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San Diego

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DARRYL COTTON,

Plaintiff,

v.

LARRY GERACI, et al.,

Defendants.

Case No. 18-cv-00325-TWR-DEB

**DEFENDANT JUDGE JOEL R.
WOHLFEIL'S NOTICE OF MOTION
AND MOTION TO DISMISS FIRST
AMENDED COMPLAINT WITH
PREJUDICE**

Date: April 21, 2021

Time: 1:30 p.m.

Crtrm: 3A (Schwartz)

Judge: The Honorable Todd W. Robinson

**[NO ORAL ARGUMENT
REQUESTED]**

TO ALL PARTIES AND/OR THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 21, 2021, at 1:30 p.m., in Courtroom 3A of the United States District Court for the Southern District of California, located at 221 West Broadway (Schwartz), San Diego, California 92101, before The Honorable Judge Todd W. Robinson, Defendant the Honorable Joel R. Wohlfeil, Judge of the Superior Court of California, County of San Diego ("Judge Wohlfeil"), will move to

dismiss Plaintiff's First Amended Complaint ("FAC") and each claim for relief pursuant to Federal Rules of Civil Procedure ("FRCP") 12(b)(1) and 12(b)(6) on the following grounds:

1. Because Judge Wohlfeil enjoys absolute judicial immunity, this Court lacks jurisdiction over the subject matter of the FAC pursuant to FRCP 12(b)(1) and the FAC fails to state a claim upon which relief can be granted under FRCP 12(b)(6);

2. The action is barred by Eleventh Amendment Immunity. Accordingly, this Court lacks jurisdiction over the subject matter of the FAC pursuant to FRCP 12(b)(1) and the FAC fails to state a claim upon which relief can be granted under FRCP 12(b)(6);

3. Pursuant to FRCP 12(b)(1), this Court lacks subject matter jurisdiction over the entire action pursuant to the *Rooker-Feldman* doctrine; and

4. The FAC fails to state facts sufficient to state a viable claim against Judge Wohlfeil and therefore should be dismissed pursuant to FRCP 12(b)(6).

The Motion to Dismiss will be based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Request for Judicial Notice with Exhibits A-D, the Declaration of Carmela E. Duke, all of which are served and filed herewith, as well as the pleadings and other papers filed hereon.

SUSANNE C. KOSKI
Superior Court of California, County of San
Diego

DATED:

January 4, 2021

By: s/ Carmela E. Duke
CARMELA E. DUKE
Attorneys for Defendant, The Honorable Joel
R. Wohlfeil, Judge of the Superior Court of
California, County of San Diego

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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 DARRYL COTTON,

13 Plaintiff,

14 v.

15 LARRY GERACI, et al.,

16 Defendants.

Case No. 18-cv-00325-TWR-DEB

17 **MEMORANDUM OF POINTS AND**
18 **AUTHORITIES IN SUPPORT OF**
19 **MOTION TO DISMISS FIRST**
20 **AMENDED COMPLAINT WITH**
21 **PREJUDICE BY DEFENDANT JUDGE**
22 **JOEL R. WOHLFEIL**

23 Date: April 21, 2021

24 Time: 1:30 p.m.

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26 Judge: The Honorable Todd W. Robinson

27 **[NO ORAL ARGUMENT REQUESTED]**
28

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I.

INTRODUCTION

As expressly alleged in the First Amended Complaint (“FAC”), Plaintiff Darryl Cotton brought this action as a “collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil in *Cotton I.*”¹ (FAC at ¶ 1.) Plaintiff seeks to, inter alia, void the judgment in *Cotton I.*, which concerned a dispute regarding an alleged real estate purchase and sale agreement between Plaintiff and Larry Geraci (“Geraci”). *Cotton I.* concerned whether Plaintiff agreed to sell Geraci his real property for the purpose of establishing a Medical Marijuana Consumer Collective (“MMCC”) on it. After Plaintiff lost the state court action, he filed a Notice of Appeal. However, because he failed to perfect his appeal, it was dismissed.

Although Plaintiff is unhappy with the outcome and rulings made in *Cotton I.*, and now improperly seeks to collaterally attack the judgment in *Cotton I.*, the FAC acknowledges that “[j]udges are protected by their judicial immunity.” (FAC at ¶ 155.) Plaintiff is correct—the entire action against Judge Wohlfeil is barred by absolute judicial immunity because it is based solely on the decisions and rulings he made in the performance of his judicial duties in *Cotton I.*² In addition, Judge Wohlfeil also enjoys the protection of the Eleventh Amendment immunity.

Moreover, because this lawsuit constitutes a de facto appeal of the judgment in *Cotton I.*, it is barred under the *Rooker-Feldman* doctrine. Lastly, Plaintiff fails to state a viable 42 U.S.C § 1983 claim and his punitive damages cause of action fails because there is no independent cause of action for punitive damage. For these reasons, Judge Wohlfeil respectfully requests that this Court dismiss the FAC, without leave to amend,

¹ *Cotton I.* refers to San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL.

² Even though Plaintiff recognizes this action is barred by the doctrine of judicial immunity, he believes “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.” (FAC at ¶ 23.)

1 and enter a judgment of dismissal, with prejudice, in his favor.

2 II.

3 SUMMARY OF ALLEGATIONS OF THE FAC³

4 A. The Underlying State Court Action.

5 On March 21, 2017, Geraci filed a Complaint with the San Diego Superior Court
6 against Cotton alleging breach of contract, breach of covenant of good faith and fair
7 dealing, specific performance, and declaratory relief as it related to an alleged real estate
8 purchase and sale agreement. (FAC at ¶¶ 74-75; *see also* Complaint in *Cotton I*, RJN,
9 Ex. A.) Plaintiff filed a cross-complaint against Geraci and Monica Berry. (FAC at ¶ 79.)
10 Judge Wohlfeil was the judge assigned to *Cotton I*. (*See* Notice of Case Assignment for
11 *Cotton I*, RJN, Ex. B.)

12 A jury decided the fate of *Cotton I* and rendered a verdict in favor of Geraci and
13 against Plaintiff. (*See* Judgment on Jury Verdict, RJN, Ex. C.) Post-trial, Judge Wohlfeil
14 denied Plaintiff's motion for new trial. (FAC at ¶ 198.) Plaintiff appealed, but the
15 California Court of Appeal, Fourth District, Division One, dismissed the appeal because
16 Plaintiff failed to timely designate the record and also failed to timely deposit costs for
17 preparing the record on appeal. (*See* Remittitur, RJN, Ex. D.)

