

1 **Darryl Cotton** 2020 APR -9 PM 2: 32
2 **6176 Federal Blvd** CLERK US DISTRICT COURT
3 **San Diego, CA 92114** SOUTHERN DISTRICT OF CALIFORNIA
4 **Telephone: (619) 954-4447**
5 **Fax: (619) 229-9387**

2020 APR -9 PM 12: 56
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

6 **Plaintiff Pro Se**

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

12
13 **DARRYL COTTON,**
14 **Plaintiffs,**

15 vs.

16 **LARRY GERACI, an individual;**
17 **REBECCA BERRY, an individual;**
18 **GINA AUSTIN, an individual; AUSTIN**
19 **LEGAL GROUP, a professional**
20 **corporation; MICHAEL WEINSTEIN,**
21 **an individual; SCOTT H.**
22 **TOOTHACRE; an individual; FERRIS**
23 **& BRITTON, a professional corporation,**
24 **CITY OF SAN DIEGO, a public entity;**
25 **and DOES 1 through 10, inclusive**

26 **Defendants,**

Case No. 18-cv-325-BAS (MDD)

NOTICE OF EX PARTE
APPLICATION; EX PARTE
APPLICATION FOR
RECONSIDERATION RE:
APPOINTMENT OF COUNSEL AND
LEAVE TO AMEND COMPLAINT

Hearing Date:
Time:
Judge:
Courtroom:

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NOTICE OF EX PARTE APPLICATION

TO THE CLERK OF THE COURT AND ALL PARTIES:

PLEASE TAKE NOTICE that plaintiff Darryl Cotton hereby makes this ex parte application (“Application”) to this Court, pursuant to Rules 64 and 65 of the Federal Rules of Civil Procedure (“FRCP”) and Local Rules 7.1(f) and 83.3(g) for the Southern District of California, for this Court to reconsider its denial of Cotton’s ex parte application seeking appointment of counsel pursuant to 28 U.S.C. § 1915E(1).

Good cause exists for the Court to consider this Application and reconsider the denial of Cotton’s request for appointment of counsel because new evidence has been discovered and it proves that various defendant attorneys have committed various acts of fraud upon this Court. And, the fact that Cotton does not have the finances to acquire counsel is the direct result of the acts that constitute a fraud on the court.

Cotton brings this Application based on the Memorandum of Points and Authorities in Support thereof, the Declaration of Darryl Cotton, and any evidence and argument that may be presented at a hearing on this Application.

Dated: April 9, 2020



Darryl Cotton

MEMORANDUM OF POINTS AND AUTHORITIES

1 There is a small group of wealthy individuals, attorneys and professionals
2 providing services in the cannabis sector (the “Enterprise”) that have conspired to create
3 an unlawful monopoly in the cannabis market (the “Antitrust Conspiracy”) in the City
4 of San Diego (the “City”). (Declaration of Darryl Cotton (“Cotton Decl.”) ¶ 1.)

5 In furtherance of the Antitrust Conspiracy, Lawrence Geraci filed a sham suit in
6 state court against Darryl Cotton seeking to prevent the sale of the Property¹ to Richard
7 Martin (“*Cotton I*”).² *Cotton I* alleged a three-sentence document, executed by both
8 Geraci and Cotton with the intent it be a receipt (the “November Document”), was a
9 fully integrated purchase contract for Geraci’s purchase of the Property and sought to
10 force the sale of the Property to Geraci. (Cotton Decl. ¶ 2.) When the suit was exposed
11 as a sham, the Enterprise took unlawful actions in and out of the courtroom, including
12 threats and acts of violence, to coerce Cotton to settle the case.

13 The reason Geraci/F&B would file a sham suit, and engage in or ratify acts and
14 threats of violence to cover up their filing of a sham suit, is that the Property qualifies
15 for a conditional use permit (“CUP”) with the City that would allow the operation of a
16 Cannabis Outlet (also generally known as a “dispensary”); a for-profit cannabis retail
17 store. The Property is worth no less than \$7,400,000 with a cannabis CUP being issued
18 and without it approximately \$500,000. (Cotton Decl. ¶ 3.)

