

No. 23-55018

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMY SHERLOCK, et al.

Plaintiffs – Appellee,

v.

Gina Austin, et al.

Defendants – Appellants

On Appeal from Order of the United State District Court
for the Southern District of California

**INDEX TO EXCERPTS OF RECORD TO FERRIS & BRITTON,
APC DEFENDANTS APPELLEE BRIEF**

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INDEX TO EXCERPTS OF RECORDS

Sherlock, et al. v. Austin, et al.

United States District Court
Southern District of California, Case No. 3:20-cv-00656-JO-DEB

Tab	Date	Document/ECF No.	Bates Nos.
Vol. 1			
1	07/9/2020	NOTICE OF WITHDRAWAL OF DOCUMENT (<i>ECF No. 16</i>)	0005
2	07/20/2020	NOTICE OF MOTION AND MOTION TO DISMISS THE FIRST AMENDED COMPLAINT BY DEFENDANTS MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST, AND FERRIS & BRITTON APC(<i>ECF No. 21</i>)	0009
3	07/20/2020	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST, AND FERRIS & BRITTON, APC'S MOTION TO DISMISS FIRST AMENDED COMPLAINT Exhibits 1-8 (<i>ECF No. 21-1 through 21-8</i>)	0043
Vol. 2			
4	07/20/2020	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST, AND FERRIS & BRITTON, APC'S MOTION TO DISMISS FIRST AMENDED COMPLAINT Exhibit 9 (<i>ECF 21-9</i>)	0211
5	08/17/2020	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS MICHAEL WEINSTEIN's, SCOTT H.	0412

		TOOTHACRE'S, ELYSSA KULAS', AND FERRIS & BRITTON APC'S REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT(<i>ECF No. 24</i>)	
6	05/05/2023	DISTRICT COURT DOCKET SHEET	0427

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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Defendant Appellee Brief, Index to Excerpts of Record, Excerpt of Records Vol. 1 and Vol. 2

Signature /s/ Katelyn Simmons

Date May 5, 2023

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No. 23-55018

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FOR THE NINTH CIRCUIT

AMY SHERLOCK, et al.

Plaintiffs – Appellee,

v.

Gina Austin, et al.

Defendants – Appellants

On Appeal from Order of the United State District Court
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**EXCERPTS OF RECORD TO FERRIS & BRITTON, APC
DEFENDANTS APPELLEE BRIEF**

Volume 1 of 2

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 10 and Attorney for Plaintiffs
 11 Amy Sherlock and Minors T.S.
 12 and S.S.

13 UNITED STATES DISTRICT COURT
 14 SOUTHERN DISTRICT OF CALIFORNIA

15 ANDREW FLORES, an individual, AMY)
 16 SHERLOCK, on her own behalf and on)
 17 behalf of her minor children, T.S. and S.S.)
 18 Plaintiffs,)

19 vs.)

20 GINA M. AUSTIN, an individual;)
 21 AUSTIN LEGAL GROUP APC, a California)
 22 Corporation; JOEL R. WOHLFEIL, an)
 23 individual; LAWRENCE (AKA LARRY))
 24 GERACI, an individual; TAX &)
 25 FINANCIAL CENTER, INC., a California)
 26 Corporation; REBECCA BERRY, an)
 27 individual; JESSICA MCELFRISH, an)
 28 individual; SALAM RAZUKI, an individual;)
 NINUS MALAN, an individual;)
 MICHAEL ROBERT WEINSTEIN, an)
 individual; SCOTT TOOTHACRE, an)
 individual; ELYSSA KULAS, an individual;)
 FERRIS & BRITTON APC, a California)
 Corporation; DAVID DEMIAN, an)
 individual, ADAM C. WITT, an individual,)

Case No.: 3:20-cv-00656-BAS-DEB

NOTICE OF WITHDRAWAL OF DOCUMENT

NO ORAL ARGUMENT UNLESS REQUESTED BY THE COURT

District Judge: Hon. Cynthia A Bashant

Magistrate Judge: Hon. Mitchell D. Dembin

Courtroom: 4B(4th Floor)

Complaint Filed: April 3, 2020
 Trial Date: None

1 RISHI S. BHATT, an individual, FINCH,)
 2 THORTON, and BAIRD, a Limited Liability)
 Partnership, JAMES D. CROSBY, an)
 3 individual; ABHAY SCHWEITZER, an)
 4 individual and dba TECHNE; JAMES (AKA)
 JIM) BARTELL, an individual; BARTELL &)
 5 ASSOCIATES, a California Corporation;)
 6 NATALIE TRANG-MY NGUYEN, an)
 individual, AARON MAGAGNA, an)
 7 individual; A-M INDUSTRIES, INC., a)
 8 California Corporation; BRADFORD)
 9 HARCOURT, an individual; ALAN)
 10 CLAYBON, an individual, MICHAEL)
 TRAVIS PHELPS, an individual; THE CITY)
 11 OF SAN DIEGO, a municipality; 2018FMO,)
 LLC, a California Limited Liability)
 12 Company; FIROUZEH TIRANDAZI, an)
 13 individual; and DOES 1 through 50, inclusive,)

14 Defendants,)

15 _____)
 16 JOHN EK, an individual;)
 17 THE EK FAMILY TRUST, 1994 Trust,)

18 Real Parties In Interest.)
 19 _____)

20 **TO THE COURT AND TO ALL PARTIES NA THEIR COUNSEL FO RECORD:**

21
 22
 23 **PLEASE TAKE NOTICE** that Plaintiffs, Andrew Flores, Amy Sherlock and her minor
 24 children T.S. and S.S. (herein after “Plaintiffs”) here by respectfully submit their request
 25 for Withdrawal of Document Number 15 . The undersigned omitted necessary parties in
 26 the caption and “Parties” section. Plaintiffs ask the Court to please withdraw Docket
 27 Number 15 from the record.
 28

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Dated: July 9, 2020

Law Offices of Andrew Flores

By _____ /s/ Andrew Flores

Plaintiff *In Propria Persona*, and
Attorney for Plaintiffs
AMY SHERLOCK, Minors T.S. and
S.S.

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 10 RACHEL M. PRENDERGAST and FERRIS & BRITTON APC

11 **UNITED STATES DISTRICT COURT**
 12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 ANDREW FLORES, an individual,
 14 AMY SHERLOCK, on her own behalf
 15 and on behalf of her minor children, T.S.
 16 and S.S., JANE DOE, an individual,
 Plaintiffs,

17 vs.

18 GINA M. AUSTIN, an individual;
 19 AUSTIN LEGAL GROUP APC, a
 California Corporation; JOEL R.
 20 WOHLFEIL, an individual;
 LAWRENCE (AKA LARRY) GERACI,
 21 an individual; TAX & FINANCIAL
 CENTER, INC., a California
 22 Corporation; REBECCA BERRY, an
 23 individual; JESSICA MCELDFRESH, an
 individual; SALAM RAZUKI, an
 24 individual; NINUS MALAN, an
 25 individual; MICHAEL ROBERT
 WEINSTEIN, an individual; SCOTT
 26 TOOTHACRE, an individual; ELYSSA
 27 KULAS, an individual; RACHEL M.
 PRENDERGAST, an individual;
 28 FERRIS & BRITTON APC, a California

Case No.: 3:20-cv-00656-BAS-DEB

**NOTICE OF MOTION AND
 MOTION TO DISMISS THE FIRST
 AMENDED COMPLAINT BY
 DEFENDANTS MICHAEL
 WEINSTEIN, SCOTT H.
 TOOTHACRE, ELYSSA KULAS,
 RACHEL M. PRENDERGAST, AND
 FERRIS & BRITTON APC;
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

Date: August 24, 2020
 Time: 10:00 a.m.

**NO ORAL ARGUMENT UNLESS
 REQUESTED BY THE COURT**

District Judge: Cynthia A. Bashant
 Magistrate Judge: Daniel E. Butcher
 Courtroom: 4B (4th Floor)
 Complaint Filed: April 3, 2020
 Trial Date: None



1 Corporation; DAVID S. DEMIAN, an
2 individual, ADAM C. WITT, an
3 individual, RISHI S. BHATT, an
4 individual, FINCH, THORTON, and
5 BAIRD, a Limited Liability Partnership,
6 JAMES D. CROSBY, an individual;
7 ABHAY SCHWEITZER, an individual
8 and dba TECHNE; JAMES (AKA JIM)
9 BARTELL, an individual; BARTELL &
10 ASSOCIATES, a California Corporation;
11 MATTHEW WILLIAM SHAPIRO, an
12 individual; MATTHEW W. SHAPIRO,
13 APC, a California corporation;
14 NATALIE TRANGMY NGUYEN, an
15 individual, AARON MAGAGNA, an
16 individual; A-M INDUSTRIES, INC., a
17 California Corporation; BRADFORD
18 HARCOURT, an individual; ALAN
19 CLAYBON, an individual; SHAWN
20 MILLER, an individual; LOGAN
21 STELLMACHER, an individual;
22 EULENTHIAS DUANE ALEXANDER,
23 an individual; BIANCA MARTINEZ; an
24 individual; THE CITY OF SAN DIEGO,
25 a municipality; 2018FMO, LLC, a
26 California Limited Liability Company;
27 FIROUZEH TIRANDAZI, an individual;
28 STEPHEN G. CLINE, an individual;
JOHN DOE, an individual; and DOES 2
through 50, inclusive,
Defendants,

JOHN EK, an individual;
THE EK FAMILY TRUST, 1994 Trust,
Real Parties In Interest.

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26 ///
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1 **TO PLAINTIFFS ANDREW FLORES, AMY SHERLOCK, T.S. and**
2 **S.S, JANE DOE AND THE COURT:**
3 **NOTICE**

4 PLEASE TAKE NOTICE that on August 24, 2020 at 10:00 a.m. or as soon
5 thereafter as this motion may be heard in courtroom 4B of the United States Court
6 for the Southern District of California, Edward J. Schwartz U.S. Courthouse, 221
7 W. Broadway, San Diego, California 92101. Defendants Michael Weinstein, Scott
8 H. Toothacre, Elyssa Kulas, Rachel M. Prendergast, and Ferris & Britton
9 (Collectively “F&B Defendants”) will and hereby do move this Court for an Order
10 dismissing them from this litigation with Prejudice. Further, Plaintiffs Andrew
11 Flores, Amy Sherlock, T.S. and S.S, Jane Doe (Collectively “Plaintiffs”) causes of
12 action for Violations of Civil Rights §§1983, 1985, 1986, and Declaratory Relief
13 should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6). Oral
14 argument will not be heard unless requested by the Court.

15 F&B Defendants bring this Motion on the grounds that the First Amended
16 Complaint does not— and could never— state a claim upon which relief may be
17 granted. This Motion is based on this Notice of Motion, the accompanying
18 Memorandum of Points and Authorities, Request for Judicial Notice with attached
19 Exhibits, and all pleadings, records and files herein, such matters of which the
20 Court may take judicial notice, and any such further documents and argument that
21 may be offered to this court before or at the hearing of this motion.

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0009



1 F&B Defendants also join in any motions by the other Defendants
2 challenging Plaintiffs' First Amended Complaint, to the extent those motions
3 support the dismissal of the First Amended Complaint as to F&B Defendants.
4

5 Dated: July 20, 2020 KJAR, McKENNA & STOCKALPER LLP

6
7 By: /s/ Gregory B. Emdee
8 JAMES J. KJAR
9 JON R. SCHWALBACH
10 GREGORY B. EMDEE
11 Attorneys for Defendants Michael
12 Weinstein, Scott H Toothacre,
13 Elyssa Kulas, Rachel M. Prendergast,
14 and Ferris & Britton
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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE.....3

TABLE OF AUTHORITIES7

MEMORANDUM OF POINTS AND AUTHORITIES.....11

1.0 INTRODUCTION.....11

2.0 PROCEDURAL HISTORY11

3.0 LEGAL STANDARD FOR MOTION TO DISMISS13

4.0 ARGUMENT.....14

4.1 PLAINTIFFS’ FIRST AMENDED COMPLAINT MUST BE DISMISSED
BECAUSE F&B DEFENDANTS ARE IMMUNE FROM LIABILITY UNDER
THE NOERR-PENNINGTON DOCTRINE.....15

4.2 PLAINTIFFS’ FIRST AMENDED COMPLAINT FAILS TO STATE ANY
CLAIMS AGAINST F&B DEFENDANTS UPON WHICH RELIEF CAN BE
GRANTED.17

4.21 Plaintiffs Have Failed to Provide “Fair Notice” of the Claims Being Asserted
and the Grounds Upon Which They Rest18

4.22 Plaintiffs Have Failed to Allege Enough Facts to State a Claim for Relief
Plausible on Its Face19

4.3 THIS COURT SHOULD NOT ENTERTAIN PLAINTIFFS’ BASELESS
CLAIMS20

4.31 Plaintiffs’ Causes of Action for Declaratory Relief are an Improper
Attempt to Circumvent the California Court of Appeals.....21

4.32 Plaintiffs’ Causes of Action for Violations of Sections 1983, 1985 & 1986
Must Be Dismissed Because They Cannot Allege That F&B Defendants
Acted Under Color of State Law.22

4.33 Plaintiffs’ §1985 Claims Fails Due to a Failure to Allege Racial or Class-
Based Discrimination.....24

4.4 PLAINTIFFS’ ENTIRE FIRST AMENDED COMPLAINT, AS IT RELATES
TO F&B DEFENDANTS, MUST BE STRIKEN UNDER THE CALIFORNIA
ANTI-SLAPP STATUTE.....25

4.41 F&B Defendants’ Litigation Acts Are Protected Under §425.16.....26

4.42 F&B Defendants’ Litigation Speech is Protected Activity.....27

1 4.43 Plaintiffs Cannot Show their Pleading is Adequate or Amendable28

2 4.5 PLAINTIFFS LACK STANDING TO SUE29

3 4.6 MOTION TO STRIKE REDUNDANT, IMMATERIAL, IMPERTINENT, AND

4 SCANDALOUS MATTERS30

5 4.7 PLAINTIFFS CANNOT FIX THE MANY DEFECTS TO THEIR CLAIMS,

6 NOR DO THEY WANT TO, SO THEY SHOULD NOT BE GIVEN LEAVE TO

7 AMEND.....30

7 **5.0 CONCLUSION31**

8

9

10

11

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15

16

17

18

19

20

21

22

23

24

25

26

27

28



TABLE OF AUTHORITIES

CASES

Aetna Life Ins. Co. of Hartford v. Haworth
300 U.S. 227, 239–40, 57 S.Ct. 461, 463–64, 81 L.Ed. 617 (1937)..... 22

Ashcroft v. Iqbal
556 U.S. 662, 678 (2009).....passim

Associated General Contractors v. California State Council of Carpenters
459 U.S. 519, 526 (1983)..... 15

Balistreri v. Pacifica Police Dep’t
901 F.2d 696, 699 (9th Cir. 1990)..... 14

Bell Atlantic Corp. v. Twombly
550 U.S. 544, 556 (2007).....passim

Bergstein v. Stroock & Stroock & Lavan LLP
(2015) 236 Cal. App.....28, 29

Boulware v. Nevada Dep’t of Human Resources
960 F.2d 793, 800 (9th Cir. 1992)..... 16

Bretz v. Kelman
773 F.2d 1026, 1029-1030 (9th Cir. 1985)26

Bulletin Displays, LLC v. Regency Outdoor Adver., Inc.
448 F. Supp. 2d. 1172, 1179 (2006).....26, 27

Cabral v. Martins
(2009) 177 Cal.App.4th 471, 479–480 28

Chahal v. Paine Webber Inc.
725 F. 2d 20, 23 (2d Cir. 1984).....25

Clegg v. Cult Awareness Network
18 F.3d 752, 754-55 (9th Cir. 1994) 15

Contreras v. Dowling
(2016) 5 Cal. App. 5th 394, 409.....28

DC Comics v. Pac. Pictures Corp.
706 F.3d 1009, 1013 (9th Cir. 2013).....27

Dean v. Friends of Pine Meadow
21 Cal.App.5th 91, 108–109 (2018)31

Deveraturda v. Globe Aviation Security Services
454 F.3d 1043, 1049-50 (9th Cir. 2006)31

Evers v. County of Custer
745 F.2d 1196, 1204 (9th Cir. 1984)..... 16

Fantasy, Inc. v. Fogerty
984 F.2d 1524, 1527 (9th Cir. 1993).....31

Finton Construction, Inc. v. Bidna & Keys, APLC
238 Cal.App.4th 200, 212 (2015)..... 18

Flagg Bros., Inc. v. Brooks

1 436 U.S. 149, 156 (1978).....24

2 *Florer v. Congregation Pidyon Shevuyim*

3 639 F.3d 916, 922 (9th Cir. 2011).....24

4 *Friedman v. Knecht*

5 248 Cal.App.2d 455, 462 (1967).....18

6 *Globetrotter Software, Inc. v. Elan Computer Group, Inc.*

7 63 F.Supp.2d 1127, 1130 (1999).....26, 27

8 *Golo, LLC, v. Higher Health Network, LLC, and Troy Shanks*

9 No. 3:18-CV-2434-GPC-MSB) 2019 WL 446251, at *4 (S.D. Cal., Feb. 5, 2019)

1032

11 *Gomez v. Bidz.com, Inc.*

12 No. CV 09-3216 CBM (EX)) 2011 WL 13190130, at *1 (C.D. Cal., Feb. 2,

13 2011).....15

14 *Gottesman v. Santana*

15 263 F. Supp. 3d 1034 (2017).....27

16 *Harmston v. City and County of San Francisco*

17 627 F.3d 1273, 1279–80 (9th Cir. 2010).....23

18 *Jarrow Formulas, Inc. v. LaMarche*

19 (2003) 31Cal.4th 728, 733–74128

20 *Kaiser Found. Health Plan, Inc. v. Abbott Labs., Inc.*

21 552 F.3d 1033, 1044 (9th Cir. 2009).....16

22 *Kearney v. Foley & Lardner*

23 566 F.3d 826, 832 (9th Cir. 2009).....17

24 *Kirkpatrick v. County of Washoe*

25 792 F.3d 1184, 1191 (9th Cir. 2015).....20

26 *Kokkonen v. Guardian Life Ins. Co. of Am.*

27 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994).....30

28 *Kottle v. Nw Kidney Ctrs. supra*

146 F.3d at 1059.....16

Longacre v. Kitsap County

744 Fed.Appx. 450, 451 (9th Cir. 2018).....15

Ludwig v. Superior Court

(1995) 37 Cal.App.4th 8, 17–19.....27

Lugar v. Edmondson Oil Co.

457 U.S. 922, 936-937 (1982).....24

Lujan v. Defenders of Wildlife

504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).....30

McCalden v. California Library Ass'n

955 F.2d 1214, 1219 (9th Cir.).....23

McQuillion v. Schwarzenegger

369 F.3d 1091, 1099 (9th Cir. 2004).....31

1 *Microsoft Corp. v. Motorola, Inc.*,
 2 795 F.3d 1024, 1047 (9th Cir. 2015)..... 16
 3 *Migdal v. Rowe Price-Fleming Int’l, Inc.*
 4 248 F3d 321, 328 (4th Cir. 2001)..... 20
 5 *Mindys Cosmetics, Inc. v. Dakar*
 6 611 F.3d 590, 596 (9th Cir. 2010)..... 28
 7 *Naffe v. Frey*
 8 789 F.3d 1030 (9th Cir. 2015)..... 23, 24
 9 *Navellier v. Sletten*
 10 (2002) 29 Cal.4th 82, 88 27
 11 *Noerr-Pennington Doctrine* 18
 12 *Olsen v. Idaho State Bd. Of Med.*
 13 363 F.3d 916, 930 (9th Cir. 2004)..... 23
 14 *Osborn v. Bank of United States*
 15 9 Wheat. 738, 819, 6 L.Ed. 204 22
 16 *Palm v. Los Angeles Department of Water and Power*
 17 889 F.3d 1081, 1084 (9th Cir. 2018)..... 31
 18 *Papasan v. Allain*
 19 478 U.S. 265, 286 (1986)..... 15
 20 *Pareto v. FDIC*
 21 139 F.3d 696, 699 (9th Cir. 1998)..... 15
 22 *Planned Parenthood Fed’n of Am. v. Ctr. for Med. Progress*
 23 890 F.3d 828, 834, 2018 U.S. App. LEXIS 12649 26, 27, 29
 24 *Polk County v. Dodson*
 25 454 U.S. 312, 325 (1981)..... 25
 26 *Price v. Hawaii*
 27 939 F.2d 702 (9th Cir. 1991)..... 24
 28 *Public Affairs Associates v. Rickover*
 369 U.S. 111, 112, 82 S.Ct. 580, 581–82, 7 L.Ed.2d 604 (1962)..... 22
Public Serv. Comm’n of Utah v. Wycoff Co.
 344 U.S. 237, 250, 73 S.Ct. 236, 243–44, 97 L.Ed. 291 (1952)..... 22
Resolute Forest Prods. v. Greenpeace Int’l
 302 F. Supp. 3d 1005, 1024 (2017)..... 26
Reyn’s Pasta Bella, LLC v. Visa USA, Inc.
 442 F.3d 741, 746 (9th Cir. 2006)..... 15
Rupert v. Bond
 68 F.Supp.3d 1142 (2014)..... 18
Rusheen v. Cohen
 (2006) 37 Cal.4th 1048, 1056 27, 28
Rutledge v. Arizona Bd. Of Regents
 859 F. 2d 732, 735 (9th Cir. 1988)..... 25

1 *Simmons v. Sacramento County Superior Court*
2 318 F.3d 1156, 1161 (9th Cir. 2003).....24, 25
3 *Skelly Oil Co. v. Phillips Petroleum Co.*
4 339 U.S. 667, 672, 70 S.Ct. 876, 879, 94 L.Ed. 1194 (1950).....22
5 *Sosa v. DIRECTV, Inc.*
6 437 F.3d 923, 930 (9th Cir. 2006).....16
7 *Sutton v. Providence Saint Joseph Medical Center*
8 192 F.3d 826, 836 (9th Cir. 1999).....24
9 *Thayer v. Kabateck Brown Kellner LLP*
10 (2012) 207 Cal.App.4th 141.....28
11 *Theme Promotions, Inc. v. News Am. Mktg. FSI,*
12 546 F.3d 991, 1007 (9th Cir. 2008).....17
13 *Tsao v. Desert Palace, Inc.*
14 698 F.3d 1128, 1139 (9th Cir. 2012).....23
15 *UMG Recordings, Inc. v. Global Eagle Entertainment, Inc.*
16 117 F.Supp.3d 1092, 1113 (C.D. Cal. 2015)18
17 *United States ex rel. Chunie v. Ringrose*
18 788 F.2d 638, 643 n. 2 (9th Cir.).....15
19 *West v. Atkins*
20 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988).....23
21 *Western Sugar Cooperative v. Archer-Daniels-Midland Co.*
22 No. CV 1134739-CBM (MANx) 2013 WL 12123307, at *1 (C.D. Cal., Sept. 16,
23 2013).....18
24 *White v. Lee*
25 227 F.3d 1214, 1242 (9th Cir. 2000).....30
26 *Yagman v. Garcetti*
27 852 F.3d 859, 863 (9th Cir. 2017).....32

STATUTES

21 42 U.S.C. § 1983.....16, 23
22 42 U.S.C. § 1985.....23, 25, 26
23 42 U.S.C. § 1986.....23, 26
24 California Civil Code § 47.....18, 28
25 California Code of Civil Procedure § 425.16.....26, 27, 29, 30
26 Federal Rules of Civil Procedure 12.....14, 15

OTHER AUTHORITIES

27 *Noerr-Pennington Doctrine*.....16, 17, 18, 31

1
2
3
4
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7
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11
12
13
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MEMORANDUM OF POINTS AND AUTHORITIES

1.0 INTRODUCTION

In this action, Plaintiffs, Andrew Flores, Amy Sherlock, T.S. and S.S, Jane Doe (Collectively “Plaintiffs”) attempt to jump into the fray of this ongoing litigation saga after Darryl Cotton (hereinafter “Cotton”) lost his jury trial in San Diego Superior Court and Cotton abandoned his appeal in the California Court of Appeal. Am. Compl. ¶¶ 18, 236, 237. Rather than accept the outcome, Plaintiffs have named everyone remotely connected to Cotton’s state court litigation, claiming a grand conspiracy.

The moving Defendants, Michael Weinstein, Scott Toothacre, Elyssa Kulas, Rachel M. Prendergast (a former paralegal), and Ferris & Britton, APC (hereinafter collectively “F&B Defendants”) were involved in the representation of Larry Geraci and Rebecca Berry in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL in San Diego Superior Court (hereinafter “state court action”). Plaintiff Andrew Flores specially appeared and represented Cotton in various proceedings in the underlying state court action and over time became personally invested in the outcome of that state court action. Am. Compl. ¶¶ 182, 184, 192, 227. In retaliation for the loss of the underlying state court action, Plaintiffs bring this suit against the F&B Defendants for their litigation acts in the state court action i.e. “filing and/or maintaining a lawsuit”. Am. Compl. ¶¶ 130, 158, 161, 167, 168, 199, 236, 290. Despite Plaintiffs’ First Amended Complaint being 45 pages with 37 pages of exhibits attached, it is inadequately pled. The First Amended Complaint is vague, unintelligible, and barred. Thus, Plaintiffs’ First Amended Complaint should be dismissed.

2.0 PROCEDURAL HISTORY

This action arises out of an unsuccessful underlying agreement for the purchase and sale of real property between Cotton and Co-Defendant Larry Geraci (hereinafter “Geraci”), which resulted in a state court lawsuit.

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1 Specifically, on March 21, 2017, Geraci, through the legal representation of the
 2 F&B Defendants, filed a complaint against Plaintiff in San Diego Superior Court
 3 (hereinafter “state court action”) *Geraci v. Cotton*, Case No.: 37-2017-00010073-
 4 CU-BC-CTL, alleging, among other things, that Cotton breached their contract;
 5 Cotton cross-complained for, among other things, breach of contract and fraud.
 6 Am. Compl., ¶¶ 130, 133 (Defendant’s Request for Judicial Notice, **Exhibit “1”**,
 7 **Exhibit “5”**, and **Exhibit “6”**.) Plaintiff Andrew Flores filed a motion to intervene
 8 in the state court action, but it was denied. Am. Compl. ¶ 182.

9 Following a jury trial in the state court action, judgment was entered in favor
 10 of Geraci and against Cotton on both the complaint and the cross-complaint.
 11 (Defendant’s Request for Judicial Notice, **Exhibit “3”** & **Exhibit “4”**). Cotton
 12 attempted to appeal the state court decision, but his appeal was dismissed for
 13 procedural failures. Compl. ¶¶ 644, 654. (Defendant’s Request for Judicial Notice,
 14 **Exhibit “8”**.)

15 Unhappy with the adverse ruling in the state court action, Cotton and
 16 Plaintiff Andrew Flores, filed their respective lawsuits in federal court. Am.
 17 Compl., ¶¶ 215, 216, 236, 237 (Defendant’s Request for Judicial Notice, **Exhibit**
 18 **“7”**). On May 13, 2020, Cotton filed a First Amended Complaint in his federal
 19 suit, which refers to the initial Complaint and events in this matter. Cotton Federal
 20 Suit First Am. Compl., ¶¶ 119, 122-124, 127-129, 133 (Defendant’s Request for
 21 Judicial Notice, **Exhibit “2”**.)

22 Plaintiff’s First Amended Complaint adds a fourth cause of action against
 23 the F&B Defendants, Plaintiffs now assert claims for Violation of Federal Civil
 24 Rights pursuant to 42 U.S.C. §§ 1983, 1985, & 1986 and declaratory relief. Am.
 25 Compl., ¶¶ 266-302; 309-314. Despite Plaintiffs amending their Complaint,
 26 Plaintiffs’ allegations still only claim that F&B Defendants represented Geraci in
 27 the underlying state court action. Am. Compl., ¶¶ 130, 136-140, 152, 153, 158,
 28 161, 162, 167, 168, 197, 199, 202, 236. In fact, Defendant Rachel Prendergast is

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1 not even mentioned once in the First Amended Complaint. *See* Am. Compl.
 2 Defendant Elyssa Kulas is only mentioned as being a defendant in this suit and as a
 3 part of the law firm Ferris & Britton APC. Am. Compl. ¶¶ 34, 37. As such, all
 4 F&B Defendants’ alleged conduct arises from their lawful litigation activities i.e.
 5 “filing and/or maintaining a lawsuit”. Am. Compl. ¶¶ 236, 290.

6 Plaintiffs admit that they initiated this matter to re-litigate the existence of
 7 the same November 2, 2016 contract that was subject of the state court action and
 8 re-litigate the state court action. Am. Compl. ¶¶ 19, 236, 237, 270; Compl. ¶¶ 5-6.
 9 Plaintiffs also seek to have the federal courts improperly intervene and act as an
 10 appellate court for the state court’s judgments and ruling. Am. Compl. ¶ 311;
 11 Compl., ¶¶ 2-3. The First Amended Complaint is mostly unintelligible and devoid
 12 of any facts sufficient to adequately support any of Plaintiffs’ causes of action
 13 against F&B Defendants. As such, F&B Defendants are entirely unable to
 14 determine what facts support the allegations against them.

15 Plaintiffs’ improper use of the federal system as an appellate court should be
 16 halted. Therefore, F&B Defendants respectfully request this Court dismiss
 17 Plaintiffs’ entire First Amended Complaint against F&B Defendants, with
 18 prejudice. Further, this Court should not grant Plaintiffs leave to amend.

19 **3.0 LEGAL STANDARD FOR MOTION TO DISMISS**

20 Fed. R. Civ. P. 12(b)(6) provides this Court’s authority to dismiss Plaintiffs’
 21 First Amended Complaint for “failure to state a claim upon which relief can be
 22 granted.” Dismissal of a complaint can be based on either a lack of a cognizable
 23 legal theory or the absence of sufficient facts alleged under a cognizable legal
 24 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). As a
 25 result of the Supreme Court’s decision in *Bell Atlantic Corp. v. Twombly*, a
 26 complaint must indicate more than mere speculation of a right to relief. *Bell*
 27 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A complaint is subject to
 28



1 dismissal unless it alleges “enough facts to state a claim to relief that is plausible
2 on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

3 In ruling on a Rule 12(b)(6) motion, a court should not accept legal
4 conclusions cast in the form of factual allegations if those conclusions cannot
5 reasonably be drawn from the facts alleged.¹ Moreover, “conclusory allegations of
6 law and unwarranted inferences are not sufficient to defeat a [Rule 12(b)(6)]
7 motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998). Courts will
8 not assume plaintiffs “can prove facts which [they have] not alleged, or that the
9 defendants have violated ... laws in ways that have not been alleged.” *Associated*
10 *General Contractors v. California State Council of Carpenters*, 459 U.S. 519, 526
11 (1983). However, this Court may take “judicial notice of ‘matters of public
12 record,’” i.e. documents filed in Darryl Cotton’s lawsuits, which are attached to the
13 concurrently filed request for judicial notice.²

14 **4.0 ARGUMENT**

15 Plaintiffs are attempting to circumvent the proper appeals process. Further,
16 Plaintiffs’ First Amended Complaint must be dismissed as it does not meet the
17 stringent pleading requirements. As further evidenced by Plaintiff’s First Amended
18 Complaint, Plaintiffs will not be able to cure these defects:

19 **First**, Plaintiffs’ claims must fail because F&B Defendants are immune from
20 liability under the *Noerr-Pennington* Doctrine for any litigation-related activity as
21 it relates to the state court action.

22 ¹ *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994) (citing
23 *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *United States ex rel. Chunie v.*
24 *Ringrose*, 788 F.2d 638, 643 n. 2 (9th Cir.), cert. denied, 454 U.S. 1031 (1981)).

25 ² Fed.R.Evid. 201; *Longacre v. Kitsap County*, 744 Fed.Appx. 450, 451 (9th Cir.
26 2018) (“The district court did not abuse its discretion by taking judicial notice of
27 documents from the state court action”); *Reyn’s Pasta Bella, LLC v. Visa USA,*
28 *Inc.*, 442 F.3d 741, 746 (9th Cir. 2006) (“We may take judicial notice of court
filings”); *Gomez v. Bidz.com, Inc.*, No. CV 09-3216 CBM (EX) 2011 WL
13190130, at *1 (C.D. Cal., Feb. 2, 2011) (“The Court takes judicial notice of
Exhibits B, C, and D, because they are public court filings”).



1 **Second**, even accepting Plaintiffs allegations as true, Plaintiffs have failed to
 2 state facts sufficient to constitute any cause of action against F&B Defendants.
 3 Plaintiffs’ 47-page First Amended Complaint is unintelligible, vague, and
 4 ambiguous, lacks any facts with the requisite specificity to support any of their
 5 causes of action. It also fails to even substantively mention Defendants Prendergast
 6 or Kulas.

7 **Third**, Plaintiffs cannot allege that F&B Defendants were state actors.

8 **Fourth**, Plaintiffs’ allegations against F&B Defendants arise entirely out of
 9 protected activity and all pendant state law claims must be stricken as a violation
 10 of the applicable California anti-SLAPP statute.

11 **Fifth**, Plaintiffs lack standing to sue.

12 **4.1 PLAINTIFFS’ FIRST AMENDED COMPLAINT MUST BE**
 13 **DISMISSED BECAUSE F&B DEFENDANTS ARE IMMUNE**
 14 **FROM LIABILITY UNDER THE NOERR-PENNINGTON**
 15 **DOCTRINE.**

16 “The Noerr-Pennington doctrine shields individuals from, inter alia, liability
 17 for engaging in litigation.”³ Noerr-Pennington immunity applies to claims under
 18 civil rights statutes (*see, e.g.*, 42 U.S.C. § 1983) that are based on the petitioning of
 19 public authorities, such as the courts.⁴ Moreover, “the Noerr-Pennington doctrine
 20 sweeps broadly” and applies to any claims that are based upon “advocacy before
 21 any branch of either federal or state government.” *Kottle v. Nw Kidney Ctrs.*,
 22 *supra*, 146 F.3d at 1059.

23 _____
 24 ³ *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 1047 (9th Cir. 2015) (emphasis
 25 in original, internal citations omitted); *accord Kaiser Found. Health Plan, Inc. v.*
 26 *Abbott Labs., Inc.*, 552 F.3d 1033, 1044 (9th Cir. 2009).

27 ⁴ *Boulware v. Nevada Dep’t of Human Resources*, 960 F.2d 793, 800 (9th Cir.
 28 1992); *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 930 (9th Cir. 2006) (holding that the
 Supreme Court has held that the Noerr-Pennington principles “apply with full force
 in other statutory contexts” outside antitrust); *see Evers v. County of Custer*, 745
 F.2d 1196, 1204 (9th Cir. 1984).



1 “[B]ecause Noerr-Pennington protects federal constitutional rights, it applies
 2 in all contexts, even where a state law doctrine advances a similar goal. [Citation.]
 3 There is no reason that Noerr-Pennington and California privilege law cannot both
 4 apply to [plaintiff’s] intentional interference claims, and we hold that the district
 5 court properly considered both doctrines.” *Theme Promotions, Inc. v. News Am.*
 6 *Mktg. FSI*, 546 F.3d 991, 1007 (9th Cir. 2008).

7 A three-part test determines whether the defendant’s conduct is immunized
 8 under Noerr-Pennington: (1) identify whether the lawsuit imposes a burden on
 9 petitioning rights, (2) decide whether the alleged activities constitute protected
 10 petitioning activity, and (3) analyze whether the statutes at issue may be construed
 11 to preclude that burden on the protected petitioning activity. *Kearney v. Foley &*
 12 *Lardner*, 566 F.3d 826, 832 (9th Cir. 2009). Application of this test renders F&B
 13 Defendants immune from any liability in this case under Noerr-Pennington.

14 As Plaintiffs admit in their pleadings, Plaintiffs’ claims against F&B
 15 Defendants in this action arise entirely out of F&B Defendants’ alleged
 16 participation in the state court action in 2017 i.e. “filing and /or maintaining a
 17 lawsuit”. Am. Compl., ¶¶ 130, 136-140, 152, 153, 156, 158, 160-162, 167, 168,
 18 197, 199, 202, 236, 290. Plaintiffs allege that “[t]his suit is the fifth suit to be filed
 19 that alleges that Geraci and his conspirators have committed a fraud on the court
 20 by filing and/or maintaining a lawsuit . . .”. Am. Compl. at ¶¶ 130, 236, 290.
 21 Plaintiffs also allege that the F&B Defendants filed a demurrer. Am. Compl. ¶¶
 22 136-140, 158, 160-162. Plaintiffs further allege that F&B Defendant’s made
 23 arguments Plaintiffs deem baseless. Am. Compl. ¶ 197. Plaintiffs additionally
 24 allege that the F&B Defendants entered into a stipulation with Cotton’s counsel.
 25 Am. Compl. ¶ 152. Moreover, Plaintiffs allege that F&B Defendants asserted
 26 motions in limine and raised affirmative defenses. Am. Compl. ¶¶ 156, 202.

27 In total, Plaintiffs simply allege that F&B Defendants represented Geraci in
 28 the state court action, such representation and litigation conduct falls squarely

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1 within the protection of the Noerr-Pennington Doctrine. Furthermore, to the extent
2 that F&B Defendants were involved in the state court action at all—whether in a
3 pre-litigation context or otherwise—such conduct remains protected by the Noerr-
4 Pennington Doctrine as “incidental to the prosecution of the suit.”⁵

5 “The Noerr-Pennington doctrine can be applied in tandem with the
6 California litigation privilege.” *UMG Recordings, Inc. v. Global Eagle*
7 *Entertainment, Inc.*, 117 F.Supp.3d 1092, 1113 (C.D. Cal. 2015). “The [litigation]
8 privilege in section 47, subdivision 2 of the Civil Code, however, is based on the
9 desire of the law to protect attorneys in their primary function – the representation
10 of a client.” *Friedman v. Knecht*, 248 Cal.App.2d 455, 462 (1967). “Without the
11 litigation privilege, attorneys would simply be unable to do their jobs properly.”⁶

12 Ultimately, it is well-established that Noerr-Pennington provides F&B
13 Defendants with a complete defense to Plaintiffs’ claims. Plaintiffs cannot satisfy
14 any of the exceptions to the applicability of the Noerr-Pennington Doctrine.
15 Consequently, Plaintiffs’ First Amended Complaint should be dismissed.

16 **4.2 PLAINTIFFS’ FIRST AMENDED COMPLAINT FAILS TO**
17 **STATE ANY CLAIMS AGAINST F&B DEFENDANTS UPON**
18 **WHICH RELIEF CAN BE GRANTED.**

19 To survive a motion to dismiss, the First Amended Complaint “must contain
20 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
21 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Bell Atlantic*
22 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A formulaic recitation of the

23 ⁵ See *Western Sugar Cooperative v. Archer-Daniels-Midland Co.*, No. CV
24 1134739-CBM (MANx) 2013 WL 12123307, at *1 (C.D. Cal., Sept. 16, 2013)
25 (“The Ninth Circuit has explained that ‘in the litigation context, not only petitions
26 [such as a complaint, answer, or other documents and pleadings] sent directly to
27 the court in the course of litigation, but also “conduct incidental to the prosecution
28 of the suit [like discovery communications and settlement demands]” is protected
by the Noerr-Pennington doctrine.””).

⁶ *Finton Construction, Inc. v. Bidna & Keys, APLC*, 238 Cal.App.4th 200, 212
(2015); see also *Rupert v. Bond*, 68 F.Supp.3d 1142 (2014). 0023



1 elements of a cause of action will not suffice. *Bell Atlantic Corp. v. Twombly*,
2 *supra*, 550 U.S. at 555. Labels and conclusions are insufficient to meet the
3 plaintiff’s obligation to provide the grounds of his entitlement to relief. *Id.*
4 “Factual allegations must be enough to raise a right to relief above the speculative
5 level.” *Id.*

6 Plaintiffs’ First Amended Complaint, on its face, fails to allege any facts
7 sufficient to state a claim for relief. Evidenced by Plaintiffs’ repetitive and
8 unintelligible pleadings, motion work, and other requests, no amount of
9 amendment will cure the significant deficiencies in the First Amended Complaint.
10 The First Amended Complaint contains no factual allegations to support its alleged
11 causes of action against F&B Defendants, neglects to state the necessary elements
12 of each cause of action, and is based entirely on vague, ambiguous, and conclusory
13 statements. The few F&B Defendant specific facts included in the First Amended
14 Complaint are implausible conjectures insufficient to support any claim for relief.
15 F&B Defendants are vaguely mentioned in their capacity as attorneys and firm,
16 however due to the lack of substantive and identifying allegations, F&B
17 Defendants’ involvement and wrongdoing is left to pure speculation.

18 **4.21 Plaintiffs Have Failed to Provide “Fair Notice” of the Claims Being**
19 **Asserted and the Grounds Upon Which They Rest**

20 Plaintiffs cannot allege some vague and speculative wrong has been
21 committed and demand relief. Instead, the pleading must give “fair notice” of the
22 claims asserted and the “grounds upon which it rests.” *Bell Atlantic Corp., supra*,
23 550 U.S. at 555. Without any substantive allegations pled, F&B Defendants cannot
24 properly prepare a defense. *Bell Atlantic Corp., supra*, 550 U.S. at 565, n. 10. F&B
25 Defendants should not be dragged into court, forced to prepare an answer by
26 guesswork, on meritless and baseless allegations alone. This requirement of “fair
27 notice” also serves to “prevent costly discovery on claims with no underlying
28 factual or legal basis.” *Migdal v. Rowe Price-Fleming Int’l, Inc.*, 248 F3d 321, 328

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1 (4th Cir. 2001).

2 Here, Plaintiffs’ First Amended Complaint fails to allege, with any amount
3 of specificity, facts that give “fair notice” of the claims asserted against F&B
4 Defendants. Plaintiffs vaguely allege that “attorneys ... committed multiple acts
5 that constitute a fraud on the court”. Am. Compl., at ¶ 17. The only other reference
6 to F&B Defendants is that they represented Geraci in the underlying state court
7 action. Am. Compl., ¶¶ 130, 136-140, 152, 153, 156, 158, 160-162, 167, 168, 197,
8 199, 202.

9 There are no facts to support how these vague assertions relate or support
10 any of the causes of action against F&B Defendants. Notwithstanding that
11 litigation activities are protected, F&B Defendants are unsure of what harm, if any,
12 their alleged conduct might have caused because it is not pled.

13 Plaintiffs’ First Amended Complaint is nothing more than a recitation of
14 Plaintiffs’ version of the history regarding the underlying contract between Geraci
15 and Cotton—the exact matters already decided in the state court action. The First
16 Amended Complaint is devoid of any factual allegations that would provide F&B
17 Defendants fair notice of the claims asserted against them because Plaintiffs
18 possess no actual facts to support their allegations.

19 **4.22 Plaintiffs Have Failed to Allege Enough Facts to State a Claim for**
20 **Relief Plausible on Its Face**

21 The rule set forth in *Bell Atlantic Corp.* requires that a party demonstrate the
22 plausibility, as opposed to the conceivability, of its causes of action in the
23 complaint. *Bell Atlantic Corp., supra*, 550 U.S. at 936. While “fair notice” and
24 “plausibility” are related concepts, they are analyzed as separate issues: “When
25 evaluating a complaint, we ask whether the pleading gives the defendant fair notice
26 of the claim and includes sufficient ‘factual matter’ to state a plausible ground for
27 relief.” *Kirkpatrick v. County of Washoe*, 792 F.3d 1184, 1191 (9th Cir. 2015).
28 Plausibility asks for more than a “sheer probability” that a defendant has acted
unlawfully. *Ashcroft, supra*, 556 U.S. at 678.

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1 Here, Plaintiffs have not alleged a “sheer probability” of wrongdoing, let
 2 alone a coherent set of facts to support a plausible claim. The First Amended
 3 Complaint’s claims against F&B Defendants are vague, conclusory, speculative,
 4 and implausible. The bare allegations, which hardly ever refer to F&B Defendants,
 5 simply do not give rise to a “plausibl[e] suggest[ion of] an entitlement to relief.”
 6 *Ashcroft*, supra, 556 U.S. at 681. In other words, the First Amended Complaint’s
 7 factual allegations do not support a plausible inference that F&B Defendants
 8 engaged in any cognizable wrongdoing against Plaintiffs.

9 Plaintiffs blithely note that the F&B Defendant’s arguments, lawsuit and
 10 opposition argument was made “without justification”, Plaintiffs were unhappy
 11 with the outcome, and thus, F&B Defendants must have schemed with Geraci to
 12 deprive Cotton of the subject property. Am. Compl. ¶¶ 138-140, 153, 197.
 13 Plaintiffs allege absolutely no facts that remotely demonstrate the plausibility of
 14 these allegations of civil rights violations. The First Amended Complaint lays out
 15 Thirty-Five (35) pages of “facts,” and then lists each cause of action with
 16 incomplete legal elements. No cause of action asserted against F&B Defendants
 17 relates any facts to support the claims. Plaintiffs solely blame F&B Defendants for
 18 filing the state court action and making arguments Plaintiffs deems to be “without
 19 justification” in F&B Defendants’ role as Geraci’s attorneys. Am. Compl., ¶¶ 13,
 20 14, 17, 138-140, 153, 197. Therefore, Plaintiffs have not “nudged” their claims
 21 “across the line from conceivable to plausible.” *Bell Atlantic Corp*, supra, 550 U.S.
 22 at 570. As the First Amended Complaint fails to allege any facts to state a claim for
 23 relief that is plausible on its face, dismissal is proper. *See Bell Atlantic Corp.*,
 24 supra, 550 U.S. at 555–56.

25 **4.3 THIS COURT SHOULD NOT ENTERTAIN PLAINTIFFS’**
 26 **BASELESS CLAIMS**

27 Plaintiffs’ second, third, and fourth causes of action are for violations of
 28 civil rights. Plaintiffs’ sixth cause of action is for “declaratory relief”. As explained
 below, each are invalid as to the F&B Defendants.

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4.31 Plaintiffs’ Causes of Action for Declaratory Relief are an Improper Attempt to Circumvent the California Court of Appeals

A lawsuit seeking federal declaratory relief must first present an actual case or controversy within the meaning of Article III, section 2 of the United States Constitution. *Aetna Life Ins. Co. of Hartford v. Haworth*, 300 U.S. 227, 239–40, 57 S.Ct. 461, 463–64, 81 L.Ed. 617 (1937); A ‘controversy’ in this sense must be one that is appropriate for judicial determination. *Osborn v. Bank of United States*, 9 Wheat. 738, 819, 6 L.Ed. 204. It must also fulfill statutory jurisdictional prerequisites. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 672, 70 S.Ct. 876, 879, 94 L.Ed. 1194 (1950). If the suit passes constitutional and statutory muster, the district court must also be satisfied that entertaining the action is appropriate. This determination is discretionary, for the Declaratory Judgment Act is “deliberately cast in terms of permissive, rather than mandatory, authority.” *Public Serv. Comm’n of Utah v. Wycoff Co.*, 344 U.S. 237, 250, 73 S.Ct. 236, 243–44, 97 L.Ed. 291 (1952) (J. Reed, concurring). The Act “gave the federal courts competence to make a declaration of rights; it did not impose a duty to do so.” *Public Affairs Associates v. Rickover*, 369 U.S. 111, 112, 82 S.Ct. 580, 581–82, 7 L.Ed.2d 604 (1962).

Here, in the declaratory relief cause of action, Plaintiffs improperly seek the state court action’s judgement declared void and vacated because of an alleged fraud upon the court and judicial bias. Am. Compl. ¶ 311; p.45 line 6-7. Plaintiffs also seek this Court’s declaration that Plaintiffs able to intervene in an already adjudicated and closed matter and declare that defendants have violated some amorphous rights of Plaintiffs. Am. Compl. p.45 line 8-10. These are not Article III “controversies” appropriate for this Court’s determination. Such matters should be decided via the California court of appeal. This matter has already been adjudicated and seeks a pseudo appeal of the state court action. Thus, Plaintiffs’ declaratory relief causes of action are inappropriate for this Court’s determination.

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1 **4.32 Plaintiffs’ Causes of Action for Violations of Sections 1983, 1985**
2 **& 1986 Must Be Dismissed Because They Cannot Allege That**
3 **F&B Defendants Acted Under Color of State Law.**

4 F&B Defendants are private attorneys, a private paralegal, and a private law
5 firm representing private citizens. Am. Compl. ¶¶ 22, 210; Compl., ¶¶ 2, 29, 708.
6 State action is a prerequisite of federal civil rights claims.⁷ Plaintiffs’ failure to
7 plead state action, i.e a cognizable claim under §1983, mandates dismissal of their
8 claims under §1983, §1985⁸ and §1986.⁹ Plaintiffs are unable to plead any facts
9 that attribute any action of F&B Defendants as state actions. Therefore, Plaintiffs’
10 claim for Violation of Civil Rights pursuant to 42 U.S.C. §§ 1983, 1985 & 1986
11 must be dismissed.

12 “‘To state a claim under §1983, a plaintiff must: (1) allege the violation of a
13 right secured by the Constitution and laws of the United States; and (2) *show that*
14 *the alleged deprivation was committed by a person acting under color of state*
15 *law.*”¹⁰ Courts must “start with the presumption that conduct by private actors is
16 not state action.”¹¹ It is Plaintiffs’ burden to allege facts sufficient to show that

17 ⁷ See, e.g., *Naffe v. Frey*, 789 F.3d 1030 (9th Cir. 2015); *West v. Atkins*, 487 U.S.
18 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988); *Tsao v. Desert Palace, Inc.*, 698
19 F.3d 1128, 1139 (9th Cir. 2012).

20 ⁸ *Turner v. Larsen*, 536 Fed.Appx. 748, 748 (9th Cir. 2013) (“The district court
21 properly dismissed Turner’s §1983 claim because Turner failed to allege facts
22 showing that defendants acted under color of state law”); *Olsen v. Idaho State Bd.*
23 *Of Med.*, 363 F.3d 916, 930 (9th Cir. 2004) (“to state a claim for conspiracy under
24 §1985, a plaintiff must first have a cognizable claim under §1983”)

25 ⁹ *McCalden v. California Library Ass’n*, 955 F.2d 1214, 1219 (9th Cir.), cert.
26 denied, 504 U.S. 957, 112 S.Ct. 2306 (1992) superseded by rule on other grounds
27 as stated in *Harmston v. City and County of San Francisco*, 627 F.3d 1273, 1279–
28 80 (9th Cir. 2010) (Claim can be stated under §1986 only if complaint states valid
29 claim under §1985).

30 ¹⁰ *Naffe v. Frey*, 789 F.3d 1030, 1035-1036 (9th Cir. 2015)(emphasis added);
31 quoting *West v. Atkins*, 487 U.S. 42, 48, (1988); *Tsao v. Desert Palace, Inc.*, 698
32 F.3d 1128, 1139 (9th Cir. 2012).

33 ¹¹ *Florer v. Congregation Pidyon Shevuyim*, 639 F.3d 916, 922 (9th Cir. 2011);
34 *Sutton v. Providence Saint Joseph Medical Center*, 192 F.3d 826, 836 (9th Cir. 2000).

1 F&B Defendants were state actors. *Florer*, at 922; *Flagg Bros., Inc. v. Brooks*, 436
 2 U.S. 149, 156 (1978). “Dismissal of a section 1983 claim following a Rule
 3 12(b)(6) motion is proper if the complaint is devoid of factual allegations that give
 4 rise to a plausible inference of either element.” *Naffe* at 1036; citing, *inter alia*,
 5 *Ashcroft v. Iqbal*, 556 U.S. 662, 677-678 (2009). Consistent with the presumption
 6 against deeming private conduct to constitute governmental action, in *Price v.*
 7 *Hawaii*, 939 F.2d 702 (9th Cir. 1991), in the context of a purported § 1983 claim
 8 against private parties, the Court explained the limitations upon the liberal federal
 9 pleading standards, stating, “private parties are not generally acting under color of
 10 state law, and we have stated that conclusionary allegations, unsupported by facts
 11 [will be] rejected as insufficient to state a claim under the Civil Rights Act.”
 12 *Price v. Hawaii*, 939 F.2d 702, 707-708 (9th Cir. 1991), citations omitted.

13 Regarding the need to scrutinize the sufficiency of allegations that private
 14 parties are subject to §1983 liability, *Price* recounted: “Careful adherence to the
 15 ‘state action’ requirement preserves an area of individual freedom by limiting the
 16 reach of federal law and federal judicial power. It also avoids imposing on the
 17 State, its agencies or officials, responsibility for conduct for which they cannot be
 18 fairly blamed. A major consequence is to require the courts to respect the limits of
 19 their own power as directed against state governments and private interests.” *Price*
 20 *v. Hawaii*, *supra*, 939 F.2d at 708, citing *Lugar v. Edmondson Oil Co.*, 457 U.S.
 21 922, 936-937 (1982).

22 The law is settled that private attorneys, like F&B Defendants, whether
 23 counseling or representing a private citizen, are not acting under color of state law
 24 for purposes of §§1983, 1985, & 1986.¹² Ultimately, Plaintiffs have not and cannot

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 26 1999).
 27 ¹² *Simmons v. Sacramento County Superior Court*, 318 F.3d 1156, 1161 (9th Cir.
 28 2003) (“Plaintiff cannot sue Mirante’s counsel under §1983, because he is a lawyer
 in private practice who was not acting under color of state law”); *Price v. State of*
Hawaii, 939 F.2d 702, 707-708 (9th Cir. 1991) (“private parties are not generally



1 allege that F&B Defendants are a state actor. Certainly, the allegations that F&B
2 Defendants represented and/or counseled Geraci during the underlying state court
3 action is plainly insufficient to plead that F&B Defendants were acting under color
4 of state law.¹³ State action is an essential element of Plaintiffs’ federal civil rights
5 claim under 42 U.S.C. §§1983 and 1985. As such, Plaintiffs’ §1983, §1985, &
6 §1986 claims against F&B Defendants must be dismissed.

7 **4.33 Plaintiffs’ §1985 Claims Fails Due to a Failure to Allege Racial or**
8 **Class-Based Discrimination**

9 “A claim [for intimidation] under section 1985(2), part 1, is composed of
10 three essential elements: (1) a conspiracy between two or more persons, (2) to
11 deter a witness by force, intimidation, or threat from attending federal court or
12 testifying freely in a matter there pending, which (3) causes injury to the claimant.”
13 *Rutledge v. Arizona Bd. Of Regents*, 859 F. 2d 732, 735 (9th Cir. 1988); *Chahal v.*
14 *Paine Webber Inc.*, 725 F. 2d 20, 23 (2d Cir. 1984).

15 A plaintiff must show the conspiracy prevented the plaintiff from bringing
16 an effective case in federal court. *Rutledge v. Arizona Bd. Of Regents, supra*, 859
17 F. 2d at 735. Regardless of whether the conspiracy could have affected Plaintiffs’
18 ability to present a case in state court, Plaintiffs must show its effect on the federal
19 court case. *Id* at 736.

20 Presumably, Plaintiffs’ reference to “attorneys” and “his agents” refers to
21 Geraci’s attorneys, including F&B Defendants. Am. Compl., ¶¶ 17, 267-269, 273.
22 It appears Plaintiffs are alleging interference in the pending present federal judicial
23 proceeding and in Cotton’s federal suit (Cotton III), which has never been served

24 acting under color of state law”); *see also Polk County v. Dodson*, 454 U.S. 312,
25 325 (1981) (private attorney, even if appointed and paid for by the state, is not
26 acting under color of state law when representing a defendant).

27 ¹³ *See, e.g., Simmons v. Sacramento County Superior Court, supra*, 318 F.3d at
28 1161 (“conclusory allegations that the lawyer was conspiring with state officers”
are insufficient to show a private party is a state actor for purposes of 42 U.S.C.
§1983).



1 on any defendants, in the concluded state court actions (Cotton I & Cotton II), and
 2 in the concluded federal court action (Cotton IV). Am. Compl. ¶¶ 269, 280. Cotton
 3 III was stayed until after the conclusion of the state court action. There has been no
 4 testimony in any contested proceedings in Cotton III as it has not even been served.
 5 Cotton IV is a federal court action filed and dismissed because it was deemed
 6 duplicative of Cotton III by the court. Am. Compl. ¶ 229. Cotton II is a state court
 7 action against the City of San Diego in which Defendant’s acted in their
 8 representative capacity as attorneys once again. Am. Compl. ¶ 206.

9 A §1985(2) part 2 cause of action is different if it pertains to state judicial
 10 proceedings, i.e the state court action, and requires Plaintiffs show a class-based
 11 animus motivated the conspiracy.¹⁴ Nowhere in Plaintiffs’ cause of action for
 12 violations of §1985 do Plaintiffs purport to be a member of any class. Further,
 13 Plaintiffs do not allege any racial or class-based discrimination. Having failed to
 14 sufficiently plead a §1985(2), part 2, claim, Plaintiffs has also failed to sufficiently
 15 plead a §1986 claim because, as noted above, the former is a requirement.

16 **4.4 PLAINTIFFS’ ENTIRE FIRST AMENDED COMPLAINT, AS**
 17 **IT RELATES TO F&B DEFENDANTS, MUST BE STRIKEN**
 18 **UNDER THE CALIFORNIA ANTI-SLAPP STATUTE.**

19 When a plaintiff alleges state law claims subject to the California anti-
 20 SLAPP statue, the Court can dismiss these claims for legal deficiencies using a
 21 Rule 12(b)(6) analysis.¹⁵ Furthermore, California’s anti-SLAPP statute applies to
 22 state claims brought in federal courts.¹⁶ Cal. Code Civ. Proc. §425.16(b)(1)

23 ¹⁴ *Bretz v. Kelman* 773 F.2d 1026, 1029-1030 (9th Cir. 1985) (The Ninth Circuit,
 24 rehearing the case en banc, held that because Bretz failed to allege racial or class-
 25 based discrimination, he did not state a cause of action under § 1985(2) part 2 or §
 1985(3) part 1.)

26 ¹⁵ See *Planned Parenthood Fed’n of Am. v. Ctr. for Med. Progress* 890 F.3d 828,
 27 834, 2018 U.S. App. LEXIS 12649; *Bulletin Displays, LLC v. Regency Outdoor*
 28 *Adver., Inc.*, (2006) 448 F. Supp. 2d. 1172, 1179; *Globetrotter Software, Inc. v.*
Elan Computer Group, Inc., (1999) 63 F.Supp.2d 1127, 1130.

¹⁶ *Resolute Forest Prods. v. Greenpeace Int’l*, 302 F. Supp. 3d 1005, 1008 (2017);



1 establishes “a two-step process for determining” whether an action should be
2 stricken as a SLAPP. *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.

3 First, the court must determine “whether the defendant has made a threshold
4 showing that the challenged cause of action” arises from an act in furtherance of
5 the right of petition or free speech in connection with a public issue. *Id.* A
6 defendant meets the burden of showing that a plaintiff’s action arises from a
7 protected activity by showing that the acts underlying the plaintiff’s cause of action
8 fall within one of the four categories of conduct described in C.C.P. §425.16(e).

9 Second, the court must “determine whether the plaintiff has demonstrated a
10 probability of prevailing on the claim.” *Navellier v. Sletten, supra*, 29 Cal.4th at
11 88. If the defendant makes a threshold showing that the cause of action arises from
12 an act in furtherance of the right of petition or free speech in connection with a
13 public issue and the plaintiff fails to demonstrate a probability of prevailing, then
14 the court must strike the cause of action. C.C.P. §425.16, subd. (b)(1).

15 **4.41 F&B Defendants’ Litigation Acts Are Protected Under §425.16**

16 A cause of action arising from F&B Defendants’ litigation activity may
17 appropriately be subject to a special motion to strike under C.C.P. §425.16.¹⁷
18 Litigation acts covered under §425.16 include communicative conduct such as
19 filing, funding, and the prosecution of civil action. *Ludwig v. Superior Court*
20 (1995) 37 Cal.App.4th 8, 17–19. Applying California state substantive law,

22 *Gottesman v. Santana*, 263 F. Supp. 3d 1034 (2017); *DC Comics v. Pac. Pictures*
23 *Corp.*, 706 F.3d 1009, 1013 (9th Cir. 2013) (“We have held that [an anti-SLAPP]
24 motion is available against state law claims brought in federal court.”); See
25 *Planned Parenthood Fed’n of Am. v. Ctr. for Med. Progress*, 890 F.3d 828, 2018
26 U.S. App. LEXIS 12649; *Bulletin Displays, LLC v. Regency Outdoor Adver., Inc.*,
(2006) 448 F. Supp. 2d. 1172, 1179; *Globetrotter Software, Inc. v. Elan Computer*
Group, Inc., (N.D. Cal. 1999) 63 F.Supp.2d 1127, 1130.

27 ¹⁷ *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056 (holding an abuse of process
28 claim with no reasonable probability of success subject to strike pursuant to anti-
SLAPP).



1 numerous cases hold the SLAPP statute protects lawyers sued for litigation-related
2 speech and activity.¹⁸

3 Here, it is indisputable that Plaintiffs’ claims “arise from an act in
4 furtherance of the right of petition or free speech.” Claims based in abuse of
5 process are subject to the anti-SLAPP statute because, by definition, they target
6 protected activity, the filing and maintenance of a lawsuit. *Jarrow Formulas, Inc.*
7 *v. LaMarche* (2003) 31Cal.4th 728, 733–741. Plaintiffs solely blame F&B
8 Defendants for filing the state court action and making arguments Plaintiffs deems
9 to be “without justification” in F&B Defendants’ role as Geraci’s attorneys. Am.
10 Compl., ¶¶ 14, 138-140, 153, 197, 236, 290. Plaintiffs’ unsubstantiated allegations
11 of extra-judicial conspiracy are precisely the types of meritless claims the
12 California anti-SLAPP statute is designed to eliminate at an early pleading stage.

13 **4.42 F&B Defendants’ Litigation Speech is Protected Activity**

14 All communicative actions or speech performed by attorneys as part of their
15 representation of a client in a judicial proceeding or other petitioning context is
16 protected by the anti-SLAPP statute and litigation privilege. *Contreras v. Dowling*
17 (2016) 5 Cal. App. 5th 394, 409; See Civ. Code § 47(b). There is no exception
18 simply because a plaintiff speculates, asserts, or alleges illegality or a statutory or
19 civil violation. *Bergstein v. Stroock & Stroock & Lavan LLP* (2015) 236 Cal. App.
20 4th 793, 805-810.

21 Therefore, F&B Defendants’ alleged conduct, speech, and activity is
22 protected from retaliation in suit by the litigation privilege and anti-SLAPP statute.
23 Plaintiffs’ allegations are entirely based on F&B Defendants’ litigation speech and
24 communicative conduct. Plaintiffs’ speculative assertion that F&B Defendants

25 _____
26 ¹⁸ *Thayer v. Kabateck Brown Kellner LLP* (2012) 207 Cal.App.4th 141 (citing
27 *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056; *Jarrow Formulas, Inc. v.*
28 *LaMarche* (2003) 31 Cal.4th 728, 742–743; *Cabral v. Martins* (2009) 177
Cal.App.4th 471, 479–480; *Mindys Cosmetics, Inc. v. Dakar* 611 F.3d 590, 596
(9th Cir. 2010).). 0033



1 committed “unlawful” acts is not enough to meet the stringent illegality exception.
 2 *Id.*; Am. Compl. ¶ 301. There is no exception to the litigation privilege or anti-
 3 SLAPP statute for mere violations of statutes, civil noncompliance, or bare
 4 assertions of wrongdoing—only actual criminal conduct or intentionally tortious
 5 acts create an exception to this privilege. *Bergstein*, 236 Cal. App. 4th at 805-810.

6 Plaintiffs’ entire 47-page First Amended Complaint against F&B Defendants
 7 is based on F&B Defendants’ actions as attorneys representing their client and
 8 their litigation-related speech and activity. The First Amended Complaint seeks to
 9 punish F&B Defendants solely for their representation of Plaintiffs’ adversary in
 10 the underlying state court action. Since the allegations against F&B Defendants are
 11 pled under state law claims, they are subject to C.C.P. §425.16, recognized by this
 12 Court through the Federal Rules. All state law causes of action asserted against
 13 F&B Defendants are subject to dismissal pursuant to California anti-SLAPP.

14 **4.43 Plaintiffs Cannot Show their Pleading is Adequate or Amendable**

15 Once a defendant establishes the anti-SLAPP law applies, the burden shifts
 16 to the plaintiff to prove their pleadings are sufficient and not subject to any
 17 privilege under the anti-SLAPP statute. *Planned Parenthood Fed'n of Am., Inc. v.*
 18 *Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir. 2018). A plaintiff cannot
 19 establish any probability of prevailing if the litigation privilege precludes the
 20 defendant’s liability on the claim. *Bergstein v. Stroock & Stroock & Lavan LLP*
 21 (2015) 236 Cal. App. 4th 793, 814. When a defendant brings issues of a “special
 22 motion to strike based on deficiencies in a plaintiff’s complaint, the motion must
 23 be treated in the same manner as a motion under Rule 12(b)(6) except that the
 24 attorney’s fee provision of §425.16(c) applies.” *Planned Parenthood Fed’n of Am.*
 25 *v. Ctr. for Med. Progress, supra*, 890 F.3d at 834.

26 All F&B Defendants’ conduct alleged in the First Amended Complaint is
 27 litigation related actions, and each subject to the special motion to strike under
 28 C.C.P. §425.16. By failing to state a claim upon which relief can be granted, all

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1 Plaintiffs’ claims are inadequately pled under Rule 12(b)(6) standards.
2 Accordingly, Plaintiffs’ state law claims in the First Amended Complaint should
3 be stricken pursuant to C.C.P. §425.16. Consequently, F&B Defendants should be
4 awarded reasonable attorneys’ fees attributable to the bringing of this motion.

5 **4.5 PLAINTIFFS LACK STANDING TO SUE**

6 When a defendant challenges the Article III standing of a plaintiff, Rule
7 12(b)(1) provides the appropriate standard because it is the court’s subject-matter
8 jurisdiction which is challenged. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.
9 2000). Once a party has moved to dismiss for lack of subject matter jurisdiction,
10 the opposing party bears the burden of establishing the Court’s jurisdiction. See
11 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128
12 L.Ed.2d 391 (1994). The Plaintiffs carry their burden by putting forth “the manner
13 and degree of evidence required” by the stage of the litigation. *Lujan v. Defenders*
14 *of Wildlife*, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

15 To satisfy the constitutional requirement of standing that arises from Article
16 III, a plaintiff must allege the “irreducible minimum” of: (1) an injury in fact via
17 “an invasion of a legally protected interest which is (a) concrete and particularized,
18 and (b) actual or imminent, not conjectural or hypothetical”; (2) causation, i.e., the
19 injury is “fairly traceable to the challenged action of the defendant”; and (3)
20 redressability, i.e. it is “likely, as opposed to merely speculative, that the injury
21 will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 560, 112 S.Ct.
22 2130–61 (internal citations and quotations omitted).

23 Legal actions cannot be brought simply on the ground that an individual or
24 group is displeased with the outcome of a lawsuit. Plaintiffs’ allegations neither
25 plead an injury in fact, indicate that F&B Defendants conduct caused Plaintiffs’
26 harm, nor will Plaintiffs’ injury be redressed by a favorable decision as no Plaintiff
27 was a party to the state court action. Voiding the state court action’s judgements or
28 any acts in said actions have no effect upon Plaintiffs. The non-Andrew Flores

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1 Plaintiffs clearly have no standing in the matter as they are just individuals Plaintiff
2 Andrew Flores met and have no relation to the F&B Defendants. Am. Compl. ¶ 95.

3 **4.6 MOTION TO STRIKE REDUNDANT, IMMATERIAL,
4 IMPERTINENT, AND SCANDALOUS MATTERS**

5 A motion to strike under Rule 12(f) may be joined with a motion to dismiss
6 under Rule 12(b)(6). Fed. R. Civ. P. 12(g)(1). Rule 12(f) allows a court, or a party
7 by motion, to strike from a pleading “any redundant, immaterial, impertinent, or
8 scandalous matter.” Fed. R. Civ. P. 12(f). An “[i]mmaterial’ matter is that which
9 has no essential or important relationship to the claim for relief... being pleaded.”¹⁹

10 Plaintiff’s prayer for punitive damages is immaterial as to any allegations
11 against F&B Defendants. Therefore, Plaintiff’s prayer for punitive damages should
12 be dismissed. Plaintiff’s various inflammatory statements in their First Amended
13 Complaint must be stricken as immaterial, redundant, impertinent and scandalous.

14 **4.7 PLAINTIFFS CANNOT FIX THE MANY DEFECTS TO THEIR
15 CLAIMS, NOR DO THEY WANT TO, SO THEY SHOULD
16 NOT BE GIVEN LEAVE TO AMEND.**

17 Decisional law holds that leave to amend should not be given if “amendment
18 would be futile.”²⁰ Since F&B Defendants cannot be construed as state actors and
19 Noerr-Pennington is an absolute defense to claims based on F&B Defendants
20 representation of Mr. Geraci in the state court action, Plaintiffs will be unable to
21 plead *any* claim against F&B Defendants. No matter how Plaintiffs label their
22 claims, Noerr-Pennington bars it.²¹ Because Plaintiffs lack standing and could

23 ¹⁹ *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other
24 grounds, 510 U.S. 517 (1994) (quoting 5 Charles A. Wright & Arthur R. Miller,
25 Federal Practice and Procedure § 1382, at 706-07 (1990)).

26 ²⁰ *Palm v. Los Angeles Department of Water and Power*, 889 F.3d 1081, 1084 (9th
27 Cir. 2018); *Deveraturda v. Globe Aviation Security Services*, 454 F.3d 1043, 1049-
28 50 (9th Cir. 2006) (holding leave to amend properly denied where amendment
would be futile); *McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1099 (9th Cir.
2004).

²¹ *Dean v. Friends of Pine Meadow*, 21 Cal.App.5th 91, 108–109 (2018) (“While
the Noerr-Pennington Doctrine was formulated in the context of antitrust cases, it



1 never plead a plausible legal theory against F&B Defendants, their claims should
2 be dismissed.²²

3 **5.0 CONCLUSION**

4 In addition to lacking standing, Plaintiffs fail to state a claim. Plaintiffs will
5 be unable to demonstrate the F&B Defendants alleged conduct is not privileged
6 and protected or that they were a state actor. Accordingly, F&B Defendants
7 respectfully request this Court dismiss Plaintiffs’ First Amended Complaint against
8 F&B Defendants with prejudice. As Plaintiff cannot plead a claim against F&B
9 Defendants, this motion should be granted without leave to amend.

10
11 Dated: July 20, 2020

KJAR, McKENNA & STOCKALPER LLP

12 By: /s/ Gregory B. Emdee
13 JAMES J. KJAR
14 JON R. SCHWALBACH
15 GREGORY B. EMDEE
16 Attorneys for Defendants Michael
17 Weinstein, Scott H Toothacre,
18 Elyssa Kulas, Rachel M. Prendergast
19 and Ferris & Britton

20 has been applied or discussed in cases involving other types of civil liability,
21 including liability for interference with contractual relations or prospective
22 economic advantage [citations] or unfair competition [citation]. Additionally, the
23 “principle of constitutional law that bars litigation arising from injuries received as
24 a consequence of First Amendment petitioning activity [should be applied],
25 regardless of the underlying cause of action asserted by the plaintiffs.” [Citation.]
26 “[T]o hold otherwise would effectively chill the defendants’ First Amendment
27 rights.”), internal citation omitted.

28 ²² *Yagman v. Garcetti*, 852 F.3d 859, 863 (9th Cir. 2017) (“dismissal is appropriate where the plaintiff failed to allege ‘enough facts to state a claim to relief that is plausible on its face’”); *Golo, LLC, v. Higher Health Network, LLC, and Troy Shanks*, No. 3:18-CV-2434-GPC-MSB) 2019 WL 446251, at *4 (S.D. Cal., Feb. 5, 2019) (“Dismissal is warranted under Rule 12 (b)(6) where the complaint lacks a cognizable legal theory”).

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020, I electronically filed the foregoing **NOTICE OF MOTION AND MOTION TO DISMISS THE FIRST AMENDED COMPLAINT BY DEFENDANTS MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST, AND FERRIS & BRITTON APC; MEMORANDUM OF POINTS AND AUTHORITIES** with the Clerk of the Court for the United States District Court, Southern District of California by using the Southern District CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the USDC-Southern District of California CM/ECF system.

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245. The envelope or package was placed in the mail at El Segundo, California. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully paid.

I further certify that participants in the case not registered as CM/ECF users have been mailed the above described documents by First Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days, to the following non-CM/ECF participants:

NONE

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 20, 2020 at El Segundo, California.

/s/ Berta R. Howard

BERTA R. HOWARD, Declarant

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TAB “3”

TAB “3”

1 KJAR, McKENNA & STOCKALPER LLP
James J. Kjar, Esq. (SBN: 94027)
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5 Attorneys for Defendants,
6 MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M.
PRENDERGAST and FERRIS & BRITTON APC

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

10 ANDREW FLORES, an individual,)
AMY SHERLOCK, on her own)
11 behalf and on behalf of her minor)
12 children, T.S. and S.S., JANE DOE,)
an individual,)

13 Plaintiffs,)

14 vs.)

15 GINA M. AUSTIN, an individual;)
AUSTIN LEGAL GROUP APC, a)
16 California Corporation; JOEL R.)
WOHLFEIL, an individual;)
17 LAWRENCE (AKA LARRY))
GERACI, an individual; TAX &)
18 FINANCIAL CENTER, INC., a)
19 California Corporation; REBECCA)
20 BERRY, an individual; JESSICA)
MCELFRESH, an individual;)
21 SALAM RAZUKI, an individual;)
22 NINUS MALAN, an individual;)
23 MICHAEL ROBERT WEINSTEIN,)
24 an individual; SCOTT TOOTHACRE,)
an individual; ELYSSA KULAS, an)
25 individual; RACHEL M.)
PRENDERGAST, an individual;)
26 FERRIS & BRITTON APC, a)
27 California Corporation; DAVID S.)
28 DEMIAN, an individual, ADAM C.)

Case No.: 3:20-cv-00656-BAS-DEB

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF DEFENDANTS
MICHAEL WEINSTEIN, SCOTT H.
TOOTHACRE, ELYSSA KULAS,
RACHEL M. PRENDERGAST, AND
FERRIS & BRITTON, APC'S
MOTION TO DISMISS FIRST
AMENDED COMPLAINT; TABLE
OF CONTENTS OF EXHIBITS**

Date: August 24, 2020
Time: 10:00 a.m.

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

District Judge: Cynthia A. Bashant
Magistrate Judge: Daniel E. Butcher
Courtroom: 4B (4th Floor)

Complaint Filed: April 3, 2020
Trial Date: None

1 WITT, an individual, RISHI S.)
 2 BHATT, an individual, FINCH,)
 THORTON, and BAIRD, a Limited)
 3 Liability Partnership, JAMES D.)
 4 CROSBY, an individual; ABHAY)
 SCHWEITZER, an individual and dba)
 5 TECHNE; JAMES (AKA JIM))
 6 BARTELL, an individual; BARTELL)
 & ASSOCIATES, a California)
 7 Corporation; MATTHEW WILLIAM)
 8 SHAPIRO, an individual;)
 9 MATTHEW W. SHAPIRO, APC, a)
 California corporation; NATALIE)
 10 TRANGMY NGUYEN, an individual;)
 11 AARON MAGAGNA, an individual;)
 A-M INDUSTRIES, INC., a)
 12 California Corporation; BRADFORD)
 13 HARCOURT, an individual; ALAN)
 14 CLAYBON, an individual; SHAWN)
 MILLER, an individual; LOGAN)
 15 STELLMACHER, an individual;)
 EULENTHIAS DUANE)
 16 ALEXANDER, an individual;)
 17 BIANCA MARTINEZ; an individual;)
 18 THE CITY OF SAN DIEGO, a)
 municipality; 2018FMO, LLC, a)
 19 California Limited Liability)
 20 Company; FIROUZEH TIRANDAZI,)
 an individual; STEPHEN G. CLINE,)
 21 an individual; JOHN DOE, an)
 22 individual; and DOES 2 through 50,)
 inclusive,)
 23 Defendants,)
 24 JOHN EK, an individual;)
 25 THE EK FAMILY TRUST, 1994)
 Trust,)
 26 Real Parties In Interest.)

27
28

1 **PLEASE TAKE NOTICE** that on August 24, 2020, or as soon thereafter,
2 Defendants MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS,
3 RACHEL M. PRENDERGAST and FERRIS & BRITTON APC (collectively
4 “Defendants”) hereby request the Court to take judicial notice pursuant to Federal Rules
5 of Evidence 201 of the following documents:
6

7
8 1. Special Verdict Form No. 1; *Geraci v. Cotton*, Case No.: 37-2017-00010073-
9 CU-BC-CTL; Filed July 16, 2019 (attached hereto as **Exhibit 1**).

10
11 2. First Amended Complaint; *Cotton v. Geraci et al.*, Case No. 3:18-cv-00325-
12 BAS-MDD; Filed May 13, 2020 (attached hereto as **Exhibit 2**).

13
14 3. Special Verdict Form No. 2; *Geraci v. Cotton*, Case No.: 37-2017-00010073-
15 CU-BC-CTL; Filed July 16, 2019 (attached hereto as **Exhibit 3**).

16
17 4. Notice of Entry of Judgment; *Geraci v. Cotton*, Case No.: 37-2017-00010073-
18 CU-BC-CTL; Filed August 20, 2019 (attached hereto as **Exhibit 4**).

19
20 5. Complaint; *Geraci v. Cotton*, Case No.:37-2017-00010073-CU-BC-CTL; filed
21 March 21, 2017 (attached hereto as **Exhibit 5**).

22
23 6. Second Amended Cross-Complaint; *Geraci v. Cotton*, Case No.: 37-2017-
24 00010073-CUBC- CTL; filed August 25, 2017 (attached hereto as **Exhibit 6**).

25
26 7. Original Federal Court Complaint Filed by Darryl Cotton; *Cotton v. Geraci*, Case
27 No.: 3:18-cv-00325-GPC-MDD; filed February 9, 2018 (attached hereto as
28 **Exhibit 7**).

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8. Original Federal Court Complaint Filed by Plaintiffs Andrew Flores et al.; *Flores et al. v. Austin et al.*, Case No.: 3:20-cv-00656-BAS-DEB; filed April 3, 2020 (attached hereto as **Exhibit 8**).

Dated: July 20, 2020

KJAR, McKENNA & STOCKALPER LLP

By: /s/ Gregory B. Emdee
JAMES J. KJAR
JON R. SCHWALBACH
GREGORY B. EMDEE
Attorneys for Defendants Michael Weinstein,
Scott H. Toothacre, Elyssa Kulas, Rachel M.
Prendergast And Ferris & Britton APC

TABLE OF CONTENTS OF EXHIBITS

EXHIBIT	DESCRIPTION	PAGE(S)
1.	Special Verdict Form No. 1; <i>Geraci v. Cotton</i> , Case No.: 37-2017-00010073-CU-BC-CTL; Filed July 16, 2019.	6-9
2.	First Amended Complaint; <i>Cotton v. Geraci et al.</i> , Case No. 3:18-cv-00325-BAS-MDD; Filed May 13, 2020.	10-29
3.	Special Verdict Form No. 2; <i>Geraci v. Cotton</i> , Case No.: 37-2017-00010073-CU-BC-CTL; Filed July 16, 2019.	30-38
4.	Notice of Entry of Judgment; <i>Geraci v. Cotton</i> , Case No.: 37-2017-00010073-CU-BC-CTL; Filed August 20, 2019.	39-65
5.	Complaint; <i>Geraci v. Cotton</i> , Case No.:37-2017-00010073-CU-BC-CTL; filed March 21, 2017.	66-75
6.	Second Amended Cross-Complaint; <i>Geraci v. Cotton</i> , Case No.: 37-2017-00010073-CUBC- CTL; filed August 25, 2017.	76-102
7.	Original Federal Court Complaint Filed by Darryl Cotton; <i>Cotton v. Geraci</i> , Case No.: 3:18-cv-00325-GPC-MDD; filed February 9, 2018.	103-162
8.	Original Federal Court Complaint Filed by Plaintiffs Andrew Flores et al.; <i>Flores et al. v. Austin et al.</i> , Case No.: 3:20-cv-00656-BAS-DEB; filed April 3, 2020.	163-362

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020, I electronically filed the foregoing **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST, AND FERRIS & BRITTON, APC’S MOTION TO DISMISS FIRST AMENDED COMPLAINT** with the Clerk of the Court for the United States District Court, Southern District of California by using the Southern District CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the USDC-Southern District of California CM/ECF system.

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245. The envelope or package was placed in the mail at El Segundo, California. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully paid.

I further certify that participants in the case not registered as CM/ECF users have been mailed the above described documents by First Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days, to the following non-CM/ECF participants:

NONE

///

1 I declare under penalty of perjury under the laws of the State of California the
2 foregoing is true and correct and that this declaration was executed on July 20, 2020 at
3 El Segundo, California.

4
5 /s/ Berta R. Howard

6 BERTA R. HOWARD, Declarant
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ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,
v.
DARRYL COTTON,
Defendant.

DARRYL COTTON,
Cross-Complainant,
v.
LARRY GERACI,
Cross-Defendant.

Case No. 37-2017-00010073-CU-BC-CTL
SPECIAL VERDICT FORM NO. 1
Judge: Hon. Joel R. Wohlfeil

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

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Yes No

If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer no further questions, and have the presiding juror sign and date this form.

2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your answer to question 2 is no, answer question 3.

3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer no further questions, and have the presiding juror sign and date this form.

4. Did all the condition(s) that were required for Defendant's performance occur?

Yes No

If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your answer to question 4 is no, answer question 5.

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5. Was the required condition(s) that did not occur excused?

Yes No

If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no, answer no further questions, and have the presiding juror sign and date this form.

6. Did Defendant fail to do something that the contract required him to do?

Yes No

or

Did Defendant do something that the contract prohibited him from doing?

Yes No

If your answer to either option for question 6 is yes, answer question 7. If your answer to both options is no, do not answer question 7 and answer question 8.

7. Was Plaintiff harmed by Defendant's breach of contract?

Yes No

If your answer to questions 4 or 5 is yes, please answer question 8.

Breach of the Implied Covenant of Good Faith and Fair Dealing

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8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

Yes No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date this form.

9. Was Plaintiff harmed by Defendant's interference?

Yes No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes, answer no further questions, and have the presiding juror sign and date this form.

10. What are Plaintiff's damages?

\$ 260,109.28

Dated: 7/16/19

Signed: [Signature]
Presiding Juror

After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in the courtroom.

0051

1 **Darryl Cotton**
2 **6176 Federal Blvd.**
3 **San Diego, CA 92114**
4 **Telephone: (619) 954-4447**
5 **Fax: (619) 229-9387**

2020 MAY 13 PM 2: 18

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

6 **Plaintiff Pro Se**

BY _____ DEPUTY

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

9 DARRYL COTTON, an individual,)
10 Plaintiff,)
11 vs.)
12 CYNTHIA BASHANT, an individual; JOEL)
13 WOHLFEIL, an individual; LARRY GERACI, an)
14 individual; REBECCA BERRY, an individual;)
15 GINA AUSTIN, an individual; MICHAEL)
16 WEINSTEIN, an individual; JESSICA)
17 MCELFRESH, an individual; and DAVID)
18 DEMIAN, an individual)
19 Defendants.

CASE NO.:3:18-cv-00325-BAS-MDD
PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR:
1. DEPRIVATION OF CIVIL RIGHTS
(42 U.S.C. § 1983)
2. DEPRIVATION OF CIVIL RIGHTS
(42 U.S.C. § 1983)
3. DECLARATORY RELIEF
4. PUNITIVE DAMAGES

Related Case: 20CV0656-BAS-MDD

DEMAND FOR JURY TRIAL

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1
2 Plaintiff *Pro Se* Darryl Cotton (“Plaintiff,” “Cotton” or “I”) alleges upon information and belief
3 as follows:

4 **INTRODUCTION**

5 1. This action is a collateral attack on a state court judgment issued by Judge Joel R. Wohlfeil in
6 *Cotton I*.¹

7 2. “Under California law, the ‘well-settled rule [is] that the courts will not aid a party whose claim
8 for relief rests on an illegal transaction.’” *Singh v. Baidwan*, 651 F. App'x 616, 2-3 (9th Cir. 2016)
9 (quoting *Wong v. Tenneco, Inc.*, 702 P.2d 570, 576 (Cal. 1985) (in bank)).

10 3. “A contract to perform acts barred by California's licensing statutes is illegal, void and
11 unenforceable.” *Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986).

12 4. *Cotton I* was a breach of contract action filed by Lawrence Geraci against Cotton.

13 5. Geraci and Cotton reached an oral joint venture agreement (the “JVA”) to develop a cannabis
14 dispensary at Cotton’s real property (the “Property”).

15 6. However, Geraci had no intention of honoring his agreement with Cotton. In fact, Geraci could
16 not honor his agreement with Cotton because he had been repeatedly sanctioned for his
17 owning/management of illegal marijuana dispensaries and, consequently, is barred as a matter of law
18 from owning a cannabis dispensary (the “Illegality Issue”).

19 7. To get around the Illegality Issue and still own the cannabis permit at the Property, Geraci
20 applied for a cannabis permit at the Property with the City in the name of his receptionist, Rebecca
21 Berry (the “Berry Application”).

22 8. In the Berry Application, Berry certified under penalty of perjury she is the sole owner of the
23 cannabis permit being sought (the “Berry Fraud”).

24 9. At trial in *Cotton I*, Geraci testified he instructed Berry to submit the Berry Application.

25 10. At trial in *Cotton I*, Berry testified she made the certifications knowing they were false.

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

1 11. Austin, as Geraci’s cannabis attorney and responsible for the Berry Application, testified in
2 *Cotton I* that it is not unlawful for Berry to have submitted the Berry Application with false statements.

3 12. The JVA had a condition precedent, the approval of a marijuana dispensary at the Property

4 13. *Cotton I* was filed by attorney Michael Weinstein of Ferris & Britton without probable cause.

5 14. When Cotton accused Weinstein of being an unethical attorney, Wohlfeil admonished Cotton
6 stating from the bench that he does not believe that Weinstein is even capable of acting unethically.

