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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE JINSOOK OHTA  
DISTRICT JUDGE PRESIDING

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ANDREW FLORES, ET AL. ) CASE NO. 20-CV-0656-TWR-DEB  
 )  
PLAINTIFFS, ) MOTION HEARING  
 )  
V. )  
 )  
GINA M. AUSTIN, )  
 )  
DEFENDANTS. )  
 )

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, MARCH 23, 2022

PAGES 1 THROUGH 22

APPEARANCES:

FOR THE PLAINTIFFS: LAW OFFICES OF ANDREW FLORES  
945 4TH AVENUE, SUITE 412  
SAN DIEGO, CALIFORNIA 92101  
BY: ANDREW FLORES, ESQ.

FOR THE DEFENDANT: SUPERIOR COURT OF CALIFORNIA,  
JOEL R. WOHLFEIL COUNTY OF SAN DIEGO  
110 UNION STREET  
SAN DIEGO, CALIFORNIA 92101  
BY: CARMELA E. DUKE, ESQ.

FOR THE DEFENDANT: KJAR MCKENNA & STOCKALPER, LLP  
FERRIS & BRITTON, APC 841 APOLLO STREET, SUITE 100  
EL SEGUNDO, CALIFORNIA 92045

REPORTED BY: ABIGAIL R. TORRES, CSR  
CSR NO. 13700  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
333 WEST BROADWAY, SUITE 420  
SAN DIEGO, CALIFORNIA 92101

1 SAN DIEGO, CALIFORNIA; WEDNESDAY, MARCH 23, 2022; 10:00 A.M.

2 -000-

3 THE CLERK: PLEASE COME TO ORDER. THIS UNITED STATES  
4 DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA IS NOW  
5 IN SESSION. THE HONORABLE JINSOOK OHTA PRESIDING.

6 CALLING MATTER NO. 2 ON CALENDAR, 20-CV-0656, *FLORES,*  
7 *ET AL., V. AUSTIN, ET AL.,* FOR A MOTION HEARING.

8 AND, YOUR HONOR, I BELIEVE PLAINTIFF COUNSEL WILL BE  
9 APPEARING BY PHONE ONLY.

10 MR. FLORES: THAT'S CORRECT, YOUR HONOR.

11 ANDRES FLORES ON BEHALF OF MYSELF AND THE OTHER  
12 PLAINTIFFS.

13 MR. EMDEE: GOOD MORNING, YOUR HONOR.

14 GREGORY EMDEE ON BEHALF OF THE F&B DEFENDANTS.

15 MS. DUKE: GOOD MORNING, YOUR HONOR.

16 CARMELA DUKE ON BEHALF OF THE HONORABLE JUDGE JOEL  
17 WOHLFEIL JUDGE FOR THE SUPERIOR COURT OF SAN DIEGO, COUNTY OF  
18 SAN DIEGO.

19 THE CLERK: AND, YOUR HONOR, I BELIEVE THAT'S ALL THE  
20 APPEARANCES FOR THE *FLORES, ET AL., V. AUSTIN* CASE.

21 YOUR HONOR, ARE YOU ABLE TO HEAR US?

22 (PAUSE IN PROCEEDINGS.)

23 THE COURT: I UNDERSTAND WE'VE -- WE'RE BACK ON THE  
24 RECORD NOW. I UNDERSTAND WE HAD APPEARANCES FROM EVERYBODY  
25 ALREADY.

1 MR. EMDEE: THIS IS GREGORY EMDEE ON BEHALF OF THE F&B  
2 DEFENDANTS. THAT'S CORRECT, YOUR HONOR.

3 THE COURT: OKAY. THANK YOU.

4 SO FIRST OFF ALL, THANK YOU, EVERYBODY, FOR  
5 ACCOMMODATING ME RUNNING THIS APPEARANCE BY ZOOM. I AM NOT  
6 ABLE TO BE IN THE COURTHOUSE FOR HEALTH REASONS. I'M STILL IN  
7 AN ISOLATION QUARANTINE PERIOD, BUT I DIDN'T WANT TO RESCHEDULE  
8 THIS HEARING. BUT THANK YOU FOR ACCOMMODATING ME. AND I  
9 APOLOGIZE FOR THE TECHNICAL DIFFICULTIES GETTING STARTED.

10 SO I SEE WE HAVE MR. EMDEE WITH US, AND I SEE THAT WE  
11 HAVE MS. DUKE WITH US. AND ON THE PHONE LINE, DO WE HAVE  
12 MR. FLORES WITH US?

13 MR. FLORES: THAT'S CORRECT, YOUR HONOR. I'M HERE.

14 THE COURT: OKAY. THANK YOU. AND IF THE DEPUTY COULD  
15 PERHAPS TURN UP THE VOLUME. I CAN HEAR EVERYTHING, BUT IT'S  
16 QUITE FAINT.

17 THE CLERK: YES, YOUR HONOR.

18 THE COURT: SO LET'S GO AHEAD AND GET STARTED.

19 MR. FLORES, CAN YOU HEAR ME OKAY?

20 MR. FLORES: I CAN, YOUR HONOR. I CAN HEAR YOU FINE.

21 THE COURT: OKAY. THANK YOU. I'M GLAD TO HEAR THAT.

22 SO IN THE ORDER, I HAVE A TENTATIVE WITH REGARD TO  
23 DISMISSING JUDGE WOHLFEIL WITH PREJUDICE FROM THIS ACTION ON  
24 JUDICIAL IMMUNITY GROUNDS.

25 AND MR. FLORES, THE COURT'S REASON FOR THAT IS BECAUSE

1 I'VE LOOKED AT THE ALLEGATIONS THAT YOU ARE MAKING AGAINST  
2 JUDGE WOHLFEIL IN YOUR COMPLAINT. I'VE GONE THROUGH THE  
3 PARAGRAPH WHERE YOU MENTION HIS NAME. AND IT LOOKS LIKE  
4 EVERYTHING THAT YOU'RE ALLEGING AGAINST HIM ARE ACTIONS THAT HE  
5 TOOK WITHIN HIS JURISDICTION AS A STATE COURT JUDGE.

