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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

DARRYL COTTON, Plaintiff, v. LAWRENCE (A/K/A LARRY) GERACI, an individual, Defendant.	Case No. 37-2022-00000023-CU-MC-CTL **DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION TO VACATE VOID JUDGMENT AND COURT REFERRAL TO THE DEPARTMENT OF JUSTICE** Date: July 12. 2024 Time: 9:00 a.m. Dept.: C-75 Judge: Hon. James A. Mangione Complaint Filed: January 3, 2022 Trial Date: Unassigned

I- INTRODUCTION

Five years ago, in San Diego Superior Court Case No. 37-2017-000010073-CU-BC-CTL ("Cotton I"), plaintiff Cotton ("Cotton") and defendant Geraci ("Geraci") tried a case over the real estate transaction and contract at the core of this apparently never-ending matter and the current motion. In the case and at trial, Cotton raised the issue of contract illegality in Cotton I. He lost. The court ruled against him. The jury unanimously rejected Cotton's claims and defenses. The court entered judgment against Cotton. Cotton filed a motion for new trial based on contract illegality. The court heard and denied that motion. Cotton filed appeals. They were dismissed. Case over.

Then, two and one-half years later, Cotton sought to vacate the Cotton I judgment claiming (1) that the contract at issue in Cotton I was illegal, (2) the Judge Wohfeil was incorrect when he ruled against Cotton on contract illegality, (3) that because the contract was illegal, the judgment based on that contract is "void" and (4) that because the Cotton I judgment is "void", he could set aside the judgment. [Notice of Lodgment ("NOL"), Exhibits 1 through 5] This Court denied that motion because, amongst other conclusions, the judgment was not void on its face. [NOL, Exhibit 5] Cotton appealed. That appeal was also dismissed. [NOL. Exhibit 6]

Now, Cotton seeks again to set aside the judgment in Cotton I. Under the guise of "new evidence", Cotton makes the same legal arguments he made in his previous motion – that the judgment in Cotton I is void -- and seeks identical relief – the judgment of Cotton I be vacated and set aside. In fact, Cotton simply copied and pasted the cited authority from his previous motion, and inserted a section for "new evidence" in a brazen attempt to re-make the same arguments he made before. Also notable, Cotton's entire "Background" section entirely concerns this alleged "illegal contract" and the "failures" of the court in Cotton I. [NOL, Ex. 1; Plaintiff Memorandum, Page 2, line 6 through Page 4, line 4.] Furthermore, Cotton's argument that, had this "new evidence" been available during the trial in Cotton I, the jury would have reached an "entirely different verdict" is pure speculation. Even if that were true, Cotton provides no legal authority supporting his contention that the possibility a jury would have rendered a different verdict under different circumstances renders a judgment "void."

Once again, this motion can only be denied. It is not supported by any relevant admissible evidence. It is time-barred under Code of Civil Procedure Section 473, as this court has already decided. It is barred by both res judicata and collateral estoppel. Finally, the underlying premise of the motion is, yet again, legally untenable, void of logic, and unsupported by any proffered legal authority. This motion is another waste of the court's valuable time and an affront to any proper or

fair application of the law.[1] Cotton has attempted this very same argument on numerous occasions. He lost in each instance. This motion is non-sensical, meritless, and ridiculous.

II- ARGUMENT

A. The Motion Should Be Denied Because it is Not Supported by Admissible Evidence

Plaintiff, once again, seeks to set aside a judgment entered almost five years ago upon jury verdict after a two-week trial because, he argues, that judgment is "void." In contrast to his previous motion to vacate, which this Court denied, Cotton now alleges that there is "new evidence" "that would have been impossible to ignore or explain away, resulting in an entirely different verdict." Not only does plaintiff offer no authority for the proposition that a judgment may be rendered "void" in the event new evidence surfaces after its entry, but the "evidence" plaintiff offers to support his motion and his startling, and significant, request is inadmissible. The ex-parte application consists of a notice, the memorandum of points and authorities, and numerous pleadings and documents attached to the memorandum. There are no authenticating declarations, there is no foundation laid for any of it, and there is no request for judicial notice for these various documents. Defendant has filed objections to the proffered "evidence." Those objections should be sustained and the motion should be denied because it is not supported by any relevant admissible evidence.

