

1 James D. Crosby (State Bar No. 110383)
Attorney at Law
2 550 West C Street
San Diego, CA 92101
3 Telephone: (619) 450-4149
Email: crosby@crosbyattorney.com

4 Attorney for Defendant Larry Geraci
5
6
7

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/15/2022 at 09:33:00 AM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 DARRYL COTTON,
11 Plaintiff,
12 v.
13 LAWRENCE (A/K/A LARRY) GERACI, an
individual,
14 Defendant.

Case No. 37-2022-00000023-CU-MC-CTL
**EX-PARTE APPLICATION FOR ORDER
SHORTENING TIME ON MOTION FOR
JUDGMENT ON THE PLEADINGS;
DECLARATION OF JAMES D. CROSBY**

Date: March 16, 2022
Time: 8:300 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Complaint Filed: January 3, 2022
Trial Date: Unassigned

15
16
17
18
19
20 **EX-PARTE APPLICATION**

21 Defendant Lawrence Geraci applies, *ex-parte*, for an order shortening time on a motion for
22 judgment on the pleadings as against plaintiff Darryl Cotton.

23 As stated in the declaration of James D. Crosby hereinbelow, good cause exists for the
24 requested order and plaintiff Darryl Cotton was given timely notice of this ex-parte application.

25 //

26 //

27 //

28

1 The ex-parte application is based on this application, the declaration of James D. Crosby
2 hereinbelow, the pleadings and papers on the file in this action, and such and further evidence or
3 argument as may be presented at the hearing.

4 Date: March 15, 2022

/s/ James D. Crosby

James D. Crosby

Attorney for Defendant Larry Geraci

6 **DECLARATION OF JAMES D. CROSBY**

7 I, James D. Crosby, do hereby declare and state:

8 1. I am an attorney licensed to practice before all courts of the state of California. I am
9 counsel for defendant Lawrence Geraci in the above-entitled matter.

10 2. By way of this action, plaintiff Darryl Cotton sought to vacate the judgment against
11 him and in favor of defendant Geraci in San Diego Superior Court Case No. 37-2017-00010073-
12 CU-BC-CTL.

13 3. Plaintiff Cotton's motion to vacate the judgment in San Diego Superior Court Case
14 No. 37-2017-00010073-CU-BC-CTL was heard by the court on February 25, 2022. The court
15 denied the motion. The court's denial of the motion to vacate judgment concludes this matter.

16 4. On March 2, 2022, I sent an email to plaintiff, demanding that he immediately
17 dismiss the lawsuit given that the court's February 25, 2022 ruling on his motion to vacate
18 concluded the matter. A true and correct copy of my March 2, 2022, email to plaintiff Cotton is
19 attached as Exhibit A.

20 5. On March 3, 2022, I received an email from plaintiff Cotton wherein he refused to
21 dismiss the action. A true and correct copy of plaintiff Cotton's March 3, 2022 email to the
22 undersigned is attached hereto as Exhibit B.

23 6. Defendant Geraci's first available means to secure dismissal of this action is now a
24 motion for judgment on the pleadings. The earliest available hearing date available from the online
25 court services and/or from the court clerk is October 07, 2022.

26 7. Defendant Geraci should not be required to wait until October 07, 2022 to secure
27 dismissal of this meritless action.

28

EXHIBIT “A”

From: [James Crosby](#)
To: [Darryl Cotton](#)
Bcc: [Michael R. Weinstein - FERRIS & BRITTON \(mweinstein@ferrisbritton.com\)](#); [Larry Geraci](#)
Subject: FW: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) - Electronic Service of Documents
Date: Wednesday, March 2, 2022 6:35:00 PM

Mr. Cotton,

Based on the below, it appears you are without counsel again. Thus, I present this demand to you directly.

I demand that you immediately dismiss your case. Last week's court ruling, in effect, concludes the matter. If needed, I will move for judgment on the pleadings and the court will grant that motion. Continued prosecution of this meritless case serves only to increase the damages to my client and your exposure for such damages. As were the two federal court cases, this action was, when filed, and remains, completely without factual or legal merit. I urge you to cease your continued prosecution of this totally meritless case.