6 FOR EXAMPLE, I'M LOOKING AT THE POSITIONS WHERE YOU  
7 TALK ABOUT HOW HE HANDLED THE MOTION FOR SUMMARY JUDGMENT  
8 RULING, THE TRIAL PROCEEDINGS. IT LOOKS LIKE YOU HAVE  
9 COMPLAINTS OR ISSUES ABOUT CERTAIN IN LIMINES OR COURTROOM  
10 RULINGS THAT HE MAY HAVE ISSUED ABOUT WITNESS TESTIMONY.

11 THERE'S -- AND THEN THERE'S ALSO THE TRIAL ITSELF AND  
12 DENIAL FOR A MOTION TO INTERVENE, A DISQUALIFICATION MOTION,  
13 AND MOTION FOR RETRIAL, AND THESE ARE JUST SOME OF  
14 THE ALLEGATIONS THAT I'M LOOKING AT.

15 BUT IT LOOKS LIKE ALL OF THESE ISSUES OR COMPLAINTS  
16 THAT YOU HAVE AGAINST JUDGE WOHLFEIL ARE REGARDING ACTIONS THAT  
17 HE HAS TAKEN AS A JUDGE. AND SO ON THOSE GROUNDS, THE COURT'S  
18 TENTATIVE IS TO RULE THAT THOSE CLAIMS CAN'T GO FORWARD BECAUSE  
19 JUDICIAL IMMUNITY BARS LAWSUITS AGAINST JUDGES FOR ACTIONS THAT  
20 TAKE -- THAT THEY TAKE IN THEIR ROLE AS JUDGES: THE DECISIONS  
21 THEY MAKE IN TERMS OF LEGAL RULINGS, OUTCOMES, HOW THEY MANAGE  
22 THEIR COURTROOM, AND ET CETERA.

23 SO UNDERSTANDING THAT THAT'S THE COURT'S TENTATIVE AND  
24 UNDERSTANDING THAT THAT'S THE COURT'S BASIS FOR THE TENTATIVE,  
25 I WANT TO GIVE YOU, MR. FLORES, A BRIEF OPPORTUNITY TO PRESENT

1 YOUR ARGUMENT TO THE COURT ON THAT ISSUE.

2 MS. DUKE, AT THAT POINT, IF YOU ALSO -- UNDERSTANDING  
3 WHERE THE COURT'S TENTATIVE IS, IF YOU FEEL THE NEED TO RESPOND  
4 TO ANYTHING, YOU MAY, BUT YOU DON'T HAVE TO. AND I WILL ISSUE  
5 A RULING WITH REGARD TO JUDGE WOHLFEIL.

6 AND AT THAT POINT, MS. DUKE, YOU MAY STAY ON, BUT  
7 YOU'RE ALSO FREE TO DROP OFF THE PROCEEDINGS. I DO WANT TO BE  
8 VERY RESPECTFUL OF THE -- OF THE TIME WITH REGARD TO THE  
9 COUNSEL FOR JUDGE WOHLFEIL AND THE STATE. SO WE'LL PROCEED IN  
10 THAT WAY.

11 AFTER THAT, WE'LL GO AHEAD, AND WE WILL ADDRESS THE  
12 CLAIMS, OR RATHER, WE'LL ADDRESS THE MOTION TO DISMISS BROUGHT  
13 BY THE F&B DEFENDANTS. BUT WE'LL HANDLE THE JUDICIAL IMMUNITY  
14 ISSUE FIRST.

15 SO GO AHEAD, MR. FLORES, AND TELL ME WHY -- TELL ME  
16 FIRST IF YOU AGREE THAT EVERYTHING THAT YOU HAVE AN ISSUE WITH,  
17 WITH REGARD TO JUDGE WOHLFEIL, COMES OUT OF WHAT HE DID AS A  
18 JUDGE. AND I UNDERSTAND YOU MIGHT FEEL THAT THE THINGS HE DID  
19 WERE INCORRECT OR WRONG OR UNFAIR OR MISGUIDED.

20 BUT LET ME KNOW IF YOU HAVE ANY ARGUMENT AS TO  
21 WHETHER -- WHAT'S IN YOUR COMPLAINT, ACTUALLY, GOES OUTSIDE  
22 WHAT HE'S DONE AS A JUDGE.

23 MR. FLORES: YES, YOUR HONOR. THE PEOPLE SUBMIT, YOUR  
24 HONOR. I DO AGREE WITH THE COURT IN THAT ASPECT. I WAS UNDER  
25 THE IMPRESSION THAT BECAUSE WE'RE ATTEMPTING TO REVISIT THE

1 RULING IN THAT CASE FOR FEDERAL RELIEF PURPOSES, THAT HE MAY BE  
2 A NECESSARY PARTY. BUT, YES, WE WILL SUBMIT ON THE COURT'S  
3 TENTATIVE, AND JUDGE WOHLFEIL WILL BE REMOVED FROM THE ACTION.

4 THE COURT: OKAY. THANK YOU.

5 GIVEN THAT -- MR. FLORES'S POSITION WITH REGARD TO  
6 JUDGE WOHLFEIL, THE COURT IS GOING TO GO AHEAD AND ADOPT THE  
7 TENTATIVE AS THE COURT'S RULING.

8 JUDGE WOHLFEIL IS DISMISSED WITHOUT PREJUDICE FROM  
9 THIS -- BECAUSE YOU -- [FAILURE IN TRANSMISSION] --

10 (COURT REPORTER INTERRUPTION.)

11 THE COURT: -- THEY -- BECAUSE I WANT TO BE RESPECTFUL  
12 OF YOUR TIME. YOU'RE ALSO FREE TO DROP OFF, AT THIS POINT.

13 MS. DUKE: THANK YOU, YOUR HONOR.

14 THE COURT: THANK YOU. TAKE CARE.

15 NOW, MOVING ON TO THE MOTION TO DISMISS BROUGHT BY THE  
16 FERRIS & BRITTON DEFENDANTS. AND I WILL USE THAT AS SHORTHAND.  
17 THERE ARE SEVERAL GROUNDS FOR DISMISSAL THERE THAT HAVE BEEN  
18 RAISED BY THE F&B DEFENDANTS.

