

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.

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

**APPELLEE JESSICA CLAIRE McELFRESH'S MOTION TO DISMISS
APPEAL FOR LACK OF JURISDICTION**

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I.

INTRODUCTION

Plaintiff and appellant DARRYL COTTON (“plaintiff”) is appealing the District Court’s judgment dismissing his Second Amended Complaint against defendant and appellee JESSICA CLAIRE McELFRESH (“Ms. McElfresh”). Plaintiff’s appeal is untimely, so this Court lacks jurisdiction to consider it. Plaintiff’s appeal should therefore be dismissed.

II.

FACTS/PROCEDURAL HISTORY

Plaintiff filed a Complaint in the United States District Court for the Southern District of California against Ms. McElfresh and several other defendants and subsequently amended it twice. In the Second Amended Complaint, plaintiff alleged causes of action for violation of 42 U.S.C. § 1983 (violation of a person’s civil rights by a someone acting under color of state law) and 42 U.S.C. § 1985 (conspiring to intimidate/threaten a witness not to testify in federal court). (District Court Docket, “Doc.” No. 98).

Ms. McElfresh moved to dismiss both causes of action pursuant to Fed. R. Civ. Proc. 12(b)(6). (Doc. No. 100). In her Rule 12(b)(6) motion, Ms. McElfresh argued that the § 1983 cause of action failed to state a valid claim against her because plaintiff did not allege violation of any of his civil rights and Ms. McElfresh is a private attorney not a government actor acting under color of state law. Ms. McElfresh argued that the § 1985 cause of action fails because there were no allegations that Ms. McElfresh conspired with anybody to intimidate/threaten a witness not to testify in federal court.

In its Order dated September 21, 2022 (ER 3), the District Court held that Ms. McElfresh is a private attorney, not a state actor, and she did not conspire with any government official to deprive plaintiff of anything or intimidate any

witnesses, so she cannot be liable for any § 1983 or § 1985 violations. The District Court therefore granted Ms. McElfresh's Rule 12(b)(6) motion to dismiss without leave to amend and entered judgment in Ms. McElfresh's favor the same day. (ER 15).

Plaintiff filed this appeal on November 16, 2022. (ER 16).

III.

LEGAL ARGUMENT

This Court lacks jurisdiction to hear plaintiff's appeal because he did not file it within 30 days.

A notice of appeal must be filed within 30 days after entry of judgment. 28 U.S.C.S. § 2107(a); Fed. R. App. Proc. 4(a)(1)(A). This time limit is "both mandatory and jurisdictional." *Tillman v. Association of Apartment Owners of Ewa Apartments*, 234 F.3d 1087, 1089 (9th Cir. 2000); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007). The purpose of the deadline is to "set a definite point of time when litigation shall be at an end" and the Court is "not at liberty to overlook" the appellant's missing of the deadline, "no matter how compelling [his] argument may be." *Melendres v. Maricopa County*, 815 F.3d 645, 649 (9th Cir. 2016).

In the present case, the judgment dismissing plaintiff's Second Amended Complaint without leave to amend was entered on September 21, 2022 and plaintiff did not file his notice of appeal until November 16, 2022. Accordingly, plaintiff's appeal was not timely and must be dismissed.

IV.

CONCLUSION

For the foregoing reasons, Ms. McElfresh respectfully requests that the Court dismiss plaintiff's appeal.

Dated: December 23, 2022 Respectfully submitted,

WALSH MCKEAN FURCOLO LLP

By: _____

Laura Stewart

Attorneys for Defendant/Respondent JESSICA
CLAIRE McELFRESH


CERTIFICATE OF COMPLIANCE

Appellate Case No. 22-56077

I certify that Appellee Jessica McElfresh's Motion to Dismiss for Lack of Jurisdiction complies with Ninth Circuit Rule 27-1(1)(d) and Fed. R. App. P. 27(d)(2)(A) because it contains 519 words.

I certify that this Motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6).

