

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

NUNC PRO TUNC
4/7/2021

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON,
Plaintiff,
v.

Case No. 3:18-cv-00325-TWR (DEB)
Formerly: 3:18-cv-003250-BAS (DEB)
Related Cases: 3:20-cv-00656-TWR (DEB)

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

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DARRYL COTTON'S
OPPOSITION TO JESSICA MCELFRISH'S
MOTION TO DISMISS FIRST AMENDED
COMPLAINT

Hearing Date: 4/21/2021
Time: NA
Judge: Hon. Todd W. Robinson
Courtroom: 3A

Defendants.

Plaintiff hereby requests that this Court take judicial notice of the documents described below and the copies thereof attached hereto in support of his Opposition to Motion of Defendant Jessica McElfresh's Motion to Dismiss

The documents listed below and attached hereto as Exhibit No. 1-2 to this opposition conformed transcripts of the hearing on Plaintiff's Motion for New Trial in *Geraci v. Cotton, et al.*, and a paid invoice from McElfresh Law to Larry Geraci for the CUP application on the Property, marked as exhibit 142 in San Diego Superior Court Case

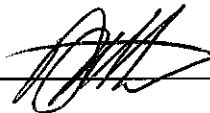
No. 37-2017-10073-CU-BC-CTL ("*Cotton I*"). This Court may properly take judicial notice of these exhibits pursuant to Federal Rules of Evidence, Rule 201.

RJN NO.	DOCUMENT TITLE/DESCRIPTION
1	<i>Cotton I</i> : Transcript of Motion For New Trial. Oct. 25, 2019
2	<i>Cotton I</i> : Paid invoice from McElfresh Law to Larry Geraci. Dec. 10, 2018

Dated: April 7, 2021

DARRYL COTTON

By



Plaintiff *In Propria Persona*,

EXHIBIT 1

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IN THE SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT
DEPARTMENT 73 HONORABLE JOEL R. WOHLFEIL, JUDGE

LARRY GERACI,)	CASE NO. 37-2017-00010073-
)	CU-BC-CTL
PLAINTIFF,)	
)	
VS.)	OCTOBER 25, 2019
)	
DARRYL COTTON,)	FRIDAY, 9:00 AM
)	
DEFENDANT.)	MOTION FOR A NEW TRIAL
)	EX PARTE HEARING

REPORTER'S CERTIFIED TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFF:	MICHAEL R. WEINSTEIN, ESQ. SCOTT H. TOOTHACRE, ESQ. FERRIS & BUTTON, APC 501 BROADWAY SUITE 1450 SAN DIEGO, CA 92101
FOR THE DEFENDANT:	EVAN P. SCHUBE, ESQ. FOR: JACOB AUSTIN, ESQ. PO BOX 231189 SAN DIEGO, CA 92193
REPORTED BY:	ELIZABETH CESENA, CSR 12266 PO BOX 131037, SD, CA 92170 LIZCEZ@GMAIL.COM

1 SAN DIEGO, CALIFORNIA, OCTOBER 25, 2019, FRIDAY, 9:00 AM

2 --000--

3 THE COURT: Item five, Geraci versus Cotton, case
4 number 10073.

5 MR. WEINSTEIN: Good morning, Your Honor.

6 Michael Weinstein and Scott Toothacre on behalf of
7 Mr. Geraci and Ms. Berry, who is not a part of this
8 conference.

9 THE COURT: And Counsel?

10 MR. SCHUBE: Good morning, Your Honor.

11 Evan Schube on behalf of Mr. Cotton.

12 THE COURT: All right. Did I hear you two say
13 that you were submitting?

14 MR. WEINSTEIN: Yeah. We are submitting, Your
15 Honor, with time to respond.

16 THE COURT: All right. Counsel?

17 MR. SCHUBE: Thank you. I'll get to the
18 illegality of the contract issue first. The fact is it
19 cuts to the heart of the motion that we filed and the
20 biggest issue.

21 A couple of items I wanted to raise with the Court, a
22 couple of factual items I wanted to raise with the Court.

23 First one, on Exhibit H of our motion, is a leave to
24 file the application to CUP Applications that were filed.
25 In general application, which is Trial Exhibit 4200, it's
26 states that "Notice of violation is required to be
27 disclosed," and skip back to page four of the same Trial
28 Exhibit, the Ownership Disclosure Statement, it also says,

1 "the name of any person of interest in the property must
2 also be disclosed," and it states to potentially attach
3 pages if needed.

4 THE COURT: So you are saying the contract is
5 unenforceable?

6 MR. SCHUBE: Yes.

7 THE COURT: As a matter of law?

8 MR. SCHUBE: Yes. CUP was a condition precedent
9 to the contract.

10 THE COURT: Counsel, up until this point in time,
11 this case was filed in 017. Your side has been screaming
12 at the Court and filed multiple writs asking me to
13 adjudicate the contract as a matter of law in favor of your
14 side.

15 Now you are asking me in, after an adverse finding, to
16 adjudicate the law for the other side? You are doing a 180.
17 Truly, you are doing a 180.

