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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/28/2022 at 08:45:00 AM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

4 Petitioner *In Propria Persona*

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO, CENTRAL DIVISION
10

11 DARRYL COTTON, an individual,

12 Petitioner,

13 v.

14 STATE OF CALIFORNIA, a public entity;
15 ROB BONTA, an individual acting under color
16 of law,

17 Respondents.

) Case No. 37-2021-00053551-CU-WM-CTL
)

) **DECLARATION OF DARRYL COTTON**
) **IN SUPPORT OF PETITIONER'S**
) **VERIFIED AMENDED PETITION FOR**
) **WRIT OF MANDATE**

) **Date: Not Set**

) **Time: Not Set**

) **Dept: C-64**

) **Judge: The Honorable John S. Meyer**

) **Trial Date: Not Set**

) **Action Filed: December 22, 2021**
)

1
2 I, Darryl Cotton, declare:

3 1. I am an individual residing in the County of San Diego, State of California, and I am the
4 Petitioner in this action. I have knowledge of the foregoing facts and if called as a witness could and
5 would testify.

6 2. The purpose of this declaration is to support those elements of *Darryl Cotton v. State of*
7 *California et al*, the San Diego County Superior Court Case No. 37-2021-00053551-CU-WM-CTL
8 Petitioner's Verified Amended Petition for Writ of Mandate ("APWOM") and Petitioners Request for
9 Judicial Notice ISO Amended Verified Petition for Writ of Mandate. ("RJN")(EX 1)

10 3. I am the owner of a commercial property, located in the City of San Diego @ 6176
11 Federal Boulevard San Diego, CA 92114 ("6176").

12 4. On this property, I operate a research and development urban farm known as 151 Farms.
13 The farm is unique in that we do innovative research and development on energy and water saving
14 cultivation techniques.

15 5. 151 Farms is open to the public for tours, displaying our techniques for the express
16 purpose of teaching others how these innovative farming methods can work in urban areas. These
17 methods save water and improve crop cultivation especially during conditions of severe drought.

18 6. In July 2015, I was approached by Mr. Ramiz 'Ray' Audish. ("Ray") After touring the
19 farm together, he noted the one thing missing on the farm was a licensed Medical Marijuana Consumer
20 Cooperative ("MMCC").

21 7. I told Ray I had no interest in being a part of any retail medical cannabis business,
22 emphasizing even if I did, the Sheriff's Department recently inspected the farm for regulatory
23 compliance, reporting they could not license cannabis cultivation because of the property's location.

24 8. The Sheriff's Department said because of the farm's location in the City of San Diego,
25 they couldn't authorize an increase in cannabis cultivation for their licensed MMCC, the Outliers
26 Collective ("OUTCO") located @ 8157 Wing Avenue, El Cajon, CA 92020 unless we had the proper
27 license.

28 9. Ray disagreed. He told me that 151 Farms was located in a City of San Diego land use
zone where these Conditional Use Permits could be acquired for a MMCC. He showed me the City of
San Diego Information Bulletin 170 ("IB-170") which does indeed list the Southeastern San Diego

(Commercial Zones 1, 2 & 3 and I-1 Industrial Zones) (SESDPD-I-1) in paragraph D as a compliant zone for an MMCC CUP. (EX-30)

10. Based on my review of this information, I agreed, in July 2015, sublet a portion of the 6176 property to Ray for the purposes of operating a licensed MMCC after he assured me he only needed to file a standard permit request, which he had successfully done many times before.

11. On February 18, 2016, I was served a summons and civil complaint filed by the City of San Diego. In *CITY Of SAN DIEGO v DARRYL COTTON* (37-2016-00005526-CU-MC-CTL) (“City of San Diego v. Cotton”) it was alleged Ray, my tenant, had broken his promise to secure the CUP necessary permit to legally operate a cannabis dispensary required by City of San Diego Municipal Code. (EX-7)

12. On February 2, 2016, Mr. Rowdy Sperry, a City of San Diego Land Use Investigator-Code Enforcement Division, provided a sworn declaration, stating when he opened his investigation into Pure Meds in October 2015, the MMCC had not acquired the necessary MMCC CUP in violation of local zoning laws. (EX-31 @ 2:15-17)