B. The Motion Should Be Denied Because It Is Untimely Under Code of Civil Procedure Section 473(d)

Yet again, Plaintiff seeks to set aside the allegedly "void" Cotton I judgment under CCP §473(d). At page 7 of his memorandum, plaintiff states as follows:

> CCP §473(d) provides relief from void judgments or orders. This provision codifies the inherent power of the court t oset aside void judgments and orders, including those made under a lack of

[1] It should be noted that this is not the only forum where Cotton has proffered the same patently ridiculous, legally untenable, conspiracy claims. Cotton filed two separate actions in U.S. District Court over these matters (Case No. 3:18-cv-00325-JO-DEB, and Case No. 3:18-cv-02751-GPC-MDD. In the first of those cases, as he attempts to do here, Cotton alleged a broad conspiracy, there including various San Diego attorneys and Judges, to deprive him of his property in the subject real estate transaction. Both District Court actions were summarily, and harshly, dismissed. He has also, as noted, filed another motion to vacate in this Court, which was also denied. Cotton now abusively attempts to recycle, in large part, that very same motion to take third shot to argue the judgment is "void."

> jurisdiction and those made in excess of jurisdiction. See Calvery v. Binali (2018) 29CA5th 954, 96 – 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 or an adverse party is essential; the court has full power to take such action on its own motion and without any application pm the part of anyone. *People v. Davis* (1904) 143 C 673, 675-676 (affirming order vacating void order made on an *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).

This is the same exact statute and case law plaintiff based his previous motion to vacate on. Plaintiff correctly cites long-applicable law that a judgment void upon its face is not extinguished by lapse of time. In fact, a judgment that is void on its face is subject to either direct or collateral attack at any time. *OC Interior Services LLC v. Nationstar Mortgage, LLC* (2017 4th Dist.) 7 Cal.App. 5th 1318, 1327; *In Country of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1228. But, unless the challenged judgment is void on its face, a motion to vacate under Section 473(d) must be brought within the time limits proscribed by Section 473. As noted in the *Calvert* case cited by plaintiff, "if a judgment is void on its face, the customary six-month time limit set but section 473 to make other motions to vacate a judgment does not apply." *Calvert v. Binali* (@018) 29 Cal.App.5th 954, 960-961. Conversely, if a judgment is not void on its face, the six-month time limit applies and a motion to vacate made after the period is untimely. Under section 473, defendants have six months to move to vacate, but if the judgment is void on its face, the six-month time limit does not apply. *Kremerman v. White* (2021) 71 Cal.App.5th 369-370; *National Diversifield Services, Inc. v. Bernstein* (1985) 168 Cal.App.3d 410, 414.[2]

Here, it is without dispute the Cotton I judgment was entered more than six months before the subject motion was filed. The Cotton I judgment was entered August 19, 2019, almost five years ago. See Plaintiff's Memorandum, Page 3, Lines 24-25. Thus, unless plaintiff has established

[2] Plaintiff does not appear to dispute that this motion is dependent upon the showing the Cotton I judgment is void on its face. The authorities cited by plaintiff speak to the inherent power of the court, as codified in section 473(d), to set aside a judgment void on its face.

that the Cotton I judgment is void on its face, this motion to vacate is untimely under Section 473(d) and can only be denied.

In ruling on Cotton's previous Motion to Vacate the allegedly "void" judgment in Cotton I, this Court clearly stated, "the judgment is not void on its face such that it should be set aside pursuant to Code of Civil Procedure §473(d)." [NOL, Ex. 5]. In yet another waste of this Court's valuable time, Plaintiff recycles the very same case law regarding void judgments and CCP §473(b) in the subject motion as he did in his previous motion. In the previous motion [NOL, Exhibit 1], on the very same cited case law, this Court ruled Cotton I judgment was not void. [NOL, Exhibit 6]. In the subject motion, Cotton makes arguments identical to those in his previous motion, and does so under the guise of "newly discovered evidence." This alleged "new evidence" does not suddenly render the judgment void on its face or timely. Even if this were the case, plaintiff cites to no authority supporting the proposition that a litigant can bring alleged "newly discovered evidence" to the courts attention in an attempt to render the judgment "void."