7 15. Wohlfeil stated that the basis of his belief is based on the fact that both he and Weinstein had
8 started their legal careers at the same time and from the years of Weinstein having practiced before him
9 when he became a judge.

10 16. Unfortunately for Wohlfeil, Weinstein *is* an unethical attorney that cares more about avoiding
11 liability for filing a malicious prosecution action than betraying Wohlfeil’s blind trust in him.

12 17. The *Cotton I* judgment is void for being procured via a fraud on the court, the product of judicial
13 bias, and because the alleged contract has an unlawful object and is therefore illegal and cannot be
14 enforced.

15 18. This action will force the judge overseeing this matter to choose between exposing the unethical
16 actions of at least two judges and numerous attorneys or to enforce an illegal contract that rewards a
17 drug dealer for seeking to acquire a cannabis permit under fraudulent pretenses and filing a malicious
18 prosecution action.

19 19. Cotton hopes that the presiding judge in this matter will not retaliate against Cotton for seeking
20 to protect his rights.

21 20. Cotton has painfully come to learn that judges instinctively protect other judges because they
22 operate from the assumption that a pro se litigant making allegations of bias and prejudice after a jury
23 trial are just sore losers. And 99.99% of the time they are probably right.

24 21. However, that probability does not give a judge the right to violate their judicial oath and not
25 vet the facts and arguments they are presented with.

26 22. In complete candid honesty, Cotton has been fighting for over three years to vindicate his rights
27 and he is simply disgusted and exhausted of hearing that he needs to be subservient and denigrate
28

1 himself before judges even when they violate Cotton’s basic rights because they assume he is a pro se
2 “conspiracy nut” litigant.

3 23. Cotton continues pushing forward, trusting not in the ridiculous notions of Justice or the Rule
4 of Law (this case proves those things do not exist), but because he knows that if he keeps filing lawsuits
5 against the unethical attorneys and the judges who have objectively shown bias against Cotton as a pro
6 se litigant that he will eventually get the attention of the media.

7 24. Then, fear of liability will force a judge to finally expose Wohlfeil for the biased judge that he
8 is. A judge who ruined Cotton’s life because he chose to trust Weinstein rather than do the job he is
9 paid to do and apply the law to the facts which he had been presented with.

10 **JURISDICTION AND VENUE**

11 25. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(3), 2283, and 18
12 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for all civil
13 actions arising under the United States Constitution or the laws of the United States, as well as civil
14 actions to redress deprivation under color of state law, of any right immunity or privilege secured by
15 the United States Constitution.

16 26. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of
17 state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by
18 the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process
19 of law.

20 27. Venue is proper in this Court because the events described below took place in this judicial
21 district and the real property at issue is located in this judicial district.

22 **PARTIES**

23 28. Cotton is, and at all times mentioned was, an individual residing within the County of San
24 Diego, California.

25 29. Cotton is, and at all times material to this action was, the sole record owner of the commercial
26 real property located at 6176 Federal Boulevard, San Diego, California 92114 (“Property”).
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1 30. Upon information and belief Defendant Geraci is, and at all times mentioned was, an individual
2 residing within the County of San Diego, California.

3 31. Upon information and belief, Defendant Berry is, and at all times mentioned was, an individual
4 residing within the County of San Diego, California.

5 32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times mentioned
6 was, an individual residing within the County of San Diego, California.

7 33. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at all times
8 mentioned was, an individual residing within the County of San Diego, California.

9 34. Upon information and belief, Defendant Jessica McElfresh ("McElfresh") is, and at all time
10 mentioned was, an individual residing within the County of San Diego, California.

11 35. Upon information and belief, Defendant David Demian ("Demian") is, and at all times
12 mentioned was, an individual residing within the County of San Diego, California.

13 36. Upon information and belief, Defendant Joel Wohlfeil ("Wohlfeil") is, and at all times
14 mentioned was, an individual residing within the County of San Diego, California.

15 37. Upon information and belief, Defendant Cynthia Bashant ("Bashant") is, and at all time
16 mentioned was, an individual residing within the County of San Diego, California.

17 38. Cotton does not know the true names and capacities of the defendants named DOES 1 through
18 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES 1 through
19 10 are in some way responsible for the events described in this Complaint and are liable to Cotton
20 based on the causes of action below. Cotton will seek leave to amend this Complaint when the true
21 names and capacities of these parties have been ascertained.

22 **FACTUAL ALLEGATIONS**

23 **I. Background**

24 A. Geraci is an intelligent and highly sophisticated businessman who has been sanctioned
25 at least three times for his ownership/management of illegal marijuana
26 dispensaries.

27 39. Geraci has approximately 40 years of experience providing tax services and has been the
owner-manager of Tax & Financial Center, Inc. ("Tax Center") since 2001.

28 40. Tax Center provides sophisticated tax, financial and accounting services.

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41. Geraci has been an Enrolled Agent with the IRS since 1999.

42. Geraci was a California licensed real estate salesperson for approximately 25 years from 1993-2017.

43. Geraci has been sued by the City for his ownership/management of at least three illegal marijuana dispensaries (the "Illegal Marijuana Dispensaries").

44. Geraci settled all three cases, collectively paying fines in the amount of \$100,000.

45. Geraci did not "coincidentally" lease three real properties to the Illegal Marijuana Dispensaries; he was an operator and beneficial owner. *See, e.g., City of San Diego v. CCSquared Wellness Cooperative*, Case No. Case No. 37-2015-00004430-CU-MC-CTL, ROA No. 44 (Stipulated Judgment) at 2:15-16 ("The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Ave, San Diego, CA 92103").

B. State and City Cannabis Laws and Regulations

46. It is against State and City laws and regulations to apply for a cannabis license or permit in the name of a third party who knowingly and falsely states in the application that they are the applicant for the cannabis license and/or permit being sought.

47. It is against the public policy of the State and City to issue cannabis licenses or permits to individuals with a history of engaging in illegal commercial marijuana activity.

48. It is against the public policy of the State and City to issue cannabis licenses or permits to an applicant who seeks to acquire a license or permit via unlawful means.

49. As an example of applicable State law when the JVA was formed, California Business and Professions Code ("BPC") § 19323, amended by 2016 Cal SB 837 and effective June 27, 2016, mandated the denial of an application for an cannabis license if the applicant had, *inter alia*, purposefully omitted required information, made false representations, been sanctioned for unauthorized commercial marijuana activity in the three years preceding the application, or failed to comply with local ordinances.

50. As an example of applicable City laws/regulations, the San Diego Municipal Code ("SDMC") prohibits the furnishing of false or incomplete information in any application for any type of license or permit from the City. SDMC § 11.0401(b) ("No person willfully shall make a false statement or fail to

1 report any material fact in any application for City license, permit, certificate, employment or other
2 City action under the provisions of the [SDMC].”).

3 51. Further, SDMC § 11.0402 provides that “[w]henver in [the SDMC] any act or omission is
4 made unlawful, it shall include causing, permitting, aiding or abetting such act or omission.”

5 52. SDMC § 121.0311 states as follows: “Violations of the Land Development Code shall be
6 treated as **strict liability offenses** regardless of intent.”²

7 53. Thus, applying for a cannabis permit or license, or aiding a party to apply for same, and willfully
8 making a false statement in the application is illegal regardless of intent.³

9 C. Gina Austin

10 54. Attorney Gina Austin attended the Thomas Jefferson School of Law and was admitted to the
11 California Bar on December 1, 2006.

12 55. Austin, with approximately two to three years of experience as an attorney, founded her law
13 firm ALG in 2009.

14 56. Austin, in her own words, is “an expert in cannabis licensing and entitlement at the state and
15 local levels and regularly speak[s] on the topic across the nation.”⁴

16 57. Austin has worked on at least 50 conditional use permit applications with the City.

17 58. Austin has been the single most successful attorney in the City in aiding her clients acquire
18 cannabis permits.

19 59. Austin’s success is not because she is a legal genius, but because she engages in and ratifies
20 unlawful actions against the competition, such as filing sham lawsuits like *Cotton I*.

21 _____
22 ² The Land Development Code consists of Chapters 11 through 14 of the SDMC (encompassing §§
111.0101-1412.0113). (SDMC § 111.0101(a).)

23 ³ See *City of San Diego v. 1735 Garnet, LLC*, D071332, at *16 (Cal. Ct. App. Oct. 30, 2017) (“[I]n a
24 recent case in which a land owner who leased property to a marijuana dispensary was sued for
25 violations of a Los Angeles Municipal Code (LAMC) section similar to SDMC section 121.0302(a),
26 the appellate court concluded the land owner’s argument that he lacked knowledge of the marijuana
27 dispensary and thus should not be held liable was meritless, when the violation of LAMC section
12.21A.1(a), was a **strict liability offense**. [Citation.] The same is true here. The terms of the SDMC
specifically provide that violations of the Land Development Act are to be treated as ‘**strict liability**
offenses.’ (SDMC, § 121.0311.)”).

28 ⁴ *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-
CTL, ROA 127 (Declaration of Gina Austin) at ¶ 2.

1 **II. The November Document and the November 3, 2016 Phone Call**

2 60. In early 2016 Geraci contacted Cotton to purchase the Property because it potentially qualified
3 to operate a cannabis dispensary.

4 61. In good faith, Cotton engaged with Geraci in preliminary due diligence.

5 62. On October 31, 2016, Geraci, without Cotton’s knowledge or consent, had Berry submit the
6 Berry Application.

7 63. On November 2, 2016, Geraci and Cotton reached the JVA pursuant to which Cotton would
8 sell the Property to Geraci.

9 64. Cotton’s consideration for entering into the JVA included (i) a 10% equity position in the
10 dispensary, (ii) on a monthly basis, the greater of \$10,000 or 10% of the net profits of the dispensary,
11 (iii) a \$50,000 non-refundable deposit for Cotton to keep if the permit for a dispensary was not
12 approved at the Property, and (iv) Geraci promised to have his attorney, Gina Austin, promptly reduce
13 the JVA to writing for execution.

14 65. At the meeting Geraci and Cotton executed a three-sentence document drafted by Geraci (the
15 “November Document”).

16 66. The November Document was executed with the intent it be a receipt for Cotton’s acceptance
17 of \$10,000 in cash towards the \$50,000 non-refundable deposit.

18 67. That same day:

19 (i) Geraci emailed Cotton a copy of the November Document, which in the email
20 attachment Geraci had titled the November Document the ‘Geraci – Cotton Contract’.

21 (ii) Upon review and within hours of having received the Geraci email Cotton replied and
22 requested that Geraci confirm in writing the November Document is not a purchase contract reflecting
23 ‘any final agreement’. (the “Request for Confirmation”); and

24 (iii) Geraci replied and confirmed the November Document is not a purchase contract (the
25 “Confirmation Email”). A true and correct copy of these emails are attached hereto as Exhibit 1.

26 68. The Request for Confirmation and the Confirmation Email prove that Cotton and Geraci did
27 not mutually assent to the November Document being a purchase contract for the Property (the “Mutual
28 Assent Issue”).

1 69. On November 3, 2016, Cotton called Geraci to talk about Geraci branding the contemplated
2 dispensary at the Property with his nonprofit 151 Farms organization.

3 70. At 1:41 p.m. on November 3, 2016, Cotton emailed Geraci after they had spoken as follows:

4 Larry, [¶] Per our phone call the name 151 AmeriMeds has not been taken nor has there
5 been any business entity formed from it. If you see this as an opportunity to
6 piggyback some of the work I've done and will continue to do as 151 Farmers with
7 further opportunities as a potential franchise for your dispensary I'd like for you to
8 consider that as the process evolves. [¶] We'll firm it up as you see fit.

9 71. On March 21, 2017, after Geraci repeatedly refused to reduce the JVA to writing as promised,
10 Cotton emailed Geraci and terminated the JVA with Geraci for anticipatory breach.

11 72. In his email terminating the JVA, Cotton specifically informed Geraci that he was selling the
12 Property to a third-party: "To be clear, as of now, you have no interest in my [P]roperty, contingent or
13 otherwise. I will be entering into an agreement with a third-party[.]"

14 73. On March 21, 2017, after terminating the JVA with Geraci, Cotton entered into a written joint
15 venture agreement with Richard Martin.

16 **III. The Cotton I Litigation**

17 74. The next day, March 22, 2017, Weinstein emailed Cotton copies of the *Cotton I* complaint and
18 a lis pendens recorded by F&B on the Property (the "F&B Lis Pendens").

19 75. The *Cotton I* complaint alleges causes of action for (i) breach of contract, (ii) breach of the
20 covenant of good faith and fair dealing, (iii) specific performance, and (iv) declaratory relief.

21 76. All four causes of action are premised on the allegation that the November Document is a fully
22 integrated purchase contract.

23 77. The *Cotton I* complaint alleges that Cotton anticipatorily breached his agreement with Geraci
24 by demanding additional consideration not originally agreed to, including the 10% equity position in
25 the dispensary.
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1 78. Weinstein filed the *Cotton I* complaint relying on the *Pendergrass*⁵ line of reasoning seeking to
2 use the parole evidence rule as a shield to bar the admission of the Confirmation Email and other
3 incriminating parole evidence.⁶

4 79. On May 12, 2017, Cotton filed pro se a cross-complaint in *Cotton I* against Geraci and Berry
5 with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent misrepresentation,
6 (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied
7 contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x)
8 conspiracy, and (xi) declaratory and injunctive relief.

9 80. After dealing with the procedural difficulties of representing himself pro se, Cotton reached an
10 agreement with a litigation investor to hire counsel to represent him in *Cotton I* and related legal matters
11 required to acquire a cannabis permit at the Property.

12 81. Cotton's litigation investor reached an agreement with then-prominent and yet to be publicly
13 disgraced cannabis attorney Jessica McElfresh for her representation of Cotton in *Cotton I*.

14 82. McElfresh did not disclose that Geraci and numerous of Geraci's associates are her clients.

15 83. McElfresh did not disclose that she shares numerous clients with Austin.

16 84. In May 2017, the San Diego County District Attorney's office filed charges against McElfresh
17 for her efforts in seeking to conceal the illegal cannabis operations of one of her clients from
18 government inspectors.

19 85. Specifically, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime,
20 Manufacturing of a Controlled Substance, and Obstruction of Justice.

21 86. McElfresh charged Cotton for her legal services for Cotton in *Cotton I*.

22 87. McElfresh referred Cotton's litigation investor to David Demian of Finch, Thornton & Baird to
23 represent Cotton in *Cotton I*.

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26 ⁵ *Bank of America etc. Assn. v. Pendergrass* (1935) 4 Cal.2d 258.

27 ⁶ See *IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 (emphasis added) ("under *Pendergrass*,
28 external evidence of promises inconsistent with the express terms of a written contract were not
admissible, even to establish fraud.").

1 88. Neither McElfresh nor Demian disclosed that FTB had shared clients with Geraci and his
2 business.

3 89. FTB twice amended Cotton’s pro se complaint with the intent to sabotage Cotton’s case.

4 90. Most notably, FTB removed from Cotton’s complaint the allegations that Geraci and Berry
5 conspired to acquire a cannabis permit at the Property in Berry’s name because Geraci could not own
6 a cannabis permit because of the Illegality Issue.

7 91. Further, FTB removed Cotton’s allegation that Geraci and Cotton had reached a valid and
8 binding oral agreement and replaced it with an allegation that Geraci and Cotton had reached an
9 agreement to agree in the future, which is not a valid and enforceable agreement.

10 92. Demian, like Weinstein, Austin and McElfresh, is a criminal with a license to practice law and
11 represents the most vile type of all attorneys – those who would connive to defeat their own client’s
12 case.

13 **IV. The Disavowment Allegation**

14 93. From the filing of *Cotton I* in March 2017 until April 2018 Weinstein argued that the statute of
15 frauds and the parol evidence rule barred the Confirmation Email and other parol evidence as proof of
16 the JVA.

17 94. For example, Weinstein argued:

18 Cotton alleges, based on extrinsic evidence [(e.g., the Confirmation Email)], that the
19 actual agreement between the parties contains material terms and conditions in
20 addition to those in the [November Document] as well as a term (a \$50,000 deposit rather
21 than the \$10,000 deposit stated in the [November Document]) that expressly conflicts
22 with a term of the [November Document]. However, such a claim cannot stand as extrinsic
evidence cannot be employed to prove an agreement at odds with the terms of the
written memorandum.

23 95. However, in April 2018, attorney Jacob Austin specially appearing for Cotton filed a motion to
24 expunge the F&B Lis Pendens and cited and argued for the first time in *Cotton I* that Geraci/Weinstein

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1 could not use the parol evidence rule to bar the Confirmation Email pursuant to the *Pendergrass* line
2 of reasoning because it had been overruled by *Riverisland* in 2013 (the “Lis Pendens Motion”).⁷

3 96. In opposition to the Lis Pendens Motion, Geraci submitted a supporting declaration alleging for
4 the first time that (i) he sent the Confirmation Email by mistake because he only read the first sentence
5 of Cotton’s Request for Confirmation email; (ii) that on November 3, 2016 he called Cotton to tell him
6 that he sent the Confirmation Email by mistake; (iii) Cotton agreed with Geraci that the Confirmation
7 Email was sent by mistake and he was not entitled to a 10% equity position in the dispensary; and (iv)
8 Cotton sent the Request for Confirmation **pretending** that Geraci and him had reached an agreement
9 that included a 10% equity position for Cotton (the “Disavowment Allegation”).

10 97. Pursuant to FRCP 201 Cotton requests the Court take judicial notice of Geraci’s April 9, 2018
11 declaration attached hereto as Exhibit 2.

12 98. Geraci’s April 9, 2018 declaration contradicts dozens of his evidentiary and judicial admissions
13 he set forth in his declarations, discovery responses and arguments in briefs prior to then.

14 99. Even assuming that Geraci’s April 9, 2018 declaration did not contradict his previous judicial
15 and evidentiary admissions, his claim is barred by the statute of frauds and the parole evidence rule.

16 100. The statute of frauds applies to an agreement for the sale of real property as Geraci
17 alleges, but it does not apply to a joint venture agreement as Cotton alleges.⁸

18 101. Geraci cannot just pretend the Confirmation Email has no legal effect.

19 **V. The Federal Lawsuits**

20 102. In February 2018, Cotton filed suit and a TRO in federal court against, *inter alia*, Geraci,
21 Weinstein and Austin alleging, *inter alia*, RICO and § 1983 claims (“*Cotton IIF*”).⁹

24 ⁷*Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* (“*Riverisland*”) (2013) 55 Cal.4th 1169, 1182 (“[W]e overrule *Pendergrass* and its progeny, and reaffirm the venerable maxim stated in *Ferguson v. Koch* [(1928) 204 Cal. 342, 347]: ‘**[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud.**’”) (emphasis added).

25 ⁸ *Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 (“[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.”).

26 ⁹ *Cotton v. Geraci*, Case No.: 18cv325-GPC(MDD).

1 103. On February 28, 2019, because of *Cotton I*, Judge Curiel stayed *Cotton III* pursuant to
2 the *Colorado River* doctrine.

3 104. In July 2019, Wohifeil entered judgment against Cotton in *Cotton I* after a jury trial
4 implicitly finding that the November Document is a fully integrated purchase contract that has a lawful
5 object as a matter of law.

6 105. Cotton filed a motion for new trial (“MNT”) arguing, *inter alia*, assuming the November
7 Document is a contract, it is an illegal contract that cannot be enforced. (*Cotton I*, ROA No 672.)

8 106. Wohlfeil denied the MNT believing Weinstein’s frivolous opposition argument that
9 Cotton had waived the defense of illegality to the enforcement of a contract because Cotton had not
10 allegedly raised the Illegality Issue before in *Cotton I*.

11 107. Factually and legally the arguments are contradicted by the facts and law. Cotton did
12 raise the Illegality Issue before the MNT and even if he had not he cannot waive the defense of
13 illegality. *See City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) (“A party to an
14 illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and **cannot waive** his
15 right to urge that defense.”).

16 108. On January 10, 2020, Judge Curiel recused himself from *Cotton III* after Cotton had
17 filed a motion to lift the *Colorado River* stay and a TRO seeking to have Judge Curiel found to be a
18 biased judge that was enforcing an illegal contract and a request for counsel.

19 109. Cotton believes that Judge Curiel realized that with the information contained within
20 his motion to lift the stay, Cotton was not a conspiracy nut and that Wohlfeil was a biased judge and
21 *Cotton I* represents a three-year long egregious miscarriage of justice.

22 110. *Cotton III* was transferred to Judge Bashant and on January 15, 2020 Bashant lifted the
23 *Colorado River* stay, but denied Cotton’s in Forma Pauperis request for court appointed counsel.

24 111. On April 9, 2020, Cotton filed an ex parte application seeking reconsideration of
25 Bashant’s order denying his request for counsel premised on, *inter alia*, the argument that Cotton
26 needed to prove Judge Wohlfeil is biased.

27 112. Getting any kind of relief from judges against judges is virtually impossible. Judges
28 protect judges.

1 113. On April 16, 2020, Judge Bashant denied Cotton’s ex parte application in a typical pro
2 se fashion with a conclusory finding that Cotton had failed to prove “exceptional circumstances,” but
3 without describing why.

4 114. Judge Wohlfeil is enforcing an illegal contract and he made statements that manifestly
5 prove he is biased because he stated Weinstein is not capable of acting unethically when the entire
6 *Cotton I* case is undisputable evidence that Weinstein is acting unethically.

7 115. Any reasonable person would find that a judge enforcing an illegal contract and
8 requiring a jury to determine a matter of law does represent exceptional circumstances.

9 116. Cotton now believes that with her recent rulings, Judge Bashant is covering up for
10 Wohlfeil.

11 117. Both Wohlfeil and Bashant served on the San Diego Superior Court for at least seven
12 years together before Bashant was elevated to the federal court.

13 118. Because of the violence and Wohlfeil’s action led Martin to believe that he was actively
14 seeking to sabotage Cotton’s case Martin sold his interest in the property to Cotton’s former attorney,
15 Andrew Flores.

16 119. On April 3, 2020, Andrew Flores filed suit in federal court and an ex parte TRO after
17 Cotton told him that some of his supporters, who had lent him significant money, were considering
18 taking violent action against Geraci’s attorneys to bring in law enforcement agencies to investigate this
19 case because Wohlfeil and the City Attorney’s are corrupt. (*Flores, et al. v. Austin, et al.*, Case No.20-
20 cv-656-BAS-MDD.)

21 120. On April 20, 2020, Bashant denied Flores’ TRO. The opening paragraph states:
22 “Plaintiffs... allege civil rights violations under 42 U.S.C. § 1983, make a ‘neglect to perform wrongful
23 act’ cause of action, and seek various forms of declaratory relief. The complaint is almost impossible
24 to summarize due to its length and confusing nature.”

25 121. Bashant’s order also alleges that Flores did not comply with FRCP 65(b) for the issuance
26 of a TRO based, in part, on Bashant’s allegation that Corina Young is a “defendant.”

27 122. First, according to Bashant, Flores lacks any professional competence as an attorney
28 because he sued for “neglect[ing] to perform wrongful act.”

1 123. Flores did not.

2 124. Flores filed a § 1986 cause of action for “neglect to **prevent** a wrongful act” which is
3 clearly stated in the title page of his complaint.

4 125. Second, Corina Young is a *witness* who has been threatened from providing her
5 testimony. She is not a “defendant.”

6 126. Bashant simply made that up.

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

9 128. Fourth, given the preceding three points, Bashant’s allegation that the Flores’ complaint
10 is “confusing” is meritless as she clearly does not understand even the most basic facts she was
11 presented with.

12 129. The bottom line is that Bashant either knew that statements she attributed to Flores were
13 true or she did not know because she did not take the time to vet Flores’ complaint and TRO.

14 130. If Bashant knew they were false, she did so to purposefully denigrate anyone that seeks
15 to prove that Wohlfeil is a biased judge to Cotton’s great prejudice.

16 131. If Bashant did not know her statements were false, then without justification she is
17 making rulings warranted by law and facts, but in reality, she never even bothered understand the facts
18 and apply the law.

19 132. In either scenario, a reasonable person would conclude that Bashant is a biased judge
20 who is not impartial.

21 **VI. This Complaint**

22 133. The Flores complaint is 177 pages and explains in detail how the *Cotton I* complaint is
23 but one sham action among many filed in furtherance by Geraci and his associates seeking to acquire
24 as many cannabis permits as they can in the City to establish a monopoly.

25 134. Cotton does not have the ability to explain the conspiracy in a clear and succinct manner
26 so he files this amended complaint focused on the fact that the November Document cannot be a
27 contract because it lacks mutual assent, has an unlawful object and Judge Wohlfeil’s statements and
28 actions prove that he is biased.

1 135. Cotton did not have a fair and impartial tribunal.

2 136. Cotton does not have the ability to explain the entire conspiracy which gives rise to
3 RICO, antitrust, obstruction of justice, and fraud causes of action that includes multiple government
4 and private attorneys.

5 137. However, Cotton intends to prepare and file a motion seeking court counsel to amend
6 this Complaint to include all defendants against whom Cotton has valid causes of action.

7 **First Cause of Action -§ 1983**

8 (Plaintiff against Bashant)

9 138. Plaintiff realleges and incorporates herein by reference the allegations in the preceding
10 paragraphs.

11 139. The presence of bad faith can render an exercise of legal judgment judicial misconduct;
12 “Bad faith” in this context means “acts within the lawful power of a judge which nevertheless are
13 committed for a corrupt purpose, i.e., for any purpose other than the faithful discharge of judicial
14 duties.” *Cannon v. Commission on Judicial Qualifications*, 14 Cal.3d 678, 695 (Cal. 1975).

15 140. Cotton has filed judicial complaints against both Wohlfeil and Bashant for their failure
16 to exercise their judicial discretion in bad faith.

17 141. Bashant’s order finding that Cotton did not prove exceptional circumstances when
18 Wohlfeil entered a judgment in *Cotton I* that enforces an illegal contract as a matter of law, coupled
19 with her fabricated statements that she attributed to Flores’ that undermines the case against Wohlfeil,
20 would lead any reasonable person to believe that she is covering up for Wohlfeil. Or, at the very least,
21 that she is not impartial.

22 142. “Bias exists where a court has prejudged, or reasonably appears to have prejudged, an
23 issue.” *Kenneally v. Lungren*, 967 F.2d 329, 333 (9th Cir. 1992) (quotation and citation omitted).

24 143. Cotton should not have to “hope” that Bashant will not take other unethical and
25 prejudiced actions against him either to continue to cover up for Wohlfeil or to retaliate against him
26 for exposing that she fabricated and attributed multiple statements to Flores that were not true.

27 144. This relief against Bashant is prospective.

28 **Second Cause of Action -§ 1983**

1 (Plaintiff against Wohlfeil)

2 145. Plaintiff realleges and incorporates herein by reference the allegations in the preceding
3 paragraphs.

4 146. Plaintiff seeks to have the *Cotton I* judgment vacated and a new trial in state court where
5 he originally filed his cross-complaint and Wohlfeil should not continue to preside over *Cotton I*.

6 147. As with Bashant, Cotton should not have to hope that Wohlfeil will not retaliate against
7 him for exposing him for being a biased judge that exposed him for being a judge that thinks the defense
8 of illegality is capable of being waived because Cotton had allegedly not raised the Illegality Issue
9 before the MNT.

10 148. This relief against Wohlfeil is prospective.

11 **Third Cause of Action – Declaratory Relief**

12 (Plaintiff against the Geraci, Berry, Weinstein, Austin, McElfresh and Demian)

13 149. Plaintiff realleges and incorporates herein by reference the allegations in the preceding
14 paragraphs.

15 150. Plaintiff seeks to have the *Cotton I* judgment declared void and vacated for being
16 procured by a fraud on the court, the product of judicial bias, and because it enforces an illegal contract.

17 **Fourth Cause of Action – Punitive Damages**

18 (Plaintiff against all defendants)

19 151. Plaintiff realleges and incorporates herein by reference the allegations in the preceding
20 paragraphs.

21 152. “At some point, justice delayed is justice denied.” *Southern Pacific Transp. Co. v.*
22 *I.C.C.*, 871 F.2d 838, 848 (9th Cir. 1989).

23 153. Since March 2017, Plaintiff has incurred over **\$3,000,000** from 7 different law firms
24 and at least three contract paralegals in legal fees. The law firms are: (i) Finch, Thornton, & Baird; (ii)
25 Law Office of Jacob Austin; (iii) Kerr & Wagstaffe LLP; (iv) Law Office of JoEllen Plaskett; (v) Law
26 Office of Andrew Flores; (vi) California Appellate Law Group; and (vii) Tiffany & Bosco. The three
27 contract paralegals are: (i) Leanne Thomas; (ii) Zoe Villaroman, and (iii) Lori Hatmaker.
28

1 154. “Generally, [punitive damages] cases fall into three categories: (1) really stupid
2 defendants; (2) really mean defendants; and, (3) really stupid defendants who could have caused a great
3 deal of harm by their actions but who actually caused minimal harm.” *TXO Production Corp. v.*
4 *Alliance Resources Corp.*, 509 U.S. 443, 453 n. 15 (1993) (citation and quotation omitted).

5 155. Judges are protected by their judicial immunity.

6 156. But *Cotton I* at every point, has failed to state a cause of action as filed when Weinstein
7 incorrectly assumed the parol evidence rule would bar the Confirmation Email and as de facto
8 amended, when confronted by *Riverisland*, to alleging that the Confirmation Email was sent by
9 mistake.

10 157. Cotton believes it would be an egregious miscarriage of justice to find that defendants
11 can file and maintain a malicious prosecution action that at no point stated a cause of action and rely
12 on the judgments or orders by judges, that were biased against Cotton, to avoid being held liable for
13 Cotton’s legal fees and costs.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Cotton prays for relief against defendants as follows:

- 16 1. That this Court disqualify Bashant from continuing to preside over this matter;
- 17 2. That the *Cotton I* judgment be declared void;
- 18 3. That the *Cotton I* action be stayed pending resolution of this action;
- 19 4. That Wohlfeil be declared bias and prohibited from continuing to preside over Cotton I upon
20 its resumption pending resolution of this Complaint;
- 21 5. General, exemplary, special and/or consequential damages in the amount to be proven at trial,
22 but which are no less than \$7,000,000;
- 23 6. Punitive damages against all defendants saved Wohlfeil and Bashant who are protected by
24 their judicial immunity;
- 25 7. That this Court appoint Cotton counsel;
- 26 8. That this Court grant Cotton’s appointed counsel leave to amend this Complaint to include all
27 defendants and set forth all material allegations; and
- 28 9. That other relief is awarded as the Court determines is in the interest of justice.

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Dated: May 13, 2020.



Darryl Cotton,
Cotton and Cotton Pro Se

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court.

I. (a) PLAINTIFFS

Cotton, Darryl.

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) In Pro Per

DEFENDANTS

Bashant, Cynthia A., Wohlfeil, Joel, Garac, Lawrence, Berry, Rebecca, Austin, Gina M., Weinstein, Michael, R., McElfresh, Jessica, Demien, David.

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FOREFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 1983. Brief description of cause: Deprivation of Civil Rights

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Bashant DOCKET NUMBER 20CV0656-BAS-MDD

DATE 05/13/2020 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

0071

ORIGINAL

FILED
Clerk of the Superior Court
JUL 16 2019
By: A. TAYLOR

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,
v.
DARRYL COTTON,
Defendant.

DARRYL COTTON,
Cross-Complainant,
v.
LARRY GERACI,
Cross-Defendant.

Case No. 37-2017-00010073-CU-BC-CTL
Judge: Hon. Joel R. Wohlfeil
SPECIAL VERDICT FORM NO. 2

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1 1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral
2 contract to form a joint venture?

3
4 ___ Yes No

5
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not
7 answer questions 2 – 7 and answer question 8.

8
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract
10 required him to do?

11
12 ___ Yes ___ No

13
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
15 answer to question 2 is no, answer question 3.

16
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant
18 things that the contract required him to do?

19
20 ___ Yes ___ No

21
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not
23 answer questions 4 – 7 and answer question 8.

24
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26
27 ___ Yes ___ No

28

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
2 answer to question 4 is no, answer question 5.

3
4 5. Was the required condition(s) that did not occur excused?

5
6 Yes No

7
8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not
9 answer questions 6 – 7 and answer question 8.

10
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12
13 Yes No

14
15 or

16
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18
19 Yes No

20
21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
22 options is no, do not answer question 7 and answer question 8.

23
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

25
26 Yes No

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28 Please answer question 8.

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Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Yes No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

Yes No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

Yes No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

Yes No

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If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do not answer question 12 and answer question 13.

12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor in causing harm to Cross-Complainant?

Yes No

Please answer question 13.

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Yes No

If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do not answer questions 14 – 18 and answer question 19.

14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?

Yes No

If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do not answer questions 15 – 18 and answer question 19.

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15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

Yes No

If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do not answer questions 16 – 18 and answer question 19.

16. Did Cross-Complainant reasonably rely on this promise?

Yes No

If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do not answer questions 17 – 18 and answer question 19.

17. Did Cross-Defendant perform the promised act?

Yes No

If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do not answer question 18 and answer question 19.

18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in causing harm to Cross-Complainant?

Yes No

Please answer question 19.

1 **Fraud - Negligent Misrepresentation**

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19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Yes No

If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant made it?

Yes No

If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

21. Did Cross-Defendant have reasonable grounds for believing the representation was true when Cross-Defendant made it?

Yes No

If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
2 juror sign and date this form.

3

4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5

6 Yes No

7

8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do
9 not answer questions 23 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
11 juror sign and date this form.

12

13 23. Did Cross-Complainant reasonably rely on the representation?

14

15 Yes No

16

17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror
20 sign and date this form.

21

22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
23 in causing harm to Cross-Complainant?

24

25 Yes No

26

27

28


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1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

4
5 25. What are Cross-Complainant's damages?

6
7 \$ _____
8
9

10
11 Dated: 7/16/19

Signed: 

Presiding Juror

12
13 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in
14 the courtroom.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/20/2019 at 03:27:00 PM
Clerk of the Superior Court
By E-Filing, Deputy Clerk

1 FERRIS & BRITTON
2 A Professional Corporation
3 Michael R. Weinstein (SBN 106464)
4 Scott H. Toothacre (SBN 146530)
5 501 West Broadway, Suite 1450
6 San Diego, California 92101
7 Telephone: (619) 233-3131
8 Fax: (619) 232-9316
9 mweinstein@ferrisbritton.com
10 stoothacre@ferrisbritton.com

11 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and
12 Cross-Defendant REBECCA BERRY

13 **SUPERIOR COURT OF CALIFORNIA**
14 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

15 LARRY GERACI, an individual,
16 Plaintiff,

17 v.

18 DARRYL COTTON, an individual; and DOES 1
19 through 10, inclusive,
20 Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

NOTICE OF ENTRY OF JUDGMENT
[IMAGED FILE]

21 DARRYL COTTON, an individual,
22 Cross-Complainant,

23 v.

24 LARRY GERACI, an individual, REBECCA
25 BERRY, an individual, and DOES 1 THROUGH
26 10, INCLUSIVE,
27 Cross-Defendants.

Action Filed: March 21, 2017
Trial Date: June 28, 2019

28 ///

///

///

///

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that, August 19, 2019, judgment was entered in the above-captioned
3 cause. A conformed copy of said judgment is attached hereto and incorporated herein by reference as
4 though fully set forth.

5
6 FERRIS & BRITTON
A Professional Corporation

7
8 Dated: August 20, 2019

9 By: Michael R. Weinstein
10 Michael R. Weinstein
11 Scott H. Toothacre
12 Attorneys for Plaintiff/Cross-Defendant LARRY GERACI
13 and Cross-Defendant REBECCA BERRY
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Superior Court of California,
County of San Diego
08/19/2019 at 11:53:00 AM
Clerk of the Superior Court
By Jessica Pascual, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,
Plaintiff,
v.
DARRYL COTTON, an individual; and DOES 1
through 10, inclusive,
Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

JUDGMENT ON JURY VERDICT
[PROPOSED BY PLAINTIFF/CROSS-
DEFENDANTS]

DARRYL COTTON, an individual,
Cross-Complainant,
v.
LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,
Cross-Defendants.

[IMAGED FILE]

Action Filed: March 21, 2017
Trial Date: June 28, 2019

This action came on regularly for jury trial on June 28, 2019, continuing through July 16, 2019, in Department C-73 of the Superior Court, the Honorable Judge Joel R. Wohlfeil presiding. Michael R. Weinstein, Scott H. Toothacre, and Elyssa K. Kulas of FERRIS & BRITTON, APC, appeared for Plaintiff and Cross-Defendant, LARRY GERACI and Cross-Defendant, REBECCA BERRY, and Jacob P. Austin of THE LAW OFFICE OF JACOB AUSTIN, appeared for Defendant and Cross-Complainant, DARRYL COTTON.

1 A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn and testified and
2 certain trial exhibits admitted into evidence.

3 During trial and following the opening statement of Plaintiff/Cross-Complainant’s counsel, the
4 Court granted the Cross-Defendants’ nonsuit motion as to the fraud cause of action against Cross-
5 Defendant Rebecca Berry only in Cross-Complainant’s operative Second Amended Cross-Complaint. A
6 copy of the Court’s July 3, 2019 Minute Order dismissing Cross-Defendant Rebecca Berry from this
7 action is attached as Exhibit “A.”

8 After hearing the evidence and arguments of counsel, the jury was duly instructed by the Court
9 and the cause was submitted to the jury with directions to return a verdict on special issues on two special
10 verdict forms. The jury deliberated and thereafter returned into court with its two special verdicts as
11 follows:

12 **SPECIAL VERDICT FORM NO. 1**

13 We, the Jury, in the above entitled action, find the following special verdict on the questions
14 submitted to us:

15
16 **Breach of Contract**

17
18 1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016
19 written contract?

20 Answer: YES

21
22 2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him
23 to do?

24 Answer: NO

25
26 3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that
27 the contract required him to do?

28 Answer: YES

1 4. Did all the condition(s) that were required for Defendant's performance occur?

2 Answer: NO

3
4 5. Was the required condition(s) that did not occur excused?

5 Answer: YES

6
7 6. Did Defendant fail to do something that the contract required him to do?

8 Answer: YES

9 or

10 Did Defendant do something that the contract prohibited him from doing?

11 Answer: YES

12
13 7. Was Plaintiff harmed by Defendant's breach of contract?

14 Answer: YES

15
16 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

17
18 8. Did Defendant unfairly interfere with Plaintiffs right to receive the benefits of the contract?

19 Answer: YES

20
21 9. Was Plaintiff harmed by Defendant's interference?

22 Answer: YES

23
24 10. What are Plaintiffs damages?

25 Answer: \$ 260,109.28

26
27 A true and correct copy of Special Verdict Form No. 1 is attached hereto as Exhibit "B."

28 ///

SPECIAL VERDICT FORM NO. 2

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral contract to form a joint venture?

Answer: NO

Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Answer: NO

Fraud - Negligent Misrepresentation

19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Answer: NO

Given the jury's responses, Question 25 regarding Cross-Complainant's damages became inapplicable as a result of the jury's responses.

///

1 A true and correct copy of Special Verdict Form No. 2 is attached hereto as Exhibit "C."

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NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Plaintiff LARRY GERACI have and recover from Defendant DARRYL COTTON the sum of \$260,109.28, with interest thereon at ten percent (10%) per annum from the date of entry of this judgment until paid, together with costs of suit in the amount of \$_____;

2. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant REBECCA BERRY; and

3. That Cross-Complainant DARRYL COTTON take nothing from Cross-Defendant LARRY GERACI.

IT IS SO ORDERED.



Dated: 8-19, 2019

Hon. Joel R. Wohlfeil
JUDGE OF THE SUPERIOR COURT
Judge Joel R. Wohlfeil

EXHIBIT A

0088

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

MINUTE ORDER

DATE: 07/03/2019 TIME: 09:00:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Andrea Taylor
REPORTER/ERM: Margaret Smith CSR# 9733
BAILIFF/COURT ATTENDANT: R. Camberos

CASE NO: 37-2017-00010073-CU-BC-CTL CASE INIT.DATE: 03/21/2017
CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Civil Jury Trial

APPEARANCES

Michael R Weinstein, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).
Scott H Toothacre, counsel, present for Respondent on Appeal, Cross - Defendant, Cross - Complainant, Plaintiff(s).
Jacob Austin, counsel, present for Defendant, Cross - Complainant, Appellant(s).
Darryl Cotton, Defendant is present.
Larry Geraci, Plaintiff is present.
Rebecca Berry, Cross - Defendant is present.

8:55 a.m. This being the time previously set for further Jury trial in the above entitled cause, having been continued from July 2, 2019, all parties and counsel appear as noted above and court convenes. The jurors are not present.

Outside the presence of the jury, Court and counsel discuss exhibits.

9:01 a.m. Court is in recess.

9:03 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are present except for juror no. 4.

An unreported sidebar conference is held. (6 minutes) Juror no. 4 arrives.

9:09 a.m. Attorney Weinstein presents opening statement on behalf of Plaintiff/Cross-Defendant Larry Geraci, et al.

9:55 a.m. Attorney Austin presents opening statement on behalf of Defendant/Cross-Complainant Darryl Cotton.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE NO: 37-2017-00010073-CU-BC-CTL

10:15 a.m. All jurors are admonished and excused for break and Court is in recess.

10:24 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jury is not present.

Outside the presence of the jury, Plaintiff makes a Motion for Non-suit on the Cross-Complaint against Rebecca Berry. The Court hears oral argument. Motion for Non-Suit is denied as to Declaratory Relief claim. Motion for Non-Suit is granted as to Fraud claim.

10:30 a.m. Court is in recess.

10:31 a.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

10:32 a.m. **LARRY GERACI** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendant:

- 1) Letter of Agreement with Bartell & Associates dated 10/29/15
- 5) Text Messages between Larry Geraci and Darryl Cotton from 7/21/16-5/8/17
- 8) Email to Larry Geraci from Darryl Cotton dated 9/21/16 with attached letter to Dale and Darryl Cotton from Kirk Ross, dated 9/21/16
- 9) Email to Larry Geraci from Darryl Cotton, dated 9/26/16
- 10) Draft Services Agreement Contract between Inda-Gro and GERL Investments, dated 9/24/16
- 14) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/4/16
- 15) Email to Rebecca Berry from Abhay Schweitzer, dated 10/6/16
- 17) Email to Larry Geraci and Neil Dutta from Abhay Schweitzer, dated 10/18/16
- 18) Email thread between Neil Dutta from Abhay Schweitzer, dated 10/19/16
- 21) Email from Larry Geraci to Darryl Cotton, dated 10/24/16
- 30) City of San Diego Ownership Disclosure Statement signed, dated 10/31/16
- 38) Agreement between Larry Geraci or assignee and Darryl Cotton, dated 11/2/16
- 39) Excerpt from Jessica Newell Notary Book, dated 11/2/16
- 40) Email to Darryl Cotton from Larry Geraci attaching Nov. 2 Agreement, dated 11/2/16
- 41) Email from Darryl Cotton to Larry Geraci, dated 11/2/16
- 42) Email to Darryl Cotton from Larry Geraci, dated 11/2/16

11:44 a.m. All jurors are admonished and excused for lunch and Court remains in session.

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit on Breach of Contract claim against Darryl Cotton. The Court hears oral argument. Motion for Non-Suit is denied without prejudice.

11:50 a.m. Court is in recess.

1:19 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. The jurors are not present.

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE NO: 37-2017-00010073-CU-BC-CTL

Outside the presence of the jury, Attorney Austin makes a Motion for Non-Suit. The Court hears argument. The Motion for Non-Suit is denied without prejudice as pre-mature. Court and counsel discuss scheduling.

1:25 p.m. Court is in recess.

1:33 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

1:34 p.m. Larry Geraci, previously sworn, resumes the stand for further direct examination by Attorney Weinstein on behalf of Plaintiff/Cross-Defendants, Larry Geraci, et al.

The following Court's exhibit(s) are marked for identification and admitted on behalf of Plaintiff/Cross-Defendants:

- 43) Email to Becky Berry from Abhay Schweitzer, dated 11/7/16 with attachment
- 44) Email to Darryl Cotton from Larry Geraci, dated 11/14/16
- 46) Authorization to view records, signed by Cotton, 11/15/16
- 59) Email to Darryl Cotton from Larry Geraci, dated 2/27/17
- 62) Email to Darryl Cotton from Larry Geraci, dated 3/2/17
- 63) Email to Larry Geraci from Darryl Cotton, dated 3/3/17
- 64) Email to Darryl Cotton from Larry Geraci, dated 3/7/17
- 69) Email to Larry Geraci from Darryl Cotton, dated 3/17/17 at 2:15 p.m.
- 72) Email to Larry Geraci from Darryl Cotton, dated 3/19/17 at 6:47 p.m.
- 137) Federal Blvd.- Summary of All Expense Payments, excel spreadsheet

2:29 p.m. An unreported sidebar conference is held. (3 minutes)

2:36 p.m. Cross examination of Larry Geraci commences by Attorney Austin on behalf of Defendant/Cross-Complainant, Darryl Cotton.

2:53 p.m. All jurors are admonished and excused for break and Court is in recess.

3:08 p.m. Court reconvenes with plaintiff(s), defendant(s) and counsel present as noted above. All jurors are present.

3:09 p.m. Larry Geraci is sworn and examined by Attorney Austin on behalf of Defendant/Cross-Complainant, Defendant.

3:47 p.m. Redirect examination of Larry Geraci commences by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

3:48 p.m. The witness is excused.

3:49 p.m. **REBECCA BERRY** is sworn and examined by Attorney Weinstein on behalf of Plaintiff/Cross-Defendant, Larry Geraci, et al.

The following Court's exhibit(s) is marked for identification and admitted on behalf of

CASE TITLE: Larry Geraci vs Darryl Cotton [Imaged]

CASE NO: 37-2017-00010073-CU-BC-CTL

Plaintiff/Cross-Complainant:

34) Forms submitted to City of San Diego dated 10/31/16; Form DS-3032 General Application dated 10/31/16

4:00 p.m. Cross examination of Rebecca Berry commences by Attorney Austin on behalf of Defendant/Cross-complainant, Darryl Cotton.

4:15 p.m. The witness is excused.

4:16 p.m. All jurors are admonished and excused for the evening and Court remains in session.

Outside the presence of the jury, Court and counsel discuss scheduling.

4:22 p.m. Court is adjourned until 07/08/2019 at 09:00AM in Department 73.

EXHIBIT B

ORIGINAL

FILED
Clerk of the Superior Court

JUL 16 2019

By: A. TAYLOR

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

LARRY GERACI,
Plaintiff,

v.

DARRYL COTTON,
Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

SPECIAL VERDICT FORM NO. 1

Judge: Hon. Joel R. Wohlfeil

DARRYL COTTON,
Cross-Complainant,

v.

LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

1. Did Plaintiff Larry Geraci and Defendant Darryl Cotton enter into the November 2, 2016 written contract?

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Yes No

If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, answer no further questions, and have the presiding juror sign and date this form.

2. Did Plaintiff do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your answer to question 2 is no, answer question 3.

3. Was Plaintiff excused from having to do all, or substantially all, of the significant things that the contract required him to do?

Yes No

If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, answer no further questions, and have the presiding juror sign and date this form.

4. Did all the condition(s) that were required for Defendant's performance occur?

Yes No

If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your answer to question 4 is no, answer question 5.

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5. Was the required condition(s) that did not occur excused?

Yes No

If your answer to question 5 is yes, then answer question 6. If your answer to question 5 is no, answer no further questions, and have the presiding juror sign and date this form.

6: Did Defendant fail to do something that the contract required him to do?

Yes No

or

Did Defendant do something that the contract prohibited him from doing?

Yes No

If your answer to either option for question 6 is yes, answer question 7. If your answer to both options is no, do not answer question 7 and answer question 8.

7. Was Plaintiff harmed by Defendant's breach of contract?

Yes No

If your answer to questions 4 or 5 is yes, please answer question 8.

Breach of the Implied Covenant of Good Faith and Fair Dealing

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8. Did Defendant unfairly interfere with Plaintiff's right to receive the benefits of the contract?

Yes No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, but your answer to question 7 is yes, do not answer question 9 and answer question 10. If your answers to questions 7 and 8 were not yes, answer no further questions, and have the presiding juror sign and date this form.

9. Was Plaintiff harmed by Defendant's interference?

Yes No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, but your answer to question 7 is yes, answer question 10. If your answers to questions 7 and 9 were not yes, answer no further questions, and have the presiding juror sign and date this form.

10. What are Plaintiff's damages?

\$ 260,109.28

Dated: 7/16/19

Signed: [Signature]
Presiding Juror

After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in the courtroom.

0097

EXHIBIT C

ORIGINAL

FILED
Clerk of the Superior Court
JUL 16 2019
By: A. TAYLOR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI,
Plaintiff,
v.
DARRYL COTTON,
Defendant.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

SPECIAL VERDICT FORM NO. 2

DARRYL COTTON,
Cross-Complainant,
v.
LARRY GERACI,
Cross-Defendant.

We, the Jury, in the above entitled action, find the following special verdict on the questions submitted to us:

Breach of Contract

0099

1 1. Did Cross-Complainant Darryl Cotton and Cross-Defendant Larry Geraci enter into an oral
2 contract to form a joint venture?

3
4 Yes No

5
6 If your answer to question 1 is yes, answer question 2. If your answer to question 1 is no, do not
7 answer questions 2 – 7 and answer question 8.

8
9 2. Did Cross-Complainant do all, or substantially all, of the significant things that the contract
10 required him to do?

11
12 Yes No

13
14 If your answer to question 2 is yes, do not answer question 3 and answer question 4. If your
15 answer to question 2 is no, answer question 3.

16
17 3. Was Cross-Complainant excused from having to do all, or substantially all, of the significant
18 things that the contract required him to do?

19
20 Yes No

21
22 If your answer to question 3 is yes, answer question 4. If your answer to question 3 is no, do not
23 answer questions 4 – 7 and answer question 8.

24
25 4. Did all the condition(s) that were required for Cross-Defendant's performance occur?

26
27 Yes No

1 If your answer to question 4 is yes, do not answer question 5 and answer question 6. If your
2 answer to question 4 is no, answer question 5.

3
4 5. Was the required condition(s) that did not occur excused?

5
6 ___ Yes ___ No
7

8 If your answer to question 5 is yes, answer question 6. If your answer to question 5 is no, do not
9 answer questions 6 – 7 and answer question 8.

10
11 6. Did Cross-Defendant fail to do something that the contract required him to do?

12
13 ___ Yes ___ No
14

15 or

16
17 Did Cross-Defendant do something that the contract prohibited him from doing?

18
19 ___ Yes ___ No
20

21 If your answer to either option for question 6 is yes, answer question 7. If your answer to both
22 options is no, do not answer question 7 and answer question 8.

23
24 7. Was Cross-Complainant harmed by Cross-Defendant's breach of contract?

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26 ___ Yes ___ No
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28 Please answer question 8.

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Fraud - Intentional Misrepresentation

8. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

Yes No

If your answer to question 8 is yes, answer question 9. If your answer to question 8 is no, do not answer questions 9 – 12 and answer question 13.

9. Did Cross-Defendant know that the representation was false, or did Cross-Defendant make the representation recklessly and without regard for its truth?

Yes No

If your answer to question 9 is yes, answer question 10. If your answer to question 9 is no, do not answer questions 10 – 12 and answer question 13.

10. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

Yes No

If your answer to question 10 is yes, answer question 11. If your answer to question 10 is no, do not answer questions 11 – 12 and answer question 13.

11. Did Cross-Complainant reasonably rely on the representation?

Yes No

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If your answer to question 11 is yes, answer question 12. If your answer to question 11 is no, do not answer question 12 and answer question 13.

12. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor in causing harm to Cross-Complainant?

Yes No

Please answer question 13.

Fraud - False Promise

13. Did Cross-Defendant make a promise to Cross-Complainant that was important to the transaction?

Yes No

If your answer to question 13 is yes, answer question 14. If your answer to question 13 is no, do not answer questions 14 – 18 and answer question 19.

14. Did Cross-Defendant intend to perform this promise when Cross-Defendant made it?

Yes No

If your answer to question 14 is no, answer question 15. If your answer to question 14 is yes, do not answer questions 15 – 18 and answer question 19.

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15. Did Cross-Defendant intend that Cross-Complainant rely on this promise?

Yes No

If your answer to question 15 is yes, answer question 16. If your answer to question 15 is no, do not answer questions 16 – 18 and answer question 19.

16. Did Cross-Complainant reasonably rely on this promise?

Yes No

If your answer to question 16 is yes, answer question 17. If your answer to question 16 is no, do not answer questions 17 – 18 and answer question 19.

17. Did Cross-Defendant perform the promised act?

Yes No

If your answer to question 17 is no, answer question 18. If your answer to question 17 is yes, do not answer question 18 and answer question 19.

18. Was Cross-Complainant's reliance on Cross-Defendant's promise a substantial factor in causing harm to Cross-Complainant?

Yes No

Please answer question 19.

1 **Fraud - Negligent Misrepresentation**

2
3 19. Did Cross-Defendant make a false representation of an important fact to Cross-Complainant?

4
5 Yes No

6
7 If your answer to question 19 is yes, answer question 20. If your answer to question 19 is no, do
8 not answer questions 20 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
9 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
10 juror sign and date this form.

11
12 20. Did Cross-Defendant honestly believe that the representation was true when Cross-Defendant
13 made it?

14
15 Yes No

16
17 If your answer to question 20 is yes, answer question 21. If your answer to question 20 is no, do
18 not answer questions 21 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
19 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
20 juror sign and date this form.

21
22 21. Did Cross-Defendant have reasonable grounds for believing the representation was true when
23 Cross-Defendant made it?

24
25 Yes No

26
27 If your answer to question 21 is yes, answer question 22. If your answer to question 21 is no, do
28 not answer questions 22 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If

1 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
2 juror sign and date this form.

3
4 22. Did Cross-Defendant intend that Cross-Complainant rely on the representation?

5
6 Yes No

7
8 If your answer to question 22 is yes, answer question 23. If your answer to question 22 is no, do
9 not answer questions 23 – 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If
10 your answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding
11 juror sign and date this form.

12
13 23. Did Cross-Complainant reasonably rely on the representation?

14
15 Yes No

16
17 If your answer to question 23 is yes, answer question 24. If your answer to question 23 is no, do
18 not answer question 24 but if your answer to questions 7, 12 or 18 is yes, answer question 25. If your
19 answers to questions 7, 12 and 18 were not yes, answer no further questions, and have the presiding juror
20 sign and date this form.

21
22 24. Was Cross-Complainant's reliance on Cross-Defendant's representation a substantial factor
23 in causing harm to Cross-Complainant?

24
25 Yes No

1 If your answer to question 24 is yes, answer question 25. If your answer to question 24 is no, but
2 if your answer to questions 7, 12 or 18 is yes, answer question 25. If your answers to questions 7, 12 and
3 18 were not yes, answer no further questions, and have the presiding juror sign and date this form.

4
5 25. What are Cross-Complainant's damages?

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7 \$ _____
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11 Dated: 7/16/19
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Signed: 
13 Presiding Juror
14

15 After all verdict forms have been signed, notify the bailiff that you are ready to present your verdict in
16 the courtroom.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/21/2017 at 10:11:00 AM
Clerk of the Superior Court
By Carla Brennan, Deputy Clerk

1 FERRIS & BRITTON
A Professional Corporation
2 Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
3 501 West Broadway, Suite 1450
San Diego, California 92101
4 Telephone: (619) 233-3131
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6

7 Attorneys for Plaintiff
LARRY GERACI

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 LARRY GERACI, an individual,
11 Plaintiff,

12 v.

13 DARRYL COTTON, an individual; and
14 DOES 1 through 10, inclusive,
15 Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

PLAINTIFF'S COMPLAINT FOR:

- 1. **BREACH OF CONTRACT;**
- 2. **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;**
- 3. **SPECIFIC PERFORMANCE; and**
- 4. **DECLARATORY RELIEF.**

16 Plaintiff, LARRY GERACI, alleges as follows:

17 1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an
18 individual residing within the County of San Diego, State of California.

19 2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an
20 individual residing within the County of San Diego, State of California.

21 3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and
22 Defendant COTTON that is the subject of this action was entered into in San Diego County, California,
23 and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County,
24 California (the "PROPERTY").

25 4. Currently, and at all times since approximately 1998, Defendant COTTON owned the
26 PROPERTY.

27 5. Plaintiff GERACI does not know the true names or capacities of the defendants sued
28 herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

0108

1 informed and believe and based thereon allege that each of the fictitiously-named defendants is in some
2 way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as
3 herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend
4 this complaint to state the true names and/or capacities of such fictitiously-named defendants when the
5 same are ascertained.

6 6. Plaintiff alleges on information and belief that at all times mentioned herein, each and
7 every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in
8 interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged,
9 were acting, whether individually or through their duly authorized agents and/or representatives, within
10 the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate
11 structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge,
12 permission, and consent of the remaining defendants, and each of them, and that said defendants
13 ratified and approved the acts of all of the other defendants.

14 **GENERAL ALLEGATIONS**

15 7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a
16 written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated
17 therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

18 8. On or about November 2, 2016, GERACI paid to COTTON \$10,000.00 good faith
19 earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until the license,
20 known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and
21 conditions of the written agreement.

22 9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged
23 and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the
24 PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long,
25 time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's
26 efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as
27 hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than
28 \$300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

1 the PROPERTY to him by Defendant COTTON.

2 **FIRST CAUSE OF ACTION**

3 **(For Breach of Contract against Defendant COTTON and DOES 1-5)**

4 10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
5 paragraphs 1 through 9 above.

6 11. Defendant COTTON has anticipatorily breached the contract by stating that he will not
7 perform the written agreement according to its terms. Among other things, COTTON has stated that,
8 contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of
9 \$50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON
10 has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the
11 PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest.
12 COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by
13 withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY
14 if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON
15 made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP
16 application.

17 12. As result of Defendant COTTON’s anticipatory breach, Plaintiff GERACI will suffer
18 damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI
19 in reliance on the agreement, including but not limited to the estimated \$300,000.00 or more expended
20 to date on the CUP process for the PROPERTY.

21 **SECOND CAUSE OF ACTION**

22 **(For Breach of the Implied Covenant of Good Faith and Fair Dealing**
23 **against Defendant COTTON and DOES 1-5)**

24 13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
25 paragraphs 1 through 12 above.

26 14. Each contract has implied in it a covenant of good faith and fair dealing that neither
27 party will undertake actions that, even if not a material breach, will deprive the other of the benefits of
28 the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

1 withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the
2 PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON
3 has breached the implied covenant of good faith and fair dealing.

4 15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair
5 dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for
6 return of all sums expended by GERACI in reliance on the agreement, including but not limited to the
7 estimated \$300,000.00 or more expended to date on the CUP process for the PROPERTY.

8 **THIRD CAUSE OF ACTION**

9 **(For Specific Performance against Defendants COTTON and DOES 1-5)**

10 16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
11 paragraphs 1 through 15 above.

12 17. The aforementioned written agreement for the sale of the PROPERTY is a valid and
13 binding contract between Plaintiff GERACI and Defendant COTTON.

14 18. The aforementioned written agreement for the sale of the PROPERTY states the terms
15 and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible
16 to specific performance.

17 19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a
18 writing that satisfies the statute of frauds.

19 20. The aforementioned written agreement for the purchase and sale of the PROPERTY is
20 fair and equitable and is supported by adequate consideration.

21 21. Plaintiff GERACI has duly performed all of his obligations for which performance has
22 been required to date under the agreement. GERACI is ready and willing to perform his remaining
23 obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for
24 a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary
25 thus satisfying that condition precedent, then to pay the remaining \$790,000.00 balance of the purchase
26 price.

27 22. Defendant COTTON is able to specifically perform his obligations under the contract,
28 namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

1 Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that
2 condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for
3 receipt of payment from GERACI or assignee of the remaining \$790,000.00 balance of the purchase
4 price.

5 23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions
6 that interfere with GERACI’s attempt to obtain approval of a CUP for a medical marijuana dispensary
7 and to specifically perform the contract upon satisfaction of the condition that such approval is in fact
8 obtained.

9 24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI’s
10 attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not
11 intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon
12 satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana
13 dispensary and tender the remaining balance of the purchase price.

14 25. The aforementioned written agreement for the purchase and sale of the PROPERTY
15 constitutes a contract for the sale of real property and, thus, Plaintiff GERACI’s lack of a plain, speedy,
16 and adequate legal remedy is presumed.

17 26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon
18 specifically enforcing the written agreement for the purchase and sale of the PROPERTY from
19 Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

20 **FOURTH CAUSE OF ACTION**

21 **(For Declaratory Relief against Defendants COTTON and DOES 1-5)**

22 27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in
23 paragraphs 1 through 14 above.

24 28. An actual controversy has arisen and now exists between Defendant COTTON, on the
25 one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written
26 agreement contains terms and condition that conflict with or are in addition to the terms stated in the
27 written agreement. GERACI disputes those conflicting or additional contract terms.

28

1 29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the
2 written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants
3 thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or
4 his assignee. Such a declaration is necessary and appropriate at this time so that each party may
5 ascertain their rights, duties, and obligations thereunder.

6 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

7 **On the First and Second Causes of Action:**

8 1. For compensatory damages in an amount in excess of \$300,000.00 according to proof at
9 trial.

10 **On the Third Cause of Action:**

11 2. For specific performance of the written agreement for the purchase and sale of the
12 PROPERTY according to its terms and conditions; and

13 3. If specific performance cannot be granted, then damages in an amount in excess of
14 \$300,000.00 according to proof at trial.

15 **On the Fourth Cause of Action:**

16 4. For declaratory relief in the form of a judicial determination of the terms and conditions
17 of the written agreement and the duties, rights and obligations of each party under the written
18 agreement.

19 **On all Causes of Action:**

20 5. For temporary and permanent injunctive relief as follows: that Defendants, and each of
21 them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and
22 all persons acting in concert with or participating with them, directly or indirectly, be enjoined and
23 restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a
24 Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

25 6. For costs of suit incurred herein; and

26 ///
27 ///
28 ///

7. For such other and further relief as the Court may deem just and proper.

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: 
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

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EXHIBIT A

0115

11/02/2016


Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.



Larry Geraci



Darryl Cotton

0116

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraoi
who proved to me on the basis of satisfactory evidence to be the person(s), whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Jessica Newell (Seal)

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Superior Court of California,
County of San Diego
08/25/2017 at 11:44:00 AM
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By Richard Day, Deputy Clerk

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

SECOND AMENDED CROSS-COMPLAINT
FOR:

(1) BREACH OF CONTRACT;
(2) INTENTIONAL
MISREPRESENTATION;
(3) NEGLIGENT
MISREPRESENTATION;
(4) FALSE PROMISE; AND
(5) DECLARATORY RELIEF.

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

./ / / / /

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1 Defendant and cross-complainant Darryl Cotton ("Cotton") alleges as follows:

2 1. Venue is proper in this Court because the events described below took place in
3 this judicial district and the real property at issue is located in this judicial district.

4 2. Cotton is, and at all times mentioned was, an individual residing within the
5 County of San Diego, California.

6 3. Cotton was at all times material to this action the sole record owner of the
7 commercial real property located at 6176 Federal Boulevard, San Diego, California 92114
8 ("Property") which is the subject of this dispute.

9 4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci
10 ("Geraci") is, and at all times mentioned was, an individual residing within the County of San
11 Diego, California.

12 5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is,
13 and at all times mentioned was, an individual residing within the County of San Diego,
14 California.

15 6. Cotton does not know the true names and capacities of the cross-defendants
16 named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed
17 and believes that ROES 1 through 50 are in some way responsible for the events described in
18 this Second Amended Cross-Complaint. Cotton will seek leave to amend this Second
19 Amended Cross-Complaint when the true names and capacities of these cross-defendants have
20 been ascertained.

21 7. At all times mentioned, each cross-defendant was an agent, principal,
22 representative, employee, or partner of the other cross-defendants, and acted within the course
23 and scope of such agency, representation, employment, and/or partnership, and with
24 permission of the other cross-defendants.

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GENERAL ALLEGATIONS

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8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it meets certain requirements of the City of San Diego (“City”) for obtaining a Conditional Use Permit (“CUP”) to operate a Medical Marijuana Consumer Cooperative (“MMCC”) at the Property. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. During these negotiations, Geraci represented to Cotton, among other things, that:

- (a) Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;
- (b) Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci lobbied with the City to have the zoning issue resolved first;
- (c) Geraci, through his personal and professional relationships, was in a unique position to lobby and influence key City political figures to have the zoning issue favorably resolved and obtain approval of the CUP application once submitted; and
- (d) Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area.

10. Cotton, acting in good faith based upon Geraci’s representations during the sale negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a CUP application at the Property while the parties negotiated the terms of a possible deal. However, despite the parties’ work on a CUP application, Geraci represented to Cotton that a CUP application for the Property could not actually be submitted until after the critical zoning issue was resolved or the application would be summarily rejected by the City.

1 11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership
2 Disclosure Statement, which is a required component of all CUP applications. Geraci told
3 Cotton that he needed the signed document to show that Geraci had access to the Property in
4 connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of
5 a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement
6 as an indication of good-faith while the parties negotiated on the sale terms. At no time did
7 Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering
8 into a final written agreement for the sale of the Property. In fact, Geraci repeatedly
9 maintained to Cotton that the critical zoning issue needed to be resolved before a CUP
10 application could even be submitted.

11 12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in
12 October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However,
13 Cotton has never met Berry personally and never entered into a lease or any other type of
14 agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who
15 was very familiar with MMCC operations and who was involved with his other MMCC
16 dispensaries. Cotton's understanding was that Geraci was unable to list himself on the
17 application because of Geraci's other legal issues but that Berry was Geraci's agent and was
18 working in concert with him and at his direction. Based upon Geraci's assurances that listing
19 Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton
20 executed the Ownership Disclosure Statement that Geraci provided to him.

21 13. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to
22 negotiate the final terms of their deal for the sale of the Property. The parties reached an
23 agreement on the material terms for the sale of the Property. The parties further agreed to
24 cooperate in good faith to promptly reduce the complete agreement, including all of the
25 agreed-upon terms, to writing.

26 14. The material terms of the agreement reached by the parties at the November 2,
27 2016 meeting included, without limitation, the following key deal points:

28 / / / /

1 (a) Geraci agreed to pay the total sum of \$800,000 in consideration for the
2 purchase of the Property, with a \$50,000 non-refundable deposit payable to Cotton
3 immediately upon the parties' execution of final integrated written agreements and the
4 remaining \$750,000 payable to Cotton upon the City's approval of a CUP application for the
5 Property;

6 (b) The parties agreed that the City's approval of a CUP application to
7 operate a MMCC at the Property would be a condition precedent to closing of the sale (in other
8 words, the sale of the Property would be completed and title transferred to Geraci only upon
9 the City's approval of the CUP application and Geraci's payment of the \$750,000 balance of
10 the purchase price to Cotton; if the City denied the CUP application, the parties agreed the sale
11 of the Property would be automatically terminated and Cotton would be entitled to retain the
12 entire \$50,000 non-refundable deposit);

13 (c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the
14 MMCC that would operate at the Property following the City's approval of the CUP
15 application; and

16 (d) Geraci agreed that, after the MMCC commenced operations at the
17 Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and
18 Geraci would guarantee that such payments would amount to at least \$10,000 per month.

19 15. At Geraci's request, the sale was to be documented in two final written
20 agreements, a real estate purchase agreement and a separate side agreement, which together
21 would contain all the agreed-upon terms from the November 2, 2016 meeting. At that meeting,
22 Geraci also offered to have his attorney "quickly" draft the final integrated agreements and
23 Cotton agreed.

24 16. Although the parties came to a final agreement on the purchase price and
25 deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come
26 up with the \$50,000 non-refundable deposit. Geraci claimed he needed extra time because he
27 had limited cashflow and would require the cash he did have to fund the lobbying efforts
28 needed to resolve the zoning issue at the Property and to prepare the CUP application.

1 17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit
2 but Geraci offered to pay \$10,000 towards the \$50,000 total deposit immediately as a show of
3 "good-faith," even though the parties had not reduced their final agreement to writing. Cotton
4 was understandably concerned that Geraci would file the CUP application before paying the
5 balance of the non-refundable deposit and Cotton would never receive the remainder of the
6 non-refundable deposit if the City denied the CUP application before Geraci paid the
7 remaining \$40,000 (thereby avoiding the parties' agreement that the \$50,000 non-refundable
8 deposit was intended to shift to Geraci some of the risk of the CUP application being denied).
9 Despite his reservations, Cotton agreed to Geraci's request and accepted the lesser \$10,000
10 initial deposit amount based upon Geraci's express promise to pay the \$40,000 balance of the
11 non-refundable deposit prior to submission of the CUP application, at the latest.

12 18. At the November 2, 2016 meeting, the parties executed a three-sentence
13 document related to their agreement on the purchase price for the Property at Geraci's request,
14 which read as follows:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA
for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a
Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be
applied to the sales price of \$800,000.00 and to remain in effect until license is
approved. Darryl Cotton has agreed not to enter into any other contacts on this
property.

20 Geraci assured Cotton that the document was intended to merely create a record of Cotton's
21 receipt of the \$10,000 "good-faith" deposit and provide evidence of the parties' agreement on
22 the purchase price and good-faith agreement to enter into final integrated agreement documents
23 related to the sale of the Property. Geraci emailed Cotton a scanned copy of the executed
24 document the same day. Following closer review of the executed document, Cotton wrote in
25 an email to Geraci several hours later (still on the same day):

I just noticed the 10% equity position in the dispensary was not language added
into that document. I just want to make sure that we're not missing that
language in any final agreement as it is a factored element in my decision to sell
the property. I'll be fine if you would simply acknowledge that here in a reply.

1 Approximately two hours later, Geraci replied via email, "No no problem at all."

2 19. Thereafter, Cotton continued to operate in good faith under the assumption that
3 Geraci's attorney would promptly draft the fully integrated agreement documents as the parties
4 had agreed and the parties would shortly execute the written agreements to document their
5 agreed-upon deal. However, over the following months, Geraci proved generally unresponsive
6 and continuously failed to make substantive progress on his promises, including his promises
7 to promptly deliver the draft final agreement documents, pay the balance of the non-refundable
8 deposit, and keep Cotton apprised of the status of the zoning issue.

9 20. Over the weeks and months that followed, Cotton repeatedly reached out to
10 Geraci regarding the status of the zoning issue, the payment of the remaining balance of the
11 non-refundable deposit, and the status of the draft documents. For example, on January 6,
12 2017, after Cotton became exasperated with Geraci's failure to provide any substantive
13 updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I
14 need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine
15 the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month
16 I'll try to call you later today still very sick."

17 21. Between January 18, 2017 and February 7, 2017, the following exchange took
18 place between Geraci and Cotton via text message:

19 Geraci: "The sign off date they said it's going to be the 30th."

20 Cotton: "This resolves the zoning issue?"

21 Geraci: "Yes"

22 Cotton: "Excellent"...

23 Cotton: "How goes it?"

24 Geraci: "We're waiting for confirmation today at about 4 o'clock"

25 Cotton: "Whats new?"

26 Cotton: "Based on your last text I thought you'd have some information on the
27 zoning by now. Your lack of response suggests no resolution as of yet."

28 Geraci: "I'm just walking in with clients they resolved it its fine we're just
waiting for final paperwork."

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1 The above communications between Geraci and Cotton regarding the zoning issue conveyed to
 2 Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had
 3 previously represented to Cotton that the CUP application could not be submitted until the
 4 zoning issue was resolved, which was key because Geraci’s submission of the CUP application
 5 was the outside date the parties had agreed upon for payment of the \$40,000 balance of the
 6 non-refundable deposit to Cotton. As it turns out, Geraci’s representations were untrue and he
 7 knew they were untrue as he had already submitted the CUP application months prior.

8 22. With respect to the promised final agreement documents, Geraci continuously
 9 failed to timely deliver the documents as agreed. On February 15, 2017, more than two
 10 months after the parties reached their agreement, Geraci texted Cotton, “We are preparing the
 11 documents with the attorney and hopefully will have them by the end of this week.” On
 12 February 22, 2017, Geraci again texted Cotton, “Contract should be ready in a couple days.”

13 23. On February 27, 2017, nearly three months after the parties reached an
 14 agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase
 15 agreement and stated: “Attached is the draft purchase of the property for 400k. The additional
 16 contract for the 400k should be in today and I will forward it to you as well.” However, upon
 17 review, the draft purchase agreement was missing many of the key deal points agreed upon by
 18 the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation,
 19 Geraci claimed it was simply due to miscommunication with his attorney and promised to have
 20 her revise the agreement to accurately reflect their deal points.

21 24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side
 22 agreement that was to incorporate other terms of the parties’ deal. Cotton immediately
 23 reviewed the draft side agreement and emailed Geraci the next day stating: “I see that no
 24 reference is made to the 10% equity position... [and] para 3.11 looks to avoid our agreement
 25 completely.” Paragraph 3.11 of the draft side agreement stated that the parties had no joint
 26 venture or partnership agreement of any kind, which contradicted the parties’ express
 27 agreement that Cotton would receive a ten percent equity stake in the MMCC business as a
 28 condition of the sale of the Property.

1 25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an
2 attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci
3 dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a
4 misunderstanding with his attorney and that Cotton could speak with her directly regarding any
5 comments on the drafts.

6 26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement
7 along with a cover email that stated: "... the 10k a month might be difficult to hit until the
8 sixth month... can we do 5k, and on the seventh month start 10k?". Cotton, increasingly
9 frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on
10 March 16, 2017 in an email which included the following:

11 We started these negotiations 4 months ago and the drafts and our
12 communications have not reflected what agreed upon and are still far from
13 reflecting our original agreement. Here is my proposal, please have your
14 attorney Gina revise the Purchase Agreement and the Side Agreement to
15 incorporate all the terms we have agreed upon so that we can execute final
16 versions and get this closed... Please confirm by Monday 12:00 PM whether we
17 are on the same page and you plan to continue with our agreement ... If,
18 hopefully, we can work through this, please confirm that revised final drafts that
19 incorporate the terms will be provided by Wednesday at 12:00 PM. I promise to
20 review and provide comments that same day so we can execute the same or next
21 day.

22 27. On the same day, Cotton contacted the City's Development Project Manager
23 responsible for CUP applications. At that time, Cotton discovered for the first time that
24 Geraci had submitted a CUP application for the Property way back on October 31, 2016,
25 before the parties even agreed upon the final terms of their deal and contrary to Geraci's
26 express representations over the previous five months. Cotton expressed his
27 disappointment and frustration in the same March 16, 2017 email to Geraci:

28 I found out today that a CUP application for my property was submitted in
October, which I am assuming is from someone connected to you. Although, I
note that you told me that the \$40,000 deposit balance would be paid once the
CUP was submitted and that you were waiting on certain zoning issues to be
resolved. Which is not the case.

29 28. On March 17, 2017, after Geraci requested an in-person meeting via text
message, Cotton replied in an email to Geraci which including the following:

1 I would prefer that until we have final agreements that we converse exclusively
2 via email. My greatest concern is that you get a denial on the CUP application
3 and not provide the remaining \$40,000 non-refundable deposit. To be frank, I
4 feel that you are not dealing with me in good faith, you told me repeatedly that
5 you could not submit a CUP application until certain zoning issues had been
6 resolved and that you had spent hundreds of thousands of dollars on getting
7 them resolved. You lied to me, I found out yesterday from the City of San
8 Diego that you submitted a CUP application on October 31 2016 BEFORE we
9 even signed our agreement on the 2nd of November... Please confirm by 12:00
10 PM Monday that you are honoring our agreement and will have final drafts
11 (reflecting completely the below) by Wednesday at 12:00 PM.

12 Geraci did not provide the requested confirmation that he would honor their agreement or
13 proffer the requested agreements prior to Cotton's deadlines.

14 29. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was
15 terminated and that Geraci no longer had any interest in the Property. Cotton also notified
16 Geraci that he intended to move forward with a new buyer for the Property.

17 30. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"),
18 emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first
19 time that the three-sentence document signed by the parties on November 2, 2016 constituted
20 the parties' complete agreement regarding the Property, contrary to the parties' further
21 agreement the same day, the entire course of dealings between the parties, and Geraci's own
22 statements and actions.

23 31. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci
24 intended to continue to pursue the CUP application and would be posting notices on Cotton's
25 property. Cotton responded via email the same day and objected to Geraci or his agents
26 entering the Property and reiterated the fact that Geraci has no rights to the Property.

27 32. The defendants' refusal to acknowledge they have no interest in the Property
28 and to step aside from the CUP application has diminished the value of the Property, reduced
the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
attorneys' fees to protect his interest in his Property.

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FIRST CAUSE OF ACTION

(Breach of Contract – Against Geraci and ROES 1 through 50)

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33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above, as though set forth in full at this point.

34. Geraci and Cotton entered into an agreement to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting the terms for a purchase and sale of the Property and a side agreement for Cotton to obtain an equity position in the MMCC to operate at the Property. This agreement is comprised of (a) the November 2, 2016 document signed by Geraci and Cotton, and (b) the November 2, 2016 email exchange between Geraci and Cotton including other agreed-upon terms and the parties’ agreement to negotiate and collaborate in good faith on final deal documents. True and correct copies of the agreement are attached hereto as Exhibits 1 and 2, respectively.

35. Cotton performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions of the contract between the parties or has been excused from performance.

36. Under the parties’ contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable final purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton’s requests and communications.

37. As a direct and proximate result of Geraci’s breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

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SECOND CAUSE OF ACTION

(Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

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38. Cotton realleges and incorporates by reference paragraphs 1 through 37, above, as though set forth in full at this point.

39. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants knew to be false or were made recklessly and without regard for their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton’s reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

40. The intentional misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties’ agreement;

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1 (c) On multiple occasions, Geraci represented to Cotton that a CUP
2 application for the Property could not be submitted until after the zoning issue was resolved;

3 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
4 yet filed a CUP application with respect to the Property when the CUP application had already
5 been filed; and

6 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
7 work of preparing a CUP application was merely underway, when, in fact, the CUP application
8 had already been filed.

9 41. Defendants, through their intentional misrepresentations and the actions taken in
10 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
11 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and
12 attorneys' fees to protect his interest in his Property. As a further result of the intentional
13 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
14 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

15 42. The misrepresentations were intentional, willful, malicious, outrageous,
16 unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent
17 to deprive Cotton of his interest in the Property. This intentional, willful, malicious,
18 outrageous and unjustified conduct entitles Cotton to an award of general, compensatory,
19 special, exemplary and/or punitive damages under Civil Code section 3294.

20 THIRD CAUSE OF ACTION

21 (Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

22 43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above,
23 as though set forth in full at this point.

24 44. Defendants made statements to Cotton that: (a) were false representations of
25 material facts; (b) defendants had no reasonable grounds for believing were true when the
26 statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and
27 justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in
28 causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and

1 proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

2 45. The negligent misrepresentations by defendants include at least the following:

3 (a) On or about October 31, 2016, Geraci fraudulently induced Cotton to
4 execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to
5 show he had access to the Property in connection with his lobbying efforts to resolve the
6 zoning issue and in connection with the preparation of a CUP application; and (ii) by
7 indicating the document would only be used as a show of good-faith while the parties
8 negotiated on the sale terms;

9 (b) On or about November 2, 2016, Geraci fraudulently induced Cotton to
10 execute the document Geraci now alleges is the fully integrated agreement between the parties
11 by representing that (i) the CUP application would not be filed until the zoning issue was
12 resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at
13 their November 2, 2016 meeting; (iii) Geraci would pay the \$40,000 remainder of the \$50,000
14 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci
15 understood and agreed the document was not intended to be the final agreement between the
16 parties for the purchase of the Property and did not contain all material terms of the parties'
17 agreement;

18 (c) On multiple occasions, Geraci represented to Cotton that a CUP
19 application for the Property could not be submitted until after the zoning issue was resolved;

20 (d) On multiple occasions, Geraci represented to Cotton that Geraci had not
21 yet filed a CUP application with respect to the Property when the CUP application had already
22 been filed; and

23 (e) On multiple occasions, Geraci represented to Cotton that the preliminary
24 work of preparing a CUP application was merely underway, when, in fact, the CUP application
25 had already been filed.

26 46. Defendants, through their negligent misrepresentations and the actions taken in
27 reliance upon such misrepresentations, have diminished the value of the Property, reduced the
28 price Cotton will be able to receive for the Property, and caused Cotton to incur costs and

1 attorneys' fees to protect his interest in his Property. As a further result of the negligent
2 misrepresentations, Cotton has been deprived of the remaining \$40,000 of the non-refundable
3 deposit that Geraci promised to pay prior to filing a CUP application for the Property.

4 FOURTH CAUSE OF ACTION

5 (False Promise – Against Geraci and ROES 1 through 50)

6 47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above,
7 as though set forth in full at this point.

8 48. On November 2, 2016, among other things, Geraci falsely promised the
9 following to Cotton without any intent of fulfilling the promises:

10 (a) Geraci would pay Cotton the remaining \$40,000 of the non-refundable
11 deposit prior to filing a CUP application;

12 (b) Geraci would cause his attorney to promptly draft the final integrated
13 agreements to document the agreed-upon deal between the parties;

14 (c) Geraci would pay Cotton the greater of \$10,000 per month or 10% of the
15 monthly profits for the MMCC at the Property if the CUP was granted; and

16 (d) Cotton would be a 10% owner of the MMCC business operating at
17 Property if the CUP was granted.

18 49. Geraci had no intent to perform the promises he made to Cotton on November
19 2, 2016 when he made them.

20 50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton
21 to rely on the false promises and execute the document signed by the parties at their November
22 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the
23 parties' entire agreement.

24 51. Cotton reasonably relied on Geraci's promises.

25 52. Geraci failed to perform the promises he made on November 2, 2016.

26 53. Defendants, through their false promises and the actions taken in reliance upon
27 such false promises, have diminished the value of the Property, reduced the price Cotton will
28 be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to

1 protect his interest in his Property. As a further result of the false promises, Cotton has been
2 deprived of the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay
3 prior to filing a CUP application for the Property.

4 54. The false promises were intentional, willful, malicious, outrageous, unjustified,
5 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive
6 Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and
7 unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary
8 and/or punitive damages under Civil Code section 3294.

9 FIFTH CAUSE OF ACTION

10 (Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

11 55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above,
12 as though set forth in full at this point.

13 56. An actual controversy has arisen and now exists between Cotton and all
14 defendants concerning their respective rights, liabilities, obligations and duties with respect to
15 the Property and the CUP application for the Property filed on or around October 31, 2016.

16 57. A declaration of rights is necessary and appropriate at this time in order for the
17 parties to ascertain their respective rights, liabilities, and obligations because no adequate
18 remedy other than as prayed for exists by which the rights of the parties may be ascertained.

19 58. Accordingly, Cotton respectfully requests a judicial declaration of rights,
20 liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration
21 that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole
22 interest-holder in the CUP application for the Property submitted on or around October 31,
23 2016, (c) defendants have no interest in the CUP application for the Property submitted on or
24 around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief as follows:

ON THE FIRST CAUSE OF ACTION:

- 1. For general, special, and consequential damages in an amount not yet fully ascertained and according to proof at trial, but at least \$40,000; and
- 2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE SECOND CAUSE OF ACTION

- 1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;
- 2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and
- 3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

ON THE THIRD CAUSE OF ACTION

- 1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000; and
- 2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE FOURTH CAUSE OF ACTION

- 1. For general, special, and consequential damages in an amount not yet fully ascertained but at least \$40,000;
- 2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and
- 3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

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ON THE FIFTH CAUSE OF ACTION

- 1. For a judicial declaration that defendants have no right or interest whatsoever in the Property;
- 2. For a judicial declaration that Cotton is the sole interest-holder in the CUP application for the Property submitted on or around October 31, 2016, defendants have no right or interest in said CUP application, and that defendants are enjoined from further pursuing such CUP application for the Property; and
- 3. For a judicial order that the Lis Pendens filed by Geraci on the Property be released.

ON ALL CAUSES OF ACTION

- 1. For interest on all sums at the maximum legal rates from dates according to proof;
- 2. For costs of suit; and
- 3. For such other relief as the Court deems just.

DATED: August 25, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP



By: _____
 DAVID S. DEMIAN
 ADAM C. WITT
 Attorneys for Defendant and Cross-Complainant
 Darryl Cotton

2403.004/3BQ6279.hkr

EXHIBIT 1

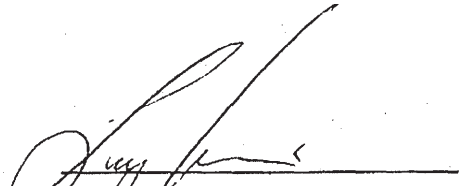
0136

11/02/2016

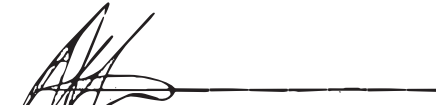
Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of \$800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.



Larry Geraci



Darryl Cotton

0137

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geragi
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Jessica Newell (Seal)

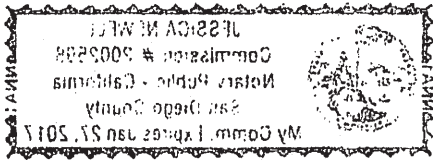


EXHIBIT 2

0140



Darryl Cotton <indagrodarryl@gmail.com>

Agreement

2 messages

Larry Geraci <Larry@tfcSD.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 3:11 PM

Best Regards,

Larry E. Geraci, EA

*Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123*

Web: Larrygeraci.com

Bus: 858.576.1040

Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

0141

6/7/2017

Gmail - Agreement

 Cotton & Geraci Contract.pdf
71K

Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 9:13 PM

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

Hi Larry,

Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

Regards.

Darryl Cotton, President



darryl@inda-gro.com
www.inda-gro.com
Ph: 877.452.2244
Cell: 619.954.4447
Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA. 92114
USA

NOTICE: The information contained in the above message is confidential information solely for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Inda-Gro immediately by telephone at 619.266.4004.

