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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 **NOTICE OF LODGMENT IN OPPOSITION TO PLAINTIFF'S MOTION TO VACATE VOID JUDGMENT** 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

Defendant Larry Geraci lodges the following documents, true and correct copies of which are attached hereto:

Ex.1 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 Judgment; Declaration of Darryl Cotton; Memorandum of Points and Authorities filed on January 3, 2022 [without attached exhibits]

Ex. 2 Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Vacate Void Judgment filed on February 10, 2022

Ex. 3 Reply in Support of Plaintiff's Application to Set Aside Judgment

Ex. 4 Tentative Ruling Dated February 24, 2022 on Plaintiff Darryl Cotton's Motion to Set Aside Judgment

Ex. 5 Notice of Ruling on Plaintiff's Motion to Vacate Void Judgment dated February 28, 2022

Ex. 6 Order Dismissing the Cotton's Appeal of the Order Denying Appellant's Ex Parte Application to Set Aside the Judgment in *Geraci v. Cotton*, Case No. 37-2017-

00010073 in the Court of Appeal State of California, Fourth Appellate District Case No. D080460

Date: June 10, 2024

James D. Crosby
Attorney for Defendant Larry Geraci

EXHIBIT "1"

DARRYL COTTON, *In pro se*
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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.: 37-2022-00000023-CU-MC-CTL

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: 1-12-22
Hearing Time: 8:30am
Judge: James A Mangione
Courtroom: C-75

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

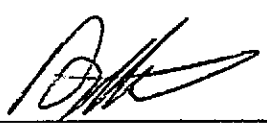
PLEASE TAKE NOTICE that on January 3, 2022, Plaintiff DARRYL COTTON will and hereby moves this Court *ex parte* for an order setting aside the judgment issued in *Cotton I*[1] entered against Cotton on August 8, 2019, or, alternatively, an order shortening time on a hearing to vacate the *Cotton I* judgment (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.

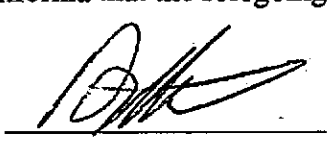
3. The facts set forth in the Application establishing the *Cotton I* judgment are void are all subject to judicial notice and set forth in the supporting Request for Judicial Notice.

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

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[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).

EXHIBIT "2"

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

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Attorney for Defendant Larry Geraci

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

Date: February 25, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione

Complaint Filed: January 3, 2022
Trial Date: Unassigned

I- INTRODUCTION

In San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL ("Cotton I"), plaintiff Cotton ("Cotton") and defendant Geraci ("Geraci") fought over a real estate transaction and a contract at the core of that transaction. They prosecuted claims for damages against each other arising from that real estate transaction and contract by way of a complaint and cross-complaint. Cotton raised the issue of contract illegality in Cotton I and the court ruled against him. The jury unanimously rejected Cotton's claims and defenses arising from that real estate transaction and contract. 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 notices of appeal. He failed to prosecute his appeals. They were dismissed. Case over.

But, now, two- and one-half years later, Cotton seeks to vacate the Cotton I judgment claiming (1) that the contract at issue in Cotton I was illegal, (2) that 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 can set aside the judgment by way of this motion

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. It is barred by both res judicata and collateral estoppel. Finally, the underlying premise of the motion is patently ludicrous, legally untenable, and unsupported by any proffered legal authority. This motion is a waste of the court's valuable time and an affront to any proper or fair application of the law.[1]

II- ARGUMENT

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

Plaintiff seeks to set aside a judgment entered two and one-half years ago upon jury verdict after a two-week trial because, he argues, that judgment is "void". But plaintiff offers no admissible evidence to support his motion and its startling, and significant, request. Per the court's January 19, 2022 Minute Order (ROA #21), the ex-parte application is deemed the moving papers. The ex-parte application consists of a notice, the memorandum of points and authorities, a five-paragraph declaration from plaintiff consisting of no relevant admissible evidence, and a bunch of various pleadings and documents attached to the memorandum. There are no authenticating declarations, there is no foundation laid, 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. Plaintiff chose to proceed in an expedited fashion in this matter and on his filed ex-parte papers.

