DARRYL COTTON
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Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual

Plaintiff,

v.

GINA AUSTIN, an individual; JESSICA MCELFRESH, an individual, and DAVID DEMIAN, an individual,

Defendants.

Case No. 3:18-cv-00325-JO-DEB

PLAINTIFF'S NOTICE OF EX PARTE APPLICATION AND EX PARTE APPLICATION FOR EXTENSION OF TIME TO FILE AMENDED COMPLAINT; DECLARATION OF DARRYL COTTON; MEMORANDUM OF POINTS AND AUTHORITIES

Hearing Date: N/A
Hearing Time: N/A
Judge: Hon. Jinsook Ohta
Courtroom: 4C

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 5, 2022, Plaintiff DARRYL COTTON will move this Court *ex parte* for an order requesting an extension to file responses to defendants' motion to dismiss pursuant to Fed. R. Civ. P. 6(b)(1)(A).

Cotton's application is based upon this notice and application, the accompanying supporting memorandum of points and authorities, the Declaration of Darryl Cotton, and the accompanying Request for Judicial Notice.

Good cause exists for this application because Cotton has been diligently attempting to acquire counsel to represent him in this action and he has reached an agreement with the law firm of Tiffany &

Bosco, his former attorneys in *Cotton I*,[1] to represent him if he can have the underlying *Cotton I* judgment declared void without having to address issues of judicial bias. Good cause also exists because Cotton needs more time as a legally untrained individual to file a coherent response to defendant attorneys' motions to dismiss and he has been attempting to do so but he also had to prepare and file a complaint and motion to vacate the *Cotton I* judgment in state court because the last order in this action found that the *Rooker-Feldman* doctrine bars this Court's jurisdiction from reviewing the legality of defendants actions. Thus, if the *Cotton I* judgment is vacated by the state court, this Court will not be barred by the *Rooker-Feldman* doctrine and Cotton's responses to defendants' motion to dismiss will be different and will also require that Cotton amend his complaint.

Lastly, Cotton is an indigent civil litigant that has been diagnosed with mental conditions that render him incapable of articulating his claims and representing himself and he needs more time to prepare a valid complaint. (*See* ECF No. 93 (application for court appointed counsel due to mental impairment.)

DATED: January 5, 2022

Darryl Cotton
Pro Se

[1] "*Cotton I*" means *Larry Geraci vs Darryl Cotton,* San Diego County Superior Court, Case No. 37-2017-00010073-CU-BC-CTL.

DECLARATION OF DARRYL COTTON

I, Darryl Cotton, declare:

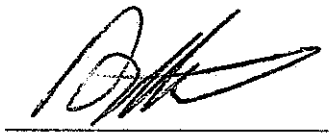
1. I am the plaintiff in this action and can would testify as to the matters stated herein as to my personal knowledge or belief, which I believe to be true.

2. If I am successful in having the *Cotton I* judgment declared void in state court, the law firm of Tiffany & Bosco will represent me in this action and the state action.

3. I have repeatedly attempted to acquire private counsel and court appointed counsel, but have been unsuccessful because of, inter alia, the allegations of judicial bias I have previously made.

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

January 5, 2022



Darryl Cotton

MEMORANDUM OF POINTS & AUTHORITIES

INTRODUCTION

On October 22, 2021, this Court denied Cotton's motion for court appointed counsel and granted certain defendants motions to dismiss, found that the *Rooker-Feldman* prevents the Court from finding the *Cotton I* judgment void for illegality, and granted Cotton thirty days to file an amended complaint in this action. (*See* ECF No. 96.) On November 22, 2021, Cotton filed an amended complaint. (ECF No. 97.) On December 6, 2021, defendants filed motions to dismiss Cotton's amended complaint. (ECF Nos. 98, 99, 100.)

On December 3, 2022, Cotton filed a complaint in equity[2] and motion to vacate[3] the void *Cotton I* judgment in state court. The hearing on the motion to vacate is set for January 12, 2022. If Cotton is successful in the state action, the law firm of Tiffany & Bosco will represent Cotton in this and the state action. Cotton respectfully requests that this Court grant Cotton an extension of 30 days to file responses to the motions to dismiss so that Tiffany & Bosco can prepare his responses to the motions to dismiss or, if the Court denies the motion to vacate, for Cotton to do his best to respond to the motions to dismiss. (*See* Declaration of Darryl Cotton at ¶ 2.)

Cotton has repeatedly attempted to acquire counsel and represent himself, however, he has been unable to do so as reflected by the record before this Court. (*Id.* at ¶ 3; *see* ECF No. 93 (motion for court appointed counsel).) Cotton's belief is that *Rooker-Feldman* does not bar this Court's jurisdiction to address the illegal actions taken by defendants, but if the *Cotton I* judgment is declared void by the state court, then this Court can address the merits of Cotton's actions without defendants being able to rely on a void judgment to avoid liability for their illegal actions in this Court and the state court.

LEGAL STANDARD

"When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires." Fed. R. Civ. P. 6(b)(1)(A). Where good cause is shown, a request for an

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[2] Request for Judicial Notice ("RJN"), Exhibit 1 (Cotton state complaint) attached hereto.
[3] RJN, Exhibit 2 (ex parte application to vacate *Cotton I* judgment) attached hereto.

extension should be granted in the absence of bad faith by the moving party or prejudice to the adverse party. *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258-59 (9th Cir. 2010). "'Good cause' is a non-rigorous standard that has been construed broadly across procedural and statutory contexts." *Id.* at 1259.

ARGUMENT

I. The *Rooker-Feldman* doctrine does not apply because this action commenced before the *Cotton I* judgment was rendered.

A. Material Facts

1. This action was filed on February 9, 2018. (ECF No. 1.)
2. The judgment in *Cotton I* was rendered on August 19, 2019.[4]

B. Applicable Law

"The *Rooker-Feldman* doctrine forbids a losing party in state court from filing suit in federal district court complaining of an injury caused by a state court judgment, and seeking federal court review and rejection of that judgment." *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013).

In *Exxon Mobil*, the Supreme Court held that one prerequisite for the application of the *Rooker-Feldman* doctrine is that the federal suit complain of injuries caused by a state-court judgment rendered ***before*** the district-court proceedings commenced. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005) (describing requirements for application of *Rooker-Feldman* doctrine). As explained by Moore's Federal Practice Guide:

> In *Exxon Mobil,* the Supreme Court held that one prerequisite for the application of the *Rooker-Feldman* doctrine is that the federal suit complain of injuries caused by a state-court judgment rendered ***before*** the district-court proceedings commenced....
>
> The Exxon Mobil Court disapproved previous lower-court decisions that had applied the doctrine to bar federal suits filed before the entry of judgment in state court. The Court explained that "[w]hen there is parallel state and federal litigation, [the *Rooker-Feldman* doctrine] is not triggered simply by the entry of judgment in state court." It is settled law that "the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction .... Comity or abstention doctrines may, in various circumstances, permit or require the federal court to stay or dismiss the federal action in favor of the state-court litigation .... ***But neither Rooker nor Feldman***

[4] RJN, Exhibit 3 (*Cotton I* judgment) attached hereto.

> ***supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment on the same or related question while the case remains sub judice in a federal court.***"
>
> The Supreme Court in *Exxon Mobil* went on to explain that when the *Rooker-Feldman* doctrine is inapplicable, once the state-court adjudication is complete, its effect on the federal suit is governed by preclusion law. Under the Full Faith and Credit Act, the federal court must usually give the same preclusive effect to the state-court judgment as another court of that state would give. Unlike the *Rooker-Feldman* doctrine, preclusion is not a jurisdictional matter. Therefore, "***[i]n parallel litigation, a federal court may be bound to recognize the claim- and issue-preclusive effects of a state-court judgment, but federal jurisdiction over an action does not terminate automatically on the entry of judgment in the state court.***"

18 Moore's Federal Practice - Civil § 133.33 (2021) (cleaned up, emphasis added).

C. Analysis and Conclusion

This action was commenced before the judgment in *Cotton I* was rendered. There are no exceptions to this requirement for the application of the *Rooker-Feldman* doctrine set forth by the Supreme Court in *Exxon-Mobile*. Consequently, the *Rooker-Feldman* doctrine does not apply and this Court does not lack jurisdiction to vindicate Cotton's Civil Rights.

II. Federal law requires that this Court apply California preclusion law finding the *Cotton I* judgment is void and, therefore, cannot be relied upon by defendants to immunize their illegal actions.

A. Material Facts

1. On June 17, 2015, Geraci was sanctioned for unlicensed commercial cannabis activities in the CCSquared Judgment.[5]

2. On March 21, 2017, Geraci filed *Cotton I* alleging 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." [6] (The "November Document.")

   b. "On or about November 2, 2016, GERACI paid to COTTON $10,000 good faith

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[5] RJN, Ex. 4 (*City of San Diego v. CCSquared Wellness Cooperative, et. al.*, Case No. 37-2015-00004430-CU-MC-CTL, Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon) (the "CCSquared Judgment") attached hereto.

[6] RJN, Ex. 5 (Geraci *Cotton I* complaint).

> 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."[7] (The "Berry CUP Application.")

3. On August 19, 2019, the *Cotton I* judgment was entered finding that the November Document is a lawful contract and that "[Geraci] is not barred by law pursuant to California Business and Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial of Application) from owning a Marijuana Outlet conditional use permit issued by the City of San Diego."[8]

B. Applicable Law

California Cannabis Laws

As in effect in November 2016 when the November Document was executed, California's cannabis licensing statutes codified at California Business & Professions Code ("BPC"), Division 8, Chapter 3.5 (Medical Cannabis Regulation and Safety Act) provided as follows:

1. A license can only be issued to a "***qualified applicant***." (BPC § 19320(b) ("Licensing authorities administering this chapter may issue state licenses only to ***qualified applicants*** engaging in commercial cannabis activity pursuant to this chapter.") (emphasis added).)

2. If the applicant does not qualify for licensure the State's licensing authorities "***shall deny***" his application. (BPC § 19323(a) ("A licensing authority ***shall deny*** an application if the applicant… does not qualify for licensure under this chapter or the rules and regulations for the state license.") (emphasis added).) BPC § 19323(a) was repealed and replaced by BPC § 26057(a), effective June 27, 2017 by Stats 2017 ch 27 § (SB 94). (BPC § 26057(a) ("The licensing authority shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division.") (emphasis added).)

3. An applicant is disqualified for licensure if he has been sanctioned for unauthorized commercial cannabis activities in the three years preceding the submission of an application. (BPC 19323(a),(b)(7) ("A licensing authority shall deny an application if the applicant has been sanctioned by a city for unlicensed commercial medical cannabis activities in the three years immediately preceding the date the

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[7] RJN, Ex. 5 (Geraci *Cotton I* complaint).
[8] RJN, Exhibit 3 (*Cotton I* judgment) attached hereto.

application is filed with the licensing authority.") (cleaned up; emphasis added).) BPC § 19323(a),(b)(7) was repealed and replaced by BPC § 26057(b)(7), effective June 27, 2017 by Stats 2017 ch 27 § (SB 94). (BPC § 26057(a),(b)(7) ("The licensing authority shall deny an application if the applicant has been sanctioned by a city for unauthorized commercial in the three years immediately preceding the date the application is filed with the licensing authority.") (cleaned up; emphasis added).