18 MR. SCHUBE: I came in on a limited scope. I
19 don't have the background.

20 THE COURT: I do. They do. They have been
21 sitting --

22 MR. SCHUBE: But my understanding was there were
23 the motions that were made were based upon my clients
24 understanding of what the agreement is which is not
25 specifically related to the November 2, 2016 agreement that
26 the jury found. Our motion is a bit more limited in that
27 regard. I may be wrong. That's my understanding of the
28 background of the case.

1 THE COURT: Again, from the Court's perspective as
2 a matter of law up to this point. You have been asking me
3 to adjudicate the contract in your favor. Now you're
4 asking the Court to adjudicate the contract as a matter of
5 law against the other side.

6 Counsel, shouldn't this have been raised at some
7 earlier point in time?

8 MR. SCHUBE: Should it have, Your Honor? My
9 personal opinion is that it should have been raised before
10 but it was not and we are where we are and so hence, the
11 reason why we're raising the issue now on a Motion for New
12 Trial.

13 I think what has been referred to before, the
14 illegality argument has been raised before and raised in the
15 context of reference to State Law and Section 2640 of the
16 California Business and Professions Code. I believe what
17 was not conveyed to the Court was that these requirements
18 for these forms, the specific provisions in the San Diego
19 Municipal Code that require those disclosures and require
20 applicant provide information.

21 The information was not provided. And --

22 THE COURT: Even if you are correct, hasn't that
23 train come and gone? The judgment has been entered. You
24 are raising this for the first time.

25 MR. SCHUBE: Your Honor, illegality of the
26 contract can be raised any time whether in the beginning or
27 during the case or on appeal.

28 THE COURT: So it's akin to a jurisdictional

1 challenge?

2 MR. SCHUBE: I don't know if it's akin to a
3 jurisdictional challenge, but the issue can be raised.

4 THE COURT: But at some point, doesn't your side
5 waive the right to assert this argument? At some point?

6 MR. SCHUBE: I am not suggesting we waived that.
7 The Case Law I saw in the motion cited that there is a duty
8 and the duty continues and so I am not aware if there is
9 anything that suggests that we waived that argument.

10 THE COURT: Anything else, Counsel?

11 MR. SCHUBE: The other thing I'd like to point
12 out, Section 11.0401 of San Diego Municipal Code
13 specifically states that "every applicant prior be
14 furnished true and complete information." And that's
15 obviously not what happened here. I think it's undisputed
16 and the reasoning for the failure to disclose, there is no
17 exception to either the San Diego Municipal Code or failure
18 to disclose.

19 THE COURT: Thank you, very much.

20 MR. SCHUBE: Thank you, Your Honor.

21 THE COURT: I am not inclined to change the
22 Court's view. Did either one of you need to be heard?

23 MR. TOOTHACRE: Just to make a record. One
24 comment with respect to the illegality argument.
25 Obviously, we agree with the comments of the Court but the
26 failure to make these disclosures in the CUP, it doesn't
27 make the contract between Geraci and Cotton unenforceable.
28 It's one thing to say that the contract or the form wasn't

1 properly filled out, that doesn't make the contract
2 unenforceable. That's all we have for the record.

3 THE COURT: Counsel, the Court observed this case
4 throughout the entirety, including at trial. Quite
5 frankly, I thought your client did well on the witness
6 stand. Truly.

7 But the jury categorically rejected your side's claim
8 and I am persuaded everybody got a fair trial here. The
9 Court confirms the tentative ruling as the order of the
10 Court. I will direct Plaintiff's side to serve Notice of
11 the Decision. Thank you very much.

12 MR. WEINSTEIN: Thank you, Your Honor.

13 MR. TOOTHACRE: Thank you, Your Honor.

14 (END OF PROCEEDING AT 9:23 AM)

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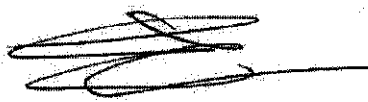
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SAN DIEGO, CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

I, ELIZABETH M. CESENA, CSR 12266, A COURT-APPROVED
REPORTER OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY
OF SAN DIEGO, DO HEREBY CERTIFY THAT I REPORTED IN SHORTHAND
THE PROCEEDINGS, TO THE BEST OF MY ABILITY, IN THE
ABOVE-ENTITLED CAUSE AND THAT THE FOREGOING
TRANSCRIPT, NUMBERED FROM PAGES 1 TO 7, IS A
FULL, TRUE AND CORRECT TRANSCRIPT OF PROCEEDINGS HELD ON
OCTOBER 25, 2019.

SAN DIEGO, CALIFORNIA, DATED THIS 9TH DAY OF
JUNE, 2020.



ELIZABETH M. CESENA, CSR 12266
CERTIFIED SHORTHAND REPORTER

EXHIBIT 2

McElfresh Law

Date	Check #	Amount
12.10.18	4514	1,245.00

1,245.00

Court's Ex.	142
Case #	ST-2017-00010073-CU-BC-CTL
Rec'd	
Dept.	C-73 CLK

McElfresh Law, Inc.

