DARRYL COTTON
6176 Federal Boulevard
San Diego, CA 92104
Telephone: (619) 954-4447
Facsimile: (619) 229-9387

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiff,

v.

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

Defendants.

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

PLAINTIFF'S NOTICE OF EX PARTE APPLICATION AND EX PARTE APPLICATION FOR APPOINTMENT OF COUNSEL PURSUANT TO 28 U.S.C. §1915(e)(1); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF DARRYL COTTON

Hearing Date: N/A
Hearing Time: N/A
Judge: Hon. Cynthia A. Bashant
Courtroom: 4B

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on ~~July~~ August 31, 2020, Plaintiff DARRYL COTTON will move this Court *ex parte* for an order appointing him counsel for representation in this action pursuant to 28 U.S.C. §1915(e)(1).

///

///

///

///

Plaintiff's ex parte is based upon this notice and application, the accompanying supporting memorandum of points and authorities, the Declaration of Darryl Cotton, the accompanying Request for Judicial Notice, and is made on the grounds that Plaintiff is an indigent civil litigant who is likely to succeed on the merits in a complex legal matter in which exceptional circumstances warrant appointment of counsel.

The legal matter is complex because the gravamen of Cotton's cause of actions are that numerous City of San Diego (the "City") attorneys and officials are part of and/or ratifying a criminal conspiracy to create an illegal monopoly in the cannabis market in the City (the "Antitrust Conspiracy"). In furtherance of this conspiracy, multiple parties, including numerous attorneys from numerous law firms, have taken criminal acts that include and constitute the filing of sham pleadings and defenses, fraud on the court, witness tampering, perjury, and other illegal acts that violate Cotton's civil rights.

Further, these actions have been taken or are being taken across multiple litigation matters before state and federal judges across five lawsuits: Cotton I[1] and Cotton II[2] were in State court before Judge Wohlfeil. Wohlfeil entered judgment against Cotton in Cotton II as a matter of law in January 2018 and entered judgment against Cotton in Cotton I after a jury trial in July 2019. Cotton III[3] is the instant action before this Court. Judgement against Cotton was entered in Cotton IV[4] by Judge Curiel in May 2019. Cotton V[5] was filed in April 2020 by Cotton's former attorney, after acquiring the rights to the subject property from the equitably owner of the subject real property, alleging the Antitrust Conspiracy and seeking to declare void the judgments issued in Cotton I, II, and IV as void for being, *inter alia*, the product of judicial bias and multiple criminal acts that constitute a fraud on the court.

DATED: August 3, 2020

DARRYL COTTON
Plaintiff *Pro Se*

---

[1] "Cotton I" means Geraci vs Cotton, San Diego County Superior Court, Case No. 37-2017-00010073-CU-BC-CTL.
[2] "Cotton II" means Cotton v City of San Diego, San Diego Superior Court Case No. 37-2017-00037675-CU-WM-CTL.
[3] "Cotton III" means Cotton v. Geraci, Southern District of California, Case No. 18CV00325-BAS (DEB).
[4] "Cotton IV" means Cotton v. Geraci, Southern District of California, Case No. 18CV2751-GPC(MDD).
[5] "Cotton V" means Flores v. Austin, Southern District of California, Case No. 20CV0656-JLS(LL).

MEMORANDUM OF POINTS & AUTHORITIES

STATEMENT OF THE CASE

There is a small group of wealthy individuals, attorneys and professionals (the "Enterprise") in the City that have conspired to create an illegal monopoly in the cannabis market (i.e. the Antitrust Conspiracy). 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 virtually all cannabis conditional use permits ("CUPs") and licenses in the City go to principals of the Enterprise. The de facto general counsel of the Enterprise is cannabis "expert" attorney Gina M. Austin.[6]

The actions giving rise to this case are acts taken by the Enterprise in furtherance of the Antitrust Conspiracy. The origin of these events arises from a three-sentence document executed by Lawrence Geraci and Cotton in November of 2016 (the "November Document"). See Cotton III ECF No. 26, Ex. 4 at Ex. A. Cotton is the owner-of-record of the real property ("Property") that is the subject of this action. See Cotton III ECF No. 3, at #2 Declaration of Darry Cotton, ¶ 3. The Property qualifies for a cannabis CUP with the City that would allow the operation of a cannabis dispensary; a for-profit cannabis retail store (the "Business"). Id. at ¶ 5. If the CUP were approved at the Property, the Property would be worth no less than $6,000,000. The value of the Property and the potential high profits from the Business are the drivers behind this litigation.

Geraci has been sued and sanctioned at least three times by the City for his owning/management of illegal marijuana dispensaries at his real properties.[7] Consequently, pursuant to State of California (the "State") and City laws, regulations and public policies, Geraci cannot own a CUP or license to operate a legal cannabis dispensary as a matter of law (the "Sanctions Issue").[8]

---

[6] Request for Judicial Notice ("RJN") Ex. 1 (Austin Decl.) at ¶ 2.

[7] See RJN Ex. 2 (i) *City of San Diego v. The Tree Club Cooperative,* Case No. 37-2014-00020897-CU-MC-CTL, (ii) *City of San Diego v. CCSquared Wellness Cooperative* , Case No. 37-2015-00004430-CU-MC-CTL and, (iii) *City of San Diego v. LMJ 35th Street Property LP, et al.,* Case No. 37-2015-000000972. (the "Geraci Judgments").

[8] See, e.g., California Business and Professions Code ("BPC") § 26057 *et seq*. (Denial of Application); San Diego Municipal Code § 42.1502 (defining and requiring dispensaries to "operat[e] with a

On November 2, 2016, Geraci, in order to prevent Cotton from selling the Property to a third-party, fraudulently induced Cotton into entering an oral joint venture agreement and promised to provide Cotton, *inter alia*, a 10% equity position in the CUP as consideration for the Property (the "JVA"). Geraci also promised to have his cannabis attorney, Gina M. Austin, promptly reduce the JVA to writing. However, Geraci could not legally honor the JVA because he could not own a cannabis CUP because of the Sanctions Issue.

To unlawfully circumvent the Sanctions Issue, Geraci submitted a CUP application at the Property using his secretary, Rebecca Berry, as a proxy (the "Berry Application"). In the Berry Application, in violation of applicable disclosure laws, regulations and the plain language of the City's CUP application forms that she certified she understood, Berry knowingly and falsely certified that she is the true and sole owner of the CUP being applied for (the "Berry Fraud").

In March 2017 Cotton discovered the Berry Fraud and demanded that Geraci reduce the JVA to writing and, no longer trusting Geraci, that a third-party be responsible for accounting of the dispensary. Geraci refused, Cotton then terminated the JVA with Geraci and entered into a written joint venture agreement with Richard Martin (the "Martin Sale"). The next day, Geraci's attorneys from the law firm of Ferris & Britton ("F&B") served Cotton with a sham action, Cotton I, and a recorded lis pendens on the Property seeking to prevent the Martin Sale (the "F&B Lis Pendens").

To complicate matters, Cotton's litigation investor attempted to hire one of Geraci's corrupt attorneys, Jessica McElfresh, to represent Cotton against Geraci. McElfresh, after initially agreeing to represent Cotton and learning about the evidence and finances Cotton and his investor were working with, ostensibly changed her mind about representing Cotton and referred Cotton's litigation investor to David Demian of Finch, Thornton & Baird ("FTB"). Neither McElfresh nor FTB disclosed that McElfresh and FTB were attorneys for Geraci or had shared clients with Geraci's business, Tax and Financial Center, Inc. ("T&FC").

Cotton engaged FTB and FTB sought to sabotage Cotton's case by, *inter alia*, amending his complaint and attempting to have Cotton make judicial admissions that Geraci was acting as Cotton's

---

Conditional Use Permit in accordance with… retailer licensing requirements contained in the California Business and Professions Code [("BPC")] sections governing cannabis and medical cannabis.").

agent when Geraci submitted the Berry Application (the "FTB Fraud"). If FTB was a good faith actor, they would have argued what any reasonable attorney would have argued, they would have shown to the court that on the day the November Document was executed, Cotton received a copy from the November Document in an email entitled "Contract," (See attached Declaration by Cotton at ¶ 5) he requested that Geraci confirm in writing the November Document is not a "final agreement." Id. at ¶ 6. Geraci responded and provided the requested confirmation (the "Confirmation Email").

Cotton fired FTB when they failed to raise the Request for Confirmation and the Confirmation Email before Wohlfeil. Id. at ¶7 Cotton then believed that Demian was simply stupid and professionally incompetence. The truth is more understandable and realistic, but it was not until after trial in Cotton I that Cotton discovered the truth. It was no until Cotton discovered that McElfresh represented Geraci at a public hearing defending Geraci's right to the cannabis CUP (that was the object of Cotton I), that Cotton realized that Demian was not as stupid as he pretended to be. But rather, is a corrupt and sociopathic individual with a disdain of the rights of others and no regard for the suffering his illegal actions cause. When Cotton filed suit against FTB, Demian and his partners at FTB, knowing they are fucked because they cannot even begin to justify the factual allegations they made on Cotton's behalf that contradict EVERY single allegations made by Cotton and which irrefutably prove they committed a fraud on the court by conniving to sabotage their own client's case. Kimes v. Stone, 84 F.3d 1121, 1127 n.3 (9th Cir. 1996) (fraud on the court includes "where an attorney fraudulently pretends to represent a party, and connives at his defeat…").

Thus, FTB hired Kenneth C. Feldman, a Partner at the vaunted international law firm of Lewis & Brisbois ("L&B"). L&B is 89th largest law firm in the United States ranked by revenue, having brought in $470,800,000 in 2018.[9] L&B has world class litigators, which include Partner Ken Feldman who FTB hired to represent them in their defense against Cotton's suit:

> Ken Feldman is a partner in the Los Angeles office of Lewis Brisbois and is national chair of the firm's Legal Malpractice Defense Department. He is a certified specialist in legal malpractice law by the California State Bar, and is the most recent chair of the California State Bar Legal Malpractice Law Advisory Commission. Ken is also the author of the California Legal Malpractice & Malicious Prosecution Liability Handbook, which is now

[9] https://en.wikipedia.org/wiki/List_of_largest_law_firms_by_revenue (August 3, 2020).

> in its 7th edition. His practice focuses on the direct representation of insurers and their insureds in professional liability actions. [10]

Feldman, given his specializations, knows and understand that a "lawyer's duties to maintain the confidences of a client and advocate vigorously are trumped ultimately by a ***duty to guard against the corruption that justice will be dispensed on an act of deceit***." United States v. Shaffer Equip. Co. 11 F.3d 450, 458 (4th Cir. 1993) (emphasis added). In order to avoid liability here, Feldman must argue that he is either an imbecile and did not realize what any reasonable attorney would have realized, any claims for or against Cotton based on the November Document being a fully integrated contract are frivolous, or argue that it is ethical to advocate on behalf of FTB who committed a fraud on the court without disclosing to ***this*** Court that FTB had committed a fraud on the State court. Thus, that it ***is*** lawful to allow federal judges to corruptly dispense justice "***on an act of deceit***." Id.

Cotton is before this Court seeking appointment of counsel, he cannot describe the widespread conspiracy or smaller conspiracies that created bedfellows of multiple bad faith actors. But Cotton can prove that all legal actions against him are frivolous. Further, that there have been numerous constitutional violations by numerous parties that are connected to Geraci. Thus, there is evidence that the illegal actions that have taken place were taken in furtherance of the Antitrust Conspiracy. Respectfully, even if the Court refuses to believe that there is an Antitrust Conspiracy, that does not mean that the individual criminal acts that Cotton set forth below as evidence in support thereof are not criminal acts that justify providing Cotton justice.

LEGAL STANDARD

The federal in forma pauperis statute provides that "[a] court may request an attorney to represent any person unable to afford counsel." 28 U.S.C. § 1915(e)(1). In the Ninth Circuit, a district court may request that an attorney represent an indigent civil litigant upon a showing of "exceptional circumstances." *See Agyeman v. Corr. Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004). "A finding of the exceptional circumstances of the plaintiff seeking assistance requires at least an evaluation of [1] the likelihood of the plaintiff's success on the merits and [2] an evaluation of the plaintiff's ability to articulate his claims 'in light of the complexity of the legal issues involved.'" *Agyeman*, 390 F.3d at 1103

---

[10] https://lewisbrisbois.com/attorneys/feldman-kenneth-c (August 3, 2020).

(quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

ARGUMENT

Remedies for violations of civil rights include declaratory relief in federal courts pursuant to 28 U.S.C. § 2201. The origin of Cotton's claims is that Cotton I was filed and maintained without probable cause as a sham action by the Enterprise as an act in furtherance of the Antitrust Conspiracy. The Cotton I complaint denies the existence of the JVA and is predicated on the false allegation that the November Document is a fully integrated contract. The November Document, as a matter of law, cannot be a fully integrated sales contract as alleged in Cotton I because: (i) it lacks mutual assent (the "Mutual Assent Issue"); (ii) over the years of litigation Geraci has been forced to continually admit and contradict previous admissions that his alleged agreement with Cotton includes numerous material terms not contained in the November Document (the "Contract Integration Issue"); and (iii) assuming it were a contract, it is an illegal contract because it violates the law, including State and City cannabis licensing laws, regulations and public policies, the statute of frauds and the equal dignities rule (hereinafter, collectively with the Sanctions Issue and the Berry Fraud, the "Illegality Issues").

Cotton's position is simple: The Mutual Assent Issue, the Contract Integration Issue, and the Illegality Issues each independently prove that Cotton I was filed without probable cause (hereinafter, collectively, the "Case Dispositive Questions of Law"). Furthermore, as proven below, all judgments entered against Cotton are void for being the product of judicial bias, having been procured through multiple criminal acts that constitute a fraud on the court, and enforcing an illegal contract. And, as all attorneys have a obligation to prevent a fraud on the court and constitutional violations to prevent access to the courts, they are liable even if only on negligence standard. 42 U.S.C. § 1985; id. § 1986.

I. Plaintiff is likely to prevail on his declaratory cause of action that defendants' actions have violated his Civil Rights and the Cotton I, Cotton II and Cotton IV judgments are void.

