

**No. 22-56077**

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**In the United States Court of  
Appeals for the Ninth Circuit**

DARRYL COTTON, individually,  
*Plaintiff and Appellant,*

v.

GINA M. AUSTIN, individually, JESSICA CLAIRE McELFRESH,  
individually, and DAVID S. DEMIAN, individually,  
*Defendants and Appellees.*

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Appeal from 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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**APPELLANTS OPPOSITION TO MOTIONS TO DISMISS  
APPEAL FOR LACK OF JURISDICTION BY RESPONDENT  
JESSICA CLAIRE MCELFRSH**

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**Darryl Cotton, Appellant, *Pro Se***  
6176 Federal Boulevard  
San Diego, California 92114  
Telephone: 619.954.4447  
151DarrylCotton@gmail.com

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**PARTIES IN INTEREST DISCLOSURE**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Cotton identifies the following parties that he knows or believes have an interest in the adjudication of this motion and case:

Gina M. Austin at Austin Legal Group, APC  
Arden Anderson at Austin Legal Group, APC  
Ethan T. Boyer at Austin Legal Group, APC  
Tamara M. Leetham at Austin Legal Group, APC  
Mara Elliott, City Attorney City of San Diego  
M. Travis Phelps, Deputy City Attorney City of San Diego  
Jana Will, Deputy City Attorney City of San Diego  
Michael Weinstein at Ferris & Britton  
Elyssa Kulas at Ferris & Britton  
Scott Toothacre at Ferris & Britton  
Carmela Duke, San Diego Superior Court  
Katherine Parker, DOJ\_OUSA  
Steven Wilson Blake at Blake Law Firm  
Laura E. Stewart at Walsh McKean Furcolo LLP  
Gregory B. Emdee at Kjar, McKenna & Stackalper  
Jon R. Schwalbach at Kjar, McKenna & Stackalper  
Eric R. Dietz at Gordon & Reese  
Tatiana Dupuy at Gordon & Reese  
Douglas Pettit at Pettit, Kohn Ingrassia, Lutz & Dolin  
Julia Dalzell at Pettit, Kohn Ingrassia, Lutz & Dolin  
Matthew C. Smith at Pettit, Kohn Ingrassia, Lutz & Dolin  
Kayla R. Sealey at Pettit, Kohn Ingrassia, Lutz & Dolin  
Kenneth Feldman, Lewis & Brisbois  
Tim J. Vanden Heuvel, Lewis & Brisbois  
David K. Demergian at Fitzmaurice, Demergian & Gagnon  
Steven A. Elia at Elia Law Firm  
Douglas Jaffe at Douglas Jaffe Law Offices  
Olga Y. Bryan at Ames Karanjia, LLP  
James R. Lance at Noonan Lance Boyer & Banach LLP  
Genevieve M. Ruch at Noonan Lance Boyer & Banach LLP

Steven A. Elia at Elia Law Firm  
Garret F. Groom at Elia Law Firm  
James Joseph at Elia Law Firm  
Maura Griffin - Aljabi Law Firm  
Andrew Flores at Law Offices  
Paul A. Beck - Law Offices of Paul A. Beck APC  
Charles F. Gorla at Gorla & Weber  
Gregory D. Hagen at Greg Hagen Law  
Dana M. Grimes at Grimes & Warwick  
Thomas J. Warwick Jr. at Grimes & Warwick  
Jay Temple at Grimes & Warwick  
Antonia F. Yoon - Kegel, Tobin & Truce  
Brian P. Funk at Law Office of Brian P. Funk  
Allen Robert Bloom at Law Office of Allen Bloom  
Daniel Watts at G10 Law  
Steven W. Galuppo at G10 Law

Date: January 3, 2023

Respectfully submitted,

By: /s/ Darryl Cotton

Darryl Cotton, Appellant, *Pro Se*

## **INTRODUCTION**<sup>1</sup>

“‘Fraud on the court’ is a claim that exists to protect the integrity of the judicial process, and therefore *a claim for fraud on the court cannot be time-barred.*” *Bowie v. Maddox*, 677 F. Supp. 2d 276, 278 (D.D.C. 2010) (emphasis added). Defendant attorney Jessica McElfresh’s (“McElfresh”) motion to dismiss should be denied because the judgments and orders they are based on are void. They are void because, *inter alia*, they were procured through acts that constitute a fraud on the court and cannot be timed barred.

