IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

DARRYL COTTON, an individual, Petitioner/Plaintiff, v. THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO, Respondent/Defendant. --- LAWRENCE (a/k/a LARRY) GERACI, an individual, Real Party in Interest.	Court of Appeal Case No. San Diego County Superior Court Case No. 37-2022-00000023-CU-MC-CTL

PETITIONER'S/PLAINTIFF'S PETITION FOR WRIT OF MANDAMUS AND OTHER APPROPRIATE RELIEF FROM THE ORDER OF THE HONORABLE JAMES A. MANGIONE ENTERED ON FEBRUARY 25, 2022 DENYING PETITIONER'S/ PLAINTIFF'S MOTION TO SET ASIDE JUDGMENT

Darryl Cotton
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Petitioner/Plaintiff *In Propria Persona*

TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL FOURTH **APPELLATE DISTRICT, DIVISION** ONE	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: DARRYL COTTON FIRM NAME: STREET ADDRESS: 1676 Federal Boulevard CITY: San Diego STATE: CA ZIP CODE: 92114 TELEPHONE NO.: (619) 95404447 FAX NO.: E-MAIL ADDRESS: 151DarrylCotton@gmail.com ATTORNEY FOR (*name*): Petitioner/Plaintiff	SUPERIOR COURT CASE NUMBER: 37-2022-0000023-CU-MC-CTL
APPELLANT/ PETITIONER: DARRYL COTTON RESPONDENT/ REAL PARTY IN INTEREST: SAN DIEGO COUNTY SUPERIOR COURT	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party (*name*): Petitioner/Plaintiff Darryl Cotton

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	**Nature of interest *(Explain):***
(1) LAWRENCE (a/k/a LARRY) GERACI	Respondent/Defendant
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: April 25, 2022

DARRYL COTTON
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

Form Approved for Optional Use
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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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INTRODUCTION

I. The *Cotton I* Judgment Is Void for Enforcing an Illegal Contract.

> *No principle of law is better settled than that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects carried out.*

Wong v. Tenneco (1985) 39 Cal.3d 126, 135.

This is a matter in which Real-Party-in-Interest Lawrence Geraci did exactly that. In March 2017, Lawrence Geraci filed a state action, *Cotton I*,[1] against Darryl Cotton seeking to enforce an alleged purchase contract for Cotton's real property (the "Property") that was subject to a single condition precedent – the approval of Geraci's application for a cannabis Conditional Use Permit ("CUP") to own a dispensary at the Property.

However, the object of the alleged agreement, Geraci's ownership of a CUP, was illegal. It was illegal because Geraci was barred by California's cannabis licensing statutes from having an interest in any kind of cannabis business because he had last been sanctioned in June 2015 for unlicensed commercial cannabis activities (*i.e.*, illegal marijuana dispensaries). As set forth in California's Business & Professions Code ("BPC") § 26057:

> The department ***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 department.

---

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

BPC Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial of Application), subsections (a), (b)(7) (cleaned up).

State law requires that an applicant for a State cannabis license first acquire local authorization, which in the City of San Diego is a CUP. Upon submission to the State for a license, an applicant must submit proof of the local authorization. A successful applicant for a license is termed a "licensee."

To unlawfully acquire ownership of a CUP to apply for a license and own a dispensary at the Property, Geraci hired attorney Gina Austin of the Austin Legal Group ("ALG"). Attorney Austin is an expert in cannabis licensing and entitlement at the state and local levels, and regularly speaks on the topic across the nation.

Attorney Austin prepared and submitted an application for a CUP at the Property in the name of Geraci's secretary, Rebecca Berry (the "Berry Application"). The Berry Application falsely declares, under penalty of perjury, that Berry is the sole and proposed owner of the CUP applied for (the "ALG Proxy Practice").

This is clearly and incontrovertibly illegal:

> Licensees shall not conduct commercial cannabis activities on behalf of, at the request of, or pursuant to a contract with any person who is not licensed under the [Medicinal and Adult-Use Cannabis Regulation and Safety Act, codified in Business and Professions Code section 26000, et seq.].

California Code of Regulations, Title 16, Division 42 (Bureau of Cannabis Control), Article 3 (Licensing), § 5032 (Commercial Cannabis Activity), subsection (b).

Cotton *pro se* pled and repeatedly raised the argument of illegality in *Cotton I*

through trial, presided over by Judge Joel Wohlfeil, which was always summarily denied. In July 2019, Geraci prevailed at trial and was awarded approximately $300,000 in damages against Cotton. After judgment was rendered, on motion for new trial via specially appearing counsel from an established law firm, Judge Wohlfeil for the ***first*** time, over two years after the action was filed – understood the issue of illegality. Judge Wohlfeil found that Cotton had waived the defense of illegality under the mistaken belief that Cotton had not raised the issue of illegality before.

Judge Wohlfeil erred factually as the record demonstrates that the issue of illegality had been pled and repeatedly raised and legally, as a matter of law, because the defense of illegality cannot be waived.

In legal terms, the *Cotton I* judgment is void as an act in excess of Judge Wohlfeil's jurisdiction because it is an exercise of a power not authorized by law and a grant of relief to Geraci that the law declares shall not be granted.

In plain language, the *Cotton I* judgment is void because a judge cannot enter a judgment enforcing an illegal contract that requires an innocent victim to pay a criminal damages for the expenses the criminal incurred in taking criminal acts against the victim. To find or allow otherwise means the justice system can be used to effectuate crimes and compensate individuals for illegal activity – a violation of the very purpose for which the justice system exists.

Prior to entry of judgment, Cotton, indigent, suffering extreme mental, emotional and financial distress and in a near "delusional" state (as evidenced by two Independent

Psychological Assessments), ***wrongfully*** believed that Judge Wohlfeil was conspiring with Geraci's attorneys to prolong the *Cotton I* case to coerce Cotton to settle with Geraci.

Cotton, believing the City and multiple other parties were complicit in the ALG Proxy Practice and that extra-judicial acts and threats of violence against him and third-parties were done at the direction of Geraci because Cotton would not settle and to prevent Cotton from continuing to defend himself in *Cotton I* and reaching trial (*i.e.*, violations of his Civil Rights), and not believing he could access justice in the state court, sought relief in federal court where he thought he could have court appointed counsel. However, the federal court stayed his case pursuant to the *Colorado River* doctrine and, subsequent to entry of the judgment, found the *Rooker-Feldman* doctrine and *res judicata* bar his causes of action against Geraci and Berry.

The federal court's position is that issue of the illegality of the alleged contract has been decided in *Cotton I* and is a state court issue. Motions to dismiss Cotton's remaining Civil Rights' causes of action against Geraci's attorneys are currently under submission.

II. Respondent Erred Denying the Motion to Vacate a Void Judgment That Enforces an Illegal Contract.

Subsequent to the federal court's last order saying the issue of illegality is a state court issue, Cotton filed the underlying suit and motion to vacate the judgment on the narrow, focused issue that it is void for enforcing an illegal contract and rendered on the premise Cotton had and could waive the defense of illegality. Respondent denied the motion.

Respondent erred by finding the judgment is not void by implying that Cotton did not raise the evidence or argue the defense of illegality before Judge Wohlfeil and thereby waived the defense of illegality. Respondent also erred in finding the judgment is not void on its face subject to relief pursuant to Code of Civil Procedure § 473(d). Lastly, Respondent erred by ignoring and failing to follow controlling California Supreme Court precedent – the *Hill* rule – mandating that he treat the judgement as void on its face because Geraci did not argue or dispute that he was sanctioned or that the BPC bars his ownership of a CUP in opposing the motion to vacate. And thus the judgment is void.

Respondent's order is void as it gives effect to a void judgment that violates the most basic principle of law – that a party cannot go to a court of law to effectuate a crime and be compensated for his illegal actions by his victim.

The order must be reversed, and the judgment vacated.

III. The Issues.

This petition presents three issues:

First, is a judgment that enforces an illegal contract not void if the evidence of illegality was presented and argued, but the court found the defense of illegality had been waived?

Second, does the ALG Proxy Practice that is being ratified by numerous judicial proceedings and public agencies represent an issue of widespread public importance that warrants writ relief?

Third, does the factual and procedural posture of Cotton's case constitute

extraordinary circumstances warranting this Court granting writ relief to prevent manifest injustice both as to him and as a matter of public policy?

PETITION

Cotton petitions this Court for a writ of mandate and/or prohibition, or other appropriate relief, directing Respondent San Diego County Superior Court to vacate its order denying the motion to vacate and enter an order vacating the judgment and such other relief as this Court deems proper given the exceptional circumstances presented.

To these ends, petitioner alleges and shows the following:

I. BENEFICIAL INTEREST OF PETITIONER; CAPACITIES OF RESPONDENT AND REAL PARTY IN INTEREST

1. Petitioner Darryl Cotton is the plaintiff in the underlying action and the defendant/cross-complainant in *Cotton I*.

2. Respondent is the San Diego County Superior Court, which entered the order denying the motion to vacate.

3. Real Party in Interest is Lawrence (A/K/A Larry) Geraci is the defendant in the underlying action and plaintiff/cross-defendant in *Cotton I*.

II. AUTHENTICITY OF EXHIBITS

4. The exhibits accompanying this petition are true and correct copies of original documents filed with respondent court, except for Exhibit 8, which is a true and correct copy of the Reporter's Transcript of Proceedings on February 25, 2022 before The Honorable James A. Mangione, regarding Cotton's motion to vacate the judgment. Following Exhibit 1 – the order from which this Petition is taken – the remaining exhibits

are in sequential, ascending date order as filed with Respondent court's Register of Actions, and all exhibits are paginated consecutively from page 1 to 1117.[2]

5. Additionally, Cotton includes a Request for Judicial Notice ("RJN") for an excerpt from the trial in *Cotton I* and from three related litigation matters based on the illegal ALG Proxy Practice to prove judicial ratification of the same represents a public policy issue that warrants immediate writ relief.