19 SO THE COURT IS GOING TO, AGAIN, LIKE IT DID WITH THE  
20 MOTION TO DISMISS BROUGHT BY JUDGE WOHLFEIL, THE COURT WILL --  
21 THE COURT WILL EXPLAIN THE REASONS FOR THAT TENTATIVE,  
22 MR. FLORES. GIVE YOU A CHANCE TO RESPOND. AND THEN GIVE  
23 MR. EMDEE A RESPONSE TO [FAILURE IN TRANSMISSION] -- A CHANCE  
24 TO RESPOND TO YOU IN TURN TO THE EXTENT THAT HE FEELS IS  
25 NECESSARY.

1 SO, FIRST OFF ALL, WITH REGARD TO THE F&B DEFENDANTS,  
2 IT LOOKS LIKE, MR. FLORES -- AND I'M LOOKING AT YOUR PARAGRAPH  
3 IN YOUR COMPLAINT STARTING AT 130, WHERE -- WHERE YOU START  
4 WITH YOUR NARRATIVE THAT -- WHERE YOU START WITH THE NARRATIVE  
5 OR AN ALLEGATION REGARDING E-MAILING YOU A COPY OF THE  
6 COMPLAINT AND A LIS PENDENS, WHICH ARE PART OF THE LITIGATION  
7 PROCEEDINGS.

8 AND THEN THEY GO ON TO DETAIL OTHER ACTIONS THAT THE  
9 FERRIS & BRITTON DEFENDANTS -- ARE [FAILURE IN TRANSMISSION] --  
10 ARE LITIGATING THE CASE.

11 THE COURT'S TENTATIVE WITH REGARD TO THE -- FERRIS  
12 DEFENDANTS, AND THESE ARE THE LAW FIRM AND THE PEOPLE  
13 ASSOCIATED WITH THE LAW FIRM OF FERRIS & BRITTON, INCLUDING ANY  
14 PARALEGAL, THE COURT'S FURTHER -- [FAILURE IN TRANSMISSION] IS  
15 TO DISMISS.

16 (COURT REPORTER INTERRUPTION.)

17 THE COURT: AND HERE'S WHY. THE NOERR-PENNINGTON  
18 DOCTRINE DOES PROTECT ACTIONS OF EITHER THE ACT OF PETITIONING  
19 A COURT OR ACTIONS THAT ARE WITHIN THAT BUBBLE THAT ARE RELATED  
20 TO THE ACT OF PETITIONING A COURT SUCH THAT IT HAS -- [FAILURE  
21 IN TRANSMISSION] PROVISION.

22 AND A LOT OF THE -- OR ALL OF THE ALLEGATIONS THAT I'M  
23 SEEING IN THE COMPLAINT HAVE TO DEAL WITH ACTIONS THAT WERE  
24 TAKEN TO LITIGATE THIS CASE, INCLUDING PRELITIGATION NECESSARY,  
25 PRELITIGATION COMMUNICATIONS, LIKE FORWARDING A COPY OF THE

1 COMPLAINT AND UNDERLYING DOCUMENTATION -- [FAILURE IN  
2 TRANSMISSION] LIKE FILING A DEMURRER AND ENTERING A STIPULATION  
3 AND MAKING ARGUMENTS IN COURT HEARINGS. AND I'M NOT SEEING  
4 ANYTHING THAT GOES OUTSIDE OF WHAT --

5 (COURT REPORTER INTERRUPTION.)

6 THE COURT: -- ATTORNEYS AND OUTSIDE OF THESE ACTS OF  
7 PETITIONING THE COURT AS LAWYERS FOR THEIR CLIENTS.

8 SO, MR. FLORES, BASED ON THAT, THE COURT'S INCLINATION  
9 IS TO DISMISS THE CLAIMS AGAINST THE DEFENDANTS WITH PREJUDICE.  
10 I UNDERSTOOD -- AND I ALREADY WAS AWARE OF IT. THERE ARE  
11 EXCEPTIONS FOR -- [FAILURE IN TRANSMISSION] THAT YOU CAN GET  
12 THE NOERR-PENNINGTON PROTECTIONS JUST BY FILING A FAKE LAWSUIT.

13 SO WHEN LITIGATION IS A POSSIBLE ISSUE, THE COURT  
14 LOOKS AT WHETHER THAT UNDERLYING ACTION WAS OBJECTIVELY  
15 BASELESS. AND THE COURT HAS LOOKED AT, IN THIS CASE, IT  
16 DOESN'T LOOK LIKE THAT EXCEPTION OR -- EXCEPTION IS GOING TO BE  
17 VIABLE IN THIS CASE, MR. FLORES.

18 AND THE REASON FOR THAT IS GERACI OR GERACI, THE PARTY  
19 THAT THE FERRIS & BRITTON DEFENDANTS WERE REPRESENTING, THEY  
20 WEREN'T A PREVAILING PARTY IN THAT UNDERLYING CASE. AND WHERE  
21 THE LITIGATION IS SUCCESSFUL UNDER THE CURRENT STATE OF THE  
22 LAW, IT LOOKS LIKE THE COURT DOESN'T REALLY NEED TO LOOK ANY  
23 FURTHER.

24 THERE ARE INSTANCES WHERE EVEN IF A LITIGATION ISN'T  
25 SUCCESSFUL, THERE'S STILL WAYS TO FIND IT NOT -- NOT [FAILURE



1 IN TRANSMISSION] ON LITIGATION. BUT HERE WE HAVE -- IT WAS THE  
2 PREVAILING PARTY IN THAT UNDERLYING CASE.

3 AND, AGAIN, MR. FLORES, I FULLY UNDERSTAND THAT IT'S  
4 YOUR POSITION AND YOUR BELIEF THAT THIS WAS [FAILURE IN  
5 TRANSMISSION], BECAUSE THINGS WENT WRONG WITH THE PROCESS. BUT  
6 AS FAR AS -- I'M NOT RULING ON ANY OF THE OTHER DEFENDANTS.  
7 BUT AS FAR AS THE FERRIS & BRITTON DEFENDANTS GO, IT LOOKS LIKE  
8 WHAT THEY WERE DOING -- FOCUSED ON WHAT THEY WERE DOING IN  
9 TERMS OF REPRESENTING THEIR CLIENTS IN THEIR ACT OF LITIGATING  
10 OR PETITIONING THE COURT.