13. Sperry went on to say when he began investigating; Pure Meds was in a MMCC CUP compliant SESDPD-I-1 zone. (EX-31 @ 3:12-16)

14. Sperry added there was a zoning change on January 14, 2016, that converted 6176 Federal’s zoning from an SESDPD-I-1 (MMCC CUP compliant zone) to a Commercial Office Zone (CO-2-1). Thus, as of January 14, 2016, my property was no longer eligible for an MMCC CUP business license. (EX-31 @ 3:12-17)

15. On March 3, 2016, I received an EX PARTE APPLICATION MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S REQUEST FOR A TEMPORARY RESTRAINING ORDER (TRO) (EX-8) which, if granted, would have denied me access to my 6176 Federal property. In that Request, the City argued operating an MMCC was illegal under federal, state and local law. It should be noted, since the City of San Diego asserted this argument, federal law remains unchanged under the Controlled Substance Act (CSA) making any licensed or unlicensed cannabis activity illegal, unless specifically protected by federal statute. (EX-8 @ 2:7-15)

16. On March 11, 2016, I received a response to my public records request, asking the City to verify the specific date of the zoning change. Prior to receiving this *ex post facto* notice, I was unaware of the zoning change or even that it was being considered by the City. (EX-32)

1 17. In the March 11th response from the City, they show that they had not properly followed
2 their own noticing procedures, as required by the provisions of “Information Bulletin 512 (IB-512).
3 Furthermore, even this *ex post facto* notice lacked most of the elements required by IB-512. (EX-33)
4 Consequently, this proves I was never properly notified of the proposed zoning change.

5 18. On March 15, 2016, Jeffrey Lake, my attorney, filed an Opposition motion to Plaintiff’s
6 request for a Temporary Restraining Order (TRO), citing I had no knowledge of the zoning change or
7 that my tenant had not applied or properly acquired the agreed upon MMCC CUP license. (EX-9)

8 19. On March 17, 2016, Judge Meyer heard oral arguments. Deputy City Attorney Ms. Onu
9 Omardia (“Omardia”) acknowledged the zoning issues. But she insisted the TRO was necessary in
10 order to determine true ownership of Pure Meds.

11 20. Judge Meyer then intervened, asking me if I would cooperate with the City’s request to
12 provide the necessary information regarding the true ownership of Pure Meds if he were to deny the
13 TRO. I agreed, emphasizing I had no interest in Pure Meds and would cooperate with the City in
14 providing them that information. I told him I would be happy to assist the City.

15 21. After hearing Omardia’s impassioned objections to my arguments, Judge Meyer denied
16 the City’s TRO request. What happened next, clearly demonstrates the City’s underlying intentions.
17 That their intent became clear in that the City never really cared about the enforcement of cannabis law
18 and regulation once the TRO was denied. Subsequent events have shown that their underlying intent
19 was to seize my real property under color of law. (It should be noted neither Omardia, nor anyone else
20 from the City Attorney’s Office, ever contacted me to get the ownership information they had
21 purported to Judge Meyer which necessitated his issuance of a TRO.) Instead, shortly thereafter, the
22 City, in what was clearly a vindictive action, began to work-up criminal charges against me.

23 22. On April 6, 2016, I was served search warrant no. 51510 and officers then entered my
24 real property at 6176 Federal. When I asked the lead agent in the raid, Detective Marisela Cooper, who
25 by complaining about Pure Meds’ operation had triggered the investigation she responded that it had
26 been a witness who wished to remain anonymous. I also, as the law entitles me to, asked Detective
27 Cooper who the affiant swearing out the warrant was and who was the judicial officer who signed off
28 on it was. Detective Cooper refused to answer those questions. After reviewing the search warrant,
none of this information was apparent on the face of warrant then and none of it is has been made
available despite repeated requests. Of note, there is no mention of any 6176 Federal Blvd., real
property to be seized. (See EX-34)

1 23. On July 22, 2016, the Office of The City Attorney, City of San Diego, Deputy City
2 Attorney Shannon M. Thomas issued a MEMORADUM to the Mayor and all City Councilmembers
3 whereby the subject was what local authority would apply for cannabis law and regulation assuming
4 the passage of AUMA. In her CONCLUSION she surmises that even if AUMA were to not pass “The
5 City may exercise its police powers to regulate land uses, including land uses **specifically regarding
recreational marijuana.**” [emphasis added] (EX-35)

