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10 Attorneys for Defendant
11 JESSICA MCELFRISH, an individual

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

14 DARRYL COTTON, an individual,
15 Plaintiff,
16 v.

17 CYNTHIA BASHANT, an individual;
18 JOEL WOHLFEIL, an individual;
19 LARRY GERACI, an individual;
20 REBECCA BERRY, an individual;
21 MICHAEL WEINSTEIN, an individual;
22 JESSICA MCELFRISH, an individual;
23 and DAVID DEMIAN, an individual,
24 Defendants.

CASE NO. 3:18-cv-00325-TWR-DEB

**DEFENDANT JESSICA'S
McELFRISH'S NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

District Judge:
Hon. Todd W. Robinson

Magistrate Judge:
Hon. Daniel E. Butcher

Date: April 21, 2021
Time: 1:30 p.m.
Courtroom: 3A

**[NO ORAL ARGUMENT
REQUESTED]**

25 TO ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN:
26 PLEASE TAKE NOTICE that on April 21, 2021, 2021 at 1:30 p.m. in
27 Courtroom 3A of the United States District Court for the Southern District of
28

1 California located at 221 West Broadway (Schwartz), San Diego, California
2 92101, the Hon. Todd Robinson presiding, defendant JESSICA McELFRESH
3 (“Ms. McElfresh”) hereby moves this Court for an order dismissing plaintiff
4 DARRYL COTTON’s (“plaintiff”) First Amended Complaint and each purported
5 claim for relief therein pursuant to Federal Rules of Civil Procedure 12(b)(6) and
6 12(b)(f) on the following grounds:

- 7 1) The First Amended Complaint fails to state facts sufficient to state a
8 viable claim upon which relief may be granted against Ms. McElfresh
9 and therefore should be dismissed pursuant to Federal Rule of Civil
10 Procedure 12(b)(6).
11 2) The third and fourth causes of action for declaratory relief and
12 punitive damages are not properly pled as causes of action and should
13 be stricken pursuant to Federal Rule of Civil Procedure 12(f).

14 This Motion to Dismiss will be based on this Notice of Motion and Motion,
15 the attached Memorandum of Points and Authorities, and Declaration of Laura
16 Stewart in support thereof, as well as the pleadings and other papers filed herein.

17
18 DATED: February 11, 2021

WALSH MCKEAN FURCOLO LLP

19
20 By: /s/ Laura Stewart
21 REGAN FURCOLO
22 LAURA STEWART
23 Attorneys for Defendant
24 JESSICA MCELFRISH, an individual
25 Email: rfurcolo@wmflp.com
26 Email: lstewart@wmflp.com
27
28

Regan Furcolo (SBN 162956)
Email: rfurcolo@wmfllp.com
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Attorneys for Defendant
JESSICA MCELFRESH, an individual

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,
Plaintiff,
v.

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

CASE NO. 3:18-cv-00325-TWR-DEB

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT JESSICA
McELFRESH'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT

District Judge:
Hon. Todd W. Robinson

Magistrate Judge:
Hon. Daniel E. Butcher

Date: April 21, 2021
Time: 1:30 p.m.
Courtroom: 3A (Schwartz)

[NO ORAL ARGUMENT
REQUESTED]

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant JESSICA McELFRESH (“Ms. McElfresh”), by and through her
3 attorneys of record herein, submits the following Motion to Dismiss Plaintiff
4 DARRYL COTTON’s (“plaintiff”) First Amended Complaint (“FAC”) pursuant to
5 Federal Rules of Civil Procedure 12(b)(6) and 12(f).

6 **I.**

7 **INTRODUCTION**

8 In an effort to overturn a judgment against him in the *Geraci* case, plaintiff
9 brings the FAC alleging two causes of action for deprivation of civil rights (42
10 U.S.C § 1983), a cause of action for declaratory relief, and what is labeled a cause
11 of action for punitive damages. Only the causes of action for declaratory relief and
12 punitive damages are alleged against Ms. McElfresh; she is not charged with
13 violating plaintiff’s civil rights or any other tort. Since a declaratory judgment
14 cannot be used as a corrective action to overturn a judgment in another case and
15 punitive damages only constitute a remedy as opposed to a claim in and of
16 themselves, the entire FAC should be dismissed against Ms. McElfresh.