Illegal Contracts

Under California law, a contract must have a "lawful object." (Civ. Code § 1550(3).) Contracts without a lawful object are void. (*Id.* § 1598.) Civil Code § 1667 elaborates that "unlawful" means: "1. Contrary to an express provision of law; [¶] 2. Contrary to the policy of express law, though not expressly prohibited; or, [¶] 3. Otherwise contrary to good morals." 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. "All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own … violation of law, whether willful or negligent, are against the policy of the law." (Cal. Civ. Code § 1668.)

"The general principle is well established that a contract… made for the purpose of furthering any matter or thing prohibited by **statute**, or to aid or assist any party therein, is void." *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1109 (emphasis added). "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.

In *Polk I*, Evan Polk (plaintiff) and Leonid Gontmakher (defendant) worked together to create a cannabis cultivation business in Washington.[9] 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

[9] *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).

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 disputed 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.) Second, because Polk was prohibited from obtaining a license by law, the oral agreement was illegal under Washington law. (*See id.* at * 8 ("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 contract***.") (emphasis added).)

In *Polk II*, the court dismissed Polk's amended complaint with prejudice on Gontmakher's motion to dismiss solely on one ground.[10] 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. *See Bassidji v. Goe*, 413 F.3d 928, 936 (9th Cir. 2005) (holding that "courts will not order a party to a contract to perform an act that is in direct violation of a positive law directive, even if that party has agreed, for

[10] *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).

> consideration, to perform that act"). The Court could not, therefore, grant relief on any of Plaintiff's causes of action. Plaintiff thus fails to state a claim upon which relief can be granted.

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

Void Judgments

"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 (Cal. Ct. App. 2017) (cleaned up, brackets in original, emphasis added).

"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, "[s]peaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of *stare decisis*, are in excess of jurisdiction, in so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari." *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291. Therefore, a lack 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." *Paterra*, 64 Cal.App.5th at 536 (quoting *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 696) (emphasis added).

C. Analysis

Like the State of Washington in *Polk*, California's Legislature has always required that a CUP be issued only to a "qualified applicant." (*See* BPC §§ 19320(a), 26055(a).) Geraci was last sanctioned on June 17, 2015 in the CCSquared judgment for unlicensed commercial cannabis activities. Pursuant to BPC § 19323(a),(b)(7), as in effect when the November Document was executed, and BPC § 26057(a),(b)(7), as in effect when the *Cotton I* judgment was entered, Geraci could not lawfully own a CUP until June 18, 2018. (*See* BPC § 19323(a),(b)(7) ("A licensing authority ***shall deny*** an application if the applicant has been sanctioned by a city for unlicensed commercial medical cannabis activities in

the three years immediately preceding the date the application is filed with the licensing authority.") (cleaned up; emphasis added).)

Applying the test of illegal contracts, the November Document cannot be a lawful contract because Geraci cannot own a CUP pursuant to the November Document in violation of California's cannabis licensing statutes and it is therefore void and judicially unenforceable. *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1109 ("The general principle is well established that a contract… made for the purpose of furthering any matter or thing prohibited by ***statute***, or to aid or assist any party therein, is void.") (emphasis added); *see Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986) ("***A contract to perform acts barred by California's licensing statutes is illegal, void and unenforceable***.") (emphasis added).

Therefore, as a matter of basic logic, the *Cotton I* judgment finding the November Document is a legal contract because Geraci is not barred by California's cannabis licensing statutes is void as 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 (quoting *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 696) (emphasis added).

D. Conclusion

This Court must apply California's preclusion principles and find that the *Cotton I* judgment would not be given effect under California law and, thus, this Court cannot give it preclusive effect without ratifying a void judgment. Defendants cannot argue this Court lacks jurisdiction to prevent it from holding them accountable for violating Cotton's Civil Rights, which they obviously did as they acquired a judgment that enforces an illegal contract and caused Cotton extreme financial, physical and mental harm. (*See* ECF No. 93 (motion for court appointed counsel).)

III. Cotton is not acting in bad faith and defendants will not be prejudiced by a delay.

Cotton filed this action based on the illegality of Geraci's ownership of a CUP. That is the gravamen of Cotton's action. As set forth above, there is no factual or legal basis to find that the November Document is a lawful contract. However, because Cotton has not been able to set forth the facts and arguments in a coherent manner, and he amended his complaint by copying and pasting from

related actions that he did not understand, Cotton has been unable to have his rights vindicated despite the simplicity of the illegality of Geraci's ownership of a CUP in direct violation of California's licensing statutes. He has attempted to amend his pleadings to conform to the law but he finds it confusing.

As the record in this action shows, Cotton has done his best and repeatedly attempted to have counsel represent him. (*See*, *gen.*, ECF.) On January 3, 2022, Cotton filed an action in State court and application to vacate the *Cotton I* judgment. (*See* RJN, Exs. 1 and 2 attached hereto.) The hearing is set forth January 12th. If Cotton is successful in having the *Cotton I* judgment declared void by the state court, then Cotton will have counsel represent him in this and the state action. (Declaration of Darryl Cotton at ¶ 2.)

Cotton respectfully requests that this Court allow Cotton 30 days to file responses that can be prepared by an attorney. Cotton understands that he has not been able to bring across the simplicity of the illegality of Geraci's ownership of a CUP without previously conflating that with the fact that Cotton believed that the *Cotton I* court was biased against him based on comments made by the Court that it did not believe Geraci's counsel was not capable of doing anything unethical or illegal.

Cotton needs counsel that can properly navigate the realities of the justice system to amend his pleading to state valid causes of action that do not conflate Cotton's valid causes of actions with his beliefs that judicial bias played a role in the rendering of the *Cotton I* judgment. *See Skinner v. Switzer*, 562 U.S. 521, 532(2011) ("If a federal plaintiff presents an independent claim, it is not an impediment to the exercise of federal jurisdiction that the same or a related question was earlier aired between the parties in state court.") (internal citations and quotation marks omitted). There can be no prejudice to defendants who are hiding behind various doctrines to prevent a substantive review of their actions that are illegal.

If Cotton does not succeed on his motion to vacate in state court, then Cotton will do his best to file an amended complaint devoid of allegations of judicial bias that focuses on the independent wrongs that have been committed by defendants – acts taken in obstructing Cotton from meaningfully accessing the state court through extrajudicial unlawful acts.

The wrongs that Cotton is complaining about are independent wrongful actions by Geraci and his agents that were not the subject of the *Cotton I* action and that have perpetrated a fraud on this Court. There must be some factual or legal basis for Geraci to file a pleading that asks this Court to deny Cotton

any relief and Geraci's pleading based on his lawful ownership of a CUP is irrefutably lacking any factual or legal basis. Thus, Geraci's attorney violated Cotton's Civil Rights when they knew or should have known that it was illegal for Geraci to own a CUP and that their submissions to this Court knowingly seek to perpetuate a fraud on this court that began with the fraud that was perpetrated in the state court action against Cotton. *See Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) ("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. *See Buller v. Buechler*,706 F.2d 844, 852-853 (8th Cir. 1983).").

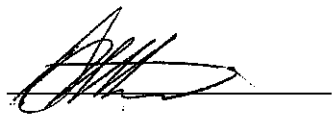
CONCLUSION

Cotton is a legally unsophisticated, blue-collar individual. Geraci filed a meritless lawsuit never intending to go to trial. That Geraci was successful in having the state court issue a judgment in direct violation of California's cannabis licensing statutes as part of scheme to extort and defraud Cotton of his property should not and cannot be condoned by the "justice" system.

Cotton concedes that his pleadings have conflated issues and not clearly separated the independent facts that give rise to various legal claims. Defendants, sophisticated attorneys or represented by sophisticated attorneys have focused on Cotton's legally unsophisticated pleadings and arguments to focus on the flaws of his arguments. However, the facts are the facts and as set forth above, Cotton has meritorious claims based on the illegal actions taken by defendants in helping and/or ratifying Geraci's illegal actions in acquiring a judgment against Cotton that is void that cannot be the basis of any right.

For the reasons set forth above, Cotton respectfully requests that he be granted a 30-day extension for him to procure counsel to represent him in this action or, alternatively, to pro se prepare his responses to defendants motions to dismiss that can take into account the State court's decision on Cotton's application to have the *Cotton I* judgment declared void, which would drastically change the allegations against defendants if they cannot rely upon the *Cotton I* judgment to shield their illegal actions.

January 5, 2022



Darryl Cotton

EXHIBIT 1

DARRYL COTTON, *In pro se*
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SUPRIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

DARRYL COTTON,

Plaintiff,

v.

LAWRENCE (A/K/A LARRY) GERACI, an individual,

Defendant.

Case No.:

Related Cases:

VERIFIED COMPLAINT IN EQUITY TO SET ASIDE VOID JUDGMENT

VERIFIED COMPLAINT

Plaintiff Darryl Cotton, upon information and belief, hereby alleges as follows:

INTRODUCTION

1. This action seeks to set aside the *Cotton I* Judgment[1] on the grounds that it is void because, *inter alia*, its entry is "an exercise of a power not authorized by law [and] a grant of relief to a party that the law declares shall not be granted." *Selma Auto Mall II v. Superior Court* (1996) 44 CA4th 1672, 1683–1684.

2. More specifically, because the *Cotton I* judgment enforces an illegal contract whose object is defendant Lawrence Geraci's ownership of a cannabis conditional use permit ("CUP")[2] that he is barred by law from owning because he has been sanctioned for unlicensed commercial cannabis activities.

3. As proven below based on judicially noticeable facts, the *Cotton I* action was filed against Cotton without factual or legal probable cause and Cotton has been attempting to protect and vindicate his rights since the *Cotton I* action was filed against him in March 2017.

4. For almost five years, Cotton has been subjected to extreme emotional, mental and physical distress by Geraci and his attorneys and agents who have used their wealth and the presumption of integrity the law affords attorneys to effectuate their crimes against Cotton via the judicial system.

5. Attached hereto as Exhibits 1 and 2 are Independent Psychological Assessments by Dr. Markus Ploesser describing Cotton's increasing mental and emotional suffering as he has sought to vindicate his rights.

6. The first Independent Psychological Assessment in March 2018 diagnoses Cotton with "Post-Traumatic Stress Disorder (F43.10), Intermittent Explosive Disorder (F63.81) and Major Depression (F32,2)." It concludes that "the level of emotional and physical distress faced by Mr. Cotton at this time is above and beyond the stress on any defendant exposed to litigation."