III. TIMELINESS OF THE PETITION

6. On February 28, 2022, the trial court entered the Notice of Ruling on Cotton's motion to vacate void judgment. (Ex. 1 at 003-005.) Cotton has worked ceaselessly to prepare this Petition and has exhausted his financial resources and leveraged his personal relationships to pay for legal support to assist in the preparation and filing of this Petition as soon as possible.

IV. MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

A. Background.

7. On October 27, 2014, Geraci was sanctioned for unlicensed commercial cannabis activities in the Tree Club Judgment by the City. (Ex. 3.1 at 135-143.)

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[2] Cotton was not sure how to best cite to the record and notes that his references to exhibits are denoted to explain if the exhibit is an exhibit that is attached to another exhibit. For example, citation to the Ownership Disclosure Form executed by Berry as part of the Berry Application is located at Exhibit 5 (Declaration of Michael Weinstein), at exhibit 10 thereto (notice of errata to motion for new trial providing updated exhibits), at exhibit 3 (exhibits to motion for new trial) thereto, at exhibit H (forms executed by Berry for the Berry Application) thereto, at exhibit 3 (Ownership Disclosure Form) thereto. Therefore, the citation to the Ownership Disclosure Form is set forth as "Ex. 5.10.3.H.4 at 526."

8. On June 17, 2015, Geraci was sanctioned for unlicensed commercial cannabis activities in the CCSquared Judgment by the City (collectively with the Tree Club Judgment, the "Geraci Judgments"). (Ex. 3.1 at 144-150.)

9. In July 2016, Geraci contacted Cotton because the Property "may qualify for a dispensary." (Ex. 5.10.3.A at 449.)

10. On October 31, 2016, Geraci caused the Berry Application to be filed, in which Berry certified or declared that she would be the "Permit Holder," was a "lessee" of the Property, the "Owner" of the Property, the "Financially Responsible Party" for the application, and under penalty of perjury that she had disclosed all parties with an interest in the Property. (*See* Ex. 5.10.3.H.1-4 at 523-526.) Geraci was not disclosed. (*See id*.)

11. On November 2, 2016, both Geraci and Cotton admit they met and reached an agreement for the sale of the Property to Geraci and that they executed a document (the "November Document"). (Ex. 2.11 at 85; Ex. 2.7 at 66.)

12. On November 2, 2016, after the parties reached an agreement and executed the November Document, Cotton requested via email that Geraci reply in writing and confirm the November Document is not a "final agreement" (the "Request for Confirmation Email"). (Ex. 2.8 at 69.)

13. Geraci replied and confirmed the November Document is not a final agreement (the "Confirmation Email"). (*Id*. ("No no problem at all").)

14. On March 21, 2017, Cotton sent Geraci an email terminating the agreement they reached on November 2, 2016 and informing him he would be entering into an agreement with a third party. (Ex. 6.1.4 at 884.)

15. That same day, Cotton entered into an agreement with Richard Martin for the sale of the Property subject to a condition precedent – the issuance of a CUP at the Property. (Ex. 6.1.5 at 894-906.)

B. The Cotton I Pleadings.

16. On March 22, 2017, counsel for Geraci, Ferris & Britton, emailed Cotton the *Cotton I* complaint and a recorded lis pendens on the Property ("F&B Lis Pendens"). (*See* Ex. 2.11 (complaint) at 77-85; Ex. 2.12 (lis pendens) at 88-91.) The complaint alleged that:

a. "On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated therein."

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

c. "Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the PROPERTY, as contemplated by the parties and their written agreement."

(Ex. 2.11 at 2.)

17. On May 12, 2017, Cotton filed pro se a cross-complaint alleging, *inter alia*, that (i) on November 2, 2016, the parties reached an oral joint venture agreement for the sale of the Property (the "JVA"), which Geraci promised to reduce to writing; (ii) the

November Document was executed as a *receipt* to memorialize Cotton accepting $10,000 towards a non-refundable deposit; (iii) Geraci was fraudulently representing the November Document as a contract; and (iv) Cotton terminated the JVA with Geraci for his failure to reduce the JVA to writing as promised. (Ex. 5.2.1 at 278, 282-288.)

18. Cotton's cross-complaint included a conspiracy cause of action against Geraci and Berry alleging that Geraci used Berry as a proxy because his sanctions disqualified him from owning a CUP:

> Berry submitted the CUP application in her name on behalf of Geraci because Geraci has been a named defendant in numerous lawsuits brought by the City of San Diego against him for the operation and management of unlicensed, unlawful and illegal marijuana dispensaries. These lawsuits would ruin Geraci's ability to obtain a CUP himself.

(Ex. 5.2.1 at 298.)

19. Cotton's original pro se cross-complaint was amended twice by counsel, in each case referencing Geraci's "legal issues." (Ex. 5.2.2 at 305; Ex. 5.2.3 at 325.)

C. The September 4, 2018 Gina Austin Declaration.

20. On September 4, 2018, Attorney Austin filed a declaration in *Razuki v. Malan, et. al.* (RJN, Ex. 1.) The declaration was filed in opposition to the continued appointment of a receiver to manage a dispensary held in her client's name, Ninus Malan. (*Id*.)

21. Attorney Austin declared:

> I am an ***expert*** in cannabis licensing and entitlement at the state and local levels and regularly speak on the topic across the nation. My firm also performs additional legal services for these defendants to include corporate transactions and structuring,

land use entitlements and regulations related to cannabis, and state compliance related to cannabis.

(RJN Ex. 1 at 2:7-11.) (emphasis added).)

22. In opposing the continued appointment of a receiver, Attorney Austin argued the receiver "would be deemed an '***owner***' of the Balboa Dispensary and an additional application would ***need*** to be filed pursuant to Section 5024 (c) of Title 16 Division 42 of the California Code of Regulations." (*Id.* at 3:5-7.)

23. Pursuant to § 5003, the definition of "owner" includes any party with a 20% or greater interest in the license applied for. (Cal. Code Regs., tit. 16, § 5003(b)(1) (as amended).)

24. Pursuant to § 5002, all "owners" must be disclosed in the application for a license. (*Id.* § 5002(c)(20) (as amended).)

25. Pursuant to § 5032, a Licensee cannot conduct business on behalf of another person who is not also a Licensee. (*Id.* § 5032(b) (as amended).)

D. The Cotton I Trial Held in July 2019.

26. During the trial of *Cotton I*, Cotton moved for a directed verdict arguing that Geraci's ownership of a CUP was barred by California's cannabis licensing statute BPC § 26057 (Ex. 3.4 at 163-175), which was summarily denied (Ex. 3.5 at 177-179).

27. At trial, Firouzeh Tirandazi, a City Project Manager III (the highest classification of Project Managers for the City, testified. (Ex. 3.8 at 219.)

28. Tirandazi testified that initially the City would not accept a competing CUP application by Cotton on his own property unless the Berry Application was first withdrawn. (RJN, Ex. 2 at 101:17-102:6.)

29. At trial, Attorney Austin testified that:

(i) She has represented at least 50 parties with regulatory compliance in applying for CUPs in the City, of which "between 20-25" have been approved (Ex.5.10.3.E at 483-485);

(ii) Neither BPC § 26057 nor the San Diego Municipal Code ("SDMC") bar Geraci's ownership of a CUP to operate a dispensary (RJN, Ex. 3 at 56:16-57:3.) ;

(iii) That BPC § 26057 applies to state licenses but not CUPs by the City (RJN, Ex. 3 at 65:3-7.) ;

(iv) That despite the plain language of the Ownership Disclosure Statement requiring Geraci's disclosure, she did not know if Geraci's disclosure was required and does not know why he was not disclosed. (RJN, Ex. 3 at 51:17-28.) at 51:17-28 ("… ***I don't know that it – it was unnecessary or necessary. We just didn't do it.***");

(v) That the purpose of the Affidavit for Medical Marijuana Consumer Cooperative Ownership Disclosure Statement is actually for conflict of interests and does not require a proxy like Berry to disclose the true owner like Geraci. (RJN, Ex. 3 at 33:15-35:9.) ; and

(vi) The reason the Berry Application was not approved was because another CUP was approved within 1,000 feet of the Property to Aaron Magagna who is her client (RJN, Ex. 3 at 60:11-22.)

30. Judge Wohlfeil found that, but for Cotton's alleged unlawful interference with the processing of the Berry Application at the Property causing delay, allowing time for the CUP to be issued to Attorney Austin's client, Magagna, the CUP would probably have been issued at the Property. (RJN, Ex. 4 at 91:26-92:12.)

31. Geraci prevailed at trial and he was awarded approximately $300,000 in damages against Cotton for his expenses incurred in pursuit of the CUP finding that Cotton had unlawfully interfered and delayed the processing of the Berry Application. (Ex. 3.6 at 180-184.)

E. The Motion for New Trial.

32. On September 13, 2019, Cotton filed, through specially appearing counsel Tiffany & Bosco, a motion for new trial on the grounds that, *inter alia*, the alleged agreement is illegal because Geraci's ownership of a CUP violates California's cannabis public policies, express provisions of law set forth in BPC §§ 19323/26057,[3] and the SDMC. (Ex. 3.7 at 188-203.)

33. Materially, the motion stated:

> On **October 9, 2015**, the State passed the Medical Marijuana Public Safety and Environmental Protection Act, 2015 California Senate Bill No. 643, California 2015-2016 Regular Session (hereinafter cited to as "S.B. 643"). Pursuant to S.B. 643, an application must be denied if the applicant does not qualify for licensure. (S.B. 643 at § 10 (adding **Cal. Bus. & Prof. Code**

[3] In June 2017, the California Legislature enacted Senate Bill 94, effective June 27, 2017 ("SB 94"), which repealed BPC § 19323 (Denial of Application) and made applicable BPC § 26057 (Denial of Application) to all cannabis applications and licenses, which was in effect when the *Cotton I* judgment was rendered.

