

FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

DARRYL COTTON
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Plaintiff *Pro Se*

NUNC PRO TUNC

12/29/2021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiff,

v.

CYNTHIA BASHANT, an individual, JOEL
WOHLFEIL, an individual, LARRY
GERACI, an individual, REBECCA BERRY,
an individual; GINA AUSTIN, an individual;
MICHAEL WEINSTEIN, an individual;
JESSICA MCELFRISH, an individual, and
DAVID DEMIAN, an individual,

Defendants.

Case No. 3:18-cv-00325-TWR (DEB)
Formerly: 3:18-cv-00325-BAS (DEB)

PLAINTIFF'S NOTICE OF EX PARTE
APPLICATION AND APPLICATION FOR AN
EXPEDITED HEARING ON PLAINTIFF'S
MOTIONS PENDING BEFORE THIS COURT;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF DARRYL
COTTON AND EXHIBITS THERETO

Hearing Date: N/A
Hearing Time: N/A
Judge: Hon. Todd W. Robinson
Courtroom: 3A

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 29, 2020, Plaintiff Darryl Cotton hereby submits this ex parte application for an order expediting a hearing on the motions pending before this Court in this matter pursuant to Federal Rule of Civil Procedure 6(c)(1) and Local Rule 7.1(e)(5) (the "Application"). Specifically, Cotton requests this Court set an expedited hearing for the following motions for the Court's trial calendar:

- 1 1. Motion to dismiss for failure to state a claim by Gina Austin. (ECF No. 24.)
- 2 2. Motion to dismiss for failure to state a claim by Michael Weinstein. (ECF No. 25.)
- 3 3. Cotton's ex parte application for appointment of counsel. (ECF No. 36.)
- 4 4. Cotton's ex parte application for (1) OSC re: preliminary injunction and (2) leave to record a lis
- 5 pendens. (ECF No. 44.)
- 6 5. Cotton's ex parte application for leave to file an omnibus sur-reply to the above-mentioned
- 7 motions. (ECF No. 46.)

8 There are no hearings scheduled on any of these pending motions (collectively, the "Motions").
9 Cotton has contacted the Court at various points since the first motion was filed on May 27, 2020 and
10 has been informed that the Court cannot ascertain when it will reach the Motions given its calendar. As
11 the Court may be aware, Cotton called the Court's chambers on or about November 2020 and asked if he
12 could file a motion seeking to expedite review of the Motions. The Court stated that Cotton could.

13 After doing his research to prepare this Application, Cotton did not file the instant Application
14 because he became aware that judges strongly disfavor having parties ask to "cut to the front of the line"
15 and it antagonizes them. Cotton had hoped that the Court's normal process would have allowed the Court
16 to reach the Motions.

17 However, Cotton is facing ever increasing irreparable emotional and psychological harm that
18 warrants the relief requested in this Application. Such constitutes good cause to warrant the granting of
19 this Application expediting the adjudication of the Motions. Edmo v. Idaho Dep't of Corr., 358 F. Supp.
20 3d 1103, 1127 (D. Idaho 2018) ("The Ninth Circuit has repeatedly held that serious psychological harm,
21 in addition to physical harm and suffering, constitutes irreparable injury.").

22 Plaintiff's Application is based upon this notice and Application, the accompanying supporting
23 memorandum of points and authorities, the Declaration of Darryl Cotton, the accompanying Request for
24 Judicial Notice, all pleadings and papers filed in this and related actions, and any such other matters that

1 the Court deems appropriate. The related actions are: Cotton I¹, Cotton II², Cotton III³, Cotton IV⁴, and
2 Cotton V⁵ (the "Related Actions").
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5 DATED: December 29, 2020
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DARRYL COTTON
Plaintiff *Pro Se*

23 ¹ "Cotton I" means Geraci vs. Cotton, San Diego County Superior Court, Case No. 37-2017-00010073-
24 CU-BC-CTL.

25 ² "Cotton II" means Cotton vs. City of San Diego, San Diego Superior Court Case No. 37-2017-
26 00037675.
27 CU-WM-CTL.

28 ³ "Cotton III" means Cotton vs. Geraci, Southern District of California, Case No. 18CV00325-BAS
(DEB).

⁴ "Cotton IV" means Cotton vs. Geraci, Southern District of California, Case No. 18-CV2751-
GPC(MDD).

⁵ "Cotton V" means Flores vs. Austin, Southern District of California, Case No. 20-CV0656-JLS(LL).

INTRODUCTION

Cotton hereby applies ex parte for an order expediting the hearing on the Motions because he is facing irreparable psychological harm. Since March 2017 Cotton has been alleging that there is a small group of wealthy individuals, attorneys and professionals providing services in the cannabis sector (the “Enterprise”) that have conspired to create an unlawful monopoly in the cannabis market (the “Antitrust Conspiracy”) in the City of San Diego (the “City”). The Enterprise includes attorneys from multiple law firms that are used to create the appearance of competition and legitimacy, while in reality, *inter alia*, the attorneys conspire against some of their own non-Enterprise clients to ensure that all cannabis conditional use permits (“CUPs”) in the City go to principals of the Enterprise.

Cotton has alleged that one of the principals of the Enterprise is Lawrence Geraci and the primary attorney responsible for furthering the Antitrust Conspiracy through sham legal actions is Gina Austin of Austin Legal Group (“ALG”). The primary argument that Cotton has consistently put forth as evidence of the Antitrust Conspiracy and that it is being effectuated through the judiciaries is that Lawrence Geraci applied for a cannabis permit through his secretary Rebecca Berry (the “Berry Application”), in which she claims to be the sole applicant and owner of the cannabis CUP being sought (the “Berry Fraud”), because Geraci cannot lawfully own a cannabis permit in his own name because he has been sanctioned at least three times for illegal commercial marijuana sales (i.e., he is a drug dealer) (the “Sanctions Issue and, collectively with the Berry Fraud, the “Illegality Issues”).⁶

Consequently, any judgment that enforces a contract whose object is Geraci’s ownership of a cannabis CUP in violation of State and City laws is void and cannot be judicially enforced in either State or Federal court. Erhart v. BOFI Holding, Inc., No. 15-cv-02287-BAS-NLS, at *12 (S.D. Cal. Feb. 14, 2017) (“No principle of law is better settled than that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out[.]”) (quoting Lee On v. Long, 37 Cal. 2d 499, 502 (1951)); see Mullins v. Kaiser Steel Corp., 466 F. Supp. 911, 915 (D.D.C. 1979) (“The general rule

⁶ City of San Diego v. The Tree Club Cooperative (Case No. 37-2014-00020897-CU-MC-CTL), City of San Diego v. CCSquared Wellness Cooperative (“CCSquared”) (Case No. 37-2015-00004430-CU-MC-CTL), and City of San Diego v. LMJ 35th Street Property LP, et al. (Case No. 37-2015-000000972).

1 emerging from [Kelly v. Kosuga, 358 U.S. 516, 79 S.Ct. 429, 3 L.Ed.2d 475 (1959)] is that a contract
 2 should be enforced whether or not it fosters illegal ends, *unless* the alleged illegality is of such a character
 3 that enforcement of the contract would 'make the courts a party to the carrying out of one of the very
 4 restraints forbidden by the Sherman Act [(i.e., antitrust laws)].'" (quoting Kelly, 358 U.S. at 520).

5 Here, the state and federal courts have enforced and ratified the very criminal behavior that
 6 California's cannabis and antitrust laws are meant to prevent. In other words, any judgment or order that
 7 enforces or ratifies the Cotton I and Cotton II judgments - Geraci's ownership of a cannabis CUP via the
 8 Berry Application that includes the Berry Fraud - makes any such issuing court "a party to the carrying
 9 out of one the very restraints forbidden by [antitrust laws]." Id.; Wilder Mfg. Co. v. Corn Products Co.,
 10 236 U.S. 165, 172 (1915) ("The case therefore reduces itself to the question whether the contract of sale
 11 was inherently illegal so as to bring it within the also *elementary rule* that courts will not exert their
 12 powers to enforce illegal contracts or to compel wrong-doing.") (emphasis added).

13 Cotton is not an attorney, but that does not mean he cannot read and understand the basic legal
 14 principles of illegality and that a judgment that enforces an illegal contract is void. In my prime I ran an
 15 electrical contracting company with over 100 employees and negotiated and contracted with numerous
 16 cities, municipal entities and large businesses. Cotton can read and understand the law that grants Cotton
 17 to right to give no respect to any order or judgment that enforces an illegal contract because any such
 18 judgment or order is void.⁷

19 Judge Robinson you must know that there have been numerous parties, including attorneys, who
 20 have been injured by Geraci and his agents' actions. Although Geraci was able to convince Wohlfeil that
 21 the value of a cannabis CUP is roughly \$100,000 – that is sheer stupidity. Yesterday, December 27,
 22 2020, Mona Zhang published an article, "**How state marijuana legalization became a boon for**
 23 **corruption: by making local officials the gatekeepers for million-dollar businesses, states created a**
 24 **breeding ground for bribery and favoritism,**" that describes the corruption and inequalities in the
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26 ⁷ "The rule is well recognized that judgments void on their face may always be attacked either directly
 27 or collaterally. A judgment absolutely void may be attacked anywhere, directly or collaterally whenever
 28 it presents itself, either by parties or strangers. It is simply a nullity, and can be neither a basis nor
 evidence of any right whatever. Moreover, the affirmance of a void judgment on appeal does not make it
 valid." Redlands Etc. Sch. Dist. v. Superior Court, 20 Cal.2d 348, 363 (Cal. 1942).

1 cannabis market. (Cotton Decl. at 4, Ex. 11.) The articles include descriptions where racial bias has driven
 2 the arbitrary decisions by local governments to issue cannabis permits. The Property, as valued by
 3 Austin's own client, Aaron Magagna, is worth \$10,000,000. With that much money on the table do you
 4 think all the parties that had an interest in the Property and were caused damages are going to go away
 5 when the indisputable facts prove that Geraci and his agents engaged in RICO/Antitrust violations that
 6 provide for treble damages?

7 But-for the sham lawsuit Cotton would have sold the Property to Chris Williams, a black man.
 8 Geraci is white. And all his attorneys are white. This is exactly how systemic racism works. Had Flores,
 9 a Mexican-American attorney filed suit on behalf of a black man and argued that the black man's previous
 10 sanctions for illegal commercial drug sales somehow did not disqualify him from owning a cannabis
 11 CUP, the Court would have scrutinized that argument and not taken an attorney at his word.

12 Attorney Andrew Flores was dumbfounded when (i) Chief Justice Sydney Thomas denied my
 13 ethical complaint against Cynthia Ann Bashant⁸ and (ii) Litigation attorney Carmela E. Duke, sent to him
 14 on November 20, 2020, a letter that requests Flores dismiss Judge Wohlfeil from his complaint by
 15 blatantly ignoring the facts that Wohlfeil made statements that prove he is biased and mandate the Cotton
 16 I and Cotton II judgments are void. (Cotton Decl. at 4, Ex. 9.)

17 This is why Cotton knows he is not crazy. Multiple attorneys are waiting for this Court to make
 18 rulings and with the passage of time all defendant attorneys who owe a duty of loyalty and candor to the
 19 court become guiltier. Their pleas of innocence will ring hollow as they will only come crawling to the
 20 Court with pleas of mercy and innocence once I or another party in another district file suit and prove
 21 that Wohlfeil is biased, the judgements are void, and all of them violated their AFFIRMATIVE DUTIES
 22 to the court to prevent a fraud on the court.

23 Flores is convinced that there is a judicial conspiracy to cover up Wohlfeil's criminal actions in
 24 this matter.

25 Additionally, Flores has discovered other parties who went to Austin and Jessica McElfresh for
 26 legal help to acquire cannabis compliant properties, were told that it was not possible, then another party
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1 filed on and received a cannabis CUP at that property. In light of the evidence Flores has put forth to
 2 these individuals, they also believe that Austin and McElfresh deceived them. In other words, I have
 3 every reason to know and believe that the judgments entered against me are void and that the judiciary is
 4 covering up Wohlfeil's failure to vet by arguments.

5 Every attorney that knows the facts of the case believe that judges are covering up for other judges
 6 and have no respect for any of the judges that have been presented with the evidence of illegality and
 7 failed to ratify Geraci's criminal scheme. Even under the most favorable interpretation of what has taken
 8 place, any judge with this matter before them will be pressured to mitigate, omit, not address, in someway
 9 coverup the lack of intelligence of the twelve judges who are obviously intellectually inferior to Geraci's
 10 attorneys.

11 **This is driving me insane.** (Cotton. Decl. at 1-2, Exs. 1-3 (evidence of psychiatric and physical
 12 harm caused by lawsuit.) The gravamen of this Motion is: even if this Court assumes that the Cotton is
 13 a conspiracy nut and the Cotton I and Cotton II judgments are valid, it is undisputable that at no point has
 14 any judge ever explained why judgments are valid in light of the Illegality Issues. As noted, without an
 15 explanation, even if affirmed on appeal, Cotton does not have to respect an order or judgment that
 16 deprives him of his real property without an explanation of why the facts Cotton has put forth as evidence
 17 that they are void is not addressed, thus violating Cotton's constitutional rights and causing him
 18 irreparable psychological harm. (Cotton Decl. Ex. 3 (Independent Psychiatric Assessment).)

19 Thus, all twelve judges who have had the issue of illegality before them whether due to corruption,
 20 negligence or incompetence ratified an illegal contract and are now the one's contributing to Cotton's
 21 irreparable harm.

22 Cotton has been labeled a "conspiracy nut" and is derided for his continued pursuit to prove the
 23 existence of a criminal organization (the "Enterprise"). The procedural posture of the case and Cotton's
 24 adamant refusal to forgive and waive his causes of action against corrupt attorneys and judges provides
 25 a specious appearance that Cotton is in fact a "conspiracy nut." But the undisputed facts giving rise to
 26 this matter unequivocally prove that Cotton is not a "conspiracy nut," he is an average American citizen
 27 without a legal education that understands that attorneys and judges are capable of being despicable, vile
 28 individuals who in their desire for greed, power and the perception of being perceived as intelligent are

1 willing to violate their duties of candor to the courts and/or their judicial oaths to pathetically and
2 desperately cling to power.

3 4 ISSUES PRESENTED

- 5 1. As a matter of law, can a court disregard an independent psychiatric assessment (“IPA”) and
6 evidence of irreparable psychological harm and substitute its own personal judgment for that of
7 the psychiatrist and evidence presented?
- 8 2. As a matter of law, given undisputed facts that prove a judgment is enforcing an illegal contract,
9 does a court violate the constitutional rights of a party by failing to explain what facts and law
10 allow the evidence of illegality to be disregarded and ratify the illegal contract?

11 12 MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

13 1. In March 2017, Geraci’s attorneys, the law firm of Ferris & Britton (“F&B”), filed Cotton I alleging
14 the November Document is a fully integrated purchase contract for Geraci’s purchase of the Property.
15 F&B filed Cotton I relying on outdated case law to provide probable cause for seeking to use the parol
16 evidence rule (i) to bar the admission of the Confirmation Email as proof of the JVA and (ii) as a shield
17 to bar the proof that Geraci and F&B conspired to commit a fraud on the court by fraudulently
18 representing a receipt as a purchase contract (the “Cotton I Conspiracy”).

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

24 3. Mrs. Austin was served with the Petition for Writ of Mandate with alleged, *inter alia*, that
25 Geraci was barred from owning a marijuana dispensary because he had previously been cited and sued
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1 by the City for illegal marijuana activity. (Cotton Decl. Exhibit 8, (Notice of Interested Parties for Writ
2 of Mandate, that includes City attorneys and officials and provided evidence of the Illegality Issues)^{9, 10}

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

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

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

9 6. On February 9, 2018, Cotton, proceeding pro se, filed a federal complaint against Geraci, Berry,
10 Mrs. Austin, ALG, Weinstein, F&B, and the City alleging eighteen causes of action under federal and
11 state law as well as declaratory and injunctive relief. Cotton also concurrently filed a motion for leave
12 to proceed in forma pauperis ("IFP"), an ex parte application for a TRO (the "Cotton III TRO"), and a
13 motion for appointment of counsel.

14 7. The basis of Cotton's factual allegations in the Cotton III complaint are mostly a combination of
15 Cotton's factual allegations in his original pro se cross-complaint in Cotton I and the Cotton II petition.

16 8. Material additional allegations included that the City is prejudiced against him because of his
17 "political activism for the legalization of medical cannabis." Cotton III, ECF No. 1 at ¶10. Also, that
18 Wohlfeil is biased against him and "has not seemed interested in reading any of [his] prior submissions
19 [i.e., the Opposition Theory]." Id. at ¶ 296.

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23 ⁹ Attached to this Motion as Exhibit 1 is a true and correct copy of the proof of service to Gina Austin,
24 Austin Legal Group and Aaron Magagna of the Petition for Writ of Mandate dated August 30, 2018
25 (which includes the evidence of the Illegality Issues). Agent for service of process Zoe Villaroman
included a declaration describing Austin's attempts to avoid service of process.

26 ¹⁰ Attached to this Motion as Exhibit 2 is a true and correct copy of proof of service to Gina Austin,
27 Austin Legal Group and Aaron Magagna of the same Writ of Mandate on August 27, 2020 (which
28 includes the evidence of the Illegality Issues). Cotton's counsel Jacob Austin (no relation to Mrs. Austin)
describes Austin's taking of the documents being very aggressive to the point of almost physically
shoving him out of the office and throwing the documents meant for her client Aaron Magagna out into
the hallway.

