

## Selected docket entries for case 22–56077

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Filed	Document Description	Page	Docket Text
12/12/2022			Filed (ECF) notice of appearance of Annie F. Fraser, Esq. (Pettit Kohn Ingrassia Lutz & Dolin PC; 11622 El Camino Real, Suite 300, San Diego, CA 92130.) for Appellee Gina M. Austin. Date of service: 12/12/2022. (Party was previously proceeding with counsel.) [12608045] [22–56077] (Fraser, Annie)
12/12/2022			Added Attorney(s) Annie Featherman Fraser for party(s) Appellee Gina M. Austin, in case 22–56077. [12608070] (QDL)
12/12/2022	<u>5</u>		Filed (ECF) Appellee Gina M. Austin Motion to dismiss for lack of jurisdiction. Date of service: 12/12/2022. [12608120] [22–56077] (Fraser, Annie)
	<u>5</u> Respondent Gina M. Austin's Motion to Dismiss Appeal for Lack of Jurisdiction	0	
	<u>5</u> Excerpts of Record	5	

Appellate Case No.: 22-56077

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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DARRYL COTTON, an individual  
Plaintiff/Appellant,

v.

GINA M. AUSTIN, individually, JESSICA CLAIRE McELFRESH, individually,  
and DAVID S. DEMIAN, individually,  
Defendants/Respondents.

---

LAWRENCE (a/k/a LARRY) GERACI, an individual,  
  
Real Party in Interest.

---

Appeal from a Judgment in the United States District Court  
For the Southern District of California  
Case No. 3:18-cv-00325-JO-DEB  
The Honorable District Judge Jinsook Ohta

---

**RESPONDENT GINA M. AUSTIN’S MOTION TO DISMISS  
APPEAL FOR LACK OF JURISDICTION**

---

Douglas A. Pettit, Esq. (SBN 160371)  
Annie F. Fraser, Esq. (SBN 144662)  
PETTIT KOHN INGRASSIA LUTZ & DOLIN PC  
11622 El Camino Real, Suite 300  
San Diego, California 92130  
Phone: (858) 755-8500  
Facsimile: (858) 755-8504  
dpettit@pettitkohn.com  
afraser@pettitkohn.com  
Attorneys for Defendant/Respondent  
GINA AUSTIN

Appellant Gina Austin moves to dismiss this appeal because this court lacks jurisdiction to hear it, as it was not timely filed.

## **I.**

### **PROCEDURAL HISTORY**

Plaintiff, Darryl Cotton (“Plaintiff”) proceeding pro se, filed a Second Amended Complaint alleging two causes of action under 42 U.S.C. §§ 1983 and 1985 against David Demian, Gina Austin, and Jessica McElfresh. (Excerpts of Record (“ER”) 18-68). On September 21, 2022, the District Court granted all Defendants’ motions to dismiss without leave to amend. (ER 6.)

On November 16, 2022, Plaintiff filed an untimely Notice of Appeal. (ER 3.)

## **II.**

### **ARGUMENT**

#### **A. This Court Lacks Jurisdiction to Hear this Appeal**

Plaintiff did not file his notice of appeal within the statutorily required 30 days. 28 U.S.C.S. § 2107(a); Fed. R. App. P. 4(1)(1)(A). As the entry of judgment was on September 21, 2022, Plaintiff had until October 21, 2022, to file a notice of appeal. He did not file it until November 16, 2022. This rule is “both mandatory and jurisdictional.” *United States v. Sadler*, 480 F.3d 932, 937 (9<sup>th</sup> Cir. 2007).

Congress has limited this Court’s ability to hear civil appeals that are not timely filed. *Ibid.* The rule’s purpose is “to set a definite point in time when litigation shall be at an end.” *Browder v. Director, Illinois Dept. of Corrections*, 434 U.S. 257, 264, 54 L.Ed.2d 521, 98 S.Ct. 556 (1978). Thus, “the late filing of the appeal notice necessitates dismissal of the appeal.” *Evans v. Synopsys, Inc.*, 34 F.4<sup>th</sup> 762, 768 (9<sup>th</sup> Cir. 2022). This court is not “at liberty to overlook a defect with the notice of appeal no matter how compelling an appellant’s argument may be.” *Melendres v. Maricopa Cnty*, 815 F.3d 645, 645 (9<sup>th</sup> Cir. 2016).

As Plaintiff did not file his notice of appeal within the statutorily required time, this Court lacks jurisdiction to hear the appeal, and must dismiss it.

### III.

#### **CONCLUSION**

Defendant requests this court dismiss Plaintiff’s pending appeal.

Respectfully submitted,

**PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

Dated: December 12, 2022

By: s/Annie F. Fraser  
Douglas A. Pettit, Esq.  
Annie F. Fraser, Esq.  
Attorneys for Respondent  
GINA M. AUSTIN  
[dpettit@pettitkohn.com](mailto:dpettit@pettitkohn.com)  
[afrazer@pettitkohn.com](mailto:afrazer@pettitkohn.com)



## Form 8. Certificate of Compliance for Briefs

**9th Cir. Case Number: 22-65077**

I am the attorney or self-represented party.

**This brief contains 327 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

☒ [X] complies with the word limit of Cir. R. 32-1.

☐ [ ] is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

☐ [ ] is an **amicus** brief and complies with the word limit of Fed. R. App. P. 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

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☐ [ ] complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):

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☐ [ ] complies with the length limit designated by court order dated \_\_\_\_\_.

☐ [ ] is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

**Signature** s/Annie F. Fraser, Esq. **Date: December 12, 2022**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**9th Cir. Case Number: 22-65077**

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**Service on Case Participants Who Are Registered for Electronic Filing:**

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Corinne C. Bertsche, Esq.  
David M. Florence, Esq.  
Lewis Brisbois Bisgaard & Smith, LLP  
550 West C Street, Suite 1700  
San Diego, CA 92101  
**Attorneys for Defendant and Appellee**  
**David S. Demian**  
Email: [corinne.bertsche@lewisbrisbois.com](mailto:corinne.bertsche@lewisbrisbois.com)

Laura Stewart, Esq.  
Walsh McKean Furcolo, LLP  
550 W C Street, Suite 950  
San Diego, CA 92101  
**Attorneys for Defendant and Appellee**  
**Jessica Claire McElfresh**  
Email: [lstewart@wmflp.com](mailto:lstewart@wmflp.com)

Darryl Cotton  
6176 Federal Boulevard  
San Diego, CA 92114  
Email: [indagroddarryl@gmail.com](mailto:indagroddarryl@gmail.com);  
[151darrylcotton@gmail.com](mailto:151darrylcotton@gmail.com)

**Signature** s/Deborah L. Barton **Date: December 12, 2022**

Appellate Case No.: 22-56077

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

DARRYL COTTON, an individual  
Plaintiff/Appellant,

v.

GINA M. AUSTIN, individually, JESSICA CLAIRE McELFRESH, individually,  
and DAVID S. DEMIAN, individually,  
Defendants/Respondents.

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LAWRENCE (a/k/a LARRY) GERACI, an individual,  
  
Real Party in Interest.

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Appeal from a Judgment in the United States District Court  
For the Southern District of California  
Case No. 3:18-cv-00325-JO-DEB  
The Honorable District Judge Jinsook Ohta

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**EXCERPTS OF RECORD**  
Volume 1 of 1

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Douglas A. Pettit, Esq. (SBN 160371)  
Annie F. Fraser, Esq. (SBN 144662)  
PETTIT KOHN INGRASSIA LUTZ & DOLIN PC  
11622 El Camino Real, Suite 300  
San Diego, California 92130  
Phone: (858) 755-8500  
Facsimile: (858) 755-8504  
dpettit@pettitkohn.com  
afraser@pettitkohn.com  
Attorneys for Defendant/Respondent  
GINA AUSTIN

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**FILED**

Nov 16 2022

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY s/shelly DEPUTY**UNITED STATES DISTRICT COURT****FOR THE DISTRICT OF Southern District of California****Form 1. Notice of Appeal from a Judgment or Order of a  
United States District Court**

U.S. District Court case number: 18cv00325-JO-DEB

Notice is hereby given that the appellant(s) listed below hereby appeal(s) to  
the United States Court of Appeals for the Ninth Circuit.

Date case was first filed in U.S. District Court: February 9, 2018

Date of judgment or order you are appealing: September 21, 2022

Docket entry number of judgment or order you are appealing: 118

Fee paid for appeal? (appeal fees are paid at the U.S. District Court)

☒ Yes   ☐ No   ☐ IFP was granted by U.S. District Court
**List all Appellants** (List each party filing the appeal. Do not use "et al." or other abbreviations.)

Darryl Cotton, an individual

Is this a cross-appeal? ☐ Yes   ☒ No

If yes, what is the first appeal case number?

Was there a previous appeal in this case? ☐ Yes   ☒ No

If yes, what is the prior appeal case number?

Your mailing address (if pro se):

6176 Federal Boulevard

**RECEIVED**

NOV 16 2022

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

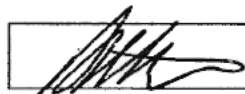
City: San Diego

State: CA

Zip Code: 92114

Prisoner Inmate or A Number (if applicable):

Signature



Date November 15, 2022

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 6. Representation Statement**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>*

**Appellant(s)** (List *each* party filing the appeal, do not use "et al." or other abbreviations.)

Name(s) of party/parties:

Darryl Cotton, an individual

Name(s) of counsel (if any):

Pro Se Litigant

Address: 6176 Federal Boulevard San Diego, CA 92114

Telephone number(s): 619.954.4447

Email(s): 151DarrylCotton@gmail.com

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☒ No

**Appellee(s)** (List *only* the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

Name(s) of party/parties:

Gina Austin, an individual

Name(s) of counsel (if any):

Douglas A Pettit

Address: 11622 El Camino Real, Ste. 300, San Diego, CA 92130

Telephone number(s): 858.755.8500

Email(s): DPettit@PettitKohn.com

*To list additional parties and/or counsel, use next page.*

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[REDACTED]

[REDACTED]

ame[REDACTED] party/parties.

Jessica [REDACTED]

ame[REDACTED] (if any):

Laura [REDACTED]

[REDACTED]

[REDACTED] 6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ame[REDACTED] party/parties.

David [REDACTED]

ame[REDACTED] (if any):

Connie [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ame[REDACTED] party/parties.

[REDACTED]

ame[REDACTED] (if any):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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## DUPLICATE

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS141866  
Cashier ID: scanapa  
Transaction Date: 11/16/2022  
Payer Name: Darryl Cotton

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NOTICE OF APPEAL/DOCKETING FEE  
For: Darryl Cotton  
Case/Party: D-CAS-3-18-CV-000325-001  
Amount: \$505.00

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CASH  
Amt Tendered: \$505.00

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Total Due: \$505.00  
Total Tendered: \$505.00  
Change Amt: \$0.00

There will be a fee of \$53.00  
charged for any returned check.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,  
Plaintiff,  
v.  
GINA M. AUSTIN, an individual;  
JESSICA MCELFFRESH, an individual;  
DAVID S. DEMIAN, an individual; and  
DOES 1-50, inclusive,  
Defendants.

Case No.: 18cv325-JO-DEB

**ORDER GRANTING MOTIONS TO  
DISMISS SECOND AMENDED  
COMPLAINT WITHOUT LEAVE  
TO AMEND**

Plaintiff Darryl Cotton, proceeding *pro se*, filed a Second Amended Complaint alleging two causes of action under 42 U.S.C. §§ 1983 and 1985 against Defendants David S. Demian, Gina M. Austin, and Jessica McElfresh. Dkt. 97 (SAC). Defendants filed motions to dismiss the SAC for failure to state a claim. Dkts. 98, 99, 100. For the reasons discussed below, the motions to dismiss are GRANTED.

## I. BACKGROUND

The claims in this litigation stem from Plaintiff's agreement to sell his property to a businessman named Larry Geraci and his attempts to obtain a cannabis permit for this property after its sale to Mr. Geraci fell through. After extensive litigation with Mr. Geraci in state court over the breach of the sale agreement, Plaintiff now alleges in federal court that Defendants Demian, Austin, and McElfresh, three private attorneys who were involved in the state court litigation, violated his constitutional rights.

In late 2016, Plaintiff entered into an agreement to sell his commercial real property to a businessman and tax consultant named Larry Geraci. SAC ¶¶ 31–34. Mr. Geraci planned to develop a cannabis dispensary on this property. SAC ¶ 35. Without telling Plaintiff, Mr. Geraci applied for a permit to run commercial cannabis operations on Plaintiff's property after completion of the sale. SAC ¶¶ 42–43. Because Mr. Geraci was unable to legally own or apply for a permit due to his prior illegal commercial cannabis operations, he submitted the application under the name of his assistant, Rebecca Berry. SAC ¶¶ 19–21, 36, 43. Plaintiff alleges that Defendants McElfresh and Austin provided legal assistance to Mr. Geraci on this cannabis permit application submitted under Ms. Berry's name. SAC ¶¶ 36, 165. Ultimately, the agreement between Plaintiff and Mr. Geraci broke down and the sale of Plaintiff's property to Mr. Geraci was never executed.

After the termination of the sale agreement with Mr. Geraci, Plaintiff sought to transfer the cannabis permit application to his name instead. Plaintiff met with Firouzeh Tirandazi, an employee of the city of San Diego, and requested that she transfer to him the cannabis permit application initiated by Mr. Geraci. SAC ¶¶ 44–46. Ms. Tirandazi refused on the grounds that only Ms. Berry, as the designated "Financially Responsible Party," could cancel or transfer the application. SAC ¶ 47. Plaintiff alleges that Ms. Tirandazi knew the cannabis permit application was submitted under the wrong name, but she "conspired with Geraci and his agents" to allow Mr. Geraci to illegally acquire the cannabis permit and prevent Plaintiff from acquiring the permit instead. SAC ¶¶ 49–50. He contends that Defendants Austin and McElfresh were a part of this conspiracy but does not

1 plead any additional facts regarding their role in the conspiracy aside from those set forth  
2 above. See SAC ¶¶ 24–29, 36, 55.

3 The termination of the property sale agreement between Plaintiff and Mr. Geraci  
4 also sparked litigation in state court. Mr. Geraci, represented by Defendant McElfresh, and  
5 Plaintiff, represented by Defendant Demian, brought claims against each other for breach  
6 of contract and fraud (“*Cotton P*”). SAC ¶ 53. Plaintiff alleges that Defendant Demian  
7 sabotaged his litigation while representing him; Plaintiff eventually terminated this  
8 attorney-client relationship because Mr. Demian failed to raise favorable arguments on his  
9 behalf. SAC ¶¶ 57–60.

10 Plaintiff further alleges that, during the course of the *Cotton I* litigation, a non-party  
11 individual named Mr. Magagna engaged in witness intimidation to the detriment of  
12 Plaintiff’s case. According to Plaintiff, Corina Young agreed to testify at trial in *Cotton I*  
13 that an individual named Mr. Bartell had discouraged her from “investing” in Plaintiff’s  
14 litigation. SAC ¶ 127. In order to prevent her from testifying on Plaintiff’s behalf, Mr.  
15 Magagna and Mr. Geraci threatened and “bribed” her, and then offered her a job in Palm  
16 Springs at a dispensary that Defendant Austin formerly represented. SAC ¶¶ 140–42, 149.  
17 As a result, Ms. Young cancelled her deposition, refused to testify at trial, and moved to  
18 Palm Springs. SAC ¶¶ 139, 147–148, 180. *Cotton I* was tried before a jury and resulted  
19 in a judgment in favor of Mr. Geraci. SAC ¶¶ 81–82.

20 On February 9, 2018, Plaintiff initiated the instant action against Mr. Geraci, Ms.  
21 Berry, Ms. Austin, various law firms involved in *Cotton I*, and the City of San Diego.<sup>1</sup> Dkt.

22 1. On May 13, 2020, Plaintiff filed a First Amended Complaint alleging claims under 42  
23 U.S.C. § 1983 and adding as defendants Mr. Demian, Ms. McElfresh, and various state and  
24 federal judges. Dkt. 18. On March 17 and October 22, 2021, the Court granted the  
25

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26  
27 <sup>1</sup> On February 28, 2018, the Court *sua sponte* stayed the action because *Cotton I* was still pending in state  
28 court. Dkt. 7. On January 15, 2020, the Court lifted the stay because the *Cotton I* litigation concluded  
with a judgment in favor of Mr. Geraci. Dkt. 11.

1 defendants' motions to dismiss the First Amended Complaint and granted Plaintiff leave  
2 to amend.<sup>2</sup> Dkts. 71, 96.

3 On November 22, 2021, Plaintiff filed the operative SAC against Defendants Austin,  
4 McElfresh, and Demian only. Dkt. 97. The SAC alleges that these Defendants conspired  
5 with Ms. Tirandazi to (1) impede Plaintiff's acquisition of a cannabis permit and (2) during  
6 the *Cotton I* trial, cover up Mr. Geraci's illegal acts to obtain the cannabis permit in  
7 violation of 42 U.S.C. § 1983. Plaintiff further alleges that Defendants conspired with Mr.  
8 Magagna and Mr. Geraci to prevent Ms. Young from testifying as a witness in the *Cotton*  
9 *I* trial in violation of 42 U.S.C. § 1985.

## 10 II. LEGAL STANDARD

11 A motion to dismiss under Federal Rule 12(b)(6) tests the legal sufficiency of the  
12 claims asserted in the complaint. Fed. R. Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729,  
13 731 (9th Cir. 2001). A court must accept all factual allegations pleaded in the complaint  
14 as true and draw all reasonable inferences from them in favor of the nonmoving party.  
15 *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). However, a court  
16 need not accept conclusory allegations as true, but “examine whether conclusory  
17 allegations follow from the description of facts as alleged by the plaintiff.” *Holden v.*  
18 *Hagopian*, 978 F.2d 115, 1121 (9th Cir. 1992). “Threadbare recitals of the elements of a  
19 cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S.  
20 at 678. To avoid a Rule 12(b)(6) dismissal, a complaint must plead “enough facts to state  
21 a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
22 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)).

23 A claim is facially plausible when the factual allegations permit “the court to draw  
24 the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*,  
25 556 U.S. at 678. While a plaintiff need not give “detailed factual allegations,” a plaintiff  
26

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27  
28 <sup>2</sup> Judge Robinson issued this order prior to the transfer of this action to Judge Ohta on January 3, 2022.



1 must plead sufficient facts that, if true, “raise a right to relief above the speculative level.”  
2 *Twombly*, 550 U.S. at 545. “The plausibility standard is not akin to a ‘probability  
3 requirement,’ but it asks for more than a sheer possibility that a defendant has acted  
4 unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). Plausibility  
5 requires pleading facts, as opposed to conclusory allegations, which rise above the mere  
6 conceivability or possibility of unlawful conduct. *Twombly*, 550 U.S. at 555. Although  
7 *pro se* pleadings are construed liberally to determine whether a claim has been stated, *see*  
8 *Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001), a plaintiff must still present factual  
9 and non-conclusory allegations to state a claim. *Twombly*, 550 U.S. at 555; *Hebbe v. Pliler*,  
10 627 F.3d 338, 341–41 (9th Cir. 2010).

11 When a complaint fails to state a claim as set forth above, a plaintiff may seek leave  
12 to amend to cure its deficiencies. Federal Rule 15(a) provides that a district court should  
13 “freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a). In deciding  
14 whether to grant leave to amend, the court considers the following factors: the presence or  
15 absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by  
16 previous amendments, undue prejudice to the opposing party, and futility of the proposed  
17 amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *DCD Programs, Ltd. v. Leighton*,  
18 833 F.2d 183, 186 (9th Cir. 1987).

19 A district court has discretion to deny leave to amend when a proposed amendment  
20 would be futile. *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 725–26 (9th Cir. 2000).  
21 Amendment is futile “if no set of facts can be proved under the amendment to the pleadings  
22 that would constitute a valid and sufficient claim or defense.” *Miller v. Rykoff–Sexton*,  
23 *Inc.*, 845 F.2d 209, 214 (9th Cir. 1988). Thus, leave to amend should be denied where “the  
24 allegation of other facts consistent with the challenged pleading could not possibly cure  
25 the deficiency.” *New v. Armour Pharm. Co.*, 67 F.3d 716, 722 (9th Cir. 1995); *Reddy v.*  
26 *Litton Indus., Inc.*, 912 F.2d 291, 297 (9th Cir. 1990) (amended complaint may not  
27 contradict prior pleadings). Repeated failure to cure deficiencies by amendment previously  
28 allowed is also a reason to deny leave to amend. *Foman*, 371 U.S. at 182. “[W]hen a

1 district court has already granted a plaintiff leave to amend, its discretion in deciding  
2 subsequent motions to amend is particularly broad.” *Chodos v. West Publishing Co.*, 292  
3 F.3d 992, 1003 (9th Cir. 2002).

### 4 III. DISCUSSION

#### 5 A. Plaintiff Fails to Plead a Section 1983 Claim Because Defendants Did Not Act 6 Under the Color of State Law

7 In the first cause of action of the SAC, Plaintiff alleges that Defendants, in violation  
8 of 42 U.S.C. § 1983, conspired with Ms. Tirandazi to (1) deny Plaintiff’s right to obtain a  
9 cannabis permit, SAC ¶ 185, and (2) deny Plaintiff’s meaningful access to the courts by  
10 covering up Mr. Geraci’s illegal attempts to acquire a cannabis permit during the *Cotton I*  
11 litigation (“Cannabis Permit conspiracy”). SAC ¶ 182. Defendants argue that Plaintiff has  
12 not alleged they engaged in action “under color of state law,” as required for Section 1983  
13 claims.

14 To state a claim under Section 1983, a plaintiff must “(1) allege the violation of a  
15 right secured by the Constitution and laws of the United States; and (2) show that the  
16 alleged deprivation was committed by a person acting under the color of state law.” *Naffe*  
17 *v. Frey*, 789 F.3d 1030, 1035–36 (9th Cir. 2015) (internal quotations omitted). The court  
18 presumes that private conduct does not constitute action under the color of state law. *See*  
19 *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999). However,  
20 Section 1983 actions “can lie against a private party when ‘he is a willful participant in  
21 joint action with the State or its agents.’” *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir.  
22 2003) (quoting *Dennis v. Sparks*, 449 U.S. 24, 27 (1980)). “One way the ‘joint action’ test  
23 is satisfied is if a ‘conspiracy’ is shown.” *Howerton v. Gabica*, 708 F.2d 380, 383 (9th Cir.  
24 1983). In other words, “[a] private party may be considered to have acted under color of  
25 state law when it engages in a conspiracy or acts in concert with state agents to deprive  
26 one’s constitutional rights.” *Fonda v. Gray*, 707 F.2d 435, 437 (9th Cir. 1983).