18 B. Plaintiff's Allegations Against Judge Wohlfeil.

19 In the FAC, Plaintiff alleges that the "*Cotton I* judgment is void for being
20 procured via a fraud on the court, the product of judicial bias, and because the alleged
21 contract has an unlawful object at is therefore illegal and cannot be enforced." (FAC at ¶
22 17.) He seeks to "expose Wohlfeil for the biased judge that he is. A judge who ruined
23 Cotton's life because he . . . [did not] apply the law to the facts which he had been
24 presented with." (FAC at ¶ 24.) Plaintiff's factual allegations against Judge Wohlfeil
25

26
27 ³ The facts set forth are taken from those alleged in the FAC, as supplemented by the
28 documents submitted in connection with Judge Wohlfeil's Request for Judicial Notice
("RJN").

center on official rulings and decisions he made in the underlying action. Such allegations include:

- Judge Wohlfeil erroneously denied Plaintiff’s motion to expunge notice of pendency of action (lis pendens). (FAC at ¶¶ 93-101.) Plaintiff asserts that the statute of frauds does not apply to a joint venture agreement. (FAC at ¶ 100.)
- Judge Wohlfeil improperly denied Plaintiff’s motion for new trial because he “believ[ed] Weinstein’s frivolous opposition arguments” (FAC at ¶ 106.) Instead, according to Plaintiff, “[f]actually and legally the arguments are contradicted by facts and law.” (FAC at ¶ 107.)
- Given the outcome of *Cotton I*, “Judge Wohlfeil is enforcing an illegal contract and 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.” (FAC at ¶ 114.) Based on Judge Wohlfeil’s statements made in *Cotton I*, Judge Wohlfeil erroneously believed that attorney Weinstein was an ethical attorney. (FAC at ¶¶ 13-16.)
- Based on “Judge Wohlfeil’s statements and actions” in *Cotton I*, Judge Wohlfeil is biased against Plaintiff. (FAC at ¶ 134.)

C. Causes Of Action Against Judge Wohlfeil.

As a result of Judge Wohlfeil’s allegedly erroneous rulings, Plaintiff asserts a civil rights cause of action under 42 U.S.C § 1983 against Judge Wohlfeil and a claim for punitive damages. (FAC at ¶¶ 145-148; p. 17.) In addition to claiming at least \$7 million in damages, Plaintiff asks this Court to grant him the following relief: (1) void the state court judgment in *Cotton I*; (2) stay the *Cotton I* action pending the resolution of this federal case; (3) declare Judge Wohlfeil biased and preclude him from continuing to preside over *Cotton I*. (FAC at p. 18.)

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III. ARGUMENT

A. Legal Standard.

Federal Rule of Civil Procedure 12(b)(1) allows for a motion to dismiss based on lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). Such a motion may be facial, where the inquiry is confined to the allegations in the complaint, or factual, where the court looks beyond the complaint to extrinsic evidence. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).

A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is a challenge to the sufficiency of the pleadings set forth in the complaint. A dismissal is proper under Rule 12(b)(6) when the complaint “fails to state a cognizable legal theory or fails to allege sufficient factual support for its legal theories.” *Caltex Plastics, Inc. v. Lockheed Martin Corporation*, 824 F.3d 1156, 1159 (9th Cir. 2016). A Rule 12(b)(6) motion for failure to state a claim may also challenge defenses disclosed on the face of the complaint or which are apparent from matters subject to judicial notice. *Weisbuch v. County of Los Angeles*, 119 F.3d 778, 783 n.1 (9th Cir. 1997); *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1016, fn. 9 (9th Cir. 2012); *Mack v. South Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” *Id.* at 679. A court is “free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations.” *Farm Credit Servs. v. Am. State Bank*, 339 F.3d 764, 767 (8th Cir. 2003) (citation omitted).

1 **B. Judge Wohlfeil Enjoys Absolute Judicial Immunity Against**
 2 **Plaintiff's Claims.**

3 As Plaintiff correctly asserts, “Judges are protected by their judicial immunity.”
 4 (FAC at ¶ 155.) “Judges and those performing judge-like functions are absolutely
 5 immune from damage liability for acts performed in their official capacities.” *Ashelman*
 6 *v. Pope*, 793 F.2d 1072, 1075. “This absolute immunity insulates judges from charges of
 7 erroneous acts or irregular action, even when it is alleged that such action was driven by
 8 malicious or corrupt motives, [citation], or when the exercise of judicial authority is
 9 ‘flawed by the commission of grave procedural errors.’” *In re Castillo*, 297 F.3d 940,
 10 947 (9th Cir. 2002) (quoting *Stump v. Sparkman*, 435 U.S. 349, 359 (1978)). “Judicial
 11 immunity discourages collateral attacks on final judgments through civil suits, and thus
 12 promotes the use of ‘appellate procedures as the standard system for correcting judicial
 13 error.’” *Id.* (quoting *Forrester v. White*, 484 U.S. 219, 225 (1988)).

14 “Judicial immunity applies however erroneous the act may have been, and
 15 however injurious in its consequences it may have proved to the plaintiff.” *Ashelman*,
 16 793 F.2d at 1075 (internal quotation marks omitted). “Disagreement with the action
 17 taken by [a] judge,” even one resulting in “tragic consequences,” “does not justify
 18 depriving that judge of his immunity.” *Stump*, 435 U.S. at 363 (applying judicial
 19 immunity to judge who approved petition for sterilization even if approval was in error).

20 Immunity is overcome in only two situations: where the judge “acts in the clear
 21 absence of all jurisdiction, [citation], or performs an act that is not ‘judicial’ in nature.”
 22 *Ashelman*, 793 F.2d at 1075; see also *Mireles v. Waco*, 502 U.S. 9, 11 (1991). When
 23 determining whether judicial immunity applies, jurisdiction is construed broadly.
 24 *Crooks v. Maynard*, 913 F.2d 699, 701 (9th Cir. 1990) (holding immunity applied where
 25 judicial officer had “colorable authority” to hold parties in contempt). A judge is not
 26 deprived of immunity for “[g]rave procedural errors or acts in excess of judicial
 27 authority” or if the judge “misinterpret[s] a statute and erroneously exercise[s]
 28 jurisdiction and thereby act[s] in excess of his jurisdiction.” *Schucker v. Rockwood*, 846

1 F.2d 1202, 1204 (9th Cir. 1988). Thus, in *Schucker*, the Ninth Circuit held that even
 2 assuming the judge had acted in excess of his jurisdiction, judicial immunity applied
 3 because the alleged conduct by the judge “was not done ‘in the clear absence of
 4 jurisdiction.’” *Id.* (quoting *Stump*, 435 U.S. at 357 n.7).