646 Valley Avenue

Suite C2

Solana Beach, California 92075

Phone: 858-756-7107

[Click Here To Pay This Invoice Using Credit Card](#)**INVOICE**

Date: 12/06/2018

Invoice #: 747

Matter: Land Use

File #:

Bill To:

Larry Geraci

5402 Ruffin Road

Suite 200

San Diego, CA

Due Date: 01/05/2019

Payments received after 12/06/2018 are not reflected in this statement.

Professional Services

Date		Details	Hours	Rate	Amount
12/05/2018	JCM	Discussion with Schweitzer regarding tomorrow's appeal; review of letter and PC report	1.00	\$350.00	\$350.00
12/06/2018	JCM	Attendance at Planning Commission hearing for appeal	2.50	\$350.00	\$875.00
For professional services rendered			3.50		\$1,225.00

Additional Charges

Date		Details	Quantity	Rate	Amount
12/06/2018	JCM	Parking for hearing	1	\$20.00	\$20.00
Total additional charges					\$20.00

Invoice Amount \$1,245.00



Online Banking

LST Investments LLC: Account Activity Transaction Details

Check number: 00000004514

Post date: 12/17/2018

Amount: -1,245.00

Type: Check

Description: Check

Merchant name: Check

Transaction category: Cash, Checks & Misc: Checks

LST INVESTMENTS LLC 8402 RUFFIN RD STE 200 SAN DIEGO, CA 92123-1301		4514 11-30/2018 CA 01428
Date: 12-17-18		
Pay to the Order of: McElfresh Law, Inc.	\$ 1245.00	
twelve hundred forty five and 00/100ths		
Bank of America		
ACH REF 181000338		
For: Inv 747	[Signature]	
⑆ 1 2 1 0 0 0 3 5 8 ⑆ 0 0 1 1 3 2 6 7 4 4 8 0 ⑆ 4 5 1 ⑆		

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

5 **Plaintiff Pro Se**

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

8 **DARRYL COTTON, an individual**
9 **Plaintiff,**

10 **vs.**

11 **CYNTHIA BASHANT, an individual;**
12 **JOEL WOHLFEIL, an individual;**
13 **LARRY GERACI, an individual;**
14 **REBECCA BERRY, an individual;**
15 **GINA AUSTIN, an individual;**
16 **MICHAEL R. WEINSTEIN, an**
17 **individual; JESSICA MCELFRISH, an**
18 **individual; and DAVID DEMIAN, an**
19 **individual**

20 **Defendants,**

Case No. 3:18-cv-00325-TWR (DEB)
Formerly: 3:18-cv-003250-BAS (DEB)
Related Cases: 3:20-cv-00656-TWR (DEB)

21 **CERTIFICATE OF SERVICE**

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

CERTIFICATE OF SERVICE

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

**1. DARRYL COTTON'S OPPOSITION TO JESSICA MCELFFRESH'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

**2. REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DARRYL COTTON'S OPPOSITION
TO JESSICA MCELFFRESH'S MOTION TO DISMISS FIRST AMENDED COMPLAINT**

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

☒ **BY E-MAIL DELIVERY:**

☐ **BY PERSONAL DELIVERY:**

April 7, 2021



Darryl Cotton

Plaintiff - Pro Se Litigant

1 DARRYL COTTON
2 6176 Federal Boulevard
3 San Diego, CA 92114
4 Telephone: (619)954-4447

2021 APR -7 PM 4:04

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

5 Plaintiff *Pro Se*

BY: _____ DEBANT

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

8
9 DARRYL COTTON,
10 Plaintiff,

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

11 v.

**PLAINTIFF DARRYL COTTON'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
DEFENDANT JESSICA
MCELFRESH'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

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

18 Defendants.

Hearing Date: 4/21/2021

Time:

Judge: Hon. Todd W. Robinson

Courtroom: 3A

19
20
21 Plaintiff pro se Darryl Cotton hereby files this opposition to defendant Jessica McElfresh's
22 Motion to Dismiss (the "MTD") Plaintiff's First Amended Complaint (the "FAC") filed by her
23 attorneys Regan Furcolo and Laura Stewart of Walsh, McKean, Furcolo LLP ("Furcolo's Law Firm").
24

25 **Introduction**

26 The parties and this court know what has taken place here. Joel Robin Wohlfeil is a biased,
27 corrupt, and incompetent judge who entered a judgment that enforces an illegal contract in *Cotton I*
28

(i.e., the Illegality Issue).¹ Wohlfeil, relying on his relationship with Larry Geraci's attorneys, Michael Weinstein and Gina Austin, failed to review the motions and evidence Cotton and his counsel submitted over the course of years. The evidence is indisputable that the *Cotton I* complaint filed by Geraci fails to state a cause of action as a matter of law because, *inter alia*, the November Document lacks mutual assent (i.e., the Mutual Assent Issue) and has illegal object (i.e, the Illegality Issue).

