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May 05 2021

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED

May 07 2021

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
s/ SuzanneA DEPUTY

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

8 **DARRYL COTTON, an individual**

9 **Plaintiff,**

10 **vs.**

11 **CYNTHIA BASHANT, an individual;**
12 **JOEL WOHLFEIL, an individual;**
13 **LARRY GERACI, an individual;**
14 **REBECCA BERRY, an individual;**
15 **GINA AUSTIN, an individual;**
16 **MICHAEL R. WEINSTEIN, an**
17 **individual; JESSICA MCELFRISH, an**
18 **individual; and DAVID DEMIAN, an**
19 **individual**

20 **Defendants,**

Case No. 3:18-cv-00325-TWR (DEB)

Formerly: 3:18-cv-003250-BAS (DEB)

Related Cases: 3:20-cv-00656-TWR (DEB)

21 **CERTIFICATE OF SERVICE**

Hearing Date: NA

Time: NA

Judge: Hon. Todd W. Robinson

Courtroom: 3A

CERTIFICATE OF SERVICE

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

1. DARRYL COTTON'S OMNIBUS OPPOSITION TO:

(1) CYNTHIA BASHANT'S STATEMENT OF INTEREST AND MOTION TO DISMISS;

(2) LARRY GERACI AND REBECCA BERRY MOTION TO DISMISS FIRST AMENDED COMPLAINT; AND

(3) DAVID DEMIAN'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT

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

[X] BY E-MAIL DELIVERY:

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May 5, 2021



Darryl Cotton

Plaintiff - Pro Se Litigant

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2 6176 Federal Boulevard
3 San Diego, CA 92114
4 Telephone: (619) 954-4447

5 Plaintiff *Pro Se*

6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA

8 DARRYL COTTON,
9 Plaintiff,
10 v.

Case No. 3:18-cv-00325-TWR (DEB)
Formerly: 3:18-cv-003250-BAS (DEB)
Related Cases: 3:20-cv-00656-TWR (DEB)

11 CYNTHIA BASHANT, an individual, JOEL
12 WOHLFEIL, an individual, LARRY GERACI, an
13 individual, REBECCA BERRY, an individual;
14 GINA AUSTIN, an individual; MICHAEL
15 WEINSTEIN, an individual; JESSICA
16 MCELFRESH, an individual, and DAVID
17 DEMIAN, an individual

18 Defendants.

DARRYL COTTON'S OMNIBUS
OPPOSITION TO:
(1) CYNTHIA BASHANT'S STATEMENT OF
INTEREST AND MOTION TO DISMISS;
(2) LARRY GERACI AND REBECCA BERRY
MOTION TO DISMISS FIRST AMENDED
COMPLAINT; AND
(3) DAVID DEMIAN'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT

Hearing Date: May 21, 2021
Hearing Time: 9:00 am
Judge: Hon. Todd W. Robinson
Courtroom: 3A

20
21 Any contract that ratifies or enforces Geraci's right to a cannabis permit in violation of the law is
22 void and unenforceable. *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986) ("A
23 contract to perform acts barred by California's licensing statutes is illegal, void and unenforceable.").
24 Any judgment or order that recognizes the validity, ratifies or enforces an illegal contract is void. *U.S. ex*
25 *Rel. Robinson Rancheria v. Borneo* ("Robinson"), 971 F.2d 244, 252 (9th Cir. 1992) ("The Court
26 explained that where a contract is void '[t]here is nothing which the parties to the action could do which
27 would in any way add to its validity. If the contracts upon which the judgment is based are to that extent
28 void, they cannot be ratified either by right, by conduct or by stipulated judgment.' Thus, the court said,

1 *the judgment itself must be void to that extent.*" (quoting *Hunter v. Superior Court*, 36 Cal.App.2d 100,
2 97 P.2d 492 (1939) (emphasis added)).

3 Therefore, the *Cotton I* and *Cotton II* judgments are void for enforcing an illegal contract. No
4 judge has the power to enforce or ratify an illegal contract.

5 None of the pending motions to dismiss before this Court argue that it is lawful for Lawrence
6 Geraci to own a cannabis permit via the Berry Application. The Court cannot lawfully ignore this issue
7 in addressing these motions. It is the case dispositive premise of Darryl Cotton's entire case against all
8 defendants. And, for this reason, among other set forth below, the pending motions to dismiss before
9 this Court must be denied.

10 LEGAL STANDARD

11 A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of a plaintiff's claims. *Conley*
12 *v. Gibson*, 355 U.S. 41, 45-46 (1957). Dismissal pursuant to Rule 12(b)(6) is proper when the Complaint
13 fails to allege sufficient facts to support a cognizable legal theory. *Mendiondo v. Centinela Hosp. Med.*
14 *Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). In order to plead a cause of action, a Complaint "must contain
15 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft*
16 *v. Iqbal*, 556 U.S. 662, 678 (2009), citing *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570 (2007). The
17 reviewing court must accept all well-pleaded facts as true, and in the light most favorable to the
18 nonmoving party. *Daniel v. County of Santa Barbara*, 288 F.3d 375, 380 (9th Cir. 2002). However,
19 pleadings that are mere conclusions "are not entitled to the assumption of truth." *Iqbal*, 550 U.S. at 679,
20 686. As the Supreme Court explains, "[a] claim has facial plausibility when the plaintiff pleads factual
21 content that allows the court to draw the reasonable inference that the defendant is liable for the
22 misconduct alleged. . . . Threadbare recitals of the elements of a cause of action, supported by mere
23 conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citations omitted). A case will not be
24 allowed to proceed absent "a Complaint with enough factual matter (taken as true) to suggest the required
25 element." *Bell Atlantic*, 550 U.S. at 556.