5 “The factors relevant in determining whether an act is judicial ‘relate to the nature
 6 of the act itself, i.e., whether it is a function normally performed by a judge, and to the
 7 expectations of the parties, i.e., whether they dealt with the judge in his judicial
 8 capacity.’” *Ashelman*, 793 F.2d at 1075 (quoting *Stump*, 435 U.S. at 362). The inquiry
 9 focuses on whether the “‘nature’ and function of the ‘act’” is normally performed by a
 10 judge, “not the ‘act itself.’” *Mireles v. Waco*, 502 U.S. 9, 13 (1991). Additional factors
 11 to be considered include whether the events occurred in the judge's chambers, and
 12 whether the controversy centered around a case then pending before the judge. *Duvall v.*
 13 *County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001).

14 Here, the FAC is devoid of any allegations suggesting that Judge Wohlfeil lacked
 15 jurisdiction over the underlying civil action. Moreover, Plaintiff’s allegations arise solely
 16 from the rulings and statements Judge Wohlfeil made in his official capacity as a state
 17 court judge. Specifically, the causes of action are based on Plaintiff’s allegations that:
 18 Judge Wohlfeil erroneously denied Plaintiff’s motion to expunge notice of pendency
 19 action (*lis pendens*) and improperly ruled the statute of frauds did not apply to a joint
 20 venture agreement (FAC at ¶¶ 93-101); Judge Wohlfeil improperly denied Plaintiff’s
 21 motion for new trial (FAC at ¶¶ 106-107); and Judge Wohlfeil enforced an illegal
 22 contract (FAC at ¶¶ 13-16). Issuing rulings in a matter pending before the court is a
 23 normal judicial function. Thus, Judge Wohlfeil was simply acting in his judicial capacity
 24 and cannot be liable for rulings made in this capacity. *Stump*, 435 U.S. at 362.

25 Finally, the proper mechanism to challenge a judge’s errors is on appeal, not by
 26 filing a subsequent civil litigation against the judge. *Pierson v. Ray*, 386 U.S. 547, 554
 27 (1967). “It is a judge's duty to decide all cases within his jurisdiction that are brought
 28 before him, including controversial cases that arouse the most intense feelings in the

litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption.” *Ibid*. “Imposing such a burden on judges would contribute not to principled and fearless decisionmaking but to intimidation.” *Id*. Plaintiff sought an appeal in *Cotton I* and it was ultimately dismissed. (*See Remittitur*, RJN, Ex. D.)

For these reasons, judicial immunity precludes this action. Because this fatal defect cannot be cured by an amendment to the pleadings, Judge Wohlfeil respectfully requests that this Court dismiss this action with prejudice.

C. Eleventh Amendment Immunity Bars Plaintiff’s Action Against Judge Wohlfeil.

The Eleventh Amendment generally bars suits against a state or an arm of the state under principles of sovereign immunity. *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995). The Eleventh Amendment has been construed as a grant of sovereign immunity to states against suits in federal court and is in the nature of a jurisdictional bar. *See Alabama v. Pugh*, 438 U.S. 781, 782 n.1 (1978); *see also Riggle v. California*, 577 F.2d 579, 581-582 (9th Cir. 1978).

California superior courts are considered arms of the state and therefore enjoy Eleventh Amendment immunity. *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003) (holding Eleventh Amendment barred § 1983 claim against superior court and its employees); *Greater Los Angeles Council of Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) (“conclud[ing] that a suit against the superior court is a suit against the State, barred by the eleventh amendment”); *Los Angeles County Ass’n of Env’tl. Health Specialists v. Lewin*, 215 F. Supp. 2d 1071, 1078 (C.D. Cal. 2002).

Similarly, because judges and court employees are considered arms of the state, they are also entitled to immunity. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989); *Simmons*, 318 F.3d at 1161; *White v. Cox*, No. C 07-3815 PJH, 2008 WL 686760, at *2 (N.D. Cal. Mar. 10, 2008); *Oliver v. Placer Superior Court*, No. 2:12-CV-

1 2665 GEB GGH, 2013 WL 2488557, at *3 (E.D. Cal. Jun. 10, 2013); *Mahaley v. Mapes*,
 2 No. EDCV 12-01896-PSG OP, 2013 WL 1914237, at *6 (C.D. Cal. Apr. 16, 2013). The
 3 immunity applies to suits for damages, injunctive relief, and declaratory relief. *Zolin*,
 4 812 F.2d at 1110 n.10.

5 Although Plaintiff appears to have named Judge Wohlfeil in his individual
 6 capacity (see FAC at ¶ 36), nothing in the allegations of the FAC would lead one to the
 7 conclusion that Judge Wohlfeil is being sued other than in his official capacity. See
 8 *Brandon v. Holt*, 469 U.S. 464, 471-472 (1985). As set forth above, all of the allegations
 9 against Judge Wohlfeil concern acts allegedly undertaken in his official capacity as a
 10 judicial officer. Critically, some of the remedies sought by Plaintiff—equitable relief
 11 directed at his orders—are remedies that could only apply to Judge Wohlfeil in his
 12 official capacity. Accordingly, the Eleventh Amendment applies to bar Plaintiff’s claims
 13 and this action should be dismissed with prejudice.

14 **D. This Action Is Barred By The Rooker-Feldman Doctrine.**

15 To the extent that Plaintiff seeks relief from this Court in lieu of the relief sought
 16 in a state court appeal, the action is barred by the *Rooker-Feldman* doctrine. Under the
 17 *Rooker-Feldman* doctrine, a federal district court lacks subject matter jurisdiction to hear
 18 an appeal from a state court judgment. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*,
 19 544 U.S. 280, 283-284 (2005); *see also Dist. of Columbia Court of Appeals v. Feldman*,
 20 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923).
 21 “*Rooker-Feldman* is a powerful doctrine that prevents federal courts from second-
 22 guessing state court decisions by barring the lower federal courts from hearing de facto
 23 appeals from state-court judgments[.]” *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th
 24 Cir. 2003). “A suit brought in federal district court is a ‘de facto appeal’ forbidden by
 25 *Rooker-Feldman* when ‘a federal plaintiff asserts as a legal wrong an allegedly
 26 erroneous decision by a state court, and seeks relief from a state court judgment based on
 27 that decision.’” *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2010), citing *Noel*
 28 *v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003).