19 Cotton was forced to sell the Property at below market value to finance his legal
20 defense in *Cotton I*. (Cotton Decl. ¶ 4.) In April 2017, Cotton unconditionally sold the
21 Property to Martin for a down payment of \$50,000 and a total consideration due of
22 \$2,000,000 if the cannabis CUP is issued at the Property and \$500,000 if the cannabis
23 CUP is not. (Cotton Decl. ¶ 5.) Cotton believed his case was a simple dispute of over
24 whether a three-sentence document is or is not a integrated purchase contract for the
25 Property by Geraci.

26 ¹ The “Property” means 6176 Federal Blvd., San Diego, CA 92214.

27 ² *Geraci v. Cotton*, San Diego Superior Court, Case No. 37-2017-00010073-CU-BC-
28 22 CTL.

1 In March 2019, my former attorney Andrew Flores purchased the rights to the
2 property and the then-pending cannabis CUP application pending on the Property from
3 Martin. (Cotton Decl. ¶ 6.) On April 3, 2020, Flores filed suit in this federal court
4 alleging the Enterprise Antitrust Conspiracy. (See Flores v. Austin, Case No. 20-CV-
5 0656-JLS-LL.) The *Cotton I* action was just one act in furtherance of the Antitrust
6 Conspiracy.

7 The *Cotton I* conspiracy successfully culminated in a competing cannabis CUP
8 application being approved to Aaron Magagna at 6220 Federal (the “District Four
9 CUP”) and a judgment in favor of Geraci in *Cotton I*.

10 The judgment issued in *Cotton I* by judge Wohlfeil was procured by multiple
11 acts that constitute a fraud on the court, is the product of judicial bias, and is an act in
12 excess of Judge Wohlfeil’s jurisdiction as it enforces an illegal contract.

13 Cotton is before this Court requesting help. Cotton cannot represent himself
14 against all the defendants that have contributed to Cotton’s current situation, at issue is
15 not a three-sentence breach of contract action. At issue are multiple conspiracies by
16 multiple parties, including Cotton’s own former attorneys, and the fact that no attorney
17 wants to represent Cotton and argue that Judge Wohlfeil is corrupt.

18 Apparently, it is just known within the legal profession that some cases fall
19 between the cracks and the perceived integrity of state court judges is more important
20 from a public policy perspective than calling out a corrupt and/or incompetent judge.

21 Cotton respectfully requests that this Court help restore Cotton’s life by
22 vindicating his rights even if it means the end of Judge Wohlfeil’s judicial career. Judge
23 Wohlfeil should not be placed above the law because he is a judge, whether due to
24 corruption or incompetence, his bias led him to make rulings and decisions contradicted
25 by facts and law that violated Cotton’s constitutional rights. And Judge Wohlfeil does
26 not care. Judge Wohlfeil would rather cover up his bias than admit the truth and deal
27 with the consequences.

28 Cotton is not a “state court” loser, he is a US Citizen whose constitutional rights
have been violated. Cotton lacks the ability to prove Judge Wohlfeil’s bias and the

1 Enterprise' Antitrust Conspiracy. Cotton needs help.

2 On February 9, 2018, Cotton initiated this action when he realized that Judge
3 Wohlfeil is biased. (Cotton Decl. ¶ 7.) On February 28, 2019, Judge Curiel stayed this
4 action pursuant to the *Colorado River Doctrine*, but did not address my allegations of
5 judicial bias. (ECF No. 7.) On December 23, 2019, I filed a motion to unstay my case,
6 requested appointment of counsel and certain injunctive relief. I argued, *inter alia*, the
7 *Cotton I* judgment should be voided for judicial bias ("Motion to Unstay"). (Cotton
8 Decl. ¶ 9.)

9 In support of my Motion to Unstay, attached as Exhibit 1, I provided the
10 Independent Psychiatric Assessment ("IPA") performed by Dr. Markus Ploesser in
11 March 2018, that states that it is "professional opinion that Mr. Cotton sincerely
12 believes that [Geraci] and his counsel are in a conspiracy against him and that they
13 represent a threat to his life." (IPA ¶ 30.) "In my professional opinion, the level of
14 emotional and physical distress faced by Mr. Cotton at this time is above and beyond
15 the usual stress on any defendant being exposed to litigation. If causative triggers and
16 threats against Mr. Cotton persist, there is substantial likelihood that Mr. Cotton may
17 suffer irreparable harm with regards to his health." (IPA ¶ 32.)