Irrespective of this Court's ruling on his previous motion to vacate, Cotton has again failed to establish that the Cotton I judgment is void on its face. To prove the judgment is void on its face, the party challenging the judgment is limited to the judgment roll. **No extrinsic evidence is allowed**. *OC Interior Services LLC v. Nationstar Mortgage, LLC, supra,* 7 Cal.App.5th at 1327-1328; *Johnson v. Hayes Cal Builders, Inc.* (1963) 60 Cal.2d 572, 576 ("The validity of the judgment on its face may be determined only by a consideration of the matters constituting part of the judgment roll"); *Dill v. Berquist Construction Co.* (!994) 24 Cal.App.4th 1426, 1441, 29 Cal.Rptr.2d 746 ("'A judgment or order is said to be void on its face when the invalidity is apparent upon an inspection of the judgment roll.'"); *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 181; *Calvert v. Binali, supra,* 29 Cal.App.5th at 954, 960-961.

Code of Civil Procedure Section 670 defines the contents of the judgment roll in Superior Court as follows:

> In superior courts the following papers, without being attached together, shall constitute the judgment roll:

> (a) In case the complaint is not answered by any defendant, the summons, with the affidavit or proof of service; the complaint; the request for entry of default with a memorandum indorsed thereon that the default of the defendant in not answering was entered, and a copy of the judgmentl if defendant has appeared by a demurrer, and the demurrer has been overruled, then notice of the overruling thereof served on defendant's attorney, together with proof of the service; and in case the service so made is by publication, the affidavit for publication of summons, and the order directing the publication of summons.
>
> (b) In all other cases, the pleadings, all orders striking out any pleading, in whole or in part, a copy of the verdict of the jury, the statement of decision of the court, or finding of the referee, and a copy of any order made on demurrer, or relating to a change of parties, and a copy of the judgment; if there are two or more defendants in the action, and any one of them has allowed judgments to pass against him or her by default, the summons, with proof of its service, on the defendant, and if the service on the defaulting defendant be by publication, then the affidavit for publication, and the order directing the publication of the summons.

Plaintiff has not established that the Cotton I judgment is void based solely on matters in the Cotton I judgment roll. Once again, Plaintiff has not even undertaken that analysis. In fact, it is without dispute that plaintiff's assertion that the Cotton I judgment is void is dependent upon matters outside the judgment roll. Plaintiff's argument that the Cotton I judgment is void is expressly dependent upon this "newly discovered evidence" of a conspiracy that plaintiff attempts to proffer. See Plaintiff's Memorandum at Page 4, line 21 through Page 5, line 25.

To the extent these assertions could even be considered "newly discovered evidence," they clearly cannot be determined from the Cotton I judgment roll. Cotton offers this "newly discovered evidence" to argue that a "conspiracy" existed and "[s]hould it have even gone to trial, had the evidence contained in this Motion to Vacate been available during *Cotton I*, the jury would have had evidence that would have been impossible to ignore or explain away, resulting in an entirely different verdict." See Plaintiff's Memorandum at Page 9, lines 2-4. Plaintiff proffers this "newly discovered evidence", cites to case law about "void judgments", urges that the jury would have decided differently had this "evidence" been available during trial, and concludes that thus, the

judgment is somehow void. None of this can be gleaned from the judgment roll and it is pure speculation.

Plaintiff has not established, and cannot establish, the Cotton I judgment is void on its face. Furthermore, this Court has already determined that it was not. [NOL, Exhibit 6]. Accordingly, this motion brought under CCP §473(d) is not timely and must, once again, be denied.

