

No. 23-55018

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMY SHERLOCK, et al.,
Individually
Plaintiffs/Appellants,

vs.

GINA AUSTIN, et al.,
Defendant/Appellee.

On Appeal from Order
of the United States District Court
for the Southern District of California,
Docket No. 3:20-cv-00656-JO-DEB,
The Honorable Jinsook Ohta, Judge

APPELLANTS' EXCERPTS OF RECORD

The Law Offices of Andrew Flores
ANDREW FLORES, State Bar No. 272958
afloreslaw@gmail.com
427 C Street, Suite 220,
San Diego, California 92101
Telephone: (619) 356-1556; Facsimile: (619) 274-8253
Attorney for Plaintiffs/Appellants

Attorney for Plaintiff Appellant, Amy Sherlock, et al.

INDEX TO EXCERPTS OF RECORD*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.
1	10/27/2014	Judgment in City of San Diego v. Tree Club Cooperative, et al. <i>ECF No. 44 (Request for Judicial Notice (“RJN”)), Ex. 9.</i>	004-011
2	06/17/2015	Judgment in City of San Diego v. CCSquared Wellness Cooperative, et al. <i>ECF No. 44 (RJN), Ex. 10.</i>	012-018
3	07/07/2020	Appellants’ First Amended Complaint ECF No. 15	019-101
4	03/23/2022	REPORTER’S TRANSCRIPT OF PROCEEDINGS HELD ON MARCH 23, 2022 CONTAINING RULING DISMISSING CASE <i>ECF No. 43 (ex parte application for order shortening time on (1) motion to vacate order or, (2) alternatively, a stay of action), at Ex. B.</i>	102-123
5	11/09/2022	Appellants’ Response to Order to Show Cause <i>ECF No. 49</i>	124-126
6	10/19/2022	ORDER DENYING EX PARTE MOTION FOR RECONSIDERATION AND ORDERING PLAINTIFFS TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED FOR FAILURE TO PROSECUTE FOR FAILURE TO FILE AMENDED COMPLAINT <i>ECF No. 48</i>	127-129
7	12/09/2022	ORDER DISMISSING CASE FOR FAILURE TO PROSECUTE FOR FAILING TO FILE AMENDED COMPLAINT <i>ECF No. 51</i>	130-132

8	01/05/2023	Notice of Appeal <i>ECF No. 53</i>	133
9		District Court Docket Sheet	134-144

FILED
Clerk of the Superior Court
No Fee GC \$6103
OCT 27 2014
By: D. JELLISON, Deputy

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

THE TREE CLUB COOPERATIVE, INC., a California corporation;
JONAH McCLANAHAN, an individual;
JOHN C. RAMISTELLA, an individual;
JL 6th AVENUE PROPERTY, LLC, a California limited liability company;
LAWRENCE E. GERACI, also known as LARRY GERACI, an individual;
JEFFREY KACHA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2014-00020897-CU-MC-CTL

JUDGE: RONALD S. PRAGER

STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6]

IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and by Marsha B. Kerr, Deputy City Attorney, and Defendants JL 6th AVENUE PROPERTY, LLC, a California limited liability company; LAWRENCE E. GERACI, aka LARRY GERACI, an individual; and JEFFREY KACHA, an individual, appearing by and through their attorney, Joseph S. Carmellino, enter into the following Stipulation for Entry of Final Judgment in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered:

1 1. This Stipulation for Entry of Final Judgment (Stipulation) is executed between and
2 among Plaintiff City of San Diego, a municipal corporation, and Defendants JL 6th AVENUE
3 PROPERTY, LLC; LAWRENCE E. GERACI, aka LARRY GERACI; and JEFFREY KACHA
4 only, who are named parties in the above-entitled action (collectively, “Defendants”).

5 2. The parties to this Stipulation are parties to a civil suit pending in the Superior Court
6 of the State of California for the County of San Diego, entitled *City of San Diego, a municipal*
7 *corporation v., The Tree Club Cooperative, Inc., a California corporation; Jonah McClanahan,*
8 *an individual; John C. Ramistella, an individual; JL 6th Avenue Property, LLC, a California*
9 *limited liability company; Lawrence E. Geraci, also known as Larry Geraci, an individual;*
10 *Jeffrey Kacha, an individual; and DOES 1 through 50, inclusive, Case No. 37-2014-00020897-*
11 *CU-MC-CTL. This Stipulation does not affect *City of San Diego v. Tycel Cooperative, Inc., et al.,**
12 *San Diego Superior Court case No. 37-2014-00025378-CU-MC-CTL, which is a separate case to*
13 *be considered separately.*

14 3. The parties wish to avoid the burden and expense of further litigation and accordingly
15 have determined to compromise and settle their differences in accordance with the provisions of
16 this Stipulation. Neither this Stipulation nor any of the statements or provisions contained herein
17 shall be deemed to constitute an admission or an adjudication of any of the allegations of the
18 Complaint. The parties to this Stipulation agree to resolve this action in its entirety as to them and
19 only them by mutually consenting to the entry of this Stipulation in its Entirety and Permanent
20 Injunction by the Superior Court.