18 On January 15, 2020, this Court granted my motion to lift the stay in this action,
19 but denied my request for counsel. This Court's order stated "While [Cotton] states he
20 seeks appointment of counsel in the caption of his application, he does not provide any
21 reason or legal authority to support his request Accordingly, the Court declines to
22 consider his request for appointment of counsel." (ECF No. 8 at 1.)

23 Cotton had hoped that his former attorney Flores would represent him in this
24 action or name him as a co-plaintiff in his action filed in this federal court on April 3,
25 2020 (the "Flores Complaint").³ Because Flores is willing to settle with defendants
26 Flores cannot represent Cotton. Cotton does not want to settle with any of the
27 defendants. He wants every City employee and attorney and Judge Wohlfeil exposed

28 ³ *Flores et al., v. Austin, et al.* (Case No. 20-CV-0656-JLS LL).

1 for their corruption or at the very least their biased and callous indifference to the mental
2 and emotional of Cotton and his supporters. They must be held accountable for their
3 actions and punished. (Cotton Decl. ¶ 11.)

4 Cotton respectfully requests that this Court review the Flores Complaint and
5 incorporate the facts and allegations set forth therein into this Application because it
6 sets forth facts and arguments that allege this instant case filed by Cotton is actually
7 just one act of many taken by Enterprise in furtherance of the Antitrust Conspiracy.
8 Cotton has repeatedly attempted to do so but is unable to articulate an antitrust
9 conspiracy that is being effectuated by attorneys via the judiciaries using complicated
10 legal concepts.

11 To date, Cotton has filed or defended four lawsuits and filed multiple appeals
12 and writ actions from decisions from those actions since March 2017. The majority of
13 all legal motions and actions were taken by attorney Jacob Austin in *Cotton I*, which
14 has 718 entries in the Register of Actions. In total, Cotton has incurred the following
15 approximate legal fees and costs:

16	David Demian, Adam Witt, Rishi Bhatt of Finch, Thornton & Baird	\$90,000
17	Jacob Austin	
18	of the Law Office of Jacob Austin	\$1,900,000
19	Michael von Lowenfeld	
20	of Kerr & Wagstaffe LLP	\$30,000
21	JoEllen Plaskett	
22	of the Law Office of JoEllen Plaskett	\$107,000
23	Andrew Flores	
24	of the Law Office of Andrew Flores	\$467,000
25	Kelly Woodruff	
26	of the California Appellate Law Group	\$5,000
27	Megan Lee, Michael Wrapp, and Evan Schube	
28	of Tiffany & Bosco	\$35,000

1	Leanne Thomas (contract paralegal)	\$32,000
2	Zoe Villaroman (contract paralegal)	\$379,000
3	Lori Hatmaker (contract paralegal)	\$30,000

4 (Cotton Decl. ¶ 12.)

5 In total, Cotton has incurred approximately \$3,000,000 in legal fees arising from
6 a dispute over whether a three-sentence document, the November Document, is or is
7 not an integrated purchase contract for the Property! (Cotton Decl. ¶ 13.)

8 Every attorney and paralegal that has worked on *Cotton I* has directly and
9 unmitigatedly agreed that the case against me is a complete sham. It is precisely because
10 of that some believe Judge Wohlfeil is corrupt.

11 ARGUMENT

12 A. Reconsideration

13 A motion to reconsider may be granted only “if the district court (1) is presented
14 with newly discovered evidence, (2) committed clear error or [its] initial decision was
15 manifestly unjust, or (3) if there is an intervening change in controlling law.” *School*
16 *Dist. No. 1J, Multnomah County v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993),
17 cert. denied, 114 S. Ct. 2742 (1994).

18 Cotton requests this Court reconsider his request for appointment of counsel
19 pursuant to the first and second prong.