27 Alleging a viable Section 1983 claim against private parties, however, takes more  
28 than just conclusory allegations of a conspiracy. *Woodrum v. Woodward County*, 866 F.2d

1 1121, 1126 (9th Cir. 1989). Instead, a plaintiff must show (1) an agreement between the  
2 defendants to deprive the plaintiff of a constitutional right, (2) an overt act in furtherance  
3 of the conspiracy, and (3) a constitutional violation. *See Gilbrook v. City of Westminster*,  
4 177 F.3d 839, 856–57 (9th Cir. 1999). A plaintiff must allege an “‘agreement or meeting  
5 of the minds’ to violate constitutional rights” between a private party and the government.  
6 *Fonda*, 707 F.2d at 438 (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970)).  
7 “To be liable as a co-conspirator, a private defendant must share with the public entity the  
8 goal of violating a plaintiff’s constitutional rights” and demonstrate a “substantial degree  
9 of cooperation” with the government to violate those rights. *Franklin v. Fox*, 312 F.3d  
10 423, 445 (9th Cir. 2002).

11 Because Defendants are three private attorneys rather than state or municipal  
12 employees, the Court begins by examining whether Plaintiff sufficiently alleges that  
13 Defendants conspired or acted jointly with a state actor. The following summarizes the  
14 entirety of Plaintiff’s factual allegations regarding Defendants’ participation in the  
15 Cannabis Permit conspiracy: Regarding Defendant McElfresh, Plaintiff alleges that she  
16 represented Mr. Geraci during the cannabis permit application despite knowing it was  
17 illegal for Mr. Geraci to have a permit. SAC ¶ 165. Ms. McElfresh also referred Plaintiff  
18 to Mr. Demian’s law firm “knowing they would take action to sabotage” Plaintiff’s case in  
19 the *Cotton I* litigation. SAC ¶ 163–65. As to Defendant Austin, Plaintiff alleges that she  
20 similarly assisted Mr. Geraci in illegally submitting a cannabis permit application, SAC ¶¶  
21 36, 161, and presented false testimony in Mr. Geraci’s favor during the *Cotton I* litigation.  
22 SAC ¶¶ 68–72. Plaintiff also alleges that Ms. Austin attended law school with Ms. Young’s  
23 attorney and previously represented the dispensary in Palm Springs that employed Ms.  
24 Young, but does not provide any more allegations regarding Ms. Austin’s participation in  
25 preventing Ms. Young’s testimony. SAC ¶¶ 137, 149. As to Mr. Demian, Plaintiff’s only  
26 allegations concern his alleged shortcomings as an attorney while representing him in  
27 *Cotton I*. Mr. Demian and his law firm allegedly failed to disclose their prior relationships  
28 with Mr. Geraci, amended Plaintiff’s pleadings to sabotage his case, sought to have



1 Plaintiff admit untrue facts in a declaration, and failed to raise favorable arguments on  
2 Plaintiff's behalf. SAC ¶¶ 166–170.

3 After liberally construing the above allegations and viewing them in the light most  
4 favorable to Plaintiff, the Court finds that Plaintiff fails to allege that Defendants entered  
5 into an agreement with a state actor or substantially cooperated with one to violate  
6 Plaintiff's rights. Plaintiff's SAC identifies only one state actor: Ms. Tirandazi, the city  
7 employee who processed Mr. Geraci's cannabis permit application and refused to transfer  
8 it to Plaintiff's name. SAC ¶¶ 44–52. While Plaintiff's pleading contains the conclusory  
9 allegation that Defendants conspired with her to deny Plaintiff his cannabis permit and  
10 interfere with the *Cotton I* litigation, SAC ¶ 159, Plaintiff alleges no facts that would  
11 support this inference. *Woodrum*, 866 F.2d at 1126 (conclusory allegations of a conspiracy  
12 are insufficient). For example, Plaintiff pleads no facts to show that any of the Defendants  
13 ever communicated with Ms. Tirandazi or entered into an agreement with her to violate  
14 Plaintiff's rights. Neither does he allege that they plotted, jointly executed, or cooperated  
15 in any action taken against Plaintiff. Rather, the allegations against Defendants center on  
16 actions they took as private attorneys representing Mr. Geraci or Plaintiff that have no  
17 nexus to Ms. Tirandazi or any other state actor. Accordingly, the Court finds that Plaintiff  
18 fails to allege Defendants acted under the color of state law to deny Plaintiff a cannabis  
19 permit or obstruct his access to the courts by covering up Mr. Geraci's illegal acts.  
20 *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003)  
21 (dismissing § 1983 claim against counsel in private practice and requiring more than  
22 conclusory allegations that the lawyer was conspiring with state officers). Because  
23 Plaintiff has not pled that Defendants acted under color of state law, his Section 1983  
24 claims against them fail and should be dismissed.

25 In the event that the Court dismisses his complaint, Plaintiff has requested leave to  
26 amend his complaint "to include Tirandazi and replead his factual allegations focused on  
27 the unlawful acts by defendants that constitute a fraud on the court." Dkt. 112 at 18. Based  
28 on his proposed amendment, the Court finds that leave to amend would be futile to

1 overcome the deficiencies of his Section 1983 claim. Plaintiff's SAC already alleges Ms.  
2 Tirandazi's conduct in denying Plaintiff's cannabis application. His proposed amendment  
3 to add Ms. Tirandazi as a party would not alter the lack of factual allegations tying Ms.  
4 Tirandazi's actions to those of Defendants. Even if Ms. Tirandazi were added as a  
5 defendant, Plaintiff's complaint would still fail to plead that Defendants acted under color  
6 of state law. Similarly, Plaintiff's proposed addition of factual allegations regarding  
7 Defendants' alleged fraud on the court would not alter the analysis that Defendants did not  
8 act under the color of state law. As he does not propose to plead additional facts to  
9 demonstrate a conspiracy or joint action between Ms. Tirandazi and Defendants, the Court  
10 finds that granting this request could not cure the lack of state action that invalidates his  
11 Section 1983 claim. Accordingly, Plaintiff's request to amend is denied without leave to  
12 amend.

13 **B. Plaintiff Fails to Plead an Injury or Conspiracy to Sustain a Section 1985 Claim**  
14 **for Witness Intimidation**

15 The Court next examines Plaintiff's claim that Defendants conspired to prevent Ms.  
16 Young from testifying as a witness in the *Cotton I* trial in violation of 42 U.S.C. § 1985.  
17 Defendants argue that Plaintiff's claim fails because he has not adequately pled the  
18 existence of such conspiracy or a resulting injury in a federal court proceeding.

19 To state a Section 1985(2) claim of witness intimidation, a plaintiff must allege "(1)  
20 a conspiracy between two or more persons, (2) to deter a witness by force, intimidation, or  
21 threat from attending federal court or testifying freely in a matter there pending, which (3)  
22 causes injury to the claimant." *Rutledge v. Arizona Bd. Of Regents*, 859 F.2d 732, 735 (9th  
23 Cir. 1988). The "gist of the wrong at which § 1985(2) is directed is...intimidation or  
24 retaliation against witnesses in federal-court proceedings." *Haddle v. Garrison*, 525 U.S.  
25 121, 125 (1998). (Interference with state court proceedings falls under a separate  
26  
27  
28

1 component of the statute that is inapplicable here.<sup>3</sup>) Therefore, in order to plead the  
2 requisite injury, a plaintiff “must show that the conspiracy hampered [his] ability to present  
3 an effective case in federal court.” *Rutledge*, 859 F.2d at 735.

4 First, the Court finds that Plaintiff fails to allege that Defendants conspired to prevent  
5 Ms. Young’s testimony with sufficient factual specificity. As with Section 1983 claims, a  
6 plaintiff needs to plead specific facts to support the existence of a conspiracy. *Olsen v.*  
7 *Idaho State Bd. of Medicine*, 363 F.3d 916, 929 (9th Cir. 2004) (affirming dismissal of  
8 Section 1985 conspiracy claim where the plaintiff failed to allege evidence of a  
9 conspiracy). Plaintiff alleges that Defendants conspired with Mr. Magagna and Mr. Geraci  
10 to prevent Ms. Young from testifying on behalf of Plaintiff but does not allege any facts to  
11 support such a claim. Plaintiff appears to ask this Court to infer conspiracy from the fact  
12 that Defendant Austin 1) went to law school with the attorney who represented Ms. Young  
13 when she cancelled her *Cotton I* deposition; and 2) at one time was counsel for the  
14 dispensary who employed Ms. Young after she moved to Palm Springs. SAC ¶¶ 147–148,  
15 180. As to Defendants McElfresh and Demian, Plaintiff has pleaded no facts regarding  
16 their connection to Mr. Magagna, or their role in preventing Ms. Young from testifying.  
17 Allegations that Ms. Austin was at one time associated with a dispensary that offered Ms.  
18 Young a job, and that she attended law school with Ms. Young’s attorney, SAC ¶¶ 137,  
19 148–149, fall short of plausibly alleging that the three Defendants agreed and acted in  
20 concert to intimidate Ms. Young and prevent her from testifying. SAC ¶¶ 187–189; *Karim-*  
21

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22  
23 <sup>3</sup> Section 1985(2) contains two components: (1) interference with federal litigation and (2) obstruction of  
24 justice at the state level. 42 U.S.C. § 1985(2). Obstruction of justice at the state level requires a showing  
25 of “racial or class-based invidiously discriminatory animus.” *Kush v. Rutledge*, 460 U.S. 719, 723 (1983);  
26 *Bagley v. CMC Real Estate Corp.*, 923 F.2d 758, 763 (9th Cir. 1991) (affirming dismissal of state level  
27 obstruction of justice claim for failure to allege membership in protected class or denial of equal  
28 protection). Based on Plaintiff’s complaint, which does not allege racial or class-based animus or any  
membership in a protected class, the Court construes his claim as one for interference with federal  
litigation. Moreover, Plaintiff confirmed that his Section 1985(2) claim was based on interference with  
his federal litigation. Dkt. 112 (Plaintiff’s Opposition) at 112 (“The threats against Young and the  
prevention of her testimony constitute obstruction of justice in THIS Court”) (emphasis in original).

1 *Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 626 (finding mere allegation of  
2 conspiracy without factual specificity to be insufficient to state a Section 1985 claim).  
3 Accordingly, the Court concludes that Plaintiff fails to allege a conspiracy to state a Section  
4 1985(2) claim of witness intimidation. Because Plaintiff's proposed amendments to add  
5 Ms. Tirandazi as a party and "replead" allegations focusing on "fraud on the court" would  
6 not cure the lack of allegations to support a Section 1985 conspiracy, the Court dismisses  
7 this claim without leave to amend.

8 Second, the Court concludes that Plaintiff has failed to plead that Defendants injured  
9 his ability to present an effective case in federal court. Plaintiff's complaint focuses on  
10 Ms. Young's refusal to provide testimony in the *Cotton I* state court litigation, not the  
11 federal litigation. Specifically, Plaintiff alleges that Ms. Young "would not testify and did  
12 not want anything to do with Cotton or *Cotton I*." SAC ¶ 142. He also alleges that her  
13 attorney "unilaterally" cancelled Ms. Young's deposition and took actions rendering it "too  
14 late" for Plaintiff to "subpoena[] her for trial at *Cotton I*". SAC ¶¶ 145, 147. Plaintiff  
15 argues that the lack of Ms. Young's testimony also impacted the current litigation because  
16 the federal action was originally filed prior to the conclusion of *Cotton I*. He, however,  
17 provides no factual allegations explaining how the loss of Ms. Young's testimony injured  
18 his ability to present his current case in federal court. Nor can he plausibly do so when his  
19 current action is premised on the injury he suffered because Ms. Young did not testify.  
20 *Iqbal*, 556 U.S. 662; SAC ¶¶ 123–129. Because Plaintiff does not and cannot plausibly  
21 show that he was "hampered" in his ability to present his case in a federal court as a result  
22 of losing Ms. Young's testimony, *Rutledge*, 859 F.2d at 735, the Court dismisses his  
23 Section 1985(2) claim without leave to amend. *Chappel*, 232 F.3d at 725–26 (denying  
24 leave to amend when amendment would be futile).




**IV. CONCLUSION**

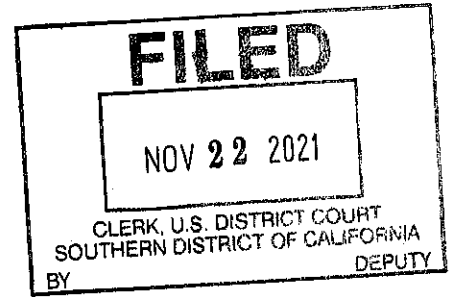
For the reasons discussed above, the Court GRANTS Defendants' motions to dismiss [Dkts. 98, 99, 100] and DISMISSES Plaintiff's SAC without leave to amend. Plaintiff's motion for leave to electronically file documents [Dkt. 116] is DENIED as moot.

**IT IS SO ORDERED.**

Dated: September 21, 2022

  
\_\_\_\_\_  
Honorable Jinsook Ohta  
United States District Judge

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



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

DARRYL COTTON, an individual

Plaintiff,

vs.

GINA M. AUSTIN, an individual; JESSICA  
MCELFRESH, an individual; DAVID S.  
DEMIAN, an individual; and DOES 1-50,  
inclusive,

Defendants,

Case No.: 18CV 325 -TWR-DEB

COMPLAINT FOR:

1. DEPRIVATION OF CIVIL RIGHTS  
(42 U.S.C. § 1983);
2. DEPRIVATION OF CIVIL RIGHTS  
(42 U.S.C. § 1985)

Related Case: 3:20-cv-0656-TWR-DEB

**JURY TRIAL DEMANDED**

**PLAINTIFF'S SECOND AMENDED COMPLAINT**

1 Plaintiff Darryl Cotton, ("Plaintiff," "Cotton" or "I") upon information and belief,  
2 alleges as follows:

### 3 INTRODUCTION

4 1. This is a Civil Rights action arising from the actions of defendant seeking to  
5 prevent Cotton from meaningfully access to the state and federal courts to prevent him  
6 from exposing their unlawful actions as part of a conspiracy in the City and County of  
7 San Diego seeking to unlawfully acquire cannabis conditional use permits ("CUP").

### 8 JURISDICTION AND VENUE

9  
10 2. Jurisdiction is also conferred on this Court pursuant to: 28 U.S.C. §§1331,  
11 1343, and 18 U.S.C. §1964, which, *inter alia*, confer original jurisdiction to the District  
12 Courts of the United States for all civil actions arising under the United States  
13 Constitution or the laws of the United States, as well as civil actions to redress deprivation  
14 under color of State law, of any right immunity or privilege secured by the United States  
15 Constitution.

16 3. This action is also brought pursuant to 42 U.S.C. § 1983 and § 1985 to  
17 redress the deprivation under color of state and local law of rights, privileges, immunities,  
18 liberty and property, secured to all citizens by, *inter alia*, the First, Fourth and Fourteenth  
19 Amendments to the United States Constitution.

20 4. This Court has jurisdiction over Plaintiffs' claims for declaratory and  
21 injunctive relief pursuant to Federal Rule of Civil Procedure 65.

22 5. Venue in this judicial district is proper under 28 U.S.C. §1391(b)(2), because  
23 a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in  
24 this district.

### 25 PARTIES

26 6. COTTON, an individual, was, and at all times mentioned herein is, residing  
27 within the County of San Diego.

28 7. COTTON is, and at all times material to this action, the sole record owner of  
the commercial real property located at 6176 Federal Boulevard, San Diego, CA 92114

1 (“Property”).

2 8. Defendant DAVID DEMIAN, an individual, was, and at all time mentioned  
3 herein is, a resident of the County of San Diego, State of California.

4 9. Defendant GINA M. AUSTIN, an individual, was, and at all times  
5 mentioned herein is, a resident of the County of San Diego, State of California.

6 10. Defendant JESSICA MCELFRISH an individual, was, and at all times  
7 mentioned herein is, a resident of the County of San Diego, State of California.

8 11. The true names and capacities, whether individual, corporate, associate or  
9 otherwise of Defendants Does 1 through 50, inclusive, are unknown to Plaintiff.

10 12. At all relevant times, each defendant was and is the agent of each of the  
11 remaining defendants and, in doing the acts alleged herein, was acting within the course  
12 and scope of such agency. Each defendant ratified and/or authorized the wrongful acts of  
13 each of the defendants.

14 13. Defendants, and each of them, are individually sued as participants and as  
15 aiders and abettors in the unlawful acts, plans, schemes, and transactions alleged in this  
16 Complaint. Defendants, and each of them, have participated as members of the conspiracy  
17 alleged herein, acted in furtherance of it, aided and assisted in carrying out its purposes,  
18 and/or performed acts and made statements in furtherance of the conspiracy.

19 **GENERAL ALLEGATIONS**

20 I. MATERIAL FACTUAL BACKGROUND

21 **A. State and City laws**

22 14. At all material times related to this action, California Bus. & Prof. Code  
23 (“BPC”) § 19323 et seq.<sup>1</sup> has mandated the denial of an application for a cannabis state  
24 license by an applicant who, inter alia, has been sanctioned for unlicensed commercial  
25 cannabis activities in the preceding three years; failed to provide required information in  
26 an application, including disclosure of all individuals with a direct ownership interest in  
27

28 <sup>1</sup> BPC § 19323 was repealed and replaced by BPC § 26057 by Stats 2017 ch 27 § 2 (SB 94), effective June 27, 2017.



1 the license being applied for; or failed to comply with local government requirements for  
2 the issuance of a permit, CUP or license for cannabis activities.

3 15. In San Diego, California, the City of San Diego requires the application for  
4 a CUP for commercial cannabis operations requires to disclose anyone who holds an  
5 interest in the proposed property or CUP in the application. Attached hereto as Exhibit A  
6 is the City's Form DS-318 Ownership Disclosure Statement for CUP application  
7 requiring disclosure of "all" parties.

8 16. SDMC § 11.0401(b) prohibits the furnishing of false or incomplete  
9 information in an application for a CUP.

10 17. A CUP application by a principal, who cannot lawfully own a CUP, in the  
11 name of an agent who falsely states in the application the agent is the sole applicant with  
12 an interest in the CUP being applied for violates BPC § 19323 and the SDMC.

13 18. A contract for a party to acquire an ownership interest in a CUP in the name  
14 of an agent, who does not disclose the principal in a CUP application because it is illegal  
15 for the principal to own a CUP, is illegal and cannot be judicially enforced.

16 **B. Geraci and Razuki have been sanctioned for unlicensed commercial**  
17 **cannabis activities.**

18 19. Geraci has been sanctioned at least twice for unlicensed commercial  
19 cannabis activities.<sup>2</sup>

20 20. Geraci was last sanctioned on June 17, 2015.

21 21. Pursuant to BPC § 19323(a),(b)(7), Geraci could not lawfully own a cannabis  
22 license or CUP until at least June 18, 2018.

23  
24  
25  
26 <sup>2</sup> In (i) *City of San Diego v. The Tree Club Cooperative, et al.*, San Diego Superior Court  
27 Case No. 37-2014-0020897-CU-MC-CTL (the "Tree Club Judgment") and (ii) *City of*  
28 *San Diego v. CCSquared Wellness Cooperative, et. al.*, Case No. 37-2015-00004430-CU-  
MC-CTL (the "CCSquared Judgment" and, collectively with the Tree Club Judgement,  
the "Geraci Judgments").

22. Razuki was sanctioned for unlicensed commercial cannabis activities on April 15, 2015.<sup>3</sup>

23. Pursuant to BPC § 19323(a),(b)(7), Razuki could not lawfully own a cannabis license or CUP until at least April 16, 2018.

**C. Austin, McElfresh and FTB are experts in CUP applications.**

24. Austin is an attorney who is “an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation.”<sup>4</sup>

25. In May 2017, McElfresh was charged with, inter alia, Conspiracy to Commit a Crime, Manufacturing of a Controlled Substance, and Obstruction of Justice for her efforts to conceal her client’s alleged illegal manufacturing operations from government inspectors. (*People v. McElfresh*, San Diego Superior Court, No. CD272111.)

26. In July 2018, McElfresh entered into a Deferred Prosecution Agreement (the “DPA”) that would allow her to plead guilty in twelve months as follows: “On April 28, 2015 [McElfresh] knowingly facilitated the use of a premises without a required permit, in violation of San Diego Municipal Code § 121.0302(a), to wit: an unpermitted marijuana manufacturing and distribution operation by Med West Distribution, LLC.”

27. Pursuant to the DPA, for a period of 12 months, McElfresh was prohibited from violating any other laws (except for minor infractions) until July 23, 2019, or face resumption of all charges filed against her. See Exhibit B

28. On October 18, 2019, McElfresh was interviewed and quoted in a San Diego Union-Tribune article that stated: “McElfresh said she advised her clients to comply with city orders to shut down, partly because operating without local permission could affect their ability to obtain state marijuana licenses in the future.”<sup>5</sup>

<sup>3</sup> *City of San Diego v. Stonecrest Plaza, LLC*, Case No. 37-2014-00009664-CU-MC-CTL (the “Stonecrest Judgment”).

<sup>4</sup> *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL, ROA 127 (Declaration of Gina Austin) at ¶ 2.

<sup>5</sup> See David Garrick, Roughly Two Dozen San Diego Marijuana Cultivators Forced to Shut Down, SAN DIEGO UNION-TRIBUNE (October 18, 2019).

29. McElfresh has represented Geraci, Razuki and Malan in various legal matters.

30. Demian has represented parties who sought to acquire ownership interests in a CUP application that was submitted by an agent and knows agency law. Attached hereto as Exhibit C is a Court of Appeal decision regarding Demian's representation for a property owner to acquire the rights to a CUP application submitted to the City of San Diego in the name of an agent who later sought to unlawfully deny the property owner his right to the CUP application.