James D. Crosby

Attorney at Law

550 West C Street, Suite 620

San Diego, California 92101

O: (619) 450-4149

C: (858) 705-0083

crosby@crosbyattorney.com

www.crosbyattorney.com

From: Evan P. Schube <EPS@tblaw.com>

Sent: Monday, February 28, 2022 10:37 PM

To: James Crosby <crosby@crosbyattorney.com>; Brandon J. Mika <BJM@tblaw.com>; Brianna Birk <Bbirk@tblaw.com>

Subject: RE: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) - Electronic Service of Documents

James –

Thank you for the email below. Per the attached limited scope of representation, our representation of Mr. Cotton was limited to the hearing on the ex parte motion and lasted until submission of the order after the hearing. Now that the Court has entered its ruling, the scope of our representation has concluded.

As a result of our limited scope, I did not have the ability or authority to dismiss the Complaint at the hearing. I have passed along your email below to Mr. Cotton. Mr. Cotton is, therefore, aware of your position with respect to the dismissal of the Complaint and you can direct all future communications to his attention. Although I do not know what course of action Mr. Cotton intends to take at this moment, if there is any continued prosecution of this case, it is without the involvement of me,

Brandon, or the Firm.

Thank you,

Evan P. Schube | Shareholder | (o) 602.288.7922

TIFFANY & BOSCO, P.A.

Seventh Floor Camelback Esplanade II | 2525 E Camelback Road | Phoenix, AZ 85016-9239
P 602.288.7922 | F 602.255.0103

Offices: Arizona | California | Nevada | New Mexico

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error, then delete it. Thank you.

From: James Crosby [<mailto:crosby@crosbyattorney.com>]

Sent: Friday, February 25, 2022 4:11 PM

To: Brandon J. Mika <BJM@tblaw.com>; Evan P. Schube <EPS@tblaw.com>; Brianna Birk <Bbirk@tblaw.com>

Subject: RE: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) - Electronic Service of Documents

Counsel,

In light of today's ruling, I urge you to immediately dismiss the case. Today's ruling, in effect, concludes the matter. If needed, I will move for judgment on the pleadings. Based on today's ruling, the court will be compelled to grant that motion. Continued prosecution of this meritless case serves only to increase the damage to my client and the potential exposure of your client, you, and your firm for such damages. As were the two federal court cases, this action was, when filed, and remains, completely without factual or legal merit. It presents a fundamental, and rather stunning, misunderstanding of the doctrine of the finality of judgments and rests on the untenable, and yet to explained or supported, notion that a claimed error by Judge Wohfeil in application of an illegality defense to a contract action gives rise to void judgment. I raised this issue in our opposition papers. Your reply completely ignored it as did your argument today. I urge you to cease your continued prosecution of this meritless case.

James D. Crosby

Attorney at Law

550 West C Street, Suite 620

San Diego, California 92101

O: (619) 450-4149

C: (858) 705-0083

crosby@crosbyattorney.com

www.crosbyattorney.com

From: Brandon J. Mika <BJM@tblaw.com>

Sent: Tuesday, February 22, 2022 3:11 PM

To: James Crosby <crosby@crosbyattorney.com>; Evan P. Schube <EPS@tblaw.com>; Brianna Birk <Bbirk@tblaw.com>

Subject: RE: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) - Electronic Service of Documents

Mr. Crosby,

Thank you for the response. I will notify the court at tomorrow's hearing.



Brandon J. Mika | Attorney - California Office

1455 Frazee Road | Suite 820 | San Diego, CA 92108
D 619.794.0515 | P 619.501.3503 | F 619.487.9079
bjm@tblaw.com | [Bio](#) | [Website](#)

Offices: Alabama | Arizona | California | Florida | Michigan | Nevada | New Mexico
**Licensed in California*

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error, then delete it. Thank you.



From: James Crosby <crosby@crosbyattorney.com>

Sent: Tuesday, February 22, 2022 1:14 PM

To: Brandon J. Mika <BJM@tblaw.com>; Evan P. Schube <EPS@tblaw.com>; Brianna Birk <Bbirk@tblaw.com>

Subject: RE: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) - Electronic Service of Documents

Defendant has no objection to the ex-parte application or the pro hac vice application. I will not oppose, or appear at the hearing on, the ex-parte application.