ARGUMENT

I. Lawrence Geraci cannot own a cannabis permit because he has been sanctioned for illegal cannabis sales.

Neither Cynthia Ann Bashant, Lawrence Geraci, Rebecca Berry, nor David Demian argue that it is lawful for Geraci to own a cannabis permit via the Berry Application. (*See gen.* ECF Nos. 64 (Bashant), 66 (Geraci and Berry), 67 (Demian).) And Cotton’s allegations must be taken as true on this motion to dismiss – the Court CANNOT ignore the issue of illegality. *Daniel v. County of Santa Barbara*, 288 F.3d 375, 380 (9th Cir. 2002).

Thus, defendants admit that the *Cotton I* and *Cotton II* judgments are void for enforcing an illegal contract. *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.”). Any judgment or order that recognizes the validity, ratifies or enforces an illegal contract is void. *U.S. ex Rel. Robinson Rancheria v. Borneo* (“*Robinson*”), 971 F.2d 244, 252 (9th Cir. 1992) (“The Court explained that where a contract is void ‘[t]here is nothing which the parties to the action could do which would in any way add to its validity. If the contracts upon which the judgment is based are to that extent void, they cannot be ratified either by right, by conduct or by stipulated judgment.’ Thus, the court said, *the judgment itself must be void to that extent.*” (quoting *Hunter v. Superior Court*, 36 Cal.App.2d 100, 97 P.2d 492 (1939) (emphasis added))).

II. This Court cannot give preclusive effect to a California state court judgment that a state court would not give.

In *Robinson*, the Ninth Circuit addressed the issue of recognizing a judgment that was void for enforcing an illegal contract. *Robinson*, 971 F.2d at 251 (“Despite the fact that we may not revisit the jurisdictional issue, 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.”).¹

¹ “A contract is part of the judgment roll if it is incorporated by reference in the pleadings or in any other document that is included in the judgment roll by statute.” *Robinson*, at 258 n.4.

1 The Court stated that “[t]he preclusive effect accorded a state court judgment in a subsequent
 2 federal court proceeding is determined by reference to the laws of the rendering state.” *Robinson*, 971
 3 F.2d at 250 (citing 28 U.S.C. § 1738; *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S.
 4 373, 380, 105 S.Ct. 1327, 1331-32, 84 L.Ed.2d 274 (1985)).

5 The *Robinson* court recognized that “California permits an attack upon a judgment based upon an
 6 illegal contract if that contract is made part of the judgment roll and if further judicial action is about to
 7 be taken to enforce the terms of the contract.” *Id.* at 251. It is irrefutable that the alleged agreement
 8 enforced by the *Cotton I* and *Cotton II* judgments violate state law prohibiting individuals who have been
 9 sanctioned for illegal cannabis activities like Geraci, as well as applicable disclosure laws that were
 10 violated by Berry in order to not disclose Geraci’s sanctions, as well as the statute of frauds. *Consul Ltd.*
 11 *v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986) (“A contract to perform acts barred by
 12 California’s licensing statutes is illegal, void and unenforceable.”).

13 Put differently, if it was lawful for Geraci to own a cannabis CUP via the Berry Application then
 14 they would have argued that. They have not. Instead they are relying on this Court to double-down and
 15 ignore the issue of illegality to protect Wohlfeil and Bashant from exposing their biased actions in
 16 refusing to address the issue of illegality. But, that is not the law and neither Wohlfeil, Bashant, nor this
 17 Court have the power to ratify or enforce an illegal contract that was only made possible because of a
 18 biased judge who refused to believe that his friend, Weinstein, would file a sham lawsuit. *Erhart v. BOFI*
 19 *Holding, Inc.*, No. 15-cv-02287-BASNLS, at *12 (S.D. Cal. Feb. 14, 2017) (“No principle of law is better
 20 settled than that a party to an illegal contract cannot come into a court of law and ask to have his illegal
 21 objects carried out[.]”) (quoting *Lee On v. Long*, 37 Cal. 2d 499, 502 (1951)). As the Ninth Circuit stated,
 22 it is “under no obligation to allow a party to invoke a prior state court judgment as a defense if that
 23 judgment is void as a matter of state law.” *Robinson*, 971 F.2d at 258.

24 Thus, here, as *Robinson*, “[i]n a nutshell, this case is one of those rare instances in which proper
 25 respect for state law and state courts would be demonstrated not by deferring to a valid state court
 26 decision, but by declining to defer to a void one” *U.S. ex Rel. Robinson Rancheria v. Borneo*
 27 (“*Robinson*”), 971 F.2d 244, 258 (9th Cir. 1992) (emphasis added).
 28

III. Geraci and Berry's motion to dismiss must be denied because it admits that the *Cotton I* and *Cotton II* judgments enforce an illegal contract procured by their criminal acts in conjunction with their attorney Michael Weinstein of Ferris & Britton and Gina Austin of Austin Legal Group.