[1] It should be noted this is not the only forum where Cotton has proffered the same patently ridiculous, legally untenable 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, Cotton alleged a broad conspiracy between Geraci, his attorney Michael Weinstein, various other attorneys, San Diego Superior Court Judge Joel Wohfeil and U.S. District Court Cynthia Bashant to deprive him of his property in the subject real estate transaction. Both District Court actions were summarily, and harshly, dismissed. [Request for Judicial Notice Ex. 1 - 5]

Those papers are devoid of admissible relevant evidence. The motion should be denied because it not supported by any relevant admissible evidence[2].

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

Plaintiff moves to set aside the allegedly "void" Cotton I judgment under CCP § 473(d). At page 4 of his memorandum, plaintiff states as follows:

> 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.

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 County 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 by section 473 to make other motions to vacate a judgment does not apply." *Calvert v. Binali* (2018) 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

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[2] For example, plaintiff's entire motion is based on the assertion the contract in Cotton I was "illegal". But plaintiff does not even offer that critical agreement as evidence supported by an authenticating declaration, much less any evidence addressing the content, meaning and/or intent of that contract. In his declaration, plaintiff states he is "*prepared to submit supporting evidence to address any concerns the Court may have in addressing the illegality of Geraci's ownership of a CUP."* That is insufficient. The moving papers are before the court. In two ex-parte applications, plaintiff, for inexplicable reasons given the subject judgment is years old, pushed the court to have this matter heard on an expedited basis and agreed his ex-parte papers would serve as the moving papers. What plaintiff is "prepared to offer" if the court asks or at some future time is irrelevant. The motion before the court is not supported by any relevant admissible evidence. It can only be denied.

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 Diversified Services, Inc v. Bernstein* (1985) 168 Cal.App.3d 410, 414.[3] 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, more than two- and one-half years ago. [See Plaintiff's Memorandum, Page 4, Line 8]. Thus, unless plaintiff has established the Cotton I judgment is void on its face, this motion to vacate is untimely under Section 473(d) and can only be denied.

Plaintiff has not established 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*. (1994) 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 judgment; if defendant has appeared by 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.

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[3] Plaintiff does not appear to dispute that this motion is dependent upon the showing the Cotton I judgment is void on it 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.

> (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 judgment 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 the Cotton I judgment is void based solely on matters in the Cotton I judgment roll. Plaintiff has not even undertaken that analysis. In fact, it is without dispute that plaintiff's assertion the Cotton I judgment is void is dependent upon matters outside the judgment roll. Plaintiff's argument the Cotton I judgment is void is expressly dependent upon his showing that Geraci was "sanctioned for unlicensed commercial cannabis activities". [Plaintiffs Memorandum, page 4, line 23 through page 5, line 4; page 4, lines 10-11; page 8, lines 4-16]. That Geraci was "sanctioned for unlicensed commercial cannabis activities" clearly cannot be determined from the Cotton I judgment roll. Plaintiff's argument that the Cotton I judgment is void is also dependent upon his showing that "the object of the "November Document" is Geraci's illegal ownership of a CUP". [Plaintiffs Memorandum, page 8, line 4-16] That clearly cannot be gleaned from the Cotton I judgment roll. This assertion would also be dependent on considering the document itself, its meaning, and the intent of Geraci and Cotton in signing it. This clearly cannot be gleaned from the judgment roll.[4] Plaintiff's argument that the Cotton I judgment is void is also expressly dependent upon his showing the illegality of the Cotton I contract was raised during the trial and in the motion for directed verdict.[5] [Plaintiffs Memorandum, page 9, line 22 through page 10, line 4-16] This cannot be gleaned from the judgment roll.

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[4] This also underscores that Cotton simply wants a do-over of Cotton I years after the fact, under the illegitimate guise of a claimed "void judgment". If Cotton thought the verdict and judgment in Cotton I, and the court's rulings on his motions for directed verdict and new trial, were incorrect for all the reasons he now argues, and then argued, he should have prosecuted an appeal and made his case to an appellate court. Cottom commenced just such appeals, they were dismissed. [Declaration of Michael Weinstein, para. 8]

[5] Cotton oddly believes that fact the illegality of the contract in Cotton I was repeatedly raised in that case years ago strengthens his argument that he can raise those same very arguments again now. If illegality was raised and ruled on in Cotton I years ago, res judicata and collateral estoppel clearly bar Geraci from raising that issue again now. The very premise of this entire action and motion is ludicrous.

