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2020 MAY 13 PM 2: 18

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

6 **Plaintiff Pro Se**

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 **DARRYL COTTON, an individual,**

12 **Plaintiff,**

13 **vs.**

14 **CYNTHIA BASHANT, an individual; JOEL**
15 **WOHLFEIL, an individual; LARRY GERACI, an**
16 **individual; REBECCA BERRY, an individual;**
17 **GINA AUSTIN, an individual; MICHAEL**
18 **WEINSTEIN, an individual; JESSICA**
19 **MCELFRESH, an individual; and DAVID**
20 **DEMIAN, an individual**

21 **Defendants.**

CASE NO.:3:18-cv-00325-BAS-MDD

PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR:

1. DEPRIVATION OF CIVIL RIGHTS
(42 U.S.C. § 1983)
2. DEPRIVATION OF CIVIL RIGHTS
(42 U.S.C. § 1983)
3. DECLARATORY RELIEF
4. PUNITIVE DAMAGES

Related Case: 20CV0656-BAS-MDD

DEMAND FOR JURY TRIAL

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2 Plaintiff *Pro Se* Darryl Cotton (“Plaintiff,” “Cotton” or “I”) alleges upon information and belief
3 as follows:

4 INTRODUCTION

5 1. This action is a collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil in
6 *Cotton I*.¹

7 2. “Under California law, the ‘well-settled rule [is] that the courts will not aid a party whose claim
8 for relief rests on an illegal transaction.’” *Singh v. Baidwan*, 651 F. App’x 616, 2-3 (9th Cir. 2016)
9 (quoting *Wong v. Tenneco, Inc.*, 702 P.2d 570, 576 (Cal. 1985) (in bank)).

10 3. “A contract to perform acts barred by California’s licensing statutes is illegal, void and
11 unenforceable.” *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986).

12 4. *Cotton I* was a breach of contract action filed by Lawrence Geraci against Cotton.

13 5. Geraci and Cotton reached an oral joint venture agreement (the “JVA”) to develop a cannabis
14 dispensary at Cotton’s real property (the “Property”).

15 6. However, Geraci had no intention of honoring his agreement with Cotton. In fact, Geraci could
16 not honor his agreement with Cotton because he had been repeatedly sanctioned for his
17 owning/management of illegal marijuana dispensaries and, consequently, is barred as a matter of law
18 from owning a cannabis dispensary (the “Illegality Issue”).

19 7. To get around the Illegality Issue and still own the cannabis permit at the Property, Geraci
20 applied for a cannabis permit at the Property with the City in the name of his receptionist, Rebecca
21 Berry (the “Berry Application”).

22 8. In the Berry Application, Berry certified under penalty of perjury she is the sole owner of the
23 cannabis permit being sought (the “Berry Fraud”).

24 9. At trial in *Cotton I*, Geraci testified he instructed Berry to submit the Berry Application.

25 10. At trial in *Cotton I*, Berry testified she made the certifications knowing they were false.

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27
28 ¹ “*Cotton I*” means *Larry Geraci vs Darryl Cotton*, San Diego County Superior Court, Case
No. 37-2017-00010073-CU-BC-CTL.

1 11. Austin, as Geraci's cannabis attorney and responsible for the Berry Application, testified in
2 *Cotton I* that it is not unlawful for Berry to have submitted the Berry Application with false statements.

3 12. The JVA had a condition precedent, the approval of a marijuana dispensary at the Property

4 13. *Cotton I* was filed by attorney Michael Weinstein of Ferris & Britton without probable cause.

5 14. When Cotton accused Weinstein of being an unethical attorney, Wohlfeil admonished Cotton
6 stating from the bench that he does not believe that Weinstein is even capable of acting unethically.

7 15. Wohlfeil stated that the basis of his belief is based on the fact that both he and Weinstein had
8 started their legal careers at the same time and from the years of Weinstein having practiced before him
9 when he became a judge.

10 16. Unfortunately for Wohlfeil, Weinstein *is* an unethical attorney that cares more about avoiding
11 liability for filing a malicious prosecution action than betraying Wohlfeil's blind trust in him.

12 17. The *Cotton I* judgment is void for being procured via a fraud on the court, the product of judicial
13 bias, and because the alleged contract has an unlawful object and is therefore illegal and cannot be
14 enforced.