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

4 10. On August 30, 2018, Attorney Jacob Austin on behalf of Cotton filed a petition for a writ of
 5 mandate in the Court of Appeal, Fourth Appellate District, Division One (the “COA Petition”) arising
 6 from Judge Wohlfeil’s denial of (i) Cotton’s ex parte application for the appointment of a receiver to
 7 manage the Berry Application (the “Receiver Motion”) and (ii) Cotton’s motion for judgment on the
 8 pleadings (the “MJOP Motion”). (Electronically filed on August 30, 2018 by Jose Rodriguez, Deputy
 9 Clerk, Case No. D074587.)

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

16 12. On September 10, 2018, the COA Petition was denied by Presiding Justice McConnell and
 17 Associate Justices Benke and Irion, summarily without explanation.

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

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

26 15. On December 6, 2018, Cotton and Hurtado, through counsel, Jacob Austin, filed a federal
 27 complaint alleging various causes of action against Geraci, Berry, Weinstein, Toothacre, F&B, Mrs.
 28 Austin, ALG, Miller, and a legal malpractice claim against FTB, Demian and Witt.

1 **I. The history of the Illegality Issues.**

2 16. Geraci has been sued at least three times by the City for his involvement in illegal marijuana
3 dispensaries (the “Illegal Marijuana Dispensaries”).

4 17. Geraci settled all three cases, collectively paying fines in the amount of \$100,000 (the “Geraci
5 Judgments”).

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

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

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

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

17 22. City attorney Phelps attended the trial.

18 23. City attorney Phelps prepared Tirandazi for testifying.

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

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

25 26. Austin falsely testified that, *inter alia*, (i) she did not speak with Hurtado regarding the November
26 Document on March 6, 2017 and (ii) that she did not confirm to Hurtado the November Document is not
27 a purchase contract.

28 27. Judge Wohlfeil prohibited Cotton and Hurtado from testifying about Magagna’s attempts to bribe

1 and threaten Corina Young, a material third-party witness to the conspiracy.

2 28. Additionally Cotton, after trial, again hired new counsel to file and argue a motion for new trial
3 based on, *inter alia*, the fact that Geraci was not eligible to own a marijuana dispensary because he had
4 previously been sanctioned maintaining an unauthorized marijuana business.

5 29. Specifically Business and Professions Code § 26057(b)(7), states: “(b) The licensing authority
6 may deny the application for licensure or renewal of a state license if any of the following conditions
7 apply: (7) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing
8 authority or a city, county, or city and county for unauthorized commercial cannabis activities, has had a
9 license suspended or revoked under this division in the three years immediately preceding the date the
10 application is filed with the licensing authority.”

11 30. Though it would appear that denial is permissive when you then add to the fact that the applicant
12 is Geraci, it becomes mandatory for the application to be denied under section (a) of the same provision.
13 “The licensing authority shall deny an application if either the applicant, or the premises for which a
14 state license is applied, do not qualify for licensure under this division.”

15 31. This is exactly the reason why Geraci chose to use his secretary (Berry) as a proxy for the
16 application.

17 32. Berry then signed the General Application stating:

18
19 I certify that I have read this application and state the above information is correct, and that I am
20 the property owner, authorized agent of the property owner, or other person having a legal right,
21 interest, or entitlement to the use of the property that is the subject of this application (Municipal
22 Code Section 112.0102). I understand that the applicant is responsible for knowing and complying
23 with the governing policies and regulations applicable to the proposed development or permit.

24 33. Furthermore, Geraci was never disclosed to the City, and therefore violated SDMC §11.0401(b)
25 (“No person willfully shall make a false statement or fail to report any material fact in any application
26 for City license, permit, certificate, employment or other City action under the provisions of the
27 [SDMC]”); SDMC § 121.0311 (“Violations of the Land Development Code shall be treated as strict
28 liability offenses regardless of intent.”)

34. Furthermore, the Defendant Weinstein and his cohorts filed and were granted five (5) temporary

1 restraining orders against me. These restraining order have caused me a great deal of grief and was a
2 further way to destroy me. On December 9, 2020 I was returning to the United States from an eye
3 doctors' appointment I had in Mexico, medical cost are very high and with my limited resources I go to
4 Mexico for certain medical procedures. Upon crossing back across the boarder into San Diego I was
5 detained by Homeland Security at the first inspection as the officer told me I came up in a background
6 search as a possible threat. I asked him what he meant by that and he told me that I had five Temporary
7 Restraining Orders on my record, and they wanted to further investigate me since I seemed to be a
8 "dangerous man". (Cotton Decl. ¶¶ 7-8).

9 35. I told the officer that these were filed by the defendants in my state case in what I believed was
10 an attempt to intimidate me and prevent me from testifying at public hearings that went to the licensing
11 of a property near mine for a cannabis license. I ended up being detained at secondary for nearly an hour
12 at which point they took my fingerprints and then released me. This situation means I can no longer visit
13 the eye clinic in Mexico and has caused me even greater levels of anxiety and stress as I now know this
14 is manufactured evidence is part of permanent background identity and how law enforcement perceives
15 me when they run my personal background information. *Id.*

16 36. Despite my fervent attempts to protect my rights another cause of distress is having to see the
17 continued construction at the 6220 Federal Blvd property. I know, and will prove at trial, that this project
18 was awarded under a conspiracy to defraud me of my rights by the defendants in this case. My ex parte
19 motion (ECF 44) request to cloud title with permission to file a lis pendens on the 6220 property has yet
20 to be decided and it is the delay in having the court make these decisions that continues to cause me
21 increased psychiatric harm. These may sound like conspiracy nut rantings but when taken in full context,
22 the reasons become clear and my sense of there being a larger conspiracy, one that involves the courts,
23 is no longer so farfetched. (Cotton Decl. ¶ 9).

24 37. This David and Goliath fight I am currently in, can only be won if I continue to bring light to the
25 corruption and legal buffoonery being perpetrated on this Court. As such on December 29, 2020 I was
26 interviewed by an exceedingly popular national podcast in which I discuss many of the issues described
27 in my complaint and other moving papers, along with links to my website in which many of the moving
28 papers and oppositions are posted. It is only a matter of time until the truth comes to light as to what

1 these individuals did to me, how the judges protected these individuals and allowed them to conduct their
 2 illegal marijuana industry take over after being involved in illegal marijuana operations. (Cotton Decl. ¶
 3 18).

4 LEGAL STANDARDS

5 “Federal Rule of Civil Procedure 6(c) gives courts the power to change a hearing date when a
 6 party demonstrates good cause.” In re Bofi Holding, Inc., Case No.: No. 3:15-CV-02324-GPC-KSC, at
 7 *2 (S.D. Cal. Sep. 28, 2016) (citing Fed. R. Civ. P. 6(c)(1)(A); Local Rule 7.1(e)(5)).

8 An ex parte application must show good cause or irreparable harm for the relief sought and that
 9 the moving party is without fault in creating the need for ex parte relief. Salameh v. Tarsadia Hotel, No.
 10 09cv2739-GPC-BLM, 2015 U.S. Dist. LEXIS 50354, at *6 (S.D. Cal. Apr. 16, 2015) (quotation and
 11 citation omitted).

12 “The concept of irreparable harm, unfortunately, ‘does not lend itself to definition.’” Prairie
 13 Band of Potawatomi Indians v. Pierce, 253 F.3d 1234, 1250 (10th Cir. 2001) (quoting
 14 Wisconsin Gas Co. V. Federal Energy Regulatory Comm’n, 758 F.2d 669, 674 (D.C. Cir.
 15 1985.) The Fifth Circuit defines irreparable injury as an injury “for which compensatory
 16 damages are unsuitable.” Wildmon v. Berwick Universal Pictures, 983 F.2d 21, 24 (5th
 17 Cir. 1992). The Seventh Circuit explained that “[o]nly harm that the district court cannot
 18 remedy following a final determination on the merits may constitute irreparable harm.”
 19 Am. Hosp. Ass’n v. Harris, 625 F.2d 1328, 1331 (7th Cir. 1998). The Tenth Circuit has
 20 combined these definitions, and observed that “irreparable harm is often suffered when the
 injury can[not] be adequately atoned for in money, or when the district court cannot remedy
 [the injury] following a final decision on the merits.” Prairie Band, 253 F.3d at 1250. In
 addition, the Ninth Circuit has held that immediate emotional and *psychological injury*
 “cannot be adequately compensated for by a monetary award after trial.” Chalk v. U.S.
Dist. Court Cent. Dist. California, 840 F.2d 701, 710 (1988).

21 D.H. v. Poway Unified Sch. Dist., Civil No. 09-cv-2621-L(NLS), at *8-9 (S.D. Cal. Dec. 19, 2013)
 22 (emphasis added).

23 The Ninth Circuit has [also] repeatedly held that *serious psychological harm*, in addition
 24 to physical harm and suffering, constitutes irreparable injury. See, e.g., Chalk v. U.S. Dist.
 25 Ct. Cent. Dist. of California, 840 F.2d 701, 709 (9th Cir. 1988) (plaintiff’s “*emotional*
 26 *stress, depression and reduced sense of well-being*” constituted irreparable harm);
 27 Thomas v. Cnty. of Los Angeles, 978 F.2d 504, 512 (9th Cir. 1992) (“Plaintiffs have also
 28 established irreparable harm, based on this Court’s finding that the deputies’ actions have
 resulted in irreparable physical and *emotional injuries* to plaintiffs and the violation of
 plaintiffs’ civil rights.”).

1 Edmo v. Idaho Dep't of Corr., 358 F. Supp. 3d 1103, 1127 (D. Idaho 2018) (emphasis added).

2 ARGUMENT

3 The IPA by Dr. Ploesser makes indisputable that Cotton is suffering irreparable because he does
4 not know *why* the State and Federal judiciaries have failed to address the Illegality Issues. Cotton's legal
5 resources do not have any language as to the weight of an IPS by a psychiatrist is to be given in a civil
6 manner. However, he has the following language from a criminal case dealing with a defense of insanity:

7 It is not necessary for the Government to present any expert testimony to meet its burden
8 of proof. The Government can meet its burden through the testimony of lay witnesses. A
9 defendant is not entitled to a judgment of acquittal simply because he offers expert
10 testimony on the issue of insanity and the Government attempts to rebut it without any
11 expert witnesses. *The expert's opinion, even if uncontradicted, is not conclusive. At the same time, it may not be arbitrarily ignored, and some reason must be objectively present for ignoring expert opinion testimony.*

12 United States v. Hall, 583 F.2d 1288, 1293-94 (5th Cir. 1978) (citations omitted, emphasis added).

13 The IPA by Dr. Ploesser has never been contradicted by any party or judge. Cotton understands
14 that the IPA by itself is "not conclusive." Id. However, he also understands that "it may *not* be arbitrarily
15 ignored." Id. The IPA is before this Court. As it makes clear, the psychological harm that Cotton is facing
16 is irreparable and stems from the lack of transparency from the judiciary.

17 Cotton emphasizes that Dr. Ploesser is employed by the State of California, has an LLM degree
18 and used to be judge. Per his professional opinion, the "greater than a normal litigant." (Cotton Decl.
19 Exhibit 3 (Ploesser Assessment) at ¶ 32).

20 At trial in *Cotton I*, Austin testified that she was not aware the Sanctions Issue. (Cotton Decl.,
21 Exhibit 7 (Trial transcript) at 2:1-7.) Further, that even if such were true, it would not make it illegal for
22 Geraci to own a cannabis CUP. Austin's testimony was claiming to be unaware of the Sanctions Issue is
23 legally and factually contradicted.

24 *Cotton is not an attorney but he KNOWS that such constitutes perjury and a fraud on the court*
25 *- it is really, truly, driving him insane that the judiciary is allowing and ratifying this to Cotton's*
26 *continued irreparable psychological harm!!*

27 The issue of whether the Cotton I judgment enforces an illegal contract has consistently and
28 repeatedly been raised throughout Cotton I – V. It has been never directly addressed by any court, except

1 when fully briefed in the Motion for New Trial. Wohlfeil's ruling denying the Motion for New Trial
 2 provides no reasoning as to his line of reasoning. However, the transcript provides support for the
 3 position that he believed that I waived the defense of illegality because it had allegedly not previously
 4 been raised. Wohlfeil's allegation is contradicted by the record. Further, even assuming that Cotton had
 5 not raised the Illegality Issues before, as a matter of law, the defense of illegality cannot be waived. City
 6 Lincoln-Mercury Co. v. Lindsey (1959) 52 Cal.2d 267, 274 ("A party to an illegal contract cannot ratify
 7 it, cannot be estopped from relying on the illegality, and cannot waive his right to urge that defense.")
 8 (emphasis added).

9 How can I, or any literally individual, respect any ruling or judgment that comes from Wohlfeil
 10 when his own statements indisputably prove that he did not know that the defense of illegality had been
 11 repeatedly raised in the matter before him for years? And, setting aside the facts of my case, that it is
 12 even legally possible for the defense of illegality can it be waived?!! It cannot. City Lincoln-Mercury
 13 Co. v. Lindsey (1959) 52 Cal.2d 267, 274.

14 As of today, the State and Federal judiciaries – via the twelve judges who have had the evidence
 15 of illegality presented - are asking Cotton to "trust" the judges have integrity. And for reasons which have
 16 yet to be explained in almost four years across five actions, it is lawful for Geraci to own a cannabis CUP
 17 via the Berry Application. To put it plainly, Cotton does not *trust* judges and the law does not require
 18 that he do so. Judges are capable of criminal and heinous acts.

19 It is possible that Wohlfeil committed actions that reflect poorly on his intelligence and integrity.
 20 And it is also possible that federal judges would seek to cover up Wohlfeil's actions. Just as Kozinski
 21 was once lauded around the world to be a man of intellectual brilliance and integrity, so can it be the case
 22 that the judges at issue here are equally morally bankrupt and their crimes have simply yet to be exposed.
 23 Cotton has already had it beaten into him that there is "no money" and it "only makes its harder" to
 24 prevail if he includes his claims against the judges. But, so what?! Nothing good comes easy and at this
 25 point in life it is Cotton's life ambition to see Wohlfeil, Bashant and Thomas impeached and Curiel
 26 admonished for their actions in this matter causing Cotton irreparable psychiatric harm. See gen. 12
 27 Moore's Federal Practice – Civil § 63.20 (Disqualification for Partiality or Bias). And, at no point in the
 28 future should Wohlfeil (when Cotton goes back to State court to have his state causes of action tried) or

1 Thomas/Bashant (when this action is finished and on appeal) be allowed to adjudicate any part of this
 2 action. Once the truth is exposed and it is clear that matters reached this stage because of the bias and
 3 incompetence of judges that have presided over these issues to date, they will be motivated to obfuscate
 4 the truth to make it APPEAR more complicated than it is and thereby mitigate for the public record for
 5 all time their stupidity and lack of integrity. **The simpler this case is proven to be, the dumber they**
 6 **will all look throughout all eternity.**

7 Cotton does not need to give any respect whatsoever to any judgment or ruling that seeks to
 8 enforce an illegal contract whose object is Geraci's ownership of a cannabis CUP. Tipton v. Thaler, 354
 9 F. App'x 138, 142 (5th Cir. 2009) ("A void judgment is a nullity from the beginning, and is attended by
 10 none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not
 11 affect, impair, or create legal rights.") (quotation omitted); Redlands Etc. Sch. Dist. v. Superior Court, 20
 12 Cal.2d 348, 363 (Cal. 1942) ("The rule is well recognized that judgments void on their face may always
 13 be attacked either directly or collaterally. [] [A] judgment absolutely void may be attacked anywhere,
 14 directly or collaterally whenever it presents itself, either by parties or strangers. It is simply a nullity, and
 15 can be neither a basis nor evidence of any right whatever. Moreover, the affirmance of a void judgment
 16 on appeal does not make it valid.") (cleaned up).

17 Lastly, Cotton notes that it is damning to Wohlfeil that in seeking to be dismissed from Flores'
 18 suit against him that he does not dispute he made the Extrajudicial Statements. (Cotton Decl., Ex. 9 (no
 19 dispute).) In fact, he simply disregards the allegations supporting the Illegality Issues and the
 20 Extrajudicial Statements and states in conclusory fashion that Flores constitutional rights were not
 21 violated because Flores had his claims adjudicated. But the claims against Wohlfeil include that he
 22 illegally had the *Cotton I* ROA manipulated to remove the evidence supporting the motion to disqualify
 23 him in order to conceal the evidence of his judicial bias; such is unconstitutional and is a claim which has
 24 not been adjudicated, is unconstitutional, and which Cotton will include in his amended complaint. See
 25 Bell v. City of Milwaukee, 746 F.2d 1205, 1261 (7th Cir. 1984) ("Judicial access must be 'adequate,
 26 effective, and meaningful.' Bounds v. Smith, 430 U.S. 817, 822, 97 S.Ct. 1491, 1495, 52 L.Ed.2d 72. To
 27 deny such access defendants need not literally bar the courthouse door or attack plaintiffs' witnesses. This
 28 constitutional right is lost where, as here, police officials shield from the public and the victim's family

1 key facts which would form the basis of the family's claims for redress. A contrary interpretation of the
 2 right to due process would encourage police officials to conceal the circumstances relating to unlawful
 3 killings committed under color of state law and other deprivations of federal rights which Section 1983
 4 was designed to remedy. [Citations.]” (emphasis added).