§ l9323(a), (b)(8).) An applicant does not qualify if he has been sanctioned by a city for unauthorized commercial marijuana activity. (*Id.*)

(*Id*. at 0194-0195 (emphasis added).)

34. Geraci opposed Cotton's defense of illegality by arguing primarily in a footnote:

> Mr. Cotton contends the November 2, 2016 agreement was illegal and void because Mr. Geraci failed to disclose his interest in both the Property and the Conditional Use Permit ("CUP"). Mr. Cotton erroneously contends the, agreement violates local law and policies, as well as state law. The statutes upon which Mr. Cotton relies were not even in effect at the time the November 2, 20 l 6 contract was entered. [Fn. 4 ("In making his illegality argument. Mr. Cotton cites to **B&P Code §§ 26000 (Effective June 27, 2017**); **26055 (Effective July 2019)**; and **26057(a) (Effective January 1, 2019)**. The contract in question was entered November 2, 2016. The general rule that judicial decisions are given retroactive effect is basic in our legal tradition. In *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207, the California Supreme Court observed: "[t]he principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student." [Citation.] **The statutes cited by Mr. Cotton in support of his "illegality" argument were not in effect until after, sometimes years after, entering the contract in question.**").] Even if that is disregarded, the contract was otherwise legal as discussed *infra*.
>
> Additionally, Mr. Cotton has waived the "illegality" argument for two reasons: (1) he never raised illegality as an affirmative defense; and (2) with regard to the "illegality" argument, Attorney [Jacob] Austin represented to the Court at the conclusion of evidence and in response to the Court's inquiries if there were any other exhibits Mr. Austin wished to admit into evidence: "I'm willing to not argue the matter if your Honor is inclined not to include it. We can just - forget about it." [Citation.]
> Even assuming the illegality argument has not been waived, the argument that the November 2, 2016 contract is illegal fails; Mr. Geraci's stipulated judgments with the City of San Diego, and the use of an agent in application process for the CUP, do not render the contract illegal. Indeed, as set forth herein, several witnesses testified that it is common practice for an applicant on a CUP application for a medical marijuana dispensary to utilize an agent in that process.

(Ex. 3.8 at 211-212 (**bold** emphasis added; underline emphasis in original).)

35. The Table of Authorities of the opposition demonstrates it does not anywhere address **BPC § 19323(a), (b)(8)**, which went into effect on **January 1, 2016**; nine months **before** the November Document was executed. (Ex. 3.8 at 207-208 (Table of Authorities)).[4]

36. BPC §§ 26000, 26055 and 26057 were added to the BPC by the "Control, Regulate and Tax Adult Use of Marijuana Act (Proposition 64), **effective November 9, 2016**." *See People v. Medina* (2018) 24 Cal.App.5th 61, 64 (emphasis added).

37. Cotton replied to Geraci's opposition by, *inter alia*, setting forth the following legal authorities establishing the defense of illegality cannot be waived:

> [A] party to an illegal contract cannot waive the right to assert the defense. *City Lincoln-Mercury Co. v. Lindsey* (1959) 52 Cal.2d 267, 273-74 (internal citations omitted); *Wells v. Comstock* (1956) 46 Cal.2d 528, 531-32 ("no person can be estopped from asserting the illegality of the transaction"). The argument also ignores the well-established rule that "even though the defendants in their pleadings do not allege the defense of illegality if the evidence shows the facts from which the illegality appears it becomes 'the duty of the court *sua sponte* to refuse to entertain the action.'" *May v. Herron* (1954) 127 Cal.App.2d 707, 710 (quoting *Endicott v. Rosenthal* (1932), 216 13 Cal. 721, 728).

(Ex. 3.9 at 229.)

38. On October 25, 2019, Judge Wohlfeil held a hearing and denied the motion for new trial finding that the defense of illegality had been waived for failure to previously

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[4] BPC § 19323 subsection (8) was renumbered to (7) when it was amended by Stats 2016 ch 32 § 27 (SB 837), effective June 27, 2016.

raise, saying:

> THE COURT: So you are saying the contract is unenforceable?
>
> MR. SCHUBE: Yes.
>
> THE COURT: As a matter of law?
>
> MR. SCHUBE: Yes. CUP was a condition precedent to the contract.
>
> …
>
> THE COURT: … you're asking the Court to adjudicate the contract as a matter of law against the other side. Counsel, shouldn't this have been raised at some earlier point in time? .... Even if you are correct, hasn't that train come and gone? The judgment has been entered. You are raising this for the first time.
>
> MR. SCHUBE: Your Honor, illegality of the contract can be raised any time whether in the beginning or during the case or on appeal.
>
> THE COURT: … But at some point, doesn't your side waive the right to assert this argument? At some point? …. I am not inclined to change the Court's view.
>
> Ex. 3.10 at 242-244.

39. Judge Wohlfeil's order denying the motion states: "The Motion (ROA # 672) of Defendant / Cross-Complainant DARRYL COTTON ('Cotton') for a new trial or a finding that the alleged November 2, 2016 agreement is illegal and void, is DENIED." (Ex. 3.11.) There is no authority cited or reasoning provided. (*Id.*)

F. The Motion to Vacate.

40. On January 3, 2022, Cotton filed the underlying complaint (Ex. 2) and motion to vacate the judgment (Ex. 3).

41. On February 10, 2022, Geraci filed his opposition arguing the motion should be denied because: "It is not supported by any relevant admissible evidence. It is time-barred under Code of Civil Procedure Section 473. It is barred by both res judicata and collateral estoppel. Finally, the underlying premise of the motion is patently ludicrous, legally untenable, and unsupported by any proffered legal authority." (Ex. 4 at 249.)

42. In his opposition, Geraci did not argue or dispute he was sanctioned in the Geraci Judgments or the BPC barred his ownership of a CUP. (Ex. 4.)

43. On February 27, 2022, Cotton filed a reply through specially appearing counsel, Tiffany & Bosco. (Ex. 7.)

44. On February 25, 2022, Respondent heard argument on the motion to vacate. (Ex. 8.)

45. On February 28, 2022, the notice of ruling denying the motion to vacate was filed. (Ex. 1.) Respondent denied the motion because:

> [1] Plaintiff ***was not precluded*** from presenting his illegality argument to the court. Plaintiff argues that the judgment is void because it is based on an illegal contract. However, ***he received the opportunity*** to present this argument in a fair, adversarial proceeding. Consequently, relief is not available pursuant to a direct attack against the judgment via independent action. [2] Furthermore, the judgment is not void on its face such that it should be set aside pursuant to Code of Civil Procedure§ 473(d).

(*Id.* at 5 (emphasis added).)

V. BASIS FOR RELIEF

46. First, Respondent's order implies that Cotton failed to present and argue the evidence of illegality before Judge Wohlfeil and therefore, without saying it, his rendering

of the judgment on the grounds that the defense of illegality had been waived lawfully transforms an illegal contract into a lawful contract. And, by that same line of legal reasoning, it is lawful for Respondent to deny Cotton relief and enforce what was previously an illegal contract to require Cotton to pay Geraci his costs incurred in seeking to defraud Cotton of the Property. Such is not the law. In this situation, writ relief is mandated to direct Respondent to apply the proper law and vacate the judgment. *Hurtado v. Superior Court* (1974) 11 Cal.3d 574, 579 ("The trial court is under a legal duty to apply the proper law and may be directed to perform that duty by writ of mandate.").

47. Second, Respondent's order is void as it gives effect to a void judgment and prohibition will lie to prevent further judicial action based on a void order. *Greene v. Superior Court of San Francisco* (1961) 55 Cal.2d 403, 406 ("Although prohibition will not lie to review the validity of a complete judicial act, it is a proper remedy to prevent further judicial action based upon a void order.").

48. Third, the ALG Proxy Practice is illegal, being validated by ongoing judicial proceedings and public agencies, and represents an issue of widespread public importance that warrants writ relief to protect the integrity of the courts and to protect the public. *See Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 6 ("*Cedars-Sinai*").

VI. ABSENCE OF OTHER REMEDIES

49. Cotton lacks a plain, speedy, adequate remedy in the ordinary course of law and writ relief is warranted for at least five reasons.

50. First, whether the *Cotton I* Judgment is void on its face presents a pure question of law appropriate for writ relief. *Calvert v. Al Binali* (2018) 29 Cal.App.5th 954, 961 ("The issue of whether a judgment is void on its face is a question of law"); *Summers v. Superior Court* (2018) 24 Cal.App.5th 138, 142 ("Treating a purported appeal as a petition for writ of mandate is appropriate … when the issue to be decided is a pure question of law.").

51. Second, Respondent's order is clearly erroneous as a matter of law. *Babb v. Superior Court* (1971) 3 Cal.3d 841, 851.

52. Third, "where a significant issue of law is raised [like the illegality of the ALG Proxy Practice], and where resolution of the issue in favor of the petitioner would result in a final disposition as to that party [like this Petition], review by writ is appropriate." *Curry v. Superior Court* (1993) 20 Cal.App.4th 180, 183.

53. Fourth, it has already been over five years since *Cotton I* was filed, further delay and expense of unnecessary litigation, including its impact on judicial resources, are valid considerations in deciding whether to grant writ review as to Cotton and the other litigation validating the ALG Proxy Practice. *H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1367 (citing *Phelan v. Superior Court* (1950) 35 Cal.2d 363, 370).

54. Fifth, as evidenced by two independent psychological assessments (*see* Ex. 2.1 at 29-36; Ex. 2.2 at 38-39) and the record in Cotton's litigation matters, Cotton has

suffered and will continue to suffer increasingly unjustified extreme irreparable mental and emotional harm. *See Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1274 ("petitioner will suffer harm or prejudice in a manner that cannot be corrected on appeal").

