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FILED
JAN 14 22 PM 3:25
Clerk of the Superior Court
JAN 14 2022

6 SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF SAN DIEGO, CENTRAL DIVISION ~~Klaus-Trent~~

8 DARRYL COTTON,
9 Plaintiff,

10 v.

11 LAWRENCE (A/K/A LARRY) GERACI, an
12 individual,
13 Defendant.

Case No.: 37-2022-00000023-CU-MC-CTL

PLAINTIFF'S NOTICE OF EX PARTE
APPLICATION AND EX PARTE
APPLICATION FOR CLARIFICATION
OF DENIAL OF EX PARTE
APPLICATION TO SET ASIDE VOID
JUDGMENT OR, ALTERNATIVELY,
SETTING ASIDE VOID JUDGMENT;
DECLARATION OF DARRYL COTTON;
MEMORANDUM OF POINTS AND
AUTHORITIES

Hearing Date: January 19, 2022
Hearing Time: 8:30
Judge: Judge Mangione
Courtroom: 75

19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:


20 PLEASE TAKE NOTICE that on January 19, 2022 that I, plaintiff DARRYL COTTON, will
21 and hereby moves this Court *ex parte* pursuant to the Court's inherent authority to set aside void
22 judgments and orders, Code of Civil Procedure ("CCP") § 1008, and CCP § 473(d) for an order clarifying
23 the basis of its denial of my *ex parte* application heard on January 12, 2021 seeking to set aside a void
24 judgment or, alternatively, an order setting aside the void judgment.

25 Good cause exists for this application because it is made on the ground that the subject judgment
26 is void on its face because it is an act in excess of the Court's jurisdiction as it enforces an illegal contract,
27 grants relief to a party that the law declares shall not be granted, represents an egregious miscarriage of
28

1 justice, and the Court has an affirmative duty to prevent the enforcement and ratification of illegal
2 contracts.

3 This Application is based on this notice, the request for judicial notice, the declaration of Darryl
4 Cotton, the supporting memorandum served and filed herewith, and on the records and file herein and in
5 the *Cotton I* action.

6 **January 14, 2022**

7 
8 _____
9 Darryl Cotton
10 Pro Se

11 DECLARATION OF DARRYL COTTON

12 I, Darryl Cotton, declare:

- 13 1. I am the plaintiff herein, and I make this declaration in support of this ex parte application.
- 14 2. On January 12, 2022, the Court heard and ruled on Cotton's ex parte application to set
15 aside a void judgment or, alternatively, order shortening time on hearing to vacate void judgment (the
16 "Original Application").
- 17 3. I am a blue-collar individual with no legal education and I am under extreme emotional
18 and financial distress as a result of the litigation that is the subject of this action; and I could not afford
19 to order a transcript for the hearing.
- 20 4. At the hearing, as I understood it, Judge Mangione denied the Original Application
21 because he stated something to the effect that he cannot set aside a void judgment on an ex parte basis
22 and/or because I would need to show "extraordinary" circumstances to set aside a void judgment since
23 the judgment was entered in 2019.
- 24 5. The order denying the Original Application only references the request for the order
25 shortening time and set a hearing date for March 25, 2022.
- 26 6. I have been trying for almost five years to prove one simple issue: defendant Geraci filed
27 a baseless lawsuit against me pursuant to which he acquired a judgment that is void as it grants him
28 damages he allegedly suffered in seeking to procure a cannabis conditional use permit and license that

1 he cannot lawfully pursuant to California's cannabis licensing statutes because he has been sanctioned
2 own for having been sanctioned for unlicensed commercial cannabis activities.

3 7. I sincerely and respectfully request that this Court not be antagonized by my seeking
4 clarification of the basis of the denial of the Original Application as the two grounds that I believe the
5 Court based its decision on are inapplicable to a void judgment as set forth below.

6 8. It is my understanding that an order denying a request to vacate a void judgment is itself
7 void and may be appealed, but the order denying the Original Application did not set forth the grounds
8 and I do not want to antagonize this Court by filing an appeal that is misconstrues what the Court said.
9 And, hopefully, if I am correct that the stated grounds are the basis of the denial, the authorities set forth
10 below prove such grounds do not apply to a void judgment and the Court may reconsider its own order
11 to conform to law and see justice carried out.

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

14 **January 14, 2022**

15 
Darryl Cotton

16
17 **MEMORANDUM OF POINTS & AUTHORITIES**

18 **INTRODUCTION**

19 I, Darryl Cotton, seek an order from this Court clarifying the grounds upon which I believe the
20 Court denied my Original Application seeking to set aside the *Cotton I* judgment.¹ Alternatively, if I am
21 correct that the two grounds I believe are the basis for the denial are the reasons that the Court denied the
22 Original Application, then that the Court reconsider its decision as such grounds are, based on the
23 authorities set forth below, inapplicable to judgments void on their face and the relief that I am requesting
24 is warranted and justified.