5 Lastly, indisputably, the service of process on Austin, Weinstein and Toothacre prove they knew
 6 that Austin KNEW Geraci had been sanctioned for illegal commercial marijuana sales. (Exhibits 1 and 2
 7 attached hereto and fully incorporated by this reference.) Austin’s testimony that she did not know is
 8 perjury and the basis for her soon-to-be-submitted declaration to this Court of her “ignorance” that Geraci
 9 did not qualify due to the Sanctions Issue. (Exhibit 7 (Trial Transcript) at 2:1-7). However, the proofs of
 10 service reveal her lie and constitute a fraud on the Court.

11 A defendant has a constitutional right to testify in his or her own defense but does not have
 12 a right to testify falsely. A defense attorney has an obligation to act as a conscientious and
 13 diligent advocate, but it is ***utterly reprehensible for an attorney at law to actively procure***
 14 ***or knowingly countenance the commission of perjury***. A defendant's right to testify does
 not trump an attorney's ethical responsibilities.

15 An attorney owes no duty to offer on his client's behalf testimony which is untrue. Stated
 16 slightly differently, an attorney, including a criminal defense attorney, has a ***special duty***
 17 ***to prevent and disclose frauds upon the court***. A lawyer should not conclude that
 18 testimony is or will be false unless there is a firm factual basis for doing so. Such a basis
 exists when facts known to the lawyer or the client's own statements indicate to the lawyer
 that the testimony or other evidence is false.

19 People v. Hayes, 27 Cal.App.5th 340, 346 (Cal. Ct. App. 2018) (cleaned up, emphasis added).

20 Every attorney at issue, especially Finch, Thornton, & Baird and their attorneys, Lewis &
 21 Brisbois, and the City’s attorneys (especially Travis Phelps) - both of whom had multiple partners
 22 included in the notice of this motion and provided this motion giving them actual and constructive
 23 knowledge that their actions require them to disclose to this Court that they were part of a scheme that
 24 perpetrated a fraud on this court – have taken no actions to explain to this court that they were at the very
 25 least used to effectuate a fraud on the court. They have violated their “***special duty to prevent and disclose***
 26 ***frauds upon the court***.” Id. (emphasis added).

1 Not knowing why I am being deprived of my property and why the judiciary is allowing corrupt criminals
 2 to blatantly violate me through the judiciary is causing me physical, mental and psychological, and
 3 emotional distress. (Cotton Decl. At 1-2, Exs. 1-3. evidence of irreparable psychological damage).

4 CONCLUSION

5 Judge Robinson, I implore you to take the IPA and evidence of the physical manifestations of my
 6 psychological damage at face value. Imagine for a few minutes, believing what I believe to be true is
 7 true. You know better than I that there is a vast difference between the ideals of what our justice system
 8 should be and what it actually is. I beseech you to have the strength of character and integrity necessary
 9 to grant me the justice that the facts and law mandate. At some point, judges are obviously corrupted
 10 and tainted by their black robes and the power that comes with them.

11 Based on how matters have unfolded, although I believe there is systemic prejudice and racism
 12 at issue here, I don't believe that Wohlfeil, Curiel, Bashant or any of the appellate judges at issue here
 13 have called you up and said, "I fucked this up, help me minimize my role in it..." However, it is also
 14 clear that systemically, the powers here have resulted in a situation where judges do not want to call out
 15 other judges for failing, which is itself clear judicial bias meant to cover up other judges. I am literally
 16 praying at night that you grant me justice even if by you doing so, it means that you will indirectly be
 17 criticizing the judges that work down the hall from you (Curiel, Bashant), across the street from you
 18 (Wohlfeil), down the street from you Justices McConnel, Benke and Orion, and at the Ninth Circuit which
 19 includes your boss, Chief Justice Thomas.

20 Please end the tortured state I am in. Please expedite the Motions you have before you. If it is true
 21 that Geraci can lawfully own a cannabis CUP via the Berry Application or that Wohlfeil's Extrajudicial
 22 Statements are not extrajudicial and do not constitute judicial bias, then please, PLEASE just explain that
 23 to me the basis for your denial. I will review the cases you cite, I will work through the reasoning you
 24 put forth, just please say something that is logical, and I can follow. I have ZERO respect for Thomas, I
 25 think he is corrupt piece of shit covering up for the fact that Bashant fabricated evidence to deny Flores'
 26 motion that Bashant did not want to adjudicate because she is intellectually lazy and wanted a notice
 27 motion instead of an ex parte motion that required her to do her job! Instead, the bitch "transferred" this
 28 case to you because if she had kept it she would have had to recuse herself for fabricating statements.

1 general language, like Thomas, and everyone will believe that are you are complicit in seeking to cover
2 up the judiciaries failures to address the Illegality Issues and Wohlfeil's judicial bias.

3 The truth is going to come out if for only one simple reason: there are tens of millions of dollars
4 at issue here and millions more in attorney fees and damages. **I CANNOT AFFORD TO PLAY**
5 **LITIGATION GAMES OR WAIT FOR THE JUDICIARY TO COME UP WITH A**
6 **CONVOLUTED WAY TO GRANT ME JUSTICE THAT MINIMIZES THE LACK OF**
7 **INTELLIGENCE AND COVERS UP ABSURDLY POOR JUDGMENT BY TWELVE JUDGES.**
8 **PEOPLE WITH FAMILIES ARE DEPENDING ON ME AND THEY HAVE CHILDREN. DOES**
9 **THAT NOT MATTER TO A COURT? TO THE SO-CALLED JUSTICE SYSTEM?**

10 Judge Robinson I ask that you please expedite the review of the Motions before you. I am not a
11 violent person and have **NEVER** hurt anyone to take from them what I could not lawfully obtain myself.
12 I don't hurt people. But the truth is that I am long past hating and viscerally loathing the attorneys and
13 judges at issue and this hate is building up inside me. It's not who I am. I am, by nature, a reasonable
14 man who has been put under unreasonable pressure for far too long – almost four years - by vile criminal
15 individuals who are friends with Wohlfeil. And who by virtue of the Black Wall are being vicariously
16 protected by every other judge because of Wohlfeil, no matter how harmful and irreparable the
17 psychological damage that doing so continues to cause me.

18 I will continue to call the attorneys and judges at issue here "criminals" and I will respect no order
19 or judgment that does not explain why Geraci can own a cannabis CUP via the Berry Application in
20 violation of State and City laws, including the statute of frauds.

21 I pray that you have the strength of character and integrity to do what the law requires, and to not
22 seek to prolong these matters so as to mitigate/obfuscate the roles of other judges at issue here.

23
24 DATED: December 29, 2020

25
26 By  _____

27 Darryl Cotton
28

EXHIBIT 1

Court of Appeal, Fourth Appellate District, Division One
 Kevin J. Lane, Clerk/Executive Officer
 Electronically RECEIVED on 8/30/2018 at 4:30:50 PM

Court of Appeal, Fourth Appellate District, Division One
 Kevin J. Lane, Clerk/Executive Officer
 Electronically FILED on 8/30/2018 by Jose Rodriguez, Deputy Clerk

PROOF OF SERVICE (Court of Appeal)

CASE #: D074587

☐ Mail ☒ Personal Service

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Larry Geraci v. Darryl Cotton, et al.
 Court of Appeal Case Number: TBD
 Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My ☐ residence ☒ business address is (specify):
 1455 Frazee Road, Suite 500, San Diego, CA 92108
3. I mailed or personally delivered a copy of the following document as indicated below (fill in the name of the document you mailed or delivered and complete either a or b):
 Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief, Exhibits Volumes 1, 2 and 3, and Request for Judicial Notice in Support of Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief

a. ☐ Mail. I mailed a copy of the document identified above as follows:

(1) I enclosed a copy of the document identified above in an envelope or envelopes and

(a) ☐ deposited the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

(b) ☐ placed the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

(2) Date mailed:

(3) The envelope was or envelopes were addressed as follows:

(a) Person served:

(i) Name:

(ii) Address:

(b) Person served:

(i) Name:

(ii) Address:

(c) Person served:

(i) Name:

(ii) Address:

☐ Additional persons served are listed on the attached page (write "APP-009, Item 3a" at the top of the page).

- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Diego, California

Page 1 of 2

APP-009

Case Name: Larry Geraci v. Darryl Cotton, et al.

Court of Appeal Case Number:

TBD

Superior Court Case Number:

37-2017-00010073-CU-BC-CTL

3. b. ☒ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name: Gina M. Austin, an individual

(b) Address where delivered:

Austin Legal Group

3990 Old Town Avenue, Suite A-112

San Diego, CA 92110

By serving Jane Doe, Receptionist (See Attachment to APP-009)

(c) Date delivered: August 20, 2018

(d) Time delivered: 4:30 p.m.

(2) Person served:

(a) Name: Austin Legal Group, APC, a California corporation

(b) Address where delivered:

Austin Legal Group

3990 Old Town Avenue, Suite A-112

San Diego, CA 92110

By serving Jane Doe, Receptionist (See Attachment to APP-009)

(c) Date delivered: August 20, 2018

(d) Time delivered: 4:30 p.m.

(3) Person served:

(a) Name: Gina M. Austin/Austin Legal Group, APC Attorneys for Aaron Magagna, an individual

(b) Address where delivered:

Austin Legal Group

3990 Old Town Avenue, Suite A-112

San Diego, CA 92110

By serving Jane Doe, Receptionist (See Attachment to APP-009)

(c) Date delivered: August 20, 2018

(d) Time delivered: 4:30 p.m.

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page (write "APP-009, Item 3b" at the top of the page).

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

Date: August 20, 2018

Zoë Gayle Villaroman

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

ATTACHMENT TO APP-009, ITEMS 3b(1), (2) and (3)

Detail of Service on Jane Doe

On August 20, 2018 at approximately 4:20 p.m., I entered the offices of the Austin Legal Group, APC to serve copies of the items listed at page 1, #3 on the parties listed at page 2, #s 3b(1), 3b(2) and 3b(3).

When I entered the office, I greeted the receptionist, placed a box containing the documents being served on the receptionist counter, told her I was there to serve the documents on Austin Legal Group, APC, Attorney Gina M. Austin and Gina M. Austin/Austin Legal Group, APC as counsel for Real Party in Interest Aaron Magagna, and asked her for her name so I could complete the Proof of Service.

The receptionist would not give me her name and asked me the name of the case and what type of documents I was serving. I responded that I was serving a writ, and supporting exhibits and Request for Judicial Notice which were going to be filed with the Fourth District Court of Appeal related to the *Geraci v. Cotton* case in the Superior Court, and showed her a copy of the Proof of Service. The receptionist looked at the Proof of Service then abruptly grabbed from my hand, looked it over and repeated that she would not accept service of the documents. I again asked for her name, but she shook her head side-to-side indicating that she would not do so.

I explained that she was the individual in charge at the front desk of the law firm and I was serving her as such. She then picked up the phone and spoke with a woman, whom I presume was Attorney Gina Austin, and advised her someone was there to serve some documents and I overheard the woman on the phone tell her, "No."

The receptionist then hung up the phone, and advised me that she would not accept the documents. I told her that she could not decline to accept service and that I was leaving the documents anyway, and again asked for her name. When she declined to give me her name the third time, I said I would be completing and filing a proof of service using her physical description as the individual in charge whom I had served. She began to say something further, but I said she should discuss the matter with the attorney who would understand that service of the documents had been properly effected.

As I was leaving the underground parking garage at the building, another woman whom I had seen enter the Austin Legal Group, APC offices as I departed was standing on the concrete median separating the paths of incoming and outgoing traffic at the building's underground parking lot. As the vehicle in which I was riding passed by, she took down the license plate number.

The description of the Jane Doe receptionist whom I served is as follows: 5'1" tall, 115 pounds, approximately 35 years old, brown eyes, Hispanic or Asian ethnicity, shoulder length dark brown or black hair bleached to a reddish-blond color.

EXHIBIT 2

Kevin J. Lane, Clerk/Executive Officer

APP-009

Electronically RECEIVED on 8/30/2018 at 4:31:17 PM

ial)

☐ Mail ☒ Personal Service

CASE #: D074587

Notice: This form may be used to provide proof that a document has served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Larry Geraci v. Darryl Cotton, et al.

Court of Appeal Case Number: TBD

Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My ☐ residence ☒ business address is (specify):
1455 Frazee Road, Suite 500, San Diego, CA 92108
3. I mailed or personally delivered a copy of the following document as indicated below (fill in the name of the document you mailed or delivered and complete either a or b):
Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief; Exhibits Volumes 1, 2 and 3, and Request for Judicial Notice in Support of Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief

a. ☐ Mail. I mailed a copy of the document identified above as follows:

(1) I enclosed a copy of the document identified above in an envelope or envelopes and

(a) ☐ deposited the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

(b) ☐ placed the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

(2) Date mailed:

(3) The envelope was or envelopes were addressed as follows:

(a) Person served:

(i) Name:

(ii) Address:

(b) Person served:

(i) Name:

(ii) Address:

(c) Person served:

(i) Name:

(ii) Address:

☐ Additional persons served are listed on the attached page (write "APP-009, Item 3a" at the top of the page).

- (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Diego, California

APP-009

Case Name: Larry Geraci v. Darryl Cotton, et al.

Court of Appeal Case Number:

T9D

Superior Court Case Number:

37-2017-00010073-CU-BC-CTL

3. b. ☒ Personal delivery. I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name: Gina M. Austin, an individual

(b) Address where delivered:

Austin Legal Group

3990 Old Town Avenue, Suite A-112

San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(2) Person served:

(a) Name: Austin Legal Group, APC, a California corporation

(b) Address where delivered:

Austin Legal Group

3990 Old Town Avenue, Suite A-112

San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(3) Person served:

(a) Name: Gina M. Austin/Austin Legal Group, APC Attorneys for Aaron Magagna, an individual

(b) Address where delivered:

Austin Legal Group

3990 Old Town Avenue, Suite A-112

San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page (write "APP-009, Item 3b" at the top of the page).

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

Date: August 27, 2018

Jacob P. Austin

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



 (SIGNATURE OF PERSON COMPLETING THIS FORM)

ATTACHMENT TO APP-009, ITEM 3b(3)

On Monday, August 27, 2018 at 4:37 p.m., I visited the office of attorney Gina Austin [SBN 246833] ("Mrs. Austin")/Austin Legal Group, APC to serve copies of the documents listed as ITEM 3 on page 1 on the individuals and entities listed in ITEM 3b(1)-(3).

When I arrived, the receptionist was not at the reception desk in the front office. Shortly thereafter, Mrs. Austin came from the back office to the reception desk to greet me. I told Mrs. Austin that I was there to serve documents – all of which were the correct copies of the Petition that had been personally served on her office the previous week.

Mrs. Austin responded that she wanted to look at copies of the Proofs of Service, and I told her that I was leaving copies for her and the Proofs of Service stated that I was serving her with three sets of the documents: one set on her as an individual, one set on her on behalf of her law firm Austin Legal Group, APC, and one set on her on behalf of her client Aaron Magagna.

Mrs. Austin then took two sets of the documents, told me she did not "want" the third set of documents, and then shoved me out the door. After standing outside and thinking about the situation, I walked back into the office at 4:39 p.m. and told Mrs. Austin that, since I was there, I was going to leave the third set of documents with her anyway. She responded very emphatically, "I don't want this!" I shrugged and said that I was leaving the documents with her.

Mrs. Austin became very angry and approached me quickly as though she was going to physically shove me out the door and said, "You're not welcome here!" Barely restraining herself from physically shoving me, as she got within inches of me she forcefully opened the door into the hallway, she then snatched the third set of documents and threw them into the hallway repeating in a loud, angry tone, "I told you, I DO NOT WANT THIS!!!"

I did not argue or resist leaving, I left at that point. I was wildly surprised by the unexpected reaction, the anger exhibited towards me, and how my personal space was violated. As an attorney I was disappointed in her decorum and unprofessional demeanor.

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447

Plaintiff *Pro Se*

2020 DEC 29 PM 4:12
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual

Plaintiff,

vs.

**CYNTHIA BASHANT, an individual;
JOEL WOHLFEIL, an individual;
LARRY GERACI, an individual;
REBECCA BERRY, an individual;
GINA AUSTIN, an individual;
MICHAEL R. WEINSTEIN, an
individual; JESSICA MCELFRISH, an
individual; and DAVID DEMIAN, an
individual**

Defendants,

Case No. 3:18-cv-00325-TWR

CERTIFICATE OF SERVICE

Hearing Date: NA

Time: NA

Judge: Hon. Todd Robinson

Courtroom: 3A

Date: December 29, 2020

Time: NA

Related Case: 20CV0656-BAS-MDD

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document(s):

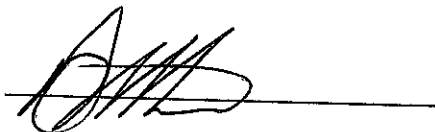
1. PLAINTIFF DARRYL COTTON'S EX PARTE MOTION FOR AN EXPEDITED HEARING TO INCLUDE EXHIBITS AND COTTON'S SUPPORTING DECLARATION WITH ATTACHED EXHIBITS.