1 *Rooker-Feldman* bars federal adjudication of any claim whether a plaintiff alleges
 2 an injury based on a state court judgment or directly appeals a state court’s decision.
 3 *Bianchi*, 334 F.3d at 900 n.4. The district court lacks subject matter jurisdiction either to
 4 conduct a direct review of a state court judgment or to scrutinize the state court’s
 5 application of various rules and procedures pertaining to the state case. *Samuel v.*
 6 *Michaud*, 980 F. Supp. 1381, 1411-1412 (D. Idaho 1996), *aff’d*, 129 F.3d 127 (9th Cir.
 7 1997). “If claims raised in the federal court action are ‘inextricably intertwined’ with the
 8 state court’s decision such that the adjudication of the federal claims would undercut the
 9 state ruling or require the district court to interpret the application of state laws or
 10 procedural rules, then the federal complaint must be dismissed for lack of subject matter
 11 jurisdiction.” *Bianchi*, 334 F.3d at 898.

12 For the *Rooker-Feldman* doctrine to apply, four requirements must be met. The
 13 requirements are as follows: “First, the federal-court plaintiff must have lost in state
 14 court. Second, the plaintiff must ‘complain[] of injuries caused by [a] state-court
 15 judgment[.]’ Third, the plaintiff must ‘invit[e] district court review and rejection of [that]
 16 judgment[].’ (Footnote omitted.) Fourth, the state-court judgment must have been
 17 ‘rendered before the district court proceedings commenced’—i.e., *Rooker-Feldman* has
 18 no application to federal-court suits proceeding in parallel with ongoing state-court
 19 litigation.” *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 85 (2nd Cir. 2005).

20 All of the requirements of *Rooker-Feldman* are met in this case. Plaintiff was the
 21 losing party in the state court action. In this federal lawsuit, he complains of injuries
 22 caused by the judgment rendered in *Cotton I* and asks this Court to scrutinize the state
 23 trial judge’s rulings and application of various state substantive laws to invalidate a state
 24 court judgment. In addition to voiding the state court judgment, Plaintiff seeks damages
 25 of no less than \$7 million because of Judge Wohlfeil’s official rulings and conduct in the
 26 state court action. Plaintiff brought Judge Wohlfeil into his lawsuit after the state
 27
 28

1 appellate court dismissed his appeal.⁴

2 “[A] party losing in state court is barred from seeking what in substance would be
3 appellate review of the state judgment in a United States district court, based on the
4 losing party's claim that the state judgment itself violates the loser's federal rights.”
5 *Johnson v. De Grandy*, 512 U.S. 997, 1005–1006 (1994). This is exactly what Plaintiff
6 seeks in this lawsuit. Accordingly, the FAC should be dismissed, with prejudice, under
7 the *Rooker-Feldman* doctrine.

8 **E. The FAC Fails To State A Viable Claim Against Judge Wohlfeil.**

9 *i. Plaintiff fails to state a viable § 1983 claim.*

10 To establish a claim for injunctive relief under § 1983, a plaintiff must establish
11 two elements: (1) a violation of a right secured by the Constitution or laws of the United
12 States; and (2) that the violation was committed by a person acting under color of state
13 law. *See* 42 U.S.C. § 1983; *West v. Atkin*, 487 U.S. 42, 48 (1988). Plaintiff has not stated
14 a § 1983 claim because he has not alleged a plausible constitutional violation. *Johnson v.*
15 *Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997).

16 Absent from the FAC are any factual allegations setting forth a plausible
17 constitutional violation. Given that Plaintiff's allegations fail to state a viable claim for
18 relief under § 1983, the FAC should be dismissed without prejudice.

19 *ii. Plaintiff's cause of action for punitive damages fails because requests*
20 *for punitive damages are not independent causes of action and Judge*
Wohlfeil is immune from punitive damages.

21 A request for punitive damages is not an independent cause of action. *Ismail v.*
22 *County of Orange*, 917 F. Supp. 2d 1060, 1073 (C.D. Cal. 2012). Instead, “punitive
23 damages are a remedy” and cannot be the basis for a separate and stand-alone cause of
24 action. *Cortez v. Skol*, 776 F.3d 1046, 1050, n. 2 (9th Cir. 2015). Despite this well-
25 settled rule, Plaintiff improperly alleges an independent cause of action for punitive
26

27 ⁴ Although Plaintiff brought this federal action in 2018, Judge Wohlfeil was not named
28 as a party until the FAC was filed on May 13, 2020, after the Court of Appeal dismissed
his appeal. (*See* Remittitur, RJN, Ex. D.)

1 damages. Therefore, Plaintiff's fourth cause of action for punitive damages must be
2 dismissed with prejudice.

3 Moreover, "[t]he doctrine of judicial immunity applies to claims for both actual
4 damages and punitive damages." *Hill v. Ponner*, No. 118CV01471 DAD SKO, 2019
5 WL 142280, at *3 (E.D. Cal., Jan. 9, 2019); *see also Littleton v. Fisher*, 530 F.2d 691
6 (6th Cir. 1976). As discussed *supra*, Judge Wohlfeil enjoys judicial immunity against
7 Plaintiff's action. Thus, because punitive damages cannot be sought as an independent
8 cause of action and because Judge Wohlfeil is subject to judicial immunity, the motion
9 to dismiss should be granted, and the FAC against Judge Wohlfeil should be dismissed
10 without prejudice.

11 IV.

12 CONCLUSION

13 As set forth above, this action against Judge Wohlfeil is barred because he enjoys
14 absolute judicial immunity. It is further precluded by the Eleventh Amendment and is
15 barred under the *Rooker-Feldman* doctrine. Also, Plaintiff fails to state a viable § 1983
16 claim and fails to state a viable claim for punitive damages. Because Plaintiff cannot
17 cure these defects by way of amendment, Judge Wohlfeil respectfully requests that the
18 Court grant this Motion to Dismiss, without leave to amend, and enter a judgment of
19 dismissal with prejudice in his favor.

20
21 Respectfully submitted,

22 SUSANNE C. KOSKI

23 Superior Court of California, County of San
24 Diego

25 DATED:

26 January 4, 2021

27 By: s/ Carmela E. Duke

28 CARMELA E. DUKE

Attorneys for Defendant, The Honorable Joel R.
Wohlfeil, Judge of the Superior Court of
California, County of San Diego

SUSANNE C. KOSKI, State Bar No. 176555
CARMELA E. DUKE, State Bar No. 270348
Superior Court of California, County of San Diego
1100 Union Street
San Diego, California 92101
Telephone: (619) 844-2382

Attorneys for Defendant, The Honorable Joel R. Wohlfeil,
Judge of the Superior Court of California, County of
San Diego

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DARRYL COTTON,

Plaintiff,

v.

LARRY GERACI, et al.,

Defendants.

Case No. 18-cv-00325-TWR-DEB

**DEFENDANT JUDGE JOEL R.
WOHLFEIL'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION TO DISMISS FIRST
AMENDED COMPLAINT WITH
PREJUDICE**

Date: April 21, 2021

Time: 1:30 p.m.