21 4. The address where the tenant Defendants were maintaining a marijuana dispensary
22 business is 1033 Sixth Avenue, San Diego, California, 92101, also identified as Assessor’s Parcel
23 Number 534-186-04-00 (PROPERTY).

24 5. The PROPERTY is owned by JL 6th AVENUE PROPERTY, LLC (JL), according to
25 San Diego County Recorder’s Grant Deed, Document No. 2012-0184893, recorded March 29,
26 2012. Defendants GERACI and KACHA are members of JL and hereby certify they have
27 authority to sign for and bind JL herein.

28 ///

6. The legal description of the PROPERTY is:

THE NORTH HALF OF LOT D IN BLOCK 34 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, MADE BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 522 OF DEEDS, IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY.

7. This action is brought under California law and this Court has jurisdiction over the subject matter, the PROPERTY, and each of the parties to this Stipulation.

INJUNCTION

8. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,** Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil Procedure section 526, and under the Court's inherent equity powers, from engaging in or performing, directly or indirectly, any of the following acts:

- a. Keeping, maintaining, operating, or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative at the PROPERTY, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code.
- b. Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

9. **Within 24 hours from the date of signing this Stipulation,** cease maintaining, operating, or allowing at the PROPERTY any commercial, retail, collective, cooperative, or group establishment for the growth, storage, sale, or distribution of marijuana, including but not limited to any marijuana dispensary, collective, or cooperative organized pursuant to the California Health and Safety Code.

1 10. The Parties acknowledge that where local zoning ordinances allow the operation of a
2 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
3 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
4 cooperative in the City of San Diego as authorized under the law after Defendants provide the
5 following to Plaintiff in writing:

6 a. Proof that the business location is in compliance with the ordinance; and

7 b. Proof that any required permits or licenses to operate a marijuana dispensary,
8 collective or cooperative have been obtained from the City of San Diego as required by the
9 SDMC.

10 **11. If the marijuana dispensary that is operating at the PROPERTY, including but**
11 **not limited to, The Tree Club Cooperative, Inc., Jonah McClanahan and John C.**
12 **Ramistella, does not agree to immediately voluntarily vacate the premises, then within 24**
13 **hours from the date of signing this Stipulation, DEFENDANTS shall in good faith use all legal**
14 **remedies available to evict the marijuana dispensary business known as The Tree Club**
15 **Cooperative, Inc., Jonah McClanahan and John C. Ramistella or the appropriate party responsible**
16 **for the leasehold and operation of the marijuana dispensary, including but not limited to,**
17 **prosecuting an unlawful detainer action.**

18 **12. Within 24 hours from the date of signing this Stipulation, remove all signage from**
19 **the exterior of the premises advertising a marijuana dispensary, including but not limited to,**
20 **signage advertising The Tree Club Cooperative.**

21 **13. Within 24 hours from the date of signing this Stipulation, post a sign for a**
22 **minimum of 60 calendar days, conspicuously visible from the exterior of the PROPERTY stating**
23 **in large bold font and capital letters that can be seen from the public right way, that “The Tree**
24 **Club Cooperative” is permanently closed and that there is no dispensary operating at this address.**

25 14. Allow personnel from the City of San Diego access to the PROPERTY to inspect for
26 compliance upon 24-hour verbal or written notice. Inspections shall occur between the hours of
27 8:00 a.m. and 5:00 p.m.

28

1 15. When this Stipulation has been filed with the Court, Jeffrey Kacha will personally
2 pick up a conformed copy of the Stipulation and Order from the Office of the City Attorney. He
3 or his attorney will contact the City’s investigator, Connie Johnson, at 619-533-5699 within 15
4 days of the filing of this Stipulation to set a time for Mr. Kacha to pick up the conformed copy.

5 **MONETARY RELIEF**

6 16. **Within 15 calendar days from the date of signing this Stipulation**, Defendants
7 shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement
8 Section’s investigative costs, the amount of \$281.93. Payment shall be in the form of a certified
9 check, payable to the “City of San Diego,” and shall be in full satisfaction of all costs associated
10 with the City’s investigation of this action to date. The check shall be mailed or personally
11 delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA
12 92101, Attention: Marsha B. Kerr.

13 17. Commencing within 30 days of signing this Stipulation, Defendants shall pay to
14 Plaintiff City of San Diego civil penalties in the amount of \$25,000, pursuant to SDMC section
15 12.0202(b) in full satisfaction of all claims against Defendants arising from any of the past
16 violations alleged by Plaintiff in this action. **\$19,000 of these penalties is immediately**
17 **suspended.** These suspended penalties shall only be imposed if Defendants fail to comply with
18 the terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if
19 imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties in the
20 amount of \$6,000 shall be paid in 15 monthly installments of \$400.00 each, at 30-day intervals
21 following the date of the first payment as specified above, in the form of a certified check,
22 payable to the “City of San Diego,” and delivered to the Office of the City Attorney, Code
23 Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention:
24 Marsha B. Kerr.

25 **ENFORCEMENT OF JUDGMENT**

26 18. In the event of default by Defendants as to any amount due under this Stipulation, the
27 entire amount due shall be deemed immediately due and payable as penalties to the City of San
28 Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the

1 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing
2 legal rate from the date of default until paid in full.