15 18. This action will force the judge overseeing this matter to choose between exposing the unethical
16 actions of at least two judges and numerous attorneys or to enforce an illegal contract that rewards a
17 drug dealer for seeking to acquire a cannabis permit under fraudulent pretenses and filing a malicious
18 prosecution action.

19 19. Cotton hopes that the presiding judge in this matter will not retaliate against Cotton for seeking
20 to protect his rights.

21 20. Cotton has painfully come to learn that judges instinctively protect other judges because they
22 operate from the assumption that a pro se litigant making allegations of bias and prejudice after a jury
23 trial are just sore losers. And 99.99% of the time they are probably right.

24 21. However, that probability does not give a judge the right to violate their judicial oath and not
25 vet the facts and arguments they are presented with.

26 22. In complete candid honesty, Cotton has been fighting for over three years to vindicate his rights
27 and he is simply disgusted and exhausted of hearing that he needs to be subservient and denigrate
28

1 himself before judges even when they violate Cotton's basic rights because they assume he is a pro se
2 "conspiracy nut" litigant.

3 23. Cotton continues pushing forward, trusting not in the ridiculous notions of Justice or the Rule
4 of Law (this case proves those things do not exist), but because he knows that if he keeps filing lawsuits
5 against the unethical attorneys and the judges who have objectively shown bias against Cotton as a pro
6 se litigant that he will eventually get the attention of the media.

7 24. Then, fear of liability will force a judge to finally expose Wohlfeil for the biased judge that he
8 is. A judge who ruined Cotton's life because he chose to trust Weinstein rather than do the job he is
9 paid to do and apply the law to the facts which he had been presented with.

10 JURISDICTION AND VENUE

11 25. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(3), 2283, and 18
12 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for all civil
13 actions arising under the United States Constitution or the laws of the United States, as well as civil
14 actions to redress deprivation under color of state law, of any right immunity or privilege secured by
15 the United States Constitution.

16 26. This action is brought pursuant to 42 U.S.C. §§ 1983 to redress the deprivation under color of
17 state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by
18 the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process
19 of law.

20 27. Venue is proper in this Court because the events described below took place in this judicial
21 district and the real property at issue is located in this judicial district.

22 PARTIES

23 28. Cotton is, and at all times mentioned was, an individual residing within the County of San
24 Diego, California.

25 29. Cotton is, and at all times material to this action was, the sole record owner of the commercial
26 real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").

1 30. Upon information and belief Defendant Geraci is, and at all times mentioned was, an individual
2 residing within the County of San Diego, California.

3 31. Upon information and belief, Defendant Berry is, and at all times mentioned was, an individual
4 residing within the County of San Diego, California.

5 32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times mentioned
6 was, an individual residing within the County of San Diego, California.

7 33. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at all times
8 mentioned was, an individual residing within the County of San Diego, California.

9 34. Upon information and belief, Defendant Jessica McElfresh ("McElfresh") is, and at all time
10 mentioned was, an individual residing within the County of San Diego, California.

11 35. Upon information and belief, Defendant David Demian ("Demian") is, and at all times
12 mentioned was, an individual residing within the County of San Diego, California.

13 36. Upon information and belief, Defendant Joel Wohlfeil ("Wohlfeil") is, and at all times
14 mentioned was, an individual residing within the County of San Diego, California.

15 37. Upon information and belief, Defendant Cynthia Bashant ("Bashant") is, and at all time
16 mentioned was, an individual residing within the County of San Diego, California.

17 38. Cotton does not know the true names and capacities of the defendants named DOES 1 through
18 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES 1 through
19 10 are in some way responsible for the events described in this Complaint and are liable to Cotton
20 based on the causes of action below. Cotton will seek leave to amend this Complaint when the true
21 names and capacities of these parties have been ascertained.

22 **FACTUAL ALLEGATIONS**

23 **I. Background**

24 A. Geraci is an intelligent and highly sophisticated businessman who has been sanctioned
25 at least three times for his ownership/management of illegal marijuana
dispensaries.

26 39. Geraci has approximately 40 years of experience providing tax services and has been the
27 owner-manager of Tax & Financial Center, Inc. ("Tax Center") since 2001.

28 40. Tax Center provides sophisticated tax, financial and accounting services.

1 41. Geraci has been an Enrolled Agent with the IRS since 1999.

2 42. Geraci was a California licensed real estate salesperson for approximately 25 years from 1993-
3 2017.