Crtrm: 3A (Schwartz)

Judge: The Honorable Todd W. Robinson

**[NO ORAL ARGUMENT
REQUESTED]**

Defendant the Honorable Joel R. Wohlfeil, Judge of the Superior Court of
California, County of San Diego, respectfully requests the Court to take judicial
notice of the following documents pursuant to Federal Rule of Evidence 201:

Exhibit A: Complaint in *Geraci v. Cotton* ("Cotton I"), San Diego
Superior Court ("SDSC") Case No. 37-2017-00010073-
CU-BC-CTL;

1 Exhibit B: Notice of Case Assignment for *Cotton I*, SDSC Case No.
2 37-2017-00010073-CU-BC-CTL;

3 Exhibit C: Judgment on Jury Verdict in *Cotton I*, SDSC Case No.
4 37-2017-00010073-CU-BC-CTL; and

5 Exhibit D: Remittitur in *Cotton I*, SDSC Case No. 37-2017-
6 00010073-CU-BC-CTL.

7
8
9 SUSANNE C. KOSKI
10 Superior Court of California, County of San
11 Diego

11 DATED:

12 January 4, 2021

12 By: s/ Carmela E. Duke
13 CARMELA E. DUKE
14 Attorneys for Defendant, The Honorable Joel
15 R. Wohlfeil, Judge of the Superior Court of
16 California, County of San Diego
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FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
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San Diego, California 92101
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Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,

v.

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

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

PLAINTIFF'S COMPLAINT FOR:

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

Plaintiff, LARRY GERACI, alleges as follows:

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

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

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

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

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

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

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

14 GENERAL ALLEGATIONS

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

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

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
 23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
 24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
 25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
 26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
 27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
 28 \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

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

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

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

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

21 **SECOND CAUSE OF ACTION**

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

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

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

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

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

8 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **FOURTH CAUSE OF ACTION**

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

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

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

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

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First and Second Causes of Action:

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

On the Third Cause of Action:

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

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

On the Fourth Cause of Action:

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

On all Causes of Action:

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

6. For costs of suit incurred herein; and

///

///

///

EXHIBIT A

11/02/2016

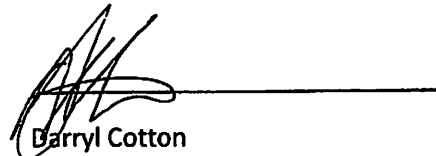
Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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



Larry Geraci



Darryl Cotton

ACKNOWLEDGMENT

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

State of California

County of San Diego

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

personally appeared Darryl Cotton and Larry Gerasi
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.



Signature Jessica Newell (Seal)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS: 330 W Broadway
 MAILING ADDRESS: 330 W Broadway
 CITY AND ZIP CODE: San Diego, CA 92101-3827
 BRANCH NAME: Central
 TELEPHONE NUMBER: (619) 450-7073

PLAINTIFF(S) / PETITIONER(S): Larry Geraci

DEFENDANT(S) / RESPONDENT(S): Darryl Cotton

LARRY GERACI VS DARRYL COTTON [IMAGED]

**NOTICE OF CASE ASSIGNMENT
and CASE MANAGEMENT CONFERENCE**

CASE NUMBER:

37-2017-00010073-CU-BC-CTL

CASE ASSIGNMENT

Judge: Joel R. Wohlfeil

Department: C-73

COMPLAINT/PETITION FILED: 03/21/2017

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	08/25/2017	01:30 pm	C-73	Joel R. Wohlfeil

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



Superior Court of California County of San Diego

NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at www.onelegal.com for information.

This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego
08/19/2019 at 11:53:00 AM
 Clerk of the Superior Court
 By Jessica Pascual, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

Judge: Hon. Joel R. Wohlfeil
 Dept.: C-73

JUDGMENT ON JURY VERDICT
[PROPOSED BY PLAINTIFF/CROSS-
DEFENDANTS]

[IMAGED FILE]

Action Filed: March 21, 2017
 Trial Date: June 28, 2019

This action came on regularly for jury trial on June 28, 2019, continuing through July 16, 2019, in Department C-73 of the Superior Court, the Honorable Judge Joel R. Wohlfeil presiding. Michael R. Weinstein, Scott H. Toothacre, and Elyssa K. Kulas of FERRIS & BRITTON, APC, appeared for Plaintiff and Cross-Defendant, LARRY GERACI and Cross-Defendant, REBECCA BERRY, and Jacob P. Austin of THE LAW OFFICE OF JACOB AUSTIN, appeared for Defendant and Cross-Complainant, DARRYL COTTON.

1 A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified and
2 certain trial exhibits admitted into evidence.

3 During trial and following the opening statement of Plaintiff/Cross-Complainant's counsel, the
4 Court granted the Cross-Defendants' nonsuit motion as to the fraud cause of action against Cross-
5 Defendant Rebecca Berry only in Cross-Complainant's operative Second Amended Cross-Complaint. A
6 copy of the Court's July 3, 2019 Minute Order dismissing Cross-Defendant Rebecca Berry from this
7 action is attached as Exhibit "A."

8 After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court
9 and the cause was submitted to the jury with directions to return a verdict on special issues on two special
10 verdict forms. The jury deliberated and thereafter returned into court with its two special verdicts as
11 follows:

12 **SPECIAL VERDICT FORM NO. 1**

13 We, the Jury, in the above entitled action, find the following special verdict on the questions
14 submitted to us:

15
16 **Breach of Contract**

17
18 1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016
19 written contract?

20 Answer: YES

21
22 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him
23 to do?

24 Answer: NO

25
26 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that
27 the contract required him to do?

28 Answer: YES

1 4. Did all the condition(s) that were required for Defendant's performance occur?

2 Answer: NO

3
4 5. Was the required condition(s) that did not occur excused?

5 Answer: YES

6
7 6. Did Defendant fail to do something that the contract required him to do?

8 Answer: YES

9 or

10 Did Defendant do something that the contract prohibited him from doing?

11 Answer: YES

12
13 7. Was Plaintiff harmed by Defendant's breach of contract?

14 Answer: YES

15
16 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

17
18 8. Did Defendant unfairly interfere with Plaintiffs right to receive the benefits of the contract?

19 Answer: YES

20
21 9. Was Plaintiff harmed by Defendant's interference?

22 Answer: YES

23
24 10. What are Plaintiffs damages?

25 Answer: \$ 260,109.28

26
27 A true and correct copy of Special Verdict Form No. 1 is attached hereto as Exhibit "B."

28 ///

SPECIAL VERDICT FORM NO. 2

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral contract to form a joint venture?