Dated: December 23, 2022 WALSH MCKEAN FURCOLO LLP

By: 

Laura Stewart
Attorneys for Defendant/Respondent JESSICA
CLAIRE McELFRESH

**CERTIFICATE OF SERVICE
FOR CASE NUMBER 22-56077**

I hereby certify that on December 23, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

**APPELLEE JESSICA CLAIRE McELFRESH'S MOTION TO
DISMISS APPEAL FOR LACK OF JURISDICTION**

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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Dated: December 23, 2022


Michelle Davis

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,
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Appeal from a Judgment in the United States District Court
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**EXCERPTS OF RECORD
VOLUME 1 OF 1**

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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 I*”). 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.¹ 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
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27 ¹ 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.² 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

27
28 ² 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
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1 component of the statute that is inapplicable here.³) 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-*
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22
23 ³ 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.

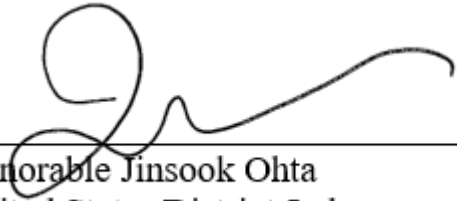
8 Second, the Court concludes that Plaintiff has failed to plead that Defendants injured
9 his ability to present an effective case in federal court. Plaintiff’s complaint focuses on
10 Ms. Young’s refusal to provide testimony in the *Cotton I* state court litigation, not the
11 federal litigation. Specifically, 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).

1 **IV. CONCLUSION**

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

5
6 **IT IS SO ORDERED.**

7
8 Dated: September 21, 2022

9
10 
11 Honorable Jinsook Ohta
12 United States District Judge
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United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Darryl Cotton, an individual

Plaintiff,

V.

Gina Austin, an individual;
Jessica McElfresh, an individual;
David Demian, an individual;
Does 1-50. inclusive

Defendant.

Civil Action No. 18cv00325-JO-DEB

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:

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.

Date: 9/21/22

CLERK OF COURT
JOHN MORRILL, Clerk of Court

By: s/ L. Sotelo

L. Sotelo, Deputy

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

**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.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Jessica McElfresh, an individual

Name(s) of counsel (if any):

Laura E. Stewart

Address: 550 West C Street, Ste. 950, San Diego, CA 92101

Telephone number(s): 619.232.8486

Email(s): lstewart@wmfllp.com

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

Appellees

Name(s) of party/parties:

David Demian, an individual

Name(s) of counsel (if any):

Corinne Bertsche

Address: 550 West C Street, Ste. 1700, San Diego, CA 92101

Telephone number(s): 619.699.4905

Email(s): Corinne.Bertsche@lewisbrisbois.com

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov



United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Darryl Cotton, an individual

Plaintiff,

V.

Gina Austin, an individual;
Jessica McElfresh, an individual;
David Demian, an individual;
Does 1-50. inclusive

Defendant.

Civil Action No. 18cv00325-JO-DEB

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:

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.

Date: 9/21/22

CLERK OF COURT
JOHN MORRILL, Clerk of Court

By: s/ L. Sotelo

L. Sotelo, Deputy

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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