Were served on this date to party/counsel of record:

[X] BY E-MAIL DELIVERY:

[X] BY PERSONAL DELIVERY: TO JUDGE WOHLFIEL THROUGH THE US MARSHALS PROCESS SERVICE

Executed on December 29, 2020 at San Diego, California.

A handwritten signature in black ink, appearing to be 'Darryl Cotton', is written over a horizontal line.

Darryl Cotton

Plaintiff - Pro Se Litigant

DARRYL COTTON
6176 Federal Boulevard
San Diego, CA 92114
Telephone: (619) 954-4447

2020 DEC 29 PM 4:12

Plaintiff Pro Se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,
Plaintiff,

v.

CYNTHIA BASHANT, an individual, JOEL
WOHLFEIL, an individual, LARRY GERACI, an
individual, REBECCA BERRY, an individual;
GINA AUSTIN, an individual; MICHAEL
WEINSTEIN, an individual; JESSICA
MCELFRESH, an individual, and DAVID
DEMIAN, an individual,
Defendants.

Case No. 3:18-cv-00325-TWR (DEB)
Formerly: 3:18-cv-003250-BAS (DEB)

**DECLARATION OF DARRYL COTTON
IN SUPPORT OF HIS EX PARTE
APPLICATION FOR EXPEDITED
HEARING ON PENDING MOTIONS**

Hearing Date: N/A

Hearing Time: N/A

Judge: Hon. Todd W. Robinson

Courtroom: 3A

I, DARRYL COTTON, declare:

1. I am over the age of eighteen years, and the Plaintiff in this action.
2. The facts set forth herein are true and correct as of my own personal knowledge.
3. This declaration is submitted in support of my application for an expedited hearing on pending motions.
4. Due to the increasing stress and depression for which I am currently under the medical care of Dr. A. Bui, MD (See Exhibit 1) that I am dealing with PTSD, depression and thoughts of suicide, brought on in large part by the defendant's actions but also as a result of this court not issuing decisions on any of the motions I have submitted to this court.
5. The psychiatric stresses I have also been documented in the January 22, 2018 declaration by Dr. C. Candido, MD (See Exhibit 2) and the March 4, 2018 declaration by Dr. M. Ploesser MD (See Exhibit 3) that cite to the conditions that I have been suffering for over 2 years now.

1 6. On March 5, 2018 in my ex parte motion for a stay or a judgement on the proceedings I
2 begged the court to articulate to me which fact in the record and on what legal authority it was persuaded
3 that I was not going to prevail on the merits of my cause of action for breach of contract. (See Exhibit
4 4 at 4:10). Despite my literally begging the court to do so, no court has ever responded to this seminal
5 question of law which has led to the physical, mental and legal conditions I find myself in today.

6 7. On December 9, 2020 as a result of the defendants actions in October 2018 to have the
7 court grant 5 separate Temporary Restraining Orders (See Exhibit 5 (Temporary Restraining Orders))
8 against me, I was returning to the United States from an eye doctor appointment I had in Mexico, which
9 resulted in me being detained by Homeland Security at the first inspection as the officer told me I came
10 up in a background search as a possible threat. I asked him what he meant by that and he told me that I
11 had 5 Temporary Restraining Orders on my record and they wanted to further investigate me since I
12 appeared to be a "dangerous man".

13 8. I told the officer that these were filed by the defendants in my state case in what I believed
14 was an attempt to intimidate me and prevent me from testifying at public hearings that went to the
15 licensing of a property near mine for a cannabis license. I ended up being detained at secondary for
16 nearly an hour at which point they took my fingerprints and then released me. This situation means I
17 can no longer visit the eye clinic in Mexico and has caused me even greater levels of anxiety and stress
18 as I know that this manufactured evidence is now part of my permanent background identity and how
19 law enforcement perceives me when they run my personal background information.

20 9. The continued construction of the 6220 Federal Blvd property is another area of extreme
21 stress for me. I know, and will prove at trial, that this project was awarded under a conspiracy to defraud
22 me of my rights by the defendants in this case. My ex parte motion (ECF 44) request to cloud title with
23 permission to file a lis pendens on the 6220 property has yet to be decided and it is the delay in having
24 the court make these decisions that continues to cause me increased psychiatric harm. These may sound
25 like conspiracy nut rantings but when taken in full context, the reasons become clear and my sense of
26 there being a larger conspiracy, one that involves the courts, is no longer so farfetched.

1 10. In the August 08, 2019 Judgement signed by Judge Wohlfeil it can be seen that
2 judgement was entered against me in the amount of \$260,109.28 (See Exhibit 6 (Trial Court Docket) at
3 p. 1)

4 11. In the August 21, 2019 Memorandum of Costs (See Exhibit 6 (Trial Court Docket) at p.
5 2) the defendants don't request attorney fees.

6 12. On May 14, 2020, ROA 724 the Superior Court docket shows a no fee, no cost judgement
7 having been entered into against me which is impossible to reconcile by Officers of the Court with the
8 judgement Judge Wohlfeil signed on August 8, 2019. (See Exhibit 6 (Trial Court Docket) at p.3).

9 13. Another area that is impossible to reconcile amongst Officers of the Court is when
10 attorney Gina Austin lies at trial that she is unaware that her client, Geraci, had been sanctioned for
11 running an illegal cannabis dispensary. (See Exhibit 7 (Trial Transcript) Pg 2:1-7) .

12 14. Austin was served on August 15, 2018 was served with my Petition for Writ of
13 Mandate/Supersedeas (See Exhibit 8) proving she was made aware of the illegal dispensaries thus
14 making her trial testimony, regarding her being unaware that Geraci had been sanctioned, a lie, under
15 oath.

16 15. Austin has been unprofessional in her relationship with me and these proceedings. She
17 knows what's coming and has been increasingly combative in her being available for service.

18 16. In the August 20, 2018 Petition for Writ of Mandate/Supersedeas there is a declaration
19 made by the Agent for Service of Process, Ms. Zoe Villaroman (See Exhibit 8 Pg 7-8) in which service
20 was not accepted in Austin's law office by a receptionist who refused to give her name. Considering
21 that Austin and her current council are now blocking my email service of these filings I would ask the
22 court for direction on how I should go about providing service to Austin and her attorneys or perhaps
23 they can simply be ordered to accept my emails as proof of service.

24 17. Andrew Flores, the plaintiff attorney in FLORES et al v AUSTIN et al on the parallel
25 case 20-cv-0656 JLS LL to mine has provided me with a letter in which the County of San Diego reached
26 out to him, but not me, in an attempt to intimidate him as an attorney who must consider his career risk
27 when they did not send me that same letter knowing that I do not carry the same professional career risk
28 as Flores does. (See Exhibit 9)

1 18. In their September 10, 2018 Appellate Court decision (see Exhibit 10) Justices
2 McConnell, Benke and Irion denied my petition for Writ of Mandate.

3 19. As I have become increasingly frustrated with being able to find justice in the state and
4 federal courts, I have found that by engaging in quiet protests outside both courthouses I am able to
5 express to the world at large what has occurred here when Judges seem to protect Judges. By doing so
6 I have found that I at least feel like something is getting done in an attempt to achieve justice in this
7 matter. Even if that justice is simply in the court of public opinion. This is the first time in my life I
8 have resorted to this type of public protest but at this point in time I feel like it's one of the few avenues
9 still available to me and it has slowly drawn a growing number of interested parties and media to the
10 case.

11 20. These protests have led to me being asked to describe my fight against corruption. On
12 December 29, 2020 I was interviewed on a very popular podcast in where I described many of the issues
13 herein and provided links to my website which contains a description of my case and relevant
14 documents.

15 21. While I'm in the process of mounting this seemingly one-man campaign against the
16 judicial powers that be, I am increasingly buoyed by more articles being published in the media that go
17 to the widespread corruption being found in cannabis licensing, regulation and law (See Politico Article
18 of 12/27/20 in Exhibit 11). I believe it will be this type of exposure that will ultimately lead to a
19 restoration of our civil rights by those who have an unerring sense of the law.

20 I declare under penalty of perjury according to the laws of the United States that the foregoing
21 is true and correct, and that this declaration was executed on December 29, 2020 at San Diego,
22 California.

23
24 
25 DARRYL COTTON
26
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EXHIBIT 1

YOUR PERSONAL PRESCRIPTION INFORMATION

Your Walgreens Pharmacy Location
 7195 Broadway
 Lemon Grove, CA 91945
 (619)433-0172

IF YOU HAVE QUESTIONS ABOUT YOUR PRESCRIPTION, PLEASE CONTACT YOUR WALGREENS PHARMACIST OR CALL 1-800-WALGREENS.

PATIENT DARRYL COTTON

BIRTH DATE 05/29/60

MEDICATION SERTRALINE 50MG TABLETS

QUANTITY 30

DIRECTIONS TAKE 1/2 TABLET BY MOUTH DAILY
 FOR 7 DAYS THEN TAKE 1 TABLET BY MOUTH DAILY

DOCTOR A. BUI, MD

DRUG DESCRIPTION

**PATIENT
 ALLERGIES**



BLUE
 FRONT: S2

INGREDIENT NAME: Sertraline Tablets (SER tra leen)

WARNING: Drugs like this one have raised the chance of suicidal thoughts or actions in children and young adults. The risk may be greater in people who have had these thoughts or actions in the past. All people who take this drug need to be watched closely. Call the doctor right away if signs like low mood (depression), nervousness, restlessness, grouching, panic attacks, or changes in mood or actions are new or worse. Call the doctor right away if any thoughts or actions of suicide occur.

COMMON USES: It is used to treat low mood (depression). It is used to treat obsessive-compulsive problems. It is used to treat panic attacks. It is used to treat post-traumatic stress. It is used to treat mood problems caused by monthly periods. It is used to treat social anxiety problems. It may be given to you for other reasons. Talk with the doctor.

BEFORE USING THIS MEDICINE: WHAT DO I NEED TO TELL MY DOCTOR BEFORE I TAKE THIS DRUG? TELL YOUR DOCTOR: If you have an allergy to sertraline or any other part of this drug. **TELL YOUR DOCTOR:** If you are allergic to this drug; any part of this drug; or any other drugs, foods, or substances. Tell your doctor about the allergy and what signs you had. **TELL YOUR DOCTOR:** If you have liver disease. **TELL YOUR DOCTOR:** If you are taking any of these drugs: Linezolid or methylene blue. **TELL YOUR DOCTOR:** If you are taking pimozide. **TELL YOUR DOCTOR:** If you have taken certain drugs for depression or Parkinson's disease in the last 14 days. This includes isocarboxazid, phenelzine, tranylcypromine, selegiline, or rasagiline. Very high blood pressure may happen. **TELL YOUR DOCTOR:** If you are taking any drugs that can cause a certain type of heartbeat that is not normal (prolonged QT interval). There are many drugs that can do this. Ask your doctor or pharmacist if you are not sure. This is not a list of all drugs or health problems that interact with this drug. Tell your doctor and pharmacist about all of your drugs (prescription or OTC, natural products, vitamins) and health problems. You must check to make sure that it is safe for you to take this drug with all of your drugs and health problems. Do not start, stop, or change the dose of any drug without checking with your doctor.

HOW TO USE THIS MEDICINE: HOW IS THIS DRUG BEST TAKEN? Use this drug as ordered by your doctor. Read all information given to you. Follow all instructions closely. Take with or without food. Keep taking this drug as you have been told by your doctor or other health care provider, even if you feel well. **HOW DO I STORE AND/OR THROW OUT THIS DRUG?** Store at room temperature. Keep lid tightly closed. Store in a dry place. Do not store in a bathroom. Keep all drugs in a safe place. Keep all drugs out of the reach of children and pets. Throw away unused or expired drugs. Do not flush down a toilet or pour down a drain unless you are told to do so. Check with your pharmacist if you have questions about the best way to throw out drugs. There may be drug take-back programs in your area. **WHAT DO I DO IF I MISS A DOSE?** Take a missed dose as soon as you think about it. If it is close to the time for your next dose, skip the missed dose and go back to your normal time. Do not take 2 doses at the same time or extra doses.

CAUTIONS: Tell all of your health care providers that you take this drug. This includes your doctors, nurses, pharmacists, and dentists. Avoid driving and doing other tasks or actions that call for you to be alert until you see how this drug affects you. Do not stop taking this drug all of a sudden without calling your doctor. You may have a greater risk of side effects. If you need to stop this drug, you will want to slowly stop it as ordered by your doctor. Avoid drinking alcohol while taking this drug. Talk with your doctor before you use marijuana, other forms of cannabis, or prescription or OTC drugs that may slow your actions. In depression, sleep and appetite may get better soon after starting this drug. Other low mood signs may take up to 4 weeks to get better. This drug may raise the chance of a broken bone. Talk with the doctor. This drug may raise the chance of bleeding. Sometimes, bleeding can be life-threatening. Talk with the doctor. This drug can cause low sodium levels. Very low sodium levels can be life-threatening, leading to seizures, passing out, trouble breathing, or death. Some people may have a higher chance of eye problems with this drug. Your doctor may want you to have an eye exam to see if you have a higher chance of these eye problems. Call your doctor right away if you have eye pain, change in eyesight, or swelling or redness in or around the eye. A severe and sometimes deadly problem called serotonin syndrome may happen. The risk may be greater if you also take certain other drugs. Call your doctor right away if you have agitation; change in balance; confusion; hallucinations; fever; fast or abnormal heartbeat; flushing; muscle twitching or stiffness; seizures; shivering or shaking; sweating a lot; severe diarrhea; upset stomach; or throwing

up; or very bad headache. This drug may affect certain lab tests. Tell all of your health care providers and lab workers that you take this drug. If you are 65 or older, use this drug with care. You could have more side effects. This drug is not approved for use in all children. Talk with the doctor to be sure that this drug is right for your child. Use with care in children. Talk with the doctor. This drug may affect growth in children and teens in some cases. They may need regular growth checks. Talk with the doctor. Taking this drug late in pregnancy may raise the chance of breathing or feeding problems, low body temperature, or withdrawal symptoms in the newborn. Talk with the doctor. Tell your doctor if you are pregnant, plan on getting pregnant, or are breast-feeding. You will need to talk about the benefits and risks to you and the baby.

POSSIBLE SIDE EFFECTS: WHAT ARE SOME SIDE EFFECTS THAT I NEED TO CALL MY DOCTOR ABOUT RIGHT AWAY?

WARNING/CAUTION: Even though it may be rare, some people may have very bad and sometimes deadly side effects when taking a drug. Tell your doctor or get medical help right away if you have any of the following signs or symptoms that may be related to a very bad side effect: Signs of an allergic reaction, like rash; hives; itching; red, swollen, blistered, or peeling skin with or without fever; wheezing; tightness in the chest or throat; trouble breathing, swallowing, or talking; unusual hoarseness; or swelling of the mouth, face, lips, tongue, or throat. Signs of low sodium levels like headache, trouble focusing, memory problems, feeling confused, weakness, seizures, or change in balance. Signs of bleeding like throwing up or coughing up blood; vomit that looks like coffee grounds; blood in the urine; black, red, or tarry stools; bleeding from the gums; abnormal vaginal bleeding; bruises without a cause or that get bigger; or bleeding you cannot stop. Signs of a very bad skin reaction (Stevens-Johnson syndrome/toxic epidermal necrolysis) like red, swollen, blistered, or peeling skin (with or without fever); red or irritated eyes; or sores in the mouth, throat, nose, or eyes. Seizures. Not able to control bladder. A big weight gain or loss. Sex problems like lowered interest in sex or ejaculation problems. Liver problems have rarely happened with this drug. Sometimes, this has been deadly. Call your doctor right away if you have signs of liver problems like dark urine, feeling tired, not hungry, upset stomach or stomach pain, light-colored stools, throwing up, or yellow skin or eyes. A type of abnormal heartbeat (prolonged QT interval) has happened with this drug. Sometimes, this has led to another type of unsafe abnormal heartbeat (torsades de pointes). Call your doctor right away if you have a fast or abnormal heartbeat, or if you pass out. **WHAT ARE SOME OTHER SIDE EFFECTS OF THIS DRUG?** All drugs may cause side effects. However, many people have no side effects or only have minor side effects. Call your doctor or get medical help if any of these side effects or any other side effects bother you or do not go away: Feeling dizzy, sleepy, tired, or weak. Constipation, diarrhea, stomach pain, upset stomach, throwing up, or feeling less hungry. Dry mouth. Trouble sleeping. Sweating a lot. Shakiness. These are not all of the side effects that may occur. If you have questions about side effects, call your doctor. Call your doctor for medical advice about side effects. You may report side effects to the FDA at 1-800-332-1088. You may also report side effects at <https://www.fda.gov/medwatch>.

OVERDOSE: If you think there has been an overdose, call your poison control center or get medical care right away. Be ready to tell or show what was taken, how much, and when it happened.

ADDITIONAL INFORMATION: If your symptoms or health problems do not get better or if they become worse, call your doctor. Do not share your drugs with others and do not take anyone else's drugs. This drug comes with an extra patient fact sheet called a Medication Guide. Read it with care. Read it again each time this drug is refilled. If you have any questions about this drug, please talk with the doctor, pharmacist, or other health care provider.

KEEP OUT OF REACH OF CHILDREN: STORE IN SAFETY CONTAINER OR SECURE AREA.

Call your doctor for medical advice about side effects.
 You may report side effects to FDA at 1-800-FDA-1088.

Do not flush unused medications or pour down a sink or drain.