4 43. Geraci has been sued by the City for his ownership/management of at least three illegal
5 marijuana dispensaries (the "Illegal Marijuana Dispensaries").

6 44. Geraci settled all three cases, collectively paying fines in the amount of \$100,000.

7 45. Geraci did not "coincidentally" lease three real properties to the Illegal Marijuana
8 Dispensaries; he was an operator and beneficial owner. *See, e.g., City of San Diego v. CCSquared*
9 *Wellness Cooperative*, Case No. Case No. 37-2015-00004430-CU-MC-CTL, ROA No. 44 (Stipulated
10 Judgment) at 2:15-16 ("The address where the Defendants were maintaining a marijuana dispensary
11 business at all times relevant to this action is 3505 Fifth Ave, San Diego, CA 92103").

12 B. State and City Cannabis Laws and Regulations

13 46. It is against State and City laws and regulations to apply for a cannabis license or permit in the
14 name of a third party who knowingly and falsely states in the application that they are the applicant for
15 the cannabis license and/or permit being sought.

16 47. It is against the public policy of the State and City to issue cannabis licenses or permits to
17 individuals with a history of engaging in illegal commercial marijuana activity.

18 48. It is against the public policy of the State and City to issue cannabis licenses or permits to an
19 applicant who seeks to acquire a license or permit via unlawful means.

20 49. As an example of applicable State law when the JVA was formed, California Business and
21 Professions Code ("BPC") § 19323, amended by 2016 Cal SB 837 and effective June 27, 2016,
22 mandated the denial of an application for an cannabis license if the applicant had, *inter alia*,
23 purposefully omitted required information, made false representations, been sanctioned for
24 unauthorized commercial marijuana activity in the three years preceding the application, or
25 failed to comply with local ordinances.

26 50. As an example of applicable City laws/regulations, the San Diego Municipal Code ("SDMC")
27 prohibits the furnishing of false or incomplete information in any application for any type of license or
28 permit from the City. SDMC § 11.0401(b) ("No person willfully shall make a false statement or fail to

1 report any material fact in any application for City license, permit, certificate, employment or other
2 City action under the provisions of the [SDMC].”).

3 51. Further, SDMC § 11.0402 provides that “[w]henver in [the SDMC] any act or omission is
4 made unlawful, it shall include causing, permitting, aiding or abetting such act or omission.”

5 52. SDMC § 121.0311 states as follows: “Violations of the Land Development Code shall be
6 treated as *strict liability offenses* regardless of intent.”²

7 53. Thus, applying for a cannabis permit or license, or aiding a party to apply for same, and willfully
8 making a false statement in the application is illegal regardless of intent.³

9 C. Gina Austin

10 54. Attorney Gina Austin attended the Thomas Jefferson School of Law and was admitted to the
11 California Bar on December 1, 2006.

12 55. Austin, with approximately two to three years of experience as an attorney, founded her law
13 firm ALG in 2009.

14 56. Austin, in her own words, is “an expert in cannabis licensing and entitlement at the state and
15 local levels and regularly speak[s] on the topic across the nation.”⁴

16 57. Austin has worked on at least 50 conditional use permit applications with the City.

17 58. Austin has been the single most successful attorney in the City in aiding her clients acquire
18 cannabis permits.

19 59. Austin’s success is not because she is a legal genius, but because she engages in and ratifies
20 unlawful actions against the competition, such as filing sham lawsuits like *Cotton I*.

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22 ² The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing §§
111.0101-1412.0113). (SDMC § 111.0101(a).)

23 ³ See *City of San Diego v. 1735 Garnet, LLC*, D071332, at *16 (Cal. Ct. App. Oct. 30, 2017) (“[I]n a
24 recent case in which a land owner who leased property to a marijuana dispensary was sued for
25 violations of a Los Angeles Municipal Code (LAMC) section similar to SDMC section 121.0302(a),
26 the appellate court concluded the land owner’s argument that he lacked knowledge of the marijuana
27 dispensary and thus should not be held liable was meritless, when the violation of LAMC section
12.21A.1(a), was a *strict liability offense*. [Citation.] The same is true here. The terms of the SDMC
specifically provide that violations of the Land Development Act are to be treated as ‘*strict liability*
offenses.’ (SDMC, § 121.0311.)”).

28 ⁴ *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL, ROA 127 (Declaration of Gina Austin) at ¶ 2.