The Ninth Circuit has ruled that misconduct by an officer of the court is an alternative definition of fraud on court. *In re Intermagnetics America, Inc.*, 926 F.2d 912, 916–917 (9th Cir. 1991); *see In re Golf 255, Inc.*, 652 F.3d 806, 810 (7th Cir. 2011) (“a witness’s lies are not fraud on the court unless a lawyer in the case is complicit in them.”). Weinstein presented Austin’s testimony that it is lawful for Geraci to own a cannabis permit via the Berry Application at the trial of *Cotton I*. Yet, weeks later when Cotton’s motion for new trial was heard, they argued that the defense of illegality had been waived. That Wohlfeil is a biased judge who did not remember that the issue of illegality had been raised before the motion for new trial or that he even thought it was possible to waive the defense of illegality CANNOT be a defense. *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998) (“A judgement is void for purposes of Rule 60(b)(4) if the court that rendered it entered an order outside its legal powers.”).

Bottom line, Geraci and Berry conspired with their attorneys and successfully committed a fraud on the court by representing and providing evidence and testimony that it was lawful for Geraci to own a cannabis CUP via the Berry Application. Wohlfeil’s stupidity cannot be a legal defense. To hold that it is to provide incentive to every attorney to screw over poor people because if they can deceive the judge to get a judgment, the reality is poor people cannot afford appeals and they will be able to get away with their crimes. This is not the law. *Erhart v. BOFI Holding, Inc.*, No. 15-cv-02287-BASNLS, at *12 (S.D. Cal. Feb. 14, 2017) (“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[.]”) (quoting *Lee On v. Long*, 37 Cal. 2d 499, 502 (1951)); *Gatti v. Highland Park Builders, Inc.*, 27 Cal. 2d 687, 689 (1946) (holding a “contract made contrary to the terms of a law designed for the protection of the public and prescribing a penalty for the violation thereof is illegal and void, and no action may be brought to enforce such contract.”).

1 **IV. Demian ignores the issue of illegality and his relationship with Geraci.**

2 A "'fraud on the court' occurs where it can be demonstrated, clearly and convincingly, that a party
3 has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's
4 ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the
5 presentation of the opposing party's claim or defense." *Aoude v. Mobile Oil Corp.*, 892 F.2d 1115, 1118
6 (1st Cir. 1989) (citing *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989)).

7 David Demian is a truly ignoble, heinous individual. Like Weinstein he comes across as an affable
8 and charismatic individual, but they are immoral, greedy individuals solely driven by money. It is
9 indisputable that Demian amended my complaint and took out my allegations against Geraci and Berry
10 that they conspired to illegally acquire a cannabis CUP at the Property. And, at very least for this motion,
11 Demian does not dispute that he has shared clients with Geraci and Geraci's tax services firm.

12 Thus, given that he does not dispute that it is illegal for Geraci to own a cannabis permit via the
13 Berry Application, then it is possible that he amended the complaint to deprive me of lawful access to
14 the state courts because of his relationship with Geraci and Geraci's clients. Individuals who are wealthy.
15 This states a claim. But for my litigation investor being at a hearing at which Demian failed to raise the
16 Confirmation Email as evidence that I did not mutually assent to the November Document being a
17 contract, I would never have fired Demian. However, by the time I fired him the damage had been done
18 and I looked like a crazy pro se before Wohlfeil arguing that my own attorney was conspiring against me
19 with opposing counsel. (Over the last three years I have repeatedly been mocked and ridiculed for this
20 (see, e.g., ECF No. 66 (Geraci and Berry motion to dismiss) at 7:23-26 ("Cotton had his day in court
21 before a jury in the State Court Action. He is a state-court loser trying to get this court to fix his state
22 court loss, based on unsubstantiated, irrelevant, and objectively ludicrous assertions of judicial bias and
23 unfairness, all simmering in a stew of grievance and self-pity.")).

24 Demian committed a fraud on the court, he sold out my interests, of his own client, to benefit his
25 other clients that he did not disclose to me. How can this be called justice? It cannot - "California law
26 allows an independent action in equity to set aside a judgment obtained by extrinsic fraud, and such *an*
27 *equitable action need not be brought in the court that rendered the challenged judgment.*" (18 Moore's
28 Federal Practice -Civil § 133.33(2)(iii) (Claims Alleging Fraud or Other Misconduct in Connection with

State-Court Proceedings) (2021) (citing *Young v. Young Holdings Corp.*, 27 Cal. App. 2d 129, 147, 80 P.2d 723, 733 (1938) (“The superior court is vested by the constitution with jurisdiction over ‘all cases in equity’; and cases of this kind—that is, for relief against judgments on the ground of fraud in their procurement—constitute a familiar and well-established head of equity jurisdiction. Nor ... is this jurisdiction vested in any particular superior court or courts. Every superior court ... has jurisdiction of all equity cases that may be brought in it.” (quoting *Herd v. Tuohy*, 133 Cal. 55, 59, 65 P. 139, 140 (1901))); *see also Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1141 (9th Cir. 2004) (“Under California law, extrinsic fraud is a basis for setting aside an earlier judgment.”).)