25 **MATERIAL FACTUAL AND PROCEDURAL BACKGROUND**
26
27

28 ¹ The "*Cotton I*" judgment means the judgment entered in *Larry Geraci v. Darryl Cotton*, Case No. 37-2017-00010073-CU-BC-CTL.

1. On January 12, 2022, the Court heard and ruled on Cotton’s ex parte application to set aside a void judgment or, alternatively, order shortening time on hearing to vacate void judgment (i.e., the “Original Application”).² (Declaration of Darryl Cotton (“Cotton Decl.”) ¶ 2.)

2. At the hearing, as I understood it, Judge Mangione denied the Original Application because he stated something to the effect that he cannot set aside a void judgment on an ex parte basis and/or because I would need to show “extraordinary” circumstances to set aside a void judgment since the judgment was entered in 2019. (“Cotton Decl.”) ¶ 2.)

3. The order denying the Original Application only references the request for the order shortening time and set a hearing date for March 25, 2022.³

4. I sincerely and respectfully request that this Court not be antagonized by my seeking clarification of the basis of the denial of the Original Application as the two grounds that I believe the Court based its decision on are inapplicable to a void judgment as set forth below. (“Cotton Decl.”) ¶ 7.)

LEGAL STANDARDS

A. A trial court's mistaken belief of applicable law can constitute "new circumstances" such that the trial court has jurisdiction to grant reconsideration under Code Civ. Proc. ("CCP") § 1008(a). *Johnston v. Corrigan* (2005) 127 Cal. App. 4th 553, 556:

B. CCP § 473(d) provides authority for a trial court to "set aside any void judgment or order." This provision codifies the inherent power of the court to set aside void judgments and orders, including those made under a lack of jurisdiction and those made in excess of jurisdiction. *See Calvert v. Binali* (2018) 29 CA5th 954, 960–964.

ARGUMENT

I. The Court may set aside the *Cotton I* judgment on an ex parte basis without taking into account the lapse of time.

As stated by the California Supreme Court in *People v. Davis* (1904) 143 Cal. 673, 675-676 (emphasis added):

² Request for Judicial Notice (“RJN”), Ex 1. (Original Application exclusive of Exhibits) attached hereto as Exhibit 1.

³ RJN, Ex. 2 (order denying Original Application) attached hereto as Ex. 2.

1 “The power of a court to vacate a judgment or order void upon its face is not extinguished
2 by a lapse of time, but may be exercised whenever the matter is brought to the attention of
3 the court. While a motion for such action on the part of the court is entirely appropriate,
4 *neither motion nor notice to an adverse party is essential. The court has full power to*
5 *take such action on its own motion and without any application on the part of any one.*

6 Based on my reading of the *People v. Glimps* language quoted above, it is my understanding that
7 the Court’s belief that it cannot issue an order vacating a void judgment void on its face pursuant to an
8 ex parte request does not apply to a judgment void on its face. The Court can set aside a void judgment
9 on its without a request by any party and without notice to any party. *Id.*

10 Similarly, the language in *People v. Glimps* states that my right to seek to set aside a void
11 judgment is “not extinguished by a lapse of time...” and, therefore, I do not need to prove “extraordinary”
12 circumstances for the delay in seeking to set aside the judgment. *Id.*⁴

13 Based on the foregoing, I respectfully request that the Court clarify if the denial my Original
14 Application is made on these two grounds or, alternatively, such other ground that I did not understand.

15 **II. An order denying a request to vacate a void judgment is a void order and appealable.**

16 It is my understanding that an order denying a request to vacate a void judgment is void as it itself
17 gives effect to the void judgment and is appealable. *Rochin v. Pat Johnson Manufacturing Co.* (1998) 67
18 Cal.App.4th 1228, 1240 (“the trial court’s subsequent order denying plaintiff’s motion to vacate the
19 amended judgment, in that it gives effect to a void judgment, is itself void.”).

20 The Court denied my Original Application to vacate the *Cotton I* judgment based on what I
21 believe are the reasons set forth above. Based on the language of *Rochin* quoted above, it is my
22 understanding I can appeal the denial of my request to have the *Cotton I* judgment set aside if its on the
23 grounds set forth above. However, I do not want to misrepresent the Court’s comments and I apologize
24 for not explaining myself clearly at the hearing as I was nervous and mentally and emotionally exhausted.