1 **II. The November Document and the November 3, 2016 Phone Call**

2 60. In early 2016 Geraci contacted Cotton to purchase the Property because it potentially qualified
3 to operate a cannabis dispensary.

4 61. In good faith, Cotton engaged with Geraci in preliminary due diligence.

5 62. On October 31, 2016, Geraci, without Cotton's knowledge or consent, had Berry submit the
6 Berry Application.

7 63. On November 2, 2016, Geraci and Cotton reached the JVA pursuant to which Cotton would
8 sell the Property to Geraci.

9 64. Cotton's consideration for entering into the JVA included (i) a 10% equity position in the
10 dispensary, (ii) on a monthly basis, the greater of \$10,000 or 10% of the net profits of the dispensary,
11 (iii) a \$50,000 non-refundable deposit for Cotton to keep if the permit for a dispensary was not
12 approved at the Property, and (iv) Geraci promised to have his attorney, Gina Austin, promptly reduce
13 the JVA to writing for execution.

14 65. At the meeting Geraci and Cotton executed a three-sentence document drafted by Geraci (the
15 "November Document").

16 66. The November Document was executed with the intent it be a receipt for Cotton's acceptance
17 of \$10,000 in cash towards the \$50,000 non-refundable deposit.

18 67. That same day:

19 (i) Geraci emailed Cotton a copy of the November Document, which in the email
20 attachment Geraci had titled the November Document the 'Geraci – Cotton Contract'.

21 (ii) Upon review and within hours of having received the Geraci email Cotton replied and
22 requested that Geraci confirm in writing the November Document is not a purchase contract reflecting
23 'any final agreement'. (the "Request for Confirmation"); and

24 (iii) Geraci replied and confirmed the November Document is not a purchase contract (the
25 "Confirmation Email"). A true and correct copy of these emails are attached hereto as Exhibit 1.

26 68. The Request for Confirmation and the Confirmation Email prove that Cotton and Geraci did
27 not mutually assent to the November Document being a purchase contract for the Property (the "Mutual
28 Assent Issue").

69. On November 3, 2016, Cotton called Geraci to talk about Geraci branding the contemplated dispensary at the Property with his nonprofit 151 Farms organization.

70. At 1:41 p.m. on November 3, 2016, Cotton emailed Geraci after they had spoken as follows:

Larry, [¶] Per our phone call the name 151 AmeriMeds has not been taken nor has there been any business entity formed from it. If you see this as an opportunity to piggyback some of the work I've done and will continue to do as 151 Farmers with further opportunities as a potential franchise for your dispensary I'd like for you to consider that as the process evolves. [¶] We'll firm it up as you see fit.

71. On March 21, 2017, after Geraci repeatedly refused to reduce the JVA to writing as promised, Cotton emailed Geraci and terminated the JVA with Geraci for anticipatory breach.

72. In his email terminating the JVA, Cotton specifically informed Geraci that he was selling the Property to a third-party: "To be clear, as of now, you have no interest in my [P]roperty, contingent or otherwise. I will be entering into an agreement with a third-party[.]"

73. On March 21, 2017, after terminating the JVA with Geraci, Cotton entered into a written joint venture agreement with Richard Martin.

III. The Cotton I Litigation

74. The next day, March 22, 2017, Weinstein emailed Cotton copies of the *Cotton I* complaint and a lis pendens recorded by F&B on the Property (the "F&B Lis Pendens").

75. The *Cotton I* complaint alleges causes of action for (i) breach of contract, (ii) breach of the covenant of good faith and fair dealing, (iii) specific performance, and (iv) declaratory relief.

76. All four causes of action are premised on the allegation that the November Document is a fully integrated purchase contract.

77. The *Cotton I* complaint alleges that Cotton anticipatorily breached his agreement with Geraci by demanding additional consideration not originally agreed to, including the 10% equity position in the dispensary.

1 78. Weinstein filed the *Cotton I* complaint relying on the *Pendergrass*⁵ line of reasoning seeking to
 2 use the parol evidence rule as a shield to bar the admission of the Confirmation Email and other
 3 incriminating parol evidence.⁶

4 79. On May 12, 2017, Cotton filed pro se a cross-complaint in *Cotton I* against Geraci and Berry
 5 with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent misrepresentation,
 6 (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied
 7 contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x)
 8 conspiracy, and (xi) declaratory and injunctive relief.