II. THE COTTON LITIGATION

A. Lawrence ("Larry") Geraci and Rebecca Berry

31. Geraci has approximately 40 years of experience providing tax services and has been the owner-manager of Tax & Financial Center "T&F Center" since 2001. T&F Center provides sophisticated tax, financial and accounting services.

32. Geraci has been an Enrolled Agent with the IRS since 1999.

33. Geraci was a California licensed real estate salesperson (*i.e.*, a real estate agent) for approximately 25 years from 1993-2017.

34. Berry has been a licensed California real estate salesperson or broker since at least 1985.

35. In mid-2016, Geraci identified the Property and began negotiating with Cotton for the purchase of the Property because he believed it would qualify for a CUP.

36. Austin, Bartell, and Schweitzer were hired by Geraci and responsible for preparing, submitting, and lobbying a CUP application with the City at the Federal Property that was submitted in the name of Geraci's assistant, Berry (the "Berry CUP Application").

37. On October 31, 2016, Geraci presented Cotton with an Ownership Disclosure Form, a required component of the City's CUP application.

38. Geraci told Cotton that he needed Cotton to execute the form to show to his agents that he had access to the Federal Property as part of his due diligence in

1 determining whether the property qualified for a CUP.

2 39. Cotton executed 4 CUP application documents with the City including the  
3 Ownership Disclosure Form. Attached hereto as Exhibit D.

4 40. On November 2, 2016, Cotton and Geraci met at Geraci's office and entered  
5 into an oral joint venture agreement whereby Cotton would sell the Federal Property to  
6 Geraci (the "JVA").

7 41. The material terms of the JVA were that Cotton would receive (i) \$800,000,  
8 (ii) a 10% equity stake in the CUP, (iii) the greater of \$10,000 a month or 10% of the net  
9 profits of the contemplated dispensary; and (iv) a \$50,000 non-refundable deposit in the  
10 event the CUP application at the Federal Property was not approved. Geraci also  
11 promised that his attorney, Austin, would promptly reduce the JVA to writing.

12 42. The JVA was subject to a single condition precedent, the approval of a CUP  
13 application with the City at the Property by Geraci.

14 43. Cotton did not know that Geraci had already filed the Berry CUP Application  
15 without disclosing Geraci or Cotton.

16 **B. Firouzeh Tirandazi**

17 44. Ms. Firouzeh Tirandazi has worked for the City for approximately 18 years.

18 45. Tirandazi works in DSD and in recent years has worked on or supervised  
19 applications for cannabis CUPs.

20 46. On or about May 15, 2017, Cotton, as the owner-of-record of the Property,  
21 met with Tirandazi to attempt to have the Berry Application transferred to his name.

22 47. Tirandazi told Cotton that only Berry, as the designated "Financially  
23 Responsible Party" in the Berry Application, could cancel or transfer the Berry  
24 Application.

25 48. In or about June 2017, Tirandazi was promoted to a Level III Supervisor at  
26 DSD and the Berry Application was assigned to Cherlyn Cac.

27 49. Tirandazi had extensive communications with Cotton and knows that Geraci  
28 is the true applicant in the Berry CUP Application.

50. When Tirandazi was deposed in *Cotton I*, she referenced the Berry CUP Application and that Geraci was applicant.

51. At her deposition, Tirandazi was represented by Scott Toothacre of Ferris & Britton, Geraci's law firm.

52. No attorney from the City was present at Tirandazi's deposition.

**C. Finch, Thornton & Baird amended Mr. Cotton's cross-complaint in state court to remove the allegations of illegality and the conspiracy cause of action against Mr. Geraci and Ms. Berry.**

53. In his original pro se cross-complaint in *Cotton I*, Mr. Cotton alleged he reached a final, binding oral joint venture agreement with Mr. Geraci for the sale of the Property<sup>6</sup> and that Mr. Geraci and Ms. Rebecca Berry conspired to apply for the CUP at the Property in Ms. Berry's name because Mr. Geraci had been sanctioned. ("*Cotton I XC*".)

54. The *Cotton I XC* set forth a conspiracy cause of action against Mr. Geraci and Ms. Berry.

55. Subsequent to filing the *Cotton I XC*, Cotton acquired a litigation investor, Mr. Hurtado, who hired attorney Jessica McElfresh to represent Cotton.

56. However, Ms. McElfresh, "upon further reflection" stated that she did "not have the bandwidth" to represent Mr. Cotton and referred Mr. Hurtado to David Demian of Thornton & Baird ("FTB").

57. Mr. Demian, a partner, and Adam Witt, an associate, of FTB represented Cotton in *Cotton I*.

58. FTB amended Mr. Cotton's operative complaint twice.

59. FTB's amendments removed, inter alia, the allegations of illegality against Mr. Geraci and the conspiracy cause of action against Mr. Geraci and Ms. Berry.

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<sup>6</sup> See *Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 ("[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.").

60. During the course of his representation, Mr. Demian attempted to have Cotton execute a supporting declaration to argue in an *ex parte* application that Mr. Geraci was acting as Cotton's agent when he submitted the CUP application in Ms. Berry's name.

61. In late 2017, at a meeting at FTB's office, Mr. Witt, while waiting for Mr. Demian, stated that he had just overheard Mr. Demian talking with another partner at FTB and that FTB had shared clients with Mr. Geraci or Mr. Geraci's tax and financial planning business.

62. FTB had never disclosed the conflict of interest.

63. In December 2017, Cotton fired Mr. Demian or Mr. Demian quit from Cotton's representation because Mr. Demian failed to raise a case dispositive issue of mutual assent before the *Cotton I* court regarding the alleged contract.

64. Had Demian raised the issue of mutual assent, or illegality, the *Cotton I* court would have found that the complaint by Geraci failed to state a claim.

65. Mr. Demian admitted he failed to raise the evidence and said it was because he had a "bad day."

**D. Judge Wohlfeil finds that the CUP application would have been approved at the Property but-for what he believed to be Cotton's alleged unlawful interference.**

66. At the trial of *Cotton I*, Judge Joel Wohlfeil found that the CUP application would have been approved at the Property but-for what he believed to be Cotton's unlawful interference with the processing of the application with the City: "I think, that it's more probable than not that a CUP had been issued and the dispensary opened..."

67. Judge Wohlfeil's finding, presuming the lawful possession of a CUP by Mr. Geraci, was supported in part by the testimony of Ms. Austin, Ms. Berry, and Ms. Firouzeh Tirandazi.

68. Ms. Austin testified that an attorney should understand if their client is eligible for a cannabis permit.

69. However, her testimony alleged that she was not aware Mr. Geraci had been



1 sanctioned. Further, Ms. Austin's testimony in regard to whether a party who has been  
2 sanctioned for unlicensed marijuana activities repeatedly changed while being questioned  
3 on the stand. Her testimony included: (i) that the City does not bar any party from being  
4 eligible for a license, (ii) that the City "might" bar some parties from being eligible, and  
5 (iii) that the City does take into account sanctions depending on what the sanctions are  
6 and provided an example in which a party had been sanctioned but had the judgment  
7 amended to reflect "no illegal cannabis activity." (See *id.* at 47:10-49:4.)

8 70. Mr. Austin's testimony alleged that she did not know why, or cannot  
9 remember why, Mr. Geraci used Ms. Berry as an agent for the CUP application.

10 71. When presented with the Ownership Disclosure Statement, the plain  
11 language of which required the disclosure of all persons who have interest in the Property,  
12 Ms. Austin was asked: "after reading that, why [did] it seem unnecessary to list Mr.  
13 Geraci?"

14 72. Ms. Austin responded: "I don't know that it - - it was unnecessary or  
15 necessary. We just didn't do it."

16 73. Further, that, contrary to its title, "the purpose of [the Ownership Disclosure  
17 Form] is for conflict of interests."

18 74. Ms. Berry's testimony alleged that while Mr. Geraci was not disclosed  
19 because he was an Enrolled Agent, she was not aware that the City's CUP application  
20 forms required Mr. Geraci to be disclosed because she did not read them: "I simply signed  
21 this. It was filled out by our team and I signed it. Trusting Mr. Geraci and the team."

22 75. As noted, Ms. Tirandazi testified for the City at a deposition and at the trial  
23 of *Cotton I*.

24 76. At her deposition, she testified that the purpose of the Ownership Disclosure  
25 Form is for the owner of the property to validate they understand that there is an  
26 application being submitted on their property and for "conflicts of interests" by the City's  
27 decision makers.

28 77. At trial, when was asked if it was her understanding that Mr. Geraci was the

individual attempting to acquire a CUP via the CUP application submitted by Ms. Berry, Ms. Tirandazi responded: “I don’t – I don’t have answer for that question.”

78. When asked if a party who had been sanctioned for illegal cannabis activity would be barred from acquiring a CUP, she did not answer that question by stating that she would have to refer to the SDMC.

79. The City has a duty to enforce the SDMC and ensure that parties who apply for a CUP meet the City’s requirements for a CUP.

### **E. The *Cotton I* judgment**

80. During trial, Cotton moved for a directed verdict arguing BPC § 20657 *et seq.* bars Mr. Geraci’s ownership of a CUP, which was summarily denied.

81. The *Cotton I* Judgment found, *inter alia*, that “[Mr. 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.”

82. The \$260,109.28 in damages awarded Mr. Geraci include legal fees for Ms. McElfresh’s representation of Mr. Geraci in advancing the interests of the CUP application before the City.

83. After trial, Cotton filed a motion for new trial arguing again, *inter alia*, the alleged November 2, 2016, agreement (i.e., the November Document) was an illegal contract and could therefore not be enforced. Mr. Geraci opposed the motion arguing that Cotton had waived the defense of illegality.

84. Judge Wohlfeil denied the motion for new trial finding that the defense of illegality had been waived because he believed the defense of illegality had not previously been raised in the action.<sup>7</sup>

### **F. The Magagna Application**

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<sup>7</sup> Judge Wohlfeil: “Counsel, shouldn’t this have been raised at some earlier point in time?... “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....** But at some point, doesn’t your side *wave* the right to assert this argument? At some point?”



1 85. On or about March 14, 2018, Magagna submitted the Magagna Application.

2 86. On or about October 18, 2018, the Magagna Application was approved by  
3 the City. In other words, the Magagna Application was submitted, processed and  
4 approved by the City in approximately 7 months.

5 87. The Berry Application had been submitted to the City on or about October  
6 28, 2016, or approximately 1.5 years prior to the Magagna Application being submitted.

7 88. Schweitzer helped Magagna prepare the architectural designs for the  
8 Magagna Application.

9 89. After submitting the Magagna Application, Schweitzer, his firm Techne, and  
10 his employee, Carlos Gonzales, assisted Magagna responding to the City's comments to  
11 the Magagna Application to have it approved.

12 90. On or about November 7, 2018, Gonzales is shown on the City's website as  
13 representing Techne and being an "agent" of Magagna for the Magagna Application.

14 91. On or about January 1, 2019, both Gonzalez and Schweitzer are shown on  
15 the City's website as representing Techne and being "concerned citizens" for the  
16 Magagna Application.

17 92. On January 30, 2019, at Schweitzer' deposition, when confronted with  
18 screen shots of the City's website for the Magagna Application on November 7, 2018,  
19 listing his employee Gonzales as an "agent" of Magagna for the Magagna Application,  
20 Schweitzer testified that neither he nor his firm worked on the Magagna Application and  
21 that the City's website showing his employee as an "agent" was a mistake.

22 93. Shortly before the Magagna Application was approved, Schweitzer told  
23 Williams, a client of his and Mrs. Austin, that he had worked on the Magagna Application  
24 and he, Schweitzer, would have an ownership interest in the District Four CUP.

25 94. As of March 17, 2020, Gonzales is again shown on the City's website as  
26 representing Techne and being an "agent" of Magagna for the Magagna Application.

27 95. The changing back of Gonzales to an "agent," after he had been changed to  
28 a "concerned citizen," is evidence of the collusion between Geraci/F&B and the City and

1 is representative of F&B's dynamism in fabricating evidence and obfuscating the truth  
2 throughout *Cotton I* in preparation for this litigation.

3  
4 III. VIOLENCE IN FURTHERANCE OF THE ANTITRUST CONSPIRACY

5 A. **Eulenthius Duane Alexander and Logan Stellmacher**

6 96. Sometime in the summer of 2016, Cotton met Stellmacher when he visited  
7 the Property and took a tour of Cotton's 151 Farms.

8 97. Stellmacher represented he worked with Alexander, a high net worth  
9 individual with a licensed medical cannabis cultivation facility in the Santa Ysabel Indian  
10 Reservation.

11 98. Unbeknownst to Cotton, Alexander and Stellmacher were familiar with  
12 Geraci, Bartell and Martinez from other transactions.

13 99. In early 2018, Alexander sponsored and hosted an art gala at San Diego State  
14 University organized by Martinez and which Geraci and Stellmacher attended.

15 100. On or about February 3, 2018, Alexander and Stellmacher and an associate  
16 went to the Property purportedly to discuss business opportunities.

17 101. However, when they arrived at the Property, they only wanted to discuss the  
18 Property and the *Cotton I* litigation. They initially offered to beat Martin's purchase price  
19 of \$2,500,000 and guaranteed Cotton a long-term job.

20 102. Cotton declined, noting he was contractually unable to settle with Geraci in  
21 a manner that left Geraci the Property.

22 103. Thereafter, Alexander and Stellmacher engaged in direct and indirect threats  
23 seeking to coerce Cotton to settle with Geraci.

24 104. Alexander made it a point to highlight that Geraci was a politically  
25 influential individual with the City and that the Berry Application was already a "done  
26 deal" for Geraci.

27 105. Cotton again informed him that he did not want to settle and could not settle  
28 since he was contractually unable to do so pursuant to the Martin Purchase Agreement.

106. Stellmacher then directly threatened Cotton, stating that Geraci's influence

with the City extended to having the ability to have the San Diego Police Department raid the Property and have Cotton arrested on planted drugs and fabricated charges.

107. Cotton responded that he was compliant with all cannabis laws and there was nothing for him to be arrested for.

108. Stellmacher, in turn, responded that if Geraci wanted the San Diego Police “would find something.”

109. Cotton became angry, told them he would not settle with Geraci under any circumstances and asked them to leave the Property immediately.

### **B. Shawn Joseph Miller**

110. “Following a jury trial, defendant Shawn Joseph Miller was found guilty on two counts of committing wire fraud, in violation of 18 U.S.C. § 1343, two counts of money laundering, in violation of 18 U.S.C. § 1957, and one count of witness tampering, in violation of 18 U.S.C. § 1512(b)(3).” *U.S. v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008).

111. At a pretrial hearing, Miller’s own attorney, fearing for his safety, requested that he be removed as counsel.<sup>8</sup>

112. Subsequent to being released, Miller began working as a contract paralegal in the City.

113. In or around January 2018, Hurtado attempted to hire Miller as a contract paralegal for Cotton and his then counsel.

114. When Hurtado met Miller, he explained the Cotton I litigation and that Geraci was a “mafia like figure.” Further that he was not a party to and did not want to be involved in the litigation because of the evidence of violence by Geraci and that he was concerned for the safety of his family and he needed to do what was in their “best interest.”

115. Thereafter, Miller stated that he knew Geraci.

---

<sup>8</sup> *Id.* at 343 (Miller’s attorney: “The Defendant and I just had a meeting, which deteriorated to a very violent nature.... I was hoping while he sat in jail he would come to his senses but obviously has not. He is hostile to me. I cannot under the ethical situation even sit at the same trial table with him. So I have all the evidence here that he needs. I can give it to him and let him represent himself.”).

1 116. Hurtado told him it would be a conflict of interest to hire Miller and  
2 requested Miller not inform Geraci about him. Miller agreed.

3 117. That same night, at approximately 10:00 p.m., Miller called Hurtado  
4 requesting that Hurtado use his influence with Cotton to persuade him to settle with  
5 Geraci because Geraci is really “not a bad guy” and that it would be in Hurtado’s “best  
6 interest,” which was a direct reference to their earlier conversation and Hurtado’s  
7 concerns for the safety of his family.

8 118. The parties had a heated discussion in which Hurtado accused Miller of  
9 threatening him on behalf of Geraci and hung up on Miller.

10 119. Thereafter, Miller repeatedly called, texted and harassed Hurtado under the  
11 guise of seeking to collect payment for work that he alleges he performed at Hurtado’s  
12 request.

13 120. In Cotton I, Geraci responded to a special interrogatory as follows:

14 **SPECIAL INTERROGATORY NO. 35:**

15 Have YOU or YOUR AGENTS requested that Shawn Miller contact Joe Hurtado  
16 regarding any matter related to this litigation?

17 **RESPONSE TO SPECIAL INTERROGATORY NO. 35**

18 Not that I am aware. Moreover, I have never requested or authorized any person to do so.

19 121. Geraci’s response allows for the possibility that if phone records and other  
20 evidence prove that Miller threatened and harassed Hurtado under the pretext of seeking  
21 to collect a debt, that Miller did so on behalf of Geraci but without Geraci’s knowledge  
22 or consent.

23 **C. Magagna**

24 122. On or around October 2, 2017, Young visited the Property and took a tour of  
25 151 Farms.

26 123. Young went to the Federal Property because she had heard about the  
27 property qualifying for a CUP and was looking for an investment opportunity.

28 124. Young was informed about the *Cotton I* litigation and was given a proposal  
to invest in the litigation as a means of acquiring an ownership interest in the Federal

1 CUP.

2 125. Young had or did engage Bartell who worked on another CUP application at  
3 a different property.

4 126. Young spoke to her attorney, Shapiro, about the potential investment who  
5 told her that she should speak to Bartell.

6 127. Bartell told her not to invest in the *Cotton I* litigation because he “owned”  
7 the Berry CUP Application and he was getting it denied with the City because “everyone  
8 hates Darryl” (the “Bartell Statement”).

9 128. Young did not invest in the *Cotton I* litigation.

10 129. Young was not aware that at the same time the Bartell Statement was made,  
11 Geraci was arguing before Judge Wohlfeil in *Cotton I* that Geraci was using his best  
12 efforts to have the Berry CUP Application approved, including through the political  
13 lobbying efforts of Bartell.

14 130. On or around May 27, 2018, Young met with Cotton and others to discuss a  
15 secured loan instead of litigation financing.

16 131. At the meeting, Young was informed by Cotton that he believed that  
17 Magagna was a co-conspirator of Geraci who was seeking to help Geraci mitigate his  
18 damages by having the Magagna CUP Application approved.

19 132. Young recognized Magagna and told Cotton that Shapiro was also  
20 Magagna’s attorney and about the Bartell Statement.

21 133. However, Young stated her belief that Magagna was not a bad-faith actor  
22 and called him to speak about what was happening.

23 134. Young met with Magagna and explained Cotton’s belief that he was a  
24 coconspirator of Geraci. To her surprise, Magagna did not deny the allegations, instead,  
25 he asked her to change her statements and offered her a bribe for doing so. Young refused.

26 135. Despite her refusal, Magagna repeatedly requested that Young communicate  
27 with Cotton and tell him that she had “dreamed” the Bartell Statement.

28 136. Young continued to refuse and Magagna became increasingly physically and

1 vocally aggressive with his demands until they parted, demanding Young not say  
2 anything about their conversation and to “keep him out of it.”

3  
4 **D. Nguyen, Young’s attorney, promises and fails to provide Young’s  
testimony.**

5 137. Nguyen and Austin both attended law school together at Thomas Jefferson  
6 School of Law in San Diego, California, and were both admitted to the California Bar on  
7 in December 2006.

8 138. On January 1, 2019, Cotton subpoenaed Young to be deposed on January 18,  
9 2019.

10 139. On January 16, 2019, attorney Nguyen, representing Young, unilaterally  
11 cancelled the deposition of Young.

12 140. On January 21, 2019, Nguyen promised to provide Young’s sworn testimony  
13 confirming, *inter alia*, the Bartell Statement and Magagna’s attempts at bribing and  
14 threatening her.

15 141. On June 12, 2019, after having been put off for months by Nguyen, counsel  
16 for Cotton emailed Nguyen demanding she provide Young’s promised testimony, to  
17 which Nguyen never responded.

18 142. On June 30, 2019, the day before the start of trial in *Cotton I*, Flores spoke  
19 with Young who said she had moved out of the City, could not be served, would not  
20 testify, and did not want anything to do with Cotton or *Cotton I*.

21 143. Young also told Flores that he needed to be fearful for the safety of himself  
22 and his family because Austin and Magagna are “dangerous.”

23 144. In January 2020, Flores spoke with Young and informed her that by failing  
24 to provide her promised testimony that he believed she was a coconspirator of Geraci and  
25 he intended to file suit against her.

26 145. Young broke down and said she had done nothing illegal and that it was  
27 Nguyen who had unilaterally decided not to provide her testimony after Young had  
28 already agreed to provide it.



1 146. Young stated that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro  
2 paid Young's legal fees to Nguyen, (iii) Nguyen – in an email – told her that it was OK  
3 to “ignore” their obligation to provide Young's testimony because “it was too late for  
4 Cotton to do anything about it.”

5 147. On October 28, 2020, Young, having learned that Cotton intended to sue her  
6 for her failure to provide her promised testimony, emailed Cotton the email from Nguyen  
7 stating it was “too late” for Cotton to do anything about subpoenaing her for trial at *Cotton*  
8 *I*. Attached hereto at Exhibit E is a true and correct copy of that email.

9  
10 **E. Gash offers Young a job in Palm Springs, CA that prevents Cotton  
from subpoenaing Young for trial.**

11 148. The job that Young received that was the catalyst for her moving out of the  
12 City, and being unable to be located to be served again for trial, was as a manager at a  
13 dispensary called Southern California Organic Treatment (SCOT) in Palm Springs, CA.

14 149. Austin has or is counsel for SCOT.

15 150. Dave Gash and James Yamashita are, respectively, the CEO and CFO of  
16 SCOT.

17 151. Public records reveal that Gash (i) was sanctioned for unlicensed cannabis  
18 activities along with Ramistella and Yamashita; (ii) was the property manager at the  
19 Balboa Property at which the Balboa CUP was issued; and (iii) has been represented by  
20 Austin.