25 **CONCLUSION**

26 I sincerely request of Judge Mangione that he please not penalize me or think ill of me for seeking

27 ⁴ I note that I can prove exceptional circumstances, but that distracts from what is a straightforward issue
28 of illegality that by itself dispositively requires the *Cotton I* judgment be declared void and would provide
Geraci and his attorneys language and arguments to distract the Court from the simple issue of illegality.

1 to set aside a judgment that is void on its face as expeditiously as possible. My life has been ruined as a
2 result of defending and seeking to vindicate my rights against Geraci and his army of attorneys. Waiting
3 until March 25, 2022 to have a hearing that takes into account factors that do not apply to a judgment
4 void on its face will only prolong the extreme emotional and financial distress that I have been under for
5 almost five years. Every day is a challenge for me while I have a nearly \$300,000 judgment issued against
6 me that makes me appear to be a sore loser who lost a case and is making frivolous arguments.

7 I respectfully request that the Court clarify the basis of my denial to have the *Cotton I* judgment
8 declared void and, if based on the two grounds set forth above, why the language of *People v. Glimps* is
9 inapplicable such that the relief I am requesting cannot be issued on an ex parte basis, particularly in light
10 of the Court's inherent powers and CCP § 473(d).

11 Alternatively, if the two arguments set forth above are the reason the Court denied my Original
12 Application, and the statutes and case law cited herein make clear that the Court is not barred by issuing
13 the requested relief, that it please reconsider its order denying the Original Application.

14
15 Dated: January 14, 2022

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17 _____

18 Darryl Cotton

19 Pro Se
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27
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EXHIBIT 1

1 DARRYL COTTON, *In pro se*
2 6176 Federal Boulevard
3 San Diego, CA 92114
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5 151DarrylCotton@gmail.com

FILED
Clerk of the Superior Court
2022 JAN 14 P 3:35
JAN 14 2022

By: S. Khals-Trent

6 **SUPERIOR COURT OF CALIFORNIA**
7 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

8 DARRYL COTTON,
9 Plaintiff,

10 v.

11 LAWRENCE (A/K/A LARRY) GERACI, an
12 individual,
13 Defendant.

Case No.: 37-2022-00000023-CU-MC-CTL

PLAINTIFF'S NOTICE OF EX PARTE
APPLICATION AND EX PARTE
APPLICATION TO SET ASIDE VOID
JUDGMENT OR, ALTERNATIVELY,
ORDER SHORTENING TIME ON
HEARING TO VACATE VOID
JUDGEMENT; DECLARATION OF
DARRYL COTTON; MEMORANDUM OF
POINTS AND AUTHORITIES

Hearing Date:

Hearing Time:

Judge: James A Mangione

Courtroom: C-75

18 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

19 **PLEASE TAKE NOTICE** that on January 3, 2022, Plaintiff DARRYL COTTON will and
20 hereby moves this Court *ex parte* for an order setting aside the judgment issued in *Cotton I*¹ entered
21 against Cotton on August 8, 2019, or, alternatively, an order shortening time on a hearing to vacate the
22 *Cotton I* judgment (the "Application"). Good cause exists for this Application because it is made on the
23 ground that the *Cotton I* judgment is void on its face because it is an act in excess of the Court's
24 jurisdiction, grants relief to Geraci that the law declares shall not be granted, and represents an egregious
25 miscarriage of justice.
26

27
28 ¹ "*Cotton I*" means *Larry Geraci v. Darryl Cotton*, Case No. 37-2017-00010073-CU-BC-CTL.

1 More specifically, Geraci was sanctioned for unlicensed commercial cannabis activities and is
2 barred by California's licensing statutes from owning a cannabis CUP. The *Cotton I* judgment enforces
3 an alleged contract whose object is Geraci's ownership of a cannabis business, which renders the *Cotton*
4 *I* judgment void on its face as it is in direct violation of California's cannabis licensing statutes. See
5 *Carlson v. Eassa*, 54 Cal.App.4th 684, 691 (Cal. Ct. App. 1997) ("The mere fact that the court has
6 jurisdiction of the subject matter of an action before it does not justify an exercise of a power not
7 authorized by law, or a grant of relief to a party that the law declares shall not be granted.").

8 This Application is based on this notice, the request for judicial notice, the declaration of Darryl
9 Cotton, the supporting memorandum served and filed herewith, and on the records and file herein and in
10 the *Cotton I* action.

