declarant
1455 Frazee Road, Suite 820
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