17 **II.**

18 **STATEMENT OF FACTS**

19 Plaintiff has brought this lawsuit seeking to overturn the judgment entered
20 against him in another case, *Larry Geraci v. Darryl Cotton*, San Diego County
21 Superior Court Case No. 37-2017-00010073-CU-BC-CTL (“the *Geraci* case”). He
22 is suing everybody who had anything whatsoever to do with the *Geraci* case: the
23 plaintiff in the *Geraci* case and his secretary, all of the attorneys for both parties in
24 the *Geraci* case, the Judge in the *Geraci* case, and the former Judge in this case.

25 Plaintiff alleges that he was sued in the *Geraci* case by Larry Geraci for
26 breach of a joint venture agreement to develop a cannabis dispensary at a property
27 here in San Diego. Instead of selling the property to Mr. Geraci, plaintiff sold it to
28 somebody else, which the jury found was a breach of the purchase contract.

1 Plaintiff further alleges that the judgment entered against him in the *Geraci* case is
 2 void because it was procured via a fraud on the court, it was the product of judicial
 3 bias, and the joint venture agreement between him and Mr. Geraci was illegal. The
 4 Judge in the *Geraci* case was Judge Wohlfeil. Michael Weinstein was Mr.
 5 Geraci's attorney in the case and Gina Austin was Mr. Geraci's attorney who
 6 drafted the application for the cannabis permit. Rebecca Berry was Mr. Geraci's
 7 receptionist who filed the application for the cannabis permit with the City.
 8 Plaintiff further alleges that his litigation investor hired Ms. McElfresh and, later,
 9 David Demian, to represent plaintiff.

10 With respect to Ms. McElfresh, plaintiff alleges that she did not disclose that
 11 Mr. Geraci and numerous of his associates are her clients or that she shares
 12 numerous clients with Ms. Austin.

13 The FAC contains two causes of action for deprivation of civil rights (42
 14 U.S.C § 1983), a cause of action for declaratory relief, and what is labeled a cause
 15 of action for punitive damages. The two causes of action for violation of 42 U.S.C.
 16 § 1983 are alleged against Judge Wohlfeil and Judge Bashant, respectively. The
 17 cause of action for declaratory relief is alleged against Mr. Geraci, Ms. Berry, Mr.
 18 Weinstein, Ms. Austin, Ms. McElfresh and Mr. Demian and seeks a judicial
 19 declaration that the judgment against him in the *Geraci* case is void. The cause of
 20 action for punitive damages is alleged against all of the defendants on the grounds
 21 that he has spent over \$3 million in legal fees and costs since March of 2017 and
 22 the defendants should be liable for those legal fees and costs because they filed a
 23 malicious prosecution action and relied on the orders of judges that were biased
 24 against him.

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III.

LEGAL AUTHORITIES

A. Legal Authorities Governing Motions to Dismiss and Motions to Strike

A complaint must be dismissed under Federal Rule of Civil Procedure 12(b)(6) if it fails to state a claim upon which relief can be granted. As a result of the Supreme Court’s decision in Bell Atlantic Corp. v. Twombly, a complaint must indicate more than mere speculation of a right to relief. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556 (2007). A complaint is subject to dismissal unless it alleges “enough facts to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Pleading deficiencies should be “exposed at the point of minimum expenditure of time and money by the parties and the court.” Bell Atlantic Corp., *supra*, 550 U.S. at 558. A motion to dismiss for failure to state a claim tests the formal sufficiency of a plaintiff’s statement of a claim for relief. *Id.*

In ruling on a Rule 12(b)(6) motion, a court should not accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged. Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994) (citing Papasan v. Allain, 478 U.S. 265, 286 (1986); United States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n. 2 (9th Cir.), cert. denied, 454 U.S. 1031 (1981)). “Conclusory allegations of law and unwarranted inferences are not sufficient to defeat a [Rule 12(b)(6)] motion to dismiss.” Pareto v. FDIC, 139 F.3d 696, 699 (9th Cir. 1998). Courts will not assume plaintiffs “can prove facts which [they have] not alleged, or that the defendants have violated ... laws in ways that have not been alleged.” Associated General Contractors v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). The complaint must give “fair notice” of the claim asserted and the “grounds upon which it rests. Bell v. Atlantic Corp., *supra*, 550 U.S. at 555.