WIC# 986638

EXHIBIT 2

Jan 22 18, 09:20a

CIMC

p.1

1 I, Dr. Carolyn Candido, declare:

- 2 1. I am a licensed physician in the State of California.
- 3 2. On December 13, 2017, I was contacted by Mr. Joe Hurtado who requested I examine a
- 4 friend of his, Mr. Darryl Cotton, who was speaking incoherently. Mr. Hurtado stated he was
- 5 concerned that Mr. Cotton may require medical attention but that Mr. Cotton did not want to
- 6 go to the Emergency Room.
- 7 3. I traveled to Mr. Hurtado's residence and met with Mr. Hurtado and Mr. Cotton.
- 8 4. Mr. Cotton was in a room by himself and initially did not allow me to examine him. After
- 9 approximately thirty minutes, Mr. Hurtado spoke with Mr. Cotton who then allowed me to
- 10 perform a physical examination.
- 11 5. Mr. Cotton had an elevated pulse, was speaking incoherently and exhibited signs of anxiety,
- 12 panic and was expressing suicidal thoughts. His language vacillated from being clear to
- 13 incoherent. I am unclear as to what he was attempting to express, but from what I could
- 14 make out, he was in an emotional state due to matters related to some legal matter regarding
- 15 his property.
- 16 6. It is my diagnosis that he was suffering from Acute Stress Disorder and that at that moment
- 17 in time represented a danger to himself and others. Because of his express statements
- 18 regarding suicide and other expressions of violence as to unidentified third-parties, I
- 19 repeatedly requested that Mr. Cotton go to the Emergency Room, which he refused.
- 20 7. I communicated with Mr. Hurtado my diagnosis and expressed my concern for Mr. Cotton
- 21 regarding his statements, to the extent that they were clear, as they reflected an intent to
- 22 harm himself and others. It was my recommendation that Mr. Cotton not be by himself.
- 23 8. After speaking with Mr. Hurtado regarding Mr. Cotton, Mr. Hurtado promised to allow Mr.
- 24 Cotton to remain at that residence until such time as Mr. Cotton was calm.
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- 28

1
DECLARATION OF DR. CAROLYN CANDIDO IN SUPPORT OF DARRYL COTTON'S PETITION FOR
EMERGENCY WRIT OF SUPERSEDEAS AND WRIT OF MANDATE

Jan 22 18, 09:20a

CIMC

p.2

1 9. Since that evening I have not met or spoken with Mr. Cotton.

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

4
5 January 22, 2018



6
7 Dr. Carolyn Candido
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EXHIBIT 3

Case No.:

**IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

DARRYL COTTON
Defendant and Appellant,

v.

The Superior Court of California, County of San Diego, Respondent.
LARRY GERACI, an individual, REBECCA BERRY, an individual,
CITY OF SAN DIEGO, a public entity,
Real Parties in Interest.

Appeal from Orders of the Superior Court, County of San Diego

37-2017-00010073-CU-BC-CTL
37-2017-00037675-CU-WM-CTL

Honorable Joel R. Wohlfeil, Judge Presiding

**INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON;
DECLARATION OF DR. MARKUS FLOESSER
IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION
FOR EXTRAORDINARY WRIT, WRIT OF MANDATE,
OR OTHER APPROPRIATE RELIEF**

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Appellant, Self-Represented

1 I, Markus Ploesser, MD, LLM, DABPN, FRCP(C), declare:

2 1. On March 4, 2018, I interviewed Mr. Darryl Cotton for an Independent
3 Psychiatric Assessment. At the beginning of the assessment, I informed Mr. Cotton
4 that the assessment was being prepared to assist the Court and not to act as an advocate
5 on his behalf. Mr. Cotton expressed his understanding, agreement and proceeded with
6 the interview and assessment.
7

8
9 **DUTY TO COURT**

10 2. I certify that I am aware of my duty as an expert to assist the Court and
11 not to be an advocate for any party. I have prepared this report in conformity with that
12 duty. I will provide testimony in conformity with that duty if I am called upon to
13 provide oral or written testimony.
14

15 3. I am solely responsible for the opinions provided in this report. I reserve
16 the right to amend or alter my opinions should additional relevant information become
17 available after the report completion.
18

19 **QUALIFICATIONS**

20
21 4. I am a psychiatrist licensed in the State of California, Physician and
22 Surgeon License No. A101564 and the Province of British Columbia, License No.
23 31564.
24

25 5. I am Board certified by the American Board of Psychiatry and Neurology
26 in the area of Psychiatry (Certificate No. 60630) and the subspecialty of Forensic
27

28 - 1 -

INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS
PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRIT,
WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

1 Psychiatry (Certificate No. 1903).

2 6. I am a Fellow of the Royal College of Physicians and Surgeons of Canada,
3 with certifications in Psychiatry and Forensic Psychiatry.
4

5 7. I am on the clinical faculty at the University of British Columbia (UBC)
6 in the division of Forensic Psychiatry.

7 8. My prior work experience has included forensic psychiatric evaluation
8 work for the Forensic Psychiatric Hospital and the Forensic Psychiatric Services
9 Commission in Coquitlam, British Columbia. I have written numerous forensic
10 psychiatric assessment reports and testified as an expert witness before the British
11 Columbia Review Board and the Provincial Courts of British Columbia.
12

13 9. I currently work as a psychiatrist for the Department of Corrections for
14 the State of California.
15

16 10. In addition to my medical qualifications, I am also a graduate of Columbia
17 University School of Law in the LLM program.
18

19 11. In preparation for my assessment of Mr. Cotton, I consulted with Dr.
20 Carolyn Candido regarding her medical diagnosis of Mr. Cotton on December 13,
21 2017. Additionally, I reviewed the declaration previously provided by Dr. Candido
22 regarding her diagnosis of Mr. Cotton prepared on January 22, 2018. (Attached hereto
23 as Exhibit 1.)
24

25 12. Prior to my interview with Mr. Cotton, I also discussed the factual
26
27

28 - 2 -

INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS
PLOSSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRIT,
WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

1 background regarding Mr. Cotton's need for a psychiatric assessment with his legal
2 consultant, Mr. Jacob Austin. Mr. Austin, I was told, is representing Mr. Cotton on a
3 limited basis due to Mr. Cotton's inability to pay for his full legal representation by
4 Mr. Austin.
5

6 **CLIENT INTERVIEW**

7 13. Mr. Cotton related the following: He is 57 years old. He was born and
8 raised in the Chicago area and has lived in San Diego since 1980. He owns a lighting
9 manufacturing company but reports that over the past approximately 9-12 months he
10 has experienced financial hardship, stress and anxiety originating from a lawsuit
11 against him.
12

13 14. Mr. Cotton denies any history of mental health symptoms predating the
14 current lawsuit. He is taking Keppra 500mg twice daily for a seizure disorder, which
15 he started suffering from around the age of 26. He usually suffers from approximately
16 3 Grand Mal seizures per year. He used to take Dilantin, another anticonvulsant
17 medication. He reports having obtained significant medical benefit from the use of
18 medical cannabis, particularly a high CBD strain which he says has helped to reduce
19 the frequency of his seizures.
20

21 15. Mr. Cotton represents he owns a property meeting certain requirements
22 by the City of San Diego and the State of California that would allow the creation and
23 operation of a Medical Marijuana Consumer Collective.
24

1 16. Mr. Cotton reports that he has and is being subjected to a variety of threats
2 and harassing behaviors that he believes have been directed against him by the plaintiff
3 in the lawsuit.
4

5 17. Mr. Cotton believes that an armed robbery on June 10th, 2017 on his
6 property may have been directed by the plaintiff. He was present at his property at the
7 time of the armed robbery, slamming the door and thereby escaping the robbers inside
8 a building on his property while he called 911. The armed individuals who committed
9 the robbery threatened Mr. Cotton at gun-point before fleeing from the premises. (Mr.
10 Cotton stated the armed-robbery is still unresolved by the police and it was the subject
11 of local news coverage that is still available online.)
12
13

14 18. Mr. Cotton states he followed the armed individuals in his vehicle as they
15 fled from the scene while he was on the phone with 911. He was told by 911 to cease
16 his pursuit due to safety reasons as Mr. Cotton was chasing the armed robbers at high-
17 speed. Mr. Cotton believes he recognized the driver of the getaway vehicle as an
18 employee of the plaintiff.
19
20

21 19. Mr. Cotton appeared particularly intense during his narration regarding
22 one of his employees who was duct-taped and laying face down at gun-point on the
23 ground. Mr. Cotton states that this long-time employee, an electrical-engineer who Mr.
24 Cotton relied upon heavily, quit the next day because of this incident.
25

26 20. Mr. Cotton describes starting to experience increased symptoms of stress
27
28

1 and anxiety since the robbery, above that which was caused by the litigation. He had
2 been in his usual state of health prior. He reports that he is now unable to sleep at night,
3 experiences "mood swings" and episodes of explosive rage without apparent triggers.
4 He experiences nightmares around themes of feeling powerless. The nightmares occur
5 in slight variations, and at times he "sees the robbers in his dreams."
6

7 21. Furthermore, his description of his nightmares include vivid scenes of
8 violence towards the attorneys for plaintiff that he believes are not acting in a
9 professional manner. Mr. Cotton believes that the attorneys representing plaintiff are
10 "in it together" with the plaintiff to use the lawsuit to "defraud" him of his property.
11 This point is one of the main foci of his expressed mental distress.
12

13 22. Mr. Cotton's distress due to his perception of a conspiracy against him by
14 attorneys is amplified by what he believes is the Court's disregard for the evidence and
15 arguments he has presented. He states he has never been provided the reasoning for the
16 denial of any relief he sought. Mr. Cotton expressed that at certain points during the
17 course of the litigation he believed the trial court judge was part of the perceived
18 conspiracy against him.
19

20 23. Mr. Cotton is also under the belief that his former law firm could have
21 resolved this matter at an early stage in the proceedings but chose not to in order to
22 continue billing legal fees.
23

24 24. Mr. Cotton reports no improvement in his mental health symptoms since
25

1 the robbery. He describes that since the robbery there have been additional threats made
2 against him by "agents" of the plaintiff. Specifically, he describes that two associates
3 of plaintiff went to his property on February 3, 2017 under the pretense of discussing
4 potential business opportunities, but when they arrived they were there to indirectly
5 threaten him by informing him that it would be "good" for him to "settle with Geraci."

7 25. Mr. Cotton now feels hopeless, helpless, unable to sleep, with decreased
8 appetite, but either no or only minimal changes in weight.

10 26. Mr. Cotton states that on December 12, 2017, immediately after a court
11 hearing, he was evaluated in the emergency department of a hospital for a TIA
12 (transitory ischemic attack, a frequent precursor of a stroke).

14 27. The day after his emergency department discharge, Mr. Cotton states he
15 assaulted a third-party and that is also the day he was diagnosed with Acute Stress
16 Disorder by Dr. Candido.

18 28. Mr. Cotton expressed having experienced suicidal ideation, most recently
19 on December 13th, 2017. He denied symptoms of psychosis, specifically
20 hallucinations.

22 OPINIONS AND RECOMMENDATIONS

23 29. It is my professional opinion that Mr. Cotton currently meets criteria of
24 Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and
25 Major Depression (F32.2). He does not present with any objective, observable signs
26

1 and symptoms of psychosis.

2 30. Given the absence of a prior mental health history of psychotic disorder
3 (and the physical symptoms that led to a diagnosis of a TIA and Acute Stress Disorder
4 by separate medical doctors), I have no reason to believe that Mr. Cotton's reports of
5 harassment by the plaintiff would be of delusional quality. It is my professional opinion
6 that Mr. Cotton sincerely believes that the plaintiff and his counsel are in a conspiracy
7 against him and that they represent a threat to his life.
8
9

10 31. It is my medical opinion that Mr. Cotton's symptoms are unlikely to
11 improve as long as current stressors (pending litigation, and what Mr. Cotton believes
12 to be threatening behaviors by plaintiff or his "agents") persist. His symptoms are also
13 likely to be significantly reduced if he believes the Court was not ignoring and
14 disregarding him.
15
16

17 32. It is my medical opinion that Mr. Cotton's mental health condition would
18 likely benefit from a rapid resolution of current legal proceedings. In my professional
19 opinion, the level of emotional and physical distress faced by Mr. Cotton at this time
20 is above and beyond the usual stress on any defendant being exposed to litigation. If
21 causative triggers and threats against Mr. Cotton persist, there is a substantial
22 likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental
23 health.
24
25

26 ///

27
28 - 7 -

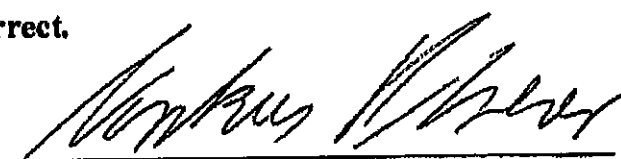
INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS
PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRIT,
WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

1 33. Besides a removal of current stressors, his mental health condition would
2 likely benefit from Cognitive Behavioral Therapy for PTSD and depression, as well as
3 a trial of antidepressant medication.
4

5 I declare under penalty of perjury under the laws of the State of California
6 that the foregoing is true and correct.
7

8 DATED:

9 3/4/2018


Markus Ploesser, MD, LLM, DABPN, FRCP(C)

10
11 M. PLOESSER, M.D.
12 PSYCHIATRIST
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28 - 8 -

INDEPENDENT PSYCHIATRIC ASSESSMENT OF DARRYL COTTON; DECLARATION OF DR. MARKUS
PLOESSER IN SUPPORT OF DARRYL COTTON'S EMERGENCY PETITION FOR EXTRAORDINARY WRIT,
WRIT OF MANDATE, OR OTHER APPROPRIATE RELIEF

EXHIBIT 4

F I L E D
Clerk of the Superior Court

MAR 05 2018

By: A. SEAMONS, Deputy

Darryl Cotton
6176 Federal Avenue
San Diego, CA 92114
619-266-4004 (phone)
619-229-9387 (fax)

PRO PER

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual, and
DOES 1-10, inclusive,

Defendants.

AND RELATED CROSS-ACTION

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity;
and DOES 1 through 25,

Respondents/Defendants.

REBECCA BERRY, an individual;
LARRY GERACI, an individual, and
DOES 1 through 25,

Real Parties In Interest.

Case Nos.:

37-2017-00010073-CU-BC-CTL

37-2017-00037675-CU-WM-CTL

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DARRYL COTTON'S *EX PARTE*
APPLICATION FOR A STAY, OR,
ALTERNATIVELY, JUDGMENT ON
THE PLEADINGS

Date: March 5, 2018

Time: 8:30 a.m.

Judge: Hon. Joel R. Wohlfeil

Dept.: C-73

I, Darryl Cotton ("Cotton"), Defendant/Cross-Complainant in the matter against Larry Geraci ("Geraci") and Rebecca Berry ("Berry") and Petitioner/Plaintiff in the matter against the City of San Diego ("City"), submit these points and authorities in support of my *ex parte*

-1-

DARRYL COTTON'S *EX PARTE* APPLICATION FOR A STAY OR, ALTERNATIVELY,
JUDGMENT ON THE PLEADINGS

1 enrichment. This Court denied Geraci's demurrer. (Cotton Decl. ¶ 7.)

2 Geraci's SOF/PER argument is the ONLY potentially valid argument that Geraci has
3 ever put forth before this Court to justify his allegation that he has a right to Cotton's Property.
4 This Court's denied Geraci's Demurrer.

5 Thus, Geraci has had neither a factual or legal basis to provide any probable cause for the
6 prosecution of this case against Cotton. Cotton has repeatedly tried to have this Court focus on
7 the lack of probable cause by Geraci. Cotton has literally begged this Court for its justification in
8 allowing this meritless case to continue to be maliciously prosecuted against him.

9
10 *I BEG the Court at the hearing to please articulate to me (i) which fact in the record*
11 *and (ii) on what legal authority it was persuaded that I am not going to prevail on the*
12 *merits of my cause of action for breach of contract.*

13 (Cotton Decl. ¶ 9.) (*emphasis in original*).

14 This Court has never deigned to explain its reasoning for allowing this case to continue to
15 be prosecuted against Cotton to his great and irreparable harm. The Confirmation Email is
16 UNDISPUTED by Geraci as to its authenticity. When Geraci challenged the Confirmation Email
17 in his Demurrer, he did so on SOF/PER grounds. In other words, Geraci has NEVER disputed
18 that the Confirmation Email sent on November 2, 2016 completely contradicts the ONLY basis
19 he alleges in his Complaint for Cotton's Property. (Cotton Decl. ¶ 10.)

20 This Court's refusal to constantly provide its reasoning for allowing what Cotton
21 perceives to be a malicious prosecution case is causing him severe emotional and mental
22 anguish. Attached to Cotton's Declaration as Exhibit 3 is an Independent Psychiatric Assessment
23 prepared by Dr. Markus Ploesser, MD, LLM, DABPN, FRCP(C) that, *inter alia*, states:

24
25 1. "It is my professional opinion that Mr. Cotton currently meets criteria of Post-
26 Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and Major
27 Depression (F32.2)"
28

2. "It is my medical opinion that Mr. Cotton's symptoms are unlikely to improve as long as current stressors [...] persist. *His symptoms are also likely to be significantly reduced if he believes the Court was not ignoring and disregarding him.*"

3. "It is my medical opinion that Mr. Cotton's mental health condition would likely benefit from a rapid resolution of current legal proceedings. In my professional opinion, the level of emotional and physical distress faced by Mr. Cotton at this time is above and beyond the usual stress on any defendant being exposed to litigation. *If causative triggers and threats against Mr. Cotton persist, there is a substantial likelihood that Mr. Cotton may suffer irreparable harm with regards to his mental health.*" (Cotton Decl. ¶ 11.)