21 152. Ramistella was a co-defendant and sanctioned with Geraci in the TreeClub  
22 Judgement for unlicensed commercial cannabis activities.

23 153. Based on the relationships between the parties, Plaintiff believes and alleges  
24 that the job offer to Young by Gash was made and intended to prevent Cotton from being  
25 able to locate and subpoena Young to testify at the trial of *Cotton I* and was an act taken  
26 in furtherance, or to prevent the exposure, of the Antitrust Conspiracy.

**ADDITIONAL SPECIFIC ALLEGATIONS AND CAUSES OF ACTION**

**FIRST CAUSE OF ACTION - § 1983**

(Plaintiff against all defendants)

154. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

155. The right of access to the courts is constitutionally guaranteed. Courts have recognized a number of constitutional provisions insuring this right: the Equal Protection Clause, the First Amendment, the Privileges and Immunities Clause of Article IV, and the Due Process Clauses of the Fifth and Fourteenth Amendments. Access must be adequate, effective, and meaningful.

156. A right of access to the courts claim arises under section 1983 if interference by a state actor either prevents the plaintiff from filing suit or renders ineffective any available remedies. A party can be liable for covering up crucial facts and for actions of delay which cause evidence to become stale or the memories of witnesses to fade.<sup>9</sup>

157. It is illegal for Geraci and Razuki to own cannabis CUPs.

158. Geraci and Razuki sought or acquired CUPs in violation of the law as part of a conspiracy to create an illegal monopoly in the City and County of San Diego, i.e., the Antitrust Conspiracy.

159. As detailed above, in furtherance of the Antitrust Conspiracy, they took unlawful actions aided and abetted by their coconspirators and/or joint tortfeasors who also took actions or omitted to take actions they were under an affirmative duty to undertake.

160. Austin prepared, submitted and lobbied the City for Razuki to own and/or maintain an ownership interest in cannabis assets, including the Balboa CUP, which he cannot lawfully own.

161. Austin prepared, submitted and lobbied the City for the Berry CUP

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<sup>9</sup> The Ninth Circuit recognizes claims based upon a conspiracy to conceal evidence. *Delew v. Wagner*, 143 F.3d 1219, 1223 (9th Cir. 1998).

1 Application knowing it was illegal for Geraci to own a CUP.

2 162. McElfresh failed to disclose her relationship with Austin and that she had  
3 shared clients with Austin.

4 163. McElfresh referred Cotton to FTB knowing they would take action to  
5 sabotage Cotton's case.

6 164. McElfresh violated her fiduciary duties to Cotton as her former client by  
7 representing Geraci regarding the same subject matter in which she represented Cotton.

8 165. McElfresh violated the terms of her DPA by representing Geraci before the  
9 City in furtherance of the Berry CUP Application knowing it was illegal for Geraci to  
10 own a CUP.

11 166. FTB failed to disclose its prior relationship with Geraci or his tax consulting  
12 business.

13 167. FTB purposefully amended Cotton's pleadings as set forth above to sabotage  
14 his case seeking to prevent exposure of Geraci's illegal attempt to own a CUP via the  
15 Berry CUP Application.

16 168. FTB sought to have Cotton admit to facts they knew not to be true by  
17 attempting to have him declare that Cotton was the party responsible for having the Berry  
18 CUP Application submitted and not Geraci.

19 169. FTB sought to sabotage Cotton's case by arguing before the *Cotton I* court  
20 that Cotton and Geraci had never reached an agreement, but instead reached an  
21 "agreement to agree", which contradicted Cotton's pro se complaint and every statement  
22 ever said to FTB.

23 170. FTB told Cotton that Judge Wohlfeil's comments did not constitute judicial  
24 bias and were not the basis for having Judge Wohlfeil disqualified.

25 171. Nguyen's failure to provide Young's testimony, in direct contradiction of  
26 her own client's promise and willingness to do so, constitutes obstruction of justice and  
27 violated Cotton's right to meaningful access to the Court.

28 172. The City has an affirmative duty to enforce the SDMC, which includes

1 denying applications for CUPs that do not qualify under the SDMC.

2 173. The City should not process or allow retention of any CUP by a party who  
3 violates the SDMC by applying for a CUP and failing to disclose all parties with an  
4 interest in the CUP.

5 174. The City should not have processed the Berry CUP Application in the name  
6 of Berry because Berry had no right to the Federal Property.

7 175. The City should not have processed the Berry CUP Application in the name  
8 of Berry because Geraci was the true owner and the City knew he was not disclosed.

9 176. The City should have prevented Cotton from submitting a competing  
10 application at the Federal Property for months.

11 177. The delay by the City allowed time for the Magagna CUP Application to be  
12 processed.

13 178. At the trial of *Cotton I*, Tirandazi committed perjury by stating that she was  
14 not aware that Geraci was the true owner of the Berry CUP Application.

15 179. As detailed above, to prevent Hurtado from financing Cotton, Geraci and/or  
16 his agents had Miller repeatedly threaten Hurtado and his family.

17 180. As detailed above, to prevent Young from testifying as to the Bartell  
18 Statement at the *Cotton I* trial, Magagna attempted to bribe and then threatened her.

19 181. In acting as alleged in this Complaint, defendants' are responsible for their  
20 own actions and as well as those of their coconspirators and/or joint tortfeasors, which  
21 actions have violated Cotton's Civil Rights.

22 182. Specifically, but not limited to, defendants' agreement to prevent Cotton  
23 from meaningful access to the Courts by covering up the illegality of Geraci's ownership  
24 of a CUP via the Berry CUP Application.<sup>10</sup>

25 183. Defendants' actions continue to prejudice Cotton as Cotton has still not been  
26

27 <sup>10</sup> See *Delew v. Wagner*, 143 F.3d 1219, 1223 (9th Cir. 1998) ("in order to satisfy color of state law  
28 requirement under civil conspiracy theory, plaintiff need only have shown that there was an  
understanding between civilian and officers to deprive plaintiff of her rights") (citing *Adickes v. S.H.  
Kress & Co.*, 398 U.S. 144, 152, 26 L. Ed. 2d 142, 90 S. Ct. 1598 (1970)).

able to vindicate his rights and is still before the Courts seeking to vindicate his rights.

184. Also, by causing delays to Cotton's ability to submit a competing CUP at the Federal Property.<sup>11</sup>

185. As set forth above, defendants' actions constitute a substantive due process violation in preventing Cotton from acquiring a CUP and to his Federal Property, which are federally protected property rights.

186. Because Cotton had his litigation pending in this Federal Court, defendants' actions against Hurtado and Young also constitute obstruction of justice.

## SECOND CAUSE OF ACTION - § 1985

(Plaintiff against all defendants)

187. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

188. As detailed above, Young has communicated that she will not testify before this Court because of the attempted bribe and threats by Magagna.

189. The acts taken by defendants, as jointly liable as coconspirators and/or joint tortfeasors, include the attempted bribery and threats against Young to prevent her from testifying in this federal court.

## PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court grant the following relief:

1. An award of compensatory and general damages in an amount to be proven at trial;
2. An award of consequential damages in an amount to be proven at trial;
3. An award of statutory damages, as permitted by law;
4. An award of punitive damages, as permitted by law, to punish the defendants and

<sup>11</sup> "[I]f state officers conspire . . . in such a way as to defeat or prejudice a litigant's rights in state court, that would amount to a denial of equal protection of the laws by persons acting under color of state law." *Dinwiddie v. Brown*, 230 F.2d 465, 469 (5th Cir.), cert. denied, 351 U.S. 971, 76 S. Ct. 1041, 100 L. Ed. 1490 (1956).

1 make examples of them;

2 5. Reasonable attorneys' fees and costs as allowed by law; and

3 6. Such other and further relief as the Court deems fair, equitable, and just.

4  
5 Dated: November 22, 2021

6  
7 By  \_\_\_\_\_

8  
9 Plaintiff *In Propria Persona*, Darryl Cotton





**City of San Diego  
 Development Services**  
 1222 First Ave., MS 302  
 San Diego, CA 92101  
 (619) 446-5000

# Ownership Disclosure Statement

**FORM  
 DS-318**  
 October 2017

**Approval Type:** Check appropriate box for type of approval(s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit  
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☐ Conditional Use Permit ☐ Variance  
☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other \_\_\_\_\_

**Project Title:** \_\_\_\_\_ **Project No. For City Use Only:** \_\_\_\_\_

**Project Address:** \_\_\_\_\_

**Specify Form of Ownership/Legal Status (please check):**

☐ Corporation ☐ Limited Liability -or- ☐ General - What State? \_\_\_\_\_ Corporate Identification No. \_\_\_\_\_  
☐ Partnership ☐ Individual

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter will be filed with the City of San Diego on the subject property with the intent to record an encumbrance against the property. Please list below the owner(s), applicant(s), and other financially interested persons of the above referenced property. A financially interested party includes any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver or syndicate with a financial interest in the application. If the applicant includes a corporation or partnership, include the names, titles, addresses of all individuals owning more than 10% of the shares. If a publicly-owned corporation, include the names, titles, and addresses of the corporate officers. (A separate page may be attached if necessary.) If any person is a nonprofit organization or a trust, list the names and addresses of **ANY** person serving as an officer or director of the nonprofit organization or as trustee or beneficiary of the nonprofit organization. A signature is required of at least one of the property owners. Attach additional pages if needed. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

**Property Owner**

Name of Individual: \_\_\_\_\_ ☐ Owner ☐ Tenant/Lessee ☐ Successor Agency  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Email: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Additional pages Attached: ☐ Yes ☐ No

**Applicant**

Name of Individual: \_\_\_\_\_ ☐ Owner ☐ Tenant/Lessee ☐ Successor Agency  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Email: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Additional pages Attached: ☐ Yes ☐ No

**Other Financially Interested Persons**

Name of Individual: \_\_\_\_\_ ☐ Owner ☐ Tenant/Lessee ☐ Successor Agency  
 Street Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_ Email: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Additional pages Attached: ☐ Yes ☐ No

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 Upon request, this information is available in alternative formats for persons with disabilities.

## EXHIBIT B

SUMMER STEPHAN  
 District Attorney  
 JORGE DEL PORTILLO  
 Deputy District Attorney, SBN 241474  
 330 W. Broadway, Ste. 960  
 San Diego, California  
 Tel: (619) 531-4419  
 Fax: (619) 531-3340  
 Email: Jorge.DelPortillo@sdca.org  
 Attorneys for Plaintiff

CLERK OF THE SUPERIOR COURT

JUL 23 2018

By: X. LUGO, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF SAN DIEGO**

THE PEOPLE OF THE STATE OF  
 CALIFORNIA,

Plaintiff,

vs.

JESSICA CLAIRE MCELFRISH,

Defendant.

Case No.: CD272111  
 DA No.: AEE604

**DEFERRED PROSECUTION  
 AGREEMENT**

Date: 7/23/2018  
 Time: 9:00 a.m.  
 Dept: 2004

**DEFERRED PROSECUTION AGREEMENT**

Defendant Jessica C. McElfresh, by and through her counsel, Eugene G. Iredale, and the People of the State of California, by and through their attorneys Summer Stephan, District Attorney, and Jorge Del Portillo, Deputy District Attorney, enter into this Deferred Prosecution Agreement (DPA).

**A. AGREEMENT**

Upon completion of the terms and conditions as set forth in this agreement, Defendant Jessica Claire McElfresh will be permitted to plead guilty to a violation of San Diego Municipal Code section 121.0302(a), as an infraction, in 12 months. This section will be charged as an infraction and added as Count 14. The People will amend the complaint to add this charge and dismiss the balance of the complaint on the same day the Defendant will enter her plea, so long

1 as the terms and conditions are met. The Defendant will be required to pay a fine of \$250 per San  
2 Diego Municipal Code section 12.0201.

3  
4 **B. TERMS AND CONDITIONS**

5 To obtain the benefits of this plea bargain, the Defendant must complete the following  
6 terms and conditions:

- 7 1. Complete the California State Bar Ethics School.  
8 2. Take the Multistate Professional Responsibility Exam and obtain a passing score of 86  
9 or higher.  
10 3. Complete 80 hours of volunteer work with a registered nonprofit organization that is  
11 not affiliated with marijuana.  
12 4. Not violate any laws, minor traffic violations excluded.

13  
14 **C. STATEMENT OF FACTS**

15 On the date of the plea, the Defendant will make the following admission under penalty of  
16 perjury:

17 On the date of the plea, the Defendant will agree to the following statement of facts: On  
18 April 28, 2015, the defendant knowingly facilitated the use of a premises without a required  
19 permit, in violation of San Diego Municipal Code section 121.0302(a), to wit: an unpermitted  
20 marijuana manufacturing and distribution operation by MedWest Distribution, LLC.

21  
22 **D. WAIVERS**

23 The Defendant agrees to continue to waive her right to a speedy preliminary hearing. The  
24 parties agree to vacate the preliminary hearing set for July 23, 2018. The parties agree to schedule  
25 a readiness conference in 12 months to enter the plea.

26 The Defendant also agrees to waive any objection to the delay of prosecution and its  
27 consequences, including but not limited to: the fading of a witness's memory, the expiration of  
28 evidence, and the inability to secure a witness's attendance.

29 ///

**E. CONSEQUENCES**


If the Defendant fails to meet any of the terms and conditions, prosecution of all charges will resume.

**F. DECLARATIONS**


By signing this DPA, the Defendant makes the following declarations under penalty of perjury:

1. I have not been induced to enter this DPA by any promise or representation of any kind except as outlined above.
2. I am entering this DPA freely and voluntarily, without fear or threat to me or anyone closely related to me.
3. I am sober and my judgement is not impaired. I have not consumed any drug, alcohol or narcotic within the past 24 hours.


DATED: 7-23-18

  
JESSICA C. McELFRESH  
Defendant

DATED: 23 July 2018

  
EUGENE G. IREDALE  
Attorney for Defendant  
Jessica Claire McElfresh

DATED: 7/23/18

  
JORGE DEL PORTILLO  
Deputy District Attorney

## EXHIBIT C

Engbreetsen v. City of San Diego

Court of Appeal of California, Fourth Appellate District, Division One

November 30, 2016, Opinion Filed

D068438

**Reporter**

2016 Cal. App. Unpub. LEXIS 8548 \*; 2016 WL 6996218

RICK ENGEBRETSSEN, Plaintiff and Respondent, v.  
CITY OF SAN DIEGO, Defendant; RADOSLAV KALLA  
et al., Real Parties in Interest and Appellants.

**Opinion**

**Notice:** NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

**Prior History:** [\*1] APPEAL from a judgment of the Superior Court of San Diego County, No. 37-2015-00017734-CU-WM-CTL, Joel M. Pressman, Judge.

**Disposition:** Affirmed.

**Core Terms**

lease, equitable estoppel, ministerial duty, property owner, statement of decision, trial court, negotiations, parties, holder, conditional use permit, supporting evidence, mandamus relief, terminated, financial responsibility, substantial evidence, agency relationship, application process, writ of mandate, possessed, Tenant

**Counsel:** Sharif Faust Lawyers, Matthew J. Faust for Real Parties in Interest and Appellants.

Finch, Thornton and Baird, David S. Demian, for Plaintiff and Respondent.

No appearance by Defendant.

**Judges:** HALLER, Acting P. J.; AARON, J., IRION, J. concurred.

**Opinion by:** HALLER, Acting P. J.

Plaintiff Rick Engbreetsen sought a writ of mandate to compel the City of San Diego (City) to recognize him as the sole applicant for a conditional use permit (CUP) to operate a medical marijuana consumer cooperative (MMCC) on his property (the Property) and process the application accordingly. Engbreetsen alleged he was the sole record owner and interest holder of the Property throughout the application process. Although real party in interest Radoslav Kalla was listed as the applicant for the CUP, Engbreetsen alleged that Kalla was acting on Engbreetsen's behalf as an agent, Kalla never had an independent legal right to use the Property, and Engbreetsen had since revoked Kalla's agency. The City did not oppose Engbreetsen's writ petition.

The trial court granted the writ, and in a statement of decision, [\*2] discussed its basis for finding that (1) Kalla was acting as Engbreetsen's agent in pursuing the CUP; (2) Kalla did not have any independent authority to pursue it or legal interest in the Property; (3) Engbreetsen, as the principal, terminated Kalla's agency and became the only proper applicant; and (4) the City had a ministerial duty to process the application in Engbreetsen's name.

On appeal, Kalla and real party in interest Matthew Compton contend the trial court's principal-agent finding is not supported by sufficient evidence, mandamus was not a proper remedy, and the court did not address and consider their equitable estoppel defense in the statement of decision. We conclude substantial evidence supports the court's factual finding of an agency relationship, Engbreetsen established a proper basis for a writ of mandate, and the court implicitly rejected Kalla and Compton's estoppel defense. Therefore, we affirm the judgment.

## Engbreetsen v. City of San Diego

## FACTUAL AND PROCEDURAL BACKGROUND

***Engbreetsen's Property and the Initial Application for a CUP to Operate an MMCC***

**Engbreetsen's** Property, on Carroll Road in San Diego, is located in a City district where up to four properties within the district may be used to [\*3] operate medical marijuana consumer cooperatives. **Engbreetsen** was the sole record owner of the Property in fee simple. In early 2014, **Engbreetsen** retained Paul Britvar to submit an application on **Engbreetsen's** behalf for a CUP to operate an MMCC and seek out prospective parties to lease or purchase the Property. The scope of **Engbreetsen** and Britvar's principal-agent relationship is well documented and undisputed in this case.

The Land Development Code (LDC), within the San Diego Municipal Code (SDMC), governs the City's CUP application process and sets forth the individuals who are authorized to file an application. (SDMC, § 112.0102.) On an initial CUP application form, Britvar certified he was the "Authorized Agent of Property Owner." On a required ownership disclosure form, he listed **Engbreetsen** as the sole owner and interest holder in the Property. Compton, as vice president of Bay Front LLC, signed a separate form naming the company as the financially responsible party to cover the City's costs in processing the application.

***Engbreetsen Authorizes Kalla to Continue the CUP Application Process***

Up until August 2014, Kalla and Compton were dealing with Britvar over lease and/or purchase negotiations, [\*4] but Kalla and Compton wished to negotiate directly with **Engbreetsen**. **Engbreetsen** began communicating primarily with Kalla. Thereafter, **Engbreetsen** terminated Britvar's agency and orally authorized Kalla as his agent to continue the CUP application process while they attempted to negotiate a lease or purchase agreement for the Property. In October 2014, unknown to **Engbreetsen**, Britvar assigned his "interest" in the CUP application to Kalla.

On October 23, 2014, Kalla filed a revised application form with the City for the CUP to operate an MMCC on the Property (the Application). As Britvar had done, Kalla marked himself as the "Authorized Agent of Property Owner" in the "Applicant" box on the Application; **Engbreetsen** is listed on the same form as the "Property Owner." Kalla signed the Application and

certified the correctness of the supplied information. Kalla did not indicate he was a property owner, tenant, or "other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application." With the Application, Kalla also filed an updated ownership disclosure form signed by **Engbreetsen**, again showing **Engbreetsen** as the sole owner and [\*5] interest holder in the Property.

Between November 2014 and February 2015, Kalla and **Engbreetsen** negotiated directly with each other on possible terms for the lease or purchase of the Property. **Engbreetsen** sent Kalla a letter of intent for the lease of the Property (First LOI). The First LOI provides: "Tenant agrees to pay for all costs and fees related to obtaining the CUP." Further, the First LOI states: "Lease Agreement shall be contingent upon Landlord obtaining CUP and Tenant obtaining any other governmental permits and licenses required for Tenant's Use."<sup>1</sup> Kalla did not sign the First LOI.

In response to the First LOI, Kalla provided **Engbreetsen** with a letter of intent for a lease and purchase option (Second LOI). Kalla's Second LOI states: "Lease Agreement shall be contingent upon Tenant on behalf of Landlord obtaining CUP and Tenant obtaining any other governmental permits and licenses required for Tenant's Use." **Engbreetsen** did not sign the Second LOI. The parties continued to exchange multiple letters [\*6] of intent and proposed leases in good faith, but could not reach an agreement. In general, **Engbreetsen** preferred to structure the deal as a lease while Kalla and Compton preferred an outright purchase/sale.

***Engbreetsen Revokes Kalla's Agency, and the City Refuses to Process the Application in Engbreetsen's Name***

Because negotiations with Kalla reached an impasse, **Engbreetsen** contacted the City in March 2015 to be recognized as the sole applicant on the Application. The City responded that it did not consider **Engbreetsen** to be the applicant. **Engbreetsen** next met with a City representative to discuss removing Kalla's name from the Application, but the City refused. Subsequently, **Engbreetsen** repeatedly met or communicated with City

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<sup>1</sup> Within the exchanged documents, the "Landlord" or "Seller" is defined as **Engbreetsen** and the "Tenant" or "Buyer" is defined as Kalla, Compton, and/or a company under their control.



## Engebretsen v. City of San Diego

representatives, including through his counsel, to convey that he was the sole owner and interest holder in the Property, he had terminated Kalla's agency, Kalla had no independent legal right to pursue the Application, and Engebretsen would be the financially responsible party. The City continuously refused to follow Engebretsen's instructions.

In April 2015, the City informed Engebretsen that Compton had designated Kalla as the new financially responsible party [\*7] for the Application, against Engebretsen's wishes. The City would not accept Engebretsen as the financially responsible party for the Application without Kalla's signature. Later that month, the City's hearing officer approved the Application for issuance of a CUP, with Kalla listed as the applicant and prospective permit holder. The Application was the fourth and last one approved by the City for a CUP to operate an MMCC in the district where the Property is located. A third party appealed the Application approval decision for unrelated reasons, and the hearing on that appeal was set to be heard by the City's Planning Commission on June 25, 2015.

#### Engebretsen's Petition for Writ of Mandate

In May 2015, Engebretsen filed a verified petition for writ of mandate directing the City to: (1) recognize Engebretsen as the sole applicant on the Application and (2) process the Application with Engebretsen as the sole applicant. The court set the matter for trial on an expedited basis. The City filed a statement of nonopposition to Engebretsen's petition for writ of mandate.