A court may dismiss a pleading without leave to amend when amendment would be futile. McQuillion v. Schwarzenegger, 369 F.3d 1091, 1099 (9th Cir. 2004); Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc., 806 F.2d 1393, 1401 (9th Cir. 1986) [Leave to amend should be denied where amending the challenged pleading could not possibly cure the deficiency].

A motion to strike under Rule 12(f) may be joined with a motion to dismiss under Rule 12(b)(6). Rule 12(f) allows a court, or a party by motion, to strike from a pleading “any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial.” Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). The Court may also use Rule 12(f) to strike a prayer for relief that is not available as a matter of law. Susilo v. Wells Fargo Bank, N.A., 796 F.Supp.2d 1177, 1196 (C.D. Cal. 2011).

IV.

ANALYSIS

A. The Entire FAC Should be Dismissed Against McElfresh Because it Does Not State A Claim Upon Which Relief May Be Granted

The only causes of action alleged in the FAC against Ms. McElfresh are the third cause of action for declaratory relief and the fourth cause of action for punitive damages. In the third cause of action for declaratory relief, plaintiff seeks a judicial declaration that the judgment entered against plaintiff in the *Geraci* case is void for being procured by fraud on the court, the product of judicial bias and it enforces an illegal contract. In the fourth cause of action for punitive damages, plaintiff alleges he has incurred over \$3 million in legal fees since 2017. He claims the defendants should pay these legal fees and is calling them “punitive damages.”

1 The only allegations about what Ms. McElfresh did wrong in plaintiff's
 2 mind are that she allegedly represented him in the *Geraci* case, she did not disclose
 3 that Mr. Geraci and numerous of Mr. Geraci's associates were her clients and she
 4 shares numerous clients with Ms. Austin. Even assuming *arguendo* that these
 5 allegations are true, it is not sufficient to state a claim upon which relief may be
 6 granted against Ms. McElfresh.

7 **B. The Third Cause of Action for Declaratory Relief Only Seeks To**
 8 **Void the Judgment in the *Geraci* Case**

9 A lawsuit seeking federal declaratory relief must first present an actual case
 10 or controversy within the meaning of Article III, section 2 of the United States
 11 Constitution. Aetna Life Ins. Co. of Hartford v. Haworth, 300 U.S. 227, 239–40
 12 (1937). A declaratory judgment is not a corrective action and should not be used
 13 to remedy past wrongs. *See, e.g., Marzan v. Bank of America*, 779 F. Supp. 2d
 14 1140, 1146 (D. Haw. 2011) [“[B]ecause Plaintiffs' claims are based on allegations
 15 regarding Defendants' past wrongs, a claim under the Declaratory Relief Act is
 16 improper and in essence duplicates Plaintiffs' other causes of action”]. Rather, the
 17 “useful purpose served by the declaratory judgment action is the clarification of
 18 legal duties for the future.” Amsouth Bank v. Dale, 386 F.3d 763, 786 (6th Cir.
 19 2004); see also Societe de Conditionnement en Aluminium v. Hunter Engineering
 20 Co., 655 F.2d 938, 943 (9th Cir. 1981) [“The Declaratory Judgment Act brings to
 21 the present a litigable controversy, which otherwise might only by [sic] tried in the
 22 future”].

23 Applying these legal authorities to the present case, a judicial declaration
 24 that the judgment in the *Geraci* case is void is not an appropriate Article III “case
 25 or controversy” for the Court to decide and would impose no liability on Ms.
 26 McElfresh. She was not a party to the *Geraci* case, so there is no prospective relief
 27 to be awarded against her if the judgment is declared void. There is absolutely no
 28

1 way for Ms. McElfresh to be held liable for anything in connection with the third
2 cause of action.

3 **C. The Fourth Cause of Action for Punitive Damages is Not Proper**
4 **Because Punitive Damages Are Only A Remedy, Not a Cause of**
5 **Action**

6 “Punitive damages constitute a remedy, not a claim.” Oppenheimer v.
7 Southwest Airlines Co., 2013 WL 3149483 (S.D. Cal. June 17, 2013) (citing
8 Cohen v. Office Depot, Inc., 184 F.3d 1292, 1297 (11th Cir. 1999) (overruled on
9 other grounds)).