A. ***The Mutual Assent Issue***. The Ninth Circuit has "held that the 'existence of [a] contract based on undisputed facts is a question of law.'" United States v. Mujahid, 799 F.3d 1228, 1237 (9th Cir. 2015) (quoting Chateau des Charmes Wines Ltd. v. Sabate USA Inc., 328 F.3d 528, 530 (9th Cir. 2003) (per curiam)). "As every first-year law student knows, an agreement or mutual assent is of course essential to a valid contract." Jacks v. CMH Homes, Inc., 856 F.3d 1301, 1304 (10th Cir. 2017)

(quotation and citation omitted); Cal. Civ. Code § 1550; Stewart v. Preston Pipeline Inc., 134 Cal. App. 4th 1565 (2005). Under California law, determining the existence of "[m]utual assent to contract is based upon objective and outward manifestations of the parties; a party's 'subjective intent, or subjective consent, therefore is irrelevant.'" Stewart, 134 Cal. App. 4th at 1587 (quoting Beard v. Goodrich, 110 Cal. App. 4th 1031, 1040 (2003)). "'[I]n the absence of fraud, overreaching[,] or excusable neglect, . . . one who signs an instrument may not avoid the impact of its terms on the ground that he failed to read the instrument before signing it.'" Id. at 1588 (quoting Hulsey v. Elsinore Parachute Center, 168 Cal. App. 3d 333, 339 (1985)). A contract will thus facially evidence mutual assent where the parties signed it and there is no indication that the contract is conditional "or that [a party] did not intend to be bound by its terms." Id. at 1587.

Geraci told Cotton the November Document was a receipt when they executed it. See Cotton III ECF No. 3, at #2 Declaration of Darry Cotton, ¶32. That same day, when Cotton received the November Document in an email from Geraci entitled "Contract", Cotton replied and sent the Request for Confirmation clearly and specifically seeking confirmation from Geraci that the November Document is not a "final agreement" because, *inter alia*, it did not contain his bargained-for "10% equity position." Id. at ¶ 33. The Request for Confirmation is unambiguous, undisputed and controlling evidence that Cotton "did not intend to be bound" by the November Document as if it were a contract. Stewart at 1587. In other words, Cotton has proof of Geraci's fraud, and he cannot be held to the November Document because Geraci drafted it to *look* like a contract relying the Pendergrass line of reasoning. Stewart, 134, Cal.App.4th at 1587.[11]

On the other hand, Geraci's Confirmation Email is objective evidence of his assent to an agreement with Cotton that included, at the very least, a 10% equity position for Cotton. Marin Storage Trucking, Inc. v. Benco Contracting and Eng'g, Inc., 89 Cal. App. 4th 1042, 1049 (2001) ("[O]rdinarily one who signs an instrument which on its face is a contract is deemed to assent to all its terms."). Geraci's

---

[11] See gen. Michelle P. LaRocca, Note – Reflections on Riverisland: Reconsideration of the Fraud Exception to the Parol Evidence Rule ("Riverisland Note"), 65 Hastings L.J. 581 (2014); id. at 592 (The Riverisland Note describes an example of fraud allowed under Pendergrass that is identical to the issue presented here: "the drafter asks the non-drafter to sign what the drafter says is a ***receipt*** for items delivered, but is actually a ***contract*** for the sale of more items.") (Emphasis added).

testimony about his subjective intent in sending the Confirmation Email has no bearing on whether he is bound by it. Nor is it relevant that he did not read the Request for Confirmation email before sending the Confirmation Email or, even assuming he *had* read it, that he may not have fully understood the significance of its plain language. Id. ("A party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing."); Stewart, 134 Cal. App. 4th at 1587 ("Plaintiff's opposition — based upon nothing more than his claim that he had not read or understood the agreement before signing it — raised no triable issue on the question of mutual assent.").

As the evidence is undisputed, the issue of mutual assent is a question of law. United States v. Mujahid, 799 F.3d 1228, 1237 (9th Cir. 2015). The law, reason and common sense allow for only one lawful and just conclusion - Geraci assented to a 10% equity position for Cotton and is bound by his agreement. Therefore, on this basis alone, the November Document cannot be the "final agreement" that Judge Wohlfeil found it to be in Cotton II as a matter of law and the jury, in violation of Cotton's constitutional rights, was unlawfully charged by Wohlfeil to find, and did find, Cotton I.[12]

B. The Illegality Issues. "Whether a contract is illegal . . . is a question of law to be determined from the circumstances of each particular case." Kashani v. Tsann Kuen China Enterprise Co., 118 Cal.App.4th 531, 540 (Cal. Ct. App. 2004) (citation and quotation omitted). A contract is unlawful and unenforceable if it is contrary to, in pertinent part, (1) an express provision of law; or (2) the policy of express law. Cal. Civ. Code §1667(1)-(2). For purposes of illegality, the "law" includes statutes, local ordinances, and administrative regulations issued pursuant to same. Kashani, 118 Cal.App.4th at 542. A contract made for the purpose of furthering any matter prohibited by law, or to aid or assist any party in the violation of the law, is void. Homami v. Iranzadi (1989) 211 Cal.App.3d 1104, 1109.

The test for illegality is "whether the plaintiff requires the aid of the illegal transaction to establish

---

[12] People v. Walker, 32 Cal. App. 3d 897, 902 (1973) ("It is error to submit to a jury as a question of fact an issue that on the record was one of law."); Shaw v. Superior Court, 2 Cal. 5th 983, 993 (2017) ("When the right to jury trial exists, it provides the right to have a jury try and determine ***issues of fact***. (Code Civ. Proc., § 592; Evid. Code, § 312.) Even in such cases, ***issues of law*** are to be determined by the court, rather than a jury. (Code Civ. Proc., § 591; Evid. Code, § 310; see generally 7 Witkin, Cal. Procedure [(5th ed. 2008)] Trial, § 81, pp. 107–108 [citing cases].") (emphasis in original).

his case. If the plaintiff cannot open his case without showing that he has broken the law, the court will not assist him, whatever his claim in justice may be upon the defendant." Id. at 1109.

Geraci was sanctioned on June 17, 2015 in the CCSquared Judgment for "maintaining" an illegal dispensary at the Geraci Property. At trial in Cotton I, Geraci committed perjury by testifying that he had no knowledge of the dispensary. Even assuming his judicial admission in the Stipulated Judgment did not directly contradict his testimony, as a co-owner of JL he is still liable. "[A]s the owner of the [Geraci Property] where an illegal marijuana facility was operating, [Geraci is] strictly liable for the offense, regardless of his knowledge, intent, or active participation in the operation. [Citations.]" City of San Diego v. Medrano, D071111, at *7 (Cal. Ct. App. Aug. 2, 2017) (unpublished). Pursuant to BPC § 26057(a),(b)(7), applicable to all cannabis CUP applications with the City (see SDMC § 42.1502), Geraci was barred from owning a cannabis CUP until June 18, 2018 as a matter of state law. The Berry Application was submitted on October 31, 2016.

Therefore, setting aside other arguments, because under both Geraci and Cotton's version of the agreement reached, which is either Geraci's 90% or 100% ownership of a cannabis CUP, which is illegal, it was void and unenforceable. Consul Ltd. v. Solide Enterprises, Inc., 802 F.2d 1143, 1148 (9th Cir. 1986) ("A contract to perform acts barred by California's licensing statutes is illegal, void and unenforceable.").[13]

Additionally, Geraci's application for a cannabis CUP at the Property via the Berry Application is illegal. Berry's failure to disclose in the Berry Application that she was allegedly acting as Geraci's agent or that Geraci was the true and sole owner of the cannabis application being sought:

(i) violates the plain and clear requirement set forth in the Ownership Disclosure Form requiring a list of all parties with an interest in the CUP or the Property (required pursuant to SDMC § 112.0102

---

[13] See Mann v. Gullickson, No. 15-cv-03630-MEJ, at *10-11 (N.D. Cal. Nov. 2, 2016) ("California courts have held that a lawful contract 'must not be in conflict either with express statutes or public policy'—as a corollary, '[a] contract that conflicts with an express provision of the law is illegal and the rights thereto cannot be judicially enforced.' Vierra v. Workers' Comp. Appeals Bd., 154 Cal. App. 4th 1142, 1148 (2007) (citations omitted); see also Armendariz v. Found. Health Psychcare Servs., Inc., 24 Cal. 4th 83, 124 (2000) ('If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced.').").

as cited to in the Ownership Disclosure Form);

(ii) violates SDMC § 11.0401 (prohibiting willful false statements in CUP applications);

(iii) makes, *inter alia*, Geraci, Berry, Austin, Bartell and Schweitzer jointly liable pursuant to SDMC § 11.0402 (joint liability for aiding & abetting) for which there can be no excuse as the violations are treated as strict liability offenses regardless of intent pursuant to SDMC § 121.0311;

(iv) violates BPC § 26057(b)(3) ("The applicant has failed to provide information required by the licensing authority.");[14] and

(v) violates the statute of frauds and the equal dignities rule. Civ. Code § 1624(4); id. § 2309.[15]

In Homami, the court declined to enforce an oral contract that provided that a buyer of real property would pay interest secretly to the seller in order to allow the seller to avoid declaring interest income and thus to evade required taxes. Homami, 211 Cal.App.3d at 1104. In reaching its decision, the court identified a "group of cases... involving] plaintiffs who have attempted to circumvent federal law. Generally, these cases arise where nonveterans seek to obtain government benefits and entitlements available to veterans only, either by setting up a strawman veteran or otherwise by falsifying documents." Id. at 1110.

Here, similarly, Geraci used his secretary Berry as a strawman, or rather a strawwoman, to unlawfully acquire a cannabis CUP that he could lawfully acquire in his own name. And he did so via a fraudulent application that violated, *inter alia*, (i) clearly applicable State and City laws and regulations requiring his disclosure as the true applicant and owner of the cannabis CUP sought and (ii) the statute of frauds and the equal dignities rule. Civ. Code § 1624(4); id. § 2309. As in Homami, "[t]o permit a recovery here on any theory would permit [Geraci and his conspirators] to benefit from [their] willful and deliberate flouting of [the] law[s] designed to promote the general public welfare." Id. at 1110.

---

[14] See Cal. Code Regs. tit. 16 § 5003(b)(1) (defining "Owner" for purposes of cannabis applications as, *inter alia*, a "person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee").

[15] See Martindell v. Bodrero, 256 Cal.App.2d 56, 61 (Cal. Ct. App. 1967) ("It is well established that parol evidence is not admissible to relieve from liability an agent who signs personally without disclosing the name of the principal on the face of the instrument."); Hollywood Nat. Bank v. International Bus. Mach, 38 Cal.App.3d 607, 617 (Cal. Ct. App. 1974) ("[W]here the writing is unambiguous on its face, extrinsic evidence is inadmissible to show that a person acted purely as an agent.").

C. ***The Contract Integration Issue.*** "Whether a contract is integrated is a question of law when the evidence of integration is not in dispute." Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc. ("Founding Members") (2003) 109 Cal.App.4th 944, 955. "An integration may be partial rather than complete: The parties may intend that a writing finally and completely express only certain terms of their agreement rather than the agreement in its entirety. If the agreement is partially integrated, the parol evidence rule applies to the integrated part." Id. at 955 (citations omitted). "The crucial threshold inquiry, therefore, and one for the court to decide, is whether the parties' ***intended*** their written agreement to be fully integrated." Brandwein v. Butler, 218 Cal. App. 4th 1485,1510 (Cal. Ct. App. 2013) (emphasis added).

Here, Geraci admits that the following material terms are part of his agreement with Cotton: (i) the $10,000 "good faith earnest money deposit" referenced in the November Document is actually a "nonrefundable deposit" and (ii) that he agreed to finance the acquisition of the CUP at the Property. These are material terms and if the "the parties intended [the November Document] to serve as the exclusive embodiment of their agreement" they would have included these terms in the November Document. Id. Additionally, although Geraci does not agree to the following term as part of his agreement, it is ***absolutely critical*** to understand that both Geraci and Cotton's version of the agreement reached included a term that Geraci would also finance the development of the CUP at the Property. Thus, no matter how poetic Weinstein waxed on Geraci's efforts to have the CUP approved, and all the professionals he hired and who testified on his behalf, it had and has no bearing on whether or not the parties mutually assented to the November Document being a fully integrated contract.

Weinstein befuddled Wohlfeil into issuing the Cotton II judgment as a matter of law by distracting him with all of the time, money, and professionals that Geraci expended or hired to have the Berry Application approved. None of those facts are evidence that the parties did not reach the JVA or of Cotton's mutual assent to the November Document being a contract.

Further, as proven above, notwithstanding Geraci's allegation that he sent the Confirmation Email by mistake, as a matter of law he assented to provide Cotton a 10% equity position in the CUP. And that term is also not in the November Document.

On the other hand, Cotton's allegation of the JVA is consistent with his allegation that the

November Document was executed with the intent it be a receipt - it reflects some of the terms reached by the parties (e.g., $800,000 purchase price) and memorializes his possession of $10,000 towards the total $50,000 nonrefundable deposit term he alleges that Geraci and him reached as part of the JVA.

D. The Disavowment Allegation is barred by the Parol Evidence Rule. The Parol Evidence Rule bars the Disavowment Allegation as a matter of law. The matter of Clear Connection Corp. v. Comcast Cable Commc'ns Mgmt., LLC, No. 2:12-cv-02910-TLN-DAD, at *9 (E.D. Cal. Dec. 3, 2013) is controlling on this issue of alleged oral statements (i.e., the Disavowment Allegation) that contradict integrated written terms (i.e., the 10% equity position) in partially integrated documents (i.e., the Request for Confirmation and the Confirmation Email):

> Groth-Hill Land Company v. General Motors, LLC, 2013 WL 3853160 (N.D. Cal. Jul. 23, 2013), which, in reaching its conclusion, cites heavily the California Supreme Court's decision in Riverisland, is instructive. In Groth-Hill, similar to the instant action, "plaintiffs in their promissory fraud claim [did] not attack the validity of the . . . agreements"; "[i]nstead, they [sought] to recover based on promises [defendant] allegedly made to them over the phone, promises which run counter to the terms of the written contract." Id. at *15. The court held that the fraud exception rule did not apply in those circumstances and the parol evidence rule excluded any such evidence. Id. at *16.
>
> Here, as was the case in Groth-Hill, Clear Connection "do[es] not attack the validity of the written agreements or argue that [Comcast] breached the written contracts," but rather "argue[s] that because this proceeding deals with a claim of fraud, the parol evidence rule does not apply." Id. at *15. Therefore, Clear Connection is "barred, **as a matter of state law**, from introducing alleged oral promises which contradict the terms of the [fully integrated] written agreements [Clear Connection] signed with" Comcast. Id. at *16. [Emphasis added.]