9 80. After dealing with the procedural difficulties of representing himself pro se, Cotton reached an
 10 agreement with a litigation investor to hire counsel to represent him in *Cotton I* and related legal matters
 11 required to acquire a cannabis permit at the Property.

12 81. Cotton's litigation investor reached an agreement with then-prominent and yet to be publicly
 13 disgraced cannabis attorney Jessica McElfresh for her representation of Cotton in *Cotton I*.

14 82. McElfresh did not disclose that Geraci and numerous of Geraci's associates are her clients.

15 83. McElfresh did not disclose that she shares numerous clients with Austin.

16 84. In May 2017, the San Diego County District Attorney's office filed charges against McElfresh
 17 for her efforts in seeking to conceal the illegal cannabis operations of one of her clients from
 18 government inspectors.

19 85. Specifically, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime,
 20 Manufacturing of a Controlled Substance, and Obstruction of Justice.

21 86. McElfresh charged Cotton for her legal services for Cotton in *Cotton I*.

22 87. McElfresh referred Cotton's litigation investor to David Demian of Finch, Thornton & Baird to
 23 represent Cotton in *Cotton I*.

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 25
 26 ⁵ *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258.

27 ⁶ See *IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 (emphasis added) ("under *Pendergrass*,
 28 external evidence of promises inconsistent with the express terms of a written contract were not
 admissible, even to establish fraud.").

1 88. Neither McElfresh nor Demian disclosed that FTB had shared clients with Geraci and his
2 business.

3 89. FTB twice amended Cotton's pro se complaint with the intent to sabotage Cotton's case.

4 90. Most notably, FTB removed from Cotton's complaint the allegations that Geraci and Berry
5 conspired to acquire a cannabis permit at the Property in Berry's name because Geraci could not own
6 a cannabis permit because of the Illegality Issue.

7 91. Further, FTB removed Cotton's allegation that Geraci and Cotton had reached a valid and
8 binding oral agreement and replaced it with an allegation that Geraci and Cotton had reached an
9 agreement to agree in the future, which is not a valid and enforceable agreement.

10 92. Demian, like Weinstein, Austin and McElfresh, is a criminal with a license to practice law and
11 represents the most vile type of all attorneys – those who would connive to defeat their own client's
12 case.

13 **IV. The Disavowment Allegation**

14 93. From the filing of *Cotton I* in March 2017 until April 2018 Weinstein argued that the statute of
15 frauds and the parol evidence rule barred the Confirmation Email and other parol evidence as proof of
16 the JVA.

17 94. For example, Weinstein argued:

18 Cotton alleges, based on extrinsic evidence [(e.g., the Confirmation Email)], that the
19 actual agreement between the parties contains material terms and conditions in
20 addition to those in the [November Document] as well as a term (a \$50,000 deposit rather
21 than the \$10,000 deposit stated in the [November Document]) that expressly conflicts
22 with a term of the [November Document]. However, such a claim cannot stand as extrinsic
evidence cannot be employed to prove an agreement at odds with the terms of the
written memorandum.

23 95. However, in April 2018, attorney Jacob Austin specially appearing for Cotton filed a motion to
24 expunge the F&B Lis Pendens and cited and argued for the first time in *Cotton I* that Geraci/Weinstein

could not use the parol evidence rule to bar the Confirmation Email pursuant to the *Pendergrass* line of reasoning because it had been overruled by *Riverisland* in 2013 (the “Lis Pendens Motion”).⁷

96. In opposition to the Lis Pendens Motion, Geraci submitted a supporting declaration alleging for the first time that (i) he sent the Confirmation Email by mistake because he only read the first sentence of Cotton’s Request for Confirmation email; (ii) that on November 3, 2016 he called Cotton to tell him that he sent the Confirmation Email by mistake; (iii) Cotton agreed with Geraci that the Confirmation Email was sent by mistake and he was not entitled to a 10% equity position in the dispensary; and (iv) Cotton sent the Request for Confirmation **pretending** that Geraci and him had reached an agreement that included a 10% equity position for Cotton (the “Disavowment Allegation”).

97. Pursuant to FRCP 201 Cotton requests the Court take judicial notice of Geraci’s April 9, 2018 declaration attached hereto as Exhibit 2.

98. Geraci’s April 9, 2018 declaration contradicts dozens of his evidentiary and judicial admissions he set forth in his declarations, discovery responses and arguments in briefs prior to then.