11 DATED: January 3, 2022



12
13
14 Darryl Cotton
Pro Se

1 DECLARATION OF DARRYL COTTON IN SUPPORT OF MOTION FOR ORDER TO SET
2 ASIDE VOID JUDGMENT ISSUED IN *COTTON I* OR, ALTERNATIVELY, OST ON MOTION TO
3 VACATE VOID JUDGEMENT

4 I, Darryl Cotton, declare:

5 1. I am the plaintiff herein, and I make this declaration in support of this Application seeking
6 an order to vacate the void *Cotton I* judgment entered against me.

7 2. As shown by this Application and the supporting documents, the *Cotton I* judgment is
8 void for enforcing an illegal contract that grants relief to defendant Lawrence Geraci that the law declares
9 shall not be granted.

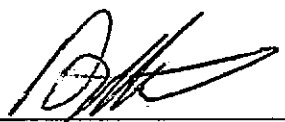
10 3. The facts set forth in the Application establishing the *Cotton I* judgment are void are all
11 subject to judicial notice and set forth in the supporting Request for Judicial Notice.

12 4. This Application is focused on the narrow issue of illegality, specifically that Geraci's
13 sanctions for unlicensed commercial cannabis activities bar his ownership of a cannabis CUP or license
14 and the *Cotton I* judgment is therefore void for granting relief in direct violation of California's cannabis
15 licensing statutes.

16 5. Should the Court require any additional facts, I am prepared to submit supporting evidence
17 to address any concerns the Court may have in addressing the illegality of Geraci's ownership of a CUP.

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

20 January 3, 2022



21 Darryl Cotton
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1 MEMORANDUM OF POINTS & AUTHORITIES

2 INTRODUCTION

3 In March 2017, defendant Lawrence Geraci filed the *Cotton I* action seeking to enforce an alleged
4 real estate purchase contract against Cotton that even as alleged is an illegal contract because its object,
5 Geraci's ownership of a cannabis conditional use permit ("CUP"), is barred by California's licensing
6 statutes because he has been sanctioned for unlicensed commercial cannabis activities. The *Cotton I*
7 action was filed to extort from Cotton his Property² at which the CUP could issue.

8 On August 19, 2019, the *Cotton I* judgment was entered against Cotton finding that Geraci is not
9 barred by California's cannabis licensing statutes. Such was error.

10 Since March 2017 - almost five years! - Cotton has been subjected to extreme emotional, mental
11 and physical distress by Geraci and his attorneys and agents who have used their wealth and the
12 presumption of integrity the law affords attorneys to effectuate their crimes against Cotton via the judicial
13 system. Across numerous actions they have made the simplicity of Geraci's illegal ownership of a
14 cannabis statute appear to be lawful or no longer able to be redressed by the judiciaries while claiming
15 Cotton is an evil, greedy individual who is seeking to extort them via the judiciary for financial profit.
16 They have inverted the truth completely to make themselves out to be righteous and saintly individuals
17 who are maliciously subjected to Cotton's alleged illegal and legally unsupported attempts to vindicate
18 his rights.

19 They have done a masterful job and have ruined Cotton's life and that of many other individuals.
20 Geraci and his army of attorneys are legal masterminds that have successfully deceived the judiciaries
21 for years by misrepresenting and fabricating facts and focusing on Cotton's legally unsophisticated
22 attempts to vindicate his rights.

23 Therefore, in an attempt to finally expose the simplicity of the illegality of Geraci's ownership of
24 a CUP, and prevent Geraci's attorneys from confusing, misdirecting or deceiving this Court through their
25 Machiavellian legal acumen, this Application is focused on four simple facts: (i) Geraci was sanctioned
26 for unlicensed commercial cannabis activities; (ii) California's licensing statutes bars a party for three

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28 ² The term "Property" shall mean and refer to the real property located at 6176 Federal Boulevard, San Diego, California.

1 years from owning a CUP or license if they have been sanctioned for unlicensed commercial cannabis
2 activities; (iii) the *Cotton I* judgment enforces an alleged contract whose object is Geraci's ownership of
3 a CUP that he is barred by law from owning because of his sanctions; and (iv) Geraci's arguments
4 regarding the legality of his ownership of a CUP are without any factual or legal justification.

5 Cotton respectfully and emphatically requests that this Court please focus on these facts and
6 please see the law and justice are carried out to redress what is an egregious miscarriage of justice.

7 MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

8 1. On October 27, 2014, Geraci was sanctioned for unlicensed commercial cannabis
9 activities in the Tree Club Judgment.³

10 2. On June 17, 2015, Geraci was sanctioned for unlicensed commercial cannabis activities
11 in the CCSquared Judgment.⁴

12 3. On March 21, 2017, Geraci filed *Cotton I* alleging that:

13 a. "On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a
14 written agreement for the purchase and sale of the PROPERTY on the terms and
15 conditions stated therein."⁵ (The "November Document.")