20 First, the Flores Complaint addresses, provides and/or references a great deal of
21 new evidence that Cotton has not had access to and still does not. For example, the
22 “Associate’s Recording” that is direct evidence of Gina Austin conspiring with Razuki
23 to create a monopoly in the cannabis market in San Diego.

24 Second, the ruling is a manifestly unjust because Cotton’s own attorneys, from
25 three different set of law firms (ALG, McElfresh, and FTB), conspired to inflict severe
26 mental and emotional harm on Cotton and make him unable to articulate his facts and
27 reasoning such that this Court could understand him. The IPA by Dr. Ploesser directly
28 reflects what I have been going through since this all began, it has only gotten worse.

B. Rule 60(b)

1 Cotton moves for the court to vacate its order denying Cotton's motion for
2 appointment of counsel and reconsider the request pursuant to Rule 60(b). As material
3 here, Rule 60(b) allows a court to relieve a party from a final judgment or order if the
4 moving party can show: (1) excusable neglect; (2) newly discovered evidence; (3)
5 fraud, misrepresentation, or misconduct by an opposing party; or (4) any other reason
6 that justifies relief. Fed. R. Civ. P. 60(b).

7 First, Cotton has been trying the best he can to represent himself. The origin of
8 this action, a dispute over whether a three-sentence document is or is not a integrated
9 agreement, is straightforward. As Cotton has argued from the beginning, the
10 Confirmation Email proves that the agreement reached between Geraci and him is not
11 to the November Document being a purchase contract.

12 But this case is no longer a simple three-sentence breach of contract action. The
13 sham action filed against me was taken in furtherance of the Enterprise's Antitrust
14 Conspiracy. I had hoped that attorney Flores would represent me and I would be a co-
15 plaintiff in the Flores Complaint. Unfortunately, there is a civil, but intense dispute,
16 between Flores and Cotton. Flores will settle with defendants. Cotton does not want to
17 settle. Cotton wants every last scumbag attorney to be held responsible, especially the
18 City employees and attorneys. They need to be fired and criminally prosecuted.

19 Second, as argued above, there is new evidence that Cotton has not and does not
20 have.

21 Third, every legal action and everything related or arising from an alleged dispute
22 regarding the November Document is a sham and every day that passes is an egregious
23 miscarriage of justice that reflects how easy the judicial systems can be manipulated
24 with wealth. Under California law, I should not even have to had pay any attorneys past
25 the pleading stage even setting aside the not-so complicated cannabis laws that Judge
26 Wohlfeil supposedly is not capable of understanding with his level of intellect.

27 "Under California law, ... whether reliance was reasonable is a question of
28 fact for the jury, and may be decided as a matter of law only if the facts
permit reasonable minds to come to just one conclusion." *Boeken v. Philip*

1 *Morris Inc.*, 127 Cal. App. 4th 1640, 1666[.] “In determining reasonable
2 reliance, [the fraud plaintiff’s] experience and intelligence, along with the
3 business environment are considered.” *Ralph Andrews Prods., Inc. v.*
4 *Paramount Pictures Corp.*, 222 Cal. App. 3d 676, 685, 271 Cal. Rptr. 797
5 (1990), as modified (Aug. 8, 1990). Therefore, a fraud plaintiff generally
6 will be denied recovery “only if his [or her] conduct is manifestly
7 unreasonable in the light of his [or her] own intelligence or information.”
8 *Markow v. Rosner*, 3 Cal. App. 5th 1027, 1056 n.2, 208 Cal. Rptr. 3d 363
9 (2016) (Johnson, J., concurring in part and dissenting in part), review denied
10 (Jan. 11, 2017).

11 In *Ohio Six Ltd. v. Motel 6 Operating L.P.*, the court considered the
12 adequacy of the plaintiff’s fraud allegations. No. CV 11-8102-MMM (Ex),
13 2012 WL 12886208, at *16–17 (C.D. Cal. Nov. 16, 2012). The court
14 explained that both the plaintiff’s level of experience and his prior business
15 relationship with the defendant were relevant to the reliance analysis. *Id.* at
16 *16. The plaintiff was “a sophisticated businessman with an extensive real
17 estate background,” indicating that he should not have been better equipped
18 than the average person to evaluate the condition of the properties at issue.
19 *Id.* On the other hand, the plaintiff and defendant had “a long-standing
20 business relationship ... and had no indication that [the defendant’s
21 representatives] were being anything less than forthright.” *Id.* at *17. The
22 court concluded that there was a genuine issue of fact as to the plaintiff’s
23 reliance.