Here, as was the case in Clear Connection and Groth-Hill, Geraci does not challenge the validity of the November Document. Rather, Geraci alleged and recovered based on alleged promises Cotton allegedly made over the phone on November 3, 2016 that contradict the 10% equity position that Geraci confirmed in the Confirmation Email. "Therefore, [Geraci should have been] 'barred, **as a matter of state law**, from introducing alleged oral promises which contradict the terms of the [partially integrated] written agreements [Geraci] signed with' [Cotton]." Id. (emphasis added).

On the other hand, Cotton has always challenged the authenticity of the November Document as a sales contract and the parol evidence rule does not bar the Request for Confirmation and the

Confirmation Email as evidence of the alleged JVA by Cotton.

E. The Disavowment Allegation is Fabricated Evidence by Weinstein. Geraci's answers to the Cotton I, Cotton II, and Cotton IV complaints and the Geraci Pre-Riverisland declarations are judicial admissions that the Disavowment Allegation never took place. The Disavowment Allegation is substantively an affirmative defense of fraud and mistake.

The Disavowment Allegation should have been barred by Wohlfeil as a de facto sham pleading seeking to avoid the expungement of the Lis Pendens that was a de facto motion for summary judgment as the expungement would have allowed Cotton to sell the Property to Martin and limited Geraci to monetary damages.[16] Wohlfeil's de facto granting of the sham amendment to the Cotton I complaint ratified Weinstein's illegal fabrication of the Disavowment Allegation to ***allegedly*** create a material issue of fact to prolong the Cotton I litigation while his conspirators took acts and threats of violence against Cotton and other seeking to prevent Cotton I from reaching trial. Cotton says allegedly because even if the Disavowment Allegation did not constitute a sham pleading contradicted by over a year of judicial and evidentiary admissions by Geraci, Berry, ALG and FTB, it still fails to state a cause of action.

F. Probable Cause. In Sheldon Appel, the California Supreme Court held the test for probable cause is "whether, on the basis of the facts known to the defendant, the institution of the prior action was legally tenable." 47 Cal. 3d at 878. The court further held an action is "tenable" from the legal perspective if it is supported by existing authority or the reasonable extension of that authority. Id. at 886. The court did not address tenability from the factual perspective. Factual tenability was addressed,

---

[16] "Admissions against interest have high credibility value, particular when, as here, they are made in the context of proceedings designed to elicit the facts. 'Accordingly, when such an admission becomes relevant to the determination, on motion for summary judgment, of whether or not there exist triable issues of fact (as opposed to legal issues) between the parties, it is entitled to and should receive a kind of deference not normally accorded evidentiary allegations in affidavits.' (Italics added; D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 22 [112 Cal.Rptr. 786, 520 P.2d 10]; Leasman v. Beech Aircraft Corp. (1975) 48 Cal.App.3d 376 [121 Cal.Rptr. 768].) ***After-the-fact attempts to reverse prior admissions are impermissible because a party cannot rely on contradictions in his own testimony to create a triable issue of fact.*** (Gray v. Reeves (1977) 76 Cal.App.3d 567 [142 Cal.Rptr. 716]; Mikialian v. City of Los Angeles (1978) 79 Cal.App.3d 150 [144 Cal.Rptr. 794].) ***The assertion of facts contrary to prior testimony does not constitute "`substantial evidence of the existence of a triable issue of fact.'"*** (D'Amico v. Board of Medical Examiners, supra,11 Cal.3d 1.)." Thompson v. Williams, 211 Cal.App.3d 566, 573-74 (Cal. Ct. App. 1989) (emphasis added).

however, in Puryear v. Golden Bear Ins. Co., 66 Cal. App. 4th 1188, 1195 (1998), in which the Court of Appeal held: "[P]robable cause requires evidence sufficient to prevail in the action or at least information reasonably warranting an inference there is such evidence." To put it another way, probable cause is lacking "when a prospective plaintiff and counsel do not have evidence sufficient to uphold a favorable judgment or information affording an inference that such evidence can be obtained for trial." Id.

Here, for the reasons set forth above, at no point did Weinstein have any evidence that contradicts the *factual* and *legal* import of the Confirmation Email. Weinstein is clearly aware of the applicability of the statute of frauds, the equal dignities rule, the parol evidence rule, and California BPC's cannabis licensing scheme. Even now, reflecting Weinstein's monstrous Machiavellian intellect, almost 3 ½ years after filing Cotton I, over twelve state and federal trial and appellate judges have been deceived by his ability to distract with immaterial facts and nonsensical arguments (e.g., the Disavowment Allegation is not substantively an affirmative defense of mistake or fraud). Prior to Riverisland, albeit de facto "lawful fraud", Weinstein had *legal* probable cause to argue that pursuant to the Pendergrass line of reasoning the Confirmation Email (and other parol evidence) should be barred pursuant to the parol evidence rule. IIG Wireless, Inc. v. Yi (2018) 22 Cal.App.5th 630, 641 ("[U]under Pendergrass, external evidence of promises inconsistent with the express terms of a written contract were not admissible, even to establish fraud."). However, post-Riverisland, Geraci's Disavowment Allegation, even if assumed to be true, is barred "as a matter of state law" pursuant to the parol evidence rule because it contradicts Geraci's Confirmation Email. Clear Connection at *9.

G. Slander of Title. For the reasons set forth above, the Cotton I action lacks, and always has, any evidentiary merit. Consequently, the recording of the F&B Lis Pendens is not privileged and constitutes slander of title and a criminal act in furtherance of the Antitrust Conspiracy. *Palmer v. Zaklama*, 109 Cal. App. 4th 1367, 1380, 1 Cal. Rptr. 3d 116, 125 (2003) (If the "alleged claim lacks evidentiary merit, the lis pendens, in addition to being subject to expungement, is not privileged. It follows the lis pendens in that situation may be the basis for an action for slander of title. [Citations.]").

> In [Gerbosi v. Gaims, Weil, W. & Epstein, LLP, 193 Cal. App. 4th 435 (2011)], an attorney (Gaims) allegedly hired an investigator to conduct illegal wiretapping activities and was sued by Finn for claims arising from those and other activities. Gaims moved to strike all of the claims under the anti-SLAPP statute. In affirming the denial of the motion as to the

> wiretapping claims, the court stated that Gaims's "status as a member of the bar does not automatically confer the protections of the anti-SLAPP statute as to all of Finn's claims. To the extent Finn alleges criminal conduct, there is no protected activity as defined by the anti-SLAPP statute. [Citation.] As a result, ***Finn's [...] cause of action for violation of the unfair competition law (which is predicated on violations of the Pen. Code) are outside the protective umbrella of an anti-SLAPP special motion to strike procedure***. Each is based on alleged criminal activity."

Malin v. Singer, 217 Cal. App. 4th 1283, 1302-03 (2013) (quoting Gerbosi at 445).

Cotton realizes that the law often elevates form over substance, but, common sense and reason should apply at least at this stage of the litigation and on this specific motion: Weinstein knew that Geraci is a violent figure. It is not a coincidence that the Armed Robbery (See Cotton V ECF No. 1 at ¶ 848-871) took place followed by the threats of violence by Miller against Hurtado and his family (Id. at ¶ 907-962). Weinstein's fabrication of evidence (e.g., the Disavowment Allegation) and suborned perjury (e.g., Austin's and Tirandazi's representations to Judge Wohlfeil that it is lawful for Geraci to own a cannabis CUP via the Berry Application) are criminal acts that serve as predicates for violations of California's unfair competition law for which Cotton seeks redress in state court. This is Weinstein's nightmare; having to be back in state court and having to justify his illegal actions, which he can't, and being exposed as the attorney that made Wohlfeil like dumbest judges in the history of judges (i.e., "Emperor Wohlfeil").[17]

H. Supporting Case Law that Cotton's Civil Rights have been violated

42 U.S.C. § 1983

Substantive Due Process. In Gerlach, the court said:

> "A prima facie case under [§] 1983 requires the plaintiff to show that a person, acting under color of state law, deprived the plaintiff of a federal constitutional or state-created property right without due process of law." [Mission Springs, Inc. v. City of Spokane, 134 Wn.2d 947, 62 (1994)).] "Property interests are not created by the constitution but are reasonable expectations of entitlement derived from independent sources such as state law." Id. (citing

---

[17] See RJN Ex. 3 (Cotton's Reply to Objection by Geraci and Berry to Judgment on Jury Verdict Proposed by Darryl Cotton) at 10:6-13 (Cotton's former attorney making a last minute attempt to pierce Wohlfeil's bias after the Cotton I trial via a "shock" approach. It describes Wohlfeil's presiding over the Cotton I trial is akin to him being the emperor from the children's fable "The Emperor's New Clothes" because he was the only party, including every witness, that did not understand he was making a fool of himself and that any one of the Case Dispositive Questions of Law meant Cotton I is a sham and the trial was just kabuki theater meant for him.).

> Board of Regents v. Roth, 408 U.S. 564, 577 (1972)). "The right to use and enjoy land is a property right." Id. "Moreover, procedural rights respecting permit issuance create property rights when they impose significant substantive restrictions on decision making." Id. at 963; see Jacobson v. Hannifin, 627 F.2d 177, 180 (9th Cir.1980) (***property interest is created where discretion to deny the permit or license is limited***).
>
> "When executive action like a discrete permitting decision is at issue, only 'egregious official conduct can be said to be arbitrary in the constitutional sense': it must amount to an 'abuse of power' lacking any 'reasonable justification in the service of a legitimate governmental objective.'" Shanks v. Dressel, 540 F.3d 1082, 1088 (9th Cir. 2008) (quoting County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998)); see City of Cuyahoga Falls v. Buckeye Cmty. Hope Found., 538 U.S. 188, 198 (2003) (rejecting substantive due process claim because city engineer's refusal to issue building permits "in no sense constituted egregious or arbitrary government conduct")… When determining whether the constitutional line has been crossed, the fact finder should consider "the need for the governmental action in question, the relationship between the need and the action, the extent of harm inflicted, and whether the action was taken in good faith or for the purpose of causing harm." Plumeau v. School Dist. No. 40 County of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997).

Gerlach v. City of Bainbridge Island, No. C11-5854BHS, at *11-13 (W.D. Wash. Aug. 7, 2012) (emphasis added).

Here, for the reasons set forth above, the City had no discretion to choose to fail to abide by the SDMC, as articulated in Engerbretsen,[18] and cancel/transfer the Berry Application at Cotton's request. Berry at no point has ever shown a lawful right to the use of the Property. The City, Tirandazi and Phelps' position, ***to this day***, is that the Cotton I and Cotton II judgments are valid even though they enforce an alleged contract whose object is Geraci's ownership of a cannabis CUP via the Berry Application that is illegal because of the Illegality Issues. Tirandazi, Phelps and the City's denial of Cotton's request to cancel/transfer the Berry Application and ratification of the Cotton I and Cotton II judgments are made

---

[18] Engebretsen v. City of San Diego, No. D068438, 2016 Cal. App. Unpub. LEXIS 8548 (Nov. 30, 2016) (action by Demian of Finch, Thornton & Baird in which the court held that the City of San Diego was obligated to recognize the property owner as the owner or the cannabis CUP application at issue because the agent that submitted the application, like Berry, could not show a lawful right to the use of the property); id. at *15 ("The City's ordinances thus ensure that conditional use permits will only be granted to individuals having the right to use the property in the manner for which the permit is sought. [Citations.] ***Any other interpretation would raise serious constitutional questions concerning property rights***. [Citations.]") (emphasis added).

in bad faith, ratify and make them complicit in the violence that they knew was being directed or taken on Geraci's behalf against innocent individuals. Trevino v. Gates, 99 F.3d 911, 920 (9th Cir. 1996).

Procedural Due Process. "A § 1983 claim based upon procedural due process... has three elements: (1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; (3) lack of process." Portman v. Cty. of Santa Clara, 995 F.2d 898, 904 (9th Cir. 1993). To have a property interest in a permit, a plaintiff must "have a legitimate claim of *entitlement* to it." Gerhart v. Lake Cnty., Montana, 637 F.3d 1013, 1019 (9th Cir. 2011) (emphasis in original). A plaintiff has a legitimate claim of entitlement to a permit where regulations mandate that a permit issue after certain requirements are satisfied and those requirements have been satisfied. Gerhart, 637 F.3d at 1019 (citing Groten v. California, 251 F.3d 844, 850 (9th Cir. 2001)).

First, a cannabis CUP was issued approximately 220 feet away from the Property to Geraci's conspirators, Magagna and Schweitzer, although Schweitzer's interest, per his client Williams (see attached exhibit 1), is undisclosed like Geraci's interest in the Berry Application and Razuki's interests in the cannabis CUPs held by Malan. All of whom are clients of Austin.

Second, the City had a ministerial duty, pursuant to Engerbretsen and SDMC, as clearly set forth in the General Application, to cancel the Berry Application at Cotton's request.

Third, for the reasons set forth above, axiomatically there was no actual process. Consequently, and contrary to Wohlfeil's ruling in Cotton II and common sense, Cotton did not need to exhaust his administrative remedies by filing a competing cannabis CUP application on his own Property to compete against himself in order to protect his Property against the fraudulent Berry Application overseen by a corrupt City employee, Tirandazi, and even more corrupt attorney, Phelps. Terrell v. Brewer, 935 F.2d 1015, 1019 (9th Cir. 1991) (exhaustion of administrative not required for, *inter alia*, futility).

In Holman v. City of Warrenton, 242 F. Supp. 2d 791 (D. Or. 2002), plaintiff developer alleged a violation of his procedural due process rights when the city approved a conditional use permit and then failed to issue a building permit. Because the application for a building permit and attached specifications wholly complied with the already-approved conditional use permit, the court found that the plaintiff had a constitutionally protected interest in developing the property. Id. at 805. The court found that the city deprived the plaintiff of that interest. Id. at 806. Since the city should have provided the plaintiff with a

pre-deprivation hearing, the court concluded that the city violated the plaintiff's right to procedural due process. Id.

Here, Cotton had an interest in preventing third parties from using his Property without his consent and in the Berry Application on his Property. As in Engerbretsen, the City had a duty to cancel the Berry Application at his request because Berry could not show a legal right to the use of the Property. However, without a hearing, the City decided to violate the SDMC and deny Cotton's request and thereby violated Cotton's procedural due process rights. The refusal to cancel or transfer the Berry Application and the City's fabricated "horse-race" created an impossible situation in which Cotton could not get other investors to buy or finance a competing CUP application because the Berry Application already had over a year head start. It would have been futile to submit a competing CUP application.