3 19. Nothing in this Stipulation shall prevent any party from pursuing any remedies as
4 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,
5 including criminal prosecution and civil penalties that may be authorized by the court according
6 to the SDMC at a cumulative rate of up to \$2,500 per day per violation.

7 20. Defendants agree that any act, intentional or negligent, or any omission or failure by
8 their contractors, successors, assigns, partners, members, agents, employees or representatives to
9 comply with the requirements set forth in Paragraphs 8-17 above will be deemed to be the act,
10 omission, or failure of Defendants and shall not constitute a defense to a failure to comply with
11 any part of this Stipulation. Further, should any dispute arise between any contractor, successor,
12 assign, partner, member, agent, employee or representative of Defendants for any reason,
13 Defendants agree that such dispute shall not constitute a defense to any failure to comply with
14 any part of this Stipulation, nor justify a delay in executing its requirements.

15 **RETENTION OF JURISDICTION**

16 21. The Court will retain jurisdiction for the purpose of enabling any of the parties to this
17 Stipulation to apply to this Court at any time for such order or directions that may be necessary or
18 appropriate for the construction, operation or modification of the Stipulation, or for the
19 enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

20 **RECORDATION OF JUDGMENT**

21 22. A certified copy of this Judgment shall be recorded in the Office of the San Diego
22 County Recorder pursuant to the legal description of the PROPERTY.

23 **KNOWLEDGE AND ENTRY OF JUDGMENT**

24 23. By signing this Stipulation, Defendants admit personal knowledge of the terms set
25 forth herein. Service by mail shall constitute sufficient notice for all purposes.

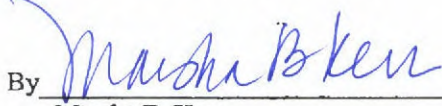
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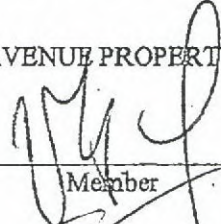
24. The clerk is ordered to immediately enter this Stipulation.

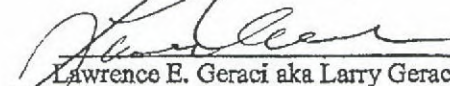
IT IS SO STIPULATED.

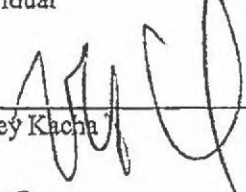
Dated: OCT. 21, 2014 JAN I. GOLDSMITH, City Attorney

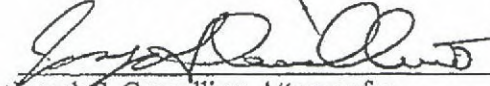
By 
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 9/26 2014 JL 6TH AVENUE PROPERTY, LLC

By 
Member

Dated: 10-21-14 2014

Lawrence E. Geraci aka Larry Geraci, an individual

Dated: 9/26 2014

Jeffrey Kacha

Dated: 9/26 2014

Joseph S. Carmellino, Attorney for
Defendants JL 6th Avenue Property, LLC,
Lawrence E. Geraci aka Larry Geraci and
Jeffrey Kacha

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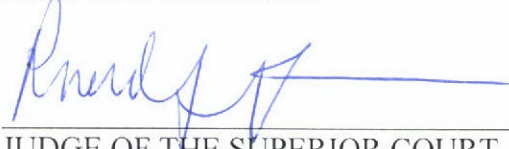


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ORDER

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 10/27/14



JUDGE OF THE SUPERIOR COURT

RONALD S. PRAGER

No Fee GC §6103

FILED
Clerk of the Superior Court

JUN 17 2015

FILED
Clerk of the Superior Court

JUN 17 2015

By: H. CHAVARIN, Deputy
15 JUN 11 PM 1:37

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation,

Plaintiff,

v.

CCSQUARED WELLNESS COOPERATIVE, a California corporation;
BRENT MESNICK, an individual;
JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC;
JEFFREY KACHA, an individual; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2015-00004430-CU-MC-CTL

STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6]

IMAGED FILE

1. Plaintiff, City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and Marsha Kerr, Deputy City Attorney; and Defendants, JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA; and LAWRENCE E. GERACI, aka LARRY GERACI (Doe 1) (collectively, "Defendants"), appearing by and through their attorney, Joseph Carmellino, Esq., enter into the following Stipulation for Entry of Final Judgment (Stipulation) in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered.

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1 Stipulation and Injunction. **Effective immediately upon the date of entry of this Stipulation,**
2 Defendants and all persons mentioned above are hereby enjoined and restrained pursuant to San
3 Diego Municipal Code (SDMC) sections 12.0202 and 121.0311, California Code of Civil
4 Procedure section 526, and under the Court’s inherent equity powers, from engaging in or
5 performing, directly or indirectly, any of the following acts:

6 Keeping, maintaining, operating or allowing any commercial, retail, collective,
7 cooperative or group establishment for the growth, storage, sale or distribution of marijuana,
8 including, but not limited to, any marijuana dispensary, collective or cooperative organized
9 anywhere in the City of San Diego without first obtaining a Conditional Use Permit pursuant to
10 the San Diego Municipal Code.