ARGUMENT

Pursuant to Code Civ. Proc. § 438(d), Cotton hereby moves for judgment on the pleadings. Code Civ. Proc. § 438(d) states that the grounds for the motion:

shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit.

People ex rel. Harris v. Pac Anchor Transp., Inc., 59 Cal. 4th 772, 174 Cal. Rptr. 3d 626, 329 P.3d 180 (2014), cert. denied, 135 S. Ct. 1400, 191 L. Ed. 2d 360 (2015) (in ruling on a motion for judgment on the pleadings, "courts may consider judicially noticeable matters in the motion"). "The court determines as a question of law whether there was probable cause to bring the maliciously-prosecuted suit. Probable cause is present *unless any reasonable attorney would agree that the action is totally and completely without merit.*" Roberts v. Sentry Life Insurance (1999) 76 Cal.App.4th 375, 382 [90 Cal.Rptr.2d 408, 412] (internal citations omitted).)

This Court may take judicial notice of its own denial of Geraci's demurrer. Thus, Geraci's own admission in the Confirmation Email removes the only FACTUAL basis for

EXHIBIT 5

CH-109**Notice of Court Hearing**

Clerk stamps date here when form is filed.

1 Person Seeking Protection

a. Your Full Name:

Rebecca Berry

Your Lawyer (if you have one for this case):

Name: Michael R. WeinsteinState Bar No.: 106464Firm Name: FERRIS & BRITTON, APC

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: 501 West Broadway, Suite 1450City: San DiegoState: CA Zip: 92101Telephone: 619-233-3131Fax: 619-232-9316E-Mail Address: mweinstein@ferrisbritton.comFILED
Clerk of the Superior Court

SEP - 5 2018

By: J. Montano, Deputy

Fill in court name and street address:

Superior Court of California, County of
SAN DIEGO - HALL OF JUSTICE
330 West Broadway, Room 225
San Diego, California 92101

Court fills in case number when form is filed.

Case Number:

37-2018-00044556-CU-HR-CTL

-5 SEP 2018 15 15
37-2018-00044556-CU-HR-CTL**2 Person From Whom Protection Is Sought**Full Name: DARRYL COTTON

The court will complete the rest of this form.

3 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in ②:

Name and address of court if different from above:

Hearing
DateDate: 10-1-18Time: 9:30AMDept.: 61

Room: _____

4 Temporary Restraining Orders (Any orders granted are on Form CH-110, served with this notice.)

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in Form CH-100, Request for Civil Harassment Restraining Orders, are (check only one box below):

(1) ☒ All **GRANTED** until the court hearing.(2) ☐ All **DENIED** until the court hearing. (Specify reasons for denial in b, below.)(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. (Specify reasons for denial in b, below.)

WV-109**Notice of Court Hearing****1 Petitioner (Employer)**a. Name: FERRIS & BRITTON, APC

Lawyer for Petitioner (if any for this case):

Name: Michael R. Weinstein State Bar No.: 106464Firm Name: FERRIS & BRITTON, APC

b. Address (If you have a lawyer, give your lawyer's information.):

Address: 501 West Broadway, Suite 1450City: San Diego State: CA Zip: 92101Telephone: 619-233-3131 Fax: 619-232-9361E-Mail Address: mweinstein@ferrisbritton.com**2 Employee in Need of Protection**Full Name: Michael R. Weinstein**3 Respondent (Person From Whom Protection Is Sought)**Full Name: Darryl Cotton

Clerk stamps date here when form is filed.

FILED

Clerk of the Superior Court

SEP - 5 2018

By: J. Montano, Deputy

Fill in court name and street address:

Superior Court of California, County of

SAN DIEGO SUPERIOR

HALL OF JUSTICE

330 West Broadway, Room 225

San Diego, California 92101

Fill in case number:

Case Number:
37-2018-00044576-CU-PT-CTL*The court will complete the rest of this form.***4 Notice of Hearing**

A court hearing is scheduled on the request for restraining orders against the respondent:

Hearing Date	Date: <u>10/01/18</u>	Time: <u>8:30 AM</u>	Name and address of court if different from above:
	Dept.: <u>661</u>	Room: _____	

5 Temporary Restraining Orders (Any orders granted are on Form WV-110, served with this notice.)

a. Temporary Restraining Orders for personal conduct and stay away orders as requested in Form WV-100, Request for Workplace Violence Restraining Orders, are (check only one box below):

(1) ☒ All **GRANTED** until the court hearing.(2) ☐ All **DENIED** until the court hearing. (Specify reasons for denial in b, below.)(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. (Specify reasons for denial in b, below.)

CH-109**Notice of Court Hearing**

Clerk stamps date here when form is filed.

1 Person Seeking Protection

a. Your Full Name:

Larry Geraci

Your Lawyer (if you have one for this case):

Name: Michael R. Weinstein

State Bar No.: 106464

Firm Name: FERRIS & BRITTON, APC

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: 501 West Broadway, Suite 1450

City: San Diego

State: CA Zip: 92101

Telephone: 619-233-3131

Fax: 619-232-9316

E-Mail Address: mweinstein@ferrisbritton.com

FILED

Clerk of the Superior Court

SEP - 5 2018

By: J. Mentano, Deputy

Fill in court name and street address:

Superior Court of California, County of
SAN DIEGO - HALL OF JUSTICE
330 West Broadway, Room 225
San Diego, California 92101

Court fills in case number when form is filed.

Case Number:

37-2018-00044542-CU-HR-CTL

2 Person From Whom Protection Is Sought

Full Name: DARRYL COTTON

The court will complete the rest of this form.

3 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in ②:

Name and address of court if different from above:

Hearing
Date

Date:

10-01-18

Time:

9:30

Dept:

61

Room:

4 Temporary Restraining Orders (Any orders granted are on Form CH-110, served with this notice.)

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in Form CH-100, Request for Civil Harassment Restraining Orders, are (check only one box below):

(1) ☒ All **GRANTED** until the court hearing.(2) ☐ All **DENIED** until the court hearing. (Specify reasons for denial in b, below.)(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. (Specify reasons for denial in b, below.)330 West Broadway
San Diego, CA 92101
SEP 15 2018

CH-109**Notice of Court Hearing**

Clerk stamps date here when form is filed.

1 Person Seeking Protection

a. Your Full Name:

Scott H. Toothacre

Your Lawyer (if you have one for this case):

Name: Scott H. Toothacre

State Bar No.: 146530

Firm Name: FERRIS & BRITTON, APC

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: 501 West Broadway, Suite 1450

City: San Diego

State: CA Zip: 92101

Telephone: 619-233-3131

Fax: 619-232-9316

E-Mail Address: stoothacre@ferrisbritton.com

FILED
Clerk of the Superior Court

SEP - 5 2018

By: J. Montano, Deputy

Fill in court name and street address:

Superior Court of California, County of
SAN DIEGO - HALL OF JUSTICE
330 West Broadway, Room 225
San Diego, California 92101

Court fills in case number when form is filed.

Case Number:

37-2018-00044535-CU-HR-CTL

2 Person From Whom Protection Is Sought

Full Name: DARRYL COTTON

The court will complete the rest of this form.

3 Notice of Hearing

A court hearing is scheduled on the request for restraining orders against the person in ②:

Name and address of court if different from above:

Hearing
Date

Date:

10/01/18

Time:

0:30 AM

Dept.:

61

Room:

5 SEP 2018 12
3080 CIVIL DIVISION

4 Temporary Restraining Orders (Any orders granted are on Form CH-110, served with this notice.)

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in Form CH-100, Request for Civil Harassment Restraining Orders, are (check only one box below):

(1) ☒ All **GRANTED** until the court hearing.(2) ☐ All **DENIED** until the court hearing. (Specify reasons for denial in b, below.)(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. (Specify reasons for denial in b, below.)

CH-109**Notice of Court Hearing**

Clerk stamps date here when form is filed.

1 Person Seeking Protection

a. Your Full Name:

Michael M. Weinstein

Your Lawyer (if you have one for this case):

Name: Michael M. Weinstein State Bar No.: 106464Firm Name: FERRIS & BRITTON, APC

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: 501 West Broadway, Suite 1450City: San Diego State: CA Zip: 92101Telephone: 619-233-3131 Fax: 619-232-9316E-Mail Address: mweinstein@ferrisbritton.com**FILED**

Clerk of the Superior Court

SEP - 5 2018

By: J. Montano, Deputy

Fill in court name and street address:

Superior Court of California, County of
SAN DIEGO - HALL OF JUSTICE
330 West Broadway, Room 225
San Diego, California 92101

Court fills in case number when form is filed.

Case Number:

37-2018-00044540-CU-HR-CTL**2 Person From Whom Protection Is Sought**Full Name: DARRYL COTTON*The court will complete the rest of this form.***3 Notice of Hearing**A court hearing is scheduled on the request for restraining orders against the person in **(2)**:

Name and address of court if different from above:

**Hearing
Date**Date: 10/01/18Time: 9:30 AMDept.: 61

Room: _____

4 Temporary Restraining Orders (Any orders granted are on Form CH-110, served with this notice.)

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in Form CH-100, Request for Civil Harassment Restraining Orders, are (check only one box below):

(1) ☒ All **GRANTED** until the court hearing.(2) ☐ All **DENIED** until the court hearing. (Specify reasons for denial in b, below.)(3) ☐ Partly **GRANTED** and partly **DENIED** until the court hearing. (Specify reasons for denial in b, below.)

-5 SEP 2018 15 22

EXHIBIT 6

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 \$ _____;

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



Hon. Joel R. Wohlfeil
JUDGE OF THE SUPERIOR COURT

Judge Joel R. Wohlfeil

MC-010

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: Michael R. Weinstein FIRM NAME: FERRIS & BRITTON, APC STREET ADDRESS: 501 West Broadway, Suite 1450 CITY: San Diego TELEPHONE NO.: 619-233-3131 E-MAIL ADDRESS: mweinstein@ferrisbritton.com ATTORNEY FOR (name): LARRY GERACI and REBECCA BERRY		STATE BAR NUMBER: 106464 STATE: CA ZIP CODE: 92101 FAX NO.: 619-232-9316		ELECTRONICALLY FILED Superior Court of California, County of San Diego 08/21/2019 at 01:44:00 PM Clerk of the Superior Court By E-Filing, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: HALL OF JUSTICE				
PLAINTIFF: LARRY GERACI DEFENDANT: DARRYL COTTON				
MEMORANDUM OF COSTS (SUMMARY)		CASE NUMBER: 37-2017-00010073-CU-BC-CTL		

The following costs are requested:

	TOTALS
1. Filing and motion fees	\$ 2,340.00
2. Jury fees	\$ 844.30
3. Jury food and lodging	\$
4. Deposition costs	\$ 9,535.44
5. Service of process	\$ 325.03
6. Attachment expenses	\$
7. Surety bond premiums	\$
8. Witness fees	\$ 550.00
9. Court-ordered transcripts	\$
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)	\$
11. Court reporter fees as established by statute	\$ 13,132.04
12. Models, enlargements, and photocopies of exhibits	\$ 3,864.45
13. Interpreter fees	\$
14. Fees for electronic filing or service	\$ 395.90
15. Fees for hosting electronic documents	\$
16. Other	\$ 2,625.00
TOTAL COSTS	\$ 33,612.16

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: August 21, 2019

MICHAEL R. WEINSTEIN

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE OF DECLARANT)

Page 4 of 2

Screen shot taken on 12/02/20. ROA No 724 does not reflect the \$260K judgement (ROA-652) Geraci won at trial.

There are other anomalies with the financial side of this case. Neither Geraci nor his attorneys have ever sought the \$260K payment from me. They have not clouded title on my property, they never sought attorney's fees and ROA 724 cannot be added to the shopping cart so it can be seen.

PARTIES			
AUSTIN, JACOB	P O Box 231189 San Diego CA 92193	(619) 357-5950	
COTTON, DARRYL	6176 Federal Boulevard San Diego CA 92114	(619) 634-1561	
GERACI, LARRY	Not Available		
LEES, MEGAN E	Not Available		
TOOTHACRE, SCOTT H	Not Available		
WEINSTEIN, MICHAEL R	FERRIS & BRITTON APC 501 W Broadway 1450 San Diego CA 92101	(619) 233-3131, (619) 232-9316	
Register of Actions			
All Entries			
Filing Entries			
Minutes Entries			
Scheduling Entries			
Enter text to search			
1			
ROA#	Entry Date	Short/Long Entry	Filed By
727	07/29/2020	E-mail re: M Giraffi, Meet & Confer re: Ex Parte motion for Appointment of Counsel submitted by Cotton, Darryl, Geraci, Larry rejected on 07/29/2020	Cotton, Darryl (Defendant); Geraci, Larry (Plaintiff)
727	07/29/2020	[A document for ROA# 727]	Notice to Filing Party SD
726	05/27/2020	Disbursement of Clerk's Trust Fund (0077081) filed by The Superior Court of San Diego.	Disbursement of Clerk's Trust Fund
725	05/26/2020	Miscellaneous Minute Order Finalized.	Minute Order
724	05/14/2020	Judgment was entered as follows: Judgment entered for Geraci, Larry and against Cotton, Darryl for \$260,000, punitive damages \$0.00, attorney fees \$0.00, interest \$0.00, prejudgment costs \$0.00, other costs \$0.00, amount payable to court \$0.00 for a grand total of \$0.00	
723	05/14/2020	Notice of Appeal dismissed without prejudice as to Cotton, Darryl.	
722	05/14/2020	Notice of Appeal dismissed without prejudice as to Geraci, Larry.	
721	05/14/2020	Remittitur filed by The Superior Court of San Diego.	Remittitur

EXHIBIT 7

Geraci vs. Cotton, et al.

Reporter's Transcript of Proceedings
July 08, 2019



www.aptusCR.com / 866.999.8310

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Q Are you aware that Mr. Geraci has been
2 sanctioned for illegal cannabis activity on three
3 occasions for owning property in which illegal marijuana
4 principals were housed?

5 A No.

6 Q You're not aware of that?

7 A No.

8 Q Did you do any type of -- actually, have you
9 worked with Mr. Geraci on any project other than the
10 6176 CUP?

11 A I'm not sure I can answer that for client
12 privilege. I know he waived with regard to this. If
13 someone could instruct me whether or not it's been
14 waived to everything, that would be helpful.

15 MR. WEINSTEIN: Waived, your Honor.

16 THE COURT: I'm sorry?

17 MR. WEINSTEIN: We will waive the privilege.

18 THE WITNESS: Okay. Yes. I did work with him
19 on -- working on some other land use entitlement
20 projects.

21 BY MR. AUSTIN:

22 Q Were those marijuana related?

23 A They were not.

24 Q So in the forms that we saw up on the board,
25 you said that Rebecca Berry's name was all that was
26 required because the -- any CUP runs with the land.
27 Correct?

28 A That's correct.

EXHIBIT 8

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT – DIVISION ONE

DARRYL COTTON,
Defendant/Petitioner/Appellant,

v.

THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO,

Respondent.

LARRY GERACI, an individual; REBECCA BERRY, an individual; MICHAEL R. WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; FERRIS & BRITTON APC, a California corporation; GINA M. AUSTIN an individual; AUSTIN LEGAL GROUP APC, a California corporation; JIM BARTELL, an individual; BARTELL & ASSOCIATES, INC., a California corporation; ABHAY SCHWEITZER, an individual and dba TECHNE; AARON MAGAGNA, an individual; THE CITY OF SAN DIEGO, a public entity; M. TRAVIS PHELPS, MICHELLE SOKOLOWSKI, FIROUZEH TIRANDAZI, CHERLYN CAC, as individuals and as employees of THE CITY OF SAN DIEGO,

Real Parties in Interest.

Court of Appeal Case No. _____
(San Diego Superior Court Case No.
37-2017-00010073-CU-BC-CTL)

and

Court of Appeal Case No. D073766
(San Diego Superior Court Case No.
37-2017-00037675-CU-WM-CTL)

**PETITION FOR WRIT OF MANDATE, SUPERSEDEAS
AND/OR OTHER APPROPRIATE RELIEF**

IMMEDIATE STAY REQUESTED ON AUGUST 20, 2018

JACOB P. AUSTIN [SBN 290303]

Law Office of Jacob Austin

1455 Frazee Road, #500, San Diego, CA 92108

Telephone: (619) 357-6850; Facsimile: (888) 357-8501; JPA@JacobAustinEsq.com

Attorney for Defendant/Petitioner/Appellant DARRYL COTTON

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION ONE		COURT OF APPEAL CASE NUMBER: Case 1. TBA Case 2. D073766
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 290303 NAME: JACOB P. AUSTIN FIRM NAME: The Law Office of Jacob Austin STREET ADDRESS: 1455 Frazee Road, #500 CITY: San Diego STATE: CA ZIP CODE: 92108 TELEPHONE NO.: (619) 357-6850 FAX NO.: (888) 357-8501 E-MAIL ADDRESS: JPA@JacobAustinEsq.com ATTORNEY FOR (name): Defendant/Petitioner/Appellant DARRYL COTTON		SUPERIOR COURT CASE NUMBER: 37-2017-00010073-CU-BC-CTL
APPELLANT/ DARRYL COTTON PETITIONER: RESPONDENT/ THE SUPERIOR COURT OF CALIFORNIA, COUNTY REAL PARTY IN INTEREST: OF SAN DIEGO, et al.		
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.		