James D. Crosby
Attorney at Law

550 West C Street, Suite 620

San Diego, California 92101
O: (619) 450-4149
C: (858) 705-0083
crosby@crosbyattorney.com
www.crosbyattorney.com

From: Brianna Birk <BBirk@tblaw.com>
Sent: Tuesday, February 22, 2022 10:49 AM
To: James Crosby <crosby@crosbyattorney.com>
Subject: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) - Electronic Service of Documents
Importance: High

Hello Mr. James Crosby:

The attached documents are being served to you electronically on behalf of your client, Lawrence Geraci. They are:

- Ex Parte Application For An Order Shortening Time For Notice And Hearing On The Verified Application Of Evan P. Schube For Pro Hac Vice Admission
- Declaration of Brandon J. Mika in Support of Ex Parte Application For An Order Shortening Time For Notice And Hearing On The Verified Application Of Evan P. Schube For Pro Hac Vice Admission
- Proof of Service

Our firm filed these documents with the court on Tuesday, February 22nd. A physical copy is en route to your office via USPS regular mail.



Brianna Birk | Receptionist
1455 Frazee Rd. Suite 820 | San Diego, CA 92108
P 619.501.3503 | F 619.487.9079
BBirk@tblaw.com | [Website](http://www.tblaw.com)
Offices: Arizona | California | Nevada | New Mexico

Tiffany & Bosco, P.A. prides itself on excellent customer service. If you feel you have not received this service, please email your comments to complaints@tblaw.com.

Tiffany & Bosco, P.A. would love to hear about employees that have gone out of their way to provide excellent customer service, so they can be recognized. If you wish to tell us about such an employee, please email us at compliments@tblaw.com

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error, then delete it. Thank you.

EXHIBIT “B”

From: [Darryl Cotton](#)
To: [James Crosby](#)
Subject: Re: FW: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) - Electronic Service of Documents
Date: Thursday, March 3, 2022 2:58:45 PM

Mr. Crosby,

I intend to appeal the denial of the motion to vacate. However, I am willing to dismiss this state and the federal case if you can provide authority that a judgment that enforces an illegal contract is not void. As you know from the moving papers, a void judgment includes one that "grants relief the law declares shall not be granted." The order does not address that issue.

Do you dispute that Geraci can lawfully own a CUP when he had been sanctioned for unlicensed commercial cannabis activities and applied for it in the name of his receptionist, Berry?

If you do, please provide what legal authority you have for that in light of California Business & Professions Code Sections 19323/26057.

If you do not, please provide any authority for your position that Geraci can collect \$300,000 plus from me for filing an action that enforces an illegal contract when Judge Wohlfeil found the defense of illegality had been waived when as a matter of law it cannot be waived. If you can, I will dismiss both my state and federal cases.

If you do not substantively respond with facts and law, then I will appeal the denial of the motion to vacate. I assume Judge Manglione will also grant your motion for judgment on the pleadings, and I will appeal that as well. Obviously having a trial judge overturn another trial judge, especially and Maglione and Wohlfeil have their courts and offices on the same floor, is incredibly difficult. But that is what the Court of Appeal is for.

Lastly, please note that if I do get the judgment set aside, I will amend my federal complaint and sue you for violating my civil rights by filing sham pleadings in federal court requesting that the court deny the relief I was requesting when you knew or should have known that Geraci's action against me did not have any probable cause because as a matter of law the alleged contract was not valid. It was not valid because it lacked mutual assent based on the undisputed writings between Geraci and myself and because the alleged contract is illegal as it was Geraci's way of acquiring a CUP he could not own by law via a proxy. By representing Geraci you are ratifying and furthering his illegal goal that deprived me of the value of a CUP and for which, for defending my rights, he seeks to collect over \$300,000 all because he wanted to illegally acquire my property to operate a lucrative dispensary that he could not own by law.

Again, if you have any authority that allows Geraci to collect \$300,000 plus from me based on a judgement that enforces an illegal contract, entered on the premise that the defense of illegality had been waived, please forward it to me and if it is applicable, I will dismiss both my state and federal courts.