PRAYER

WHEREFORE, Cotton prays that this Court:

1. Issue peremptory writ of mandate or other appropriate relief directing Respondent to vacate its order of February 28, 2022 and to enter a new order granting Cotton's motion to vacate the judgment;

2. For costs and fees for the preparation of this Petition; and

3. For such other and further relief as the Court may deem just and proper.

VERIFICATION

I, Darryl Cotton, am the plaintiff in underlying action. I have read this petition and know its contents. The allegations are within my personal knowledge and accurately reflect what is alleged or set forth in the records of this case and those documents in other cases provided in support hereof in the Exhibits and the Requests for Judicial Notice.

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This Verification applies to the foregoing as well as the Additional Material and Factual Procedural Background set forth below.

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

Dated: April 25, 2022

DARRYL COTTON
Petitioner/Plaintiff *In Propria Persona*

MEMORANDUM OF POINTS AND AUTHORITIES

WRIT RELIEF IS MANDATED TO DIRECT RESPONDENT TO APPLY THE PROPER LAW TO VACATE THE VOID JUDGMENT THAT ENFORCES AN ILLEGAL CONTRACT AND TO PREVENT FURTHER JUDICIAL ACTION BASED ON A VOID ORDER.

I. Standard of Review

"The issue of whether a judgment is void on its face is a question of law, which [the court reviews] de novo." *Calvert v. Al Binali,* 29 Cal.App.5th at 961.

II. Respondent's order is void as it gives effect to the void *Cotton I* Judgment that enforces an illegal contract.

A. California courts may not enforce or ratify illegal contracts or those violative of public policy.

The Courts have a duty to, *sua sponte*, refuse to entertain an action that seeks to enforce an illegal contract. *Endicott v. Rosenthal* (1932) 216 Cal. 721, 728.

Under California law, a contract must have a "lawful object." (Civ. Code § 1550(3).) Contracts without a lawful object are void and unenforceable. (*Id*. §§ 1598, 1608.) For purposes of illegality, the "law" includes statutes, local ordinances, and administrative regulations issued pursuant to the same. *Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118 Cal.App.4th 531, 542.

"Whether a contract is illegal is a question of law to be determined from the circumstances of each particular case." *Kashani,* 118 Cal. App. 4th at 540 (cleaned up). "The test as to whether a demand connected with an illegal transaction is capable of being

enforced is whether the claimant requires the aid of an illegal transaction to establish his case." *Brenner v. Haley* (1960) 185 Cal.App.2d 183, 287.

The courts cannot commit aid or compensate criminals for criminal activity. That is why as a matter of law, the defense of illegality cannot be waived. As set forth in the seminal California Supreme Court case of *Lewis & Queen*:

> Whatever the state of the pleadings, when the evidence shows that the plaintiff in substance seeks to enforce an illegal contract or recover compensation for an illegal act, the court has both the ***power*** and ***duty*** to ascertain the true facts in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids. It is immaterial that the parties, whether by inadvertence or consent, even at the trial do not raise the issue. The court may do so of its own motion when the testimony produces evidence of illegality. It is not too late to raise the issue on motion for new trial, in a proceeding to enforce an arbitration award, or even on appeal.

Lewis & Queen v. N. M. Ball Sons (1957) 48 Cal.2d 141, 147-148 (citations omitted, emphasis added).

B. The alleged agreement between Cotton and Geraci was illegal and in violation of public policy.

1. State of California and City of San Diego Cannabis Laws.

As in effect on November 2, 2016, when the November Document was executed, the state required that a cannabis license only be issued to "qualified applicants." (BPC § 19320(a).) The State mandated the denial of an application if an applicant did not qualify for licensure. (*See* BPC § 19323(a) ("The licensing authority ***shall deny*** an application if the applicant … does not qualify for licensure under this chapter or the rules and regulations for a state license.") (emphasis added).)

Among other criteria, an applicant was disqualified if the applicant had been sanctioned for unlicensed commercial cannabis activities in the three years preceding the submission of an application or failed to provide required information in the application. (BPC § 19323(a), (b)(3), (7).) Prior to applying for a State license, an applicant was required to acquire authorization from the local jurisdiction (*e.g.*, a CUP). (BPC § 19322(a)(1).)

In the City, an application for a CUP requires the disclosure of all parties who hold an interest in the relevant property or the CUP for which the application is made. (*See* Ex. 2.5 at 58 (Ownership Disclosure Statement)); SDMC § 112.0102(b) (application shall be made on forms provided by city manager and accompanied by all the information required by the same).

An applicant upon submission for a State license was required to provide proof of the local authorization and submit their fingerprints for a background check with the Department of Justice. (BPC § 19322(a)(1).) A successful applicant was termed a "Licensee," defined as a "person issued a state license under this chapter to engage in commercial cannabis activity." (BPC § 19300.5.)

2. *Polk v. Gontmakher*

The matter of *Polk* is factually and legally identical to the issue of illegality before this Court regarding the legality of a contract for a party holding a prohibited interest in a cannabis business via a proxy.

In *Polk I*, Evan Polk (plaintiff) and Leonid Gontmakher (defendant) worked

together to create a cannabis cultivation business in Washington.[5] After Washington State passed an initiative regulating the production, distribution, and sale of marijuana, they decided to obtain a license. (*Id*. at *2.) However, because Polk had previously pled guilty to drug related crimes, "he was prohibited from obtaining a producer or processor license…." (*Id*. at *3.) Polk and Gontmakher "agreed to move forward with the business anyway, orally agreeing to be 'equal partners' in their cannabis growing venture." (*Id*.) Thereafter, they agreed to modify their respective percentages of ownership such that Polk maintained a 30% ownership stake in the cannabis business and "Mr. Polk's 'interest' would be held in the name of one of Mr. Gontmakher's relatives." (*Id*. at *4.) Subsequently, the parties had a dispute and Polk filed suit alleging he is entitled to an ownership interest in the cannabis business and past and future profits. (*Id*.)

The district court dismissed Polk's original complaint on Gontmakher's motion to dismiss on two independent grounds: first, because Polk's claims seeking profits from cannabis activities violated the Federal Controlled Substances Act. (*Id*. at *6); and second, because Polk was prohibited from obtaining a license by law, the oral agreement was illegal. (*Id*. at * 8.) The Court concluded: "Mr. Polk's interest in [the cannabis business] was illegal from the very beginning and he knew it…. ***The Court will not enforce an illegal***

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[5] *Polk v. Gontmakher* (*Polk I*), No. 2:18-cv-01434-RAJ, 2019 U.S. Dist. LEXIS 146724, at *3 (W.D. Wash. Aug. 28, 2019). *See Haligowski v. Superior Court* (2011) 200 Cal. App. 4th 983, 998, fn. 4 ("Unpublished federal opinions are citable notwithstanding California Rules of Court, rule 8.1115 which only bars citation of unpublished California opinions.") (cleaned up).

contract." (*Id*. at *8 (emphasis added).)

In *Polk II*, the district court dismissed Polk's third amended complaint with prejudice on Gontmakher's motion to dismiss solely on one ground.[6] The Court described Washington's cannabis licensing framework that requires that a cannabis license be issued only in the names of "true party(ies) of interest," who are defined by statute to include any party with a right to revenues from the contemplated cannabis business, and who must undergo a "vetting process" by the Washington Liquor and Cannabis Board. (*Id.* at *5.) The court explained:

> Plaintiff does not dispute that his claims seeking a share of profits generated by [the cannabis business] would make him a true party of interest under the statute. Because he has not been identified as a true party of interest in [the cannabis business] or vetted by the [Washington Liquor and Cannabis Board], any grant of relief based on entitlement to a share of [the cannabis business'] profits would be in violation of the statute. In other words, by affording Plaintiff such relief, the Court would be effectively recognizing him as a true party of interest in subversion of the [Washington Liquor and Cannabis Board] and in violation of Washington state law. The Court cannot require payment of a share of [the cannabis business'] profits to Plaintiff based on his alleged rights to such profits—either through enforcement of the contract or disgorgement of unjust enrichment and related breaches of equity—without violating state statute.

(*Id.* at *6-7.)

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[6] *Polk v. Gontmakher* (*Polk II*), No. 2:18-cv-01434-RAJ, 2021 U.S. Dist. LEXIS 53569, at *5 (W.D. Wash. Mar. 22, 2021).

3. The agreement between Geraci and Cotton, like Polk and Gontmakher, is illegal, void, and judicially unenforceable.

Geraci was last sanctioned on June 17, 2015 in the CCSquared Judgment for unlicensed commercial cannabis activities. Therefore, as a matter of law, he could not lawfully have an interest in a cannabis business until June 18, 2018. (BPC §§ 19323(a), (b)(7).) The November Document was executed in November 2016 during the time period when Geraci was disqualified from having an interest in a cannabis business. (*Id*.) The object of the alleged contract – Geraci's ownership interest in a CUP to apply for a license and own a dispensary – was illegal.

The reasoning in *Polk* applies identically here:

> [Geraci] does not dispute that his claims seeking a share of profits [or damages] generated by [the contemplated CUP at the Property] would make him a [Licensee] under the statute. Because he [had] not been identified as a [owner] in [the Berry Application] or vetted by [the California Bureau of the Cannabis Control], any grant of relief based on entitlement to a share of [the profits anticipated, or damages based on Geraci's ownership interest in the proposed business via the Berry Application,] would be in violation of the statute. In other words, by affording [Geraci] such relief, [Judge Wohlfeil ***did***] effectively recogniz[e] him as a [Licensee] in subversion of the [California Bureau of Cannabis Control] and in violation of [California] state law.

(*Polk II* at *6-7.)

Geraci's agreement with Cotton was illegal, void, and ***is*** judicially unenforceable.

C. The Cotton I Court exceeded its jurisdiction in finding that the defense of illegality can be waived and, thus, an illegal contract can be made legal.

Judge Wohlfeil erred factually as the record is clear that Cotton raised the issue of illegality in his cross-complaints and it was the subject of, *inter alia*, a motion for directed verdict.

Judge Wohlfeil erred legally because the defense of illegality cannot be waived and can be raised for the first time in a motion for new trial. *Lewis & Queen*, 48 Cal.2d at 147-48 ("It is not too late to raise the issue on motion for new trial….").