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@wmfllp.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	8	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: # 1 Memo of Points and Authorities, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 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	9	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	10	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	11	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. 8). 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	12	Summons Issued. 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. (Attachments: # 1 IFP letter)(jmo) (dsn) (Entered: 01/16/2020)
04/09/2020	13	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: # 1 Declaration of Darryl Cotton in Support of Ex Parte Application for Reconsideration) (jmo) (dlg). (Entered: 04/15/2020)
04/16/2020	14	ORDER Denying Ex Parte Motion for Appointment of Counsel (ECF No. 13). 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	15	** WITHDRAWN BY FILER PER NOTICE OF WITHDRAWAL OF DOCUMENT 17 ** 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	16	MOTION to Dismiss for Failure to State a Claim by Gina Austin, Austin Legal Group. (Attachments: # 1 Memo of Points and Authorities Memorandum of Points and Authorities in Support of Motion to Dismiss, # 2 Request for Judicial Notice Request for Judicial Notice in Support of Motion to Dismiss with Exhibits 1-3, # 3 Declaration Declaration of Julia Dalzell in Support of Motion to Dismiss with Exhibits 1-9, # 4 Proof of Service Certificate of Service)(Dalzell, Julia)Attorney Julia Dalzell added to party Austin Legal Group(pty:dft) **QC mailer sent re possible duplicate motion of ECF. No. 15 on 5/7/2020 (jmo). (Entered: 05/06/2020)
05/07/2020	17	NOTICE of Withdrawal of Document No. 15 by Gina Austin, Austin Legal Group (Dalzell, Julia) (jmo). (Entered: 05/07/2020)
05/13/2020	18	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: # 1 Amended Civil Cover Sheet)New Summons Requested. (jmo) (dlg). (Entered: 05/14/2020)
05/14/2020	19	Amended Summons Issued. 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. (jmo)(dlg). (Entered: 05/14/2020)
05/14/2020	20	ORDER Terminating as Moot Motion to Dismiss (ECF No. 16). 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	21	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	22	Exhibits to First Amended Complaint (ECF No. 18), 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	23	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	24	MOTION to Dismiss for Failure to State a Claim by Gina Austin. (Attachments: # 1 Memo of Points and Authorities in Support of Motion to Dismiss Plaintiff's First Amended Complaint, # 2 Declaration of Julia Dalzell in Support of Motion to Dismiss, # 3 Request for Judicial Notice in Support of Motion to Dismiss with Exhibits 1-5, # 4 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	25	**DOCUMENT WITHDRAWN BY FILER PER NOTICE OF WITHDRAWAL 28 ** 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	26	MOTION to Dismiss for Failure to State a Claim by Michael Weinstein. (Attachments: # 1 Request for Judicial Notice in Support of Motion to Dismiss by Def. Micahel Weinstein, # 2 Exhibit 1 Spec. Verdict form No. 1 filed July 16, 2019, # 3 Exhibit 2 Spec. Verdict form No. 2 filed July 16, 2019, # 4 Exhibit 3 Not Entry of Judgment filed Aug 20, 2019, # 5 Exhibit 4 Complaint Geraci v Cotton Filed March 21 2017, # 6 Exhibit 5 Sec Amend Complaint Geraci v Cotton Filed Aug 25 2017, # 7 Exhibit 6 Pet for Alternative Writ of Mandate Filed Oct 6 2017, # 8 Exhibit 7 Complaint Cotton v Geraci Filed February 8 2018, # 9 Exhibit 8 Order to Stay Filed February 28 2018, # 10 Exhibit 9 Complaint Cotton v Geraci Filed December 6 2018, # 11 Exhibit 10 Order Dismissing Cotton v Geraci Filed May 14 2019, # 12 Exhibit 11 Ex Parte Application Cotton v Geraci Filed December 23 2019, # 13 Exhibit 12 Order Granting Ex Parte Cotton v Geraci Filed January 15 2020, # 14 Exhibit 13 First Amended Complaint Cotton v Geraci Filed May 13 2020)(Emdee, Gregory). **QC Mailer set re duplicate motion filed and if in error to withdraw motion 25 or 26 (jmo). (Entered: 06/26/2020)