24
25 California courts have found plaintiffs’ claims unreliable as a matter of law,
26 typically in cases where the court determines that the plaintiff was
27 experienced enough to know better. In *Guido v. Koopman*, 1 Cal. App. 4th
28 837, 843–44, 2 Cal. Rptr. 2d 437 (1991), the Court of Appeal held that a
practicing attorney who uses releases in her practice could not reasonably
rely on the advice of her horseback riding instructor as to the validity of a
written lease without reviewing it herself. *Id.* Considering the plaintiff’s
knowledge and experience, the Court determined that her reliance was not
reasonable. *Id.*

Similarly, in *Hoffman v. 162 N. Wolfe LLC*, 228 Cal. App. 4th 1178, 1196–
97, 175 Cal. Rptr. 3d 820 (2014), the Court of Appeal found that a real estate
agent could not bring a fraud claim over a property dispute because his
reliance on a single statement by the neighbors that they would “take care
of” the problem was not reasonable. The Court noted that the plaintiff’s
“experience and sophistication are relevant factors in determining ...

1 justifiable reliance.” *Id.* at 1096. Moreover, the plaintiff’s own observations
2 contradicted his neighbor’s reassurances. *Id.* These factors’ combined with
3 the plaintiff’s reticence to assert his rights, combined to make his reliance on
 his neighbor’s statements unreasonable. *Id.* at 1096–97.

4 California courts emphasize that it is “rare” to find reliance unreasonable as
5 a matter of law. Nevertheless, where an experienced party who should have
6 known better claims to have been misled, the California courts appear to
 treat allegations of reliance with substantially more skepticism.

7 *IV Sols., Inc. v. United HealthCare Servs., Inc.*, No. CV1609598MWFAGR, 2017
8 WL 3018079, at *7–8 (C.D. Cal. July 12, 2017).

9 From day one, I have been arguing that the Confirmation Email proves that
10 Geraci and I consented to a joint venture agreement that included, at the very least, a
11 10% equity position for me. The November Document cannot be a purchase contract
12 as alleged by Geraci as a matter of law. To find otherwise is to provide an incentive for
13 wealthy individuals to file frivolous lawsuits against those without wealth without any
14 evidence at all as a strategic investment that, especially if you are in Judge Wohlfeil’s
15 courtroom and hire F&B, may lead to a win. And, as matters stand now and my case
16 represents, has no downside because judges protect judges and as a matter of public
17 policy the federal court can’t say what is the truth: you are more likely to have justice
18 in federal court than in state court. Although, that is no guarantee as reflected by my
19 case.

20 Third, I must amend my complaint to include the actions of defendant attorneys
21 in this action and the Flores Complaint for their unlawful actions against me. My
22 attorneys at Finch, Thornton & Baird did not disclose they had shared clients with
23 Geraci and attempted to sabotage my case.

24 Fourth, my entire case is unjust. I now know that when it comes to Judge
25 Wohlfeil that the truth does not matter, he will be protected by his judicial immunity
26 and whatever set of economic and social circumstances led to him being appointed a
27 judge. But, nothing changes the fact that Judge Wohlfeil entered a judgment that
28 enforces an illegal contract and is therefore void. That cannot be condoned or allowed
 to pass.

1 **C. Appointment of Counsel**

2 In proceedings in forma pauperis, the district court “may request an attorney to
3 represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). “When
4 confronted with a request under § 1915(e)(1) for pro bono counsel, the district court is
5 to make the following inquiries: (1) has the indigent plaintiff made a reasonable attempt
6 to obtain counsel or been effectively precluded from doing so; and if so, (2) given the
7 difficulty of the case, does the plaintiff appear competent to litigate it himself?” *Pruitt*
8 *v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007).