[Quoted text hidden]

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DAVID S. DEMIAN, SBN 220626
E-MAIL: ddemian@ftblaw.com
ADAM C. WITT, SBN 271502
E-MAIL: awitt@ftblaw.com

FINCH, THORNTON & BAIRD, LLP
ATTORNEYS AT LAW
4747 EXECUTIVE DRIVE - SUITE 700
SAN DIEGO, CALIFORNIA 92121-3107
TELEPHONE: (858) 737-3100
FACSIMILE: (858) 737-3101

Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

PROOF OF SERVICE BY MAIL

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual;
REBECCA BERRY, an individual; and
ROES 1 through 50,

Cross-Defendants.

I, Heidi Runge, declare that:

I am over the age of eighteen years and not a party to the action; I am employed in the County of San Diego, California, where the mailing occurred; and my business address is 4747 Executive Drive, Suite 700, San Diego, California 92121-3107. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service pursuant to which practice the correspondence

0143

1 will be deposited with the United States Postal Service this same day in the ordinary course of
2 business. I caused to be served the following document(s): SECOND AMENDED CROSS-
3 COMPLAINT, by placing a copy thereof in a separate envelope for each addressee listed as
4 follows:


5 Michael R. Weinstein, Esq. ATTORNEYS FOR PLAINTIFF AND
6 Scott H. Toothacre, Esq. CROSS-DEFENDANT LARRY GERACI
7 Ferris & Britton
8 A Professional Corporation
9 501 West Broadway, Suite 1450
10 San Diego, California 92101
11 Telephone: (619) 233-3131
12 Facsimile: (619) 232-9316
13 Email: mweinstein@ferrisbritton.com
14 stoothacre@ferrisbritton.com

11 Michael R. Weinstein, Esq. ATTORNEYS FOR CROSS-DEFENDANT
12 Scott H. Toothacre, Esq. REBECCA BERRY
13 Ferris & Britton
14 A Professional Corporation
15 501 West Broadway, Suite 1450
16 San Diego, California 92101
17 Telephone: (619) 233-3131
18 Facsimile: (619) 232-9316
19 Email: mweinstein@ferrisbritton.com
20 stoothacre@ferrisbritton.com

16 I then sealed the envelope(s) and, with the postage thereon fully prepaid, either
17 deposited it/each in the United States Postal Service or placed it/each for collection and
18 mailing on August 25, 2017, at San Diego, California, following ordinary business practices.

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

21 Executed on August 25, 2017.

22 
23 Heidi Runge

28 2403.004/Proof.hr

FILED
Feb 09 2018
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *s/ Lillianac* DEPUTY

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Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff Pro Se

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

DARRYL COTTON, an individual,

Plaintiff,

CASE NO.: '18CV0325 GPC MDD

Judge:
Dept.:

vs.

PLAINTIFF'S COMPLAINT FOR:

LARRY GERACI, an individual;
REBECCA BERRY, an individual; GINA
AUSTIN, an individual; AUSTIN LEGAL
GROUP, a professional corporation;
MICHAEL WEINSTEIN, an individual;
SCOTT H. TOOTHACRE; an individual;
FERRIS & BRITTON, a professional
corporation; CITY OF SAN DIEGO, a
public entity; and DOES 1 through 10,
inclusive,

1. 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE
2. 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS
3. BREACH OF CONTRACT;
4. FALSE PROMISE;
5. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
6. BREACH OF FIDUCIARY DUTY;
7. FRAUD IN THE INDUCEMENT;
8. FRAUD / FRAUDULENT MISREPRESENTATION;
9. TRESPASS;
10. SLANDER OF TITLE;
11. FALSE DOCUMENTS LIABILITY;
12. UNJUST ENRICHMENT;
13. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
15. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
16. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
17. CONSPIRACY;
18. RICO;
19. DECLARATORY RELIEF; AND
20. INJUNCTIVE RELIEF.

Defendants.

DEMAND FOR JURY TRIAL

1 **Darryl Cotton**
2 **6176 Federal Blvd.**
3 **San Diego, CA 92114**
4 **Telephone: (619) 954-4447**
5 **Fax: (619) 229-9387**

6 **Plaintiff Pro Se**

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

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

CASE NO.:

Judge:
Dept.:

11 **vs.**

PLAINTIFF'S COMPLAINT FOR:

12 **LARRY GERACI, an individual;**
13 **REBECCA BERRY, an individual; GINA**
14 **AUSTIN, an individual; AUSTIN LEGAL**
15 **GROUP, a professional corporation;**
16 **MICHAEL WEINSTEIN, an individual;**
17 **SCOTT H. TOOTHACRE; an individual;**
18 **FERRIS & BRITTON, a professional**
19 **corporation; CITY OF SAN DIEGO, a**
20 **public entity; and DOES 1 through 10,**
21 **inclusive,**

22 **Defendants.**

- 23 **1. 42 U.S.C. SEC. 1983: 4TH AMEND.**
- 24 **UNLAWFUL SEIZURE**
- 25 **2. 42 U.S.C. SEC. 1983: 14TH AMEND. DUE**
- 26 **PROCESS VIOLATIONS**
- 27 **3. BREACH OF CONTRACT;**
- 28 **4. FALSE PROMISE;**
- 5. BREACH OF IMPLIED COVENANT OF**
- GOOD FAITH AND FAIR DEALING;**
- 6. BREACH OF FIDUCIARY DUTY;**
- 7. FRAUD IN THE INDUCEMENT;**
- 8. FRAUD / FRAUDULENT**
- MISREPRESENTATION;**
- 9. TRESPASS;**
- 10. SLANDER OF TITLE;**
- 11. FALSE DOCUMENTS LIABILITY;**
- 12. UNJUST ENRICHMENT;**
- 13. INTENTIONAL INTERFERENCE WITH**
- PROSPECTIVE ECONOMIC RELATIONS;**
- 14. NEGLIGENT INTERFERENCE WITH**
- PROSPECTIVE ECONOMIC RELATIONS;**
- 15. INTENTIONAL INFLICTION OF**
- EMOTIONAL DISTRESS;**
- 16. NEGLIGENT INFLICTION OF**
- EMOTIONAL DISTRESS;**
- 17. CONSPIRACY;**
- 18. RICO;**
- 19. DECLARATORY RELIEF; AND**
- 20. INJUNCTIVE RELIEF.**

29 **DEMAND FOR JURY TRIAL**

1
2 Plaintiff *Pro Se* Darryl Cotton (“Plaintiff,” “Cotton” or “I”) alleges upon information and
3 belief as follows:

4 **INTRODUCTION**

5 1. The origin of this matter is a simpler-than-most real estate contract dispute regarding
6 the sale of my property to defendant Larry Geraci (“Geraci”).

7 2. My property qualifies to apply with the City of San Diego (“City”) for a Conditional
8 Use Permit (“CUP”). If the City issues the CUP, the value of the Property will immediately be worth
9 at least **\$16,000,000** because the CUP will allow the establishment of a Medical Marijuana Consumer
10 Collective (“MMCC”). Under the regulatory scheme being effectuated by the State of California, an
11 MMCC is a retail-for-profit marijuana store. Because the City is creating an incredibly small
12 oligarchy by only issuing 36 MMCC retail licenses across the entire City, and will not issue any more
13 for at least 10 years, the net present value of the Property, to an individual that has the capital and
14 resources to build, develop and operate the MMCC, is at least **\$100,000,000**.

15 3. However, the value of the Property is exponentially **greater** than \$100,000,000 to
16 organized, sophisticated and powerful criminals that are looking for legitimate businesses in the
17 marijuana industry that they can use as fronts for their illegal operations.

18 4. Defendant Larry Geraci (“Geraci”) is exactly such a criminal -- he runs a criminal
19 enterprise that has for years operated in the illegal marijuana industry. He operates publicly through a
20 business providing tax and financial consulting services that he uses to invests his illegal gains and to
21 provide money laundering services to other criminals who own illegal marijuana stores.

22 5. It is a matter of public record that Geraci is an Enrolled Agent with the I.R.S. and that
23 he has been a named defendant in numerous lawsuits filed by the City against him for his
24 owning/operating of numerous illegal marijuana dispensaries. As described below, he now operates

1 through employees and attorneys to hide his illicit operations. There is no way to ascertain exactly the
2 breadth of his criminal enterprise given his use of private and legal proxies for his criminal activities.

3 6. In November of 2016, Geraci and I came to terms for the sale of my property to him,
4 the terms of which included my having an ownership interest in the contemplated MMCC. However,
5 I found out Geraci had induced me to enter into that agreement on fraudulent grounds and he
6 breached the agreement in numerous ways.
7

8 7. Consequently, I terminated the agreement. After I terminated the agreement, Geraci, in
9 concert with his office manager/employee Rebecca Berry ("Berry") and his counsel, Gina Austin
10 ("Austin"), Michael Weinstein ("Weinstein") and Scott H. Toothacre ("Toothacre"), and their
11 respective law firms, brought forth a meritless lawsuit in state court attempting to fraudulently
12 deprive me of my property (the "Geraci Action").
13

14 8. After the Geraci Action was filed, I requested the City transfer the CUP application
15 filed by Geraci on my property to me. The City refused. I then filed an action against the City seeking
16 to have the City transfer the CUP application to me as Geraci had no legal basis to my property after
17 our agreement was terminated (the "City Action;" and collectively with the Geraci Action, the "State
18 Action.") Defendant attorneys named herein, and their respective law firms, are Geraci's counsel in
19 the State Action (the "Attorney Defendants").
20

21 9. Throughout the course of the State Action, I have dealt with officials from the City of
22 San Diego ("City") that have violated my constitutional rights in various ways. These actions, by
23 themselves unlawful, have also had the effect of allowing, condoning, perpetuating and augmenting
24 the irreparable harm done to me that was originally set in motion by Geraci, Berry and the Attorney
25 Defendants.
26

27 10. I believe the City as an entity is prejudiced against me and has, and is, seeking to
28 deprive me of my rights and property because of (i) my political activism for the legalization of

1 medical cannabis (“Political Activism”) and/or (ii) as the result of political influence wielded by
2 Geraci.

3 11. Irrespective of motivation and whether the City is in some manner connected to
4 Geraci, which I believe to be true for the reasons explained below, but even I myself find hard to
5 believe (I understand how crazy it sounds), it does not change the facts – the City has taken unlawful
6 actions towards me.
7

8 12. For all intents and purposes, even assuming the City has not been unduly influenced
9 by Geraci and his political lobbyists, the effect to me by the City’s actions would be no different as if
10 the City had actually purposefully conspired against me with Geraci to effectuate his unlawful
11 scheme against me to fraudulently deprive me of my Property.
12

13 13. These officials and their unconstitutional actions include, but are not limited to:

14 a. A criminal prosecutor who induced me into entering into a misdemeanor plea
15 agreement and did not tell me or my attorney representing me that as a consequence of entering that
16 misdemeanor plea agreement I would be forfeiting my real property at issue here (which at that point
17 in time was worth at least \$3,000,000). That City attorney then used that misdemeanor plea
18 agreement as the unreasonable basis of filing a lis pendens on my property, thereby unconstitutionally
19 seizing my property, and filing a Forfeiture Action seeking to acquire my property. The City attorney
20 initially requested \$100,000 to cease its unfounded Forfeiture Action, but when my then-counsel
21 produced evidence of my destitute financial status, the City agreed to only extort \$25,000 from me
22 (the short and long-term consequence of having to renegotiate the terms of my agreement with my
23 financial backers to meet the January 2, 2018 deadline to pay this unconstitutional \$25,000 obligation
24 or lose the Property that is worth millions of dollars is the single most financially catastrophic event
25 to happen in this litigation, other than Geraci’s breach of our agreement and the actions he set in
26 motion leading to this Federal Complaint.)
27
28

1 b. Officials at Development Services that were processing the CUP application
2 submitted by Geraci violated my constitutional rights by denying me substantive and procedural due
3 process by failing to provide notice about a material change in how they were processing my
4 application; blatantly lying to me by telling me they could not accept a second CUP application on a
5 property (which they later said I could after my then-counsel sent them a demand letter and noted
6 there was no legal basis for their position and that he had personally filed a second CUP application
7 on another property for another landlord in a similar situation to mine);

9 c. Civil attorneys for the City in the State Action that (a) violated their ethical
10 duties by failing to inform the judges in the State Action about the Judge’s mistakes/erroneous
11 assumptions and/or working in concert with the State Court Judges and other City officials against
12 me because of my Political Activism and (b) continuing to prosecute the State Action when they
13 knew it was meritless, thereby maliciously putting more undue financial and emotional pressure on
14 me by seeking money/fees and accusing me of having “unclean hands;” and

16 d. The State Court Judges presiding over the State Action whom I am forced to
17 conclude, given that their Orders simply cannot be reconciled with the evidence and arguments made
18 before them, are at the very least guilty of gross negligence by systemically denying me my
19 constitutional rights by assuming that because I am a crazy pro se and that no pleading, evidence and
20 oral argument I put forth over the course of months could actually contain enough legal and factual
21 basis so as to warrant the relief I requested.

23 14. Alternatively, the state court judges have been grossly negligent towards me either
24 because (i) they are unjustly dismissive of me because of my *pro se* and *blue-collar* status and simply
25 did not review my pleadings and disregarded my arguments at the oral hearings (ii) or they are not
26 impartial because, as one judge stated at the last hearing 2 weeks ago, he doubts my allegations of
27

1 ethical violations against counsel (including City attorneys) are true because he “knows them all
2 well.”

3 15. In the absence of additional information, I am forced to conclude that the state court
4 judges, actually City officials, are acting in concert with other City Officials as part of an off-the-
5 books illegal stratagem to deprive property owners of their properties via Forfeiture Actions if they
6 are sympathetic to and/or share my Political Activism.
7

8 16. I am not the only individual who has had their property unconstitutionally seized as
9 part of a Forfeiture Action that has been used by the City to extort significant financial gains from
10 property owners that share my Political Activism. Should I prevail in the TRO, I may seek out other
11 victims and bring forth a class action lawsuit against the City for their unconstitutional practice of
12 seizing properties.
13

14 17. I pray *this Federal Court* will not be dismissive of me because of my *pro se* and blue-
15 collar status and my Political Activism. I am painfully cognizant that from a statistical standpoint,
16 given my *pro se* status and the allegations above, that I will be perceived immediately as an
17 uneducated, legally-ignorant and conspiracy nut. I understand that. It is a reasonable assumption to
18 make. I just pray that this Federal Court, before it finalizes its conclusion, that it genuinely reviews
19 the evidence submitted with my TRO application because although from statistical standpoint I am
20 probably a *pro se* conspiracy nut, there is the possibility that my case is that 1 in a 1,000,000 chance
21 that there really is a conspiracy against me driven by the fact that the Property can be worth at least
22 **\$100,000,000** to sophisticated individuals, such as the defendants herein (excluding the City).
23

24 18. The truth is, I am a step away from literally losing my sanity, and I am aware of that.
25 But I view this Federal Court as my last recourse to protect and vindicate my rights as a citizen of this
26 great country and, if nothing else, that it may please explain to me its logic and evidence in issuing its
27 orders – something the State Courts have never done.
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19. I know how crazy all this sounds even as I write this now. But I would ask the Court to consider that I have owned this property since 1997 and have worked the better part of my life in building my business's and my future at this location. For me to lose this property and what it represents of my life's work is incredibly difficult to bear.

20. I have done everything in my power in the State Action, including selling off my future to finance the professional services of attorneys and representing myself pro se, but it has not availed me in the slightest. I have been before the State Judges over eight times and never once have they sought to explain, despite my repeated, specific and emotional pleas that they do so, why my case should not be immediately, summarily adjudicated my favor given undisputed evidence and facts in the record. (See Exhibit 1 (My opposition to a motion to compel my deposition filed in the State Action in which I described the totality of the circumstances to the state judge presiding, which was ignored.)

21. Thus, I am forced to conclude "that state courts [a]re being used to harass and injure individuals [such as myself], either because the state courts [a]re powerless to stop deprivations or [a]re in league with those who [a]re bent upon abrogation of federally protected rights." Mitchum v. Foster, 407 U.S. 225, 240, 92 S. Ct. 2151, 2161, 32 L. Ed. 2d 705 (1972).

22. I file this Complaint today before this Federal Court, pursuant to s 1983, because "[t]he very purpose of s 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial' Ex parte Virginia, 100 U.S., at 346, 25 L.Ed. 676." (*Id.*)

JURISDICTIONAL FACTS

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23. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(3), 2283, and 18 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for all civil actions arising under the United States Constitution or the laws of the United States, as well as civil actions to redress deprivation under color of state law, of any right immunity or privilege secured by the United States Constitution. Further this court has subject matter jurisdiction pursuant to the Federal Racketeering Act, 18 U.S.C. section 1651, et seq. I also request this Court exercise its supplemental jurisdiction and adjudicate claims arising under the laws of the State of California pursuant to 28 U.S.C. § 1367(a).

24. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process of law. This action seeks injunctive and other extraordinary relief, monetary damages, and such other relief as this Court may find proper.

25. Venue is proper in this Court because the events described below took place in this judicial district and the real property at issue is located in this judicial district.

PARTIES

26. Cotton is, and at all times mentioned was, an individual residing within the County of San Diego, California.

27. Cotton is, and at all times material to this action was, the sole record owner of the commercial real property located at 6176 Federal Boulevard, San Diego, California 92114 (“Property”).

1 28. Cotton is the President of Inda-Gro that he founded in 2010 which is a manufacturer
2 of environmentally sustainable products, primarily horticulture lighting systems, that help enhance
3 crop production while conserving energy and water resources and which operates from the Property.

4 29. Cotton is the President of 151 Farms, a not-for-profit organization he founded in 2015
5 that is focused on providing ecologically sustainable horticultural practices for the food and medical
6 needs of urban communities which also operates from the Property.

7 30. Upon information and belief Defendant Larry Geraci ("Geraci") is, and at all times
8 mentioned was, an individual residing within the County of San Diego, California.

9 31. Upon information and belief, Defendant Rebecca Berry ("Berry") is, and at all times
10 mentioned was, an individual residing within the County of San Diego, California.

11 32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times
12 mentioned was, an individual residing within the County of San Diego, California.

13 33. Upon information and belief, Austin Legal Group ("ALG") is, and at all times
14 mentioned was, a company located within the County of San Diego, California.

15 34. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at
16 all times mentioned was, an individual residing within the County of San Diego, California.

17 35. Upon information and belief, Defendant Scott H. Toothacre ("Toothacre") is, and at
18 all times mentioned was, an individual residing within the County of San Diego, California.

19 36. Upon information and belief, Ferris & Britton ("F&B") is, and at all times mentioned
20 was, a company located within the County of San Diego, California.

21 37. Defendant City of San Diego ("City") is, and at all times mentioned was, a public
22 entity organized and existing under the laws of California.

23 38. Cotton does not know the true names and capacities of the defendants named DOES 1
24 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES
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1 1 through 10 are in some way responsible for the events described in this Complaint and are liable to
2 Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the
3 true names and capacities of these parties have been ascertained.

4 39. At all times mentioned, defendants Geraci, Berry, Austin, ALG (the "Original
5 Defendants") were each an agent, principal, representative, alter ego and/or employee of the others
6 and each was at all times acting within the course and scope of said agency, representation and/or
7 employment and with the permission of the others.

8 40. As detailed below, Weinstein, Toothacre & F&B are attorneys representing Geraci
9 and Berry and joined the Original Defendants in their malfeasance when they became aware that the
10 Geraci Lawsuit was vexatious, continued prosecuting the Geraci Lawsuit and took unlawful actions
11 beyond the scope of their legal representation (F&B, from here on out, collectively, with the Original
12 Defendants, the "Private Defendants").

13 41. As detailed below, the City, through various representatives, each acting either with
14 purposeful intent, in concert with and/or with negligence, condoned, allowed, perpetuated and
15 augmented the irreparable and unlawful actions taken by the Private Defendants with their own
16 unconstitutional actions.

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20 **FACTUAL ALLEGATIONS**

21 ***THE ORIGIN OF THIS MATTER - MY PROPERTY***

22 42. In or around August 2016, Geraci first contacted Cotton to purchase the property and
23 set up an MMCC. The Property is one of a very limited number of properties located in San Diego
24 City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

25 43. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively
26 regarding the terms of a potential sale of the Property and, in good faith, took various steps in
27
28

1 contemplation of finalizing their negotiations (including the execution of documents required for the
2 CUP application). During these negotiations, Geraci represented to Cotton, among other things, that:

3 a. Geraci was a trustworthy individual because Geraci operated in a fiduciary
4 capacity for many high net worth individuals and businesses as an Enrolled Agent for the IRS
5 and the owner-manager of Tax and Financial Center, Inc., an accounting and financial
6 advisory business;

7
8 b. Geraci, through his due diligence, had uncovered a critical zoning issue that
9 would prevent the Property from being issued a CUP to operate a MMCC unless Geraci first
10 lobbied with the City to have the zoning issue resolved (the "Critical Zoning Issue");

11 c. Geraci, through his personal, political and professional relationships, was in a
12 unique position to lobby and influence key City political figures to have the Critical Zoning
13 Issue favorably resolved and obtain approval of the CUP application once submitted;

14 d. Geraci was qualified to successfully operate a MMCC because he owned and
15 operated several other marijuana dispensaries in the San Diego County area through his
16 employee Berry and other agents; and

17
18 e. That through his Tax and Financial Center, Inc. company he knew how to "get
19 around" the IRS regulations and minimize tax liability which is something he did for himself
20 and other owners of cannabis dispensaries.

21
22 44. On November 2, 2016, Cotton and Geraci met and came to an oral agreement for the
23 sale of Cotton's Property to Geraci (the "November Agreement").

24 45. The November Agreement had a condition precedent for closing, which was the
25 successful issuance of a CUP by the City.

26
27 46. The November Agreement consisted of, among other things, Geraci promising to
28 provide the following consideration: (i) a \$50,000 non-refundable deposit for Cotton to keep if the

1 CUP was not issued, (ii) a total purchase price of \$800,000 if the CUP was issued; and a 10% equity
2 stake in the MMCC with a guarantee minimum monthly equity distribution of \$10,000.

3 47. At the November 2, 2016 meeting, after the parties reached the November
4 Agreement, Geraci (i) provided Cotton with \$10,000 in cash to be applied towards the total non-
5 refundable deposit of \$50,000 and had Cotton execute a document to record his receipt of the
6 \$10,000 (the "Receipt") and (ii) promised to have his attorney, Gina Austin, speedily draft and
7 provide final, written purchase agreements for the Property that memorialized all of the terms that
8 made up the November Agreement.
9

10 48. The parties agreed to effectuate the November Agreement via two written
11 agreements, one a "Purchase Agreement" for the sale of the Property and a second "Side Agreement"
12 that contained, among other things, Cotton's equity percentage, terms for his continued operations of
13 his Inda-Gro business and 151 Farms operations at the Property until the beginning of construction at
14 the Property of the MMCC, and the guaranteed minimum monthly payments of \$10,000 (collectively,
15 the ("Final Agreement").
16

17 49. On that same day, November 2, 2016, after the parties met, reached the November
18 Agreement and separated, the following email chain took place:

19 a. At 3:11 PM, Geraci emailed a scanned copy of the Receipt to Cotton.

20 b. At 6:55 PM, Cotton replied to Geraci stating the following:

21 "Thank you for meeting today. Since we executed the Purchase Agreement in
22 your office for the sale price of the property I just noticed the 10% equity
23 position in the dispensary was not language added into that document. I just
24 want to make sure that we're not missing that language in any final agreement
as it is a factored element in my decision to sell the property. I'll be fine if you
would simply acknowledge that here in a reply."

25 c. At 9:13 PM, Geraci replied with the following:

26 "*No no problem at all*"
27
28

1 50. In other words, on the same day the Receipt was executed and I received it from
2 Geraci, I realized it could be misconstrued and that it was missing material terms (e.g., my 10%
3 equity stake). Because I was concerned, I emailed him specifically, so that he would confirm that the
4 Receipt was not a final agreement and he confirmed it. That is why I refer to this email as the
5 "**Confirmation Email.**"

6
7 51. Thereafter, over the course of almost five months, the parties exchanged numerous
8 emails, texts and calls regarding the Critical Zoning Issue, the Final Agreements and comments to
9 various drafts of the Final Agreement that were drafted by Gina Austin.

10 52. On March 7, 2017, Geraci emailed a draft Side Agreement. The cover email states:
11 "Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your
12 thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth
13 month....can we do 5k, and on the seventh month start 10k?"

14 53. The attached draft of the Side Agreement to the March 7, 2017 email from Geraci
15 provides, among other things, the following:

- 16 a. "WHEREAS, the Seller and Buyer have entered into a Purchase Agreement[,] dated as of approximate even date herewith, pursuant to which the Seller shall sell to
17 Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal
18 Blvd., San Diego, California 92114[.]"
- 19 b. Section 1.2: "Buyer hereby agrees to pay to Seller 10% of the net revenues of
20 Buyer's Business [...] Buyer hereby guarantees a profits payment of not less than
21 \$5,000 per month for the first three months [...] and \$10,000 a month for each month
22 thereafter[.]"
- 23 c. Section 2.12, which provides for notices, requires a copy of all notices sent to
24 Buyer to be sent to: "Austin Legal Group, APC, 3990 Old Town Ave, A-112, San
25 Diego, CA 92110."

26 54. The draft was provided in a Word version and attached to the email from Geraci, the
27 "Details" information of that Word document states that the "Authors" is "Gina Austin" and that the
28 "Content created" was done on "3/6/2017 3:48 PM." (the "**Meta-Data Evidence**"; a true and correct
copy of a screenshot of the Meta-Data Evidence is attached hereto as **Exhibit 2**).

1 55. I then found out that Geraci had been lying to me about the Critical Zoning Issue and
2 had submitted a CUP application with the City BEFORE we even finalized the November
3 Agreement.

4 56. Thus, Geraci breached the November Agreement by, *inter alia*, (i) filing the CUP
5 application with the City without first paying Cotton the \$40,000 balance of the non-refundable
6 deposit; not paying Cotton the \$40,000 balance; and (ii) failing to provide the Final Agreement as
7 promised.
8

9 57. I gave Respondent Geraci numerous opportunities to live up to his end of the bargain.
10 I was forced to, I had put off other investors and was relying on the \$40,000 to make payroll and
11 purchase materials for a new line of lights I was developing for my company Inda-Gro. I also, if I had
12 to, would have sold part of my 10% equity stake in the MMCC once it was approved.
13

14 58. However, Geraci made it clear via his email communications that he was going to
15 attempt to deprive me of the benefits of the bargain I bargained for when he refused to confirm via
16 writing that he was going to honor the November Agreement and made a statement that he had his
17 "attorneys working on it."
18

19 59. On March 21, 2017, after Geraci refused to confirm in writing that he was going to
20 honor the November Agreement, I emailed him: "To be clear, as of now, you have no interest in my
21 property, contingent or otherwise." Having anticipated his breach and being in desperate need of
22 money, That same day, I entered into the Written Real Estate Purchase Agreement with a third-party.
23 That deal was brokered by my Investor.

24 60. The next day, Weinstein emailed me a copy of the Geraci Lawsuit and filed a *Lis*
25 *Pendens* on my Property. The Geraci Lawsuit is premised solely and exclusively on the allegation
26 that the Receipt is the Final Agreement. As stated in Geraci's own words in a declaration submitted
27 in State Action under penalty of perjury: "***On November 2, 2016, Mr. Cotton and I executed a***
28

1 *written purchase and sale agreement for my purchase of the Property from him on the terms and*
2 *conditions stated in the agreement[.]’*

3 61. Thus, putting aside an overwhelming amount of additional and undisputed evidence,
4 Geraci’s own written admission in the Confirmation Email explicitly confirming the Receipt is not
5 the Final Purchase Agreements is completely damning and dispositive. It contradicts the only basis of
6 his complaint in the State Action and merits summary adjudication in my favor on the Breach of
7 Contract cause of action and related claims (hereinafter, the Breach of Contract cause of action
8 premised on the preceding facts is referred to as the “Original Issue”).

10 62. The only argument that has been put forth in the State Action that at first glance
11 appears to have merit is Geraci’s argument that the Confirmation Email should be prevented from
12 having legal effect pursuant to the Statute of Frauds (SOF) and the Parol Evidence Rule (PER). That
13 argument was the basis of Geraci’s demurrer to my cross-complaint in the State Action, which the
14 State Court denied.

16 63. Thus, the FACTS prove Geraci is lying and that his Complaint is meritless. And the
17 LAW is on my side as it will not prevent the admission of the Confirmation Email. With neither the
18 facts nor the law supporting Geraci’s lawsuits, why have the state court judges allowed both legal
19 actions to continue to my great and irreparable physical, emotional, psychological and financial
20 detriment?
21

22 64. The Receipt is the SOLE and ONLY basis of Geraci’s claim to the Property in the
23 Civil Action and the CUP application in the City Action. Gina Austin is defending Geraci and Berry
24 in the City Action which is premised on the alleged fact that the Receipt is the Final Agreement for
25 my Property.
26

27 65. The Receipt was executed in November of 2016.
28

1 66. Geraci's motivation for his unlawful behavior here is deplorable, but it is
2 understandable – Greed. What I cannot understand, nor can the attorneys I have spoken with about
3 these matters, is how or what Austin was thinking when she decided to represent Geraci and Berry in
4 the City Action and, on numerous occasions, work with Weinstein and Toothacre in the Geraci
5 Action? The record was already clear by then, and unless she wants to perjure herself or allege that I
6 somehow can get Google to falsify its records, there is evidence that is beyond dispute that she is
7 LYING to the State Court perpetuating a meritless case based solely on one single argument she
8 knows is false.

10 67. She is representing to the State Court that the Receipt is the final agreement for my
11 property, but she drafted several versions of the purchase and the side agreement for my property as
12 late as March of 2017? This appears to me to be criminal. And really, really dumb.

14 68. She is supposedly incredibly smart, she was just named as one of the Top Cannabis
15 Attorneys in San Diego. This is actually the basis of the fear of my Investor, a former attorney
16 himself, what kind of influence does Geraci have that he can force and coerce Austin to commit a
17 crime, to be able to get F&B to bring forth a vexatious lawsuit and to continue to maliciously
18 prosecute a case with no probable cause? Why have the judges not addressed the evidence?
19

20 69. For me it is impossible to ascertain the full extent of Geraci's influence, but it is
21 significant and scary. It is even enough to force a convict out on parole to risk going back to jail - on
22 January 17, 2018 while attempting to find a paralegal to assist me with filing and proof reading my
23 pleadings in the State Action, my investor, a former federal judicial law clerk, called several
24 paralegals to see if they could help me on short notice because my pleadings were not professional.
25 He invited a paralegal named Shawn Miller of SJBM Consulting over to his home to interview him
26 and give him the background. After he gave a description of the case and the Complaint and my
27 Cross-Complaint, Shawn stated that he knew Geraci and his business associates.
28

1 70. Because Shawn knew Geraci, my investor told him that matters would not work out
2 and asked him not to mention him to Geraci and/or his associates. My investor specifically told
3 Shawn that as a paralegal, he was ethically and professionally bound to NOT disclose the
4 conversation and its contents.

5 71. Not even two hours later, at around 10:00 PM at night, Shawn called my investor and
6 told him that it would be in his "best interest" for him to use his influence on me to get me to settle
7 with Geraci. This was the last straw for my investor because he does not understand the actions taken
8 by the City, the attorneys and the judges in this action. Being threatened at his home late at night by a
9 convict out on parole who was clearly aware that by violating his ethical and professional duties he
10 would risk going back to jail, reflected to him, that Geraci, putting aside my own belief that he is a
11 thuggish drug-lord at the head of a criminal enterprise, was someone that had a great deal of
12 influence over criminals and was someone he did not want anything to do with.

15 72. My investor has been a nervous wreck knowing that Geraci and his associates,
16 including a former special forces green beret (discussed below) know where he lives.

17 73. With all these seemingly unrelated people and events all coming together to protect,
18 intimidate for, push unfounded legal claims for, and do Geraci's bidding has been disturbing and
19 created nothing but turmoil in my life. Even my family, friends, businessmen and investors are
20 concerned that matters have escalated to a degree that Geraci, in seeking to cover-up everything that
21 has transpired here, may take drastic actions against them.

23 **SUMMARY OF MATERIAL FACTS REGARDING WEINSTEIN, TOOTHACRE AND F&B**

24 74. Initially, given the simple nature of the Original Issue, believing that I would be able
25 to represent myself *pro se* in the Geraci Lawsuit. This was a foolish assumption as it turned out.
26 Without wealth, justice is difficult to access. I prepared and filed an Answer to the Geraci Lawsuit
27 and filed a Cross-Complaint. My Answer and Cross-Complaint were submitted in one document and,
28

1 therefore, denied by the State Court for failing to comply with procedural requirements. Thus, I was
2 forced to realize, notwithstanding the simplicity of the Original Issue, that I would be unable to
3 efficiently represent myself in a legal proceeding and entered into an agreement with a third-party
4 (the "Investor") to finance my representation in the Geraci Lawsuit. (The Investor is also the
5 individual who brokered the Real Estate Written Purchase Agreement between Mr. Martin and
6 myself.)

7
8 75. In exchange for my Investor financing the Geraci Litigation, I exchanged a portion of
9 the proceeds that I would receive from the Real Estate Purchase Agreement.

10 76. Investor did research, interviewed and coordinated my retaining the services of Mr.
11 David Damien of Finch, Thornton and Baird ("FTB"). Investor recommended FTB for me to
12 interview and choose as counsel because Mr. Damien had previously worked on a very similar
13 matter, representing a property owner against an investor with whom he had an agreement to develop
14 an MMCC, but with which he had a falling out before the CUP was issued. Mr. Damien was able to
15 prevail in that lawsuit, a Writ of Mandate action against the City, and have the City transfer the CUP
16 application filed by and paid for by the investor in that matter to the property owner (see
17 *Engerbretsen v. City of San Diego*, 37-2015-00017734-CU-WM-CTL.) Thus, he appeared to be a
18 perfect fit to help represent me against Geraci.

19
20
21 77. Investor negotiated with Mr. Damien for FTB to fully represent me in various legal
22 matters without limitation and to do so via a financing arrangement of \$10,000 a month. However,
23 Mr. Damien did not actually want to do work in excess of \$10,000 a month. Consequently, he was
24 not prepared for several hearings and proved grossly incompetent.[6]

25
26 78. Mr. Damien was professionally negligent on December 7, 2017 when he represented
27 me before the state court judge on an application for a TRO. Summarily, he failed in oral argument to
28 raise with the state court judge the Confirmation Email – the single most powerful and dispositive

1 piece of evidence in this case. After he was berated by my Investor right outside the courtroom for his
2 negligence, he withdrew as my counsel before even speaking with me via email.

3 79. The State Court Judge’s order denying my TRO states “The Court, after hearing oral
4 argument and taking into consideration papers filed, denies the request for Temporary Restraining
5 Order and provides counsel with a hearing for the Preliminary Injunction.” Based on the facts above,
6 and as can be confirmed with the opposition to the TRO motion filed herewith, there is no factual or
7 legal basis for the Court’s decision.
8

9 80. I then filed *pro se* a motion for reconsideration regarding the TRO motion in which I
10 explicitly stated that Damien had been negligent by failing to raise the Confirmation Email with the
11 state court judge. That motion was heard on December 12, 2017.
12

13 81. On December 12, 2017, five days after the denial of my TRO application. I showed
14 up with family, friends, and supporters, confident that I would have “my day in court” and that the
15 State Court judge would realize Damien’s negligence and issue the TRO.
16

17 82. Instead, I was not even given the opportunity to speak a single word. Before I could
18 say anything, the State Court judge told me he was denying my motion for reconsideration and left
19 the bench.
20

21 83. The minute order states: “The Court denies without prejudice the ex parte application.
22 Defendant is directed to go by way of noticed motion.” If I am correct in assuming that, even putting
23 aside additional evidence, the Confirmation Email by itself dispositively resolves the case in my
24 favor, then what is the basis of the State Court decision to deny my motion for reconsideration if he
25 had reviewed my motion and understood that Damien had been negligent by failing to raise the
26 Confirmation Email? And why was I not allowed to speak a single word? And how does allowing me
27 to file by way of “noticed motion” address the exigency that was the basis of my TRO? And how
28

1 does it address the professional negligence of my counsel at the TRO hearing on December 7, 2017?

2 It does not.

3 84. December 12, 2017 is, and always will be, the worst day of my life. I was in so much
4 shock from the denial of my motion for reconsideration and the way in which it happened, that I
5 suffered a Transient Ischemic Attack, a form of stroke. I had to go to the Emergency Room that day
6 after the state court judge denied my motion without even letting me speak a single word.
7

8 85. The next day my financial investor told me he was going to cease funding my personal
9 needs and the Geraci Litigation because he needed to “cut his losses.” I went to his home uninvited. I
10 again pleaded with him to continue his support and he refused. I could not control myself and I ended
11 up physically assaulting him.

12 86. He was going to call the police and have me arrested. I will forever be grateful that he
13 did not and instead called a medical doctor who found me to be a danger to myself and others. (See
14 **exhibit 1.**)

15 87. After the denial of my TRO application, I made numerous calls to the California State
16 Bar and their Ethic Hotline regarding Damien’s negligence at the TRO Motion hearing. I was
17 directed to various Ethics opinions regarding not just his actions, but those of the other attorneys who
18 were present who, because of the situation violated their ethical duties by failing to let the State Court
19 know that it was ruling on a motion when it had not taken into account the single most powerful piece
20 of evidence – the Confirmation Email.
21
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23 88. The most relevant items that I was pointed to are the following:

24 a. “[A]n attorney has a duty not only to tell the truth in the first place, but a duty
25 to ‘aid the court in avoiding error and in determining the cause in accordance with justice
26 and the established rules of practice.’ (51 Cal.App. at p. 271, italics added.)”

27 b. “A lawyer acts unethically where she assists in the commission of a fraud by
28 implying facts and circumstances that are not true in a context likely to be misleading.”[10]

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89. When Weinstein first emailed me the complaint on March 22, 2017 from the state court action, I replied and noted the facts above, including the Confirmation Email. Thus, Weinstein knew from the very beginning that he was filing and prosecuting a vexatious lawsuit. Unless he wants to argue that he assumed the SOF and the PER would prevent the admission of the Confirmation Email AND he was not aware of the concept of promissory estoppel which would apply if the SOF and PER did apply in the first instance to prevent the admission of the Confirmation Email. (Or likely any of the other common law exceptions to the PER per the Rutter Guide such as fraud, formation defect, condition precedent, collateral agreement, ambiguity or subsequent agreements most of which would swallow up the rule thereby leaving him without a defense. Assuming of course that anyone was actually paying attention or being unduly influenced by Geraci via his political lobbyist. In fact, if I had the money I would hire a private investigator to see what ties Geraci has to my former attorneys at FTB that helped them forget basic fist year law school contract law concepts such as promissory estoppel). In fact, an associate at FTB, when partner David Damien was not in the room, even let slip that some of Geraci's clients were also clients of their law firm, FTB. Should FTB not have to disclose that relationship as part of my representation because it could represent a conflict of interest? They never did, aside from the associate, Mr. Witt, who did so in small conversation when the partner Damien was not in the room.)

90. Even assuming the above is the case, that Weinstein was not aware of the concept of promissory estoppel, no later than when the State Court denied Geraci's demurrer based on the SOF and the PER, Weinstein knew that the case was at that point vexatious and yet he kept prosecuting it.

91. At the December 7, 2017 TRO hearing, Weinstein obviously knew that Damien was negligent in not raising, among the other arguments, the Confirmation Email in front of the State Court judge. I believe that given the language provided by the California State Bar, that he violated

1 his ethical obligations to the Court and, vicariously to me, by allowing the State Court judge to rule
2 on the TRO motion without raising with him the fact that he was doing so without having taken into
3 account material and dispositive evidence.

4 92. The obligations of an attorney must stop short of taking advantage of situations that
5 lead to a miscarriage of justice, especially when he knows that I am facing severe financial and
6 emotional distress. This appears to me to be an Abuse of Process, and this is in the best case scenario
7 in which it is can be assumed that he is not vexatiously continuing to prosecute this case when he
8 knows that there is no factual or legal basis for it.

10 93. I filed Notices of Appeal from the denial of my TRO application and Motion for
11 Reconsideration. I hired counsel, Mr. Jacob Austin, a criminal defense attorney, who graciously
12 agreed to help me on my appeals on a contingent basis (and with a guarantee of ultimately being paid
13 by my investor if I did not prevail on my Appeal).

15 94. I was working on the draft of my Appeal, when Weinstein, on January 8, 2018, filed
16 two motions to compel my deposition in the State Action and a large amount of discovery requests.

17 95. Against the advice of my counsel and my investor, I decided to take advantage of the
18 opportunity to oppose the Motion to Compel and highlight to the judge the Confirmation Email and
19 the actions by counsel as described above. I filed my Opposition and it is attached here as Exhibit 1.
20

21 96. The Motions to Compel were granted and the various requests I set forth in my
22 opposition were denied.

23 97. The order issued by the judge granting the motion to compel and denying the relief I
24 requested, is predicated on the erroneous belief that there is "disputed" evidence in the record. Up
25 until that point in time I believed that the state court judge decision was due to Damien's negligence,
26 I now believe that there are other nefarious factors at play and justice simply cannot be had in San
27 Diego state court.
28

1 98. That same day, January 25, 2018, I emailed Weinstein specifically accusing him of
2 violating his ethical obligations as he has an “affirmative duty” to inform the State Court judge about
3 his erroneous assumption regarding the fact that the Confirmation Email was not disputed. He replied
4 with a perfectly crafted legal response, by stating that he “had not made any misrepresentations to the
5 courts about facts or the law,” which is completely accurate. My accusation was that he was violating
6 an affirmative duty to act, not that he had taken an act that was a misrepresentation.
7

8 ***SUMMARY OF ADDITIONAL MATERIAL FACTS REGARDING THE CITY***

9 **The City Prosecutor – Mark Skeels**

10
11 99. In July of 2015, I leased a portion of my building to a tenant who managed a non-
12 profit corporation, “Pure Meds,” to run a cannabis dispensary based on his representations that he
13 was fully compliant with the laws. I did not know then what I know now, that leasing my property to
14 Pure Meds without the proper City permit would be unlawful.

15 100. Although Pure Meds operated from my building, it was completely segregated with
16 separate entrances and addresses.
17

18 101. On April 6, 2016, the City shut down Pure Meds and brought charges against Pure
19 Meds and myself almost exactly one year later. On April 5, 2017, realizing and acknowledging my
20 error, I pled guilty to one misdemeanor charge of a Health and Safety Code section HS 11366.5 (a)
21 violation.
22

23 102. My plea agreement states that “***Mr. Cotton retains all legal rights pursuant to prop***
24 ***215.***” The judge asked me during the hearing why that language was added. I explained that I run 151
25 Farms at my Property and that I cultivate medical cannabis there in compliance with prop 215.
26 Because I was giving up my 4th amendment rights in the plea agreement, I wanted to be sure that I
27
28

1 was protected for my cultivation at the Property pursuant to Proposition 215. In other words, my Plea
2 Agreement and my discussion was predicated on my keeping my Property.

3 103. Immediately upon entering into the Plea Agreement, the City filed a Petition for
4 Forfeiture of Property based on the Plea Agreement I entered into and filed a Lis Pendens putting yet
5 another cloud on my title.

6 104. Deputy City Attorney Skeels did not explain to me, nor my counsel, that he intended
7 to seek the forfeiture of my property or that it was even a possibility. In fact, he did the opposite, he
8 made it seem as if he was giving me a sweetheart deal with a small fine and informal probation.

9 105. My criminal defense attorney who defended me in that action submitted a sworn
10 declaration stating that he was not aware and was not made aware by Skeels that the forfeiture of my
11 property was a possibility. Skeels did not care.

12 106. In other words, Skeels fraudulently induced me to enter into a plea agreement without
13 telling me the consequences that he was actually planning to pursue. This appears to me to be a
14 violation of my constitutional right to be made aware of the consequences to pleading guilty to a
15 criminal charge. Based on representations of Skeels, I didn't fully understand the charges or the
16 effects of admitting guilt. I would not have entered into a misdemeanor plea agreement if the
17 consequence of that action was to forfeit my property for which at that point in time I was still going
18 to receive in excess of \$3,000,000. It is ludicrous to believe otherwise.

19 107. In fact, this unlawful seizure is, I believe, part of an unconditional strategy by Skeels
20 and the City to deprive individuals of their property. This belief is bolstered by the fact that I have
21 been told on numerous occasions by numerous criminal attorneys as I have explained these facts that
22 it is incredibly rare for prosecutors to talk to defense counsel in the presence of the accused, much
23 less directly communicate with a defendant.

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1 108. Skeels told me he was giving me a “sweetheart” deal. I feel that if it wasn’t a pressure
2 tactic than it was essentially a “confidence game” and a complete sham designed to gain undeserved
3 trust and pretend to be helpful while concealing his true intent of pursuing Asset Forfeiture. Under
4 information and belief, I feel that this is just one example of what appears to be endemic, systemic
5 maneuvering to confiscate the properties of as many defendants as possible.

6
7 109. This seemingly mild misdemeanor, my leasing out my property to third-parties over
8 who I had no control, with its \$239 fine, ended up in an unimaginable \$25,000 extortion that also
9 forced me to renegotiate with numerous parties to get it at a time when I was completely destitute
10 because of this legal action brought forth by Geraci and his crew of criminals.

11 110. Once I hired FTB, Damien reached out to Skeels and according to Damien, even
12 Skeels was not aware of the fact that there would be a forfeiture action. While that would be
13 believable under some circumstances, the Petition for Forfeiture of Property & Lis Pendens were
14 filed the next day so it is impossible to believe him.

15
16 111. Ultimately, facing numerous lawsuits and needing to prioritize my time and limited
17 financing, I settled and agreed to pay the City \$25,000. For the record, I am not here in this legal
18 action seeking to have that Plea Agreement nullified. Per the Forfeiture Settlement Agreement that
19 Skeels and Damien convinced me into entering, if I fight the Stipulation for Entry of Judgement, then
20 I lose the Property. I am stating these series of events so that it can be taken into account with the
21 other actions by the City via Development Services and the Officers of the Court that together make
22 it clear that there is a pattern of discriminatory and unconstitutional behavior towards me by the City.
23 Whether these actions are because of my Political Activism, Geraci’s influence or a combination of
24 both, will be proven through discovery and trial. (As a side note in regards to Skeels: I would hope
25 that Judge Cano may take it upon herself to sanction Skeels for his manipulation of the Plea
26 Agreement that she approved and which clearly did not contemplate the Forfeiture Action that he
27
28

1 brought under it as she and I had explicitly discussed the continuation of my cultivation practices on
2 the Property, the basis of the Prop 215 language added into the Plea Agreement. Who knows how
3 many more victims Skeels has extorted and how many orders by judges he has manipulated?)

4
5 The City’s Development Services Department

6 112. On March 21, 2017, when I terminated my agreement with Geraci and sold the
7 property to a third-party, I also emailed the Development Project Manager responsible for the CUP
8 application on my Property. I stated:

9
10 “the potential buyer, Larry Geraci (cc’ed herein), and I have failed to finalize the purchase of
11 my property. As of today, there are no third-parties that have any direct, indirect or contingent
12 interests in my property. The application currently pending on my property should be denied
13 because the applicants have no legal access to my property.”

14 113. The City refused to cease processing the CUP application as the application was
15 submitted by Geraci’s employee, Berry.

16 114. However, on May 19, 2017, after numerous emails and calls with various individuals
17 at Development Services, the Project Manager provided a letter addressed to Abhay Schweitzer,
18 Geraci’s architect who is in control of processing the CUP application with City, stating, in relevant
19 part:

20 “City staff has been informed that the project site has been sold. In order to continue the
21 processing of your application, with your project resubmittal, please provide a new Grant
22 Deed, updated Ownership Disclosure Statement, and a change of Financial Responsible Party
23 Form if the Financial Responsible Party has also changed.”

24 115. Thus, as of May 19, 2017, I proceeded under the assumption that I was not at risk of
25 losing the CUP process because the CUP process was on hold until, *inter alia*, I executed a Grant
26 Deed. **If a CUP application is submitted and it is denied, then another CUP application cannot**
27 **be resubmitted for a year on the same Property.**
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116. Sometime after May 19, 2017, I contacted Development Services and requested that I be allowed to submit a second CUP application. Development Services denied my request and stated that they could not accept a second CUP application on the same property. This is a blatant lie. Damien had, in the Engerbretsen matter, submitted a second CUP application on behalf of his client with the City.

117. On September 22, 2017, my then-counsel Damien wrote to Development Services noting their refusal to accept a second CUP application and that such “refusal is not supported by any provision of the Municipal Code.”

118. The City replied on September 29, 2017, by stating, inter alia, that I could submit a second CUP application, but then also stated the following:

“As you’ve acknowledged in your letter, DSD is currently processing an application, submitted by Ms. Rebecca Berry [...] Please be advised that the City is only able to make a decision on one of these applications; the first project deemed ready for a decision by the Hearing Officer will be scheduled for a public hearing. Following any final decision on one of the CUP applications submitted [...], the CUP application still in process would be obsolete and would need to be withdrawn.”

119. On October 30, 2017, through my then-counsel Damien, I filed a Motion for Writ of Mandate directing the City to transfer the CUP application to me. It was not until I reviewed the Declaration of Abhay Schweitzer in Support of Geraci’s opposition to my Motion for a Writ of Mandate that I came to find out that the City had, in complete contradiction of the letter provided on May 19, 2017, continued to process the Geraci CUP application on MY Property without the executed Grant Deed.

120. The City never informed me of this or provided notice of any kind. Had I known, I would have taken alternative steps to secure my rights to the CUP process. Per Schweitzer’s declaration, everything was going great and he anticipates the CUP being approved in March of 2018.

1 121. To summarize, first, DSD communicated that it would not process a CUP application
2 on my Property without an executed grant deed by me. However, without any notice or knowledge
3 and in complete contradiction of its own letter stating it required an executed Grant Deed, it
4 continued to prosecute the Geraci CUP application.

5 122. Second, when I first reached out to DSD to submit a second CUP application, it
6 blatantly lied by stating that they could not accept a second CUP application on the property when it
7 had on other occasions for similarly situated individuals.
8

9 123. Third, not until my then-counsel sent a demand letter noting there was no legal basis
10 for the City’s refusal, did DSD allow me to submit a CUP application. But, the City created an unjust
11 “horse-race” between myself and Geraci.
12

13 124. DSD has been processing the Geraci CUP application for over a year at that point,
14 allowing me to submit a second CUP application on those terms is a **futile** task that would only have
15 resulted in needless additional expense and actions and which, per the declaration of Schweitzer, was
16 a fool’s task as it is expected that the CUP will issue in March. This is simply a malicious ploy to get
17 me to expend more money and resources when all these parties knew that I was fighting a meritless
18 lawsuit and incredibly financially challenged.
19

20 City Civil Attorneys

21 125. For the same reasons explained above, the City attorney at the TRO Motion hearing
22 should have informed the State Court judge about Damien’s negligence and the Confirmation Email.
23

24 126. Further, the City through its attorney, filed its Answer to my application for a Writ of
25 Mandate AFTER the TRO Motion hearing. At that point, the City knew that Damien had been
26 negligent and the attorney for the City even communicated to Damien that he “should have won”
27 based on the pleading papers.
28

1 127. Pursuant to the Answer filed, even though the City KNOWS that the case is meritless,
2 it is seeking legal fees against me and it is accusing me, among other things, of being guilty of
3 "unclean hands."

4 128. The City is accusing me of wrongdoing when it knows that I am not in the wrong.
5 The only wrongs that the City could hold against me are the leasing of my Property to a non-profit
6 that operated an unlicensed dispensary. I recognize I was wrong in not seeking out confirmation of
7 the dispensary's legality and I pled guilty, for which I was extorted \$25,000.
8

9 129. The only other potential reason is that the City, when taking into account all of the
10 other unfounded and unconstitutional actions described herein, is that the City is systemically
11 discriminating against me whenever it can because of my Political Activism and/or in connection
12 Geraci as a result of his influence.
13

14 The State Court Judges

15 130. At the oral hearing held on January 25, 2018 on Geraci's motions to compel, the State
16 Court judge started the hearing by stating that he does not believe that counsel against whom I made
17 my allegations would engage in the actions I described. He specifically stated that he has known them
18 all for a long period of time.
19

20 131. As I view it, he was telling me he has some form of relationship with attorneys and
21 that he does not believe they would engage in unethical actions. OK, I understand that. I could just be
22 a crazy pro per, but why did he not review the evidence submitted and make a judgment that takes
23 that evidence into account? I literally begged him in my opposition, and for that matter, in my Motion
24 for Reconsideration, that he please provide the reasoning for why the Confirmation Email does not
25 dispositively address my breach of contract cause of action.
26

27 132. The Order he issued granting Weinstein's Motions to Compel and denying my
28 requests in my Opposition states the following: "*Disputed* evidence exists suggesting that Cotton was

1 not the only person who possess the right to use the subject property.” THERE IS **NO** DISUPTED
2 EVIDENCE. The only evidence in the record ever put forth by Geraci for his claim to my Property is
3 his allegation that the Receipt is the final purchase agreement for my property, a lie which is blatantly
4 exposed by his admission in the Confirmation Email. That, again, is NOT DISPUTED.

5 133. To clearly highlight this issue: The Confirmation Email was the subject of a demurrer
6 that the State Court judge ruled on, it was objected to on SOF and PER grounds, not its authenticity
7 that has never been challenged, disputed or denied since November 2, 2016!

8 134. I was preparing yet another Motion for Reconsideration regarding his order granting
9 the Motions to Compel, exhausting my limited resources attempting to make all kinds of arguments
10 when I came to a realization: even if he did turn around and issue some kind of order favorable to me,
11 all the evidence proves that he is at best, grossly negligent, and, at worst, conspiring against me
12 because of my Political Activism.
13
14

15 **THE FILING OF THIS FEDERAL COMPLAINT – THREATS**

16 135. On **February 3, 2018**, two individuals visited me. (I am not naming them because one
17 of the individuals is a former special forces operative for the US military and, for the reasons
18 described below, an agent of Geraci.) These two individuals came to my Property and during the
19 course of that conversation contradicted themselves by stating first that they had nothing to do with
20 Geraci and that they would buy the Property/CUP and assured me a long term job.
21

22 136. When I told them that Mr. Martin was paying a total purchase price of \$2,500,000,
23 they told me they would pay significantly *more* than \$2,500,000 and that it would also be beneficial
24 for me as I would be able to “end” the litigation with Geraci.
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137. I then explained to them that I was already contractually and legally obligated to pursue the litigation action against Geraci, prevail, and then transfer the Property and the CUP application to Mr. Martin.

138. They looked at each other and then contradicted themselves. They told me that Geraci was “powerful” and had “deep ties and influence” with the “City” and that it would not go well for me if I did not agree to settle the action with Geraci. These individuals are NOT simple, street level individuals. One of them is a high-net worth individual that recently sponsored a large art gala at San Diego State (the “Sponsor”).

139. The other is a former special forces operative for the US Military (the “Operative”). The Operative told me that because of my Plea Agreement, Geraci could use his influence with the City to have the San Diego Police Department raid my Property at any time and have me arrested. I told him that all the cannabis on my Property was compliant with Proposition 215 and my rights to cultivate as I had specifically discussed with the judge who accepted the plea agreement. I showed it to them, I have a large photocopy of it on my wall at the Property, and it was clear they were expecting me to be more intimidated.

140. Yesterday, **February 8, 2018**, when I was wrapping up this Federal Complaint and all the required documents for the filing of my TRO submitted concurrently with herewith, I sent an email notice **ONLY** to counsel in the State Action (the “Federal Notice Email”).

141. NO ONE ELSE KNEW THAT WAS PLANNING ON FILING IN FEDERAL COURT WITH THESE CAUSES OF ACTION YESTERDAY. NOT EVEN MY OWN FAMILY, FRIENDS, INVESTORS, SUPPORTERS, PARALEGALS AND COUNSEL.

142. I sent the Federal Notice Email at **3:01 PM**.

143. At **3:36 PM**, not even an hour later, the Operative called me and told me *emphatically* that he no longer has anything to do with the Sponsor, Geraci or anything related to me. He was

1 aware that I was immediately filing in Federal Court. He asked that I note name him or involve him
2 in this Federal lawsuit. Because he is ex-special forces, I have no desire to do so. Should the Sponsor,
3 Geraci, and whichever attorney informed him deny this allegation, then they can name him and be
4 responsible for the consequences of doing so. I note I have the phone records to prove this and am
5 creating copies that will be kept separately by third-parties.

6
7 144. How could Sponsor and Operative claim to not know Geraci? Why is Operative
8 calling me to tell me that he has nothing to do with Geraci or the actions that have transpired here? I
9 ONLY told counsel in the State Action. Clearly, Sponsor and Operative are working with Austin,
10 Weinstein, Toothacre and Geraci and they were sent to coerce and/or intimidate me at the behest of
11 Geraci in an attempt to force me to settle this lawsuit when they came to visit me on February 8,
12 2018.

13
14 **CONCLUSION**

15 145. I was researching the last Order by the state judge that denied my requested relief
16 because, he decrees, that I have not Exhausted my Administrative Remedies. In the Rutter guide it
17 states that: "The failure to pursue administrative remedies does not bar judicial relief where the
18 administrative remedy is *inadequate*, or where it would be *futile to pursue* the remedy" and
19 "administrative remedies also inadequate when irreparable harm would result by requiring exhaustion
20 before seek judicial relief" [Rutter Guide 1:906.26.]

21
22 146. Additionally, it stated in that subsection that: "Generally, a plaintiff is not required to
23 exhaust state administrative or judicial remedies before suing under federal civil rights statutes."
24 [Rutter Guide 1:906.29]

25
26 147. This reference led to me researching Section 1983 claims that I already knew allowed
27 federal action, but I was not aware could stop State Court actions while it adjudicated the Federal
28 Questions. That Rutter Guide section has a link to Mitchum v. Foster.

1 148. The United States Supreme Court held in Mitchum v. Foster that Section 1983 claims
2 in Federal Court are an exception to the Anti-Injunction Act that would allow a Federal Court to stay
3 a state court action. In reaching this decision, the United States Supreme Court noted the following
4 from the legislative debates leading to the passing of Section 1983:

5
6 “Senator Osborn: ‘If the State courts had proven themselves competent to suppress the local
7 disorders, or to maintain law and order, we should not have been called upon to legislate[.]’

8 Representative Perry concluded: ‘Sheriffs, having eyes to see, see not; judges, having ears to
9 hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they
10 might be accomplices.... (A)ll the apparatus and machinery of civil government, all the
11 processes of justice, skulk away as if government and justice were crimes and feared
12 detection. Among the most dangerous things an injured party can do is to appeal to justice.’”

13 In my case, among other things, the City attorney unreasonably seized my property, they
14 “saw” and “heard” me speak with the judge regarding my right to retain my Prop 215 rights and my
15 property, but they pretend that they do not; I have repeatedly and emphatically demeaned myself and
16 begged the State Court judges in writing and at oral hearings to hear me regarding the Confirmation
17 Email, but they do not “hear me;” all attorneys present at the TRO hearing on December 7, 2017
18 where obligated to aid the Court in avoiding error, but they “conceal the truth or falsify it.” The City
19 attorneys “skulk away” and pretend to not be involved by stating that this case is a “private dispute”
20 between private actors.

21 149. It is futile to seek to protect and vindicate my rights in State Court. I have been
22 repeatedly told by numerous attorneys that if I were to appeal the State Court orders that there would
23 be severe backlash because judges take severe and personal offense when their judgment is
24 challenged. And that it is especially true when it turns out that they were actually wrong as there is
25 then a record of their “abuse of discretion” – “Among the most dangerous things an injured party
26 can do is to appeal to justice.” (*Id.*)
27
28

1 150. Thus, I find myself here and now today. I do not ask this Federal Court to believe me,
2 I only ask that this Court please genuinely review the evidence submitted with my application
3 submitted herewith for a TRO and the causes of action I bring forth in this Federal Complaint. If
4 Geraci and/or the City is allowed to passively and/or actively sabotage the CUP application, I will
5 have lost everything of value in my life completely unlawfully and unconstitutionally.

6
7 151. Please, I realize that this is a Federal Court and my Political Activism will not endear
8 me to the Federal Judiciary as an entity, but I do not come before this Federal Court to enforce or
9 argue rights related to my Political Activism, but rather for the protection and vindication of those
10 rights that are granted to me by the Constitution of the United States of America.

11
12 **FIRST CLAIM 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE (As**
13 **against the City of San Diego)**

14 152. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1
15 through 135 as though fully set forth herein.

16 153. Defendant(s), acting under the color of state law, county ordinances, and penal codes,
17 individually and in their official capacity, and in violation of 42 U.S.C. § 1983, have violated
18 Plaintiff's right to be free from unreasonable search and seizure under the Fourth Amendment.

19 154. Well after my property was raided because the wrong-doings of my adjoining tenant
20 (Pure Meds), it occurred upon the City that (although they declined to press charges shortly after the
21 raid and waited the full statute of limitations under California Penal Code 364/365 days) I could
22 easily be charged and set up for an Asset Forfeiture action, so they filed. Upon entering a plea
23 following City Attorney Skeels' repeated assurances that the plea was a "sweetheart deal", and for
24 the sake of expediency, I went ahead and pled guilty.

25 155. I thought the action was over at that time. I was wrong, the City used this transaction
26 to further their suspicious utilization of Asset Forfeiture and almost immediately filed a Lis Pendens.
27
28

1 THAT is where the truly unreasonable seizure comes into play. This was essentially a retroactive
2 punishment tacked on to the punishment that the City had already meted out.

3 156. Defendants (City Attorney's Office) violated Plaintiffs' right to procedural due
4 process by issuing a Lis Pendens as a result of the plea without any prior notice and under false
5 pretenses. Defendant City has violated Plaintiffs' right to be free from unreasonable search and
6 seizure under the Fourth Amendment by conducting in such underhanded behavior.
7

8 157. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an
9 amount according to proof at trial.

10
11 **SECOND CLAIM FOR 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS (As against City)**

12 158. Cotton hereby incorporates by reference all of his allegations contained above as if
13 fully set forth herein.

14
15 159. Defendants, acting under the color of state law, county ordinances, regulations,
16 customs and usage of regulations and authority, individually and in their official capacity, and in
17 violation of 42 U.S.C. § 1983, have deprived Plaintiff of the rights, privileges or immunities secured
18 by the Due Process Clause of the Fourteenth Amendment.

19
20 160. Defendant City, specifically Development Services, has violated Plaintiff's rights to
21 substantive and procedural due process by the actions alleged above in regards to my Property and
22 the associated CUP application pending on my Property.

23 161. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an
24 amount according to proof at trial.
25

26 **THIRD CLAIM FOR BREACH OF CONTRACT (Against Geraci, Berry, Austin, ALG and DOES 1 through 10)**
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162. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

163. Geraci and Cotton entered into an oral agreement regarding the sale of the Property and agreed to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting their agreement.

164. The November 2nd Agreement was meant to be the written instrument that solely memorialized the partial receipt of the non-refundable deposit.

165. Cotton upheld his end of the bargain, including by deciding to not sell his Property to another party while Geraci, among other matters, ostensibly prepared a CUP application for submission.

166. Under the parties' oral contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

167. Geraci breached the contract by, among other reasons, alleging the November 2nd Agreement is the final agreement between the parties for the purchase of the Property. Berry, as Geraci's agent is also liable. And Gina Austin and ALG were fully aware and apparently supportive of these actions based on the multiple drafts and revisions of what was to be the final purchase agreement.

168. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable, has suffered and continues to suffer damages because of Geraci's actions that constitute a breach of contract. This intentional, willful, malicious,

1 outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special,
2 exemplary and/or punitive damages.

3 **FOURTH CAUSE OF ACTION FALSE PROMISE – (As Against Geraci, Berry and DOES 1**
4 **through 10)**

5 169. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7
8 170. On November 2, 2016, among other things, Geraci falsely promised the following to
9 Cotton without any intent of fulfilling the promises.

10 171. Geraci would pay Cotton the remaining \$40,000 of the non-refundable deposit prior to
11 filing a CUP application;

12 172. Geraci would cause his attorney to promptly draft the final integrated agreements to
13 document the agreed-upon deal between the parties;

14
15 173. Geraci would pay Cotton the greater of \$10,000 per month or 10% of the monthly
16 profits for the MMCC at the Property if the CUP was granted; and

17 174. Cotton would be a 10% owner of the MMCC business operating at Property if the
18 CUP was granted.

19
20 175. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016
21 when he made them.

22 176. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to
23 rely on the false promises and execute the document signed by the parties at their November 2, 2016
24 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire
25 agreement.

26
27 177. Cotton reasonably relied on Geraci's promises.

28 178. Geraci failed to perform the promises he made on November 2, 2016.

1 179. As a result of the actions taken in reliance on Geraci's false promises, Geraci created a
2 cloud on Cotton's title to the Property. As a further result of Geraci's false promises, Geraci has
3 diminished the value of the Property, reduced the price Cotton will be able to receive for the
4 Property, and caused Cotton to incur significant unnecessary costs and attorneys' fees to protect his
5 interest in his Property. As a further result of Geraci's false promises, Cotton has been deprived of
6 the remaining \$40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a
7 CUP application for the Property.
8

9 180. Geraci's representations were intentional, willful, malicious, outrageous, unjustified,
10 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton
11 of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct
12 entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages
13 under Civil Code section 3294.
14

15 **FIFTH CLAIM OF BREACH OF THE IMPLIED COVENANT OF GOOD FAITH**
16 **AND FAIR DEALING (As against Geraci, Berry, Austin, ALG, the City of San Diego, and**
17 **DOES 1 through 10)**

18 181. Cotton hereby incorporates by reference all of his allegations contained above as if
19 fully set forth herein.
20

21 182. Geraci breached the implied covenant of good faith and fair dealing when, among
22 other actions described herein, he alleged that the November 2nd Agreement is the final purchase
23 agreement between the parties for the Property.
24

25 183. As discussed above, Geraci, Berry, by and through counsel (Austin and ALG) and
26 personally continued to negotiate terms of the initial agreement for months following the November 2
27 Agreement.
28

1 184. Additionally, the City of San Diego, specifically Development Services have not dealt
2 with the CUP application fairly as discussed above. They have been paid application fees to process
3 the CUP on my property. I am the sole deed holder and have at all times held exclusive possession of
4 the Federal Blvd. property.

5 185. In dealing with San Diego, they have breached the implied covenant of good faith and
6 fair dealing when among other actions, they have not kept me informed or allowed me to gain
7 ownership of the CUP and have even went so far as to deny my rights to Due Process in failing to do
8 so.
9

10 186. I have suffered and continue to suffer damages because of Geraci's actions, his
11 attorneys actions and the City's Actions that constitute a breach of the implied covenant of good faith
12 and fair dealing.
13

14 187. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
15 to an award of general, compensatory, special, exemplary and/or punitive damages.
16

17 **SIXTH CLAIM OF BREACH OF FIDUCIARY DUTY (As against Geraci and DOES 1**
18 **through 10)**

19 188. Cotton hereby incorporates by reference all of his allegations contained above as if
20 fully set forth herein.

21 189. Geraci stated he would honor the agreement reached on November 2nd, 2016, which
22 included a 10% equity stake in the Business and a guaranteed monthly equity distribution of \$10,000
23 a month.
24

25 190. Geraci stated he would pay the balance of the non-refundable deposit as soon as
26 possible, but at the latest when the alleged critical zoning issue was resolved, which, in turn, he
27 alleged was a necessary prerequisite for submission of the CUP application.
28

1 191. Geraci acknowledged that the November 2nd Agreement was not the final agreement
2 for the purchase of the Property via email on November 2nd, 2016.00

3 *Enrolled Agent – Fiduciary Duty*

4 192. Geraci represented to Cotton that as an Enrolled Agent for the IRS he was an
5 individual that could be trusted as he operated in a fiduciary capacity on a daily basis for many high-
6 net worth individuals and businesses. Further, that as an Enrolled Agent he would be able to structure
7 the tax filings of the medical marijuana dispensary and the owners, including Cotton, in such a way
8 that the tax liability would be very limited and, consequently, would maximize Cotton’s share of the
9 profits.
10

11 193. Geraci, by representing himself to be an Enrolled Agent of the IRS that would, among
12 other things, submit on behalf of Cotton tax filings with the IRS, created a fiduciary relationship
13 between Cotton and himself.
14

15 *Real Estate Broker – Fiduciary Duty*

16 194. Geraci is a licensed real estate Broker.

17 195. Geraci took responsibility for the drafting of the Purchase Agreement for the Property
18 stating he would have his attorney provide a draft and, further, that Cotton did not require his own
19 counsel to revise the drafts of the real estate purchase contract.
20

21 196. Geraci induced Cotton into letting him effectuate the real estate transaction by
22 claiming that Cotton could trust Geraci.

23 197. Breach of Fiduciary Duties

24 198. Cotton has violated his fiduciary duties by, among the other actions described herein,
25 fraudulently inducing Cotton into executing the November 2nd Agreement and alleging it is the final
26 agreement for the purchase of the Property.
27
28

1 199. Cotton has suffered and continues to suffer damages because of Geraci's actions that
2 constitute a breach of his fiduciary duties.

3 200. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
4 to an award of general, compensatory, special, exemplary and/or punitive damages.
5

6 **SEVENTH CLAIM FOR FRAUD IN THE INDUCEMENT (As against Geraci, Berry, ALG,
7 Austin and DOES 1 through 10)**

8 201. Plaintiff incorporates by reference each and every allegation contained above as
9 though fully set forth herein.

10 202. Geraci made promises to Cotton on November 2nd, 2016, promising to effectuate the
11 agreement reached on that day, but he did so without any intention of performing or honoring his
12 promises.
13

14 203. Geraci had no intent to perform the promises he made to Cotton on November 2nd,
15 2016 when he made them, as is clear from his actions described herein, that he represented he would
16 be preparing a CUP application.

17 204. In fact, he had already deceived Cotton and submitted a CUP application PRIOR to
18 November 2, 2016.
19

20 205. Geraci intended to deceive Cotton in order to, among things, execute the November
21 2nd Agreement.

22 206. Cotton reasonably relied on Geraci's promises and had no idea Geraci had already
23 started the CUP application process.
24

25 207. Geraci failed to perform the promises he made on November 2nd, 2016, notably, his
26 delivery of the balance of the non-refundable deposit and his promise to treat the November 2nd
27 Agreement as a memorialization of the \$10,000 received towards the non-refundable deposit and not
28 the final legal agreement for the purchase of the Property.

1 208. Cotton has suffered and continues to suffer damages because he relied on Geraci's
2 representations and promises.

3 209. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
4 to an award of general, compensatory, special, exemplary and/or punitive damages.

5
6 **EIGHTH CLAIM FOR FRAUD/FRAUDULENT MISREPRESENTATION (As against**
7 **Geraci, Berry, Austin, ALG and DOES 1 through 10)**

8 210. Cotton hereby incorporates by reference all of his allegations contained above as if
9 fully set forth herein.

10 211. Each of the Defendants and their agents intentionally and/or negligently made
11 representations of material fact(s) in discussions with Cotton. On November 2, 2016, Geraci
12 represented to Cotton, among other things, that:

13 212. He would honor the agreement reached on November 2nd, 2016, which included a
14 10% equity stake in the Business and a guaranteed monthly equity distribution of \$10,000 a month.

15 213. He would pay the balance of the non-refundable deposit as soon as possible, but at the
16 latest when the alleged critical zoning issue was resolved, which, in turn, he alleged was a necessary
17 prerequisite for submission of the CUP application.

18 214. He understood and confirmed the November 2nd Agreement was not the final
19 agreement for the purchase of the Property.

20 215. That he, Geraci, as an Enrolled Agent by the IRS was someone who was held to a high
21 degree of ethical standards and that he could be trusted to prepare and forward the final legal
22 agreements, honestly effectuate the agreement that they had reached, including the corporate
23 structure of the contemplated businesses so as to ultimately minimize Cotton's tax liability.

24 216. That the preparation of the CUP application would be very time consuming and take
25 hundreds of thousands of dollars in lobbying efforts.
26
27
28

1 217. Geraci knew that these representations were false because, among other things, Geraci
2 had already filed a CUP application with the City of San Diego prior to that day. At that point in
3 time, all of his declarations regarding the issues that needed to be addressed, his trustworthiness and
4 his intent to follow through with accurate final legal agreements were false. His subsequent
5 communications via email, text messages and Final Agreement draft revisions make clear that he
6 continued to represent to Cotton that the preliminary work of preparing the CUP application was
7 underway, when, in fact, he was just stalling for time. Presumably, to get an acceptance or denial
8 from the City and, assuming he got a denial, to be able to deprive Cotton of the \$40,000 balance due
9 on the non-refundable deposit.
10

11 218. Geraci intended for Cotton to rely on his representations and, consequently, not
12 engage in efforts to sell his Property.
13

14 219. Cotton did not know that Geraci's representations were false.

15 220. Cotton relied on Geraci's representations.

16 221. Cotton's reliance on Geraci's representations were reasonable and justified.

17 222. As a result of Geraci's representations to Cotton, Cotton was induced into executing
18 the November 2nd Agreement, giving Geraci the only basis of his Complaint and, consequently,
19 among other unfavorable results, allowing Geraci to unlawfully create a cloud on title to his Property.
20 Thus, Cotton has been forced to sell his Property at far from favorable terms.
21

22 223. Cotton has been damaged in an amount of no less than \$2,000,000 from this Claim
23 alone. Additional damages from potential future profit distributions and other damages will be proven
24 at trial.
25

26 224. Geraci's representations were intentional, willful, malicious, outrageous, unjustified,
27 done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton
28 of his interest in the Property.

1 225. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton
2 to an award of general, compensatory, special, exemplary and/or punitive damages.

3 **NINTH CLAIM FOR TRESPASS (As against Geraci, Berry, Toothacre, Weinstein,**
4 **F&B and DOES 1 through 10)**

5 226. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7 227. The Property was owned by Cotton and is in his exclusive possession.

8 228. Geraci, or an agent acting on his behalf, illegally entered the subject property on or
9 about March 27, 2017, and posted two NOTICES OF APPLICATION on the Property.
10

11 229. Geraci's attorney, Michael Weinstein, emailed Cotton on March 22, 2017 stating that
12 Geraci or his agents would be placing the aforementioned Notices upon Cotton's property.

13 230. Geraci knew that he had fraudulently induced Cotton into executing the November
14 2nd Agreement and, consequently, he had no valid legal basis to trespass unto Cotton's Property.
15

16 231. Alternatively, setting aside the fraudulent inducement, on March 21, 2017, Cotton,
17 having discovered Geraci's criminal scheme to deprive him of his Property, emailed Geraci stating
18 that he no longer had any interests in the Property and should not trespass on his Property, yet he
19 continued to do despite being warned not to.
20

21 232. Geraci's Notices of Application posted on his Property has caused and continues to
22 damage Cotton because the discouragement of future businesses, partnerships and potential buyers it
23 immediately caused to which Weinstein was a knowing party.

24 233. Cotton has no adequate remedy at law for the injuries currently being suffered in that
25 it will be impossible for Cotton to determine the precise amount Cotton has suffered and continues to
26 suffer damages because of Geraci's actions.
27
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1 234. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
2 to an award of general, compensatory, special, exemplary and/or punitive damages.

3 **TENTH CLAIM FOR SLANDER OF TITLE (As against Geraci, Berry, Austin, ALG,**
4 **F&B and the City of San Diego)**

5 235. Cotton hereby incorporates by reference all of his allegations contained above as if
6 fully set forth herein.

7
8 236. Geraci disparaged Cotton's exclusive valid title by and through the preparing, posting,
9 publishing, and recording of the documents previously described herein, including, but not limited to,
10 a Complaint in state court and Lis Pendens filed on the Property.

11 237. The City of San Diego separately also used/abused the Lis Pendens process to strong
12 arm me and violate my 4th Amendment Rights against unreasonable seizure.

13
14 238. Defendants knew that such documents were improper in that at the time of the
15 execution and delivery of the documents, Defendants had no right, title, or interest in the Property.
16 These documents were naturally and commonly to be interpreted as denying, disparaging, and casting
17 doubt upon Cotton's legal title to the Property. By posting, publishing and recording documents,
18 Defendants' disparagement of Cotton's legal title was made to the world at large.

19
20 239. As a direct and proximate result of all Defendants' conduct in publishing these
21 documents, Cotton's title to the Property has been disparaged and slandered, and there is a cloud on
22 Cotton's title, and Cotton has suffered and continues to suffer damages, including, but not limited to,
23 lost future profits, in an amount to be proved at trial, but in an amount of no less than \$2,000,000.

24
25 240. As a further and proximate result of Defendants' conduct, Cotton has incurred
26 expenses in order to clear title to the Property. Moreover, these expenses are continuing, and Cotton
27 will incur additional expenses for such purpose until the cloud on Cotton's title to the Property has
28

1 been removed. The amounts of future expenses are not ascertainable at this time but will be proven at
2 trial.

3 241. The amount of such damages shall be proven at trial (expert witness testimony will
4 likely be of critical importance).

5
6 **ELEVENTH CLAIM FOR FALSE DOCUMENTS LIABILITY (As against Geraci,
7 Berry, Austin, ALG, F&B and DOES 1 through 10)**

8 242. Cotton hereby incorporates by reference all of his allegations contained above as if
9 fully set forth herein.

10 243. Geraci filed a Complaint against Cotton and a Lis Pendens on the Property with a
11 public office, respectively, this Court and the San Diego County Recorder's Office.

12 244. Geraci knew the Complaint and Lis Pendens, both solely and completely predicated
13 upon his allegation that the November 2nd Agreement was the final agreement for the purchase of the
14 Property, was false and unfounded when he filed them.

15 245. Geraci, his agents and counsel, all knew at the time of the filing he was committing a
16 crime (in violation of California Penal Code Section 115 PC) and did so knowingly anyway.

17 246. Cotton has suffered and continues to suffer damages because of Geraci's actions.

18 247. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
19 to an award of general, compensatory, special, exemplary and/or punitive damages.
20

21
22 **TWELFTH CLAIM OF UNJUST ENRICHMENT (As against Geraci, Berry, and the
23 City of San Diego)**

24 248. Cotton hereby incorporates by reference all of his allegations contained above as if
25 fully set forth herein.

26 249. Geraci represented to Cotton that executing the November 2nd Agreement was only to
27 memorialize the \$10,000 good-faith deposit towards the total \$50,000 non-refundable deposit, but
28

1 Geraci now alleges that the November 2nd Agreement is the final agreement for the purchase of the
2 Property.

3 250. Geraci himself confirmed via email that the November 2nd Agreement is not the final
4 agreement.

5 251. Had Geraci described the effect of executing the November 2nd Agreement in the way
6 that Geraci presently interprets it, then Cotton would never have signed the November 2nd
7 Agreement.
8

9 252. Geraci will be unjustly enriched at the expense of Cotton if he is permitted to retain
10 the interest in the Property that he now asserts under the November 2nd Agreement.

11 253. The City of San Diego was able trick me into entering deals that caused me to lose
12 \$25,000 to remove the Lis Pendens from the property.
13

14 254. Cotton has suffered and continues to suffer damages because of Geraci's actions.

15 255. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton
16 to an award of general, compensatory, special, exemplary and/or punitive damages.
17

18 **THIRTEENTH CLAIM OF INTENTIONAL INTERFERENCE WITH**
19 **PROSPECTIVE ECONOMIC RELATIONS – (As Against Geraci, Berry, Austin, F&B and**
20 **DOES 1 through 10)**

21 256. Cotton hereby incorporates by reference all of his allegations contained above as if
22 fully set forth herein.

23 257. Cotton has an ongoing prospective business relationship with Mr. Martin and the City
24 via by the then-filed CUP application that was resulting, and would have resulted, in an economic
25 benefit to Cotton based on and in connection with the approval of the CUP application.
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27
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1 258. Further, specifically, Cotton has an ongoing prospective business relationship with Mr.
2 Martin for the sale of the Property that was resulting, and would have resulted, in an economic
3 benefit to Cotton based on and in connection with the sale of the Property.

4 259. Defendants knew of Cotton’s ongoing and prospective business relationship with Mr.
5 Martin and the City arising from and related to the CUP Application and defendants knew of
6 Cotton’s ongoing and prospective business relationship with the new buyer for the Property.
7

8 260. Defendants intentionally engaged in acts designed to interfere, and which have
9 interfered and are likely to continue to interfere, with Cotton’s relationship with the City, the CUP
10 application, and the new buyer, including without limitation, their refusal to acknowledge they have
11 no interest in the Property and/or the CUP application.
12

13 261. As a direct and proximate result of the defendants’ conduct, Cotton has suffered and
14 will continue to suffer damages in an amount not yet fully ascertainable and to be determined
15 according to proof at trial.

16 262. The aforementioned conduct by defendants was despicable, willful, malicious,
17 fraudulent, and oppressive conduct which subjected Cotton to cruel and unjust hardship in conscious
18 disregard of Cotton’s rights, so as to justify an award of exemplary and punitive damages in an
19 amount to be determined according to proof at trial, including pursuant to Civil Code section 3294.
20

21 **FOURTEENTH CLAIM OF NEGLIGENT INTERFERENCE WITH PROSPECTIVE**
22 **ECONOMIC RELATIONS – (As Against Geraci, Berry, and DOES 1 through 10)**

23 263. Cotton hereby incorporates by reference all of his allegations contained above as if
24 fully set forth herein.

25 264. Cotton has an ongoing prospective business relationship with the City that was
26 resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with
27 the approval of the CUP application. In addition, Cotton has an ongoing prospective business
28

1 relationship with the new buyer of the Property that was resulting, and would have resulted, in an
2 economic benefit to Cotton based on and in connection with the sale of the Property.

3 265. Defendants knew or should have known of Cotton’s ongoing and prospective business
4 relationship with the City arising from and related to the CUP Application, and defendants knew or
5 should have known of Cotton’s ongoing and prospective business relationship with the new buyer for
6 the Property.
7

8 266. Defendants failed to act with reasonable care when they engaged in acts designed to
9 interfere, and which have interfered and are likely to continue to interfere, with Cotton’s relationship
10 with the City, the CUP application, and the new buyer, including without limitation, their refusal to
11 acknowledge they have no interest in the Property and/or the CUP application.
12

13 267. As a direct and proximate result of the defendants’ conduct, Cotton has suffered and
14 will continue to suffer damages in an amount not yet fully ascertainable and to be determined
15 according to proof at trial.
16

17 **FIFTH CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (As against**
18 **All Defendants)**

19 268. Cotton hereby incorporates by reference all of his allegations contained above as if
20 fully set forth herein.

21 269. Defendants, and each of them, engaged in outrageous conduct towards Plaintiff, with
22 the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer
23 severe emotional distress. Geraci has event sent convicts to intimidate, coerce and threaten my
24 investors by telling him that it would be in his “best interest” to use his influence me to settle with
25 Geraci.
26
27
28

1 270. All of the above-named defendants know that this is an unfounded lawsuit against me
2 and the continued malicious attempts at depriving me of my rights, money and sanity can only be
3 described as outrageous.

4 271. The defendants have acted for the purpose of causing me emotional distress so severe
5 that it could be expected to adversely affect mental health and well-being.

6 272. The defendants' conduct is causing such distress, which includes, but is not limited to,
7 chronic loss of sleep, paranoia, and other injuries to health and well-being. All of these injuries
8 continue on a daily basis.

9 273. To the extent that said outrageous conduct was perpetrated by certain Defendants, the
10 remaining Defendants adopted and ratified said conduct with a wanton and reckless disregard of the
11 deleterious consequences. As a proximate result of said conduct, I have suffered and continue to
12 suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as
13 economic losses.

14 274. Defendants committed the acts alleged herein maliciously, fraudulently and
15 oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive
16 amounting to malice and in conscious disregard of Plaintiff's rights, entitling Plaintiff to recover
17 punitive damages in amounts to be proven at trial.

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19
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21 **SIXTHTEENTH CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
22 **(As against All Defendants)**

23 275. Plaintiff realleges and incorporates by reference the allegations contained above as
24 though fully set forth.

25 276. All Defendants, and each of them, knew or reasonably should have known that the
26 conduct described herein would, and did, proximately result in physical and emotional distress to
27 Plaintiff. Being as all of the above-named defendants know that this is an unfounded lawsuit against
28

1 me and the continued malicious attempts at depriving me of my rights, money and sanity can only be
2 described as outrageous.

3 277. At all relevant times, all Defendants, and each of them, had the power, ability,
4 authority, and duty to stop engaging in the conduct described herein and/or to intervene to prevent or
5 prohibit said conduct.

6 278. Despite said knowledge, power, and duty, Defendants negligently failed to act so as to
7 stop engaging in the conduct described herein and/or to prevent or prohibit such conduct or otherwise
8 protect Plaintiff. Therefore, whether or not the defendants have acted for the express purpose of
9 causing me this extreme emotional distress, they have caused it. And they should have known this
10 would happen.

11 279. Further, they have been made aware and have been on notice. Weinstein of F&B,
12 specifically. To the extent that said negligent conduct was perpetrated by certain Defendants, the
13 remaining Defendants confirmed and ratified said conduct with the knowledge that Plaintiff's
14 emotional and physical distress would thereby increase, and with a wanton and reckless disregard for
15 the deleterious consequences to Plaintiff.

16 280. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and
18 physical injuries, as well as economic losses, all to his damage in amounts to be proven at trial.

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22 **SEVENTEENTH CLAIM FOR CONSPIRACY (As against Geraci, Berry, Austin, ALG,
23 Weinstein, the City of San Diego and DOES 1 through 10)**

24 281. Cotton hereby incorporates by reference all of his allegations contained above as if
25 fully set forth herein.

26 282. Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement on
27 October 31st, 2016, alleging that the Ownership Disclosure Statement was necessary because the
28

1 parties did not have a final agreement in place at that time, thus, he needed it to show other
2 professionals involved in the preparation of the CUP application and the lobbying efforts to prove
3 that he, Geraci, had access to the Property.