99. Even assuming that Geraci’s April 9, 2018 declaration did not contradict his previous judicial and evidentiary admissions, his claim is barred by the statute of frauds and the parole evidence rule.

100. The statute of frauds applies to an agreement for the sale of real property as Geraci alleges, but it does not apply to a joint venture agreement as Cotton alleges.⁸

101. Geraci cannot just pretend the Confirmation Email has no legal effect.

V. The Federal Lawsuits

102. In February 2018, Cotton filed suit and a TRO in federal court against, *inter alia*, Geraci, Weinstein and Austin alleging, *inter alia*, RICO and § 1983 claims (“*Cotton III*”).⁹

⁷*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* (“*Riverisland*”) (2013) 55 Cal.4th 1169, 1182 (“[W]e overrule *Pendergrass* and its progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch* [(1928) 204 Cal. 342, 347]: ‘***It was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.***’”) (emphasis added).

⁸*Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 (“[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.”).

⁹*Cotton v. Geraci*, Case No.: 18cv325-GPC(MDD).

1 103. On February 28, 2019, because of *Cotton I*, Judge Curiel stayed *Cotton III* pursuant to
2 the *Colorado River* doctrine.

3 104. In July 2019, Wohlfeil entered judgment against Cotton in *Cotton I* after a jury trial
4 implicitly finding that the November Document is a fully integrated purchase contract that has a lawful
5 object as a matter of law.

6 105. Cotton filed a motion for new trial ("MNT") arguing, *inter alia*, assuming the November
7 Document is a contract, it is an illegal contract that cannot be enforced. (*Cotton I*, ROA No 672.)

8 106. Wohlfeil denied the MNT believing Weinstein's frivolous opposition argument that
9 Cotton had waived the defense of illegality to the enforcement of a contract because Cotton had not
10 allegedly raised the Illegality Issue before in *Cotton I*.

11 107. Factually and legally the arguments are contradicted by the facts and law. Cotton did
12 raise the Illegality Issue before the MNT and even if he had not he cannot waive the defense of
13 illegality. See *City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) ("A party to an
14 illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and *cannot waive* his
15 right to urge that defense.").

16 108. On January 10, 2020, Judge Curiel recused himself from *Cotton III* after Cotton had
17 filed a motion to lift the *Colorado River* stay and a TRO seeking to have Judge Curiel found to be a
18 biased judge that was enforcing an illegal contract and a request for counsel.

19 109. Cotton believes that Judge Curiel realized that with the information contained within
20 his motion to lift the stay, Cotton was not a conspiracy nut and that Wohlfeil was a biased judge and
21 *Cotton I* represents a three-year long egregious miscarriage of justice.

22 110. *Cotton III* was transferred to Judge Bashant and on January 15, 2020 Bashant lifted the
23 *Colorado River* stay, but denied Cotton's in Forma Pauperis request for court appointed counsel.

24 111. On April 9, 2020, Cotton filed an ex parte application seeking reconsideration of
25 Bashant's order denying his request for counsel premised on, *inter alia*, the argument that Cotton
26 needed to prove Judge Wohlfeil is biased.

27 112. Getting any kind of relief from judges against judges is virtually impossible. Judges
28 protect judges.

1 113. On April 16, 2020, Judge Bashant denied Cotton's ex parte application in a typical pro
 2 se fashion with a conclusory finding that Cotton had failed to prove "exceptional circumstances," but
 3 without describing why.

4 114. Judge Wohlfeil is enforcing an illegal contract and he made statements that manifestly
 5 prove he is biased because he stated Weinstein is not capable of acting unethically when the entire
 6 *Cotton I* case is undisputable evidence that Weinstein is acting unethically.

7 115. Any reasonable person would find that a judge enforcing an illegal contract and
 8 requiring a jury to determine a matter of law does represent exceptional circumstances.

9 116. Cotton now believes that with her recent rulings, Judge Bashant is covering up for
 10 Wohlfeil.

11 117. Both Wohlfeil and Bashant served on the San Diego Superior Court for at least seven
 12 years together before Bashant was elevated to the federal court.

13 118. Because of the violence and Wohlfeil's action led Martin to believe that he was actively
 14 seeking to sabotage Cotton's case Martin sold his interest in the property to Cotton's former attorney,
 15 Andrew Flores.