9 First, I have had 11 attorneys work on my case. ALL of them agree the case the
10 November Document is not a purchase contract as a matter of law. Even random
11 attorneys and individuals who review the pleadings agree that the November Document
12 is not a purchase contract. The only people who disagree are the ones who stand to lose
13 for being corrupt or biased, which means Geraci and his agents, the City’s employees
14 and attorneys who furthered or ratified the unlawful acts against me and Judge
15 Wohlfeil.

16 However, neither myself nor my litigation investors have any more capital to
17 continue my legal defense. And the reason is that Geraci’s attorneys and my own former
18 attorneys took unlawful actions to prolong certain litigation matters to drain my
19 financial resources and those of my investors. In that sense, I have been prevented from
20 doing so. For example, when FTB had me engage attorney Cline who counseled me
21 along with FTB to pay \$25,000.

22 As noted above, I owe approximately \$3,000,000 to 11 attorneys and at least 3
23 paralegals who have worked on my case, but who will not continue because this case
24 is about protecting the public perception of the judges who have worked on this case.
25 They, the individuals who actually practice law, are the ones that are the first to say that
26 the law is just a business that attempts to achieve justice. And like any business with
27 not enough resources, you don’t get the product you are supposed to produce, in this
28 case, justice.

 Second, this case is very difficult and the fact that I have not prevailed until this

1 point reflects the complexity of what has taken place. I understand the Mutual Assent
2 Issue and what an illegal contract is and that it cannot be enforced. That is not difficult.
3 But proving the City, Geraci and his agents, which include my own former attorneys,
4 are part of a conspiracy or multiple conspiracies is not within my ability to do.

5 **D. Leave to Amend Complaint**

6 A pro se litigant must be given leave to amend his or her complaint unless it is
7 “absolutely clear that the deficiencies of the complaint could not be cured by
8 amendment.” *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980) (Per
9 Curiam). Cotton respectfully requests that the Court appoint him counsel and grant him
10 leave to amend his complaint to include the evidence discovered by Flores. Cotton
11 cannot explain the Antitrust Conspiracy and the role various City employees and
12 attorneys have played in creating the instant situation.

13 **CONCLUSION**

14 It appears to me the biggest hurdle is the fact that a finding the November
15 Document is not a purchase contract inherently reflects that Judge Wohlfeil is either
16 corrupt or incompetent, both of which have consequences on every case he has ever
17 handled. So my rights as an individual are being violated to protect the perception of
18 Judge Wohlfeil being wise and just when he is far from either. And the fact that a
19 finding that he did not review my arguments and evidence would open up every other
20 cause he has ever had, which would cost money. And that is what this always comes
21 down to, money. The state does not want a wave of appeals from Judge Wohlfeil’s case
22 – but why not? If Judge Wohlfeil has similarly acted in other cases, substituting his own
23 personal judgment of attorneys and parties for the facts and law he is presented with,
24 then his cases should be reviewed to vindicate the rights of innocents. It is appalling to
25 think how many people have lost their livelihoods or even sent to jail because Judge
26 Wohlfeil believes himself to be above the law.

27 Cotton understands that he is emotional. But his emotion, anger, is justified.
28 What I hope this Court realizes is that this is not about Cotton, but about his family, his
friends and supporters who have backed him for years.

1 How many lives must Judge Wohlfeil destroy before the scales of public policy
2 turn from protecting an incompetent judge, who maybe made a bad call in one case, to
3 tipping in the other direction realizing that Judge Wohlfeil is unfit for the job he has
4 and causes more harm to the public at large then the value he brings?

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6 Dated: April 9, 2020

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Darryl Cotton

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1 **Darryl Cotton**
2 **6176 Federal Blvd.**
3 **San Diego, CA 92114**
4 **Telephone: (619) 954-4447**
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6 **Plaintiff Pro Se**

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

DARRYL COTTON, ,
Plaintiffs,

vs.