10 Applying these legal authorities to the present case, the fourth cause of
11 action in the FAC for punitive damages is not properly pled as a cause of action.
12 Furthermore, the cause of action for punitive damages is based on the allegations
13 that the defendants filed a malicious prosecution action against him and relied on
14 judges who were biased against him. These allegations are not even directed
15 towards Ms. McElfresh, since according to plaintiff, she did not have anything to
16 do with suing plaintiff in the *Geraci* case (on the contrary, he alleges that she
17 represented him in the *Geraci* case) and she is not a judge. There is absolutely no
18 way for Ms. McElfresh to be held liable for anything in connection with the fourth
19 cause of action.

20 **C. Plaintiff Should Not be Granted Leave to Amend**

21 Leave to amend should be denied where amending the challenged pleading
22 could not possibly cure the deficiency. Schreiber Distributing Co. v. Serv-Well
23 Furniture Co., Inc., 806 F.2d 1393, 1401 (9th Cir. 1986).

24 Here, no amendment could cure the defects in plaintiff’s FAC against
25 McElfresh since his explicitly stated goal is to set aside the judgment against him
26 in the *Geraci* case to which Ms. McElfresh was not even a party. No substantive
27 causes of action are alleged against Ms. McElfresh. The only substantive causes of
28 action in the FAC are the two causes of action for §1983 violations and, as a matter

1 of law, those causes of action could not be alleged against Ms. McElfresh because
 2 she is a private attorney, not a state actor. See Simmons v. Sacramento County
 3 Superior Court, 318 F.3d 1156, 1161 (9th Cir. 2003) [the plaintiff could not sue
 4 opposing counsel under §1983 because he was a lawyer in private practice who
 5 was not acting under color of state law].

6 V.

7 **CONCLUSION**

8 For these reasons, Ms. McElfresh respectfully requests this Court dismiss
 9 Plaintiff's FAC against her without leave to amend.

10
 11 DATED: February 11, 2021

WALSH MCKEAN FURCOLO LLP

12
 13 By: /s/ Laura Stewart

REGAN FURCOLO

LAURA STEWART

Attorneys for Defendant

JESSICA MCELFRISH, an individual

Email: rfurcolo@wmflp.com

Email: lstewart@wmflp.com

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3 Laura Stewart (SBN 198260)
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10 Attorneys for Defendant
11 JESSICA MCELFRISH, an individual

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 DARRYL COTTON, an individual,
15 Plaintiff,
16 v.

17 CYNTHIA BASHANT, an individual;
18 JOEL WOHLFEIL, an individual;
19 LARRY GERACI, an individual;
20 REBECCA BERRY, an individual;
21 MICHAEL WEINSTEIN, an individual;
22 JESSICA MCELFRISH, an individual;
23 and DAVID DEMIAN, an individual,
24 Defendants.

CASE NO. 3:18-cv-00325-TWR-DEB

DECLARATION OF LAURA
STEWART IN SUPPORT OF
DEFENDANT JESSICA'S
McELFRISH'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT

District Judge:
Hon. Todd W. Robinson

Magistrate Judge:
Hon. Daniel E. Butcher

Date: April 21, 2021
Time: 1:30 p.m.
Courtroom: 3A

[NO ORAL ARGUMENT
REQUESTED]

I, LAURA STEWART, declare as follows:

1. I am licensed to practice law in the State of California and am an
associate at Walsh, McKean Furcolo, LLP, counsel of record for defendant
JESSICA McELFRISH ("Ms. McElfresh").

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

3. As required by Judge Robinson's Chamber Rules, on February 9, 2021, I called and e-mailed plaintiff DARRYL COTTON ("plaintiff") to meet and confer with him regarding Ms. McElfresh's motion to dismiss the First Amended Complaint against her pursuant to Federal Rule of Civil Procedure 12(b)(6) and motion to strike the two causes of action against her (punitive damages and declaratory relief) pursuant to Federal Rule of Civil Procedure 12(f). A true and correct copy of my correspondence to plaintiff dated February 9, 2021 and his response to me the same day are attached hereto as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 11th day of February, 2021 in San Diego, California.

/s/ Laura Stewart
LAURA STEWART

EXHIBIT “A”

Michelle Davis

From: Laura Stewart
Sent: Tuesday, February 9, 2021 11:07 AM
To: 'indagrodarryl@gmail.com'
Subject: Cotton v. Bashant, et al. (Our Client, Jessica McElfresh)

Mr. Cotton,

As I said during our telephone conversation this morning, my office is counsel for Jessica McElfresh in the lawsuit you filed in the United States District Court for the Southern District of California.