4 283. As a sign of good-faith by Cotton as they had not reached a final agreement for the
5 sale of the Property. Geraci wanted something in writing proving Cotton's support of the CUP
6 application at his Property because he needed to immediately spend large amounts of cash to continue
7 with the preparation of the CUP application and the lobbying efforts. However, Geraci promised that
8 the Ownership Disclosure Statement would not under any circumstances actually be submitted to the
9 City of San Diego. Further, that it was impossible to submit the CUP application as the critical zoning
10 issue had been resolved with the city of San Diego.

11
12 284. The Ownership Disclosure Statement is also executed by Rebecca Berry and denotes
13 Rebecca Berry is the "Tenant/Lessee" of the Property.

14
15 285. Geraci represented to Cotton that Rebecca Berry could be trusted and was one of his
16 best employees who was familiar with the medical marijuana industry.

17 286. Cotton has never met or entered into any agreement with Rebecca Berry.

18
19 287. Rebecca Berry knew that she had not entered into a lease of any form with Cotton for
20 the Property.

21 288. Upon information and belief, Rebecca Berry allowed the CUP application to be
22 submitted in her name on behalf of Geraci because Geraci has been a named Cotton in numerous
23 other lawsuits brought by the City of San Diego against him for the operation and management of
24 unlicensed and unlawful marijuana dispensaries.[14]

25
26 289. Rebecca Berry knew that she was filing a document with the City of San Diego that
27 contained a false statement, specifically that she was a lessee of the Property.

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290. Rebecca Berry, at Geraci's instruction or her own desire, submitted the CUP application as Geraci's agent, thereby Geraci's scheme to deprive Cotton of his Property.

291. Gina Austin and ALG represented Berry and Geraci in the initial Writ motion involving the City of San Diego, additionally, Austin and ALG drafted the proposed Final Purchase Agreements and subsequent revisions well into March of 2017. Therefore these acts were in full knowledge that the November 2 Agreement (which this whole case is premised on) was NOT intended to be the full and final agreement. The egregiousness of not informing the court of these material facts and allowing this case to proceed so far is a slight to the Superior Court to which an officer of the court has a duty of honesty, integrity and candor. No other possible explanation comes to mind other than Austin and ALG have been knowingly working in concert together to defraud the court, and myself.

292. Inexplicably, no one working in The City Attorney's Office of the City of San Diego have raised their voices to assist me when they have received all the above information. They have seen my evidence, they have expressed surprise that I was not granted a TRO after reading my Motion for Reconsideration for the TRO. Yet, knowing this is an unfounded case San Diego is still permitting this injustice continue.

293. The San Diego Department of Services seemingly worked exclusively for Geraci and Berry and essentially blocked me from having any say as to the CUP for my property. They have continued to process the CUP application for Geraci and Berry when they know that Geraci and Berry have no legal right to my Property.

294. Then I was told to submit a new application which necessarily creates an inequitable race – all these facts can only be reconciled if one is to accept that 1) the city is prejudiced against me or; 2) Geraci has them in his pocket.

1 295. Not only that, this all follows the tyrannical practices of Deputy City Attorney Mark
2 Skeels who tricked me and my young defense counsel into setting myself up for an Asset Forfeiture
3 Action that ultimately resulted in a \$25,000 extortion. Under the Fourth Amendment, "[t]he right of
4 the people to be secure in their persons, houses, papers, and effects, against unreasonable searches
5 and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const.
6 amend. IV. "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it
7 merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S.Ct.
8 1801, 114 L.Ed.2d 297 (1991). In light of the situation I was in, the unforeseen and extreme result
9 must surely constitute an "unreasonable" seizure.
10

11 296. Further adding to my confusion, frustration and inability to gain any traction in
12 protecting my own interests, the Honorable Judge Wohlfeil presiding over my case has not seemed
13 interested in reading any of my prior submissions. He "knows [the attorneys opposing me] well" and
14 I believe based on that he is biased against me now that I am pro se and a likely mark for everyone to
15 be able to walk over and take advantage of with no repercussions. At best, Judge Wohlfiel probably
16 hopes my case can be settled out of court relieving him of further responsibility (or culpability?) in
17 regard to my case. At worst, Wohlfeil's seemingly purposeful negligence at this point is an
18 intentional cover-up of the fact that he does not care about my case or he is actively helping Geraci.
19
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21 297. Ultimately, whether it was done purposefully, working in concert with, and/or because
22 of gross negligence, all the parties here, even if operating in their own "mini-conspiracies," have de
23 facto operated in a one, large conspiracy by perpetuating and augmenting the unlawful actions and
24 harm caused to Darryl.
25

26 298. Cotton has suffered and continues to suffer damages because of actions of all
27 defendants such that it would be "a challenge to imagine a scenario in which that harassment would
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1 not have been the product of a conspiracy.” [*Geinosky v. City of Chicago* (7th Cir. 2012) 675 F3d
2 743, 749].

3 299. As a direct and proximate result of Defendants’, their agents’ and conspirators’
4 concerted, intentional (and even negligent), willful, malicious, outrageous, and unjustified conduct
5 entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.
6 unlawful conduct. Plaintiff has suffered and continues to suffer serious emotional distress,
7 humiliation, anguish, emotional and physical injuries, as well as economic losses, all to his damage in
8 amounts to be proven at trial.
9

10 **EIGHTEENTH CLAIM FOR RACKETEER INFLUENCED AND CORRUPT**
11 **ORGANIZATION ACT (As against All Defendants)**

12 300. Cotton hereby incorporates by reference all of his allegations contained above as if
13 fully set forth herein.
14

15 301. The elements of civil RICO are as follows: (1) conduct, (2) of an enterprise, (3)
16 through a pattern (4) of racketeering activity, (5) resulting in injury.

17 302. Geraci, as proven by public records of lawsuits filed by the City against him for the
18 operating of illegal dispensaries, has run an enterprise of illegal marijuana dispensaries over the
19 course of years. His enterprise if focused on marijuana dispensaries and related financial support
20 services meant to unlawfully circumvent IRS tax liabilities. As discussed above, he uses employees,
21 third-parties, attorneys and criminals to operate his criminal enterprise.
22

23 303. Geraci specifically told Cotton, when fraudulently inducing him to enter into the
24 November Agreement, that as an Enrolled Agent for the IRS, he was uniquely positioned to “get
25 around” paying IRS Code Section 280(e). At the time, it appeared to Cotton that Geraci was stating
26 he had some form of unknown method to do so lawfully. In retrospect, it is apparent that he is
27
28

1 providing money laundering services for himself and others, using his Tax and Financial company as
2 legitimate front for his behind the scenes unlawful activities.

3 304. Geraci runs his enterprise through his employees, such as Berry, who use their names
4 on applications, such as the CUP application at issue here, to provide anonymity and for Geraci to
5 stay off the radar of law enforcement agencies. For example, Geraci, and Berry, were required by law
6 to state the names of all individuals who had an interest in the CUP when the CUP application was
7 filed. Geraci's name is NOT on the CUP application. His office manager, Berry, is. Had this instant
8 lawsuit not required him to fraudulently attempt to enforce the Receipt as the final agreement for the
9 Property, there would be no record of his ownership in the CUP application.
10

11 305. Geraci is the lead perpetrator in the enterprise. It is Geraci that had his office manager,
12 Berry submit the CUP application with material omissions (his name); having Gina Austin, his
13 attorney, represent him in the State Actions although she knows she is violating her ethical (and
14 potentially legal) obligations to the Court by representing Geraci under the false premise that the
15 Receipt is the final agreement for the Property; Geraci is directing Weinstein, also his attorney, to
16 continue to represent him when Weinstein knows that there is no factual or legal basis to continue
17 prosecuting the State Action against me to my great detriment.
18

19
20 306. Mr. Geraci has told me that he has run many illegal marijuana dispensaries through his
21 employee, Berry. I believe that he has invested the proceeds of the pattern of racketeering activity
22 into the enterprise endeavors to continuously open more illegal dispensaries. Further, because he has
23 evaded criminal prosecution and additionally managed to pull off this farce of a civil suit against me,
24 I believe he has also used said monies to compensate Austin and Weinstein, and, de facto, their
25 respective law firms, for the unethical and unlawful actions against me. How else can one explain
26 why two, ostensibly intelligent attorneys who statistically speaking should be smarter than most
27 would take the actions they have which are clearly unethical and unlawful.
28

1 307. The way in which the City has dealt with me in every avenue also points to the distinct
2 possibility that Geraci's "influence" has in fact tainted the state legal process against me. I have been
3 specifically told by Mr. Dwayne and his associate Mr. L that Geraci has deep connections to the
4 City's politicians.

5 308. To my knowledge all defendants and Does above in some way shape or form have
6 worked in conjunction with one another willfully, occasionally negligently, but at all times in
7 association against me. Most certainly, Austin, ALG, Weinstein, Toothacre, Berry and F&B do
8 Geraci's bidding and are complicit in all of his dishonest schemes.

9 309. As a direct and proximate result of the Defendants', their agents' and coconspirators'
10 plot to participate in the conduct of the affairs of their conspiracy and wrongs, alleged herein,
11 Plaintiff has been and is continuing to be injured in his property, person and business as set forth
12 herein.
13
14

15 **NINETEENTH CLAIM OF DECLARATORY RELIEF (As Against All Defendants)**

16 310. Cotton hereby incorporates by reference all of his allegations contained above as if
17 fully set forth herein.

18 311. An actual controversy has arisen and now exists between Cotton and all defendants
19 concerning their respective rights, liabilities, obligations and duties based on the actions described
20 herein.
21

22 312. A declaration of rights is necessary and appropriate at this time in order for the parties
23 to ascertain their respective rights, liabilities, and obligations because no adequate remedy other than
24 as prayed for exists by which the rights of the parties may be ascertained.

25 313. Accordingly, Cotton respectfully requests a judicial declaration of rights, liabilities,
26 and obligations of the parties. Specifically, Cotton requests a judicial declaration that (a) Cotton is
27 the sole owner of the Property, (b) Cotton is the owner and sole interest-holder in the CUP
28

1 application for the Property submitted on or around October 31, 2016, (c) defendants have no right or
2 interest in the Property or the CUP application for the Property submitted on or around October 31,
3 2016, and (d) the Lis Pendens filed by Geraci be released.

4
5 **INJUNCTIVE RELIEF (As Against All Defendants)**

6 314. Cotton hereby incorporates by reference all of his allegations contained above as if
7 fully set forth herein.

8 315. For the reasons argued above, Cotton respectfully requests that all defendants be
9 immediately be notified and enjoined that their actions, even if under the color of effectuating
10 professional legal services, the law or the authority of any governmental agency, cease violating Mr.
11 Cotton's rights.

12 316. That the Geraci be ordered to continue to pay for the costs associated with getting
13 approval of the CUP application and the development of the MMCC per his agreement with Cotton,
14 and as he stated in his declaration in the state action.

15 317. That the City not be allowed to passively and/or affirmatively sabotage the CUP so as
16 to limit its liability for its actions stated herein.

17 318. Such as other injunctive relief as is required based on the facts alleged above to protect
18 and vindicate my rights.

19 //

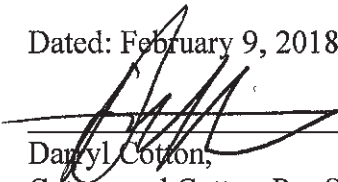
20 //

PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That the Court order the Lis Pendens on the Property be released;
2. That the Court order, by way of declaratory relief, that there is no purchase agreement between the Geraci and that Cotton is the sole owner of the Property;
3. That the CUP application be transferred to me;
4. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than \$5,000,000;
5. Punitive damages against all defendants;
6. Sanctions against counsel as this Court may find warranted based on the allegations above that will be proven to be true during the course of this litigation;
7. That this Court appoint Mr. Cotton counsel until such time as he has the financial wherewithal to pay for counsel himself; and
8. That other relief is awarded as the Court determines is in the interest of justice.

Dated: February 9, 2018.



 Darryl Cotton,
 Cotton and Cotton Pro Se

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 15. Certificate of Service for Electronic Filing

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form15instructions.pdf>

9th Cir. Case Number(s) No. 23-55018

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

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I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

Description of Document(s) (*required for all documents*):

Defendant Appellee Brief, Index to Excerpts of Record, Excerpt of Records Vol. 1 and Vol. 2

Signature /s/ Katelyn Simmons

Date May 5, 2023

(use "s/[typed name]" to sign electronically-filed documents)

0205

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No. 23-55018

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMY SHERLOCK, et al.

Plaintiffs – Appellee,

v.

Gina Austin, et al.

Defendants – Appellants

On Appeal from Order of the United State District Court
for the Southern District of California

**EXCERPTS OF RECORD TO FERRIS & BRITTON, APC
DEFENDANTS APPELLEE BRIEF**

Volume 2 of 2

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TAB “4”

TAB “4”

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9 Plaintiff *In Propria Persona*
 10 and Attorney for Plaintiffs
 11 Amy Sherlock, Minors T.S.
 12 and S.S., and Jane Doe

11 UNITED STATES DISTRICT COURT
 12 SOUTHERN DISTRICT OF CALIFORNIA

14 ANDREW FLORES, an individual, AMY)
 15 SHERLOCK, on her own behalf and on)
 16 behalf of her minor children, T.S. and S.S.,)
 17 JANE DOE, an individual,)

17 Plaintiffs,)

18 vs.)

19 GINA M. AUSTIN, an individual; AUSTIN)
 20 LEGAL GROUP APC, a California)
 21 Corporation; JOEL R. WOHLFEIL, an)
 22 individual; LAWRENCE (AKA LARRY))
 23 GERACI, an individual; TAX &)
 24 FINANCIAL CENTER, INC., a California)
 25 Corporation; REBECCA BERRY, an)
 26 individual; JESSICA MCELFFRESH, an)
 27 individual; SALAM RAZUKI, an individual;)
 28 NINUS MALAN, an individual;)
 MICHAEL ROBERT WEINSTEIN, an)
 individual; SCOTT TOOTHACRE, an)
 individual; ELYSSA KULAS, an individual;)
 RACHEL M. PRENDERGAST, an)
 individual;

Case No.:

COMPLAINT FOR:

1. DEPRIVATION OF CIVIL RIGHTS (42 U.S.C. § 1983);
2. DEPRIVATION OF CIVIL RIGHTS (42 U.S.C. § 1983);
3. CONSPIRACY TO VIOLATE CIVIL RIGHTS (42 U.S.C. § 1985);
4. NEGLIGENCE TO PREVENT A WRONGFUL ACT (42 U.S.C. § 1986);
5. DECLARATORY RELIEF;
6. DECLARATORY RELIEF;
7. DECLARATORY RELIEF

JURY TRIAL DEMANDED

1 FERRIS & BRITTON APC, a California)
2 Corporation; DAVID S. DEMIAN, an)
3 individual, ADAM C. WITT, an individual,)
4 RISHI S. BHATT, an individual, FINCH,)
5 THORTON, and BAIRD, a Limited Liability)
6 Partnership, JAMES D. CROSBY, an)
7 individual; ABHAY SCHWEITZER, an)
8 individual and dba TECHNE; JAMES (AKA)
9 JIM) BARTELL, an individual; BARTELL &)
10 ASSOCIATES, a California Corporation;)
11 MATTHEW WILLIAM SHAPIRO, an)
12 individual; MATTHEW W. SHAPIRO, APC,)
13 a California corporation; NATALIE TRANG-)
14 MY NGUYEN, an individual, AARON)
15 MAGAGNA, an individual; A-M)
16 INDUSTRIES, INC., a California)
17 Corporation; BRADFORD HARCOURT, an)
18 individual; ALAN CLAYBON, an individual;)
19 SHAWN MILLER, an individual; LOGAN)
20 STELLMACHER, an individual;)
21 EULENTHIAS DUANE ALEXANDER, an)
22 individual; BIANCA MARTINEZ; an)
23 individual; THE CITY OF SAN DIEGO, a)
24 municipality; 2018FMO, LLC, a California)
25 Limited Liability Company; FIROUZEH)
26 TIRANDAZI, an individual; STEPHEN G.)
27 CLINE, an individual; JOHN DOE, an)
28 individual; and DOES 2 through 50, inclusive,)

Defendants,

JOHN EK, an individual;
THE EK FAMILY TRUST, 1994 Trust,

Real Parties In Interest.

1 Plaintiffs Andrew Flores, Amy Sherlock, Minors T.S. and S.S. and Jane Doe, upon
2 information and belief, allege as follows:

3 **INTRODUCTION**

4 1. “History teaches us that every so often those that keep their mouths shut, and
5 eyes and ears closed in the face of evil are called to account. In a way [their] culpability
6 is greater than most others. [They] really should have known better. By [their] inaction
7 [they] facilitated the spread of the disease. As Edmund Burke stated in a letter to William
8 Smith dated January 19, 1795, ‘[t]he only thing necessary for the triumph of evil is for
9 good men to do nothing.’” *United States v. Loc. 560, Intern. Bro. of Teamsters* (D.N.J.
10 1984) 581 F. Supp. 279, 298 (emphasis added).

11 2. The gravamen of this case is about unethical attorneys who conspired with
12 their clients to take unlawful action. And the third-party government and private attorneys
13 who, having knowledge and power to prevent the harm caused by the unethical attorneys,
14 failed to take action to prevent their unlawful actions. The third-party attorneys thereby
15 ratified the unlawful actions, including allowing severe suffering to be effectuated
16 through the state and federal judiciaries upon innocents, and became jointly liable with
17 the unethical attorneys and their clients.

18 3. Plaintiffs seek this federal court’s protection to enable them to access the
19 state court to vindicate their rights free of judicial bias, unlawful litigation tactics, and
20 acts and threats of violence against themselves and material third-party witnesses.

21 I. PLAINTIFFS

22 4. Flores is an attorney whose approximate ten-year practice has predominantly
23 been criminal defense. Flores knows criminals; over the course of his practice he has
24 come to easily recognize the language and actions used by prosecutors and defense
25 attorneys seeking to expose or hide unlawful acts. As such, he is keenly aware of the
26 transparent prevarication used by attorneys seeking to disguise their client’s unlawful
27 actions in the face of evidence reflecting their guilt.

28 5. Plaintiffs dare file suit against the numerous defendants named in this action

1 seeking this federal court’s help primarily for the following two reasons.

2 6. First, because Plaintiffs have come to understand what any first-year law
3 school student knows: to prove the existence of a contract, there must be evidence of
4 mutual assent. *See Jacks v. CMH Homes, Inc.*, 856 F.3d 1301, 1304 (10th Cir. 2017) (“As
5 every first-year law student knows, an agreement or mutual assent is of course essential
6 to a valid contract.”) (quotation and citation omitted).

7 7. Second, the belief that conspiracies cannot survive the light of day even if
8 the conspirators include government officials, members of the judiciary, international law
9 firms, and high-net worth individuals. “No man in this country is so high that he is above
10 the law.” *Butz v. Economou*, 438 U.S. 478, 506 (1978) (quoting *United States v. Lee*, 106
11 U.S. 196, 220 (1882)).

12 8. Flores. In mid-2017, Flores became acquainted with *Geraci v. Cotton*
13 (“*Cotton I*”)¹ when he was asked by a colleague to cover for him and make a special
14 appearance on behalf of Darryl Cotton.

15 9. On November 2, 2016, Lawrence Geraci and Cotton reached an oral joint
16 venture agreement (the “JVA”) to develop a cannabis dispensary (the “Business”) at
17 Cotton’s real property located at 6176 Federal Boulevard, San Diego California 92114
18 (the “Property”). On that day, Geraci and Cotton executed a three-sentence document
19 drafted by Geraci (the “November Document”). The November Document is a receipt for
20 Cotton’s acceptance of \$10,000 in cash towards a total \$50,000 agreed-upon non-
21 refundable deposit. That same day, (i) Geraci emailed Cotton a copy of the November
22 Document; (ii) upon review, Cotton replied and requested that Geraci confirm in writing
23 the November Document is not a purchase contract (the “Request for Confirmation”); and
24 (iii) Geraci replied and confirmed the November Document is not a purchase contract (the
25 “Confirmation Email”).

26 10. The Request for Confirmation and the Confirmation Email prove that Cotton
27

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

1 and Geraci did not mutually assent to the November Document being a purchase
2 agreement for the Property (the “Mutual Assent Issue”).

3 11. What Cotton did not know was that Geraci could not actually provide a “final
4 agreement” reflecting they were joint venturers. Geraci could not lawfully own an interest
5 in a cannabis CUP because he had been repeatedly sanctioned for the
6 owning/management of illegal marijuana dispensaries (the “Sanctions Issue”). *See, e.g.,*
7 *City of San Diego v. CCSquared Wellness Cooperative*, Case No. Case No. 37-2015-
8 00004430-CU-MC-CTL, ROA No. 44 (Stipulated Judgment) at 2:15-16 (“The address
9 where the Defendants were maintaining a marijuana dispensary business at all times
10 relevant to this action is 3505 Fifth Ave, San Diego[.]”).

11 12. In March 2017, Geraci’s attorneys, the law firm of Ferris & Britton (“F&B”),
12 filed *Cotton I* alleging the November Document is a fully integrated² purchase contract
13 for Geraci’s purchase of the Property. F&B filed *Cotton I* relying on outdated case law
14 to provide probable cause for seeking to use the parol evidence rule (i) to bar the
15 admission of the Confirmation Email as proof of the JVA and (ii) as a shield to bar the
16 proof that Geraci and F&B conspired to commit a fraud on the court by fraudulently
17 representing a receipt as a purchase contract (the “*Cotton I* Conspiracy”).

18 13. Cotton is a blue-collar individual with no wealth or legal background. Over
19 a year into the case, an attorney specially appeared for Cotton, hired by a litigation
20 investor, who confronted F&B for the first time with a 2013 California Supreme Court
21 decision dispositively preventing F&B from arguing there is *legal probable cause* to rely
22 on the parole evidence rule to bar the admission of the Confirmation Email. Thus,
23 removing any probable cause for the filing of *Cotton I* because of the Mutual Assent Issue.
24

25 ² “In contract law, ‘integration’ means the extent to which a writing constitutes the
26 parties’ final expression of their agreement. To the extent a contract is integrated, the
27 parol evidence rule precludes the admission of evidence of the parties’ prior or
28 contemporaneous oral statements to contradict the terms of the writing, although parol
evidence is always admissible to interpret the written agreement.” *Esbensen v. Userware
Internat., Inc.*, 11 Cal. App. 4th 631, 636-37 (Cal. Ct. App. 1992).

1 14. In response, in April 2018, Geraci, F&B and Geraci’s other attorney, Gina
2 Austin (Mrs. Austin) of Austin Legal Group, APC (“ALG”), colluded to fabricate factual
3 evidence to provide *factual probable cause* for the filing of *Cotton I*. Specifically, that
4 (i) Cotton sent the Request for Confirmation pretending that he and Geraci had reached
5 an oral agreement that included a “10% equity position” for Cotton, but was in reality an
6 attempt at “renegotiating” the deal they had reached hours earlier that day; (ii) Geraci
7 only read the first sentence of the Request for Confirmation (*i.e.*, “Thank you for meeting
8 today.”); (iii) Geraci sent the Confirmation Email by mistake because he did not read all
9 of the Request for Confirmation; (iv) on November 3, 2016, Geraci realized he sent the
10 Confirmation Email by mistake and called Cotton to explain same; and (v) Cotton “was
11 not upset” and *orally agreed* with Geraci that he is not entitled to the 10% equity position
12 Geraci confirmed in the Confirmation Email (the “Disavowment Allegation”).

13 15. Simply stated and understood, *Cotton I* is a “sham” action filed and
14 maintained without probable cause by numerous attorneys on behalf of Geraci to prevent
15 the sale of the Property to Flores and his predecessor-in-interest.³

16 16. Flores knows - as a result of over 3,500 hours of investigations, interviews,
17 research and working on *Cotton I* and related litigation matters over the course of almost
18 two years - that Geraci is a sophisticated businessman who is politically influential,
19 intelligent, and a ruthless criminal. This is not an exaggeration set forth in a complaint to
20 sensationalize the issue. Geraci has directed acts and threats of violence against Cotton,
21

22
23 ³ As material to this action, a “sham” action or pleading includes, first, the filing of
24 a single suit that is “(1) objectively baseless, and (2) a concealed attempt to interfere with
25 the plaintiff’s business relationships.” *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180,
26 1184 (9th Cir. 2005) (citation and quotation omitted). Second, “in the context of a judicial
27 proceeding, if the alleged anticompetitive behavior consists of making intentional
28 misrepresentations to the court, litigation can be deemed a sham if ‘a party’s knowing
fraud upon, or its intentional misrepresentations to, the court deprive the litigation of its
legitimacy.’” *Id.* (citation omitted). And, third, a defensive pleading may also be a sham
“because asking a court to deny one’s opponent’s petition is also a form of petition; thus,
we may speak of a ‘sham defense’ as well as a ‘sham lawsuit.’” *Id.*

1 his litigation investors and supporters, and third-party witnesses in an effort to coerce
2 Cotton into settling *Cotton I*.

3 17. Geraci filed *Cotton I* as part of a small group of wealthy individuals and
4 attorneys (the “Enterprise”) in the City that have conspired to create an unlawful
5 monopoly in the cannabis market (the “Antitrust Conspiracy”). The Enterprise includes
6 attorneys from multiple law firms that are used to create the appearance of competition
7 and legitimacy, while, in reality, *inter alia*, the attorneys conspire even against some of
8 their own non-Enterprise clients to ensure that all cannabis conditional use permits
9 (“CUPs”)⁴ in the City go to principals of the Enterprise.

10 18. Flores purchased and became the equitable owner of the Property because
11 all the parties with an interest in the Property, who could have brought this suit, had
12 grounds to believe that the presiding judge in *Cotton I*, Judge Wohlfeil, and certain City
13 employees were part of and/or knowingly ratifying the sham action and the extra-judicial
14 threats and acts of violence against Cotton, people close to him, and the individuals
15 financially supporting him.

16 19. During the course of his investigations and work in and related to *Cotton I*,
17 Flores became acquainted with Jane Doe (“Jane”) and Amy Sherlock and her children
18 who have been harmed by the Enterprise and undertook their representation.

19 20. Jane. Jane relied on the representations of defendant attorneys Mrs. Austin
20 of ALG and David Demian of Finch, Thornton & Baird (“FTB”) to provide financial and
21 other support to Cotton, his legal team and his supporters.

22 21. Mrs. Sherlock. Michael “Biker” Sherlock was a husband, father,
23 professional athlete, and an entrepreneur with interests in various businesses, including
24 in the cannabis sector. Mr. and Mrs. Sherlock were victims of the Enterprise. Biker
25 partnered with Bradford Harcourt who, unknown to Biker, is or was a principal of the
26 _____

27 ⁴ “[A] conditional use permit grants an owner permission to devote a parcel to a use
28 that the applicable zoning ordinance allows not as a matter of right but only upon issuance
of the permit.” *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*
(2007) 157 Cal.App.4th 997, 1006.

1 Enterprise, and used agents of the Enterprise to acquire interests in two cannabis permits
 2 in 2015 (the “Balboa CUP” and the “Ramona CUP”). Thereafter, Biker and Harcourt
 3 were faced with various litigation and business-related expenses that required Biker to
 4 deplete his financial resources and even use the college funds for his two sons, S.S. and
 5 T.S., to defend the significant investments he made in securing the two permits.
 6 Unfortunately, Biker passed away on December 3, 2015.

7 22. Thereafter, Harcourt became the sole owner of the Balboa CUP and held an
 8 interest in the Ramona CUP. Mrs. Sherlock was never informed of any agreements
 9 whereby Biker provided his consent to sell or transfer his interest in the cannabis permits.
 10 The entity owned by Biker that acquired the Balboa CUP was dissolved with a form filed
 11 with the California Secretary of State three weeks after he passed away (the “Dissolution
 12 Form”). Mrs. Sherlock does not recognize her husband’s alleged signature on the
 13 Dissolution Form.

14 23. Mr. Manny Gonzales is a handwriting fraud expert, with over 40 years of
 15 experience - including as a special investigator of the Division of Trial Counsel for the
 16 State Bar of California and who has testified as an expert in over 170 cases - provided an
 17 analysis that concluded with a high degree of certainty that Biker’s signature was forged
 18 on the Dissolution Form (and could be conclusively decided so if he had access to the
 19 original filed with the state).

20 24. As of the filing of this complaint, Harcourt’s attorney, Allan Claybon of
 21 Messner Reeves LLP, has repeatedly refused to provide an explanation as to how
 22 Harcourt came to own Biker’s interest in the two cannabis permits. However, Claybon
 23 has communicated Harcourt’s affirmative defenses in anticipation of litigation: (i) the
 24 statute of limitations bars any fraud-based causes of action that Mrs. Sherlock may have;
 25 (ii) the statute of limitations was not tolled because Mrs. Sherlock did not “exercise
 26 reasonable diligence” because she did not check the state’s records after Biker passed
 27 away; and (iii) Harcourt and a third-party allege they saw Biker execute the Dissolution
 28 Form the day before he passed away, therefore, per Claybon, their testimony legally and

1 conclusively establishes same and there is no probable cause to allege Harcourt acted
2 unlawfully (“Harcourt’s Affirmative Defenses”).

3 II. JUDGE WOHLFEIL

4 25. Unfortunately, there is a complicated threshold issue with a temporal aspect
5 that must be addressed and there is no easy way to do so. Although Cotton was the target
6 of a conspiracy by Geraci’s attorneys, his own attorneys (who had pre-existing and
7 undisclosed relationships with Geraci), and City attorneys and employees (who have
8 worked for years with Geraci and his team of experts, which include Mrs. Austin who has
9 been hired by the City and markets the fact the City is her client), he did not set forth the
10 facts as to each of those parties that prove they took unlawful action. Instead he argued
11 the conclusion and came across as a stereotypical pro se litigant with delusions of
12 persecution (*i.e.*, a “conspiracy nut”) and he lost all credibility with Judge Wohlfeil.

13 26. Judge Wohlfeil in *Cotton I* issued a judgment against Cotton that was
14 procured by a fraud on the court, is the product of judicial bias, and is void for being an
15 act in excess of his jurisdiction as it enforces an illegal contract.

16 27. Additionally, after judgment was entered in *Cotton I*, and a motion by Cotton
17 was pending in federal court accusing Judge Wohlfeil of bias, it can appear that Judge
18 Wohlfeil finally understood that he had made an egregious mistake in assuming Cotton
19 was a conspiracy nut. The facts support the appearance that Judge Wohlfeil conspired
20 with someone in the San Diego Superior Court’s Clerk’s Office (the “City Clerk”) to
21 reject – 18 months after they were submitted – the documents then pending in federal
22 court that evidence his judicial bias against Cotton.

23 28. *Plaintiffs do not allege that Judge Wohlfeil is actually corrupt.* It could be a
24 coincidence that the Clerk’s Office took 18 months to reject those specific documents.
25 However, even without taking into account other evidence and arguments, based on the
26 timing and substance of the documents deleted from the public record – *i.e.*, the *Cotton I*
27 register of actions (the “ROA”) – a reasonable third party could believe that Judge
28 Wohlfeil conspired with the City Clerk to remove evidence from the *Cotton I* ROA that

1 proved he was biased against Cotton throughout *Cotton I* (the “ROA Conspiracy”).

2 29. Plaintiffs believe that matters have reached this optically implausible stage
3 primarily for two reasons. First, because Judge Wohlfeil has a fixed-opinion of private
4 attorneys Mrs. Austin of ALG, Demian of FTB, and Michael Weinstein of F&B such that
5 he does not believe they are capable of acting unethically and would not file or maintain
6 a sham lawsuit or connive against their own client’s interest (Judge Wohlfeil’s “Fixed-
7 Opinion”).⁵ Consequently, Judge Wohlfeil came to believe that Cotton was a “conspiracy
8 nut” and thereafter, with the exception of one discovery hearing, he never vetted any of
9 Cotton’s submissions; rather, he simply relied upon the opposition arguments and
10 testimony of F&B and Mrs. Austin (the “Opposition Theory”).

11 30. The second reason being that Judge Wohlfeil simply refuses to believe it is
12 possible for there to be a criminal conspiracy that includes corrupt City employees and
13 attorneys.

14 III. THE LEGALIZATION OF CANNABIS AND PUBLIC CORRUPTION

15 31. **“California is awash in cannabis cash. Some is being used to bribe public**
16 **officials.”** This is the title of an article published by the *Los Angeles Times* on March 17,
17 2019 describing numerous cases of government corruption in the multi-billion-dollar
18 legal cannabis market in the state. There are corrupt city, county and law enforcement
19 officials across the state who have been and are being bribed by private parties to
20 unlawfully acquire permits to operate cannabis businesses and/or divert law enforcement
21 efforts from shutting down illegal cannabis operations.

22 32. On August 15, 2019, the Federal Bureau of Investigation (the “FBI”)
23 published a report as part of its *FBI, This Week* audio series titled **“Public Corruption**

26 ⁵ Cotton and his litigation investors hired four different attorneys from four different
27 law firms, at different times, to specially appear before Judge Wohlfeil and argue that
28 *Cotton I* was filed without probable cause by Geraci’s attorneys because, *inter alia*, the
Mutual Assent Issue. At none of the hearings did Judge Wohlfeil address the Mutual
Assent Issue.

1 **Threat Emerges in Marijuana Industry.**⁶ The report highlights that “corruption is
2 more prevalent in western states where the licensing is decentralized - meaning the level
3 of corruption can span from the highest to the lowest level of public officials.”

4 33. As a recent and local example, on November 22, 2019, the FBI arrested the
5 Captain of the Rancho San Diego County Sherriff’s Office, Morad Marco Garmo, for,
6 among other things, running a gun trafficking business and informing an illegal marijuana
7 dispensary of impending raids by law enforcement agencies.⁷ Notably, the complaint
8 describes Garmo sending a photo text to an individual, identified as “San Diego County
9 employee,” of a cease and desist letter sent by the City to an illegal marijuana dispensary.
10 When asked by the San Diego County employee to whom the letter was sent, Garmo
11 replied: “Chaldeans I know[,] can we push it back?” The San Diego County employee
12 replied, “Yes you can” - thus, evidencing collusion between a City employee with the
13 authority to direct investigations of violations of the law and the Captain of a Sherriff’s
14 Office charged with enforcing the law.

15 34. Flores has spoken with the FBI multiple times regarding the actions giving
16 rise to this action. In February 2020, Flores spent over three hours with two FBI Special
17 Agents regarding the specific facts alleged herein and Flores’ personal concern regarding
18 potential violence against certain defendant attorneys named in this suit. (At their request,
19 Flores has not named the FBI Special Agents herein.) On March 12, 2020, Flores and
20 one of the FBI Special Agents spoke regarding the instant complaint and Flores promised
21 to provide a copy of this complaint when filed.

22 35. Plaintiffs do not allege or mean to imply that corrupt government pay-to-
23 play cannabis conspiracies are common. However, at this point in time while the cannabis
24

25
26
27 ⁶ This report is available at the FBI’s website at: <https://www.fbi.gov/> (March 13,
2020).

28 ⁷ *United States v. Mordad Marco Garmo*, Case No.: 19-CR-04768-GPC (S.D. Cal.
Nov. 21, 2019).

1 industry is still transitioning from an illegal market, deals primarily in cash,⁸ and is very
2 profitable, such conspiracies are quite plausible. *See Extrajudicial Involvement in*
3 *Marijuana Enterprises*, 2017 Cal. Jud. Ethics Op. LEXIS 1 (The California Supreme
4 Court Committee on Judicial Ethics finding: “The profits to be gained from the marijuana
5 industry in California are substantial and investors are flocking to this lucrative
6 industry.”).

7 IV. DEMAND FOR REAL PROPERTIES THAT QUALIFY FOR CANNABIS CUPS IN THE
8 CITY

9 36. Since at least 2011 when the City allowed the operations of a dispensary (a
10 physical store that sells cannabis) by a medical marijuana consumer collective
11 (“MMCC”), there has been a freneticism in the real estate market for properties that
12 qualify for a cannabis CUP from the City.

13 37. The City has authorized a maximum number of 36 CUPs for cannabis
14 dispensaries and 40 CUPs for cannabis cultivation/processing.

15 38. In regard to dispensaries, the City has stringent requirements that include a
16 minimum 1,000 feet separation from, *inter alia*, schools, child care centers, churches, and
17 other dispensaries. Because of the limited supply of real properties that qualify under the
18 City’s regulations, the City has been forced to allow some land use variances in the
19 appropriate circumstances.

20 39. For example, on or about August 11, 2016, the City’s Planning Commission
21 approved a dispensary at 3455 Camino Del Rio South (Project No. 368346) even though
22

23 ⁸ *See, e.g.,* Altman, A., *Time* (Special Edition), *Marijuana: The Medical Movement*
24 (2018), *Pot’s Money Problem* at 78-83 (“[M]arijuana moguls look more like criminals
25 than capitalists. They lease secret off-site warehouses to store their money and pay their
26 employees with cash-stuffed envelopes. Some outfit their homes with false walls and
27 safes bolted to the floors. They tote tens of thousands of dollars around and foot five-
28 figure tax bills with wads of 20s. To avert robberies, stores will often stagger delivery
schedules, hire decoy drivers and employ armed guards to monitor dozens of on-site
surveillance cameras. Shunned by proper banks, they run their shops as makeshift
substitute.”).

1 it was located within 1,000 feet of a public park. At the public hearing, in response to
2 opposition to the approval, Commissioner Anthony Wager stated:

3
4 I don't find that any of the 14 marijuana dispensaries we have approved so far
5 have been this idealist utopia of perfect parking, perfect space. We still have
6 a mandate to somehow come up with 36 different dispensaries ... and we're
7 not going to be able to achieve that. ... We're reaching the ceiling. ... We're
8 trying our best to fit square pegs into round holes.

9
10 40. On or about July 20, 2017, the City Planning Commission approved a
11 dispensary at 2425 Camino Del Rio South (Project No. 514308). The dispensary was
12 located within 1,000 feet of two schools. However, pursuant to "path of travel"
13 measurements that considered barriers such as Texas Street, the project was compliant
14 with the 1,000 feet minimum separation requirement.

15
16 41. At the hearing, Chairman Stephen Haase noted that the Planning
17 Commission should not entertain opposition arguments based on illegal ways of access
18 to the project, stating, "I'm troubled by any testimony that encourages illegal behavior
19 like jaywalking or jumping fences, things like that.... When we measure distance ... it
20 ought to be the safe path."

21
22 42. On or about October 1, 2019, the Director of the City's Development
23 Services Department ("DSD"), Elyse W. Lowe, sent a memorandum to Kevin L.
24 Faulconer on the subject entitled "Marijuana/Cannabis Permitting Update." The
25 memorandum states that the City had allowed for the issuance of 36 dispensary CUPs (4
26 per City Council District), but had only approved 23. Furthermore, in some districts, such
27 as City Council District Four where the Property is located, there were no other dispensary
28 CUP applications pending, reflecting that only one property can qualify in the district due
to the regulatory requirements.

25 V. THE ENTERPRISE AND THE DREAM TEAM

26
27 43. At least some of the principals of the Enterprise are criminals with a history
28 of operating illegally in the cannabis black market and being sanctioned by authorities for
their criminal behavior. These individuals were perfectly positioned to acquire the limited

1 and highly coveted cannabis permits in the City once the cannabis industry started to
 2 become legalized because they had the wealth and operational knowledge acquired from
 3 their illegal operations to finance the hiring of attorneys, political lobbyists and other
 4 professionals. However, because some had public records of illegal cannabis activities
 5 disqualifying them from owning a legal cannabis business, they required assistance from
 6 attorneys and other professionals to navigate the heavily regulated cannabis licensing
 7 process via unlawful means, including but not limited to applying for and acquiring the
 8 necessary cannabis permits through proxies - sometimes attorneys - who would not
 9 disclose the individuals with a criminal history as the true beneficial owners of the
 10 cannabis permits for which they applied.

11 44. Some of these individuals still continue to operate in the illegal black market
 12 using their legal licensed cannabis operations as fronts for their illegal operations.

13 45. The de facto general counsel of the Enterprise is Mrs. Austin. In her own
 14 words: “I am an expert in cannabis licensing and entitlement at the state and local levels
 15 and regularly speak on the topic across the nation.”⁹

16 46. Mrs. Austin, together with political lobbyist James Bartell of Bartell &
 17 Associates (“B&A”); building-designer Abhay Schweitzer of Techne, Inc.; and Firouzeh
 18 Tirandazi, a Development Project Manager for DSD responsible for overseeing cannabis
 19 CUP applications, make up the core group that facilitates the Enterprise’s acquisition of
 20 cannabis CUPs in furtherance of the Antitrust Conspiracy.

21 47. Mrs. Austin, Bartell, and Schweitzer are considered the local “Dream Team”
 22 for individuals who desire to acquire a cannabis CUP from the City.

23 48. In *Cotton I*, Mrs. Austin testified that she has represented approximately 25
 24 cannabis applications in the City, 23 of which were approved; Bartell testified that out of
 25 20 cannabis applications for which he has lobbied the City, 19 were approved; and
 26 Schweitzer testified that he has worked with the City on approximately 30-40 cannabis
 27

28 ⁹ *Razuki v. Malan* (“*Razuki II*”), San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL, ROA 127 (Declaration of Gina Austin), ¶ 2.

1 applications.

2 49. Tirandazi has worked on numerous cannabis applications submitted by the
3 Dream Team on which she made decisions contrary to applicable laws and regulations to
4 the benefit of the clients of the Dream Team.

5 VI. THE CHILD CARE ISSUE

6 50. When it became clear that Cotton could not settle *Cotton I* in a manner that
7 would allow Geraci to acquire the Property, because Cotton had sold the Property to
8 Flores’ predecessor-in-interest, Geraci/F&B needed a contingency plan in case *Cotton I*
9 was exposed as a sham to argue they are not responsible for the millions in consequential
10 damages arising from and related to the filing and maintaining of *Cotton I*.

11 51. The *Cotton I* Conspiracy culminated in the City’s knowing and unlawful
12 approval of a cannabis CUP (the “District Four CUP”) within 1,000 feet of the two Child
13 Care Centers.¹⁰

14 52. On or about October 18, 2018, the City approved, at Tirandazi’s
15 recommendation, an application for a cannabis CUP at 6220 Federal Blvd., San Diego,
16 CA 92114 (“6220 Federal”) submitted by Aaron Magagna (the “Magagna Application”).

17 53. Magagna is a principal of the Enterprise.

18 54. Attached hereto as Exhibit 1 is a report commissioned by Title Pro
19 Information Systems showing that the District Four CUP was issued within 1,000 feet of
20 the Child Care Centers in violation of state law and San Diego Municipal Code (“SDMC”)
21 § 141.0504(a)(1) (the “Child Care Issue”).

22 VII. DEFENDANTS’ JOINT LIABILITY

23 55. Without considering amounts arising from emotional distress, exemplary or
24 punitive damages, the minimum compensatory damages suffered by Plaintiffs is at least
25 approximately \$9,500,000. If Plaintiffs are successful in having this Court ensure their
26 safe access to state court and they prevail on their RICO and/or antitrust causes of action

27 ¹⁰ The Child Care Centers mean (i) Village Kids Child Care at 2156 Oriole Street,
28 San Diego CA 92114 and (ii) Cuddles Academy Child Care at 2156 Oriole Street, San
Diego CA 92114.

1 allowing for treble damages, defendants are jointly liable for no less than \$28,500,000.

2 56. Plaintiffs do not believe, as Cotton has alleged pro se in multiple legal
3 proceedings (while under severe mental and emotional strain), that there is some kind of
4 “master” conspiracy. Rather, groups of defendants each had motive to take unlawful
5 action and, as various events and legal actions progressed, defendants came to understand
6 each other’s unlawful actions and realized they were joint, concurrent, and/or successive
7 tortfeasors. Consequently, defendants had motive to cover up, or at the very least not
8 expose, each other’s crimes in order to hide and limit their joint liability. *See Roth v.*
9 *Rhodes*, 25 Cal. App. 4th 530, 544 (1994) (joint and several liability rule of conspiracy
10 applies to antitrust claims brought under Cartwright Act).

11 **JURISDICTION AND VENUE**

12 57. Jurisdiction is also conferred on this Court pursuant to: 28 U.S.C. §§1331,
13 1343, and 18 U.S.C. §1964, which, *inter alia*, confer original jurisdiction to the District
14 Courts of the United States for all civil actions arising under the United States
15 Constitution or the laws of the United States, as well as civil actions to redress deprivation
16 under color of State law, of any right immunity or privilege secured by the United States
17 Constitution.

18 58. This action is also brought pursuant to 42 U.S.C. §§1983, 1985, 1986 to
19 redress the deprivation under color of state and local law of rights, privileges, immunities,
20 liberty and property, secured to all citizens by, *inter alia*, the First, Fourth and Fourteenth
21 Amendments to the United States Constitution.

22 59. This Court has jurisdiction over Plaintiffs’ claims for declaratory and
23 injunctive relief pursuant to Federal Rule of Civil Procedure 65.

24 60. Venue in this judicial district is proper under 28 U.S.C. §1391(b)(2), because
25 a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in
26 this district.

27 **PARTIES**

1 61. Plaintiff ANDREW FLORES, an individual, was, and at all times mentioned
2 herein is, residing and doing business as a duly licensed attorney in the City and County
3 of San Diego, California.

4 62. Plaintiff AMY SHERLOCK, an individual, and at all times herein was and
5 is, residing and working in the City of Carlsbad, County of San Diego, California.

6 63. Plaintiff MINORS T.S. and S.S., progeny of Amy and Michael Sherlock, are
7 individuals, were, and at all times herein, living and attending school in the City of
8 Carlsbad and of the County of San Diego, State of California.

9 64. Plaintiff JANE DOE, an individual, was and at all material times mentioned
10 herein, residing and doing business in the City of El Cajon and of the County of San
11 Diego, State of California.

12 65. Defendant JOEL R. WOHLFEIL, an individual, was, and at all times
13 mentioned herein is, a resident of the County of San Diego, State of California.

14 66. Defendant LARRY GERACI an individual, was, and at all times mentioned
15 herein is, a resident of the County of San Diego, State of California.

16 67. Defendant TAX & FINANCIAL CENTER, INC., a California corporation,
17 and at all times relevant to this action was, a California corporation organized and existing
18 under the laws of the State of California, with its principal place of business located in
19 the County of San Diego.

20 68. Defendant REBECCA BERRY an individual, was, and at all times
21 mentioned herein is, a resident of the County of San Diego, State of California.

22 69. Defendant MICHAEL ROBERT WEINSTEIN an individual, was, and at all
23 times mentioned herein is, a resident of the County of San Diego, State of California.

24 70. Defendant SCOTT TOOTHACRE an individual, was, and at all times
25 mentioned herein is, a resident of the County of San Diego, State of California.

26 71. Defendant ELYSSA KULAS an individual, was, and at all times mentioned
27 herein is, a resident of the County of San Diego, State of California.

28

1 72. Defendant RACHEL M. PRENDERGAST an individual, was, and at all
2 times mentioned herein is, a resident of the County of San Diego, State of California.

3 73. Defendant FERRIS & BRITTON APC (*i.e.*, F&B), is a California
4 Professional Corporation, and at all times relevant to this action was, a California
5 Professional Corporation organized and existing under the laws of the State of California,
6 with its principal place of business located in the County of San Diego. F&B includes
7 defendant Weinstein, Toothacre and Kulas.

8 74. Defendant DAVID DEMIAN, an individual, was, and at all time mentioned
9 herein is, a resident of the County of San Diego, State of California.

10 75. Defendant ADAM WITT, an individual, was, and at all time mentioned
11 herein is, a resident of the County of San Diego, State of California.

12 76. Defendant RISHI BHATT, an individual, was, and at all time mentioned
13 herein is, a resident of the County of San Diego, State of California.

14 77. Defendant FINCH, THORTON, and BAIRD, is a California Limited
15 Liability Partnership, organized and existing under the laws of the State of California,
16 with its principal place of business located in the County of San Diego.

17 78. Defendant ABHAY SCHWEITZER, an individual and dba TECHNE; an
18 individual, was, and at all times mentioned herein is, a resident of the County of San
19 Diego, State of California.

20 79. Defendant JIM BARTELL an individual, was, and at all times mentioned
21 herein is, a resident of the County of San Diego, State of California.

22 80. Defendant BARTELL & ASSOCIATES, a California corporation, and at all
23 times relevant to this action was, a California Corporation organized and existing under
24 the laws of the State of California, with its principal place of business located in the
25 County of San Diego.

26 81. Defendant GINA M. AUSTIN, an individual, was, and at all times
27 mentioned herein is, a resident of the County of San Diego, State of California.
28

1 82. Defendant AUSTIN LEGAL GROUP APC, a California corporation, and at
2 all times relevant to this action was, a California Professional Corporation organized and
3 existing under the laws of the State of California, with its principal place of business
4 located in the County of San Diego.

5 83. Defendant MATTHEW WILLIAM SHAPIRO an individual, was, and at all
6 times mentioned herein is, a resident of the County of San Diego, State of California.

7 84. Defendant MATTHEW W. SHAPIRO APC, a California corporation, and
8 at all times relevant to this action was, a California Professional Corporation organized
9 and existing under the laws of the State of California, with its principal place of business
10 located in the County of San Diego.

11 85. Defendant NATALIE TRANG-MY NGUYEN an individual, was, and at all
12 times mentioned herein is, a resident of the County of San Diego, State of California.

13 86. Defendant AARON MAGAGNA an individual, was, and at all times
14 mentioned herein is, a resident of the County of San Diego, State of California.

15 87. Defendant A-M INDUSTRIES, INC., a California corporation, and at all
16 times relevant to this action was, a California Professional Corporation organized and
17 existing under the laws of the State of California, with its principal place of business
18 located in the County of San Diego.

19 88. Defendant SHAWN MILLER an individual, was, and at all times mentioned
20 herein is, a resident of the County of San Diego, State of California.

21 89. Defendant LOGAN STELLMACHER an individual, was, and at all times
22 mentioned herein is, a resident of the County of San Diego, State of California.

23 90. Defendant EULENTHIAS DUANE ALEXANDER, an individual, was, and
24 at all times mentioned herein is, a resident of the County of San Diego, State of California.

25 91. Defendant BIANCA MARTINEZ an individual, was, and at all times
26 mentioned herein is, a resident of the County of San Diego, State of California.

27 92. Defendant JESSICA MCELFRISH an individual, was, and at all times
28 mentioned herein is, a resident of the County of San Diego, State of California.

1 93. Defendant THE CITY OF SAN DIEGO, a municipality,

2 94. Defendant FIROUZEH TIRANDAZI, an individual, was, and at all times
3 mentioned herein is, a resident of the County of San Diego, State of California.

4 95. Defendant STEPHEN G. CLINE, an individual, was, and at all times
5 mentioned herein is, a resident of the County of San Diego, State of California.

6 96. Defendant SALAM RAZUKI an individual, was, and at all times mentioned
7 herein is, a resident of the County of San Diego, State of California.

8 97. Defendant NINUS MALAN an individual, was, and at all times mentioned
9 herein is, a resident of the County of San Diego, State of California.

10 98. Defendant BRADFORD HARCOUT an individual, was, and at all times
11 mentioned herein is, a resident of the County of San Diego, State of California.

12 99. Defendant ALAN CLAYBON an individual, was, and at all times mentioned
13 herein is, a resident of the County of San Diego, State of California.

14 100. Defendant JOHN DOE (GET AWAY DRIVER) an individual, was, and at
15 all times mentioned herein is, a resident of the County of San Diego, State of California.

16 101. Real Party in Interest JOHN EK an individual, was, and at all times
17 mentioned herein is, a resident of the County of San Diego, State of California.

18 102. Real Party Interest THE EK FAMILY TRUST, 1994 Trust; 2018FMO, LLC,
19 a California limited liability company... a California corporation, and at all times relevant
20 to this action was, a California Limited Liability Company organized and existing under
21 the laws of the State of California, with its principal place of business located in the
22 County of San Diego.

23 103. and DOES 3 through 50, inclusive,

24 **GENERAL ALLEGATIONS**

25 104. At this point in time, Plaintiffs allege there were originally three separate
26 conspiracies that evolved and made all defendants joint tortfeasors as they directly or
27 tacitly worked in concert and sought to cover-up their respective crimes. First, the
28 Enterprise’s Antitrust Conspiracy. Second, a conspiracy by the City to unlawfully record

1 a lis pendens on properties at which dispensaries were operated without the appropriate
2 cannabis CUP; which the City did to extort fines from the property owners (the “City
3 Conspiracy”). Third, the ROA Conspiracy.

4 105. In regard to the Antitrust Conspiracy, there are three general categories of
5 defendants. The first category are the individuals who operate illegal cannabis businesses
6 on a day-to-day basis with their day-to-day attorneys and corrupt City employees that
7 help effectuate their efforts to monopolize the cannabis industry (e.g., Geraci, Magagna,
8 Mrs. Austin, Tirandazi). The second category are attorneys who represent the first
9 category defendants and knowingly aid their clients in effectuating their crimes via the
10 judiciaries (e.g., Weinstein of F&B and Demian of FTB). And the third category are top-
11 tier attorneys that were brought in by the second category attorneys and their clients to
12 defend them in federal court when Cotton filed a lawsuit against them. These top-tier
13 attorneys knew, or should have known, that their actions in defending their clients in
14 federal court - for ongoing unlawful actions taken in then-ongoing state court proceedings
15 - violated the constitutional and statutory rights of Plaintiffs and others.¹¹

16 106. **To date, there have been ten judges that have had the Mutual Assent**
17 **Issue before them.¹² The issue of Mutual Assent Issue has never been addressed by**
18 **any judge.**

19 107. Unfortunately, this is the result of a waterfall effect that is taking place with
20

21 ¹¹ See *Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) (“Though there
22 appears to be no clear rule of immunity with respect to the liability under the civil rights
23 laws of attorneys who violate the civil rights of others while representing their clients,
24 cases under the Civil Rights Act indicate that the attorney may be held liable for damages
25 if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably
26 should have known, would violate the clearly established constitutional or statutory rights
27 of another. See *Buller v. Buechler*, 706 F.2d 844, 852-853 (8th Cir. 1983).”).

28 ¹² Judge Wohlfeil and Judge Sturgeon in state court; Cotton filed two writs appealing
Judge Wohlfeil’s orders that were before Justices Huffman, Irion, Dato, McConnell, and
Benke; and Cotton’s federal actions have been before Judge Curiel (who recused himself
after making several rulings), Judge Whelan (who also recused himself after receiving the
case from Judge Curiel), and one is presently before Judge Bashant.

1 Judge Wohlfeil’s Fixed-Opinion at the origin.

2 108. Judge Wohlfeil’s Fixed-Opinion prevents him from realizing that F&B filed
3 *Cotton I* without any probable cause. In turn, Plaintiffs are forced to assume in the
4 absence of any other information, every other Judge does not believe that Judge Wohlfeil
5 would fail to understand the Mutual Assent Issue and Cotton and his attorneys are
6 misrepresenting the facts. Thus, no matter how many times Cotton and his attorneys have
7 attempted to have other Judges realize Judge Wohlfeil’s Fixed-Opinion is judicial bias
8 against Cotton, all they have accomplished is being marginalized and put in the
9 “conspiracy nut” category along with Cotton.

10 109. Plaintiffs are forced herein to not just prove three separate conspiracies, but
11 also provide sufficient facts to fight the procedural history in this matter that would appear
12 to reflect that Judge Wohlfeil was impartial in *Cotton I*; as ratified by nine other Judges
13 that had the same Mutual Assent Issue before them.

14 110. Thus, to meet the heightened pleading standards required to meet the sham
15 exception to the *Noerr-Pennington* doctrine, and the heightened pleading standards
16 applicable to allegations of judicial bias and multiple conspiracies against multiple
17 parties, including underlying antitrust violations as motive, Plaintiffs set forth their
18 allegations in seven parts.

19 111. Part I summarizes material State of California and City cannabis laws and
20 regulations.

21 112. Part II summarizes the backgrounds and relationships by and among the
22 material parties to this action not described elsewhere in the complaint.

23 113. Part III summarizes material litigation matters that have a direct and
24 significant impact on this action.

25 114. Part IV summarizes various cannabis CUP applications in which the
26 Enterprise has been involved and related litigation disputes over ownership of the
27 cannabis CUPs. (The Enterprise’s downfall is going to be their unbounded greed; in
28 addition to engaging in fraudulent and violent actions against third parties, the members

1 also suffer from severe infighting that manifests in litigation as well as taking violence
2 against each other.)

3 115. Part V discusses the *Cotton I* Conspiracy and related litigation matters
4 providing facts that reflects how the Enterprise works simultaneously through sham
5 litigation and extra-judicial acts and threats of violence in furtherance of the Antitrust
6 Conspiracy.

7 116. Part VI summarizes Biker’s acquisition of the Balboa CUP and the Ramona
8 CUP and the connections between the current owners of those permits and the Enterprise.

9 117. Part VII summarizes the threats and acts of violence against Cotton, people
10 close to him, his financial supporters, and material third party witnesses seeking to prevent
11 Flores (and his predecessor) from seeking legal redress and vindicating his rights to the
12 Property and the District Four CUP.

13 **PART I – STATE AND CITY CANNABIS LAW & REGULATIONS**

14 I. STATE LAW

15 118. Non-Profit Medical Cannabis Entities. Proposition 215, or the
16 Compassionate Use Act of 1996 (the “CUA”), was a statewide voter initiative authored
17 by, among others, Dennis Peron. The CUA decriminalized the personal possession and
18 cultivation of medical marijuana in the State.

19 119. In 2003, the State enacted the Medical Marijuana Program Act (the
20 “MMPA”), clarifying the scope and application of the CUA, and establishing certain
21 requirements for, *inter alia*, nonprofit entities that would come to be known as Medical
22 Marijuana Consumer Cooperatives (*i.e.*, MMCCs).

23 120. For-Profit Medical Cannabis Entities. In 2015, the State enacted three
24 bills—Assembly Bills 243 and 246 and Senate Bill 643 (“SB 643”)—that collectively
25 established a comprehensive State regulatory framework for the licensing and
26 enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery,
27 and testing of medicinal cannabis in California. This regulatory scheme was known as
28 the Medical Cannabis Regulation and Safety Act (“MCRSA”). MCRSA authorized a

1 person who obtained a state license and, if required, the relevant local permit, to engage
2 in commercial medical cannabis activity pursuant to the license/permit.

3 121. SB 643 added § 19323 (Denial of application for licensure or renewal) to the
4 Cal. Bus. & Prof. Code (“BPC”), which mandated that an application for an MMCC be
5 denied if the applicant did not qualify for licensure. SB 643 at § 10 (adding BPC § 19323).

6 122. BPC § 19323 was amended in 2016 by Cal SB 837, effective June 27, 2016.
7 As amended, it is the original applicable regulatory language at issue in this action when
8 the November Document was executed. It then-read, materially, as follows (emphasis
9 added):

10 (a) A licensing authority *shall* deny an application if the *applicant* or the
11 premises for which a state license is applied does not qualify for licensure under
12 this chapter [3.5 (Medical Cannabis Regulation and Safety Act)] or the rules
13 and regulations for the state license.

14 (b) A licensing authority *may* deny an *application* for licensure or renewal of
15 a state license, or issue a conditional license, if any of the following conditions
16 apply:

17 (1) Failure to comply with the provisions of this chapter or any rule or
18 regulation adopted pursuant to this chapter or the rules and regulations
19 for the state license...

20 (2) Conduct that constitutes grounds for denial of licensure pursuant to
21 Chapter 2 (commencing with Section 480) of Division 1.5 [“(§480)”].

22 (3) The applicant has failed to provide information required by the
23 licensing authority.

24 (7) The applicant... has been sanctioned by a licensing authority or a
25 city... for unlicensed commercial medical cannabis activities... in the
26 three years immediately preceding the date the application is filed with
27 the licensing authority.

28 123. BPC § 480 set forth the following relevant criteria that mandated denial of
an MMCC application pursuant to BPC § 19323(a),(b)(2):

1 (i) The applicant has “[d]one any act involving dishonesty, fraud, or deceit
2 with the intent to substantially benefit himself or herself or another, or substantially injure
3 another.” BPC § 480(a)(2); and

4 (ii) “[T]he applicant knowingly made a false statement of fact that is required
5 to be revealed in the application for the license.” BPC § 480(d).

6 124. For-Profit Recreational Cannabis Entities. On November 8, 2016, the voters
7 of California approved Proposition 64, the Adult Use of Marijuana Act (“AUMA”).
8 AUMA became effective November 9, 2016 and legalized recreational, for-profit
9 cannabis sales starting in January 2018.

10 125. The intent of AUMA was, *inter alia*, to ensure a comprehensive regulatory
11 system that takes production and sales of cannabis away from an illegal market and
12 curtails the illegal diversion of cannabis from to other states or countries.

13 126. AUMA’s findings and declarations included the following statement: “By
14 bringing marijuana into a regulated and legitimate market, [AUMA] creates a transparent
15 and accountable system. This will help police crackdown on the underground black
16 market that currently benefits violent drug cartels and transnational gangs, which are
17 making billions from marijuana trafficking and jeopardizing public safety.” AUMA at §
18 2(H) (emphasis added).

19 127. Pursuant to AUMA, the Bureau of Cannabis Control (“BCC”) “shall have
20 the exclusive authority to create, issue, renew, discipline, suspend, or revoke licenses for
21 the... sale of marijuana within the state.” AUMA § 6.1 (adding BPC § 26012(a)(1))
22 (emphasis added).

23 128. AUMA required that an applicant for a cannabis license meet the
24 requirements for a state license under AUMA and, if any, comply with applicable local
25 laws and ordinances.

26 129. AUMA added § 26057 to the BPC, which was substantively identical to BPC
27 § 19323, setting forth the criteria mandating denial of certain cannabis applications.
28

1 130. Thus, for a short period of time, there were two regulatory frameworks for
2 cannabis: MCRSA for medical and AUMA for non-medical/recreational use.

3 131. However, pursuant to 2017 Cal SB 94 (“SB 94”), effective June 27, 2017,
4 MCRSA was repealed and AUMA amended to consolidate the regulation of medical and
5 non-medical cannabis activities pursuant to a single regulatory framework by the state.

6 132. SB 94 increased the disclosure requirements for applicants seeking a state
7 license. SB 94 stated:

8 In order to strictly control the cultivation, processing, manufacturing,
9 distribution, testing, and sale of cannabis in a transparent manner that allows
10 the state to fully implement and enforce a robust regulatory system, licensing
11 authorities must know the identity of those individuals who have a significant
12 financial interest in a licensee, or who can direct its operation. Without this
13 knowledge, regulators would not know if an individual who controlled one
14 licensee also had control over another. To ensure accountability and preserve
the state’s ability to adequately enforce against all responsible parties the state
must have access to key information.

15 SB 94 § 1(f).

16 133. SB 94 amended BPC § 26052 to state, in material part: “Any person or trade
17 association may bring an action to enjoin and restrain any violation of this section for the
18 recovery of damages.” BPC § 26052(c).

19 134. Materially summarized, even as the cannabis regulatory scheme created by
20 the state evolved, it has always sought to prohibit organized crime/criminals from entering
21 the cannabis market, transparency in the application process and operations for cannabis
22 entities, and to prevent the creation of monopolies. To effectuate these goals, the state
23 has always required, *inter alia*, the disclosure of all parties with a material ownership
24 interest and/or control of cannabis entities. Further, it has always mandated the denial of
25 applications from individuals who fail to comply with the state’s requirements (which
26 include by reference and incorporation compliance with, if any, local requirements
27 necessary for the operation of cannabis entities).

28 II. CITY LAW

1 135. General Permit and CUP Requirements. Since at least August 1993, SDMC
 2 has prohibited the furnishing of false or incomplete information in any application for any
 3 type of permit or CUP from the City. *See* SDMC § 11.0401(b) (“No person willfully shall
 4 make a false statement or fail to report any material fact in any application for City license,
 5 permit, certificate, employment or other City action under the provisions of the
 6 [SDMC].”).

7 136. SDMC § 11.0402 provides that “[w]henver in [the SDMC] any act or
 8 omission is made unlawful, it shall include causing, permitting, aiding or abetting such
 9 act or omission.”

10 137. Thus, applying for a cannabis permit or CUP, or aiding a party to apply for
 11 same, and willfully making a false statement in the application is illegal.

12 138. SDMC § 121.0302(a) states as follows: “It is unlawful for any person to
 13 maintain or use any premises in violation of any of the provisions of the Land
 14 Development Code, without a required permit, contrary to permit conditions, or without
 15 a required variance.”

16 139. The Land Development Code consists of Chapters 11 through 14 of the
 17 SDMC (encompassing §§ 111.0101-1412.0113). (SDMC § 111.0101(a).)

18 140. SDMC § 121.0311 states as follows: “Violations of the Land Development
 19 Code shall be treated as **strict liability** offenses regardless of intent.” (Emphasis added.)

20 141. Medical Cannabis CUP Requirements. On April 27, 2011, the City passed
 21 Ordinance No. 20043 (“O-20043”). Pursuant to O-20043, an MMCC could operate a
 22 dispensary in the City if organized as an MMCC with the state and provided that it
 23 acquired the appropriate permit and CUP from the City. Ordinance 20356 set the
 24 maximum number of MMCCs allowed as 4 per City Council District (for a maximum
 25 possible total of 36 in the City) and required that any MMCC keep a minimum distance
 26 of 1,000 feet from certain locations, including schools, parks, child care centers and other
 27 dispensaries.

28 142. O-20043 required all persons defined as *responsible persons* to undergo

1 fingerprinting and background checks. O-20043 broadly defined a *responsible person* to
2 include any person who is responsible for the “operation, management, direction, or
3 policy of an [MMCC].”

4 143. Recreational Cannabis CUP Requirements. On February 22, 2017, in
5 response to the passage of AUMA, the City adopted Ordinance No. O-20793 (“O-
6 20793”). O-20793 amended the City’s cannabis regulations and permitted the retail sale
7 of cannabis for recreational use in dispensaries (then called “Marijuana Outlets” and now
8 called “Cannabis Outlets”) with the appropriate CUP from the City.

9 144. Pursuant to O-20793 all applicants for cannabis CUPs must comply with the
10 requirements of AUMA set forth in the BPC. *See* SDMC § 113.0103 (defining a Cannabis
11 Outlet as a “retail establishment operating with a [CUP]... in accordance with dispensary
12 or retailer requirements pursuant to the [BPC].”).

13 III. AGENCY INTERPRETATION OF STATE LAW

14 145. On January 15, 2019, the BCC issued an addendum providing its final
15 reasoning for the adoption of regulations pursuant to AUMA after providing opportunities
16 for public comments (the “BCC Final Statement of Reasons”).¹³ In the BCC Final
17 Statement of Reasons in Appendix A (hereinafter, “Appendix A”) the BCC sets forth its
18 reasoning and position on the following three material requirements.

19 146. The BCC summarized comments regarding certain application requirements
20 as follows:

21 Commenter objects to the paperwork-oriented minutiae about every
22 aspect of a cannabis business, and states that has caused huge parts of
23 the existing black-market cannabis industry to be unable or unwilling
24 to participate in the legal market. Commenter states that he believes the
25 reasoning behind the detailed regulations is that the public wants safety
around cannabis, but the reasoning is faulty.

26 The BCC responded in relevant part as follows:

27
28 ¹³ An online copy of the BCC Final Statement of Reasons can be found at the BCC website
(<https://bcc.ca.gov>) under the Laws and Regulations section. (March 13, 2020.)

1 The [BCC] disagrees with this comment. [AUMA] requires that the
2 [BCC] only issue licenses to qualified applicants and that the Bureau
3 deny an application if either the applicant or the premises do not qualify
4 for licensure. ([BPC §§] 26055 and 26057.) In order to determine if an
5 applicant is qualified for licensure, [AUMA] requires that an
6 application contain certain information about the premises, the owner,
7 and the commercial cannabis business and its operations. ([BPC §]
8 26051.5.) The [BCC] cannot waive the requirements of [AUMA] and
9 must fulfill its duty under [AUMA].

10 Appendix A at 9.

11 147. The BCC summarized comments regarding the disclosure of prior
12 convictions as follows:

13 Commenters state that the information required in the application
14 regarding an applicant’s prior convictions is too cumbersome.
15 Commenters object to the inclusion of juvenile convictions and states
16 that overall the [BCC] should not have access to dismissals or expunged
17 records. One commenter requested the [BCC] disregard dismissals.
18 Another commenter stated that requirements to declare juvenile
19 convictions for alcohol, dangerous drugs, or other controlled substances
20 is an obstacle to licensure.

21 The BCC responded in relevant part as follows:

22 The [BCC] disagrees with this comment. [BPC §] 26051.5 provides the
23 [BCC] with the ability to obtain and receive criminal history
24 information from the Department of Justice and the Federal Bureau of
25 Investigation for an applicant for any state cannabis license. Further,
26 [BPC §] 26057 provides that the [BCC] **shall** deny an application if the
27 **applicant** does not qualify for licensure and that the [BCC] may deny
28 an application when the applicant has been convicted of an offense that
is substantially related to the qualifications, functions, or duties of the
business or profession for which the application is made. Further, the
section provides that if the [BCC] determines that the applicant is
otherwise suitable to be issued a license, then the [BCC] shall conduct
a thorough review of the nature of the crime, conviction, circumstances,
and evidence of rehabilitation, and shall evaluate the suitability of the
applicant to be issued a license based on the evidence found in the
review.

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Appendix A at 27-28 (emphasis added).

148. Thus, applications from applicants with certain convictions must be denied.

149. And applicants with convictions that do not specifically require their denial must be disclosed in the application so that the BCC can conduct a review and then determine whether to issue a state license.

150. Cal. Code Regs. tit. 16 § 5026(a) provides that: “A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued.”

151. The BCC summarized two comments regarding § 5026 as follows:

[First comment:] Home day care centers should be excluded from this provision, as many localities have them.

[Second comment:] Suggest revising subsection (a) as follows:

A premises licensed under this division shall not be located within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, licensed day care center, or youth center that is was in existence at the time ~~the license is issued~~ applicant commenced operations.

152. The BCC responded two both comments identically as follows:

The [BCC] disagrees with this comment. Section 5026 of the regulation is consistent with the premise’s location limitations identified in [BPC §] 26054.

Appendix A at 102-103, 108.

153. No later than January 15, 2019, all cannabis professionals and licensing agencies, including the City’s DSD, have known or should have known that the definition of a “day care center” includes home day cares as well as unlicensed day cares.

PART II – MATERIAL RELATIONSHIPS AMONG THE DEFENDANTS

1 154. A civil conspiracy can be inferred from evidence showing a course of
 2 conduct on the part of the defendants that is “teeming with fraudulent representations and
 3 replete with intrigue, deception and duplicity[.]” *Anderson v. Thacher* (1946) 76 Cal.
 4 App. 2d 50, 73. It can also be inferred from circumstantial evidence of dealings between
 5 the defendants (*see Rogers v. Grua* (1963) 215 Cal. App. 2d 1, 9) and from statements
 6 made by one who claimed merely to be an advisor rather than a conspirator from which
 7 it could be inferred that he or she had joined in the unlawful scheme (*see Wetherton v.*
 8 *Growers Farm Labor Ass’n* (1969) 275 Cal. App. 2d 168, 176–177).

9 **A. Salam Razuki and Ninus Malan**

10 155. Salam Razuki and Ninus Malan were business partners in numerous business
 11 ventures for at least a decade before they had a falling out over profits from the cannabis
 12 businesses they acquired as principals of the Enterprise; and Razuki then sought to have
 13 Malan kidnapped and murdered.

14 156. The anticompetitive tactics and agents Razuki and Malan used in furtherance
 15 of the Antitrust Conspiracy have been used by them in their other business ventures.

16 157. Razuki and Haith Razuki are the owners of Stonecrest Plaza located at 3690
 17 Murphy Canyon Road in San Diego, California 92123. They also own a Chevron branded
 18 gas station and car wash that operate at Stonecrest Plaza (the “Chevron Gas Station”).

19 158. Across the street from the Chevron Gas Station is an ARCO gas station
 20 located at 3770 Murphy Canyon Road, San Diego, California 92123 (the “ARCO Gas
 21 Station”).

22 159. Stonecrest Village is a 318-acre community near the Chevron Gas Station
 23 and the ARCO Gas Station.

24 160. On or about October 13, 2016, the City Council approved a CUP application
 25 from the owners of the ARCO Gas Station to expand their gas pumps from 8 to 12 and to
 26 build a car wash (the “ARCO Project”).

27 161. On or about October 27, 2016, Claus Antonio Norby Cedillo (“Norby”) filed
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1 an appeal of the approval of the ARCO Project (the “ARCO Appeal”). In the ARCO
2 Appeal, Norby stated his address is in Bonita, CA 91902. The grounds for the appeal was
3 an allegation that a traffic study had not been conducted by the City.

4 162. Bartell, allegedly representing a coalition that includes residents of
5 Stonecrest Village, engaged Urban Systems Associates to provide a traffic impact report
6 of the ARCO Project (the “Traffic Report”). Bartell then used the Traffic Report to lobby
7 for the ARCO Appeal alleging the ARCO Project would impermissibly increase traffic.

8 163. On March 16, 2017, the San Diego Reader published an article by Marty
9 Graham titled “Murphy Canyon gas-station grapple.” The article quotes Bartell as saying
10 “[w]e are concerned about the impact of increased traffic on the neighborhood... Our
11 traffic study showed significant impacts, contrary to the City’s study.”

12 164. A memo prepared by a Senior Traffic Engineer for DSD regarding the
13 Traffic Report states: “City staff finds the Urban Systems analysis to be inaccurate, and
14 does not constitute substantial evidence that the project would result in a significant
15 impact.” For example, the Traffic Report “failed to accurately compare the existing
16 conditions to the project conditions by excluding U turns from the existing condition
17 scenario.”

18 165. In other words, the ARCO Appeal supported by the Traffic Report and
19 Bartell’s lobbying efforts is a sham.

20 166. The representative of the ARCO Gas Station, Alex Mucino, is quoted in the
21 article by Graham saying he does not believe Bartell is authentically representing
22 Stonecrest Village: “I can’t prove [Bartell is] being funded by the competition [*i.e.*,
23 Razuki], but that’s what I think.”

24 167. Unfortunately for the owners of the ARCO Gas Station, the sham Traffic
25 Report and the sham ARCO Appeal nonetheless triggered a review of the ARCO Project
26 necessitating a new environmental impact study that would cost approximately \$500,000.

27 168. On or about April 5, 2017, Mucino submitted a letter to DSD withdrawing
28

1 the ARCO Project. The letter notes that the ARCO Appeal was likely funded by Razuki
2 and “the likely losers will be our customers who will not be able to enjoy competitive
3 prices, product quality and diversity proposed by our [ARCO] Project. The stifling of
4 competition will neither be good for consumers nor good for business.”

5 169. At the City Council hearing on April 25, 2017 at which the ARCO Project
6 was withdrawn, Councilmember Scott Sherman stated: “Well [Razuki,] this sure seems
7 like a backhanded way to stop the people across the street from competing with you. I’m
8 at a loss for words, I really am.”

9 170. On April 28, 2017, Bartell submitted a Lobbying Firm Quarterly Disclosure
10 Report with the City in which he disclosed he lobbied for Razuki Investments LLC in
11 support of the ARCO Appeal.

12 171. On May 4, 2017, the San Diego Reader published an investigative news
13 article titled “Dueling car washes on Aero Drive” by Julie Stalmer.

14 172. Although in her article Stalmer appears to be worried about libel, her article
15 effectively describes how her investigate efforts revealed that Razuki had multiple
16 individuals pretend they were not associated with him and make false statements to the
17 City Council in support of the ARCO Appeal.

18 173. The article describes that at the April 25, 2017 hearing, one Ninus Malan
19 “said he worked in a law office above the [ARCO Gas Station]. He complained about not
20 being able to talk outside with clients because of the noise from below.” Malan urged the
21 ARCO Appeal be approved because the proposed car wash would create too much noise.

22 174. Also, Norby, who filed the ARCO Appeal and stated his address as being in
23 Bonita, spoke to the City Council alleging he was a resident of, and speaking on behalf
24 of the community at, Stonecrest Village.

25 175. In sum, Bartell used his political influence to lobby certain City officials that
26 resulted in the City imposing a \$500,000 cost on a competitor of Razuki, arising from the
27 ARCO Appeal filed by Norby who lied about his residence, supported by a sham Traffic
28

1 Report commissioned by Razuki and testimony by Malan alleging he works at a law office
2 at the ARCO Gas Station above the proposed car wash.

3 **B. The Associate**

4 176. One of Razuki’s cannabis business associates (the “Associate”) stated in a
5 confidential conversation with an investigative reporter – after Razuki had been arrested
6 and was being held by the FBI – that he does not believe Biker committed suicide and
7 that he believes that Razuki had something to do with his death.¹⁴

8 177. The Associate describes meetings between Razuki and Mrs. Austin in which
9 they explicitly discussed their goal of creating a “monopoly” in the City’s cannabis market
10 through proxies and the use of lawsuits.

11 178. Furthermore, the Associate stated that the Enterprise uses Mexican gangs
12 that commit violent acts on the Enterprise’s behalf to further their goals when disputes
13 arise in the operations of their marijuana ventures.

14 179. The Associate was an intermediary between Razuki and the Mexican gangs
15 with whom he has a relationship with because his cousin is a member in one of the
16 Mexican gangs.

17 180. On June 11, 2019, Flores emailed Assistant United States Attorney Shital
18 Thakkar prosecuting *Razuki III* (defined below) to inform him that Flores had possession
19 of an audio recording of the Associate summarizing the above (the “Associate’s
20 Recording”) and that he intended to file a civil complaint against Razuki.

21 181. Flores described that he was concerned that the release of the Associate’s
22 Recording would pose a danger to the Associate’s life and/or affect potentially ongoing
23 criminal investigations directly or related to Razuki. AUSA Thakkar never responded.

24 182. Flores shall submit the Associate’s Recording to the judge overseeing this
25 matter and allow the court to determine when and how to release the recording that will
26

27 _____
28 ¹⁴ Plaintiffs do not allege that Razuki was actually involved in Biker’s death. However,
this information is material and relevant because the Associate, who worked with Razuki,
believes that Razuki could have been responsible.

1 potentially expose the Associate to danger and/or affect ongoing criminal investigations.

2 **C. Gina Austin and Natalie Nguyen**

3 183. As noted, Mrs. Austin is the de facto general counsel for the Enterprise and,
4 via her firm, ALG, is responsible for coordinating and effectuating the Enterprise's
5 Antitrust Conspiracy by acquiring the limited number of cannabis CUPs, including
6 through the use of proxies.

7 184. The use of proxies accomplishes at least two goals. First, it allows the
8 acquisition of the cannabis CUPs by individuals who would otherwise be barred as a
9 matter of law from obtaining them and, second, it hides the monopoly.

10 185. Mrs. Austin's duties on behalf of the Enterprise include the coordinating and
11 overseeing of other professionals required to obtain marijuana permits, including other
12 attorneys, architects, building design specialists, and political lobbyists.

13 186. Mrs. Austin is known as one of the premier attorneys in San Diego for
14 acquiring marijuana permits. Mrs. Austin is often sought out by individuals who are aware
15 of real properties that are or may become available and which potentially qualify for a
16 cannabis permit. When non-Enterprise individuals seek her counsel regarding real
17 properties that may qualify for a cannabis permit, Mrs. Austin would provide the location
18 of the real property to principals of the Enterprise so they could seek to acquire the real
19 properties before the non-Enterprise members could. Or, alternatively, acquire a nearby
20 property and submit a competing CUP application.

21 187. During the meetings with members of the Enterprise she would discuss (i)
22 what current projects the principals were working on; (ii) where other cannabis
23 applications had been filed and whether a principal could file a competing application;
24 (iii) whether Mrs. Austin could facilitate slowing down the other application via litigation
25 or expedite the processing of a new application to acquire the permit first; (iv) the
26 timelines of her non-Enterprise client's projects; and (v) the identity and financial
27 circumstances of her non-Enterprise clients.

28 188. Mrs. Austin and Natalie Nguyen both attended the Thomas Jefferson School

1 of Law together and were both admitted to the California Bar on December 1, 2006.

2 189. Mrs. Austin, with approximately two-three years of experience as an
3 attorney, founded her law firm ALG in 2009.

4 190. Through ALG, Mrs. Austin has been the single most successful attorney in
5 the City in the intense competition for cannabis CUPs; competition that includes private
6 equity firms and other wealthy individuals and entities that are represented by national
7 and international law firms.

8 191. Mrs. Austin’s success is not because she is a legal genius, but because she
9 engages in and ratifies unlawful actions, including bribery of public officials and violence,
10 against the competition.

11 **D. Lawrence (“Larry”) Geraci and Rebecca Berry**

12 192. Geraci has approximately 40 years of experience providing tax services and
13 has been the owner-manager of Tax & Financial Center “T&F Center” since 2001. T&F
14 Center provides sophisticated tax, financial and accounting services.

15 193. Geraci has been an Enrolled Agent with the IRS since 1999.

16 194. Geraci was a California licensed real estate salesperson (*i.e.*, a real estate
17 agent) for approximately 25 years from 1993-2017.

18 195. Geraci ceased being a real estate agent because Cotton threatened to report
19 him to the California Bureau of Realtors for attempting to defraud him of his Property.

20 (i) In *Cotton I*, Cotton propounded the following special interrogatory to Geraci:
21 “[D]escribe with specificity all reasons why YOU ceased to have a valid real estate
22 salesperson licensed issued by the California Bureau of Real Estate”

23 (ii) Geraci/F&B’s entire response was: “I let my license expire” and failed to
24 respond to the question of why he let it expire.

25 196. Berry has been a licensed California real estate salesperson or broker since
26 at least 1985.

27 197. Geraci and Berry testified that Geraci directed Berry to file an application
28 for a cannabis CUP at the Property in her name and that she did so as his agent (the “Berry

1 Application”).

2 198. Geraci and Berry testified that the reason Berry did not disclose Geraci in
3 the Berry Application is because he is an Enrolled Agent with the IRS (the “Berry
4 Fraud”).

5 199. Geraci and Berry were aware of the statute of frauds at all material times to
6 this action and know that Berry’s alleged agency was required to be memorialized in
7 writing pursuant to the equal dignities rule (the “Agency Issue”). Civ. Code § 1624(4);
8 *id.* § 2309.¹⁵

9 200. Geraci cannot legally own a cannabis CUP pursuant to the Berry Application
10 because of, *inter alia*, the Sanctions Issue, the Berry Fraud, and the Agency Issue
11 (hereinafter, collectively, the “Illegality Issue”).

12 **E. Firouzeh Tirandazi and Cherlyn Cac**

13 201. Ms. Firouzeh Tirandazi has worked for the City for approximately 18 years.

14 202. Tirandazi works in DSD and in recent years has worked on or supervised
15 applications for cannabis CUPs.

16 203. On or about May 15, 2017, Cotton, as the owner-of-record of the Property,
17 met with Tirandazi to attempt to have the Berry Application transferred to his name.

18 204. Tirandazi told Cotton that only Berry, as the designated “Financially
19 Responsible Party” in the Berry Application, could cancel or transfer the Berry
20 Application.

21 _____
22 ¹⁵ Flores notes that neither Geraci, Berry, F&B nor the City have ever disclosed any
23 writing that reflected Berry was acting as Geraci’s agent in submitting the Berry
24 Application. Assuming the Enterprise and the City collude to allege it was provided to
25 the City and argue they “coincidentally” forgot to disclose same in over three years and
26 multiple litigation actions, the parol evidence rule bars its admission. *Martindell v.*
27 *Bodrero*, 256 Cal.App.2d 56, 61 (Cal. Ct. App. 1967) (“It is well established that parol
28 evidence is not admissible to relieve from liability an agent who signs personally without
disclosing the name of the principal on the face of the instrument.”); *Hollywood Nat. Bank*
v. International Bus. Mach, 38 Cal.App.3d 607, 617 (Cal. Ct. App. 1974) (“[W]here the
writing is unambiguous on its face, extrinsic evidence is inadmissible to show that a
person acted purely as an agent.”).

1 205. In or about June 2017, Tirandazi was promoted to a Level III Supervisor at
2 DSD and the Berry Application was assigned to Cherlyn Cac.

3 206. Both Tirandazi and Cac were aware of the Child Care Centers and the Child
4 Care Issue when the Magagna Application was approved.

5 207. Both Tirandazi and Cac have taken steps to hide their knowledge of the Child
6 Care Centers and the Child Care Issue in preparation for this litigation to allege they were
7 not aware of same.

8 **F. Matthew Shapiro**

9 208. Shapiro is an attorney that markets himself as being “San Diego’s most
10 infamous marijuana lawyer” and advertises his services by stating he has “stolen hundreds
11 of pounds of weed from the police.”

12 209. Shapiro has represented Magagna in various legal matters and has worked
13 extensively with Mrs. Austin for years in furtherance of the Antitrust Conspiracy,
14 including by making special appearances for her.

15 210. Shapiro acts as a broker for Magagna, selling the marijuana that Magagna
16 grows at legal cultivation facilities to his clients and illegal marijuana dispensaries who
17 he targets with his marketing.

18 211. Shapiro also represents Corina Young who, as more fully described below,
19 was successfully threatened by Magagna to prevent her from providing her testimony
20 against Geraci and his agents in *Cotton I*.

21 212. When Shapiro was informed that Young had made comments that reflect
22 Magagna is a co-conspirator, he immediately called his own client a “pot head” and stated
23 “nothing she says can be trusted” and that he could wreck her credibility.

24 **G. Bianca Martinez**

25 213. Martinez is a political lobbyist that was working for Bartell at B&A in early
26 2016.

27 214. Geraci had hired Bartell/B&A to lobby for various projects and Martinez got
28 to know Geraci and his staff through her work at B&A.

215. While Martinez was working at B&A, Geraci and Bartell had a standing

1 offer to, among others, Martinez, that any party that found a real property that was
2 acquired and at which a dispensary was operated would receive as compensation a 10%
3 equity position in that dispensary.

4 216. In early 2016, Martinez identified the Property to Geraci and Bartell as a
5 location that could qualify for a cannabis CUP.

6 i. *Martinez goes to the Property*

7 217. In late 2017, Martinez was no longer working for Bartell at B&A and went
8 to the Property.