16 b. "On or about November 2, 2016, GERACI paid to COTTON \$10,000 good faith
17 earnest money to be applied to the sales price of \$800,000 and to remain in effect until
18 the license, known as a Conditional Use Permit or CUP is approved, all in accordance
with the terms and conditions of the written agreement."⁶ (The "Berry CUP
Application.")

19 4. During the trial of *Cotton I*, Cotton moved for a directed verdict arguing that Geraci's
20 ownership of a CUP was barred by California's cannabis licensing statute Business & Professions
21 ("BPC") § 26057, which was summarily denied.⁷

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24 ³ Request for Judicial Notice ("RJN"), Ex. 1 (*City of San Diego v. The Tree Club Cooperative, et al.*, San
Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL, Stipulation for Entry of Final
Judgement and Permanent Injunction; Judgment Thereon) ("Tree Club Judgment").

25 ⁴ RJN, Ex. 2 (*City of San Diego v. CCSquared Wellness Cooperative, et. al.*, Case No. 37-2015-
26 00004430-CU-MC-CTL, Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment
Thereon) (the "CCSquared Judgment").

27 ⁵ RJN, Ex. 3 (Geraci *Cotton I* complaint) at ¶ 7.

28 ⁶ RJN, Ex. 3 (Geraci *Cotton I* complaint) at ¶ 8.

⁷ RJN Ex. 4 (motion for directed verdict) and Ex. 5 (summary denial).

5. On August 19, 2019, the *Cotton I* judgment was entered, finding that “[Geraci] is not barred by law pursuant to 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.”⁸

6. On September 13, 2019, Cotton filed a motion for new trial arguing, *inter alia*, it is illegal for Geraci to own a CUP pursuant to BPC §§ 19323, 26057 (the “MNT”).⁹

7. Geraci opposed the MNT arguing, *inter alia*, the defense of illegality had been waived.¹⁰

8. Cotton replied, *inter alia*, that the defense of illegality cannot be waived.¹¹

9. On October 25, 2019, the court denied the MNT finding that the defense of illegality had been waived.¹²

LEGAL STANDARD

“A judgment absolutely void may be attacked anywhere, directly or collaterally whenever it presents itself, either by parties or strangers. It is simply a nullity, and can be neither a basis nor evidence of any right whatever. **A void judgment [or order] is, in legal effect, no judgment.** By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one.” *OC Interior Servs., LLC v. Nationstar Mortg., LLC*, 7 Cal.App.5th 1318, 1330 (Cal. Ct. App. 2017) (cleaned up, brackets in original, emphasis added); see *Renoir v. Redstar Corp.* (2004) 123 CA4th 1145, 1154 (“an order denying a motion to vacate void judgment is a void order and appealable”) (citing *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 69).

“Generally, a judgment is void if the court lacked subject matter jurisdiction or jurisdiction over the parties.” *Paterra v. Hansen* (2021) 64 Cal.App.5th 507, 535. However, “[s]peaking generally, any

⁸ RJN, Ex. 6 (*Cotton I* judgment).

⁹ RJN Ex. 7 (Motion for New Trial).

¹⁰ RJN Ex. 8 (Opposition to Motion for New Trial).

¹¹ RJN Ex. 9 (Reply to Motion for New Trial).

¹² See RJN Ex. 10 Reporters Transcript of the Motion for New Trial hearing held on October 25, 2019 (“RT October 25, 2019”) at 3:6-7 (“Counsel, shouldn’t this have been raised at some earlier point in time?”); *id.* at 3:22 (“Even if you are correct [about the illegality], hasn’t that train come and gone? The judgment has been entered. You are raising this for the first time.”); *id.* at 4:4-5 (“But at some point, doesn’t your side waive the right to assert this argument? At some point?”) and RJN Ex. 11 (order denying Motion for New Trial).

1 acts which exceed the defined power of a court in any instance, whether that power be defined by
2 constitutional provision, express statutory declaration, or rules developed by the courts and followed
3 under the doctrine of *stare decisis*, are in excess of jurisdiction, in so far as that term is used to indicate
4 that those acts may be restrained by prohibition or annulled on certiorari.” *Abelleira v. District Court of*
5 *Appeal* (1941) 17 Cal.2d 280, 291. Therefore, a lack of jurisdiction resulting in a void judgment also
6 occurs when an act by a Court is an “exercise of a power not authorized by law, or a grant of relief to a
7 party that the law declares *shall not* be granted.” *Paterra*, 64 Cal.App.5th at 536 (quoting *Carlson v.*
8 *Eassa* (1997) 54 Cal.App.4th 684, 696) (emphasis added).