On June 16, 2015, the court conducted a trial and heard testimony from Kalla and Compton. Kalla testified he and Compton "believed [\*8] [they] had a lease contract on the property" based on Britvar's representations, but admitted that negotiations with Engebretsen "fell completely apart" and the parties never actually executed a lease agreement. Compton confirmed he and Kalla had no lease agreement on the Property and they agreed to be financially responsible for the Application because they thought they "were going to be able to lease" the Property. The City took no position at trial.

After closing argument, the court gave its tentative ruling from the bench, granting Engebretsen's petition for a writ of mandate. As part of the ruling, Engebretsen would have to pay the City the amounts Kalla and Compton had paid for the Application's processing, so

the City could then reimburse Kalla and Compton. In making its ruling, the court noted the undisputed facts that Engebretsen was the record owner of the Property and Kalla and Compton did not enter into a lease or purchase agreement for the Property. The court commented that Kalla and Compton had not shown they had "any interest in [the] property whatsoever," and had "moved forward absent a legally binding agreement under any circumstances." Kalla and Compton requested a [\*9] statement of decision on several disputed issues, and the court directed counsel for Engebretsen to draft a proposed statement. Following the trial, the court issued a minute order summarizing its ruling.

On June 23, 2015, Kalla and Compton filed a notice of appeal. The next day, the court ordered that the notice of appeal would not operate as a stay of execution on the judgment and writ to be issued.

On July 20, 2015, the court filed its statement of decision (SOD). Kalla and Compton did not object to the SOD, propose any revisions, or otherwise inform the trial court that the SOD failed to address an issue. On August 18, 2015, the court rendered its judgment, which attached and incorporated the SOD by reference, and issued the writ of mandate.<sup>2</sup>

#### DISCUSSION

##### 1. Standard of Review

When an appellate court reviews a trial court's judgment on a petition for a writ of mandate, it applies the substantial evidence test to the trial court's findings of fact and independently reviews the trial court's [\*10] conclusions on questions of law, which include the interpretation of a statute and its application to the facts. (*Klajic v. Castaic Lake Water Agency* (2001) 90 Cal.App.4th 987, 995, 109 Cal. Rptr. 2d 454 (*Klajic*).) The substantial evidence test applies to both express and implied findings of fact. (*Rey Sanchez Investments v. Superior Court* (2016) 244 Cal.App.4th 259, 262, 197 Cal. Rptr. 3d 575.) "'Substantial evidence' is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651, 51 Cal. Rptr. 2d 907.) When reviewing the trial court's factual findings, we ask whether it was "reasonable for a trier of

<sup>2</sup>We denied Kalla and Compton's request for judicial notice dated February 19, 2016, of a separate lawsuit filed by Engebretsen against them. Accordingly, that matter is not part of the record on appeal.

## Engebretsen v. City of San Diego

fact to make the ruling in question in light of the whole record." (*Id.* at p. 652.)

## II. The Trial Court Properly Issued a Writ of Mandate

Kalla and Compton contest the court's finding of an agency relationship, the propriety of mandamus relief, and the court's implied rejection of their equitable estoppel defense.

### A. The Court's Finding Regarding the Existence of an Agency Relationship Is Supported by Substantial Evidence

Kalla and Compton argue insufficient evidence supported the trial court's factual finding that Kalla acted as Engebretsen's agent in pursuing a CUP application and the court placed undue weight on the application form submitted by Kalla to the City.

"An agent is one who represents another, called the principal, in dealings with third persons." [\*11] (*Civ. Code*, § 2295.) "Any person may be authorized to act as an agent, including an adverse party to a transaction." (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1579, 36 Cal. Rptr. 2d 343.) Agency may be implied from the circumstances and conduct of the parties. (*Ibid.*) Indicia of an agency relationship include the agent's power to alter legal relations between the principal and others and the principal's right to control the agent's conduct. (*Valley Investments, L.P. v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 826, 106 Cal. Rptr. 2d 689.) "The existence of an agency relationship is a factual question for the trier of fact whose determination must be affirmed on appeal if supported by substantial evidence." (*Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 965, 56 Cal. Rptr. 3d 177 (*Garlock*)).

Here, substantial evidence supports the court's finding that Kalla was acting as Engebretsen's agent in completing the Application. Kalla certified on the Application form that he was Engebretsen's authorized agent, thereby representing and binding Engebretsen in dealings with the City regarding the CUP application. Kalla had no other basis or authority to complete a CUP application for the Property—he was neither a property owner nor a legal interest holder. In addition, Engebretsen declared under penalty of perjury that he orally authorized Kalla as his agent to continue the application process initiated by agent Britvar. Other evidence suggests [\*12] that Kalla understood the CUP was for Engebretsen's benefit as the Property owner until Kalla executed a lease or purchase agreement.

Furthermore, Engebretsen consistently believed he was able to terminate Kalla's agency with respect to the Application at any time, as a principal is entitled to do. (See *Malloy v. Fong* (1951) 37 Cal.2d 356, 370, 232 P.2d 241 ["The power of the principal to terminate the services of the agent gives him the means of controlling the agent's activities."].) Kalla and Compton essentially ask us on appeal to reweigh or draw alternative inferences from the evidence, which we may not do. (*Garlock, supra*, 148 Cal.App.4th at p. 966.) The court's agency finding was reasonable.

### B. Engebretsen Established a Proper Basis for Mandamus Relief

Kalla and Compton contend that Engebretsen did not establish a basis for mandamus relief because the City did not have a ministerial duty to recognize Engebretsen as the applicant and Engebretsen possessed a plain, speedy, and adequate legal remedy.

#### 1. Writs of Mandate Generally

Under *Code of Civil Procedure* section 1085, subdivision (a), the trial court may issue a writ of mandate "to any . . . person . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use [\*13] and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that . . . person."

"A traditional writ of mandate under *Code of Civil Procedure* section 1085 is a method for compelling a public entity to perform a legal and usually ministerial duty. [Citation.] The trial court reviews an administrative action pursuant to *Code of Civil Procedure* section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires. [Citations.] 'Although mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of discretion. [Citation.] In determining whether an agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld.'" (*Klajic, supra*, 90 Cal.App.4th at p. 995, fn. omitted; *California Public Records Research, Inc. v. County of Stanislaus* (2016)

## Engebretsen v. City of San Diego

246 Cal.App.4th 1432, 1443, 201 Cal. Rptr. 3d 745.)

## 2. The City Had a Ministerial Duty

Kalla and Compton argue the City did not have ministerial duty in this case because [\*14] (1) there is no City procedure for amending a CUP application, (2) allowing amendments may allow "dangerous or untrustworthy" people to operate an MMCC, and (3) a writ of prohibition was the appropriate remedy to stop the City from processing the Application in Kalla's name. We reject these arguments.

To obtain mandamus relief, Engebretsen was required to demonstrate that the City had a "clear, present, ministerial duty" to perform the requested action. (*Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 129, 133 Cal. Rptr. 2d 249.) "A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists." (*Ibid.*) An act is not ministerial when it involves the exercise of discretion or judgment. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 596, 79 Cal. Rptr. 3d 489.)

Courts have concluded that city and county employees are engaged in ministerial acts when ascertaining whether procedural requirements have been met. (E.g., *Billig v. Voges* (1990) 223 Cal.App.3d 962, 968-969, 273 Cal. Rptr. 91 [clerk correctly rejected referendum petition because it did not comply with Elections Code]; *Palmer v. Fox* (1953) 118 Cal.App.2d 453, 455-456, 258 P.2d 30 [compelling county engineer to process building permit application where plaintiffs submitted all required paperwork]; see also *Shell Oil Co. v. City and County of San Francisco* (1983) 139 Cal.App.3d 917, 921, 189 Cal. Rptr. 276 (*Shell Oil*) [compelling city to process a lessee's application for a conditional use permit because lessee was [\*15] an "owner" under the city's relevant ordinance].)

In this case, Engebretsen showed that the City must process and issue applications for conditional use permits consistent with relevant laws and procedures.<sup>3</sup> (SDMC, § 112.0102, subds. (a) & (b).) The City's ordinances provide that the persons "deemed to have

the authority to file an application [are]: [¶] (1) The record owner of the real property that is the subject of the permit, map, or other matter; [¶] (2) The property owner's authorized agent; or [¶] (3) Any other person who can demonstrate a legal right, interest, or entitlement to the use of the real property subject to the application." (SDMC, §§ 112.0102, subd. (a), 113.0103 [defining *applicant*].) The City's ordinances thus ensure that conditional use permits will only be granted to individuals having the right to use the property in the manner for which the permit is sought. (SDMC, §§ 112.0102, subd. (a), 113.0103; see *Shell Oil, supra*, 139 Cal.App.3d at p. 921; see generally 66A Cal.Jur.3d Zoning And Other Land Controls § 427 [summarizing California cases].) Any other interpretation would raise serious constitutional questions concerning property rights. (*Shell Oil, at p. 921*; see also *County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510, 138 Cal. Rptr. 472, 564 P.2d 14 [holding that conditional use permits "run with the land"].)

Engebretsen demonstrated he was the only person who possessed the right to use the Property, Kalla never independently possessed such a right, Kalla was acting for Engebretsen's benefit in completing the Application (*Civ. Code*, § 2330), and Engebretsen had terminated Kalla's agency. Under the circumstances, the City had a ministerial duty to process the CUP application for Engebretsen, the Property owner.

Regarding Kalla and Compton's remaining arguments, there is no evidence in the record that requiring the City to process the Application in Engebretsen's name would lead to dangerous MMCC operations.<sup>4</sup> Finally, Kalla and Compton have not cited any authority to support their position that a writ of prohibition was an available remedy. A writ of prohibition "arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." (*Code Civ. Proc.*, § 1102, italics added.) A writ of prohibition may not restrain ministerial or nonjudicial [\*17] acts, including an administrative decision to grant a permit. (*Whitten v. California State Board of Optometry* (1937) 8 Cal.2d 444, 445, 65 P.2d 1296; *F.E. Booth Co. v. Zellerbach* (1929) 102 Cal.App. 686, 687, 283 P. 372.) The trial court did not err in concluding the City had a

<sup>3</sup> "[A] conditional use permit grants an owner [\*16] permission to devote a parcel to a use that the applicable zoning ordinance allows not as a matter of right but only upon issuance of the permit." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1006, 68 Cal. Rptr. 3d 882.)

<sup>4</sup> As Engebretsen also points out, a different section of the SDMC requires background checks for people operating or working at an MMCC (SDMC, § 42.1507), which is unaffected by provisions of the LDC.

## Engebretsen v. City of San Diego

ministerial duty to process the Application in Engebretsen's name.

### 3. Engebretsen Did Not Have an Adequate Legal Remedy

Kalla and Compton next argue that Engebretsen possessed an adequate legal remedy of filing and/or pursuing a new CUP application, precluding mandamus relief.<sup>5</sup> This argument lacks merit.

A writ of mandate generally will not issue when the plaintiff possesses a "plain, speedy and adequate remedy in the ordinary course of law." (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 114, 40 Cal. Rptr. 2d 839, 893 P.2d 1160.) Here, Engebretsen showed he did not possess such a remedy. The City refused [\*18] to process the Application in Engebretsen's name, and it approved the Application with Kalla named as the prospective permit holder. Also, the City would not be issuing any more conditional use permits to operate MMCC's within the same city district. (SDMC, § 141.0614.) If the CUP was granted to Kalla, Engebretsen had no other immediate means to obtain a CUP for his Property from the City. Moreover, Engebretsen showed that the parties needed a determination in time to respond to an unrelated appeal of the City's decision to approve the Application. The court did not err in granting mandamus relief.

### C. The Court Did Not Commit Reversible Error in Connection with Kalla and Compton's Equitable Estoppel Defense

At trial, Kalla and Compton opposed the issuance of a writ of mandate under a theory of equitable estoppel. Specifically, their counsel argued that Engebretsen was estopped from obtaining the CUP in his name because Kalla and Compton relied on Engebretsen's promises to sign a lease. Under *Code of Civil Procedure section 632*, Kalla and Compton requested a statement of decision on the court's "finding and reasoning as to the application of equitable estoppel" in the case.

The SOD did not explicitly address equitable estoppel, but instead [\*19] sets forth in significant detail the

factual background supporting the court's implicit rejection of the theory. Kalla and Compton did not object to the SOD below or argue it was deficient for failing to address an issue. On appeal, they contend the trial court erred in not addressing their equitable estoppel defense in its SOD and that the evidence supports their defense. We conclude they waived the argument regarding a deficient SOD and substantial evidence supports the court's implied rejection of their defense.

### 1. Kalla and Compton Waived or Forfeited Their Claim Regarding the Court's Failure to Address Equitable Estoppel in the Statement of Decision

In a court trial, "first, a party must request a statement of decision as to specific issues to obtain an explanation of the trial court's tentative decision (§ 632); second, if the court issues such a statement, a party claiming deficiencies therein must bring such defects to the trial court's attention to avoid implied findings on appeal favorable to the judgment (§ 634)." (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1134, 275 Cal. Rptr. 797, 800 P.2d 1227 (Arceneaux).) *Code of Civil Procedure section 634* "clearly refers to a party's need to point out deficiencies in the trial court's statement of decision as a condition of avoiding such implied findings, rather [\*20] than merely to request such a statement initially as provided in *section 632*." (*Arceneaux*, at p. 1134.) "[I]f a party does not bring such deficiencies to the trial court's attention, that party waives the right to claim on appeal that the statement was deficient in these regards, and hence the appellate court will imply findings to support the judgment." (*Id.* at pp. 1133-1134.)

Here, Kalla and Compton did not bring any alleged deficiencies in the SOD to the trial court's attention. If they had, the SOD could have been corrected and made part of the record on appeal. Accordingly, Kalla and Compton have waived or forfeited their argument relating to the court's alleged failure to address equitable estoppel, and we will imply all necessary findings to support the court's judgment. (*Agri-Systems, Inc. v. Foster Poultry Farms* (2008) 168 Cal.App.4th 1128, 1135, 85 Cal. Rptr. 3d 917.)

### 2. The Court's Implied Rejection of Kalla and Compton's Equitable Estoppel Defense Is Supported by Substantial Evidence

Substantial evidence supports the court's implied rejection of Kalla and Compton's equitable estoppel defense. (See *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 970, 153 Cal. Rptr.

<sup>5</sup>Kalla and Compton also assign error to the trial court's omitting to address the issue of alternative legal remedies in its SOD. As we discuss, *infra*, they waived the argument by failing to object to the SOD or pointing out the alleged deficiency to the trial court. Regardless, any error was harmless because Engebretsen sufficiently stated a basis to obtain writ relief.



## Engebretsen v. City of San Diego

*3d 135* ["the appellate court applies the doctrine of implied findings and presumes the trial court made all necessary findings supported by substantial evidence"].) "Generally speaking, four elements must be present in order to apply the [\*21] doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 257, 80 Cal. Rptr. 3d 876 (*Golden Gate*).) The defense does not apply when even one element is missing. (*Ibid.*)

Here, it was virtually undisputed that the parties engaged in arm's-length, good faith negotiations for several months, but they simply could not reach a suitable lease or purchase agreement. The record supports that Kalla and Compton pursued the Application despite knowing they had not yet signed any agreement with Engebretsen, the Property owner. As a result, Kalla and Compton were not "ignorant of the true facts." (*Golden Gate, supra*, 165 Cal.App.4th at p. 259.) Similarly, Engebretsen only sought to be recognized as the sole applicant when he realized that the parties could not reach a mutually acceptable agreement. Consequently, Kalla and Compton failed to establish that equitable estoppel prevented the City from recognizing Engebretsen as the CUP applicant.

## DISPOSITION

The judgment [\*22] is affirmed. Engebretsen shall recover his costs on appeal.

HALLER, Acting P. J.

WE CONCUR:

AARON, J.

IRION, J.

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City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101  
(619) 446-5000

THE CITY OF SAN DIEGO

Court's Use

Case # 37-2017-0018974-CU-BC-CTL

Rec'd

Dep: C-73 CLK

# EXHIBIT D

## General Application

FORM  
DS-3032

AUGUST 2013

Part I (Must be completed for all permits/approvals)	1. <b>Approval Type:</b> <i>Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes</i> <input type="checkbox"/> Electrical/Plumbing/Mechanical <input type="checkbox"/> Sign <input type="checkbox"/> Structure <input type="checkbox"/> Grading <input type="checkbox"/> Public Right-of-Way; <input type="checkbox"/> Subdivision <input type="checkbox"/> Demolition/Removal <input type="checkbox"/> Development Approval <input type="checkbox"/> Vesting Tentative Map <input type="checkbox"/> Tentative Map <input type="checkbox"/> Map Waiver <input checked="" type="checkbox"/> Other: CUP					
	2. <b>Project Address/Location:</b> <i>Include Building or Suite No.</i> 6176 Federal Blvd.		Project Title: Federal Blvd. MMCC		Project No. <i>For City Use Only</i> 520606	
	Legal Description: (Lot, Block, Subdivision Name & Map Number) TR# 2 001100 BLK 25* LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO				Assessor's Parcel Number: 543-020-02	
	Existing Use: <input type="checkbox"/> House/Duplex <input type="checkbox"/> Condominium/Apartment/Townhouse <input checked="" type="checkbox"/> Commercial/Non-Residential <input type="checkbox"/> Vacant Land					
	Proposed Use: <input type="checkbox"/> House/Duplex <input type="checkbox"/> Condominium/Apartment/Townhouse <input checked="" type="checkbox"/> Commercial/Non-Residential <input type="checkbox"/> Vacant Land					
	Project Description: The project consists of the construction of a new MMCC facility					
	3. <b>Property Owner/Lessee Tenant Name:</b> <i>Check one</i> <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Lessee or Tenant Telephone: Fax: Rebecca Berry					
	Address: 5982 Gullstrand Street		City: San Diego	State: CA	Zip Code: 92122	E-mail Address: becky@tfcscd.net
	4. <b>Permit Holder Name</b> - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103. Name: Rebecca Berry Telephone: Fax:					
	Address: 5982 Gullstrand Street		City: San Diego	State: CA	Zip Code: 92122	E-mail Address: becky@tfcscd.net
5. <b>Licensed Design Professional</b> (if required): (check one) <input checked="" type="checkbox"/> Architect <input type="checkbox"/> Engineer License No.: C-19371 Name: Michael R Morton AIA Telephone: Fax:						
Address: 3956 30th Street		City: San Diego	State: CA	Zip Code: 92104	E-mail Address:	
6. <b>Historical Resources/Lead Hazard Prevention and Control</b> (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) - a. Year constructed for all structures on project site: 1951 b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No d. Does the project include any foundation repair, digging, trenching or other site work? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No I certify that the information above is correct and accurate to the best of my knowledge. I understand that this project will be distributed/reviewed based on the information provided.						
Part II	Print Name: Abhay Schweitzer Signature: <i>[Signature]</i> Date: 10/28/2016					
	7. <b>Notice of Violation</b> - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? <input type="checkbox"/> No <input type="checkbox"/> Yes, copy attached					
	8. <b>Applicant Name:</b> <i>Check one</i> <input type="checkbox"/> Property Owner <input type="checkbox"/> Authorized Agent of Property Owner <input checked="" type="checkbox"/> Other Person per M.C. Section 112.0102 Telephone: Fax: Rebecca Berry					
	Address: 5982 Gullstrand Street		City: San Diego	State: CA	Zip Code: 92122	E-mail Address: becky@tfcscd.net
Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project. Signature: <i>[Signature]</i> Date: 10/31/2016						

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DS-3032 (08-13)





City of San Diego  
Development Services  
1222 First Ave., MS-401  
San Diego, CA 92101  
(619) 446-5000

# Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP)

FORM  
DS-190  
MARCH 2014

The purpose of this affidavit is for the property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative (MMCC) to affirm that all uses within 1,000 feet from the subject property line have been identified, including residential zones within 100 feet, as defined in San Diego Municipal Code (SDMC), Sections 113.0103 and 141.0614.

The proposed MMCC location must be 100 feet from any residential zone and not within 1,000 feet of the property line of the following:

- |                      |  |
|----------------------|--|
| 1. Public park       | 6. Minor-oriented facility                       |
| 2. Church            | 7. Other medical marijuana consumer cooperatives |
| 3. Child care center | 8. Residential care facility                     |
| 4. Playground        | 9. Schools                                       |
| 5. City library      |  |

## GENERAL INFORMATION

Project Name:

Federal Blvd. MMCC

Project No.: For City Use Only

5201004

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Date Information Verified by Owner or Authorized Agent:

10/28/2016

**DECLARATION:** The property owner, authorized agent, or business owner of the Medical Marijuana Consumer Cooperative must complete the following section and sign their name where indicated.

We are aware that the business described above is subject to the Medical Marijuana Consumer Cooperatives (MMCC) regulated by SDMC, Section 141.0614 and Chapter 4, Article 2, Division 16. We hereby affirm under penalty of perjury that the proposed business location is not within 1,000 feet, measured in accordance with SDMC, Section 113.0225, of the property line of any public park, church, child care center, playground, library owned and operated by the City of San Diego, minor-oriented facility, other medical marijuana consumer cooperative, residential care facility, or schools; and is 100 feet from any residential zone as identified on the 1000-foot radius map and spreadsheet submitted with the Conditional Use Permit application.