First Amendment. "The denial of a requested property use in retaliation for the exercise of free expression protected by the first amendment is actionable." (Joseph G. Cook & John L. Sobieski, Jr., *Civil Rights Actions*, ¶ 12E.05 (Matthew Bender & Co. 2020) (citing Nestor Colon Medina & Sucesores, Inc. v. Custodio, 964 F.2d 32 (1st Cir. 1992)). Among other facts giving support to the position that the City has and is retaliating against Cotton, Cotton filed the Cotton II action against the City. As set forth above, there is no justification for the City's denial of Cotton's request to cancel the Berry Application and its continued ratification of the Cotton I and Cotton II judgments.

In Saints and Sinners v. City of Providence, 172 F. Supp. 2d 348 (D.R.I. 2001), an operator of an adult entertainment store alleged that his first amendment rights were violated when an adult entertainment license and liquor license transfer were denied. As to the adult entertainment license, the Court found that although the licensing board could deny the license for violations of a zoning ordinance, it could not "deny an adult entertainment license to an entity that complie[d] with all aspects of the zoning ordinance." Id. at 532. As to the liquor license, the court noted that "a threat to take away a liquor license may have a chilling effect on a person's ability to exercise a protected activity under the First Amendment." Id. Finding that the licensing board denied the transfer of the liquor license only in an effort to frustrate the opening of an adult entertainment bar, the court concluded that the defendants violated the plaintiff's first amendment rights. Id. at 355-356.

The City's actions that include the slander of tile of the Property with the City Lis Pendens, failing to abide by the SDMC, and ratifying the illegal actions of Geraci and his conspirators in various litigation matters, seeking to prevent Cotton from having a cannabis CUP issued at the Property, violate his first amendment rights.

Further, the bottom line is that the "Fourteenth Amendment entitles [a plaintiff] a fair opportunity to present his or her claim." Bell, 746 F.2d at 1261. Cotton has a federally protected right, even if Judge Wohlfeil and a dozen other judges do not believe him, to bring forth a claim and prove that a "conspiracy deprived [Cotton] of [his] federally-protected due process right of access to the courts." Id. Judge Wohlfeil's failure to allow Cotton to amend his answer to include an antitrust defense violates his constitutional rights.

42 U.S.C. § 1985

"42 U.S.C. § 1985… create[es] a cause of action based on a conspiracy which deprives one of access to justice or equal protection of law." Bell v. City of Milwaukee, 746 F.2d 1205, 1232-33 (7th Cir. 1984). Cotton does not completely understand all of his causes of action that arise under § 1985. For purposes of the instant request, he focuses on the violence against witnesses and the fraud committed by the private and government attorneys that constitute a fraud on the court and have prevented him from access to the courts.

The first clause of subsection (2) of § 1985 creates a cause of action against individuals conspiring to deter a party or witness from attending court and testifying; "class-based invidious discrimination [is] not required under [this] section 1985(2)." Rutledge v. Ariz. Bd. of Regents, 660 F.2d 1345, 1354 n.3 (9th Cir. 1981); see Stevens v. Rifkin, 608 F. Supp. 710, 720 (N.D. Cal. 1984) ("where there is an allegation of state action with respect to the conspiracy… class-based discriminatory animus is not required.").

To the extent that class based animus is required for some causes of action pursuant to § 1985, as Cotton has always maintained, the City is motivated by its animus against Cotton for his lifelong political activism for medical cannabis patient rights and the legalization of medical cannabis. Stevens v. Rifkin, 608 F.Supp. 710 (political dissidents protected class); Fantroy v. Greater St. Louis Labor Council, 478 F. Supp. 355 (E.D. Mo. 1979) (Plaintiffs' allegations of discrimination against persons as members of

group with certain political beliefs stated cause of action under 42 USCS § 1985(3)).

In Bell, the Court of Appeals for the Seventh Circuit found that "a conspiracy to cover up a killing, thereby obstructing legitimate efforts to vindicate the killing through judicial redress, interferes with the due process right of access to courts, which is protected by Sections 1985(2) and 1985(3)." Bell v. City of Milwaukee, 746 F.2d 1205, 1261 (7th Cir. 1984).

The SDPD. While not as egregious as the killing in Bell, the SDPD's failure to investigate the Getaway Driver interferes with Cotton's due process right of access to the courts. Cotton is positive that there is evidence linking the Getaway Driver to the illegal cannabis market and Geraci.

Tirandazi and Phelps. Here, Phelps had a duty as a public official to ensure compliance with the SDMC, to prevent Geraci's criminal scheme from being effectuated via the judiciaries, and prevent Cotton from being persecuted for his political beliefs.[19] Phelps affirmative actions in, *inter alia*, opposing Cotton's appeal to the California Supreme Court,[20] representing Tirandazi at the trial of Cotton I, and his failure to inform the state and federal courts that Geraci cannot own a cannabis CUP are acts un furtherance to cover-up the City's knowing or negligent role Geraci's criminal conspiracy to extort the Property from Cotton via the judiciary and then cover-up same.[21] Further, Phelps like Weinstein and

---

[19] Huey v. Barloga, 277 F. Supp. 864, 870 (N.D. Ill. 1967)(Huey) ("State governments have a basic responsibility to maintain an orderly society. To discharge this responsibility, state and local officials must take reasonable steps to preserve law and order and to provide for the personal safety of individual members of society. The Fourteenth Amendment requires that state officials exercise this duty towards all classes of persons without distinction. Thus, where individuals attempt to use intimidation and violence against others as part of a system of discrimination, state officials have a duty to take reasonable measures to protect the oppressed. They may not be allowed to escape this duty simply by asserting that it is merely a matter of individual discrimination. The neglect of this duty with knowledge of the use of force by one class of persons against another, is tantamount to discrimination by state officials themselves. Such neglect, therefore, would be 'state action' of a fundamental nature and within the ambit of the Civil Rights Act.").

[20] RJN No. 4 City's Informal Response to Petition for Review Re: S250895 (Supreme Court of California).

[21] Huey at 872 ("Public officials are not the guarantors of the safety of all persons present in the community. If they were, every victim of a crime would have a cause of action against them. Some specific act or ***omission*** in dereliction of their public responsibility which proximately caused the injury must be alleged. Absent such an allegation, the plaintiff's cause of action under section 1985 cannot be sustained.") (Emphasis added).

every other attorney who, unlike the courts, must review the briefs and motions filed in all actions, know that Weinstein is a lying sociopath that has deceived the courts. Therefore, that the allegations of violence and witness tampering by Geraci whose objective was to prevent witnesses with alleged testimony detrimental to Geraci were virtually certain to be true.

Due Process – Judge Wohlfeil and the San Diego Superior Court Clerk. Cotton also has a § 1985 conspiracy claim against Judge Wohlfeil and the San Diego Superior Court clerk who rejected Cotton's supporting documentation for the DQ Motion, 18 months after they were filed and ruled on, which constitutes a deprivation of due process in judicial proceedings. Le Grand v. Evan, 702 F.2d 415, 418 (2d Cir. 1983) ("The refusal of a clerk of a court to accept the papers of a litigant seeking to commence an action under a state statute may deprive that litigant of federal constitutional rights.").

In Voit v. Superior Court, 201 Cal.App.4th 1285 (2011), the superior court clerk refused to file the motion of a pro se litigant for appointment of counsel because it did not cite precedent in support; the Court of Appeal issued a peremptory writ finding that the clerk's office had exceeded the limits of its ministerial duties, resulting in the deprivation of the right of access to the courts. Id. at 1287-1288.

Here, the San Diego Superior Court's clerk's actions, taken while the DQ Motion had been provided to the federal court in support of Cotton's claim of judicial bias, was taken to cover up Judge Wohlfeil's judicial bias throughout Cotton I. The Extrajudicial Statements are manifestly extrajudicial as made clear by the very US Supreme Court case that Wohlfeil cites. It was not "coincidence" that the Clerk rejected Cotton's supporting evidence for the DQ Motion while the DQ Motion and the DQ Order were before Judge Curiel as evidence of Judge Wohlfeil's bias.

Corina Young. Young, a third party entrepreneur visited the Property and met with Cotton seeking to invest to acquire an equity position in the contemplated cannabis CUP. [Cite.] Young is a third party with testimony damaging to the Enterprise whose testimony was repeatedly sought and subpoenaed. [Cite.] Young's testimony was never acquired and thus never presented to the jury in Cotton I for two reasons. First, Young was successfully threatened from providing her testimony by Magagna (the "Magagna Threats"). Second, Young was prevented from providing her testimony by her own attorney, Natalie Nguyen. Nguyen unilaterally canceled two deposition for Young and promised Cotton's counsel to provide Young's testimony before trial, but never provided it. Shortly before trial, Nguyen told Young

it was "OK to ignore" her obligation to provide her testimony because it was "too late" for Cotton to do anything about it (the "Nguyen Fraud"). See Cotton V, ECF 2-8 at ¶ 28-29 (Flores Declaration in Support of Temporary Restraining Order). Nguyen and Austin both attended the Thomas Jefferson School of Law and were admitted to the California Bar on the same day. Young had been referred to Nguyen for defense in the Cotton I action by her own cannabis attorney, Matthew Shapiro, who is also an attorney of Magagna, someone who has a close professional relationship with Austin (often making special appearances for her), and who paid for Nguyen's legal services on behalf of Young.

Furthermore, as Cotton has just found out, when Young failed to provide her testimony for the Cotton I trial in July 2019, Young oh so fortuitously had a lucrative job offer that included an equity position in a dispensary outside of the City. Young was given a job offer by David Gash and Matthew Yamashita. In short, the job offer was a sham and Young quit after discovering that Gash and Yamashita are identical to Geraci, using legal businesses to engage in illegal black-market cannabis operations. In July 2020, Young filed suit against, *inter alia*, Gash and Yamashita. Young v. Gash, et al., California Superior Court, Case No. PSC2003199.

According to the California Secretary of State website, public records reveal that Gash is the Manager of 8863 Balboa LLC, which handles the property management for 8863 Balboa Ave., San Diego, CA 92123.[22] At that location there is a dispensary owned and operated by Salam Razuki. See Cotton V, ECF No. 1 at ¶ 299-306; San Diego Patients Cooperative Corporation, Inc v. Razuki Investments, LLC, San Diego Superior Court Case No. 37-2017-00020661-CU-CO-CTL. Razuki is a client of Austin and McElfresh. Further, Yamashita is the CEO and Secretary of A Higher Level Care Cooperative, Inc. of which the Chief Financial Officer is John Ramistella.[23] Ramistella was a co-defendant with Geraci who judicially admitted, along with Geraci, to "maintaining" an illegal marijuana dispensary in the TreeClub Cooperative judgment. See, supra, fn. 7.

In other words, Young was (i) threatened by Magagna (a client of Austin); (ii) was represented by Nguyen (a classmate of Austin); (iii) was referred to Nguyen by Shapiro (who works for Austin and Magagna) and who paid for Nguyen's legal services; and (iv) was given a sham job offer, that got her

---

[22] https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=201734110165-27385557
[23] https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=03240441-14131377

out of the City when Cotton was seeking to subpoena her for the Cotton I trial, by (a) Gash (who is connected to Razuki/Malan, clients of Austin) and (b) Yamashita who, via his CFO Ramistella, is connected to Geraci.

Lastly, Cotton highlights that he posted the above connections between Geraci/Austin and Gash/Yamashita last week via the 8863 Balboa LLC and A Higher Level Care Cooperative, Inc. on his blog. Today he checked the CA Secretary of State website and saw that an amendment was filed on the 8863 Balboa LLC on July 28, 2020. The amendment is "unavailable" on the website, but Cotton bets dollars to donuts that whatever it is its effect will be to mitigate or minimize the liability of the parties. Gash and Yamashita are drug dealers working as part of the same Enterprise overseen by Austin. When Austin needed Young out of the City, they made her a job offer to get her out of the City. That is purposeful obstruction of justice.

Williams and Hurtado. Attached hereto as Exhibit 1 is an email provided to me by Hurtado that reflects an email exchange between him and William (the "Williams Email"). Hurtado provided the email to me in anticipation that Williams would provide his declaration authenticating the attached email between him and Hurtado. However, Williams did not provide the promised declaration and Hurtado refused to do so thereafter. Hurtado is in the process of leaving San Diego to go work in Hawaii and I will not be able to get ahold of him later. As the email clearly states, Hurtado intended to testify about his conversation with Williams and their conversations with Austin regarding the November Document. Yet, Judge Wohlfeil prevented Hurtado from discussing the Williams Email or calling Williams to impeach Austin's testimony that she did not speak with Hurtado at the William's event referenced in the Williams Email.

Further, Williams directly confirms that Abhay Schweitzer has an ownership interest in the cannabis CUP acquired by Magagna. Schweitzer testified that he understands that it is conflict of interest to own an interest in the Magagna CUP and that he does not own an interest in the Magagna CUP. But HIS OWN CLIENT'S TESTIMOY will prove that he is lying.

42 U.S.C. § 1986

As summarized by the Bell court, 746 F.2d at 1256:

> [I]n the context of a Section 1985 conspiracy, liability may also be predicated upon not only participation but upon ***neglect to prevent*** under Section 1986. The requisite affirmative link under Section 1986 is that [1] the person have "knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 * * * are about to be committed", [2] possess the "power to prevent or aid in preventing" them, and [3] that the "reasonable diligence" of that person could have prevented the commission of any of the wrongs conspired to be done, 42 U.S.C. § 1986. See Vietnamese Fishermen's Association v. Knights of the Ku Klux Klan, 518 F. Supp. 993, 1006 (S.D.Tex. 1981).

Here, first, for the other reasons set forth above, all City officials and professionals and government and private attorneys who prepared, processed and/or ratified the Berry Application or the Cotton I litigation know that Geraci's submission of the Berry Application is an illegal attempt to circumvent the State and City's disclosure requirements because he cannot lawfully own a cannabis CUP because of the Illegality Issues; and (ii) City attorney Phelps and every attorney of record in every action related to the November Document knows as a matter of law that the November Document cannot be a lawful contract because, *inter alia*, it lacks mutual assent and a lawful object. The Case Dispositive Questions of Law are that: case dispositive. They have no factual or legal theory upon which to rely on to justify their failure to prevents multiple frauds on the court.