McElfresh was a knowing part of Geraci's scheme to commit a fraud on the court by, *inter alia*, submitting an opposition to Aaron Magagna's CUP approval by the City representing that Geraci can lawfully own a cannabis CUP notwithstanding the Illegality Issue. McElfresh's sham appeal was part of Geraci's conspiracy to sabotage the Berry Application to mitigate Geraci's liability in case the *Cotton I* action was exposed for the malicious prosecution it was.

That a judge, Wohlfeil, entered a judgment enforcing the November Document is inconsequential. If such were the case, the concept of "void judgements" and the doctrine of a "fraud on the court" would not exist. No order or judgment to date has addressed the Illegality Issue except Wohlfeil who found the defense of illegality had been waived. It can't. His bias in favor of Michael Weinstein is made irrefutable by his holding. Attached hereto as Exhibit 1 is the transcript from the Motion for New Hearing held on October 25, 2019 in which Wohlfeil found the defense of illegality has been waived. (Ex. 1 ("THE COURT: Even if you are correct, hasn't that train come and gone? The judgment has been entered. You are raising this for the first time.")).

Wohlfeil is a biased and corrupt judge who did not review the motions and supporting evidence he was presented with. If that truth is exposed, then every civil and criminal party that has ever been before him would have grounds to file appeals. To protect that truth from being exposed and reflecting negatively on the judiciary, and the corruption and incompetence by numerous other judges who had

¹ Terms not otherwise defined herein have the meaning set forth in the FAC.

1 the Illegality Issue before them, the state and federal judiciaries have tacitly aligned themselves with
 2 Geraci's criminal enterprise and are attempting to coerce Cotton into believing that it is lawful for
 3 Geraci to own a cannabis CUP via the Berry Application.

4 This has now become a battle of wills between me and the state and federal judges who have
 5 knowingly or negligently ratified an illegal contract to cover up Wohlfeil's bias actions and knowingly
 6 seek to deprive me of my constitutional rights. But as I do not have to respect any order or judgment
 7 that ratifies an illegal contract, there is nothing any judge can do to stop me from seeking to vindicate
 8 my constitutionally protected rights. *Watts v. Pinckney*, 752 F.2d 406, 409 (9th Cir. 1985) ("It is well
 9 settled that a judgment is void 'if the court that considered it lacked jurisdiction of the subject matter,
 10 or if the parties or if the court acted in a manner inconsistent with due process of law.' [Citation.]");
 11 *Tipton v. Thaler*, 354 F. App'x 138, 142 (5th Cir. 2009) ("[A] void judgment is a nullity from the
 12 beginning and is attended by none of the consequences of a valid judgment. It is entitled to no respect
 13 whatsoever because it does not affect, impair, or create legal rights."); *Watts v. Pinckney*, 752 F.2d
 14 406, 410 (9th Cir. 1985) ("A void judgment is a legal nullity and a court considering a motion to
 15 vacate has no discretion in determining whether it should be set aside.").

17 I plan to appeal various motions by this Court, as I am assuming this Court will grant additional
 18 unfavorable motions, and I will be appealing every decision. And, even if the Ninth Circuit joins in
 19 covering up what has taken place, I will just sue them as well - "It has been held that the affirmance
 20 by an appellate court of a void judgment imparts to it no validity; and especially if such affirmance is
 21 put upon grounds not touching its validity." *Redlands Etc. Sch. Dist. v. Superior Court*, 20 Cal.2d
 22 348, 362 (Cal. 1942) (quoting *Pioneer Land Co. v. Maddux*, 109 Cal. 633, 642).

24 Eventually I will get to a judge that holds sacrosanct their judicial oath more than upholding
 25 the Black Wall at the expense of my rights. In the meantime, every order and judgement that fails to
 26 address the Illegality Issue and the Judicial Bias issue is just further evidence of a judicial conspiracy

1 to cover up Wohlfeil's failure to review the motions and evidence he was presented with.

2 "No man in this country is so high that he is above the law." *Butz v. Economou*, 438 U.S. 478,
3 506 (1978) (quoting *United States v. Lee*, 106 U.S. 196, 220 (1882)). I will keep on fighting until
4 every last corrupt judge is exposed, judges are not above the law and do not get to break the law to
5 cover up for other judges. (*Id.*)

6 Material Summary of the Case

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

12 Cotton is the owner-of-record of real property (the "Property") in the City that qualifies for a
13 cannabis CUP. Geraci, in order to prevent Cotton from selling the Property to a third-party, Chris
14 Williams (a black man), fraudulently induced Cotton into entering an oral joint venture agreement
15 and promised to provide Cotton, *inter alia*, a 10% equity position in the CUP as consideration for the
16 Property (the "JVA"). However, Geraci could not actually honor the JVA because he could not own
17 a cannabis CUP because of the Sanctions Issue.

18 To unlawfully circumvent the Sanctions Issue, Geraci hired cannabis expert Gina Austin.
19 Austin prepared Geraci's CUP application at the Property using his secretary, Berry, as a proxy (the
20 "Berry Application"). In the Berry Application, in violation of the Statute of Frauds, applicable
21 disclosure laws, regulations and the plain language of the City's CUP application forms that she
22 certified she understood, Berry knowingly and falsely certified that she is the true and sole owner of
23 the CUP being applied for (the "Berry Fraud" and, collectively with the Sanctions Issue, the "Illegality
24 Issues").