9 CCP § 473(d) provides for relief from void judgments or orders. This provision codifies the
10 inherent power of the court to set aside void judgments and orders, including those made under a lack of
11 jurisdiction and those made in excess of jurisdiction. *See Calvert v. Binali* (2018) 29 CA5th 954, 960–
12 964. The power of a court to vacate a judgment or order void upon its face is not extinguished by lapse
13 of time, but may be exercised whenever the matter is brought to the attention of the court. While a motion
14 for such action on the part of the court is appropriate, neither motion nor notice to an adverse party is
15 essential; the court has full power to take such action on its own motion and without any application on
16 the part of anyone. *People v. Davis* (1904) 143 C 673, 675–676 (affirming order vacating void order
17 made on ex parte basis); *see People v. Glimps* (1979) 92 CA3d 315, 325 (no notice of motion required to
18 set aside order void on its face).

19 If the judgment is void on its face, no showing of a meritorious case, that is, a good claim or
20 defense, by the party moving for relief is required, *see Bennett v. Hibernia Bank* (1956) 47 C2d 540, 554,
21 and the judgment may be set aside by the court on its own motion, *see Montgomery v. Norman* (1953)
22 120 CA2d 855, 858. Accordingly, no affidavit or declaration of merits is required to support a motion for
23 relief at law from a judgment on the ground that it is void on its face. *County of Ventura v. Tillett* (1982)
24 133 CA3d 105, 112.

25 ARGUMENT

26 **I. California Cannabis licensing statutes bar a party from obtaining a CUP for a period of**
27 **three years from the date of a party’s last sanction for unlicensed commercial cannabis**
28 **activities.**

1 As in effect in November 2016 when the November Document was executed, California's
2 cannabis licensing statutes codified at BPC, Division 8, Chapter 3.5 (Medical Cannabis Regulation and
3 Safety Act) provided as follows:

4 1. A license can only be issued to a "qualified applicant." (BPC § 19320(b) ("Licensing
5 authorities administering this chapter may issue state licenses only to *qualified applicants* engaging in
6 commercial cannabis activity pursuant to this chapter.") (emphasis added).)

7 2. If the applicant does not qualify for licensure the State's licensing authorities "shall deny"
8 his application. (BPC § 19323(a) ("A licensing authority *shall deny* an application if the applicant...
9 does not qualify for licensure under this chapter or the rules and regulations for the state license.")
10 (emphasis added).) BPC § 19323(a) was repealed and replaced by BPC § 26057(a), effective June 27,
11 2017 by Stats 2017 ch 27 § (SB 94). (BPC § 26057(a) ("The licensing authority shall deny an application
12 if either the applicant, or the premises for which a state license is applied, do not qualify for licensure
13 under this division.") (emphasis added).)

14 3. An applicant is disqualified for licensure if he has been sanctioned for unauthorized
15 commercial cannabis activities in the three years preceding the submission of an application. (BPC
16 19323(a),(b)(7) ("A licensing authority shall deny an application if the applicant has been sanctioned by
17 a city for unlicensed commercial medical cannabis activities in the three years immediately preceding the
18 date the application is filed with the licensing authority.") (cleaned up; emphasis added).) BPC §
19 19323(a),(b)(7) was repealed and replaced by BPC § 26057(b)(7), effective June 27, 2017 by Stats 2017
20 ch 27 § (SB 94). (BPC § 26057(a),(b)(7) ("The licensing authority shall deny an application if the
21 applicant has been sanctioned by a city for unauthorized commercial in the three years immediately
22 preceding the date the application is filed with the licensing authority.") (cleaned up; emphasis added).

23 4. As part of the application process, an applicant is required to first lawfully acquire a local
24 government permit/CUP and submit their fingerprints to the State's licensing authorities for a background
25 check with the Department of Justice. BPC § 19322(a)(1),(2) ("A person *shall not* submit an application
26 for a state license issued by a licensing authority pursuant to this chapter unless that person has received
27 a license, permit, or authorization from the local jurisdiction. An applicant for any type of state license
28 issued pursuant to this chapter *shall* do all of the following: [¶] (1) Electronically submit to the

1 Department of Justice fingerprint images and related information [for a background check] [¶] (2) Provide
2 documentation issued by the local jurisdiction in which the proposed business is operating certifying that
3 the applicant is or will be in compliance with all local ordinances and regulations.”) (emphasis added).