Plaintiff has not established, and cannot establish, the Cotton I judgment is void on its face. Accordingly, this motion brought under CCP § 473(d) is not timely and must 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. Phillip Morris USA, Inc*., (2010) 48 Cal App.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 former 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 an 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.3d 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, one injury 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 actions 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, 160 Cal.Rptr.141, 603 P.2d 58.)

Claim preclusion/Res judicata bar 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 only 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 matters 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. <u>This Action is Barred by Res Judicata</u>

Cotton filed a cross-complaint, amended twice, in Cotton I. That cross-complaint sought contract, tort, and punitive damages against Geraci arising from the same real property transaction and contract that formed the basis of the Cotton I judgment and which Cotton now seeks to vacate. The cross-complaint was resolved against Cotton by jury verdict. [Declaration of Michael Weinstein, para. 5, Exhibit 6] Given that Cotton had the opportunity to prosecute his illegal contract claims against Geraci, based on the same transaction and contract as, and along with, his other contract and tort claims, he is barred by the doctrine of re judicata from relitigating those illegality claims now. The now-raised contract illegality claims were matters clearly within the scope of the Cotton I action. They were related to the subject-matter of, and relevant to the core issues in, Cotton

I action. They could have been raised in Cotton's cross-complaint. The final judgment in Cotton I clearly bars Cotton from now re-litigating contract illegality claims that could and should have been brought in that case. *Boeken v. Phillip Morris USA, Inc*., supra, 48 Cal App.4th at 797-798; *Villacres v. ABM Industries Inc*., supra, 189 Cal.App.4th at 576. Res judicata clearly applies. This motion should be denied.

3. This Action is Barred by Collateral Estoppel

In his moving papers, Cotton repeatedly states the illegality of the Cotton I contact was raised as a defense in the case.

- *"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."*

  [Plaintiffs Memorandum, page 5, lines 19-21]
- *"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."*

  [Plaintiffs Memorandum, page 6, lines 1-4]
- *"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").….. Geraci opposed the MNT arguing, inter alia, the defense of illegality had been waived…..Cotton replied, inter alia, that the defense of illegality cannot be waived."*

  [Plaintiffs Memorandum, page 6, lines 5-8]
- *"On October 25, 2019, the court denied the MNT finding that the defense of illegality had been waived."*

  [Plaintiffs Memorandum, page 6, lines 9-10]
- *"In sum, factually, the defense of illegality had been raised during trial."*

  [Plaintiffs Memorandum, page 10, lines 23-24]

In fact, the entire premise of plaintiff's argument in Section II of his memorandum is that Geraci's lawyers skillfully deceived the Cotton I court into wrongfully believing *"that it was legally possible for the defense of illegality to be waived.*" It is at the core of plaintiff's argument that the defense of illegality was raised and, in his view, wrongfully addressed by Judge Wohfeil in Cotton I. And, separate and distinct from the plaintiff's own arguments, the record itself clearly reflects the defense of illegality was raised and litigated in Cotton I. That case ended in a unanimous jury verdict and final judgment against Cotton. [Declaration of Michael Weinstein, paras. 5-6, Ex. 6-7]

Yet, now, years later, Cotton seeks to relitigate the Cotton I illegality issue, and Judge Wohfeil's rulings on that issue, under the guise of a claimed "void" judgment. Collateral estoppel bars him from doing so. As fervently asserted by Cotton, the contract illegality issue raised in this motion was raised and litigated in Cotton I. Cotton I resulted in a final judgment on the merits. Cotton was a party to Cotton I. The elements for application of collateral estoppel are clearly established. *Boeken v. Phillip Morris USA, Inc., supra*, 48 Cal App.4th at 797. Collateral estoppel clearly applies. The motion should be denied.

D. The Motion Should Be Denied Because the Underlying Premise for the Motion is Patently Ridiculous and Unsupported by Proffered Legal Authority.