1 Cotton discovered the Berry Fraud and demanded that Geraci reduce the JVA to writing.
 2 Geraci refused, Cotton then terminated the JVA with Geraci and entered into a written joint venture
 3 agreement with Richard Martin (the "Martin Sale"). The next day, to prevent the Martin Sale, Geraci's
 4 attorneys from the law firm of Ferris & Britton ("F&B") served Cotton with a sham action, *Cotton I*,
 5 and a recorded lis pendens on the Property (the "F&B Lis Pendens"). The *Cotton I* complaint denies
 6 the existence of the JVA and is predicated on the false allegation that a three-sentence document,
 7 executed as a *receipt* by Geraci and Cotton, is a *contract* for Geraci's purchase of the Property (the
 8 "November Document").

9 During the course of the Cotton I litigation, it became apparent to Geraci and his attorneys that
 10 Cotton was not going to succumb to litigation pressure and they needed to take steps to limit their
 11 legality. They did this by having a cannabis CUP approved less than 1,000 feet from the Property,
 12 thereby legally making it impossible for a cannabis CUP to ever be approved at the Property. That
 13 other cannabis CUP was acquired by Aaron Magagna. McElfresh submitted a sham objection to the
 14 approval of Magagna's approval representing that Geraci could lawfully own a cannabis CUP. It
 15 provided the false appearance that Geraci and his attorneys/agents were working in good faith to have
 16 the Berry Application approved, when in reality they wanted it denied.
 17

18 McElfresh's actions were taken in furtherance of Geraci's criminal conspiracy to initially
 19 defraud Cotton of the Property and then to mitigate his liability to Cotton. Her actions constitute a
 20 fraud on the court.
 21

22 Statement of Facts

23 **I. THE COTTON I JUDGMENT ENFORCES AN ILLEGAL CONTRACT AND IS THEREFORE VOID.** 24 **A. THE SANCTIONS ISSUE²**

25
 26 ² There are other legal actions in which Geraci was sanctioned, for simplicity, Cotton only sets forth
 27 one.

1. Geraci cannot lawfully own a cannabis CUP because he was sanctioned for illegal cannabis activity. (FAC ¶ 6.)

B. THE BERRY FRAUD

2. On October 31, 2016, Berry submitted the Berry Application to the City with the Berry Fraud. (FAC ¶ 7-8.)

3. Berry did not disclose Geraci in any capacity in the Berry Application as required by State and City Laws. (FAC ¶ 50-53.)

4. Berry testified at trial in *Cotton I* that the failure to disclose Geraci was purposeful and purportedly because Geraci was an Enrolled Agent with the IRS. (Cotton's Motion for New Trial (the "MNT")) at 26:19-27:5 (transcript of Berry's testimony at *Cotton I* trial attached as an exhibit to the MNT).

C. NO JUDGE OTHER THAN WOHLFEIL HAS EVER ADDRESSED THE ILLEGALITY ISSUE.

5. Wohlfeil found the defense of illegality had been waived at the hearing at the Motion for New Trial. (Ex. 1.) The orders issued by this federal court to date have not addressed the statute of frauds or the disclosure requirements by the State and the City and whether the November Document is therefore an illegal contract and the Cotton I judgment is void for enforcing an illegal contract. *See gen.* ECF docket.

Legal Standard

A complaint must plead sufficient factual allegations to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citations omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

"A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Johnson v. Riverside Healthcare*, 534 F.3d 1116, 1121 (9th Cir. 2008) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699

1 (9th Cir. 1990)).

2 Here, the entire MTD is frivolous because it ignores that McElfresh represented that Geraci
3 can lawfully own a cannabis CUP when he cannot. Wohlfeil, and this Court, are relying on her actions
4 being lawful to conclude that Geraci did not commit a fraud on the court by having McElfresh submit
5 the sham objection to make it look like he was trying to get the Berry Application approved.
6

7 **Argument**

8 **I. THE *COTTON I* JUDGMENT ENFORCES AN ILLEGAL CONTRACT.**

9 **A. GENERAL CITY CUP APPLICATION REQUIREMENTS**

10 Since August 1993, SDMC § 11.0401 has prohibited the furnishing of false or incomplete
11 information in any application for any type of permit or CUP from the City. (*See* SDMC § 11.0401(b)
12 (“No person willfully shall make a false statement or fail to report any material fact in any application
13 for City license, permit, certificate, employment or other City action under the provisions of the
14 [SDMC].”).)

15 SDMC § 11.0402 provides that “[w]henver in [the SDMC] any act or omission is made
16 unlawful, it shall include causing, permitting, aiding or abetting such act or omission.”
17

18 SDMC § 121.0302(a) provides that: “It is unlawful for any person to maintain or use any
19 premises in violation of any of the provisions of the Land Development Code, without a required
20 permit, contrary to permit conditions, or without a required variance.”
21

22 The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing
23 §§ 111.0101-1412.0113). (SDMC § 111.0101(a).)

24 The City’s General Application for CUP applications requires - and cites SDMC § 112.0102
25 - that an applicant certify they are the owner, an agent of the owner, or a person having a legal right
26 to the property on which the CUP application is filed on.