If you can't, then I will continue to file motions and pleadings until a court in plain language tells me that Geraci can collect \$300,000 plus from me because Judge Wohlfeil found the defense of illegality had been waived when it is a legal impossibility.

Lastly, as described in my complaint, in my appeal of the denial of the motion to vacate, I will also argue that the judgment is void for judicial bias as described in my complaint. Although Mr. Schube has represented me in limited capacities since the motion for new trial, his firm will not let him represent me in an action that requires that allegations of judicial bias, which is why he has only represented me in limited capacities on the issue of illegality.

I look forward to your response.

Sincerely,

Darryl

On Wed, Mar 2, 2022 at 6:35 PM James Crosby <crosby@crosbyattorney.com> wrote:

Mr. Cotton,

Based on the below, it appears you are without counsel again. Thus, I present this demand to you directly.

I demand that you immediately dismiss your case. Last week's court ruling, in effect, concludes the matter. If needed, I will move for judgment on the pleadings and the court will grant that motion. Continued prosecution of this meritless case serves only to increase the damages to my client and your exposure for such damages. As were the two federal court cases, this action was, when filed, and remains, completely without factual or legal merit. I urge you to cease your continued prosecution of this totally meritless case.

James D. Crosby

Attorney at Law

550 West C Street, Suite 620

San Diego, California 92101

O: (619) 450-4149

C: (858) 705-0083

crosby@crosbyattorney.com

www.crosbyattorney.com

From: Evan P. Schube <EPS@tblaw.com>
Sent: Monday, February 28, 2022 10:37 PM
To: James Crosby <crosby@crosbyattorney.com>; Brandon J. Mika <BJM@tblaw.com>;
Brianna Birk <Bbirk@tblaw.com>
Subject: RE: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) -
Electronic Service of Documents

James –

Thank you for the email below. Per the attached limited scope of representation, our representation of Mr. Cotton was limited to the hearing on the ex parte motion and lasted until submission of the order after the hearing. Now that the Court has entered its ruling, the scope of our representation has concluded.

As a result of our limited scope, I did not have the ability or authority to dismiss the Complaint at the hearing. I have passed along your email below to Mr. Cotton. Mr. Cotton is, therefore, aware of your position with respect to the dismissal of the Complaint and you can direct all future communications to his attention. Although I do not know what course of action Mr. Cotton intends to take at this moment, if there is any continued prosecution of this case, it is without the involvement of me, Brandon, or the Firm.

Thank you,

Evan P. Schube | Shareholder | (o) 602.288.7922

TIFFANY & BOSCO, P.A.

Seventh Floor Camelback Esplanade II | 2525 E Camelback Road | Phoenix, AZ 85016-9239

P 602.288.7922 | F 602.255.0103

Offices: Arizona | California | Nevada | New Mexico

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege.

If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error, then delete it. Thank you.

From: James Crosby [<mailto:crosby@crosbyattorney.com>]
Sent: Friday, February 25, 2022 4:11 PM
To: Brandon J. Mika <BJM@tblaw.com>; Evan P. Schube <EPS@tblaw.com>; Brianna Birk <Bbirk@tblaw.com>
Subject: RE: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) - Electronic Service of Documents

Counsel,

In light of today's ruling, I urge you to immediately dismiss the case. Today's ruling, in effect, concludes the matter. If needed, I will move for judgment on the pleadings. Based on today's ruling, the court will be compelled to grant that motion. Continued prosecution of this meritless case serves only to increase the damage to my client and the potential exposure of your client, you, and your firm for such damages. As were the two federal court cases, this action was, when filed, and remains, completely without factual or legal merit. It presents a fundamental, and rather stunning, misunderstanding of the doctrine of the finality of judgments and rests on the untenable, and yet to explained or supported, notion that a claimed error by Judge Wohfeil in application of an illegality defense to a contract action gives rise to void judgment. I raised this issue in our opposition papers. Your reply completely ignored it as did your argument today. I urge you to cease your continued prosecution of this meritless case.