The purpose of my call was to meet and confer with you before filing Ms. McElfresh's motion to dismiss the First Amended Complaint against her, which we intend to file with the court this Thursday. The motion will be made under Rules 12(b)(6) and 12(f) of the Federal Rules of Civil Procedure on the ground that the two causes of action alleged against her (declaratory relief and punitive damages) do not state a claim upon which relief may be granted and should be stricken.

Declaratory relief is not the appropriate vehicle for overturning a judgment in another case, which is what the third cause of action in your First Amended Complaint seeks to do. A lawsuit seeking federal declaratory relief must first present an actual case or controversy within the meaning of Article III, section 2 of the United States Constitution. Aetna Life Ins. Co. of Hartford v. Haworth, 300 U.S. 227, 239–40 (1937). A declaratory judgment is not a corrective action and should not be used to remedy past wrongs. *See, e.g., Marzan v. Bank of America*, 779 F. Supp. 2d 1140, 1146 (D. Haw. 2011) ["[B]ecause Plaintiffs' claims are based on allegations regarding Defendants' past wrongs, a claim under the Declaratory Relief Act is improper and in essence duplicates Plaintiffs' other causes of action"]. Rather, the "useful purpose served by the declaratory judgment action is the clarification of legal duties for the future." Amsouth Bank v. Dale, 386 F.3d 763, 786 (6th Cir. 2004); *see also Societe de Conditionnement en Aluminium v. Hunter Engineering Co.*, 655 F.2d 938, 943 (9th Cir. 1981) ["The Declaratory Judgment Act brings to the present a litigable controversy, which otherwise might only by [sic] tried in the future"].

Punitive damages are not a cause of action, but a remedy for substantive torts committed by the defendant and there are no substantive causes of action against Ms. McElfresh alleged in your First Amended Complaint. "Punitive damages constitute a remedy, not a claim." Oppenheimer v. Southwest Airlines Co., 2013 WL 3149483 (S.D. Cal. June 17, 2013) (citing Cohen v. Office Depot, Inc., 184 F.3d 1292, 1297 (11th Cir. 1999) (overruled on other grounds)).

For these reasons, we ask that you please dismiss the First Amended Complaint against Ms. McElfresh. If we do have to file the motion to dismiss, we will be asking the court not to grant leave to amend the First Amended Complaint because no amendment could cure these deficiencies.

Please let me know if you would be willing to dismiss the First Amended Complaint against Ms. McElfresh or if you would like to discuss these issues further. Thank you.

Laura Stewart, Esq.
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CONFIDENTIALITY NOTE: THIS E-MAIL AND ANY ATTACHMENTS ARE CONFIDENTIAL AND MAY BE PROTECTED BY LEGAL PRIVILEGE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR USE OF THIS E-MAIL OR ANY ATTACHMENT IS PROHIBITED. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY RETURNING IT TO THE SENDER AND DELETE THIS COPY FROM YOUR SYSTEM. THANK YOU FOR YOUR COOPERATION.

Michelle Davis

From: Darryl Cotton <indagrodarryl@gmail.com>
Sent: Tuesday, February 9, 2021 12:24 PM
To: Laura Stewart
Subject: COTTON V AUSTIN ET AL - McElfresh MTD
Attachments: ECF-55-01-21-21-main-merged.pdf

Ms. Stewart,

Following up on our conversation, please find attached my opposition to Judge Wohlfeil's motion to dismiss. I understand that you must "zealously" advocate on behalf of Jessica McElfresh. Someone I know to work for drug dealers and who connived to defeat my case. I know she is going to deny being my counsel and that my litigation investor paid for her services on my case, I am, in fact counting on that, so I can prove she is a lying bitch.

However, as to you, I want to emphasize that I am preparing a lawsuit against Wohlfeil's attorneys for filing a MTD that tacitly admits that Wohlfeil made the Extrajudicial Statements (as defined in my complaint), but ignore it and seek to bar me from access to the courts. I don't want to file another lawsuit against more attorneys, but I will against any who violate Rule 11 and who ignore my allegations in the complaint that Wohlfeil's statements meet the criteria for judicial bias, hence the judgements entered against me by Wohlfeil are void.