SDMC § 121.0311 states as follows: “Violations of the Land Development Code shall be treated as *strict liability* offenses regardless of intent.” (Emphasis added.)

B. CANNABIS CUP APPLICATION REQUIREMENTS³

SDMC § 42.1502 defines a “cannabis outlet” (i.e., a dispensary) as a “retail establishment operating with a Conditional Use Permit in accordance with... retailer licensing requirements contained in the California Business and Professions Code [(“BPC”)] sections governing cannabis and medical cannabis.” (Emphasis in original.)

BPC § 26057 (Denial of Application) provides as follows:

- (a) The licensing authority *shall deny* an application if... the applicant... do[es] not qualify for licensure under this division.
- (b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply.
 - (1) Failure or inability to comply with the provisions of this division, any rule or regulation adopted pursuant to this division...
 - (3) Failure to provide information required by the licensing authority.
 -
 - (7) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities... in the three years immediately preceding the date the application is filed with the licensing authority.

BPC § 26057(a),(b)(1)(3)(7) (emphasis added).

II. MCELFRISH COMMITTED AN ACT IN FURTHERANCE OF GERACI’S CONSPIRACY BY REPRESENTING THAT GERACI CAN LAWFULLY OWN A CANNABIS CUP VIA THE BERRY APPLICATION.

A. THE SANCTIONS ISSUE

Geraci was sanctioned on June 17, 2015 in the CCSquared Judgment for “maintaining” an

³ The Berry Application was originally a medical cannabis CUP application that was converted to a for-profit cannabis retail CUP application during the course of *Cotton I*. Throughout the Course of *Cotton I*, various cannabis laws and regulations at the State and City level were applicable to medical and non-medical applications that changed over time. For simplicity, Petitioners focus on the primary State statute that applied when the *Cotton I* judgement was issued, BPC § 26057.

1 illegal dispensary at the Geraci Property. At trial in *Cotton I*, Geraci lied and said he has never
 2 operated a dispensary. Even assuming his judicial admissions in the Stipulated Judgment did not
 3 directly contradict his testimony, as a co-owner of JL he is still liable. “[A]s the owner of the [Geraci
 4 Property] where an illegal marijuana facility was operating, [Geraci is] strictly liable for the offense,
 5 regardless of his knowledge, intent, or active participation in the operation. [Citations.]” *City of San*
 6 *Diego v. Medrano*, D071111, at *7 (Cal. Ct. App. Aug. 2, 2017) (unpublished); *see People v. Superior*
 7 *Court of L.A. Cnty.*, 234 Cal.App.4th 1360, 1385 (Cal. Ct. App. 2015) (“[Party’s] claim that he lacked
 8 knowledge that there was a marijuana facility on his property lacks merit as violation of [the Los
 9 Angeles Municipal Code] section 12.21A.1(a) is a strict liability offense.”).

10 Pursuant to BPC § 26057(a),(b)(7), applicable to all cannabis CUP applications with the City
 11 (see SDMC § 42.1502), Geraci was barred from owning a cannabis CUP until June 18, 2018.

12 The Berry Application was submitted on October 31, 2016. Therefore, setting aside other
 13 arguments, because the November Document’s object is Geraci’s ownership of a cannabis CUP,
 14 which is illegal, it is void and unenforceable. *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143,
 15 1148 (9th Cir. 1986) (“A contract to perform acts barred by California’s licensing statutes is illegal,
 16 void and unenforceable.”).

17
 18 **B. THE BERRY FRAUD**

19 Geraci’s narrative that it is lawful for Berry to submit the Berry Application with the Berry
 20 Fraud is illegal because it:

21 (i) violates the plain and clear requirement set forth in the Ownership Disclosure Form
 22 requiring a list of all parties with an interest in the CUP or the Property (required pursuant to SDMC
 23 § 112.0102 as cited to in the Ownership Disclosure Form);

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

25 (iii) makes McElfresh jointly liable with Austin, Geraci, Berry, Bartell and Schweitzer
 26 pursuant to SDMC § 11.0402 (joint liability for aiding & abetting) for which there can be no excuse
 27

1 as the violations are treated as strict liability offenses regardless of intent pursuant to SDMC §
2 121.0311;

3 (iv) violates BPC § 26057(b)(3) (“The applicant has failed to provide information required by
4 the licensing authority.”). *See* Cal. Code Regs. tit. 16 § 5003(b)(1) (defining “Owner” for purposes
5 of cannabis applications as, *inter alia*, a “person with an aggregate ownership interest of 20 percent
6 or more in the person applying for a license or a licensee”); and

7 (v) violates the statute of frauds. Civ. Code § 1624(4); *id.* § 2309; *Martindell v. Bodrero*, 256
8 Cal.App.2d 56, 61 (Cal. Ct. App. 1967) (“It is well established that parol evidence is not admissible
9 to relieve from liability an agent who signs personally without disclosing the name of the principal on
10 the face of the instrument.”); *Hollywood Nat. Bank v. International Bus. Mach.*, 38 Cal.App.3d 607,
11 617 (Cal. Ct. App. 1974) (“[W]here the writing is unambiguous on its face, extrinsic evidence is
12 inadmissible to show that a person acted purely as an agent.”).