11 SO WITH [FAILURE IN TRANSMISSION] AN OPPORTUNITY TO  
12 RESPOND TO ME ON THAT ONE, AS WELL, AND THEN WE'LL TALK ABOUT  
13 SOME OF THE [FAILURE IN TRANSMISSION] OKAY, MR. FLORES?

14 MR. FLORES: THAT SOUNDS GOOD, YOUR HONOR. YOU KNOW,  
15 OBVIOUSLY, MY -- MINE AND MY CLIENTS' POSITION ON THIS IS  
16 OBVIOUSLY, YOU KNOW, YES, WE DISAGREE WITH THE RULING IN THAT  
17 PRIOR CASE.

18 BUT I THINK, MORE IMPORTANTLY THAN ANYTHING, YOUR  
19 HONOR, EVERY COURTROOM HAS A DUTY TO IDENTIFY WHETHER THERE WAS  
20 AN ILLEGAL ACTION. AND WHAT OUR CLAIM IS, YOUR HONOR, IS THAT  
21 THESE ATTORNEY ASSISTED THEIR CLIENTS IN OBTAINING OR  
22 ATTEMPTING TO OBTAIN SOMETHING THAT WAS -- HE WAS LEGALLY  
23 BARRED FROM OBTAINING.

24 SO THEY KNEW THAT MR. GERACI HAS BEEN PROPERLY  
25 SANCTIONED FOR RUNNING ILLEGAL -- OR OPERATING ILLEGALLY IN THE

1 MARIJUANA INDUSTRY. AND, THEREFORE, WAS BARRED FROM,  
2 ULTIMATELY, HAVING THE BENEFIT OF THE BARGAIN IN THAT OTHER  
3 CASE, WHICH IS WHAT WE -- WHAT MR. COTTON TO EXPLAIN TO THE  
4 COURT AND DID SO, NOT IN AN EFFICIENT MANNER.

5 BUT I THINK THAT EVERY COURT HAS TO LOOK AT THAT  
6 CONTRACT TO DECIDE WHETHER OR NOT THE SUBSTANCE OF THE CONTRACT  
7 IS ILLEGAL. WE BELIEVE THAT IT IS. WE BELIEVE THAT THE  
8 ATTORNEYS SHOULD HAVE KNOWN THAT IT WAS AN ILLEGAL CONTRACT.  
9 AND, THEREFORE, THEY, IN ESSENCE, ASSISTED THEIR CLIENT IN  
10 OBTAINING A BENEFIT ILLEGALLY.

11 THE COURT: OKAY. THANK YOU, MR. FLORES. I  
12 APPRECIATE THAT ARGUMENT. AND I DO FULLY UNDERSTAND AND  
13 APPRECIATE THAT YOU HAVE HAD FRUSTRATIONS WITH THE PROCESS THAT  
14 HAPPENED IN THE STATE COURT, AND THAT YOU BELIEVE IT WAS A  
15 WRONGFUL RESULT.

16 BUT AS FAR [FAILURE IN TRANSMISSION] BECAUSE YOUR  
17 ALLEGATIONS CENTER ON FERRIS & BRITTON DEFENDANTS AND THEIR  
18 ACTIVITIES IN TERMS OF PETITIONS, THE COURT BY PURSUING THIS  
19 LITIGATION [FAILURE IN TRANSMISSION] COURT VIOLATING, AND OTHER  
20 ACTS THAT ARE INCIDENTAL -- THAT ARE MAKING REQUESTS OF  
21 THE [FAILURE IN TRANSMISSION] FILING BEFORE THE COURT, THE  
22 COURT IS GOING TO ADOPT THE TENTATIVE AND DISMISS YOUR CLAIMS  
23 AGAINST THE FERRIS & BRITTON DEFENDANTS WITH PREJUDICE.

24 AND THE REASON THAT I'M DEFENDING -- THAT I'M  
25 DISMISSING WITH PREJUDICE IS AFTER HEARING FROM YOU TODAY, IT

1 SOUNDS [FAILURE IN TRANSMISSION] AGAINST THEM, IT'S NOT WHAT  
2 HAPPENED OUTSIDE OF THEIR PETITIONING CONDUCT. SO IT DOESN'T  
3 APPEAR THAT WE'D BE ABLE TO AMEND THIS IN A WAY THAT WOULD FIX  
4 THE PROBLEM WITH -- YOUR BASIC --

5 MR. FLORES: I'M SORRY, YOUR HONOR. I DON'T MEAN TO  
6 INTERRUPT. YOU'RE BREAKING UP. EVERYTHING -- I'M CATCHING  
7 EVERY OTHER WORD. I DON'T KNOW IF COUNSEL HAS A PROBLEM HERE.

8 THE COURT: I APOLOGIZE, AND I'LL BACK UP A BIT.

9 IS THIS BETTER, MR. FLORES?

10 MR. FLORES: YES, I CAN HEAR YOU MUCH BETTER. THANK  
11 YOU.

12 THE COURT: OKAY. THANK YOU. I'M GOING TO BACK UP  
13 TO -- AND LET ME KNOW IF YOU NEED ME TO BACK UP FURTHER. BUT  
14 I'LL START BACK AT THE POINT WHERE I WAS EXPLAINING WHY I'M  
15 GRANTING THE PETITION, AND WHY I'M DOING THAT WITH PREJUDICE.

16 AND THE REASON FOR THAT IS AFTER HEARING FROM YOU,  
17 AND, OF COURSE, AFTER REVIEWING ALL THE PAPERS, IT REALLY  
18 SOUNDS LIKE THE -- THE FUNDAMENTAL CRUX OF YOUR GRIEVANCE  
19 AGAINST THE FERRIS & BRITTON DEFENDANTS IS WHAT THEY DID IN THE  
20 COURTROOM WHILE FILING THINGS BEFORE THE COURT, WHILE MAKING  
21 REQUESTS OF THE COURT, BASICALLY WHILE PETITIONING THE COURT.  
22 AND OTHER THINGS THAT WERE INCIDENTAL TO THAT CONDUCT.