6 24. On December 9, 2016, in the civil case, Judge Meyer signed off on the FINAL
7 JUDGEMENT GRANTING PERMANENT INJUNCTION AND CIVIL PENALTIES AS TO
8 DEFENDANT DARRYL COTTON in the amount of \$5,000. (EX-11)

9 25. On February 22, 2017, the City of San Diego adopted their non-medical cannabis
10 licensing ordinance no; O-20793 whereby the City amends their “...current medical marijuana
11 consumer cooperative land use regulations...” to be in compliance with AUMA, “regardless of medical
12 purposes...to apply to the retail of all marijuana.” (EX-36)

13 26. On March 15, 2017, criminal misdemeanor charges were filed against me by the City of
14 San Diego in PEOPLE v DARRYL GERARD COTTON (M230071). (EX-37)

15 27. On April 5, 2017, I arrived at the arraignment hearing in PEOPLE v DARRYL
16 GERARD COTTON. I was represented by attorney Robert Bryson (“Bryson”).

17 28. Prior to the actual hearing, Deputy City Attorney, Mark Skeels (“Skeels”), met with us
18 in the hallway outside the courtroom to discuss the City’s position.

19 29. Skeels told us that most illegal dispensaries being raided result in the City bringing
20 charges against the landlords. He then added was that these illegal dispensaries were quickly re-opened
21 within days after filing criminal complaints because the rents are so lucrative. He stated that many
22 landlords use the excuse that they have no control over their tenants and the leases they have with their
23 tenants cannot be broken.

24 30. Skeels expressed he was impressed that, after having been raided, unlike other property
25 owners, I had not succumbed to Ray’s offers to pay more rent and allow him to reopen. Pure Meds had
26 been closed permanently.

27 31. Skeels stated that as a result of my doing the “right thing” by not allowing Pure Meds to
28 reopen, Skeels would offer me a Plea Agreement which would reduce the four misdemeanor charges I
was being charged with to just one. The caveat, however, was I would have to accept that Plea

Agreement right then and there, requiring me to sign-off on just the one Health and Safety Code Section 11366.5(a) misdemeanor charge.

32. Skeels went on to say that by my accepting the proffered Plea Agreement, he would then focus his prosecutorial efforts on Ray who he saw as the real culprit in unlicensed activity. Skeels told us that besides Pure Meds, Skeels had come to find out Ray had been operating multiple illegal dispensaries within the City. At the time this statement seemed like a legitimate reason for the City to want to dispatch the case they had filed against me and focus their efforts on Ray.

33. Skeels made it clear if the Plea Agreement deal was to go through there were three important caveats I must agree to. The first was I had to acknowledge, as the property owner, I had allowed Ray to operate an unlicensed MMCC on my property. The second was I had to put in writing I would never again allow another unlicensed MMCC to operate on my property. Thirdly, I would have to agree to forfeit all the items and money seized during the property search, most of which belonged to Pure Meds anyway. The agreement would also attach a three-year probationary period which required to waive my 4th amendment rights for property searches during that 3-year period. At the completion of the probationary period, I could then move to have the single misdemeanor charge expunged from my record.

34. After these hallway discussions with Skeels had been completed, I was then given about 20 minutes alone to confer with counsel. Bryson was of the opinion Skeels' offer was a generous one. I tended to agree but wanted some changes made so I would not have any future issues with growing medical cannabis under Prop 64 guidelines within this time frame.

35. Prior to signing the Plea Agreement, my concern was that I would risk being in violation of not only the Plea Agreement if during a site visit the investigating authorities determined that my rights under Prop 215 medical cannabis guidelines were being eclipsed by yet unknown and evolving Prop 64 non-medical cannabis law and regulation. My concern was regarding the local, state and federal interpretation of what laws I would be inspected under and what I was expected to adhere to and be in compliance with during the duration of the Plea Agreement. The purpose of our adding the Prop 215 language to the Plea Agreement was to establish an absolute certainty that as a medical cannabis patient I would be subject to the regulations as established under Prop 215, purely medical cannabis guidelines.