Even assuming, solely for the sake of argument, 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 based on a patently ludicrous, legally untenable and unsupportable premise. Cotton argues that Judge Wohfeil was wrong when he rejected the contract illegality argument in Cotton I, that the contract was illegal, and that because the judgment was really based on an illegal contract, it is void and can now be revisited by this court on motion to vacate. Setting aside whether plaintiff has even proven, or could prove, the contract was illegal and that Judge Wohfeil was wrong, or has explained, or could explain, why an appeal in Cotton I wasn't his sole remedy to seek to rectify that perceived error, where is the authority for the startling proposition that if Judge Wohfeil was wrong and the contract was "illegal" that renders the Cotton I judgment void and subject to attack now? Plaintiff

cites no authority for this astounding proposition. Illegality is an affirmative defense to a contract action. It speaks to whether a contract can be enforced. It does not speak to the power or jurisdiction of the court to make decisions about the enforceability of the contract and the applicability of an illegality defense to contract enforcement, or to render enforceable judgments based thereon. If plaintiff's basic premise were correct, whenever an illegality defense is raised and rejected in a contract action, the defendant would always be able to thereafter challenge that judgment, separate and distinct from appeal, by way of a direct or collateral attack on the judgment because he believes the trial court made an error and did not find the contract to be illegal. That is an absurd proposition with no support in the law. It would set up special judicial review rights for defendants raising the illegality defense in contract cases. Where is the case law or statutory basis for such special treatment? If this were the law, and this court denies plaintiff's motion because it doesn't believe Judge Wohfeil erred, couldn't plaintiff simply file another motion to vacate because it is still all based on an illegal contract, and the Court this time, like Judge Wohfeil, is wrong and the judgment remains void? Couldn't he simply keep filing motions to vacate because it is all based on an illegal contract and, in turn, a void judgment until he finds a Judge to bite on his ludicrous argument? Conversely, what if the trial court had sustained an illegality defense, wouldn't that, under plaintiff's premise, immediately divest the court of the power to proceed further in the case and enter a judgment? It's all patently absurd. Illegality is a defense to a contract action, nothing more, nothing less. It does not affect the power or jurisdiction resulting in void judgments. If a defendant loses on the illegality defense, he can appeal. That's it. That how it works. That how the law works. It doesn't work like Cotton suggests in this motion. There is no law proffered by plaintiff that it does. This motion is based on a patently ludicrous, and legally untenable and unsupportable premise. The motion can only be denied.

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III- CONCLUSION

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

Dated: February 10, 2022

Respectfully submitted,

/s/ James D. Crosby
James D. Crosby
Attorney for Larry Geraci

EXHIBIT "3"

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

Darryl Cotton, Plaintiff, vs. LAWRENCE (A/K/A LARRY) GERACI, an indvidual Defendant.	Case No.: 37-2022-00000023-CU-MC-CTL **REPLY IN SUPPORT OF PLAINTIFF'S APPLICATION TO SET ASIDE JUDGMENT** Action Filed: Jan. 3, 2022 Hearing Date: February 25, 2022 Time: 9:00 a.m. Judge: James A Mangione Department: C-75

In his Ex Parte Application to Set Aside Void Judgment (the "Motion"), Mr. Cotton demonstrated that the Cotton I[1] judgment was void because Geraci was sanctioned for unlicensed commercial cannabis activities, which required the denial of any application Geraci would have to submit to the state to operate a marijuana dispensary. Defendant's Opposition to Plaintiff's Motion to Vacate Judgment (the "Response") does not dispute that Geraci was sanctioned or that the California Business & Profession Code ("BPC") prohibited Geraci from lawfully operating a cannabis business as a result of the same. Instead, the Response argues that the Motion is not supported by admissible evidence, the Motion is untimely under § 473(d), res judicata and collateral estoppel prevent Mr. Cotton from obtaining the relief sought, and the "underlying premise for the Motion is patently ridiculous." The arguments in the Response should be rejected because:

[1] Defined terms have the same meaning given them in the Motion.

1. There is no dispute that the BPC prohibits Geraci from obtaining a license to operate a cannabis dispensary;
2. The pertinent evidence is in the judgment roll and is admissible;
3. The Complaint and Motion are timely because a judgment void on its face, as well as a judgment valid on its face, can be attacked at any time in an independent equitable action;
4. The doctrines of res judicata and collateral estoppel do not apply to void judgments;
5. Geraci's counsel's "patently ridiculous" argument is contradicted by legal authority.

For the reasons set forth more fully below and the Motion, the Court can and should grant the relief sought in the Motion.