23 AND SO IT DOESN'T SOUND LIKE BECAUSE WHAT YOU REALLY  
24 HAVE -- WHAT --

25 THE CLERK: YOU'RE CUTTING OFF, YOUR HONOR.

1 THE COURT: IT DOESN'T SOUND LIKE YOU WOULD BE ABLE TO  
2 AMEND IN A WAY THAT WOULD BE ABLE TO FIX THAT UNDERLYING  
3 PROBLEM.

4 SO DID YOU FOLLOW ME, MR. FLORES, WITH REGARD TO WHY  
5 I'M GRANTING THIS WITH PREJUDICE?

6 MR. FLORES: I DID, YOUR HONOR. AND IF I CAN JUST  
7 INQUIRE OF THE COURT. OBVIOUSLY, PART OF OUR ARGUMENT, YOUR  
8 HONOR, IS THAT THE ATTORNEYS CONSPIRED WITH THEIR CLIENT TO  
9 OBTAIN AN ILLEGAL RESULT.

10 NOW, OBVIOUSLY, THERE MATTERS -- THEIR ACTIONS, YOU  
11 KNOW, PETITIONING THE COURT, HOWEVER, THE CONSPIRACY BETWEEN  
12 THEM AND THEIR CLIENT IS KIND OF THE CRUX OF, IN MY MIND, OF  
13 WHAT OUR ALLEGATIONS ARE IN THIS CASE.

14 THE COURT: OKAY. THAT -- THAT'S UNDERSTOOD,  
15 MR. FLORES. BUT BASED ON THE COURT'S REVIEW OF THE COMPLAINT  
16 AND YOUR PAPERS AND CONSIDERING YOUR ARGUMENT TODAY, INsofar AS  
17 WHAT --

18 (COURT REPORTER INTERRUPTION.)

19 THE CLERK: YOUR HONOR, YOU'RE CUTTING OFF.

20 THE COURT: OKAY. SO, MR. FLORES, HOLD ON JUST A  
21 SECOND.

22 MR. EMDEE, ARE YOU HAVING SIMILAR TROUBLE WITH -- WITH  
23 HAVING ME CUT IN AND OUT?

24 MR. EMDEE: I AM HAVING THE SAME ISSUES. HOWEVER, I'M  
25 ABLE TO FOLLOW WHAT YOU'RE SAYING. THERE'S CERTAIN WORDS THAT

1 ARE MISSING. BUT I KNOW YOU WERE GOING TO GRANT SOMETHING, SO  
2 I'M ASSUMING THAT'S THE MOTION TO DISMISS, BUT I AM FOLLOWING  
3 PIECE BY PIECE.

4 THE COURT: MR. FLORES, SO IF [FAILURE IN  
5 TRANSMISSION] WHAT OTHER OPTIONS WE CAN EXPLORE. I'LL JUST  
6 BACK -- I'LL JUST BACK UP A LITTLE BIT. AND IT SOUNDS LIKE YOU  
7 FOLLOWED ME WHEN I EXPLAINED WHY I WAS GRANTING THIS WITH  
8 PREJUDICE.

9 AND I'LL REITERATE -- I WILL GO AHEAD AND REITERATE  
10 WHAT I EXPLAINED WITH REGARD TO YOUR ARGUMENT THAT IT'S PART OF  
11 THE CONSPIRACY.

12 SO I HEAR YOUR ARGUMENT THAT IT WAS PART OF THE  
13 CONSPIRACY. BUT I HAVE REVIEWED YOUR COMPLAINT, YOUR PAPER,  
14 AND WHAT YOU ARGUED IN FRONT OF ME TODAY, AND BASED ON THOSE  
15 THINGS, MR. FLORES, IT DOESN'T LOOK LIKE THERE'S ANY ACTIVITY  
16 THAT YOU ARE COMPLAINING OF THAT DOESN'T CONCERN THE PROTECTED  
17 PETITIONING ACTIVITY.

18 AND SO NOERR-PENNINGTON DOES APPLY HERE BECAUSE --  
19 AGAIN, IT'S NOT A SHARED LITIGATION BECAUSE MR. GERACI WAS THE  
20 PREVAILING PARTY IN THE UNDERLYING ACTION.

21 SO THE COURT IS GOING TO GO AHEAD AND DISMISS THE  
22 CLAIMS AGAINST THE F&B DEFENDANTS WITH PREJUDICE. AND,  
23 FINALLY, I'D LIKE TO TALK ABOUT THAT -- THE COMPLAINT WITH THE  
24 OTHER DEFENDANTS, MR. FLORES. AND I UNDERSTAND THAT LOOKING AT  
25 THE -- THERE ARE MANY, MANY OTHER DEFENDANTS THAT YOU BELIEVE

1 WERE A PART OF THIS CONSPIRACY.

2 SO I'D LIKE TO TALK ABOUT STANDING. BECAUSE, FIRST  
3 OFF ALL, STANDING WAS AN ISSUE THAT THE FERRIS & BRITON  
4 DEFENDANTS RAISED IN THEIR PAPERS.

5 ALSO, STANDING IS SOMETHING THAT IS REQUIRED FOR THE  
6 COURT'S SUBJECT MATTER JURISDICTION. SO THE COURT WOULD HAVE  
7 ITS OWN DUTY TO MAKE SURE THAT IT HAS SUBJECT MATTER  
8 JURISDICTION TO PROCEED. AND SO STANDING MEANS THAT YOU,  
9 YOURSELF, MR. FLORES, AND THE OTHER PLAINTIFFS SUFFERED AN  
10 INJURY THAT IS REDRESSABLE BY THIS COURT.

11 AND WITH REGARD TO THAT, I'M HAVING TROUBLE  
12 UNDERSTANDING FROM YOUR COMPLAINT, MR. FLORES, WHAT WAS THE  
13 INJURY THAT YOU HAD SUFFERED. IT SOUNDS LIKE FROM THE  
14 UNDERLYING ACTION THAT YOU ARE MR. COTTON'S ATTORNEY OR YOU  
15 WERE HIS ATTORNEY AT CERTAIN POINTS IN TIME [FAILURE IN  
16 TRANSMISSION].

17 AND WE HAVE LOOKED AT THE PARAGRAPH WHERE YOU TALK  
18 ABOUT THE DENIAL OF THE MOTION TO INTERVENE. BUT I AM STILL  
19 NOT SURE WHAT -- HOW YOU WERE HARMED BY THE CONSPIRACY -- THE  
20 CONSPIRACY THAT YOU'RE ALLEGING AND THE OTHER SERIES OF EVENTS  
21 THAT YOU ARE ALLEGING IN YOUR COMPLAINT.