C. <u>The Motion Should Be Denied Because It Is Barred by Res Judicata and/or Collateral Estoppel</u>

1. <u>Res Judicata and Collateral Estoppel</u>

The California Supreme Court in *Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797, described the doctrines of res judicata and collateral estoppel as follows:

> "As generally understood, '[t]he doctrine of *res judicata* gives certain *conclusive effect* to a *forcer judgment* in subsequent litigation involving the same controversy.' [Citation.] The doctrine 'has a double aspect.' [Citation.] 'In its primary aspect,' commonly known as claim preclusion, it 'operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. [Citation.' [Citation.] 'In its secondary aspect,' commonly known as collateral estoppel, '[t]he prior judgment … "operates"' in 'a second suit… based on a different cause of action…"as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action." [Citation.]' [Citation.] 'The prerequisite elements for applying the doctrine to either na entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]'" (*People v. Barragan* (2004) 32 Cal.4th 236, 252-253, 9 Cal.Rptr.3d 76, 83 P.3d 480.)

The Supreme Court in *Boeken* then specifically addressed claim preclusion, or res judicata, as follows at pages 797-789:

> Here, we are concerned with the claim preclusion aspect of res judicata. To determine whether two proceedings involve identical causes of action for purposes of claim preclusion, California courts have "consistently applied the 'primary rights' theory." (*Slater v. Blackwood* (1975) 15 Cal.3d 791, 795, 126 Cal.Rptr. 225, 543 P.2d 593.) Under this theory, "[a] cause of action … arises out of an antecedent primary right and corresponding duty and the delict or breach of such primary right and duty by the person on whom the

> duty rests. 'Of these elements, the primary right and duty and the delict or wrong combined constitute the cause of action in the legal sense of the term…'" (*McKee v. Dodd* (1908) 152 Cal. 637, 641, 93 P. 854.)
>
> "In California the phrase 'cause of action' is often used indiscriminately … to mean counts which state [according to different legal theories] the same cause of action…" (*Eichler Homes of San Mateo, Inc. v. Superior Court* (1961) 55 Cal.2d 845, 847, 13 Cal.Rptr. 194, 361 P.2d 914.) But for purposes of applying the doctrine of res judicata, the phrase "cause of action" has a more precise meaning: The cause of action is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common law or statutory) advanced. (See *Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 860, 21 Cal.Rptr.2d 691, 855 P.2d 1263.) As we explained in *Slater v. Blackwood, supra,* 15 Cal.2d at page 795, 126 Cal.Rptr. 225, 543 P.2d 593: "[T]he 'cause of action' is based upon the harm suffered, as opposed to the particular theory asserted by the litigant. [Citation.] Even where there are multiple legal theories upon which recovery might be predicated, on inquiry gives rise to only one claim for relief. 'Hence a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though he presents a different *legal ground for relief*.' [Citations.]" Thus, under the primary rights theory, the determinative factor is the harm suffered. When two action involving the same parties seek compensation for the same harm, they generally involve the same primary right. (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 954, 60 Cal.Rptr. 141, 603 P.2d 58.)

Claim preclusion/Res Judicata bars claims that were brought in a prior lawsuit as well as claims that could have been raised in the former action. *Busick v. Workmen's Comp. Appeals Bd.* (1972) 7 Cal.3d 967, 975 (" 'the prior judgment is res judicata on matters which were raised or could have been raised, on matters litigated or litigable' "). Addressing this concept, the court in *Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 576 stated as follows:

> "The fact that different forms of relief are sought in the two lawsuits is irrelevant, for if the rule were otherwise, 'litigation finally would end when a party ran out of counsel whose knowledge and imagination could conceive of different theories of relief based upon the same factual background.' … '[U]nder what circumstances is a matter to be deemed decided by the prior judgment? Obviously, if it is actually raised by proper pleadings and treated as an issue in the cause, it is conclusively determined by the first judgment. But the rule goes further. If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it could have been raised, the judgment is conclusive on it despite the fact that it was not in fact

> expressly pleaded or otherwise urged… "… [A]n issue may not be thus split into pieces. If it has been determined in a former action, it is binding notwithstanding the parties litigant may have omitted to urge for or against it matter which, if urged, would have produced an opposite result…" " (*Interinsurance Exchange of the Auto. Club v. Superior Court* (1989) 209 Cal.App.3d 177, 181-182, 257 Cal.Rptr. 37, citations & italics omitted.)