As stated in another California Supreme Court decision: "***A party to an illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and cannot waive his right to urge that defense***." *City Lincoln-Mercury Co. v. Lindsey* (1959) 52 Cal.2d 267, 274 (emphasis added).

Pursuant to the doctrine of *stare decisis,* Judge Wohlfeil was "required" to follow controlling precedent and find the defense of illegality cannot be waived and his failure to do so constitutes an act in excess of his jurisdiction. *People v. Burnham* (1986) 176 Cal.App.3d 1134, 1149; *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291.

D. The Cotton I Judgment is void for enforcing an illegal contract in violation of express statutes and public policy.

"Generally, a judgment is void if the court lacked subject matter jurisdiction or jurisdiction over the parties." *Paterra v. Hansen* (2021) 64 Cal.App.5th 507, 535. However, a lack or excess of jurisdiction resulting in a void judgment also occurs when an act by a Court is an "exercise of a power not authorized by law, or a grant of relief to a party that the law declares shall not be granted." *Id*. at 536 (quoting *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 696); *see 311 South Spring Street Co. v. Department of General Services* (2009) 178 Cal.App.4th 1009, 1018 ("… we define a judgment that is void for excess of jurisdiction to include a judgment that grants relief which the law declares shall not be

granted.").

In regards to procedural errors, the California Supreme Court has said: "most procedural errors are not jurisdictional." (*In re Marriage of Goddard* (2004) 33 Cal.4th 49, 56 (*Goddard*)). "Nonetheless, certain procedural errors are jurisdictional. [*Abelleira*, 17 Cal.2d at p. 288.] An error is jurisdictional 'only where the clear purpose of the statute is to restrict or limit the power of the court to act and where the effective enforcement of such restrictions requires the use of extraordinary writs of certiorari or prohibition.'" *Id.* at 57.

In *Paterra*, a complicated property dispute with numerous competing parties and legal actions spanning over twelve years, Judge Wohlfeil denied a motion to correct or vacate a portion of a prior quiet title judgment that adjudicated the rights of a defaulting lender. *Id*. at 513. This Court of Appeal reversed and remanded, holding that the judgment was void for three independent reasons. *Id*. at 515. The second reason set forth, dispositive in this matter, was because the Judge Wohlfeil did not hold a hearing to adjudicate the lender's rights as required by the mandatory "shall" language of Cal. Code Civ. Proc. § 764.010. *Id*. at 536. This Court explained:

> [S]ection 764.010 imposes mandatory obligations with respect to default judgments, stating that in a quiet title action, "[t]he court ***shall not*** enter judgment by default but shall in all cases require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants …." (Italics added.) These provisions—***absolutely prohibiting*** a default judgment without an evidentiary hearing as to each defaulting defendant's claimed interest—reflect the ***Legislature's intent*** to provide a method for adjudicating title to real property to ensure a property owner obtains "'a general decree that would be binding on all people.'" [Citation.] "[O]nce a quiet title judgment on any grounds becomes final, it is good against all the world as of the time of the judgment. There is, for all practical purposes,

no going back." [Citation.]

> Where, as here, the undisputed record shows the court did not hear evidence respecting plaintiff's quiet title claims against a defaulting defendant, the judgment against that defendant is void as beyond the court's fundamental powers to provide a final determination on title. Accordingly, the judgment against Clarion was void as outside the scope of the court's jurisdiction to grant. (*See Carlson*, *supra*, 54 Cal.App.4th at p. 696 ["'*The mere fact that the court has jurisdiction of the subject matter of an action before it does not justify an exercise of a power not authorized by law, or a grant of relief to a party that the law declares shall not be granted.*'"].)

Paterra, 64 Cal.App.5th at 535-36 (emphasis added).

Here, as in *Paterra*, the mandatory "***shall deny***" language of BPC §§ 19323/26057 applies and reflects the "***Legislature's intent***" to "***absolutely prohibit***" an applicant sanctioned for unlicensed commercial cannabis activities from owning an interest in a cannabis business. In other words, the "clear purpose of the statute is to restrict or limit the power of the court to act" in any way that would allow a sanctioned individual like Geraci to acquire an ownership interest in a cannabis business. *See Goddard,* 33 Cal.4th at 57; Civ. Code §§ 1550, 1598, 1608; Code Civ. Proc. § 473(d).

The *Cotton I* judgment is void because its rendering, enforcing a contract in violation of the clear purpose of the statute, was "an exercise of a power not authorized by law [and] a grant of relief to [Geraci] that the law declares ***shall not*** be granted." *Paterra,* 64 Cal.App.5th at 536.

In *Hunter*, a party to a stipulated judgment petitioned the Court of Appeal to issue a writ of prohibition enjoining the Superior Court from enforcing the judgment. *Hunter v. Superior Court*, 36 Cal.App.2d 100 (1939). The party argued that the stipulated judgment

was void because it was a restraint of trade in violation of Cal. Civil Code § 1673. *Id*. at 112-113. The *Hunter* "court [was] mainly concerned with whether or not the judgment is on its face void, and whether or not it is such a judgment as the court had no power or jurisdiction to make under the circumstances." *Id*. at 112. The Court said: "Nullity of judgments results from … want of power to grant the relief contained in the judgment." *Id*.

In reaching its decision, the Court explained that the "legality or illegality of the judgment must be determined by the terms and provisions of section 1673 of the Civil Code. If the judgment comes within the inhibition of that section, then it is to that extent void. ***There is nothing the parties to the action could do which would in any way add to its validity***. If the contracts upon which the judgment is based are to that extent void, they cannot be ratified either by right, by conduct or by stipulated judgment." *Id*. at 113 (emphasis added).

The Court found the judgment was in violation of section 1673 of the Civil Code, void, granted the petition for a writ of prohibition preventing the trial court from proceeding based on the void judgment, and concluded: "If a court grants relief, which under no circumstances it has any authority to grant, its judgment is *to that extent* void." *Id*. at 116 (emphasis in original).

Applying the principles set forth in *Hunter*, the legality of the *Cotton I* judgment "must be determined by the terms and provisions" of BPC § 19323 as in effect when the November Document was executed in November 2016. The *Cotton I* judgment directly

comes within the inhibition of BPC § 19323 and is void because the court granted relief "which under no circumstances it had any authority to grant." *Id*.

E. Respondent's order is void as it gives effect to a void judgment and affirms the void judgment on grounds not touching its validity.

"A void judgment is simply a nullity, and can be neither a basis nor evidence of any right whatever." *Paterra*, 64 Cal.App.5th 507 at 528 (cleaned up). "An order after judgment that gives effect to a judgment that is void on its face is itself void and subject to appeal even if the judgment itself is not appealed." *Carr v. Kamins* (2007) 151 Cal.App.4th 929, 933. Respondent's order is void and its reliance on *Olivera v. Grace* (1942) 19 Cal.2d 570 (vacating judgment against incompetent defendant) and *Kachig v. Boothe* (1971) 22 Cal.App.3d 626 (denying attack on judgment based on intrinsic fraud) to deny Cotton relief is inapposite – how can there be a "***fair***" proceeding that results in a judgment that enforces an ***illegal*** contract that requires an innocent victim to pay a criminal for his criminal acts against him?

And while it is true that Geraci and his agents engaged in actions that constitute intrinsic fraud (as well as extrinsic fraud), that was not the basis upon which Cotton sought relief in the motion to vacate. Neither *Olivera* nor *Kachig* dealt with a judgment being void as a result of an act ***by*** a court that is in excess of its jurisdiction; granting relief the law declares shall not be granted; nor contain *any* language that provides *any* support for the position that a void judgment for enforcing an illegal contract will become a valid judgment because the issue of illegality had been found to be waived in violation of the doctrine of

stare decisis; and thereby transform an illegal contract into a legal contract that is judicially enforceable.

In other words, Respondent's order affirms the void *Cotton I* judgment upon grounds not touching its validity. Related to this issue, the California Supreme Court has said:

> It is the firmly established rule which has been lost sight of in many cases, that a void judgment cannot be given life or validity by a mere affirmance thereof by an appellate court, even though that latter court may have had appellate jurisdiction to determine that issue. This court said in *Pioneer Land Co. v. Maddux*, 109 Cal. 633, 642 [42 Pac. 295, 50 Am. St. Rep. 67]:
>
> "It has been held that the affirmance by an appellate court of a void judgment imparts to it no validity; and ***especially*** *if such affirmance is put upon grounds not touching its validity*."

Redlands High School Dist. v. Superior Court of San Bernardino County (1942) 20 Cal.2d 348, 362 (emphasis added); *Hager v. Hager* (1962) 199 Cal.App.2d 259, 261 (same); *311 S. Spring St. Co.,* 178 Cal.App.4th at 1015 (same); *see also Kenney v. Tanforan Park Shopping Ctr.* (Dec. 15, 2008, Nos. G038323, G039372) (___Cal.App.4th___ [2008 Cal. App.Unpub.LEXIS 10048, at *36-37]) ("***A judgment giving effect to a void judgment is also void***.") (citing *County of Ventura v. Tillett* (1982) 133 Cal.App.3d 105, 110 and *Security Pac. Nat. Bank v. Lyon* (1980) 105 Cal.App.3d Supp. 8, 13) (emphasis added).

The *Cotton I* judgment is void and it "is simply a nullity, and can be neither a basis nor evidence of any right whatever" (*Paterra*, 64 Cal.App.5th at 528) and it "cannot be given life or validity" (*Redlands High School Dist.*, 20 Cal.2d at 362) as it has been by Respondent's order as it is an "order after judgment that gives effect to a judgment that is

void on its face [and] is itself void" (*Carr,* 151 Cal.App.4th at 933); "***especially*** [as Respondent's] affirmance is put on upon grounds not touching its validity." *Redlands High School Dist.*, 20 Cal.2d at 362 (emphasis added).