7. The second Independent Psychological Assessment in July 2021 sets forth Dr. Ploesser's "medical opinion that Mr. Cotton is unable to process facts and legal issues beyond a basic level, unable

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[1] The "*Cotton I* Judgment" means the judgment entered in *Larry Geraci v. Darryl Cotton*, Case No. 37-2017-00010073-CU-BC-CTL.

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

to gather relevant evidence in [a] manner called for by litigation, unable to conduct complex legal research, and would be incapable of interacting with any counsel representing Mr. Geraci or [his] associates due to his belief that they are 'conspiring' against him.'" It concludes that it is Dr. Ploesser's "professional medical opinion Mr. Cotton's obsessional ruminations around his legal case are bordering a ***delusional*** quality, which will make it very difficult for him to competently represent himself in civil litigation."

8. Except, Dr., Ploesser is wrong – ***I am not delusional.*** I am a blue-collar farmer. An individual who fortuitously owned real property that became highly valuable because it qualified for a cannabis dispensary and he was targeted by Geraci and his unethical agents and attorneys who first sought to extort him of my real property via litigation and then fabricated evidence and misrepresented the facts and law to the judiciaries for years to make me out to be a purportedly crazy pro se litigant allegedly hellbent on extorting Geraci and his agents for my own evil desire for financial gain.

9. Geraci and his agents through their knowledge of the law deceived the *Cotton I* court into believing that Geraci could lawfully own a CUP and thereby prevailed in *Cotton I.*

10. Simply stated and understood, this action comes down to one single question of law: can Geraci lawfully own a cannabis business in violation of California's cannabis licensing statutes? As irrefutably proven below by judicially noticeable facts, the answer is clearly and unequivocally ***no.***

11. Consequently, the *Cotton I* Judgment is void and Geraci and his agents are liable for putting Cotton through years of extreme physical, mental and emotional distress in their illegal pursuit of financial gain without regard for the law and the rights of Cotton.

THE PARTIES

12. Plaintiff Cotton, an individual, is and at all times herein mentioned was residing in the County of San Diego, California.

13. Defendant Lawrence (A/K/A Larry) Geraci, an individual, is and at all times herein mentioned was residing in the County of San Diego, California.

CAUSE OF ACTION – TO SET ASIDE VOID JUDGMENT

I. BACKGROUND

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

sophisticated tax, financial and accounting services.

15. Geraci is an Enrolled Agent with the Internal Revenue Service.

16. Geraci was a licensed real estate salesperson from July 1992 until March 2017 and is imputed by law with knowledge of the statute of frauds.

17. On October 27, 2014, and June 17, 2015, Geraci was sanctioned for unlicensed commercial cannabis activities in, respectively, the Tree Club Judgment[3] and the CCSquared Judgment[4] (collectively, the "Geraci Judgments").

18. Cotton is the owner-of-record of 6176 Federal Blvd., San Diego, CA 92114 (the "Property").

19. The Property qualified for a CUP to operate a cannabis dispensary.

II. NEGOTIATIONS FOR THE PROPERTY, THE JVA AND THE BERRY CUP APPLICATION

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

21. On October 31, 2016, Geraci presented Cotton with an Ownership Disclosure Statement, a required component for a CUP application with the City of San Diego[5].

22. Geraci told Cotton that he needed Cotton to execute the form to show to his agents that he had access to the Property as part of his due diligence in determining whether the Property qualified for a CUP.

23. Cotton executed the Ownership Disclosure Form because of Geraci's fraudulent inducement that the form was part of Geraci's due diligence process and not that it would actually be submitted without the parties having reached an agreement for the sale of the Property.

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[3] The "Tree Club Judgment" means *City of San Diego v. The Tree Club Cooperative, et al.*, San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL, Stipulation for Entry of Final Judgement and Permanent Injunction; Judgment Thereon ("Tree Club Judgment")). The Court is hereby requested to take judicial notice of the Tree Club Judgment, a copy of which is attached hereto as Exhibit 3, and fully incorporated by this reference.

[4] The "CCSquared Judgment" means *City of San Diego v. CCSquared Wellness Cooperative, et. al.*, Case No. 37-2015-00004430-CU-MC-CTL, Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon. The Court is hereby requested to take judicial notice of the CCSquared Judgment, a copy of which is attached hereto as Exhibit 4, and fully incorporated by this reference.

[5] Attached hereto as Exhibit 5 and fully incorporated by this reference.

24. On October 31, 2016, Geraci had an application with the City filed for a CUP at the Property (the "Berry CUP Application").

25. The Berry CUP Application was submitted by Rebecca Berry who is Geraci's assistant.

26. The Berry CUP Application included the Ownership Disclosure Form and a Form DS-3032 General Application (the "General Application"), attached hereto as Exhibit 6.

27. The Ownership Disclosure Statement required a list that "***must*** include the names and addresses of all persons who have an interest in the property, ***recorded or otherwise***, and state the type of interest."

28. The Berry CUP Application falsely states that Berry is the owner of the CUP being applied for; Geraci is not disclosed anywhere in the Berry CUP Application.

29. The Berry CUP Application was filed without Cotton's knowledge or consent.

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

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

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

33. At their meeting at which the JVA was reached, Geraci had Cotton execute a three-sentence document to memorialize Cotton's receipt of $10,000 towards the total $50,000 non-refundable deposit (the "November Document").

34. On November 2, 2016, after the parties reached the JVA and executed the "November Document" Geraci did not give Cotton a copy at the time of signing but instead at 3:11 PM, emailed it to Cotton, attached hereto as Exhibit 7.

35. On November 2, 2016, at 6:55 PM, Cotton, having concerns that the email Geraci had sent earlier described the November Document attachment as a "Cotton and Geraci Contract",

sent Geraci a response request for confirmation ("Request for Confirmation") that the November Document was NOT a final contract which read;

> Hi Larry, [¶] Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property, I'll be fine if you would simply acknowledge that here in a reply.

36. On November 2, 2016 at 9:13 PM, Geraci replied: "No no problem at all" (the "Confirmation Email") Both the "Request" and "Confirmation" email is attached hereto as Exhibit 8.

37. On November 3, 2016, Geraci and Cotton spoke over the phone for less than 3 minutes.

38. After their phone call, Cotton emailed Geraci regarding the subject of their phone call, which was based entirely on the naming of the new dispensary, attached hereto as Exhibit 9, not any oral clarification of terms as Geraci had testified to at trial.

39. Subsequently, for months, Cotton and Geraci communicated via email and texts regarding the JVA, issues regarding the approval of a CUP at the Property and drafts of the written agreement for Geraci's purchase of the Property.

40. For example, on March 7, 2017, Geraci emailed Cotton a revised draft of a purchase agreement for the purchase of the Property and in the cover email he states: "… the 10k a month might be difficult to hit until the sixth month… can we do 5k, and on the seventh month start 10k?". Cotton replied on March 16, 2017, with his concerns with the draft and Geraci's failure to reduce the JVA to writing. And Cotton emailed Geraci again on March 17, 2017, after Geraci texted Cotton in reply to Cotton's March 16, 2017, email asking to meet in person. True and correct copies of this email chain is attached hereto as Exhibit 10 and fully incorporated herein by this reference.

41. On March 21, 2017, after Geraci repeatedly refused to reduce the JVA to writing as promised, Cotton emailed Geraci terminating the JVA for anticipatory breach and informed him that he would be entering into an agreement with a third party for the sale of the Property.

42. Thereafter, that same day, Cotton entered into a written joint venture agreement with a third-party for the sale of the Property.

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III. THE *COTTON I* ACTION WAS FILED WITHOUT FACTUAL OR LEGAL PROBABLE CAUSE.

43. On March 21, 2017, Geraci, as plaintiff, filed in this court against Cotton, as defendant, the *Cotton I* complaint, attached hereto as Exhibit 11, in which Geraci sought damages for an alleged breach of contract against Cotton alleging that the November Document is a fully integrated contract for his purchase of the Property.[5]

44. On March 22, 2017, Geraci's attorney, Michael Weinstein of Ferris & Britton served Cotton with the *Cotton I* complaint and a recorded lis pendens on the Property (the "F&B Lis Pendens"). Attached hereto as Exhibit 12.

45. The *Cotton I* action was filed without factual or legal probable cause because the alleged November Document cannot be a final, fully integrated contract as alleged in the *Cotton I* complaint for at least two reasons as a matter of law: (i) it has an unlawful object (i.e., is an illegal contract) (the "Illegality Issue") and (ii) it lacks mutual assent (the "Mutual Assent Issue").

A. The Illegality Issue

i. *Framework for assessing enforceability of "illegal" contracts.*

46. Under California law, a contract must have a "lawful object." (Civ. Code § 1550(3).) Contracts without a lawful object are void. (*Id.* § 1598.) Civil Code § 1667 elaborates that "unlawful" means: "1. Contrary to an express provision of law; [¶] 2. Contrary to the policy of express law, though not expressly prohibited; or, [¶] 3. Otherwise contrary to good morals." 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. "All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own … violation of law, whether willful or negligent, are against the policy of the law." (Cal. Civ. Code § 1668.)

47. "'***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; nor can he set up a case in which he must necessarily disclose an illegal purpose as the groundwork of his claim.***'" *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1111 (quoting *Lee On v. Long* (1951) 37 Cal.2d 499, 502 (emphasis added)). "***The general principle is well established that a contract… made for the purpose***

of furthering any matter or thing prohibited by statute, or to aid or assist any party therein, is void." *Id.* at 1109 (emphasis added). "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.

ii. *California cannabis licensing statutes*

48. As in effect in October and November 2016 when the Berry CUP Application was submitted and the November Document executed, California's cannabis licensing statutes codified at California Business & Professions Code ("BPC"), Division 8, Chapter 3.5 (Medical Cannabis Regulation and Safety Act) provided as follows:

a. A license can only be issued to a "***qualified applicant.***" BPC § 19320(b) ("Licensing authorities administering this chapter may issue state licenses only to ***qualified applicants*** engaging in commercial cannabis activity pursuant to this chapter.") (emphasis added).

b. If the applicant does not qualify for licensure the State's licensing authorities "***shall deny***" his application. (BPC § 19323(a) ("A licensing authority ***shall deny*** an application if the applicant… does not qualify for licensure under this chapter or the rules and regulations for the state license.") (emphasis added).) BPC § 19323(a) was repealed and replaced by BPC § 26057(a), effective June 27, 2017 by Stats 2017 ch 27 § (SB 94). (BPC § 26057(a) ("The licensing authority ***shall deny*** an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division.") (emphasis added).)

c. An applicant is disqualified for licensure if he has been sanctioned for unauthorized commercial cannabis activities in the three years preceding the submission of an application. (BPC 19323(a),(b)(7) ("A licensing authority ***shall deny*** an application if the applicant has been sanctioned by a city for unlicensed commercial medical cannabis activities in the three years immediately preceding the date the application is filed with the licensing authority.") (cleaned up; emphasis added).) BPC § 19323(a),(b)(7) was repealed and replaced by BPC § 26057(b)(7), effective June 27, 2017 by Stats 2017 ch 27 § (SB 94). (BPC § 26057(a),(b)(7) ("The licensing authority ***shall deny*** an application if the

applicant has been sanctioned by a city for unauthorized commercial in the three years immediately preceding the date the application is filed with the licensing authority.") (cleaned up; emphasis added).

d. As part of the application process, an applicant is required to first lawfully acquire a local government permit/CUP and submit their fingerprints to the State's licensing authorities for a background check with the Department of Justice. BPC § 19322(a)(1),(2) ("A person ***shall not*** submit an application for a state license issued by a licensing authority pursuant to this chapter unless that person has received a license, permit, or authorization from the local jurisdiction. An applicant for any type of state license issued pursuant to this chapter ***shall*** do all of the following: [¶] (1) Electronically submit to the Department of Justice fingerprint images and related information [for a background check] [¶] (2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.") (emphasis added).

e. A qualified applicant who is granted a state license is defined as a "licensee." BPC § 19300.5(x) ("Licensee" means a person issued a state license under this chapter to engage in commercial cannabis activity.").

iii. *The agreement reached between Cotton and Geraci is illegal.*

49. Geraci was last sanctioned on June 17, 2015 in the CCSquared Judgment. Thus, he was disqualified from owning a CUP or license for cannabis operations until June 18, 2018. If Geraci had applied for a CUP in his name in October 2016 his application would have mandatorily been denied pursuant to BPC § 19323(a),(b)(7).