Please represent McElfresh within the bounds of the law. If you don't and seek to ratify the conspiracy against me by filing a sham MTD that seeks to deprive me of lawful access to the courts, I will file suit against you too. I do not want to. And assuming you are not a cut of the same cloth as a shit attorney like McElfresh that will lay prone for any criminal for money, you should be perfectly clear that Lawrence Geraci can't own a cannabis CUP and his attorneys are all criminals with licenses to practice law.

I look forward to your arguments and, if in fact, I fail to state a cause of action against McElfresh, then you are a vastly smarter and more competent attorney. Even more so than Kenneth Feldman, a partner and Lewis & Brisbois who in order to cover up David Demian's actions, colluded with McElfresh, to amend my complaint and destroy my suit, could only argue that service of process was not proper. Also, I assume that you will review all the pending motions to dismiss, they got nothing. They are all fucked. And I am going to sue each and everyone of them.

I am only emailing this because I have enough people to sue. But if you fuck me, I will come back and fuck you and your firm too. When this is over, I will make sure every client of every piece of shit attorney knows that their attorneys are pieces of shit. Do yourself a favor, don't go down for a piece of shit like McElfresh. The money you will get from representing her is not worth becoming associated with her. And, if you lie like her, becoming jointly liable for ratifying a criminal conspiracy via the judiciaries.

Your call.

Darryl Cotton

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

DARRYL COTTON, an individual,
Plaintiff,

v.

CASE NO. 3:18-cv-00325-TWR-DEB

DECLARATION OF SERVICE

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

I, the undersigned, declare:

That I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the service occurred; and my business address is: 550 West C Street, Suite 950, San Diego, California.

On February 11, 2021, I served the following document(s):

1. **DEFENDANT JESSICA'S MCELFFRESH'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT;**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT JESSICA MCELFFRESH'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT; and**
3. **DECLARATION OF LAURA STEWART IN SUPPORT OF DEFENDANT JESSICA'S MCELFFRESH'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT.**

in the following manner:

SERVICE LIST*Darryl Cotton v. Cynthia Bashant, et al.**USDC, Southern District of California Case No. 3:18-cv-00325-BAS-DEB*

PARTY	COUNSEL
Plaintiff DARRYL COTTON <i>Pro Se</i>	<u>VIA FIRST CLASS MAIL</u> Darryl Cotton 6176 Federal Boulevard San Diego, CA 92114 Tel: 619.954.4447 indagroddarryl@gmail.com
Defendant GINA M. AUSTIN	<u>VIA CM/ECF</u> Douglas A. Pettit, Esq. Julia M. Dalzell, Esq. PETTIT KOHN INGRASSIA LUTZ & DOLIN 11622 El Camino Real, Suite 300 San Diego, CA 92130 Tel: 858.755.8500 / Fax: 858.755.8504 dpettit@pettitkohn.com jdalzell@pettitkohn.com
Defendant MICHAEL WEINSTEIN	<u>VIA CM/ECF</u> James J. Kjar, Esq. Jon R. Schwalbach, Esq. Gregory B. Emdee, Esq. KJAR McKENNA & STOCKALPER 841 Apollo Street, Suite 100 El Segundo, CA 90245 Tel: 424.217.3026 / Fax: 424.367.0400 kjar@kmslegal.com jschwalbach@kmslegal.com gemdee@kmslegal.com

SERVICE LIST*Darryl Cotton v. Cynthia Bashant, et al.**USDC, Southern District of California Case No. 3:18-cv-00325-BAS-DEB*

PARTY	COUNSEL
Defendant The Honorable Joel R. Wohlfeil, Judge of the Superior Court of California, County of San Diego	<u>VIA CM/ECF</u> Susanne C. Koski, Esq. Carmela E. Duke, Esq. Superior Court of California, County of San Diego 1100 Union Street San Diego, CA 92101 Tel: 619.844.2382 Susanne.Koski@sdcourt.ca.gov Carmela.Duke@sdcourt.ca.gov

- ☒ **By Electronic Transfer – as indicated on the attached service list.**
I caused all of the above-entitled document(s) to be served through CM/ECF addressed to all parties named below. A copy of the Notice of Electronic Filing page will be maintained with the original document(s) in our office.
- ☒ **By First Class Mail – as indicated on the attached service list.** By causing a copy to be placed in a separate envelope, with postage fully prepaid, for each addressee named below and deposited each in the U.S. Mail at San Diego, California.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 11, 2021, at San Diego, California.

Michelle Davis