James D. Crosby

Attorney at Law

550 West C Street, Suite 620

San Diego, California 92101

O: (619) 450-4149

C: (858) 705-0083

crosby@crosbyattorney.com

www.crosbyattorney.com

From: Brandon J. Mika <BJM@tblaw.com>
Sent: Tuesday, February 22, 2022 3:11 PM

To: James Crosby <crosby@crosbyattorney.com>; Evan P. Schube <EPS@tblaw.com>;
Brianna Birk <Bbirk@tblaw.com>
Subject: RE: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) -
Electronic Service of Documents

Mr. Crosby,

Thank you for the response. I will notify the court at tomorrow's hearing.



Brandon J. Mika | Attorney - California Office

1455 Frazee Road | Suite 820 | San Diego, CA 92108

D 619.794.0515 | P 619.501.3503 | F 619.487.9079

bjm@tblaw.com | [Bio](#) | [Website](#)

Offices: Alabama | Arizona | California | Florida | Michigan | Nevada | New Mexico

**Licensed in California*

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege.

If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error, then delete it. Thank you.



From: James Crosby <crosby@crosbyattorney.com>
Sent: Tuesday, February 22, 2022 1:14 PM
To: Brandon J. Mika <BJM@tblaw.com>; Evan P. Schube <EPS@tblaw.com>; Brianna Birk <Bbirk@tblaw.com>
Subject: RE: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) - Electronic Service of Documents

Defendant has no objection to the ex-parte application or the pro hac vice application.

I will not oppose, or appear at the hearing on, the ex-parte application.

James D. Crosby

Attorney at Law

550 West C Street, Suite 620

San Diego, California 92101

O: (619) 450-4149

C: (858) 705-0083

crosby@crosbyattorney.com

www.crosbyattorney.com

From: Brianna Birk <Bbirk@tblaw.com>
Sent: Tuesday, February 22, 2022 10:49 AM

To: James Crosby <crosby@crosbyattorney.com>

Subject: San Diego County Case 37-2022-00000023-CU-MC-CTL (Cotton v. Geraci) -
Electronic Service of Documents

Importance: High

Hello Mr. James Crosby:

The attached documents are being served to you electronically on behalf of your client, Lawrence Geraci. They are:

- Ex Parte Application For An Order Shortening Time For Notice And Hearing On The Verified Application Of Evan P. Schube For Pro Hac Vice Admission
- Declaration of Brandon J. Mika in Support of Ex Parte Application For An Order Shortening Time For Notice And Hearing On The Verified Application Of Evan P. Schube For Pro Hac Vice Admission
- Proof of Service

Our firm filed these documents with the court on Tuesday, February 22nd. A physical copy is en route to your office via USPS regular mail.



Brianna Birk | Receptionist

1455 Frazee Rd. Suite 820 | San Diego, CA 92108

P 619.501.3503 | F 619.487.9079

BBirk@tblaw.com | [Website](#)

Offices: Arizona | California | Nevada | New Mexico

Tiffany & Bosco, P.A. prides itself on excellent customer service. If you feel you have not received this service, please email your comments to complaints@tblaw.com.

Tiffany & Bosco, P.A. would love to hear about employees that have gone out of their way to provide excellent customer service, so they can be recognized. If you wish to tell us about such an employee, please email us at compliments@tblaw.com

CONFIDENTIALITY NOTICE: The information contained in this message may be protected by the attorney-client privilege.

If you believe that it has been sent to you in error, do not read it. Please immediately reply to the sender that you have received the message in error, then delete it. Thank you.

EXHIBIT “C”

From: [James Crosby](#)
To: [Darryl Cotton](#)
Cc: [Larry Geraci](#); [Raisa Leal](#)
Bcc: [Michael R. Weinstein - FERRIS & BRITTON \(mweinstein@ferrisbritton.com\)](#)
Subject: RE: EX-PARTE NOTICE
Date: Monday, March 14, 2022 4:00:00 PM

Mr. Cotton,

Take notice that on **Wednesday, March 16, 2022, at 8:30 a.m.**, I will appear in Department C-75 of the San Diego Superior Court to apply ex-parte for an order shortening time on a motion for judgment on the pleadings. Our moving papers will be served by email tomorrow before noon.

James D. Crosby

Attorney at Law

550 West C Street, Suite 620

San Diego, California 92101

O: (619) 450-4149

C: (858) 705-0083

crosby@crosbyattorney.com

www.crosbyattorney.com

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]