But-for Demian amending my complaint to remove my conspiracy and fraud allegations against Geraci and Berry, Wohlfeil would not have thought I was an idiot when I made those arguments later in the litigation after I was representing myself pro se. Demian’s actions were “calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier...” *Aoude*, 892 F.2d at 1118 (citing *Alexander v. Robertson*, 882 F.2d 421, 424 (9th Cir. 1989)). Demian committed a fraud on the court.

V. Cynthia Ann Bashant is a corrupt judge and is the reason why the Ninth Circuit must follow the United States Supreme Court’s § 1983 precedent.

In the past dozen years, state and local judges have repeatedly escaped public accountability for misdeeds that have victimized thousands. Nine of ten kept their jobs, a Reuters investigation found – including an Alabama judge who unlawfully jailed hundreds of poor people, many of them Black, over traffic fines.

Michael Berens and John Shiffman, *Reuters Investigates, The Teflon Robe, Objections Overruled: Thousands of U.S. Judges who broke laws or oaths remained on the bench.* (<https://www.reuters.com/investigates/special-report/usa-judges-misconduct/> (Filed June 30, 2020).)

It is a fact that judges protect judges and seek to not expose their unethical/illegal actions.
Id.

Bashant does not deny that she failed to address the issue of illegality or that she fabricated statements against attorney Andrew Flores making him look like an incompetent asshole. She was successful, since her order making him appear to be an idiot, he explicitly told me and his other clients,

1 including Amy Sherlock, that he can't help us if "corrupt" judges decide to cover up Wohlfeil's biased
 2 actions. (FAC ¶¶ 113-132.) Again, she does not deny this and these allegations MUST be taken as true
 3 on this motion to dismiss.

4 My claim against Bashant comes down to this, a reasonable person would believe that she is either
 5 covering up Wohlfeil's biased actions (i.e., the Black Wall) or she was negligent, did not want to read a
 6 177 factually dense complaint on an ex parte basis, because she is lazy. Either way, any reasonable person
 7 would believe that there is at very least the appearance that Bashant is biased and would be motivated to
 8 retaliate against Cotton for bringing forth his claims against her. Had she not transferred the case to
 9 Robinson, she would have been REQUIRED to recuse herself. *Liteky v. United States*, 510 U.S. 540, 548,
 10 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994) (recusal mandated if judges impartiality could reasonably be
 11 questioned; judge need not be subjectively biased or prejudiced as long as judge appears to be so).

12 Bashant's actions, whether due to laziness, negligence, or corruption, ratified and enforced the
 13 *Cotton I* and *Cotton II* judgments, which enforce an illegal contract. It makes her look stupid and certainly
 14 form the basis to prevent her from being nominated to the Ninth Circuit in the future. And she has sat on
 15 the Ninth Circuit before, and she should be prevented from having anything to do with my actions in my
 16 soon to be filed appeals from this Court's rulings also ignoring the issue of illegality.

17 However, as I was made aware, the Ninth Circuit in *Mullins* took the position that § 1983 claims
 18 do not apply to federal judges, in contradiction of the United States Supreme Court precedent on the
 19 issue. As set forth in the dissent of *Mullins* by Judge O'Scannlain:

20 I concur in substantially all of the majority's opinion, but I must respectfully dissent from
 21 its analysis of judicial immunity from prospective injunctive relief set forth in part III C.

22 The majority believes that the Pulliam exception to judicial immunity should apply only to
 23 state judges, while federal judges should remain absolutely immune to challenges for
 24 prospective injunctive relief. In my view, the majority's approach misreads the Supreme
 25 Court's Pulliam opinion. Moreover, I believe the Court has already considered the
 26 majority's policy argument in Pulliam itself, concluding that there is no need to shield
 27 judges (state or federal) from injunctive relief challenges:

28 We never have had a rule of absolute judicial immunity from prospective
 relief, and there is no evidence that the absence of that immunity has had a
 chilling effect on judicial independence . . . The limitations already imposed
 by the requirements for obtaining equitable relief against any defendant —

1 a showing of an inadequate remedy at law and of a serious risk of
 2 irrevocable harm (citations omitted), — severely curtail the risk that judges
 3 will be harassed and their independence compromised by the threat of
 4 having to defend themselves against suits by disgruntled litigants.

Pulliam at 536-38, 104 S.Ct. at 1977-79.

5 The Supreme Court has previously held that it is inappropriate to create a distinction
 6 between state and federal officials for purposes of immunity:

7 There is no basis for according to federal officials a higher degree of
 8 immunity from liability when sued for a constitutional infringement as
 9 authorized by Bivens than is accorded state officials when sued for the
 10 identical violation under section 1983. The constitutional injuries made
 11 actionable by section 1983 are of no greater magnitude than those for which
 12 federal officials may be responsible.

13 *Butz v. Economou*, 438 U.S. 478, 500, 98 S.Ct. 2894, 2907, 57 L.Ed.2d 895 (1978). This
 14 circuit has also noted that "we make no distinction between a section 1983 action and a
 15 Bivens action for purposes of immunity." *Lonneker Farms, Inc. v. Klobucher*, 804 F.2d
 16 1096, 1097 (9th Cir. 1986). Until today, no court has sought to parse these otherwise plain
 17 statements of the law, and I can see no reason to do so in the present case. To extrapolate
 18 from *Pulliam* a rule which broadly discriminates between federal and state judges in the
 19 judicial immunity field is at best unwarranted and at worst potentially divisive to the goal
 20 of harmony in the administration of the American judicial system.