36. To address this concern, I requested that there be language added to the Plea Agreement which expressly stated that I would not be waiving my Prop 215 medical cannabis cultivation rights for the medical cannabis plants being grown on my property. When I explained to Skeels and Bryson why I wanted this included Skeels had no objection to it. In fact, it was Skeels who suggested that there be

no plant limits associated with the Plea Agreement as long as the Physicians Recommendations qualified the plant counts on the property.

37. Skeels then included that language into the Plea Agreement by handwriting it into the Plea Agreement. At the time it really did seem to us that Skeels was acting in good faith and in a spirit of cooperation. However, later I would find out otherwise. With the agreed upon language having been added, Skeels, Bryson and I signed it.

38. Upon entering the courtroom and appearing before Judge Cano, she took the time to go through the Plea Agreement line by line with me. She wanted to make sure I understood exactly what it was I had agreed to. When she came to the Prop 215 language Skeels had added, she asked for clarification of that language. I told her that with the still evolving laws under Prop 64 and where there might be conflicts with Prop 215, I wanted to be assured I would not be subject to unequal enforcement of state or federal cannabis laws during my probation. Simply put, I did not want to expose myself to the possibility of my being in legal jeopardy under federal cannabis law. I knew that in consideration of the Plea Agreement I could not accept terms that would be subject to any state non-medical regulation requirements that would be in positive conflict with federal law under the CSA. Specifically, those conditions that allowed the federal government prosecutorial discretion by the Department of Justice (DOJ) for those individuals engaged in non-medical cannabis violations of the CSA.

39. From my standpoint, to which we all agreed, my federal medical cannabis protections were derived from the DOJ being denied funding the prosecution of individuals who are in substantive compliance within those states' medical cannabis regulatory regimes. Upon consideration of my explanation and Skeels assent, Judge Cano agreed that these issues were legally confusing and agreed that this language would reduce the chance that I would not be in compliance with the terms set forth in the Plea Agreement. With that Judge Cano added her signature to the Plea Agreement and it became fully executed by all parties. This demonstrates that for the purposes of the Superior Court for the County of San Diego, whether or not there has been confusion arising from the language of Prop 64 is a matter subject to the *Doctrine of Stare Decisis*. **There has!** (EX-38)

40. On April 5, 2017, the City of San Diego (Plaintiff), represented by Deputy City Attorney Nicole Carnahan, filed an entirely new civil action (37-2017-00012428-CU-AF-CTL) in a PETITION FOR FORFEITURE OF PROPERTY, requesting I relinquish my 6176 Federal property as a result of pleading guilty to a single misdemeanor within the Plea Agreement just hours before. Considering the timing it is astronomically improbable and frankly incomprehensible considering the timing, that Skeels

1 was unaware of the forfeiture clause when he stood before Judge Cano. It is far more likely Skeels
2 purposefully hid the exact nature and consequences of my pleading guilty to a single misdemeanor charge
3 of violating Health and Safety Code Section 11366.5(a). (EX-39)

4 41. After recovering from the shocking news, received by mail from the County Recorder, I
5 immediately contacted Skeels by phone. Skeels claimed he was unaware of the real property forfeiture
6 aspect of the agreement. He offered nothing more than a recommendation to contact my attorney to
7 discuss my options.

8 42. I immediately contacted my attorney Bryson who admitted he had no idea about the
9 forfeiture clause. Bryson was completely incredulous. His recommendation to me at the arraignment,
10 to accept the Plea Agreement, was solely based on Skeels' recommendation without Bryson having
11 done further research in the 20 minutes we were given. During all the Plea Agreement discussions, and
12 even with Judge Cano reviewing the Plea Agreement, the loss of my property was never discussed or
13 even considered a possibility as the real property forfeiture was not language included in the search
14 warrant. As this was one of 4 charges that I was to answer at the arraignment, it was reasonable for me
15 to believe that my attorney knew of the potential consequences arising from any guilty plea.