I. There is no dispute that the BPC prohibits Geraci from obtaining a license to operate a cannabis dispensary.

Notably absent from the Response is any attempt to dispute the argument that the BPC: (i) required the denial of the application for any person who has been sanctioned by a city for unlicensed commercial medical cannabis activities in the three years immediately preceding the date the application is filed; and (ii) the applicant is required to acquire a CUP prior to applying for a cannabis license. (Mot. at 8: 4-18; *see gen.* Resp.) Neither does the Response dispute that the Geraci Judgments are sanctions against Geraci. (*See gen.* Resp.); *see OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318, 1328-29 (if a party fails to object to the evidence, then it is established and the "court must treat the judgment as void upon its face"). Therefore, Geraci does not dispute that the Cotton I judgment grants relief in violation of the BPC and, as a result, is void. *Paterra v. Hansen* (2021) 64 Cal.App.5th 507, 536; *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.")

II. The pertinent evidence is in the judgment roll and is admissible.

Without citation to legal authority, the Response argues that Mr. Cotton is not entitled to the relief sought in the Motion because it is not supported by admissible evidence. (Resp. at 2:12-3:2.) But

the determination as to whether a judgment is void on its face is based upon the judgment roll, not extrinsic or admissible evidence. *OC Interior Services*, 7 Cal.App.5th at 1327-28 ("To prove that a judgment is void, the party challenging the judgment is limited to the judgment roll"). As a result, Mr. Geraci's efforts to have the Court deny the Motion because it is not supported by admissible evidence is unavailing.

Even if admissibility of evidence was at issue, Geraci has conceded the truth of the judicial admissions in the Cotton I Complaint and is bound by them. The November Document was attached to the Cotton I Complaint and it expressly stated that Cotton agreed to sell the property to Geraci "on the approval of a Marijuana Dispensary. (CUP for a dispensary)" (Declaration of Michael Weinstein in Opposition to Pl.'s Motion to Vacate Void Judgment, Exhibit 1 (the "Cotton I Complaint") at Exhibit A.) Geraci alleged that he "has engaged and continues to engaged in efforts to *obtain a CUP for a medical marijuana dispensary at the property.*" (Cotton I Compl. at ¶ 9 (emphasis added); *see also id.* at ¶ 15 (alleging Geraci has spent more than $300,000 on the CUP process), ¶ 21 ("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 paying the balance of the purchase price if he "obtains CUP approval for a medical marijuana dispensary"), ¶¶ 23-24 (alleging Geraci has made efforts to obtain approval of a CUP for a medical marijuana dispensary), p. 6 at lines 20-24 (asking the Court to enter an order enjoining Cotton "from taking any action that interferes with Plaintiff Geraci's efforts to obtain approval of a Conditional Use Permit (CUP) for a medical marijuana dispensary").) Based upon these judicial admissions, Geraci concedes their truth and is bound by the same. *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 47-48 ("A judicial admission is a party's unequivocal concession of the truth of a matter, and removes the matter as an issue in the case.")

Similarly, the Response does not argue that the Geraci Judgments or Cotton I judgment are inadmissible. (*See* Resp. at 2:12-3:2.). The Geraci Judgments: (i) expressly enjoin and restrain Geraci "from engaging in or performing, directly or indirectly," operating or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative; (ii) require Geraci to immediately "cease

maintaining" a marijuana business at the properties; and (iii) required Geraci to pay civil penalties for operating an illegal marijuana dispensary. And the Cotton I judgment enforces a contract whose purpose was to allow Geraci to obtain a CUP and operate a marijuana dispensary at the property. In sum, all the evidence the Court needs to determine that the Cotton I judgment is void on its face is admissible and, more importantly, in the judgment roll.

III. A void judgment can be challenged at any time, and the judgment roll supports the relief sought.

Although the Response argues that the Complaint is untimely under § 473(d), it also acknowledges that "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." (Resp. at 3:12-14 (citing *OC Interior Services*).) The Response then argues that whether the Cotton I judgment is void on its face "clearly cannot be gleaned from the judgment roll." (Resp. at 5:17-18.) The argument ignores what the judgment roll reveals.