21 I would simply follow the reasoning of *Affeldt* which the majority cites with favor and then
 22 abandons. Both *Affeldt* and the majority here conclude that the litigant "cannot show an
 23 inadequate remedy 'at law' and a serious risk of irreparable harm, prerequisites to
 24 injunctive relief under *Pulliam*" (Maj.Op. at 1392). In my view, this ends the matter; no
 25 injunction will lie against the federal judge in this case and his decision is properly affirmed
 26 on such grounds alone.

27 *Mullis v. U.S. Bankruptcy Ct., Dist of Nevada*, 828 F.2d 1385, 1394-95 (9th Cir. 1987).

28 Wohlfeil issued a judgment enforcing an illegal contract. Bashant IGNORED the evidence of
 illegality and ratified and enforced that judgment when she had absolutely no discretion or authority to
 do so. *Watts v. Pinckney*, 752 F.2d 406, 410 (9th Cir. 1985) ("A void judgment is a legal nullity and a
 court considering a motion to vacate has no discretion in determining whether it should be set aside.").

At least in regards to me, Bashant cannot be allowed to stand in judgment of me, it violates my
 constitutional rights. "The Due Process Clause entitles a person to an impartial and disinterested
 tribunal." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980). In addition, "justice must satisfy the

1 appearance of justice.” *Offutt v. United States*, 348 U.S. 11, 14 (1954); *Exxon Corp. v. Heinze*, 32 F.3d
 2 1399, 1403 (9th Cir. 1994) (“[T]he Constitution is concerned not only with actual bias but also with ‘the
 3 appearance of justice.’”).

4 Again, whether intended or not, any reasonable person would know and believe that Bashant was
 5 at the very least negligent in handling my matters. Thus, I should have to hope that she will not retaliate
 6 against me in the future. Nor can it be said that I can rely on ethical complaints against her. I filed a
 7 complaint against her, attached hereto as Exhibit 1, which was denied by Chief Justice Sydney Thomas,
 8 attached hereto as Exhibit 2, also without addressing the issue of illegality.

9 **It is possible that a reasonable person would believe that judges are covering up for other**
 10 **judges and, thus, the law must afford a legal remedy.**

11 My case is not theoretical, it is simple and straightforward and reflects that corrupt judges count
 12 on other corrupt judges to cover up their unethical/illegal actions. This should NOT be possible. But the
 13 way the law is right now it is. And it must change. Judge O’Scaannlain’s dissent is directly on point.

14 CONCLUSION

15 It is the belief of numerous attorneys that this Court has already taken the position that it will seek
 16 to cover up the actions of Wohlfeil and Bashant as demonstrated by its granting Weinstein’s motion to
 17 dismiss. It is therefore conceptually impossible for this Court to grant me any relief because Weinstein
 18 is the individual that filed and argued that it was legal for Geraci to own a cannabis permit via the Berry
 19 Application. To grant me any relief is to say that you made a mistake when you granted Weinstein’s
 20 motion to dismiss. And if there is one thing I have learned by now is that judges will never admit they
 21 made a mistake, no matter the cost to Constitutional rights of the litigants before them. You all blatantly
 22 violate the judicial oath you took – and for what? For your pride? Sheer hubris. I hate you all and sooner
 23 or later I will expose you all because there is nothing you can do to keep me from seeking to protect my
 24 Constitutional rights to an impartial trial before an impartial judge and no matter how you may wish you
 25 could convolute the facts, nothing you say or do can make it lawful for Geraci to own a cannabis permit
 26 via the Berry Application.

27 The \$261,000 judgment entered against me by Wohlfeil may not mean much to you, but it is
 28 weight that will drag me down for the rest of my life if my rights are not vindicated.

1 DATED: May 5, 2021

2
3 By



Darryl Cotton

EXHIBIT 1

Judicial Council of the Ninth Circuit

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 5 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The Ninth Circuit Judicial Council also adopted local misconduct rules. The rules are available in federal court clerks' offices, on individual federal courts' Web sites, and on www.uscourts.gov, and https://www.ca9.uscourts.gov/misconduct/judicial_misconduct.php.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. Under the Ninth Circuit's local misconduct rules, you are required to file five copies of your misconduct complaint and exhibits, plus one copy for each additional judge if more than one subject judge is named in your complaint. Enclose your complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: Darryl Cotton
 Contact Address: 6176 Federal Blvd.
San Diego, CA 92114
 Daytime telephone: (619) 954-4447

2. Name(s) of Judge(s): Hon. Cynthia Bashant
 Court: US District Court Southern District of California

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?
☒ Yes ☐ No
 If "yes," give the following information about each lawsuit:
 Court: 9th Circuit - San Diego
 Case Number: 18-cv-325-BAS-MDD
 Docket number of any appeal to the NA Circuit: _____
 Are (were) you a party or lawyer in the lawsuit?
☒ Party ☐ Lawyer ☐ Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

I am currently a Pro Se litigant in the previously referenced case.