2. This Action is Barred by Res Judicata

Cotton states that he "will not be using this Motion to cite previous arguments that represent judgments enforcing illegal contracts such as the 'strawman' practice." Plaintiff's Memorandum, Page 2, lines 1 through 2. However, Cotton then continues to restate all of the *same allegations* made in all his previous attempts to vacate the allegedly "void" judgment in Cotton I regarding "illegal contracts" and the "Strawman practice". For example, in the current motion, Cotton states:

- "*The Cotton I judgment enforces an illegal contract whose object is defendant Geraci's ownership of a cannabis conditional use permit ("CUP") that he is barred from owning because he has been sanctioned for unlicensed cannabis activities."*

  (Plaintiff's Memorandum, Page 2, lines 8-10).
- *"Geraci and his agents, most notably attorney Gina Austin, a self-avowed expert in cannabis law and regulation, 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."*

  (Plaintiff's Memorandum, Page 2, lines 11-13)
- *"In Cotton I the court failed to address the core issue of my complaint which was under Business and Professions ("BPC") §26057: The department shall deny an application if the applicant has been sanctioned by a city for unauthorized cannabis activities in the three years immediately preceding the date the application was filed with the department."*

  (Plaintiff's Memorandum, Pages 2 line 20, through Page 3, line 3).

Cotton has made these very same arguments multiple times – in this court, at trial, on appeal, in the prior motion to vacate, on appeal again, and in various federal court actions - over

almost a half-decade and has lost every time. Simply because Cotton presents unsubstantiated, unauthenticated, and inadmissible "new evidence" which allegedly supports these arguments does not grant him the ability to continue to *make* these arguments. They have been made. Decisions have been rendered. The judgment of Cotton I is not void, as many courts, including this one, have made clear. Cotton's inability to accept such decisions does not allow him to ignore long-standing legal doctrines of res judicata and collateral estoppel. If that were the case, Cotton could continue to bring motion to vacate, after motion to vacate, after motion to vacate, with no end, every time he concocts another piece of "evidence" allegedly supporting the notion that a broad "conspiracy" exists which renders the judgment "void". [3]

D. <u>The Motion Should Be Denied Because the Underlying Premise for the Motion is Legally Untenable, Void of Logic and Reason, and Unsupported by Any Proffered Legal Authority.</u>

Even assuming, <u>solely for the sake of argument</u>, that plaintiff could get beyond the Section 573 time bar, and application of res judicata and collateral estoppel, and offered, or even could offer, any supporting admissible relevant evidence, the motion can still only be denied because it is legally untenable, void of logic and reason, and unsupported by any proffered legal authority

Cotton proffers "newly discovered evidence", cites to case law about "void judgments", urges that the jury would have decided differently had this "evidence" been available during trial, and concludes that, thus, the judgment is somehow "void" and can now be revisited by this Court on another motion to vacate. Cotton cites no case law supporting the notion Cotton can bring yet another motion to vacate based on "new evidence" years after the entry of judgment. There is no authority cited for the proposition that bringing "new evidence" renders a judgment subject to attack for being "void." There is no supporting evidence or authority cited that this "evidence" would have definitively made a jury decide differently. If the premises Cotton asserts in this motion were correct, Cotton would be able to bring this same motion attempting to render the judgment

[3] The amount of valuable court time, expensive counsel time, and client money that has been wasted on Cotton's ludicrous and imaginary conspiracy claims would be difficult to determine but undisputedly significant.

"void", each and every time he can conjure up another story and draft another motion. That is not how the law, or the court system, work. This motion is based on a legally untenable underlying premise, is void of logic and reason, and is unsupported by any proffered legal authority. Thus, it can only be denied.

III- CONCLUSION

Based on the foregoing, defendant Geraci respectfully requests that the court issue an order denying the motion to vacate and dismissing the action with prejudice.

Date; June 10, 2024

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