13
14 In *Homami*, the court declined to enforce an oral contract that provided that a buyer of real
15 property would pay interest secretly to the seller in order to allow the seller to avoid declaring interest
16 income and thus to evade required taxes. *Homami* at 1104. In reaching its decision, the court
17 identified a “group of cases... involv[ing] plaintiffs who have attempted to circumvent federal law.
18 Generally, these cases arise where nonveterans seek to obtain government benefits and entitlements
19 available to veterans only, either by setting up a strawman veteran or otherwise by falsifying
20 documents.” *Homami* at 1110.

21 Here, similarly, Geraci used his secretary Berry as a strawman, or rather a strawwoman, to
22 unlawfully acquire a cannabis CUP that he could not own in his own name. And he did so via a
23 fraudulent application that violated clearly applicable State and City laws and regulations requiring
24 the disclosure of Geraci. McElfresh, as an attorney knows that Geraci’s claim violates, *inter alia*, the
25 Statute of Frauds.
26

Therefore, even setting aside the Sanctions Issue, the *Cotton I* judgment is void because in direct contravention of Berry's testimony, Geraci cannot own a cannabis permit via the Berry Application because of the Berry Fraud. "To permit a recovery here on any theory would permit [Geraci] to benefit from his willful and deliberate flouting of [the] law[s] designed to promote the general public welfare." *Id.* at 1110 (quoting *May, supra*, at 712).

McElfresh as an attorney is imputed with knowledge of the statute of frauds and the disclosure requirements required for a cannabis application with the City.

III. AN ORDER OR JUDGMENT ENFORCING AN ILLEGAL CONTRACT IS VOID AND DESERVES NO RESPECT WHATSOEVER.

Cotton does not have to respect any order or judgement that enforces an illegal contract. *Watts v. Pinckney*, 752 F.2d 406, 409 (9th Cir. 1985) ("It is well settled that a judgment is void 'if the court that considered it lacked jurisdiction of the subject matter, or if the parties or if the court acted in a manner inconsistent with due process of law.' [Citation.]"); *Tipton v. Thaler*, 354 F. App'x 138, 142 (5th Cir. 2009) ("[A] void judgment is a nullity from the beginning, and is attended by none of the consequences of a valid judgment. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights."); *Watts v. Pinckney*, 752 F.2d 406, 410 (9th Cir. 1985) ("A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside.").

IV. DECLARATORY RELIEF REQUIREMENT OF AN ACTUAL CONTROVERSY IS STATIFIED WHEN USED TO RESOLVE THE LEGAL RELATIONS OF THE PARTIES AND TO AVOID FUTURE LITIGATION.

As noted above, Cotton requests leave to include a §1983 claim against McElfresh as a co-conspirator with a government actor, i.e. the City of San Diego. McElfresh argues that "declaratory relief is not a corrective action and should not be used to remedy past wrong." ECF 65 at 6:12-13.

However, McElfresh ignores the argument that the Defendants in this matter ARE using the *Cotton I* judgment as a shield for their actions. While the courts generally avoid deciding disputes

contingent in part on future possibility an exception may be had where the issues, largely legal in nature, may be resolved without further factual development, or where judicial resolution will largely settle the parties dispute, the threat of future litigation is sufficient to establish an actual controversy. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–132, 127 S. Ct. 764, 166 L. Ed.2d 604 (2007).

Furthermore the fact that the filing of a lawsuit is contingent on certain factors does not necessarily defeat jurisdiction over a declaratory relief action, the court must inquire whether the injury that has not yet occurred is sufficiently likely to happen. *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 897 (5th Cir. 2000).

In this matter a determination that the judgment in *Cotton I* is void or unenforceable will resolve the legal dispute between the parties with respect to future litigation; a further factual development. Thus, the declaratory cause of action is properly pled. Or, at the very least, should be allowed to be amended: Geraci cannot lawfully own a cannabis CUP via the Berry Application. McElfresh represented that he could. ([.]) That is irrefutably false; she is an attorney and is imputed with knowledge of the law. Whether she did so with intent or negligence is for a jury to decide.⁴

V. COTTON REQUESTS LEAVE TO AMEND HIS COMPLAINT TO ADD A § 1983 CAUSE OF ACTION AGAINST THE CITY AND MCELFRESH.

The City knows that Geraci cannot own a cannabis CUP via the Berry Application. At the very least this Court cannot deny that the City was negligent in stating the Berry Application was lawful even though Berry's alleged agency, the Berry Fraud, violates the Statute of Frauds.