There is a related case that is being presided over by Judge Bashant that was filed by my previous attorney Andrew Flores. That is Case No. 20CV0656 JLS LL

Law Office of Andrew Flores 945 4th Ave., San Diego, CA 92101

Ph: 619.256.1556

4. Have you filed any lawsuits against the judge?

☒ Yes

☐ No

If "yes," give the following information about each such lawsuit:

Court: US District Court Southern District of California

Case Number: 18-cv-325-BAS-MDD

Present status of lawsuit: 5%

Name, address, and telephone number of your lawyer for the lawsuit against the judge:

Self Represented Darryl Cotton

6176 Federal Blvd. SD CA 92114

619.954.4447

Court to which any appeal has been taken in the lawsuit against the judge:

Docket number of the appeal:

Present status of the appeal:

5. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation. Local Rule 6.1(b) provides that your statement of facts must not be longer than five pages (five sides), or 1,200 words, whichever is less.

You must provide objectively verifiable proof such as the names of witnesses or recorded documents or transcripts to support your allegations. Adverse rulings do not support misconduct allegations, as the appropriate forum for an argument that a judge erred is the appellate court. Thus, you need not include copies of your filings in the underlying case or the judge's orders because even if a review of those documents is necessary, the documents are accessible via PACER. Excess or irrelevant documentation will be returned to the complainant.

6. Acknowledgment, declaration and signature:

In the space provided below, please write the following statement: "I understand that even if I successfully prove that the judge engaged in misconduct or is disabled, this procedure cannot change the outcome of the underlying case." (If this statement is not written, your complaint will not be processed and will be returned to you.)

I understand that even if I successfully prove that the judge engaged in misconduct or is disabled, this procedure cannot change the outcome of the underlying case.

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature)



Darryl Cotton

(Date) May 05, 2020

May 5, 2020

Chief Judge Sidney Thomas
Judicial Council of the Ninth Circuit

Re: Judicial Misconduct by Judge Cynthia Ann Bashant

Chief Judge Thomas,

Judge Cynthia Ann Bashant has taken unethical actions either knowingly or with purposeful negligence to cover up the biased/unethical actions of state court judge Joel Wohlfeil. Wohlfeil and Bashant served together for approximately seven years in the San Diego Superior Court.

On November 2, 2016, Lawrence Geraci and I reached an oral joint venture agreement (the "JVA") to develop a cannabis store (the "Business") at my real property ("Property"). Geraci's attorney, Gina Austin, was to reduce the JVA to writing. That same day, Geraci and I executed a three-sentence document (the "November Document"), as my acceptance of \$10,000 in cash towards a total \$50,000 agreed-upon nonrefundable deposit.

Also that same day (i) Geraci emailed me a copy of the November Document; (ii) I replied and requested that Geraci confirm in writing the November Document is not a purchase contract (the "Request for Confirmation"); and (iii) Geraci replied and confirmed the November Document is not a purchase contract (the "Confirmation Email").

"As every first-year law student knows, an agreement or mutual assent is of course essential to a valid contract." *Jacks v. CMH Homes, Inc.*, 856 P.3d 1301, 1304 (10th Cir. 2017). The Request for Confirmation and the Confirmation Email prove that I and Geraci did not mutually assent to the November Document being a purchase agreement for the Property (the "Mutual Assent Issue").

I terminated the JVA with Geraci on March 21, 2017 for failing to reduce the JVA to writing and because I discovered he had applied for a cannabis permit at the Property in the name of his receptionist (the "Berry Application"). On March 22, 2017, Geraci's attorney, Michael Weinstein, served me with a suit alleging the November Document is a fully integrated purchase contract for the Property ("*Cotton I*").¹

In the Berry Application, Berry certified she is the sole owner of the cannabis application being sought (the "Berry Fraud"). At trial in *Cotton I*, both Geraci and Berry testified that the false statements made in the Berry Application were made knowingly and allegedly because Geraci is an Enrolled Agent with the IRS and not because he is prohibited by law from owning a cannabis business as a result of at least three sanctions by the City for owning/operating illegal marijuana dispensaries (the "Illegality Issue"). See, e.g., *City of San Diego v. CCSquared Wellness Cooperative*, Case No. 37-2015- 00004430-CU-MC-CTL, ROA No. 44 (Stipulated Judgment) at 2:15-16 ("The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Ave, San Diego[.]").

Cotton I can be determined to be a malicious prosecution action filed without probable cause for at least three reasons. First, the Mutual Assent Issue is case-dispositive. Second, the November Document has an unlawful object; Geraci's ownership of a cannabis business that he is prohibited from because of the Illegality Issue. Third, Geraci cannot own a cannabis permit via the Berry Application because of the Berry Fraud.

Wohlfeil has stated from the bench that he does not believe Weinstein and Austin are capable of acting unethically. There is an ongoing investigation by the state court against Wohlfeil that I filed.

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

In February 2018, I filed suit and a TRO in federal court against, *inter alia*, Geraci, Weinstein and Austin alleging, *inter alia*, RICO and § 1983 claims.² On February 28, 2019, because of *Cotton I* Judge Curiel stayed the action pursuant to the *Colorado River* doctrine.