III. Respondent erred finding the *Cotton I* Judgment is not void on its face.

First, "'A judgment is void on its face if the court which rendered the judgment … exceeded its jurisdiction in granting relief which the court had no power to grant.'" *Carr,* 151 Cal.App.4th at 933 (quoting *County of Ventura v. Tillett* (1982) 133 Cal.App.3d 105, 110); *Hunter,* 36 Cal.App.2d at 112 (same). Respondent erred finding the *Cotton I* judgment is not void on its face on this ground.

Second, the judgment is also void on its face because the "judgment roll" includes, *inter alia*, Geraci's complaint attaching the alleged agreement with an illegal object; the issue of illegality was pled in Cotton's cross-complaints; and the damages awarded to Geraci were for his pursuit of his unlawful object – his illegal ownership of a dispensary. *See* Cal. Code Civ. Proc. § 473(d); *id*. § 670(b) (defining judgment roll); *id*. § 422.10 (defining pleadings). Respondent erred in finding the judgment is not void on its face on this ground as well.

IV. Respondent's order is an act in excess of his jurisdiction for not addressing and failing to follow controlling California Supreme Court precedent - the *Hill* rule.

> As our high court explained many years ago, if a party admits facts showing that a judgment is void, or allows such facts to be established without opposition, then, ***as a question of law***, a court ***must*** treat the judgment as void upon its face. (*Hill v. City Cab & Transfer Co.* (1889) 79 Cal. 188, 191 [21 P. 728] (*Hill*).

OC Interior Services, LLC v. Nationstar Mortgage, LLC (2017) 7 Cal.App.5th 1318, 1327-1329 (citations and quotations omitted) (emphasis added).

Even assuming the *Cotton I* judgment was not otherwise void on its face, in opposing the motion to vacate, Geraci did *not* dispute or argue that he was sanctioned in the Geraci Judgments or that his sanctions barred his ownership of a CUP to operate a dispensary pursuant to the BPC. (*See* Ex. 4.) These facts were established without opposition and therefore the rendering of the judgment was an act in excess of Judge Wohlfeil's jurisdiction.

Respondent erred – *as a question of law* – not following the *Hill* rule pursuant to the doctrine of *stare decisis*, treating the judgment as void on its face, and vacating the judgment for this reason as well.

V. The *Cotton I* Judgment should also be set aside because the Court has the inherent power to set aside a judgment entered by mistake.

"A trial court has inherent power to set aside a judgment entered through its own inadvertence or improvidence, such as a judgment which does not express the court's true intention or where the court acted in ignorance of some material fact of record." *Don v. Cruz* (1982) 131 Cal.App.3d 695, 703 ("*Don"*) (citing *Key System Transit Lines v. Superior Court* (1950) 36 Cal.2d 184, 187-188 ("*Key System*")).

In *Key System*, the trial court dismissed an action for failure to prosecute within two years pursuant to Cal. Code of Civ. Proc. § 583. *Key System,* 36 Cal.2d at 185. Plaintiffs filed a motion to vacate the order of dismissal, which was granted by the same judge who

issued the order of dismissal. *Id*. Defendant filed a writ of prohibition alleging that the trial court was without jurisdiction to vacate the order of dismissal. *Id*.

In denying the petition, the Court explained:

> **The arguments of the petitioner invoke application of the policy requiring finality of judgments and orders** [**exactly like Geraci.**] ….
>
> In 1 Freeman on Judgments (5th ed.) p. 432, it is said that where the court is deceived or is laboring under a mistake or misapprehension as to the state of the record or as to the existence of extrinsic facts upon which its action is predicated, it has inherent power to vacate a judgment which would not otherwise have been rendered. **That principle was applied by this court in setting aside one of its own judgments almost three years after it was rendered because the first order was made on the theory that the defendant had not moved for a new trial when in fact he had done so.** (*In re Rothrock*, [1939] 14 Cal.2d 34 [92 P.2d 634].)

Key System, 36 Cal.2d at 187-188 (emphasis added).

It cannot be judicially contemplated that Judge Wohlfeil *intended* to enter a judgment enforcing an illegal contract – it was a mistake. The judgment "does not express the court's true *intention* [and] the court acted in ignorance of [a] material fact of record." *Don,* 131 Cal.App.3d at 703 (emphasis added).

Therefore, the *Cotton I* judgment should also be set aside because it "was made on the theory that [Cotton] had not [raised the issue of illegality prior to moving] for a new trial when in fact he had done so." *Key System,* 36 Cal.2d at 187-188; *In re Rothrock*, 14 Cal.2d 34; *Don,* 131 Cal.App.3d at 703.

VI. Conclusion

Pursuant to the authorities set forth above, the Court should grant this Petition, direct Respondent to apply the proper law, vacate the judgment, and not proceed based on a void order that gives effect to a void judgment.

WRIT RELIEF IS REQUIRED TO PROTECT THE PUBLIC BECAUSE THE ALG PROXY PRACTICE IS AN ILLEGAL PRACTICE THAT IS CAUSING HARM TO THE PUBLIC AND IS BEING VALIDATED BY THE JUDICIARIES.

As demonstrated below, the ALG Proxy Practice violates, *inter alia*, California's cannabis licensing statutes, the Cartwright Act, the UCL, Penal Code provisions and is *prima facie* fraud. It is illegal petitioning activity, and all litigation based on same is also illegal: "The courts cannot validate ongoing illegality." *Fontana Redevelopment Agency v. Torres*, 153 Cal.App.4th 902, at 913.

Writ relief is therefore warranted because the illegality of the ALG Proxy Practice:

> … is an issue of law that does not turn on the facts of this case, it is a significant issue of widespread importance, and it is in the public interest to decide the issue at this time. Given the [ongoing] recognition of the [ALG Proxy Practice] by the lower courts, delaying until some future case an announcement of our conclusion that [the ALG Proxy Practice] should not be recognized in the circumstances present here would be extremely wasteful of the resources of both courts and parties, for they would continue to litigate such cases on the assumption that the [ALG Proxy Practice lawfully] exists.

Cedars-Sinai, 18 Cal.4th at 6 (cleaned up).

I. Litigation Based on the ALG Proxy Practice.

A. Cotton v. Geraci, et. al.

1. On February 9, 2018, before entry of judgment in *Cotton I*, Cotton filed an action in federal court including causes of action for violations of his Civil Rights against, *inter alia*, Geraci, Berry, and Geraci's attorneys (Ex. 6.1 at 0658-1036.), which was stayed

pursuant to the *Colorado River* doctrine. (*See* Ex. 6.5 at 1090.) The complaint set forth allegations describing acts and threats of violence against Cotton and third parties taken in furtherance of preventing Cotton from prosecuting the *Cotton I* action. (*See* Ex. 6.1.)

2. Subsequent to the *Cotton I* judgment being entered, Cotton's complaint has been amended twice, including to allege facts constituting extrinsic fraud which were not discovered until after the trial of *Cotton I*. (RJN. Exs. 5, 6.)

3. However, the federal court has repeatedly found that the *Rooker-Feldman* doctrine bars Cotton's causes of action based on the illegal agreement and has dismissed his causes of action against Geraci and Berry. (*See* Ex. 6.3 at 1064 ("At bottom, Plaintiff believes that the contract between him and Geraci and Berry is illegal, but that issue has been dealt with in state court.").)

4. Motions to dismiss Cotton's operative complaint are currently under submission.(RJN, Ex. 7.)

B. Flores, et al. v. Austin, et al.

5. On April 3, 2020, Attorney Andrew Flores filed suit in federal court against, *inter alia*, Attorney Austin with causes of actions which originate from the ALG Proxy Practice. (RJN, Ex. 8.)

6. Attorney Flores' complaint alleges that during his investigations into Attorney Austin and the ALG Proxy Practice he met and was provided a recording of an interview by an investigative reporter with an employee of Razuki. (*Id*. at 32:4-33:1.) The employee states he was present when Attorney Austin and Razuki discussed how to prevent

Attorney Austin's non-conspirator clients from acquiring properties that qualify for CUPs so they could be acquired by her coconspirators and that they expressively stated their goal was to create a "monopoly." (*Id*. at 32:8-10.)

C. Razuki v. Malan, et. al.

7. "Razuki and Malan's business relationship began with commercial real estate investments in 2009, and eventually expanded into several cannabis businesses." (RJN, Ex. 9 (the "*Razuki Decision*")[7] at *2.)

8. On January 6, 2015, Razuki was sanctioned for unlicensed commercial cannabis activities by the City (the "Stonecrest Judgment").[8] (RJN, Ex. 10.)

9. Subsequent to Razuki being sanctioned in the Stonecrest Judgment, Razuki and Malan entered into an oral partnership agreement (the "Oral Agreement") pursuant to which:

> Razuki would provide the initial cash investment to purchase a certain asset while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, he would be entitled to seventy-five percent (75%) of the profits & losses of that particular asset and Malan would be entitled to twenty-five percent (25%) of said profits & losses.

(*Razuki Decision* at *8.)

10. "By 2017, however, the relationship was strained, and they entered into a settlement agreement to clarify their ownership of and rights to the expected profits from

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[7] The "*Razuki Decision*" means *Salam Razuki v. Ninus Malan* (Feb. 24, 2021, No. D075028) ___Cal.App.5th___ [2021 Cal. App. Unpub. LEXIS 1168]).

[8] The "Stonecrest Judgment" means *City of San Diego v. Stonecrest Plaza*, *LLC*, Case No. 37-2014-00009664-CU-MC-CTL.

three cannabis businesses [the "Settlement Agreement]." (*Id.* at *2-3.)

11. As part of the Oral and Settlement Agreements, Malan would apply for cannabis permits and licenses but not disclose Razuki's ownership interests therein because of the Stonecrest Judgment (*i.e.*, the ALG Proxy Practice):

> Because of [the Stonecrest Judgment], I was concerned with having my name on any title associated with a marijuana operation. This is why Malan would put his name on title for the LLCs related to our marijuana operations. I always assumed he would honor the oral agreement and the Settlement Agreement that would entitle me to 75% ownership of all the Partnership Assets.