Property Owner or Authorized Agent Name: Check one ☒ Owner ☐ Agent

Telephone No.:

Mailing Address:

City:

State:

Zip Code:

Signature:

Date:

Business Owner Name:

Rebecca Berry

Telephone No.:

(858) 999-6882

Mailing Address:

5982 Gullstrand Street

City:

San Diego

State:

CA

Zip Code:

92122

Signature:

Rebecca Berry

Date:

Oct 31 2016

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DS-190 (03-14)

 <p>City of San Diego Development Services Attn: Deposit Accounts 1222 First Ave., MS-401 San Diego, CA 92101 (619) 446-5000</p>	<h2 style="text-align: center;">Deposit Account/Financially Responsible Party</h2>	<b>FORM</b> <b>DS-3242</b> <b>AUGUST 2014</b>

Project Address/Location: 6176 Federal Blvd. San Diego, CA. 92114	Project No. <u>320606</u>	Internal Order No.: For City Use Only
--	---------------------------	---------------------------------------

Approval Type: Check appropriate box for type of approval requested:

☐ Grading  
 ☐ Public Right-of-Way  
 ☐ Subdivision  
 ☐ Neighborhood Use  
 ☐ Coastal  
 ☐ Neighborhood Development  
☐ Site Development  
☐ Planned Development  
☒ Conditional Use  
☐ Variance  
☐ Vesting Tentative Map  
☐ Tentative Map  
☐ Map Waiver  
☐ Other: \_\_\_\_\_

Is the project subject to a Reimbursement Agreement? ☐ No ☐ Yes

If yes, provide Reimbursement Agreement Application Project Number or Resolution/Ordinance No.: \_\_\_\_\_

**Deposit Trust Fund Account Information:** A deposit into a Trust Fund account with an initial deposit to pay for the review, inspection and/or project management services is required. The initial deposit is drawn against to pay for these services. The Financially Responsible Party will receive a monthly statement reflecting the charges made against the account, and an invoice when additional deposits are necessary to maintain a minimum balance. The payment of the invoice will be required in order to continue processing your project. At the end of the project, any remaining funds will be returned to the Financially Responsible Party.

FINANCIALLY RESPONSIBLE PARTY				
Name/Firm Name: Rebecca Berry	Address: 5982 Gullstrand Street	E-mail:		
City: San Diego	State: CA	Zip Code: 92122	Telephone:	Fax No.:

**Financially Responsible Party Declaration:** I understand that City expenses may exceed the estimated advance deposit and, when requested by the City of San Diego, will provide additional funds to maintain a positive balance. Further, the sale or other disposition of the property does not relieve the individual or Company/Corporation of their obligation to maintain a positive balance in the trust account, unless the City of San Diego approves a Change of Responsible Party and transfer of funds. Should the account go into deficit, all City work may stop until the requested advance deposit is received.

☐ This is a continuation of existing Project No.: \_\_\_\_\_ Internal Order No.: \_\_\_\_\_

- NOTE:** Using an existing opened account may be allowed when:
1. Same location for both projects;
  2. Same Financially Responsible Party;
  3. Same decision process (Ministerial and discretionary projects may not be combined);
  4. Same project manager is managing both projects; and
  5. Preliminary Review results in a project application.

Please be advised: Billing statements cannot distinguish charges between two different projects.

Please Print Legibly.

Print Name: <u>REBECCA BERRY</u>	Title: <u>PRESIDENT</u>
Signature*: <u>Rebecca Berry</u>	Date: <u>10/31/16</u>

\*The name of the individual and the person who signs this declaration must be the same. If a corporation is listed, a corporate officer must sign the declaration (President, Vice-President, Chairman, Secretary or Treasurer).

FOR CITY USE ONLY	
Project Title: <u>Federal Blvd mmcc</u>	Date Requested: <u>10/31/16</u>
<input checked="" type="checkbox"/> Keep existing Project No. _____ as lead	or <input type="checkbox"/> Use new Project No. _____ as lead

ACCOUNT CLOSURE AUTHORIZATION	
Date Requested: _____	<input checked="" type="checkbox"/> Completed <input type="checkbox"/> Inactive <input type="checkbox"/> Withdrawn <input type="checkbox"/> Collections
Print Name: _____	Signature: _____

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DS-3242 (08-14)



City of San Diego  
Development Services  
1222 First Ave., MS-302  
San Diego, CA 92101  
(619) 446-5000

## Ownership Disclosure Statement

**Approval Type:** Check appropriate box for type of approval (s) requested: ☐ Neighborhood Use Permit ☐ Coastal Development Permit  
☐ Neighborhood Development Permit ☐ Site Development Permit ☐ Planned Development Permit ☒ Conditional Use Permit  
☐ Variance ☐ Tentative Map ☐ Vesting Tentative Map ☐ Map Waiver ☐ Land Use Plan Amendment • ☐ Other \_\_\_\_\_

**Project Title**

Federal Blvd. MMCC

**Project No. For City Use Only**

**Project Address:**

6176 Federal Blvd., San Diego, CA 92114

### Part I - To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

**Additional pages attached** ☐ Yes ☒ No

**Name of Individual (type or print):**

Darryl Cotton

☒ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

**Street Address:**

6176 Federal Blvd

**City/State/Zip:**

San Diego Ca 92114

**Phone No:**

( 619 ) 954-4447

**Fax No:**

**Signature :**

**Date:**

10-31-2016

**Name of Individual (type or print):**

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

**Street Address:**

**City/State/Zip:**

**Phone No:**

**Fax No:**

**Signature :**

**Date:**

**Name of Individual (type or print):**

Rebecca Berry

☐ Owner ☒ Tenant/Lessee ☐ Redevelopment Agency

**Street Address:**

5982 Gullstrand St

**City/State/Zip:**

San Diego / Ca / 92122

**Phone No:**

8589996882

**Fax No:**

**Signature :**

**Date:**

10-31-2016

**Name of Individual (type or print):**

☐ Owner ☐ Tenant/Lessee ☐ Redevelopment Agency

**Street Address:**

**City/State/Zip:**

**Phone No:**

**Fax No:**

**Signature :**

**Date:**



Darryl Cotton <indagrodarryl@gmail.com>

---

## Testimony

---

Corina Young <corina.young@live.com>  
To: Darryl Cotton <indagrodarryl@gmail.com>

Wed, Oct 28, 2020 at 12:22 PM

Darryl,

I am not involved. Please do not include me in your lawsuit. Please do not post this email online.

Attached are emails from my attorney at the time.

Corina

---

### 2 attachments

 **Email #1.pdf**  
299K

 **Email 2.pdf**  
133K

**FW: Geraci v. Cotton [Deposition Subpoena - Corina Young]**

natalie@nguyenlawcorp.com &lt;natalie@nguyenlawcorp.com&gt;

Tue 7/2/2019 12:01 PM

To: 'Corina Young' &lt;corina.young@live.com&gt;

📎 1 attachments (10 KB)

190627.Tentative Rulings on Motions in Limine.pdf;

Good morning Corina,

I hope this email finds you well. I haven't heard back from you so I assume you are occupied with other importance.

As an update, below is the last email from Cotton's attorney. In light of the trial dates, I presumed he was bluffing so I just ignored him.

The court issued its ruling on the parties' Motions in Limine in the Geraci v. Cotton trial last week. If you are bored or curious, it is attached for your review. The Trial was supposed to start July 1 but it looks as if someone (likely Cotton's attorney) filed an appeal and so trial was taken off calendar. I'll keep you apprised of this but for the moment, there's nothing you really need to do.

Yours,

Natalie

Natalie T. Nguyen, Esq.

**NGUYEN LAW CORPORATION**

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: [natalie@nguyenlawcorp.com](mailto:natalie@nguyenlawcorp.com)**From:** Jake Austin <jpa@jacobaustinesq.com>**Sent:** Wednesday, June 12, 2019 6:45 PM**To:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>**Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Ms. Nguyen,

Trial on the Geraci v. Cotton case in which your client, Corina Young, is a material witness is immediately impending and you have yet to deliver on any of the items we had previously agreed upon.

At this point in time it is too late to rely on you to uphold your promises without a proper demand. I need you to provide a declaration by end of week or I will have to file a motion for sanctions against you personally, and re-issue a subpoena.

Let me know by the end of the day Friday if you will provide the declaration requested or not so I can proceed accordingly.

Jacob

**Law Office of Jacob Austin**

P.O. Box 231189

San Diego, CA 92193 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501



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On Tue, May 28, 2019 at 10:20 AM Jake Austin <jpa@jacobaustinesq.com> wrote:

Ms. Young's original deposition was scheduled for Jan. 18th and we agreed to your request that she provide a declaration instead. It has been over 4 months and we have yet to receive anything. Please provide an update.

Jacob  
**Law Office of Jacob Austin**  
 P.O. Box 231189  
 San Diego, CA 92193 USA  
 Phone: (619) 357-6850  
 Facsimile: (888) 357-8501

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On Fri, May 3, 2019 at 12:04 PM <natalie@nguyenlawcorp.com> wrote:

Good morning Jake,

Thanks for following up. Let me check and get back to you soon.

Natalie

Natalie T. Nguyen, Esq.  
**NGUYEN LAW CORPORATION**  
 M: 2260 Avenida de la Playa | La Jolla, CA 92037  
 T: 858-225-9208  
 E: [natalie@nguyenlawcorp.com](mailto:natalie@nguyenlawcorp.com)

**From:** Jake Austin <jpa@jacobaustinesq.com>  
**Sent:** Thursday, May 2, 2019 11:56 AM  
**To:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>  
**Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Please give me an update, this is important to my client's case.

Jacob  
**Law Office of Jacob Austin**  
 P.O. Box 231189  
 San Diego, CA 92193 USA  
 Phone: (619) 357-6850  
 Facsimile: (888) 357-8501

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On Tue, Apr 16, 2019 at 6:15 PM Jake Austin <jpa@jacobaustinesq.com> wrote:

Hello Natalie,

As you recall we have been trying to work out an affidavit or a deposition for three months now, can you kindly give me an update on Ms. Young?

Jacob

**Law Office of Jacob Austin**

P.O. Box 231189

San Diego, CA 92193 USA

Phone: (619) 357-6850

Facsimile: (888) 357-8501

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On Thu, Mar 7, 2019 at 1:45 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

Ms. Young is out of town on March 11 so she will not be able to attend the deposition as noticed. Our Objection to the Deposition Notice is attached.

Despite her limited availability, we maintain the intention to provide you with a written statement as previously agreed. I hope to have it ready sometime next week.

Best regards,

Natalie

Natalie T. Nguyen, Esq.

**NGUYEN LAW CORPORATION**

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: [natalie@nguyenlawcorp.com](mailto:natalie@nguyenlawcorp.com)

**From:** Jake Austin <jpa@jacobaustinesq.com>

**Sent:** Thursday, February 28, 2019 2:05 PM

**To:** [natalie@nguyenlawcorp.com](mailto:natalie@nguyenlawcorp.com)

**Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hello,

I haven't heard from you for awhile so just so you know my office is generating a subpoena for a deposition. We hope we do not need a deposition so if you can provide an affidavit that would be greatly appreciated. Also can we agree to accept electronic service from one another moving forward?

Jacob

On Mon, Jan 21, 2019 at 3:09 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

I closely reviewed the Declaration of Joe Hurtado and the text message exchange attached thereto. I also discussed your proposal:

“Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

with Ms. Young and she's accepted the same. We will provide a sworn written testimony by Ms. Young as described above.

Best regards,

Natalie T. Nguyen, Esq.  
**NGUYEN LAW CORPORATION**  
M: 2260 Avenida de la Playa | La Jolla, CA 92037  
T: 858-225-9208  
E: natalie@nguyenlawcorp.com

**From:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>  
**Sent:** Thursday, January 17, 2019 5:23 PM  
**To:** 'Jake Austin' <jpa@jacobaustinesq.com>  
**Subject:** RE: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hi Jacob,

Thank you for taking the time to lay it all out for me. My grasp of this case is limited to the online register of action, the minute order to continue trial, and the deposition subpoena. However, I'm only representing a third-party witness so I see no reason to be embroiled in the case. Perhaps it's best this way.

I quickly scanned the attachment you sent, mostly the text message exchange. I gather there's some complicated history between the parties. In any event, I don't see an issue with a providing a sworn statement.

I intend to review your email and attachment more closely tomorrow and discuss your proposal with Mr. Young. I will reach back out to you after that.

Best regards,

Natalie

Natalie T. Nguyen, Esq.  
**NGUYEN LAW CORPORATION**  
M: 11440 West Bernardo Court, Suite 210 | San Diego, CA 92127  
T: 858-225-9208  
E: natalie@nguyenlawcorp.com

10/28/2020

**From:** Jake Austin <jpa@jacobaustinesq.com>  
**Sent:** Thursday, January 17, 2019 4:55 PM  
**To:** natalie@nguyenlawcorp.com  
**Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hello Natalie,

This is an awkward situation, so I will be direct. Your client has repeatedly communicated that she is hostile to my client and will not provide her deposition to material matters that are crucial to my client. Thus, your unilateral decision to cancel the deposition because I did not respond with an alternative to her deposition is procedural improper and, in light of her long history of seeking to avoid being deposed, is suspect.

I can inform you that one of the parties on our side went through Stage III cancer and so we are aware of the challenges that dealing with cancer treatments takes on a patient and their loved ones. However, because of that, we also know that there will never be a "good" time in that context to be deposed.

I am not sure how deeply you are aware of the facts in this matter, so I will not assume you are purposefully being antagonistic and will not file a motion to compel your client's attendance and seek sanctions.

With that said, we understand your client is in a tough situation, which is what makes her testimony highly relevant and credible to our case. In your prior email you state that we can discuss "alternatives to her sitting for the deposition" and since it wasn't a request to reschedule, I have been racking my brain for an alternative to having her go through a deposition which I know could be tedious and stressful on its own. I also know that she may be hesitant to discuss certain subjects and may rely on the right against self-incrimination in some of her responses. I am not sure how familiar you are with the underlying case, but it is my belief that Ms. Young has not been involved in the acts that underline the causes of action and it is not my intention to name her in any lawsuit or anything to that effect.

To be specific, the facts which we hope to elicit from Ms.

Young have already been provided *by* her in her text messages with Mr. Hurtado. Attached hereto is a declaration from Mr. Hurtado that in turn has exhibits of text messages between him and Ms. Young regarding the subjects that we desire to depose Ms. Young on. The only additional facts we would want established, beyond those in her text messages, is a description of how long and how many interactions she has had with the parties at issue in this litigation and in the text messages.

What should be clear is that Ms. Young has known the parties associated with Mr. Geraci significantly longer and has established professional relationships with them, as opposed to the limited number of times she has met Mr. Cotton and Mr. Hurtado with whom she only had a couple of interactions with (setting aside her communications related to not wanting to be involved in this litigation to Mr. Hurtado).

Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

Please confirm if your client is willing to provide such sworn testimony. If not, please let me know if your client is available to be deposed any day next week between Wednesday through Friday.

Please note that the trial calendar requires us to file a motion for summary judgement on or before February 8, 2019. As you know, getting transcripts back and drafting an MSJ is time

consuming, so, unfortunately, we are not in a position to push back her deposition for any prolong period of time.

Thus, if you cannot agree to providing her sworn testimony as described above, or having her deposition taken sometime next week, in the interests of my client's case, I will be forced to file an ex-parte application seeking to compel her deposition.

Lastly, again, my apologies for this direct and confrontational email. However, given Ms. Young's repeated statements, the nearing MSJ deadline, and the actions by the attorneys for Mr. Geraci, which I have already gone on record of stating and believing to be tantamount to fraud, I hope you can appreciate that I am attempting to manage this situation for Ms. Young as best as possible. The bottom line is that Ms. Young's testimony provides damaging evidence against her own attorney and agents and I realize the uncomfortable position she is in.

I am open to alternatives and discussions, but Ms. Young's testimony is material and crucial. If you would like to discuss this issue further, I will make myself available to you.

Jacob

On Tue, Jan 15, 2019 at 1:05 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.  
**NGUYEN LAW CORPORATION**  
M: 2260 Avenida de la Playa | La Jolla, CA 92037  
T: 858-225-9208  
E: natalie@nguyenlawcorp.com

**Law Office of Jacob Austin**

1455 Frazee Rd. Suite 500  
San Diego, CA 92108 USA  
Phone: (619) 357-6850  
Facsimile: (888) 357-8501

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On Wed, Jan 16, 2019 at 3:39 PM <natalie@nguyenlawcorp.com> wrote:

Hi Jacob,

I did not receive a response from you. Please note that for the reasons set forth in my email below, Ms. Young is unable and will not attend the deposition you set for this Friday, January 18, 2019, at 10:00 am. Please kindly contact my office before setting another deposition date.

Best regards,

Natalie

Natalie T. Nguyen, Esq.

**NGUYEN LAW CORPORATION**

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: [natalie@nguyenlawcorp.com](mailto:natalie@nguyenlawcorp.com)

**From:** [natalie@nguyenlawcorp.com](mailto:natalie@nguyenlawcorp.com) <[natalie@nguyenlawcorp.com](mailto:natalie@nguyenlawcorp.com)>

**Sent:** Tuesday, January 15, 2019 1:05 PM

**To:** [JPA@jacobaustinesq.com](mailto:JPA@jacobaustinesq.com)

**Subject:** Geraci v. Cotton [Deposition Subpoena - Corina Young]

**Importance:** High

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.

**NGUYEN LAW CORPORATION**

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: [natalie@nguyenlawcorp.com](mailto:natalie@nguyenlawcorp.com)

--

Law Office of Jacob Austin  
1455 Frazee Rd. Suite 500  
San Diego, CA 92108 USA  
Phone: (619) 357-6850  
Facsimile: (888) 357-8501

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**Geraci v Cotton**

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>

Mon 7/22/2019 11:24 AM

To: 'Corina Young' <corinayoung@live.com>

📎 1 attachments (80 KB)

Invoice\_656\_491294\_g8e.pdf;

Hi Corina,

I hope this email finds you very well.

I just wanted to let you know that the trial in Geraci v Cotton went forward and was completed. Therefore, you don't have to worry about providing any declaration or testimony on this case. Attached is your final invoice; no payment is due from you and we will close our file.

It was a pleasure working with you. Good luck on all your future endeavors!

PS. The jury found in favor of Geraci.

Natalie T. Nguyen, Esq.

**NGUYEN LAW CORPORATION**

M: 2260 Avenida de la Playa | La Jolla, CA 92037

T: 858-225-9208

E: [natalie@nguyenlawcorp.com](mailto:natalie@nguyenlawcorp.com)



1 **DARRYL COTTON**  
2 **6176 Federal Boulevard**  
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 **GINA AUSTIN, an individual; JESSICA**  
12 **MCELFRESH, an individual; DAVID DEMIAN,**  
13 **an individual; and DOES 1-100, inclusive**

14 **Defendants.**

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

**CERTIFICATE OF SERVICE**

PLAINTIFF'S SECOND AMENDED  
COMPLAINT

Related Case: 20-cv-0656-BAS-MDD

**CERTIFICATE OF SERVICE**

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

- 1. PLAINTIFF'S SECOND AMENDED COMPLAINT.**
- 2. EXHIBITS 1-2**

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

**[x] BY EMAIL SERVICE:**

**David Demian to Attorney Corinne Bertsche @ Corinne.Bertsche@lewisbrisbois.com**

**Jessica McElfresh to Attorney Laura E. Stewart @ lstewart@wmflp.com**

**Gina Austin to Attorney Michelle Lynn Propst @ mpropst@pettitkohn.com**

Executed on November 22, 2021, at San Diego, California



Plaintiff: DARRYL COTTON

In pro se

APPEAL,CLOSED,IFP,USMSVC

**U.S. District Court  
Southern District of California (San Diego)  
CIVIL DOCKET FOR CASE #: 3:18-cv-00325-JO-DEB**

Cotton v. Geraci et al  
Assigned to: Judge Jinsook Ohta  
Referred to: Magistrate Judge Daniel E. Butcher  
Case in other court: USCA, 21-55519  
USCA, 22-56077

Date Filed: 02/09/2018  
Date Terminated: 09/21/2022  
Jury Demand: Plaintiff  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

Cause: 42:1983cv Civil Rights Act - Civil Action for Deprivation  
of Rights

**Plaintiff**

**Darryl Cotton**  
*an individual*

represented by **Darryl Cotton**  
6176 Federal Blvd.  
San Diego, CA 92114  
619-954-4447  
PRO SE

**Jacob Austin**  
Law Office of Jacob Austin  
PO Box 231189  
San Diego, CA 92193  
619-357-6850  
Fax: 888-357-8501  
Email: JacobAustinLaw@outlook.com  
*TERMINATED: 10/22/2021*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Larry Geraci**  
*an individual*  
*TERMINATED: 11/22/2021*

represented by **James D Crosby**  
James D. Crosby, Attorney at Law  
550 West C Street  
Suite 620  
San Diego, CA 92101  
619-450-4149  
Email: crosby@crosbyattorney.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Rebecca Berry**  
*an individual*  
*TERMINATED: 11/22/2021*

represented by **James D Crosby**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**ER\_69**

**Gina Austin**  
*an individual*

represented by **Douglas A Pettit**  
Pettit Kohn Ingrassia & Lutz PC  
11622 El Camino Real  
Suite 300  
San Diego, CA 92130  
(858)755-8500  
Fax: (858)755-8504  
Email: DPettit@PettitKohn.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Julia Dalzell**  
11622 El Camino Real  
Suite 300  
San Diego, CA 92130  
858-755-8500  
Email: jdalzell@pettitkohn.com  
*TERMINATED: 06/24/2021*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Michelle Lynn Bains**  
Wilson Elser Moskowitz Edelman & Dicker  
LLP  
401 West A Street  
Suite 1900  
San Diego, CA 92101  
619-321-6208  
Email: michelle.bains@wilsonelser.com  
*TERMINATED: 01/18/2022*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Austin Legal Group**  
*a professional corporation*  
*TERMINATED: 05/13/2020*

represented by **Julia Dalzell**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Michael Weinstein**  
*an individual*  
*TERMINATED: 11/22/2021*

represented by **Gregory Brian Emdee**  
Kjar McKenna & Stockalper  
841 Apollo Street  
Suite 100  
El Segundo, CA 90245  
424-217-3026  
Email: gemdee@kmslegal.com  
*TERMINATED: 11/22/2021*  
*LEAD ATTORNEY*

**Defendant**

**Scott H. Toothacre**  
*an individual*  
*TERMINATED: 05/13/2020*

**Defendant****Ferris & Britton***a professional corporation**TERMINATED: 05/13/2020***Defendant****City of San Diego***a public entity**TERMINATED: 05/13/2020***Defendant****Does 1 through 10***inclusive**TERMINATED: 05/13/2020***Defendant****Cynthia Bashant***an individual**TERMINATED: 11/22/2021***Defendant****Joel Wohlfeil***an individual**TERMINATED: 11/22/2021*

represented by **Carmela E. Duke**  
Superior Court of California, County of San  
Diego  
1100 Union Street  
San Diego, CA 92101  
619-844-2382  
Email: carmela.duke@sdcourt.ca.gov  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant****Jessica McElfresh***an individual*

represented by **Laura E. Stewart**  
Walsh Mckean Furcolo LLP  
550 West C Street  
Suite 950  
San Diego, CA 92101-8569  
(619) 232-8486  
Fax: (619) 232-2691  
Email: lstewart@wmflp.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant****David Demian***an individual*

represented by **Corinne Bertsche**  
Lewis Brisbois Bisgaard & Smith LLP  
550 West C Street  
Suite 1700  
San Diego, CA 92101  
619-699-4905  
Fax: 619-233-8627  
Email:  
Corinne.Bertsche@lewisbrisbois.com

LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

**Defendant**

**Does 1-50**  
*inclusive*

Date Filed	#	Docket Text
02/09/2018	<u>1</u>	COMPLAINT with Jury Demand against Gina Austin, Austin Legal Group, Rebecca Berry, City of San Diego, DOES 1 through 10, Ferris & Britton, Larry Geraci, Scott H. Toothacre, Michael Weinstein, IFP Filed, filed by Darryl Cotton. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4.1, # <u>6</u> Exhibit 4.2, # <u>7</u> Exhibit 4.3, # <u>8</u> Exhibit 4.4, # <u>9</u> Exhibit 4.5, # <u>10</u> Exhibit 4.6, # <u>11</u> Exhibit 5, # <u>12</u> Exhibit 6, # <u>13</u> Exhibit 7, # <u>14</u> Exhibit 8, # <u>15</u> Exhibit 9, # <u>16</u> Exhibit 10, # <u>17</u> Exhibit 11, # <u>18</u> Exhibit 12, # <u>19</u> Exhibit 13, # <u>20</u> Exhibit 14, # <u>21</u> Exhibit 15.1, # <u>22</u> Exhibit 15.2, # <u>23</u> Exhibit 15.3, # <u>24</u> Exhibit 15.4, # <u>25</u> Exhibit 16)  The new case number is 3:18-cv-325-GPC-MDD. Judge Gonzalo P. Curiel and Magistrate Judge Mitchell D. Dembin are assigned to the case.(lrc) (jao). (Entered: 02/12/2018)
02/09/2018	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Darryl Cotton. (lrc) (jao). (Entered: 02/12/2018)
02/09/2018	<u>3</u>	MOTION for Temporary Restraining Order by Darryl Cotton. (Attachments: # <u>1</u> Memorandum in Support of Darryl Cotton's Ex Parte Application for Temporary Restraining Order, # <u>2</u> Declaration of Darryl Cotton, # <u>3</u> Request for Judicial Notice in Support of Temporary Restraining Order, # <u>4</u> Exhibit 1.1, # <u>5</u> Exhibit 1.2, # <u>6</u> Exhibit 1.3, # <u>7</u> Exhibit 1.4, # <u>8</u> Exhibit 1.5, # <u>9</u> Exhibit 1.6, # <u>10</u> Exhibit 1.7, # <u>11</u> Exhibit 2, # <u>12</u> Exhibit 3, # <u>13</u> Exhibit 4, # <u>14</u> Exhibit 5, # <u>15</u> Exhibit 6, # <u>16</u> Exhibit 7, # <u>17</u> Exhibit 8) (lrc) (jao). (Entered: 02/12/2018)
02/20/2018	<u>4</u>	Notice of Document Discrepancies and Order Thereon by Judge Gonzalo P. Curiel Accepting Document: Supplemental Information, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), Supplemental documents require court order. Nunc Pro Tunc 2/13/18. Signed by Judge Gonzalo P. Curiel on 2/20/18.(All non-registered users served via U.S. Mail Service)(dlg) (Entered: 02/20/2018)
02/20/2018	<u>5</u>	SUPPLEMENTAL DOCUMENT by Darryl Cotton re <u>3</u> MOTION for Temporary Restraining Order. Nunc pro tunc 2/13/18 (dlg) (Entered: 02/20/2018)
02/21/2018	<u>6</u>	MOTION to Appoint Counsel by Darryl Cotton. (dlg) (Entered: 02/22/2018)
02/28/2018	<u>7</u>	ORDER Granting <u>2</u> Motion for Leave to Proceed in forma pauperis; Sua Sponte Staying the Case Pursuant to the Colorado River Doctrine; Denying <u>3</u> Motion for Temporary Restraining Order; and Denying <u>6</u> Motion to Appoint Counsel. Plaintiff shall notify the Court promptly upon final judgment in the state court action. Signed by Judge Gonzalo P. Curiel on 2/28/18. (All non-registered users served via U.S. Mail Service)(dlg) (Entered: 02/28/2018)
12/23/2019	<u>8</u>	Plaintiff's Ex Parte Application for (1) Lift of Stay of this Proceeding; (2) Appointment of Counsel; and (3) Injunctive Relief by Darryl Cotton. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3, # <u>5</u> Exhibit 4, # <u>6</u> Exhibit 5, # <u>7</u> Exhibit 6, # <u>8</u> Exhibit 7, # <u>9</u> Exhibit 8, # <u>10</u> Exhibit 9, # <u>11</u> Exhibit 10, # <u>12</u> Exhibit 11,



		# <u>13</u> Exhibit 12)(anh) Modified on 1/16/2020 (jmo). Modified on 1/16/2020 (jmo). Added MOTION for Preliminary Injunction on 1/16/2020 (jmo). (Entered: 12/26/2019)
01/09/2020	<u>9</u>	MINUTE ORDER OF RECUSAL. Judge Gonzalo P. Curiel is no longer assigned. Case randomly reassigned to Judge Thomas J. Whelan for all further proceedings. The new case number is 18cv0325-W(MDD).(All non-registered users served via U.S. Mail Service)(no document attached) (jsp) (Entered: 01/09/2020)
01/10/2020	<u>10</u>	MINUTE ORDER OF RECUSAL. Judge Thomas J. Whelan is no longer assigned. Case randomly reassigned to Judge Cynthia Bashant for all further proceedings. The new case number is 18cv325 BAS (MDD).(All non-registered users served via U.S. Mail Service) (no document attached) (jcj) (Entered: 01/10/2020)
01/15/2020	<u>11</u>	ORDER (1) Granting Plaintiff's Ex Parte Application to Lift the Stay in the Case; (2) Directing U.S. Marshall to Effect Service; and (3) Denying Plaintiff's Request for Injunctive Relief (ECF No. <u>8</u> ). Signed by Judge Cynthia Bashant on 1/15/20. (All non-registered users served via U.S. Mail Service. IFP packet mailed to Plaintiff) (Certified Copy to USM) (jmo) (dsn) (Entered: 01/16/2020)
01/16/2020	<u>12</u>	Summons Issued. <b>Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. Summons will be mailed to plaintiffs not receiving notice electronically.</b> (Attachments: # <u>1</u> IFP letter)(jmo) (dsn) (Entered: 01/16/2020)
04/09/2020	<u>13</u>	Ex Parte Application for Reconsideration re: Appointment of Counsel and Leave to Amend Complaint, by Darryl Cotton. (jmo) (Additional attachment(s) added on 4/15/2020: # <u>1</u> Declaration of Darryl Cotton in Support of Ex Parte Application for Reconsideration) (jmo) (dlg). (Entered: 04/15/2020)
04/16/2020	<u>14</u>	ORDER Denying Ex Parte Motion for Appointment of Counsel (ECF No. <u>13</u> ). Signed by Judge Cynthia Bashant on 4/15/20. (All non-registered users served via U.S. Mail Service)(jmo) (dlg). (Entered: 04/16/2020)
05/06/2020	<u>15</u>	<b>** WITHDRAWN BY FILER PER NOTICE OF WITHDRAWAL OF DOCUMENT <u>17</u> **</b> MOTION to Dismiss for Failure to State a Claim by Gina Austin. (Dalzell, Julia)Attorney Julia Dalzell added to party Gina Austin(pty:dft) (jmo). Modified on 5/11/2020 (jmo). (Entered: 05/06/2020)
05/06/2020	<u>16</u>	MOTION to Dismiss for Failure to State a Claim by Gina Austin, Austin Legal Group. (Attachments: # <u>1</u> Memo of Points and Authorities Memorandum of Points and Authorities in Support of Motion to Dismiss, # <u>2</u> Request for Judicial Notice Request for Judicial Notice in Support of Motion to Dismiss with Exhibits 1-3, # <u>3</u> Declaration Declaration of Julia Dalzell in Support of Motion to Dismiss with Exhibits 1-9, # <u>4</u> Proof of Service Certificate of Service)(Dalzell, Julia)Attorney Julia Dalzell added to party Austin Legal Group(pty:dft) <b>**QC mailer sent re possible duplicate motion of ECF. No. 15 on 5/7/2020 (jmo).</b> (Entered: 05/06/2020)
05/07/2020	<u>17</u>	NOTICE of Withdrawal of Document No. 15 by Gina Austin, Austin Legal Group (Dalzell, Julia) (jmo). (Entered: 05/07/2020)
05/13/2020	<u>18</u>	Plaintiff's First Amended COMPLAINT with Jury Demand against Gina Austin, Cynthia Bashant, Rebecca Berry, David Demian, Larry Geraci, Jessica McElfresh, Michael Weinstein, Joel Wohlfeil, filed by Darryl Cotton. (Attachments: # <u>1</u> Amended Civil Cover Sheet)New Summons Requested. (jmo) (dlg). (Entered: 05/14/2020)
05/14/2020	<u>19</u>	Amended Summons Issued. <b>Counsel receiving this notice electronically should print this summons and serve it in</b>

		<b>accordance with Rule 4, Fed.R.Civ.P and LR 4.1. Summons will be mailed to plaintiffs not receiving notice electronically.</b> (jmo)(dlg). (Entered: 05/14/2020)
05/14/2020	<u>20</u>	ORDER Terminating as Moot Motion to Dismiss (ECF No. <u>16</u> ). Signed by Judge Cynthia Bashant on 5/14/20. (All non-registered users served via U.S. Mail Service)(jmo) (dlg). (Entered: 05/14/2020)
05/19/2020	<u>21</u>	Notice of Document Discrepancies and Order Thereon by Judge Cynthia Bashant Accepting Document: Notice of Errata, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: Civ.L. Rule 5.2 - Missing Proof of Service; Other - Improper Withdrawal of Document (Notice of Errata). Nunc Pro Tunc 5/14/20. Signed by Judge Cynthia Bashant on 5/19/20.(All non-registered users served via U.S. Mail Service)(jmo) (Entered: 05/19/2020)
05/19/2020	<u>22</u>	Exhibits to First Amended Complaint (ECF No. <u>18</u> ), by Darryl Cotton. Nunc Pro Tunc 5/14/20. (All non-registered users served via U.S. Mail Service)(jmo) (Entered: 05/19/2020)
05/27/2020	<u>23</u>	ORDER OF TRANSFER. Magistrate Judge Mitchell D. Dembin is no longer assigned. Case reassigned to Magistrate Judge Daniel E. Butcher for all further Magistrate Judge proceedings. The new case number is 18cv325-BAS-DEB. Signed by Magistrate Judge Mitchell D. Dembin on 5/27/20.(All non-registered users served via U.S. Mail Service) (jmo) (Entered: 05/27/2020)
05/27/2020	<u>24</u>	MOTION to Dismiss for Failure to State a Claim by Gina Austin. (Attachments: # <u>1</u> Memo of Points and Authorities in Support of Motion to Dismiss Plaintiff's First Amended Complaint, # <u>2</u> Declaration of Julia Dalzell in Support of Motion to Dismiss, # <u>3</u> Request for Judicial Notice in Support of Motion to Dismiss with Exhibits 1-5, # <u>4</u> Proof of Service of Defendant Gina M. Austin's Motion to Dismiss Plaintiff's First Amended Complaint)(Dalzell, Julia) (jmo). (Entered: 05/27/2020)
06/26/2020	<u>25</u>	<b>**DOCUMENT WITHDRAWN BY FILER PER NOTICE OF WITHDRAWAL <u>28</u> **</b> MOTION to Dismiss for Failure to State a Claim by Michael Weinstein. (Emdee, Gregory)Attorney Gregory Brian Emdee added to party Michael Weinstein(pty:dft.) Modified on 7/2/2020 to withdraw document (jmo). (Entered: 06/26/2020)
06/26/2020	<u>26</u>	MOTION to Dismiss for Failure to State a Claim by Michael Weinstein. (Attachments: # <u>1</u> Request for Judicial Notice in Support of Motion to Dismiss by Def. Micahel Weinstein, # <u>2</u> Exhibit 1 Spec. Verdict form No. 1 filed July 16, 2019, # <u>3</u> Exhibit 2 Spec. Verdict form No. 2 filed July 16, 2019, # <u>4</u> Exhibit 3 Not Entry of Judgment filed Aug 20, 2019, # <u>5</u> Exhibit 4 Complaint Geraci v Cotton Filed March 21 2017, # <u>6</u> Exhibit 5 Sec Amend Complaint Geraci v Cotton Filed Aug 25 2017, # <u>7</u> Exhibit 6 Pet for Alternative Writ of Mandate Filed Oct 6 2017, # <u>8</u> Exhibit 7 Complaint Cotton v Geraci Filed February 8 2018, # <u>9</u> Exhibit 8 Order to Stay Filed February 28 2018, # <u>10</u> Exhibit 9 Complaint Cotton v Geraci Filed December 6 2018, # <u>11</u> Exhibit 10 Order Dismissing Cotton v Geraci Filed May 14 2019, # <u>12</u> Exhibit 11 Ex Parte Application Cotton v Geraci Filed December 23 2019, # <u>13</u> Exhibit 12 Order Granting Ex Parte Cotton v Geraci Filed January 15 2020, # <u>14</u> Exhibit 13 First Amended Complaint Cotton v Geraci Filed May 13 2020)(Emdee, Gregory). <b>**QC Mailer set re duplicate motion filed and if in error to withdraw motion 25 or 26 (jmo).</b> (Entered: 06/26/2020)
06/29/2020	<u>27</u>	Plaintiff Darryl Cotton's Memorandum of Points and Authorities (1) In Opposition to Defendant Gina M. Austin's Motion to Dismiss Plaintiff's First Amended Complaint and (2) Request for Sanctions re <u>24</u> , filed by Darryl Cotton. (jmo) (Entered: 07/01/2020)
07/01/2020	<u>28</u>	NOTICE OF WITHDRAWAL OF DOCUMENT by Michael Weinstein re <u>25</u> MOTION to Dismiss for Failure to State a Claim filed by Michael Weinstein . (Emdee, Gregory)



		(jmo). (Entered: 07/01/2020)
07/06/2020	<u>29</u>	REPLY to Response to Motion re <u>24</u> MOTION to Dismiss for Failure to State a Claim filed by Gina Austin. (Attachments: # <u>1</u> Proof of Service)(Dalzell, Julia) (jmo). (Entered: 07/06/2020)
07/14/2020	<u>35</u>	NOTICE of Errata on Plaintiff Darryl Cotton's Request for Judicial Notice, by Darryl Cotton re <u>34</u> Request for Judicial Notice (All non-registered users served via U.S. Mail Service)(jmo) (Entered: 07/17/2020)
07/15/2020	<u>30</u>	Notice of Document Discrepancies and Order Thereon by Judge Cynthia Bashant Accepting Document: Plaintiff Darryl Cottons Memorandum of Points and Authorities (1) In opposition to Defendant Michael Weinstains Motion to Dismiss Plaintiffs First Amended Complaint and (2) Request for Sanctions, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: Civ.L. Rule 5.2 - Missing Proof of Service; OTHER: Documents are not to be emailed to Chambers. Nunc Pro Tunc 7/14/20. Signed by Judge Cynthia Bashant on 7/15/20.(All non-registered users served via U.S. Mail Service)(jmo) (Entered: 07/17/2020)
07/15/2020	<u>31</u>	Plaintiff Darryl Cottons Memorandum of Points and Authorities (1) Inopposition to Defendant Michael Weinstein's Motion to Dismiss Plaintiff's First Amended Complaint and (2) Request for Sanctions re <u>26</u> , filed by Darryl Cotton. Nunc Pro Tunc 7/14/20 (jmo) (Entered: 07/17/2020)
07/16/2020	<u>33</u>	Notice of Document Discrepancies and Order Thereon by Judge Cynthia Bashant Accepting Document: Request for Judicial Notice, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: FRCvP 11(a) Missing signature on filing LR 5.1(j) Improper title; Missing name, address, telephone. Nunc Pro Tunc 7/14/20. Signed by Judge Cynthia Bashant on 7/16/20.(All non-registered users served via U.S. Mail Service)(jmo) (Entered: 07/17/2020)
07/16/2020	<u>34</u>	REQUEST FOR JUDICIAL NOTICE by Darryl Cotton. Nunc Pro Tunc 7/14/20. (All non-registered users served via U.S. Mail Service)(jmo) (Entered: 07/17/2020)
07/17/2020	<u>32</u>	REPLY to Response to Motion re <u>26</u> MOTION to Dismiss for Failure to State a Claim filed by Michael Weinstein. (Emdee, Gregory) (jmo). (Entered: 07/17/2020)
08/03/2020	<u>36</u>	Plaintiff's Notice of Ex Parte Application and Ex Parte Application for Appointment of Counsel, by Darryl Cotton. (jmo) (Entered: 08/04/2020)
08/06/2020	<u>37</u>	Notice of Document Discrepancies and Order Thereon by Judge Cynthia Bashant Accepting Document: Motion to add page to Ex Parte, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: LR 5.1 - Improperly Titled; Document LR 5.2 - Missing Proof of Service. Nunc Pro Tunc 8/5/20. Signed by chambers of Judge Cynthia Bashant on 8/6/20.(All non-registered users served via U.S. Mail Service)(jmo) (Entered: 08/06/2020)
08/06/2020	<u>38</u>	MOTION to add page to Ex Parte Application <u>36</u> , by Darryl Cotton. Nunc Pro Tunc 8/5/20. (jmo) (Entered: 08/06/2020)
08/17/2020	<u>39</u>	RESPONSE in Opposition re <u>38</u> MOTION to Supplement, <u>36</u> MOTION to Appoint Counsel filed by Michael Weinstein. (Emdee, Gregory) (jmo). (Entered: 08/17/2020)
08/27/2020	<u>40</u>	Notice of Document Discrepancies and Order Thereon by Judge Cynthia Bashant Accepting Document: Plaintiff Pro Se Darryl Cottons Reply to Defendant Michael Weinstains Opposition to Plaintiffs Ex Parte Application for Appointment of Counsel, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), Civ. L. Rule 5.1: Missing time and date on motion and/or supporting documentation, OTHER: Plaintiffs reply brief is 11.5 pages long, which exceeds the page limits set by the local rules. All

		further briefs must comply with the page limit requirements. Plaintiff must not email filings to the Courts efile e-mail address. Nunc Pro Tunc 8/21/20. Signed by chambers of Judge Cynthia Bashant on 8/27/20.(All non-registered users served via U.S. Mail Service)(jmo) (Entered: 08/27/2020)
08/27/2020	<u>41</u>	Plaintiff Pro Se Darryl Cotton's Reply to Defendant Michael Weinstein's Opposition to Plaintiff's Ex Parte Application for Appointment of Counsel, filed by Darryl Cotton. Nunc Pro Tunc 8/21/20. (jmo) (Entered: 08/27/2020)
09/24/2020	<u>42</u>	ORDER OF TRANSFER. Judge Cynthia Bashant is no longer assigned. Case reassigned to Judge Todd W. Robinson for all further proceedings. Pending hearings previously set before the original Judge have been transferred to the newly assigned Judge. The new case number is 18-cv-00325-TWR-DEB. Signed by Judge Cynthia Bashant on 9/24/20. (All non-registered users served via U.S. Mail Service)(jmo) (Entered: 09/24/2020)
10/30/2020	<u>43</u>	Notice of Document Discrepancies and Order Thereon by Judge Todd W. Robinson Accepting Document: Plaintiff's Motion for Order to Show Cause Re: Preliminary Injunction, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: Civ.L. Rule 5.2 - Missing Proof of Service. Nunc Pro Tunc Plaintiff's Motion for Order to Show Cause Re: Preliminary Injunction. Signed by Judge Todd W. Robinson on 10/30/20.(All non-registered users served via U.S. Mail Service)(dlg) (Entered: 10/30/2020)
10/30/2020	<u>44</u>	Plaintiff's Motion for Order to Show Cause Re: Preliminary Injunction by Darryl Cotton. Nunc pro tunc 10/27/20 (dlg) (Entered: 10/30/2020)
11/03/2020	<u>45</u>	Notice of Document Discrepancies and Order Thereon by Judge Todd W. Robinson Accepting Document: Notice of Ex Parte Application, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), Civ.L. Rule 5.2 - Missing Proof of Service; Other: Missing Declaration or Affidavit; OTHER: Sur-Reply. Nunc Pro Tunc 10/29/2020. Signed by Chambers of Judge Todd W. Robinson on 11/3/2020.(All non-registered users served via U.S. Mail Service)(mme) (Entered: 11/04/2020)
11/03/2020	<u>46</u>	Ex Parte Application by Darryl Cotton. Nunc Pro Tunc 10/29/2020 (mme) (Entered: 11/04/2020)
11/03/2020	<u>47</u>	Notice of Document Discrepancies and Order Thereon by Judge Todd W. Robinson Accepting Document: Notice of Errata, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), LR 5.1 Improper format; Missing hearing date and time. Nunc Pro Tunc 10/30/2020. Signed by Chambers of Judge Todd W. Robinson on 11/3/2020.(All non-registered users served via U.S. Mail Service)(mme) (Entered: 11/04/2020)
11/03/2020	<u>48</u>	NOTICE of Errata by Darryl Cotton re <u>44</u> . Nunc Pro Tunc 10/30/2020 (mme) (Entered: 11/04/2020)
12/18/2020	<u>49</u>	SUMMONS Returned Executed, Joel Wohlfeil served. (jmr) (jms). (Entered: 12/21/2020)
01/04/2021	<u>50</u>	MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> by Joel Wohlfeil. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Request for Judicial Notice with Exhibits A-D, # <u>3</u> Declaration of Carmela E. Duke, # <u>4</u> Proof of Service)(Duke, Carmela)Attorney Carmela E. Duke added to party Joel Wohlfeil(pty:dft) (jmr). (Entered: 01/04/2021)
01/05/2021	<u>51</u>	SUMMONS Returned Executed, Joel Wohlfeil served. (jmr)(jms). (Entered: 01/05/2021)
01/07/2021	<u>52</u>	Notice of Document Discrepancies and Order Thereon by Judge Todd W. Robinson Accepting Document: Plaintiffs Notice of Ex Parte Application and Application for an Expedited Hearing on Plaintiffs Motions Pending Before this Court; Memorandum of Points and Authorities; Declaration of Darryl Cotton and Exhibits Thereto, from Plaintiff