Second and third, all government and private attorneys had the "power" to prevent the sham Cotton I and this action - an ***ongoing*** conspiracy that interfered with his contract with Martin/Flores via the judiciary and even now continues to deprive Cotton of access to the state courts to vindicate his rights to the Property under state law - by disclosing to the state and federal courts the truth. Further, they had a legal duty as officers of the court to not aid their clients in effectuating their criminal goals via the justice system. Their loyalty and allegiance to their clients' money that they elevate above their legal and ethical duty of candor to the courts is reprehensible, lies in bad faith, and constitutes a fraud on the court.[24]

II. Plaintiff cannot articulate his claims given the complexity of the legal and factual issues involved.

Cotton hired a contract paralegal that could not find a single instance of Judge Bashant granting

---

[24] See U.S. v. Shaffer Equipment Co., 11 F.3d 450, 456 (4th Cir. 1993) ("[C]ounsel for the United States has deliberately placed its loyalty and allegiance to its agency client (EPA) and client's servant (Robert Caron) far and above the unending duty of candor owed to this Court. ***Such conduct is reprehensible and lies in bad faith***.") (Emphasis added).

a motion for appointment of counsel for a civil litigant. See Declaration of Zoe Villaroman at ¶ 12. However, Judge Bashant did cite Agyeman in her previous order denying Cotton's request for counsel. In Agyeman, Agyeman filed suit alleging that defendant employees of the Corrections Corporation of America had beaten him, had his request for counsel denied by the trial court, and after trial appealed the judgment of the district court. The Ninth Circuit granted Agyeman IPF status and appointed him counsel for the appeal. On appeal, the court held that "the district court abused its discretion in declining to appoint counsel for Agyeman", vacated the judgment and remand the matter. Agyeman, 390 at 1102.

In reaching its decision, the Ninth Circuit noted that "Agyeman, it is obvious from his pleadings, is literate and educated. He was able to read statutes and legal literature. But he lacks legal training." Agyeman v. Corrections Corp. of America, 390 F.3d 1101, 1104 (9th Cir. 2004). Cotton, similarly, can argue the hell out of mutual assent, Riverisland and an illegal contract. However, he cannot even begin to come up with a game plan, even if he had the money to do so, to take depositions against so many defendants who have spent decades of their lives fooling the judiciaries into thinking they are reputable and honest attorneys. The Court should be able to see that Austin, Weinstein and Demian are evil and big fat liars. Period. But they are damn smart. Smarter than 12 judges to date. I can beat him on the simple issues, but I can't on the procedure or all the causes of action which I lawfully have but don't know I have.

Lastly, Plaintiff has no money. For over three years Cotton has been living off primarily borrowed money that is accruing interest. Cotton owes over $3,000,000 in legal fees, other attorneys are not willing to take his case because their payment would be subordinated to existing legal debt and there is no guarantee they would acquire their legal fees even if they prevail if their fees are subordinated to all of Cotton's investors. This is an issue that can justly be taken into account by this Court. Lewis v. Casey, 518 U.S. 343, 370 (1996) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.").

CONCLUSION

Judge Bashant, the above has been copied and pasted primarily from the five lawsuits, treatises, template motions and orders. And though I know understand some of the law at issue here, I want to be clear about something and I want to explain it in the best way I personally know how. I recently saw

EXHIBIT 1

From: joe hurtado
Sent: Saturday, July 6, 2019 10:55 AM
To: Christopher Williams
Subject: RE: Vista - Transaction Advisory Services

Chris, please call me back.

As crazy as it sounds with everything we have discussed, Judge Wohlfeil is allowing the case to proceed and they are in trial.

Last week, Judge Wohlfeil did not allow Andrew to join the case to present the evidence about Razuki/Gina and he did not care that Aaron Magagna threatened Corina and she has left the city. I spoke to her last Sunday and she told me she is not going to testify and that Andrew should be worried about his safety if he files a lawsuit against Gina.

All of this means is that I am going to have to testify this coming week at trial. I am going to have to speak about what we discussed below. I am sorry as I know this puts you in a bad spot with Abhay who is still working on your Marijuana Outlet applications and Gina and Bartell may take an antagonistic position towards you. I will emphasize that you have repeatedly asked to not be involved or mentioned in the case and your statements were made at a time that you did not realize they would be harmful to them.

But, I am in the same situation that I found myself with Corina and I can't lie under oath. Jake is going to ask me about the basis of my beliefs regarding Gina and Abhay being part of Geraci's conspiracy to defraud Darryl of his property and why I financed Darryl's litigation despite Judge Wohlfeil's rulings for over two years.

From: Christopher Williams < >
Sent: Wednesday, December 26, 2018 1:58 PM
To: joe hurtado
Subject: Re: Vista - Transaction Advisory Services

Thank you Joe,

Yes I'm fully aware you are not an attorney and are only helping out with legal consultation. It is very much appreciated.

As to your other litigation, I am not a party. I have nothing to do with either of the parties mentioned when it comes to Daryl's lawsuit. I do know that at an event I hosted, you talked at length with Ms. Austin regarding Daryl's property. To be clear I have not spoken with Ms. Austin in quite sometime. She did represent me in two of my properties in Lemon Grove in 2017. She has not represented me since then and I do not plan to have her represent me on any properties going forward. Besides pleasantries we have not spoken since early 2018. As to Abhay, he is my Architect for multiple MMD applications in San Diego county. I do not want to be apart of any litigation or conversation about him that does not concern any of my MMD's. I am fully aware Abhay may be seeking personal interest in MMD's in San Diego county including in district 4. At this moment I do not see it as a conflict of interest. Anything involving your litigation with Daryl, I hope to be left out of.

Thank you for helping me locate an attorney for my situation. Please let me know what else is needed from me

On Wed, Dec 26, 2018, 1:08 PM joe hurtado < wrote:

Chris,

As discussed, this email is just to confirm our current relationship. I am helping you identify and locate counsel for your Vista matter, although we have discussed your Vista contract and your potential legal issues, I am not an attorney in California. Nothing I said, or will say, was or is intended to be legal advice for you to act up upon, but rather potential issues for you to discuss with a California licensed attorney. I know you dislike the constant disclaimer, but given the issues I have with Geraci and his agents, notably Austin and Abhay who you work with, I want this to be clear.

Also, although you are not a party to the Darryl lawsuit and I can't imagine you being involved, I want our past conversations to be clear on two points. First, I described to you that Gina told me at your downtown event that Geraci had not executed a final agreement for Darryl's property and, in the preceding months, you and I had been negotiating your potential purchase of Darryl's property. Again, very unlikely you will be involved, but if the other side says I made up my conversation with Gina, you are one of a few people who I described my conversation with her at that event. Second, that Abhay told you that he "will have the first CUP in District 4." The first CUP to be approved was Magagna's and Abhay is Magagna's agent for the CUP on the City's website.

Bottom line, you have enough stuff to deal with and don't need to be involved in the Darryl lawsuit, but if I am going to consult on the Vista project and other potential matters, I want our relationship and the above facts to not be a source of contention given your much-longer relationship and professional involvement with Gina and Abhay. I'll put together a formal transaction advisory services agreement, but for now please reply and confirm that the above statements that pertain to you are true.

Best, Joe

Joe Hurtado

EXHIBIT A-2

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 PLOESSER 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

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

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

DUTY TO COURT

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

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

QUALIFICATIONS

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

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

Psychiatry (Certificate No. 1903).

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

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

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

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

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

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

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

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

CLIENT INTERVIEW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OPINIONS AND RECOMMENDATIONS

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

and symptoms of psychosis.

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

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

32. 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.

///

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

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

DATED: 3/4/2018

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

M. PLOESSER, M.D.
PSYCHIATRIST

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiffs,

vs.

LARRY GERACI, an individual; REBECCA BERRY a/k/a REBECCA ANN BERRY RUNYAN, 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, SEAN MILLER, an individual FINACH THORTON & BAIRD, a limited liability partnership, DAVID DEMIAN, an individual, ADAM WITT, an individual; and DOES 1 through 50, inclusive,

Case No. 3:18-cv-00325-BAS-DEB

REQUEST FOR JUDICIAL NOTICE

Hearing Date: N/A
Time: NA
Judge: Hon. Cynthia Ann Bashant
Courtroom:

Plaintiff hereby requests that this Court take judicial notice of the documents described below and the copies thereof attached hereto in support of his Application for Appointment of Counsel Pursuant to 28 U.S.C. § 1915(e)(1).

The documents listed below and attached hereto as RJN Exhibits Nos. 1–4 conformed copies of pleadings, transcripts, or other papers filed in *Geraci v. Cotton, et al.*, San Diego Superior Court Case No. 37-2017-10073-CU-BC-CTL ("*Cotton I*") and other cases named herein which are currently pending in and/or were previously adjudicated by the San Diego County Superior Court. This Court may properly take judicial notice of these exhibits pursuant to Federal Rules of Evidence, Rule 201.

RJN NO.	DOCUMENT TITLE/DESCRIPTION
1	Supplemental Declaration of Gina M. Austin for September 7, 2018 Hearing filed on September 4, 2018 in the case entitled *Razuki v. Malan, et. al.*, San Diego County Superior Court Case No. 37-2018-00034229-CU-BC-CTL
2	Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon [CCP § 664.6] filed and entered on June 17, 2014 in case entitled *City of San Diego v. CCSquared Wellness Cooperative, et al.*, San Diego Superior Court Case No. 37-2015-00004430-CU-MC-CTL
3	*Cotton I,* Cotton's Reply to Objection by Geraci and Berry to Judgment on Jury Verdict Proposed by Darryl Cotton
4	*Cotton I,* City's Informal Response to Petition for Review Re: *S250895*

Dated: August 3, 2020

DARRYL COTTON

By _____

Plaintiff *In Propria Persona*

EXHIBIT 1

Gina M. Austin (SBN 246833)
E-mail: *gaustin@austinlegalgroup.com*
Tamara M. Leetham (SBN 234419)
E-mail: *tamara@austinlegalgroup.com*
AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110
Phone: (619) 924-9600
Facsimile: (619) 881-0045

Attorneys for Defendants
Ninus Malan

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO- CENTRAL DIVISION

SALAM RAZUKI, an individual,

Plaintiff,

vs.

NINUS MALAN, an individual; CHRIS HAKIM, an individual; MONARCH MANAGEMENT CONSULTING, INC., a California corporation; SAN DIEGO UNITED HOLDINGS GROUP, LLC, a California limited liability company; FLIP MANAGEMENT, LLC, a California limited liability company; ROSELLE PROPERTIES, LLC, a California limited liability company; BALBOA AVE COOPERATIVE, a California nonprofit mutual benefit corporation; CALIFORNIA CANNABIS GROUP, a California nonprofit mutual benefit corporation; DEVILISH DELIGHTS, INC. a California nonprofit mutual benefit corporation; and DOES 1-100, inclusive;

Defendants.

CASE NO. 37-2018-00034229-CU-BC-CTL

SUPPLEMENTAL DECLARATION OF GINA M. AUSTIN FOR SEPTEMBER 7, 2018 HEARING

[Imaged File]

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

I, Gina M. Austin, declare:

1. I am attorney admitted to practice before this Court and all California courts and, along with Tamara M. Leetham, represent defendant Ninus Malan ("Malan") in this matter. I make this supplemental declaration in support of Malan's application to vacate order appointing receiver. Unless otherwise stated, all facts testified to are within my personal knowledge and, if called as a witness, I would and could competently testify to them.

2. I am an expert in cannabis licensing and entitlement at the state and local levels and regularly speak on the topic across the nation.

3. My firm also performs additional legal services for these defendants to include corporate transactions and structuring, land use entitlements and regulations related to cannabis, and state compliance related to cannabis.

4. The purpose of this declaration is to provide additional information related to the events that have transpired since the last hearing on August 20, 2018. All of the facts previously testified to in my declaration of June 30, 2018 and August 20, 2018 remain true and accurate.

5. I spoke with Mr. Essary immediately after the hearing in this matter on August 20, 2018 and suggested that an independent cannabis expert not affiliated with either the plaintiff or defendant would be a better solution in order to avoid an actual or apparent conflict of interest by Mr. Lachant. I informed Mr. Essary that while I could provide any cannabis licensing information he required, both sides would probably appreciate an independent third party. I recommended Pamela Epstein of Greenwise Consulting.

6. Both Ninus Malan and Pamela Epstein informed me on August 27, 2018 that Mr. Essary was going to continue to use Mr. Lachant despite our objections. On August 27, 2018 I followed up with an email to Mr. Essary that we oppose the use of Mr. Lachant given the fact that Mr. Lachant is a partner with Nelson Hardiman and counsel for plaintiff-in-intervention. A true and correct copy of the email is attached hereto as Exhibit A.

7. There is no need for Mr. Essary to manage or control any part of state application process. The only fee associated with the Balboa Dispensary state license will not occur until the annual license is issued. Based upon expected revenues of $2.5 to $7.5 the fee to the Bureau of

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

Cannabis Control will be $64,000. So long as Ninus Malan and Balboa Ave Cooperative are the identified "owners" and applicants for the state licensing for the Balboa Dispensary there is no need to change any information at the state level. However, if a consultant is needed I am willing to provide the necessary assistance.

8. If Mr. Essary remains the receiver he would be deemed an "owner" of the Balboa Dispensary and an additional application would need to be filed pursuant to Section 5024 (c) of Title 16 Division 42 of the California Code of Regulations. This additional application would unnecessarily increase expenses for the Balboa Dispensary as the application would need to be submitted anew with the receiver as an "owner" and then again once the litigation is complete. It will also cause a delay that could potentially prevent the Balboa Dispensary from operating in 2019 if the annual application is not approved. If SB 1459 is signed by the governor (allowing for provisional licenses for those who hold temporary licenses) the change of ownership may also affect the ability of Balboa Ave Cooperative to obtain a provision license.

9. There is no need for Mr. Essary to manage or control any part of state application process for the distribution or manufacturing license at the Mira Este property. The only fee associated with the Mira Este state licenses will not occur until the annual licenses are issued. The fees will be $7,500 to California Department of Public Health for manufacturing so long as revenue is not over $500,000 and $1,200 for distribution so long as annual revenue is not over $3,000,000 for manufacturing. As long as Ninus Malan, Chis Hakim and California Cannabis Group are the identified "owners" and applicants for the state licensing for the Mira Este property there is no need to change any information at the state level. However, if a consultant is needed I am willing to provide the necessary assistance.