16 119. On April 3, 2020, Andrew Flores filed suit in federal court and an ex parte TRO after
 17 Cotton told him that some of his supporters, who had lent him significant money, were considering
 18 taking violent action against Geraci's attorneys to bring in law enforcement agencies to investigate this
 19 case because Wohlfeil and the City Attorney's are corrupt. (*Flores, et al. v. Austin, et al.*, Case No.20-
 20 cv-656-BAS-MDD.)

21 120. On April 20, 2020, Bashant denied Flores' TRO. The opening paragraph states:
 22 "Plaintiffs... allege civil rights violations under 42 U.S.C. § 1983, make a 'neglect to perform wrongful
 23 act' cause of action, and seek various forms of declaratory relief. The complaint is almost impossible
 24 to summarize due to its length and confusing nature."

25 121. Bashant's order also alleges that Flores did not comply with FRCP 65(b) for the issuance
 26 of a TRO based, in part, on Bashant's allegation that Corina Young is a "defendant."

27 122. First, according to Bashant, Flores lacks any professional competence as an attorney
 28 because he sued for "neglect[ing] to perform wrongful act."

1 123. Flores did not.

2 124. Flores filed a § 1986 cause of action for “neglect to prevent a wrongful act” which is
3 clearly stated in the title page of his complaint.

4 125. Second, Corina Young is a *witness* who has been threatened from providing her
5 testimony. She is not a “defendant.”

6 126. Bashant simply made that up.

7 127. Third, Flores did provide notice, case law and argument for why notice is not required
8 pursuant to FRCP 65.

9 128. Fourth, given the preceding three points, Bashant’s allegation that the Flores’ complaint
10 is “confusing” is meritless as she clearly does not understand even the most basic facts she was
11 presented with.

12 129. The bottom line is that Bashant either knew that statements she attributed to Flores were
13 true or she did not know because she did not take the time to vet Flores’ complaint and TRO.

14 130. If Bashant knew they were false, she did so to purposefully denigrate anyone that seeks
15 to prove that Wohlfeil is a biased judge to Cotton’s great prejudice.

16 131. If Bashant did not know her statements were false, then without justification she is
17 making rulings warranted by law and facts, but in reality, she never even bothered understand the facts
18 and apply the law.

19 132. In either scenario, a reasonable person would conclude that Bashant is a biased judge
20 who is not impartial.

21 **VI. This Complaint**

22 133. The Flores complaint is 177 pages and explains in detail how the *Cotton I* complaint is
23 but one sham action among many filed in furtherance by Geraci and his associates seeking to acquire
24 as many cannabis permits as they can in the City to establish a monopoly.

25 134. Cotton does not have the ability to explain the conspiracy in a clear and succinct manner
26 so he files this amended complaint focused on the fact that the November Document cannot be a
27 contract because it lacks mutual assent, has an unlawful object and Judge Wohlfeil’s statements and
28 actions prove that he is biased.

135. Cotton did not have a fair and impartial tribunal.

136. Cotton does not have the ability to explain the entire conspiracy which gives rise to RICO, antitrust, obstruction of justice, and fraud causes of action that includes multiple government and private attorneys.

137. However, Cotton intends to prepare and file a motion seeking court counsel to amend this Complaint to include all defendants against whom Cotton has valid causes of action.

First Cause of Action -§ 1983

(Plaintiff against Bashant)

138. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

139. The presence of bad faith can render an exercise of legal judgment judicial misconduct; “Bad faith” in this context means “acts within the lawful power of a judge which nevertheless are committed for a corrupt purpose, i.e., for any purpose other than the faithful discharge of judicial duties.” *Cannon v. Commission on Judicial Qualifications*, 14 Cal.3d 678, 695 (Cal. 1975).

140. Cotton has filed judicial complaints against both Wohlfeil and Bashant for their failure to exercise their judicial discretion in bad faith.

141. Bashant’s order finding that Cotton did not prove exceptional circumstances when Wohlfeil entered a judgment in *Cotton I* that enforces an illegal contract as a matter of law, coupled with her fabricated statements that she attributed to Flores’ that undermines the case against Wohlfeil, would lead any reasonable person to believe that she is covering up for Wohlfeil. Or, at the very least, that she is not impartial.

142. “Bias exists where a court has prejudged, or reasonably appears to have prejudged, an issue.” *Kenneally v. Lungren*, 967 F.2d 329, 333 (9th Cir. 1992) (quotation and citation omitted).