9 218. Martinez approached Cotton wanting to facilitate the sell or partnership of
10 the Business at the Property.

11 219. Martinez was livid when she found out that Geraci had approached Cotton
12 and entered into an agreement with him for the Property without providing for her 10%
13 because she identified the Property to him and Bartell.

14 220. Martinez told Cotton that she had identified the Property a year prior and
15 Cotton responded that Geraci had provided sworn declarations that an individual named
16 Neil Dutta was the individual that identified the Property to him.

17 221. Martinez then told Cotton about (i) the 10% promise from Geraci/Bartell;
18 (ii) that Dutta is a business partner of Geraci in illegal marijuana dispensaries; (iii) that
19 she quit B&A after Bartell sexually harassed her and failed to compensate her as promised
20 on other projects; and (iv) although she began some kind of legal proceeding against
21 Bartell for sexual harassment, she ceased the proceeding because Bartell was “too
22 powerful” in the City and she would not be able to work as a political lobbyist if she
23 continued in her action against him.

24 222. Later, as she became involved in *Cotton I* and learned who the parties were,
25 she disclosed that attorney Shamman works with Mrs. Austin and Geraci on cannabis
26 related matters.

27 223. Martinez also stated that Geraci has an ownership interest in the Balboa CUP
28 and that she and Geraci’s own staff believe Geraci’s actions contributed to Biker’s

1 suicide.

2 ii. *Martinez goes back to Geraci/Bartell*

3 224. After Cotton introduced Martinez to Hurtado, and Martinez agreed to
4 become Cotton’s “Bartell” – a political lobbyist with DSD – Hurtado provided transaction
5 advisory services to Martinez on other projects she was working on. However, none of
6 the deals that he worked on with Martinez ever came to fruition.

7 225. Also, during this time, Hurtado got to know Martinez’ boyfriend and loaned
8 him \$4,000.

9 226. On April 6, 2018, after Cotton communicated his knowledge of the Magagna
10 Application and that he believed that Magagna was a conspirator of Geraci, Martinez sent
11 the following messages to Cotton:

12 Martinez: ... Bartell screwed me out of pay and bonuses and is deceitful so I
13 wouldn’t put it past them.

14 Martinez: ... I’ll help as much as you need me to. I hate to see ethical abiding
15 citizens being screwed. It’s not right.

16 227. However, around this time, the relationship between Hurtado and Martinez
17 became strained and they had a falling out. Hurtado did not want to continue to collaborate
18 with Martinez regarding potential ventures and Martinez was offended.

19 228. Hurtado found out that while Martinez represented herself to be an expert in
20 cannabis laws, compliance and operations, and a “female-version” of Bartell, in fact, she
21 only had a superficial understanding of cannabis regulations, did not understand the
22 underlying economics, and did not wield the political influence that Bartell did.

23 229. After the falling out between Hurtado and Martinez, Cotton and Martinez
24 remained on good terms, but only communicated sporadically.

25 230. On or about August 08, 2018, Martinez messaged Cotton in relevant part as
26 follows (emphasis added):

27 Martinez: I’ve actually got a really good win-win proposition for you on federal.
28 I’ve been holding back on re-engaging but I think I can help both parties.
If you agree, I can contact him. Not the other way around.

1 **Give me the green light to Engage and I can work on it ASAP.** I’ve got
2 a great [solution] for both.

3
4 We can set up a call also you and I and [I] want to know what you’d like.

5 Cotton: There’s a competing CUP within 300 ft of my property.

6 Martinez: I know and this is why this needs to happen fast.

7
8 Cotton: I just spoke with Jacob, he said I should not talk about federal or any
9 settlement discussions. I’m sorry Jacob is about to file a lawsuit against
10 bartell specifically and it does not look good if I talk to you. So, let’s talk
11 about your projects, but we can’t discuss federal or bartell or any
12 settlement.

13 Martinez: That’s fine so you’re not open to a settlement at This Point? Wow
14 what’s going on with Bartell?

15 Martinez: I’m more concerned with the cup filed down the street catching up as
16 far as timeline. ***So much time and money already spent to lose this to
17 someone who came in of the street to try and take this from both you and
18 Larry***

19 Martinez: I just looked into the estimated timelines and it looks like the other
20 project is now 6 weeks ahead of you to be approved for their CUP. We
21 should meet ASAP. Please advise.

22 231. Martinez is an opportunist and after it became clear that she was not a
23 “Bartell,” and would not get an equity position in the Business from Cotton, she
24 reestablished her relationships with Geraci and Bartell to leverage the situation for
25 personal profit.

26 232. This belief is supported by, *inter alia*, three facts. First, prior to the falling
27 out between Martinez and Hurtado, Martinez was livid at Bartell for sexually harassing
28 her and Geraci/Bartell for entering into an agreement with Cotton and reneging on their
promise to provide her a 10% equity position for finding the Property.

233. However, after the falling out with Hurtado, in her communications to

1 Cotton seeking to mediate a settlement with Geraci, she lacked the animus she had before
2 and makes it appear that Geraci is also a victim of Magagna (e.g., Magagna is going to
3 “take this from you and Larry”).

4 234. Second, Martinez is not a legally sophisticated party. A review of the
5 messages she sent Cotton clearly reflect she was coached by an attorney to articulate in
6 her communications with Cotton that she needed Cotton’s consent before allegedly
7 reaching out to Geraci to mediate a settlement.¹⁶

8 235. Third, on or about March 4, 2019, Martinez reached out again to Cotton this
9 time to allegedly discuss business opportunities.

10 236. However, at that point in time, Martinez and Bartell’s social media accounts
11 showed that Martinez was an employee of B&A and she was Facebook friends with
12 Magagna.

13 237. Cotton did not meet with Martinez.

14 iii. *Hurtado Dispute*

15 238. In August 2018, when Martinez reached out to Cotton to mediate a
16 settlement, Cotton showed Hurtado the messages.

17 239. Hurtado became convinced that Martinez had become an agent of Geraci.

18 240. Thereafter, Hurtado emailed Martinez and her boyfriend and demanded that
19 they pay back the \$4,000 he had loaned her boyfriend at Martinez’ request.

20 241. On or about August 2, 2018, the boyfriend responded: “Hi Joe, this is the
21 first I’ve heard of this so thank you for updating me. I gave Bianca back the loan like you
22 said I could but that’s the last I’ve heard of it.”

23 242. In other words, Martinez received the \$4,000 in trust to be paid back to
24 Hurtado, but she kept the money for herself.

25
26 ¹⁶ See California Rules of Professional Conduct Rule 2-100 (Communication with a
27 Represented Party) (“[W]hile representing a client, a member shall not communicate
28 directly or indirectly about the subject of the representation with a party the member
knows to be represented by another lawyer in the matter, unless the member has the
consent of the other lawyer.”).

1 243. Martinez keeping the \$4,000 provided to her in trust is embezzlement.

2 244. Flores was then engaged by Hurtado to send Martinez a demand letter for
3 the \$4,000. During the course of that representation, Hurtado provided Flores with a
4 communication between himself and Martinez.

5 245. On August 2, 2018, Martinez wrote Hurtado:

6
7 As you are aware of, I am an owner of 10% of that CUP [at the Property]. And
8 regardless of the outcome [of *Cotton I*] and who the CUP gets approved under.
9 We had many discussions where you agreed to have your new investors honor
my 10% ownership.

10 246. Martinez is under the false impression that because she found the Property
11 for Geraci, and Cotton never submitted a cannabis application at the Property for her to
12 lobby for, she is still somehow owed a 10% equity position in the Business irrespective
13 of who acquires it.

14 247. Flores and Martinez emailed and spoke numerous times, Martinez promised
15 to pay back the \$4,000, but she never did.

16 **H. Quintin Shamman**

17 248. Quintin Shamman is an attorney that works in the cannabis sector and is an
18 agent of the Enterprise.

19 249. Shamman knows that successful illegal marijuana dispensaries can make
20 over \$100,000 a day at or greater than 50% profit margins. Further, that unlicensed
21 dispensaries pay the property owners at which they operate rent that is multiples of the
22 market rate. Also, that the dispensary owners indemnify the property owners against the
23 fines and costs required to keep unlicensed dispensaries open via litigation.¹⁷

24 250. On or about May 29, 2018, the Voice of San Diego published an article titled
25 “Liquor Store Owners Are Getting Into the Pot Game” by Jesse Marx. The article

26 ¹⁷ See, e.g., Kinsee Morlan, *Illegal Pot Shops Are Opening Faster Than San Diego County*
27 *Can Shut Them Down*, Voice of San Diego (Jan. 24, 2018)
28 <https://www.voiceofsandiego.org/topics/government/county-cant-enforce-pot-dispensary-ban/>

1 discusses the overlap between members of the Neighborhood Market Association (the
2 “NMA”) and the operations of illegal marijuana dispensaries at real properties owned by
3 or associated with members of the NMA.

4 251. Notably, the article discusses and quotes Shamman as follows:

5
6 Attorney Quintin Shamman, who has represented several landlords in illegal
7 marijuana dispensary cases, said his clients weren’t checking their sites as
8 often as the city would have liked and that left them vulnerable. His clients
9 would never have entered the illegal marijuana marketplace willingly, he
10 argued, because they need to be on the good side of city regulators long-term.
11 Damaging that relationship, he said, would not be worth “*a little extra rent.*”

12 252. Shamman’s defense of property owners is a knowing and false
13 representation of the true economics and dynamics between property owners and
14 unlicensed dispensaries.

15 253. Currently, Shamman is a proxy for the true and undisclosed owner in an
16 application for a cannabis CUP in the City of La Mesa and is represented by McElfresh.

17 **I. McElfresh**

18 254. In addition to the other relationships set forth herein, McElfresh has
19 represented Razuki in numerous legal actions.¹⁸ On August 23, 2018, the Voice of San
20 Diego published an article regarding various problems at a Lincoln Park strip mall owned
21 by Razuki and managed by Malan. The article describes Razuki being charged in a 25-
22 count complaint relating to his maintenance of the property in question and various other
23 legal matters and quotes McElfresh as Razuki’s attorney.

24 255. McElfresh has numerous shared clients with Mrs. Austin. On or about
25 August 10, 2017, while a criminal case against McElfresh was pending (described below),
26 Mrs. Austin was quoted in various San Diego news publications saying “[w]e have several

27 18 *See People v. Razuki*, San Diego Superior Court, Case No. M227357CE; Kinsee
28 Morlan, *Problems at This Lincoln Park Strip Mall Keep Getting Worse Despite City
Intervention*, Voice of San Diego (Aug. 23, 2018)
[https://www.voiceofsandiego.org/topics/land-use/problems-at-this-lincoln-park-strip-
mall-keep-getting-worse-despite-city-intervention/](https://www.voiceofsandiego.org/topics/land-use/problems-at-this-lincoln-park-strip-mall-keep-getting-worse-despite-city-intervention/)

1 clients who may also be in the files that were seized by the DA [in the case against
2 McElfresh].”¹⁹

3 256. McElfresh has had two cannabis licenses issued in her name. The first on
4 December 27, 2018 (license no. C11-0000491-LIC) and the second on June 25, 2019
5 (license no. C11-18-0000767-TEM).

6 257. As of March 30, 2020, the first is “inactive” and the second was “canceled.”

7 258. Plaintiffs believe and allege that discovery will provide evidence that
8 McElfresh acted as a proxy and acquired those licenses for the true and undisclosed
9 owners. And, they were transferred and/or canceled in anticipation of this litigation
10 naming McElfresh.

11 **J. The Original Litigation Investors and the Crowd Source Investors**

12 259. There have been various litigation matters regarding the Property that have
13 been ongoing since March 2017. It has completely exhausted the personal finances of
14 Cotton, his original litigation investors (the “Original Litigation Investors”) who, with the
15 exception of Jane Doe (“Jane”), memorialized their agreements in a Secured Litigation
16 Financing Agreement (the “SLFA”). These matters have also exhausted the resources of
17 numerous blue-collar, private parties who Cotton “crowd sourced” for capital promising
18 them high rates of return when he prevails in his legal actions (the “Crowd Source
19 Investors”).

20 260. The Crowd Source Investors are made up primarily of blue-collar individuals
21 who have been working with Cotton’s 151 Farms nonprofit that operates at the Property.
22 They include veterans who have physical disabilities and PTSD, patients undergoing
23 chemotherapy and radiation treatments for cancer, individuals suffering from AIDS and
24

25
26
27 ¹⁹ See, e.g., Jonah Valdez, *San Diego DA’s Prosecution of Pot Attorney Has Sent Chills*
28 *Through the Legal Community* (August 9, 2017)
<https://www.voiceofsandiego.org/topics/news/san-diego-das-prosecution-of-pot-attorney-has-sent-chills-through-the-legal-community/>

1 ALS,²⁰ families with children who suffer from epilepsy, and lifelong political activists for
2 the legalization of medical cannabis.

3 261. While the Crowd Source Investors are not attorneys, they all supported
4 Cotton because they understand that it is not legal for Geraci to send the Confirmation
5 Email (*i.e.*, sign a document) and over a year later in litigation claim to have not read the
6 Request for Confirmation before sending the Confirmation Email.

7 262. Most have been provided with or had the *Stewart* case explained by Cotton.
8 In *Stewart*, “[Stewart] asserted that he did not read the settlement agreement before
9 signing it” and appealed the grant of a motion for summary judgment against him. *Stewart*
10 *v. Preston Pipeline Inc.* (2005), 134 Cal.App.4th 1565, 1586-87. “[Stewart] claimed that
11 (1) there was no mutual consent and (2) there was a triable issue of material fact as to
12 whether he was entitled to rescind the agreement due to unilateral mistake.” *Id.* The
13 California Court of Appeal found that “[n]either claim has merit.” *Id.* The *Stewart* court
14 explained:

15 “It is well established, in the absence of fraud, overreaching or excusable
16 neglect, that one who signs an instrument may not avoid the impact of its
17 terms on the ground that he failed to read the instrument before signing it.’
18 [Citations.²¹]

19 [Stewart] has cited no California cases (and we are aware of none) that stand
20 for the ***extreme proposition*** that a party who fails to read a contract but
21 nonetheless objectively manifests his assent by signing it — absent fraud or

22 ²⁰ See, e.g., *Cotton v. Geraci, et al.* (“*COTTON III*”) 18CV0325 GPC MDD, ECF No.
23 1, Exhibit 15.4 (Declarations of Kevin McShane, Charles “Sonny” Findlay, Don Casey
24 (Former NBA Basketball Coach) and Sean Major (Former Sgt. USMC) in support of
25 Cotton’s Federal Complaint).

26 ²¹ “As [the United States Supreme Court] explained many years ago: ‘It will not do
27 for a man to enter into a contract, and, when called upon to respond to its obligations, to
28 say that he did not read it when he signed it, or did not know what it contained. If this
were permitted, contracts would not be worth the paper on which they are written. But
such is not the law. A [party] ***must*** stand by the words of his contract; and, if he will not
read what he signs, he alone is responsible for his omission.’ (*Upton v. Tribilcock* (1875)
91 U.S. 45, 50.)” *Stewart* at 1589 n. 30 (emphasis added).

1 knowledge by the other contracting party of the alleged mistake — may later
2 rescind the agreement on the basis that he did not agree to its terms. To the
3 contrary, California authorities demonstrate that a contracting party is not
4 entitled to relief from his or her alleged unilateral mistake under such
circumstances. [Citations.]

5 *Stewart*, 134 Cal.App.4th at 1588-89 (emphasis added).

6 263. As detailed below, the Crow Source Investors understand that Geraci/F&B
7 do not argue fraud, overreaching, or excusable neglect. Geraci argues the same “extreme
8 proposition” that *Stewart* did, that he should not be bound because he allegedly did not
9 read the entire Request for Confirmation before sending the Confirmation Email. As in
10 *Stewart*, Geraci’s claim should have fared no better.

11 264. Unfortunately, the basic principles articulated in *Stewart* has led multiple
12 parties, including multiple attorneys from different law firms, to believe that Judge
13 Wohlfeil is corrupt because they believe it is impossible for a judge to not understand this
14 basic concept (*i.e.*, the Mutual Assent Issue) or that Plaintiffs’ Opposition Theory is
15 possible.

16 265. As of the filing of this Complaint, some of the Crowd Source Investors are
17 contemplating taking violent action against some of the defendant attorneys who have
18 actively taken steps to defraud them, most probably Mrs. Austin, McElfresh, Weinstein,
19 Toothacre, Demian and Witt.

20 **K. The Enterprise, the Enterprise’s Agents**

21 266. The principals of the Enterprise include (i) Geraci, (ii) Malan, (iii) Razuki,
22 (iv) Magagna, and (v) Harcourt (the “Principals”).

23 267. The agents of the Enterprise include (i) Berry, (ii) Mrs. Austin, (iii) F&B,
24 (iv) FTB, (v) McElfresh, (vi) Nguyen, (vii) Bartell, (viii) Schweitzer, (viii) Crosby, (ix)
25 Shapiro, (x) Miller, (xi) Stellmacher, (xii) Alexander, (xiii) Tirandazi, (xiv) Cline, (xv)
26 the Getaway Driver (defined below), and (xvi) Martinez (the “Agents”).

27 268. Mrs. Austin has represented Geraci, Berry, Razuki, Malan, Magagna,
28 Quintin George Shamman, Keith Henderson, Chris Williams and Craig Rofhok in
applications for cannabis CUPs.

1 269. Mrs. Austin, McElfresh, Shapiro, and Shamman, attorneys, have worked
2 together on multiple cannabis applications in which they knew that the true owners were
3 not disclosed.

4 270. Even if only via negligence, there are at least two City attorneys who have
5 aided the Enterprise’s Antitrust Conspiracy because they were parties to litigation that
6 should have been dispositively resolved in favor of Cotton by, *inter alia*, the Mutual
7 Assent Issue and they failed to inform the court: Will and Phelps.

8 **PART III - MATERIAL LITIGATION**

9 I. THE PAROL EVIDENCE RULE AND RIVERISLAND

10 271. As a general legal matter, once parties reach and reduce their agreement to a
11 written contract, the written contract becomes the agreement. The parol evidence rule can
12 be a complicated legal theory, but in essence it protects the agreement reached by parties
13 to a contract and prevents them from later saying they agreed to something else than what
14 is in the contract. “A short and vernacular explanation of the parol evidence rule would
15 be that a party to a written contract cannot be permitted to urge that a contract means
16 something which its written terms simply cannot mean.” *Ri-Joyce, Inc. v. New Motor*
17 *Vehicle Bd.*, 2 Cal.App.4th 445, 452 (Cal. Ct. App. 1992).

18 272. However, there are exceptions to the parol evidence rule to introduce
19 evidence – called extrinsic or parol evidence – to urge an interpretation that conflicts with
20 the terms of a writing or contract. As material here, one of the exceptions is to prove fraud.

21 273. The fraud exception is generally justified in three ways. First, if fraud is
22 present, there cannot be mutual assent between the parties so there can be no valid, legal
23 contract and the parol evidence rule does not apply. Second, from an individual and
24 practical perspective, it is unlikely a party would allow evidence of his fraud to appear on
25 the face of the written document. Thus, the exception allows extrinsic evidence to prove
26 fraud because it is unlikely to be found on the face of the alleged contract. Third, from a
27 public policy perspective, parol evidence of fraud is allowed because otherwise parties
28 would be able to engage in fraudulent transactions without fear of being held to account

1 by the judicial system even if sued.

2 274. In 1935, the California Supreme Court in *Pendergrass* limited the fraud
3 exception to the parol evidence rule by barring parol evidence if offered to prove an oral
4 promise “directly at variance with the promise of the writing.” *Bank of America etc. Assn.*
5 *v. Pendergrass* (1935) 4 Cal.2d 258, 263.

6 275. At the time, it seemed like a good idea that if someone signed something,
7 they should not be allowed later to argue that they were promised something that directly
8 contradicted what they signed. Essentially, it was a “tough luck” line of reasoning -
9 parties should not sign something if they do not know what they are signing.

10 276. In 2013, however, the California Supreme Court’s unanimous decision in
11 *Riverisland* overruled *Pendergrass* and declared that the parol evidence rule does not bar
12 extrinsic/parol evidence to prove an oral agreement even if it directly contradicts the terms
13 of an alleged contract. *Riverisland Cold Storage, Inc. v. Fresno-Madera Production*
14 *Credit Association (“Riverisland”)* (2013) 55 Cal.4th 1169, 1182 (“[W]e overrule
15 *Pendergrass* and its progeny, and reaffirm the venerable maxim stated in *Ferguson v.*
16 *Koch* [(1928) 204 Cal. 342, 347]: ‘***It was never intended that the parol evidence rule***
17 ***should be used as a shield to prevent the proof of fraud.***’”) (emphasis added).

18 277. As described in the *Riverisland* decision, “Oral promises made without the
19 promisor’s intention that they will be performed could be an effective means of deception
20 if evidence of those fraudulent promises were never admissible merely because they were
21 at variance with a subsequent written agreement.” *Id.* at 1177 (citation and quotation
22 omitted).

23 278. In other words, “*Pendergrass* provided drafting parties a loophole to make
24 misrepresentations and then disclaim them later in writing.^[22]” Michelle P. LaRocca,
25 *Note – Reflections on Riverisland: Reconsideration of the Fraud Exception to the Parol*
26

27 _____
28 ²² Footnote citing Alicia W. Macklin, Note, *The Fraud Exception to the Parol Evidence Rule: Necessary Protection for Fraud Victims or Loophole for Clever Parties?*, 82 S. Cal. L. Rev. 809, 810 (2009).

1 *Evidence Rule* (“*Riverisland Note*”), 65 *Hastings L.J.* 581, 583 (2014).

2 279. The *Riverisland Note* describes an example of fraud allowed under
3 *Pendergrass*: “the drafter asks the non-drafter to sign what the drafter says is a receipt for
4 items delivered, but is actually a contract for the sale of more items.” *Id.* at 592 (emphasis
5 added).

6 280. In sum, in California from 1935 to 2013 – for over 75 years – Machiavellian
7 attorneys could counsel their unethical clients to defraud unsophisticated parties by
8 making an oral agreement they did not intend to keep and having them sign a receipt that
9 was drafted to look like a purchase contract that contradicted the oral agreement reached.
10 This type of fraud was de facto lawful because “under *Pendergrass*, external evidence of
11 promises inconsistent with the express terms of a written contract were not admissible,
12 even to establish fraud.” *IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 (emphasis
13 added).

14 II. THE SAN DIEGO MUNICIPAL CODE AND ENGBRETSSEN

15 281. Rick Engebretsen was a property owner, like Cotton, who reached an
16 agreement with a third party to apply for a cannabis CUP at his real property.

17 282. In *Engbretsen v. City of San Diego*, Engebretsen sought a writ of mandate
18 to compel the City to recognize him as the sole applicant for a CUP to operate a dispensary
19 on his real property and process the application accordingly.²³ Engebretsen alleged he
20 was the sole record owner and interest holder of the real property throughout the
21 application process. Although real party in interest Radoslav Kalla was listed as the
22 applicant for the CUP (the “Kalla Application”), Engebretsen alleged that Kalla was
23 acting on Engebretsen’s behalf as an agent, Kalla never had an independent legal right to
24 use Engebretsen’s real property, and Engebretsen had since revoked Kalla’s agency,
25 requiring the City to transfer the application to Engebretsen.

26 283. In April 2015, the City informed Engebretsen that it recognized Kalla as the
27 financially responsible party for the Kalla Application, against Engebretsen’s wishes.

28 _____
²³ Superior Court of San Diego County, Case No. 37-2015-00017734-CU-WM-CTL.

1 Also, the City would not accept Engebretsen as the financially responsible party for the
2 Kalla Application without Kalla’s signature. Later that month, the City’s hearing officer
3 approved the Kalla Application for issuance of a CUP to operate a dispensary, with Kalla
4 listed as the applicant and prospective CUP holder.

5 284. In May 2015, David Demian and Adam Witt of FTB filed a verified petition
6 for a writ of mandate on behalf of Engerbretsen directing the City to: (1) recognize
7 Engerbretsen as the sole applicant on the Kalla Application and (2) process the Kalla
8 Application with Engerbretsen as the sole applicant.

9 285. The City filed a statement of nonopposition. The trial court granted the writ.

10 286. On appeal, as material here as it informed Cotton’s decision to hire FTB and
11 which they touted as reflective of their legal competence, the court found:

12
13 Engebretsen showed that the City must process and issue applications for
14 [CUPs] consistent with relevant laws and procedures. [Citations.] The City’s
15 ordinances provide that the persons “deemed to have the authority to file an
16 application [are]: [¶] (1) The *record owner* of the real property that is the
17 subject of the permit, map, or other matter; [¶] (2) The property owner’s
18 authorized agent; or [¶] (3) Any other person who can demonstrate a legal
19 right, interest, or entitlement to the use of the real property subject to the
20 application.” (SDMC, §§ 112.0102, subd. (a), 113.0103 [defining *applicant*].)
21 The City’s ordinances thus ensure that [CUPs] will only be granted to
22 individuals having the right to use the property in the manner for which the
23 permit is sought. (SDMC, §§ 112.0102, subd. (a), 113.0103; [Citations.] **Any
24 other interpretation would raise serious constitutional questions
25 concerning property rights.** [Citations.]

26 Engebretsen demonstrated he was the only person who possessed the right to
27 use [his real property], Kalla never independently possessed such a right,
28 Kalla was acting for Engebretsen’s benefit in completing the [Kalla
Application] (Civ. Code, § 2330), and Engebretsen had terminated Kalla’s
agency. **Under the circumstances, the City had a ministerial duty to
process the CUP application for Engebretsen, the [p]roperty owner.**

27 *Engerbretsen v. City of San Diego*, No. D068438, 2016 Cal. App. Unpub. LEXIS 8548
28 (Nov. 30, 2016) (emphasis added).

1 287. The Engebretsen decision by the Court of Appeals was filed on or around
2 November 30, 2016. As of such date, because of *Engebretsen*, the City had actual and
3 constructive knowledge of what its nondiscretionary duties were under the SDMC to
4 property owners in similar situations as Engebretsen (the “Engerbretsen Mandate”).

5 288. On or about May 15, 2017, when Tirandazi told Cotton that she could not
6 cancel or transfer the Berry Application because Cotton was not the “Financially
7 Responsible Party,” she knew she was violating the Engerbretsen Mandate.

8 III. MC ELFRESH AND MEDWEST

9 289. Attorney defendant Jessica McElfresh was or is counsel for Med West
10 Distribution, LLC (“Med West”).

11 290. In May 2017, the San Diego County District Attorney’s office filed charges
12 against the owner of Med West, James Slatic, four of Med West’s employees, and
13 McElfresh arising from the alleged illegal production of concentrated cannabis oil.

14 291. McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime,
15 Manufacturing of a Controlled Substance, and Obstruction of Justice for her efforts to
16 conceal Med West’s manufacturing operations from government inspectors.²⁴

17 292. Materially, the complaint against her alleged that:

18 On December 24, 2015, [McElfresh] emailed JAMES SLATIC about [an]
19 inspection that occurred on April 28, 2015. McElfresh told Slatic that the
20 inspectors “were clearly suspicious.” McElfresh continued to say “I had to
21 keep a very, very close eye on the retired SDPD investigator... Gary Jaus....
22 He’s a very smart man, and I had to walk a very fine line between being very
23 nice and trying too hard to keep him focused on me.” McElfresh continued to
24 say “I didn’t flirt (wouldn’t have worked), but I just kept focusing on the
25 papers.... I’m convinced they walked away knowing it wasn’t a dispensary in
26 the typical sense... but it probably seemed like something other than just
27 paper. That just wasn’t what they were under mandate to look for, and hey,
28 we did a very good job.” McElfresh continued to say “they’ve been there once
and went away, operating under the theory that no actual marijuana is there.
We did a really, really good job giving them plausible deniability – and it was

²⁴ *People v. McElfresh*, San Diego Superior Court No. CD272111.

1 clear to them it wasn't a dispensary. But, I think they suspected it was
2 something else more than paper.”

3 293. In November 2017, Slatik and the four Med West employees pleaded guilty
4 to two misdemeanor charges: (1) delaying/obstructing a police officer; and (2) the illegal
5 possession of marijuana for sale.

6 294. On July 23, 2018, McElfresh entered into a Deferred Prosecution Agreement
7 (the “DPA”) that would allow her to plead guilty in twelve months to an infraction (the
8 equivalent of a speeding ticket) as follows: “On April 28, 2015 [McElfresh] knowingly
9 facilitated the use of a premises without a required permit, in violation of San Diego
10 Municipal Code § 121.0302(a), to wit: an unpermitted marijuana manufacturing and
11 distribution operation by Med West Distribution, LLC.”²⁵

12 295. McElfresh’s case was prosecuted by Deputy District Attorney Jorge Del
13 Portillo. As described by Portillo in a court filing: “In that email, [McElfresh] essentially
14 admitted she orchestrated a charade for city inspectors.”

15 296. Pursuant to the DPA, for a period of 12 months, McElfresh was prohibited
16 from violating any other laws (with the exception of traffic tickets) until July 23, 2019 or
17 face resumption of all charges filed against her.

18 **IV. THE GERACI ILLEGAL MARIJUANA DISPENSARIES AND JUDGMENTS**

19 297. Prior to his involvement with the Property, Geraci was sued by the City for
20 his involvement in three illegal marijuana dispensaries (the “Illegal Marijuana
21 Dispensaries”).²⁶ Geraci settled all three cases, collectively paying fines in the amount of
22 \$100,000 (the “Geraci Judgments”).

23 298. Geraci did not “coincidentally” lease three real properties to the Illegal
24 Marijuana Dispensaries; he was an operator and beneficial owner.

25 **PART IV – CANNABIS CUP APPLICATIONS**

26 ²⁵ *Id.* filed July 23, 2018.

27 ²⁶ *City of San Diego v. The Tree Club Cooperative* (Case No. 37-2014-00020897-
28 CU-MC-CTL), *City of San Diego v. CCSquared Wellness Cooperative* (“*CCSquared*”) (Case No. 37-2015-00004430-CU-MC-CTL), and *City of San Diego v. LMJ 35th Street Property LP, et al.* (Case No. 37-2015-000000972).

I. THE BALBOA CUP

299. In or around April 2013, Biker initiated the process of obtaining a cannabis CUP with the City at 8863 Balboa Avenue, Unit E, San Diego, California 92123 (“8863 Balboa”).

300. Biker's partner in this business endeavor was Harcourt.

301. On or around July 9, 2015, the City’s Planning Commission approved a cannabis CUP at 8863 Balboa in Biker’s name (the “Balboa CUP”).

302. On December 3, 2015, Biker passed away.

303. Razuki is the current owner of the Balboa CUP.

304. *Harcourt v. Razuki (“Razuki I”).*²⁷ On June 6, 2017, San Diego Patients Cooperative Corporation, Inc. (“SDPCC”) and Harcourt filed a lawsuit against, *inter alia*, Razuki, Malan, and Henderson alleging they had successfully conspired to defraud them of the Balboa CUP.

305. The *Razuki I* complaint contains causes of action against Razuki for, *inter alia*, breach of an oral joint venture agreement allegedly reached in or around August 2016.

306. The *Razuki I* complaint sets forth the following material allegations:

After [Mr. Sherlock] passed away in or around December 2015, HARCOURT submitted documentation to the City of San Diego in order to remove Mr. Sherlock as the MMCC’s responsible person, and HARCOURT then finalized the recording of the CUP with the City of San Diego under SDPCC. Moreover, HARCOURT identified himself as the MMCC’s responsible person.

As a result of the nearly three (3) year process to obtain, secure, and record CUP No. 1296130 with the City of San Diego, Plaintiffs incurred costs and expenses in the amount of approximately \$575,000.00.

On or around August 31, 2016, Defendants RAZUKI and RAZUKI INVESTMENTS, through their agent HENDERSON, prepared a written draft

²⁷ *San Diego Patients Cooperative Corporation, Inc v. Razuki Investments, LLC*, San Diego Superior Court Case No. 37-2017-00020661-CU-CO-CTL.

1 joint venture agreement outlining the basic terms of the joint venture and/or
2 partnership, and provided it to HARCOURT.

3 In or around September 30, 2016, Defendants RAZUKI and RAZUKI
4 INVESTMENTS made a payment of \$50,000.00 to HARCOURT as a show of
5 good faith in moving forward with the joint venture and/or partnership.

6 On or around October 18, 2016, the grant deed reflecting the transfer of the [real
7 property (at which the Balboa CUP was issued)] to Defendant RAZUKI
8 INVESTMENTS LLC was recorded with the San Diego County Recorder.

9 On information and belief, following the [purchase of the real property by
10 Razuki], Defendants RAZUKI and RAZUKI INVESTMENTS directed,
11 authorized and/or ratified a representative and/or agent to take the following
12 actions without the knowledge or consent of Plaintiffs: (i) contact the San Diego
13 Development Services Department; (ii) falsely claim that the representative
14 and/or agent represented Defendants RAZUKI and RAZUKI INVESTMENTS
15 and Plaintiff SDPCC; and (iii) request that the cooperative identified on the city
16 permit be changed to BALBOA AVE and that the responsible person name be
17 changed to NINUS MALAN. On information and belief, the city [CUP] was
18 then modified to indicate that BALBOA AVE was affiliated with the MMCC
19 at the Property.

20 Moreover, despite the parties' agreements, as well as the various
21 representations made by Defendants RAZUKI and RAZUKI INVESTMENTS,
22 RAZUKI and RAZUKI INVESTMENTS: (i) failed to comply with the terms
23 of the Lease; (ii) failed to execute a joint venture and/or partnership agreement,
24 operating agreement, and/or promissory note concerning the MMCC; (iii)
25 **falsely misrepresented to third parties that their \$800,000.00 purchase of**
26 **the Property included the rights to operate an MMCC on the Property;** and
27 (iv) interfered with Plaintiff SDPCC's rights concerning the Property and CUP.

28 307. Materially summarized, Razuki and Harcourt reached an oral joint venture
agreement that was to be reduced to writing. Razuki provided a \$50,000 "good faith"
payment while the parties were negotiating the joint venture agreement. However, Razuki
then purchased the real property at which the Balboa CUP was issued and then
fraudulently represented himself as the owner of the Balboa CUP to the City. The City
then transferred the Balboa CUP to Razuki. Thereafter, Razuki represented that \$800,000
was the value of the real property, inclusive of a dispensary CUP.

1 308. *Razuki v. Malan* (“*Razuki II*”).²⁸ On July 10, 2018, Razuki initiated a civil
2 lawsuit against his business partner Malan regarding ownership of multiple real estate
3 properties and marijuana businesses after they had a falling out.

4 309. But-for *Razuki II*, it would not be public knowledge that Razuki held an
5 interest in the cannabis businesses that are the subject of *Razuki II*, as his ownership
6 interests were not disclosed during the application process.²⁹

7 310. Razuki directly admitted in a sworn declaration submitted in *Razuki II* that
8 the reason he was not disclosed, and used Malan as a proxy, was because he had been
9 sanctioned for operating illegal dispensaries.³⁰

10 311. The *Razuki II* action also revealed that the Dream Team knowingly helped
11 Razuki acquire interests in cannabis CUPs from the City without disclosing his ownership
12 interest, exactly as they did with Geraci in the Berry Application.

13 312. On July 17, 2018, Judge Sturgeon appointed a receiver, Michael Essary, to
14 manage the marijuana related assets that were subject of the dispute. (*Razuki II*, ROA 20.)

15 313. On September 4, 2018, Mrs. Austin executed a declaration in support of
16

17
18 ²⁸ *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-
CU-BC-CTL.

19 ²⁹ *See id.* at ROA 1 at 5:15-6:1 (“The oral agreement between Razuki and Malan was
20 simple: Razuki would provide the initial investment to purchase the property and Malan
21 would manage the property (e.g. ensure upkeep and acquire tenants). After Razuki was
22 paid back for his initial investment, Razuki would receive seventy-five percent (75%) of
any profits while Malan would receive twenty-five percent (25%) of any profits....
However, on paper, Malan owned one hundred percent (100%)...”).

23 ³⁰ *Id.* at ROA 79 6:1-8 (“Pursuant to the settlement agreement, I was enjoined from
24 ‘[k]eeping, maintaining, operating, or allowing the operation of any ‘unpermitted use’ at
25 any property in the City of San Diego. Additionally, I was enjoined from ‘[k]eeping or
26 maintaining any violations of the San Diego Municipal Code at ... any other property in
the City of San Diego.’ [...] Because of this settlement agreement, I was concerned with
27 having my name on any title associated with a marijuana operation. This is why Malan
would put his name on title for the LLCs related to our marijuana operations. I always
28 assumed he would honor the oral agreement and Settlement Agreement that would entitle
me to 75% ownership of all the Partnership Assets.”).

1 Malan’s request seeking to terminate the court appointed receiver. In the declaration,
 2 Mrs. Austin argued “[t]here is no need for Mr. Essary to manage or control any part of
 3 the state application process... So long as Ninus Malan and Balboa Ave Cooperative are
 4 the identified ‘owners’ and applicants for the state licensing for the Balboa Dispensary
 5 there is no need to change any information at the state level. However, if a consultant is
 6 needed, I am willing to provide the necessary assistance.... If Mr. Essary remains the
 7 receiver, he would be deemed an ‘owner’ of the Balboa Dispensary and an additional
 8 application would need to be filed pursuant to Section 5024(c) of Title 16 Division 42 of
 9 the California Code of Regulations.” (*Razuki II*, ROA 127.)

10 314. On or about September 7, 2018, Judge Sturgeon denied Mrs. Austin’s
 11 request to terminate the receiver.

12 315. On May 17, 2019, Mr. Essary submitted an ex parte application seeking the
 13 termination of the operator at one of the cannabis businesses put in receivership. The
 14 application and the supporting evidence detail “*extensive illegal black-market cannabis*
 15 *operations*” by Jerry Baca, Bobby Sanz, Chris Hakim and Malan. (*Razuki II*, ROA 699
 16 at 2:14-17 (emphasis added).)

17 316. In other words, a cannabis business operating pursuant to a CUP acquired by
 18 Mrs. Austin for Malan, the acquisition of which was funded by Razuki, is being used as
 19 a front for illegal operations as found by a third-party court appointed receiver. A receiver
 20 that Mrs. Austin opposed, sought to have terminated, and offered to personally replace.

21 317. *US. v. Razuki (“Razuki III”)*.³¹ On or around November 15-16, 2018, the
 22 FBI arrested Razuki, Sylvia Gonzalez and Elizabeth Juarez for conspiring to kidnap and
 23 kill Malan because of *Razuki II*. The value of the assets that are the subject of *Razuki II*
 24 are estimated to be approximately \$40,000,000.³²

26 ³¹ *US. v. Salam Razuki*, No. 18MJ5915 (S.D. Cal. Nov. 19, 2018).

27 ³² *Id.* at ROA 1 at 3:14-16 (“Gonzalez said the civil dispute between her, Razuki, and
 28 N. M. was over \$44 million dollars.”); *Id.* at 7:17-21 (“During his interview, Razuki
 admitted the existence of the ongoing civil lawsuit... involving approximately \$40
 million.”).

1 318. Malan v. Razuki (“Razuki IV”).³³ On August 7, 2019, Malan filed suit
2 against, *inter alia*, Razuki, Gonzales, and Juarez for, *inter alia*, (i) interference with the
3 exercise of his civil rights to engage in civil litigation (*i.e.*, *Razuki II*) and (ii) intentional
4 infliction of emotional distress related to their conspiracy to have him kidnapped and
5 murdered.

6 II. THE RAMONA CUP

7 319. On or about January 13, 2015, Biker and Renny Bowden applied for a San
8 Diego County Sheriff’s Department Medical Marijuana Collective Operations Certificate
9 (“Operations Certificate”) at 1210 Olive Street, Ramona, CA 92065 (“1210 Olive”).

10 320. Schweitzer worked on the application for the Operations Certificate.

11 321. Plaintiffs believe and thereon allege that Mrs. Austin and Bartell also worked
12 on or lobbied for the Operations Certificate application.

13 322. On or about January 16, 2015, the Sherriff’s Department approved the
14 application.

15 323. On or about May 24, 2017, Bowden and Harcourt sought and were granted
16 an annual renewal for the Operations Certificate at 1210 Olive.

17 324. As of March 16, 2020, the BCC website lists Alexander as the owner of the
18 state license pursuant to which the dispensary at 1210 Olive is operating.

19 325. Alexander, as more fully described below, threatened Cotton on behalf of
20 Geraci to settle *Cotton I*.

21 III. THE NATIONAL CUP

22 326. Alan Austin of Austin and Associates (an architecture firm) and Mrs. Austin
23 (they are husband and wife) represented Magagna in an application with the City for a
24 Marijuana Production Facility (“MPF”) at 3279 National Ave., San Diego CA 92113
25 (“3279 National” and the “National MPF Application”).

26 327. Alan Austin paid DSD Invoice No. 812579 in the amount of \$8,566.00 as
27 part of the National MPF Application.

28 ³³ *Malan v. Razuki, et. al.*, San Diego Superior Court, Case No. 37-2019-00041260-
CU-PO-CTL.

1 328. On or about February 26, 2018, the National MPF Application was accepted
2 by DSD with Magagna being listed as the proposed CUP holder.

3 329. On or about March 19, 2018, the National MPF Application was reviewed
4 by Mr. Tyler Sherer of DSD’s LDR-Planning Group. He analyzed and provided a report
5 regarding the distances from the proposed National MPF and residential zones, schools,
6 and churches and found that the National MPF location could not meet the minimum
7 distance requirements and he recommended the project be denied.

8 330. On or about February 12, 2019, Tirandazi issued a report to the City’s
9 Hearing Officer for the National MPF Application recommending it be approved along
10 with three deviations because 3279 National is 760 feet from a church (Iglesia Puerto
11 Seguro Church), 800 feet from an elementary school (Rodriguez Elementary School), and
12 15 feet from a residential zoned area.

13 331. On or about February 20, 2019, the City approved the National MPF
14 Application.

15 IV. THE BERRY APPLICATION

16 332. In or around mid-2016, Geraci first contacted Cotton because the Property
17 “may qualify for a dispensary.”

18 333. Both Geraci and Berry testified that on October 31, 2016, Geraci had Berry
19 file for a dispensary CUP at the Property (*i.e.*, the Berry Application).

20 334. Geraci is not disclosed in the Berry Application.

21 335. Both Geraci and Berry testified that Berry’s failure to disclose Geraci in the
22 Berry Application was purposeful; he was not disclosed because he was an Enrolled
23 Agent with the IRS (*i.e.*, the Berry Fraud).

24 336. The Berry Application included four forms that contained material
25 representations by Berry.

26 337. First, in Form DS-3032 (General Application)), Berry certified that (a) she
27 is the “Lessee or Tenant” of the Property, (b) that she is the “Permit
28 Holder,” and (c) that she “understand[s] [she] is responsible for knowing and complying

1 with the governing policies and regulations applicable to [a dispensary].” Section 7 of
2 DS-3032 required the Berry disclose any “Notice of Violation,” which is defined to
3 include a Geraci Judgment.

4 338. Second, in Form DS-190 (Affidavit for Medical Marijuana Consumer
5 Cooperatives for Conditional Use Permit), Berry declared that she (a) is the “Owner” of
6 the Property, (b) the “Business Owner,” and (c) is aware a dispensary is subject to
7 the SDMC’s dispensary requirements.

8 339. Third, in Form DS-3242 (Deposit Account / Financially Responsible Party),
9 Berry stated she is the “financially responsible party” for the dispensary and the
10 “President” of the entity seeking the cannabis CUP.

11 340. Fourth, in Form DS-318 (Ownership Disclosure Statement), Berry stated
12 she was a “tenant/lessee” of the Property. Form DS-318 required Berry to provide a list
13 that “must include the names and addresses of all persons who have an interest in the
14 property, recorded or otherwise, and state the type of interest (e.g., tenants who will
15 benefit from the permit, all individuals who own the property).” (Emphasis added.)

16 341. Pursuant to Evidence Code Section 452(d)(1), Plaintiffs request that the
17 Court take judicial notice of the four DSD forms in the preceding four paragraphs (the
18 “Berry Forms”) that were submitted into evidence at trial in *Cotton I* as exhibit 34.

19 342. The Berry Application was submitted pre-AUMA and sought a
20 medical cannabis CUP from the City and was subject to BPC § 19323.

21 343. After the passage of AUMA, the Berry Application was switched to a
22 recreational cannabis CUP application and was subject to BPC §26057.

23 V. THE MAGAGNA APPLICATION

24 344. On or about March 14, 2018, Magagna submitted the Magagna Application.

25 345. Magagna is not an engineer, architect or building-designer.

26 346. Shapiro is Magagna’s attorney for the Magagna Application and
27 incorporated A-M Industries, the named entity in the Magagna Application.

28

1 347. Shapiro told Jacob that Magagna personally prepared and submitted the
2 Magagna Application himself including the architectural drawings.

3 348. On or about October 18, 2018, the Magagna Application was approved by
4 the City. In other words, the Magagna Application was submitted, processed and
5 approved by the City in approximately 7 months.

6 349. The Berry Application had been submitted to the City on or about October
7 28, 2016, or approximately 1.5 years prior to the Magagna Application being submitted.

8 350. Either Alan Austin or Schweitzer helped Magagna prepare the architectural
9 designs for the Magagna Application.

10 351. After submitting the Magagna Application, Schweitzer, his firm Techne, and
11 his employee, Carlos Gonzales, assisted Magagna responding to the City’s comments to
12 the Magagna Application to have it approved.

13 352. On or about November 7, 2018, Gonzales is shown on the City’s website as
14 representing Techne and being an “agent” of Magagna for the Magagna Application.

15 353. On or about January 1, 2019, both Gonzalez and Schweitzer are shown on
16 the City’s website as representing Techne and being “concerned citizens” for the
17 Magagna Application.

18 354. On January 30, 2019, at Schweitzer’ deposition, when confronted with
19 screen shots of the City’s website for the Magagna Application on November 7, 2018,
20 listing his employee Gonzales as an “agent” of Magagna for the Magagna Application,
21 Schweitzer testified that neither he nor his firm worked on the Magagna Application and
22 that the City’s website showing his employee as an “agent” was a mistake.

23 355. Shortly before the Magagna Application was approved, Schweitzer told
24 Williams, a client of his and Mrs. Austin, that he had worked on the Magagna Application
25 and he, Schweitzer, would have an ownership interest in the District Four CUP.

26 356. As of March 17, 2020, Gonzales is again shown on the City’s website as
27 representing Techne and being an “agent” of Magagna for the Magagna Application.

28 357. The changing back of Gonzales to an “agent,” after he had been changed to

1 a “concerned citizen,” is evidence of the collusion between Geraci/F&B and the City and
2 is representative of F&B’s dynamism in fabricating evidence and obfuscating the truth
3 throughout *Cotton I* in preparation for this litigation.

4 VI. THE LA MESA CUP

5 358. There are two competing applications for a cannabis CUP in the City of La
6 Mesa (the “La Mesa CUP”).

7 359. On or about May 23, 2017, Mrs. Austin submitted a cannabis application for
8 Shamman (the “Shamman Application”).

9 360. Shamman is a proxy for the true and undisclosed owner.

10 361. On or about August 23, 2017, McElfresh submitted a competing application
11 for Evergreen, LLC (the “Evergreen Application”).

12 362. The property owner on which the Evergreen Application was submitted is
13 represented by Shapiro.

14 363. The Evergreen Application team included McElfresh, Bartell and
15 Schweitzer.

16 364. On or about March 4, 2019, in anticipation of the Evergreen Application
17 approval, Mrs. Austin filed a writ of mandate seeking to have the Shamman Application
18 heard first and to delay the final hearing on the Evergreen Application (the “Evergreen
19 Writ”).³⁴

20 365. The Evergreen Writ is before Judge Wohlfeil.

21 366. On or about March 6, 2019, the Evergreen Application was approved.

22 367. For the reasons set forth herein, Flores believes that at the conclusion of the
23 Evergreen Writ litigation, the La Mesa CUP will ultimately go to Shamman for the
24 Enterprise. The basis for such will appear to be a good faith mistake or error by
25 McElfresh, Bartell or Schweitzer.

26 368. A review of the record reveals that Judge Wohlfeil’s Fixed-Opinion of Mrs.

27 ³⁴ *La Mesa Alternative Health Inc. v. City of La Mesa*, San Diego Superior Court Case
28 No. 37-2019-00011634-CU-WM-CTL.

1 Austin is manifesting itself in the Evergreen Writ action.

2 369. On or about December 31, 2019, Evergreen filed a motion seeking a
3 protective order quashing several deposition notices and other discovery requests. In
4 opposition, Mrs. Austin made several motions.

5 370. On January 24, 2020, Judge Wohlfeil denied all of Evergreen’s motions,
6 granted all of Mrs. Austin’s motions, and the totality of the reasoning set forth by Judge
7 Wohlfeil in his Minute Order is “for the reasons set forth in [Mrs. Austin’s] opposing
8 papers.” *Evergreen Writ*, ROA 218.

9 **PART V – LITIGATION RELATED TO THE PROPERTY**

10 I. THE CITY I-III ACTIONS

11 371. *City I*.³⁵ In or around July 2015, Cotton leased a suite at the Property to an
12 MMCC called PureMeds. Cotton believed PureMeds could lawfully operate at the
13 Property as an MMCC.

14 372. On or about February 18, 2016, the City filed the *City I* complaint seeking
15 injunctive and other relief to enjoin the operation of PureMeds at the Property.

16 373. On or about February 24, 2016, the City filed an ex parte application for a
17 TRO against Cotton seeking to enjoin the operation of PureMeds at the Property.

18 374. On or about March 3, 2016, the City’s request for a TRO was denied because
19 the court found that Cotton was not the owner/operator of PureMeds, and Cotton had
20 reason to believe that a dispensary could lawfully operate at the Property. In part, because
21 the Property had previously been zoned to allow for the operations of a dispensary and
22 the City had changed the zoning of the Property without providing notice of the change
23 to Cotton.

24 375. However, the court required, and Cotton agreed, to cooperate with the City
25 to identify the owner of PureMeds.

26 376. The City never contacted Cotton to identify the owner of PureMeds.

27
28 ³⁵ *City of San Diego v. Cotton*, San Diego Superior Court Case No. 37-2016-
00005526-CU-MC-CT (“*City I*”).

1 377. City II.³⁶ Instead, on or about March 30, 2016, the City applied for and was
2 granted a search warrant, based on an unidentified complainant, to locate marijuana and
3 related paraphernalia at the Property.

4 378. On April 6, 2016, the San Diego Police Department Special Task Force
5 effectuated the March 30, 2016 search warrant at the Property.

6 379. Thereafter, the Office of the District Attorney informed and provided Cotton
7 a “rejection letter” stating they would not be filing charges against him with regard to the
8 raid on the Property. Notably, it specifically reflects that the case was not referred to the
9 City Attorney’s Office for further prosecution.

10 380. In or around mid-April 2016, Audish took Cotton to see attorney Shamman
11 because he wanted Cotton to allow him to reopen PureMeds at the Property. Shamman
12 explained to Cotton that he could ensure that PureMeds stayed open at the Property
13 through various legal maneuvers with no liability for Cotton for at least six months.
14 Shamman described his actions as normal for the cannabis industry and something he did
15 for his other clients constantly. Shamman described how his clients’ unlicensed cannabis
16 dispensaries would be shut down and be reopened within days under different names and
17 nonprofit entities.

18 381. Audish offered to pay double the rent to Cotton if he allowed him to reopen
19 PureMeds at the Property.

20 382. Cotton refused Shamman’s and Audish’s proposal.

21 383. PureMeds did not reopen.

22 384. On March 15, 2017, after Cotton demanded the JVA be reduced to writing
23 reflecting Geraci’s ownership of a cannabis CUP and two weeks before the statute of
24 limitations ran, the City Attorney’s Office filed the City II complaint charging Cotton and
25 Audish with various Health & Safety Code (“H&S”) and SDMC violations based on the
26 execution of the April 6, 2016 search warrant.

27 385. It is unclear what the catalyst was for the City’s Attorney Office to prosecute
28

³⁶ *People v. Audish, Cotton*, San Diego Superior Court Case No. M230071 (“*City II*”).

1 Cotton after the Office of the District Attorney’s had initially rejected prosecuting Cotton
2 and had not referred the matter to the City’s Attorney Office in the first place.

3 386. Cotton believes that it was the Geraci’s influence with the City.

4 387. Plaintiffs believe and allege the City was motivated by the City Conspiracy.

5 388. The investigative report by the San Diego Police Department regarding the
6 raid is designated as Incident # 16-040009011 (the “SDPD Report”). The SDPD Report
7 confirms or concludes the following:

8 (i) The owner of PureMeds is not Cotton, but his lessee, Audish;³⁷

9 (ii) Cotton is the owner and operator of Inda-Gro, a lighting manufacturing
10 company, that operates lawfully at the Property and was not associated with PureMeds;³⁸
11 and

12 (iii) James Whitfield lives at the Property “inside of a white RV parked in the
13 middle of the [P]roperty.” In the SDPD Report, the investigator interviewed Whitfield
14 and summarized his interview, in relevant part, as follows: “I asked Whitfield where he
15 lived. Whitfield stated he lived inside of the RV in the front lot. Based on my previous
16 observations and Whitfield’s lack of knowledge of cultivation and marijuana
17 cooperatives, I did not believe Whitfield was intentionally growing marijuana plants as a
18 part of a collective or as a care provider.”

19 389. Cotton retained attorneys Dharmi Mehtra and Robert Bryson to represent
20 him in *City II*, which was being prosecuted by Deputy City attorney Mark Skeels.

21
22 _____
23 ³⁷ SDPD Investigator’s Report #16-040009011 at 10 (“A lease found during the
24 search identified the lease of the property as Ramiz AUDISH. Based on the lease and
25 several follow-ups, I believe AUDISH is the business owner of Pure Meds.”).

26 ³⁸ *Id.* at 11-12 (“A female answered the phone and identified the business as
27 ‘IndaGro’.... I conducted a computer check of IndaGro and found the business webpage
28 for Indagro products. The business advertised Induction Lighting Systems and offered
specialized lighting systems for a range, of \$480.00 to \$1435.00 for their products. The
page does not advertise the growth of any marijuana plants nor does it make any mention
of the use specifically for marijuana plants. The CEO of the company was identified as
Darryl COTTON.”).

1 390. On April 5, 2017, at his arraignment, Cotton pled guilty to one misdemeanor
2 count of H&S § 11366.5(a), allowing a building to be used to manufacture, store, or
3 distribute a controlled substance.

4 391. The plea agreement was negotiated by Bryson and Skeels and included the
5 following handwritten provision: “Mr. Cotton retains all legal rights pursuant to Prop.
6 215.”

7 392. When Judge Rachel Cano accepted the plea agreement, she asked about the
8 nature of the Prop. 215 provision, to which Cotton replied by informing her of his 151
9 Farmers nonprofit that operates at the Property.

10 393. In other words, the negotiations with Skeels, the plain language of the Prop.
11 215 provision in the plea agreement, and the discussion with Judge Cano who accepted
12 the plea, all reflected the parties’ mutual assent and understanding that Cotton would
13 continue to own the Property at which he operates his 151 Farmers nonprofit entity.

14 394. *City III*.³⁹ On April 5, 2017, City attorney Nicole Carnahan filed the *City*
15 *III* complaint initiating a civil forfeiture action against, *inter alia*, the Property pursuant
16 to Cotton’s guilty plea of H&S § 11366.5(a) in *City II*.

17 395. On or about April 18, 2017, the City recorded a lis pendens on the Property
18 pursuant to *City III* (the “City Lis Pendens”).

19 396. Skeels subsequently demanded \$100,000 to expunge the City Lis Pendens.

20 397. Skeels alleges that he did not know that Carnahan was going to file the *City*
21 *III* forfeiture action on the same day he and Cotton entered into the *City II* plea agreement.

22 398. It is unclear from the record why Skeels was demanding the \$100,000 when
23 Carnahan filed the *City III* complaint.

24 399. On or about May 9, 2017, Cotton’s *City II* attorney Bryson executed a
25 declaration provided to the City explaining that in his negotiations with Skeels they did
26 not discuss or contemplate the forfeiture of the Property and that he had never informed
27

28 ³⁹ *People v. \$30,609.00 IN U.S. Currency and Real Property – 6176-6184 Federal Boulevard, San Diego (“City III”)*.

1 Cotton such was a possibility of him pleading guilty.

2 400. Cotton should have been made aware that the consequence of pleading guilty
3 would be the potential forfeiture of the Property. *Brady v. United States*, 397 U.S. 742,
4 748 (“[W]aivers of constitutional rights not only must be voluntary but must be knowing,
5 intelligent acts done with sufficient awareness of the relevant circumstances and likely
6 consequences.”).

7 401. At that time the Property was under contract for a minimum consideration
8 for Cotton in the amount of approximately \$4,000,000 pursuant to the agreement with
9 Flores’ predecessor in interest (the “Martin Purchase Agreement”).

10 402. As more fully described below, Cotton engaged FTB to represent him in,
11 *inter alia*, *City III*. However, when FTB could not answer basic questions regarding the
12 *City III* action, Cotton sought to engage Jacob, who focuses on criminal defense, to
13 represent him in the *City III* matter.

14 403. FTB opposed Cotton’s plan and recommended that FTB be allowed to
15 engage attorney Stephen Cline, a criminal defense specialist, to act as co-counsel with
16 FTB and negotiate with the City regarding *City III*.

17 404. On October 3, 2017, on the advice of FTB and Cline as being just and proper,
18 Cotton agreed to pay \$25,000 to settle *City III* with the City to expunge the City Lis
19 Pendens.

20 405. Having read the *City II* and *City III* complaints and the plea agreement, it
21 took Flores about ten minutes of legal research to understand that the City Lis Pendens
22 was unlawfully recorded.

23 406. Setting aside other procedural and substantive due process arguments,
24 pursuant to H&S § 11470(g), the Property is not subject to forfeiture as a result of Cotton’s
25 plea agreement in *City II*.

26 407. As of March 26, 2020, the treatise California Criminal Defense Practice §
27 145.01A states:

28 Unlike any of the other categories of forfeitable property, real property is
subject to forfeiture only if it is owned by a person who has been convicted of

1 violating Health and Safety Code Section 11366, 11366.5, or 11366.6 with
2 respect to that property. [H&S § 11470(g).⁴⁰] Further, no real property is
3 subject to forfeiture if it is used as a family residence or for other lawful
4 purposes, or if it is owned by two or more persons, one of whom had no
5 knowledge of its unlawful use. *Id.* (emphasis added).

6 408. In *City I*, Judge John Meyer found that Cotton did not own or operate
7 PureMeds and Cotton had reason to believe that a dispensary could lawfully operate at
8 the Property because he was not given notice of any change in zoning by the City.

9 409. In *City II*, the SDPD Report made its conclusions, supported by
10 investigations and interviews, clear on at least three issues that bring it within the ambit
11 of H&S § 11470(g): (i) Cotton is not the owner/operator of PureMeds; (ii) Cotton lawfully
12 operated Inda-Gro at the Property; and (iii) Whitfield, who has no involvement with
13 PureMeds, lives on the Property and it is his primary residence.

14 410. Attorneys Skeels, Carnahan, Demian and Cline knew or should have known
15 what would take any reasonable attorney a nominal amount of time to research and
16 understand – the Property is not subject to forfeiture pursuant to Cotton’s *City II* plea
17 agreement because of H&S § 11470(g).

18 411. Furthermore, the City, FTB and Cline knew that Cotton had unconditionally
19 sold the Property to Martin on April 15, 2017 – 3 days before the City recorded the City
20 Lis Pendens – when they demanded the \$25,000 in October 2017.

21 412. Per his website, defendant attorney Cline permanently closed down his law
22 practice on July 1, 2018 for reasons he “will not go into.”

23 413. As of March 29, 2020, Cline is listed on the California Bar Website as being
24 employed by the San Diego County Public Defender’s Office.

25 414. Based on the above, Plaintiffs believe and allege that Cline engaged in

26 ⁴⁰ “The real property of any property owner who is convicted of violating Section
27 11366, 11366.5, or 11366.6 with respect to that property. However, property which is
28 used as a family residence or for other lawful purposes, or which is owned by two or more
persons, one of whom had no knowledge of its unlawful use, **shall not** be subject to
forfeiture.” H&S § 11470(g) (emphasis added).

1 unethical practices and was forced to close down his practice.

2 415. Cline colluded with FTB and purposefully counseled Cotton to pay \$25,000
3 to increase the financial and emotional pressure on Cotton and his supporters seeking to
4 coerce Cotton to settle and deprive Martin of the District Four CUP.

5 II. COTTON I PRE-TRIAL AND COTTON II

6 **A. Negotiations for the Property in 2016**

7 416. In early 2016 through mid-2017, in addition to Geraci, Cotton was
8 approached by at least 20 parties who wanted to purchase the Property, partner to develop
9 a dispensary at the Property and/or facilitate the sale/partnership of the Property for a
10 dispensary. As material to this complaint, the five most notable parties are clients and/or
11 have long established relationships with the Dream Team: (i) Christopher Williams; (ii)
12 Keith Henderson; (iii) Craig Rofhok; (iv) Corina Young; and (v) Bianca Martinez.

13 417. The first four are or were clients of Mrs. Austin, Bartell and/or Schweitzer.
14 The fifth, Martinez, was an employee of Bartell and worked with Geraci directly.

15 418. Each personally approached Cotton at the Property on their own initiative,
16 with the exception of Rofhok who was already acquainted with Cotton via his 151 Farms
17 organization.

18 419. The initial asking price by Cotton proposed to each of them for a joint
19 venture included the following consideration for Cotton: (i) \$1,000,000, (ii) a 51%
20 interest in the dispensary, (iii) a \$50,000 non-refundable deposit, and (iv) the buyer would
21 be responsible for all related permit acquisition and development costs for the Business
22 (the "Asking Price").

23 420. Rofhok is a sophisticated businessman who owns or owned an attorney
24 headhunting company, a legal cannabis delivery business, and has an interest in legal
25 cannabis businesses.

26 421. Rofhok is, or was, an equity owner of Mankind Cannabis Dispensary, a
27 licensed dispensary in the City.

28 422. In early 2017, Mankind was selling a 49% interest in Mankind for
approximately \$7,000,000.

1 423. Rofhok was marketing the sale and told Cotton and Hurtado about the sale
2 and the price Mankind was seeking; without taking into account a premium for a
3 controlling share, the approximate valuation for that cannabis business in the City is
4 approximately \$14,000,000.

5 424. Terry Nafso and Rafi Gorges are successful local businessmen who were
6 introduced to Cotton by Rofhok, are not believed to be Mrs. Austin’s clients, and who
7 desired to purchase the Property and/or partner with Cotton. They met at the Property
8 numerous times with Cotton with and without Rofhok. Their testimony will confirm the
9 Asking Price.

10 425. Williams is a local businessman with various interests including in the
11 cannabis industry.

12 426. In addition to seeking to purchase the Property himself, Williams also
13 brought Rakesh “Rocky” Goyal, the owner of Apothekare (a licensed dispensary in the
14 City), to the Property to negotiate with Cotton in early 2017 for the purchase of the
15 Property in the event Geraci did not reduce the JVA to writing.

16 427. Williams and Goyal can both testify and confirm the Asking Price.

17 428. Geraci convinced Judge Wohlfeil in *Cotton I* that the value of the Property,
18 inclusive of a cannabis CUP, is \$800,000 as noted in the November Document.

19 **B. Preliminary Draft Agreements**

20 429. In or around mid-2016, Geraci contacted Cotton and expressed his interest
21 to Cotton in acquiring the Property. Geraci and Cotton negotiated regarding the terms of
22 the potential sale of the Property.

23 430. During their negotiations, Geraci discussed with Cotton an alleged zoning
24 issue that would have to be resolved before a CUP application could be submitted on the
25 Property (the “Zoning Issue”).

26 431. Cotton, acting in good faith based upon Geraci’s representations during the
27 negotiations, assisted Geraci with preliminary due diligence in investigating the
28 feasibility of a CUP application and resolution of the alleged Zoning Issue at the Property

1 while the parties continued to negotiate the terms of a possible deal.

2 432. On or around September 24, 2016, wanting to get a final agreement in
3 writing, Cotton drafted preliminary documents to reflect the terms that he and Geraci had
4 been discussing at that point in time.

5 433. Per Geraci’s professional tax advice, Cotton sought to effectuate the joint
6 venture via two documents which Geraci said would be advantageous from a tax
7 perspective (the “Preliminary Agreements”). One document being a purchase contract
8 for the Property and the second being a side agreement for all other terms, including
9 Cotton’s equity ownership in the dispensary.

10 434. The Preliminary Agreements reflect the terms the parties were discussing as
11 of September 26, 2016, which included a 10% equity position for Cotton in the
12 dispensary, and which were shared with Geraci.

13 **C. The Preparation and Submission of the Berry Application**

14 435. On October 5, 2016, Geraci directed Schweitzer via email to replace his
15 name on the contract between himself and Schweitzer for the preparation of the Berry
16 Application. Geraci requested his name be substituted with Berry’s name.

17 436. In other words, the contract for Schweitzer’s services would reflect that
18 Berry, and not Geraci, was his client.

19 437. Schweitzer complied and provided an updated contract for his services
20 reflecting Berry as his client with no mention of Geraci being the actual client.

21 438. On October 27, 2016, Mrs. Austin replied to an email sent by Schweitzer
22 providing drafts of documents to be submitted as part of the Berry Application, stating:
23 “Thanks Abhay. Are you the person completing the submission package? I am under the
24 impression it is getting submitted on Friday. I would like to review all the docs prior to
25 submittal. PDF is fine.”

26 439. Later the same day, Schweitzer replied: “Hi Gina, Yes that’s me. I’m
27 working to complete everything today and I’ll email today once [it’s] done.”

28 440. On October 28, 2016, Mrs. Austin replied and provided comments to the

1 draft of the Berry Application, including “Still need... DS-318...”

2 441. On October 31, 2016, Geraci asked Cotton to execute Form DS-318
3 (Ownership Disclosure Statement), which is a required component of all CUP
4 applications.

5 442. Geraci told Cotton that he needed the executed Ownership Disclosure
6 Statement to show that he had access to the Property in connection with his lobbying
7 efforts to resolve the Zoning Issue and his eventual preparation of a CUP application.

8 443. At no time did Geraci indicate to Cotton that the CUP application would be
9 filed prior to the parties entering into a final written agreement for the sale of the Property.

10 444. Geraci also repeatedly maintained to Cotton that the Zoning Issue needed to
11 be resolved before a CUP application could even be submitted to the City.

12 445. Additionally, the Ownership Disclosure Statement that Geraci provided to
13 Cotton to sign incorrectly indicated that Cotton had leased the Property to Berry.

14 446. Cotton had never met Berry personally and never entered into a lease or any
15 other type of agreement with her.

16 447. At the time, Geraci told Cotton that Berry was a trusted employee who was
17 very familiar with dispensary operations because she helped manage his dispensaries.⁴¹

18
19 ⁴¹ On November 8, 2018, Berry responded via discovery in the *Cotton I* action to the
20 following Request for Admission as follows:

21 **REQUEST FOR ADMISSION NO. 6:** Admit that you have helped manage
22 marijuana dispensaries that have been enjoined for operating without appropriate
23 approvals by the CITY in the last five years.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:** Objection: the request is
25 vague and ambiguous as to the phrase “helped manage” marijuana dispensaries that
26 have been enjoined from operating without appropriate approvals.” Additionally, the
27 request is neither relevant to the subject matter of the action nor reasonably calculated
28 to lead to the discovery of admissible evidence. (CCP§2017.101.) The request also
infringes on the witness [sic] 5th amendment right against self-incrimination.

1 448. Geraci represented that he was unable to list himself as the applicant on the
2 application because of his status as an Enrolled Agent with the IRS, but that Berry was
3 working as their agent on behalf of their joint venture.

4 449. Based upon Geraci’s assurances that listing Berry as a tenant on the
5 Ownership Disclosure Statement was necessary and proper, Cotton executed the
6 Ownership Disclosure Statement.

7 450. On October 31, 2016, the Berry Application was submitted to the City.

8 451. On or about February 27, 2018, prior to F&B being confronted with
9 *Riverisland*, Schweitzer executed a declaration stating that the purpose of Part 1 of the
10 Ownership Disclosure Statement “is to identify all persons with an interest in the
11 [P]roperty and must be signed by all persons with an interest in the [P]roperty.” *Cotton*
12 *I*, ROA 119 ¶ 6 (emphasis in original).

13 452. On or about January 30, 2019, the deposition of Schweitzer was taken.

14 453. When Schweitzer was presented with and asked if he prepared the Berry
15 Application, he testified: “I don’t recall if myself personally prepared this document. I
16 believe this document was prepared by my firm.”

17 454. On or about March 3, 2019, Bartell’s deposition was taken.

18 455. Bartell testified that he consulted with Weinstein before his deposition.

19 456. During his deposition, Bartell was asked: “When lobbying -- is it legal to
20 lobby for a CUP marijuana outlet application when... the name on the project is not the
21 owner's name?” Bartell responded: “I don’t know.”

22 457. Mrs. Austin, Bartell and Schweitzer were all part of numerous email chains
23 discussing the drafting, comments and revisions to the Berry Application. Despite their
24 alleged representations of not knowing or remembering, the Dream Team collectively,
25 knowingly, and deliberately aided and abetted Geraci’s illegal attempt to acquire an
26

27 *Cotton I*, ROA 364 (Declaration of Jacob Austin in Support of Motion to Compel Further
28 Responses from Rebecca Berry), Ex. 2 (Berry Responses to Requests for Admissions) at
6:18-27.

1 interest in a cannabis CUP without disclosing his ownership interest.

2 **D. The Soils Analysis Issue**

3 458. On November 15, 2016, DSD issued a review of the Berry Application,
4 which included as a required item a geotechnical report for the Property (the “Soils
5 Analysis”).

6 459. On February 22, 2017, Schweitzer submitted responses to the City regarding
7 the Berry Application addressing issues raised by DSD, which did not include a Soils
8 Analysis.

9 460. On or about February 24, 2017, Schweitzer sent an update to Geraci, the
10 Dream Team, and others regarding the “Completeness Review” of the Berry Application,
11 which stated: “*N.A. Geotechnical study [i.e., Soils Analysis] has been removed from the
12 CUP submittal.*” [Emphasis added.]

13 461. The Soils Analysis ceased being an issue with the City per Schweitzer no
14 later than February 24, 2017.

15 462. The strategic importance of the Soils Analysis to Geraci is that it requires a
16 private geologist to make a subjective recommendation to the City in its report that the
17 City follows.

18 463. After Cotton found litigation investors and it became clear that *Cotton I*
19 could be exposed as a sham, Geraci’s agents used their influence with certain City
20 employees to make it appear that the Soils Analysis had been “newly” raised by the City
21 as a requirement in order to have the geologist recommend a denial.

22 464. On February 27, 2018, Geraci submitted a declaration in support of his
23 motion seeking a court order forcing Cotton to allow a geologist unto the Property to
24 perform the Soils Analysis. In his declaration, Geraci alleges: “I have been advised by
25 Abhay Schweitzer that another issue has *recently arisen* in connection with the processing
26 of the [Berry] Application and our attempts to obtain approval of and issuance of the CUP,
27 namely, we have been required by the City to perform soils testing at the subject
28 property.” *Cotton I*, ROA 117 at ¶ 18.

1 465. The allegations in Geraci’s February 27, 2018 declaration are directly
2 contradicted by Schweitzer’s February 22, 2017 email provided by Geraci in discovery.

3 466. The geologist performed the Soils Analysis with Cotton present and told him
4 there would be no issue with her recommending an approval.

5 467. When Cotton followed-up with her shortly thereafter for a copy of the report,
6 she was nervous and insinuated her company would be issuing a denial.

7 468. Cotton sent a detailed email to the geologist memorializing their
8 conversations and threatening to sue her if she issued a denial contrary to her
9 representations to him and informing her of Geraci’s unlawful actions. The geologist did
10 not issue a denial.

11 469. F&B made Cotton’s opposition to granting Geraci access the Property to
12 perform the Soils Analysis the vanguard at trial in *Cotton I* to argue that Cotton is
13 responsible for the Magagna Application being approved before the Berry Application
14 because he allegedly “interfered” with and delayed the required Soils Analysis (the “Soils
15 Analysis Issue”).

16 **E. The November Document and the November 3, 2016 Email**

17 470. For about six months after Geraci first contacted Cotton, the parties
18 negotiated for Geraci’s potential purchase of the Property and a possible joint venture.

19 471. To this end, as noted, Cotton drafted and shared the Preliminary Agreements.

20 472. However, Geraci never provided any edits or comments to the Preliminary
21 Agreements nor did he provide draft agreements of his own.

22 473. On November 1, 2016, Cotton was still negotiating with various parties for
23 the potential sale of the Property or partnership to develop a dispensary at the Property.

24 474. On November 1, 2016, Cotton met with Henderson and they discussed a
25 potential joint venture and the parties beginning the due diligence process that Cotton had
26 already begun with Geraci.

27 475. On November 2, 2016 at around 9:05 a.m., Cotton emailed Henderson: “Hi
28 Keith, I would be interested in continuing our discussion from yesterday. If you are

1 agreeable, I would ask that you sign and return the attached [non-disclosure agreement
2 (“NDA”)] so that we may do so.”

3 476. Plaintiffs believe and allege that Henderson, a client of Mrs. Austin,
4 contacted her to review the NDA from Cotton and/or to inform her about the need to
5 engage in preliminary due diligence as he was in negotiations for the Property.

6 477. Plaintiffs believe and allege that Mrs. Austin then contacted Geraci to let him
7 know that Henderson had engaged Cotton in negotiations for the Property.

8 478. This was a huge problem for Geraci and the Dream Team as they had already
9 submitted the Berry Application on October 31, 2016 and if Cotton sold to Henderson
10 their fraud would be exposed.

11 479. On November 2, 2016 at around 9:58 a.m., Cotton received the executed
12 NDA from Henderson.

13 480. On November 2, 2016 at around 11:07 a.m., Geraci called Cotton requesting
14 they meet later that day at his office to finalize their agreement.

15 (i) At trial, regarding this call, Geraci testified he called because: “we want to
16 submit this, get this – the CUP is going to be submitted, and I’d like to get
17 something in writing.”

18 (ii) Geraci’s trial testimony alleges he called to execute the November
19 Document because he wanted to submit the Berry Application. This testimony is
20 perjury as the Berry Application had already been submitted two days prior on
21 October 31, 2016 without Cotton’s knowledge or consent.

22 481. When Cotton and Geraci met later that day at T&F Center, they executed the
23 November Document that was notarized by one of Geraci’s employees at T&F Center.

24 482. There are only 16 emails between Geraci and Cotton between the execution
25 of the November Document in November 2016 and the filing of *Cotton I* in March 2017.
26 There are approximately 240 texts between Geraci and Cotton during the same time
27
28

1 period.⁴²

2 483. The texts and emails unequivocally provide support for a uniform, single
3 narrative: that Cotton and Geraci communicated and acted as joint venturers and the
4 November Document was executed with the intent it be a receipt.

5 484. On November 2, 2016, after the parties executed the November Document,
6 Geraci emailed Cotton a copy of the November Document at around 3:11 p.m., in an
7 email with the subject being “Contract,” which states in full:

8 Agreement between Larry Geraci or assignee and Darryl Cotton:

9 Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd,
10 CA for a sum of \$800,000.00 to Larry Geraci or assignee on the approval of
11 a Marijuana Dispensary. (CUP for a dispensary)

12 Ten Thousand dollars (cash) has been given in good faith earnest money to be
13 applied to the sales price of \$800,000.00 and to remain in effect until license
14 is approved. Darryl Cotton has agreed to not enter into any other contacts [sic]
15 on this property.

16 485. At around 6:55 p.m., Cotton replied to the same email as follows:

17 Hi Larry, [¶] Thank you for meeting today. Since we executed the Purchase
18 Agreement in your office for the sale price of the [P]roperty I just noticed the
19 10% equity position in the dispensary was not language added into that
20 document. I just want to make sure that we’re not missing that language in
21 any final agreement as it is a factored element in my decision to sell the
22 property, *I'll be fine if you would simply acknowledge that here in a reply.*

23 (*i.e.*, the “Request for Information”) (emphasis added).

24 486. On November 2, 2016 at around 9:13 p.m., Geraci replied: “*No no problem*
25 *at all*” (*i.e.*, the Confirmation Email).

26 487. On November 3, 2016 at around 12:36 p.m., Cotton called Geraci, who did
27 not pick up.

28 488. On November 3, 2016 at around 12:40 p.m., Geraci called Cotton back and

⁴² Filed concurrently with this Complaint is Plaintiffs’ ex parte application seeking, *inter alia*, that Magagna be prevented from selling/transferring the District Four CUP pending resolution of the instant action. All of the emails and texts between Geraci and Cotton are attached to the request for judicial notice as, respectively, Exs. 12 and 15.

1 they spoke for approximately three minutes.

2 489. On November 3, 2016 at around 1:41 p.m., Cotton emailed Geraci as follows
3 (emphasis added):

4 Larry, [¶] ***Per our phone call*** the name 151 AmeriMeds has not been taken
5 nor has there been any business entity formed from it. If you see this as an
6 opportunity to piggyback some of the work I've done and will continue to do
7 as 151 Farmers with further opportunities as a potential franchise for your
8 dispensary I'd like for you to consider that as the process evolves. [¶] We'll
9 firm it up as you see fit.

10 (the "November 3, 2016 Email").

11 490. As reflected by the 1:41 p.m. email referencing the 12:40 p.m. call, Cotton
12 was excited about collaborating with Geraci and was hoping Geraci would brand the
13 dispensary at the Property as a 151 Farmers organization.

14 **F. The Zoning Issue**

15 491. During their negotiations, Geraci represented to Cotton that through his
16 personal and professional relationships, he was in a unique position to lobby and influence
17 key City political figures to (i) have the Zoning Issue favorably resolved and (ii) have the
18 cannabis CUP application on the Property approved once submitted.

19 492. Prior to their falling out Cotton repeatedly requested updates from Geraci
20 and became increasingly exasperated with Geraci's failure to provide any substantive
21 responses to his inquiries on the alleged Zoning Issue, which was supposedly preventing
22 Geraci from providing Cotton the \$40,000 balance due as part of the non-refundable
23 deposit.

24 493. Between January 6, 2017 and February 7, 2017, the following text exchanges
25 took place between Cotton and Geraci that reflect Cotton's belief that the Zoning Issue
26 needed to be resolved before a CUP application could even be submitted on the Property:

27 **COTTON: Can you call me? If for any reason you're not moving forward I**
28 **need to know[?]**

GERACI: I'm at the doctor now everything is going fine the meeting went great
yesterday supposed to sign off on the zoning on the 24th of this month
I'll try to call you later today still very sick

1 GERACI: The sign off date they said it's going to be the 30th

2 COTTON: **This resolves the zoning issue?**

3 GERACI: Yes

4 COTTON: Excellent...

5 COTTON: How goes it?

6 GERACI: We're waiting for confirmation today at about 4 o'clock

7 COTTON: What's new?

8 COTTON: Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet.

9 GERACI: I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork.

10 **G. The Draft Agreements provided by Geraci; The Memorandum of Understanding with Martin**

11 494. Geraci failed to have Mrs. Austin promptly reduce the JVA to writing as promised on November 2, 2016.

12 495. Several weeks after the November Document was executed, Cotton renewed discussions with third parties on a contingency basis and asked Hurtado to help him locate a new buyer for the Property if Geraci breached the JVA.

13 496. On February 27, 2017, Geraci emailed Cotton a draft purchase contract for the Property ("Draft Agreement I"). However, it did not reflect the JVA. Among other things, it did not provide for Cotton's 10% equity stake or the \$40,000 balance towards the non-refundable deposit.

14 497. Draft Agreement I states that in lieu of a down deposit, Geraci had already provided "alternative consideration."

15 498. After numerous discovery fights with F&B in *Cotton I*, Geraci was forced to admit that (i) the "alternative consideration" in Draft Agreement I is the \$10,000 "good faith earnest money" deposit referenced in the November Document and (ii) the \$10,000 "good faith earnest money deposit" deposit is actually a "non-refundable" deposit.⁴³

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27 ⁴³ After being confronted with *Riverisland*, F&B had to reconcile the November Document with the parol evidence that would not be barred under *Pendergrass*. F&B was forced to argue that the "good faith earnest money" deposit stated in the November

1 499. On March 2, 2017, Geraci emailed Cotton a draft agreement entitled Side
2 Agreement that had a provision stating that Geraci and Cotton were not partners (“Draft
3 Agreement II”).

4 500. The next day, the following communications between the parties began with
5 Cotton emailing Geraci as follows:

6
7 Larry, [¶] I read the Side Agreement in your attachment and I see that no
8 reference is made to the 10% equity position... In fact para 3.11 [stating we
9 are not partners] looks to avoid our agreement completely... Can you
10 explain?

11 501. Cotton texted Geraci later that day: “Did you get my email?”

12 502. Geraci replied one minute later: “Yes I did I’m having her rewrite it now[.]
13 As soon as I get it I will forward it to you” (the “Partnership Confirmation Text”).

14 503. On March 6, 2017, Geraci, knowing that Mrs. Austin was the keynote
15 speaker at a cannabis event hosted by Williams and that Cotton planned to attend, texted
16 Cotton: “Gina Austin is there she has a red jacket on if you want to have a conversation
17 with her.”

18 504. Cotton did not make the event, but Hurtado did. At Cotton’s request,
19 Hurtado spoke with Mrs. Austin regarding Cotton’s concern that the JVA had not been
20 reduced to writing in over four months and noted that other parties were interested in the
21 Property.

22 Document is the same thing as a “non-refundable deposit.” Their prevarication is
23 transparent:

24 **REQUEST FOR ADMISSION NO. 20:** Admit that the \$10,000 YOU paid
25 COTTON on November 2, 2016 is a non-refundable deposit.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:** Admitted,
27 subject to the following: The \$10,000 paid to COTTON on November 2,
28 2016, was a non-refundable deposit to be applied to the sales price of
\$800,000 *if and when* the CUP was approved by the CITY. [Emphasis
added.]

1 505. Mrs. Austin acknowledged the delay to Hurtado, inherently confirming the
2 November Document is not a purchase contract, and stated that she would have a revised
3 draft to Cotton shortly.

4 506. Hurtado communicated this representation by Mrs. Austin to Jane – at that
5 point a prestigious attorney that Hurtado believed to be reputable – and relied on that
6 representation to support and invest in *Cotton I*.

7 507. The very next day, on March 7, 2017, Geraci emailed Cotton a revised Side
8 Agreement that was drafted by Mrs. Austin (“Draft Agreement III” and, collectively with
9 Draft Agreement I and II, the “Draft Agreements”).

10 508. In the March 7, 2017 cover email, Geraci wrote:
11 Hi Darryl, I have not reviewed this yet but wanted you to look at it and give
12 me your thoughts. Talking to Matt, the 10k a month might be difficult to hit
13 until the sixth month... can we do 5k, and on the seventh month start 10k?
14 (the “\$10,000 Request Email”).

15 509. Draft Agreement III provided for Cotton to receive 10% of the net profits of
16 the dispensary, not a 10% equity position as agreed per the JVA.

17 510. Cotton was frustrated with Geraci’s repeated failure to accurately reduce the
18 JVA to writing. At this point, Cotton became confident that Geraci was seeking to deprive
19 him of his bargained-for equity position.

20 511. At this point, Cotton still did not understand it was illegal for Geraci to own
21 a cannabis business because of the Sanctions Issue.

22 512. On March 15, 2017, Hurtado reached a contingent agreement with Flores’
23 predecessor-in-interest for the purchase of the Property that was reduced to writing in a
24 Memorandum of Understanding (the “MOU”).⁴⁴

25 _____
26 ⁴⁴ The MOU was subsequently amended and incorporated into the SLFA that was
27 provided under seal by Cotton to Judge Curiel on or about February 9, 2018 in *Cotton III*
28 (defined below). Additionally, Cotton has stated he provided the court additional material
documents as part of the same submission, but he does not remember what those
documents are.

1 513. The MOU provides that in the event the Property becomes available, *i.e.*,
2 Geraci breaches the JVA, Martin would provide, *inter alia*, the following consideration
3 for the Property: (i) \$2,500,000; (ii) a 49% ownership stake in the dispensary; and (iii)
4 the greater of 49% of the net profits or \$20,000 on a monthly basis once the Business was
5 operating.

6 514. On March 16, 2017, Cotton emailed Geraci:

7
8 We started these negotiations 4 months ago and the drafts and our
9 communications have not reflected what [was] agreed upon and are still far
10 from reflecting our original agreement.... please confirm that revised final
11 drafts that incorporate the [JVA] terms will be provided by Wednesday at
12 12:00 PM, I promise to review and provide comments that same day so we
13 can execute the same or next day.

14 515. On March 17, 2017, Geraci responded by requesting an in-person meeting
15 with Cotton via text: “can we meet in person[?]”

16 516. Cotton replied via email, materially, as follows:

17 I would prefer that until we have final agreements that we converse
18 exclusively via email. My greatest concern is that you get a denial on the CUP
19 application and not provide the remaining \$40,000 non-refundable deposit....
20 We need a final written, legal, and binding agreement.... Please confirm by
21 12:00 PM Monday that you are honoring our agreement and will have final
22 drafts... by Wednesday at 12:00 PM.

23 517. On March 18, 2017 at around 1:43 p.m., Geraci responds to Cotton’s email:
24 “I have an attorney working on the situation now. I will follow up by Wednesday with
25 the response as their timing will play a factor.”

26 518. Geraci’s communication was his attempt to delay Cotton from selling the
27 Property to a third-party while F&B was preparing to file *Cotton I* falsely alleging the
28 November Document is a purchase contract for the Property.

 519. Cotton’s ignorance of the possibility that the November Document could
even be represented as a purchase contract is obvious from his reply.

 520. On March 19, 2017 at around 9:02 a.m., Cotton replied: “I understand that

1 drafting the agreements will take time, but you don't need to consult with your attorneys
2 to tell me whether or not you are going to honor our agreement.... If I do not have written
3 confirmation from you by 12:00 PM tomorrow, I will [be] contacting the City of San
4 Diego and let them know that our agreement was not completed[.]”