Since March 2017, when *Cotton I*<sup>2</sup> was filed against plaintiff/appellant Darryl Cotton in State court, Cotton has been attempting to vindicate his rights in the State of California and Federal courts attempting to prove what is true as a matter of law: the *Cotton I* action was filed against Cotton as a sham to extort Cotton’s real property

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<sup>1</sup> This opposition sets forth the minimum facts required for this Court to adjudicate this matter. There are lots of other material and related facts that also give rise to legal grounds for relief, but Cotton is not capable of explaining them all.

<sup>2</sup> *Larry Geraci v. Darryl Cotton*, Superior Court of California, County of San Diego 37-2017-00010073-CU-BC-CTL (“Cotton I”).

(the “Property”) that qualifies for a lucrative cannabis dispensary license.

*Cotton I* was filed to extort the Property from Cotton as a matter of law because Lawrence Geraci has been sued and sanctioned at least three times by the City of San Diego (the “City”) for his owning/management of illegal dispensaries at his real properties. Consequently, pursuant to State and City laws, regulations and public policies, Geraci cannot own a conditional use permit (“CUP”) or license to operate a legal cannabis dispensary as a matter of law (the “Sanctions Issue”).

Geraci, in order to prevent Cotton from selling the Property to a third-party, fraudulently induced Cotton into entering an oral joint venture agreement and promised to provide Cotton, *inter alia*, a 10% equity position in the dispensary as consideration for the Property (the “JVA”). However, Geraci could not actually honor the JVA because he could not own a cannabis CUP because of the Sanctions Issue.

To unlawfully circumvent the Sanctions Issue, Geraci’s cannabis attorney, Gina Austin, submitted a CUP application at the Property using his secretary, Rebecca Berry, as a proxy (the “Berry Application” and the “Strawman Practice”). In the Berry Application, in violation of



applicable disclosure laws, regulations and the plain language of the City's CUP application forms that she certified she understood, Berry knowingly and falsely certified that she is the true and sole owner of the CUP being applied for, which violates numerous penal codes (the "Berry Fraud"). (*See, e.g.*, Penal Code § 115 (false documents liability).) Berry certified that Cotton was the "Owner" and that Berry was a "Lessee" of the Property.

Cotton discovered the Berry Fraud and demanded that Geraci reduce the JVA to writing as he had promised to do. Geraci did not, Cotton then terminated the JVA with Geraci and entered into a written joint venture agreement with Richard Martin. The next day, Geraci's attorneys from the law firm of Ferris & Britton ("F&B") served Cotton the *Cotton I* complaint and a recorded lis pendens on the Property (the "F&B Lis Pendens"). The *Cotton I* complaint denies the existence of the JVA and is predicated on the false allegation that a three-sentence document, executed as a receipt by Geraci and Cotton, is a contract for Geraci's purchase of the Property (the "November Document").

Cotton lost *Cotton I* at a jury trial and had a judgment rendered against him. Cotton's reading of applicable laws leads him to a conclusion shared by dozens of attorneys, paralegals and sophisticated

parties who invest in litigation matters: the *Cotton I* judgment and all judgments and orders based on same are void for, inter alia, enforcing an illegal contract. The Courts simply do not have the jurisdiction to knowingly and purposefully enforce and ratify *criminal* behavior and doing so by judicial error is a legal nullity.

Cotton admits he was late in getting the NOA filed. But he should never have had to file an NOA in the first place. He has for *years* made multiple motions before the state and federal courts seeking to establish that *Cotton I* judgement is void for enforcing an illegal contract and being the product of judicial bias and a fraud on the court. (Cotton does not want to address judicial bias anymore and hopes this Court will grant him relief by focusing on the fraud on the court claims based on the acts taken in furtherance of the illegal Strawman Practice.)

Cotton is mentally and physically exhausted after years of this ongoing litigation. On December 26, 2022, Cotton had a heart attack and was admitted to Grossmont Hospital for three days. (Cotton Decl. at ¶ 18.) Cotton's heart attack was stress induced. (*Id.*)

McElfresh took acts in furtherance of Geraci's conspiracy to economically extort the Property from Cotton via the *Cotton I* litigation. And the acts taken by McElfresh and her coconspirators that perpetrated

a fraud on the court were taken to unlawfully acquire cannabis businesses in the County and City of San Diego for wealthy parties who cannot own cannabis businesses because they have had judgments entered against them for operating illegal dispensaries. “***Engaging in unlicensed commercial cannabis activity is a crime.***”<sup>3</sup>