The term "judgment roll" includes the pleadings, a copy of the verdict(s) of the jury, the statement of decision of the court, and a copy of the judgment. Code. Civ. P. 670(b). The term "pleadings" means complaints, demurrers, answers, and cross-complaints. Code Civ. P. § 422.10. And an original complaint remains a pleading within the definition of the judgment roll even if it is amended. *Redington v. Cornwell* (1891) 90 Cal. 49, 59-61.

The judgment roll includes all of the documents and allegations necessary to determine that the Cotton I judgment is void on its face. As for the pleadings, the November Document was attached to the Cotton I Complaint and expressly states that Cotton agreed to sell the property to Geraci "on the approval of a Marijuana Dispensary. (CUP for a dispensary)". (Compl., Exhibit 11 at Ex. A.)[2] And as noted

[2] The Response argues that the Court's analysis would be "dependent on considering the [November Document] itself, its meaning, and the intent of Geraci and Cotton in signing it." The interpretation of a contract is a question of law when the language of the document is clear and unambiguous. *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 524-25; *Oakland-Alameda County Coliseum Authority v. Golden State Warriors, LLC* (2020) 53 Cal.App.5th 807, 818-19.

earlier, the Cotton I Complaint also alleges that Geraci "has engaged and continues to engaged in efforts to obtain a CUP *for a medical marijuana dispensary at the property.*" And Geraci actually sought and was awarded damages for the amounts that he spent to obtain a CUP. (*Id.* at ¶¶ 12, 15, p. 6 lines 6-14.)

In Cotton's Cross Complaint, Cotton alleged that "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." (Decl. of Michael Weinstein in Opposition to Plaintiff's Motion to Vacate Void Judgment, Exhibit 2 (Cotton's Cross-Complaint) at ¶ 132.) Geraci's legal issues (i.e., the Geraci Judgments) were also raised in the First Amended Cross-Complaint and the Second Amended Cross-Complaint. (*Id.*, First Amended Cross-Complaint at ¶ 12; Second Amended Cross-Complaint at ¶ 12.)

As for the jury verdicts and the Cotton I judgment, they determined that the November Document was a valid and enforceable contract, Geraci's damages (which, according to the Cotton I Complaint, constituted monies "expended to date on the CUP process") totaled $260,109.28[3], and the Court enforced the same by entering judgment against Mr. Cotton.

Notwithstanding the foregoing, the Court can still consider extrinsic evidence. A judgment that is valid on its face is subject to direct attack "in an independent equitable action without time limit" and extrinsic evidence may be presented. *OC Interior Services*, 7 Cal.App.5th at 1328 (internal citations omitted). This action is an independent equitable action and, as a result, the Court may consider extrinsic evidence.

In short, the Cotton I judgment is void because: (i) the November Document required Geraci to obtain a CUP; (ii) the Cotton I Complaint alleged that Geraci pursued a CUP, spent monies to obtain a CUP, and was damaged as a result; (iii) the Cotton I judgment awarded Geraci damages for the monies he spent pursuing a CUP; (iv) the Geraci Judgments sanctioned Geraci for unlicensed commercial

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[3] Costs in the amount of $33,612.16 were also added to the Cotton I judgment.

cannabis activity; and (v) those sanctions prohibited Geraci from operating a marijuana dispensary pursuant to the BPC. Therefore, whether the Cotton I judgment is void on its face can be gleaned from the judgment roll.

IV. Res judicata does not apply to void judgments.

While the response recites the general principles of the doctrines of res judicata and collateral estoppel, it does not address the applicability of those doctrines in relation to void judgments. (*See gen.* Resp. at 6:3-9:14.) The case law is clear - the doctrines of res judicata does not apply to void judgments. *People v. Amaya* (2015) 239 Cal.App.4th 379, 387 ("it is hornbook law that a void judgment has not effect as either res judicata or collateral estoppel"); *Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1239-1240 (cited with approval in *OC Interior Services, LLC v. Nationstar Mortgage, LLC* (2017) 7 Cal.App.5th 1318); *see also 311 S. Spring St. Co. v. Dep't of Gen. Sevs.* (2009) 178 Cal.App.4th 1009, 1015. That is because a "void judgment or order is, in legal effect, no judgment." *Rochin*, 67 Cal.App.4th at 1240.