10. If Mr. Essary remains the receiver he would be deemed an "owner" and additional filing requirements must be met for both the distribution and manufacturing applications.

11. During the time that SoCal was operating the Balboa Dispensary they were using a point of sale system called Treez. The City of San Diego through its contractor MGO is in the middle of a tax and compliance audit of the Balboa dispensary. I have been working with MGO to determine what information is required to be provided and have agreed on what is to be

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

produced. On August 24, 2018 I received the sales report from Treez for the sales occurring during January through March 2018 while SoCal was operating the dispensary. A true and correct copy of the email is attached hereto as Exhibit B. I did not attach the excel spread sheets as they are over 1000 pages.

12. I immediately forwarded this information to MGO for their review. Mr. Grigor Gevorgyan of MGO informed me that there is a discrepancy between the tax form that was filed by Mr. Essary and the sales data reported on the spreadsheets of approximately $100,000. A true and correct copy of the email from Mr. Gevorgyan is attached hereto as Exhibit C.

13. I informed Mr. Essary of the discrepancy. On August 27, 2018 Mr. Essary sent an email stating that he would have to contact Mr. Yaeger to determine why there is a discrepancy. As of the drafting of this declaration MGO has not received a response from Mr. Yaeger or Mr. Essary as to the basis for the discrepancy. A true and correct copy of MGO's request for clarification is attached hereto as Exhibit D.

14. On August 15, 2018, I was attending the hearing for the Conditional Use Permit for a marijuana production facility located on 8859 Balboa Ave, Suites A-E. San Diego United Holdings, LLC is the applicant. The application was approved and was not appealed. The permit will be recorded by the City of San Diego within the next 10 business days. The temporary and annual state application for this location must be prepared. The expense for the application process is $25,000. This expense will be covered by the operating group that San Diego United Holdings contracts with to conduct operations at this facility. It is critical that the operating entity be secured as quickly as possible to allow for the timely filing of a state application. All of the potential operating entities that we have had conversations with will not enter into an agreement so long as there is a receiver in control.

15. An application for a Conditional Use Permit by Mira Este Properties, LLC for a marijuana production facility located at 9212 Mira Este Court is set to go before the Hearing Officer on October 3, 2018. It is highly likely that the permit will be appealed to the Planning Commission because the City will only be issuing 40 licenses and approximately half will have been issued by this time. It is my opinion that successful approval of this application is

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

contingent on our office attending the hearing.

I declare under penalty of perjury under California state law that the foregoing is true and correct. Executed in San Diego, California on September 4, 2018.

Gina M. Austin

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

EXHIBIT 2

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. THE TREE CLUB COOPERATIVE, INC., a California corporation; JONAH McCLANAHAN, an individual; JOHN C. RAMISTELLA, an individual; JL 6th AVENUE PROPERTY, LLC, a California limited liability company; LAWRENCE E. GERACI, also known as LARRY GERACI, an individual; JEFFREY KACHA, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2014-00020897-CU-MC-CTL JUDGE: RONALD S. PRAGER STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6] IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and by Marsha B. Kerr, Deputy City Attorney, and Defendants JL 6th AVENUE PROPERTY, LLC, a California limited liability company; LAWRENCE E. GERACI, aka LARRY GERACI, an individual; and JEFFREY KACHA, an individual, appearing by and through their attorney, Joseph S. Carmellino, enter into the following Stipulation for Entry of Final Judgment in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered:

1. This Stipulation for Entry of Final Judgment (Stipulation) is executed between and among Plaintiff City of San Diego, a municipal corporation, and Defendants JL 6th AVENUE PROPERTY, LLC; LAWRENCE E. GERACI, aka LARRY GERACI; and JEFFREY KACHA only, who are named parties in the above-entitled action (collectively, "Defendants").

2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court of the State of California for the County of San Diego, entitled *City of San Diego, a municipal corporation v., The Tree Club Cooperative, Inc., a California corporation; Jonah McClanahan, an individual; John C. Ramistella, an individual; JL 6th Avenue Property, LLC, a California limited liability company; Lawrence E. Geraci, also known as Larry Geraci, an individual; Jeffrey Kacha, an individual; and DOES 1 through 50, inclusive,* Case No. 37-2014-00020897-CU-MC-CTL. This Stipulation does not affect *City of San Diego v. Tycel Cooperative, Inc., et al.*, San Diego Superior Court case No. 37-2014-00025378-CU-MC-CTL, which is a separate case to be considered separately.

3. The parties wish to avoid the burden and expense of further litigation and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent Injunction by the Superior Court.

4. The address where the tenant Defendants were maintaining a marijuana dispensary business is 1033 Sixth Avenue, San Diego, California, 92101, also identified as Assessor's Parcel Number 534-186-04-00 (PROPERTY).

5. The PROPERTY is owned by JL 6th AVENUE PROPERTY, LLC (JL), according to San Diego County Recorder's Grant Deed, Document No. 2012-0184893, recorded March 29, 2012. Defendants GERACI and KACHA are members of JL and hereby certify they have authority to sign for and bind JL herein.

///

6. The legal description of the **PROPERTY** is:

THE NORTH HALF OF LOT D IN BLOCK 34 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MADE BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 522 OF DEEDS, IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY.

7. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

INJUNCTION

8. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,** Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

a. Keeping, maintaining, operating, or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative at the PROPERTY, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code.

b. Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

9. **Within 24 hours from the date of signing this Stipulation,** cease maintaining, operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

10. The Parties acknowledge that where local zoning ordinances allow the operation of a marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then Defendants will be allowed to operate or maintain a marijuana dispensary, collective or cooperative in the City of San Diego as authorized under the law after Defendants provide the following to Plaintiff in writing:

a. Proof that the business location is in compliance with the ordinance; and

b. Proof that any required permits or licenses to operate a marijuana dispensary, collective or cooperative have been obtained from the City of San Diego as required by the SDMC.

11. **If the marijuana dispensary that is operating at the PROPERTY, including but not limited to, The Tree Club Cooperative, Inc., Jonah McClanahan and John C. Ramistella, does not agree to immediately voluntarily vacate the premises, then within 24 hours from the date of signing this Stipulation,** DEFENDANTS shall in good faith use all legal remedies available to evict the marijuana dispensary business known as The Tree Club Cooperative, Inc., Jonah McClanahan and John C. Ramistella or the appropriate party responsible for the leasehold and operation of the marijuana dispensary, including but not limited to, prosecuting an unlawful detainer action.

12. **Within 24 hours from the date of signing this Stipulation,** remove all signage from the exterior of the premises advertising a marijuana dispensary, including but not limited to, signage advertising The Tree Club Cooperative.

13. **Within 24 hours from the date of signing this Stipulation,** post a sign for a minimum of 60 calendar days, conspicuously visible from the exterior of the PROPERTY stating in large bold font and capital letters that can be seen from the public right way, that "The Tree Club Cooperative" is permanently closed and that there is no dispensary operating at this address.

14. Allow personnel from the City of San Diego access to the PROPERTY to inspect for compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of 8:00 a.m. and 5:00 p.m.

15. When this Stipulation has been filed with the Court, Jeffrey Kacha will personally pick up a conformed copy of the Stipulation and Order from the Office of the City Attorney. He or his attorney will contact the City's investigator, Connie Johnson, at 619-533-5699 within 15 days of the filing of this Stipulation to set a time for Mr. Kacha to pick up the conformed copy.

MONETARY RELIEF

16. **Within 15 calendar days from the date of signing this Stipulation,** Defendants shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's investigative costs, the amount of $281.93. Payment shall be in the form of a certified check, payable to the "City of San Diego," and shall be in full satisfaction of all costs associated with the City's investigation of this action to date. The check shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

17. Commencing within 30 days of signing this Stipulation, Defendants shall pay to Plaintiff City of San Diego civil penalties in the amount of $25,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **$19,000 of these penalties is immediately suspended. These suspended penalties shall only be imposed if Defendants** fail to comply with the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties in the amount of $6,000 shall be paid in 15 monthly installments of $400.00 each, at 30-day intervals following the date of the first payment as specified above, in the form of a certified check, payable to the "City of San Diego," and delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention: Marsha B. Kerr.

ENFORCEMENT OF JUDGMENT

18. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the

enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid in full.

19. Nothing in this Stipulation shall prevent any party from pursuing any remedies as provided by law to subsequently enforce this Stipulation or the provisions of the SDMC, including criminal prosecution and civil penalties that may be authorized by the court according to the SDMC at a cumulative rate of up to $2,500 per day per violation.

20. Defendants agree that any act, intentional or negligent, or any omission or failure by their contractors, successors, assigns, partners, members, agents, employees or representatives to comply with the requirements set forth in Paragraphs 8-17 above will be deemed to be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to comply with any part of this Stipulation. Further, should any dispute arise between any contractor, successor, assign, partner, member, agent, employee or representative of Defendants for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to comply with any part of this Stipulation, nor justify a delay in executing its requirements.

RETENTION OF JURISDICTION

21. The Court will retain jurisdiction for the purpose of enabling any of the parties to this Stipulation to apply to this Court at any time for such order or directions that may be necessary or appropriate for the construction, operation or modification of the Stipulation, or for the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

RECORDATION OF JUDGMENT

22. A certified copy of this Judgment shall be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

23. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by mail shall constitute sufficient notice for all purposes.

///

24. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: Oct. 21, 2014

JAN I. GOLDSMITH, City Attorney

By _____
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 9/26, 2014

JL 6TH AVENUE PROPERTY, LLC

By _____
Member

Dated: 10-21-14, 2014

_____
Lawrence E. Geraci aka Larry Geraci, an individual

Dated: 9/26, 2014

_____
Jeffrey Kacha

Dated: 9/26, 2014

_____
Joseph S. Carmellino, Attorney for Defendants JL 6th Avenue Property, LLC, Lawrence E. Geraci aka Larry Geraci and Jeffrey Kacha

///

ORDER

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor. IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 10/27/14

JUDGE OF THE SUPERIOR COURT

RONALD S. PRAGER

FILED
Clerk of the Superior Court

MAY 29 2015

By: M. CHAVARIN, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. CCSQUARED WELLNESS COOPERATIVE, a California corporation; BRENT MESNICK, an individual; JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2015-00004430-CU-MC-CTL ~~(PROPOSED)~~ PRELIMINARY INJUNCTION ORDER IMAGED FILE Date: May 29, 2015 Time: 10:30 a.m. Dept: C-61 Judge: Hon. John S. Meyer Complaint filed: February 9, 2015 Trial Date: None Set

This matter came on for hearing on May 29, 2015, at 10:30 a.m. in Department C-61, the Honorable John S. Meyer, judge presiding. Deputy City Attorney Marsha B. Kerr appeared on behalf of Plaintiff, City of San Diego. John Trembley appeared on behalf of defendants CC Squared and Mesnick; Joseph Carrillino for JL India Street, Kacha and Geraci (DOC 1).

IT IS HEREBY ORDERED that defendants CCSQUARED WELLNESS COOPERATIVE; BRENT MESNICK; JL INDIA STREET, LP; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI, their agents, servants, employees, partners, associates, officers, representatives, lessees, sublessees, all persons acting in concert or participating with or for them, and all persons occupying 3505 Fifth Avenue, San Diego, California (the PROPERTY), with actual or constructive notice of this Order, cease operating or

maintaining a marijuana dispensary, collective, cooperative or other marijuana-related operation at the PROPERTY California **within 24 hours of the issuance of this Order**.

IT IS FURTHER ORDERED that defendants CCSQUARED WELLNESS COOPERATIVE; BRENT MESNICK; JL INDIA STREET, LP; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI do not operate or maintain a marijuana dispensary, collective, cooperative or other marijuana-related operation anywhere else in the City of San Diego, unless Defendant obtains a Medical Marijuana Consumer Cooperative Conditional Use Permit per San Diego Municipal Code section 141.0614.

An agent of the City of San Diego is authorized to post a copy of this Order on the exterior of the PROPERTY in a place visible to anyone entering or exiting the premises. This Order shall be posted on the date the Order is issued and may remain posted at the PROPERTY until the enjoined conduct ceases or until a superseding order issues.

Defendants, or any persons, who continue to maintain, operate or allow any commercial, retail, collective, cooperative or group establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to, any marijuana dispensary, collective or cooperative organized pursuant to the Health and Safety Code at the PROPERTY after 24 hours from issuance of this Order are subject to arrest and removal from the PROPERTY for violation of this Order pursuant to San Diego Municipal Code section 12.0201 and California Penal Code section 166(a)(4).

IT IS SO ORDERED.

Dated 5-29-15

JUDGE OF THE SUPERIOR COURT
JOHN S. MEYER

EXHIBIT 3

ROA 647
11 pages

Jacob P. Austin [SBN 290303]
The Law Office of Jacob Austin
P.O. Box 231189
San Diego, CA 92193
Telephone:(619) 357.6850
Facsimile:(888) 357.8501
Email:JPA@JacobAustinEsq.com

Attorney for Defendant/Cross-Complainant DARRYL COTTON

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

Judge: The Honorable Joel R. Wohlfeil
Dept: C-73

REPLY TO OBJECTION BY PLAINTIFF/CROSS-DEFENDANTS LARRY GERACI AND REBECCA BERRY TO JUDGMENT ON JURY VERDICT PROPOSED BY DEFENDANT/CROSS-COMPLAINANT DARRYL COTTON

[IMAGED FILE]

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

Defendant/Cross-Complainant Darryl Cotton ("Cotton") hereby files this Response to *Objections by Plaintiff/Cross-defendants Larry Geraci and Rebecca Berry to Judgment on Jury Verdict Proposed by Defendant/Cross-Complainant Darryl Cotton* (the "Objections").

Cotton's counsel ("Counsel") is not *legally* obligated to file this Response.

Counsel is, however, *ethically* compelled to file this Response against the adamant desire of his own client, Cotton. This Response is solely for the benefit of this Court.

This is not a motion. This Court held a trial in this action. This Court made findings. A jury verdict was reached in favor of Plaintiff Lawrence Geraci ("Geraci"). The only matter left for this Court is to enter judgment and thereby enforce Geraci's breach of contract and related claims.