Answer: NO

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Answer: NO

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Given the jury's responses, Question 25 regarding Cross-Complainant's damages became inapplicable as a result of the jury's responses.

///

1 A true and correct copy of Special Verdict Form No. 2 is attached hereto as Exhibit "C."

2
3 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

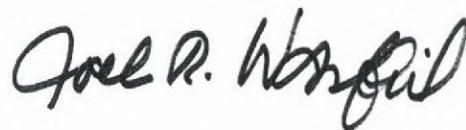
4 1. That Plaintiff LARRY GERACI have and recover from Defendant DARRYL COTTON
5 the sum of \$260,109.28, with interest thereon at ten percent (10%) per annum from the date of entry of
6 this judgment until paid, together with costs of suit in the amount of \$ 33,612.16; *added 10/1/19*
af

7 2. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant
8 REBECCA BERRY; and

9 3. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant
10 LARRY GERACI.

11
12 **IT IS SO ORDERED.**

13
14 Dated: 8-19, 2019



15 Hon. Joel R. Wohlfeil
16 **JUDGE OF THE SUPERIOR COURT**

17 Judge Joel R. Wohlfeil
18
19
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23
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25
26
27
28

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 07/03/2019 TIME: 09:00:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Andrea Taylor
REPORTER/ERM: Margaret Smith CSR# 9733
BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: 37-2017-00010073-CU-BC-CTL CASE INIT.DATE: 03/21/2017
CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Civil Jury Trial

APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).
Scott H Toothacre, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).
Jacob Austin, counsel, present for Defendant, Cross - Complainant, Appellant(s).
Darryl Cotton, Defendant is present.
Larry Geraci, Plaintiff is present.
Rebecca Berry, Cross - Defendant is present.

8:55 a.m. This being the time previously set for further Jury trial in the above entitled cause, having been continued from July 2, 2019, all parties and counsel appear as noted above and court convenes. The jurors are not present.

Outside the presence of the jury, Court and counsel discuss exhibits.

9:01 a.m. Court is in recess.

9:03 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are present except for juror no. 4.

An unreported sidebar conference is held. (6 minutes) Juror no. 4 arrives.

9:09 a.m. Attorney Weinstein presents opening statement on behalf of Plaintiff/Cross-Defendant Larry Geraci, et al.

9:55 a.m. Attorney Austin presents opening statement on behalf of Defendant/Cross-Complainant Darryl Cotton.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

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

10:15 a.m. All jurors are admonished and excused for break and Court is in recess.

10:24 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jury is not present.

Outside the presence of the jury, Plaintiff makes a Motion for Non-suit on the Cross-Complaint against Rebecca Berry. The Court hears oral argument. Motion for Non-Suit is denied as to Declaratory Relief claim. Motion for Non-Suit is granted as to Fraud claim.

10:30 a.m. Court is in recess.

10:31 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

10:32 a.m. **LARRY GERACI** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendant:

- 1) Letter of Agreement with Bartell & Associates dated 10/29/15
- 5) Text Messages between Larry Geraci and Darryl Cotton from 7/21/16-5/8/17
- 8) Email to Larry Geraci from Darryl Cotton dated 9/21/16 with attached letter to Dale and Darryl Cotton from Kirk Ross, dated 9/21/16
- 9) Email to Larry Geraci from Darryl Cotton, dated 9/26/16
- 10) Draft Services Agreement Contract between Inda-Gro and GERL Investments, dated 9/24/16
- 14) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/4/16
- 15) Email to Rebecca Berry from Abhay Schweitzer, dated 10/6/16
- 17) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/18/16
- 18) Email thread between Neil Dutta from Abhay Schweitzer, dated 10/19/16
- 21) Email from Larry Geraci to Darryl Cotton, dated 10/24/16
- 30) City of San Diego Ownership Disclosure Statement signed, dated 10/31/16
- 38) Agreement between Larry Geraci or assignee and Darryl Cotton, dated 11/2/16
- 39) Excerpt from Jessica Newell Notary Book, dated 11/2/16
- 40) Email to Darryl Cotton from Larry Geraci attaching Nov. 2 Agreement, dated 11/2/16
- 41) Email from Darryl Cotton to Larry Geraci, dated 11/2/16
- 42) Email to Darryl Cotton from Larry Geraci, dated 11/2/16

11:44 a.m. All jurors are admonished and excused for lunch and Court remains in session.

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit on Breach of Contract claim against Darryl Cotton. The Court hears oral argument. Motion for Non-Suit is denied without prejudice.

11:50 a.m. Court is in recess.

1:19 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are not present.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

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

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit. The Court hears argument. The Motion for Non-Suit is denied without prejudice as pre-mature. Court and counsel discuss scheduling.

1:25 p.m. Court is in recess.

1:33 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

1:34 p.m. Larry Geraci, previously sworn, resumes the stand for further direct examination by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendants:

- 43) Email to Becky Berry from Abhay Schweitzer, dated 11/7/16 with attachment
- 44) Email to Darryl Cotton from Larry Geraci, dated 11/14/16
- 46) Authorization to view records, signed by Cotton, 11/15/16
- 59) Email to Darryl Cotton from Larry Geraci, dated 2/27/17
- 62) Email to Darryl Cotton from Larry Geraci, dated 3/2/17
- 63) Email to Larry Geraci from Darryl Cotton, dated 3/3/17
- 64) Email to Darryl Cotton from Larry Geraci, dated 3/7/17
- 69) Email to Larry Geraci from Darryl Cotton, dated 3/17/17 at 2:15 p.m.
- 72) Email to Larry Geraci from Darryl Cotton, dated 3/19/17 at 6:47 p.m.
- 137) Federal Blvd.- Summary of All Expense Payments, excel spreadsheet

2:29 p.m. An unreported sidebar conference is held. (3 minutes)

2:36 p.m. Cross examination of Larry Geraci commences by Attorney Austin on behalf of Defendant/Cross-Complainant, Darryl Cotton.

2:53 p.m. All jurors are admonished and excused for break and Court is in recess.

3:08 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

3:09 p.m. Larry Geraci is sworn and examined by Attorney Austin on behalf of Defendant/Cross-Complainant, Defendant.

3:47 p.m. Redirect examination of Larry Geraci commences by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

3:48 p.m. The witness is excused.

3:49 p.m. **REBECCA BERRY** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

The following Court's exhibit(s) is marked for identification and admitted on behalf of

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

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

Plaintiff/Cross-Complainant:

34) Forms submitted to City of San Diego dated 10/31/16; Form DS-3032 General Application dated 10/31/16

4:00 p.m. Cross examination of Rebecca Berry commences by Attorney Austin on behalf of Defendant/Cross-complainant, Darryl Cotton.