11 **COMPLIANCE MEASURES**

12 **DEFENDANTS agree to do the following at the PROPERTY:**

13 8. **Immediately** cease maintaining, operating, or allowing any commercial, retail,
14 collective, cooperative, or group establishment for the growth, storage, sale, or distribution of
15 marijuana, including but not limited to any marijuana dispensary, collective, or cooperative
16 organized pursuant to the California Health and Safety Code.

17 9. The Parties acknowledge that where local zoning ordinances allow the operation of a
18 marijuana dispensary, collective or cooperative as a permitted use in the City of San Diego, then
19 Defendants will be allowed to operate or maintain a marijuana dispensary, collective or
20 cooperative in the City of San Diego as authorized under the law after Defendants provide the
21 following to Plaintiff in writing:

- 22 a. Proof that the business location is in compliance with the ordinance; and
- 23 b. Proof that any required permits or licenses to operate a marijuana dispensary,
24 collective or cooperative have been obtained from the City of San Diego as
25 required by the SDMC.

26 10. **Within 24 hours from the date of signing this Stipulation,** remove all signage from
27 the exterior of the premises advertising a marijuana dispensary, including but not limited to,
28 signage advertising CCSquared Wellness Cooperative or CCSquared Storefront.

1 11. **No later than 48 hours from signing this Stipulation** cease advertising on the
2 internet, magazines or through any other medium the existence of CCSquared Wellness
3 Cooperative or CCSquared Storefront at the PROPERTY.

4 12. **No later than 48 hours from signing this Stipulation** remove all fixtures, items and
5 property associated with a marijuana dispensary business from the PROPERTY.

6 13. **Within one week of signing this Stipulation**, Defendant will contact City zoning
7 investigator Leslie Sennett at 619-236-6880 to schedule an inspection of the PROPERTY.

8 **MONETARY RELIEF**

9 14. Defendants, jointly and severally, shall pay Plaintiff City of San Diego, for
10 Development Services Department, Code Enforcement Section’s investigative costs, the amount
11 of **\$2,438.03**. All other attorney fees and costs expended by the parties in the above-captioned
12 case are waived by the parties. The parties agree that payment in full of the monetary amount
13 referenced as investigative costs is applicable to and satisfies payment of investigative costs for
14 both cases referenced in paragraph 2 above.

15 15. Defendants shall jointly and severally pay to Plaintiff City of San Diego civil penalties
16 in the amount of \$75,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims
17 against Defendants arising from any of the past violations alleged by Plaintiff in this action.
18 **\$37,500 of these penalties is immediately suspended.** Payment in the amount of \$37,500 in
19 civil penalties plus \$2438.03 in investigative costs referenced in paragraph 14, totaling
20 \$39,938.03, shall be made in 24 monthly installments of \$1,664.09 each beginning on or before
21 June 5, 2015, and continuing on the fifth of each successive month until paid in full. Receipt of
22 Defendants’ initial monthly payment of \$1,664.09 on June 4, 2015 is acknowledged. The parties
23 agree that payment in full of the monetary amounts referenced as civil penalties is applicable to
24 and satisfies payment of civil penalties for both of the cases referenced in paragraph 2 above. All
25 payments shall be made in the form of a certified check payable to the “City of San Diego,” and
26 shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue,
27 Suite 700, San Diego, CA 92101, Attention: Marsha B. Kerr.

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1 16. The suspended penalties shall only be imposed if Defendants fail to comply with the
2 terms of this Stipulation. Plaintiff City of San Diego agrees to notify Defendants in writing if
3 imposition of the penalties will be sought by Plaintiff and on what basis.

4 **ENFORCEMENT OF JUDGMENT**

5 17. In the event of default by Defendants as to any amount due under this Stipulation, the
6 entire amount due shall be deemed immediately due and payable as penalties to the City of San
7 Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the
8 enforcement of this Stipulation. Further, any amount in default shall bear interest at the prevailing
9 legal rate from the date of default until paid in full. Service by mail shall constitute sufficient
10 notice for all purposes.

11 18. Nothing in this Stipulation shall prevent any party from pursuing any remedies as
12 provided by law to subsequently enforce this Stipulation or the provisions of the SDMC,
13 including criminal prosecution and civil penalties that may be authorized by the court according
14 to the SDMC at a cumulative rate of up to \$2,500 per day per violation occurring after the
15 execution of this Stipulation.

16 19. Defendants agree that any act, intentional act, omission or failure by their contractors,
17 successors, assigns, partners, members, agents, employees or representatives on behalf of
18 Defendants to comply with the requirements set forth in Paragraphs 7-15 above will be deemed to
19 be the act, omission, or failure of Defendants and shall not constitute a defense to a failure to
20 comply with any part of this Stipulation. Further, should any dispute arise between any
21 contractor, successor, assign, partner, member, agent, employee or representative of Defendants
22 for any reason, Defendants agree that such dispute shall not constitute a defense to any failure to
23 comply with any part of this Stipulation, nor justify a delay in executing its requirements.