4 **II. Geraci is barred by California’s cannabis licensing statutes from owning a CUP.**

5 Geraci was last sanctioned on June 17, 2015 in the CCSquared judgment for unlicensed
6 commercial cannabis activities. Pursuant to BPC § 19323(a),(b)(7), as in effect when the November
7 Document was executed, and BPC § 26057(a),(b)(7), as in effect when the *Cotton I* judgment was
8 entered, Geraci could not lawfully own a CUP until June 18, 2018.

9 The November Document was executed on November 2, 2016, during the time frame during
10 which Geraci was barred by California’s licensing statutes. As the object of the November Document is
11 Geraci’s illegal ownership of a CUP, it is, even assuming it were a contract, an illegal contract and
12 judicially unenforceable. *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1109 (“The general principle
13 is well established that a contract... made for the purpose of furthering any matter or thing prohibited by
14 statute, or to aid or assist any party therein, is void.”) (emphasis added); see *Consul Ltd. v. Solide*
15 *Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986) (“A contract to perform acts barred by California’s
16 licensing statutes is illegal, void and unenforceable.”).

17 Consequently, the *Cotton I* judgment finding the November Document is a legal contract because
18 Geraci is not barred by California’s licensing statutes is void as an “exercise of a power not authorized
19 by law [and] a grant of relief to [Geraci] that the law declares *shall not* be granted.” *Paterra*, 64
20 Cal.App.5th at 536 (quoting *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 696) (emphasis added).

21 **III. Geraci’s attorneys deceived the *Cotton I* court into believing that it was legally possible for**
22 **the defense of illegality to be waived.**

23 Whatever the state of the pleadings, when the evidence shows that the plaintiff in substance
24 seeks to enforce an illegal contract or recover compensation for an illegal act, *the court has*
25 *both the power and duty to ascertain the true facts in order that it may not unwittingly*
26 *lend its assistance to the consummation or encouragement of what public policy forbids.*
27 It is immaterial that the parties, whether by inadvertence or consent, even at the trial do not
28 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.

1 *Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal. 2d 141, 147-48 (citations omitted; emphasis added)

2 In his opposition to the MNT, Geraci argued that Cotton had waived the defense of illegality
3 relying on *Chodosh v. Palm Beach Park Ass'n* 2018 WL 6599824. (RJN, Ex. 8 at 10-12.) Geraci's
4 argument lacks any factual or legal support.

5 First, the defense of illegality cannot be waived. *City Lincoln-Mercury Co. v. Lindsey* (1959) 52
6 Cal.2d 267, 274 ("A party to an illegal contract cannot ratify it, cannot be estopped from relying on the
7 illegality, and cannot waive his right to urge that defense."); *Wells v. Comstock* (1956) 46 Cal.2d 528,
8 532 ("no person can be estopped from asserting the illegality of the transaction").

9 Second, *Chodosh* provides no basis for the argument put forth by Geraci that Cotton had waived
10 the defense of illegality. In *Chodosh*, the Court addressed the issue of illegality and noted that:

11 Two California Supreme Court cases decided after *Lewis & Queen* — *Fomco, Inc. v. Joe*
12 *Maggio, Inc.* (1961) 55 Cal.2d 162, 10 Cal. Rptr. 462, 358 P.2d 918 (*Fomco*), and *Apra v.*
13 *Aureguy* (1961) 55 Cal.2d 827, 13 Cal. Rptr. 177, 361 P.2d 897 (*Apra*) — both *rejected*
14 posttrial defenses of illegal contract because the illegality defense had not been raised in
the trial court. (See *Fomco, supra*, 55 Cal.2d at p. 166; *Apra, supra*, 55 Cal.2d at p. 831.)

15 *Chodosh, supra*, at *15 (emphasis in original).

16 However, the *Chodosh* court found that *Fomco* and *Apra* were inapplicable because the issue of
17 illegality had been raised at the trial court and therefore was within the ambit of *Lewis & Queen*. *Id.* at
18 *15-16 ("The issue having been raised at the trial level, its consideration at the appellate level comes
19 within *Lewis & Queen* and outside the rule of *Fomco* and *Apra*."). Here, the issue of illegality was raised
20 during trial in Cotton's motion for directed verdict and thus is within the ambit of *Lewis & Queen*.

21 Third, *Chodosh* is an unpublished opinion that was cited to by Geraci in violation of Cal. Rules
22 of Court 8.115 to misrepresent the facts and law that successfully deceived the *Cotton I* court into finding
23 that the defense of illegality had been waived by Cotton.