22 I UNDERSTAND HOW -- I UNDERSTAND [FAILURE IN  
23 TRANSMISSION] BUT NOT UNDERSTANDING YOU ARE THE ONE THAT  
24 SUFFERED AN INJURY AND -- AND HOW MS. AMY SHERLOCK AND HER  
25 MINOR CHILDREN WERE THE ONES WHO SUFFERED AN INJURY HERE.

1 MR. FLORES: YEAH. YOUR HONOR, I CAN GIVE YOU, SORT  
2 OF, A SYNOPSIS OF WHAT OCCURRED. OBVIOUSLY, I'LL NOT TO BE FOR  
3 VERY LONG. I TRIED TO BE AS DETAILED AS POSSIBLE BECAUSE IT IS  
4 LITTLE BIT OF A COMPLICATED SCENARIO.

5 BUT, IN ESSENCE, WHAT HAPPENED IN THIS SITUATION, YOUR  
6 HONOR, MR. COTTON HAD A PROPERTY THAT QUALIFIED INITIALLY A  
7 PERMIT TO OPERATE A MEDICAL MARIJUANA DISPENSARY. OKAY?

8 HE HAD ENTERED INTO AN AGREEMENT WITH MR. GERACI.  
9 MR. GERACI PURCHASED THAT PROPERTY AND APPLIED FOR A  
10 CONDITIONAL USE PERMIT ON THE PROPERTY. HOWEVER, THEY --  
11 AGAIN, YOU KNOW, AS I STATED BEFORE, MR. GERACI, HE WASN'T  
12 ELIGIBLE TO REQUIRE THE CUP.

13 MR. COTTON THEN TERMINATED THE AGREEMENT WITH HIM  
14 BECAUSE HE WAS ASKING FOR SOME REASSURANCES. THOSE  
15 REASSURANCES NEVER CAME. SO HIS CONTROL -- MEDIATION, HE  
16 ENTERED INTO A CONTRACT WITH A NEW INDIVIDUAL, FIRST STEP  
17 PROPERTY. THAT INDIVIDUAL IS RICHARD JAY MARTIN.

18 MY INVOLVEMENT WITH MR. COTTON WAS, I ACTUALLY  
19 ASSISTED AS COUNSEL A COUPLE OF TIMES. HE DID ASK ME TO REVIEW  
20 THE ENTIRE CASE, WHICH IS HOW WE GET FAMILIAR WITH IT. AFTER  
21 SOME TIME REVIEWING THE CASE, IT BECAME CLEAR TO ME THAT  
22 MR. MARTIN WOULD HAVE HAD A, YOU KNOW, CAUSE OF ACTION AGAINST  
23 MR. GERACI FOR INTENT OF INTERFERENCE WITH HIS CONTRACTUAL  
24 RIGHT WITH MR. COTTON.

25 HOWEVER, MR. MARTIN HAD SOME CONCERNS. HE WAS AN

1 INVESTOR FROM HAWAII. HE DIDN'T NECESSARILY WANT TO BE  
2 INVOLVED IN THE LITIGATION. I DID OFFER TO PURCHASE HIS  
3 CONTRACTUAL RIGHTS FROM HIM, WHICH I DID.

4 AND, THEREFORE, BROUGHT THIS ACTION TO HAVE STANDING  
5 AS HIS PREDECESSOR INTEREST TO BRING IT BACK AGAIN TO THE  
6 INDIVIDUALS. SO WITH RESPECT TO MS. SHERLOCK, MS. SHERLOCK'S  
7 HUSBAND -- MS. SHERLOCK'S HUSBAND WAS AN INVESTOR IN THE BALBOA  
8 CUP. HE INITIALLY HAD THE BALBOA CUP ISSUED IN HIS NAME. HE  
9 HAS SOME PARTNERS ASSOCIATED WITH HIM.

10 HOWEVER, WHAT ENDED UP HAPPENING IS MS. AUSTIN AND HER  
11 CLIENT CONSPIRED TO BASICALLY TAKE THAT OVER. AND AT THE  
12 POINT, WHEN MR. SHERLOCK PASSED AWAY, NO ONE INFORMED  
13 MR. SHERLOCK THAT HE HAD AN INTEREST IN THE PROPERTY. THAT THE  
14 CUP WAS ISSUED IN HIS NAME. THAT HE HAD A BUSINESS PARTNER  
15 THAT BASICALLY DIDN'T PROVIDE ANY INFORMATION ABOUT WHAT HAD  
16 HAPPENED. AND, EVENTUALLY, SHE'D COME TO FIND OUT THAT THE CUP  
17 WAS GRANTED. IT WAS SOLD.

18 THERE WAS SOME SIGNIFICANT AMOUNT OF MONEY. AND IT  
19 ALSO INVOLVED THE LITIGATION AT THE MOMENT IN STATE COURT. SO  
20 THOSE ARE -- THOSE ARE SORT OF, YOU KNOW, OBVIOUSLY, THE -- THE  
21 BEGINNINGS OF THE CLAIM. BUT I WILL INFORM THE COURT THAT WE  
22 DID RECENTLY -- AS PART OF THIS JURISDICTIONAL ISSUE, IT'S A  
23 LITTLE DIFFICULT BECAUSE THE STATE COURT DOES HAVE CONTROL OVER  
24 THOSE PROPERTIES BECAUSE THEY'RE ALL ALREADY IN LITIGATION AND  
25 ATTEMPTING TO INTERVENE IN THOSE LITIGATIONS.



1 I DID -- I KEPT INTERVENING ON BEHALF OF MS. SHERLOCK  
2 IN THE LITIGATION ABOUT THE BALBOA CUP. HOWEVER, THE COURT IN  
3 THAT CASE SAID THAT IT WOULD SIGNIFICANTLY EXPAND THE ISSUES IN  
4 THAT MATTER. SO IT DENIED THE REQUEST. SO WE ENDED UP -- AND  
5 THAT'S READING BETWEEN THE LINES. THE JUDGE, HE BASICALLY  
6 SAID, YOU KNOW, "FILE YOUR OWN COMPLAINT." THIS IS WHAT WE  
7 DID.