LARRY GERACI, an individual;
REBECCA BERRY, an individual;
GINA AUSTIN, an individual; AUSTIN
LEGAL GROUP, a professional
corporation; MICHAEL WEINSTEIN,
an individual; SCOTT H.
TOOTHACRE; an individual; FERRIS
& BRITTON, a professional corporation,
CITY OF SAN DIEGO, a public entity;
and DOES 1 through 10, inclusive

Defendants,

Case No. 18-cv-325-BAS (MDD)

**DECLARATION OF DARRYL
COTTON IS SUPPORT OF EX
PARTE APPLICATION FOR
RECONSIDERATION RE:
APPOINTMENT OF COUNSEL AND
LEAVE TO AMEND COMPLAINT**

Hearing Date:
Time:
Judge:
Courtroom:

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I, DARRYL COTTON, declare:

1. I believe there is 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”). Terms not otherwise defined herein are defined in the memorandum in support of this application.

2. Larry Geraci and I executed the November Document with the intent it be a receipt.

3. The Property is worth no less than \$7,400,000 with a cannabis CUP being issued and without it approximately \$500,000.

4. I was forced to sell the Property at below market value to finance his legal defense in *Cotton I*.

5. In April 2017, I unconditionally sold the Property to Martin for a down payment of \$50,000 and a total consideration due of \$2,000,000 if the cannabis CUP is issued at the Property and \$500,000 if the cannabis CUP is not.

6. In March 2019, my former attorney Andrew Flores purchased the rights to the Property and the then-pending cannabis CUP application pending on the Property from Richard Martin.

7. On February 9, 2018, Cotton initiated this action when he realized that Judge Wohlfeil is biased.

8. On February 28, 2019, Judge Curiel stayed this action pursuant to the *Colorado River Doctrine*, but did not address my allegations of judicial bias. (ECF No. 7.)

9. On December 23, 2019, I filed a motion to unstay my case, requested appointment of counsel and certain injunctive relief. I argued, *inter alia*, the *Cotton I* judgment should be voided for judicial bias (“Motion to Unstay”).

1 10. In support of my Motion to Unstay, attached as Exhibit 1, I provided the
2 Independent Psychiatric Assessment (“IPA”) performed by Dr. Markus Ploesser in
3 March 2018, that states that it is “professional opinion that Mr. Cotton sincerely
4 believes that [Geraci] and his counsel are in a conspiracy against him and that they
5 represent a threat to his life.” (IPA ¶ 30.) “In my professional opinion, the level of
6 emotional and physical distress faced by Mr. Cotton at this time is above and beyond
7 the usual stress on any defendant being exposed to litigation. If causative triggers and
8 threats against Mr. Cotton persist, there is substantial likelihood that Mr. Cotton may
9 suffer irreparable harm with regards to his health.” (IPA ¶ 32.)

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11 this action or name him as a co-plaintiff in his action filed in this federal court on April
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15 for their corruption or at the very least their biased and callous indifference to the mental
16 and emotional of Cotton and his supporters. They must be held accountable for their
17 actions and punished.

18 12. To date, Cotton has filed or defended four lawsuits and filed multiple
19 appeals and writ actions from decisions from those actions since March 2017. The
20 majority of all legal motions and actions were taken by attorney Jacob Austin in *Cotton*
21 *I*, which has 718 entries in the Register of Actions. In total, Cotton has incurred the
22 following approximate legal fees and costs:

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25	Jacob Austin	
26	of the Law Office of Jacob Austin	\$1,900,000
27	Michael von Lowenfeld	

28 ¹ *Flores et al., v. Austin, et al.* (Case No. 20-CV-0656-JLS LL).

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2	JoEllen Plaskett	
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6	Kelly Woodruff	
7	of the California Appellate Law Group	\$5,000
8	Megan Lee, Michael Wrapp, and Evan Schube	
9	of Tiffany & Bosco	\$35,000
10	Leanne Thomas (contract paralegal)	\$32,000
11	Zoe Villaroman (contract paralegal)	\$379,000
12	Lori Hatmaker (contract paralegal)	\$30,000

13. In total, Cotton has incurred approximately \$3,000,000 in legal fees.

14. Every attorney and paralegal that has worked on *Cotton I* has directly and unmitigatedly agreed that the case against me is a complete sham. It is precisely because of that some believe Judge Wohlfeil is corrupt.

Dated: April 9, 2020

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Darryl Cotton

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