McElfresh was engaged and paid to represent plaintiff/appellant Darryl Cotton in *Larry Geraci v. Darryl Cotton*, Superior Court of California, County of San Diego 37-2017-00010073-CU-BC-CTL (“*Cotton I*”). *Cotton I* sought to enforce an illegal real estate purchase contract. The illegal contract was for Lawrence Geraci’s purchase of Cotton’s real property (the “Property”). Judgment in favor of Geraci was entered against Cotton. Only three facts are needed to prove that the *Cotton I* judgment is void as an act in excess of the state court’s jurisdiction for enforcing an illegal contract and because it was procured through the perjured testimony of attorneys and officials of the City of San Diego. In short, a conspiracy by Geraci and his attorneys to extort the Property from Cotton to engage in criminal unlicensed commercial

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<sup>3</sup> *Wheeler v. Appellate Div. of Superior Court*, 72 Cal. App. 5th 824, 833 (2021) (citing Bus. & Prof. Code, § 26038, subd. (c)) (cleaned up, emphasis added).

cannabis activity. A conspiracy to which McElfresh is a knowing coconspirator and took acts in furtherance of; most notably, representing to the City of San Diego that it is lawful for Geraci to own a cannabis business via attorney Austin's Strawman Practice (i.e., the Antitrust Conspiracy).

### **MATERIAL FACTUAL BACKGROUND**

#### **I. Geraci is sanctioned for unlicensed commercial cannabis activity in 2014 and 2015.**

On October 27, 2014, Geraci had a judgment entered against him and fined by the City of San Diego for owning and operating an illegal dispensary. (*City of San Diego v. Tree Club Cooperative, Inc. et al.*, Case No. 37-2014-20897.).

On June 17, 2015, Geraci had a judgment entered against him and fined by the City of San Diego for owning and operating *two* illegal dispensaries. (*City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-4430 (the "CCSquared Judgment," and collectively with the Tree Club Judgment, the "Geraci Judgments").

#### **II. McElfresh is engaged and paid to represent Cotton in *Cotton I* to argue that Geraci cannot lawfully own a cannabis business because of the Geraci Judgments and then she represents Geraci before the City of San Diego representing that Geraci *can* lawfully own a cannabis business.**

McElfresh was engaged to represent Cotton in *Cotton I*. (Cotton Decl. at ¶¶ 3-4; *see* ECF No. 18 (complaint) at ¶¶ 81-86.) However, she then changed her mind. (*Id.* at ¶ 86-87.) McElfresh referred Cotton to attorney David Demian of the law firm of Finch, Thornton & Baird (FTB). (*Id.* at ¶ 87.)

FTB took actions to sabotage Cotton's case. (Cotton Decl. at ¶¶ 6-9.) Most notably, FTB removed the Conspiracy cause of action against Geraci and Berry and the allegations that Geraci could not own a cannabis business because of the Geraci Judgments. (*Id.* at ¶ 8.)

Materially, McElfresh never disclosed to Cotton that she had shared clients with Austin and she then represented Geraci before the City on the Berry Application. (Cotton Decl. at ¶ 13, Ex. A (McElfresh bill to Geraci for representing Geraci for the Berry Application before the City.) Summarized, McElfresh had relationships with Geraci and Austin and represented the Strawman Practice is legal to the City by representing Geraci seeking to have him own a cannabis dispensary in the name of Berry.

**III. The *Cotton I* judgment entered against Cotton was based on the perjury by attorney Gina Austin and City of San Diego Employee Tirandazi Firouzeh.**

At the trial of *Cotton I*, attorney Gina Austin testified that it not unlawful for Geraci to own a CUP in the name of Berry via the Strawman Practice despite the fact he was sanctioned in the Geraci Judgments. (See Cotton Decl. at ¶ 17, Ex. B (Opp. to Motion for New Trial) at 14:11-12 (“**attorney Gina Austin testified at trial the statute [BPC § 20657] would not prevent Mr. Geraci from obtaining a CUP.**”) (emphasis added).)

AT NO POINT HAS ANY STATE OR FEDERAL JUDGE ADDRESSED GERACI AND HIS ATTORNEYS’ **OWN** JUDICIAL ADMISSIONS THAT ATTORNEY AUSTIN FILED AN APPLICATION FOR A CANNABIS PERMIT IN THE NAME OF BERRY SO GERACI COULD ENGAGE IN COMMERCIAL CANNABIS ACTIVITIES AND HOW SUCH DOES NOT CONSTITUTE ENGAGING IN CRIMINAL UNLICENSED COMMERCIAL CANNABIS ACTIVITY. (Cotton Decl. at ¶ 16.)