⁴ Further, on a MTD, my allegations that McElfresh represented me is an allegation that must be taken as true. She violated her fiduciary duty to me by representing Geraci as well without my consent and by not informing me that she had a previous relationship with Geraci. However, I can't get evidence from my litigation investor who paid McElfresh for her services because he believes, and he is a former federal judicial law clerk, that all judges, including this court (Robinson), are purposefully ignoring the Illegality Issues and the threats of violence against him and other witnesses to cover up Wohlfeil's illegal actions. That I am the case that falls between the cracks because judges care more about protecting the perception of other judges as capable and just than the rights of any single individual.

Thus, Cotton requests leave to amend his complaint to add a §1983 cause of action against the City and McElfresh.

VI. PUNITIVE DAMAGES IS PROPER GIVEN THE ONGOING FRAUD THAT MCELFRESH AND HER CONSPIRATORS ARE SEEKING TO PERPETUATE ON THIS COURT.

McElfresh has committed a fraud on the court, and is doing so now, by representing to this Court that it is lawful for Geraci to own a cannabis CUP via the Berry Application. A mentally challenged individual knows this.

And if I was wrong, a judge or motion by one of the defendants would have already used specific facts and applicable law to explain it. Instead, there are just general gibberish from numerous parties seeking to case me as conspiracy nut pro se, instead of a victim of criminal conspiracy that also deceived the judiciaries.

VII. LEAVE TO AMEND SHOULD BE GRANTED.

Geraci cannot own a cannabis CUP via the Berry Application. Period. It is illegal. McElfresh represented that he can. Although is impossible to imagine a scenario in which she did so innocently, pursuant to the SDMC, and for sure criminal law statutes, her aiding & abetting makes her liable. And, her MTD makes her attorneys liable as well for seeking to argue that the *Cotton I* judgment is valid when they know or should know that McElfresh's actions have resulted in a miscarriage of justice and they seek to prevent Cotton from vindicating his rights:

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.* See *Buller v. Buechler*, 706 F.2d 844, 852-853 (8th Cir. 1983). Therefore, plaintiffs may state claims for relief for violation of their civil rights against defendant Schickman if plaintiffs allege that Schickman knew, or reasonably should have known, that the actions he took with respect to plaintiffs would violate their clearly established constitutional or statutory rights.

Stevens v. Rifkin, 608 F. Supp. 710, 730 (N.D. Cal. 1984) (emphasis added).

Conclusion

Todd Robinson, you are presiding over this case, I had high hopes that you would do what is right and vindicate my lawful rights. The last two orders you have issued reflect the truth, you intend to cover up Wohlfeil's biased, illegal actions. You intend to use your position as judge to prevent me from vindicating my rights. At this point, I no longer have the rage I did before. I have researched you and I am forced to conclude that you are a victim of your circumstances, that the judiciaries simply cannot afford to expose other judges. In your case, the biased actions by Gonzalo Curiel and Cynthia Ann Bashant who failed to take action to correct Wohlfeil's illegal actions against me that violated my civil rights. Curiel and Bashant had the Illegality Issue before them and they ratified an illegal contract and failed to provide me any relief and here I am years later still trying to prove what is apparent to even a high school student.

Thus, for you to grant me any relief on that issue is to expressly state that their judgment is flawed; you are a new judge and apparently those political considerations are more important to you than vindicating my rights. I am tired Robinson. But I have no other option because there are people depending on me. Short of you throwing me in jail for seeking to vindicate my rights, I will never stop filing motions, appeals and lawsuits because no order or judgment you issue, that recognizes the validity of the *Cotton I* judgment, is valid. This has become a battle of wills between you and I Robinson, and although you, as a federal judge, are no doubt smarter and certainly more powerful than I am, you can't ever stop me. Frankly, I wish you would have me arrested on some trumped-up charges because a jury would never convict me when I expose Wohlfeil's actions.

But the law says I do not have to respect any judgment or order that enforces an illegal contract because it is void and of no legal effect. So this has really become a battle of wills between me and the judiciaries. My lawful, righteous pursuit to expose Wohlfeil and the state and federal judges who bungled this case and motivated to cover up Wohlfeil's biased, corrupt actions and that of the other corrupt judges who seek to prevent the truth from being exposed, of numerous state and federal judges

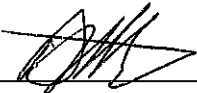
1 have a failed to address the Illegality Issue because the record of Cotton I prove that Wohlfeil did not
2 review the arguments he was presented with and failed to understand the most basic facts of *Cotton I*.

3
4 **GERACI CANNOT OWN A CANNABIS CUP VIA THE BERRY APPLICATION AND**
5 **ANY ORDER OR JUDGEMENT THAT RATIFIES SUCH AN ACTION, INCLUDING THE**
6 ***COTTON I* JUDGMENT, IS VOID AND DESERVES NO RESPECT WHATSOEVER.**

7 **THIS IS THE LAW.**

8 **NO JUDGE HAS THE POWER TO VIOLATE MY RIGHTS TO PROTECT ANOTHER**
9 **JUDGE.**

10
11 Dated: April 7, 2021

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15 _____

16 Darryl Cotton
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