8 IT WOULD BE OUR INTENT, YOUR HONOR, AT THIS POINT, TO  
9 ACTUALLY FILE A MOTION TO STAY THIS ACTION UNTIL THE REVOLUTION  
10 OF THE RES IN THOSE CASES OR IN STATE COURT CASE RESOLVES. AND  
11 THEN WE COME BACK AND ADDRESS OUR CONSTITUTIONAL CLAIMS AT THAT  
12 TIME.

13 OBVIOUSLY, WHATEVER WE'RE DEALING WITH, YOU KNOW, ANY  
14 TRUST CONSPIRACY IN CALIFORNIA STATE CLAIM THAT WE'VE MADE IN  
15 THE STATE COURT CASE. AND, AGAIN, YOU KNOW, IF WE ARE ASKING  
16 FOR LOST PROFITS IN ANY OF THOSE THINGS, IT'S MY UNDERSTANDING  
17 THE FEDERAL COURT WILL NOT BE ABLE TO GIVE US THOSE REMEDIES  
18 BECAUSE OF THE FACT THAT, YOU KNOW, THERE IS -- YOU KNOW --  
19 OBVIOUSLY, UNDER FEDERAL LAW, MARIJUANA IS LEGAL.

20 BUT, OBVIOUSLY, ENTITLED TO ANY -- UNDER STATE COURT,  
21 YOU KNOW, WE SHOULD BE ABLE TO RECOVER THOSE.

22 THE COURT: OKAY. THANK YOU, MR. FLORES, FOR THAT  
23 EXPLANATION, THE CURRENT COMPLAINT. AND IT'S HELPFUL TO HAVE  
24 THAT EXPLANATION SO THAT THE COURT CAN GAUGE WHETHER AMENDMENTS  
25 MIGHT BE EITHER USEFUL OR FUTILE AND THAT AMENDMENT WOULD NOT

1 BE ABLE TO FIX THE UNDERLYING PROBLEM.

2 SO ON THE -- BASED ON THE CURRENT COMPLAINT, THE COURT  
3 RULES THAT YOU HAVEN'T ADEQUATELY PLED THAT YOU HAVE STANDING,  
4 IN THAT YOU ARE THE ONE THAT SUFFERED THE INJURY AND THAT  
5 MS. SHERLOCK WAS THE ONE WHO SUFFERED THE INJURY.

6 THE COURT ALSO NOTES THAT RE-DRESS ABILITY IS AT LEAST  
7 WITH REGARD TO SOME OF YOUR REQUESTS WITH THE -- IN TERMS OF --  
8 THE COURT -- BASICALLY, UNDO WHAT THE STATE COURT HAS DONE THAT  
9 THERE ARE PROBLEMS OF REDRESSABILITY THERE, AS WELL, IN THAT  
10 THIS COURT, LIKELY, DOES NOT HAVE THE POWER TO GO IN AND ORDER  
11 THE STATE COURT TO UNDO ITS RULES.

12 BECAUSE THE PROPER REMEDY AND PROCEDURE FOR THAT IS TO  
13 APPEAL THE STATE COURT RULINGS IN THE PROPER APPELLATE FORUM  
14 FOR THAT. AT THIS POINT, WHAT THE COURT IS GOING TO DO, IS THE  
15 COURT IS GOING TO DISMISS YOUR FIRST AMENDED COMPLAINT, BUT  
16 THIS WILL BE WITHOUT PREJUDICE.

17 SO THAT MEANS THAT YOU WOULD HAVE THE OPPORTUNITY TO  
18 AMEND TO TRY TO SHOW ME IN THE COMPLAINT WHAT YOU ARE TRYING TO  
19 EXPLAIN TO ME TODAY, AS IN, TELL ME HOW YOU WERE THE ONE THAT  
20 WAS HURT BY THIS, AND HOW MS. SHERLOCK WAS THE ONE THAT WAS  
21 HURT BY THIS.

22 AND SO IF YOU -- SO I'LL GIVE YOU -- HOW MUCH TIME DO  
23 YOU THINK THAT YOU WOULD NEED TO FILE THIS AMENDED [FAILURE IN  
24 TRANSMISSION] -- AND -- AND THEN AT ANY TIME, OF COURSE, YOU  
25 WOULD BE ABLE TO FILE THAT MOTION TO STAY. AND THE COURT WOULD

1 CONSIDER THAT SEPARATELY WHEN IT CAME IN. BUT AS FAR AS  
2 AMENDING THIS COMPLAINT, I AM GOING TO GIVE YOU AN OPPORTUNITY  
3 TO AMEND THE COMPLAINT.

4 DO YOU THINK 45 DAYS WOULD BE ADEQUATE, MR. FLORES?

5 MR. FLORES: I THINK I HAVE A VERY TIGHT SCHEDULE AT  
6 THE MOMENT. ARE WE ABLE TO GO 60 DAYS?

7 THE COURT: SURE. I WILL GIVE YOU 60 DAYS TO AMEND  
8 THE COMPLAINT.

9 MR. COURTROOM DEPUTY, COULD YOU LET ME KNOW A WEEKDAY  
10 THAT IS APPROXIMATELY 60 DAYS FROM NOW AND THE COURT WILL MAKE  
11 A DATE CERTAIN IN ITS RULING?

12 THE CLERK: YES, YOUR HONOR.

13 60 DAYS OUT WILL GIVE US THE NEXT DATE -- AFTER  
14 60 DAYS FOR THE CIVIL CALENDAR IS WEDNESDAY, MAY 11TH.

15 THE COURT: GREAT. THANK YOU.

16 SO, MR. FLORES, I AM [FAILURE IN TRANSMISSION] IN YOUR  
17 COMPLAINT ON STANDING GROUNDS WITHOUT PREJUDICE. YOU WILL  
18 HAVE -- YOU WILL HAVE UNTIL WEDNESDAY, MAY 11TH, TO FILE A  
19 SECOND AMENDED COMPLAINT. OKAY, MR. FLORES?