		Darryl Cotton. Non-compliance with local rule(s), OTHER: LR 83.3(g)(2) - Declaration or Affidavit of notice to opposing party not included within the Ex Parte motion. Nunc Pro Tunc 12/29/2020. Signed by Judge Todd W. Robinson on 12/7/2021.(All non-registered users served via U.S. Mail Service)(jmr) (jms). (Entered: 01/07/2021)
01/07/2021	<u>53</u>	Plaintiffs Notice of Ex Parte Application and Application for an Expedited Hearing on Plaintiffs Motions Pending Before this Court; Memorandum of Points and Authorities; Declaration of Darryl Cotton and Exhibits Thereto by Darryl Cotton. NUNC PRO TUNC 12/29/2020 (jmr) (jms). (Entered: 01/07/2021)
01/19/2021	<u>54</u>	Notice of Document Discrepancies and Order Thereon by Judge Todd W. Robinson Accepting Document: Opposition to Motion to Dismiss t/w Request for Judicial Notice, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: Civ.L. Rule 7.1(h) - Missing table of contents and/or table of authorities;. Nunc Pro Tunc 1/11/2021. (sxa) (Entered: 01/19/2021)
01/19/2021	<u>55</u>	Darryl Cotton's Opposition re <u>50</u> MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> with Attachment REQUEST for Judicial Notice in Support of Darryl Cotton's Opposition filed by Darryl Cotton. Nunc Pro Tunc 1/11/2021. (sxa) Modified on 1/21/2021 to rearrange documents and update docket text to reflect (jms) (Entered: 01/19/2021)
01/20/2021	<u>56</u>	USM 285 form - Certificate of Service re ECF <u>55</u> . (sxa) (Entered: 01/20/2021)
01/28/2021	<u>57</u>	USM 285 form - Summons Returned Executed re ECF <u>18</u> . Modified on 2/25/2021 to correct text (sxa). (Entered: 01/28/2021)
01/28/2021	<u>58</u>	USM 285 form - Summons Returned Executed re ECF <u>18</u> . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	<u>59</u>	USM 285 form - Summons Returned Executed re ECF <u>18</u> . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	<u>60</u>	USM 285 form - Summons Returned Executed re ECF <u>18</u> . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	<u>61</u>	USM 285 form - Summons Returned Executed re ECF <u>18</u> . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	<u>62</u>	USM 285 form - Summons Returned Executed re ECF <u>18</u> . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	<u>63</u>	USM 285 form - Summons Returned Executed re ECF <u>18</u> . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
02/08/2021	<u>64</u>	MOTION to Dismiss for Lack of Jurisdiction <i>and Statement of Interest Regarding Judicial Immunity</i> by United States of America. (Attachments: # <u>1</u> Proof of Service) (Parker, Katherine)Attorney Katherine L. Parker added to party United States of America(pty:ip) (sxa). (Entered: 02/08/2021)
02/11/2021	<u>65</u>	MOTION to Dismiss for Failure to State a Claim by Jessica McElfresh. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Declaration of Laura Stewart, # <u>3</u> Proof of Service)(Stewart, Laura)Attorney Laura E. Stewart added to party Jessica McElfresh(pty:dft) (sxa). (Entered: 02/11/2021)
02/11/2021	<u>66</u>	MOTION to Dismiss for Failure to State a Claim by Rebecca Berry, Larry Geraci. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Request for Judicial Notice, # <u>3</u> Exhibit, # <u>4</u> Proof of Service)(Crosby, James)Attorney James D Crosby added to party

		Rebecca Berry(pty:dft), Attorney James D Crosby added to party Larry Geraci(pty:dft) (sxa). (Entered: 02/11/2021)
02/11/2021	<u>67</u>	MOTION to Dismiss for Failure to State a Claim by David Demian. (Attachments: # <u>1</u> Notice, # <u>2</u> Declaration of Corinne C. Bertsche, # <u>3</u> Declaration of David Demian, # <u>4</u> Declaration of Alexandria Quindt, # <u>5</u> Request for Judicial Notice, # <u>6</u> Proof of Service) (Bertsche, Corinne)Attorney Corinne Bertsche added to party David Demian (pty:dft) (sxa). (Entered: 02/11/2021)
02/25/2021	<u>68</u>	Notice of Document Discrepancies and Order Thereon by Judge Todd W. Robinson Accepting Document: Application for Entry of Default on Michael Weinstein, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: No provisions for acceptance, per FRCP 55 - dispositive motion filed by Defendant Michael Weinstein, ecf 26. Nunc Pro Tunc 2/24/21. (All non-registered users served via U.S. Mail Service)(sxa) (Entered: 02/25/2021)
02/25/2021	<u>69</u>	Request for Entry of Clerk Default against Michael Weinstein. Nunc Pro Tunc 2/24/2021. (sxa)(No Default issues due to dispositive motion filed by Defendant Michael Weinstein, ecf 26 ) (Entered: 02/25/2021)
03/11/2021	<u>70</u>	ORDER Denying <u>36</u> <u>38</u> Plaintiff's Ex Parte Motion for Appointment of Counsel. Signed by Judge Todd W. Robinson on 3/11/21. (All non-registered users served via U.S. Mail Service)(sxa) (Entered: 03/11/2021)
03/17/2021	<u>71</u>	ORDER Granting <u>24</u> <u>26</u> Motions to Dismiss. Signed by Judge Todd W. Robinson on 3/16/21. (All non-registered users served via U.S. Mail Service)(sxa) (Entered: 03/17/2021)
04/07/2021	<u>72</u>	RESPONSE in Support re <u>65</u> MOTION to Dismiss for Failure to State a Claim <i>and No Opposition by Plaintiff</i> filed by Jessica McElfresh. (Attachments: # <u>1</u> Proof of Service) (Stewart, Laura) (sxa). (Entered: 04/07/2021)
04/07/2021	<u>73</u>	REPLY - Other re <u>55</u> Response in Opposition to Motion, <u>50</u> MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> filed by Joel Wohlfeil. (Attachments: # <u>1</u> Proof of Service)(Duke, Carmela) (sxa). (Entered: 04/07/2021)
04/14/2021	<u>74</u>	RESPONSE in Support re <u>65</u> MOTION to Dismiss for Failure to State a Claim <i>re Plaintiff's First Amended Complaint</i> filed by Jessica McElfresh. (Attachments: # <u>1</u> Proof of Service)(Stewart, Laura) (sxa). (Entered: 04/14/2021)
04/15/2021	<u>75</u>	Notice of Document Discrepancies and Order Thereon by Judge Todd W. Robinson Accepting Document: Opposition to Motion to Dismiss First Amended Complaint, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: Not timely per TWR chambers. Nunc Pro Tunc 4/7/2021. Signed by Judge Todd W. Robinson on 4/14/2021. (All non-registered users served via U.S. Mail Service)(jmr) (Entered: 04/15/2021)
04/15/2021	<u>76</u>	Opposition to Motion to Dismiss First Amended Complaint filed by Darryl Cotton. NUNC PRO TUNC 4/7/2021 (jmr) (Entered: 04/15/2021)
04/15/2021	<u>77</u>	ORDER Continuing Hearing on Defendant's Motion to Dismiss. Motion Hearings reset for 5/19/2021 at 01:30 PM before Judge Todd W. Robinson. Signed by Judge Todd W. Robinson on 4/15/21.(All non-registered users served via U.S. Mail Service)(sxa) (Entered: 04/15/2021)
05/05/2021	<u>78</u>	REPLY - Other re <u>67</u> MOTION to Dismiss for Failure to State a Claim filed by David Demian. (Bertsche, Corinne)(sxa). (Entered: 05/05/2021)
05/07/2021	<u>79</u>	Notice of Document Discrepancies and Order Thereon by Judge Todd W. Robinson Accepting Document: DARRYL COTTON'S OMNIBUS OPPOSITION TO:(1)



		CYNTHIA BASHANT'S STATEMENT OF INTEREST AND MOTION TO DISMISS; (2) LARRY GERACI AND REBECCA BERRY MOTION TO DISMISS FIRST AMENDED COMPLAINT; AND(3) DAVID DEMIAN'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: LR 5.1(j)(4) Incorrect hearing time and date listed. Nunc Pro Tunc 5/5/21. (All non-registered users served via U.S. Mail Service) (sxa) (Entered: 05/07/2021)
05/07/2021	<u>80</u>	Darryl Cotton's Omnibus Opposition re <u>50</u> MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> filed by Darryl Cotton. Nunc Pro Tunc 5/5/2021. (sxa) (Entered: 05/07/2021)
05/10/2021	<u>81</u>	REPLY - Other re <u>80</u> Response in Opposition to Motion to Dismiss filed by David Demian. (Bertsche, Corinne)(sxa). (Entered: 05/10/2021)
05/12/2021	<u>82</u>	REPLY to Response to Motion re <u>64</u> MOTION to Dismiss for Lack of Jurisdiction <i>and Statement of Interest Regarding Judicial Immunity</i> filed by United States of America. (Attachments: # <u>1</u> Proof of Service)(Parker, Katherine) (mme). (Entered: 05/12/2021)
05/14/2021	<u>83</u>	ORDER vacating hearing and taking matters under submission without oral argument (ECF Nos. 5, 64-67). Signed by Judge Todd W. Robinson on 5/14/2021.(All non-registered users served via U.S. Mail Service)(jpp) (Entered: 05/14/2021)
05/14/2021	<u>84</u>	NOTICE OF APPEAL to the 9th Circuit by Darryl Cotton as to <u>71</u> Order. IFP Status. (Notice of Appeal electronically transmitted to the US Court of Appeals.) (akr). (Modified on 5/17/2021 to correct date filed.) (akr). (Entered: 05/17/2021)
05/19/2021	<u>85</u>	USCA Case Number 21-55519 for <u>84</u> Notice of Appeal to the 9th Circuit filed by Darryl Cotton. (akr) (Entered: 05/19/2021)
05/19/2021	<u>86</u>	USCA Time Schedule Order as to <u>84</u> Notice of Appeal to the 9th Circuit filed by Darryl Cotton. (akr) (Entered: 05/19/2021)
06/11/2021	<u>87</u>	ORDER of USCA as to <u>84</u> Notice of Appeal to the 9th Circuit filed by Darryl Cotton. A review of the record demonstrates that the USCA lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. Consequently, this appeal is dismissed for lack of jurisdiction. Dismissed. (akr) (Entered: 06/11/2021)
06/24/2021	<u>88</u>	NOTICE of Appearance by Douglas A Pettit on behalf of Gina Austin (Pettit, Douglas)Attorney Douglas A Pettit added to party Gina Austin(pty:dft) (zda). (Entered: 06/24/2021)
06/24/2021	<u>89</u>	NOTICE OF WITHDRAWAL OF APPEARANCE OF JULIA DALZELL by Gina Austin (Pettit, Douglas) (zda). (Entered: 06/24/2021)
06/24/2021	<u>90</u>	NOTICE of Appearance by Michelle Lynn Propst on behalf of Gina Austin (Propst, Michelle)Attorney Michelle Lynn Propst added to party Gina Austin(pty:dft) (zda). (Entered: 06/24/2021)
07/06/2021	<u>91</u>	MANDATE of USCA dismissing the appeal as to <u>84</u> Notice of Appeal to the 9th Circuit filed by Darryl Cotton. (akr) (Entered: 07/07/2021)
08/28/2021	<u>92</u>	NOTICE of Appearance <i>Special Appearance</i> by Jacob Austin on behalf of Darryl Cotton (Austin, Jacob)Attorney Jacob Austin added to party Darryl Cotton(pty:pla)(sxa). (Entered: 08/28/2021)
08/28/2021	<u>93</u>	Ex Parte MOTION to Appoint Counsel by Darryl Cotton. (Attachments: # <u>1</u> Declaration Declaration of Jacob P. Austin, # <u>2</u> Declaration Declaration of Darryl Cotton, # <u>3</u> Request for Judicial Notice RJN Exhibits 1-8, # <u>4</u> Request for Judicial Notice RJN Exhibits 9-12,

		# <u>5</u> Request for Judicial Notice RJN Exhibits 13-17)(Austin, Jacob)(sxa). (Entered: 08/28/2021)
08/30/2021	<u>94</u>	CERTIFICATE OF SERVICE by Darryl Cotton re <u>93</u> Ex Parte MOTION to Appoint Counsel (Austin, Jacob)(sxa). (Entered: 08/30/2021)
09/13/2021	<u>95</u>	NOTICE if Dismissal With Prejudice Pursuant to Federal Rules of Civil Procedure by Darryl Cotton. (sxa) (Entered: 09/13/2021)
10/22/2021	<u>96</u>	ORDER Granting Motions to Dismiss and denying Others as Moot. Plaintiff will have thirty (30) days from the date of this Order to file an amended complaint against Defendants Gina Austin, Jessica McElfresh, and David Demian. Signed by Judge Todd W. Robinson on 10/22/2021. (jms) (Entered: 10/22/2021)
11/22/2021	<u>97</u>	SECOND AMENDED COMPLAINT with Jury Demand against Gina M. Austin, Jessica McElfresh, David S. Demian, Does 1-50, filed by Darryl Cotton. (fth) (Entered: 11/23/2021)
11/22/2021		Per Second Amended Complaint Rebecca Berry (an individual), David Demian (an individual), Larry Geraci (an individual), Michael Weinstein (an individual), Joel Wohlfeil (an individual), Gina Austin (an individual) and Cynthia Bashant (an individual) terminated. (no document attached) (fth) (Entered: 11/23/2021)
12/06/2021	<u>98</u>	MOTION to Dismiss <i>Second Amended Complaint</i> by David Demian. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Declaration, # <u>3</u> Proof of Service)(Bertsche, Corinne) (fth). (Entered: 12/06/2021)
12/06/2021	<u>99</u>	MOTION to Dismiss for Failure to State a Claim by Gina Austin. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Declaration, # <u>3</u> Request for Judicial Notice, # <u>4</u> Proof of Service)(Propst, Michelle) (fth). (Entered: 12/06/2021)
12/06/2021	<u>100</u>	MOTION to Dismiss for Failure to State a Claim by Jessica McElfresh. (Attachments: # <u>1</u> Memo of Points and Authorities, # <u>2</u> Declaration of Laura Stewart, # <u>3</u> Request for Judicial Notice, # <u>4</u> Proof of Service)(Stewart, Laura) (fth). (Entered: 12/06/2021)
01/03/2022	<u>101</u>	ORDER OF TRANSFER: This case is transferred from the calendar of the Honorable Todd W. Robinson (TWR) to the calendar of the Honorable Jinsook Ohta (JO). All pending dates - whether before Judge Robinson or any magistrate judge - remain unchanged. The new case number is 18cv325 JO (DEB). Signed by Judge Todd W. Robinson on 01/03/2022.(All non-registered users served via U.S. Mail Service)(jcj) (Entered: 01/04/2022)
01/05/2022	<u>102</u>	Plaintiff's Notice of Ex Parte Application and Ex Parte Application for Extension of Time to File Amended Complaint; Declaration of Darryl Cotton; Memorandum of Points and Authorities by Darryl Cotton. (axc) (dlg). (Entered: 01/06/2022)
01/14/2022	<u>103</u>	Notice of Document Discrepancies and Order Thereon by Judge Jinsook Ohta Accepting Document: Plaintiff's Notice of Ex Parte Application and Ex parte Application for Extension of Time to File Amended Complaint; Declaration of Darryl Cotton; Memorandum of Points and Authorities, from Plaintiff Darryl Cotton. Non-compliance with local rule(s), OTHER: LR 5(1)(m) - All documents filed must be filed separately; multiple pleadings in one filing not proper. Nunc Pro Tunc 1/5/2022. Signed by Judge Jinsook Ohta on 1/14/2022.(All non-registered users served via U.S. Mail Service)(axc) (dlg). (Entered: 01/14/2022)
01/18/2022	<u>104</u>	NOTICE of Withdrawal of Appearance of Michelle Propst on Behalf of Defendant Gina M. Austin by Gina Austin (Pettit, Douglas) (zda). (Entered: 01/18/2022)

01/21/2022	<u>105</u>	RESPONSE in Opposition re <u>102</u> MOTION for Extension of Time to Amend <i>Complaint</i> filed by Jessica McElfresh. (Attachments: # <u>1</u> Proof of Service)(Stewart, Laura) (ddf). (Entered: 01/21/2022)
01/21/2022	<u>106</u>	OBJECTION by David Demian to <i>Plaintiff's Ex Parte for Extension to File Amended Complaint</i> . (Bertsche, Corinne) (ddf). (Entered: 01/21/2022)
01/24/2022	<u>107</u>	NOTICE of Joinder by Gina Austin and <i>Joinder of Defendants' McElfresh's and Demian's Oppositions to Plaintiff's ExParte Application of Time to File Amended Complaint</i> (Pettit, Douglas) (dlg). (Entered: 01/24/2022)
01/27/2022	<u>108</u>	REPLY to Response to Motion re <u>102</u> MOTION for Extension of Time to Amend filed by Darryl Cotton. (axc) (Entered: 01/28/2022)
01/28/2022	<u>109</u>	NOTICE of Errata on Plaintiff's Response to Defendant's Opposition to Plaintiff's Request for Extension of Time by Darryl Cotton (axc) (Entered: 01/28/2022)
01/28/2022	<u>110</u>	Notice of Document Discrepancies and Order Thereon by Judge Jinsook Ohta Accepting Document: Notice of Errata on Plaintiff's Response to Defendant's Opposition to Plaintiff's Request for Extension of Time. Non-compliance with local rule(s), OTHER: CivLR 15.1(a) - No provision for acceptance. Errata's Prohibited. Nunc Pro Tunc 1/28/2022. Signed by Judge Jinsook Ohta on 1/28/2022.(All non-registered users served via U.S. Mail Service)(axc) (Entered: 01/28/2022)
03/02/2022	<u>111</u>	ORDER Granting <u>102</u> Motion for Extension of Time. Motions to Dismiss Hearings rescheduled for 4/13/2022 at 9:00 AM before Judge Jinsook Ohta. Signed by Judge Jinsook Ohta on 3/2/22. (All non-registered users served via U.S. Mail Service)(dlg) (Entered: 03/02/2022)
03/30/2022	<u>112</u>	Plaintiff's Opposition to Defendant's Motion to Dismiss (ECF Docket Numbers <u>98</u> , <u>99</u> , <u>100</u> ) filed by Darryl Cotton. (axc) (Entered: 03/31/2022)
04/06/2022	<u>113</u>	REPLY to Response to Motion re <u>98</u> MOTION to Dismiss <i>Second Amended Complaint</i> filed by David Demian. (Bertsche, Corinne) (axc). (Entered: 04/06/2022)
04/06/2022	<u>114</u>	RESPONSE in Support re <u>100</u> MOTION to Dismiss for Failure to State a Claim filed by Jessica McElfresh. (Attachments: # <u>1</u> Proof of Service)(Stewart, Laura) (axc). (Entered: 04/06/2022)
04/06/2022	<u>115</u>	REPLY to Response to Motion re <u>99</u> MOTION to Dismiss for Failure to State a Claim filed by Gina Austin. (Pettit, Douglas) (axc). (Entered: 04/06/2022)
05/20/2022	<u>116</u>	Plaintiff's Notice Of Ex Parte Application And Application For Leave To File Electronically Via CM/ECF by Darryl Cotton. (ddf) (Entered: 05/23/2022)
09/21/2022	<u>117</u>	ORDER: The Court GRANTS Defendants motions to dismiss <u>98</u> <u>99</u> <u>100</u> and DISMISSES Plaintiffs SAC without leave to amend.Plaintiffs motion for leave to electronically file documents <u>116</u> is DENIED as moot. Signed by Judge Jinsook Ohta on 9/21/2022. (All non-registered users served via U.S. Mail Service)(exs) (jrm). (Entered: 09/21/2022)
09/21/2022	<u>118</u>	CLERK'S JUDGMENT. IT IS SO ORDERED AND ADJUDGED that The Court GRANTS Defendants motions to dismiss [Dkts. 98, 99, 100] and DISMISSES Plaintiffs SAC without leave to amend. Plaintiffs motion for leave to electronically file documents [Dkt. 116] is DENIED as moot.(All non-registered users served via U.S. Mail Service) (exs)(jrm). (Entered: 09/21/2022)
11/16/2022	<u>119</u>	NOTICE OF APPEAL to the 9th Circuit as to <u>117</u> Order on Motion to Dismiss, Order on Motion to Dismiss for Failure to State a Claim, Order on Motion for Leave to



		Electronically File Documents, <u>118</u> Clerk's Judgment, by Darryl Cotton. (Filing fee \$505, fee PAID, receipt CAS141866.) (Notice of Appeal electronically transmitted to US Court of Appeals.) (Attachments: # <u>1</u> Filing Fee Receipt)(smy1) (Entered: 11/17/2022)
11/21/2022	<u>120</u>	USCA Case Number 22-56077 for <u>119</u> Notice of Appeal to 9th Circuit, filed by Darryl Cotton. (Attachments: # <u>1</u> Attention All Parties and Counsel, # <u>2</u> Case Opening Packet) (All non-registered users served via U.S. Mail Service)(smy1)(jrd) (Entered: 11/22/2022)
11/21/2022	<u>121</u>	USCA Time Schedule Order as to <u>119</u> Notice of Appeal to 9th Circuit, filed by Darryl Cotton. (All non-registered users served via U.S. Mail Service)(smy1)(jrd) (Entered: 11/22/2022)

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12/09/2022 12:28:05			
<b>PACER Login:</b>	anniefraser	<b>Client Code:</b>	176-1154
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	3:18-cv-00325-JO-DEB
<b>Billable Pages:</b>	12	<b>Cost:</b>	1.20