24 **RETENTION OF JURISDICTION**

25 20. The Court will retain jurisdiction for the purpose of enabling any of the parties to
26 this Stipulation to apply to this Court at any time for such order or directions that may be
27 necessary or appropriate for the construction, operation or modification of the Stipulation, or for
28 the enforcement or compliance therewith, pursuant to Code of Civil Procedure 664.6.

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RECORDATION OF JUDGMENT

21. This Stipulation shall not be recorded unless there is an uncured breach of the terms herein, in which instance a certified copy of this Stipulation and Judgment may be recorded in the Office of the San Diego County Recorder pursuant to the legal description of the PROPERTY.

KNOWLEDGE AND ENTRY OF JUDGMENT

22. By signing this Stipulation, Defendants admit personal knowledge of the terms set forth herein. Service by regular mail shall constitute sufficient notice for all purposes.

23. The clerk is ordered to immediately enter this Stipulation.

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

By Marsha B. Kerr
Marsha B. Kerr
Deputy City Attorney
Attorneys for Plaintiff

Dated: 6-10, 2015

JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC

By Jeffrey Kacha
Jeffrey Kacha, General Partner

Dated: 6-10, 2015

Jeffrey Kacha
Jeffrey Kacha, an individual


Dated: 6-8, 2015

Lawrence E. Geraci
Lawrence E. Geraci, aka Larry Geraci, an individual

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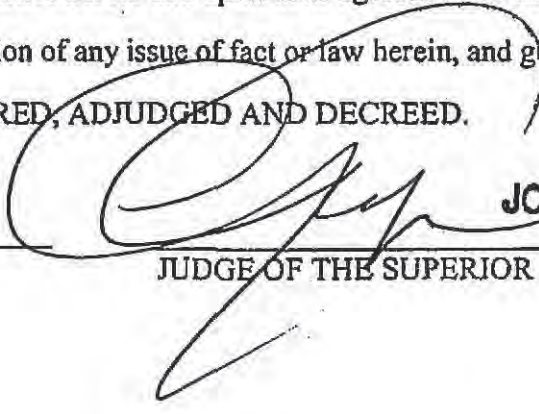
Dated: 6/11/15, 2015

By 
Joseph S. Carmellino
Attorney for Defendants Jeffrey Kacha and
JL India Street LP, formerly known as JL
India Street, LLC

JUDGMENT

Upon the stipulation of the parties hereto and upon their agreement to entry of this Stipulation without trial or adjudication of any issue of fact or law herein, and good cause appearing therefor, IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 6-12-18


JOHN S. MEYER
JUDGE OF THE SUPERIOR COURT

1 ANDREW FLORES
2 California State Bar Number 272958
3 Law Office of Andrew Flores
4 945 4th Avenue, Suite 412
5 San Diego, CA 92101
6 Telephone: 619.256.1556
7 Facsimile: 619.274.8253
8 Andrew@FloresLegal.Pro

9 Plaintiff *In Propria Persona*
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

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. 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; AND
- 6. DECLARATORY RELIEF.

JURY TRIAL DEMANDED

COMPLAINT

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; MICHAEL)
 10 TRAVIS PHELPS, an individual; THE CITY)
 OF SAN DIEGO, a municipality; 2018FMO,)
 11 LLC, a California Limited Liability)
 Company; FIROUZEH TIRANDAZI, an)
 12 individual; and DOES 1 through 50, inclusive,)

13)
 14)
 Defendants,

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

17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)
 Real Parties In Interest.

COMPLAINT

1 Plaintiffs Andrew Flores, Amy Sherlock and minors T.S. and S.S., upon
2 information and belief, allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs seek this Federal Court’s protection to enable them to access the
5 State of California (the “State”) judiciary to vindicate their rights free of judicial bias,
6 illegal litigation tactics, and acts and threats of violence against themselves and material
7 third-party witnesses.

8 2. There is a small group of wealthy individuals, attorneys and professionals
9 (the “Enterprise”) in the City of San Diego (the “City”) that have conspired to create an
10 illegal monopoly in the cannabis market (the “Antitrust Conspiracy”).

11 3. The Enterprise includes attorneys from multiple law firms that are used to
12 create the appearance of competition and legitimacy, while in reality, *inter alia*, the
13 attorneys conspire against some of their own non-Enterprise clients to ensure that virtually
14 all cannabis conditional use permits (“CUPs”)¹ in the City go to principals of the
15 Enterprise.

16 4. At least some of the principals of the Enterprise are criminals with a history
17 of operating illegally in the cannabis black market and being sanctioned by authorities for
18 their criminal behavior. Consequently, as a matter of law, they cannot own a cannabis
19 CUP or license. However, these individuals have the wealth and professional
20 relationships acquired from their illegal operations to finance the hiring of attorneys,
21 political lobbyists, and other professionals to navigate the heavily regulated cannabis
22 licensing process and acquire cannabis CUPs illegally. These illegal tactics include
23 applying for and acquiring cannabis CUPs through proxies - sometimes attorneys - who
24 do not disclose the individuals with a criminal history as the true beneficial owners of the
25 cannabis CUPs acquired.