24 In sum, *factually*, the defense of illegality had been raised during trial. *Legally*, even if the defense
25 of illegality had not been raised, *Lewis & Queen* is controlling as the defense of illegality can be raised
26 for the first time in a motion for new trial. *Lewis & Queen*, 48 Cal. 2d at 147-48 ("It is not too late to
27 raise the issue [of illegality] on motion for new trial...") (citations omitted).
28

1 Geraci's attorneys deceived the *Cotton I* court into incorrectly finding the defense of illegality
2 had been waived.

3 **CONCLUSION**

4 Geraci was sanctioned for illegal cannabis activities and could not by law own a CUP pursuant to
5 the November Document. The *Cotton I* judgment finding that Geraci could own a CUP pursuant to the
6 November Document, in direct violation of California's licensing statutes, is therefore void.

7 Pursuant to CCP § 473(d) and the Court's inherent power to set aside a void judgment, Cotton
8 respectfully requests the Court issue an order vacating the void *Cotton I* judgment. Alternatively, Cotton
9 requests the Court issue an order shortening time on a hearing to vacate the *Cotton I* judgment.

10
11 Dated: January 3, 2021

12
13 A handwritten signature in black ink, appearing to read 'Darryl Cotton', is written over a horizontal line.

14 Darryl Cotton

15 Pro Se
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EXHIBIT 2

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 01/12/2022

TIME: 08:30:00 AM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione

CLERK: Valerie Secaur, Sarah Doski

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: M. Morales

CASE NO: 37-2022-00000023-CU-MC-CTL CASE INIT.DATE: 01/03/2022

CASE TITLE: **Cotton vs. Geraci [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Ex Parte

APPEARANCES

Darryl Cotton, self represented Plaintiff, present.

James Crosby, counsel, specially appearing for defendant(s).

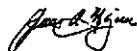
This being the time set for hearing on plaintiff's ex parte application to set aside void judgment or, alternatively, order shortening time on hearing to vacate void judgment, counsel and party, as noted above, are present and hearing commences.

Parties, as noted above, are sworn to testify on their behalf.

The Court, having read the moving papers and having heard from counsel and party, denies the request for an order shortening time, and sets this matter to be heard as a motion to vacate void judgment on 3/25/2022 at 9:00 am. The ex parte papers are deemed as the moving papers.

Parties waive notice.

The Motion Hearing (Civil) is scheduled for 03/25/2022 at 09:00AM before Judge James A Mangione.



Judge James A Mangione

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Darryl Cotton, Pro Se Plaintiff 6176 Federal Blvd. San Diego, CA 92114</p> <p>TELEPHONE NO.: 619.954.4447 FAX NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional): 151DarrylCotton@gmail.com</p> <p>ATTORNEY FOR (Name): NA</p>	<p>FOR COURT USE ONLY</p> <p>2022 JAN 14 3:30 PM</p> <p>FILED Clerk of the Superior Court</p> <p>JAN 14 2022</p> <p>By: S. Klais-Trent</p> <p>CASE NUMBER: 37-2022-00000023-CU-MC-CTL</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS: 330 West Broadway</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE: San Diego, CA 92101</p> <p>BRANCH NAME: Hall of Justice</p>	
<p>PETITIONER/PLAINTIFF: Darryl Cotton</p> <p>RESPONDENT/DEFENDANT: Lawrence (A/K/A Larry) Geraci, an individual</p>	
<p>PROOF OF PERSONAL SERVICE—CIVIL</p>	

(Do not use this Proof of Service to show service of a Summons and Complaint.)

- I am over 18 years of age and not a party to this action.
- I served the following documents (specify):
 1 ea., Motion for Reconsideration including Exhibits 1 & 2

☐ The documents are listed in the Attachment to Proof of Personal Service—Civil (Documents Served) (form POS-020(D)).

- I personally served the following persons at the address, date, and time stated:

- Name: **Larry Geraci** *Receipt: amanda*
- Address: **5402 Ruffin Rd Ste 200 San Diego CA 92123**
- Date: **3:00 pm 11/14/22**
- Time:

☒ The persons are listed in the Attachment to Proof of Personal Service—Civil (Persons Served) (form POS-020(P)).

- I am

- ☒ not a registered California process server.
- ☐ a registered California process server.
- ☐ an employee or independent contractor of a registered California process server.
- ☐ exempt from registration under Business & Professions Code section 22350(b).

- My name, address, telephone number, and, if applicable, county of registration and number are (specify):

Michael Wolf Segal
64632 Meissner Rd
Deer Island, OR 97054

503-349-7867

- ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☐ I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date: **January 14, 2022**

Michael Wolf Segal

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)



(SIGNATURE OF PERSON WHO SERVED THE PAPERS)