50. To circumvent the law and unlawfully acquire a cannabis business, Geraci applied in the name of his secretary, Berry.

51. Cotton is aware of one factually identical case in which a principal disqualified from having an interest in a cannabis business had his interest held in the name of a proxy and when he sued to recover profits the Court found the contract to be illegal and unenforceable.

52. In *Polk*, Evan Polk (plaintiff) and Leonid Gontmakher (defendant) worked together to

create a cannabis cultivation business in Washington.[6] 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 disputed and Polk filed suit alleging he is entitled to an ownership interest in the cannabis business and past and future profits. (*Id.*)

53. 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.) Second, because Polk was prohibited from obtaining a license by law, the oral agreement was illegal under Washington law. (*See id.* at * 8 ("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 contract.***") (emphasis added).)

54. The court dismissed Polk's third amended complaint with prejudice on Gontmakher's motion to dismiss solely on one ground.[7] 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

[6] Attached hereto as Exhibit 13 is a true and correct copy of *Polk v. Gontmakher*, 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*, 200 Cal. App. 4th 983, 998, fn. 4 (2011) ("Unpublished federal opinions are citable notwithstanding California Rules of Court, rule 8.1115 which only bars citation of unpublished California opinions.") (cleaned up).

[7] Attached hereto as Exhibit 14 is a true and correct copy of *Polk v. Gontmakher*, No. 2:18-cv-01434-RAJ, 2021 U.S. Dist. LEXIS 53569, at *5 (W.D. Wash. Mar. 22, 2021).

> 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. *See Bassidji v. Goe*, 413 F.3d 928, 936 (9th Cir. 2005) (holding that "courts will not order a party to a contract to perform an act that is in direct violation of a positive law directive, even if that party has agreed, for consideration, to perform that act"). The Court could not, therefore, grant relief on any of Plaintiff's causes of action. Plaintiff thus fails to state a claim upon which relief can be granted.

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

55. Like the State of Washington in *Polk*, California's Legislature has required that a CUP be issued only to a "qualified applicant." BPC §§ 19320(a). Applying the test of illegal contracts, the November Document, even assuming it was a contract, is illegal because Geraci cannot seek to enforce the alleged agreement without violating the law on at least two independent grounds.

56. First, Geraci was barred by BPC § 19323(a),(b)(7) from owning a CUP because of the CCSquared Judgment.

57. Second, even assuming Geraci had not been sanctioned, Geraci cannot lawfully acquire a CUP via the Berry CUP Application that knowingly, purposefully and falsely states that Berry would be the owner of the CUP being applied for in violation of the City's cannabis and laws and regulations requiring that Geraci be disclosed in the Ownership Disclosure Form as the true and sole owner of the CUP being applied for. *See* San Diego Municipal Code ("SDMC") § 11.0401(b) ("No person willfully shall make a false statement or fail to report any material fact in any application for City license, permit, certificate, employment or other City action under the provisions of the [SDMC]."); SDMC § 11.0402 provides that "[w]henever in [the SDMC] any act or omission is made unlawful, it shall include causing, permitting, aiding or abetting such act or omission."); BPC § 19322(a)(1),(2) (requiring applicant comply with local laws and regulations and lawfully acquire local permit/CUP).

iv. *The illegality argument was raised repeatedly during Cotton I.*

58. Throughout *Cotton I*, Cotton argued that Geraci was barred by law from owning a CUP

because of the Geraci Judgments.[8] At the trial of *Cotton I*, Cotton moved for a directed verdict arguing that BPC § 26057 bars Geraci ownership of a CUP via the Berry CUP Application, which was summarily denied.

59. The *Cotton I* Judgment found, *inter alia*, that "[Geraci] is not barred by law pursuant to California Business and Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial of Application) from owning a Marijuana Outlet conditional use permit issued by the City of San Diego." A true and correct copy of the *Cotton I* Judgment is attached hereto as Exhibit 15.

60. The *Cotton I* Judgement awarded $260,109.28 in damages to Geraci.

61. After trial, Cotton filed a motion for new trial arguing, *inter alia*, the alleged agreement, the November Document, was an illegal contract.

62. Geraci opposed the motion arguing that, in regards to the illegality argument, that (i) Cotton waived the defense of illegality; (ii) that neither the Geraci Judgments or the BPC bar Geraci's ownership of a CUP; and (iii) that Geraci was not disclosed in the Ownership Disclosure Statement because (a) Geraci is an Enrolled Agent, (b) Geraci used Berry as a proxy for "convenience of administration," and (c) the City's CUP application forms only allowed Berry to sign as an owner, tenant, or "Redevelopment Agency."

63. Geraci's arguments are without factual or legal support as none of them make it lawful for Geraci to own a CUP via the Berry CUP Application.

64. Judge Wohlfeil, presiding over *Cotton I*, denied the motion for new trial finding that the defense of illegality had been waived because he believed the defense of illegality had not previously been raised in the action.

v. *The Cotton I Judgment is void 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."*

65. "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 of

[8] *See, e.g., Cotton I*, ROA No. 19 (Cotton's original cross-complaint filed on May 12, 2017) at ¶ 132 ("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.").

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) (emphasis added).

66. "Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction, in so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari." *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291.

67. 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. *Paterra* at 513. The 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 trial court did not hold a hearing to adjudicate the lender's rights as required by the mandatory "shall" language of Cal. Code Civ. Pro § 764.010. *Id.* at 536. The 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.

68. Here, as in *Paterra*, the mandatory "***shall deny***" language of BPC §§ 19323(a)/26057(a)

applies and reflects the Legislature's intent to "absolutely prohibit" the approval of a CUP or license by an applicant like Geraci who has been sanctioned for unlicensed commercial cannabis activities.

69. Also, an applicant like Berry who knowingly applies for a local CUP with false information in violation of the SDMC requiring the disclosure of all parties with an interest in the CUP sought in the Ownership Disclosure Form.

70. By affording Geraci relief, Judge Wohlfeil found that not only was Geraci a "qualified applicant," but effectively that he would have been a "licensee" who would have been approved by the State's licensing authorities with rights of ownership to a CUP/license. The *Cotton I* Judgment subverts the State's licensing authorities mandate to vet individuals and is in direct violation of the cannabis licensing statutes enacted by the Legislature to prevent individuals who have been sanctioned for illegal cannabis operations from owning cannabis businesses and parties who fail to lawfully acquire a local CUP.

71. Therefore, as a matter of law based on the judicially noticeable facts set forth above, the *Cotton I* Judgment is void because its entry 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." *Paterra*, *supra*, at 536 (quoting *Carlson*, 54 Cal.App.4th at 696 (emphasis added)); *Abelleira*, 17 Cal.2d at 291; *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.").

B. The Mutual Assent Issue

72. A lawful contract requires mutual assent. *See* Civ. Code § 1550. Consent is not mutual unless the parties all agree on the same thing in the same sense. Civ. Code § 1580.

73. The texts and emails between Geraci and Cotton uniformly support the position that the parties reached the JVA as alleged by Cotton and that the November Document was not executed with the intent that it be a final, fully integrated agreement for Geraci's purchase of the Property.

74. The Request for Confirmation and the Confirmation Email prove that the agreement reached by Geraci and Cotton to which they mutually assented included a 10% equity position pursuant to the JVA alleged by Cotton.

75. Geraci's March 7, 2017, email asking for a reduction of a monthly payment of an existing obligation from $10,000 to $5,000 reflects that the agreement reached by Geraci and Cotton to which they mutually assented included a term of $10,000 monthly payments to Cotton pursuant to the JVA alleged by Cotton.

76. From the filing of the *Cotton I* complaint in March 2017 until April 2018, Geraci's pleadings, motion practice and judicial and evidentiary admissions argued that the statute of frauds and the parol evidence rule barred admission of the Request for Confirmation, the Confirmation Email and other parol evidence as evidence that the parties did not mutually assent to the November Document being a purchase contract for the Property.

77. For example, in Geraci's reply to his demurrer of the *Cotton I* second amended cross-complaint:

> Cotton alleges, based on extrinsic evidence, that the actual agreement between the parties contains material terms and conditions in addition to those in the [November Document] as well as a term (a $50,000 deposit rather than the $10,000 deposit stated in the [November Document] that expressly conflicts with a term of the [November Document]. However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the written memorandum.

78. On April 4, 2018, Cotton, via a specially appearing attorney, filed a motion to expunge the F&B Lis Pendens (the "Lis Pendens Motion"). The Lis Pendens Motion argued for the first time in *Cotton I* that, pursuant to *Riverisland*,[9] Geraci could not use the parol evidence rule as a shield to bar parol evidence as proof that the parties executed the November Document as a receipt and that Geraci was fraudulently representing it as a contract.

79. The Lis Pendens Motion was a *de facto* motion for summary judgment as a finding that

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[9] On January 14, 2013, the California Supreme Court overruled a longstanding precedent regarding the fraud exception to the parol evidence rule. In the 1935 case, *Bank of America Etc. Assn. v. Pendergrass* ("*Pendergrass*") 4 Cal.2d 258, the California Supreme Court declared inadmissible evidence of promissory fraud—a promise made without the intent to perform—made prior to and inconsistent with the subsequent written agreement. The court's unanimous decision in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169, overruled *Pendergrass* and declared that the parol evidence rule does not bar evidence of promissory fraud that contradicts the terms of a writing. *Id.* at 1182 ("***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud***.") (quotation omitted, emphasis added); *see IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 ***("[U]nder Pendergrass, external evidence of promises inconsistent with the express terms of a written contract were not admissible, even to establish fraud***.") (emphasis added).

the Geraci was fraudulently representing the November Document as a contract when it was executed with the intent it be a receipt would have meant that the *Cotton I* complaint was filed without probable cause and Geraci and his attorneys would be liable for filing what constitutes a malicious prosecution action.