20 MR. FLORES: THANK YOU, YOUR HONOR, FOR YOUR TIME.  
21 YES. THANK YOU VERY MUCH.

22 THE COURT: YOU'RE WELCOME. MR. FLORES, ARE YOU STILL  
23 WITH US?

24 MR. FLORES: I AM, YOUR HONOR. CAN YOU HEAR ME?

25 THE COURT: OKAY. I'M JUST AFRAID THAT I LOST YOU.

1 I ALSO --

2 MR. FLORES: I --

3 THE COURT: CAN YOU HEAR ME?

4 MR. FLORES: I CAN.

5 THE COURT: OKAY. THANK YOU.

6 I ALSO WANT TO ADDRESS, WHILE I HAVE YOU, THAT 9083  
7 ACTIONS -- AND THERE WAS A CHALLENGE RAISED WITH REGARD TO THAT  
8 ALSO BY MR. EMDEE. 9083 ACTIONS NEED TO BE ALLEGED AGAINST  
9 PEOPLE WHO ARE ACTING UNDER COLOR OF STATE LAW.

10 AND SO WHILE I'M DISMISSING WITH LEAVE TO AMEND ON  
11 STANDING GROUNDS, WHILE I HAVE YOU, SINCE YOU'RE PROCEEDING PRO  
12 SE, I JUST WANTED TO FLAG THAT ISSUE FOR YOU AS WELL. OKAY,  
13 MR. FLORES?

14 AND AT THIS POINT, PLEASE DON'T DROP OFF YET. I'M  
15 GOING TO GIVE MR. EMDEE A CHANCE TO ADDRESS THE COURT WITH  
16 WHATEVER HE FEELS NECESSARY GIVEN THE COURT'S RULINGS. I --  
17 I -- I'M GOING TO GIVE HIM THAT OPPORTUNITY, EVEN THOUGH I HAVE  
18 LARGELY RULED IN HIS FAVOR, JUST IN CASE, AND THEN -- AND THEN  
19 AT THAT POINT, WE'LL CONCLUDE THE HEARING.

20 BUT, MR. FLORES, PLEASE PLEASE STAY ON UNTIL THE  
21 HEARING IS CONCLUDED.

22 GO AHEAD, MR. EMDEE.

23 MR. EMDEE: THANK YOU, YOUR HONOR.

24 I'M FINE WITH SUBMITTING ON THE TENTATIVES THAT THE  
25 COURT HAS ALREADY ADOPTED. AND AS FAR AS THE STANDING ISSUE,

1 THAT DOESN'T REALLY INVOLVE MY CLIENT AT THIS POINT IN TIME.

2 THE COURT: GREAT. THANK YOU. THE HEARING AT THIS  
3 POINT IS CONCLUDED.

4 MR. FLORES, YOU HAVE YOUR 60 DAYS TO AMEND ANOTHER  
5 COMPLAINT AND WHATEVER OTHER MOTIONS YOU'RE ANTICIPATING. THE  
6 COURT WILL CONSIDER THOSE ONES THAT ARE BEFORE THE COURT. TAKE  
7 CARE --

8 MR. EMDEE: YOUR HONOR, QUICK -- QUICK QUESTION, YOUR  
9 HONOR. ABOUT THAT -- THE RULING -- DISMISSAL WITH PREJUDICE.  
10 WILL THE PARTIES BE OFFICIALLY TERMINATED AT THIS POINT?  
11 BECAUSE I JUST WANT TO MAKE SURE BECAUSE, TYPICALLY, WHEN A  
12 MOTION TO DISMISS IS GRANTED IN A FEDERAL COURT, THE TIMELINE  
13 TO APPEAL AND EVERYTHING DOESN'T BEGIN TO RUN UNTIL ALL THE  
14 PARTIES HAVE BEEN DISMISSED, SO I'M ASSUMING THAT MEANS WE'LL  
15 BE DISMISSED AT THE 60-DAY MARK.

16 THE COURT: SO WE'LL GO AHEAD AND FOLLOW UP WITH THE  
17 SHORT WRITTEN RULING AS STATED ON THE RECORD THAT YOUR CLIENTS  
18 ARE DISMISSED WITH PREJUDICE.

19 THE -- YES, THERE IS THAT SITUATION WITH APPELLATE  
20 PROCESS, BUT WE WILL ENTER JUDGMENT WITH REGARD TO YOUR  
21 CLIENTS.

22 MR. EMDEE: OKAY. ALL RIGHT. THANK YOU, YOUR HONOR,  
23 SO WE -- OKAY. SO YOUR UNDERSTANDING IS THAT OUR TIMELINE TO  
24 APPEAL THIS RULING DOES NOT BEGIN UNTIL ALL THE DEFENDANTS ARE  
25 OUT OF THIS MATTER?

1 THE COURT: SO, MR. EMDEE, I CAN'T GIVE LEGAL  
2 ADVICE --

3 MR. EMDEE: NO. I UNDERSTAND. I UNDERSTAND, YOUR  
4 HONOR.

5 THE COURT: OKAY. THANK YOU.

6 MR. EMDEE: ALL RIGHT.

7 MR. FLORES: THANK YOU, YOUR HONOR.

8 THE CLERK: AND, YOUR HONOR, THAT CONCLUDES THE  
9 COURT'S CALENDAR. AND WE'RE IN RECESS.

10 (THE PROCEEDINGS WERE ADJOURNED AT 10:41 A.M.)

11 -000-

12 **C E R T I F I C A T E**

13 I, ABIGAIL R. TORRES, CERTIFY THAT I AM A DULY  
14 QUALIFIED AND ACTING OFFICIAL COURT REPORTER FOR THE UNITED  
15 STATES DISTRICT COURT; THAT THE FOREGOING IS A TRUE AND  
16 ACCURATE TRANSCRIPT OF THE PROCEEDINGS AS TAKEN BY ME IN THE  
17 ABOVE-ENTITLED MATTER ON MARCH 23, 2022, AND THAT THE FORMAT  
18 USED COMPLIES WITH THE RULES AND REQUIREMENTS OF THE UNITED  
19 STATES JUDICIAL CONFERENCE.

20 DATED: JUNE 21, 2022, SAN DIEGO

21 S/ABIGAIL R. TORRES

22 \_\_\_\_\_  
23 ABIGAIL R. TORRES  
24 U.S. OFFICIAL COURT REPORTER  
25