(RJN Ex. 11 (Razuki Declaration) at 6:5-8.)

12. On July 13, 2018, Razuki filed a complaint against, among others, Malan alleging he has ownership interests in approximately $40,000,000 in cannabis assets that the parties had acquired pursuant to the Oral and Settlement Agreements from which Malan was unlawfully diverting money owed to him ("*Razuki*").[9] (*See Razuki Decision* 5 at *7.)

13. Attorney Austin represents Malan in the *Razuki* action. (RJN, Ex. 1.)

14. In *Razuki*, the trial court appointed a receiver to manage the assets the subject of the dispute between Razuki and Malan. (*Id.* at *2.)

15. Attorney Austin, in opposing the appointment of the receiver, argued the receiver "would be deemed an 'owner' of the Balboa Dispensary and an additional application would need to be filed pursuant to Section 5024(c) of Title 16 Division 42 of

[9] "*Razuki*" means *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL.

the California Code of Regulations." (RJN Ex. 7 at 3:5-7.)

16. Malan appealed the appointment of the receiver, which this Court affirmed. (*Razuki Decision* at *2.)

17. Materially, this Court, in denying Malan's claim to invalidate the Settlement Agreement, said:

> Malan's assertion that the Settlement Agreement is unenforceable because it was against the public policy of this state at the time it was entered, does not convince us the trial court abused its discretion by appointing the receiver. "Anything that has a tendency to injure the public welfare is, in principle, against public policy. But to determine what contracts fall into this vague class is exceedingly difficult. It has been frequently observed that the question is primarily for the Legislature, and that, ***in the absence of a legislative declaration***, a court will be very reluctant to hold the contract void." [Citations.]

(*Id.* at *56-57 (emphasis added).)

18. This Court also recognized that the BPC applies to CUP applications. (*Id.* at *7 ("The licenses were required under state laws that closely regulate cannabis businesses.") (citing Bus. & Prof. Code, § 26000 *et seq*.)).)

II. California's Anti-Monopoly Cannabis Licensing Statutes and Express Public Policies.

On November 9, 2016, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA") went into effect, which, among other things, legalized nonmedical use of cannabis. The Findings and Declarations in AUMA included the following material provisions:

> By bringing marijuana into a regulated and legitimate market, [AUMA] creates a ***transparent and accountable system***. This will help police crackdown on the underground black market that currently benefits violent drug cartels and transnational gangs, which are making billions from marijuana trafficking and jeopardizing public safety.
>
> ….
>
> [AUMA] also ***protects consumers and small businesses*** by imposing strict anti-monopoly restrictions for businesses that participate in the nonmedical marijuana industry.

AUMA at § 2(H), (J) (emphasis added).

AUMA prohibits a licensee from forming a trust in restraint of trade in violation of the Cartwright Act; provides joint liability for an agent that that aids a licensee in a violation thereof; and provides that any party "may bring an action to enjoin and restrain any violation of this section for the recovery of damages." (BPC §§ 26052(a)(2), (b)-(c) (as amended).)

On June 27, 2017, Senate Bill 94 ("SB 94") went into effect making amendments to California's cannabis licensing regulatory framework and consolidating the medical and non-medical cannabis licensing schemes. Materially, the Findings and Declarations included the following:

> In order to strictly control the cultivation, processing, manufacturing, distribution, testing, and sale of cannabis in a transparent manner that allows the state to fully implement and enforce a robust regulatory system, ***licensing authorities must know the identity of those individuals who have a significant financial interest in a licensee, or who can direct its operation***. Without this knowledge, regulators would not know if an individual who controlled one licensee also had control over another. To ensure accountability and preserve the state's ability to adequately enforce against all responsible parties the state must have access to key information.

SB 94, § 1(f) (emphasis added).

To specifically allow for further private enforcement against illegal monopolies and other unlawful business practices in the cannabis industry, SB 94 added § 26051 to Division 10 (Cannabis) of the BPC which materially provides that: "The Cartwright Act, the Unfair Practices Act, the Unfair Competition Law… apply to all licensees regulated under this division." BPC § 26051(a) (as amended).

III. The *Noerr-Pennington* Doctrine does not immunize the ALG Proxy Practice.

"The *Noerr-Pennington* doctrine immunizes legitimate efforts to influence a branch of government from virtually all forms of civil liability." *People ex rel. Harris v. Aguayo* (2017) 11 Cal.App.5th 1150, 1160. However, there is an exception to such immunity for sham petitioning activity in California. *Hi-Top Steel Corp. v. Lehrer* (1994) 24 Cal.App.4th 570, 579.

"The sham exception has both an objective and subjective element: [1] a petition or litigation must be objectively baseless, in that one could not reasonably expect it to succeed; and [2] the person making the petition or pursuing the litigation must be motivated by an improper purpose." *Tichinin v. City of Morgan Hill* (2009) 177 Cal.App.4th 1049, 1072.

"Unlawful actions may not be subject to immunity under the *Noerr-Pennington* doctrine." *People ex rel. Harris,* 11 Cal.App.5th at 1161. California Penal Code § 115 "makes it a felony to knowingly procure or offer any false or forged instrument for filing in a public office." *Id*. at 1166. "[F]raud … and recording false documents, among other

things, are not protected petitioning activity under *Noerr-Pennington* and its progeny." *Id*. at 1163.

Axiomatically, the ALG Proxy Practice is not immunized under the *Noerr-Pennington* doctrine: (1) any petition or litigation based on the acquisition or enforcement of ownership interests in cannabis business based on the ALG Proxy Practice (*i.e.*, fraud) seeking to enforce illegal contracts is objectively baseless; and (2) any party petitioning or pursuing litigation based on the illegal ALG Proxy Practice restricts trade in the cannabis market – an improper purpose. *See id.*

IV. The California Litigation Privilege does not immunize the ALG Proxy Practice.

A. Civil Code Section 47(b) does not immunize the ALG Proxy Practice.

The litigation privilege codified in Civil Code section 47(b) creates a nearly absolute privilege for statements made during the course of litigation. *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241 (describing exceptions to litigation privilege).

Courts have created exceptions to the litigation privilege when two conditions are met: (1) the statute at issue is "more specific than the litigation privilege," and (2) application of the privilege would render the statute "significantly or wholly inoperable." *See People v. Persolve* (2013) 218 Cal.App.4th 1267, 1274.

A cause of action for violation of BPC § 26052 meets both prongs of this test. BPC § 26052(a)(1) prohibits a licensee and its agents from taking any acts that restrict trade in violation of the Cartwright Act. Subdivision (b) of the statute provides for joint liability for

any person who aids, directly or indirectly, a licensee in any violation. And subdivision (c) provides that "Any person… may bring an action to enjoin and restrain any violation of this section for the recovery of damages."

The Legislature clearly provided for a cause of action to recover damages for violations of this section, which must include damages caused by attorneys filing lawsuits in furtherance of a violation of the statute. If the litigation privilege trumped a suit for a violation of this statute, the privilege would "effectively immunize conduct that the [statute] prohibits" (*Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 338) thereby rendering the statute "significantly or wholly inoperable" (*Persolve*, 218 Cal.App.4th at 1274).

Attorney Austin and her clients cannot immunize their illegal acts in furtherance of their illegal goals via litigation.

B. Civil Code Section 47(c) does not immunize lawsuits by rival claimants to ownership in real property or CUPs based on the ALG Proxy Practice – they constitute slander of title.

"The elements of the [slander of title] tort are (1) a publication, (2) without privilege or justification, (3) falsity, and (4) direct pecuniary loss." *Sumner Hill Homeowners' Assn., Inc. v. Rio Mesa Holdings, LLC* (2012) 205 Cal.App.4th 999, 1030 (brackets in original).

First, the filing of the Berry Application and the *Cotton I* action are publications that claim ownership of the Property and the contemplated CUP at the Property.

Second, pursuant to Civil Code section 47(c), there is a qualified litigation privilege for a rival claimant to property that is lost when the publication is made with malice. *Hill v.*

Allan (1968) 259 Cal.App.2d 470, 490. Malice exists when the person making the statement has no reasonable grounds for believing the statement to be true, or makes the statement for any reason other than to protect the interest for the protection of which the privilege is given; and "implied malice, or malice at law," exists when a "rival claimant of property prosecutes an action… [and] attempts to secure to themselves property as to which they had no legitimate claim." *See Spencer v. Harmon Enterprises, Inc.* (1965) 234 Cal.App.2d 614, 622-623.

Third, Geraci and Berry's statements claiming to have ownership interests in the Property and the CUP based on the November Document are false because the alleged agreement is an illegal contract.

Fourth, Cotton is entitled to damages that include "(1) the expense of legal proceedings necessary to remove the doubt cast by the disparagement [including this petition, and all past and future litigation in state and federal courts], (2) financial loss resulting from the impairment of vendibility of the property, and (3) general damages for the time and inconvenience suffered by plaintiff in removing the doubt cast upon his property." *Seeley v. Seymour* (1987) 190 Cal.App.3d 844, 865.

All lawsuits claiming rival ownership of property or a CUP based on the ALG Proxy Practice constitute slander of title and are not protected by the litigation privilege.

V. The ALG Proxy Practice Violates the Cartwright Act.

"The antitrust laws are designed to protect the public, as well as more immediate victims, from a restraint of trade or monopolistic practice which has an anticompetitive impact on the market." *Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 724.

The Cartwright Act prohibits two or more persons from combining to do certain specified anti-competitive acts including creating or carrying out restrictions on trade or commerce and preventing competition in the sale or purchase of any commodity. (BPC §§ 16720(a), (c).)

To prevail in an action under the Cartwright Act, a plaintiff must prove the following: (1) the formation and operation of the conspiracy; (2) illegal acts done pursuant thereto; and (3) damage proximately caused by such acts. *Asahi Kasei Pharma Corp. v. CoTherix, Inc.* (2012) 204 Cal.App.4th 1, 8.