That is the gravamen of this entire matter. “***Engaging in unlicensed commercial cannabis activity is a crime.***”<sup>4</sup> And owning and

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<sup>4</sup> *Wheeler v. Appellate Div. of Superior Court*, 72 Cal. App. 5th 824, 833 (2021) (citing Bus. & Prof. Code, § 26038, subd. (c)) (cleaned up, emphasis added).

operating cannabis businesses via the Strawman Practice is illegal, criminal, and judgments and orders that ratify or enforce such criminal activity are “absolutely void.”

If it is a criminal act, and it is, then the lawsuit filed against Cotton in March 2017 was a sham and it is an egregious miscarriage of justice that it is now January of 2023 and Cotton is still trying to prove the Strawmen Practice is illegal and the judgments and orders enforcing its lawfulness are void.

Cotton makes no allegations of judicial bias in this opposition, but common-sense dictates that had the state and federal judges been impartial and applied basic first year contract principles to, again Geraci’s and his own attorneys judicial admissions, Cotton would not be here now. Cotton truly fears that he will have to be held in contempt and sent to jail before the courts declare all of the judgments and orders against him that are based on void judgments and orders for, inter alia, enforcing criminal activity.

### **ARGUMENT**

“[U]nder the Full Faith and Credit Act a federal court must give the same preclusive effect to a state-court judgment as another court of that State would give. “It has long been established that § 1738 does not

allow federal courts to employ their own rules of res judicata in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the State from which the judgment is taken." *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 481-482 (1982). The Full Faith and Credit Act thus "[allows] the States to determine, subject to the requirements of the statute and the Due Process Clause, the preclusive effect of judgments in their own courts." *Marrese*, *supra*, at 380.

*Parsons Steel, Inc. v. First Ala. Bank*, 474 U.S. 518, 523, 106 S. Ct. 768, 771 (1986). Under California law:

A judgment absolutely void may be attacked anywhere, directly or collaterally whenever it presents itself, either by parties or strangers. It is simply a nullity and can be neither a basis, nor evidence, of any right whatever. A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one.

*OC Interior Servs., LLC v. Nationstar Mortg., LLC*, 7 Cal. App. 5th 1318, 1330 (2017) (*OC Interior*) (cleaned up, brackets in original, emphasis added).)



**“A judgment giving effect to a void judgment is also void”<sup>5</sup> because “being worthless in itself, all proceedings founded upon it are equally worthless.”** (*OC Interior*, 7 Cal. App. 5th 1330 (2017)).

There is no time limit for bringing an action or motion to vacate a judgment or order obtained via a fraud on the court. (*See, e.g., Bleecher v. Nightingale Nurses, LLC*, No. 07-80378-Civ-DIMITROULEAS/S, 2010 U.S. Dist. LEXIS 101844, at \*30 (S.D. Fla. Sep. 8, 2010) (“[T]he one year limitation on vacating judgments based on fraud by an adverse party, set forth in Fed.R.Civ.P. 60(c), ***does not apply to orders procured by fraud of one’s own counsel.***”) (citing *Mckinney v. Boyd*, 604 F.2d 632, 634 (9th Cir. 1968) (emphasis added)). “‘Fraud on the court’ is a claim that exists to protect the integrity of the judicial process, and therefore *a claim for fraud on the court cannot be time-barred.*” *Bowie v. Maddox*, 677 F. Supp. 2d 276, 278 (D.D.C. 2010) (emphasis added).

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<sup>5</sup> *Kenney v. Tanforan Park Shopping Ctr.*, Nos. G038323, G039372, 2008 Cal. App. Unpub. LEXIS 10048, at \*36-37 (Dec. 15, 2008) (citing *County of Ventura v. Tillett*, 133 Cal.App.3d 105, 110 (1982) [“an order giving effect to a void judgment is also void and is subject to attack”]; *Security Pac. Nat. Bank v. Lyon*, 105 Cal.App.3d Supp. 8, 13 (1980) [“affirmance of a void judgment or order is itself void”] (emphasis added).