26
27 ¹ “[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 5. The Enterprise also includes at least one City employee and attorney who
2 take acts in furtherance of the Antitrust Conspiracy that include knowingly processing the
3 applications and ratifying the illegal acquisition of cannabis CUPs by these criminals via
4 proxies.

5 6. The de facto general counsel of the Enterprise is cannabis expert attorney
6 Gina M. Austin. In her own words: “I am an expert in cannabis licensing and entitlement
7 at the state and local levels and regularly speak on the topic across the nation.”²

8 7. Austin, together with political lobbyist James Bartell of Bartell & Associates
9 (“B&A”); building-designer Abhay Schweitzer of Techne, Inc.; and Firouzeh Tirandazi,
10 a Development Project Manager for the City’s Development Services Department
11 (“DSD”) are responsible for submission, processing and/or lobbying of the fraudulent
12 cannabis CUP applications with the City in furtherance of the Antitrust Conspiracy.

13 8. Austin, Bartell, and Schweitzer are considered the “Dream Team” in the City
14 for individuals who desire to acquire a cannabis CUP.

15 9. Austin has represented approximately 25 cannabis applications in the City,
16 23 of which were approved; Bartell has lobbied the City for 20 cannabis applications of
17 which 19 were approved; and Schweitzer has worked with the City on approximately 30-
18 40 cannabis CUP applications.

19 10. Tirandazi has worked on numerous cannabis applications submitted and/or
20 backed by members of the Dream Team on which she has made decisions contrary to
21 applicable laws and regulations that have violated the constitutional rights of other parties.

22 11. Chief Deputy City Attorney M. Travis Phelps has been counsel for the City
23 in at least two actions in which he has ratified the unlawful acquisition of cannabis CUPs
24 for principals of the Enterprise.

25 12. As more fully described below, Plaintiffs are victims of the Enterprise’s
26

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

1 Antitrust Conspiracy that have been deprived of their interest in cannabis CUPs and their
2 federally-protected right of access to the State and Federal Courts.

3 13. At various points in time victims of the Enterprise have sought to vindicate
4 their rights against the Enterprise’s principals and attorneys. They have been
5 unsuccessful.

6 14. The Enterprise has been defended by an army of attorneys from numerous
7 high-profile law firms that have blatantly lied to cover-up their client’s participation in
8 criminal activities or have deceitfully minced their words and selectively quoted the
9 victims to make them out to be greedy, stupid litigants filing frivolous litigation.

10 15. In *Stevens*, the court said:

11 Though there appears to be no clear rule of immunity with respect to the
12 liability under the civil rights laws of attorneys who violate the civil rights of
13 others while representing their clients, cases under the Civil Rights Act
14 indicate that the attorney *may* be held liable for damages if, on behalf of the
15 client, the attorney takes actions that he or she knows, or reasonably should
16 have known, would violate the clearly established constitutional or statutory
17 rights of another. *See Buller v. Buechler*, 706 F.2d 844, 852-853 (8th Cir.
18 1983).

18 *Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) (emphasis added).

19 16. This case will require a definitive determination of whether attorneys that
20 knew or should have known that the manner in which they represented their clients, that
21 helped effectuate their client’s criminal goals via the judiciaries, may or may not be held
22 jointly liable with their clients.

23 17. As this and related actions prove, the Enterprise’s attorneys and agents have
24 committed multiple acts that constitute a fraud on the court to effectuate the Antitrust
25 Conspiracy and to cover-up their illegal actions. And, because they have used their legal
26 acumen to successfully acquire multiple judgments that judicially ratify their actions, they
27 use those judgements as shields to fail to address the factual allegations and legal
28 arguments that prove those judgments were procured through acts of fraud on the court

1 and are void for violating the law (e.g., the ownership of cannabis CUPs by individuals
2 who cannot own cannabis CUPs).

3 18. Setting aside the obvious, that Plaintiffs have not been parties or been in
4 privity with any of the parties in related litigation matters, there are at least two
5 substantive principles of law that require this Court to take *affirmative* action and reach
6 the merits of Plaintiffs’ allegations.

7 19. First, as set forth in the seminal case of *Hazel-Atlas*, the United States
8 Supreme Court held that a court has “*the duty*” to vacate judgments procured through a
9 fraud on the court by attorneys. *Hazel-Atlas Co. v. Hartford Co.* (“*Hazel-Atlas*”), 322
10 U.S. 238, 249-50 (1944) (“We hold, therefore, that the Circuit Court on the record here
11 presented had both the *duty and the power* to vacate its own judgment and to give the
12 District Court appropriate directions.”) (fn. omitted, emphasis added); *Fierro v. Johnson*,
13 197 F.3d 147, 155 (5th Cir. 1999) (“*Hazel-Atlas* allows a judgment to be attacked on the
14 basis of intrinsic fraud that results from corrupt conduct by officers of the court.”).

15 20. Second, as the United States Supreme Court declared in *Epic*, “authorities
16 from the earliest time to the present unanimously hold that no court will lend its assistance
17 in any way towards carrying out the terms of an illegal contract.” *Epic Sys. Corp. v. Lewis*,
18 138 S. Ct. 1612, 1645 (2018) (quoting *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 77
19 (1982)). “To deny a remedy to reclaim [property procured through an illegal contract] is
20 to give effect to the illegal contract.” *Danebo Lumber Co. v. Koutsky-Brennan-Vana Co.*,
21 182 F.2d 489, 495 (9th Cir. 1950) (quoting *Parkersburg v. Brown*, 106 U.S. 487, 503).