5 521. On March 21, 2017, after Geraci repeatedly failed to reduce the JVA to
6 writing and refused to provide written assurance of performance (*i.e.*, that he would
7 reduce the JVA to writing), Cotton terminated the agreement with Geraci for anticipatory
8 breach.⁴⁵

9 522. In his termination of the JVA, Cotton specifically informed Geraci that he
10 was selling the Property to a third-party: “To be clear, as of now, you have no interest in
11 my [P]roperty, contingent or otherwise. I will be entering into an agreement with a third-
12 party[.]”

13 523. On March 21, 2017, after terminating the JVA with Geraci, Cotton entered
14 into the Martin Purchase Agreement.

15 **H. Geraci’s Complaint and Cotton’s Answer**

16 524. The next day, March 22, 2017, Weinstein emailed Cotton a copy of the
17 *Cotton I* complaint and the F&B Lis Pendens.⁴⁶

18
19 ⁴⁵ “[I]f a party to a contract expressly or by implication repudiates the contract before
20 the time for his or her performance has arrived, an anticipatory breach is said to have
21 occurred. [Citations.] The rationale for this rule is that the promisor has engaged not only
22 to perform under the contract, but also not to repudiate his or her promise.” *Romano v.*
Rockwell Internat., Inc., 14 Cal. 4th 479, 489 (Cal. 1996).

23 ⁴⁶ “Once a lis pendens is filed, it clouds the title and effectively prevents the property's
24 transfer until the litigation is resolved or the lis pendens is expunged.” *BGJ Associates,*
LLC v. Superior Court, 75 Cal. App. 4th 952, 967 (Cal. Ct. App. 1999). “Courts have
25 long recognized that ‘[b]ecause the recording of a lis pendens place[s] a cloud upon the
26 title of real property until the pending action [is] ultimately resolved . . . , the lis pendens
27 procedure [is] susceptible to serious abuse, **providing unscrupulous plaintiffs with a**
powerful lever to force the settlement of groundless or malicious suits.’ *Id.* at 969
28 (quoting *Malcolm v. Superior Court* (1981) 29 Cal.3d 518, 523, fn. 2, and 524) (emphasis
added); *see also Hilberg v. Superior Court*, 215 Cal.App.3d 539, 542 (“We cannot ignore

1 525. The *Cotton I* complaint alleges causes of action for (i) breach of contract, (ii)
2 breach of the covenant of good faith and fair dealing, (iii) specific performance, and (iv)
3 declaratory relief.

4 526. All four causes of action are premised on the allegation that the November
5 Document is a fully integrated purchase contract.

6 527. The *Cotton I* complaint alleges that Cotton anticipatorily breached his
7 agreement with Geraci by demanding additional consideration not originally agreed to.
8 Specifically:

9 On November 2, 2016, [Geraci] and [Cotton] entered into a written agreement
10 for the purchase and sale of the [Property] on the terms and conditions stated
11 therein....

12 [Cotton] has anticipatorily breached the contract by stating that he will not
13 perform the written agreement according to its terms. Among other things,
14 [Cotton] has stated that, contrary to the written terms, the parties agreed
[Cotton] is entitled to a 10% ownership interest in the [Property].

15 528. Geraci/F&B’s *Cotton I* complaint ignores the existence of, *inter alia*,
16 Geraci’s Confirmation Email.

17 529. On May 8, 2017, Cotton filed his *Cotton I* answer including an affirmative
18 defense for fraud.

19 **I. Cotton’s Pro Se Cross-complaint and F&B’s First Demurrer.**

20 530. On May 12, 2017, Cotton filed pro se a cross-complaint in *Cotton I* against
21 Geraci and Berry with causes of action for: (i) quiet title, (ii) slander of title, (iii)
22 fraud/fraudulent misrepresentation, (iv) fraud in the inducement, (v) breach of contract,
23 (vi) breach of oral contract, (vii) breach of implied contract, (viii) breach of the implied
24 covenant of good faith and fair dealing, (iv) trespass, (x) conspiracy, and (xi) declaratory

25 _____
26 as judges what we know as lawyers — that the recording of a lis pendens is sometimes
27 made not to prevent conveyance of property that is the subject of the lawsuit, but to coerce
28 an opponent to settle regardless of the merits.”). **“The financial pressure exerted on the
property owner may be considerable, forcing him to settle not due to the merits of
the suit but to rid himself of the cloud upon his title.** The potential for abuse is
obvious.” *BGJ Associates, supra*, at 969 (emphasis added).

1 and injunctive relief.

2 531. Cotton’s cause of action for breach of oral contract materially stated as
3 follows (emphasis added):

4 *The agreement reached on November 2nd, 2016 is a valid and binding oral*
5 *agreement between Cotton and Geraci.*

6 Geraci has breached the agreement by, among other actions described herein,
7 alleging the written November [Document] is the final and entire agreement
8 for the Property.

9 532. Cotton’s cause of action against Geraci and Berry for conspiracy materially
10 alleged as follows (emphasis added):

11 Berry submitted the [Berry Application] in her name on behalf of Geraci
12 because Geraci has been a named defendant in numerous lawsuits brought by
13 the City of San Diego against him for the operation and management of
14 unlicensed, unlawful and illegal marijuana dispensaries. **These lawsuits**
15 **would ruin Geraci's ability to obtain a CUP himself [i.e., the Sanctions**
16 **Issue].**

17 Berry knew that she was filing a document with the City of San Diego that
18 contained false statements, specifically that she was a lessee of the Property
19 and owner of the [P]roperty [i.e., the Berry Fraud].

20 Berry, at Geraci’s instruction or her own desire, submitted the [Berry
21 Application] as Geraci's agent, and thereby participated in Geraci’s scheme to
22 deprive Cotton of his Property and his ownership interest in the [District Four
23 CUP].

24 533. On June 16, 2017, F&B filed a demurrer to Cotton’s pro se cross-complaint
(the “First F&B Demurrer”).

25 534. In the First F&B Demurrer, as to Cotton’s cause of action for breach of an
26 oral contract, F&B argued (emphasis added):

27 The sixth cause of action for breach of oral contract does not state a cause of
28 action because: a) Cross-Complainant has failed to allege conduct which

would be an actual breach; b) **there cannot be an oral contract which contradicts a written contract**; and c) the alleged oral contract for the purchase and sale of the subject real property violates the Statute of Frauds.

535. Post-*Riverisland*, F&B’s arguments are without any factual or legal justification: (a) filing suit and fraudulently representing a receipt as a purchase contract is a breach of the JVA;⁴⁷ (b) evidence of an oral contract that contradicts a written contract is admissible pursuant to *Riverisland*; and (c) an oral joint venture agreement is not subject to the statute of frauds.⁴⁸

536. As to Cotton’s cause of action for conspiracy, F&B argued:

The tenth cause of action for civil conspiracy fails to state a cause of action because there is no such cause of action in California. Rather, conspiracy is a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its preparation. A conspiracy cannot be alleged as a tort separate from the underlying wrong it is organized to achieve.

537. F&B’s argument is without justification because, *inter alia*, it assumes the Berry Fraud is not illegal.

J. Cotton’s First and Second Amended Cross-complaints prepared and filed by FTB; and Geraci’s and Berry’s Answers.

538. After *Cotton I* was filed, Hurtado, on behalf of Cotton, Martin and himself, met with McElfresh several times to discuss *Cotton I* and her representing Cotton in *Cotton I* and Martin in a CUP application with the City on the Property.

539. McElfresh agreed that the November Document could not a purchase contract as a matter of law because of the Confirmation Email.

⁴⁷ Plaintiff notes that although the Illegality Issue means the JVA was illegal when formed, such does not insulate defendants from liability for their fraud. *Timberlake v. Schwank*, 248 Cal.App.2d 708, 711 (“An action for damages for fraud inducing a person to enter into a joint venture does not arise out of the joint venture; exists independently of it; and lies even though there is no dissolution of or accounting in the joint venture.”).

⁴⁸ *Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 (“[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.”).

1 540. On or around April 13, 2017, McElfresh emailed Hurtado that “upon further
2 reflection” she would not be able to represent Cotton in *Cotton I*. Further, she
3 recommended Demian of FTB, describing his success in the *Engerbretsen* matter, and
4 one other attorney.

5 541. Notwithstanding her change of course, an attorney-client relationship had
6 already been established between McElfresh and each of Cotton, Hurtado and Martin.⁴⁹

7 542. Further, McElfresh *did* agree to represent Martin in the CUP application with
8 the City. Attached hereto as Exhibit 2 is an email chain between Hurtado, McElfresh and
9 Martin reflecting McElfresh’s agreement to work for Martin.

10 543. Based on McElfresh’s recommendation, Hurtado reached out to FTB and
11 arranged for a meeting between F&B and Cotton and a financing agreement in the event
12 FTB and Cotton came to terms.

13 544. In May 2017, McElfresh was arrested in the Med West matter.

14 545. On June 25, 2017, Cotton entered into an agreement with FTB for their
15 services in representing him in (i) *Cotton I*, (ii) *Cotton II*, (iii) *City III*, and (iv) in the
16 preparation and submission of a cannabis CUP application with the City.

17 546. On June 30, 2017, Demian and Witt of FTB substituted in as counsel for
18 Cotton and filed an amended cross-complaint in *Cotton I* (the “FAXC”).

19 547. The FAXC reduced and revised the causes of action from 11 to 7 as follows:
20 (i) breach of contract; (ii) intentional misrepresentation; (iii) negligent misrepresentation;
21 (iv) false promise; (v) intentional interference with prospective economic relations; (vi)
22

23 ⁴⁹ *Miller v. Metzinger* (1979) 91 Cal.App.3d 31, 39-40 (“As our Supreme Court said
24 in *Perkins v. West Coast Lumber Co.* (1900) 129 Cal. 427, 429 [62 P. 57]: ‘When a party
25 seeking legal advice consults an attorney at law and secures that advice, the relation of
26 attorney and client is established prima facie.’ [...] In *Westinghouse Elec. Corp. v. Kerr-*
27 *McGee Corp.* (7th Cir. 1978) 580 F.2d 1311, 1319, the court said: ‘The fiduciary
28 relationship existing between lawyer and client extends to preliminary consultation by a
prospective client with a view to retention of the lawyer, although actual employment
does not result.’”).

1 negligent interference with prospective economic relations; and (vii) declaratory relief.

2 548. FTB’s amendments from Cotton’s pro se Complaint to their FAXC were
3 without factual or legal justification. The unjustified amendments include:

- 4 (i) Dropping Cotton’s cause of action for breach of an oral contract;
- 5 (ii) Dropping Cotton’s cause of action for fraud;
- 6 (iii) Dropping Cotton’s cause of action for conspiracy against Geraci and Berry;
- 7 (iv) Dropping Berry from all causes of action except the seventh for declaratory
8 relief; and
- 9 (v) Amending Cotton’s factual allegation that the “agreement reached on
10 November 2, 2016 is a valid and binding oral agreement,”⁵⁰ to alleging the parties had
11 reached “an agreement to agree” in the future which is not an enforceable agreement.⁵¹

12 549. On August 25, 2017, Judge Wohlfeil entered a minute order reflecting that
13 pursuant to the stipulation of F&B and FTB, no new parties could be named and all
14 unserved, non-appearing and fictitiously named parties were dismissed.

15 550. F&B and FTB’s failure to name Martin as an indispensable party as required
16 by law is without justification as FTB had disclosed the Martin Purchase Agreement to
17 F&B and both parties knew Martin was the equitable owner of the Property.⁵²

19 ⁵⁰ “In *San Francisco Iron etc. Co. v. American Mill. etc. Co.* (1931) 115 Cal.App.
20 238, a joint venture was held to be consummated when the minds of the parties meet as
21 to the formation of the contract of joint venture. Also it was held that a joint venture could
22 exist without explication of all details.” *Franco W. Oil Co. v. Fariss*, 259 Cal. App. 2d
325, 345 (1968).

23 ⁵¹ “It is Hornbook law that an agreement to make an agreement is nugatory, and that
24 this is true of material terms of any contract.” *Roberts v. Adams* (1958) 164 Cal. App. 2d
312, 314. “[N]either law nor equity provides a remedy for a breach of an agreement to
25 agree in the future.’ [Citation.]” *Id.* at 316.

26 ⁵² *See, e.g., Cotton I*, ROA 115 (F&B opposition to Cotton December 7, 2017 ex parte
27 application for TRO) at 11 (“[I]f Cotton is granted his cooperator PI, then he has every
28 incentive as a co-applicant to torpedo the CUP approval process so that the condition
required for Geraci to acquire the Property is not satisfied and Cotton can instead sell the
Property to another buyer he has lined up for a purchase price of \$2,000,000 (compared

1 551. During a phone conversation with Demian early in his representation of
2 *Cotton I*, Hurtado and Jane communicated their fears that Geraci was a “drug-lord and
3 violent figure” and they did not want to become named parties both because of Geraci
4 and also because they did not want to be publicly associated with the cannabis industry.

5 552. Demian unambiguously represented that there was no reason or need to name
6 Martin, Hurtado or Jane in *Cotton I*.

7 553. In the same conversation, Demian agreed the Confirmation Email means the
8 November Document is not a purchase contract.

9 554. Also, on August 25, 2017, FTB filed a second amended cross-complaint for
10 Cotton (the “SAXC”). This time, FTB dropped the causes of action for intentional and
11 negligent interference with prospective economic relations.

12 555. The amendments from the FAXC to the SAXC are without factual or legal
13 justification.

14 556. The deleted causes of action would have eventually alerted Judge Wohlfeil
15 to the fact that Martin was required to be a named party to the action as an indispensable
16 party.

17 557. In *Cotton I* discovery, Cotton produced Martin’s pre-approval letter for
18 \$2,500,000 for the Property as required by the MOU.

19 558. Martin had the financial resources to hire experienced counsel if named as a
20 party to *Cotton I*.

21 559. On November 20, 2017, Geraci filed his Answer to the SAXC, which does
22 not raise the Disavowment Allegation either as a “new matter”⁵³ or sets forth affirmative
23

24 to the \$800,000 purchase price he will receive from Geraci). In other words, if Cotton is
25 granted his TRO and/or PI but Geraci prevails at trial, Geraci's victory may be a pyrrhic
26 one as Cotton would have a \$1.2 million reason to destroy the CUP approval process in
27 order to free Cotton to close the more lucrative deal he has made with another buyer,
28 [Martin], for the purchase and sale of the Property.”) (Emphasis in original removed).

⁵³ See CCP § 431.30(b) (“In addition to denials, the answer should contain whatever affirmative defenses or objections to the complaint that defendant may have, and that

1 defenses of fraud or mistake.

2 560. The Disavowment Allegation substantively constitutes affirmative defenses
3 that were required to be pled in Geraci’s answer as a “new matter,” fraud and/or mistake,
4 which he waived for failing to raise (the “Affirmative Defenses Issue”).

5 561. Geraci’s fifth affirmative defense in his *Cotton I* Answer states: “[Geraci]
6 currently has insufficient information upon which to form a belief as to the existence of
7 additional and as yet unstated affirmative defenses. [Geraci] reserves the right to assert
8 additional affirmative defenses in the event discovery discloses the existence of said
9 affirmative defenses.”

10 562. On September 9, 2017, Geraci filed a demurrer to Cotton’s SAXC (the
11 “Second F&B Demurrer”), which includes the following admission by F&B: “[Geraci]
12 alleges in his Complaint that the [November Document] contains all the material terms
13 and conditions of the agreement for the purchase and sale of the [Property] and is the
14 entire agreement enforceable between the parties.” *Cotton I*, ROA 53 at 8 (emphasis
15 added).

16 563. On November 3, 2017, Judge Wohlfeil held a hearing on Geraci’s demurrer
17 to the SAXC having issued a tentative ruling overruling Geraci’s demurer.

18 564. The hearing was a fraud on the court that can be described as a play put on
19 for Judge Wohlfeil by F&B and FTB seeking to have Cotton’s case dismissed before it
20 could proceed further.

21 565. Geraci’s demurrer relied on *Bezell v. Schrader* (1963) 59 Cal.2d 577 and
22 *Sterling v. Taylor* (2007) 40 Cal.4th 757, both of which were decided before *Riverisland*
23 in 2013. At the hearing, Weinstein drew Judge Wohlfeil’s attention to those “two
24 California Supreme Court cases” and argued materially as follows:

25
26 So those decisions clearly hold that under the statute of frauds, **extrinsic
evidence can’t be employed to prove an agreement at odds with the terms**

27
28 would otherwise not be in issue under a simple denial. Such defenses or objections are referred to as ‘new matter.’”).

of the memorandum. Put another way, the parole agreement, in this case, alleged oral agreement that Mr. Cotton is alleging of which the written agreement is a memorandum, must be one whose terms are consistent with the terms of the memorandum. So determining whether extrinsic evidence provides the certainty required by the statutes, **[the] Court has to recognize that extrinsic evidence cannot contradict the terms of the writing.**

566. F&B’s is arguing the *Pendergrass* line of reasoning.

567. Demian then appeared to oppose F&B, but in reality, he was informing Judge Wohlfeil that he should dismiss the case because the parties had reached an unenforceable agreement to agree. As argued by Demian:

[S]everal of the statements of Mr. Weinstein are interesting to me and they point up that our case and our causes of action for breach of contract have merit.... That November [Document] leads with this language: “Darryl Cotton has agreed to sell the property located at,” et cetera. Darryl Cotton has agreed. Darryl Cotton does not hereby agree pursuant to the terms of this agreement. If you look at real estate purchase agreements, CAR forms, commercially drafted, they will all say, The seller of the property hereby agrees to sell the property.

Our case is based on the idea that this is a receipt. This is more a receipt than an agreement. This document was signed because Mr. Geraci said, I'm going to give you \$10,000. We need to at least put down that **we have this agreement to agree** and have an exchange of this cash in a writing that documents it.... And consistent with all our allegations in our cause of action, **we assert that there was an agreement to reach the final terms of an agreement.**

I know I firmly believe this complaint states a cause of action that survives the statute of frauds and the standard for general demurrer.... Where there is **a written agreement to agree**, the cause of action can stand.... When you have that **agreement to agree**, it’s not necessarily an unhinged agreement to agree. You **may** have agreement.

568. At no point has Cotton ever argued anything other than that he and Geraci reached the JVA - “a valid and binding oral agreement.”

569. Demian’s argument contradicted his own client’s judicial admissions.

570. What Demian did was highlight to Judge Wohlfeil that he “firmly believed,”

1 not that he “knew,” that “a written agreement to agree” “may” be an agreement.

2 571. Despite the fact that FTB amended Cotton’s complaint to include language
3 that the parties had “agreed to agree,” Weinstein feigned ignorance that Demian could
4 even argue such a position at the hearing:

5 [Demian] is **now** saying they had an agreement to agree. If that’s the case,
6 then his case gets -- **the cause of action gets knocked out automatically.**
7 **There's no such thing as [an] agreement to agree.**

8 It's even in your quotation in the tentative ruling. You were distinguishing in
9 there between agreement to agree and actual agreement to negotiate in good
10 faith towards something. Those are different things. So I need to make that
11 point.

12 572. Weinstein is correct; Demian is wrong: “There’s no such thing as [an]
13 agreement to agree.”

14 573. Had Demian, at the very least, raised the Confirmation Email and argued
15 what any first-year law school student would know to argue, that a contract requires
16 mutual assent, *Cotton I* would have been resolved in Cotton’s favor then and there and
17 this lawsuit would not be required.

18 574. But-for Demian’s deceit, Judge Wohlfeil would not be a named party to this
19 action.

20 **K. Cotton II⁵⁴**

21 575. On October 6, 2017, FTB filed on behalf of Cotton a Verified Petition for
22 Alternative Writ of Mandate against the City - naming Geraci and Berry as real parties in
23 interest - demanding the City remove Berry from the Berry Application and recognize
24 Cotton as the sole applicant (“*Cotton II*”). Attached to the *Cotton II* petition were, *inter*
25 *alia*, the Request for Confirmation and the Confirmation Email as “Exhibit 3”.

26 576. Mrs. Austin, on November 30, 2017, filed a Verified Answer to *Cotton II* for
27 Geraci that “admits that Exhibit 3 to the Verified Petition is a true and correct copy of

28 ⁵⁴ *Cotton v City of San Diego*, San Diego Superior Court Case No 37-2017-00037675-
CU-WM-CTL.

1 certain emails exchanged between [Geraci and Cotton.]”

2 577. Geraci’s response in his verified answer is a judicial admission he sent the
3 Confirmation Email.

4 578. On January 25, 2018, Judge Wohlfeil entered an ordered denying Cotton’s
5 *Cotton II* petition for two reasons:

6 [Cotton] cannot demonstrate that he was the only person who possessed the
7 right to use the [Property]... In addition, [Cotton] has not exhausted his
8 administrative remedy by submitting his own separate CUP application.

9 579. These are F&B’s arguments and lack any factual or legal justification.

10 580. First, Judge Wohlfeil’s order makes a vague reference to “evidence” that
11 Berry had a right to file the Berry Application on the Property, but does not address what
12 any of that evidence is, much less the Mutual Assent Issue.

13 581. Second, “Failure to exhaust administrative remedies is excused if it is clear
14 that exhaustion would be futile.” *Jonathan Neil & Assoc., Inc. v. Jones*, 33 Cal. 4th 917,
15 936 (2004), as modified (Oct. 20, 2004).

16 582. The City via both its DSD employees and multiple attorneys have taken the
17 position and represented to Judge Wohlfeil that it is lawful for Geraci to own a cannabis
18 CUP via the Berry Application notwithstanding the Illegality Issue and the Engerbretsen
19 Mandate.

20 583. Certain City employees are corrupt, including Tirandazi and Phelps.

21 584. Filing a competing CUP would be futile.

22 585. City attorney Phelps approved the *Cotton II* judgment provided by Weinstein
23 thereby ratifying Geraci/F&B’s pre-*Riverisland* contention the Confirmation Email is
24 barred by the parole evidence rule.

25 **L. Demian’s Deceit**

26 586. On December 5, 2017, Demian emailed Cotton and Hurtado a draft of the ex
27 parte application intended to be filed for a December 7, 2017 hearing. Hurtado responded
28 and provided comments.

587. That same day, Demian replied to Hurtado’s email/comments as follows

1 (emphasis added):

2
3 Thank you for the comments. The one issue I do want to discuss is the first –
4 the others we can incorporate. The first issue is critical to deposition and other
5 testimony. I am glad you pointed out this issue. Very very important to me
6 we not lose Darryl’s credibility on some *misunderstanding*. The [language
7 in] our brief [now reads as follows]:

8 “...Geraci to pursue the Cotton CUP on Cotton’s behalf”

9 Joe’s comment: *Darryl was supposed to be the minority 10% owner in this*
10 *joint venture*. The language here makes it seem as if Geraci is acting solely
11 as Darryl’s agent in submitting the CUP and that Darryl would be the sole
12 beneficiary of the CUP. Not sure if material, but thought I would raise in case
13 it is worth clarifying.

14 My thoughts: [¶] what was supposed to happen on termination of the deal as
15 happened? It sounds like it was not discussed or agreed upon by the parties.

16 There would have been many options, including: (1) Geraci releases the
17 permit back to Darryl and Darryl does not owe him any money for his costs
18 in chasing the permit; (2) Geraci does not assign the permit to you and it is
19 rejected by the City at the end as Geraci has no interest in the property, but
20 you would have to reapply for your own permit as City says now; or (3) Geraci
21 releases the permit to you and you pay him back the costs he spent on the
22 permit; (4) there was *no agreement* so the court must decide what to do in that
23 vacuum.

24 I suspect it [was not] discussed, let me [know] if I am wrong. So the
25 declaration *should* be number 4. In the brief, I can argue for option 1, BUT I
26 DO NOT WANT YOU TO DECLARE TO ANYTHING NOT EXACTLY
27 WHAT WAS AGREED.

28 588. DEMIAN’S USE OF ALL CAPS AT THE END OF THE EMAIL seeking
to create a defense for his deceit does not negate the facts: (i) his first three
recommendations continue to argue that Geraci was acting as Cotton’s agent, thus,
completely contradicting Cotton’s verified pro se cross-complaint, every communication
he had received from Cotton, and the comments Hurtado had just provided to him; and

1 (ii) the fourth recommendation is seeking that Cotton judicially admit that an “agreement”
2 had not been reached (*i.e.*, the parties had an “agreement to agree”).

3 589. There is no factual or legal justification for Demian to have drafted a TRO
4 and supporting documentation that argues:

5 (i) Geraci was acting as Cotton’s agent;

6 (ii) Cotton “should” provide a declaration that “no agreement” had been reached;

7 (iii) Cotton’s declaration should make one factual admission, but that Demian
8 would argue a different position in the brief to Judge Wohlfeil (collectively, “Demian’s
9 Deceit”).

10 590. Had Cotton followed Demian’s legal advice and admitted that Geraci was
11 acting as his agent in having Berry file the Berry Application, then any reasonable
12 attorney would have used Cotton’s admission to argue, *inter alia*, Cotton’s Illegality Issue
13 and the Berry Fraud are meritless as Cotton admitted those actions were taken on his
14 behalf.

15 591. Demian cannot produce any evidence of any kind, other than self-serving
16 testimony by himself and others at FTB, to support his assertion there was a
17 “misunderstanding” resulting in him believing that Geraci was acting as Cotton’s agent.

18 592. On or about December 24, 2019., Cotton emailed, *inter alia*, Demian, certain
19 partners at FTB who had been involved in the litigation, and their counsel Kenneth
20 Feldman of Lewis and Brisbois, and provided them, *inter alia*, documents, emails, and
21 testimony transcripts that prove the *Cotton I* judgment was procured via fraud on the court
22 and is the product of judicial bias.⁵⁵

23 593. FTB committed a fraud on the court by conniving at the defeat of their own
24 client. *See Estate of Sanders*, 40 Cal. 3d 607, 614 (1985) (defining extrinsic fraud as
25 including “where an attorney fraudulently... assumes to represent a party and connives at
26 his defeat...”) (quoting *United States v. Throckmorton* (1878) 98 U.S. 61, 65-66).

27 _____
28 ⁵⁵ Attached here to as Exhibit 3 is a true and correct copy of the December 24, 2019 email,
excluding the attachments.

M. The December 7, 2017 hearing

594. On December 7, 2017, Judge Wohlfeil held a hearing simultaneously on two ex parte applications by Cotton, one in each of *Cotton I* and *Cotton II*. Cotton’s *Cotton I* ex parte application sought to, *inter alia*, have Geraci and Berry transfer the Berry Application to Cotton. Cotton’s *Cotton II* ex parte application sought to, *inter alia*, have the City transfer the Berry Application to Cotton.

595. Both ex parte applications were filed against FTB’s recommendations at the insistence of Cotton and Hurtado.

596. Both ex parte applications have the same foundational and case-dispositive issue: does Geraci have a right to the Property because of the November Document?

597. Demian represented Cotton in both ex parte applications.

598. Mrs. Austin and Weinstein represented Geraci and Berry in both ex parte applications.

599. City attorney Jana Will represented the City in the *Cotton II* ex parte application.

600. Judge Wohlfeil started the hearing by stating that the ex parte applications submitted by FTB “broke the record” for being the largest filings he had ever received on an ex parte basis.

601. Judge Wohlfeil also said that he did not read “everything.”

602. Judge Wohlfeil then substantively communicated that he had not read anything and needed counsel to explain the material points of their positions.

603. Weinstein argued the November Document is a fully integrated agreement because it looks like a fully integrated agreement.

604. Any reasonable attorney would have opposed Weinstein’s argument by raising at least one of the following arguments: the Mutual Assent Issue, the Sanctions Issue, the Berry Fraud, fraud (*i.e.*, *Riverisland*), or promissory estoppel.

605. Demian did not raise any of those arguments.

606. Demian’s sole argument at the hearing was focused on the constitutional

1 right of a property owner to exclude a third-party from his property.

2 607. Demian’s argument did not address the threshold issue of whether the
3 November Document granted Geraci a right to the Property in the first place.

4 608. Obviously, Judge Wohlfeil denied both ex parte applications. Both of Judge
5 Wohlfeil’s minute orders denying the ex parte applications state that he took into account
6 the papers filed in support of the ex parte applications.

7 609. Unfortunately, these were false statements and Judge Wohlfeil’s original sin;
8 understandably, he probably thought it was impossible for the material facts or law to be
9 materially misrepresented as he had before him four attorneys from four different legal
10 entities (the City, ALG, F&B and FTB) representing three different groups of parties
11 (Geraci, Cotton, and the City).

12 **N. After the December 7, 2017 hearing**

13 610. After the hearing, Hurtado was standing by the door when Demian walked
14 out of Judge Wohlfeil’s courtroom talking to City attorney Will.

15 611. Will stated to Demian that he “should have won” based on the briefs.

16 612. Hurtado then started berating Demian for failing to raise the Confirmation
17 Email for what he then believed to be simple gross incompetence. *See Cotton I*, ROA 104,
18 Ex. 8 (Declaration of Elizabeth Emerson executed on January 22, 2018 at ¶8 (“After the
19 hearing concluded, Mr. Hurtado started yelling at Mr. Demian right outside the
20 Courtroom about how it was possible that Mr. Demian could not raise with the Court ‘the
21 fucking email!’ Mr. Hurtado was incredibly agitated and loud and everyone in the hallway
22 was staring at Mr. Hurtado and Mr. Demian.”).

23 613. For several minutes, Demian was not able to provide any coherent response
24 to Hurtado’s demands for an explanation for his failure to raise the Confirmation Email.

25 614. After a few minutes, Demian stated that investing in litigation is risky.

26 615. His comment was not responsive to Hurtado’s demands for an explanation
27 for how he failed to raise the Confirmation Email, however, it laid the groundwork for
28 Demian’s argument that any of Hurtado’s financial losses would be his own fault for

1 financing Cotton’s litigation in the first place.

2 616. Hurtado became more upset realizing the implication of Demian’s only
3 coherent statement and Demian then mumbled he had another meeting while looking at
4 his feet and walked away.

5 617. Demian left the courthouse, called Cotton, and left him a voicemail quitting
6 as his counsel.

7 618. Cotton had not spoken with Hurtado when he called Demian back. Demian
8 admitted that he had a “bad day” and did not raise the Confirmation Email.

9 619. However, Demian told Cotton that he did not understand Hurtado’s anger
10 over what Demian alleged was a minor issue. According to Demian, they could have
11 addressed any failings as part of another motion down the line, but that he could no longer
12 continue as counsel for Cotton because Hurtado’s anger and beratement were unjustified.

13 **O. The January 25, 2018 Hearing – Cotton the “Conspiracy Nut”**

14 620. On January 17, 2018, Cotton submitted an ex parte application seeking leave
15 to (i) file a memorandum in excess of 15 pages in opposition to Geraci’s motion to compel
16 Cotton’s deposition and (ii) submit ex parte and under seal the SLFA.

17 621. On January 18, 2018, Weinstein opposed Cotton’s request to file the SLFA
18 under seal. Judge Wohlfeil granted Cotton leave to file a 30-page brief, but denied
19 Cotton’s request to file the SLFA ex parte and under seal.

20 622. After the January 18, 2018 hearing, Weinstein approached Cotton and
21 offered his “sincere” apologies for the “situation” that Cotton was in and stated that he
22 was working with Geraci to put together a settlement offer.

23 623. On January 22, 2018, Cotton filed a document in opposition to Geraci’s
24 motions to compel Cotton’s deposition (the “Verified Memorandum”).

25 624. The Verified Memorandum describes the January 18, 2018 settlement offer
26 by Weinstein:

27 Mr. Weinstein approached me to discuss access to the Property for soil
28 samples to continue the [Berry Application] and to discuss a possible
settlement of this action regarding the Property and the [Berry Application]. I

1 am not clear what he means, Mr. Weinstein has had the [Martin Purchase
 2 Agreement] since early in this litigation and it has been discussed. He knows
 3 I was forced to unconditionally sell my interest in the Property on April 15,
 4 2017, to pay off debts and continue financing this litigation... As [the Martin
 5 Purchase Agreement] makes clear, the condition precedent for closing is the
 6 successful resolution of this lawsuit. I am assuming that Mr. Weinstein wants
 7 me to engage in some kind of legal machinations by which I can void my
 8 agreement with [Martin] so I can transfer the Property to Geraci. Even if there
 9 were some legal mechanism that would allow that (and it does not appear to
 10 me that is should be allowed in any circumstance as it would violate the
 11 implied covenant of good faith and fair dealing in every contract), I would not
 12 do so. Even if lawful, it is not ethical and it would make me just as bad as
 13 Geraci - the very idea of which is nauseating.

12 625. The Verified Memorandum was procedurally supposed to be oppositions to
 13 Geraci’s motions to compel Cotton’s deposition. Instead, Cotton in pro se fashion used
 14 30 pages to argue his entire case, most of which was criticizing the actions of the attorneys
 15 at the December 7, 2017 hearing.

16 626. The Verified Memorandum will is a critical piece of evidence in this action
 17 because it reflects Cotton’s genuine, blue-collar attempt to achieve justice. And,
 18 consequently, the malevolence of all defendants who knowingly supported the *Cotton I*
 19 Conspiracy in furtherance of the Antitrust Conspiracy and depriving Flores of the District
 20 Four CUP.

21 627. In the Verified Memorandum Cotton questions his own sanity and is open to
 22 the possibility that he is “crazy” because Judge Wohlfeil had not already adjudicated
 23 *Cotton I* in his favor. It describes how he attacked his litigation investor, Hurtado, after
 24 he told Cotton that he was going to “cut his losses” and cease financing *Cotton I*. The
 25 supporting declarations and exhibits evidence the great emotional, mental and financial
 26 distress that has and is still being inflicted upon Cotton since March 2017.

27 628. In what comes across as pro se emotional gibberish, but is actually and
 28 tragically an accurate reflection of the American judicial system, the Verified
 Memorandum concludes with the following paragraph:

1
2 Lastly, I sincerely believe that this case also represents something larger than
3 myself and that if the damage and harm caused to me by Geraci and
4 perpetuated and augmented by the acts of counsel as described above,
5 including their manipulations of this Court, are allowed to pass, then it will
6 prove that the concern articulated by Justice Kennard in *Neary* in 1992 has
7 ceased to be “an already too common perception,” but has in fact become
8 reality and “the quality of justice a litigant can expect is proportional to the
9 financial means at the litigant's disposal.” *Neary v. Regents of University of*
10 *California* (1992) 3 Cal.4th 273,287 (emphasis added).

11 629. Cotton’s plight is proof of what is “reality” - it takes wealth to access justice
12 in America.

13 630. On January 25, 2018, Judge Wohlfeil began the hearing by telling Cotton
14 that he does not believe the allegations Cotton set forth in his Verified Memorandum
15 describing, *inter alia*, the unethical actions taken by attorney defendants Mrs. Austin,
16 Weinstein or Demian. Judge Wohlfeil stated that he personally knows the attorneys as
17 they have been practicing before him for years and he does not believe they are capable
18 of acting unethically (*i.e.*, Judge Wohlfeil’s Fixed-Opinion).

19 631. It is Plaintiffs’ belief that it was at this point that Judge Wohlfeil cemented
20 in his mind the idea that Cotton was a “conspiracy nut.” Thereafter, with the exception
21 of one discovery hearing, Plaintiffs believe and allege Judge Wohlfeil never read the
22 submissions by Cotton.

23 632. On January 25, 2018, after the hearing, Cotton sent an email to Weinstein
24 and Mrs. Austin, which materially states as follows:

25 Your prior relationship [with Judge Wohlfeil] somehow means I am wrong.
26 I’m sure you have read my opposition, so you know my thoughts, I am either
27 crazy or I have just never been able to get the judge to focus on the one email
28 from Geraci that I refer to as the Confirmation Email.

P. Jacob Austin; The Lis Pendens Motion & Riverisland

633. After Cotton fired FTB for Demian’s pretend gross incompetence, Cotton

1 entered into an agreement with Jacob to draft, file and then specially appear for Cotton
2 on a motion to expunge the F&B Lis Pendens. Further they agreed that Jacob would help
3 Cotton do research and assist him in his legal defense on a limited scope basis.

4 634. On March 12, 2018, prior to F&B fabricating the Disavowment Allegation,
5 Jacob emailed Weinstein and noted that his review of the evidence in *Cotton I* led him to
6 the belief that Mrs. Austin was conspiring with Geraci to misrepresent a receipt as a
7 contract and that she had made knowing false representations to the court.

8 635. Later that day, Weinstein responded:

9 Austin has made no misrepresentations to the court. No declaration signed
10 under penalty of perjury by Gina Austin has been submitted as evidence to the
11 Court in any proceeding in any of the two cases [*Cotton I* and *II*]. She has
12 appeared as counsel in [*Cotton II*] and argued with me in opposition to
13 Cotton’s first ex parte application for issuance of a writ of mandate heard by
14 Judge Sturgeon. That is it—legal argument. She will be a witness at trial [in
15 *Cotton I*] but so far has not submitted any written or other testimony. So I just
16 do not understand your position in that regard.^[56]

17 636. Mrs. Austin argued the November Document is a fully integrated contract;
18 she was attorney of record for Geraci and Berry and verified their verified answers to
19 Cotton’s *Cotton II* petition, which includes Geraci’s judicial admission he sent the
20 Confirmation Email.

21 637. Weinstein’s arguments defending Mrs. Austin are frivolous.

22 638. On April 4, 2018, Jacob filed a motion to expunge the F&B Lis Pendens
23 recorded on the Property (the “Lis Pendens Motion”). The Lis Pendens Motion cited
24 *Riverisland* and argued that Geraci could not use the parol evidence rule as a shield to bar
25 the parol evidence, including his own Confirmation Email, as proof of his own fraud.

26 639. The Lis Pendens Motion was a de facto motion for summary judgment. Had
27 Cotton prevailed, the F&B Lis Pendens would have been expunged, and the sale to Martin
28 would have closed.

⁵⁶ See *Cotton I*, ROA 166, Ex. D (complete emails between Jacob and Weinstein).

1 640. On April 9, 2018, Geraci executed a declaration in opposition to the Lis
2 Pendens Motion that raised the Disavowment Allegation for the first time. *Cotton I*, ROA
3 180.

4 641. On April 10, 2018, Judge Wohlfeil denied Cotton’s Lis Pendens Motion and
5 his arguments in his order are substantively identical to those raised by F&B’s opposition
6 and contradicted by the actual evidence he was presented with.

7 642. For example, his order states (i) the November Document “appears” to be an
8 agreement, (ii) “the documents [Cotton] offers in support of this Motion were created
9 after November 2, 2016”; and (iii) “the [Draft Agreements]... appear to be unsuccessful
10 attempts to negotiate changes to the original agreement.”⁵⁷

11 643. The following observations provide support for the Opposition Theory:

12 (i) That the November Document “appears” to be an agreement is the one
13 and only specious fact that Geraci has on his side because he drafted a receipt to look like
14 a purchase contract. However, Judge Wohlfeil’s order does not address *Riverisland* or the
15 Mutual Assent Issue.

16 (ii) Judge Wohlfeil stating the Request for Confirmation and the
17 Confirmation Email were “created after November 2, 2016” is factually incorrect. That
18 Judge Wohlfeil used this language from F&B’s opposition, contradicted by the
19 undisputed evidence, reflects he did not personally review the evidence and trusted F&B’s
20 description of the evidence.

21 (iii) The language in the Draft Agreements reflect they were original
22 agreements and not amendments. There is not a single sentence in the Draft Agreements
23 for Judge Wohlfeil to rely on that would provide factual support for the conclusion that
24 they even “appear” to be attempts at renegotiations as F&B argued in their brief.⁵⁸
25

26 ⁵⁷ *Geraci v. Cotton*, 37-2017-00010073-CU-BC-CTL, ROA 192 (emphasis added).

27 ⁵⁸ On November 8, 2018, Geraci/F&B responded via discovery in the *Cotton I* action
28 to the following Request for Admissions materially as set forth below:

1 Further, the Draft Agreements all contain highly custom and atypical confidentiality
2 clauses that allow the marketing of a dispensary at the Property, but prevent disclosure of
3 the parties who own the Property (Mrs. Austin was seeking to prevent Cotton from
4 disclosing Geraci’s ownership of Property in violation of applicable disclosure laws).

5 **Q. Jacob Austin; The California Court of Appeal Petition**

6 644. Cotton filed multiple appeals and petitions for writ of mandate from Judge
7 Wohlfeil’s rulings, some were completed and some he abandoned because he did not have
8 the financial resources to complete them.

9 645. On August 30, 2018, Jacob on behalf of Cotton filed a petition for a writ of
10 mandate in the Court of Appeal, Fourth Appellate District, Division One (the “COA
11 Petition”) arising from Judge Wohlfeil’s denial of (i) Cotton’s ex parte application for the
12 appointment of a receiver to manage the Berry Application (the “Receiver Motion”) and
13 (ii) Cotton’s motion for judgment on the pleadings (the “MJOP Motion”). (Electronically
14 filed on August 30, 2018 by Jose Rodriguez, Deputy Clerk, Case No. D074587.)

15 646. In support of the COA Petition was an Independent Psychiatric Assessment
16 (“IPA”) by Dr. Marcus Ploesser. Dr. Ploesser works as a psychiatrist for the Department
17 of Corrections for the State of California in addition running a private practice.

18 647. The IPA unambiguously reflects the intense mental and emotional distress
19

20 **REQUEST FOR ADMISSION NO. 25:** Admit that none of the DRAFT
21 AGREEMENTS contains any language therein describing or mentioning that
22 the DRAFT AGREEMENTS are amending the agreement YOU and
23 COTTON reached on November 2, 2016

24 **REQUEST FOR ADMISSION NO. 26:** Admit that none of the DRAFT
25 AGREEMENTS contains any language therein describing or mentioning that
26 the DRAFT AGREEMENTS are renegotiations of the agreement YOU and
27 COTTON reached on November 2, 2016.

28 Geraci/F&B responded to both RFAs identically as follows: “the DRAFT
AGREEMENTS, had any been signed, contained provisions that would have replaced
any prior agreements related to the subject matter.” Transparent prevarication.

1 that Cotton has been undergoing as a result of *Cotton I*.

2 648. The Receiver Motion alleged, and if true also proved, that Young had been
3 threatened by Magagna and that Bartell was a knowing conspirator of Geraci seeking to
4 deprive Cotton of the Property via a sham action.

5 649. The MJOP Motion alleged, and if true also proved, that the November
6 Document is not a fully integrated contract as alleged in the *Cotton I* complaint as a matter
7 of law.

8 650. The COA Petition argued, *inter alia*, that (i) Judge Wohlfeil had abused his
9 discretion by repeatedly finding the November Document was a fully integrated
10 agreement and went through a detailed analysis of the parol evidence rule; (ii) the
11 Disavowment Allegation is barred by the parol evidence rule; (iii) the Disavowment
12 Allegation is barred by the statute of frauds; and (iv) Geraci’s Disavowment Allegation
13 was fabricated in response to *Riverisland* and is contradicted by Geraci’s previous judicial
14 admissions.

15 651. Any reasonable attorney reviewing the COA Petition would know that
16 *Cotton I* was filed and maintained without probable cause.

17 652. Even without a legal background, the COA Petition explains the facts and
18 arguments simply and concisely such that any reasonable party who read it would
19 understand that *Cotton I* was filed as part of an unlawful scheme meant to deprive Cotton
20 of the Property and the District Four CUP.

21 653. The COA Petition named and was served on the following real parties in
22 interest: (i) Weinstein, (ii) Toothacre, (iii) F&B, (iv) Mrs. Austin (as Magagna’s attorney),
23 (v) Mrs. Austin (as Geraci’s attorney), (vi) ALG, (vii) Bartell, (viii) B&A, (ix)
24 Schweitzer, (x) Techne, (xi) Magagna, (xii) Phelps (as the City’s attorney), (xiii) the City
25 of San Diego, (xiv) Michelle Sokolowski (Deputy Director, City of San Diego DSD), (xv)
26 Tirandazi, and (xvi) Cherlyn Cac (Development Project Manager for DSD responsible
27 for the Berry Application and the Magagna Application).

28 654. On September 10, 2018 the COA Petition was denied by Presiding Justice

1 McConnell and Associate Justices Benke and Irion summarily without explanation.

2 **R. The DQ Motion**

3 655. On September 12, 2018, Cotton filed a motion to disqualify Judge Wohlfeil
4 from continuing to preside over *Cotton I* pursuant to “(i) California Code of Civil
5 Procedure (‘CCP’) § 170. 1 (a)(6)(A)(iii) on the grounds that a ‘person aware of the facts
6 might reasonably entertain a doubt that the judge would be able to be impartial,’ and (ii)
7 CCP § 170.1 (a)(6)(B) on the grounds that the facts demonstrate ‘[b]ias or prejudice
8 toward a lawyer in the proceeding.’” *Cotton I*, ROA 292 (the “DQ Motion”) at 2:2-5.

9 656. On January 25, 2018, Judge Wohlfeil made his Fixed-Opinion statement;
10 and on August 2, 2018, when asked by Flores about his Fixed-Opinion, Judge Wohlfeil
11 responded by saying that he “may” have made the Fixed-Opinion statement because he
12 has known Weinstein since “early on” in their careers when they both started their
13 practices (collectively, the “Extrajudicial Statements”).

14 657. The DQ Motion set forth, *inter alia*, the following facts and arguments: the
15 Extrajudicial Statements, the Mutual Assent Issue, the Illegality Issue, the Berry Fraud,
16 and violations of the SDMC and BPC § 26057.

17 658. Materially, as it supports the position that Judge Wohlfeil conspired with the
18 City Clerk for the ROA Conspiracy, Cotton argued:

19 [Geraci] is before Judge Wohlfeil as part of a demonstrably unlawful scheme
20 to acquire the CUP at issue here. [Geraci] is prohibited from owning a CUP
21 by numerous applicable City of San Diego and State of California laws and
22 regulations that disqualify individuals who (i) have been sanctioned for being
23 involved in illegal marijuana commercial businesses (ii) and for failing to
24 comply with the applicable disclosure obligations as part of the CUP
25 application process (meant to prevent disqualified individuals from acquiring
26 an interest in a CUP for marijuana-related operations)....

27 To date, Judge Wohlfeil has never addressed why he allows this action to
28 continue when even [Geraci] has admitted to the facts above that prove he and
his agents have violated numerous applicable disclosure laws and

1 regulations....

2
3 Mrs. Austin is [Geraci’s] attorney who is responsible for overseeing the
4 [Berry Application] for [Geraci]. Thus... a third-party could reasonably
5 entertain the notion that Judge Wohlfeil is avoiding this issue to “protect” Mrs.
6 Austin from the legal repercussions of violating numerous applicable
7 disclosure laws and regulations and aiding and abetting her client in a scheme
8 whose unlawful goal is to help her client acquire a prohibited interest in a
9 marijuana related CUP. **Alternatively, that Judge Wohlfeil believes Mrs.
Austin to be ethical to a degree that he cannot impartially review the
evidence he is presented with that proves otherwise....**

10
11 [Cotton’s counsel] respectfully notes that he is at a loss to understand Judge
12 Wohlfeil’s actions. He does not believe Judge Wohlfeil has intended to
13 specifically harm [Cotton], but, his actions are unjustified and are resulting in
14 severe prejudice to [Cotton]. **[Geraci] and his attorneys are intelligent
15 individuals who, as a result of Judge Wohlfeil’s actions, had and continue
16 to have the luxury of covering up their tracks and taking actions to
17 unjustly mitigate their liability to [Cotton].** That Judge Wohlfeil’s
18 bias/fixed-opinion leads him to believe the preceding sentence is unfounded
19 or some form of litigation-hyperbole is why [Cotton’s counsel] is compelled
20 to bring forth this [DQ Motion] in defense of his client’s rights.

19 659. Judge Wohlfeil denied the DQ Motion, but he did not deny he made the
20 Extrajudicial Statements (the “DQ Order”). *Cotton I*, ROA 297.

21 660. The DQ Order alleges that the basis of the Extrajudicial Statements was
22 formed during the course of the proceedings and, as such, cannot be the basis of
23 disqualification. In support of this position, Judge Wohlfeil quotes *Liteky v. United States*
24 for the following proposition: “[O]pinions formed by the judge on the basis of facts
25 introduced or events occurring during current or prior proceedings are not grounds for a
26 recusal motion unless they display a similar degree of favoritism or antagonism.” 510 U.S.
27 540, 555.

28 661. However, *Liteky* describes “extrajudicial” as “clearly [meaning] a source

1 outside the judicial proceeding at hand-which would include as extrajudicial sources
2 earlier judicial proceedings conducted by the same judge (as are at issue here).” *Id.* at 545.

3 662. Thus, although *Liteky* is applicable and controlling, Judge Wohlfeil’s
4 reliance is inapposite and mandated his recusal.

5 663. Judge Wohlfeil also denied the DQ Motion incorrectly stating that he was
6 not in chambers when the DQ Motion was served.

7 664. Flores personally called Judge Wohlfeil’s chambers and requested to speak
8 with Judge Wohlfeil’s law clerk. Flores spoke with a law clerk named Calvin, who stated
9 he was a temporary law clerk for Judge Wohlfeil, and who confirmed that Judge Wohlfeil
10 was in chambers.

11 665. Attached hereto as Exhibit 4 is a true and correct copy of Flores’ call log
12 showing he called Judge Wohlfeil’s chambers on September 12, 2018 at 3:48 p.m. for
13 approximately 5 minutes. The length of the call is because when Flores spoke with law
14 clerk Calvin, Flores requested that Calvin please go confirm Judge Wohlfeil was in fact
15 present and in chambers as required by code, which he did placing Flores on hold while
16 he confirmed same.

17 666. The DQ Motion is time stamped 4:22 p.m. and was personally served on law
18 clerk Calvin by Jacob.

19 667. The supporting evidence for the DQ Motion included the COA Petition.

20 668. The majority of the factual allegations and legal arguments in this Complaint
21 have been copied and pasted from the DQ Motion and its supporting documents.

22 **S. The Deposition of Tirandazi**

23 669. On March 14, 2019, the deposition of Tirandazi was taken at Flores’ office.

24 670. Tirandazi was represented by Toothacre of F&B.

25 671. Flores saw and heard Toothacre and Tirandazi discussing how Tirandazi
26 should respond to questions.

27 672. Subsequent to her deposition, F&B denied representing Tirandazi.

28 673. Any reasonable party reviewing Tirandazi’s deposition transcript would

1 conclude that F&B was acting as Tirandazi’s counsel at her deposition.

2 674. Further, and more reflective of the truth than inherently partial testimony,
3 Tirandazi was deposed in her capacity as a DSD employee for the City and she was not
4 represented by a City attorney.

5 675. If F&B is to be believed, Tirandazi decided to attend a deposition without
6 any legal representation; in a suit in which she had been accused of taking illegal actions
7 in furtherance of a criminal conspiracy that included F&B.

8 676. At her deposition, Tirandazi was questioned why she failed to cancel the
9 Berry Application at Cotton’s request. The following material exchange took place
10 regarding this topic:

11 Q: When they -- when Mr. Cotton was wanting to cancel Ms. Berry's CUP on
12 the property, was it canceled?

13 A: No.

14 Q: Did the City continue working on it?

15 A: Yes.

16

17 Q: [In Form DS-3032] [u]nder [section] No. 4, the permit holder name, this is
18 the property owner person or entity that is granted authority by the property
19 owner to be responsible for scheduling inspections... and **who has the
right to cancel the approval, in addition to the property owner.** And it
20 lists a municipal code [SDMC § 113.0103]. Is this the correct reading of
21 that [section] No. 4, permit holder name?

22 A: **That is correct.**

23 Q: You had just stated that only the applicant can withdraw or cancel an
24 application. This general application, [section] No. 4, contradicts that. It
25 says that the property owner -- my reading is that the property owner can
26 also cancel withdraw. Is that true?

27 A: **I can't speak to that. That's not how we have interpreted that.** It's
28 whoever that has been given the right to process the application on behalf
of the property owner.

677. Tirandazi’s contradicting herself, first confirming the clear language that a
property owner can cancel a CUP application, then feigning ignorance in understanding
the plain language she had just confirmed.

678. Tirandazi’s testimony, particularly in light of the Engerbretsen Mandate,

1 reflects her criminal complicity and is an act in furtherance of the Antitrust Conspiracy.

2 679. And, again, no matter the labels that the attorneys for the Enterprise will use
3 in opposition, any person that reviews her deposition transcript will come to the
4 conclusion that Toothacre was at her deposition as her counsel and defended her. In other
5 words, even if it cannot be proven she was the recipient of the ~\$270,000 that is
6 unaccounted for in Geraci’s “political contributions” (described below), she has been paid
7 by the Enterprise with Toothacre’s professional services for her unlawful actions.

8 680. The City’s failure to send an attorney to defend Tirandazi was a purposeful
9 act meant to help the City deny knowledge of actions that any attorney would know or
10 should know meant that *Cotton I* was filed as a sham (e.g., the Illegality Issue).

11 **T. Jacob becomes Cotton’s attorney of record.**

12 681. Jacob became Cotton’s attorney-of-record sua sponte on April 27, 2018 at a
13 hearing at which Judge Wohlfeil had signaled his intent to grant Geraci’s motion for
14 terminating sanctions. *See Cotton I*, ROA 222 (order denying terminating sanctions); *id.*,
15 ROA 224 (Jacob’s substitution of attorney form). But-for Jacob stating to Judge Wohlfeil
16 that he would immediately become Cotton’s attorney-of-record and would ensure that
17 Cotton abided by his discovery obligations (which up to that point Cotton had refused to
18 take part in under the belief that he did not have to because the case was a sham), the
19 instant complaint exposing the *Cotton I* Conspiracy would never have been filed.

20 682. Pursuant to BPC § 6068(h), “[i]t is the duty of an attorney... [n]ever to reject,
21 for any consideration personal to himself or herself, the cause of the defenseless or the
22 oppressed.”

23 683. Jacob knew (i) that he did not have the experience (the trial of *Cotton I* was
24 his first trial), (ii) that he would need to set aside most of his time to fully represent Cotton
25 and he would not get any more compensation on a monthly basis (he had already agreed
26 to finance his services for specific motions and special appearances), and (iii) that he
27 lacked the support staff (he is a solo-practitioner) to fight back against F&B/ALG and
28 their unethical practices; which by then indisputably included fabricating evidence (e.g.,

1 the Disavowment Allegation). However, Jacob still undertook the responsibility to
2 represent Cotton rather than let Geraci and F&B manipulate Judge Wohlfeil into entering
3 a terminating sanction and thereby defile the judiciary by making it the instrument by
4 which Geraci unlawfully acquired the Property.

5 **U. F&B’s Videotaped Deposition of Cotton**

6 684. On May 14, 2018, Weinstein and Toothacre deposed Cotton for over eight
7 hours. Cotton was questioned in great detail regarding, *inter alia*, his telephonic, text
8 and email communications between him and Geraci immediately before, the day of, and
9 after November 2, 2016. However, at no point during that deposition did Weinstein or
10 Toothacre ask Cotton any questions regarding the purported phone call that took place on
11 November 3, 2016.

12 685. Any reasonable attorney representing Geraci would have asked Cotton about
13 the alleged November 3, 2016 phone call in which Cotton allegedly agreed with Geraci
14 that he was not entitled to a 10% equity position.

15 **V. Cotton’s Motion for Summary Judgement or, Alternatively,
16 Summary Adjudication (the “MSA”).**

17 686. On March 8, 2019, Cotton filed a motion for summary judgment or,
18 alternatively, summary adjudication (the “MSA”). The MSA is one of the strongest
19 pieces of evidence supporting Plaintiffs’ Opposition Theory.

20 687. In the MSA, Cotton:

21 Move[d] for summary adjudication on two issues and the four causes of action
22 in Geraci’s Complaint. The first issue is a finding that the November Document
23 is not a fully integrated agreement for the sale of the Property. The second, that
24 Geraci’s newly raised affirmative defense – the Disavowment Allegation – is
25 barred as a matter of law [].Lastly, as to Geraci’s Complaint, it fails as each of
26 his four claims have an element requiring Geraci prove the November
27 Document is a valid fully integrated agreement for the sale of the Property.

28 688. F&B opposed judicial notice of Geraci’s verified answer to the *Cotton II*
petition which contained his judicial admission he sent the Confirmation Email, but not
the Disavowment Allegation. F&B argued:

1 Geraci admitted that he sent the [Confirmation Email]; however, that is
2 merely evidence that he sent the email and, on its face, is not evidence of any
3 factual matter beyond the fact that he sent the email. ***The absence of an***
4 ***allegation in a pleading does not prove or disprove the existence of any fact.***
5 Having no evidentiary value, the matter is irrelevant to Cotton's Motion for
6 Summary Judgment/Summary Adjudication and judicial notice should be
7 denied.

8 689. In regard to the Disavowment Allegation, F&B took the inherently
9 contradictory position that substantively it was not an affirmative defense, but that Geraci
10 could still testify about the Disavowment Allegation for its “evidentiary value” as if it
11 were an affirmative defense:

12 Cotton asserts that the "Disavowment Allegation" is barred as a matter of law
13 because an affirmative defense is waived if not pleaded. Cotton's mistake here
14 is that the "Disavowment Allegation" is not an affirmative defense. The
15 "Disavowment Allegation" is Attorney Austin's characterization and argument
16 regarding the facts. There is no allegation in the pleadings or in the evidence
17 which references a "Disavowment Allegation." Geraci has not raised this as
18 an affirmative defense and does not intend to do so. However, this in no way
19 strips Geraci's testimony regarding the events and circumstances surrounding
20 the November [Document] and the November 2 email exchange and
21 November 3 telephone call with Cotton of its ***evidentiary value*** or in some
22 other way precludes its admission into evidence.

23 690. Weinstein’s argument is without factual or legal justification.

24 691. The MSA is one of the strongest pieces of evidence in support of the
25 Opposition Theory because Weinstein argued in opposition for the first and last time that
26 the November Document is not a fully integrated purchase contract!

27 692. This admission contradicts everything Geraci argued before and after the
28 MSA and contradicts the judgment entered by Judge Wohlfeil in *Cotton I*.

693. On May 23, 2019, Judge Wohlfeil held a hearing on the MSA and, for the
first time, addressed the November Document and held it is “ambiguous.”

694. Judge Wohlfeil Minute Order ignores the fact that Cotton moved for partial
adjudication on six issues and states that Cotton’s “motion for summary judgment against

1 [Geraci] is DENIED.”

2 695. At the hearing, in response to questions by specially appearing attorney
3 Plaskett – whose sole mandate was to have Judge Wohlfeil address the legal import of the
4 Confirmation Email to the November Document - Judge Wohlfeil responded: “... ***the***
5 ***Court cannot and will not adjudicate this case as a matter of law...***”

6 696. But that is exactly what Judge Wohlfeil’s duty was. *Founding Members v.*
7 *Newport Beach* (2003) 109 Cal. App. 4th 944, 954 (“Whether a contract is integrated is a
8 question of law when the evidence of integration is not in dispute.”). Neither the
9 November Document, the Request for Confirmation nor the Confirmation Email, have
10 ever been disputed.

11 697. Furthermore, it was his duty, and Cotton’s right, that he address that issue as
12 a crucial threshold issue in the litigation. *Brandwein v. Butler*, 218 Cal. App. 4th 1485,
13 1510 (Cal. Ct. App. 2013) (“The crucial threshold inquiry, therefore, and one for the court
14 to decide, is whether the parties’ intended their written agreement to be fully integrated.”).

15 **W.The Deposition of Hurtado**

16 698. On April 17, 2019, the deposition of Hurtado was taken by attorney
17 Toothacre. Hurtado was represented by specially appearing attorney JoEllen Plaskett.
18 Also in attendance were Cotton and Jacob who asserted various privileges during the
19 deposition.

20 699. It was a very hostile deposition that started with a verbal altercation between
21 Hurtado and Toothacre.

22 700. Cotton’s website has a section titled “Canna-Greed. Stay Awake. Stay
23 Aware. My Story” where he has kept track of, *inter alia*, the litigation against him, posted
24 every pleading and motion and evidence he has regarding the case, and described the
25 extra-judicial attempts to threaten him into settling the litigation.⁵⁹

26 701. Cotton’s website first describes Hurtado helping Cotton after Cotton
27

28 ⁵⁹ See <https://151farmers.org/2017/10/23/canna-greed-stay-awake-stay-aware-my-story/> (March 30, 2020).

1 terminated the agreement with Geraci. Toothacre did not know that Hurtado had already
2 been negotiating with Cotton and on behalf of Cotton with third parties for months before
3 November 2, 2016 for the Property to develop the Business.

4 702. A review of the non-privileged/confidential parts of the transcript makes it
5 apparent that there were various factual issues that F&B thought were discrepancies or
6 were facts that were in their favor. However, Hurtado contextualized them and explained
7 their relation to other facts, bringing across that F&B had exponentially misunderstood
8 the quality and quantity of evidence that Cotton would be able to present.

9 703. For example, Hurtado engaged with numerous parties who were willing to
10 partner on the Property for at or near the Asking Price.

11 704. Also, at the deposition of Cotton, Cotton testified that he had not received
12 any payments towards the purchase price of the Property from Martin as required by the
13 Martin Purchase Agreement. However, as the SLFA memorialized, Martin decided to
14 pull back from the purchase because of, *inter alia*, Geraci’s criminal background and the
15 *Cotton I* litigation. Hurtado and Jane paid the \$50,000 non-refundable deposit due to
16 Cotton when the Martin Purchase Agreement was amended. Subject to Cotton prevailing
17 in *Cotton I*, Martin would reimburse Hurtado and Jane and the sale to Martin would close
18 as originally contemplated. However, if Cotton was not successful, Cotton was obligated
19 to pay that \$50,000 amount back to Hurtado and Jane and was thus a loan secured by an
20 interest in the Property.

21 705. In other words, there *was* consideration and the Martin Purchase Agreement
22 is a valid agreement that Geraci and F&B/Toothacre unlawfully interfered in.

23 706. Toothacre visibly started shaking in the deposition when it became clear that
24 the consequential damages were in the millions, there were numerous third party
25 witnesses that could testify as to the legitimacy of the valuation, and Hurtado directly told
26 him that he intended to report him to the California State Bar and do everything he could
27 to see him criminally prosecuted for his actions once the truth was exposed.

28 707. At a certain point, Toothacre ceased his aggressive and offensive posturing

1 and started making repeated self-denigrating comments to the effect that he was only an
2 “employee” of F&B, that Weinstein is “the boss,” that he’s “only doing what I am told,”
3 and that he was not responsible for the filing and maintaining of *Cotton I*.

4 708. The consequences of Hurtado’s deposition included: (i) Toothacre seeking
5 to absolve himself of guilt for maintaining a sham action by arguing the Nuremberg
6 defense, an admission of guilt (“Toothacre’s Nuremberg Admission”); (ii) F&B had a
7 paralegal, Prendergrast, falsify a proof of service on a fabricated discovery request to
8 breach the attorney-client privilege between Hurtado and Cotton; (iii) F&B made Cotton
9 a settlement offer to continue the litigation to exert continued financial and emotional
10 distress on Hurtado, Jane and Cotton’s supporters; (iv) Geraci sent someone, probably
11 Miller, to threaten Hurtado and Jane at Jane’s residence; (v) prior to trial, F&B moved to
12 bar Cotton from admitting Toothacre’s Nuremberg Admission as evidence; and (vi) the
13 revelation that Martinez had reconciled with Geraci and his agents and disclosed
14 confidential information regarding Hurtado.

15 i. *Toothacre’s Nuremberg Admission*

16 709. The deposition of Hurtado concluded with the following exchange between
17 Toothacre and Hurtado:

18 Toothacre: Thank you, Hurtado. I’m very sorry for [confidential and privileged
19 matter].

20 Hurtado: If that was true, Toothacre, you would cease your prosecution of this
21 action.

22 Toothacre: **It’s not my case.**

23 Hurtado: **You put your name on it.**

24 Toothacre: **I didn’t.**

25 Hurtado: Your names on the letterhead. You literally sound like the Nazi guy: “I’m
26 just following orders.”

27 710. Flores spoke with attorney Plaskett, who is familiar with Toothacre in a
28 professional capacity from irregular interactions over the course of twenty years.

711. Plaskett confirmed that Toothacre started physically shaking in response to
Hurtado’s testimony and that in her experience she believed him to be a seasoned litigator

1 that would not react like that absent very extreme circumstances. Furthermore, that
2 Toothacre stressed the position that he cannot be held liable for maintaining *Cotton I*
3 without probable cause despite being an attorney-of-record since the inception of the case
4 and having subpoenaed, and being in the process of deposing, Hurtado.

5 ii. *Prendergrast: False Certification of Proof of Service*

6 712. During the deposition of Hurtado various privileges were asserted by
7 Hurtado, Plaskett, Cotton and Jacob regarding communications between Hurtado,
8 themselves and third parties.

9 713. On April 25, 2019, eight days after the deposition of Hurtado, F&B emailed
10 Jacob falsely alleging that a set of special written interrogatories had been served over 7
11 months before on September 24, 2018 (the “F&B Interrogatories”).

12 714. Pursuant to CCP § 2030.260(a), a party has 30 days to respond to written
13 interrogatories.

14 715. “A party that fails to serve a timely response to the discovery request waives
15 ‘any objection’ to the request, ‘including one based on privilege’ or the protection of
16 attorney work product.” *Sinaiko Hlth v. Pacific Hlth*, 148 Cal.App.4th 390, 403-4 (Cal.
17 Ct. App. 2007) (citing CCP §§ 2030.290(a), 2031.300(a)).

18 716. F&B had their paralegal Rachel M. Prendergrast falsely certify that she sent
19 the F&B Interrogatories on September 24, 2018 in order to allow F&B to then allege that
20 Cotton’s failure to timely serve responses waived all privileges in regard to his
21 communications with Hurtado and Cotton (the “Prendergrast Fraud”).

22 717. In email and phone conversations with Jacob, Weinstein responded with
23 feigned righteous indignation at the idea that F&B would undertake the Prendergrast
24 Fraud, identical to his feigned outrage when he is accused of fabricating the Disavowment
25 Allegation, but admitted that he has no actual evidence the F&B Interrogatories were sent
26 other than evidence that is capable of being fabricated (*e.g.*, Prendergrast’s proof of
27 service).

28 718. Weinstein also alleged it was a “coincidence” that F&B decided to follow-

1 up on the F&B Interrogatories for the first time over 7 months after they were allegedly
2 sent and 8 days after the deposition of Hurtado at which various privileges were asserted
3 between Cotton and Hurtado (and which would have been waived by operation of law
4 had Jacob not made an issue of the Prendergrast Fraud).

5 iii. *F&B's Settlement Offer*

6 719. On May 23, 2019, Judge Wohlfeil stated at the MSA hearing for the first
7 time that he found the November Document to be “ambiguous.”

8 720. On May 28, 2019, Toothacre demanded additional discovery production
9 from Hurtado threatening that if not produced he will file an ex parte application “seeking
10 the imposition of sanctions against [Hurtado].”

11 721. On May 29, 2019, Hurtado emailed Toothacre a letter requesting that
12 Toothacre provide in writing the probable cause for maintaining *Cotton I* justifying the
13 discovery demands he was making of Hurtado in light of Judge Wohlfeil’s finding, for
14 the first time in *Cotton I*, that the November Document is “ambiguous” at the MSA
15 hearing. Therefore, among other things, the Confirmation Email would not be barred and
16 would be admitted to interpret the November Document which leads to the Mutual Assent
17 Issue. Hurtado requested that Toothacre respond by May 30, 2019 at 5:00 p.m.

18 722. On May 30, 2019, at 5:24 p.m., Hurtado emailed Toothacre:

19 Toothacre, it is after 5:00 PM, please reply and let me know if you want me
20 to produce the discovery. It will take time to make corrections to my
21 deposition and look for additional documents that are responsive to your
22 requests, but are needless for the reasons set forth in my letter.

23 You cannot threaten me with sanctions and then just ignore me. If you believe
24 you have probable cause to maintain the action and seek discovery from me,
25 say so.

26 723. On May 31, 2019, Toothacre responded with one sentence: “Yes, please
27 provide the discovery as soon as you are able.”

28 724. Hurtado replied to Toothacre’s email as follows (emphasis added):

You have failed to respond to my request for your probable cause to maintain
this action in light of Judge Wohlfeil’s ruling finding the [November

Document is] ambiguous, and you still demand that I provide discovery. I see Weinstein is included so I assume you have set up your favorite defense, that you are just following orders, like a Nazi war criminal. **You're going to burn in hell one day for what you are putting my family through Toothacre.**

725. There are highly confidential and privileged issues that are material to the interaction between Hurtado and Toothacre that were disclosed during Hurtado's deposition.

726. Any reasonable person upon understanding what Toothacre knew to be true, when he demanded additional discovery from Hurtado on May 31, 2019, will know Toothacre to be an unscrupulous attorney that sought to purposefully inflict severe mental, financial and emotional harm with his unfounded demand for discovery (for which he could not and did not articulate probable cause to demand).

727. Seven days later, on June 7, 2019, Toothacre emailed Jacob a settlement offer as follows:

In an effort to resolve the state court matter without incurring the significant additional expense of trial, I propose the parties agree as follows:

- (a) dismiss the entire state court action without prejudice (thus, the claims in Geraci's operative complaint and in Cotton's operative cross-complaint will be dismissed without prejudice); and (b) the parties each waive costs.

This would end the state court case and avoid the trial before Judge Wohlfeil (and the time and expense associated with it). The settlement would not affect the federal court action. Upon dismissal your client could choose to proceed as he sees fit in the federal court action (e.g., seek to lift the stay of that action and proceed with his federal court lawsuit before Judge Curriel [sic]) with none of the parties giving up their rights to assert claims or defenses in that federal court action.

Please let me know as soon as practicable whether or not your client is willing to settle the state court action on these terms and conditions. As you know, fees and costs are rapidly escalating as we prepare for trial.

728. The settlement offer by Toothacre is not privileged for at least three reasons.

729. First, it evidences that F&B offered the settlement agreement to continue to

1 exert emotional and financial distress on Cotton’s supporters, including Hurtado (and not
2 to prove Geraci’s liability in the breach of contract action with Cotton). Second, *Cotton*
3 *I* is a sham. Third, it is an act taken in furtherance of the Antitrust Conspiracy.

4 730. Plaintiffs do not believe that any attorney representing Geraci, F&B or any
5 other defendant will take the risk of presenting the *Cotton I* judgment to this federal court
6 and argue that it is not the product of a fraud on the court or judicial bias.

7 731. Any attorneys that do are ratifying the Enterprise’s Antitrust Conspiracy,
8 will become jointly liable with the Enterprise and, by their own affirmative action, be
9 seeking to perpetuate a fraud on this federal court.

10 iv. *F&B’s MIL Re: Toothacre’s Nuremberg Admission*

11 732. On or about June 21, 2019, F&B, realizing that Toothacre’s Nuremberg
12 Admission is a tacit admission that F&B filed and maintained *Cotton I* without probable
13 cause, moved to prevent Toothacre’s Nuremberg Admission at trial.

14 733. F&B argued that Cotton raising the Toothacre Nuremberg Admission was
15 an “ad hominem” attack that was “inflammatory and prejudicial” and cited in support,
16 *inter alia*, *Martinez v. State of California Dept. of Trans.* (2018) 238 Cal.App.4th 559,
17 567 for the following statement: “Insinuation that a party has a Nazi decal was particularly
18 egregious attorney misconduct.”

19 734. F&B’s reliance on *Martinez* is frivolous for at least two reasons.

20 735. First, the *Martinez* case states that the Nazi reference *during trial* was
21 egregious because it was “a gratuitous, out-of-the-blue attempt to link Martinez to the
22 Nazis.” *Id.* at 564. Hurtado’s statement was made at the end of a long, denigrating and
23 unlawful deposition by Toothacre. Toothacre, after realizing that Hurtado’s responses
24 meant that Cotton would be owed millions in consequential damages if he ever got a judge
25 to take his case seriously, started making comments seeking to absolve himself of liability
26 despite being an attorney-of-record for Geraci since the inception of *Cotton I*. Thus,
27 Hurtado’s comment was neither “gratuitous” nor “out-of-the-blue” and F&B’s use of
28 *Martinez* is reflective of their unethical litigation tactics. *Martinez* admonished counsel

1 for the unjustified reference to Nazis. Yet, F&B did exactly what the *Martinez* court
2 admonished, unjustifiably used the Nazi reference to seek to exclude material and relevant
3 testimony that evidences F&B conspired with Geraci to file a sham lawsuit.

4 736. Second, the description of Toothacre’s statements as a “Nazi” admission of
5 guilt is factually and legally warranted; it is not a purposeful inflammatory ad hominem
6 attack as F&B argued.⁶⁰ During the Nuremberg trials after World War II, several Nazis
7 claimed they were not guilty of the tribunal’s charges because they had been acting at the
8 directive of their superiors. Since then, that argument has become popularly known as the
9 “Nuremberg defense,” in which the accused states they were “only following orders.”
10 Subsequent to the Nuremberg trials, it became a recognized valid legal defense pursuant
11 to the Rome Statute of the International Criminal Court (“ICC”) (an international treaty
12 to which the United States was a signatory). An individual is able to present a legal
13 defense and absolve themselves of liability in the ICC by arguing, exactly as Toothacre
14 repeatedly and offensively did at the deposition of Hurtado, that they were “just following
15 orders.” The Nuremberg defense is not a valid defense under California law – Toothacre’s
16 instinctive attempt to distance himself from F&B and put the blame on Weinstein only
17 serves to emphasize his knowing guilt.

18 737. Judge Wohlfeil did not allow Cotton or Hurtado to testify as to Toothacre’s
19 Nuremberg Admission at trial; thus, this evidence was not taken into account by the jury
20 in reaching its judgment in *Cotton I*.

21 v. *Martinez’ Disclosure of Hurtado and Dr. Ploesser*

22 738. During the deposition of Hurtado, Toothacre asked Hurtado if he had
23 personally met with Dr. Ploesser.

24 739. That Hurtado had personally seen Dr. Ploesser was a fact known to six and
25 only six individuals: (i) Dr. Ploesser, (ii) Hurtado, (iii) Jacob, (iv) Cotton, (v) Martinez,
26 and (vi) Martinez’s boyfriend.

27 ⁶⁰ See *Florida v. Bostick*, 501 U.S. 429, 443 (1991) (Justice Thurgood Marshall in a
28 U.S. Supreme Court opinion criticizing police tactics quoting Florida “is not Hitler's
Berlin, nor Stalin's Moscow, nor is it white supremacist South Africa.”).

1 740. The only way F&B could have known that Hurtado had personally seen Dr.
2 Ploesser was if Martinez informed Geraci or one of his agents.

3 741. Martinez’s disclosure of Hurtado seeing Dr. Ploesser is an unethical, even if
4 not illegal, disclosure of a private and confidential relationship that has nothing to do with
5 the determination of whether the November Document was executed with the intent it be
6 a receipt or a purchase contract on November 2, 2016.

7 III. THE COTTON I TRIAL AND COTTON III-V

8 A. **The Cotton I Trial**

9 742. All of the parties that testified on Geraci’s behalf at trial were (i) Geraci, (ii)
10 Berry, (iii) Mrs. Austin, (iv) Bartell, (v) Schweitzer, and (vi) Tirandazi.

11 743. All these parties directly testified or provided supporting testimony for, *inter*
12 *alia*, the conclusion that Geraci is not barred by law from owning a CUP pursuant to the
13 Berry Application due to the Illegality Issue.

14 744. Tirandazi and Schweitzer falsely testified they were not aware or could not
15 remember the existence of the Child Care Centers.

16 745. City attorney Phelps attended the trial.

17 746. City attorney Phelps prepared Tirandazi for testifying.

18 747. City attorney Phelps knows that Tirandazi supported the approval of the
19 Magagna Application even though the Child Care Centers are within 1,000 feet of 6220
20 Federal in violation of the SDMC and state law.

21 748. Geraci cried on the stand when he testified the communications from Cotton
22 to him, reflecting they were joint venturers, were actually Cotton “extorting” him and that
23 Cotton had “betrayed” their friendship.

24 749. At this point in Geraci’s testimony, Weinstein looked at the jury and asked
25 Geraci if he needed a “moment to compose” himself as he allegedly dealt with the intense
26 emotion of recalling Cotton’s betrayal of their friendship.

27 750. Once the facts alleged herein are vetted, and the truth is established, Geraci’s
28 crying proves that not only will Geraci use violence against families in furtherance of his
illegal goals, but that he is also willing to undertake public self-degrading acts to avoid

1 being held legally and financially liable.

2 751. Any future statements of alleged regret or contrition by Weinstein will be
3 false as reflected by this scripted act he put on for Judge Wohlfeil and the jury.

4 752. Geraci testified the value of the Property, inclusive of a cannabis CUP, is
5 \$800,000.

6 753. Judge Wohlfeil prohibited Cotton and Hurtado from providing contradicting
7 testimony to prove the value of the Property with a cannabis CUP is exponentially greater
8 than \$800,000.

9 754. Judge Wohlfeil prohibited Cotton and Hurtado from testifying as to
10 Toothacre’s Nuremberg Admission.

11 755. Mrs. Austin falsely testified that, *inter alia*, (i) she did not speak with
12 Hurtado regarding the November Document on March 6, 2017, (ii) that she did not
13 confirm to Hurtado the November Document is not a purchase contract, (iii) that Geraci
14 is not barred from owning a cannabis CUP pursuant to the Berry Application
15 notwithstanding the Illegality Issue.

16 756. Judge Wohlfeil prohibited Jacob from calling Williams to testify and
17 impeach Mrs. Austin’s testimony that she did not speak with Hurtado on March 6, 2017
18 about the November Document.

19 757. Judge Wohlfeil prohibited Cotton and Hurtado from testifying about
20 Magagna’s threats against Young preventing her from testifying at that trial (described
21 below).

22 758. Judge Wohlfeil’s refusal to address the Mutual Assent Issue and the Illegality
23 Issue means that he represented to the jury that (i) the November Document is a fully
24 integrated purchase contract as pled in Geraci’s complaint and (ii) that it is not illegal for
25 Geraci to own a cannabis CUP pursuant to the Berry Application notwithstanding (a) the
26 Illegality Issue, or (b) the lack of a writing memorializing the alleged agency between
27 Geraci and Berry in violation of the statute of frauds and the equal dignities rule.

28 **B. The Motion for New Trial**

1 759. After the trial of *Cotton I*, Cotton specially hired counsel from out of state to
 2 file a motion for a new trial (the “MNT”). Cotton’s specially appearing counsel filed the
 3 MNT based primarily on three grounds: (i) even assuming the November Document were
 4 a contract, it is illegal and cannot be enforced because of the Sanctions Issue and the Berry
 5 Fraud; (ii) the jury in *Cotton I* applied a subjective standard to Geraci’s conduct and an
 6 objective standard to Cotton’s conduct (semantics attempting a different approach at
 7 having Judge Wohlfeil address the Mutual Assent Issue); and (iii) Geraci, F&B and Mrs.
 8 Austin used the attorney-client privilege as a shield during discovery and a sword at trial,
 9 which prohibited Cotton from having a fair and impartial trial.

10 760. The F&B opposition to the MNT is without any factual or legal justification.

11 761. At the MNT hearing, Judge Wohlfeil denied the MNT apparently believing
 12 F&B’s opposition argument that Cotton had waived the defense of illegality because
 13 Cotton had allegedly not previously raised the Sanctions Issue or the Berry Fraud.

14 762. The following exchange took place between Judge Wohlfeil and Cotton’s
 15 counsel regarding the defense of illegality, as well as Toothacre’s closing comment:

16 Cotton’s Counsel: ... I’ll get to the illegality of the contract issue first. The
 17 fact is it cuts to the heart of the motion that we filed and the biggest
 18 issue. [...]

19 Judge Wohlfeil: So you are saying the contract is unenforceable?
 20

21 Cotton’s Counsel: Yes.

22 Judge Wohlfeil: As a matter of law?
 23

24 Cotton’s Counsel: Yes. [The] CUP was a condition precedent to the contract.

25 Judge Wohlfeil: [...] from the Court's perspective as a matter of law up to
 26 this point, you have been asking me to adjudicate the contract in your
 27 favor. Now you're asking the Court to adjudicate the contract as a matter
 28 of law against the other side. Counsel, shouldn't this have been raised
 at some earlier point in time?

1 Cotton’s Counsel: ... the illegality argument has been raised before and raised
2 in the context of reference to state law and Section [26057] of the
3 California business and professions code...

4 Judge Wohlfeil: **Even if you are correct, hasn’t that train come and gone?**
5 **The judgment has been entered. You are raising this for the first**
6 **time?**

7 Cotton’s Counsel: Your Honor, illegality of the contract can be raised any
8 time whether in the beginning or during the case or on appeal. [...]

9 Judge Wohlfeil: But at some point, doesn't your side waive the right to assert
10 this argument? At some point? [...] Anything else, counsel?

11 Cotton’s Counsel: The other thing I’d like to point out, section [11.0401] of
12 [the] San Diego Municipal Code specifically states that every applicant
13 [must furnish] true and complete information. And that’s obviously not
14 what happened here. I think it’s undisputed and the reasoning for the
15 failure to disclose, there is no exception to either the San Diego
16 Municipal [C]ode or [state law] [f]or failure to disclose.

17 Judge Wohlfeil: Thank you, very much.

18 Cotton’s Counsel: Thank you, Your Honor.

19 Judge Wohlfeil: I am not inclined to change the Court’s view. Did either one
20 of you need to be heard?

21 Toothacre: Just to make a record. One comment with respect to the illegality
22 argument. Obviously, we agree with the comments of the Court but the
23 failure to make these disclosures in the CUP, it doesn’t make the
24 contract between Geraci and [C]otton unenforceable. It's one thing to
25 say that the contract or the form wasn’t properly filled out, that doesn't
26 make the contract unenforceable. That’s all we have for the record.

27 763. Judge Wohlfeil’s comments are contradictory. If Cotton’s counsel was
28 “correct” that the illegality had previously been raised, then how can that “train [have]
come and gone” for failure to raise?

764. Judge Wohlfeil did not address the other issues raised in the MNT and

1 summarily denied the MNT without providing any reasoning.

2 765. Judge Wohlfeil’s position that Cotton did not raise the Sanctions Issue or the
3 Berry Fraud prior to the MNT is factually incorrect - it was repeatedly alleged in *Cotton*
4 *I* including in Cotton’s pro se cross-complaint, in the COA Petition, as one of the main
5 foci seeking Judge Wohlfeil’s disqualification in the DQ Motion,⁶¹ in opposition to a
6 motion in limine by F&B seeking to exclude the Geraci Judgements,⁶² it was the basis of
7 a motion by Cotton seeking leave to amend his answer to include an affirmative defense
8 of antitrust laws based on the Enterprise’s Antitrust Conspiracy,⁶³ and the subject of a
9 motion for directed verdict by Cotton at trial.⁶⁴

10 766. It is impossible to reconcile Judge Wohlfeil’s statements from the bench at
11 the MNT hearing with the record of *Cotton I*; especially as the record of the Illegality
12 Issue being raised prior to the MNT in *Cotton I* was described in Cotton’s Reply to the
13 MNT.

14 767. Judge Wohlfeil’s statements at the MNT hearing could lead a reasonable
15 person to believe that he did not read Cotton’s MNT and the Reply, and only read F&B’s
16

17 _____
18 ⁶¹ *Cotton I*, ROA 292 at 33:11-13 (“Judge Wohlfeil has ratified [Geraci’s] attempt to
19 pursue an interest in the Property and by extension the CUP even though [Geraci] cannot
20 legally own an interest in a Marijuana Outlet under state law.”).

21 ⁶² *Cotton I*, ROA 581 (Cotton’s opposition to F&B’s motion in limine seeking to bar
22 the Geraci Judgments arguing they are not material and irrelevant) at 2:12-15 (“[I]t is
23 Cotton’s contention that because of the various disclosure laws with not only the City for
24 the CUP but also with the State for final approval Mr. Geraci knew he would never be
25 able to meet this condition without utilizing a proxy to do so. Therefore, in this context
26 the fact that Mr. Geraci was sanctioned is relevant. Additionally, it is material that Mr.
27 Geraci never disclosed these facts to Cotton and it is his contention that this was part of
28 his scheme to deprive him of his property.”).

⁶³ *Cotton I*, ROA 596 (July 1, 2019 Minute Order) (“Defense counsel make a motion
to amend answer to add Anti-Trust Enterprise defense for conspiracy, Court hears oral
argument. The motion to amend answer is denied.”).

⁶⁴ *Cotton I*, ROA 615 at 5:21-22 (“Despite Ms. Austin’s Testimony Mr. Geraci’s Prior
Sanctions, and His Intentional Failure to Disclose his Interest, Bar Him From Ownership
of [a] Marijuana [Outlet].”).

1 opposition to the MNT (*i.e.*, the Opposition Theory).

2 768. Contrary to Judge Wohlfeil’s ruling, as set forth in greater detail in the Reply
3 to the MNT, as a matter of law the defense of illegality cannot be waived. *City Lincoln-*
4 *Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) (“A party to an illegal contract
5 cannot ratify it, cannot be estopped from relying on the illegality, and cannot waive his
6 right to urge that defense.”); *see Erhart v. BOFI Holding, Inc.*, No. 15-cv-02287-BAS-
7 NLS, at *12 (S.D. Cal. Feb. 14, 2017) (“No principle of law is better settled than that a
8 party to an illegal contract cannot come into a court of law and ask to have his illegal
9 objects carried out[.]”) (quoting *Lee On v. Long*, 37 Cal. 2d 499, 502 (1951)).

10 **C. Cotton III⁶⁵**

11 769. On February 9, 2018, Cotton, proceeding pro se, filed a federal complaint
12 against Geraci, Berry, Mrs. Austin, ALG, Weinstein, F&B, and the City alleging eighteen
13 causes of action under federal and state law as well as declaratory and injunctive relief.
14 Cotton also concurrently filed a motion for leave to proceed in forma pauperis (“IFP”),
15 an ex parte application for a TRO (the “*Cotton III TRO*”), and a motion for appointment
16 of counsel.

17 770. The basis of Cotton’s factual allegations in the *Cotton III* complaint are
18 mostly a combination of Cotton’s factual allegations in his original pro se cross-complaint
19 in *Cotton I* and the *Cotton II* petition.