In July 2019, Wohlfeil entered judgment against me in *Cotton I* after a jury trial. I filed a motion for new trial ("MNT") arguing, *inter alia*, assuming the November Document is a contract, it is an illegal contract that cannot be enforced. (*Cotton I*, ROA No 672.) Wohlfeil denied the MNT believing his buddy Weinstein's frivolous argument that I had waived the defense of illegality to the enforcement of a contract - Wohlfeil is a biased idiot. *City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) ("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.").

On January 10, 2020, Judge Curiel recused himself. On January 15, 2020, Bashant lifted the *Colorado River* stay, but denied my request for counsel. On April 9, 2020, I filed an ex parte application seeking reconsideration of the Court's denial of my request for counsel premised on, *inter alia*, the argument I needed to prove Judge Wohlfeil is biased. Further, I moved for Judge Bashant to vacate the order denying my request for counsel pursuant to FRCP 60(b) because, *inter alia*, the *Cotton I* judgment enforces an illegal contract.

On April 16, 2020, Judge Bashant denied my ex parte application in pro se fashion conclusory finding I had failed to prove "exceptional circumstances," but without describing why.

On April 3, 2020, my former attorney, Andrew Flores, filed suit in federal court and an ex parte TRO after I told him that some of my supporters who had lent me significant money were planning to shoot one of Geraci's attorneys to bring in law enforcement agencies to investigate what we believe to be a political corruption that includes Wohlfeil. (*Flores, et al. v. Austin, et al.*, Case No.20-cv-656-BAS-MDD.)

On April 20, 2020, Judge Bashant denied Flores' TRO. The opening paragraph states: "Plaintiffs... allege civil rights violations under 42 U.S.C. § 1983, make a 'neglect to perform wrongful act' cause of action, and seek various forms of declaratory relief. The complaint is almost impossible to summarize due to its length and confusing nature." Also, she alleges that Flores did not comply with FRCP 65(b) for the issuance of a TRO because his reasoning is unclear on the premise that Corina Young is a "defendant."

First, according to Bashant, Flores is an idiot that sued someone for "neglect[ing] to perform wrongful act." Flores did not. Flores filed a § 1986 cause of action for "neglect to prevent a wrongful act." Bashant either purposefully is attempting to make Flores appear to be an idiot - what kind of moron sues somebody for *not* committing a crime? - or she did not bother to read the complaint with even the most minimal diligence that presumably is expected of any attorney, much less that of a federal judge.

Second, Corina Young is a witness who has been threatened from providing her testimony. She is not a "defendant." Bashant simply made that up.

Third, Flores *did* provide notice, case law and argument for why notice is not required pursuant to FRCP 65.

Fourth, given the preceding, her allegation that the Flores' complaint is "confusing" is denigrating as she clearly does not understand even the most basic facts she was presented with.

² *Cotton v. Geraci*, Case No.: 18cv325-GPC(MDD).

Bashant's actions reflect she would rather ratify and enforce an illegal contract rather than expose Wohlfeil as a biased judge. How can justice ever be achieved when judges like Bashant fabricate and attribute statements to parties that prevent them from exposing judge's unethical actions?



Darryl Cotton

EXHIBIT 2

OFFICE OF THE CIRCUIT EXECUTIVE

UNITED STATES COURTS FOR THE NINTH CIRCUIT

JAMES R. BROWNING UNITED STATES COURTHOUSE
95 SEVENTH STREET
POST OFFICE BOX 193939
SAN FRANCISCO, CA 94119-3939

ELIZABETH A. SMITH
CIRCUIT EXECUTIVE
PHONE: (415) 355-8900

October 19, 2020

Darryl Cotton
6176 Federal Boulevard
San Diego, CA 92114

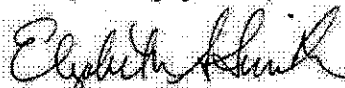
Re: Complaint of Judicial Misconduct No. 20-90056

Dear Mr. Cotton:

Chief Judge Thomas has issued an order in your complaint of judicial misconduct. A copy is enclosed.

A complainant or judge aggrieved by an order of the chief judge may petition the judicial council for review thereof by filing such petition in the office of the clerk of the court of appeals within 42 days of the date of the clerk's letter to the complainant transmitting the chief judge's order. 28 U.S.C. § 352(c); Judicial-Conduct Rule 18(b).

Very truly yours,


Elizabeth A. Smith

EAS/tc

FILED

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

OCT 19 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 20-90056

ORDER

THOMAS, Chief Judge:

Complainant, a pro se litigant, has filed a complaint of judicial misconduct against a district judge. Review of this complaint is governed by the Rules for Judicial Conduct and Judicial-Disability Proceedings (“Judicial-Conduct Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 et seq., and relevant prior decisions of the Ninth Circuit Judicial Council. In accordance with these authorities, the names of complainant and the subject judge shall not be disclosed in this order. See Judicial-Conduct Rule 11(g)(2).

The Judicial Conduct and Disability Act provides a remedy if a federal judge “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a). A chief judge may dismiss a complaint if, following review, he or she finds it is not cognizable under the statute, is directly related to the merits of a decision or procedural ruling, or is frivolous or lacks sufficient evidence to raise an inference of misconduct.