80. On April 9, 2018, Geraci executed a declaration in support of his opposition to the Lis Pendens Motion[10].

81. In his declaration, Geraci alleged for the first time that (i) Geraci did not read the entire Request for Confirmation before sending the Confirmation Email; (ii) Geraci called Cotton on November 3, 2016 and told him that he did not intend to send the Confirmation Email; (iii) Cotton orally agreed that the Request for Confirmation was sent as an attempt to acquire a 10% equity position in the CUP that the parties had not bargained-for and Cotton stated "well, you don't get what you don't ask for"; and (iv) Cotton orally agreed he was not entitled to a 10% equity interest in the CUP that is established by his Request for Confirmation and Geraci's Confirmation Email (the "Disavowment Allegation").

82. Subsequent to the hearing, Cotton emailed Weinstein accusing him of fabricating the Disavowment Allegation, to which Weinstein responded as follows:

> First, our view is that the statute of frauds bars the [Confirmation Email] because it is parol evidence that is being offered to explicitly contradict the terms of the [November Document]. Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016, resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10% equity position. Rather, Mr. Geraci's position is that there was never an oral agreement between them that Mr. Cotton would receive a 10% equity position. Even assuming for the sake of argument that the [Confirmation Email] is not barred by the parol evidence rule and admissible, the telephone call the next day is parol evidence that Mr. Geraci never agreed to a 10% equity position and, therefore, it is consistent with the [November Document] and not barred by the statute of frauds.[11]

83. Weinstein's arguments lack any factual or legal justification and are in fact negated by undisputed facts and applicable law.

84. First, the Disavowment Allegation is an affirmative defense of mistake that was not pled and therefore waived.

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[10] Attached hereto as Exhibit 16, which the Court is requested to take judicial notice of.

[11] This email from Weinstein is attached hereto as Exhibit 17 and fully incorporated by this reference.

85. Second, the Disavowment Allegation is barred by Geraci's previous discovery responses and judicial and evidentiary admissions that required the disclosure of the Disavowment Allegation prior to being confronted by *Riverisland*.

86. Third, the statute of frauds does not apply to an oral joint venture agreement such as the JVA.[12]

87. Fourth, pursuant to *Riverisland*, parol evidence is not barred to prove fraud. *See Riverisland*, 55 Cal.4th at 1182 ("[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.").

88. Fifth, even assuming that Geraci's allegations are taken as true, they fail to state a claim because under California law Geraci may not allege mistake to avoid the legal impact of confirming in writing that his agreement with Cotton included a 10% equity position for Cotton.

89. As best explained in *Forreststream* relying on California law:

> To form a contract, the parties must "reach mutual assent or consent on definite or complete terms." *Netbula, LLC v. Blindview Dev. Corp.*, 516 F. Supp. 2d 1137, 1155 (N.D. Cal. 2007). Mutual assent to a contract is based on the parties' objective and outward manifestations; "a party's 'subjective intent, or subjective consent, therefore is irrelevant.'" *Stewart*, 134 Cal. App. 4th at 1587 (quoting *Beard v. Goodrich*, 110 Cal. App. 4th 1031, 1040, 2 Cal. Rptr. 3d 160 (2003)). Ordinarily, a party "who signs an instrument which on its face is a contract is deemed to assent to all its terms." *Marin Storage & Trucking, Inc. v. Benco Contracting & Eng'g, Inc.*, 89 Cal. App. 4th 1042, 1049, 107 Cal. Rptr. 2d 645 (2001). And, "[a] party cannot avoid the terms of a contract on the ground that he or she failed to read it before signing." *Id.* (*citing Hernandez v. Badger Constr. Equip. Co.*, 28 Cal. App. 4th 1791, 1816, 34 Cal. Rptr. 2d 732 (1994)). Indeed, it is "[a] cardinal rule of contract law . . . that a party's failure to read a contract, or to carefully read a contract, before signing it is no defense to the contract's enforcement." *Desert Outdoor Adver. v. Super. Ct.*, 196 Cal. App. 4th 866, 872, 127 Cal. Rptr. 3d 158 (2011). "'[I]n the absence of fraud, overreaching[,] or excusable neglect, . . . one who signs an instrument may not avoid the impact of its terms on the ground that he failed to read the instrument before signing it.'" *Stewart*, 134 Cal. App. 4th at 1588 (quoting *Hulsey v. Elsinore Parachute Center*, 168 Cal. App. 3d 333, 339, 214 Cal. Rptr. 194 (1985)). A contract will thus facially evidence mutual assent where the parties signed it and there is no indication that the contract is conditional "or that [a party] did not intend to be bound by its terms." *See Stewart*, 134 Cal.

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

App. 4th at 1587.

Forreststream Holdings Ltd. v. Shenkman (N.D.Cal. Mar. 24, 2017, No. 16-cv-01609-LB) 2017 U.S.Dist.LEXIS 43624, at *19-20 ("*Forreststream*").

90. In *Forreststream*, the court granted summary judgment against Gregory Shenkman in a breach of contract action who opposed summary judgment by, *inter alia*, alleging he did not consent to a contract because he did not read it:

> Mr. Shenkman… contends that he did not sign the full contract and thus is not bound by it. He declares that in April 2014, "Mr. Zaits, serving as the intermediary, presented [him] with a single page for signature and asked [him] to sign as confirmation of [his] agreement to the terms [they] had been discussing." Mr. Shenkman "understood this to mean that Forreststream had agreed to [his] unequivocal condition that pledging [his] EIS shares meant that the restructured loan would be non-recourse." He did not "understand this to be a final, binding agreement, but rather an agreement to work together in good faith to finalize the terms at a later date." Mr. Shenkman signed the single page — the Loan Restructuring Agreement's signature page — but he never "reviewed, signed, or agreed to the first three pages of that document." Thus, he asserts, he never assented to the terms of the Agreement.

Id. at *18-19 (citations omitted).

91. On the issue of consent, the Court explained:

> Mr. Shenkman does not argue that any party (including Forreststream) engaged in fraud. Indeed, Forreststream's representatives were not present when he signed the agreement, and he presents no evidence that there were, for example, misrepresentations or pressures to sign. He also cannot establish reasonable reliance or excusable neglect because he failed to read the Agreement; "'[g]enerally, it is not reasonable to fail to read a contract.'" *Desert Outdoor Adver.*, 196 Cal. App. 4th at 873 (quoting *Brown v. Wells Fargo Bank, N.A.*, 168 Cal. App. 4th 938, 959, 85 Cal. Rptr. 3d 817 (2008)) (alteration and emphasis in original). And, in light of these fundamental rules of contract law, Mr. Shenkman's argument that he only received a signature page is unpersuasive. *See Vulcan Power Co. v. Munson*, 89 A.D.3d 494, 932 N.Y.S. 2d 68 (2011) ("A signer's duty to read and understand that which it signed is not diminished merely because [the signer] was provided with only a signature page.") (internal quotations omitted).
>
> In sum, Mr. Shenkman assented to the contract and is bound by its terms.

Id. at *20.)

92. Here, Cotton requested that Geraci confirm in writing that their "final agreement" would

include a "10% equity position" as they had mutually agreed to and Geraci confirmed same. Thus, as defendant in *Forreststream*, because Geraci did not allege that Cotton engaged in fraud, nor can he establish reasonable reliance or excusable neglect based on his allegation that he did not read all of the Request for Confirmation before sending the Confirmation Email, he fails to state a cause of action or defense to Cotton's action against him as the Confirmation Email clearly and unambiguously confirms the agreement between Cotton and Geraci included a 10% equity position for Cotton.

93. Further, as a licensed real estate agent Geraci is imputed with knowledge of the statute of frauds and if the Disavowment Allegation had actually taken place, Geraci knew that he should have memorialized in writing the Disavowment Allegation in order to negate the legal consequence of sending the Confirmation Email.

94. To summarize, F&B filed the *Cotton I* action relying on the *Pendergrass* line of reasoning to use the parol evidence rule to bar the facts – the parol evidence, including the Confirmation Email – to fraudulently mispresent the November Document as a contract and effectuate a crime via the judiciary. (*See* Michelle P. LaRocca, *Note – Reflections on Riverisland: Reconsideration of the Fraud Exception to the Parol Evidence Rule* ("*Riverisland Note*"), 65 Hastings L.J. 581, 583 (2014) ("*Pendergrass* provided drafting parties a loophole to make misrepresentations and then disclaim them later in writing.") (citing Alicia W. Macklin, Note, The Fraud Exception to the Parol Evidence Rule: Necessary Protection for Fraud Victims or Loophole for Clever Parties?, 82 S. Cal. L. Rev. 809, 810 (2009)); *IIG Wireless, Inc.*, 22 Cal.App.5th at 641 ***("[U]nder Pendergrass, external evidence of promises inconsistent with the express terms of a written contract were not admissible, <u>even to establish fraud</u>.")*** (emphasis added). When confronted by *Riverisland* removing any <u>*legal*</u> grounds to bar the parol evidence establishing that Cotton and Geraci mutually assented to an agreement that included a 10% equity position for Cotton, Geraci and his attorneys fabricated <u>*facts*</u> - the Disavowment Allegation – to seek to avoid the financial and legal liability for filing *Cotton I* without factual or legal probable cause (i.e., a malicious prosecution action). But, as proven above, even the revised version of factual allegations fail to state a claim under California law.

IV. <u>COTTON HAS CONTINUOUSLY SOUGHT TO VINDICATE HIS RIGHTS.</u>

95. As noted in the introduction, Cotton has been put under severe emotional, mental, and

physical distress since March 2017 in seeking to defend and vindicate his rights against Geraci and his attorneys and agents. It has been almost five years. Because of the pressure he has been under, Cotton for a long time thought that there was a widespread conspiracy against him not just by Geraci and his agents, but by the judiciaries including Judge Wohlfeil. Cotton now understands that the law is a process and that Judge Wohlfeil did not conspire with Geraci or his agents against him by refusing to address the issue of illegality or other questions of law; Weinstein is simply a legal genius that comes across as an honest, affable attorney that has integrity, but who in reality has no respect for the law or the judiciaries and will use his superior intellect and knowledge of the law to effectuate crimes against innocent parties for his clients and to avoid liability for filing what are substantively malicious prosecution actions against innocent parties like Cotton.

96. On February 9, 2018, Cotton filed an action in federal court seeking to prevent the *Cotton I* action from continuing due to, *inter alia*, Cotton's then-belief of judicial bias. Subsequently Cotton amended his complaint to be solely based on Civil Rights violations – Cotton cannot recover in federal court for cannabis related actions because of illegality under federal law – and filed numerous motions seeking to have court appointed counsel and other relief, including setting aside the *Cotton I* Judgment due to a fraud on the court by the actions of Geraci's attorneys. *See Kougasian v. TMSL, Inc.* (9th Cir. 2004) 359 F.3d 1136, 1141 ("It has long been the law that a plaintiff in federal court can seek to set aside a state court judgment obtained through extrinsic fraud.").

97. On October 22, 2021, the federal court issued its latest ruling in Cotton's action finding that the *Rooker-Feldman* doctrine bars its review of the *Cotton I* judgment for illegality. (*See Cotton v. Bashant, et al.*, 18-CV-325 TWR (DEB), ECF No. 96 at 7:18-20 ("[Cotton's] claim is barred by the *Rooker-Feldman* doctrine.").

98. The necessity of having the *Cotton I* judgment declared void must be addressed in this State Court.

PRAYER FOR RELIEF

WHEREFORE, Cotton prays judgment as follows:

1. That the *Cotton I* Judgment be vacated and set aside pursuant to Code Civ. Proc. § 473(d),

the Court's inherent authority to vacate a void judgment entered in error or in excess of the authority of the Court, and/or any other basis at law.

2. For costs of suit herein incurred.
3. For damages as allowed by law.
4. For such other and further relief as the court may deem proper.

VERIFICATION

I, Darryl Cotton, am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe it to be true.

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

January 3, 2022

Darryl Cotton

EXHIBIT 2

DARRYL COTTON, *In pro se*
6176 Federal Boulevard
San Diego, CA 92114
Telephone: (619) 954-4447
151DarrylCotton@gmail.com

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

DARRYL COTTON,

Plaintiff,

v.

LAWRENCE (A/K/A LARRY) GERACI, an individual,

Defendant.

Case No.:

PLAINTIFF'S NOTICE OF EX PARTE APPLICATION AND EX PARTE APPLICATION TO SET ASIDE VOID JUDGMENT OR, ALTERNATIVELY, ORDER SHORTENING TIME ON HEARING TO VACATE VOID JUDGEMENT; DECLARATION OF DARRYL COTTON; MEMORANDUM OF POINTS AND AUTHORITIES

Hearing Date:
Hearing Time:
Judge:
Courtroom:

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 30, 2021, Plaintiff DARRYL COTTON will and hereby moves this Court *ex parte* for an order setting aside the judgment issued in *Cotton I*[1] entered against Cotton on August 8, 2019, or, alternatively, an order shortening time on a hearing to vacate the *Cotton I* judgment (the "Application"). Good cause exists for this Application because it is made on the ground that the *Cotton I* judgment is void on its face because it is an act in excess of the Court's jurisdiction, grants relief to Geraci that the law declares shall not be granted, and represents an egregious miscarriage of justice.

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

More specifically, Geraci was sanctioned for unlicensed commercial cannabis activities and is barred by California's licensing statutes from owning a cannabis CUP. The *Cotton I* judgment enforces an alleged contract whose object is Geraci's ownership of a cannabis business, which renders the *Cotton I* judgment void on its face as it is in direct violation of California's cannabis licensing statutes. *See Carlson v. Eassa*, 54 Cal.App.4th 684, 691 (Cal. Ct. App. 1997) ("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.").

This Application is based on this notice, the request for judicial notice, the declaration of Darryl Cotton, the supporting memorandum served and filed herewith, and on the records and file herein and in the *Cotton I* action.

DATED: January 3, 2022

Darryl Cotton
Pro Se

DECLARATION OF DARRYL COTTON IN SUPPORT OF MOTION FOR ORDER TO SET ASIDE VOID JUDGMENT ISSUED IN *COTTON I* OR, ALTERNATIVELY, OST ON MOTION TO VACATE VOID JUDGEMENT

I, Darryl Cotton, declare:

1. I am the plaintiff herein, and I make this declaration in support of this Application seeking an order to vacate the void *Cotton I* judgment entered against me.

2. As shown by this Application and the supporting documents, the *Cotton I* judgment is void for enforcing an illegal contract that grants relief to defendant Lawrence Geraci that the law declares shall not be granted.

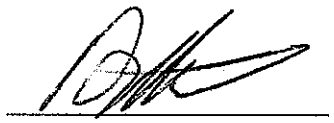
3. The facts set forth in the Application establishing the *Cotton I* judgment are void are all subject to judicial notice and set forth in the supporting Request for Judicial Notice.

4. This Application is focused on the narrow issue of illegality, specifically that Geraci's sanctions for unlicensed commercial cannabis activities bar his ownership of a cannabis CUP or license and the *Cotton I* judgment is therefore void for granting relief in direct violation of California's cannabis licensing statutes.

5. Should the Court require any additional facts, I am prepared to submit supporting evidence to address any concerns the Court may have in addressing the illegality of Geraci's ownership of a CUP.

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

January 3, 2022



Darryl Cotton

MEMORANDUM OF POINTS & AUTHORITIES

INTRODUCTION

In March 2017, defendant Lawrence Geraci filed the *Cotton I* action seeking to enforce an alleged real estate purchase contract against Cotton that even as alleged is an illegal contract because its object, Geraci's ownership of a cannabis conditional use permit ("CUP"), is barred by California's licensing statutes because he has been sanctioned for unlicensed commercial cannabis activities. The *Cotton I* action was filed to extort from Cotton his Property[2] at which the CUP could issue.

On August 19, 2019, the *Cotton I* judgment was entered against Cotton finding that Geraci is not barred by California's cannabis licensing statutes. Such was error.

Since March 2017 - **almost five years!** - Cotton has been subjected to extreme emotional, mental and physical distress by Geraci and his attorneys and agents who have used their wealth and the presumption of integrity the law affords attorneys to effectuate their crimes against Cotton via the judicial system. Across numerous actions they have made the simplicity of Geraci's illegal ownership of a cannabis statute appear to be lawful or no longer able to be redressed by the judiciaries while claiming Cotton is an evil, greedy individual who is seeking to extort them via the judiciary for financial profit. They have inverted the truth completely to make themselves out to be righteous and saintly individuals who are maliciously subjected to Cotton's alleged illegal and legally unsupported attempts to vindicate his rights.

They have done a masterful job and have ruined Cotton's life and that of many other individuals. Geraci and his army of attorneys are legal masterminds that have successfully deceived the judiciaries for years by misrepresenting and fabricating facts and focusing on Cotton's legally unsophisticated attempts to vindicate his rights.

Therefore, in an attempt to finally expose the simplicity of the illegality of Geraci's ownership of a CUP, and prevent Geraci's attorneys from confusing, misdirecting or deceiving this Court through their Machiavellian legal acumen, this Application is focused on four simple facts: (i) Geraci was sanctioned for unlicensed commercial cannabis activities; (ii) California's licensing statutes bars a party for three

[2] The term "Property" shall mean and refer to the real property located at 6176 Federal Boulevard, San Diego, California.

years from owning a CUP or license if they have been sanctioned for unlicensed commercial cannabis activities; (iii) the *Cotton I* judgment enforces an alleged contract whose object is Geraci's ownership of a CUP that he is barred by law from owning because of his sanctions; and (iv) Geraci's arguments regarding the legality of his ownership of a CUP are without any factual or legal justification.

Cotton respectfully and emphatically requests that this Court please focus on these facts and please see the law and justice are carried out to redress what is an egregious miscarriage of justice.

MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

1. On October 27, 2014, Geraci was sanctioned for unlicensed commercial cannabis activities in the Tree Club Judgment.[3]

2. On June 17, 2015, Geraci was sanctioned for unlicensed commercial cannabis activities in the CCSquared Judgment.[4]

3. On March 21, 2017, Geraci filed *Cotton I* alleging 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." [5] (The "November Document.")

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."[6] (The "Berry CUP Application.")

4. 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 Business & Professions ("BPC") § 26057, which was summarily denied.[7]

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[3] Request for Judicial Notice ("RJN"), Ex. 1 (*City of San Diego v. The Tree Club Cooperative, et al.*, San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL, Stipulation for Entry of Final Judgement and Permanent Injunction; Judgment Thereon) ("Tree Club Judgment").

[4] RJN, Ex. 2 (*City of San Diego v. CCSquared Wellness Cooperative, et. al.*, Case No. 37-2015-00004430-CU-MC-CTL, Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon) (the "CCSquared Judgment").

[5] RJN, Ex. 3 (Geraci *Cotton I* complaint) at ¶ 7.

[6] RJN, Ex. 3 (Geraci *Cotton I* complaint) at ¶ 8.

[7] RJN Ex. 4 (motion for directed verdict) and Ex. 5 (summary denial).

5. On August 19, 2019, the *Cotton I* judgment was entered, finding that "[Geraci] is not barred by law pursuant to California Business and Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial of Application) from owning a Marijuana Outlet conditional use permit issued by the City of San Diego."[8]

6. On September 13, 2019, Cotton filed a motion for new trial arguing, *inter alia*, it is illegal for Geraci to own a CUP pursuant to BPC §§ 19323, 26057 (the "MNT").[9]

7. Geraci opposed the MNT arguing, *inter alia*, the defense of illegality had been waived.[10]

8. Cotton replied, *inter alia*, that the defense of illegality cannot be waived.[11]

9. On October 25, 2019, the court denied the MNT finding that the defense of illegality had been waived.[12]

LEGAL STANDARD

"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 (Cal. Ct. App. 2017) (cleaned up, brackets in original, emphasis added); *see Renoir v. Redstar Corp.* (2004) 123 CA4th 1145, 1154 ("an order denying a motion to vacate void judgment is a void order and appealable") (citing *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 69).

"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, "[s]peaking generally, any

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[8] RJN, Ex. 6 (*Cotton I* judgment).
[9] RJN Ex. 7 (Motion for New Trial).
[10] RJN Ex. 8 (Opposition to Motion for New Trial).
[11] RJN Ex. 9 (Reply to Motion for New Trial).
[12] *See* RJN Ex. 10 Reporters Transcript of the Motion for New Trial hearing held on October 25, 2019 ("RT October 25, 2019") at 3:6-7 ("Counsel, shouldn't this have been raised at some earlier point in time?"); *id.* at 3:22 ("Even if you are correct [about the illegality], hasn't that train come and gone? The judgment has been entered. You are raising this for the first time."); *id.* at 4:4-5 ("But at some point, doesn't your side waive the right to assert this argument? At some point?") and RJN Ex. 11 (order denying Motion for New Trial).

acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of *stare decisis*, are in excess of jurisdiction, in so far as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari." *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291. Therefore, a lack 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." *Paterra*, 64 Cal.App.5th at 536 (quoting *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 696) (emphasis added).

CCP § 473(d) provides for relief from void judgments or orders. This provision codifies the inherent power of the court to set aside void judgments and orders, including those made under a lack of jurisdiction and those made in excess of jurisdiction. *See Calvert v. Binali* (2018) 29 CA5th 954, 960–964. The power of a court to vacate a judgment or order void upon its face is not extinguished by lapse of time, but may be exercised whenever the matter is brought to the attention of the court. While a motion for such action on the part of the court is appropriate, neither motion nor notice to an adverse party is essential; the court has full power to take such action on its own motion and without any application on the part of anyone. *People v. Davis* (1904) 143 C 673, 675–676 (affirming order vacating void order made on ex parte basis); *see People v. Glimps* (1979) 92 CA3d 315, 325 (no notice of motion required to set aside order void on its face).

If the judgment is void on its face, no showing of a meritorious case, that is, a good claim or defense, by the party moving for relief is required, *see Bennett v. Hibernia Bank* (1956) 47 C2d 540, 554, and the judgment may be set aside by the court on its own motion, *see Montgomery v. Norman* (1953) 120 CA2d 855, 858. Accordingly, no affidavit or declaration of merits is required to support a motion for relief at law from a judgment on the ground that it is void on its face. *County of Ventura v. Tillett* (1982) 133 CA3d 105, 112.

ARGUMENT

I. California Cannabis licensing statutes bar a party from obtaining a CUP for a period of three years from the date of a party's last sanction for unlicensed commercial cannabis activities.

As in effect in November 2016 when the November Document was executed, California's cannabis licensing statutes codified at BPC, Division 8, Chapter 3.5 (Medical Cannabis Regulation and Safety Act) provided as follows:

1. A license can only be issued to a "***qualified applicant***." (BPC § 19320(b) ("Licensing authorities administering this chapter may issue state licenses only to ***qualified applicants*** engaging in commercial cannabis activity pursuant to this chapter.") (emphasis added).)

2. If the applicant does not qualify for licensure the State's licensing authorities "***shall deny***" his application. (BPC § 19323(a) ("A licensing authority ***shall deny*** an application if the applicant… does not qualify for licensure under this chapter or the rules and regulations for the state license.") (emphasis added).) BPC § 19323(a) was repealed and replaced by BPC § 26057(a), effective June 27, 2017 by Stats 2017 ch 27 § (SB 94). (BPC § 26057(a) ("The licensing authority shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division.") (emphasis added).)

3. An applicant is disqualified for licensure if he has been sanctioned for unauthorized commercial cannabis activities in the three years preceding the submission of an application. (BPC 19323(a),(b)(7) ("A licensing authority shall deny an application if the applicant has been sanctioned by a city for unlicensed commercial medical cannabis activities in the three years immediately preceding the date the application is filed with the licensing authority.") (cleaned up; emphasis added).) BPC § 19323(a),(b)(7) was repealed and replaced by BPC § 26057(b)(7), effective June 27, 2017 by Stats 2017 ch 27 § (SB 94). (BPC § 26057(a),(b)(7) ("The licensing authority shall deny an application if the applicant has been sanctioned by a city for unauthorized commercial in the three years immediately preceding the date the application is filed with the licensing authority.") (cleaned up; emphasis added).

4. As part of the application process, an applicant is required to first lawfully acquire a local government permit/CUP and submit their fingerprints to the State's licensing authorities for a background check with the Department of Justice. BPC § 19322(a)(1),(2) ("A person ***shall not*** submit an application for a state license issued by a licensing authority pursuant to this chapter unless that person has received a license, permit, or authorization from the local jurisdiction. An applicant for any type of state license issued pursuant to this chapter ***shall*** do all of the following: [¶] (1) Electronically submit to the

Department of Justice fingerprint images and related information [for a background check] [¶] (2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.") (emphasis added).

II. Geraci is barred by California's cannabis licensing statutes from owning a CUP.

Geraci was last sanctioned on June 17, 2015 in the CCSquared judgment for unlicensed commercial cannabis activities. Pursuant to BPC § 19323(a),(b)(7), as in effect when the November Document was executed, and BPC § 26057(a),(b)(7), as in effect when the *Cotton I* judgment was entered, Geraci could not lawfully own a CUP until June 18, 2018.

The November Document was executed on November 2, 2016, during the time frame during which Geraci was barred by California's licensing statutes. As the object of the November Document is Geraci's illegal ownership of a CUP, it is, even assuming it were a contract, an illegal contract and judicially unenforceable. *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1109 ("The general principle is well established that a contract… made for the purpose of furthering any matter or thing prohibited by ***statute***, or to aid or assist any party therein, is void.") (emphasis added); *see Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986) ("A contract to perform acts barred by California's licensing statutes is illegal, void and unenforceable.").

Consequently, the *Cotton I* judgment finding the November Document is a legal contract because Geraci is not barred by California's licensing statutes is void as 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 (quoting *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 696) (emphasis added).

III. Geraci's attorneys deceived the *Cotton I* court into believing that it was legally possible for the defense of illegality to be waived.

> 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, 147-48 (citations omitted; emphasis added)

In his opposition to the MNT, Geraci argued that Cotton had waived the defense of illegality relying on *Chodosh v. Palm Beach Park Ass'n* 2018 WL 6599824. (RJN, Ex. 8 at 10-12.) Geraci's argument lacks any factual or legal support.

First, the defense of illegality cannot be waived. *City Lincoln-Mercury Co. v. Lindsey* (1959) 52 Cal.2d 267, 274 ("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."); *Wells v. Comstock* (1956) 46 Cal.2d 528, 532 ("no person can be estopped from asserting the illegality of the transaction").

Second, *Chodosh* provides no basis for the argument put forth by Geraci that Cotton had waived the defense of illegality. In *Chodosh*, the Court addressed the issue of illegality and noted that:

> Two California Supreme Court cases decided after *Lewis & Queen* — *Fomco, Inc. v. Joe Maggio, Inc.* (1961) 55 Cal.2d 162, 10 Cal. Rptr. 462, 358 P.2d 918 (*Fomco*), and *Apra v. Aureguy* (1961) 55 Cal.2d 827, 13 Cal. Rptr. 177, 361 P.2d 897 (*Apra*) — both *rejected* posttrial defenses of illegal contract because the illegality defense had not been raised in the trial court. (*See Fomco, supra*, 55 Cal.2d at p. 166; *Apra, supra*, 55 Cal.2d at p. 831.)

Chodosh, supra, at *15 (emphasis in original).

However, the *Chodosh* court found that *Fomco* and *Apra* were inapplicable because the issue of illegality had been raised at the trial court and therefore was within the ambit of *Lewis & Queen*. *Id.* at *15-16 ("The issue having been raised at the trial level, its consideration at the appellate level comes within *Lewis & Queen* and outside the rule of *Fomco* and *Apra*."). Here, the issue of illegality was raised during trial in Cotton's motion for directed verdict and thus is within the ambit of *Lewis & Queen*.

Third, *Chodosh* is an unpublished opinion that was cited to by Geraci in violation of Cal. Rules of Court 8.115 to misrepresent the facts and law that successfully deceived the *Cotton I* court into finding that the defense of illegality had been waived by Cotton.

In sum, *factually*, the defense of illegality had been raised during trial. *Legally*, even if the defense of illegality had not been raised, *Lewis & Queen* is controlling as the defense of illegality 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 [of illegality] on motion for new trial…") (citations omitted).

Geraci's attorneys deceived the *Cotton I* court into incorrectly finding the defense of illegality had been waived.

CONCLUSION

Geraci was sanctioned for illegal cannabis activities and could not by law own a CUP pursuant to the November Document. The *Cotton I* judgment finding that Geraci could own a CUP pursuant to the November Document, in direct violation of California's licensing statutes, is therefore void.

Pursuant to CCP § 473(d) and the Court's inherent power to set aside a void judgment, Cotton respectfully requests the Court issue an order vacating the void *Cotton I* judgment. Alternatively, Cotton requests the Court issue an order shortening time on a hearing to vacate the *Cotton I* judgment.

Dated: January 3, 2021

Darryl Cotton

Pro Se

EXHIBIT 3

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

JUDGMENT ON JURY VERDICT [PROPOSED BY PLAINTIFF/CROSS-DEFENDANTS]

[IMAGED FILE]

Action Filed: March 21, 2017
Trial Date: June 28, 2019

This action came on regularly for jury trial on June 28, 2019, continuing through July 16, 2019, in Department C-73 of the Superior Court, the Honorable Judge Joel R. Wohlfeil presiding. Michael R. Weinstein, Scott H. Toothacre, and Elyssa K. Kulas of FERRIS & BRITTON, APC, appeared for Plaintiff and Cross-Defendant, LARRY GERACI and Cross-Defendant, REBECCA BERRY, and Jacob P. Austin of THE LAW OFFICE OF JACOB AUSTIN, appeared for Defendant and Cross-Complainant, DARRYL COTTON.

A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified and certain trial exhibits admitted into evidence.

During trial and following the opening statement of Plaintiff/Cross-Complainant's counsel, the Court granted the Cross-Defendants' nonsuit motion as to the fraud cause of action against Cross-Defendant Rebecca Berry only in Cross-Complainant's operative Second Amended Cross-Complaint. A copy of the Court's July 3, 2019 Minute Order dismissing Cross-Defendant Rebecca Berry from this action is attached as Exhibit "A."

After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court and the cause was submitted to the jury with directions to return a verdict on special issues on two special verdict forms. The jury deliberated and thereafter returned into court with its two special verdicts as follows:

SPECIAL VERDICT FORM NO. 1

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

Answer: YES

2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him to do?

Answer: NO

3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that the contract required him to do?

Answer: YES

4. Did all the condition(s) that were required for Defendant's performance occur?

Answer: NO

5. Was the required condition(s) that did not occur excused?

Answer: YES

6. Did Defendant fail to do something that the contract required him to do?

Answer: YES

or

Did Defendant do something that the contract prohibited him from doing?

Answer: YES

7. Was Plaintiff harmed by Defendant's breach of contract?

Answer: YES

Breach of the Implied Covenant of Good Faith and Fair Dealing

8. Did Defendant unfairly interfere with Plaintiffs right to receive the benefits of the contract?

Answer: YES

9. Was Plaintiff harmed by Defendant's interference?

Answer: YES

10. What are Plaintiffs damages?

Answer: $ 260,109.28

A true and correct copy of Special Verdict Form No. 1 is attached hereto as Exhibit "B."

///

SPECIAL VERDICT FORM NO. 2

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral contract to form a joint venture?

Answer: NO

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Answer: NO

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Given the jury's responses, Question 25 regarding Cross-Complainant's damages became inapplicable as a result of the jury's responses.

///

A true and correct copy of Special Verdict Form No. 2 is attached hereto as Exhibit "C."

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff LARRY GERACI have and recover from Defendant DARRYL COTTON the sum of $260,109.28, with interest thereon at ten percent (10%) per annum from the date of entry of this judgment until paid, together with costs of suit in the amount of $33,612.16 added 10/1/19 at ; and

2. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant REBECCA BERRY; and

3. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant LARRY GERACI.

IT IS SO ORDERED.