4:15 p.m. The witness is excused.

4:16 p.m. All jurors are admonished and excused for the evening and Court remains in session.

Outside the presence of the jury, Court and counsel discuss scheduling.

4:22 p.m. Court is adjourned until 07/08/2019 at 09:00AM in Department 73.

EXHIBIT B

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,

v.

DARRYL COTTON,
Defendant.

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

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

DARRYL COTTON,
Cross-Complainant,

v.

LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

1
2 ☒ Yes ☐ No

3
4 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer
5 no further questions, and have the presiding juror sign and date this form.

6
7 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him
8 to do?

9
10 ☐ Yes ☒ No

11
12 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
13 answer to question 2 is no, answer question 3.

14
15 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that
16 the contract required him to do?

17
18 ☒ Yes ☐ No

19
20 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer
21 no further questions, and have the presiding juror sign and date this form.

22
23 4. Did all the condition(s) that were required for Defendant's performance occur?

24
25 ☐ Yes ☒ No

26
27 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
28 answer to question 4 is no, answer question 5.

1
2 5. Was the required condition(s) that did not occur excused?

3
4 ☒ Yes ☐ No

5
6 If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no,
7 answer no further questions, and have the presiding juror sign and date this form.

8
9 6: Did Defendant fail to do something that the contract required him to do?

10
11 ☒ Yes ☐ No

12
13 or

14
15 Did Defendant do something that the contract prohibited him from doing?

16
17 ☒ Yes ☐ No

18
19 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
20 options is no, do not answer question 7 and answer question 8.

21
22 7. Was Plaintiff harmed by Defendant's breach of contract?

23
24 ☒ Yes ☐ No

25
26 If your answer to questions 4 or 5 is yes, please answer question 8.

27
28 Breach of the Implied Covenant of Good Faith and Fair Dealing

1
2 8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

3
4 ☒ Yes ☐ No

5
6 If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but
7 your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to
8 questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date
9 this form.

10
11 9. Was Plaintiff harmed by Defendant's interference?

12
13 ☒ Yes ☐ No

14
15 If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but
16 your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes,
17 answer no further questions, and have the presiding juror sign and date this form.

18
19 10. What are Plaintiff's damages?

20
21 \$ 260,109.28

22
23 Dated: 7/16/19

24 Signed: [Signature]
Presiding Juror

25
26 After all verdict forms have been signed, notify the bailiff that you are ready to present your
27 verdict in the courtroom.
28

EXHIBIT C

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,

v.

DARRYL COTTON,
Defendant.

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

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

DARRYL COTTON,
Cross-Complainant,

v.

LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1 1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral
2 contract to form a joint venture?

3
4 ☐ Yes ☒ No

5
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not
7 answer questions 2 – 7 and answer question 8.

8
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract
10 required him to do?

11
12 ☐ Yes ☐ No

13
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
15 answer to question 2 is no, answer question 3.

16
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant
18 things that the contract required him to do?

19
20 ☐ Yes ☐ No

21
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not
23 answer questions 4 – 7 and answer question 8.

24
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26
27 ☐ Yes ☐ No

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
2 answer to question 4 is no, answer question 5.

3
4 5. Was the required condition(s) that did not occur excused?

5
6 ☐ Yes ☐ No

7
8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not
9 answer questions 6 -- 7 and answer question 8.

10
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12
13 ☐ Yes ☐ No

14
15 or

16
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18
19 ☐ Yes ☐ No

20
21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
22 options is no, do not answer question 7 and answer question 8.

23
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

25
26 ☐ Yes ☐ No

27
28 Please answer question 8.

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

☐ Yes ☒ No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

☐ Yes ☐ No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

☐ Yes ☐ No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

☐ Yes ☐ No

1
2 If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do
3 not answer question 12 and answer question 13.
4

5 12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
6 in causing harm to Cross-Complainant?
7

8 ☐ Yes ☐ No
9

10 Please answer question 13.
11

12 Fraud - False Promise
13

14 13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the
15 transaction?
16

17 ☐ Yes ☒ No
18

19 If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do
20 not answer questions 14 – 18 and answer question 19.
21

22 14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?
23

24 ☐ Yes ☐ No
25

26 If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do
27 not answer questions 15 – 18 and answer question 19.
28

1 15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

2
3 ☐ Yes ☐ No

4
5 If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do
6 not answer questions 16 – 18 and answer question 19.

7
8 16. Did Cross-Complainant reasonably rely on this promise?

9
10 ☐ Yes ☐ No

11
12 If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do
13 not answer questions 17 – 18 and answer question 19.

14
15 17. Did Cross-Defendant perform the promised act?

16
17 ☐ Yes ☐ No

18
19 If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do
20 not answer question 18 and answer question 19.

21
22 18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in
23 causing harm to Cross-Complainant?

24
25 ☐ Yes ☐ No

26
27 Please answer question 19.

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

☐ Yes ☒ No

If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant made it?

☐ Yes ☐ No

If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

21. Did Cross-Defendant have reasonable grounds for believing the representation was true when Cross-Defendant made it?

☐ Yes ☐ No

If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
2 juror sign and date this form.

3
4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5
6 ☐ Yes ☐ No

7
8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do
9 not answer questions 23 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
11 juror sign and date this form.

12
13 23. Did Cross-Complainant reasonably rely on the representation?

14
15 ☐ Yes ☐ No

16
17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror
20 sign and date this form.

21
22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
23 in causing harm to Cross-Complainant?

24
25 ☐ Yes ☐ No

1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

4
5 25. What are Cross-Complainant's damages?

6
7 \$ _____
8
9

10
11 Dated: 7/16/19

Signed: 

Presiding Juror

12
13 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in
14 the courtroom.
15
16
17
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28

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

FILED
Clerk of the Superior Court

MAY 14 2020

By: S. Ochoa, Deputy

San Diego County Superior Court - Main
P.O. Box 120128
San Diego, CA 92112

RE: LARRY GERACI,
Plaintiff, Cross-defendant and Respondent,
v.
DARRYL COTTON,
Defendant, Cross-complainant and Appellant.
D077081
San Diego County Super. Ct. No. 37-2017-00010073-CU-BC-CTL

* * * **REMITTITUR** * * *

I, Kevin J. Lane, Clerk of the Court of Appeal of the State of California, for the Fourth Appellate District, certify the attached is a true and correct copy of the original opinion or decision entered in the above-entitled case on February 11, 2020, and that this opinion or decision has now become final.