See 28 U.S.C. § 352(b)(1)(A)(i)-(iii). Judicial misconduct proceedings are not a substitute for the normal appellate review process, and may not be used to seek reversal of a judge's decision, to obtain a new trial, or to request reassignment to a different judge.

Complainant alleges that the district judge is covering up the biased and unethical actions of a Superior Court judge who presided over complainant's civil case regarding a joint venture agreement. To support his allegation, complainant points to the fact that the district judge denied a motion for a temporary restraining order. In denying that motion, complainant alleges the district judge also improperly stated that defendants were not given proper notice. These issues directly relate to the merits of the case and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(i); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009).

Complainant further supports his allegation of bias with his belief that the district judge failed to read the civil complaint. To support his belief, he points to one of the district judge's orders, in which she stated that the complaint was difficult to summarize because of its length and confusing nature. To the extent the district judge found the complaint difficult to decipher, that does not constitute misconduct. Beyond a reference to the above statement, complainant submits no

evidence to support his allegation that the district judge failed to read the civil complaint, which is dismissed as unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 569 F.3d 1093 (9th Cir. Jud. Council 2009) (“claimant’s vague insinuations do not provide the kind of objectively verifiable proof that we require”); Judicial-Conduct Rule 11(c)(1)(D).

Finally, complainant alleges that the district judge lied by stating that a witness was a defendant. A review of the docket shows that the district judge was merely quoting a motion filed by the plaintiff, which stated that the witness was a defendant. This allegation is therefore “conclusively refuted by objective evidence” and must be dismissed. 28 U.S.C. § 352(b)(1)(B).

DISMISSED.

The Ninth Circuit Judicial Council's Judicial Misconduct Proceedings Rules
Effective May 2018

The Ninth Circuit Judicial Council adopted the following rules for misconduct proceedings:

Rule 6(b): *Brief statement of facts.* A complaint must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based. The statement of facts should include a description of:

- (1) what happened;
- (2) when and where the relevant events happened;
- (3) any information that would help an investigator check the facts; and
- (4) for an allegation of disability, any additional facts that form the basis of the allegation.

Rule 6(c): *Legibility.* A complaint should be typewritten if possible. If not typewritten, it must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted is still illegible, it will not be accepted for filing.

Rule 6(d): *Complaint's Address and Signature; Verification.* The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing under penalty of perjury. If any of these requirements are not met, the complaint will be accepted for filing, but it will be reviewed under only Rule 5(b).

Local Rule 6.1(a): *Name of Subject Judge.* Complainant must either use the form appended to the local rules, or shall identify any and all subject judge(s) on the first page of the complaint. If complainant fails to so identify the subject judge(s), the complaint will be returned to complainant with a request to do so.

Local Rule 6.1(b): *Page Limit.* The statement of facts must not be longer than five pages (five sides), or 1,200 words, whichever is less. The complaint must be submitted on standard 8.5x11 size paper. A complainant may petition the Chief Judge for permission to submit additional pages if extraordinary circumstances exist, and the Chief Judge may delegate the consideration of these requests to the Circuit Executive.

Local Rule 6.1(d): Acknowledgment. The complaint must include the following written acknowledgment: "I understand that even if I successfully prove that the judge engaged in misconduct or is disabled, this procedure cannot change the outcome of the underlying case." Complainant may either write this acknowledgment in the space provided in Section 6 of the complaint form, or complainant must write out the acknowledgment on the first page of the complaint. If complainant fails to write out the acknowledgment, the complaint will be returned to complainant with a request to do so.

Amended Local Rule 6.1(e): Number of Copies. The complainant must file an original and one copy of (1) the complaint form, (2) the statement of facts, and (3) any documents submitted.

Rule 18(b): When to File; Form; Where to File; A petition for review must be filed in the office of the circuit clerk with 42 days of the date on the clerk's letter informing the parties of the chief judge's order. The petition should be in letter form, addressed to the circuit clerk, and in an envelope marked "**Misconduct Petition**" or "**Disability Petition**". The name of the subject judge must not be shown on the envelope. The letter should be typewritten or otherwise legible. It should begin with "**I hereby petition the judicial council for review of...**" and state the reasons why the petition should be granted. It must be signed.

Rule 18(d): Untimely Petition. The clerk must refuse to accept a petition that is received after the deadline in 18(b).

Rule 18(e): Timely Petition Not in Proper Form. When the clerk receives a petition for review within the time allowed but in a form that is improper to a degree that would substantially impair its consideration by the judicial council—such as a document that is ambiguous about whether it is intended to be a petition for review—the clerk must acknowledge its receipt, call the filer's attention to the deficiencies, and give the filer the opportunity to correct the deficiencies with 21 days of the date of the clerk's letter about the deficiencies or within the original deadline for filing the petition, whichever is later. If the deficiencies are corrected within the time allowed, the clerk will proceed according to paragraphs (a) and (c) of the Rule. If the deficiencies are not corrected, the clerk must reject the petition.

Amended Local Rule 18.1(b): Page Limit and Number of Copies: A petition for review must not be longer than five pages (five sides), or 1,200 words, whichever is less. A complainant may petition the Chief Judge for permission to submit additional pages if extraordinary circumstances exist, and the Chief Judge may delegate the consideration of these requests to the Circuit Executive. The complainant must file an original and one copy of the petition for review, along with a copy of the original complaint.