143. Cotton should not have to “hope” that Bashant will not take other unethical and prejudiced actions against him either to continue to cover up for Wohlfeil or to retaliate against him for exposing that she fabricated and attributed multiple statements to Flores that were not true.

144. This relief against Bashant is prospective.

Second Cause of Action -§ 1983

(Plaintiff against Wohlfeil)

145. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

146. Plaintiff seeks to have the *Cotton I* judgment vacated and a new trial in state court where he originally filed his cross-complaint and Wohlfeil should not continue to preside over *Cotton I*.

147. As with Bashant, Cotton should not have to hope that Wohlfeil will not retaliate against him for exposing him for being a biased judge that exposed him for being a judge that thinks the defense of illegality is capable of being waived because Cotton had allegedly not raised the Illegality Issue before the MNT.

148. This relief against Wohlfeil is prospective.

Third Cause of Action – Declaratory Relief

(Plaintiff against the Geraci, Berry, Weinstein, Austin, McElfresh and Demian)

149. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

150. Plaintiff seeks to have the *Cotton I* judgment declared void and vacated for being procured by a fraud on the court, the product of judicial bias, and because it enforces an illegal contract.

Fourth Cause of Action – Punitive Damages

(Plaintiff against all defendants)

151. Plaintiff realleges and incorporates herein by reference the allegations in the preceding paragraphs.

152. “At some point, justice delayed is justice denied.” *Southern Pacific Transp. Co. v. I.C.C.*, 871 F.2d 838, 848 (9th Cir. 1989).

153. Since March 2017, Plaintiff has incurred over **\$3,000,000** from 7 different law firms and at least three contract paralegals in legal fees. The law firms are: (i) Finch, Thornton, & Baird; (ii) Law Office of Jacob Austin; (iii) Kerr & Wagstaffe LLP; (iv) Law Office of JoEllen Plaskett; (v) Law Office of Andrew Flores; (vi) California Appellate Law Group; and (vii) Tiffany & Bosco. The three contract paralegals are: (i) Leanne Thomas; (ii) Zoe Villaroman, and (iii) Lori Hatmaker.

154. "Generally, [punitive damages] cases fall into three categories: (1) really stupid defendants; (2) really mean defendants; and, (3) really stupid defendants who could have caused a great deal of harm by their actions but who actually caused minimal harm." *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 453 n. 15 (1993) (citation and quotation omitted).

155. Judges are protected by their judicial immunity.

156. But *Cotton I* at every point, has failed to state a cause of action as filed when Weinstein incorrectly assumed the parol evidence rule would bar the Confirmation Email and as de facto amended, when confronted by *Riverisland*, to alleging that the Confirmation Email was sent by mistake.

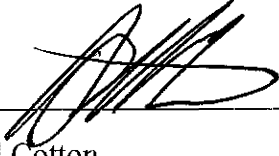
157. Cotton believes it would be an egregious miscarriage of justice to find that defendants can file and maintain a malicious prosecution action that at no point stated a cause of action and rely on the judgments or orders by judges, that were biased against Cotton, to avoid being held liable for Cotton's legal fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That this Court disqualify Bashant from continuing to preside over this matter;
2. That the *Cotton I* judgment be declared void;
3. That the *Cotton I* action be stayed pending resolution of this action;
4. That Wohlfeil be declared bias and prohibited from continuing to preside over Cotton I upon its resumption pending resolution of this Complaint;
5. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than \$7,000,000;
6. Punitive damages against all defendants saved Wohlfeil and Bashant who are protected by their judicial immunity;
7. That this Court appoint Cotton counsel;
8. That this Court grant Cotton's appointed counsel leave to amend this Complaint to include all defendants and set forth all material allegations; and
9. That other relief is awarded as the Court determines is in the interest of justice.

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2 Dated: May 13, 2020.

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5 Darryl Cotton,

6 Cotton and Cotton Pro Se
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JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Cotton, Darryl.

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

In Pro Per

DEFENDANTS

Bashant, Cynthia, 2020 MAY 19 PM 2:48
 Rebecca, Austin, Gina, M., Weinstein, Michael, R., McElfresh,
 Jessica, Demien, David

CLERK US DISTRICT COURT

County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input checked="" type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:

Deprivation of Civil Rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Bashant

DOCKET NUMBER 20CV0656-BAS-MDD

DATE

05/13/2020

FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE