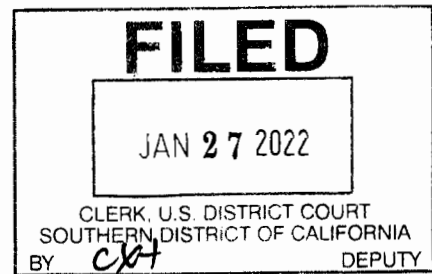


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5 **151DarrylCotton@gmail.com**
6 **Plaintiff Pro Se**



7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 DARRYL COTTON, an individual

10 Plaintiff,

11 v.

12 GINA AUSTIN, an individual; JESSICA
13 MCELFRESH, an individual, and DAVID
14 DEMIAN, an individual,

15 Defendants.

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

**RESPONSE TO DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
REQUEST FOR EXTENSION OF TIME**

Hearing Date: N/A

Hearing Time: N/A

Judge: Hon. Jinsook Ohta

Courtroom: 4C

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17 As proven in the moving ex parte application (the "Application"), the *Cotton I*¹ judgment is void
18 for, *inter alia*, being an "exercise of power not authorized by law [and] a grant of relief to [Geraci] that
19 the law declares shall not be granted." *Pattera v. Hansen* (2021) 64 Cal.App.5th 507, 536 (Court of
20 Appeal decision reversing Judge Wohlfeil judgment for granting relief in violation of statute).

21 Simply stated, the *Cotton I* action was a sham action and the judgment was procured through
22 error. Under federal law, the *Noerr-Pennington* doctrine does not immunize all petitioning activity such
23 as sham pleadings that include the filing of defensive pleadings "because asking a court to deny one's
24 opponent's petition is also a form of petition; thus, we may speak of a 'sham defense' as well as a 'sham
25 lawsuit.'" *Freeman v. Lasky, Haas & Cohler* (9th Cir. 2005) 410 F.3d 1180, 1184.
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28 ¹ Defined terms have the meaning set forth in the moving ex parte application.

such suits), [that] was (1) objectively baseless, and (2) a concealed attempt to interfere with the plaintiff's business relationships." *Id.* The *Cotton I* action was baseless and filed to prevent Cotton from selling his property to a third party after he terminated his agreement with Geraci (Cotton not knowing Geraci could not lawfully own a cannabis license/CUP).

As proven in the Application, Cotton respectfully disagrees that this Court lacks jurisdiction pursuant to the *Rooker-Feldman* doctrine because Cotton did not file this action AFTER the *Cotton I* action was finished. (See Application at 5:6-6:14.) Cotton is not a "state court loser" looking at a second bite at the apple. That Cotton amended his complaint and changed the relief he requested after the *Cotton I* judgment was entered does not deprive this Court of jurisdiction, rather Cotton should be granted leave to amend his complaint to request relief pursuant to his Civil Rights causes of action. But the pending motions to dismiss and the orders in this action continuously rely on the validity of the *Cotton I* judgment being valid and the *Rooker-Feldman* doctrine.

On October 22, 2021, Judge Robinson issued an order granting certain motions to dismiss. (ECF No. 96.) In that order, Judge Robinson addressed the issue of illegality as follows:

At bottom, Plaintiff believes that the contract between him and Geraci and Berry is illegal, but that issue has been dealt with in state court. While plaintiffs are not precluded from bringing similar, independent actions in federal court, Plaintiff explicitly states that this action is a "collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil."

(*Id.* at 7:13-17 (emphasis added).)

Thus, Cotton filed a state action seeking to have the STATE COURT, set aside the state judgment so this Court can proceed to Cotton's causes of action without having to deal with the void judgment issue. That was the basis of Cotton's Application. On January 19, 2022, the State Court set a hearing date for Cotton's motion to vacate the *Cotton I* judgment on March 25, 2022. (Attached hereto as Exhibit 1.)

Thus, Cotton respectfully requests that the time the Court grants for an extension be two weeks after the March 25, 2022 hearing date.

Cotton's request is warranted and constitutes good cause. There must be some factual or legal basis for defendants' motions to dismiss in order for them to not be liable for filing a sham defensive pleading. Neither this Court nor Cotton require a legal education or any legal experience to understand

Geraci was sanctioned for illegal marijuana activities and was barred by law from owning a cannabis license/CUP, which the Cotton I judgment granted Geraci nearly \$300,000 in damages against Cotton and deprived Cotton of his rights to a CUP at his property worth millions of dollars.

That none of the defendants argue that Geraci can lawfully own a cannabis license/CUP by itself should be a dispositive factor to this Court that defendants understand they took actions in furtherance of and/or ratified Geraci's sham lawsuit and are liable for same. There must be *some* factual or legal basis for defendants' motions to dismiss in order for them to not be liable for filing a sham defensive pleading. Neither this Court nor Cotton require a legal education or any legal experience to understand Geraci was sanctioned for illegal marijuana activities and was barred by law from owning a cannabis license/CUP, which the Cotton I judgment granted Geraci nearly \$300,000 in damages against Cotton and deprived Cotton of his rights to a CUP at his property worth millions of dollars.

Is this Court of Justice not bothered or angered by the fact that attorney defendants are seeking to use this Court to ratify an illegal action? That their petitions to this Court are based solely on the distaste of federal courts from voiding/interfering with state court actions? But there is a line at which federal courts must seek to vindicate the rights of parties, even if it means they must indirectly state that there was an error in a state court action. Justice and the law requires that federal courts protect citizen's civil rights and that is not self-serving litigation dramatics, it is the principle of federal civil rights jurisdiction.

Lastly, judicial economy supports Cotton's request for an extension because even if this Court granted defendants motions to dismiss, at the point at which Cotton gets the *Cotton I* judgment set aside for being void, all orders issued by the state and this federal court predicted on the validity of the *Cotton I* judgment would be void as well. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.* (9th Cir. 1992) 971 F.2d 244, 250 ("The preclusive effect accorded a state court judgment in a subsequent federal court proceeding is determined by reference to the laws of the rendering state.... ***we must consider whether we may decline to recognize the judgment if it is based upon a void contract where the illegality of that contract appears on the face of the judgment roll.***") (emphasis added).

To summarize: (i) the *Cotton I* judgment is void; (ii) this action was filed before the *Cotton I* action was entered so the *Rooker-Feldman* doctrine does not bar this Court's jurisdiction; (iii) the defensive pleadings in this action constitute sham pleadings because they lack any factual or legal support

1 and constitute overt acts in furtherance of Geraci's conspiracy that deprived Cotton of valuable rights to
2 his property and violated his civil rights (at no point have defendants even attempted to prove that Geraci
3 is not barred by state law from owning a cannabis license/CUP); and (iv) the state court will address the
4 issue of illegality and the voidness on March 25, 2022.

5 Cotton respectfully requests that this Court grant an extension until after the March 25, 2022
6 hearing. And as Cotton noted, if Cotton is successful in his motion to vacate, Cotton will have counsel
7 represent him in both the state and this federal action which make his requests to this Court clearer as
8 they will come from experienced attorneys.

9 Thank you.

10 January 27, 2022



11 Darryl Cotton
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EXHIBIT 1

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 01/19/2022

TIME: 08:30:00 AM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione

CLERK: Valerie Secaur

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: **37-2022-00000023-CU-MC-CTL** CASE INIT.DATE: 01/03/2022

CASE TITLE: **Cotton vs. Geraci [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Ex Parte

APPEARANCES

Darryl Cotton, self represented Plaintiff, present.

James Crosby, counsel, present for Defendant(s).

This being the time set for hearing on Plaintiff's ex parte application for clarification of denial of ex parte application to set aside void judgment, counsel and party, as noted above, are present and hearing commences.

The Court, having read the moving papers and heard from Plaintiff, explains his ruling at the 1/12/2022 ex parte hearing. The Court explains to Plaintiff the types of matters which are appropriate for ex parte relief, and clarifies that his ex parte decision made no ruling on the merits of Plaintiff's request to vacate void judgment.

The Court grants Plaintiff's oral motion to advance 3/25/2022 motion hearing to vacate void judgment. Motion hearing is advanced to 2/25/2022 at 9:00 am.

Motion Hearing (Civil) is advanced pursuant to party's motion to 02/25/2022 at 09:00AM before Judge James A Mangione.

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

9 **DARRYL COTTON, an individual**
10 **Plaintiff,**

11 **vs.**

12 **GINA AUSTIN, an individual;**
13 **JESSICA MCELFFRESH, an individual;**
14 **and DAVID DEMIAN, an individual**
15 **Defendants,**

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

CERTIFICATE OF SERVICE

Hearing Date: NA
Time: NA
Judge: Hon. Jinsook Ohta
Courtroom: 4C

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19 **CERTIFICATE OF SERVICE**

20
21 I hereby certify that a copy of the foregoing document(s):

- 22 1. DARRYL COTTON, PLAINTIFF RESPONSE TO DEFENDANTS'
23 OPPOSITION TO PLAINTIFF'S REQUEST FOR EXTENSION OF TIME
24 WITH ONE EXHIBIT
25

26
27 Were served on this date to party/counsel of record:
28

1 **[X] BY E-MAIL DELIVERY:**

2 **Counsel for Defendant Austin: DPettit@PettitKohn.com**

3
4 **Counsel for Defendant McElfresh: LStewart@WMFLLP.COM**

5 **Counsel for Defendant Demian: Corinne.Bertsche@LewisBrisbois.com**

6
7 **Interested Party: Katherine.Parker@USDOJ.GOV**

8
9 Dated: January 27, 2022

10
11 
12

13 Darryl Cotton

14 Plaintiff – Pro Se Litigant