The Response devotes 3 ½ pages to res judicata and collateral estoppel. But nowhere in those pages does the Response address the applicability of the doctrines to void judgments, notwithstanding citations to *OC Interior Services*. (Resp. at 3:12-15.) The foregoing binding legal authority demonstrates that the doctrines of res judicata and collateral estoppel do not bar this Court from determining whether the Cotton I judgment is void.

V. The "patently ridiculous" argument is not supported by any legal authority.

The Response argues that the underlying premise in the Motion is "patently ridiculous" but fails to cite to any legal authority for the same. (Resp. at 9:15-10:23.) Mr. Geraci's counsel's feelings towards Mr. Cotton's ability to file the Complaint and seek the relief sought in the Motion are not a basis to deny the Motion. Both Mr. Cotton and the Response cite to *OC Interior Services*, amongst other legal authority, which entitles Mr. Cotton to collaterally attack the Cotton I judgment at any time. That legal authority allows Mr. Cotton to bring this action and seek the relief sought in the Motion.

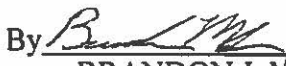
Further, there is legal authority that suggests a void judgment can be attacked multiple times. For example, a judgment that is void but affirmed on appeal can still be subsequently attacked collaterally. *See Redlands High School Dist. v. Superior Court of San Bernardino Co.* (1942) 20 Cal.2d 348, 362 (citing cases); *311 S. Spring St. Co.*, 178 Cal.App.4th at 1015. Under *Redlands* and *311 S. Spring St.*, even if Cotton had appealed the Cotton I judgment and lost, the result would not prohibit this proceeding.

VI. Conclusion

For the reason set forth in the Motion, this reply, and the entire record before the Court in this matter, Cotton requests that the Court grant the relief sought in the Motion.

DATED this 17th day of February, 2022.

TIFFANY & BOSCO, P.A.

By 

BRANDON J. MIKA, Esq.
Attorneys for Darryl Cotton

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My business address is 1455 Frazee Road, Suite 820, San Diego, CA 92108. On 2/17/22, I served the attached document, **REPLY IN SUPPORT OF PLAINTIFF'S APPLICATION TO SET ASIDE JUDGMENT,** on the parties to this action by serving:

James D. Crosby
550 W. C Street, Suite 620
San Diego, CA 92101
crosby@crosbyattorney.com

[] (BY U.S. MAIL) I am readily familiar with the practices of this office for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence placed for collection is deposited with the United States Postal Service with the postage thereon fully prepaid on the same day. On the date stated above, I placed an original or true copy of the foregoing document(s) described herein in an addressed, stamped, sealed envelope for collection and mailing following ordinary business practices.

[X] (BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL) I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows:

BY EMAIL:
James Crosby (crosby@crosbyattorney.com)

BY OVERNIGHT MAIL:
James D. Crosby
550 W. C Street, Suite 620
San Diego, CA 92101

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

Dated: 2/17/22

By: Brianna Birk
Brianna Birk, Declarant
1455 Frazee Road, Suite 820
San Diego, CA 92108

EXHIBIT "4"

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - February 24, 2022

EVENT DATE: 02/25/2022 EVENT TIME: 09:00:00 AM DEPT.: C-75

JUDICIAL OFFICER: James A Mangione

CASE NO.: 37-2022-00000023-CU-MC-CTL

CASE TITLE: COTTON VS. GERACI [IMAGED]

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

EVENT TYPE: Motion Hearing (Civil)
CAUSAL DOCUMENT/DATE FILED:

Plaintiff Darryl Cotton's Motion to Set Aside Judgment is denied.

"Equity's jurisdiction to interfere with final judgments is based upon the absence of a fair, adversary trial in the original action." (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575.) "A direct attack on an otherwise final, valid judgment by way of an independent action to set it aside is permitted where it appears that the complaining party was fraudulently prevented from presenting his claim or defense in the prior action. This rule is based upon the important public policy that litigants be afforded a fair adversary proceeding in which fully to present their case. Such relief will be denied, however, where it appears that the complaining party has had an opportunity to present his case to the court and to protect himself from any fraud attempted by his adversary." (*Kachig v. Boothe* (1971) 22 Cal.App.3d 626, 632 (internal citations, alterations and quotation marks omitted).)

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

All requests for judicial notice are granted.