1. This form is being submitted on behalf of the following party (name): Appellant/Petitioner DARRYL COTTON
2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. ☒ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of Interest (Explain):
(1) Larry Geraci, an individual	Alleged purchaser Appellant's property and financier of CUP application
(2) Rebecca Berry, an individual	Agent/employee of Larry Geraci and applicant for CUP on property
(3) Michael R. Weinstein	Attorney representing Real Parties in Interest Geraci and Berry
(4) Scoot Toothacre	Attorney representing Real Parties in Interest Geraci and Berry
(5) Ferris & Britton APC	Law firm at which Michael R. Weinstein & Scott Toothacre practice
<input checked="" type="checkbox"/> Continued on attachment 2.	

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 15, 2018

JACOB P. AUSTIN
(TYPE OR PRINT NAME)


(SIGNATURE OF APPELLANT OR ATTORNEY)

Page 1 of 1

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS - continued
ATTACHMENT 2

Name of Interested Entity or Person	Nature of Interest (Explain)
(6) Gina M. Austin, an individual.	Attorney who formerly represented Geraci, and currently represents Aaron Magagna
(7) Austin Legal Group APC, a California corporation	Law Firm of Attorney Gina Austin which formerly represented Geraci, and currently represents Aaron Magagna
(8) Jim Bartell, an individual	Lobbyist providing services to Larry Geraci re CUP application for Petitioner's real property
(9) Bartell & Associates, Inc.	Lobbying firm providing services to Larry Geraci re pending CUP application for Petitioner's real property
(10) Abhay Schweitzer, an individual	Architect providing design and other services for Larry Geraci re pending CUP application for Petitioner's real property
(11) Abhay Schweitzer dba TECHNE	Fictitious Business Name under which Abhay Schweitzer does business providing design and other services for Larry Geraci re CUP application for Petitioner's real property
(12) Aaron Magagna, an individual	Owner of a recently-submitted CUP application for real property located at 6220 Federal Boulevard, City and County of San Diego, California
(13) M. Travis Phelps, an individual and employee of the City of San Diego	Deputy Attorney for the City of San Diego who represented the City of San Diego in a related case in the San Diego County Superior Court entitled <i>Cotton v. City of San Diego, et al.</i> , Case No. 37-2017-00037675-CU-WM-CTL
(14) The City of San Diego	The public entity which is processing the CUP applications for Petitioner's real property and the competing CUP application submitted by Aaron Magagna

(15) Michelle Sokolowski, an individual and employee of the City of San Diego

Deputy Director, City of San Diego Development Services Department, Project Submittal and Management Division who was involved in processing the CUP application for Petitioner's real property

(16) Firouzeh Tirandazi, an individual and employee of the City of San Diego

Former Development Project Manager, City of San Diego Development Services Department who was involved in processing the CUP application for Petitioner's real property

(17) Cherlyn Cac, an individual and employee of the City of San Diego

Development Project Manager, City of San Diego Development Services Department who was involved in processing the CUP application for Petitioner's real property

"professional relationships" and hired lobbyists, he was in a unique position to have the Zoning Issue resolved; (vi) he was highly qualified to operate the Business because he owned and operated multiple cannabis dispensaries in the City;¹³ (vii) stated that he could not put the CUP in his name because of the fact that he was an Enrolled Agent with the IRS¹⁴; and (viii) therefore, Geraci suggested his office manager, Rebecca Berry ("Berry"), an individual who could be trusted to be the applicant on the CUP application because, *inter alia*, she helped manage his other marijuana dispensaries.¹⁵

¹³ V2 E9 p.381, at ln.21-22.

¹⁴ V2 E9 p. 582

¹⁵ Petitioner notes Geraci has been specifically sanctioned in at least three other matters involving illegal marijuana dispensaries in San Diego, California: *City of San Diego v. The Tree Club Cooperative* Case No. 37-2014-00020897-CU-MC-CTL, *City of San Diego v. CCSquared Wellness Cooperative* Case No. 37-2015-00004430-CU-MC-CTL and, *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-000000972 (see RJNs 1-6). Furthermore, pursuant to Bus. & Prof. Code, § 26057(b)(7) that provides that "[t]he licensing authority may deny the application for licensure or renewal of a state license if... [t]he applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date the application is filed with the licensing authority," Petitioner believes that the true reason Geraci suggested Berry as his agent was to circumvent applicable disclosure laws.

PROOF OF SERVICE (Court of Appeal)

CASE #: D074587

☐ Mail ☒ Personal Service

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Larry Geraci v. Darryl Cotton, et al.

Court of Appeal Case Number: TBD

Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My ☐ residence ☒ business address is (specify):
1455 Frazee Road, Suite 500, San Diego, CA 92108
3. I mailed or personally delivered a copy of the following document as indicated below (fill in the name of the document you mailed or delivered and complete either a or b):
Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief, Exhibits Volumes 1, 2 and 3, and Request for Judicial Notice in Support of Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief
 - a. ☐ Mail. I mailed a copy of the document identified above as follows:
 - (1) I enclosed a copy of the document identified above in an envelope or envelopes and
 - (a) ☐ deposited the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
 - (b) ☐ placed the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.
 - (2) Date mailed:
 - (3) The envelope was or envelopes were addressed as follows:
 - (a) Person served:
 - (i) Name:
 - (ii) Address:
 - (b) Person served:
 - (i) Name:
 - (ii) Address:
 - (c) Person served:
 - (i) Name:
 - (ii) Address:
 - ☐ Additional persons served are listed on the attached page (write "APP-009, Item 3a" at the top of the page).
 - (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Diego, California

APP-009

Case Name: Larry Geraci v. Darryl Cotton, et al.

Court of Appeal Case Number:

TBD

Superior Court Case Number:

37-2017-00010073-CU-BC-CTL

3. b. ☒ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name: Gina M. Austin, an individual

(b) Address where delivered:

Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving Jane Doe, Receptionist (See Attachment to APP-009)

(c) Date delivered: August 20, 2018

(d) Time delivered: 4:30 p.m.

(2) Person served:

(a) Name: Austin Legal Group, APC, a California corporation

(b) Address where delivered:

Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving Jane Doe, Receptionist (See Attachment to APP-009)

(c) Date delivered: August 20, 2018

(d) Time delivered: 4:30 p.m.

(3) Person served:

(a) Name: Gina M. Austin/Austin Legal Group, APC Attorneys for Aaron Magagna, an individual

(b) Address where delivered:

Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving Jane Doe, Receptionist (See Attachment to APP-009)

(c) Date delivered: August 20, 2018

(d) Time delivered: 4:30 p.m.

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page (write "APP-009, Item 3b" at the top of the page).

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

Date: August 20, 2018

Zoë Gayle Villaroman

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)


(SIGNATURE OF PERSON COMPLETING THIS FORM)

ATTACHMENT TO APP-009, ITEMS 3b(1), (2) and (3)

Detail of Service on Jane Doe

On August 20, 2018 at approximately 4:20 p.m., I entered the offices of the Austin Legal Group, APC to serve copies of the items listed at page 1, #3 on the parties listed at page 2, #s 3b(1), 3b(2) and 3b(3).

When I entered the office, I greeted the receptionist, placed a box containing the documents being served on the receptionist counter, told her I was there to serve the documents on Austin Legal Group, APC, Attorney Gina M. Austin and Gina M. Austin/Austin Legal Group, APC as counsel for Real Party in Interest Aaron Magagna, and asked her for her name so I could complete the Proof of Service.

The receptionist would not give me her name and asked me the name of the case and what type of documents I was serving. I responded that I was serving a writ, and supporting exhibits and Request for Judicial Notice which were going to be filed with the Fourth District Court of Appeal related to the *Geraci v. Cotton* case in the Superior Court, and showed her a copy of the Proof of Service. The receptionist looked at the Proof of Service then abruptly grabbed from my hand, looked it over and repeated that she would not accept service of the documents. I again asked for her name, but she shook her head side-to-side indicating that she would not do so.

I explained that she was the individual in charge at the front desk of the law firm and I was serving her as such. She then picked up the phone and spoke with a woman, whom I presume was Attorney Gina Austin, and advised her someone was there to serve some documents and I overheard the woman on the phone tell her, "No."

The receptionist then hung up the phone, and advised me that she would not accept the documents. I told her that she could not decline to accept service and that I was leaving the documents anyway, and again asked for her name. When she declined to give me her name the third time, I said I would be completing and filing a proof of service using her physical description as the individual in charge whom I had served. She began to say something further, but I said she should discuss the matter with the attorney who would understand that service of the documents had been properly effected.

As I was leaving the underground parking garage at the building, another woman whom I had seen enter the Austin Legal Group, APC offices as I departed was standing on the concrete median separating the paths of incoming and outgoing traffic at the building's underground parking lot. As the vehicle in which I was riding passed by, she took down the license plate number.

The description of the Jane Doe receptionist whom I served is as follows: 5'1" tall, 115 pounds, approximately 35 years old, brown eyes, Hispanic or Asian ethnicity, shoulder length dark brown or black hair bleached to a reddish-blond color.

EXHIBIT 9



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

SAN DIEGO COUNTY COURTHOUSE
PO BOX 122724
SAN DIEGO, CA 92112-2724

November 20, 2020

Andrew Flores, Esq.
Law Office of Andrew Flores
945 4th Avenue, Suite 412
San Diego, CA 92101

RE: *Flores, et al. v. Austin, et al.*, Case No. 3:20-cv-00656-TWR-DEB

Dear Mr. Flores:

I represent the Honorable Joel R. Wohlfeil in the above-entitled action. I am writing you in a good faith attempt to resolve this matter informally and prior to Judge Wohlfeil making an appearance in this case and filing a Motion to Dismiss the First Amended Complaint ("FAC"). District Judge Todd W. Robinson's Standing Order of Civil Cases requires any party contemplating filing a noticed motion in his court to meet and confer in an attempt to resolve the issue which is subject of the motion. This letter shall serve as Judge Wohlfeil's good faith attempt to comply with Judge Robinson's chamber rules and meet and confer to informally resolve the issues concerning your FAC.

We request that you please voluntarily dismiss the action you filed against Judge Wohlfeil because it is barred as a matter of law. If you are not willing to voluntarily dismiss the action against Judge Wohlfeil, then we intend to seek a formal dismissal of the FAC on the following grounds:

1. Judge Wohlfeil is absolutely immune from liability under the doctrine of judicial immunity because the actions upon which the FAC are based were taken in the judge's official judicial capacity. Judges are granted absolute immunity from civil liability for their judicial actions. *Stump v. Sparkman*, 435 U.S. 349, 355-356 (1978). "Judicial immunity applies however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff." *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (internal quotation marks omitted). "Disagreement with the action taken by [a] judge," even one resulting in "tragic consequences," also "does not justify depriving that judge of his immunity." *Stump*, 435 U.S. at 363 (applying judicial immunity to judge who approved petition for sterilization even if approval was in error).

Judicial immunity is overcome only in two circumstances: where the judge "acts in the clear absence of all jurisdiction, [citation], or performs an act that is not 'judicial' in nature." *Ashelman*, 793 F.2d at 1075; *see also Mireles v. Waco*, 502 U.S. 9, 11 (1991). Neither of these two circumstances apply to this case. Instead, the FAC is entirely based on actions and

statements made by Judge Wohlfeil while he was the presiding judge in *Cotton I* and *Cotton II*. Because the claims for relief against Judge Wohlfeil are based on acts done in his official capacity as a judge in *Cotton I* and *Cotton II*, Judge Wohlfeil is protected under the doctrine of absolute judicial immunity.

Moreover, judge's errors should be corrected on appeal, not by subsequent civil litigation, because civil liability "would contribute not to principled and fearless decisionmaking but to intimidation." *Pierson v. Ray*, 386 U.S. 547, 554 (1967). This lawsuit is an improper vehicle to challenge Judge Wohlfeil's rulings made in *Cotton I* and *II*.

2. Judge Wohlfeil is immune from liability under the Eleventh Amendment. 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 Riggie v. California*, 577 F.2d 579, 581-82 (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); *Los Angeles County Ass'n of Envtl. 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. The immunity applies to suits for damages, injunctive relief, and declaratory relief. *Franceschi*, *supra*, 57 F.3d at 831.

All of the allegations against Judge Wohlfeil concern acts undertaken in his official capacity as a judicial officer of the Superior Court. Accordingly, the Eleventh Amendment also bars the claims for relief asserted in the FAC.

3. All three plaintiffs lack standing to sue Judge Wohlfeil. As plaintiffs you must establish that you have standing pursuant to Article III of the U.S. Constitution. Article III standing has three elements: (1) the plaintiff must have suffered an "injury in fact;" (2) "there must be a causal connection between the injury and the conduct complained of;" and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). You and the Sherlock plaintiffs have not satisfied these three elements.

4. The declaratory relief claim fails as a matter of law because it cannot be used to remedy past wrongs. (*Edejer v. DHI Mortg. Co.*, C 09-1302 PJH, 2009 WL 1684714, at *11 (N.D. Cal., 2009). The relief you and the Sherlock plaintiffs seek in the FAC is to redress alleged past wrongs. You are not seeking a declaration as to future rights. Thus, as a matter of law, plaintiffs are not entitled to declaratory relief and this cause of action has no merit.

5. Finally, the first cause of action, asserted by you against Judge Wohlfeil, fails to state a viable claim for relief. To establish a claim for injunctive relief under § 1983, a plaintiff must establish two elements: 1) a violation of a right secured by the Constitution or laws of the United States; and 2) that the violation was committed by a person acting under color of state

law. See 42 U.S.C. § 1983; *West v. Atkin*, 487 U.S. 42, 48 (1988). You have not stated a viable § 1983 claim because you have not alleged a plausible constitutional violation. *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997).

You fail to allege a procedural due process claim against Judge Wohlfeil. A procedural due process claim has two elements: deprivation of a constitutional protected liberty or property interest and denial of adequate procedural protection.” *Krainski v. Regents of Nev. Sys. of Higher Educ.*, 616 F.3d 963, 969-70 (9th Cir. 2010). First, you have not alleged a cognizable property interest. Second, even if you did, which you have not, the allegations in the FAC show that you were provided access to the courts to bring your claim. Additionally, the allegations establish that you were provided an opportunity to be heard on your motion, and your issue was adjudicated. Thus, the allegations in the FAC demonstrate that your due process rights were not violated. As a result, your § 1983 claim cannot survive and should be dismissed.

Based on the foregoing, I request that you voluntarily dismiss this action against Judge Wohlfeil.

Also, to date you have not served Judge Wohlfeil with a summons and complaint in this matter. This letter does not, and in no way, constitute a waiver of service of the summons and the FAC.

Please respond to this meet and confer letter before December 4, 2020, advising whether you agree to dismiss this action. If not, please address each of the deficiencies listed above and provide any legal authority and analysis you have supporting your assertion that the FAC is legally sufficient.

Sincerely,



Carmela E. Duke
Litigation Attorney
Office of General Counsel
Superior Court of California,
County of San Diego

EXHIBIT 10

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Court of Appeal
Fourth Appellate District
FILED ELECTRONICALLY
09/10/2018
Kevin J. Lane, Clerk
By: Michael Hubbard

DARRYL COTTON,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

LARRY GERACI et al.,

Real Parties in Interest.

D074587

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

THE COURT:

The petition for writ of mandate, request for stay and request for judicial notice have been read and considered by Presiding Justice McConnell and Associate Justices Benke and Irion. The request for judicial notice is granted. The petition is denied.

McCONNELL, P. J.

Copies to: All parties

Exhibit 11

POLITICO



CANNABIS

How state marijuana legalization became a boon for corruption

By making local officials the gatekeepers for million-dollar businesses, states created a breeding ground for bribery and favoritism.



In states' rush to limit the numbers of licensed vendors and give local municipalities control of where to locate dispensaries, they created something else: A market for local corruption. | Ed Andrieski/AP Photo

By **MONA ZHANG**

12/27/2020 06:50 AM EST



Jasiel Correia's star was rising.

The son of Cape Verdean immigrants in the working-class Massachusetts port city of Fall River — famed as the home of Lizzie Borden — Correia was a home-grown prodigy. At 23, he was elected mayor, fielding congratulatory calls from Sen. Elizabeth Warren and Rep. Joe Kennedy.

Advertisement

That was in 2015. Four years later, just a week before his reelection race, federal agents ignominiously led him away from his home in handcuffs and charged him with attempting to extort cannabis companies of \$600,000 in exchange for granting them lucrative licenses to sell weed in his impoverished city.

“Mayor Correia has engaged in an outrageous brazen campaign of corruption, which turned his job into a personal ATM,” declared U.S. Attorney Andrew Lelling during a press conference announcing the charges.

The downfall of Fall River's young mayor wasn't just a tragedy for the thousands of people who invested their hopes in him: It was emblematic of a rash of cannabis-related corruption across the nation, from Massachusetts to California to Arkansas and beyond.

In the past decade, 15 states have legalized a regulated marijuana market for adults over 21, and another 17 have legalized medical marijuana. But in their rush to limit the numbers of licensed vendors and give local municipalities

control of where to locate dispensaries, they created something else: A market for local corruption.