22 21. Through illegal acts that constitute a fraud on the court by numerous
23 attorneys, previous judicial judgments have ratified illegal contracts at issue in this case.
24 The illegal acts by attorneys include perjury, falsification of evidence, and the ratification
25 of acts and threats of violence against material third party witnesses with detrimental
26 testimony to members of the Enterprise.

27 22. Numerous high-profile private and government attorneys have relied on the
28 presumption of integrity the courts afford them as officers of the court to effectuate the

1 Antitrust Conspiracy or to hide their violation of their affirmative duties to prevents acts
2 in furtherance of the Antitrust Conspiracy via the judiciaries – and that is why their actions
3 are so egregious and must be exposed so the rights of their victims can be vindicated.
4 *Kupferman v. Consolidated Res. Mfg. Corp.*, 459 F.2d 1072, 1078 (2d Cir. 1972) (“While
5 an attorney ‘should represent his client with singular loyalty that loyalty obviously does
6 not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court,
7 as an officer thereof, demands integrity and honest dealing with the court. And when he
8 departs from that standard in the conduct of a case he perpetrates a fraud upon the court.’
9 [Citation.]”) (emphasis added); *accord Synanon Church v. United States*, 579 F. Supp.
10 967, 975 (D.D.C. 1984).

11 **JURISDICTION AND VENUE**

12 23. 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 24. 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 25. This Court has jurisdiction over Plaintiffs’ claims for declaratory and
23 injunctive relief pursuant to Federal Rule of Civil Procedure 65.

24 26. 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**

28 27. Plaintiff ANDREW FLORES, an individual, was, and at all times mentioned

1 herein is, residing and doing business as a duly licensed attorney in the City and County
2 of San Diego, California.

3 28. Plaintiff AMY SHERLOCK, an individual, and at all times herein was and
4 is, residing and working in the City of Carlsbad, County of San Diego, California.

5 29. Plaintiff MINORS T.S. and S.S., progeny of Amy and Michael Sherlock, are
6 individuals, were, and at all times herein, living and attending school in the City of
7 Carlsbad and of the County of San Diego, State of California.

8 30. Defendant JOEL R. WOHLFEIL, an individual, was, and at all times
9 mentioned herein is, a resident of the County of San Diego, State of California.

10 31. Defendant LARRY GERACI an individual, was, and at all times mentioned
11 herein is, a resident of the County of San Diego, State of California.

12 32. Defendant TAX & FINANCIAL CENTER, INC., a California corporation,
13 and at all times relevant to this action was, a California corporation organized and existing
14 under the laws of the State of California, with its principal place of business located in
15 the County of San Diego.

16 33. Defendant REBECCA BERRY an individual, was, and at all times
17 mentioned herein is, a resident of the County of San Diego, State of California.

18 34. Defendant FERRIS & BRITTON APC (i.e., F&B), is a California
19 Professional Corporation, and at all times relevant to this action was, a California
20 Professional Corporation organized and existing under the laws of the State of California,
21 with its principal place of business located in the County of San Diego. F&B includes
22 defendants WEINSTEIN, TOOTHACRE AND KULAS.

23 35. Defendant MICHAEL ROBERT WEINSTEIN an individual, was, and at all
24 times mentioned herein is, a resident of the County of San Diego, State of California.

25 36. Defendant SCOTT TOOTHACRE an individual, was, and at all times
26 mentioned herein is, a resident of the County of San Diego, State of California.

27 37. Defendant ELYSSA KULAS, an individual, was, and at all times mentioned
28 herein is, a resident of the County of San Diego, State of California.

1 38. F&B Attorney of record for Geraci.

2 39. Defendant DAVID DEMIAN, an individual, was, and at all time mentioned
3 herein is, a resident of the County of San Diego, State of California.

4 40. Defendant ADAM WITT, an individual, was, and at all time mentioned
5 herein is, a resident of the County of San Diego, State of California.

6 41. Defendant RISHI BHATT, an individual, was, and at all time mentioned
7 herein is, a resident of the County of San Diego, State of California.

8 42. Defendant FINCH, THORTON, and BAIRD, is a California Limited
9 Liability Partnership, organized and existing under the laws of the State of California,
10 with its principal place of business located in the County of San Diego.

11 43. Defendant ABHAY SCHWEITZER, an individual and dba TECHNE; an
12 individual, was, and at all times mentioned herein is, a resident of the County of San
13 Diego, State of California.

14 44. Defendant JIM BARTELL an individual, was, and at all times mentioned
15 herein is, a resident of the County of San Diego, State of California.

16 45. Defendant BARTELL & ASSOCIATES, a California corporation, and at all
17 times relevant to this action was, a California Corporation organized and existing under
18 the laws of the State of California, with its principal place of business located in the
19 County of San Diego.