20 771. Material additional allegations included that the City is prejudiced against
21 him because of his “political activism for the legalization of medical cannabis.” *Cotton*
22 *III*, ECF No. 1 at ¶10. Also, that Wohlfeil is biased against him and “has not seemed
23 interested in reading any of [his] prior submissions [*i.e.*, the Opposition Theory].” *Id.* at
24 ¶ 296.

25 772. On February 28, 2018, Judge Curiel stayed *Cotton III* pursuant to the
26 *Colorado River* doctrine, granted Cotton’s IFP motion and denied his motion for
27

28 ⁶⁵ *Cotton v. Geraci* (S.D. Cal. Feb. 28, 2018) Case No.: 18cv325-GPC(MDD)
 (“*Cotton V*”).

1 appointment of counsel as moot.

2 773. On December 23, 2019, after Judge Wohlfeil entered the judgment in *Cotton*
3 *I*, Cotton filed an ex-parte application seeking Judge Curiel to find, *inter alia*, that Judge
4 Wohlfeil is biased. In support of that application, Cotton provided Judge Curiel the MNT,
5 the opposition and reply, as well as the transcript from the MNT hearing and the DQ
6 Motion.

7 774. On January 9, 2020 Judge Curiel recused himself without explanation.

8 775. Cotton believes that Judge Curiel recused himself because he realized that
9 Cotton is not a “conspiracy nut” and had provided him all the facts that mandated federal
10 intervention and staying *Cotton I* as a result of judicial bias in February 2018.

11 **D. Cotton IV⁶⁶**

12 776. On December 6, 2018, Cotton and Hurtado, through counsel, Jacob, filed a
13 federal complaint alleging various causes of action against Geraci, Berry, Weinstein,
14 Toothacre, F&B, Mrs. Austin, ALG, Miller, and a legal malpractice claim against FTB,
15 Demian and Witt.

16 777. On March 8, 2019, Cotton filed the MSA in *Cotton I*.

17 778. On March 26, 2019, attorney James D. Crosby as attorney-of-record for
18 Geraci and Berry filed their answer to Cotton’s *Cotton IV* complaint.

19 779. Flores was initially dumbfounded when he first read the answer Crosby filed
20 because the MSA was pending before Judge Wohlfeil seeking to have the court
21 specifically address the Affirmative Defenses Issue.

22 780. The Answer filed by Crosby is a “sham defense” and perpetuated the fraud
23 on the court committed in state court and carried it over to federal court.

24 781. Crosby, by filing the *Cotton IV* answers on behalf of Geraci/Berry, became
25 a conspirator/accessory-after-the fact to a criminal scheme that includes making
26 misrepresentations to the state and federal courts and acts and threats of violence against
27

28 ⁶⁶ *Cotton v. Geraci* (S.D. Cal. May. 14, 2019) Case No.: 18cv2751-GPC(MDD)
 (“*Cotton VI*”).

1 innocent third-parties and their families.

2 782. Crosby’s actions only became understandable when Flores began his
3 investigations into Crosby and discovered that (i) Crosby is a solo-practitioner who has
4 an office in the same office building as F&B and (ii) was previously represented by F&B
5 in a legal matter that resulted in a judgement in his favor in excess of \$500,000.⁶⁷

6 783. F&B’s use of Crosby as a proxy to commit a fraud on the federal court is the
7 Enterprise’s defining modus operandi.

8 784. Flores was going to represent Hurtado in *Cotton IV*, but an issue arose that
9 prevent Flores from representing Hurtado and the parties amended their agreement.

10 785. On May 14, 2019, Judge Curiel dismissed the *Cotton IV* complaint with
11 prejudice.

12 **E. Cotton V**

13 786. This is the fifth lawsuit to be filed arising in part from the Enterprise’s actions
14 seeking to deprive Flores, or his predecessor in interest, of the District Four CUP.

15 787. Some of the actions and evidence that the Antitrust Conspiracy exists and
16 includes corrupt City employees took place at the trial of *Cotton I*.

17 i. *The \$300,000 Public Corruption Issue*

18 788. The *Cotton I* complaint filed on March 21, 2017 alleges Geraci “estimates
19 he has incurred expenses to date of more than \$300,000 on the CUP process[.]”

20 789. Prior to the dispute between Geraci and Cotton, Geraci told Cotton that he
21 makes political contributions to numerous City politicians and that he had already started
22 “greasing the wheels” to have the alleged Zoning Issue resolved and a cannabis CUP
23 application approved at the Property.

24 790. However, according to the evidence submitted by Geraci at trial in *Cotton I*,
25 prior to the filing of the *Cotton I* complaint, Geraci had only spent approximately \$32,000
26 and there is no mention or evidence of any “political contributions” by Geraci.

27 791. In July 2019 in *Cotton I*, Geraci was awarded a total of approximately

28 ⁶⁷ See *Crosby v. Neuman*, San Diego Superior Court, Case No. 37-2010-00057331-
CU-CO-NC, ROA 140.

1 \$260,000 in damages in connection with the Berry Application, with the majority of those
2 costs being incurred months and years after the filing of the *Cotton I* complaint.

3 792. The approximate \$270,000 missing from Geraci’s evidence of damages prior
4 to March 2017 are the “political contributions” that were unlawful bribes to City
5 employees that Geraci cannot admit to.

6 793. Geraci is the owner-manager of T&F Center and has been an Enrolled Agent
7 with the IRS for over 40 years; Geraci knows accounting.

8 794. Geraci will not be able to provide a reasonable explanation for why he
9 alleged expenses of \$300,000 or more in March 2017 but could only prove approximately
10 \$32,000 in July 2019.

11 795. The chart below breaks down the expenses incurred by Geraci according to
12 the evidence he submitted at trial in *Cotton I* (Geraci Trial Exhibit No. 137) as follows:
13 (i) before the filing of *Cotton I*, (ii) between the filing of *Cotton I* and the approval of the
14 Magagna Application, and (iii) after the approval of the Magagna Application.

<u>Vendor Name</u>	<u>Up to 03/21/17</u>	<u>03/21/17 - 10/18/18</u>	<u>Post 10/18/18</u>
Austin Legal	2,592.00	4,230.11	0.00
Bartell and Associates	9,011.05	58,595.25	6,136.05
City Treasurer	0.00	6,000.00	7,500.00
Lundstrom Engineering	4,400.00	0.00	0.00
McElfresh Law	0.00	0.00	1,245.00
Mituza Traffic Consulting	0.00	4,200.00	0.00
Sam Wade Landscape Architects	1,500.00	4,447.91	2,301.16
SCST	0.00	2,265.50	0.00
Snipes-Dye	0.00	12,147.50	0.00
TECHNE	14,800.00	35,876.24	35,955.51
Title Pro	0.00	300.00	0.00
Totals	32,303.05	128,062.51	53,137.72
Percentage of Total Expenses	12.4%	49.2%	20.4%

1 796. Geraci’s own judicial admissions evidence there is public corruption (the
2 “Public Corruption Issue”).

3 ii. *McElfresh & FTB*

4 797. In mid-November 2019, Flores discovered McElfresh’s role after the trial of
5 *Cotton I* when he was reviewing F&B’s trial exhibits and working through the
6 discrepancies described in the Public Corruption Issue.

7 798. Learning of McElfresh’s role, connecting FTB to Geraci and thereafter her
8 relationships with Mrs. Austin and Razuki, was Flores’ first “smoking gun” moment in
9 his professional career. It is the gateway fact in understanding that Cotton is not a
10 “conspiracy nut,” but actually a victim of a conspiracy by multiple attorneys from
11 multiple law firms that included his own attorneys at FTB.

12 799. Among other issues, it reconciled the most perplexing issue for Flores at that
13 point in time in his investigations. On one hand, F&B via discovery turned over
14 incriminating emails clearly proving that Berry, Gina, Bartell, and Schweitzer knowingly
15 aided Geraci in unlawfully applying for a cannabis CUP without disclosing his interest in
16 the Berry Application. This would appear to reflect F&B acts with integrity. But, on the
17 other hand, F&B clearly conspired with Geraci to commit a fraud upon the court by filing
18 a sham action and fabricating the Disavowment Allegation in response to *Riverisland*.

19 800. The reason F&B turned over the damning evidence to FTB was because FTB
20 is a conspirator and was conniving at the defeat of Cotton’s case.

21 iii. *The Magagna Appeal by McElfresh / Schweitzer*

22 801. On or about December 6, 2018, McElfresh represented Geraci at the appeal
23 hearing of the approval of the Magagna Application (the “Magagna Appeal”).

24 802. At trial in *Cotton I*, McElfresh’s invoices for representing Geraci at the
25 Magagna Appeal were included in the supporting documentation computing Geraci’s
26 damages.

27 803. Prior to the December 6, 2018 hearing, McElfresh and Schweitzer consulted
28 for the preparation of the Magagna Appeal and discussed the Child Care Centers. *See e.g.*
Cotton I, Trial Exhibit No. 147 at 147-059:¶¶7-8 (Techne Invoice 685 stating they “verify

1 and research if there is or has been a cuddles day care or any church near the zone of the
2 project.”

3 804. On or about November 15, 2019, Flores brought to Hurtado’s attention that
4 McElfresh represented Geraci at the Magagna Appeal.

5 805. Hurtado knew that McElfresh knew that Geraci could not legally own a
6 cannabis CUP because of the Sanctions Issue and that she knew the import of the
7 Confirmation Email to the November Document.

8 806. On November 25, 2019, after Hurtado had reviewed his emails with
9 McElfresh and FTB, he called Deputy District Attorney Del Portillo and left him a
10 voicemail letting him know that he had evidence that McElfresh had breached the DPA
11 during the 12-month term. On December 3, 2019, Hurtado called Del Portillo again.

12 807. On December 6, 2019, Hurtado was considering contacting the Department
13 of Justice believing that Del Portillo was purposefully seeking to avoid prosecuting
14 McElfresh due to corruption.

15 808. However, Flores has interacted with Del Portillo throughout the course of
16 his career, he has had multiple clients in cases prosecuted by Del Portillo. Flores knows
17 Del Portillo to be an ethical and straightforward attorney.

18 809. On December 6, 2019, Flores called and spoke with Del Portillo with
19 Hurtado on the line and let him know about McElfresh breaching the DPA by representing
20 Geraci in the Magagna Appeal.

21 810. Succinctly explaining the Enterprise and the Antitrust Conspiracy in a
22 credible manner was not something that could be done in that single phone call. Therefore,
23 the parties agreed that as soon as Flores finished the instant complaint, he would provide
24 it to Del Portillo. Further, he would provide documentation and evidence proving the
25 allegations as to McElfresh.

26 811. McElfresh breached the DPA by (i) violating her fiduciary duty to Cotton,
27 Martin and Hurtado by representing Geraci at the Magagna Appeal because she knew that
28 (ii) *Cotton I* was a sham action because of the Mutual Assent Issue; (iii) Geraci cannot

1 own a cannabis CUP via the Berry Application because of the Illegality Issue; and (iv)
2 the Magagna Application should have been denied because of the Child Care Issue, which
3 she purposefully failed to raise in the Magagna Appeal.

4 812. McElfresh’s DPA is contractual in nature and must be addressed by contract
5 law standards.⁶⁸ The DPA provides that if McElfresh “fails to meet any of the terms and
6 conditions, prosecution of all charges will resume.”

7 813. The fact that evidence of McElfresh’s breach of the DPA during the period
8 of deferment was not discovered until after the period of deferment provides no basis for
9 failing to hold her accountable for the breach and the crimes she committed that
10 constituted the breach.⁶⁹

11 814. If Del Portillo is prevented by his superiors from prosecuting McElfresh for
12 her breach of the DPA - thereby inherently refusing to investigate Tirandazi’s and Phelps
13 unlawful acts - then such is evidence that someone with material influence in the City is
14 seeking to cover-up the Antitrust Conspiracy and the City’s knowing or negligent role in
15 it.

16 iv. *The Damages Issue: Judge Wohlfeil did not conspire with the*
17 *Enterprise.*

18 815. At trial, Judge Wohlfeil found that absent Cotton’s interference, the Berry
19 Application would have been approved and a dispensary opened at the Property (the
20 “Damages Issue”). The Damages Issue is the strongest reason for why Plaintiffs do not
21 believe that Judge Wohlfeil, while favorably biased in favor of Mrs.

22 _____
23 ⁶⁸ “[D]eferred prosecution agreements are similar to plea agreements in that both are
24 considered ‘contractual in nature and must be measured by contract law standards.’
25 *United States v. Sutton*, 794 F.2d 1415, 1423 (9th Cir. 1986).” *United States v. Goldfarb*
(N.D. Cal. Sep. 5, 2012) No. C 11-00099 WHA, at *3.

26 ⁶⁹ *Cf. State v. Kaczmariski* (Wis. Ct. App. 2009) 320 Wis. 2d 811, 822 (“We conclude
27 that the deferred prosecution agreement unambiguously provides that, in the event that
28 [defendant] breaches the agreement, the district attorney may resume prosecuting
[defendant] only during the deferral period. The agreement plainly states that, if
[defendant] violates the agreement, ‘the District Attorney may, *during the period of*
deferred prosecution . . . prosecute you for this offense.’ (Emphasis added.)”).

1 Austin/Weinstein/Demian, is not actually corrupt and conspiring with them.

2 816. The Catch-22 that F&B found itself in the *Cotton I* trial is that it needed to
3 convince Judge Wohlfeil and the jury that Geraci believed the November Document was
4 a purchase contract, the Dream Team was working to have the Berry Application
5 approved (reflecting their belief that it was lawful for Geraci to own a CUP despite the
6 Illegality Issue), and but-for Cotton’s interference the Berry Application would have been
7 approved.

8 817. However, they did not want there to be an actual finding by Judge Wohlfeil
9 that the Berry Application would actually have been approved.

10 818. This is because F&B needed to plan for the possibility that *Cotton I* would
11 later be exposed as a sham on appeal or via collateral attack. If that were the case then
12 Geraci/F&B would be liable to Cotton for the lost profits he would have been owed but-
13 for their fraud and deceit.

14 819. Put another way: if Cotton was responsible for the delay in the processing of
15 the Berry Application that allegedly allowed the Magagna Application to catch up and
16 get approved before the Berry Application, then any reasonable attorney representing
17 Geraci would seek consequential damages, including lost profits from a dispensary at the
18 Property that would have been realized but-for Cotton’s alleged unlawful interference.
19 But F&B did not.

20 820. The following exchange between Weinstein and Judge Wohlfeil at the trial
21 of *Cotton I* regarding the Damages Issue would be amusing if not for all the violence that
22 Weinstein has directed, encouraged and ratified with his superior legal acumen:

23 MR. WEINSTEIN: First of all [...] there’s no evidence that the CUP would
24 ever have been obtained.

25 THE COURT: Well, on that subject, there is evidence from Mr. Bartell--

26 MR. WEINSTEIN: Right.

27 THE COURT: They can rely upon your witnesses’ testimony as well.

28 MR. WEINSTEIN: So --

1 THE COURT: Mr. Bartell made an awful good witness and all but said that
2 instead of being 19 for 20, he would have been 20 for 20 but for Mr. Cotton's
3 interference. [...]

4 MR. WEINSTEIN: So –

5 THE COURT: In fact, I think you may have elicited it.

6 MR. WEINSTEIN: I did.

7 THE COURT: Counsel, you may have. I'm not picking on you, but that's what
8 I seem to recall to be the up -- so there's evidence, I think, **that it's more
9 probable than not that a CUP had been issued and the dispensary opened.**

10 MR. WEINSTEIN: Had Mr. Cotton not interfered.

11 THE COURT: Right.

12 821. Weinstein did too good a job convincing Judge Wohlfeil and the jury that
13 the Dream Team was working on the Berry Application in good faith.

14 822. F&B's failure to seek consequential damages and Judge Wohlfeil's finding
15 that the Berry Application would have been approved at the Property, but-for Cotton's
16 alleged unlawful interference, evidences F&B's bad faith and that Judge Wohlfeil is not
17 conspiring with F&B.

18 **PART VI – MR. AND MRS. SHERLOCK / HARCOURT'S AFFIRMATIVE DEFENSES**

19 823. On December 21, 2015, 18 days after Biker's death, a Certificate of
20 Cancellation for Leading Edge Real Estate, LLC ("LERE") was filed with the state that
21 was executed by Harcourt and allegedly Biker (the "Signature Date Issue").

22 824. As described above, Martinez stated that Geraci had an ownership interest
23 in the Balboa CUP.

24 825. This led Plaintiff Flores to investigate the Balboa CUP and discover after
25 review of the litigation referenced herein that, though Biker applied for and was granted
26 the Balboa CUP, somehow upon his death on December 3, 2015 it ended up being owned
27 by Harcourt and thereafter Razuki and also allegedly Malan.

28 826. Flores, while investigating the connection between Geraci, Razuki and
Malan discovered that that Balboa CUP was originally granted to Biker as an owner of
LERE to which Harcourt was a partner.

827. Flores then discovered that LERE has been dissolved. Flores was able to

1 obtain a copy of the Certificate of Cancellation filed with the Secretary of State and
2 discovered the Signature Date Issue.

3 828. Shortly thereafter, Flores discovered a Certificate of Cancellation for a
4 company named Full Circle Finance Company, LLC, filed December 8, 2015, or five
5 days after Biker’s death allegedly signed by Harcourt and Biker.

6 829. In or around January 2020, Flores met with Mrs. Sherlock and showed her
7 the form filed with California Secretary of State dissolving LERE that was purportedly
8 executed by Biker and pointed out the Signature Date Issue.

9 830. Mrs. Sherlock said the signature on the form was not Biker’s.

10 831. Further, that she did not understand why, if her husband had an interest in
11 the Balboa Permit, would it not have been transferred to her or why she was not notified.

12 832. Mrs. Sherlock was unaware that Biker was ever actually granted the Balboa
13 CUP and believed that it was lost due to litigation or some other process.

14 833. Because it was possible the Biker *could* have, in theory, signed the
15 documents before his death, Flores engaged handwriting expert Manny Gonzalez of
16 Alliance Forensic Sciences, LLC, who has had over 40 years of forensic document
17 experience. Mr. Gonzalez concluded that the signature of Biker on the Dissolution Form
18 of LERE was more likely than not a forgery (and could be determined to be conclusively
19 a forgery if he had access to the original).

20 834. On February 21, 2020, Flores first contacted Harcourt’s attorney, Allan
21 Claybon of Messner Reeves LLP, and thereafter they spoke and emailed several times.

22 835. Flores argued it could appear that Harcourt forged Bikers’ signature to
23 acquire his interest in the cannabis permit and thereby defrauded Mrs. Sherlock and her
24 family as Biker’s heirs. Flores provided Claybon a copy of the handwriting experts’
25 report.

26 836. Flores has had a single, simple question for Harcourt: “how did Bikers’
27 interest in the cannabis permit become yours?”

28 837. On their first call, Claybon was professional and agreed that the

1 “circumstances” were “suspicious” and that he “appreciated Flores” reaching out to him
2 to discuss before initiating litigation.

3 838. However, when they spoke next, Claybon contradicted himself and
4 described the facts provided by Flores as being baseless speculation.

5 839. As of the filing of this Complaint, Harcourt has not provided an answer to
6 this simple question. However, without admitting guilt, Claybon communicated
7 Harcourt’s Affirmative Defenses in anticipation of this litigation.

8 840. Claybon has directly accused Flores of being “jaded” for not believing
9 Harcourt’s self-serving allegation that he saw Biker execute the form dissolving the LLC
10 *the day before* he passed away. An alleged action that had never been disclosed to Mrs.
11 Sherlock until Flores contacted Claybon in good faith presuming Harcourt would be able
12 to provide a reasonable explanation.

13 841. Claybon argues that the allegations by Harcourt and the third-party who
14 allegedly saw Biker execute the form the day before he passed away conclusively
15 establishes the truth of the matter and negates the evidentiary value of the professional
16 handwriting expert and Mrs. Sherlock’s familiarity with Biker’s signature. Therefore,
17 Mrs. Sherlock has no probable cause and is acting in bad faith in bringing forth this suit.

18 842. Further, as the email correspondence between Flores and Claybon reflects,
19 Claybon in an articulate, sophisticated, and professional manner consistently pretends to
20 not understand the simplicity of the request made of Harcourt seeking an explanation of
21 how he acquired Biker’s interest in the permit. It is exasperating and transparent
22 prevarication. Attached hereto as Exhibit 5 are the last two emails sent by Flores to
23 Claybon regarding this issue.

24 843. In March 2020, Flores was provided documents by the Office of the County
25 Counsel that revealed that (i) the property owner at which the Ramona CUP operates and
26 Renny Bowden, who were college roommates, were the owners of the Operating
27 Certificate of the Ramona Permit at least as late as 2018; and (ii) the individual listed as
28 the owner of the Ramona Permit currently with the BCC is Eulenthias Duane Alexander,

1 who is an agent of Geraci that was sent to threaten Cotton to settle *Cotton I*.

2 844. Prior to receiving these documents Flores spoke with Senior Deputy County
3 Counsel Timothy M. White, who provided the name and contact email for the permit
4 holder. The name provided was Renny Bowden, however, the email provided was for
5 Bradford@EquityCapital.us.

6 845. Cotton and Mrs. Sherlock have repeatedly visited and contacted the office of
7 San Diego Mayor Kevin Faulconer regarding the District Four CUP, the Balboa CUP and
8 the Ramona CUP.

9 846. As of the date of this filing, neither Cotton nor Mrs. Sherlock have ever
10 received a response from Mayor Faulconer’s office.

11 **PART VII – VIOLENCE IN FURTHERANCE OF THE ANTITRUST CONSPIRACY**

12 847. At a certain point after *Cotton I* was filed, it became apparent that Cotton is
13 an indomitable individual – he had not and would not succumb to the mental, emotional
14 or financial pressure of defending against a sham action by a wealthy individual, filed by
15 unethical attorneys who engage in illegal litigation tactics, and which was being presided
16 over by a biased judge.

17 **F. The Armed Robbery**

18 848. Jeff Hagler is a veteran – a Navy Officer - who served honorably in the U.S.
19 armed services. He has a degree in electrical engineering and was an employee of
20 Cotton’s company Inda-Gro at the Property where he designed and built induction and
21 LED-based lighting systems.

22 849. On June 10, 2017, Hagler was caught in Geraci’s line-of-fire when Geraci
23 directed three armed and masked assailants to rob and threaten individuals at the Property.
24 The assailants held Hagler at gun point, threatened him with a pistol in his face, tied his
25 hands and feet behind him, forced him to the floor and robbed him of his personal
26 possessions (the “Armed Robbery”). Hagler quit work at Inda-Gro the next day.

27 850. Cotton arrived during the Armed Robbery, saw Hagler tied up on the floor,
28 had a gun pointed to his face, and he ran to contact the authorities.

1 851. When the assailants ran from the Property and got into a car that was waiting
2 for them, Cotton chased them in his own vehicle.

3 852. Cotton chased them at high speeds down Federal Blvd. while he called 911
4 and provided the police the license plate number.

5 853. Cotton was ordered by the 911 dispatcher to cease pursuing the assailants at
6 high speed because of the potential risk to the public.

7 854. Approximately one hour later a man was apprehended by the Chula Vista
8 Police, who matched the description of the getaway driver, returning a rental car that
9 matched the license plate provided by Cotton on the 911 call (the “Getaway Driver”).

10 855. Cotton’s former business, Fleet Systems, was an authorized dealer for
11 Kohler brand generators. Many of the local news company vans have had Kohler brand
12 generators installed at the Property by Fleet Systems.

13 856. When the report of the Armed Robbery went to the local news outlets a driver
14 of one of the news vans recognized the Property address, as he had taken his news van to
15 be serviced there and reached out to Cotton. The driver was able to send him an
16 unpublished picture of the police detaining the Getaway Driver.⁷⁰

17 857. The picture was unpublished at the request of the SDPHD because there was
18 an “active” investigation.

19 858. SDPD Detective Eric Pollom was assigned to the Armed Robbery.

20 859. On or about June 10, 2017, Detective Pollom told Cotton that the Getaway
21 Driver had not been arrested as part of a strategy to start an investigation for the “big fish”
22 – the individual responsible for directing the Armed Robbery.

23 860. Flores, as part of his due diligence in preparing for this suit, reviewed reports
24
25

26 _____
27 ⁷⁰ Attached hereto as Exhibit 6 is a true and correct copy of the photo of the photo of
28 the individual being detained by police officers after the Armed Robbery returning the
rented vehicle with the matching license plate number provided by Cotton on the 911.
The picture was taken at the Enterprise Rent-A-Car in Chula Vista, California

1 by the SDPD⁷¹ and the CVPD regarding the Armed Robbery. The reports provided by
2 the SDPD and the CVPD (which are heavily redacted) are notable because they do not
3 note or describe the existence of the Getaway Driver, much less that he had been detained
4 by the police.

5 861. On September 13, 2018, Flores and Cotton met with Detective Eric Pollom
6 and Sergeant Chris Cameron to inquire about the status of the investigation into Armed
7 Robbery and the Getaway Driver.

8 862. When Cotton asked about the status of the Getaway Driver, Detective
9 Pollom denied that the police had taken the Getaway Driver into custody.

10 863. Flores and Cotton then showed Detective Pollom and Sergeant Cameron the
11 unpublished image of police officers detaining the Getaway Driver at the car rental
12 agency.

13 864. Detective Pollom was stunned by the picture and asked Cotton how he had
14 acquired that picture?

15 865. Cotton replied that it came from a local news company and that it was sent
16 to him on the same day of the Armed Robbery.

17 866. Detective Pollom then appeared to remember that the Getaway Driver had
18 been detained but stated he could not provide details about the investigation.

19 867. Sergeant Cameron at that point said “just so you guys know, I was not the
20 Sergeant went this happened, this did not happen on my watch.”

21 868. On January 9, 2019, in response to emails from Cotton, Detective Pollom
22 emailed Cotton “[t]he case is currently inactive. There have been no new leads since we
23 spoke.”

24 869. Cotton believes, and informed Detective Pollom, the Getaway Driver is
25 someone he had seen at Geraci’s T&F Center during one of his meetings with Geraci.

26 870. The Getaway Driver was recognized by individuals in the cannabis
27

28 ⁷¹ The reports by the SDPD were created by Officers Gibson and Shields (Incident No. 17060016585).

1 community as someone who operates illegal marijuana dispensaries in Chula Vista, but
2 would not provide his name for fear of violent retaliation once they realized their
3 disclosure of his name would be used to name him in this suit.

4 871. Nothing in Flores’ experience as a criminal defense attorney can provide a
5 reasonable explanation for why Detective Pollom, knowing the identity of the Getaway
6 Driver, who in turn knew the identity of the assailants, would allegedly put the Armed
7 Robbery case into inactive status because there have been no “new leads.”

8 **G. Eulenthius Duane Alexander and Logan Stellmacher**

9 872. Sometime in the summer of 2016, Cotton met Stellmacher when he visited
10 the Property and took a tour of Cotton’s 151 Farms.

11 873. Stellmacher represented he worked with Alexander, a high net worth
12 individual with a licensed medical cannabis cultivation facility in the Santa Ysabel Indian
13 Reservation.

14 874. Unbeknownst to Cotton, Alexander and Stellmacher were familiar with
15 Geraci, Bartell and Martinez from other transactions.

16 875. In early 2018, Alexander sponsored and hosted an art gala at San Diego State
17 University organized by Martinez and which Geraci and Stellmacher attended.

18 876. On or about February 3, 2018, Alexander and Stellmacher and an associate
19 went to the Property purportedly to discuss business opportunities.

20 877. However, when they arrived at the Property, they only wanted to discuss the
21 Property and the *Cotton I* litigation. They initially offered to beat Martin’s purchase price
22 of \$2,500,000 and guaranteed Cotton a long-term job.

23 878. Cotton declined, noting he was contractually unable to settle with Geraci in
24 a manner that left Geraci the Property.

25 879. Thereafter, Alexander and Stellmacher engaged in direct and indirect threats
26 seeking to coerce Cotton to settle with Geraci.

27 880. Alexander made it a point to highlight that Geraci was a politically
28 influential individual with the City and that the Berry Application was already a “done

1 deal” for Geraci.

2 881. Cotton again informed him that he did not want to settle and could not settle
3 since he was contractually unable to do so pursuant to the Martin Purchase Agreement.

4 882. Stellmacher then directly threatened Cotton, stating that Geraci’s influence
5 with the City extended to having the ability to have the San Diego Police Department raid
6 the Property and have Cotton arrested.

7 883. Cotton responded that he was compliant with all cannabis laws and there was
8 nothing for him to be arrested for.

9 884. Stellmacher, in turn, responded that if Geraci wanted the San Diego Police
10 “would find something.”

11 885. Cotton became angry, told them he would not settle with Geraci under any
12 circumstances and asked them to leave the Property immediately.

13 886. On or about February 8, 2018, Cotton emailed Weinstein, Mrs. Austin and
14 Phelps to inform them that he would be filing a federal lawsuit that, *inter alia*, describes
15 the threats by Alexander and Stellmacher.

16 887. Approximately 30 minutes after that email was sent, Stellmacher called
17 Cotton to emphatically tell him that he was no longer associating with Alexander or
18 Geraci. Stellmacher stated that he was out on bail or some kind of probation for drug
19 charges in Texas and could not be implicated in any criminal activity.

20 888. At that point in time, on Geraci’s side, no individuals other than Weinstein
21 and Mrs. Austin knew that Cotton was getting ready to file a federal complaint describing
22 Stellmacher as an agent of Geraci in a criminal conspiracy.

23 889. Either Weinstein or Mrs. Austin immediately informed Geraci, or one of his
24 agents, thus prompting Stellmacher’s call to Cotton.

25 890. On February 9, 2018, Cotton filed his pro se federal complaint, *Cotton III*,
26 in which he describes Alexander and Stellmacher’s threats. However, at that point in
27 time, Cotton did not know Alexander or Stellmacher’s last names, so they were referred
28 to as Duane and Logan, respectively, in *Cotton III*.

1 891. On February 12, 2018, Stellmacher repeatedly called Cotton and Cotton
2 emailed City attorney Phelps about his concern for his safety.

3 892. City attorney Phelps responded: “Mr. Cotton: If you are scared or concerned
4 for your safety I recommend you contact the appropriate authorities.”

5 893. On or about February 17, 2018, Stellmacher showed up uninvited to the
6 Property and threatened Cotton for describing his actions in *Cotton III*. However, he also
7 demanded that he be kept out of the litigation from then on.

8 894. Cotton confronted Stellmacher with what he alleged in *Cotton III*, his belief
9 that he and Alexander were working as agents of Geraci to coerce him into settling *Cotton*
10 *I* when they threatened him at the Property.

11 895. Stellmacher alleged that Alexander and him had encouraged Cotton to settle
12 with Geraci out of goodwill for his own benefit.

13 896. Over a year later, after the Magagna Application had been approved, on May
14 14, 2019, Stellmacher showed up unannounced at the Property again and said that it was
15 “good” that the “whole mess was over now” that the District Four CUP had been issued
16 at 6220 Federal.

17 897. Stellmacher’s statement presupposed that there were no more potential
18 repercussions from the *Cotton I* litigation that was still ongoing and that Magagna was
19 not associated with Geraci.

20 898. Stellmacher requested that Cotton help him acquire 20 pounds of marijuana.

21 899. Stellmacher went out of his way to say that the 20 pounds were for a non-
22 medical transaction and that he would provide Cotton a significant premium for arranging
23 for the marijuana because he knew that Cotton needed the money.

24 900. Cotton told him that he would not engage in any illegal activity and told him
25 to leave the Property.

26 901. Stellmacher was sent by Geraci in an attempt to set up Cotton for an illegal
27 sale of marijuana to make him appear to be like Geraci, an individual who operates illegal
28 marijuana dispensaries, because the trial of *Cotton I* was less than two months away and

1 there was a possibility that Judge Wohlfeil’s Fixed-Opinion could be pierced.

2 902. Cotton has a demonstrable lifelong passion for the political advocacy of the
3 legalization of medical marijuana that has been public and documented.

4 903. In contrast, Geraci’s only documented involvement with marijuana is with
5 the Illegal Marijuana Dispensaries and *Cotton I*.

6 904. Geraci’s filing of *Cotton I* and his actions seeking to acquire the District Four
7 CUP, including crying on the stand, leave no room for doubt about his character, integrity,
8 and what he is willing to do to acquire cannabis CUPs and avoid liability.

9 905. If a jury ever reaches the issue of how much money Geraci and his joint
10 tortfeasors should be made to pay Cotton for the harm they have inflicted on him or
11 ratified over the course of years, making Cotton appear to be someone who operates
12 illegal marijuana dispensaries like Geraci would make Cotton an unsympathetic victim to
13 the jury and greatly limit those damages.

14 906. Frankly, a brilliant and unethical legal strategy. However, despite Cotton’s
15 dire financial circumstances, he has stayed true to his medical cannabis activities and has
16 not engaged in any of the non-medical and highly profitable deals that he has been
17 unprecedentedly approached with since mid-2018.

18 **H. Shawn Joseph Miller**

19 907. Miller is an agent of Geraci who has repeatedly threatened, harassed and
20 intimidated the families of Hurtado and Jane. Miller has a long-documented history of
21 violence and criminal behavior.

22 908. “Following a jury trial, defendant Shawn Joseph Miller was found guilty on
23 two counts of committing wire fraud, in violation of 18 U.S.C.§ 1343, two counts of
24 money laundering, in violation of 18 U.S.C.§ 1957, and one count of witness tampering,
25 in violation of 18 U.S.C.§ 1512(b)(3).” *U.S. v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008).

26 909. At a pretrial hearing, Miller’s own attorney, fearing for his safety, requested
27 that he be removed as counsel. *Id.* at 343 (Miller’s attorney: “The Defendant and I just
28 had a meeting, which deteriorated to a very violent nature.... I was hoping while he sat in

1 jail he would come to his senses but obviously has not. He is hostile to me. I cannot under
2 the ethical situation even sit at the same trial table with him. So I have all the evidence
3 here that he needs. I can give it to him and let him represent himself.”).

4 910. The Court of Appeal decision emphasized that the trial court “citing Miller's
5 criminal history and propensity for fraud, sentenced Miller to an above-Guidelines
6 term...” *Id.* at 344 (emphasis added).

7 i. *January 2018*

8 911. In early January 2018, Cotton, having fired FTB for what was then believed
9 to be Demian’s gross incompetence, was acting pro se and required paralegal support.
10 Additionally, Jacob, who had been retained on a limited representation basis and was
11 working his way through discovery and the motions filed in *Cotton I* and *Cotton II* in
12 preparation for the filing of the Lis Pendens Motion, also needed paralegal support.

13 912. Jacob had an office in Mission Valley, Cotton operated at the Property, and
14 Hurtado’s office was at his residence which was approximately 32 miles from Jacob’s
15 office and took approximately 50-70 minutes to reach depending on traffic.

16 913. Jane’s residence was central to all parties.

17 914. Jane agreed to allow a floor of her residence to be used as a temporary office
18 for Cotton, Jacob, Hurtado and paralegals to meet to work on Cotton’s litigation.⁷²

19 915. On and around January 17, 2018, Hurtado contacted a few paralegals
20 including Miller.

21 916. Jacob recognized Miller from his website, SBJM Consulting, as Miller also
22 worked in the same office building as Jacob in Mission Valley and previously worked
23 with one of his colleagues.

24 917. On or about January 17, 2018, Miller went to Jane’s residence to meet with
25 Hurtado and Jacob. However, because Miller was running late, Jacob had to leave as
26 Miller was arriving, but Jacob confirmed it was Miller from his office building.

27 ⁷² The disclosure that Jane’s residence was used as a location for work by Cotton and
28 other individuals for litigation purposes is not a direct or implied waiver of any applicable
privilege. Neither is any other disclosure in this Complaint.

1 918. Hurtado provided Miller the pleadings in *Cotton I* and explained the
2 paralegal support that Cotton and Jacob required. Hurtado noted his financing role and
3 that he did not want to be directly involved because, *inter alia*, Geraci appeared to be a
4 “mafia-like figure” and was definitely a criminal. Hurtado explained that, at the very
5 least, Geraci was involved in illegal marijuana operations on a commercial scale and had
6 the wealth to persuade an ostensibly reputable law firm, F&B, to engage in a malicious
7 prosecution action to deprive Cotton of the Property by misrepresenting a receipt as a
8 purchase contract.

9 919. Hurtado informed Miller that he would run a background check on him.

10 920. Miller then stated he personally knew Geraci and that in full disclosure he
11 himself was on parole.

12 921. Hurtado then informed Miller that there was a conflict of interest that
13 precluded him from financing his employment for Cotton and Jacob. However, Hurtado
14 requested that Miller not disclose their conversation to Geraci. Hurtado specifically
15 emphasized to Miller that he was ethically obligated to keep their conversation
16 confidential from Geraci, which Miller acknowledged and said he understood.

17 922. Despite Miller’s expressed understanding, approximately two hours later at
18 around 10:00 p.m., Miller called Hurtado requesting that Hurtado use his influence with
19 Cotton to persuade him to settle with Geraci because Geraci is really “not a bad guy.”

20 923. Furthermore, Miller said that it would be in Hurtado’s “best interest.”

21 924. This comment scared Hurtado because it had potentially two meanings. First,
22 earlier that evening Hurtado told Miller he always had to do what was in the “best interest”
23 of his family. Second, it is the same expression used by Stellmacher when threatening
24 Cotton, leading to the possibility that the language, if not an indirect threat to his family,
25 originated directly from Geraci.

26 925. Hurtado immediately accused Miller of violating his ethical obligations by
27 contacting Geraci. Miller denied the accusation.

28 926. Hurtado responded that it made no sense for Miller to call him two hours

1 after he had left, seek to have Cotton settle the case, and attribute to Geraci positive
2 character traits after Hurtado explained that Geraci was indisputably a criminal.

3 927. Miller ignored Hurtado’s statements regarding Geraci’s criminal actions and
4 responded that he had just been “thinking about it” and said it was just “too bad” that a
5 resolution could not be reached because, again, Geraci was not a “bad guy.”

6 928. Hurtado told Miller to never contact him again and hung up.

7 929. The next day, Hurtado went to the El Cajon Police Department to file a report
8 and spoke with the officer on duty – Officer J. McDaniels. Officer McDaniels informed
9 Hurtado that without an explicit threat, he could not file a police report.

10 930. Officer McDaniels recommended that Hurtado speak with Miller’s parole
11 officer. Hurtado went to the parole office but was informed that even if Miller could be
12 identified (there were over a dozen in the system) he needed to file a report with the police.

13 931. Hurtado went back to the El Cajon police department, explained the situation
14 with the parole office, and was again told he could not file a police report.

15 932. As a consequence of his interaction with Miller and the police’s inability to
16 help, Hurtado decided to distance himself and disengaged for a period of time from Cotton
17 and the litigation.

18 ii. February 2018

19 933. On February 9, 2018, Cotton pro se filed *Cotton III* and the *Cotton III TRO*.

20 934. Cotton described in the *Cotton III TRO* how Hurtado had been threatened by
21 Miller, was intimidated by Geraci, and refused to provide Cotton supporting testimony.⁷³

22 ⁷³ *Cotton III*, ECF No. 3 (*Cotton III TRO*) at 15:25-16:5 (“As of today, February 9,
23 2018, when I submit this, I feel hounded and conspired against. I have alienated my
24 friends, employees, family, supporters and even the litigation investors who stand to gain
25 the most if I prevail in this legal action stay as far away as possible. They fear that Geraci
26 may take unlawful retaliation against them. One of my litigation investors is a former
27 attorney who has worked at Goldman Sachs, Latham and Watkins and he is even a former
28 federal judicial clerk in the 9th district court. He stopped helping me in mid-January when
a third party, a convict out on parole, called him late at night at his home and threatened
him by telling him that it would be in his ‘best interest’ to use his influence on me to get

1 935. Plaintiffs believe that disclosure by Cotton that Hurtado was fearful of Miller
2 was the catalyst for the Enterprise to then repeatedly use Miller to intimidate Hurtado.

3 936. On or about February 21, 2018, someone with a phone number unknown to
4 Cotton called him asking for “Joe.”

5 937. Cotton began to tell the caller that he had the wrong number, but before he
6 could finish the caller asked, “is this Darryl?” The caller then told Cotton that “Joe” was
7 his attorney and that Joe owed him for services rendered for Cotton. Cotton hung up.

8 938. Cotton then called Hurtado to inform him of the call and gave the number
9 from his caller I.D. to Hurtado. Hurtado then called the number, recognized Miller’s
10 voice and hung up.

11 939. Hurtado sent a text message to Miller telling him to not contact him.

12 940. Miller then sent Hurtado a series of texts stating that, *inter alia*, Hurtado was
13 harassing him and that Hurtado had not paid him for his services.

14 941. For example, Miller texted: “Stop calling my office and hanging up. Please
15 or [I] will have to get a civil harassment restraining order. Please pay [your] bill.”

16 iii. *April 2018*

17 942. On April 4, 2018 Cotton filed the Lis Pendens Motion first arguing
18 *Riverisland*.

19 943. On April 7, 2018, Miller texted Hurtado: “at what address do you want me
20 to serve papers on you? The address w[h]ere we met [(Jane’s residence)] is not your office
21 anymore, like you told me it was.”

22 944. The fact that Miller referred to Jane’s residence and that Miller knew
23 Hurtado was no longer working at Jane’s residence was a turning point for Jane and
24 Hurtado.

25 945. Miller’s text directly reflects that Miller had been observing Jane’s
26 residence.

27
28 me to settle with Geraci.”). Cotton meant to say that Hurtado clerked in the United States
District Court, Northern District of California.

1 946. Jane was terrified when she was informed of Miller’s text.

2 947. Hurtado realized that Geraci had the influence to have a convict out on parole
3 risk incarceration for stalking and harassment. Therefore, Geraci was a criminal of a
4 higher order of magnitude than he previously believed.

5 948. On April 26, 2018, Cotton’s ex parte application for an extension to file a
6 writ of mandate from the state court’s denial of the Lis Pendens Motion was heard and
7 approved by Judge Wohlfeil.

8 949. On April 29, 2018, Miller texted: “Read the [Fair Debt Collection Practices
9 Act] I have a right to contact you. This is an attempt to collect a debt and any information
10 contained will be used for that reason.”

11 950. Relatedly, when Miller appealed his criminal conviction, he “argue[d] that
12 his statement to [the] witness... that he would sue her for defamation if she spoke with
13 the FBI regarding its investigation of [him] cannot be considered a ‘threat’ within the
14 meaning of § 1512 because he has the legal right to initiate legal proceedings.” *Miller*,
15 531 F.3d at 351.

16 951. The Court of Appeal disagreed:

17 [Miller’s] argument, however, is seriously flawed because it rests upon an
18 inaccurate assumption. Although Miller claims that he has the right to file a
19 defamation claim against [the witness], “there is no constitutional right to file
20 frivolous litigation.” *Wolfe v. George*, 486 F.3d 1120, 1125 (9th Cir. 2007)
21 (observing that “[j]ust as false statements are not immunized by the First
22 Amendment right to freedom of speech, . . . baseless litigation is not
23 immunized by the First Amendment right to petition”). The problem with his
24 argument is that Miller threatened to sue [the witness] for defamation solely
25 on the basis of her cooperation with the FBI, regardless of the veracity of [the
26 witness’] statements to investigators. Miller has no right to institute baseless
27 legal proceedings for the purpose of harassment, and cannot hide behind the
28 First Amendment to shield him from prosecution under § 1512.

Miller, 531 F.3d at 351.

952. Miller is seeking to hide his unlawful harassment and threatening actions
against Jane and Hurtado exactly as he did before, but instead of using the First
Amendment as a pretext for his threats he is using the FDCPA.

1 953. Miller cannot provide any evidence that Hurtado ever hired him to undertake
2 any work or that Hurtado ever initiated contact with him.

3 iv. *June 2019*

4 954. On May 30, 2019, Hurtado emailed Toothacre demanding that Toothacre
5 provide the probable cause for the discovery demands he was making of Hurtado in light
6 of Judge Wohlfeil’s findings that the November Document is ambiguous.

7 955. On or around June 3, 2019 at around 8:00 p.m., a white sedan pulled into the
8 driveway at Jane’s residence with its lights on and the engine running.

9 956. Jane’s mother saw the car in the driveway and informed Jane. Jane informed
10 Hurtado who went outside and approached the car. The car lurched towards Hurtado and
11 then pulled out of the driveway and drove away.

12 957. Hurtado believes, and Plaintiffs thereon allege, the white sedan was driven
13 by Miller.

14 v. *Geraci’s discovery response regarding Miller*

15 958. Miller’s motivation for threatening Hurtado and Jane and their families is
16 made clear by Geraci’s own response regarding Miller.

17 959. In *Cotton I*, Geraci responded to special interrogatory No. 35 as follows:

18 **SPECIAL INTERROGATORY NO. 35:**

19 Have YOU or YOUR AGENTS requested that Shawn Miller contact Joe
20 Hurtado regarding any matter related to this litigation?

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 35**

22 Not that I am aware. Moreover, I have never requested or authorized any person
23 to do so.

24 960. Geraci/F&B’s Machiavellian response allows for the possibility that if (i) it
25 can be established that Miller did threaten Jane and Hurtado and their families and (ii)
26 that Geraci was in contact with Miller at that time, then Geraci’s purposefully vague
27 answer allows for an after-the-fact “explanation” that Miller threatened Hurtado and his
28 family purportedly of his own volition (or at the direction of an agent of Geraci), but that
it was done without Geraci’s knowledge or consent.

1 961. Any reasonable attorney in F&B’s position would know that Geraci’s
2 response evidences that Miller did threaten Hurtado and his family and Geraci was
3 involved.

4 962. The response, drafted by F&B, reflects F&B’s knowing complicity in the
5 violence undertaken by Geraci to avoid liability and their evil disregard for the mental,
6 financial, and physical safety of Cotton and his supporters, including Jane and Hurtado.

7 **I. Corina Young**

8 963. On or around October 2, 2017, Young visited the Property and took a tour of
9 151 Farms. She went to the Property because she had heard about the Property qualifying
10 for a cannabis CUP.

11 964. Young introduced herself to Cotton and informed him she was looking for
12 investment opportunities in cannabis businesses.

13 965. Cotton called Hurtado and he went to the Property to meet Young.

14 966. Hurtado explained the Property qualified for a cannabis CUP, but there was
15 a legal dispute that needed to be resolved that required financing (*i.e.*, *Cotton I*).

16 967. Young was interested in investing in the litigation as a means of acquiring
17 an ownership interest in the contemplated Business at the Property.

18 i. *The Bartell Statement*

19 968. Around mid-October 2017, Young’s attorney, Shapiro, took Young to
20 consult with Bartell regarding the potential investment and likelihood of a cannabis CUP
21 being issued at the Property.

22 969. At the meeting, Bartell responded by stating he “owned” the Berry
23 Application with the City and that he was getting it denied “because everyone hates
24 Darryl” (the “Bartell Statement”).

25 970. Young was not aware that at the same time the Bartell Statement was made,
26 Geraci/F&B were arguing to Judge Wohlfeil that Geraci was using his best efforts to have
27 the Berry Application approved, including through the political lobbying efforts of
28 Bartell.

971. Young did not communicate the Bartell Statement to Cotton or Hurtado but

1 let them know she had decided to not pursue investing in *Cotton I*.

2 ii. *Magagna’s Attempted Bribery & Threats*

3 972. On or about May 17, 2019, Hurtado sent Young an investment proposal to
4 finance *Cotton I* not as a litigation investment, but as a loan secured by a note on the
5 Property.

6 973. On or around May 27, 2018, Young met with Hurtado at Jane’s residence to
7 discuss the investment proposal. When they met, Cotton and Jacob were also at Jane’s
8 residence.

9 974. Jacob and Cotton had discovered that Shapiro represented Magagna and
10 Shapiro had previously sat next to Cotton and Hurtado in plain clothes at a hearing before
11 Judge Wohlfeil.

12 975. Thereafter, when confronted, Shapiro stated he was in Judge Wohlfeil’s
13 chambers because he had a client before Judge Wohlfeil, but was forced to admit he lied
14 when Jacob demanded the party and case number.

15 976. On May 27, 2018, when Young arrived at Jane’s residence, Cotton had a
16 picture of Magagna on a computer screen.

17 977. Young recognized Magagna and explained that she had been introduced to
18 him by Shapiro.

19 978. Cotton communicated that they believed Magagna to be a co-conspirator of
20 Geraci and were contemplating taking legal action. Young defended Magagna, arguing
21 he was not someone who would do something unethical and that there must be a
22 misunderstanding.

23 979. Young, attempting to mediate the situation, contacted Magagna and he
24 requested they meet.

25 980. When they met, Young explained the situation as she understood it, that her
26 testimony regarding the Bartell Statement somehow provided evidence that supported
27 Cotton’s case against Geraci.

28 981. Furthermore, that because of his relationship with Shapiro, and because

1 Shapiro was at the meeting with Bartell when he made the Bartell Statement, they
2 believed Magagna was a knowing co-conspirator of Geraci helping him to mitigate his
3 liability to Cotton by acquiring the District Four CUP at 6220 Federal.

4 982. To her surprise, Magagna did not deny the allegations, instead, he asked her
5 to change her statements and offered to bribe her for doing so. Young refused. Despite
6 her refusal, Magagna repeatedly requested that Young go back to Cotton, Jacob and
7 Hurtado and change her statements by saying that she “dreamed” the Bartell Statement.
8 Young continued to refuse and Magagna continuously pressured her to change her
9 testimony until they parted.

10 983. Over the course of the next several days, Magagna continued to contact
11 Young, but started aggressively demanding that Young change her statements to “keep
12 him out of it,” and to not disclose that he sells his “legal” marijuana to Shapiro’s clients.

13 984. Young became intensely frightened at Magagna’s turn to aggressiveness,
14 something he had not exhibited before during their relationship, and told him that she
15 would not get involved at all in the case.

16 985. Young met with Hurtado and asked him to help her stay out of the *Cotton I*
17 litigation. However, Hurtado explained that she was the proverbial “smoking gun”
18 directly connecting Geraci to Magagna via Shapiro and Bartell. Furthermore, that
19 because she had made those statements in front of Jacob and Cotton, even if he, Hurtado,
20 was not willing to volunteer his testimony, he could not contradict their testimony
21 regarding her statements.

22 986. Young confided in him that she was scared of Magagna because she believed
23 him to be involved with organized crime. That Magagna had a licensed cultivation facility
24 and that Shapiro brokered deals for Magagna to his clients, who were primarily criminals,
25 and for which Shapiro would be paid \$100 for every pound of marijuana sold.

26 iii. *Attorney Natalie Nguyen – Promised Testimony*

27 987. On June 1, 2018, Hurtado spoke with Young and she was in an agitated and
28 fearful state. Young made comments that reflected she had investigated Geraci, and she

1 had confirmed that he was a dangerous individual, and she started to imply she would not
2 be able to testify.

3 988. Hurtado then communicated via text with Young. Those text messages make
4 clear that: (i) Bartell made the Bartell Statement; (ii) Bartell at that point in time had
5 already been hired by Young to help her acquire a cannabis CUP at another real property
6 and she was concerned that if she provided her testimony, adverse to Bartell, he sabotage
7 her marijuana application as he was doing with Cotton; (iii) Shapiro gets paid for illegal
8 marijuana sales he brokers for Magagna; (iv) Shapiro and Magagna had both been to
9 Young's home; (iv) Magagna had attempted to bribe and threatened her; and (v) Young
10 was worried for her physical safety.⁷⁴

11 989. On January 1, 2019, Jacob subpoenaed Young to be deposed on January 18,
12 2019. On January 16, 2019, attorney Nguyen, representing Young, unilaterally cancelled
13 the deposition of Young.

14 990. On January 21, 2019, Nguyen promised to provide Young's testimony
15 confirming, *inter alia*, the Bartell Statement and Magagna's attempts at bribing and
16 threatening her.

17 991. On June 12, 2019, after having been put off for months by Nguyen, Jacob
18 emailed Nguyen demanding she provide Young's promised testimony, to which Nguyen
19 never responded.

20 992. On June 30, 2019, the day before the start of trial in *Cotton I*, Hurtado and
21 Flores spoke with Young who said she had moved out of the City, could not be served,
22 would not testify, and did not "want anything" to do with Cotton or *Cotton I*. Young also
23 told Flores that he needed to be fearful for the safety of himself and his family because,
24 *inter alia*, Austin and Magagna are "dangerous."

25 993. In January 2020, Flores believed he was done preparing the complaint for
26 the instant action and intended to name Young as a co-conspirator of Geraci. Flores spoke
27

28 ⁷⁴ Mr. Hurtado provided a declaration in *Cotton I*, attaching the text messages with
Young. *Cotton I*, ROA 237, Ex. 5.

1 with Young and was direct, informing her that by failing to provide her testimony she was
2 a co-conspirator of Geraci, and he would seek to have her held civilly liable. Further, that
3 it was possible after the civil action was concluded, and factual findings had been made,
4 that such could lead to a criminal action against her.

5 994. Young broke down and said she had done nothing illegal and that it was
6 Nguyen’s sole decision to not provide Young’s testimony.

7 995. Young alleged that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro
8 paid Nguyen’s legal fees for defending Young, (iii) Nguyen – in an email – told her that
9 it was OK to “ignore” their obligation to provide Young’s testimony because “it was too
10 late for Cotton to do anything about it” (the “Young Allegations”).

11 996. At that point, Flores was skeptical because he could not believe that Nguyen
12 would so blatantly violate her ethical duties and ratify the violence against Young, which
13 was before Flores discovered that Nguyen and Mrs. Austin attended law school together.

14 997. Nguyen’s failure to provide Young’s promised testimony perpetuated the
15 *Cotton I* Conspiracy, which she knew would cause severe mental, financial, and
16 emotional distress to Cotton and his supporters, and severely prejudice Cotton’s case.

17 **ADDITIONAL SPECIFIC ALLEGATIONS AND CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION - § 1983**

19 (Plaintiffs against Judge Wohlfeil and the City Clerk)

20 998. Plaintiffs reallege and incorporate herein by reference the allegations in the
21 preceding paragraphs.

22 999. “42 U.S.C. § 1983 is derived from Section 1 of the Ku Klux Klan Act of
23 1871... Generally, [§] 1983 creates a cause of action for deprivation of rights secured by
24 the ‘Constitution and [federal] laws’ perpetrated under color of state law.” *Bell v. City of*
25 *Milwaukee*, 746 F.2d 1205, 1232 (7th Cir. 1984) (citing § 1983).

26 1000. “The Due Process Clause entitles a person to an impartial and disinterested
27 tribunal.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980). In addition, “justice must
28 satisfy the appearance of justice.” *Offutt v. United States*, 348 U.S. 11, 14 (1954); *Exxon*

1 *Corp. v. Heinze*, 32 F.3d 1399, 1403 (9th Cir. 1994) (“[T]he Constitution is concerned
2 not only with actual bias but also with ‘the appearance of justice.’”). “Bias exists where
3 a court has prejudged, or reasonably appears to have prejudged, an issue.” *Kenneally v.*
4 *Lungren*, 967 F.2d 329, 333 (9th Cir. 1992) (quotation and citation omitted).

5 1001. The following actions, among others, taken by Judge Wohlfeil and/or the
6 City Clerk could lead a reasonable person to believe that *Cotton I* was not adjudicated
7 before “an impartial and disinterested tribunal” and/or Judge Wohlfeil is biased because
8 he prejudged that *Cotton I* was filed and maintained with probable cause:

9 (i) Judge Wohlfeil’s stated Fixed-Opinion;

10 (ii) Judge Wohlfeil’s DQ Order denying the DQ Motion alleging the
11 Extrajudicial Statements are not extrajudicial.

12 (iii) Judge Wohlfeil’s DQ Order stating that neither he nor his law clerk were
13 served with the DQ Motion.

14 (iv) Judge Wohlfeil’s adjudication of the MSA as if it was solely a motion for
15 summary judgment thereby violating Cotton’s right to move for partial adjudication to
16 narrow the issues and lower the burden of associated legal fees and costs for trial in a
17 sham action.

18 (v) Judge Wohlfeil’s statements at the MNT hearing reflecting his alleged belief
19 that Cotton had not previously raised the Illegality Issue in *Cotton I*.

20 (vi) Judge Wohlfeil’s statements at the MNT hearing copying FTB’s frivolous
21 argument in opposition that the defense of illegality can and had been waived by Cotton.

22 (vii) The City Clerk’s rejection of the DQ Motion’s supporting documents 18
23 months after they were submitted and while pending in federal court as evidence in
24 support of a motion by Cotton of Judge Wohlfeil’s bias.

25 (viii) Judge Wohlfeil’s findings at the trial of *Cotton I* regarding the November
26 Document: (1) “I agree with the proposition that the three-sentence paragraph... three-
27 sentence contract on November 2 was not an integrated contract” and (2) “I do not
28

1 consider the 11/2/16 agreement to be an agreement.”⁷⁵

2 1002. Judge Wohlfeil’s findings at trial provide support for the Opposition Theory;
3 he did not understand that his findings translated into a judgment in favor of Cotton. *See*
4 *Chodosh v. Palm Beach Park Ass’n*, 2018 WL 6599824 at *6 (“Indeed, the trial judge
5 found as a matter of fact there were no certificates of occupancy, he just didn’t think that
6 absence could translate into a judgment in appellants’ favor.”).⁷⁶

7 1003. Judge Wohlfeil’s ruling denying Flores’ motion to intervene in *Cotton I* as
8 an indispensable party deprives Flores of his constitutional rights to the Property and the
9 District Four CUP as the equitable owner of the Property without due process. *Truax v.*
10 *Corrigan*, 257 U.S. 312, 332 (1921) (“The due process clause requires that every man
11 shall have the protection of his day in court.”).

12 1004. Flores has a right to invoke “the federal district court's jurisdiction under §
13 1983 to restrain the state judiciary from conducting private tort litigation in a way that...
14 violate[s] his constitutional rights.” *Miofsky v. Superior Court of California*, 703 F.2d
15 332, 338 (9th Cir. 1983).

16 1005. Judge Wohlfeil’s ruling denying Flores’ motion to intervene in *Cotton I*
17 deprives Flores of his constitutional right to bring forth a claim to prove a “conspiracy
18 deprived [Flores] of [his] federally-protected due process right of access to the courts.”
19 *Bell*, 746 F.2d at 1261.

21 ⁷⁵ Attached hereto as Exhibit 7 at 81:14-6 and 88:26-28, respectively, are material
22 excerpts of the July 10, 2019 Trial Transcript with Judge Wohlfeil’s statements finding
23 the November Document is not an integrated purchase contract.

24 ⁷⁶ Ironically, *Chodosh* is an unpublished opinion that is prohibited from being cited
25 in state court by F&B. *California Rules of Court, Rule 8.115*. F&B violated the rule and
26 cited to *Chodosh* in a desperate (and successful) attempt to find language to misrepresent
27 the law to Judge Wohlfeil regarding the Illegality Issues in their opposition to the MNT.
28 The great irony is that F&B alerted Plaintiffs to an unpublished opinion that they would
not have otherwise reviewed, that they can reference in this matter to prove F&B’s
unethical litigation tactics, and proves that Plaintiffs most ridiculous-sounding allegation
is possible: a judge may preside over a case for years, hold trial, and make factual findings
that he does not understand require adjudication in favor of a party as a matter of law.

SECOND CAUSE OF ACTION - § 1983

(Flores against the City and Tirandazi)

1006. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

1007. Local governments are “persons” under § 1983 and may be liable for causing a constitutional deprivation. *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690 (1978)). A “local governmental entity may be liable if it has a policy of inaction and such inaction amounts to a failure to protect constitutional rights.” *Lee v. City of Los Angeles*, 250 F.3d 668, 681 (9th Cir. 2001) (citation and quotation omitted).

1008. Tirandazi’s decisions (i) to not cancel the Berry Application at Cotton’s request, (ii) to not transfer the Berry Application to Martin at Cotton’s request, (iii) to allow Cotton/Martin to submit a competing CUP application on the Property but force them to compete against the Berry Application, and (iv) approving the Magagna Application, when she knew about the Child Care Issue, violated Flores’ constitutional rights to the Property and the District Four CUP (the “Tirandazi Decisions”).

1009. Tirandazi’s Decisions were reviewed, approved, and ratified by other City officials, including Tirandazi’s supervisors and City attorneys.

1010. But-for the Tirandazi Decisions, taken while acting as an employee of the City, Flores would be the actual owner of the District Four CUP.

1011. Equal Protection. “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.” *Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001) (citation and quotation omitted).

1012. Numerous cases by the United States Supreme Court “have recognized successful equal protection claims brought by a ‘class of one,’ where the plaintiff alleges [they have] been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Village of Willowbrook v. Olech*,

1 528 U.S. 562, 564 (2000).

2 1013. Flores is a class of one as the successor-in-interest to Martin’s rights to the
3 District Four CUP as the equitable owner of the Property.

4 1014. There is no rational basis for the City’s decision to not transfer the Berry
5 Application to Martin upon Cotton’s demand in accordance with the SDMC, as
6 articulated in the Engerbretsen Mandate, and treat Martin differently than any other
7 applicant for a CUP with the City.

8 1015. There is no rational basis for the City’s decision to allow the Berry
9 Application to be processed after being informed about the Illegality Issue.

10 1016. Substantive Due Process. “When executive action like a discrete permitting
11 decision is at issue, only egregious official conduct can be said to be arbitrary in the
12 constitutional sense: it must amount to an abuse of power lacking any reasonable
13 justification in the service of a legitimate governmental objective.” *Shanks v. Dressel*, 540
14 F.3d 1082, 1088 (9th Cir. 2008) (quotations and citations omitted).

15 1017. The Tirandazi Decisions constitute egregious official conduct made in
16 contradiction of applicable laws and regulations, an abuse of power, and lack any
17 reasonable justification.

18 1018. Procedural Due Process. “The Due Process Clause of the Fourteenth
19 Amendment provides: ‘[N]or shall any State deprive any person of life, liberty, or
20 property, without due process of law.’ Historically, this guarantee of due process has been
21 applied to *deliberate* decisions of government officials to deprive a person of life, liberty,
22 or property.” *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (emphasis in original).

23 1019. Judge Wohlfeil found that the Berry Application would have been approved
24 and the District Four CUP issued at the Property but-for Cotton’s alleged unlawful
25 interference.

26 1020. Cotton’s interference was not unlawful.

27 1021. Flores has a right to the District Four CUP that would have been granted at
28 the Property had the City complied with the SDMC.

1 1022. Tirandazi testified the decision to not cancel the Berry Application at
2 Cotton’s request was a deliberate act she took in her position as a supervisor of DSD and
3 after consulting with her supervisors at DSD.

4 1023. The doctrine of qualified immunity does not protect “the plainly incompetent
5 or those who knowingly violate the law.” *Burns v. Reed*, 500 U.S. 478, 495 (1991)
6 (citation omitted).

7 1024. Tirandazi testified she understood the plain language of the Ownership
8 Disclosure Form providing that the owner of real property has the right to cancel the CUP
9 application on his property.

10 1025. Tirandazi is not incompetent; she is feigning an inability to understand the
11 plain language in the Ownership Disclosure Form to knowingly violate the law.

12 1026. Ratification. Multiple City employees and attorneys in multiple proceedings
13 and litigation actions, over the course of years, have allowed the perpetuation and ratified
14 the lie that Berry was allegedly acting as Geraci’s agent when she submitted the Berry
15 Application and that same is not illegal because of the Illegality Issue.

16 1027. “The purpose of the statute of frauds is to prevent fraud and perjury as to
17 extrajudicial agreements by requiring enforcement of the more reliable evidence of some
18 writing signed by the party to be charged.” *Kohn v. Jaymar-Ruby, Inc.* (1994) 23
19 Cal.App.4th 1530, 1534.

20 1028. City attorney Phelps knew the legal import of the statute of frauds and the
21 equal dignities rule when he approved the *Cotton II* judgment.

22 1029. The City has ratified the very fraud and perjury that the statute of frauds is
23 meant to prevent. And by doing so the City also ratified the *Cotton I* sham action based
24 on the same lie and thereby also ratified and emboldened the violence undertaken by
25 Geraci in seeking to prevent Flores from acquiring the District Four CUP. *See Trevino v.*
26 *Gates*, 99 F.3d 911, 920 (9th Cir. 1996) (“We have found municipal liability on the basis
27 of ratification when the officials involved adopted and expressly approved of the acts of
28 others who caused the constitutional violation.”).

1 1030. The Principals and the Agents took, ratified, and/or supported the Armed
 2 Robbery, the threats by Alexander and Stellmacher against Cotton, the acts and threats of
 3 violence by Miller against Hurtado and Jane and their families, and the acts and threats
 4 by Magagna against Young in furtherance of the Antitrust Conspiracy. *See Briley v.*
 5 *California*, 564 F.2d 849, 858 (9th Cir. 1977) (“It is clear that defendants who were
 6 engaged in purely private conduct may be found liable under § 1983 if it is established
 7 that they have acted in concert with another party against whom a valid claim can be
 8 stated.”).

9 **THIRD CAUSE OF ACTION - § 1983**

10 (Plaintiffs against the City)

11 1031. Plaintiffs reallege and incorporate herein by reference the allegations in the
 12 preceding paragraphs.

13 1032. “Obstructing access to the courts is a constitutional violation.” *Victorianne*
 14 *v. Cnty. of San Diego*, No. 14cv2170 WQH (BLM), at *15 (S.D. Cal. Feb. 3, 2016) (citing
 15 *Bell, supra*, at 1261 (“conspiracy to cover up a [crime], thereby obstructing legitimate
 16 efforts to vindicate the [crime] through judicial redress, interferes with the due process
 17 right of access to courts. . . . This constitutional right is lost where . . . police officials
 18 shield from the public and the victim’s family key facts which would form the basis of
 19 the family’s claims for redress.”).

20 1033. Detective Pollom’s failure to adequately investigate the Armed Robbery was
 21 done so in his capacity as an SDPD officer.

22 1034. On September 13, 2018, Detective Pollom first denied the Getaway Driver
 23 had been detained.

24 1035. But-for Flores and Cotton physically showing Detective Pollom the image
 25 of the Getaway Driver being detained by police officers and informing Detective Pollom
 26 that Cotton had received the image on June 6, 2017, directly from a local news channel,
 27 Detective Pollom would have maintained the false assertion that the SDPD did not know
 28 the identity of the Getaway Driver to cover up the fact that the SDPD knew the identity

1 of the Getaway Driver.

2 1036. Sergeant Cameron’s statement after Cotton showed the picture of the
3 Getaway Driver being detained by the police - “just so you guys know, I was not the
4 Sergeant when this happened, this did not happen on my watch” – is suspect and provides
5 further cause to believe that Detective Pollom failed to properly investigate.

6 1037. Plaintiffs believe and thereon allege that Detective’s Pollom’s failure to
7 investigate the Armed Robbery would have established a relationship between the
8 Getaway Driver and the assailants who committed the Armed Robbery and Geraci or his
9 agents.

10 1038. Such would be supporting evidence of the existence of the Enterprise and its
11 use of violence in preventing access to individuals who seek to vindicate their rights in
12 the judiciary.

13 1039. Detective Pollom’s “failure to adequately investigate [the Armed Robbery]
14 interfered with the rights of [Plaintiffs] to access the courts.” *Id.*

15 1040. Plaintiffs believe and thereon allege that Detective Pollom’s failure to
16 adequately investigate the Armed Robbery was motivated by one or more of the following
17 improper reasons:

18 (i) The City’s animus against Cotton as a political dissident with a long history of
19 political activism in support of the legalization of cannabis;⁷⁷

20 (ii) The City’s understanding that the City would be jointly liable for Geraci’s
21 damages because of the City’s unlawful filing of the City Lis Pendens in furtherance of
22 the City Conspiracy making it at the very least a concurrent joint tortfeasor with Geraci;

23 (iii) The City’s understanding that the actions of, *inter alia*, Tirandazi and Phelps
24 in the Property related litigation and the Berry and Magagna Applications were
25 egregiously unlawful and warrant severe sanctions. Thus, if the City helped Cotton
26

27 ⁷⁷ See *Cty. of San Diego v. San Diego Norml*, 165 Cal.App.4th 798 (Cal. Ct. App. 2008)
28 (suit by City challenging the state’s cannabis regulatory scheme legalizing cannabis
arguing it is illegal pursuant to the federal Controlled Substances Act).

1 establish the Armed Robbery was taken at the direction or consent of Geraci, then it would
2 be increasing the likelihood of its own unlawful actions being exposed and simultaneously
3 increasing the amount of damages it would be jointly liable for;

4 (iv) The political influence of Geraci and his agents with certain individuals with
5 the City whose identities are unknown to Plaintiffs at this time; and/or

6 (iv) The SDPD’s training program was not adequate to train its detectives as under
7 the facts the Getaway Driver should have been arrested and the Armed Robbery
8 investigated.

9 1041. Detective Pollom’s failure to adequately investigate the Armed Robbery,
10 coupled with Judge Wohlfeil’s and City attorney Phelps’ actions and omissions, has
11 contributed to the perception that Geraci has influence with the City and the SDPD.

12 1042. Numerous material third party witnesses do not believe they can access the
13 courts for justice and fear retribution by the City, the SDPD, and having their character
14 and integrity assassinated by F&B, like they did against Cotton, Jacob and Hurtado, for
15 speaking the truth.

16 **FOURTH CAUSE OF ACTION – § 1985**

17 (Plaintiffs against Geraci, Malan, Razuki, Magagna, Berry, Mrs. Austin,
18 Weinstein, Toothacre, McElfresh, Nguyen, Bartell, Crosby, Miller, Stellmacher,
19 Alexander, Tirandazi, the John Doe (Getaway Driver) , Does 3-5 (Armed Robbers)

20 1043. Plaintiffs reallege and incorporate herein by reference the allegations in the
21 preceding paragraphs.

22 1044. “§ 1985... create[es] a cause of action based on a conspiracy which deprives
23 one of access to justice or equal protection of law.” *Bell*, 746 F.2d at 1233. “The debates
24 surrounding the passage of the [Ku Klux Klan Act of 1871] expressed concern that
25 conspiratorial and unlawful acts of the Klan went unpunished because Klan members and
26 sympathizers controlled or influenced the administration of state criminal justice.” *Id.*

27 1045. “The current version of Section 1985 creates a federal right of action for
28 damages against conspiracies which deter by force, intimidation, or threat a party or

1 witness in federal court (Section 1985(2), first portion) and against conspiracies which
2 obstruct the due course of justice with intent to deny equal protection (Section 1985(2),
3 second portion). It also creates an action against conspiracies which deprive persons of
4 equal protection or other federal rights or privileges (Section 1985(3)).” *Id.*

5 1046. Geraci and his agents have known that Martin was the equitable owner of
6 the Property since the Martin Purchase Agreement was disclosed in *Cotton I* via discovery
7 in mid-2017.

8 1047. Geraci and his agents have known that Flores purchased Martin’s rights in
9 the Martin Purchase Agreement since he filed his motion to intervene on June 26, 2019.

10 1048. Geraci and his agents have known that there are investors who have invested
11 in Cotton’s legal defense secured by the Property since Cotton attempted to submit the
12 Secured Litigation Financing Agreement ex parte and under seal to Judge Wohlfeil in
13 January 2018.

14 1049. Geraci and his agents have known that Cotton filed *Cotton III* in federal court
15 in February 2018 and any issues and claims adjudicated in state court regarding the
16 Property and the District Four CUP would have, absent unlawful action (e.g., a fraud on
17 the court), preclusive effect in *Cotton III* in which he alleged a RICO cause of action.

18 1050. “[T]he essential allegations of a [§] 1985(2) claim of witness intimidation
19 are (1) a conspiracy between two or more persons, (2) to deter a witness by force,
20 intimidation or threat from attending court or testifying freely in any pending matter,
21 which (3) results in injury to the plaintiff.” *Miller v. Glen Helen Aircraft, Inc.*, 777 F.2d
22 496, 498 (9th Cir. 1985) (quoting *Chahal v. Paine Webber Inc.*, 725 F.2d 20, 23 (2d Cir.
23 1984)).⁷⁸

24
25 ⁷⁸ In *Chahal*, the Second Circuit analyzed that while § 1985(2) “does not define the term
26 ‘witness.’ However, Congress’ purpose, which was to protect citizens in the exercise of
27 their constitutional and statutory rights to enforce laws enacted for their benefit, is
28 achieved by interpreting the word ‘witness’ liberally to mean not only a person who has
taken the stand or is under subpoena but also one whom a party intends to call as a witness.

1 1051. Geraci and his agents conspired with the Getaway Driver and the Armed
2 Robbers to commit the Armed Robbery to, *inter alia*, deter by force Cotton, Hagler, and
3 his supporters from testifying in *Cotton I*, *Cotton III*, and this action.

4 1052. Geraci and his agents conspired with Stellmacher and Alexander to threaten
5 Cotton to prevent him from, *inter alia*, testifying in *Cotton I*, *Cotton III*, and this action.

6 1053. Geraci and his agents conspired with Miller to, *inter alia*, repeatedly
7 intimidate Jane, Hurtado and their families to prevent them from testifying in *Cotton I*,
8 *Cotton III*, and this action.

9 1054. Geraci and his agents conspired with Magagna to, *inter alia*, threaten Young
10 to prevent her from testifying in *Cotton I*, *Cotton III*, and this action.

11 1055. Plaintiffs have suffered injury as a result of these actions that includes an
12 inability to acquire the testimony of these individuals for this action because they have
13 been intimidated by the acts and threats of violence.

14 **FIFTH CAUSE OF ACTION – § 1986**

15 (Plaintiffs against Mrs. Austin, McElfresh, Weinstein, Toothacre, Kulas,
16 Prendergast, Demian, Witt, Bhatt, Crosby, Shapiro, Nguyen, Tirandazi, the City, and
17 Cline)

18 1056. Plaintiffs reallege and incorporate herein by reference the allegations in the
19 preceding paragraphs.

20 1057. “Section 1986 imposes liability on every person who knows of an impending
21 violation of section 1985 but neglects or refuses to prevent the violation.” *Karim-Panahi*
22 *v. Los Angeles Police Dept*, 839 F.2d 621, 626 (9th Cir. 1988).

23 1058. “[§] 1986 predicates liability upon (1) knowledge that any of the
24 conspiratorial wrongs are about to be committed, (2) power to prevent or to aid in
25 preventing the commission of those wrongs, (3) neglect to do so, where (4) the wrongful
26 acts were committed, and (5) the wrongful acts could have been prevented by reasonable
27

28 Deterrence or intimidation of a potential witness can be just as harmful to a litigant as
threats to a witness who has begun to testify.” *Chahal*, 725 F.2d at 24 (emphasis added).

1 diligence.” *Bell v. City of Milwaukee* (7th Cir. 1984) 746 F.2d 1205, 1233.

2 1059. The named defendants to this cause of action knew that the Enterprise was
3 taking steps in furtherance of the Antitrust Conspiracy, which included the *Cotton I*
4 Conspiracy, the Armed Robbery, the threats by Alexander and Stellmacher against
5 Cotton, the acts and threats of violence by Miller against Hurtado and Jane and their
6 families, and the acts and threats by Magagna against Young.

7 1060. The defendants named in this cause of action had the power to prevent the
8 unlawful actions described herein.

9 1061. The defendants named in this cause of action failed to act to prevent the
10 unlawful actions that were carried out and still fail to do so. Cotton’s email sent on
11 December 27, 2019, provided all parties the facts and documents pursuant to which any
12 reasonable party would have known the conspiracy against Cotton, but which they all
13 failed to take action on.

14 1062. The unlawful acts described herein could have been prevented by reasonable
15 diligence, which for the most part under these facts would have been to simply tell the
16 truth to Judge Wohlfeil or Judge Curiel.

17 **SIXTH CAUSE OF ACTION – VIOLATION OF THE BANE ACT (CC § 52.1)**

18 (Plaintiffs against Geraci, Malan, Razuki, Magagna, Miller, Stellmacher,
19 Alexander, the John Doe (Getaway Driver), and Does 3-5(Armed Robbers))

20 1063. Plaintiffs reallege and incorporate herein by reference the allegations in the
21 preceding paragraphs.

22 1064. The parties named to this cause of action intentionally interfered with the
23 civil rights of Plaintiffs by threats, intimidation, or coercion.

24 1065. The parties named to this cause of action directed, took and/or ratified threats
25 of violence against Cotton, Jane, Hurtado and Young causing Plaintiffs to reasonably
26 believe that if they exercised their rights to access the court that violence would be taken
27 against them.

28 1066. Plaintiffs reasonably believe that the parties to this named cause of action

1 have the ability to carry out the threats.

2 1067. The defendants named to this cause of action instructed their agents JOHN
3 DOE and DOES 3-5 to commit the Armed Robbery at the Property for the purpose of
4 intimidating and discouraging Cotton and his supporters from continuing the litigation in
5 *Cotton I*. DOE and DOES 3-5 had the apparent ability to carry out the threats.

6 1068. Plaintiffs were harmed because witnesses and other similarly situated
7 individuals did not testify in Cotton I and will not come forward now believing there is a
8 conspiracy that will carry through on their threats of violence that has created a reasonable
9 fear that they or their families will be harmed if they testify or exercise their civil rights
10 to the detriment of the named defendants to this cause of action.

11 1069. The conduct of the defendants named to this cause of action was and is a
12 substantial factor in causing Plaintiffs' harm.

13 **SEVENTH CAUSE OF ACTION – DECLARATORY RELIEF**

14 (Mrs. Sherlock and Minors T.S. and S.S against Harcourt and Claybon)

15 1070. Plaintiffs reallege and incorporate herein by reference the allegations in the
16 preceding paragraphs.

17 1071. An actual controversy has arisen and now exists between Mrs. Sherlock and
18 minors and Harcourt and Claybon. Mrs. Sherlock claims that the facts alleged herein
19 provide probable cause to bring suit, in state court, against Harcourt and Claybon, as part
20 of the Antitrust Conspiracy to defraud Mrs. Sherlock and her minor children of their
21 interest in the Balboa CUP and the Ramona CUP that would have transferred to them
22 after Biker's death.

23 1072. Harcourt and Claybon have already communicated Harcourt's Affirmative
24 Defenses disputing Mrs. Sherlock's position.

25 1073. An actual, present and justiciable controversy has therefore arisen and now
26 exists between the Plaintiffs and defendants named in this cause of action with regard to
27 the transfer of Mr. Sherlock's interests in the Balboa CUP and the Ramona CUP to
28 Harcourt.Biker's interest to Harcourt.

1 1074. A judicial determination of this controversy is necessary and appropriate in
2 order for the parties to ascertain their rights, duties, and obligation regarding this dispute.

3 **EIGHT CAUSE OF ACTION – DECLARATORY RELIEF**

4 (Plaintiffs against Mrs. Austin, ALG, Geraci, Berry, T&F, McElfresh, Weinstein,
5 Toothacre, Kulas, Prendergrast, F&B Crosby, Bartell, B&A, Schweitzer, Shapiro,
6 Matthew W. Shapiro APC, Nguyen, Magagna, 2018FMO LLC, A-M Industries Inc,
7 Miller, Stellmacher, Alexander, Martinez, Tirandazi, Cline, Demian, Witt, Bhatt, FTB,
8 and Ek)

9 1075. Plaintiffs reallege and incorporate herein by reference the allegations in the
10 preceding paragraphs.

11 1076. An actual controversy has arisen and now exists between Plaintiffs and the
12 defendants named in this cause of action. Plaintiffs claim that the judgments reached in
13 *Cotton I* and *Cotton II* were procured by acts and/or omissions that constitute a fraud upon
14 the court, are a product of judicial bias, and are void for being an act in excess of Judge
15 Wohlfeil’s jurisdiction as they enforce an illegal contract.

16 1077. Plaintiffs are informed and believe, and therefore allege, that defendants
17 named in this cause of action dispute this position.

18 1078. An actual, present and justiciable controversy has therefore arisen and now
19 exists between Plaintiffs and Defendants named in this cause of action concerning the
20 validity of the judgements in question and their acts or failure to act that contributed to
21 the procurement of those judgments.

22 1079. A judicial determination of this controversy is necessary and appropriate in
23 order for the parties to ascertain their rights, duties, and obligation regarding this dispute.

24 **NINTH CAUSE OF ACTION – DECLARATORY RELIEF**

25 (Flores against Mrs. Austin, ALG, Weinstein, Toothacre, F&B, Demian, Witt and F&B)

26 1080. Flores realleges and incorporates herein by reference the allegations in the
27 preceding paragraphs.

28 1081. *“The right to sue and defend in the courts is the alternative of force.” Bell,*

1 746 F.2d at 1263 (quoting *Chambers v. Baltimore Ohio R.R.*, 207 U.S. 142, 148 (1907)
2 (emphasis added)).

3 1082. Attorney Flores has, since mid-2018, represented to Cotton, the Original
4 Litigation Investors, the Crowd Source Investors, Jane and other third parties that his
5 professional and unmitigated legal opinion is that *Cotton I* is a textbook example of a
6 sham action/malicious prosecution having been filed for an ulterior purpose: to prevent
7 the sale of the Property to his predecessor-in-interest, Martin.

8 1083. Flores has described defendant attorneys Mrs. Austin, Weinstein, Toothacre,
9 Demian and Witt as the most “unethical attorneys” he has ever come across or even read
10 about in his career (the “Unethical Attorneys”).

11 1084. Mrs. Austin drafted the Draft Documents seeking to deprive Cotton of the
12 benefit of the terms he negotiated in the JVA with Geraci; Cotton sought to engage
13 McElfresh to represent him against Mrs. Austin/Geraci; McElfresh referred Cotton to
14 FTB; FTB amended Cotton’s complaint and engaged in, *inter alia*, Demian’s Deceit
15 conniving to sabotage Cotton’s case; F&B then colluded with Geraci/Mrs. Austin and
16 fabricated the Disavowment Allegation when confronted with *Riverisland*; McElfresh
17 represented Geraci in the Magagna Appeal and did not raise the Child Care Issue; and
18 Weinstein and Mrs. Austin used her “expert” testimony to capitalize on Judge Wohlfeil’s
19 Fixed-Opinion to blatantly lie that Geraci can own a cannabis CUP despite the Illegality
20 Issues.

21 1085. There is nothing complicated about what has taken place; the only reason
22 these crimes have not been exposed is because of Judge Wohlfeil’s Fixed-Opinion and
23 the City’s attorneys’ failures to abide by their affirmative ethical duties to the Court to
24 cover up and/or limit the City’s liability.

25 1086. The judgment entered by Judge Wohlfeil against Cotton does not change
26 Flores’ position, especially as he has reviewed all the evidence and transcripts of the trial
27 of *Cotton I*; but-for the Damages Issue and the transcript from the MNT hearing
28 (supporting the Opposition Theory), Flores would believe Judge Wohlfeil is corrupt.

1 1087. Unfortunately, in mid-2018 through mid-2019, Flores never imagined that
2 Judge Wohlfeil would fail to understand, *inter alia*, the Mutual Assent Issue or enter a
3 judgment that enforces an illegal contract.

4 1088. Consequently, back then Flores had been candid in his view of the Unethical
5 Attorneys; they are the primary individuals responsible for the filing and maintaining of
6 *Cotton I*, a case that should never have been and that should have been dispositively
7 addressed in Cotton’s favor in the preliminary stages.

8 1089. Unfortunately, Flores described that in his approximate ten years of criminal
9 defense work, during which he has come across murderers, drug addicts, cartel associates,
10 pedophiles and sociopathic criminals, he has never come across any other individuals that
11 can match the Unethical Attorneys in sheer willful malevolence. They have knowingly
12 caused more harm to innocent people than any criminal Flores has come across during
13 his professional career.

14 1090. These attorneys, over the course of years, have used their superior legal
15 expertise to manipulate and defraud innocents via the judiciaries, have slandered and
16 destroyed the reputation and assassinated the character of anyone who dared to expose
17 their actions, while hypocritically holding themselves out to be of great integrity and
18 moral character.

19 1091. The Unethical Attorneys are masters at taking advantage of the presumption
20 of integrity that the judiciaries afford them by virtue of the fact that they have a license to
21 practice law.

22 1092. As matters stand today, some of the Crowd Source Investors believe that
23 their rights will never be vindicated and that these attorneys will not be held to account
24 for the losses they have suffered because of these attorneys’ unethical actions.

25 1093. It is possible that some of these individuals, in their own words, may be
26 willing to become “martyrs” and take violent action against these attorneys.

27 1094. Flores has reason to believe that some of these parties have contemplated
28 taking vigilante justice, being arrested, and using as their defense the unjustified rulings

1 by Judge Wohlfeil to bring attention to the miscarriage of justice that is *Cotton I*. These
2 parties believe, that in their defense to a criminal action, Judge Wohlfeil’s rulings could
3 be reviewed and findings could be made that they were contrary to law as such would be
4 mitigating evidence of, *inter alia*, the motivation for any unlawful acts they take against
5 these attorneys.

6 1095. In other words, these individuals believe they have no other recourse at law
7 to expose a criminal conspiracy that has caused severe harm to them and their families.

8 1096. Flores, Cotton, and parties close to him have gone to numerous law
9 enforcement and governmental agencies - including San Diego City Attorney, San Diego
10 County District Attorney, the United States Attorney, the San Diego Police Department,
11 the FBI, and the California State Bar - and repeatedly raised the issues and evidence of
12 violence.

13 1097. Nothing has been done. As the record in *Cotton I* makes clear, Judge
14 Wohlfeil has repeatedly been provided with credible evidence that violence has been
15 undertaken against innocents. He has done nothing.

16 1098. Flores personally described to Judge Wohlfeil the violence against Young at
17 the hearing on his motion to intervene and offered to produce the Associate Recording as
18 evidence of Mrs. Austin’s role in the Antitrust Conspiracy. Judge Wohlfeil refused.

19 1099. Because Judge Wohlfeil has never even addressed the allegations of
20 violence, from the perspective of non-attorney third parties, they believe that he is, if not
21 complicit, then at the very least knowingly ratifying the violence against them.