Counsel *could* have waited a matter of days for this Court to enter the proposed judgment submitted by Michael Weinstein ("Weinstein"), counsel for Geraci. However, if this Court enters judgment in favor of Plaintiff, it will be enforcing an illegal contract and this Court's judgment will therefore be void. "A contract that conflicts with an express provision of the law is illegal and the rights thereto cannot be judicially enforced." *Vierra v. Workers' Comp. Appeals Bd.*, 154 Cal. App. 4th 1142, 1148 (2007). *See A.I. Credit Corp. v. Aguilar Sebastinelli* (2003) 113 Cal. App. 4th 1072, 1080 ("***courts do not sit to give effect to . . . illegal contracts.***") (quotation omitted; emphasis added).

Geraci cannot legally own a Conditional Use Permit ("CUP") pursuant to California Business and Professions Code ("BPC"), Division 10 (**Cannabis**), Chapter 5 (**Licensing**), § 26057 (**Denial of Application**) which states that: "[T]he licensing authority ***shall*** deny an application if the ***applicant***.... has been sanctioned by a licensing authority or a city... for unauthorized commercial cannabis activities... in the three years immediately preceding the date the application is filed with the licensing authority."

Cotton has consistently and steadfastly argued this point since he filed his pro se Cross-complaint. Dock. No. 19. Materially, Cotton's *pro se* Cross-complaint alleged that (i) Geraci and Cotton reached an oral joint venture agreement to develop a Marijuana Outlet at the real property of which Cotton is the owner-of-record;[1] (ii) that Geraci was legally barred from owning a Marijuana Outlet;[2] and (iii) that Geraci and his receptionist, Rebecca Berry ("Berry"), conspired to acquire a CUP from the City of San Diego at the Property via a fraudulent application that falsely stated that Berry was the owner of the Property and of the CUP being sought.[3]

Although this Court has expressed its disbelief, Cotton's former attorneys amended his Cross-complaint and dropped this and other material factual allegations. Cotton fired his former attorneys – the law firm of Finch, Thornton & Baird ("FTB") – for fraud in their representation of him in this action. Thereafter, this Court denied Cotton's motions to amend his Cross-complaint to include these allegations, but via discovery and motions Cotton reasserted these allegations thereby amending his Cross-complaint.

At least at trial, it appears this Court was deceived by Geraci, Weinstein and Austin into thinking that it is lawful for Geraci to acquire a CUP via a fraudulent application. On July 8, 2019, Austin testified at trial in this matter as follows:[4]

Cotton's Attorney: Are you familiar with this code [BPC § 26057]?

---

[1] Docket. No. 19 (Cotton's Cross-Complaint) (Count Six – Breach of Oral Contract) at 17:10-12 ("The agreement reached on November 2nd; 2016 is a valid and binding oral agreement between Cotton and Geraci.").

[2] *Id.* (Cotton's Cross-Complaint) (Count Ten – Conspiracy) at 21:3-7 ("Berry submitted the CUP application in her name on behalf of Geraci because Geraci has been a named defendant in numerous lawsuits brought by the City of San Diego against him for the operation and management of unlicensed, unlawful and illegal marijuana dispensaries. These lawsuits would ruin Geraci's ability to obtain a CUP himself.").

[3] *Id.*

[4] A true and correct copy of the rough transcript is attached as Exhibit A.

Austin: Yes.

Cotton Attorney: So in subsection (a), it states that the licensing authority shall deny an application if either the applicant or the premises for which the state license applied do not qualify for the license under this division. Correct?

Austin: Correct.

Cotton's Attorney: All right. So although you're [allegedly] not aware of any sanctions against Mr. Geraci, if such a thing were in existence, would he be barred from having a license issued in his name?

Austin: ***No***.

[….]

Cotton's Attorney: So if the State had an issue with Mr. Geraci's name [not being on the application], what would that process be to try and ensure that he could acquire the license?

Weinstein: Objection. Your Honor. Vague, irrelevant, since we're not talking about a state license. That's…

Judge Wohlfeil: Sustained.

The question asked was neither vague nor irrelevant and the objection should not have been sustained by this Court.

As to Austin, her testimony is directly contradicted by the clear and unambiguous language of BPC § 26057. "[T]he word '***shall***' is mandatory." *Woolls v. Superior Court* (2005) 127 Cal. App. 4th 197, 208 (emphasis added). There is no discretion here; Geraci's application must be denied and therefore he cannot seek relief from this Court for something that he cannot legally own – a CUP.

Respectfully, Counsel reviewed Austin's testimony in depth from the trial transcripts and this Court was so blatantly deceived by her that it is clear this Court did

not review any of the applicable laws and regulations at issue here. Virtually everything Austin testified about is a complete lie that that made a mockery of this Court and the judicial system. Although the BPC does contain mechanisms by which individuals that violate laws can proceed through a process to determine whether a license should be denied or revoked, those mechanisms are for crimes that are not directly related to the operations of the license issued. As Austin testified at trial, it would be like if an attorney got a DUI, depending on the circumstances and the history of the individual, the attorney may or may not lose his law license. However, if an attorney conspired to steal from, kidnap and murder her own client, that attorney would definitely lose their law license and there would be no discretion or mechanism in that situation by which that attorney could retain her law license and continue to practice law.

As to Weinstein, he deceived this Court with Austin into thinking that the BPC does not apply to Geraci because a CUP issued by the City is not a "state license."

As defined in the San Diego Municipal Code ("SDMC"): "Marijuana outlet means a retail establishment operating with a Conditional Use Permit... ***in accordance with dispensary or retailer licensing requirements contained in the California Business and Professions Code sections governing marijuana and medical marijuana***." SDMC § 42.1502 (emphasis added).

SDMC § 42.1502 is clear and unambiguous - a Marijuana Outlet CUP compliant with the City's ***land use regulations*** can only be issued by the City and operate if the applicant meets the requirements for a cannabis license set forth in the BPC.[5] Contrary

---

[5] *See also* SDMC Chapter 4 (Health and Sanitation), Article 2 (Health Regulated Businesses and Activities), Division 15 (Marijuana Outlets, Marijuana Production Facilities, and Transportation of Marijuana), § 42.1501 (**Purpose and Intent**) ("It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing but strictly regulating the retail sale of marijuana at marijuana outlets... in accordance with state law. It is further the intent of this

to Weinstein's objections, there is no such thing as a "City license" that can be issued without requiring a "state license."

Austin knows this. In her own words: "***I am an expert in cannabis licensing and entitlement at the state and local levels and regularly speak on the topic across the nation***."[6] At trial in this matter, she pretended that she did not know if Geraci had previously been sanctioned by the City for unlawful cannabis operations. Another demonstrable lie - perjury. Austin has been served with numerous submissions in this and related matters that contain requests for judicial notice of the lawsuits against Geraci for his management/ownership of illegal marijuana dispensaries – she deceived this Court.

A. THIS COURT IS LEGALLY OBLIGATED TO NOT ENFORCE AN ILLEGAL CONTRACT

> Whatever the state of the pleadings, when the evidence shows that the plaintiff in substance seeks to enforce an illegal contract or recover compensation for an illegal act, **the court has both the power and *duty* to ascertain the true facts** in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids. [Citations.] It is immaterial that the parties, whether by inadvertence or consent, even at the trial do not raise the issue. The court may do so of its own motion when the testimony produces evidence of illegality. **It is not too late to raise the issue on motion for new trial, in a proceeding to enforce an arbitration award, or even on appeal**.

Lewis Queen v. N.M. Ball Sons (1957) 48 Cal. 2d 141, 146-48 (emphasis added; citations omitted).

Division to ensure that marijuana is not diverted for illegal purposes, and to limit its use to those persons authorized under state law. *Nothing in this Division is intended to authorize the… sale… of marijuana… in violation of state law.* [¶] *It is not the intent of this Division to supersede or conflict with state law, but to implement [AUMA.]*") (emphasis added).

[6] *Razuki v. Malan,* San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL, ROA 127, ¶ 2.

In the present case the issue of illegality was raised in Cotton's pro se complaint, consistently thereafter in numerous motions after Cotton fired his former counsel for fraud, and at trial.

B. ILLEGAL CONTRACTS

California courts have held that a lawful contract "must not be in conflict either with express statutes or public policy"—as a corollary, "[a] contract that conflicts with an express provision of the law is illegal and the rights thereto cannot be judicially enforced." *Vierra v. Workers' Comp. Appeals Bd.*, 154 Cal. App. 4th 1142, 1148 (2007) (citations omitted); *see also Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 124 (2000) ("If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced.").

Here, the alleged contract in this action is contrary to express statutes and public policy. The alleged contract in this action was subject to one condition precedent – the issuance of a CUP at the Property to Geraci. That is the "object" of the alleged contract that Geraci sought to enforce in this action. But, Geraci cannot legally own the object of this action for at least three obvious reasons. First, the CUP application filed by Berry constitutes fraud and violates AUMA and federal antitrust laws.[7] *See Clipper Exxpress, v. Rky. Mount. Motor Tariff* (9th Cir. 1982) 674 F.2d 1252, 1258 ("[T]he *Walker Process* doctrine… extends antitrust liability to one who commits fraud on a court or agency to obtain competitive advantage."). Second, Geraci is barred from owning a CUP for the reasons set forth above. Lastly, enforcement of this alleged contract violates the

---

[7] Cotton respectfully notes that on June 27, 2019, attorney Andrew Flores argued to this court that he had evidence that directly implicated Gina Austin in an anti-trust conspiracy to acquire all of the marijuana licenses in San Diego. On July 8, 2019 Austin testified in this action that she had acquired approximately 23 of the limited number of cannabis permits issued by the City. The City of San Diego has capped the number of Marijuana Outlet permits to four per City Council District for a maximum total of thirty-six.

underlying public policy that requires disclosure of all parties with an interest in a cannabis license both to prevent the infiltration of organized crime and to prevent monopolies being formed in the cannabis market. *See* BPC § 2600 notes (describing purpose and intent of cannabis regulations); BPC § 26222.3 ("An association that is organized pursuant to this chapter shall not conspire in restraint of trade, or serve as an illegal monopoly, attempt to lessen competition, or to fix prices in violation of law of this state.").

C. COUNSEL'S ETHICAL DILEMMA

For over year, ever since Counsel became Cotton's attorney-of-record, he has struggled with his ethical obligations to his client and the State and Federal judiciaries. Counsel signed-up for a dispute regarding whether a three-sentence document executed by Geraci and Cotton in November of 2016 is or is not a fully integrated sales contract for Geraci's purchase of the Property from Cotton.

What Counsel could never have imagined was that Geraci and his agents are part of a group of individuals who have conspired to create an unlawful monopoly in the marijuana market in the City of San Diego. A group that uses violence in furtherance of its goal to acquire a monopoly and that, *inter alia*, bribed and intimidated witnesses to prevent them from testifying at trial in this matter in violation of 42 U.S.C. § 1985.[8] *See Bell v. Milwaukee* (7th Cir. 1984) 746 F.2d 1205, 1233 ("42 U.S.C. § 1985… create[es] a cause of action based on a conspiracy which deprives one of access to justice or equal protection of law.").

Furthermore, every attorney who represented any party in this and related actions violated their ethical duties to this Court by failing to inform it of the conspiracies against Cotton. They all knew or should have known that (i) Geraci was barred as a matter of law

---

[8] *See, e.g.*, Docket No. 546 (Joint Trial Readiness Conference Report).

from owning a marijuana license and this action seeks to enforce an illegal contract, (ii) Geraci could not prevail in this action because he cannot acquire a marijuana permit from the City via an application to the City's Department of Development Services without committing fraud, and (iii) the November Document is not a fully integrated sales contract as a matter of law, therefore rendering the instant litigation the archetype of a sham lawsuit / malicious prosecution action. Consequently, they are all liable under 42 U.S.C. § 1986. *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 626 (9th Cir. 1988) ("[§] 1986 imposes liability on every person who knows of an impending violation of [§] 1985 but neglects or refuses to prevent the violation.").[9]

Up until now, Counsel's main dilemma was attempting to convince this court that multiple attorneys from different law firms and the City are legally and financially motivated to prevent the exposure of their individual crimes because they have all contributed to Cotton's damages and are thus jointly liable as joint tortfeasors even if not as co-conspirators.

In a strange turn of events, this Response represented Counsel's greatest ethical dilemma both personally and professionally. Personally, this Court has with open contempt disregarded Counsel's assertion of facts and arguments and never provided its reasoning for its rulings. Counsel relied on this Court impartiality and it made a liar of Counsel. Allowing this Court to enter a judgment to enforce an illegal contract would provide support for Cotton's allegations that this Court is corrupt and has conspired with Weinstein. However, Counsel does not actually believe this Court is corrupt.

---

[9] *See Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) ("Though there appears to be no clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that the attorney may be held liable for damages if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably should have known, would violate the clearly established constitutional or statutory rights of another.").

Thus, despite the personal desire for this Court to be held accountable for its errors - and this Court has no conception of the horrific emotional and financial distress its refusal to properly adjudicate this action has caused numerous individuals and their families - Counsel will not perpetuate the same lack of ethics that led to this instant situation.

Professionally, Counsel and Cotton were greatly at odds over the filing of this Response. If this Court takes five minutes to contemplate that Weinstein, Austin and Demian are capable of lying in order to avoid legal and financial liability, and reviewed the applicable laws and regulations at issue here, it would realize that Geraci cannot legally own a CUP and that the entire trial in this action made this Court the proverbial Emperor wearing the Emperors Clothes. This Court presided over trial in this matter and made grand statements from its elevated bench about justice and impartiality in an action in which every attorney knew that this Court had no idea what was actually taking place.

D. WEINSTEIN'S OBJECTIONS TO COTTON'S PROPOSED JUDGMENT

Weinstein in his Opposition does NOT argue that the three findings by this Court, as to ***questions of law*** that Cotton proposes to be included in the final judgment, are incorrect. Rather, Weinstein concludes, without any factual or legal support, that: "To include this partial recitation and characterization of findings and conclusion by the Court is unnecessary, argumentative, and invites confusion." Opp. at 2:5-6.

Cotton's proposed judgment is an edited version of Weinstein's proposed judgment that *only* adds one paragraph stating the Court is including three findings material to the case, which are:

1. The November 2, 2016 written document is a fully integrated sales contract as alleged by Plaintiff in his Complaint.

2. Plaintiff's testimony and evidence at trial neither constitute legal affirmative defenses of mistake or fraud nor contradict his judicial admissions in his Answer to Defendant's Cross-complaint.

3. Plaintiff is not barred by law pursuant to the California Business and Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial of Application) from owning a Marijuana Outlet conditional use permit issued by the City of San Diego.