16 43. Bryson contacted Skeels and confirmed the City had the legal right to sell my property
17 unless I quickly filed a motion with the Court to withdraw the Plea Agreement. As a result of Skeels
18 failing to disclose the forfeiture clause and my attorney being unprepared, I faced the real possibility of
19 losing my 6176 Federal Blvd., real property, over a simple misdemeanor violation.

20 44. On April 18, 2017, the City filed a LIS PENDENS on my property which clouded title
21 (preventing me from using my equity as collateral to employ competent legal counsel). This began the
22 formal process whereby the City would sell my forfeited property. (EX-40)

23 45. On May 9, 2017, Bryson provided his DECLARATION which memorialized the
24 conversation we had with Skeels and how the Plea Agreement was presented and signed. Bryson again
25 admitted, he was unaware of the real property forfeiture repercussions that would prove to be the result
26 of my agreeing to that Plea Agreement. (EX-41)

27 46. On May 18, 2017, I received a disengagement letter from Bryson's firm, THE LAW
28 OFFICE OF DHARMI META. I no longer had counsel to represent me. (EX-42)

47. I immediately engaged a new attorney, Mr. David Demian (Demian) who began
discussions with Skeels to prevent the property forfeiture from occurring.

1 48. Skeels was demanding I pay \$100K to dismiss the forfeiture while keeping the rest of
2 the Plea Agreement terms intact. Under the Demian negotiations Skeels was intractable and unwilling
3 to dismiss the action for anything less than the \$100K he had in mind.

4 49. Not satisfied with Skeels gross attempt to extort this large amount of money from me,
5 Demian recommended I hire attorney Stephen Cline who had a successful track record representing
6 clients when dealing with Skeels.

7 50. On October 4, 2017, a STIPULATION FOR ENTRY OF JUDGMENT was entered into
8 where I settled the civil forfeiture action with a single payment of \$25K. (EX-43)

9 51. On January 2, 2018, I made the \$25K payment to the City of San Diego per the terms of
10 that STIPULATED JUDGEMENT. (EX-45)

11 52. On January 11, 2018, the City of San Diego withdrew the Lis Pendens recorded on my
12 property. The Plea Agreement remained in force as to the remaining terms of that agreement. (EX-44)

13 53. While I have maintained my medical cannabis patient rights and adhered to the terms as
14 set forth in the April 5, 2017, Plea Agreement, the City has never once inspected my property to
15 ascertain if I was in fact, in compliance.

16 54. As further evidence that the City's true intention throughout this matter was extortion,
17 under color of law, I submit that I was never required to sign a Probation Agreement; assigned a
18 Probation Officer; nor was my property ever inspected to see if I was compliant with the terms of Plea
19 Agreement.

20 55. The April 5, 2017, Plea Agreement expired on April 5, 2020. The action I bring before
21 the court in my APWOM is timely in that it falls within both the three-year statute of limitations
22 between April 5, 2020, and now and it also, the general statute of limitations of four years. (Cal. Code
23 of Civ. Proc. §343.) However, the discovery of certain facts and elements giving rise to fraud or
24 mistake were not known until on or about July 15, 2021, thus providing the operative exception to that
25 general statute of limitation in which I rely on Cal. Code Civ. Proc. § 338(d): "An action for relief on
26 the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the
27 discovery, by the aggrieved party, of the facts constituting the fraud or mistake." Which keeps me well
28 within the statute of limitations.

 56. I maintain that to be compliant with current state law, as enacted under Senate Bill 94
("SB-94")(EX-59) I would have to be licensed under regulations which are proscribed by Title 21 USC
§903, (EX-20) putting me in federal legal jeopardy. Being state licensed under the provisions of SB 94,

1 denies me the protection of Section 531, (EX-22) a line item, in the current federal budget. This is
2 proof positive that irreconcilable positive conflicts exist between state and federal law.

3 As a result of these irreconcilable legal conflicts in cannabis law and regulation, I hereby ask the
4 state court to grant my petition for justice by issuing a Writ of Mandate requiring Respondent to act in
5 accordance with the relief sought in my Amended Verified Petition for Writ of Mandate.

6 I declare under penalty of perjury under the laws of the State of California, that the statements
7 made herein are true and correct of my personal knowledge.

8
9 June 24, 2022



10 Darryl Cotton, Petitioner
11 *In Propria Persona*