22 1100. The Unethical Attorneys, compared to Cotton’s Crowd Source Investors, are
23 wealthy and while the *Cotton I* and related litigation matters have had no effect on their
24 home life, their actions have and are causing immense suffering to the families of blue-
25 collar men and woman. These individuals sacrificed believing in the representations of
26 Cotton, his agents, and the general belief that a state judge would act impartially.

27 1101. What the Unethical Attorneys fail to realize - especially Demian as Cotton
28 has posted Demian’s Deceit email on his website (and you don’t have to be an attorney

1 to understand Demian sought to destroy his own client’s life) - is that they have taken or
2 ratified unlawful action outside of the judiciary to harm innocent families and now these
3 families have no reason to trust the court system or believe that justice will ever be
4 achieved.

5 1102. The Unethical Attorneys have prevented these individuals from having their
6 rights vindicated and have left them with what they believe to be their only alternative:
7 violence.

8 1103. In mid-2019, Flores stopped going to the Property and meeting with the
9 Cotton’s Crowd Source Investors because he did not want to hear some of their
10 discussions.

11 1104. However, Flores met with the Crowd Source Investors in anticipation of
12 litigation and, prior to Judge Wohlfeil’s ruling on Cotton’s Motion to Bind (*Cotton I*,
13 ROA 511), which convinced numerous parties that Judge Wohlfeil was corrupt, he would
14 potentially have represented these parties in litigation.

15 1105. Flores contacted the California State Bar Ethics Hotline and expressed his
16 concerns regarding potential violence, and he was informed that the attorney-client
17 privilege still applies to these individuals.

18 1106. In February 2020, Cotton told Flores that some of the Crowd Source
19 Investors have started to meet without him.

20 1107. In March 2020, Flores was informed that the Crowd Source Investors know
21 where Weinstein lives and that he has a wife and two daughters in Mission Valley and
22 that Alan Austin has a business in El Cajon. They also believe they have discovered
23 where Demian lives.

24 1108. That they know this is the main catalyst for Flores filing this rushed
25 Complaint.

26 1109. Flores’ position is this: if anybody takes violent action against the Unethical
27 Attorneys, it is due to their own illegal actions and malicious activities that have
28 purposefully destroyed the lives of Cotton’s investors and supporters.

1 1110. The damage they have caused, particularly right now amidst the Coronavirus
2 pandemic that has left many of them without income is intensifying their hate for the
3 Unethical Attorneys.

4 1111. The savings they could otherwise have relied on or, had justice take its due
5 course, the principal plus interest they were promised, could have helped them through
6 these unprecedented difficult times. For these blue collar individuals, who are not wealthy
7 and do not have financial reserves, this capital is the difference that is putting their
8 families through needless suffering during these difficult times.

9 1112. The Unethical Attorneys believe themselves to be above the law and, in fact,
10 their superior legal knowledge has actually placed them above the law. The consequences
11 of such may be that the Crowd Source Investors will similarly act outside the law.

12 1113. Thus, Flores is informed and believes, and thereon alleges, that the Unethical
13 Attorneys would dispute his description of them and would claim that Flores' statements
14 are a contributing cause to any potential violence against them.

15 1114. At no point has Flores ever condoned, supported, and/or in any manner
16 communicated that taking violence was appropriate, just or lawful.

17 1115. Flores specifically described that he would not continue to meet with some
18 of them, and asked them to communicate same to the rest of Cotton's supporters/investors,
19 because he cannot be part of or involved in any type of unlawful action.

20 1116. An actual, present and justiciable controversy has therefore arisen and now
21 exists between the Flores and the Unethical Attorneys concerning whether Flores is liable
22 to defendants for any potential/actual violence against them in light of his statements.

23 1117. A judicial determination of this controversy is necessary and appropriate in
24 order for the parties to ascertain their rights, duties and obligations regarding this dispute.

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiffs request that the Court grant the following relief:

- 27
28 1. The judgments entered in *Cotton I* and *II* be vacated;

2. A declaration that Plaintiffs be allowed to join *Cotton I* as indispensable parties;⁷⁹
3. A declaration that Flores be allowed to join *Cotton II* as an indispensable party;
4. An order that *Cotton I* and *Cotton II* be stayed pending resolution of this federal action;
5. A declaration that no ruling, order or judgment issued by Judge Wohlfeil may be used by defendants to justify any action in this action due to judicial bias;
6. A declaration finding that the defendants have violated Plaintiff's rights under the Constitution and laws of the United States and the Constitution and laws of the State of California;
7. An award of compensatory and general damages in an amount to be proven at trial;
8. An award of consequential damages in an amount to be proven at trial;
9. An award of statutory damages, as permitted by law;
10. An award of punitive damages, as permitted by law, to punish the defendants and make examples of them;
11. Reasonable attorneys' fees and costs as allowed by law;
12. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining Magagna, the City and their agents from selling or otherwise transferring the District Four CUP until the conclusion of this action;
13. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining all defendants from directing, supporting and/or approving in any manner the intimidating, threatening, or otherwise attempting to dissuade any potential witness from testifying or otherwise providing a statement in this matter;
14. Any other injunctive relief as required to effectuate the relief requested herein; and
15. Such other and further relief as the Court deems fair, equitable, and just.

Dated: April 3, 2020

Law Offices of Andrew Flores

⁷⁹ Plaintiffs will collectively file suit in state court against defendants for, *inter alia*, violations of the Cartwright Act, the Bane Act, and/or negligent acts or omissions that furthered the Antitrust Conspiracy in violation of 42 U.S.C § 1986.

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By /s/ Andrew Flores

Plaintiff *In Propria Persona*, and
Attorney for Plaintiffs
AMY SHERLOCK, Minors T.S. and
S.S., and JANE DOE

EXHIBIT 1



1014.5' to Parcel #3
 1019.5' to Parcel #4

719.5' to Parcel #3
 724.5' to Parcel #4

Village Kids Child Care
 2156 Oriole Street SD CA 92114
 Licensee: Ms. Michelle DeJohette

Cuddles Academy Child Care
 2145 Oriole Street, SD CA 92114
 Licensee: Ms. Megan Hanshaw

Use Code	Zone	YrBt	Units	SqFt	SiteAmt	Phone	SiteDt
1 Parcel: 543-020-02-00 Owner: COTTON, DARRYL STORES, RETAIL OUTLET	C	1961		918	\$141,000F		02/27/1998
2 Parcel: 543-020-04-00 Owner: OWNER NAME UNAVAILABLE VACANT COMMERCIAL	C						03/25/2019
3 Parcel: 544-011-64-00 Owner: DEJOHETTE, MICHELLE SINGLE FAMILY RESIDENCE	R1	1980	1	1,505	\$490,000F		04/15/2005
4 Parcel: 544-012-04-00 Owner: HANSHAW, MEGAN SINGLE FAMILY RESIDENCE	R1	1960	1	1,764	\$225,000F		06/30/2010

**Path of Travel Distances Shown
 Between Properties
 As Per SDMC 113.0225(c)**

EXHIBIT 2

From: R.J. Martin <[REDACTED]>
Sent: Friday, May 12, 2017 10:52 AM
To: Jessica McElfresh
Cc: Joe Hurtado
Subject: Re: Federal - CUP Application - Introduction

Joe,

Thank you for the email introduction.

Jessica,

Thank you for reaching out and your willingness to work with us on our CUP application. Mahalo!

Please contact me if you have any questions or need additional information @ [REDACTED] or [REDACTED]

--R.J. Martin

[REDACTED]
[REDACTED]

On Thu, May 11, 2017 at 1:48 PM, Jessica McElfresh [REDACTED] wrote:

Hi Joe and R.J.,

R.J., it would be a pleasure to work with you towards the CUP. I currently represent four of the open and operating licensed dispensaries in the City of San Diego, as well as licensees in other jurisdictions. Please feel free to give me an initial call if I can answer some questions for you.

Joe, yes, agreed, always nice to work with professionals 😊

Take care,

Jessica C. McElfresh

Attorney-at-Law

McElfresh Law, Inc.

jessica@mcfreshlaw.com

www.criminallawyersandiego.com/

Office: [REDACTED]

Cell: [REDACTED]

Fax: [REDACTED]

Appointments:

12555 High Bluff Drive, Suite 390

San Diego, CA 92130

Mailing:

P.O. Box 230363

Encinitas, CA 92023

WARNING: This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. It contains information from McElfresh Law, Inc., which may be privileged, confidential and exempt from disclosure under applicable law. Dissemination or copying of this e-mail and/or any attachments by anyone other than the addressee or the addressee's agent is strictly prohibited. If this electronic transmission is received in error, please notify Jessica C. McElfresh immediately at [\(858\) 756-7107](tel:8587567107). Thank you.

From: Joe Hurtado [REDACTED]
Sent: Thursday, May 11, 2017 4:46 PM
To: R.J. Martin [REDACTED] Jessica McElfresh [REDACTED]
Subject: Federal - CUP Application - Introduction

R.J.,

Following-up on our conversation right now, wanted to make a quick intro to Jessica, one of the very few attorneys to get a CUP application approved in San Diego.

Once the mess with Darryl gets cleared, it is my strong recommendation that you retain Jessica to take over the CUP application.

Jessica, thank you again for the update today and your counsel over the last week, I cannot emphasize enough how nice it is to work and interact with professionals.

Best, Joe

EXHIBIT 3



(no subject)

2 messages

Darryl Cotton <indagrodarryl@gmail.com>

Tue, Dec 24, 2019 at 2:29 PM

To: Ken.Feldman@lewisbrisbois.com, "mphelps (mphelps@sandiego.gov)" <MPhelps@sandiego.gov>, "David S. Demian" <ddemian@ftblaw.com>, "Austin, Gina" <gaustin@austinlegalgroup.com>, JOHNS CRANE - John Ek <johnek@aol.com>, akohn@pettitkohn.com, natalie@nguyenlawcorp.com, crosby@crosbyattorney.com
 Cc: aferris@ferrisbritton.com, "Rishi S. Bhatt" <rbhatt@ftblaw.com>, "Adam C. Witt" <awitt@ftblaw.com>, Jake Austin <jacobaustinesq@gmail.com>, Andrew Flores <afloreslaw@gmail.com>, CynthiaM@vanstlaw.com, corina.young@live.com, biancaimeemartinez@gmail.com, "Hoy, Cheri" <choy@sandiego.gov>, "Sokolowski, Michelle" <msokolowski@sandiego.gov>, ekulas@ferrisbritton.com, dbarker@ferrisbritton.com, jorge.delportillo@sdca.org, gbraun@sandiego.gov, Joe Hurtado <j.hurtado1@gmail.com>, pfinch@ftblaw.com, "Jason R. Thornton" <jthornton@ftblaw.com>, jbaired@ftblaw.com, stoothacre@ferrisbritton.com, matthew@shapiro.legal, "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>, Cherlyn Cac <Ccac@sandiego.gov>, abhay@techne-us.com, jim@bartellassociates.com, jessica@mcelfreshlaw.com, Chris Williams <Chris@xmgmedia.com>

I am sending this email on Christmas Eve to let everyone know that this past year, like the year before and the year before that, has been another one full of crushing personal and professional hardship for me brought on by the litigation and conspiracies you've all played a part in the theft of my property and the Fraud Upon the Court which you all, to some degree or another, have played a part in. If you are receiving this email it's because you should know that yesterday I filed an *Ex Parte* motion to unstay my *Pro Se* complaint in federal court

[Case No: 18-cv-0325-GPC-MDD](#) and look to have what you have all been a party to presented to a competent judge.

So while you all enjoy your Christmas with your friends, family and colleagues and welcome in the New Year, rest assured I will not be doing so. What you have subjected me to has cost me, in addition to a \$261K judgement I now owe Geraci on a sham lawsuit, everything I have ever held dear to me as people I have known and loved abandoned me over what they have come to decide has been my error in judgement. My failure to make a deal. My failure to read the tea leaves and as shown in this Flowchart I created, [Geraci v Cotton Flowchart](#) my failure to bend to superior forces. What I have expected them to believe and rely on is not only extraordinary it is, if you hadn't experienced it firsthand, unbelievable so I guess I can't really blame them for giving up on me. But I can blame everyone who has received this email for what's happened to me and for that I want you to be aware of the following;

Attorney Kenneth Feldman; I have been told today that it is impossible for you to be as unethical every other attorney included in this email (except DA Jorge DelPortillo). Let me break down the conspiracy for you, it begins and ends with attorney Jessica McElfresh, who emailed her client about how she was obstructing justice and got charged with obstruction of justice. She had to enter a plea agreement, **see attachment (1)**, with District Attorney Jorge DelPortillo, cc'ed herein that specifically would have prevented her from representing Geraci in the 6220 appeal, yet she did so anyway.

I first went to McElfresh to defend me in the suit against Geraci, not knowing she was a co-conspirator of Austin. I PAID for her services, I have the billing statements. She referred me to David Demian of Finch, Thornton & Baird, who along with McElfresh, are the two most corrupt and reprehensible individuals that stand out even among a vile group of violent criminals and deceitful professionals who violate their fiduciary duties to their clients and the courts.

BOTH OF THEM WERE MY ATTORNEYS IN REPRESENTING ME AGAINST GERACI!

Demian never told me he had shared client's with Geraci's firm, Tax & Financial Center, Inc. Any doubt about Demian being deceitful and corrupt has been stripped away by his actions when he represented me. All you have to do is review my pro se complaint against Geraci and Berry and compare it to the first and second amended complaints filed by FTB on my behalf! Without authorization Demian dropped the conspiracy charge against Geraci and Berry and he also dropped the allegations that Geraci cannot own a marijuana CUP because he had previously been sanctioned for illegal activity. Only an attorney seeking to sabotage ~~0087~~ case would have dropped those allegations, they are case dispositive and he cannot come up with any evidence to rationalize those actions! Geraci and Berry both testified to those very facts at trial.

Demian also sent me an email saying I "should" say that Geraci was acting as my agent when he submitted the CUP on my property without disclosing his or my interest in the property and he did so in Berry's name without disclosing Geraci's name.

Demian I will not settle with you under any conditions and there will be a day where you will be on the stand along with your criminal associates who aided and abetted you in this scheme, Witt and Bhatt will also be held accountable. As well as the other Partners at FTB who knew about what was going on and helped you cover it up by hiring Feldman. You all have had your chances to come clear and chose not to. Wherever you go for the rest of your careers I will make sure everyone you work with knows that you are the type of attorneys that conspire against their own clients and lack the integrity and morals. You are exponentially worse than the criminals you protect, you literally pervert the justice system and make it impossible for normal people to use the justice system to achieve justice.

Contrary to Austin's testimony at trial, it is not legal for Geraci to own a MO CUP - the only reason they got away with it is because Judge Wohlfeil is the Forrest Gump of state judges, who based on his limited intellect is being paid far beyond what he is worth at \$167K annum salary. Mr. Feldman, you pay your first year associates more than he makes after 30 years of practicing law. By the time this is over, he will be revealed for the true puppet he is being played by Weinstein and to stupid to know it. You know you cannot rely on a judges order when you know it was procured by fraud.

I can not forgive Wohlfeil for what he put me, my and my family through as a result of his incompetence. I'm not even a lawyer and I know that a contract requires MUTUAL ASSENT and a LAWFUL OBJECT! Weinstein made Wohlfeil look like a puppet dancing on his strings, too dumb to even understand what was going on in front of him. He's a disgrace of a judge. I wonder how many innocent people Wohlfeil screwed over by his incompetence because he was played by smarter attorneys like Weinstein? It is a truly depressing thought.

Feldman, you filed a motion to dismiss that you knew was helping hide FTB's malicious acts of conspiring against their own client! You teach classes on ethics, if you fail to do the ethical action immediately and inform Judge Curiel, I am naming you personally in my amended complaint. Pursuant to 42 USC Section 1986. Your failure to act is evidence of your guilt.

I would also ask you to keep in mind that Ferris & Briton is a cesspool of legal 'professionals' that exists for aiding their unethical clients who want to take unethical actions and is corrupt all the way through from their managing partner, Weinstein, to their "I was forced to take part in a malicious prosecution action by Weinstein" associates Toothacre and Kulas, their deceitful paralegal Debra Barker, who falsified proofs of service to break the attorney-client privilege with my attorneys, to even their scumbag client, attorney James Crosby.

Feldman, don't you think it is strange that Geraci's counsel before Judge Curiel, the only attorney STUPID enough enough to file an Answer, is a solo practitioner who works in the same building as Ferris & Briton and is their former client for whom they got a judgement in the hundreds of thousands of dollars! Here see **attachment (2)** Crosby's federal answer. Only someone that F&B had leverage over would be stupid enough to file an Answer in the federal action when the MSJ in state court was pending and NOT assert fraud or mistake as an affirmative defense. Crosby is the stupidest attorney among all the attorneys here - the idiot perpetuated a fraud upon Judge Curiel, I can't wait to see him try to explain, the way Weinstein does, that it is a "coincidence" that Geraci hired him or some other reason for why Geraci's allegations of November 3, 2016, don't constitute affirmative defenses of fraud or mistake.

Berry submitted the CUP as part of a fraudulent scheme by not disclosing Geraci as the true owner of the CUP being sought - she testified to this in open court. Geraci has been sanctioned. Austin testified that it is legal for Geraci to have a CUP. But if that was true, Demian would not have dropped those allegations from my complaint. And McElfresh, if not a scumbag attorney that destroys lives, would not have represented Geraci in the appeal and she would have raised the daycares in the appeal. But she did not. Neither did Abhay, because it was a sham appeal to make it look like Geraci wanted Magagna's CUP denied, when in reality he needed it denied to mitigate his damages to me by millions! McElresh is simply a criminal and shes going to go to jail now that there is evidence she breached her plea agreement. Unless the City wants to cover this up and allows her to knowingly break the law and not hold her accountable in an effort to sweep all this underneath the rug. Whoever gives those orders at the City is probably the corrupt individual at the City behind the scenes.

Attachment (3) is a settlement offer from Ferris & Britton **AFTER** Emperor Wohlfeil denied my MSJ. Any reasonable attorney right now would know that having just defeated an MSJ, saying that it is '**economical**' to transfer the whole case to federal court **makes no sense!** You get your judgement in state court and then you raise Res Judicata in federal court. You don't go through the time and cost of discovery all over again in federal court.

0388

Gina Austin:

At trial you called Joe a liar, but Chris Williams knows that you spoke with him at his event and that you confirmed the November Document is not a sales contract. Joe and Chris, I am sorry about calling you out on this, **but I am not going to stand by and do nothing** and you both have testimony I need and that proves Austin committed perjury when she said she would not speak to Joe at your Chris's event because of attorney-client privilege. There is no privilege as there was no litigation at that time, but even if there was, she broke it by discussing it with both of you. And Chris, you hired Austin to speak at that event and she was your attorney and so was Abhay, so your testimony is going to make it clear that Austin is perjuring herself as well as Abhay.

Attorney Matt Shapiro: I have proof you sell weed for Magagna. **Magagna threatened Corina Young because she knows that you sell weed for him.** Nguyen, Young's attorney, PROMISED to provide Young's testimony that Magagna had threatened her and that Bartell was going to get the CUP at my property denied by the City. Magagna has been represented by Austin AND Abhay Schweitzer (Geraci's Point for the CUP Contract at my 6176 proerty) on the 6220 Federal Blvd. - **attached (4) Ex 147-059** are Abhay's (TECHNE) own billing statements which shows he researched the Cuddles Day academy and absolutely knew they were located within 1,000 feet of the two daycares.

Attachment (5) are the emails between Shapiro and Jake showing what a duplicitous individual Shapiro is when he admits that he lied about working for Magagna, and then when he realized he could not cover up the lie, began to assassinate his clients character with statements to Jake that Young is a pothead whose testimony can't be trusted.

Attached (6) is Abhays testimony from trial (attached 4 pages 70-71) is a fraudulent attempt to deny he knew about the Daycares. Schweitzer and McElfresh knew when they prepared the appeal that Magagna's location did not qualify, but they left that out of the appeal. The SDMC that prohibits daycares within 1,000 feet daycares. They both knowingly failed to do so at the public hearings even when someone mentioned the daycares at the public hearing.

Attorney Michael Weinstein: bad move trying to inflate Geraci's damages to cover up his bribes to corrupt City officials that you could not put in the public record.

Attached is a site map report commissioned from Title Pro showing the two day care centers being within 1,000 feet of the 6220 property! The City knew about the two daycare because someone raised it at the public hearing. Attorney Phelps for the City is not stupid, he is just as guilty by not raising these issues to the courts attention by not speaking up, helping a crime be committed in an attempt to cover up the City's corrupt actions in this matter. What a coincidence the City filed a forfeiture action on my property a month after Geraci files a lawsuit, then makes me an offer which I did not know at the time made me legally ineligible to own an interest in a MO CUP.

Attorney Michael Phelps: You are perhaps my greatest disappointment in all of this. Scumbag attorneys like Austin, McElfresh and Weinstein are to be expected, but I reviewed my emails with you and it's obvious to me you knew Geraci's case was frivolous, so when I communicated I was being threatened you should have told the judges that there was a high likelihood that it was Geraci and his agents! You let them take violent actions against me, my family, and people close to me - I am going to make it my goal to report all my communications with you to the state bar when this is over so that after their crimes are proven, it will be clear that you have a callous disregard for the safety and lives of innocent individuals, not just my own, and you lose your law license. Wohlfeil may be an idiot, but you are a malicious individual that is not fit for the job you hold.

It offends deeply that you sat at my trial the entire time as a "public servant" when you were there helping Geraci defraud me of my property using the courts. I rank you third in unethical despicable attorneys only behind McElfresh and Demian.

It was not until after trial that my attorney Andrew Flores came to the full realization you were all conspiring against me and he could prove it, he is the real owner of the 6220 MO CUP. He found the evidence of McElfresh in the damages receipts submitted by Geraci at trial. That was the first time we reviewed FTB's actions and realized it is not that FTB is stupid, it is that that they they are corrupt. **I went to McElfresh, a co-conspirator of Austin, for legal representation, and she referred me to FTB. One unlucky decision that has led to all this shit.**

6220 Property Owner John Ek, As you know I reached out to you is a series of phone calls and emails back in May 2018 to warn you about the litigation going on between Geraci and myself and the suspicious nature that Aaron Magagna had contacted you and began a competing CUP application on your property. I've broken down the hearing and approval process that occurred for [The Magagna/DSD 6220 CUP Approval Process](#) for you to consider in greater detail. The only reason I'm taking the time to bring you up to speed on this is because I HAVE known you for better that 20 years and in my heart of hearts want to believe you are not actively participating in this scheme with these people.

Bianca Martinez, I have our messages and so does Joe about how Geraci promised you 10% in the CUP at my property then he screwed you. I know you have already spoken with Geraci and his attorneys, Andrew says there is no way you sent those messages about needing a "green light" to engage in settlement discussions unless you were coached by an attorney. And unless you told them that Joe was seeing Dr. Ploesser how else would they know to ask him if he had seen him? You are low, disclosing someone else's mental health to get what you want. I am just letting you know that if you deny those allegations, I am going to subpoena Matt and he will not lie for you and he knows how Bartell sexually harassed you, how Geraci screwed you over the 10%. If you lie, I will name you as a defendant as well AND subpoena your boyfriend Matt. There is no way he is going to risk committing perjury and ratifying a criminal conspiracy by denying you have made those statements for years. If he does, I will name him as a defendant too and see if he is willing to help you cover up your lies on the stand in federal court.

Attorney Natalie Nguyen: As you've already been made aware, I filed the TRO today. Note that in relief for prayer I am going to name you in my amended complaint. You knew I NEEDED Young's testimony, you PROMISED to provide it, then you just VIOLATED ethical duties to the court and ignored emails from my attorneys while you made time for Young to move out of the city so we could not serve her and compel her to testify. This was after you unilaterally canceled two depositions without consent. That makes you a criminal. My attorney Jake Austin has all your emails **attachment (7)** lined up and that you are helping deny me equal protection of the laws by obstructing justice does not get any clearer.

I DARE YOU TO RESPOND TO THIS EMAIL AND SAY THAT YOU NEVER PROMISED TO PROVIDE YOUNG'S TESTIMONY REGARDING MAGAGNA'S THREATS TO YOUNG.




With the exception of Andrew and Jorge, you are all disgraces as attorneys that are the main reasons why everyone hates attorneys. You will literally allow the lives of families of innocent individuals to be threatened by Geraci and his gang of thugs rather than do what is right.

In closing I want everyone to know there is no situation where I ever give up. You are all attorneys so you should understand this: Emperor Wohlfeil acted in excess of his jurisdiction by issuing a judgment that enforces an illegal contract. It is void. Any and all orders issued pursuant to that judgment are void. Res Judicata will NEVER apply no matter how many lawsuits are brought and denied by the inept Judge Wohlfeil. Sooner or later, me, Andrew, or someone else will get the federal court to look at this substantively and you can't rely on an order from a biased judge that is void on its face to justify your action or failure to take action when you knew my civil rights were being violated.

Attached as Exhibit 8 is an image I commissioned from Title Pro showing that 6220 is within 1,000 feet of two daycares. Someone at the City is corrupt - the City did not accidentally approve a marijuana business! By now I hope you all realize that I will not rest until I am vindicated which means you are all going to be exposed sooner or later.






Darryl Cotton

8 attachments

-  **1) McElfresh Deferred Prosecution Agreement.pdf**
166K
-  **2) Geraci Answer to Federal Complaint.pdf**
89K
-  **3) 06-10-19-Settlement-Offer-2.pdf**
320K

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4/3/2020

-  **4) TECHNE BILLING STATEMENTS Ex 147-059.pdf**
2717K
-  **5) 05-27-18-Shapiro-emails.pdf**
328K
-  **6) SCHWEITZER TESTIMONY re RADIUS CK pages 70-71.pdf**
940K
-  **7) Nguyen-emails.pdf**
846K
-  **8) Title Pro 6176 Image-8-09-19.pdf**
232K









200

Darryl Cotton <indagroddarryl@gmail.com>
To: Andrew Flores <afloreslaw@gmail.com>, Joe Hurtado <j.hurtado1@gmail.com>

Fri, Apr 3, 2020 at 12:33 PM

[Quoted text hidden]

8 attachments

-  **1) McElfresh Deferred Prosecution Agreement.pdf**
166K
-  **2) Geraci Answer to Federal Complaint.pdf**
89K
-  **3) 06-10-19-Settlement-Offer-2.pdf**
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328K
-  **6) SCHWEITZER TESTIMONY re RADIUS CK pages 70-71.pdf**
940K
-  **7) Nguyen-emails.pdf**
846K
-  **8) Title Pro 6176 Image-8-09-19.pdf**
232K

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EXHIBIT 4



6192462844



(858) 254-9224 Mar 18
This is Lori. This is Ch... 01:59



61

(619) 450-7073 Sep 12, 2018
Outgoing call



485

N

Natasha Lead Counsel Dec 30, 2013
Hey Andrew. Sometim... 00:21



1374

(760) 726-2171 Jul 10, 2013
This is a message for ... 00:36

(619) 450-7073



(619) 450-7073

Type	Time	Date	Duration
Outgoing call	3:48 PM	Wednesday, Sep 12, 2018	4 min 55 s

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EXHIBIT 5

From: Andrew flores
Sent: Monday, March 9, 2020 3:47 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate [NON-PRIVLIGED CONVERSATION]

THIS COMMUNICATION IS NOT PRIVATE.

Mr. Claybon, the language in [redacted] applies to CRA statutes that do not require a political class for protection.

I am only writing to confirm the obvious: your continued feigned ignorance, the core issue here is an understanding of how Mr. Harcourt acquired Mr. Sherlock s interest in the Balboa CUP.

M M M M M

our bad faith is manifest and I will be bringing suit against you, your firm and your client as early as this week. Please stop threatening me with the implication that I am the individual that is acting in bad faith. It is my belief that your stalling is an attempt for your client to manufacture evidence to legitimi e his defrauding Mrs. Sherlock of her interest in the Balboa CUP.

I am open to legitimate conversations, not feigned ignorance as reflected by our email chain below. Please understand that while you continue to maintain that it is reasonable for Mr. Harcourt to not explain how he acquired Mr. Sherlock s interest, I view you as a criminal and co-conspirator of Mr. Harcourt that is using his expertise of the law to maliciously injure Mrs. Sherlock and her children. As already noted, a court will decide whether these communications and the facts set forth herein constitute probable cause to accuse you of such.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. 619 356-1556
F. 619 274-8053



CONFIDENTIALITY NOTICE:

This electronic mail message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying,

0395

disclosure or distribution of this information may be subject to legal restriction or sanction. Please notify the sender, by electronic mail or telephone, of any unintended recipients and delete the original message without making any copies.

From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, March 4, 2020 7:14 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Mrs. Sherlock demanded to know Mr. Harcourt's explanation for how he ended up owning 100% of the Balboa CUP after evidence was discovered that Mrs. Sherlock was unlawfully deprived of her interest in the Balboa CUP as Mr. Sherlock's heir (as fully described below). That demand is not unreasonable. It takes no effort for Mr. Harcourt to respond with a simple statement as to whether he purchased Mr. Sherlock's interest or Mr. Harcourt disavowed his interest in the Balboa CUP for some reason. Your feigned ignorance of the simplicity of this issue is apparent and your refusal to provide an explanation is unreasonable.

I am writing to make two points. First, as I noted, I went to the City and the documents that Mr. Harcourt references in his complaint pursuant to which the City transferred him sole ownership of the Balboa CUP are not in the City's file. Thus, your allegation that you "believe" the documents are "publicly accessible" has no factual basis. I have exercised due diligence and have not come across any such documents, if you know where they are publicly available, please let me know.

Second, as noted, your description of Mrs. Sherlock's demand based on the facts and arguments set forth below as "unreasonable" lacks probable cause. Even if Mr. Harcourt is not responsible for forging Mr. Harcourt's signature or engaged in unlawful conduct, that does not explain why he is refusing to provide a simple explanation given the facts. In my professional opinion, you have crossed the line from zealous advocacy of your client to being a co-conspirator of Mr. Harcourt seeking to defraud Mrs. Sherlock. *See Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) ("Though there appears to be no clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that the attorney may be held liable for damages if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably should have known, would violate the clearly established constitutional or statutory rights of another.") (citing *Buller v. Buechler*, 706 F.2d 844, 852-853 (8th Cir. 1983)).

Based on the language in *Stevens*, I will be forced to protect Mrs. Sherlock's rights by filing suit against your personally and your firm as co-conspirators of Mr. Harcourt. And we will let a Court determine which one of us is unreasonable in light of our positions described below. Please consider this notice of my intent to file suit and a TRO against, *inter alia*, Mr. Harcourt, you, and your firm for conspiring to defraud Mrs. Sherlock of her interest in the Balboa CUP.

If you have any case law that contradicts *Stevens* and which allows you to unilaterally ignore Mrs. Sherlock's demand, particularly as the core basis of this suit is the belief that Mr. Harcourt fabricated documents and your refusal is potentially allowing him time to fabricate additional evidence to legitimize the transfer, please provide it and I will reconsider my position in light of any such authority.

Sincerely,

Andrew Flores
 Attorney at Law
 945 4th Ave Suite 412
 San Diego CA 92101
 P. 619 356-1556
 F. 619 274-8053

0396

EXHIBIT 6



EXHIBIT 7

Geraci vs. Cotton, et al.

Reporter's Transcript of Proceedings July 10, 2019

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 APPEARANCES
 2 FOR PLAINTIFF AND CROSS-DEFENDANT LARRY GERACI AND
 3 CROSS-DEFENDANT REBECCA BERRY:
 4 FERRIS & BRITTON
 5 BY: MICHAEL R. WEINSTEIN, ESQUIRE
 6 BY: SCOTT H. TOOTHACRE, ESQUIRE
 7 BY: ELYSSA K. KULAS, ESQUIRE
 8 501 West Broadway, Suite 1450
 9 San Diego, California 92101
 10 mweinstein@ferrisbritton.com
 11 stoothacre@ferrisbritton.com
 12 ekulas@ferrisbritton.com

13
 14 FOR DEFENDANT AND CROSS-COMPLAINANT DARRYL COTTON:
 15 ATTORNEY AT LAW
 16 BY: JACOB P. AUSTIN, ESQUIRE
 17 1455 Frazee Road, Suite 500
 18 San Diego, California 92108
 19 619.357.6850
 20 jpa@jacobaustinesq.com

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Transcript of Proceedings

Geraci vs. Cotton, et al.

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I N D E X

PAGE

WITNESSES:

JAMES BARTELL SCHWEITZER	
Direct by Mr. Toothacre	11
Cross by Mr. Austin	25
DARRYL COTTON	
Direct by Mr. Austin	33
Cross by Mr. Weinstein	54
Redirect by Mr. Austin	60
Recross by Mr. Weinstein	62
LARRY GERACI (On rebuttal)	
Direct by Mr. Weinstein	65

Transcript of Proceedings

Geraci vs. Cotton, et al.

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I N D E X

EXHIBITS	IDENTIFIED	/ ADMITTED
85 Email to Michael Weinstein from Darryl Cotton re Geraci v. Cotton - Posting of Notice of Application, dated 3/28/17	52	59

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 THE COURT: All right. If the evidence had
2 ended as of yesterday, we would be having a very
3 different discussion than I expect we'll have this
4 morning.

5 As of this time yesterday, I understood
6 Plaintiff's theory in the case. But I was not clear on
7 what Plaintiff's (sic) theory was.

8 From Mr. Geraci's perspective, this was a
9 straight-on purchase of real estate, which requires a
10 writing. Now, I agree with the defense -- well, let me
11 back up.

12 I disagree with the defendant's position
13 that -- well, let me rephrase that.

14 I agree with the proposition that the
15 three-sentence paragraph -- three-sentence contract on
16 November 2 was not an integrated contract. I do think,
17 though, that there's enough there that a jury could
18 return a verdict in favor of Mr. Geraci on his breach of
19 contract claim, given his theory.

20 Now, today, we heard evidence of a joint
21 venture, the terms of which are not entirely clear to
22 the Court. But, folks, if the Court of Appeal were
23 looking at this record, I'm of the view that they would
24 see enough that would allow Mr. Cotton's theory, based
25 upon an oral joint venture agreement to go to the jury,
26 which does not require a writing for him to contribute
27 his property to what he's characterizing as a venture.

28 There's more the Court could say, but that may

Transcript of Proceedings

Geraci vs. Cotton, et al.

1 Mr. Geraci made the statement that Mr. Cotton would get
2 a 10 percent stake in what they're characterizing as an
3 oral joint venture.

4 MR. WEINSTEIN: All right. So that's a --
5 there was -- there was testimony by Mr. Cotton that
6 that's what they discussed. Mr. Geraci has denied that.
7 But for purposes of this motion, we rely on Mr. Cotton's
8 testimony.

9 It's -- ultimately, you can't have a fraud
10 claim that's based on mere nonperformance of the
11 representation. Otherwise, every contract claim,
12 dispute over a contract, would be a tort claim. And
13 there -- there has to be -- the -- I suppose that the --
14 there's nothing in -- there's no written representation,
15 obviously, because they came in documents that
16 Mr. Cotton prepared that Mr. Geraci undisputed --
17 indisputably didn't sign. So those representations in
18 the written documents can't be attributed to him.

19 So what he's really saying is he promised to
20 sign an agreement containing these terms and he never
21 did. That -- that -- I don't believe can convert a
22 contract claim to a tort claim. I don't believe it's
23 sufficient.

24 I know there's -- the Tenzer versus Superscope
25 case is the one that comes to mind.

26 THE COURT: Well, I'm not so concerned about
27 this because I do not consider the 11/2/16 agreement to
28 be an agreement.

Transcript of Proceedings


Geraci vs. Cotton, et al.

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I, Margaret A. Smith, a Certified Shorthand Reporter, No. 9733, State of California, RPR, CRR, do hereby certify:

That I reported stenographically the proceedings held in the above-entitled cause; that my notes were thereafter transcribed with Computer-Aided Transcription; and the foregoing transcript, consisting of pages number from 1 to 182, inclusive, is a full, true and correct transcription of my shorthand notes taken during the proceeding had on July 10, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of July 2019.



Margaret A. Smith, CSR No. 9733, RPR, CRR

TAB “5”

TAB “5”

1 KJAR, McKENNA & STOCKALPER LLP
 2 James J. Kjar, Esq. (SBN: 94027)
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 3 Jon R. Schwalbach, Esq. (SBN: 281805)
jschwalbach@kmslegal.com
 4 Gregory B. Emdee, Esq. (SBN: 315374)
gemdee@kmslegal.com
 5 841 Apollo Street, Suite 100
 6 El Segundo, California 90245
 7 Telephone: (424) 217-3026
 8 Facsimile: (424) 367-0400

9 Attorneys for Defendants,
 10 MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA KULAS, and
 11 FERRIS & BRITTON APC

12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 ANDREW FLORES, an individual,
 15 AMY SHERLOCK, on her own behalf
 16 and on behalf of her minor children, T.S.
 and S.S., JANE DOE, an individual,
 Plaintiffs,

17 vs.

18 GINA M. AUSTIN, an individual;
 19 AUSTIN LEGAL GROUP APC, a
 California Corporation; JOEL R.
 20 WOHLFEIL, an individual;
 LAWRENCE (AKA LARRY) GERACI,
 21 an individual; TAX & FINANCIAL
 CENTER, INC., a California
 22 Corporation; REBECCA BERRY, an
 23 individual; JESSICA MCELFRISH, an
 individual; SALAM RAZUKI, an
 24 individual; NINUS MALAN, an
 individual; MICHAEL ROBERT
 25 WEINSTEIN, an individual; SCOTT
 26 TOOTHACRE, an individual; ELYSSA
 27 KULAS, an individual; RACHEL M.
 PRENDERGAST, an individual; FERRIS
 28 & BRITTON APC, a California

Case No.: 3:20-cv-00656-BAS-DEB

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 DEFENDANTS MICHAEL
 WEINSTEIN’S, SCOTT H.
 TOOTHACRE’S, ELYSSA KULAS’,
 AND FERRIS & BRITTON APC’S
 REPLY TO PLAINTIFFS’
 OPPOSITION TO MOTION TO
 DISMISS PLAINTIFFS’ FIRST
 AMENDED COMPLAINT**

Date: August 24, 2020

Time: 10:00 a.m.

**NO ORAL ARGUMENT UNLESS
 REQUESTED BY THE COURT**

District Judge: Cynthia A. Bashant

Magistrate Judge: Daniel E. Butcher

Courtroom: 4B (4th Floor)

Complaint Filed: April 3, 2020

Trial Date: None 0409



1 Corporation; DAVID S. DEMIAN, an
 2 individual, ADAM C. WITT, an
 3 individual, RISHI S. BHATT, an
 4 individual, FINCH, THORTON, and
 5 BAIRD, a Limited Liability Partnership,
 6 JAMES D. CROSBY, an individual;
 7 ABHAY SCHWEITZER, an individual
 8 and dba TECHNE; JAMES (AKA JIM)
 9 BARTELL, an individual; BARTELL &
 10 ASSOCIATES, a California Corporation;
 11 MATTHEW WILLIAM SHAPIRO, an
 12 individual; MATTHEW W. SHAPIRO,
 13 APC, a California corporation;
 14 NATALIE TRANGMY NGUYEN, an
 15 individual, AARON MAGAGNA, an
 16 individual; A-M INDUSTRIES, INC., a
 17 California Corporation; BRADFORD
 18 HARCOURT, an individual; ALAN
 19 CLAYBON, an individual; SHAWN
 20 MILLER, an individual; LOGAN
 21 STELLMACHER, an individual;
 22 EULENTIAS DUANE ALEXANDER,
 23 an individual; BIANCA MARTINEZ; an
 24 individual; THE CITY OF SAN DIEGO,
 25 a municipality; 2018FMO, LLC, a
 26 California Limited Liability Company;
 27 FIROUZEH TIRANDAZI, an individual;
 28 STEPHEN G. CLINE, an individual;
 JOHN DOE, an individual; and DOES 2
 through 50, inclusive,

Defendants,

JOHN EK, an individual;
 THE EK FAMILY TRUST, 1994 Trust,
 Real Parties In Interest.

I. INTRODUCTION

In this action, Plaintiffs, Andrew Flores, Amy Sherlock, T.S. and S.S, Jane Doe (Collectively “Plaintiffs”) attempt to jump into the fray of this ongoing litigation saga after Darryl Cotton (hereinafter “Cotton”) lost his jury trial in San

0410

1 Diego Superior Court and Cotton abandoned his appeal in the California Court of
2 Appeal. (Am. Compl. ¶¶ 18, 236, 237). Rather than accept the outcome, Plaintiffs
3 have named everyone remotely connected to Cotton’s state court litigation,
4 claiming a grand conspiracy. Plaintiffs’ Opposition does not make a showing of
5 how Plaintiffs’ First Amended Complaint alleges any facts to support a claim
6 against Defendants Michael Weinstein, Scott Toothacre, Elyssa Kulas, Rachel
7 Pendergrast, and Ferris & Britton, APC (hereinafter collectively “F&B
8 Defendants”).

9 Instead of proving they have additional facts to permit amendment,
10 Plaintiffs’ Opposition regurgitates their vague and inadequate conclusory
11 contentions of the First Amended Complaint and fails to do more than simply
12 reference Defendants’ protected litigation speech and activity. Therefore, for the
13 reasons stated herein and the subject Motion to Dismiss, Plaintiffs’ First Amended
14 Complaint should be dismissed with prejudice.

15 **II. ARGUMENT**

16 **A. Plaintiffs Have Failed to Prove That Their First Amended Complaint**
17 **States Any Facts To Meet The Requisite Pleading Standards**

18 Plaintiffs’ First Amended Complaint fails to allege any facts sufficient to
19 state a claim for relief against F&B Defendants. The First Amended Complaint
20 contains no factual allegations to support Plaintiffs’ alleged causes of action
21 against F&B Defendants, neglects to state an actionable and independent cause of
22 action against F&B Defendants, and contains no other facts describing or
23 specifying any conduct of F&B Defendants to support any remote allegations of
24 some alleged wrongdoing.

25 Plaintiffs’ Opposition attempts to re-cast their repetitive and unintelligible
26 pleading as being about “the formation and actions of a criminal enterprise seeking
27 to create an unlawful cannabis monopoly”. (Oppo at 3:12-14). Even if true,
28 Plaintiffs’ First Amended Complaint does not mention any activity regarding the

1 F&B Defendants outside their protected litigation activities i.e. filing and
2 maintaining a lawsuit and making legal arguments.

3 Plaintiffs vaguely reference “evil and illegal actions” due to allegations that
4 Defendant Geraci filed his lawsuit, via the legal services of the F&B Defendants,
5 against Cotton without probable cause. (Oppo at 3:20-22). Plaintiffs also attempt to
6 claim that, as to the F&B Defendants, their First Amended Complaint alleges
7 bribery, obstruction of justice, witness tampering, falsifying evidence, and
8 suborning perjury, but this is simply not the case. (Oppo at 4:21-24; *See Am.*
9 *Compl.*, ¶¶ 130, 136-140, 152, 153, 158, 161, 162, 167, 168, 197, 199, 202, 236).
10 Plaintiffs’ only allegations against the F&B Defendants claim that they represented
11 Geraci in the underlying state court action. (*Am. Compl.*, ¶¶ 130, 136-140, 152,
12 153, 158, 161, 162, 167, 168, 197, 199, 202, 236.) Furthermore, Defendant Elyssa
13 Kulas is only mentioned as being a defendant in this suit and as a part of the law
14 firm Ferris & Britton APC. (*Am. Compl.* ¶¶ 34, 37).

15 Despite no such allegation in the First Amended Complaint, Plaintiffs now
16 attempt to claim that Defendant Toothacre represented Tirandazi at deposition.
17 (Oppo at 4:23-25). Once again, even if true, this is litigation protected activity.
18 Under the various doctrines discussed in the Motion to Dismiss, Defendant
19 Toothacre cannot be sued for representing a person in a deposition.

20 Plaintiffs also attempt to make the conclusory claim that because the
21 underlying action was an allegedly “sham” action, the allegations of violence were
22 therefore ratified by the F&B Defendants. (Oppo at 8:13-14). Plaintiffs then
23 somehow make the leap that they have asserted that the F&B Defendants made
24 misrepresentations to the court because the opposing attorney in the underlying
25 action decided to not call a witness to testify. (Oppo at 8:15-16). Plaintiffs fail to
26 allege any facts that connect the F&B Defendants to these allegations, and it
27 appears that Plaintiffs have resorted to incoherent ramblings and wild non-sensical
28 accusations.

0412

1 Plaintiffs ultimately end their non-sensical conclusory accusations with
2 conclusory statements that the underlying action was a “sham” litigation because
3 the F&B Defendants made legal arguments and represented Tirandazi and
4 therefore the F&B Defendants must have committed a criminal act because
5 Plaintiffs apparently did not like what Tirandazi testified to and disagreed with the
6 F&B Defendants’ arguments. (Oppo at 8:24 – 9:9). Under *Freeman*, in order to
7 show a lawsuit was a “sham” for antitrust purposes, Plaintiffs must show that the
8 lawsuit was (1) objectively baseless, and (2) a concealed attempt to interfere with
9 the plaintiff’s business relationships. *Freeman v. Lasky, Haas & Cohler*, 410 F.3d
10 1180, 1184 (9th Cir.2005). Plaintiffs cannot satisfy this burden because the
11 underlying suit was decided against Cotton and in favor of F&B Defendant’s
12 former client Defendant Geraci. Therefore, said suit was not “objectively baseless”
13 and therefore not a “sham”.

14 Plaintiffs’ Opposition does nothing to clarify the vague and speculative
15 wrongs alleged in the First Amended Complaint. Thus, Plaintiffs have failed to
16 give “fair notice” of the claims asserted against Defendants and the “grounds upon
17 which they rest.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
18 Defendants cannot possibly begin to prepare a defense based on the speculative
19 and conclusory allegations regarding a matter that was resolved by jury trial.

20 **1. F&B Defendants’ Alleged Conduct is Protected by the Litigation**
21 **Privilege and Warrants Granting F&B Defendants’ Motion to Dismiss**

22 At no point in Plaintiffs’ First Amended Complaint do Plaintiffs allege that
23 the F&B Defendants committed any wrong besides filing a suit on behalf of
24 Defendant Geraci, emailing Cotton a copy of a lis pendens, filing a demurrer,
25 entering into a stipulation with Cotton’s counsel, as well as making arguments at
26 court proceedings and in pleadings. (Am. Compl. at ¶¶ 130, 131, 136-140, 152,
27 153, 158, 162, 196). Plaintiffs attempt to claim that they have alleged in their First
28 Amended Complaint: “bribery, obstruction of justice, witness tampering, falsifying

1 evidence and suborning perjury.” (Oppo. at 4:22-24). However, these allegations
2 do not appear on the face of the complaint. Nowhere in Plaintiffs’ First Amended
3 Complaint are the F&B defendants alleged to have bribed any person, obstructed
4 justice, tampered with any witness, suborned perjury, or falsified evidence. (See
5 Am Compl.). In fact, Plaintiffs’ opposition makes clear that Plaintiffs are
6 attempting to punish the F&B Defendants for filing a lawsuit they deem frivolous
7 and making legal arguments they deem meritless in their role as attorneys. (Oppo.
8 at 8:10-14).

9 Plaintiffs attempt to claim that a vast criminal conspiracy called the
10 “Enterprise” filed “sham” litigations, colluded with city officials, and ratified
11 violence against witnesses. (Oppo. at 4:12-15). Plaintiffs also expect this Court to
12 take wild conclusory allegations as true. (Oppo. at 4:25). However, as evidenced
13 by the judgements in *Cotton I* in F&B Defendants’ client’s favor, the suit filed by
14 F&B Defendants was not “objectively baseless” as required by *Freeman* to
15 constitute a “sham litigation”. *Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180,
16 1184 (9th Cir.2005). As evidence that F&B Defendants made misrepresentations to
17 the court, Plaintiffs attempt to claim that *Cotton I* was a “sham” litigation because
18 F&B Defendants made legal arguments in court or pleadings that Plaintiffs believe
19 to be incorrect. (Oppo. at 8:24-27). This type of litigation speech is precisely the
20 type of litigation activity protected by the various litigation privileges.

21 As for threats of violence and witnesses tampering, Plaintiffs vaguely state
22 “illegal acts by attorneys” include “perjury, falsification of evidence, and the
23 ratification of acts and threats of violence”. (Am. Compl. ¶ 21). In a suit with
24 numerous attorneys and judges, Plaintiffs’ speculative and vague assertion that
25 some amorphous “attorneys” committed “illegal acts” is not enough to meet the
26 stringent illegality exception. *Bergstein v. Stroock & Stroock & Lavan LLP* (2015)
27 236 Cal. App. 4th 793, 805-810. There is no exception to the litigation privilege or
28 anti-SLAPP statute for mere violations of statutes, civil noncompliance, or bare

0414

1 assertions of wrongdoing—only actual criminal conduct or intentionally tortious
2 acts create an exception to this privilege. *Id.* at 805-810. Furthermore, labels and
3 conclusions are insufficient to meet the Plaintiffs’ obligation to provide the basis of
4 their entitlement to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
5 (2007). “Factual allegations must be enough to raise a right to relief above the
6 speculative level.” *Id.*

7 In regard to Plaintiffs’ citation in support of their claim that F&B
8 Defendants made misrepresentations to the court regarding the testimony of Mr.
9 Young, the cited paragraphs do not even mention F&B Defendants. (Oppo. at 8:15-
10 16; Am. Compl. ¶¶ 241-243). Plaintiffs cannot merely state that F&B Defendants
11 committed some illegal act and then provide no other supporting facts and then
12 survive a motion to dismiss as it provides no notice to the defendants as to what
13 they are being accused of.

14 **2. Plaintiffs Cannot Use the Federal Courts as a Pseudo Appellate**
15 **Court**

16 In opposition, Plaintiffs attempt to claim that the federal courts can be used
17 as an appellate court for state court actions as long as Plaintiffs have alleged a
18 fraud upon the court. (Oppo. at 9:12-25). Plaintiffs then cite to case law
19 demonstrating that an attorney pretending to represent a client is committing a
20 fraud upon the court. (*Id.*). However, F&B Defendants have never represented any
21 of the Plaintiffs or Cotton and Plaintiffs complain of F&B Defendants making
22 legal arguments. (*Id.*) Plaintiffs attempt to speculate that F&B Defendants
23 conspired with Cotton’s attorneys without any basis. (*Id.*) Regardless, no such
24 allegations of fraud exist in the First Amended Complaint. (See Am. Compl.).

25 Under the doctrine of res judicata, a judgment on the merits in a prior suit
26 bars a second suit involving the same parties or their privies based on the same
27 cause of action. Under the doctrine of collateral estoppel, on the other hand, the
28 second action is upon a different cause of action and the judgment in the prior suit

1 precludes re-litigation of issues actually litigated and necessary to the outcome of
2 the first action. (1B J. Moore, Federal Practice ¶ 0.405[1], pp. 622–624 (2d ed.
3 1974); e. g., *Lawlor v. National Screen Serv. Corp.*, 349 U.S. 322, 326, 75 S.Ct.
4 865, 867, 99 L.Ed. 1122; *Commissioner of Internal Revenue v. Sunnen*, 333 U.S.
5 591, 597, 68 S.Ct. 715, 719, 92 L.Ed. 898; *Cromwell v. County of Sac*, 94 U.S.
6 351, 352–353, 24 L.Ed. 681). Defensive use of collateral estoppel precludes a
7 plaintiff from relitigating identical issues by merely “switching adversaries.”
8 *Bernhard v. Bank of America Nat. Trust & Savings Assn.*, 19 Cal.2d, at 813, 122
9 P.2d, at 895.

10 As such, Plaintiffs’ claims are barred by collateral estoppel and res judicata.
11 As Plaintiffs were privy to the underlying state action and Cotton, Plaintiffs cannot
12 relitigate the same issues determined in the state court action. Specifically,
13 Plaintiffs are attempting to re-litigate the issue of whether the contract between
14 Cotton and Defendant Geraci was illegal. (Am. Compl. ¶¶ 19, 236, 237, 270).
15 Ultimately, Plaintiffs are attempting to reframe their argument that they believe
16 F&B Defendants’ legal arguments were “frivolous”. (Oppo. at 9:26-28). Claiming
17 an attorney’s arguments held no merit, after a trier of fact decided the matter in
18 said attorney’s favor, is not a fraud upon the court nor is it grounds to use the
19 federal courts as an appellate court.

20 3. No State Action Has Been Alleged

21 In opposition, Plaintiffs also makes the conclusory assertion that state action
22 was alleged. (Oppo. at 11:5-7). It was not. (See Am. Compl.). Beyond general
23 conclusory allegations that “a small group of wealthy individuals, attorneys and
24 professionals in the City of San Diego that have conspired to create an illegal
25 monopoly in the cannabis market” and all defendants conspired to defraud Cotton
26 and acquire a cannabis CUP, no other allegations are even asserted against the
27 F&B Defendants. (Am. Compl. ¶¶ 2, 267, 268).

28 In support of Plaintiffs’ claims that they alleged state action they cite to

0416

1 paragraphs 274 through 281 of the First Amended Complaint. (Oppo. 11:23-24).
2 However, the only remote reference to the F&B Defendants is paragraph 280,
3 which holds every attorney named is a conspirator because Plaintiffs believe that
4 testimony given in the state court action was not accurate. (Am. Compl. ¶¶ 274-
5 281). In no way do these allegations allege some conspiracy making F&B
6 Defendants a state actor.

7 As previously noted, Courts must “start with the presumption that conduct
8 by private actors is not state action.” *Florer v. Congregation Pidyon Shevuyim*, 639
9 F.3d 916, 922 (9th Cir. 2011); *Sutton v. Providence Saint Joseph Medical Center*,
10 192 F.3d 826, 836 (9th Cir. 1999). No facts are alleged to support Plaintiffs’
11 contention that the F&B defendants are state actors beyond vague and general
12 allegations of some conspiracy. There are no statements of what specifically the
13 F&B Defendants did to further such conspiracy beyond stating that each and every
14 defendant “conspired” against Cotton. (See generally Am. Compl.). In opposition,
15 Plaintiffs make conclusory unsupported statements that the F&B Defendants
16 conspired with Tirandazi. (Oppo. at 9:5-7). Plaintiffs also attempt to claim, in
17 opposition, that Tirandazi was represented by F&B Defendants. (Oppo. at 12:10-
18 14). Once again Plaintiffs are making baseless conclusory allegations that should
19 not survive a motion to dismiss. Labels and conclusions are insufficient to meet the
20 Plaintiffs’ obligation to provide the basis of their entitlement to relief. *Bell Atlantic*
21 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “Factual allegations must be enough
22 to raise a right to relief above the speculative level.” (*Id.*) As such, none of the
23 F&B Defendant’s alleged conduct in the First Amended Complaint could be
24 construed as state action.

25 **B. Plaintiffs Have Failed to Prove They Can Amend Their Pleading to**
26 **State Sufficient Facts**

27 Attempting to support their pleading, Plaintiffs’ Opposition includes
28 additional “facts” they believe substantiate their allegations against F&B

1 Defendants. However, Plaintiffs’ Opposition simply rehashes Plaintiffs’ First
 2 Amended Complaint’s version of history regarding the underlying state court
 3 action’s events. (Oppo. at 11:5-7; 11:23- 12:1; 12:10-14; 12:26-28.) Plaintiffs then
 4 state that all the defendants’ actions are “evil and illegal” because the underlying
 5 lawsuit against Cotton was filed. (Oppo. at 3:20-22.) Ultimately, Plaintiffs
 6 continue to make conclusory allegations that all defendants’ acts in the underlying
 7 state action were “illegal”. (Oppo. at 3:20; 4:3-6; 12:23-28.) In fact, Plaintiffs’
 8 entire opposition is much like their First Amended Complaint: vague and devoid of
 9 facts. Furthermore, Plaintiffs only specifically refer to the F&B Defendants twice
 10 in their entire opposition and everything else references all defendants, which is
 11 approximately twenty-seven entities or individuals. (Oppo. at 8:25; 9:5).

12 Plaintiffs have shown they cannot amend their pleading to meet any standard
 13 because F&B Defendants’ actions as attorneys representing their client and their
 14 litigation related speech and activity would be subject to the California anti-SLAPP
 15 statute, adopted and as applied by this Court. Furthermore, Plaintiffs cannot allege
 16 that the F&B Defendants were state actors as they are private attorneys. In
 17 opposition, Plaintiffs attempt to claim that representing Tirandazi for deposition
 18 purposes make Defendants a state actor, but this is also not supported by case law.
 19 *Polk County v. Dodson*, 454 U.S. 312, 325 (1981 (private attorney, even if
 20 appointed and paid for by the state, is not acting under color of state law when
 21 representing a defendant).

22 Attempting to attack the validity of the underlying state court judgment in
 23 *Cotton I*, Plaintiffs now claim F&B Defendants committed “illegal acts”. (Oppo. at
 24 3:20-22; 4:3-6; 12:23-28). Even assuming, arguendo, that Plaintiffs’ allegations
 25 were plausible, such accusations do not warrant the judgement be set aside. Once
 26 the time for appealing an order or judgment has passed, a court may only set aside
 27 or modify an order or judgment if the judgment is void on its face of the record on
 28 the basis of fraud and mistake. *Estate of Beard* (1999) 71 Cal.App.4th 753, 774.

1 Additionally, it is the trial court that retains jurisdiction to set aside a void
2 judgment. An appellate court can then review that decision. *Talley v. Valuation*
3 *Counselors Group, Inc.* (2010) 191 Cal. App. 4th 132, 146. Plaintiffs cannot seek
4 to circumvent this process by instead filing an action in Federal Court to act as
5 both the state trial court and state appellate court.

6 Plaintiffs’ Opposition provides no additional facts or claims to establish they
7 are able to amend their First Amended Complaint to meet pleading standards.
8 Plaintiffs’ Opposition now argues that Defendants’ Motion fails to address the
9 merits of Plaintiffs’ First Amended Complaint. (Oppo. at 3:21-24; 14:23-26.)
10 Plaintiffs are mistaken that F&B Defendants are required to somehow guess and
11 hypothesize the claims against them and then defend the merits of those claims in
12 the pleading stage. A motion to dismiss dismisses conclusions, unwarranted
13 inferences, and inadequately pled complaints when amendment would be futile.
14 The Court does not weigh credibility and does not make any legal or factual ruling
15 on the merits of any facts or claims; instead, the Court addresses whether there are
16 “enough facts to state a claim to relief that is plausible on its face.” *Ashcroft v.*
17 *Iqbal*, 556 U.S. 662, 678 (2009). F&B Defendants have shown there is no plausible
18 claim for relief and Plaintiffs’ Opposition neglects to argue otherwise and instead
19 re-hashes the same conclusory allegations in the First Amended Complaint.

20 Plaintiffs’ opposition provides no additional substantive allegations or facts
21 that would warrant leave to amend, and instead clarifies that Plaintiffs are simply
22 seeking to punish F&B Defendants solely for their representation of Cotton’s
23 adversary in the underlying state court proceeding. Plaintiffs even acknowledge
24 that the Court has already deemed their original complaint as “almost impossible to
25 summarize due to its length and confusing nature”. (Oppo. at 14:12-13.) Plaintiffs’
26 First Amended Complaint is no different. Tellingly Plaintiffs further admit that if
27 given leave to amend they would just add in the same facts from their original
28 complaint that was “impossible to summarize” and had a “confusing nature”.

1 (Oppo. at 14:13-16).

2 **III. CONCLUSION**

3 Plaintiffs’ First Amended Complaint fails to state a claim for relief against
4 Defendants. Plaintiffs’ Opposition fails to prove that the First Amended Complaint
5 is adequately pled and fails to prove that Plaintiffs have sufficient facts to amend
6 their claims. In fact, Plaintiffs have consistently shown that they are incapable of
7 assembling a coherent complaint. Accordingly, F&B Defendants respectfully
8 request that this Court dismiss Plaintiffs’ First Amended Complaint against F&B
9 Defendants with prejudice without leave to amend.

10
11 Dated: August 17, 2020

KJAR, McKENNA & STOCKALPER LLP

12 By: /s/ Gregory B. Emdee
13 JAMES J. KJAR
14 JON R. SCHWALBACH
15 GREGORY B. EMDEE
16 Attorneys for Defendant
17 Michael Weinstein,
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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2020, I electronically filed the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS MICHAEL WEINSTEIN’S, SCOTT H. TOOTHACRE’S, ELYSSA KULAS’, AND FERRIS & BRITTON APC’S REPLY TO PLAINTIFFS’ OPPOSITION TO MOTION TO DISMISS PLAINTIFFS’ FIRST AMENDED COMPLAINT** with the Clerk of the Court for the United States District Court, Southern District of California by using the Southern District CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the USDC-Southern District of California CM/ECF system.

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245. The envelope or package was placed in the mail at El Segundo, California. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully paid.

I further certify that participants in the case not registered as CM/ECF users have been mailed the above described documents by First Class Mail, postage pre-paid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days, to the following non-CM/ECF participants:

NONE
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 17, 2020, 2020 at El Segundo, California.

s/Berta R. Howard

BERTA R. HOWARD, Declarant

0422



TAB “6”

TAB “6”

**U.S. District Court
Southern District of California (San Diego)
CIVIL DOCKET FOR CASE #: 3:20-cv-00656-JO-DEB**

Flores et al v. Austin et al
Assigned to: Judge Jinsook Ohta
Referred to: Magistrate Judge Daniel E. Butcher
Case in other court: USCA, 20-71813
USCA, 23-55018
Cause: 42:1983bv Bivens Non-Prisoner

Date Filed: 04/03/2020
Date Terminated: 12/09/2022
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Andrew Flores
an individual

represented by **Andres Flores**
Law Offices of Andrew Flores
945 4th Avenue
Suite 412
San Diego, CA 92101
619-356-1556
Email: afloreslaw@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Amy Sherlock
*on her own behalf and on behalf of her
minor children, T.S. abd S.S.*

represented by **Andres Flores**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Jane Doe
an individual
TERMINATED: 07/09/2020

represented by **Andres Flores**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Gina M. Austin
an individual

Defendant

Austin Legal Group APC
a California Corporation

Defendant

Joel R. Wohlfeil
an individual
TERMINATED: 03/23/2022

represented by **Carmela E. Duke**
Superior Court of California, County of San
Diego

0424

1100 Union Street
San Diego, CA 92101
619-844-2382
Email: carmela.duke@sdcourt.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Lawrence Geraci
an individual
also known as
Larry

Defendant

Tax & Financial Center, Inc.
a California Corporation

Defendant

Rebecca Berry
an individual

Defendant

Jessica McElfresh
an individual

Defendant

Salam Razuki
an individual

Defendant

Ninus Malan
an individual

Defendant

Michael Robert Weinstein
an individual
TERMINATED: 03/23/2022

represented by **Gregory Brian Emdee**
Kjar McKenna & Stockalper
841 Apollo Street
Suite 100
El Segundo, CA 90245
424-217-3026
Email: gemdee@kmslegal.com
TERMINATED: 03/23/2022
LEAD ATTORNEY

Defendant

Scott Toothacre
an individual
TERMINATED: 03/23/2022

Defendant

Elyssa Kulas
an individual

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TERMINATED: 03/23/2022

Defendant

Rachel M. Prendergast

an individual

TERMINATED: 07/09/2020

Defendant

Ferris & Britton APC

a California Corporation

Defendant

David S. Demian

an individual

Defendant

Adam C. Witt

an individual

Defendant

Rishi S. Bhatt

an individual

Defendant

Finch, Thorton, and Baird

a Limited Liability Partnership

Defendant

James D. Crosby

an individual

Defendant

Abhay Schweitzer

an individual

doing business as

Techne

Defendant

James Bartell

an individual

also known as

Jim

Defendant

Bartell & Associates

a California Corporation

Defendant

Matthew William Shapiro

an individual

TERMINATED: 07/09/2020

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Defendant

Matthew W. Shapiro, APC
a California Corporation
TERMINATED: 07/09/2020

Defendant

Natalie Trang-My Nguyen
an individual

Defendant

Aaron Magagna
an individual

Defendant

A-M Industries, Inc.
a California Corporation

Defendant

Bradford Harcourt
an individual

Defendant

Alan Claybon
an individual

Defendant

Shawn Miller
an individual
TERMINATED: 07/09/2020

Defendant

Logan Stellmacher
an individual
TERMINATED: 07/09/2020

Defendant

Eulenthias Duane Alexander
an individual
TERMINATED: 07/09/2020

Defendant

Bianca Martinez
an individual
TERMINATED: 07/09/2020

Defendant

The City of San Diego
a municipality

Defendant

2018FMO, LLC
a California Limited Liability Company

0427

Defendant

Firouzeh Tirandazi

an individual

Defendant

Stephen G. Cline

an individual

TERMINATED: 07/09/2020

Defendant

John Doe

an individual

TERMINATED: 07/09/2020

Defendant

Does 2 through 50

inclusive

TERMINATED: 07/09/2020

Defendant

Michael Travis Phelps

an individual

Defendant

Douglas A. Pettit

an individual

Defendant

Julia Dalzell

an individual

Defendant

Does 3 through 50

inclusive

Date Filed	#	Docket Text
04/03/2020	1	COMPLAINT with Jury Demand against 2018FMO, LLC, A-M Industries, Inc., Eulenthias Duane Alexander, Gina M. Austin, Austin Legal Group APC, James Bartell, Bartell & Associates, Rebecca Berry, Rishi S. Bhatt, Alan Claybon, Stephen G. Cline, James D. Crosby, DOES 2 through 50, David S. Demian, John Doe, Ferris & Britton APC, Finch, Thorton, and Baird, Lawrence Geraci, Bradford Harcourt, Elyssa Kulas, Aaron Magagna, Ninus Malan, Bianca Martinez, Matthew W. Shapiro, APC, Jessica McElfresh, Shawn Miller, Natalie Trangmy Nguyen, Rachel M. Prendergast, Salam Razuki, Abhay Schweitzer, Matthew William Shapiro, Logan Stellmacher, Tax & Financial Center, Inc., The City of San Diego, Firouzeh Tirandazi, Scott Toothacre, Michael Robert Weinstein, Adam C. Witt, Joel R. Wohlfeil (Filing fee \$ 400 receipt number ACASDC-13706618.), filed by Amy Sherlock, Andrew Flores, Jane Doe. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit) <p style="text-align: right;">0428</p>

		The new case number is 3:20-cv-656-JLS-LL. Judge Janis L. Sammartino and Magistrate Judge Linda Lopez are assigned to the case. (Flores, Andres)(smd) (sjt). (Entered: 04/06/2020)
04/03/2020	2	MOTION for Temporary Restraining Order by Jane Doe, Andrew Flores, Amy Sherlock. (Attachments: # 1 Memo of Points and Authorities, # 2 part 1, # 3 part 2, # 4 part 3, # 5 part 4, # 6 part 5, # 7 part 6, # 8 Declaration, # 9 Exhibit 1)(smd) (sjt). (Entered: 04/06/2020)
04/03/2020	3	REQUEST FOR JUDICIAL NOTICE by Jane Doe, Andrew Flores, Amy Sherlock (smd) (Entered: 04/06/2020)
04/06/2020	4	Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (smd) (Entered: 04/06/2020)
04/07/2020	5	ORDER OF RECUSAL. Judge Janis L. Sammartino is no longer assigned. Case reassigned to Judge Dana M. Sabraw for all further proceedings. The new case number is 20CV0656-DMS(LL). Signed by Judge Janis L. Sammartino on 4/07/2020.(jpp) (Entered: 04/07/2020)
04/13/2020	6	AMENDED DOCUMENT by Andrew Flores. <i>Exhibit 6 to Plaintiff's Complaint.</i> (Flores, Andres) Modified on 4/14/2020 QC mailer sent re improper withdrawal of document (aef). (Entered: 04/13/2020)
04/17/2020	7	ORDER OF TRANSFER PURSUANT TO LOW NUMBER RULE. Case reassigned to Judge Cynthia Bashant and Magistrate Judge Mitchell D. Dembin for all further proceedings. Judge Dana M. Sabraw and Magistrate Judge Linda Lopez are no longer assigned to this case. Pending hearings previously set before the original Judge(s) have been transferred to the newly assigned Judge(s). Create association to 3:18-cv-00325-BAS-MDD. The new case number is 20cv0656-BAS-MDD. Signed by Judge Dana M. Sabraw on 4/17/2020. Signed by Judge Cynthia Bashant on 4/15/2020. Motions set before Mitchell D. Dembin.(aef) (Entered: 04/20/2020)
04/20/2020	8	ORDER Denying Motion for Temporary Restraining Order (ECF No. 2). Signed by Judge Cynthia Bashant on 4/20/20. (jmo) (dlg). (Entered: 04/20/2020)
05/27/2020	9	ORDER OF TRANSFER. Magistrate Judge Mitchell D. Dembin is no longer assigned. Case reassigned to Magistrate Judge Daniel E. Butcher for all further Magistrate Judge proceedings. The new case number is 20cv656-BAS-DEB. Signed by Magistrate Judge Mitchell D. Dembin on 5/27/20.(jmo) (Entered: 05/27/2020)
06/25/2020	10	USCA Case Number 20-71813 for Petition for Writ of Mandamus filed by Jane Doe, Andrew Flores, Amy Sherlock. (akr) (Entered: 06/26/2020)
06/26/2020	11	ORDER of USCA as to the Petition for Writ of Mandamus filed by Jane Doe, Andrew Flores, Amy Sherlock. Petitioners have not demonstrated that this case warrants the intervention of the USCA by means of the extraordinary remedy of mandamus. Accordingly, the petition is denied. Petitioners' motion for injunctive relief is denied as moot. No further filings will be accepted in this closed case. Denied. (akr) (Entered: 06/26/2020)
06/30/2020	12	MOTION to Dismiss for Failure to State a Claim <i>by defendants, Toothacre, Kulas, Prendergast, Ferris & Britton and</i> by Michael Robert Weinstein. (Attachments: # 1 Request for Judicial Notice in Support of Motion to Dismiss, # 2 Exhibit 1 Spec. Verdict form No. 1 filed July 16, 2019, # 3 Exhibit 2 First Amended Complaint Cotton v Geraci Filed May 13 2020, # 4 Exhibit 3 Spec. Verdict form No. 2 filed July 16, 2019, # 5 Exhibit 4 Not Entry of Judgment filed Aug 20, 2019, # 6 Exhibit 5 Complaint Geraci v Cotton

		Filed March 21 2017, # 7 Exhibit 6 Sec Amend Complaint Geraci v Cotton Filed Aug 25 2017, # 8 Exhibit 7 Complaint Cotton v Geraci Filed February 9 2018)(Emdee, Gregory)Attorney Gregory Brian Emdee added to party Michael Robert Weinstein(pty:dft) (jmo). (Entered: 06/30/2020)
06/30/2020	13	**DOCUMENT WITHDRAWN BY FILER PER NOTICE OF WITHDRAWAL 14 **MOTION to Dismiss for Failure to State a Claim <i>by defendants, Toothacre, Kulas, Prendergast, Ferris & Britton and</i> by Michael Robert Weinstein. (Emdee, Gregory) **QC Mailer sent re: duplicate motion filing. Request to withdraw if docketed in error(jmo). Modified on 7/2/2020 to withdrawal document (jmo). (Entered: 06/30/2020)
07/01/2020	14	NOTICE OF WITHDRAWAL OF DOCUMENT by Michael Robert Weinstein re 13 MOTION to Dismiss for Failure to State a Claim <i>by defendants, Toothacre, Kulas, Prendergast, Ferris & Britton and</i> filed by Michael Robert Weinstein . (Emdee, Gregory) (jmo). (Entered: 07/01/2020)
07/07/2020	15	**DOCUMENT WITHDRAWN BY FILER PER NOTICE OF WITHDRAWAL 16 ** AMENDED COMPLAINT with Jury Demand against All Defendants, filed by Andrew Flores. (Attachments: # 1 Exhibit Exhibits to Complaint)New Summons Requested. (Flores, Andres) **Filer contacted to review and correct amended complaint as to parties on 7/8/2020 (jmo). Modified on 7/10/2020 to withdraw document (jmo). (Entered: 07/07/2020)
07/09/2020	16	NOTICE OF WITHDRAWAL OF DOCUMENT by Andrew Flores re 15 Amended Complaint, filed by Andrew Flores <i>Docket Number 15</i> . (Flores, Andres) (jmo). (Entered: 07/09/2020)
07/09/2020	17	AMENDED COMPLAINT with Jury Demand against All Defendants, filed by Andrew Flores. (Attachments: # 1 Exhibit Exhibits to Complaint)New Summons Requested. (Flores, Andres) (jmo). (Entered: 07/09/2020)
07/10/2020	18	Amended Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (jmo) (Entered: 07/10/2020)
07/10/2020	19	ORDER Terminating as Moot Motion to Dismiss (ECF No. 12). Signed by Judge Cynthia Bashant on 7/10/20. (jmo) (Entered: 07/10/2020)
07/15/2020	20	NOTICE of Errata by Michael Robert Weinstein re 12 MOTION to Dismiss for Failure to State a Claim <i>by defendants, Toothacre, Kulas, Prendergast, Ferris & Britton and</i> (Emdee, Gregory) (jmo). (Entered: 07/15/2020)
07/20/2020	21	MOTION to Dismiss for Failure to State a Claim <i>by SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST and FERRIS & BRITTON APC and</i> by Michael Robert Weinstein. (Attachments: # 1 Request for Judicial Notice, # 2 Exhibit 1 Spec. Verdict form No. 1 filed July 16, 2019, # 3 Exhibit 2 First Amended Complaint Cotton v Geraci Filed May 13 2020, # 4 Exhibit 3 Spec. Verdict form No. 2 filed July 16, 2019, # 5 Exhibit 4 Not Entry of Judgment filed Aug 20, 2019, # 6 Exhibit 5 Complaint Geraci v Cotton Filed March 21 2017, # 7 Exhibit 6 Sec Amend Complaint Geraci v Cotton Filed Aug 25 2017, # 8 Exhibit 7 Complaint Cotton v Geraci Filed February 9 2018, # 9 Exhibit 8 Complaint Flores v Austin Filed April 3 2020)(Emdee, Gregory) (jmo). Modified on 3/28/2022 (axc). (Entered: 07/20/2020)
08/10/2020	22	RESPONSE in Opposition re 21 MOTION to Dismiss for Failure to State a Claim <i>by SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST and FERRIS & BRITTON APC and</i> filed by Andrew Flores. (Flores, Andres) (jmo). (Entered: 08/11/2020)

08/13/2020	23	NOTICE of Errata by Andrew Flores re 22 Response in Opposition to Motion (Flores, Andres) QC email re Errata (dlg). (Entered: 08/13/2020)
08/17/2020	24	REPLY to Response to Motion re 21 MOTION to Dismiss for Failure to State a Claim by SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST and FERRIS & BRITTON APC and SCOTT H. TOOTHACRE, ELYSSA KULAS, and FERRIS & BRITTON APC filed by Michael Robert Weinstein. (Emdee, Gregory) (jmo). (Entered: 08/17/2020)
08/18/2020	25	Ex Parte MOTION for Leave to File <i>Sur-Reply</i> by Andrew Flores. (Attachments: # 1 Declaration Flores Declaration, # 2 Request for Judicial Notice RJN)(Flores, Andres) (jmo). (Entered: 08/18/2020)
09/24/2020	26	ORDER OF TRANSFER. Judge Cynthia Bashant is no longer assigned. Case reassigned to Judge Todd W. Robinson for all further proceedings. Pending hearings previously set before the original Judge have been transferred to the newly assigned Judge. The new case number is 20-cv-00656-TWR-DEB. Signed by Judge Cynthia Bashant on 9/24/20.(jmo) (Entered: 09/24/2020)
01/13/2021	27	MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> by Joel R. Wohlfeil. (Attachments: # 1 Memo of Points and Authorities, # 2 Request for Judicial Notice with Exhibits A-I, # 3 Declaration of Carmela E. Duke with Exhibit 1, # 4 Proof of Service) (Duke, Carmela)Attorney Carmela E. Duke added to party Joel R. Wohlfeil(pty:dft) (sxa). (Entered: 01/13/2021)
03/22/2021	28	ORDER Granting 25 Ex Parte Application for Leave to File Sur-Reply. Plaintiffs Must File their sur-reply on or before Friday 3/26/2021. Signed by Judge Todd W. Robinson on 3/22/21. (sxa) (Entered: 03/22/2021)
03/29/2021	29	SUR-REPLY - re 28 Order on Motion for Leave to File Document filed by Andrew Flores, Amy Sherlock. (Flores, Andres) QC mail sent on 3/29/2021 re timeliness and incorrect caption (sxa). (Entered: 03/29/2021)
04/15/2021	30	REPLY - Other re 27 MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> filed by Joel R. Wohlfeil. (Attachments: # 1 Proof of Service)(Duke, Carmela) (sxa). (Entered: 04/15/2021)
04/21/2021	31	RESPONSE in Opposition re 27 MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> by Joel Wohlfeil filed by Andrew Flores, Amy Sherlock. (Flores, Andres) (sxa). (Entered: 04/21/2021)
04/26/2021	32	Notice of Document Discrepancies and Order Thereon by Judge Todd W. Robinson Accepting re 31 Response in Opposition to Motion, from Plaintiff Andrew Flores. Non-compliance with local rule(s), Civ. L. Rule 7.1 or 47.1: Date noticed for hearing not in compliance with rules/documents are not timely. IT IS HEREBY ORDERED: The document is accepted despite the discrepancy noted above. Any further non-compliant documents may be stricken from the record. Signed by Judge Todd W. Robinson on 4/26/21.(sxa) (Entered: 04/26/2021)
04/26/2021	33	ORDER Vacating Hearing and Taking Matter Under Submission. Signed by Judge Todd W. Robinson on 4/26/21.(sxa) (Entered: 04/26/2021)
05/07/2021	34	REPLY - Other re 31 Response in Opposition to Motion, 27 MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> filed by Joel R. Wohlfeil. (Attachments: # 1 Proof of Service)(Duke, Carmela)(sxa). (Entered: 05/07/2021)
01/03/2022	35	ORDER OF TRANSFER: This case is transferred from the calendar of the Honorable Todd W. Robinson (TWR) to the calendar of the Honorable Jinsook Ohta (JO). All pending dates - whether before Judge Robinson or any magistrate judge - remain unchanged. The

		new case number is 20cv656 JO (DEB). Signed by Judge Todd W. Robinson on 01/03/2022.(jcj) (Entered: 01/04/2022)
01/19/2022	36	Motions Submitted on the briefs 21 MOTION to Dismiss for Failure to State a Claim by <i>SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST and FERRIS & BRITTON APC</i> and, 27 MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> . Signed by Judge Jinsook Ohta on 01/19/2022.(no document attached) (mec) (Entered: 01/19/2022)
03/15/2022	37	Minute Order by Judge Jinsook Ohta: The Court sets oral argument on the pending motions to dismiss (Doc. Nos. 21 , 27) for March 23, 2022 at 10:00 a.m. in Courtroom 4C. All parties and counsel may appear by videoconference and the courtroom deputy will provide the videoconference information. The Court's tentative decision with regard to Defendant Judge Joel R. Wohlfeil's motion is to dismiss with prejudice. (no document attached) (smy) (Entered: 03/15/2022)
03/23/2022	38	Minute Entry for proceedings held before Judge Jinsook Ohta: Motion Hearing held on 3/23/2022 re 21 MOTION to Dismiss for Failure to State a Claim by <i>SCOTT H. TOOTHACRE, ELYSSA KULAS, RACHEL M. PRENDERGAST and FERRIS & BRITTON APC</i> and filed by Michael Robert Weinstein and 27 MOTION to Dismiss <i>First Amended Complaint with Prejudice</i> filed by Joel R. Wohlfeil. Order to follow. (Court Reporter/ECR Abigail Torres). (Plaintiff Attorney Andres Flores). (Defendant Attorney Carmela E. Duke; Gregory Brian Emdee). (no document attached) (smy) (Entered: 03/23/2022)
03/23/2022	39	ORDER Dismissing First Amended Complaint Against Defendants Judge Wohlfeil and F&B Defendants with Prejudice and for Lack of Standing with Leave to Amend. Signed by Judge Jinsook Ohta on 3/23/2022.(axc) (Main Document 39 replaced on 3/23/2022) (axc). (rmc) Modified on 6/29/2022 to link to motions 21 and 27 (rmc). (Entered: 03/23/2022)
06/03/2022	40	TRANSCRIPT ORDER - For hearing(s) on March 23, 2022 by David S. Demian. (Bertsche, Corinne) (Entered: 06/03/2022)
06/17/2022	41	TRANSCRIPT ORDER - For hearing(s) on 3/23/2022 by Andrew Flores. (Flores, Andres) (Entered: 06/17/2022)
06/21/2022	42	NOTICE OF FILING OF OFFICIAL TRANSCRIPT (Motion Hearing) held on 3/23/2022 before Judge Jinsook Ohta. Court Reporter/Transcriber: Abigail R. Torres. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 7/12/2022. Redacted Transcript Deadline set for 7/22/2022. Release of Transcript Restriction set for 9/19/2022. (akr) (Entered: 06/21/2022)
10/12/2022	43	Declaration of Attorney Andrew Flores; ExParte Application for Order Shortening Time on 1) Motion to Vacate Order or 2) Alternatively, a Stay of Action (Attachments: # 1 Affidavit Affidavit of Andrew Flores, # 2 Affidavit Affidavit of Amy Sherlock)(Flores, Andres)(exs). (Entered: 10/12/2022)
10/13/2022	44	Request for Judicial Notice in Support of Plaintiffs' Ex Parte Application for Order Shortening Time on (1) Motion to Vacate Order or, (2) Alternatively, a Stay of Action Volume 1 of 3 (Flores, Andres) (exs). (Entered: 10/13/2022)
10/13/2022	45	Request for Judicial Notice in Support of Plaintiffs' Ex Parte Application for Order Shortening Time on (1) Motion to Vacate Order or, (2) Alternatively, a Stay of action Volume 2 of 3(Flores, Andres) (exs). (Entered: 10/13/2022)

10/13/2022	46	Request for Judicial Notice in Support of Plaintiffs' Ex Parte Application for Order Shortening Time on (1) Motion to Vacate Order or, (2) Alternatively, a Stay of action Volume 3 of 3 (Flores, Andres) (exs). (Entered: 10/13/2022)
10/13/2022	47	CERTIFICATE OF SERVICE by Amy Sherlock re 45 Request for Judicial Notice, 44 Request for Judicial Notice, 46 Request for Judicial Notice, 43 Ex Parte MOTION for Order <i>Shortening Time</i> (Flores, Andres) (exs). (Entered: 10/13/2022)
10/19/2022	48	Order Denying 43 Ex Parte Motion for Reconsideration and Ordering Plaintiffs to Show Cause why Case Should not be Dismissed for Failure to Prosecute. Signed by Judge Jinsook Ohta on 10/19/2022. (exs) (Entered: 10/19/2022)
11/09/2022	49	RESPONSE re 48 Order on Motion for Order filed by Amy Sherlock. (Attachments: # 1 Exhibit A)(Flores, Andres) (anh). (Entered: 11/09/2022)
11/16/2022	50	Order by Judge Jinsook Ohta: The attached civil chambers rules will take effect immediately. Parties should especially note the meet and confer requirements prior to obtaining a hearing date for a noticed motion. (smy) (Entered: 11/16/2022)
12/09/2022	51	Order Dismissing Case for Failure to Prosecute. Signed by Judge Jinsook Ohta on 12/9/2022.(exs) (Entered: 12/09/2022)
12/09/2022	52	CLERK'S JUDGMENT. IT IS SO ORDERED AND ADJUDGED: the Court DISMISSES the case in its entirety with prejudice pursuant to Federal Rule of Civil Procedure 41 (b) for failure to prosecute. (exs) (Entered: 12/09/2022)
01/05/2023	53	NOTICE OF APPEAL to the 9th Circuit (FEE PAID) as to 52 Clerk's Judgment, 51 Order by Amy Sherlock. (Filing fee \$505.00 receipt number ACASDC-17472702.) (Notice of Appeal electronically transmitted to US Court of Appeals.) (Flores, Andres)(jrd) (Entered: 01/05/2023)
01/09/2023	54	Proof of Service (Flores, Andres) (exs). (Entered: 01/09/2023)
01/10/2023	55	USCA Case Number 23-55018 for 53 Notice of Appeal to 9th Circuit, filed by Amy Sherlock. (Attachments: # 1 Attention All Parties and Counsel, # 2 Case Opening Packet, # 3 Mediation Letter, # 4 Attention You are Not Registered)(smy1)(jrd) (Entered: 01/10/2023)
01/10/2023	56	USCA Time Schedule Order as to 53 Notice of Appeal to 9th Circuit, filed by Amy Sherlock. (NOTICE TO PARTIES of deadlines regarding appellate transcripts: Appellant shall file transcript designation and ordering form with the US District Court, provide a copy of the form to the court reporter, and make payment arrangements with the court reporter on or by 2/6/2023 (see Ninth Circuit Rule 10-3.1); Due date for filing of transcripts in US District Court is 3/8/2023.)(smy1)(jrd) (Entered: 01/10/2023)
02/06/2023	57	TRANSCRIPT DESIGNATION AND ORDERING FORM by Andrew Flores, Amy Sherlock for proceedings held on 3/23/2022 re 53 Notice of Appeal to 9th Circuit,. (Flores, Andres) (exs). (Entered: 02/06/2023)

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 15. Certificate of Service for Electronic Filing

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form15instructions.pdf>

9th Cir. Case Number(s) No. 23-55018

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

Service on Case Participants Who Are Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) via email to all registered case participants on this date because it is a sealed filing or is
 submitted as an original petition or other original proceeding and therefore cannot be served via the Appellate Electronic Filing system.

Service on Case Participants Who Are NOT Registered for Electronic Filing:

I certify that I served the foregoing/attached document(s) on this date by hand delivery, mail, third party commercial carrier for delivery within 3 calendar days, or, having obtained prior consent, by email to the following unregistered case participants (*list each name and mailing/email address*):

Description of Document(s) (*required for all documents*):

Defendant Appellee Brief, Index to Excerpts of Record, Excerpt of Records Vol. 1 and Vol. 2

Signature /s/ Katelyn Simmons

Date May 5, 2023

(use "s/[typed name]" to sign electronically-filed documents)

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