A. Formation

The doctrine of per se illegality holds that some acts are prohibited by the antitrust laws regardless of any asserted justification or alleged reasonableness. *Oakland-Alameda County Builders' Exchange v. F. P. Lathrop Constr. Co.* (1971) 4 Cal.3d 354, 361. These per se illegal practices, because of their pernicious effect on competition and lack of any redeeming virtue, are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. (*Id*. at 361.)

Manifestly, the ALG Proxy Practice is illegal and a per se violation of antitrust laws.

Geraci and his agents' justifications and excuses for taking, aiding and/or ratifying Geraci's acquisition of a CUP via the ALG Proxy Practice were put forth in their testimony and set forth in the opposition for new trial and their justifications fail to create a triable issue of fact regarding their intent to violate antitrust laws. *See Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 855.

Most notably, Attorney Austin's testimony that Geraci was not required to be disclosed in the Berry Application at the *Cotton I* trial in July 2019 that is directly contradicted by her sworn declaration in September 2018 arguing that an "owner" "need[s]" to be disclosed to the State licensing authorities in *Razuki*. (*Compare* RJN, Ex. 1 at 3:5-7 *with* RJN, Ex. 3 at 51:17-28.)

As to Razuki and Malan, they directly admit that they put the cannabis assets in Malan's name because Razuki was sanctioned in the Stonecrest Judgement as they fight over their $40,000,000 cannabis empire before the courts, including this Court of Appeal.

Furthermore, the evidence before this Court is sufficient to find that there it is probable that Attorney Austin and her clients have *already* established a near monopoly in the cannabis market in the City. This is because, although the City authorized thirty-six (36) CUPs for dispensaries, due to various factors affecting eligibility of real properties, "City planning staff concluded that the actual number of dispensaries to be created 'is very

likely to be significantly less'" than thirty (30).[10]

Attorney Austin's own testimony that she has worked on the successful acquisition of 20-25 CUPs, coupled with Attorney Flores' allegation of direct evidence of Attorney Austin and her clients are seeking to create a monopoly, makes it probable a near monopoly has already been created.

B. Illegal Acts

As set forth above, all petitioning activity in furtherance, ratification and/or defense of the ALG Proxy Practice is illegal and not protected by any immunity.

C. Damages

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[10] *See Union of Medical Marijuana Patients, Inc.v. City of San Diego* (2019) 7 Cal.5th 1171, 1180 ("In 2014, the City of San Diego (City) adopted an ordinance authorizing the establishment of medical marijuana dispensaries and regulating their location and operation."); *id*. at 1182 ("Because the City contains nine city council districts, the Ordinance's limit of four dispensaries per district permitted, in theory, the establishment of 36 dispensaries. A study commissioned by the City, however, found that the other restrictions placed on the location of dispensaries by the Ordinance, such as the limitation to particular zoning districts and the minimum distance from sensitive uses, precluded the establishment of a dispensary entirely in one city council district and limited two other districts to three dispensaries each. This left a practical maximum of 30 dispensaries. City planning staff concluded that the actual number of dispensaries to be created 'is very likely to be significantly less,' since 'factors such as available units for rent, rental rates, overall demand for dispensaries, and proximity of potential sites to target markets would rule out some sites.'").

"The focus of the Cartwright Act is 'on the punishment of violators for the larger purpose of promoting free competition.'" *Asahi,* 204 Cal.App.4th at 7. A party prevailing on a Cartwright violation is entitled to recover treble damages. BPC § 16750(a).

Judge Wohlfeil found that but for Cotton's alleged interference with the Berry Application the CUP would probably have issued at the Property. But Cotton's interference was not unlawful. But for Geraci's filing of the *Cotton I* action, the Berry Application with the City preventing Cotton from filing a CUP application with Martin, and the recording of the F&B Lis Pendens on the Property,[11] a CUP would have issued and Cotton's deal with Martin would have closed. Pursuant to his agreement, Cotton would have received: (i) $2,000,000; and (ii) a 20% equity stake in the dispensary; and (iii) on a monthly basis the greater of 20% of the net profits or $10,000. (*See* Ex. 6.1.5 at 890, 901.)

At a minimum, Cotton's damages – assuming a ten-year span (the life of a CUP), minimum monthly distributions of $10,000, no additional increase in the valuation of Cotton's 20% interest in the dispensary – are $2,000,000 *plus* $1,200,000 ($10,000,000 x 120 months) *plus* $400,000 (20% valuation of $2,000,000 purchase price) *minus* the sale

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[11] "Once a lis pendens is filed, it clouds the title and effectively prevents the property's transfer until the litigation is resolved or the lis pendens is expunged." *BGJ Associates v. Superior Court* (1999) 75 Cal.App.4th 952, 967. "Courts have long recognized that because the recording of a lis pendens places a cloud upon the title of real property until the pending action is ultimately resolved, the lis pendens procedure is susceptible to serious abuse, ***providing unscrupulous plaintiffs with a powerful lever to force the settlement of groundless or malicious suits***." *Id*. at 969 (cleaned up).

of the Property for $500,000, which equals: **$3,100,000**. Pursuant to BPC § 16750(a), Cotton's damages are trebled for a total of **$9,300,000.**

VI. The ALG Proxy Practice Violates The UCL.

"The UCL is a law enforcement tool designed to protect consumers and deter and punish wrongdoing." *People ex rel. Harris,* 11 Cal.App.5th at 1159. It prohibits "unfair competition" that is broadly defined to include any unlawful, unfair or fraudulent business act or practice. BPC § 17200. The "unlawful" practices prohibited by the UCL "are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made." *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 531-532; *id*. at 532 (holding "conditional use permits are part of local zoning laws…. a violation of a permit's conditions is also a violation of the zoning law, and is therefore unlawful.").

As set forth above, because the ALG Proxy Practice violates California's cannabis licensing statutes, the Cartwright Act and it also violates the UCL. *See B.W.I. Custom Kitchen v. Owens-Illinois* (1987) 191 Cal.App.3d 1341, 1355 ("Violations of the Cartwright Act are also unlawful business practices under the unfair competition statutes.").

In *Golden State Seafood, Inc. v. Schloss*, plaintiff filed an action for malicious prosecution and a UCL claim against a defendant attorney and his client. *Golden State Seafood, Inc. v. Schloss* ("*Golden State*") (2020) 53 Cal.App.5th 21, 27. The complaint alleged attorney defendant filed a prior lawsuit against plaintiff on behalf of his client

knowing he lacked probable cause to bring and maintain the action. *Id*. Defendant attorney appealed the trial court's denial of his anti-SLAPP motion and a motion for reconsideration of same. *Id.* The Court of Appeal affirmed the denials and in reaching its decision on the UCL claim, the Court held: "Knowingly filing or pursuing unmeritorious legal actions that are not factually or legally tenable, for the purpose of earning income, qualifies as an unfair business practice." *Id*. at 40.

Here, as in *Golden State,* Attorney Austin's petitioning based on the ALG Proxy Practice is illegal and therefore unmeritorious. Consequently, Attorney Austin's petitioning activity is an unfair business practice, is not subject to an anti-SLAPP motion, is not immunized, and constitute violations of the UCL.

VII. Conclusion

The ALG Practice is illegal and represents an issue of public importance that warrants writ relief protect the public.

COTTON'S CIRCUMSTANCES ARE EXTRAORIDNARY AND JUSTIFY WRIT RELIEF AS TO HIM AND AS A MATTER OF PUBLIC POLICY.

A. The Integrity of the Judiciaries.

"By refusing to entertain the enforcement of illegal contracts, courts maintain their integrity while at the same time deterring the formation of such contracts." *Aghaian v. Minassian* (2021) 64 Cal.App.5th 603, 622.

This Court should grant writ relief to vindicate the damage done to the integrity of the courts and to Cotton.

B. Cotton's Civil Rights.

> Though there appears to be no clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that the attorney may be held liable for damages if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably should have known, would violate the clearly established constitutional or statutory rights of another.

Stevens v. Rifkin, 608 F. Supp. 710, 730 (N.D. Cal. 1984) (citing *Buller v. Buechler*, 706 F.2d 844, 852-853 (8th Cir. 1983)).

The federal court has found the *Rooker-Feldman* doctrine bars review of Cotton's Civil Rights causes of action based on the *Cotton I* judgment. The Court cannot allow Respondent's order failing to vacate the judgment to stand as it serves to immunize the illegal actions of Geraci and his attorneys. *Cf. Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1011 ("A judgment should not be vacated if it would deny a licensing agency or the public the ability to discover bad acts involving matters of public concern.").

It is "manifest injustice" to allow the judgment to stand, force Cotton to pay Geraci for his illegal acts against Cotton, and allow the perception of judicial ratification of illegal activity that violates Cotton's Civil Rights. *See Luxury Asset Lending, LLC v. Philadephia Television Network, Inc.* (2020) 56 Cal.App.5th 894, 913.

CONCLUSION

For all of the reasons set forth above, this Court should find that Respondent's order is void for enforcing a void judgment, is prejudicial to Cotton, represents a public interest of widespread importance because it judicially validates the ALG Proxy Practice, and

justifies writ relief.

Cotton pleads with this Court that it exercise its broad inherent power to see justice done and take whatever action and grant whatever relief is within its power even if not requested herein.

Dated: April 25, 2021

Respectfully submitted,

DARRYL COTTON
Petitioner *In Propria Persona*

CERTIFICATE OF WORD COUNT

I, Petitioner/Plaintiff Darryl Cotton, hereby certify that the foregoing Petitioner for Writ of Mandate and Other Applicable Relief is prepared in proportionally spaced Times New Roman 13 point type and, based on the word count of the word processing system used to prepare this document, the Petition is 13083 words long.

Dated: April 25, 2021

DARRYL COTTON
Petitioner *In Propria Persona*