06/29/2020	27	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 24 , filed by Darryl Cotton. (jmo) (Entered: 07/01/2020)
07/01/2020	28	NOTICE OF WITHDRAWAL OF DOCUMENT by Michael Weinstein re 25 MOTION to Dismiss for Failure to State a Claim filed by Michael Weinstein . (Emdee, Gregory) (jmo). (Entered: 07/01/2020)
07/06/2020	29	REPLY to Response to Motion re 24 MOTION to Dismiss for Failure to State a Claim filed by Gina Austin. (Attachments: # 1 Proof of Service)(Dalzell, Julia) (jmo). (Entered: 07/06/2020)
07/14/2020	35	NOTICE of Errata on Plaintiff Darryl Cotton's Request for Judicial Notice, by Darryl Cotton re 34 Request for Judicial Notice (All non-registered users served via U.S. Mail Service)(jmo) (Entered: 07/17/2020)
07/15/2020	30	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	31	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 26 , filed by Darryl Cotton. Nunc Pro Tunc 7/14/20 (jmo) (Entered: 07/17/2020)
07/16/2020	33	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	34	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	32	REPLY to Response to Motion re 26 MOTION to Dismiss for Failure to State a Claim filed by Michael Weinstein. (Emdee, Gregory) (jmo). (Entered: 07/17/2020)
08/03/2020	36	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	37	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	38	MOTION to add page to Ex Parte Application 36 , by Darryl Cotton. Nunc Pro Tunc 8/5/20. (jmo) (Entered: 08/06/2020)
08/17/2020	39	RESPONSE in Opposition re 38 MOTION to Supplement, 36 MOTION to Appoint Counsel filed by Michael Weinstein. (Emdee, Gregory) (jmo). (Entered: 08/17/2020)

08/27/2020	40	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	41	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	42	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	43	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	44	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	45	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	46	Ex Parte Application by Darryl Cotton. Nunc Pro Tunc 10/29/2020 (mme) (Entered: 11/04/2020)
11/03/2020	47	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	48	NOTICE of Errata by Darryl Cotton re 44 . Nunc Pro Tunc 10/30/2020 (mme) (Entered: 11/04/2020)
12/18/2020	49	SUMMONS Returned Executed, Joel Wohlfeil served. (jmr) (jms). (Entered: 12/21/2020)
01/04/2021	50	MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> by Joel Wohlfeil. (Attachments: # 1 Memo of Points and Authorities, # 2 Request for Judicial Notice with Exhibits A-D, # 3 Declaration of Carmela E. Duke, # 4 Proof of Service)(Duke,