These three findings by the Court are questions of law that support Weinstein's client's case. *There is no logical reason for him to oppose their inclusion and there is certainly nothing that is unnecessary, argumentative or that would invite confusion from their inclusion.*

E. CONCLUSION

Counsel sincerely and emphatically requests that this Court consider the possibility that this entire action has been a sham meant to deceive this Court. If not for Cotton's sake, then at least for its own. Counsel does not want to be involved in a litigation matter in which one of the issues is whether this Court has unlawfully conspired with Weinstein to predetermine the outcome of this action in a manner that minimizes the financial liability of numerous attorneys the Court has made statements about that can be used against it to justify allegations of corruption.

DATED: August 19, 2019

By Jacob P. Austin
JACOB P. AUSTIN
Attorney for Defendant
DARRYL COTTON

EXHIBIT 4

GEORGE SCHAEFER
ASSISTANT CITY ATTORNEY

M. TRAVIS PHELPS
CHIEF DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

MARA W. ELLIOTT
CITY ATTORNEY

CIVIL LITIGATION DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

October 18, 2018

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: ***S250895*** – *Cotton v. City of San Diego (Geraci)*
City's Informal Response to Petition for Review

Dear Presiding Justice and Associate Justices:

The City of San Diego (City) respectfully submits this informal response to Darryl Cotton's (Petitioner) Petition for Review.

Petitioner seeks relief from an involuntary dismissal after failure to timely file a motion to set aside a default and reinstate Petitioner's appeal. Petitioner claims to not have become aware of a Notice of Default filed on July 6, 2018 in the Lower Court until July 12, 2018 (7/06/18 NOD). (Petition for Review (Pet.), p. 7.) Upon receiving the 7/06/18 NOD, Petitioner contends he spoke to an Appellate Clerk concerning the 7/06/18 NOD and was informed that "the case would be dismissed by the Court of Appeal but, if [Petitioner] amended the Designation [of Record on Appeal] and filed it with a proof of service of same in the Lower Court, he thereafter could a motion in this Court to vacate the dismissal." (Pet., p. 7.) After meeting with the Appellate Clerk, Petitioner met with Clerk De Los Santos of the Lower Court's Appellate Division and was specifically informed his options. Allegedly he was told procedurally he could not designate a transcript for one hearing and elect to prepare a Settled Statement for the remaining hearings. (*Id.*) Petitioner claims he was informed that if he chose to prepare a Settled Statement of Decision he must do so by completing and filing Form APP-014. (*Id.*)

Despite meeting with the Clerks on July 12, 2018, "upon receipt of the 7/06/18 NOD,"[1] apparently, Petitioner strategically chose not to attempt to vacate the default until

[1] The exact date Petitioner met with the Appellate Clerk or Clerk De Los Santos is not entirely clear from Petitioner's "Relevant Facts and Background." Petitioner states he met with them "upon receipt of the 7/06/18 NOD" which was July 12, 2018, six days before the dismissal was filed.

after dismissal was entered on July 18, 2018. Instead, it appears he chose to attempt to bring a motion to set aside the default and reinstate his appeal before the 30 days ran and the involuntary dismissal became final pursuant to CRC Rule 8.264(b)(1). Petitioner retained Counsel (Mr. Jacob Austin) on August 7, 2018, to represent him in this matter.

Petitioner's Counsel claims to have been busy working on "numerous fronts" to advance Petitioner's litigation which led him to not be able to attempt to file the Motion to Set Aside Default until the last minute and due, in part, to an alleged technical difficulty the Motion was untimely filed on the 31st day 14 minutes late, and the dismissal became final divesting the Court of Appeal of Jurisdiction.

Petitioner seeks relief pursuant to Code of Civil Procedure section 473(b), which states "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken."

Petitioner's Counsel contends he was not able to timely file the Motion to Set Aside Default because he was working on many time-sensitive obligations, including the need to for additional discovery in another case in which he represents Petitioner (*Geraci v. Cotton*, Case No. 37-2017-00010073-CU-BC-CTL (Case No. 2017-00010073). While Petitioner's Counsel contends many of the pressing matters were related to an upcoming trial in Case No. 2017-00010073, pursuant to Petitioner's own motion the trial date was continued on August 2, 2018 (15 days before the Motion to Set Aside Default could timely be filed), to January 25, 2019. While Petitioner claims Case No. 2017-00010073 is "related" to the current matter and based on same facts, the City is not a party to that case, and is completely unaware of any claims regarding deadlines or time commitments related thereto. Accordingly, City cannot address specifics of any of Petitioner's claims concerning time sensitive obligations precluding him from timely filing the Motion to Set Aside, besides looking at the information that is publicly available on the Superior Court's Register of Actions.

However, even assuming the truth of all of Petitioner's claims, Petitioner's apparent strategic decision to attempt to set aside default *after* dismissal and Petitioner's Counsel's claim of being a sole practitioner too busy with Petitioner's "related case" to timely file does not justify relief under Code of Civil Procedure section 473(b). Being busy and experiencing stress in meeting deadlines in the practice of law alone is not excusable neglect or inadvertence. *Ambrose v. Michelin North America, Inc.* (2005) 134 Cal. App. 4th 1350, 1355 (counsel unsuccessfully argued the stresses of a busy practice,

the hurry to meet deadlines and obligations of other pending litigation); *see also Martin v. Taylor*, 267 Cal. App. 2d 112, 117 (1968) (noting the "unusual press of business" is not a legitimate legal excuse, because "[t]o accept this as a legal justification for the failure to comply with the statute would be to discourage diligence in the prosecution of appeals and establish a precedent that might lead to vexatious delays".)

Based on the facts alleged, assuming all to be true, the Petition for Review should be denied as it does not set forth appropriate legal justification to obtain relief from dismissal under Code of Civil Procedure section 473(b).

Dated: October 18, 2018

MARA W. ELLIOTT, City Attorney

By _____
M. Travis Phelps
Chief Deputy City Attorney

Attorneys for Respondent and Defendant
City of San Diego

IN THE SUPREME COURT
OF STATE OF CALIFORNIA

PROOF OF SERVICE

Cotton v. City of San Diego (Geraci)

Case No. S250895
Appellate Case No. D073766
San Diego Superior Court Case No. 37-2017-00037675-CU-WM-CTL

I, the undersigned, declare that:

I was at least 18 years of age and not a party to the case; I am employed in the County of San Diego, California. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

On October 18, 2018, I served true copies of the following document(s) described as:

- **CITY OF SAN DIEGO'S INFORMAL RESPONSE TO PETITION FOR REVIEW**

on the interested parties in this action as follows:

Jacob P. Austin — via TrueFiling
THE LAW OFFICE OF JACOB AUSTIN
1455 Frazee Road, Suite 500
San Diego, CA 92108
Tel.: (619) 357-6850
Fax: (888) 357-8501
jpa@jacobaustinesq.com

Attorney for Plaintiff/Appellant/Petitioner
DARRYL COTTON

Clerk of San Diego Superior Court
Hon. Joel Wohlfeil
330 West Broadway, D-73
San Diego, CA 92101

via Overnight Delivery

[XX] **(BY ELECTRONIC SERVICE)** By transmitting via TrueFiling to the above parties at the email addresses listed above.

[ ] **(BY PERSONAL SERVICE)** I provided copies to Nationwide Legal for personal service on this date to be delivered to the office of the addressee(s) listed above.

[XX] **(BY OVERNIGHT DELIVERY)** I enclosed said document(s) in a sealed envelope or package provided by Golden State Overnight (GSO) and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of GSO.

[ ] **(BY UNITED STATES MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing with the United States Postal Service and that the correspondence shall be deposited with the United States Postal Service with postage fully prepaid this same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 18 day of October 2018, at San Diego, California.

Marci Bailey

DARRYL COTTON
6176 Federal Boulevard
San Diego, CA 92104
Telephone: (619) 954-4447
Facsimile: (619) 229-9387

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiff,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual; GINA AUSTIN, an individual; AUSTIN LEGAL GROUP, a Professional Corporation; MICHAEL WEINSTEIN, an individual; SCOTT H. TOOTACRE, 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-3325-BAS (MDD)

DECLARATION OF ZOË GAYLE VILLAROMAN IN SUPPORT OF *EX PARTE* APPLICATION BY PLAINTIFF DARRYL COTTON FOR APPOINTMENT OF COUNSEL PURSUANT TO 28 U.S.C §1915(e)(1)

Hearing Date:
Time:
Judge: Hon. Cynthia A. Bashant
Courtroom: 4B

I, Zoë Gayle Villaroman, declare:

1. I am over the age of eighteen years, not a party to this action and make this declaration in support of Plaintiff's *Ex Parte* Application for Appointment of Counsel Pursuant to 28 U.S.C. §1915(e)(1).

/ / /

2. The facts contained herein are true and correct of my own personal knowledge, except those facts which are stated upon my information and belief; and, as to those matters, I believe them to be true.

3. For the past five years, I have worked solely as an independent contractor providing research, legal writing, discovery review and analysis, trial preparation and other paralegal assistance/services to attorneys and law firms throughout California.

4. My experience in the legal industry spans the past 43 years – the first 15 years of which were as a legal secretary, and the remainder as a paralegal. I am a lead trial paralegal highly experienced in both California state and federal procedure, as well as appellate procedure in the Fourth District Court of Appeal, the 9th Circuit Court of Appeal and the California Supreme Court.

5. During my career, I have been employed by a number of prominent law firms both in San Diego and San Francisco – including but not limited to Miller Boyko & Bell, the former Gray Cary Ames & Frye, Gibson Dunn & Crutcher, Winston & Strawn, LLP (formerly Murphy, Weir & Butler), and Pillsbury & Levinson.

6. I have coordinated, supervised and managed paralegal and legal secretarial teams supporting counsel in prominent civil litigation, products liability and bankruptcy proceedings – including but not limited to Procter & Gamble Rely Tampon TSS cases, Owens-Corning and Kelly Moore Paint Company asbestos class actions, and *In re J. David Dominelli*, *In re Pan America World Airways, In re America West Airlines,* and *In re R.H. Macy & Co., Inc. and Affiliated Department Stores.*

7. During the past nearly three years, I provided paralegal assistance on a contract basis to Jacob P. Austin of the Law Office of Jacob Austin and Andrew Flores, Attorney at Law, both of whom formerly represented Plaintiff in the related state court action, and Evan P. Schube of Tiffany & Bosco, P.A., Plaintiff's former counsel who represented him in connection with post-trial motions in the related state court action. My fees for the services I rendered in the state court action, the attendant appellate proceedings and post-trial motions are approximately $400,000.

8. Due to Plaintiff's dire financial straits since entry of the final judgment in the state court action, my contract work for him has been extremely limited.

9. On Tuesday, July 21, 2020, I received a call from Plaintiff who said he needed my help to do research for him regarding his *ex parte* motion for reconsideration of this Court's order denying him appointment of counsel, and that he had borrowed some money from a friend to pay me for my work. I spent a total of 4.5 hours communicating with Plaintiff concerning this project, performing the research re 28 U.S.C. §1915(e)(1), the two prong test for the granting of a motion for appointment of counsel thereunder, and this Court's history of rulings on 28 U.S.C. §1915(e)(1) motions, and drafting this declaration, and my total fees charged to Plaintiff were $675 (4.5 hours x $150/hour).

10. Plaintiff gave me his draft moving papers to review and, when I finished reading them, he asked me if I could explain to him what he was doing wrong which caused this Court to keep denying his requests for appointment of counsel, so I spent some time researching 28 U.S.C. 1915(e)(1) and other authority relevant to the two prong test of "exceptional circumstances" for appointment of counsel for federal *pro se* civil litigants.

11. Thereafter, I retrieved from Lexis rulings by Judge Bashant on motions for appointment of counsel pursuant to 28 U.S.C. §1915(e)(1), following which I began a review of the rulings to attempt to determine the circumstances which existed when Her Honor granted a *pro se* civil litigant's motion for appointment of counsel.

12. I reviewed a random sampling of 40 to 50 of Judge Bashant's rulings and I found none granting any motion by a *pro se* civil litigant for the appointment of counsel.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct and that this declaration was executed on July 30, 2020.

/s/
ZOË GAYLE VILLAROMAN

DARRYL COTTON
6176 Federal Boulevard
San Diego, CA 92104
Telephone: (619) 954-4447
Facsimile: (619) 229-9387

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,

Plaintiff,

v.

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

Defendants.

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

DECLARATION OF DARRYL COTTON IN SUPPORT OF HIS APPLICATION FOR APPOINTMENT OF COUNSEL

Hearing Date: N/A
Hearing Time: N/A
Judge: Hon. Cynthia A. Bashant
Courtroom: 4B

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 Appointment of Counsel.

4. All facts contained in my Application for Appointment of Counsel are true and correct to the best of my knowledge.

5. On November 2, 2016, after Geraci and I entered into our oral joint venture agreement and signed the receipt for the $10,000 cash deposit, Geraci emailed me a copy of the receipt titled "Contract."

6. Upon receiving the email from Geraci I responded requesting that he confirm in writing

that the November Document was not the "final agreement."

7. My attorneys from Finch Thorton and Baird (FTB) failed to raise the email I sent Geraci shortly after receiving his "contract" email at a hearing in Cotton I. I immediately terminated their services due to the fact that I believed my attorney Demian was stupid and professionally incompetent.

8. Prior to filing this ex parte application, I notified all parties and their attorneys of my intent to file this request.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 3, 2020 at San Diego, California.

DARRYL COTTON

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

Plaintiff *Pro Se*

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 MCELFRESH, an individual; and DAVID DEMIAN, an individual

Defendants,

Case No. 3:18-cv-00325-BAS-DEB

CERTIFICATE OF SERVICE

Hearing Date: NA
Time: NA
Judge: Hon. Cynthia A. Bashant
Courtroom: 4B

Date: August 3, 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 APPLICATION FOR APPOINTMENT OF COUNSEL PUSUANT TO 28 U.S.C. § 1915 (e)(1).

2. DECLARATION OF DARRYL COTTON.

3. DECLARATION OF ZOE VILLAROMAN.

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

[X] BY E-MAIL DELIVERY: SEE ATTACHED EXHIBIT

[X] BY PERSONAL DELIVERY: TO JUDGE WOHLFIEL AT THE HALL OF JUSTICE, 330 WEST BROADWAY SAN DIEGO, CA 92101

Executed on August 3, 2020 at San Diego, California.

Darryl Cotton

Plaintiff - Pro Se Litigant