Dated: 8-19, 2019

Joel R. Wohlfeil

Hon. Joel R. Wohlfeil
JUDGE OF THE SUPERIOR COURT

Judge Joel R. Wohlfeil

EXHIBIT 4

No Fee GC §6103

FILED
Clerk of the Superior Court
JUN 17 2015

FILED
Clerk of the Superior Court
JUN 17 2015
By: H. CHAVARIN, Deputy
'15 JUN 11 PM 1:57

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

CCSQUARED WELLNESS COOPERATIVE, a California corporation; BRENT MESNICK, an individual; JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA, an individual; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2015-00004430-CU-MC-CTL

STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6]

IMAGED FILE

1. Plaintiff, City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and Marsha Kerr, Deputy City Attorney; and Defendants, JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI (Doe 1) (collectively, "Defendants"), appearing by and through their attorney, Joseph Carmellino, Esq., enter into the following Stipulation for Entry of Final Judgment (Stipulation) in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered.

///

2. The parties to this Stipulation are parties in two civil actions pending in the Superior Court of the State of California for the County of San Diego. It is the intention of the parties that the terms of this Stipulation constitute a global settlement of the following cases:

a. *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-00004430-CU-MC-CTL.

b. *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-000000972.

3. The parties wish to avoid the burden and expense of further litigation and accordingly have determined to compromise and settle their differences in accordance with the provisions of this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein shall be deemed to constitute an admission or an adjudication of any of the allegations of the Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent Injunction by the Superior Court.

4. The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Avenue, San Diego, also identified as Assessor's Parcel Number 452-407-17-00 (PROPERTY). The PROPERTY is currently owned by JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC.

5. The legal description of the PROPERTY is:

Lot 3 in block 45 of loma grande, in the city of San Diego, County of San Diego, State of California, according to Map thereof No. 692, filed in the Office of the County Recorder of San Diego County, November 23, 1891.

6. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

INJUNCTION

7. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this

Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,** Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

Keeping, maintaining, operating or allowing any commercial, retail, collective, cooperative or group establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to, any marijuana dispensary, collective or cooperative organized anywhere in the City of San Diego without first obtaining a Conditional Use Permit pursuant to the San Diego Municipal Code.

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

8. **Immediately** cease maintaining, operating, or allowing any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

9. The Parties acknowledge that where local zoning ordinances allow the operation of a marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then Defendants will be allowed to operate or maintain a marijuana dispensary, collective or cooperative in the City of San Diego as authorized under the law after Defendants provide the following to Plaintiff in writing:

a. Proof that the business location is in compliance with the ordinance; and

b. Proof that any required permits or licenses to operate a marijuana dispensary, collective or cooperative have been obtained from the City of San Diego as required by the SDMC.

10. **Within 24 hours from the date of signing this Stipulation,** remove all signage from the exterior of the premises advertising a marijuana dispensary, including but not limited to, signage advertising CCSquared Wellness Cooperative or CCSquared Storefront.

11. **No later than 48 hours from signing this Stipulation** cease advertising on the internet, magazines or through any other medium the existence of CCSquared Wellness Cooperative or CCSquared Storefront at the PROPERTY.

12. **No later than 48 hours from signing this** Stipulation remove all fixtures, items and property associated with a marijuana dispensary business from the PROPERTY.

13. **Within one week of signing this Stipulation,** Defendant will contact City zoning investigator Leslie Sennett at 619-236-6880 to schedule an inspection of the PROPERTY.

MONETARY RELIEF

14. Defendants, jointly and severally, shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's investigative costs, the amount of **$2,438.03.** All other attorney fees and costs expended by the parties in the above-captioned case are waived by the parties. The parties agree that payment in full of the monetary amount referenced as investigative costs is applicable to and satisfies payment of investigative costs for both cases referenced in paragraph 2 above.

15. Defendants shall jointly and severally pay to Plaintiff City of San Diego civil penalties in the amount of $75,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past violations alleged by Plaintiff in this action. **$37,500 of these penalties is immediately suspended.** Payment in the amount of $37,500 in civil penalties plus $2438.03 in investigative costs referenced in paragraph 14, totaling $39,938.03, shall be made in 24 monthly installments of $1,664.09 each beginning on or before June 5, 2015, and continuing on the fifth of each successive month until paid in full. Receipt of Defendants' initial monthly payment of $1,664.09 on June 4, 2015 is acknowledged. The parties agree that payment in full of the monetary amounts referenced as civil penalties is applicable to and satisfies payment of civil penalties for both of the cases referenced in paragraph 2 above. All payments shall be made in the form of a certified check payable to the "City of San Diego," and shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

///

16. The suspended penalties shall only be imposed if Defendants fail to comply with the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if imposition of the penalties will be sought by Plaintiff and on what basis.

ENFORCEMENT OF JUDGMENT

17. In the event of default by Defendants as to any amount due under this Stipulation, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid in full. Service by mail shall constitute sufficient notice for all purposes.

18. Nothing in this Stipulation shall prevent any party from pursuing any remedies as provided by law to subsequently enforce this Stipulation or the provisions of the SDMC, including criminal prosecution and civil penalties that may be authorized by the court according to the SDMC at a cumulative rate of up to $2,500 per day per violation occurring after the execution of this Stipulation.

19. Defendants agree that any act, intentional act, omission or failure by their contractors, successors, assigns, partners, members, agents, employees or representatives on behalf of Defendants to comply with the requirements set forth in Paragraphs 7-15 above will be deemed to be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to comply with any part of this Stipulation. Further, should any dispute arise between any contractor, successor, assign, partner, member, agent, employee or representative of Defendants for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to comply with any part of this Stipulation, nor justify a delay in executing its requirements.

RETENTION OF JURISDICTION

20. The Court will retain jurisdiction for the purpose of enabling any of the parties to this Stipulation to apply to this Court at any time for such order or directions that may be necessary or appropriate for the construction, operation or modification of the Stipulation, or for the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

RECORDATION OF JUDGMENT

21. This Stipulation shall not be recorded unless there is an uncured breach of the terms herein, in which instance a certified copy of this Stipulation and Judgment may be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

22. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by regular mail shall constitute sufficient notice for all purposes.

23. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

By _____
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 6-10, 2015

JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC

By _____
Jeffrey Kacha, General Partner

Dated: 6-10, 2015

_____
Jeffrey Kacha, an individual

Dated: 6-8, 2015

_____
Lawrence E. Geraci, aka Larry Geraci, an individual

///

Dated: 6/11/15, 2015

By _____
Joseph S. Carmellino
Attorney for Defendants Jeffrey Kacha and JL India Street LP, formerly known as JL India Street, LLC

JUDGMENT

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 6-17-15

JOHN S. MEYER
JUDGE OF THE SUPERIOR COURT

EXHIBIT 5

A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,

Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

PLAINTIFF'S COMPLAINT FOR:

1. **BREACH OF CONTRACT;**
2. **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;**
3. **SPECIFIC PERFORMANCE; and**
4. **DECLARATORY RELIEF.**

Plaintiff, LARRY GERACI, alleges as follows:

1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and Defendant COTTON that is the subject of this action was entered into in San Diego County, California, and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County, California (the "PROPERTY").

4. Currently, and at all times since approximately 1998, Defendant COTTON owned the PROPERTY.

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend this complaint to state the true names and/or capacities of such fictitiously-named defendants when the same are ascertained.

6. Plaintiff alleges on information and belief that at all times mentioned herein, each and every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged, were acting, whether individually or through their duly authorized agents and/or representatives, within the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge, permission, and consent of the remaining defendants, and each of them, and that said defendants ratified and approved the acts of all of the other defendants.

GENERAL ALLEGATIONS

7. 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. A true and correct copy of said written agreement is attached hereto as Exhibit A.

8. On or about November 2, 2016, GERACI paid to COTTON $10,000.00 good faith earnest money to be applied to the sales price of $800,000.00 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.

9. 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. The CUP process is a long, time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than $300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

FIRST CAUSE OF ACTION

(For Breach of Contract against Defendant COTTON and DOES 1-5)

10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 9 above.

11. Defendant COTTON has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, COTTON has stated that, contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of $50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest. COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP application.

12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI in reliance on the agreement, including but not limited to the estimated $300,000.00 or more expended to date on the CUP process for the PROPERTY.

SECOND CAUSE OF ACTION

(For Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendant COTTON and DOES 1-5)

13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 12 above.

14. Each contract has implied in it a covenant of good faith and fair dealing that neither party will undertake actions that, even if not a material breach, will deprive the other of the benefits of the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON has breached the implied covenant of good faith and fair dealing.

15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI in reliance on the agreement, including but not limited to the estimated $300,000.00 or more expended to date on the CUP process for the PROPERTY.

THIRD CAUSE OF ACTION

(For Specific Performance against Defendants COTTON and DOES 1-5)

16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 15 above.

17. The aforementioned written agreement for the sale of the PROPERTY is a valid and binding contract between Plaintiff GERACI and Defendant COTTON.

18. The aforementioned written agreement for the sale of the PROPERTY states the terms and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible to specific performance.

19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a writing that satisfies the statute of frauds.

20. The aforementioned written agreement for the purchase and sale of the PROPERTY is fair and equitable and is supported by adequate consideration.

21. Plaintiff GERACI has duly performed all of his obligations for which performance has been required to date under the agreement. GERACI is ready and willing to perform his remaining obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary thus satisfying that condition precedent, then to pay the remaining $790,000.00 balance of the purchase price.

22. Defendant COTTON is able to specifically perform his obligations under the contract, namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for receipt of payment from GERACI or assignee of the remaining $790,000.00 balance of the purchase price.

23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary and to specifically perform the contract upon satisfaction of the condition that such approval is in fact obtained.

24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana dispensary and tender the remaining balance of the purchase price.

25. The aforementioned written agreement for the purchase and sale of the PROPERTY constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy, and adequate legal remedy is presumed.

26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon specifically enforcing the written agreement for the purchase and sale of the PROPERTY from Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

FOURTH CAUSE OF ACTION

(For Declaratory Relief against Defendants COTTON and DOES 1-5)

27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 14 above.

28. An actual controversy has arisen and now exists between Defendant COTTON, on the one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written agreement contains terms and condition that conflict with or are in addition to the terms stated in the written agreement. GERACI disputes those conflicting or additional contract terms.

written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or his assignee. Such a declaration is necessary and appropriate at this time so that each party may ascertain their rights, duties, and obligations thereunder.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First and Second Causes of Action:

1. For compensatory damages in an amount in excess of $300,000.00 according to proof at trial.

On the Third Cause of Action:

2. For specific performance of the written agreement for the purchase and sale of the PROPERTY according to its terms and conditions; and

3. If specific performance cannot be granted, then damages in an amount in excess of $300,000.00 according to proof at trial.

On the Fourth Cause of Action:

4. For declaratory relief in the form of a judicial determination of the terms and conditions of the written agreement and the duties, rights and obligations of each party under the written agreement.

On all Causes of Action:

5. For temporary and permanent injunctive relief as follows: that Defendants, and each of them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and all persons acting in concert with or participating with them, directly or indirectly, be enjoined and restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

6. For costs of suit incurred herein; and

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Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

EXHIBIT A

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)