All evidentiary objections are overruled.

EXHIBIT "5"

James D. Crosby (State Bar No. 110383)
Attorney at Law
550 West C Street
San Diego, CA 92101
Telephone: (619) 450-4149
Email: crosby@crosbyattorney.com

Attorney for Defendant Larry Geraci

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

NOTICE OF RULING ON PLAINTIFF'S MOTION TO VACATE VOID JUDGMENT

Date: February 25, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione

Complaint Filed: January 3, 2022
Trial Date: Unassigned

The motion of the plaintiff Darryl Cotton to the vacate the judgment in San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL came on regularly for hearing on February 25, 2022, in Department C-75 of the above-entitled court, the Hon. James A. Mangione presiding. The law firm of Tiffany & Bosco, P.A. by Attorney Evan P. Schube appeared on behalf of plaintiff Cotton. Attorney James D. Crosby appeared on behalf of defendant Larry Geraci. At the hearing, the Court, having considered the moving, opposition and reply papers and heard oral argument of the parties, confirmed its tentative ruling denying the motion and ordered that the court's tentative ruling, a true and correct copy of which is attached hereto, was the final order of the court on the motion.

Date: February 28, 2022

/s/ James D. Crosby
James D. Crosby
Attorney for Defendant Larry Geraci

Exhibit 1

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - February 24, 2022

EVENT DATE: 02/25/2022 EVENT TIME: 09:00:00 AM DEPT.: C-75

JUDICIAL OFFICER: James A Mangione

CASE NO.: 37-2022-00000023-CU-MC-CTL

CASE TITLE: COTTON VS. GERACI [IMAGED]

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

EVENT TYPE: Motion Hearing (Civil)
CAUSAL DOCUMENT/DATE FILED:

Plaintiff Darryl Cotton's Motion to Set Aside Judgment is denied.

"Equity's jurisdiction to interfere with final judgments is based upon the absence of a fair, adversary trial in the original action." (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575.) "A direct attack on an otherwise final, valid judgment by way of an independent action to set it aside is permitted where it appears that the complaining party was fraudulently prevented from presenting his claim or defense in the prior action. This rule is based upon the important public policy that litigants be afforded a fair adversary proceeding in which fully to present their case. Such relief will be denied, however, where it appears that the complaining party has had an opportunity to present his case to the court and to protect himself from any fraud attempted by his adversary." (*Kachig v. Boothe* (1971) 22 Cal.App.3d 626, 632 (internal citations, alterations and quotation marks omitted).)

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

All requests for judicial notice are granted.

All evidentiary objections are overruled.

EXHIBIT "6"

COURT OF APPEAL - STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

DARRYL COTTON,
Plaintiff and Appellant,
v.
LAWRENCE GERACI,
Defendant and Respondent.
D080460
San Diego County Super. Ct. No. 37-2022-00000023-CU-MC-CTL

THE COURT:

Appellant filed a letter brief in response to this court's August 18, 2022 order. Appellant argues, as he did in his opening brief, that the order denying appellant's ex parte application to set aside the judgment in the prior case (*Geraci v. Cotton*, Case No. 37-2017-00010073) is appealable because while nonstatutory motions to vacate are not appealable, "an exception applies when the appellant alleges that the underlying order or judgment is void." (*Doe v. Regents of University of California* (2022) 80 Cal.App.5th 282, 289 (*Doe*).) In *Doe*, however, the party who sought to vacate the judgment filed her motion in the same action in which the judgment was entered. (See *id.* at p. 289.)

Appellant argues *Doe* does not limit the appeals of orders denying motions to vacate a void judgment to those motions filed only in the original action, because "a void order or judgment may be directly or collaterally attacked at any time." However, appellant has provided no authority to support the proposition that an order denying a motion to set aside a judgment is appealable where the motion was filed in a collateral action. There is no appealable order or judgment in the instant case (*Cotton v. Geraci*, Case No. 37-2022-00000023), which appellant initiated to collaterally attack the judgment in the prior case (*Geraci v. Cotton*, Case No. 37-2017-00010073).

The matter having been considered by Presiding Justice McConnell and Associate Justices Huffman and Aaron, the appeal is DISMISSED on the ground that it is taken from a nonappealable order.

MCCONNELL
Presiding Justice

cc: All Parties