_____ Appellant X Respondent to recover costs.
_____ Each party to bear own costs.
_____ Other (See Below)

5/14/20

Witness my hand and the seal of the Court affixed this

KEVIN J. LANE, Clerk

By: Jonathan Newton, Deputy Clerk

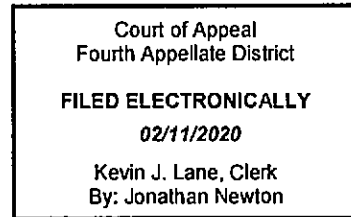


cc: All Parties (Copy of remittitur only, Cal. Rules of Court, rule 8.272(d).)

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE



LARRY GERACI,
Plaintiff, Cross-defendant and Respondent,

v.

DARRYL COTTON,
Defendant, Cross-complainant and Appellant.

D077081

San Diego County Super. Ct. No. 37-2017-00010073-CU-BC-CTL

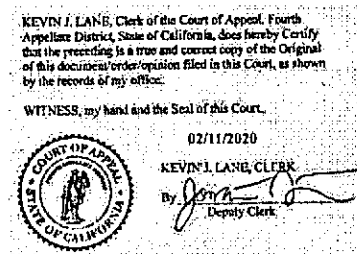
THE COURT:

Pursuant to California Rules of Court, rule 8.140, the appeal filed November 21, 2019, is **DISMISSED** for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)) and because appellant did not timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rules 8.122(c), 8.130(b), 8.140).

MCCONNELL

Presiding Justice

cc: Clerk of the San Diego County Superior Court
All Parties



SUSANNE C. KOSKI, State Bar No. 176555
CARMELA E. DUKE, State Bar No. 270348
Superior Court of California, County of San Diego
1100 Union Street
San Diego, California 92101
Telephone: (619) 844-2382

Attorneys for Defendant, The Honorable Joel R. Wohlfeil,
Judge of the Superior Court of California, County of
San Diego

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DARRYL COTTON,

Plaintiff,

v.

LARRY GERACI, et al.,

Defendants.

Case No. 18-cv-00325-TWR-DEB

**DECLARATION OF CARMELA E.
DUKE IN SUPPORT OF DEFENDANT
JUDGE JOEL R. WOHLFEIL'S
REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF MOTION TO
DISMISS FIRST AMENDED
COMPLAINT WITH PREJUDICE**

Date: April 21, 2021

Time: 1:30 p.m.

Crtrm: 3A (Schwartz)

Judge: The Honorable Todd W. Robinson

**[NO ORAL ARGUMENT
REQUESTED]**

I, CARMELA E. DUKE, declare as follows:

1. I am licensed to practice law in the State of California and employed as a
litigation attorney by the Superior Court of California, County of San Diego.

2. I have personal knowledge of the matters stated here and if called as a
witness, I would competently testify thereto.

1 3. Attached to the Request for Judicial Notice in Support of the Motion to
2 Dismiss Plaintiff's First Amended Complaint by Defendant, the Honorable Joel R.
3 Wohlfeil, Judge of the Superior Court of California, County of San Diego, are true
4 and correct copies of the following documents:

5 Exhibit A: Complaint in *Geraci v. Cottton* ("Cotton I"), San Diego
6 Superior Court ("SDSC") Case No. 37-2017-00010073-
7 CU-BC-CTL;

8 Exhibit B: Notice of Case Assignment for *Cotton I*, SDSC Case No.
9 37-2017-00010073-CU-BC-CTL;

10 Exhibit C: Judgment on Jury Verdict in *Cotton I*, SDSC Case No.
11 37-2017-00010073-CU-BC-CTL; and

12 Exhibit D: Remittitur in *Cotton I*, SDSC Case No. 37-2017-
13 00010073-CU-BC-CTL.

14
15 I declare under penalty of perjury that the foregoing is true and correct.
16 Executed this 4th day of January 2021, in San Diego, California.

17
18 s/ Carmela E. Duke
19 CARMELA E. DUKE
20
21
22
23
24
25
26
27
28

SUSANNE C. KOSKI, State Bar No. 176555
CARMELA E. DUKE, State Bar No. 270348
Superior Court of California, County of San Diego
1100 Union Street
San Diego, California 92101
Telephone: (619) 844-2382

Attorneys for Defendant, The Honorable Joel R. Wohlfeil,
Judge of the Superior Court of California, County of
San Diego

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DARRYL COTTON,

Plaintiff,

v.

LARRY GERACI, et al.,

Defendants.

Case No. 18-cv-00325-TWR-DEB

PROOF OF SERVICE

[CivLR 5.4(c)]

I, PUI KATSIKARIS, declare that: I am over the age of eighteen years and not a party to the above-referenced case; I am employed in, or am a resident of, the County of San Diego, California where the mailing occurs; and my business address is: 1100 Union Street, San Diego, California.

I further declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

On January 4, 2021, I served the following document(s): **DEFENDANT JUDGE JOEL R. WOHLFEIL'S NOTICE OF MOTION AND MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH PREJUDICE;**

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **MOTION TO DISMISS FIRST AMENDED COMPLAINT WITH**
3 **PREJUDICE BY DEFENDANT JUDGE JOEL R. WOHLFEIL;**
4 **DEFENDANT JUDGE JOEL R. WOHLFEIL'S REQUEST FOR**
5 **JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS FIRST**
6 **AMENDED COMPLAINT WITH PREJUDICE with EXHIBITS A-D;**
7 **and DECLARATION OF CARMELA E. DUKE IN SUPPORT OF**
8 **DEFENDANT JUDGE JOEL R. WOHLFEIL'S REQUEST FOR**
9 **JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS FIRST**
10 **AMENDED COMPLAINT WITH PREJUDICE**

11 by placing a true copy of each document in a separate envelope addressed to each
12 addressee, respectively, as follows:

13 **Darryl Cotton**
14 **6176 Federal Blvd.**
15 **San Diego, CA 92114**
16 **619-954-4447**

17 I then sealed each envelope and deposited said envelope(s) in the U.S. Postal
18 Pick up box, this same day, at my business address shown above, following
19 ordinary business practices.

20 Additionally, pursuant to the Electronic Case Filing Administrative Policies
21 and Procedures Manual of this Court, Section 2.d.2, service has been effected on
22 the parties below, whose counsel of record is a registered participant of CM/ECF,
23 via electronic service through the **CM/ECF system**:

24 **Julia Dalzell** Email: jdalzell@pettitkohn.com
25 (Attorney for Defendants Gina Austin and Austin Legal Group);

26 **Gregory Brian Emdee** Email: gemdee@kmslegal.com
27 (Attorney for Defendant Michael Weinstein).

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

Executed on January 4, 2021



PUI KATSIKARIS