		Carmela)Attorney Carmela E. Duke added to party Joel Wohlfeil(pty:dft) (jmr). (Entered: 01/04/2021)
01/05/2021	51	SUMMONS Returned Executed, Joel Wohlfeil served. (jmr)(jms). (Entered: 01/05/2021)
01/07/2021	52	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	53	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	54	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	55	Darryl Cotton's Opposition re 50 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	56	USM 285 form - Certificate of Service re ECF 55 . (sxa) (Entered: 01/20/2021)
01/28/2021	57	USM 285 form - Summons Returned Executed re ECF 18 . Modified on 2/25/2021 to correct text (sxa). (Entered: 01/28/2021)
01/28/2021	58	USM 285 form - Summons Returned Executed re ECF 18 . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	59	USM 285 form - Summons Returned Executed re ECF 18 . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	60	USM 285 form - Summons Returned Executed re ECF 18 . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	61	USM 285 form - Summons Returned Executed re ECF 18 . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	62	USM 285 form - Summons Returned Executed re ECF 18 . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
01/28/2021	63	USM 285 form - Summons Returned Executed re ECF 18 . Modified on 2/25/2021 to correct text (sxa) (Entered: 01/28/2021)
02/08/2021	64	MOTION to Dismiss for Lack of Jurisdiction <i>and Statement of Interest Regarding Judicial Immunity</i> by United States of America. (Attachments: # 1 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	65	MOTION to Dismiss for Failure to State a Claim by Jessica McElfresh. (Attachments: # 1 Memo of Points and Authorities, # 2 Declaration of Laura Stewart, # 3 Proof of Service)(Stewart, Laura)Attorney Laura E. Stewart added to party Jessica McElfresh(pty:dft) (sxa). (Entered: 02/11/2021)
02/11/2021	66	MOTION to Dismiss for Failure to State a Claim by Rebecca Berry, Larry Geraci. (Attachments: # 1 Memo of Points and Authorities, # 2 Request for Judicial Notice, # 3 Exhibit, # 4 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	67	MOTION to Dismiss for Failure to State a Claim by David Demian. (Attachments: # 1 Notice, # 2 Declaration of Corinne C. Bertsche, # 3 Declaration of David Demian, # 4 Declaration of Alexandria Quindt, # 5 Request for Judicial Notice, # 6 Proof of Service) (Bertsche, Corinne)Attorney Corinne Bertsche added to party David Demian (pty:dft) (sxa). (Entered: 02/11/2021)
02/25/2021	68	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	69	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	70	ORDER Denying 36 38 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	71	ORDER Granting 24 26 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	72	RESPONSE in Support re 65 MOTION to Dismiss for Failure to State a Claim <i>and No Opposition by Plaintiff</i> filed by Jessica McElfresh. (Attachments: # 1 Proof of Service) (Stewart, Laura) (sxa). (Entered: 04/07/2021)
04/07/2021	73	REPLY - Other re 55 Response in Opposition to Motion, 50 MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> filed by Joel Wohlfeil. (Attachments: # 1 Proof of Service)(Duke, Carmela) (sxa). (Entered: 04/07/2021)
04/14/2021	74	RESPONSE in Support re 65 MOTION to Dismiss for Failure to State a Claim <i>re Plaintiff's First Amended Complaint</i> filed by Jessica McElfresh. (Attachments: # 1 Proof of Service)(Stewart, Laura) (sxa). (Entered: 04/14/2021)
04/15/2021	75	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	76	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	77	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	78	REPLY - Other re 67 MOTION to Dismiss for Failure to State a Claim filed by David Demian. (Bertsche, Corinne)(sxa). (Entered: 05/05/2021)
05/07/2021	79	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	80	Darryl Cotton's Omnibus Opposition re 50 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	81	REPLY - Other re 80 Response in Opposition to Motion <i>to Dismiss</i> filed by David Demian. (Bertsche, Corinne)(sxa). (Entered: 05/10/2021)
05/12/2021	82	REPLY to Response to Motion re 64 MOTION to Dismiss for Lack of Jurisdiction <i>and Statement of Interest Regarding Judicial Immunity</i> filed by United States of America. (Attachments: # 1 Proof of Service)(Parker, Katherine) (mme). (Entered: 05/12/2021)
05/14/2021	83	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	84	NOTICE OF APPEAL to the 9th Circuit by Darryl Cotton as to 71 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	85	USCA Case Number 21-55519 for 84 Notice of Appeal to the 9th Circuit filed by Darryl Cotton. (akr) (Entered: 05/19/2021)
05/19/2021	86	USCA Time Schedule Order as to 84 Notice of Appeal to the 9th Circuit filed by Darryl Cotton. (akr) (Entered: 05/19/2021)
06/11/2021	87	ORDER of USCA as to 84 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	88	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	89	NOTICE OF WITHDRAWAL OF APPEARANCE OF JULIA DALZELL by Gina Austin (Pettit, Douglas) (zda). (Entered: 06/24/2021)
06/24/2021	90	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: Plaintiffs 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 Plaintiff's Ex Parte for Extension to File Amended <i>Complaint</i> . (Bertsche, Corinne) (ddf). (Entered: 01/21/2022)
01/24/2022	<u>107</u>	NOTICE of Joinder by Gina Austin and Joinder of Defendants' McElfresh's and Demian's Oppositions to Plaintiff's ExParte Application of Time to File Amended <i>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	118	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	119	NOTICE OF APPEAL to the 9th Circuit as to 117 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, 118 Clerk's Judgment, by Darryl Cotton. (Filing fee \$505, fee PAID, receipt CAS141866.) (Notice of Appeal electronically transmitted to US Court of Appeals.) (Attachments: # 1 Filing Fee Receipt)(smy1) (Entered: 11/17/2022)
11/21/2022	120	USCA Case Number 22-56077 for 119 Notice of Appeal to 9th Circuit, filed by Darryl Cotton. (Attachments: # 1 Attention All Parties and Counsel, # 2 Case Opening Packet) (All non-registered users served via U.S. Mail Service)(smy1)(jrd) (Entered: 11/22/2022)
11/21/2022	121	USCA Time Schedule Order as to 119 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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