**I. “Engaging in unlicensed commercial cannabis activity is a crime”<sup>6</sup> - Geraci’s ownership of a cannabis business in the name of his secretary - the Strawman Practice – is unlicensed commercial cannabis activity and is a crime.**

The Department of Cannabis Control (DCC), formerly known as the Bureau of Cannabis Control, is the “State of California agency that regulates commercial cannabis licenses for medical and adult-use in California.” *United States v. Bureau of Cannabis Control*, No. 20cv1375-BEN-LL, 2020 U.S. Dist. LEXIS 157919, at \*1 (S.D. Cal. Aug. 31, 2020) (US v. DCC). “When a commercial cannabis business applies for a provisional or annual license, it is ***required to provide*** information to the [DCC] such as business ownership interest(s), financial interest(s), personal identifying information (e.g., date of birth and social security number), financial information including banking information, business operating procedures, and state and federal criminal arrest and conviction history.” (*Id.* at \*1-2 (citing DCC opposition brief).)

The California Legislature set forth in California Business & Professions Code (BPC) § 26055 that the DCC “may issue state licenses

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<sup>6</sup> *Wheeler v. Appellate Div. of Superior Court*, 72 Cal. App. 5th 824, 833 (2021) (citing Bus. & Prof. Code, § 26038, subd. (c)) (cleaned up, emphasis added).

*only* to qualified applicants.”<sup>7</sup> Further, that pursuant to BPC § 26057, the DCC “*shall deny* an application if the applicant has been sanctioned by a city for *unauthorized commercial cannabis activities* in the three years immediately preceding the date the application is filed with the [DCC].”<sup>8</sup>

The California Legislature also passed BPC § 26053 that states: “All commercial cannabis activity shall be conducted between licensees.”<sup>9</sup> On December 6, 2022, the DCC released a press release that materially stated as follows:

The Department of Cannabis Control (DCC) announced today that it has won a significant legal victory against participants in the illegal cannabis market. Represented by its partners in the Attorney General’s Office, DCC obtained a court order awarding more than \$128 million in civil penalties—the maximum sought by DCC—against businesses and individuals that were engaged in *unlicensed commercial cannabis activity*.

“This ruling sends a strong message that the illegal cannabis market will not be tolerated in California,” said DCC Director Nicole Elliott. “DCC and our partners will do everything in our power to protect consumers and maintain the integrity of California’s legal cannabis

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<sup>7</sup> BPC § 26055(a) (former § 19320(a) (emphasis added)).

<sup>8</sup> BPC § 26057 (former § 19323) (cleaned up, emphasis added)).

<sup>9</sup> BPC § 26053(a) (former § 19320(a)).

market. We applaud the Court for its commitment to enforcing the rule of law in California’s cannabis industry.”

(The press release can be found on the DCC’s webpage at: <https://cannabis.ca.gov/2022/12/dcc-wins-court-judgement-against-illegal-cannabis-market/>.)

In short, you need to apply for a license to operate a dispensary and operating a dispensary without a license “engaging in unlicensed commercial cannabis activity [and] is a *crime*.”<sup>10</sup>

Geraci was sanctioned in the Geraci Judgments. He cannot own a cannabis business. The Strawman Practice – engaging in unlicensed commercial cannabis activity in the name of a third party – is illegal; *criminally illegal*. (*Id.*)

McElfresh’s representation to the City that Geraci can own a cannabis business via the Strawman Practice was a fraudulent representation, an act taken in furtherance of the Antitrust Conspiracy, and makes her jointly liable with Geraci and Austin, whose fabrication of evidence and perjured testimony that the Strawman Practice is lawful constitutes a fraud on the court.

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<sup>10</sup> *Wheeler v. Appellate Div. of Superior Court*, 72 Cal. App. 5th 824, 833 (2021) (citing Bus. & Prof. Code, § 26038, subd. (c)) (cleaned up, emphasis added).

**II. McElfresh's violation of her duty of loyalty to Cotton is evidence of her knowing role in the conspiracy by Geraci and his attorneys and agents to unlawfully acquire cannabis businesses.**

An attorney's duty of undivided loyalty to his or her client is fundamental to the attorney-client relationship. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 289.) The “attorney’s duty-and the client’s legitimate expectation-of loyalty, rather than confidentiality,” is the “primary value at stake” in conflict-of-interest situations involving simultaneous representations of adverse clients, even in different matters. (*Flatt, supra*, 9 Cal.4th at p. 284.)

This is so “[e]ven though the simultaneous representations may have nothing in common, and there is no risk that confidences to which counsel is a party in the one case have any relation to the other matter...” (*Flatt, supra*, 9 Cal.4th at p. 284.) The reason is evident:

A client who learns that his or her lawyer is also representing a litigation adversary, even with respect to a matter wholly unrelated to the one for which counsel was retained, cannot long be expected to sustain the level of confidence and trust in counsel that is one of the foundations of the professional relationship. All legal technicalities aside, few if any clients would be willing to suffer the prospect of their attorney continuing to represent them under such circumstances.