Almost all the states that legalized pot either require the approval of local officials — as in Massachusetts — or impose a statewide limit on the number of licenses, chosen by a politically appointed oversight board, or both. These practices effectively put million-dollar decisions in the hands of relatively small-time political figures — the mayors and councilors of small towns and cities, along with the friends and supporters of politicians who appoint them to boards. And these strictures have given rise to the exact type of corruption that got Correia in trouble with federal prosecutors. They have also created a culture in which would-be cannabis entrepreneurs feel obliged to make large campaign contributions or hire politically connected lobbyists.

For some entrepreneurs, the payments can seem worth the ticket to cannabis riches.

For some politicians, the lure of a bribe or favor can be irresistible.

Correia's indictment alleges that he extorted hundreds of thousands of dollars from marijuana companies in exchange for granting them the local approval letters that are necessary prerequisites for obtaining Massachusetts licenses. Correia and his co-conspirators — staffers and friends — accepted a variety of bribes including cash, more than a dozen pounds of marijuana and a "Batman" Rolex watch worth up to \$12,000, the indictment charges.



CANNABIS

1 in 3 Americans now lives in a state where recreational marijuana is legal

BY NATALIE FERTIG AND MONA ZHANG

Cigar bars were his preferred meeting spot, where he rendezvoused with aspiring marijuana licensees to ascertain their willingness to pay bribes, prosecutors allege. When one marijuana vendor asked him why he demanded so much money for a letter in support of his business, Correia said he needed

the money for legal fees. A year earlier, he had been indicted on charges of wire fraud and filing false tax returns in connection with his tech startup.

AD

“All government contracting and licensing is subject to these kinds of forces,” said Douglas Berman, a law professor at Ohio State University who authors a blog on marijuana policy. But “there are unique facets to government contracting in [the cannabis] space that makes it uniquely vulnerable to corruption.”

In Fall River, with its population of roughly 90,000, the cost of obtaining a letter of local approval from Correia’s City Hall was anywhere from \$100,000 to \$250,000 in bribes, according to the indictment. One vendor even agreed to give 2 percent of his sales to a friend of Correia’s who was helping to facilitate the bribes, according to court documents. This friend allegedly acted as a middleman to help conceal the mayor’s involvement in the extortion scheme.

Genoveva Andrade, who served as Correia’s chief of staff, pleaded guilty to bribery and extortion charges in December. Correia is scheduled to go to trial in February, and five marijuana applicants are expected to testify for the prosecution.

“There’s a lot of deal-making between businesses and localities that creates the environment of everyone working their way towards getting a piece of the action,” Berman said. Whether it’s city or county officials that need to be

appealed, local control is “just another opportunity for another set of hands to be outstretched.”

It’s not just local officials. Allegations of corruption have reached the state level in numerous marijuana programs, especially ones in which a small group of commissioners is charged with dispensing limited numbers of licenses. Former Maryland state Del. Cheryl Glenn was sentenced to two years in prison in July for taking bribes in exchange for introducing and voting on legislation to benefit medical marijuana companies. Missouri Gov. Mike Parson’s administration is the target of law enforcement and legislative probes into the rollout of its medical marijuana program.

“The state is given full control in an industry where there is so much competition — where everyone realizes how valuable these licenses are,” said Lorenzo Nourafchan, CEO of Northstar Financial Consulting, which works with cannabis businesses.

Nourafchan cited some friends who submitted “incredible applications” for Missouri medical marijuana licenses only to see the licenses go to large, multistate operators: “It just seemed to me and many others that it was not fair ... people were not given objective and unbiased treatment.”

Paying for police and restoring artwork

When advocates seek to legalize marijuana, whether through a ballot initiative or through the state legislature, there is typically a corresponding demand that local communities be given a say in whether a dispensary will be set up shop in their towns.

Inevitably, some localities would want to ban marijuana businesses as unsuitable to their tastes; others, however, may welcome them in hopes of reaping a tax windfall. When Massachusetts passed a recreational legalization initiative in 2016, the state gave wide latitude to local authorities. Not only are cannabis companies required to have a letter of support from municipalities to get a state license, they must also have a “host community agreement,” which

allows for a "community impact fee" of not more than 3 percent of gross sales of the cannabis business.

AD

But the competition for licenses has been so intense that companies quickly found ways of going beyond the cap, offering more community givebacks in order to win their support. In this scramble for licenses, large, well-heeled firms were able to offer municipalities greater financial benefits compared to small, locally run businesses — the opposite of what the law intended.

For instance, the national pot powerhouse PharmaCann ("Improving people's lives through cannabis") offered the town of Wareham, on the Cape Cod Canal, money for police details; paid an art conservation company to restore a painting; and put up money for a local oyster festival, among other sweeteners.

These special benefits — particularly the police details — seemed to run afoul of the state's commitment to right past wrongs of marijuana enforcement, which was the thinking behind a requirement that cannabis businesses have a "Positive Impact Plan" in order to help areas that were disproportionately targeted by marijuana enforcement.

State regulators delayed the license renewal of PharmaCann last year in order to review its agreements with Wareham. A bill to increase oversight of these agreements stalled in committee last session, but state Sen. Julian Cyr, who represents Cape Cod, Nantucket and Martha's Vineyard, plans to reintroduce the legislation next year.

Local control is "the biggest mistake that we made," said Massachusetts Cannabis Control Commissioner Shaleen Title at a Boston University conference on marijuana law. Title is a longtime drug policy-reform advocate and serves in the Commission's social justice seat. As someone who helped draft Massachusetts's legalization law, Title said, she takes responsibility for those shortcomings.

"We should have spelled out a lot more how local control would work ... how the selection decisions would be made as to who can operate in a city or town," she said. A quick solution, she said, would be to tie municipal marijuana tax revenue to certain social equity goals like rewarding local businesses.

"Then, you get your share of tax revenue," Title said, referring to local governments. "I think that would completely solve that issue."

Massachusetts, however, isn't the only state that is plagued by issues of local control.

California led the way for the country's modern legalization movement when it legalized medical marijuana at the ballot box in 1996. The state's early medical marijuana program was largely unregulated — no testing requirements for contaminants, no seed-to-sale tracking software that are now common in regulated marijuana markets. The industry flourished, and many saw California's program as "de-facto legalization" amid the lax regulatory structure.

AD

Those days are long gone. Oklahoma's medical marijuana market is looking more like California's cannabis heyday when small operators didn't have to contend with the exorbitant costs of compliance. California, on the other hand, is contending with the same forces that gave rise to Correia's alleged crimes in Massachusetts: local control.

Since California voters approved adult-use legalization in 2016, giving municipal governments near-total control of the approval process, many longtime medical marijuana and underground operators struggled to enter the industry. Aside from compliance costs, there's the matter of actually securing a license. Despite California's pot-friendly reputation, most of the state's municipalities have chosen to ban commercial cannabis businesses, fueling even greater competition among companies to enter the municipalities willing to host them.

In return, the localities have chosen to enact their own regulations on how to obtain cannabis licenses, empowering local politicians and government officials. That's given rise to a myriad of corruption cases, from bribes to local sheriffs to a Ukrainian-born man indicted alongside two associates of presidential lawyer Rudolph Giuliani, Lev Parnas and Igor Fruman, over campaign finance violations for plotting to funnel money to politicians in hopes of getting licenses in Nevada and New York.

In May, federal prosecutors charged two city officials in Calexico, near California's border with Mexico, with corruption, after the pair solicited bribes from an undercover FBI agent in exchange for fast-tracking a marijuana permit application, according to court documents. "This isn't our first rodeo," one of the officials told the agent, referencing how the pair had done similar work for others. The bribery scheme was carried out under the guise of a consulting firm, which was used to launder money, according to court documents. Both officials struck plea deals.

Just a month later, FBI agents arrested Los Angeles City Council Member Jose Huizar for corruption. The city is home to the largest legal marijuana market in the world, posting more than \$3 billion in sales last year.

While the federal corruption case focuses on allegations that Huizar was a central figure in a pay-to-play scheme for real estate developers, court documents in a separate suit allege that Huizar operated in a similar fashion with marijuana companies. A former staffer filed a wrongful termination complaint, claiming he was fired after sharing details about Huizar extorting cannabis companies with federal officials.

According to court documents, Huizar conditioned local marijuana permits on "political donations, 'consulting fees' funneled to the Councilmember's friends, and cash payments made directly to Huizar."

Huizar pleaded not guilty to the bribery charges in December. He denied the allegations in the wrongful termination suit, and the case is poised to be dismissed after the parties reached a settlement.

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In November, FBI agents raided a Compton, California, councilman's home and the offices of a Baldwin Park city attorney as part of an investigation into their dealings with marijuana businesses, the Los Angeles Times reported. A former police officer said in a declaration that three cannabis businesses complained to him about "questionable business practices, which included paying as much as \$250,000 cash in a brown paper bag to city officials."

These cases didn't occur in a vacuum. The FBI has been warning states across the country about the public corruption threat posed by the marijuana industry.

"We've seen in some states the price go as high as \$500,000 for a license to sell marijuana. So, we see people willing to pay large amounts of money to get in to the industry," said special agent Regino Chavez during an FBI podcast last year.

Further north in Sacramento, Andrey Kukushkin, the chief financial officer of a company that operates a cannabis dispensary, was indicted on federal campaign finance violations alongside Parnas and Fruman, who had allegedly helped Giuliani look into U.S. officials in Ukraine as part of his probe into President-elect Joe Biden. Kukushkin pleaded not guilty to the federal charges.

The Ukrainian-born Kukushkin and his partner are the "de facto pot kings of Sacramento," the Sacramento Bee reported, controlling nearly one-third of the local market. Kukushkin was also set to partner with the San Francisco Veterans Affairs Medical Center on a cannabis research project, but the agreement was scrapped just weeks before he was indicted, POLITICO first reported.

Kukushkin, along with the other three individuals indicted in the case, planned to use funds from a Russian national for political donations in Nevada and New York in order to secure marijuana licenses, according to federal prosecutors.

Parnas and Fruman also attempted to get into the pot business in Florida, but industry insiders told POLITICO that their lack of familiarity about cannabis regulations in California and Nevada, where they claimed to hold licenses, raised red flags.

If the same players are repeatedly getting licenses, "it stifles creativity and ingenuity and new ideas in the space," Nourafchan said. "The person who has an incredible application, but doesn't have deep pockets to pay off local officials, is prevented from adding their own contribution."

Limited programs, license caps

It's not just liberal states, eager to help local communities scarred by the drug war, where corruption has emerged as an issue.

Medical marijuana programs in more conservative states such as Arkansas and Missouri have also been dogged with allegations of corruption, though none have stuck in court. In both states, applicants who lost out on licenses believe the supposed “merit-based” application process was rigged to benefit the politically well-connected.

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Naturalis Health, one of the losing applicants in Arkansas, succeeded in getting a temporary restraining order against the state Medical Marijuana Commission after a Circuit Court judge ruled that the regulators carried out the licenses process in a “flawed, biased, and arbitrary and capricious manner.” But that ruling was thrown out by the state Supreme Court.

And while Arkansas Attorney General Leslie Rutledge wrote in a letter to the chief justice that allegations of improprieties are “unsubstantiated,” she raised the issue of a commissioner being offered a bribe by one of the winning companies. The commissioner did not report the attempted bribe, Rutledge wrote, and there is no law requiring him to do so. But the commissioner gave the applicant “the second-highest score that he awarded to any entity,” which was “significantly higher” than any other commissioner.

“We have no evidence that the commissioner took the bribe or based his scoring on the offer,” the letter, first reported by KHBS, read. “Still, we believe we needed to provide these facts to the tribunal.”

Other applicants similarly filed lawsuits and ethics complaints about the process.

"It was just unbelievable ... the level of corruption was shocking to me," said Mildred Barnes Griggs, who was part of a team that applied for but did not receive a license in Arkansas, and responded with a series of official complaints alleging favoritism and a lack of accountability. "Open corruption. Corruption that went unpunished."

Arkansas gave out only five cultivation licenses in the first round of licensing and Griggs says the license cap played a big role in promoting wrongdoing, including awarding licenses to applicants who provided false information and one who seemed to plagiarize much of its application from another team that didn't receive one. She and Olly Neal, another member of her application team, were both motivated to get involved in the cannabis industry after seeing high levels of poverty in their communities and the devastation of disproportionate marijuana arrests of African Americans.

Both Griggs and Neal hail from Lee County — named after the Confederate general — and went to segregated schools growing up. Neal went on to become the first Black district prosecutor in the state, and eventually served as a judge in the state circuit and appeals courts. Since voters in the state approved medical marijuana legalization at the ballot box in 2016, arrests for possession have trended upward, according to data from the American Civil Liberties Union. In Lee County, Black people are four times more likely to be arrested for marijuana possession than white people, slightly higher than the national average.

Griggs and Neal felt that allowing their application, which was rooted in a Black community that had suffered from the drug war, would spur economic development and heal some of the wounds. But they say that despite encouragement from the state to apply, the process was rigged from the beginning.

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Neal filed a complaint with the Arkansas Ethics Commission, pointing to Medical Marijuana Commissioner Travis Story's ties to one of the winning licensees, Osage Creek Cultivation. As a lawyer, Story had helped the owners of Osage Creek in previous business and land-use matters unrelated to medical marijuana. The commission dismissed the complaint, saying that licensing medical marijuana businesses did not qualify as a "procurement matter" under state ethics laws.

Story's ties to state Sen. Bob Ballinger, who is a partner at his law firm, raised eyebrows for the various campaign contributions Ballinger received from medical marijuana hopefuls.

Story has denied any allegations of bias or impropriety during the licensing process.

Other legal challenges were also filed by those who didn't secure licenses, including by Griggs' team. Those lawsuits alleged that the regulators violated their own rules during the licensing process, and that the licenses were awarded in an "arbitrary and capricious" manner. None of them prevailed in court except one: Abraham Carpenter, a farmer in Grady, Ark., who also grows produce and hemp. Carpenter Farms was the only 100 percent Black-owned applicant. Despite the application's high score, it was disqualified based on a "scriveners' error," a minor inconsistency in two parts of his application, despite the fact that one of the winning applicants had the same error.

During a commission hearing in June, Carpenter explained how he had taken his grievances to the attorney general's office, the commission, and even the governor's office. Everyone told him his only remedy is through the courts.

"We'll, we've been all the way to the Supreme Court and we prevailed," he said.
"We are yet to be treated fairly."

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The licensed cultivators "want to fix prices at high levels," said Billy Murphy, the Baltimore civil rights attorney who represented Carpenter in the case. "We belong at the table. We've earned it with our blood, sweat, tears, our prison sentences."

The state Supreme Court ruled that the commission violated equal protection, amounting to racial discrimination. The regulatory agency "differentiates among individuals (the 100 percent minority-owned applicants and everyone else)," the court wrote.

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Carpenter eventually got a license, but another lawsuit from existing growers is trying to stop newer licensees.

License caps similarly befell Missouri's medical marijuana program earlier this year after regulators decided to cap the number of licenses to the minimum required under the law. The limited licenses and perceived scoring disparities led to more than 800 administrative appeals, law enforcement and legislative investigations, and a lawsuit challenging the license cap.

Even if there wasn't outright corruption, state Sen. Peter Merideth told POLITICO earlier this year that even the appearance of corruption was problematic. A legislative report penned by a lawyer for the state Democratic caucus cited "credible allegations" of executive branch interference with the corruption investigation. But the Republican-led investigation fizzled out, and it's unclear whether the Special Committee on Government Oversight will pick it up next session.

"Where there's money, there's people in powerful positions able to steer contracts or granting of licenses in one direction," Kenneth Warren, a political science professor at Saint Louis University, said of the conflict-of-interest allegations. He cited an "endless" list of groups involved in the medical marijuana program that are connected to the Parson administration.

While Arkansas' marijuana regulators scored the applications themselves, Missouri regulators hired a third party. In both cases, detractors pointed to scoring irregularities and questioned how "blind" the process really was.

A major sticking point in Missouri's licensing process was the late addition of "bonus points" for locating businesses in certain ZIP codes after many applicants had already secured real estate for their businesses.

During a trial over the state's medical marijuana program, the top cannabis regulator testified under oath that the FBI subpoenaed the agency for information involving four medical marijuana license applicants. The subpoena was likely tied to an FBI investigation into utility contracts in Independence, the Missouri Independent reported. The judge in the trial ultimately tossed the case.

"Because the state is delegating exactly who is in control, who is doing the review process of the licenses, who approves them, who creates the applications, etc. it's a breeding ground for corruption," Nourafchan said.

The cannabis industry is "particularly vulnerable to lacking a set of safeguards or regularity that might hedge against corruption in other areas," said Berman, the Ohio State law professor. Even with other vice industries like alcohol or gambling, policymakers have been working on regulating those industries for decades. "In the cannabis space, we're almost literally making it up as we go. No history, no background, no norms," he said.

States that have largely avoided corruption controversies either do not have license caps — like Colorado or Oklahoma — or dole out a limited number of licenses through a lottery rather than scoring the applicants by merit — like Arizona. Many entrepreneurs, particularly those who lost out on license applications, believe the government shouldn't be in the business of picking winners and losers and should just let the free market do its job.

"It was far more political than I had ever anticipated," said Barnes Griggs of her application experience. "People were encouraged to apply, but you didn't stand a chance. It was already rigged."

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