(*Id.* at pp. 285, 287 [client is "'likely to doubt the loyalty of a lawyer who undertakes to oppose him in an unrelated matter'"].) Not surprisingly, "in all but a few instances, the rule of disqualification in simultaneous representation cases is a per se or 'automatic' one." (*Id.* at p. 284, citing cases.)

A lawyer's duty of loyalty "not to represent [a] second client in light of an irremediable conflict with the existing client" is "***mandatory and unwaivable***." (*Flatt, supra*, 9 Cal.4th at p. 279) (emphasis added).<sup>11</sup>

McElfresh was engaged and paid to represent Cotton to dispute Geraci's lawful ownership of a cannabis businesses via ALG's Strawman Practice. McElfresh then represented Geraci before the City and represented that Geraci could lawfully own a cannabis business via ALG's Strawman Practice. There was no disclosure or agreement by McElfresh to Cotton. McElfresh's violation of her duty of loyalty to

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<sup>11</sup> Because the "principle of loyalty is for the client 's benefit," in rare cases an attorney may be permitted to undertake the simultaneous representation of clients with adverse interests in unrelated matters, "provided full disclosure is made and both agree in writing to waive the conflict." (*Flatt, supra*, 9 Cal.4th at p. 286, fn. 4.) Here, there was no waiver or agreement. McElfresh undertook Geraci's representation without informing Cotton or getting his consent – itself evidence of McElfresh's role in the larger conspiracy to unlawfully acquire cannabis businesses for her and Austin's clients.

Cotton and representing that it is lawful for Geraci to own a cannabis business via the Strawman Practice is both unethical and an illegal act that makes her jointly liable with Geraci and his coconspirators. “Engaging in unlicensed commercial cannabis activity is a crime”<sup>12</sup> and McElfresh has aided her clients and those of Austin in seeking and engaging in such criminal activity.

### **III. McElfresh’s motion to dismiss should be denied.**

Fabrication of evidence by a party in which an attorney is implicated and perjury by an attorney constitute a fraud on the court. (*Trendsettah*, 31 F.4th at 1134; *Intermagetics*, 926 F.2d at 916–917.) Austin’s testimony that the Strawman Practice is lawful and does not constitute engaging in criminal unlicensed commercial cannabis activity is perjury. And because she is an attorney, it constitutes fraud on the court. (*Id.*)

McElfresh’s nondisclosure of her shared clients with Austin, violating her duty of loyalty to Cotton by representing Geraci after having been engaged and paid to represent Cotton, and thereby also

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<sup>12</sup> *Wheeler v. Appellate Div. of Superior Court*, 72 Cal. App. 5th 824, 833 (2021) (citing Bus. & Prof. Code, § 26038, subd. (c)) (cleaned up, emphasis added).

representing to the City that Geraci's ownership of a cannabis permit at the Property is lawful, are all acts that no one can reasonably doubt were taken in furtherance of Geraci's scheme to extort the Property from Cotton and the subsequent cover-up, which is still ongoing.

### **CONCLUSION**

McElfresh's motion to dismiss should be denied. Yes, Cotton was late in filing a notice of appeal. However, there is always relief for a litigant who shows that the judgments and orders against him are void for being a fraud on the court. Simply stated, it cannot be the case that the justice system will allow attorneys who aid their clients to commit crimes via the judiciary to go without redress.

DATED: January 3, 2022

Respectfully submitted,

By: /s/ Darryl Cotton

Darryl Cotton, Appellant, *Pro Se*



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

Pursuant to Federal Rules of Appellate Procedure 27(a)(2)(B) and Ninth Circuit Rule 27-1, I certify that APPELLANT’S OPPOSITION TO MOTION TO DISMISS APPEAL FOR LACK OF JURISDICTION is proportionally spaced, has a typeface of 14-point or more and contains 3,656 words.

DATED: January 3, 2022

Respectfully submitted,

By: /s/ Darryl Cotton

Darryl Cotton, Appellant, *Pro Se*

**CERTIFICATE OF SERVICE**

**FOR CASE NUMBER 22-56077**

I hereby certify that on January 3, 2023, 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. APPELLANT’S OPPOSITION TO 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.

Respectfully submitted,

By: /s/ Darryl Cotton

Darryl Cotton, Appellant, *Pro Se*