20 46. Defendant GINA M. AUSTIN, an individual, was, and at all times
21 mentioned herein is, a resident of the County of San Diego, State of California.

22 47. Defendant AUSTIN LEGAL GROUP APC, a California corporation, and at
23 all times relevant to this action was, a California Professional Corporation organized and
24 existing under the laws of the State of California, with its principal place of business
25 located in the County of San Diego.

26 48. Defendant NATALIE TRANG-MY NGUYEN an individual, was, and at all
27 times mentioned herein is, a resident of the County of San Diego, State of California.

28 49. Defendant AARON MAGAGNA an individual, was, and at all times

1 mentioned herein is, a resident of the County of San Diego, State of California.

2 50. Defendant A-M INDUSTRIES, INC., a California corporation, and at all
3 times relevant to this action was, a California Professional Corporation organized and
4 existing under the laws of the State of California, with its principal place of business
5 located in the County of San Diego.

6 51. Defendant JESSICA MCELFRISH an individual, was, and at all times
7 mentioned herein is, a resident of the County of San Diego, State of California.

8 52. Defendant THE CITY OF SAN DIEGO, a municipality,

9 53. Defendant FIROUZEH TIRANDAZI, an individual, was, and at all times
10 mentioned herein is, a resident of the County of San Diego, State of California.

11 54. Defendant MICHAEL TRAVIS PHELPS, an individual, was, and at all
12 times mentioned herein is, a resident of the County of San Diego, State of California.

13 55. Defendant SALAM RAZUKI an individual, was, and at all times mentioned
14 herein is, a resident of the County of San Diego, State of California.

15 56. Defendant NINUS MALAN an individual, was, and at all times mentioned
16 herein is, a resident of the County of San Diego, State of California.

17 57. Defendant BRADFORD HARCOUT an individual, was, and at all times
18 mentioned herein is, a resident of the County of San Diego, State of California.

19 58. Real Party in Interest JOHN EK an individual, was, and at all times
20 mentioned herein is, a resident of the County of San Diego, State of California.

21 59. Real Party Interest THE EK FAMILY TRUST, 1994 Trust; 2018FMO, LLC,
22 a California limited liability company... a California corporation, and at all times relevant
23 to this action was, a California Limited Liability Company 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 60. and DOES 3 through 50, inclusive,

27 **GENERAL ALLEGATIONS**

28 I. BACKGROUND

A. Salam Razuki and Ninus Malan

61. Salam Razuki and Ninus Malan are principals of the Enterprise. They were business partners in numerous business ventures for at least a decade before they had a falling out over profits from the cannabis businesses they acquired.

62. Razuki would use Malan as a proxy in cannabis business ventures who would not disclose Razuki as having an interest in the assets acquired.

63. After the parties had a falling out, Razuki sued Malan seeking to acquire his undisclosed ownership interest in their various business ventures.

64. The litigation was expensive.

65. Razuki then sought to have Malan kidnapped to Mexico and murdered.

66. Razuki and his conspirators who planned to kidnap and murder Malan were arrested by the FBI.

67. The Dream Team represented Razuki and Malan in numerous business and legal matters, including in acquiring cannabis CUPs solely in the name of Malan knowing that Razuki had an interest in the cannabis CUPs acquired.

68. The estimated worth of the cannabis related assets acquired by Razuki and Malan is estimated to be approximately \$44,000,000.

B. The Associate

69. One of Razuki’s cannabis business associates (the “Associate”) described in a confidential conversation with an investigative reporter – after Razuki had been arrested and was being held by the FBI – meetings between Razuki and Austin in which they explicitly discussed their goal of creating a “monopoly” in the City’s cannabis market through proxies and the use of sham lawsuits.

C. Gina Austin, Natalie Nguyen and Jessica McElfresh

70. Austin and attorney Natalie Nguyen both attended the Thomas Jefferson School of Law and were both admitted to the California Bar on December 1, 2006.

71. Austin, with approximately two to three years of experience as an attorney, founded her law firm ALG in 2009 through which she has been unprecedently successful

1 in acquiring cannabis CUPs for her clients.

2 72. Austin has acquired more cannabis CUPs in the City than any other attorney
3 or entity in the City.

4 73. Austin’s success is not because she turned out to be a prodigy in the field of
5 law, but because she engages in and ratifies unlawful actions, including violence, to
6 achieve her goals.

7 74. McElfresh has represented Razuki in numerous legal actions.³

8 75. McElfresh has numerous shared clients with Austin.⁴

9 **D. Phelps**

10 76. On August 27, 2018, the San Diego City Attorney’s office issued a press
11 release recognizing Phelps being awarded “the prestigious 2018 Jefferson B. Fordham
12 Award in Advocacy by the American Bar Association.”

13 77. The press release goes on to describe Phelps’ background and experience as
14 follows:

15
16 Phelps has served in the San Diego City Attorney’s Office for almost 17 years.
17 He has developed extensive expertise in pension, land use, and environmental
18 litigation, handling many of the City of San Diego’s most high-profile,
19 complex, and often politically sensitive cases. He is admitted to practice in all
20 California State Courts, the U.S. District Court, Southern District of
California, and U.S. Court of Appeals, Ninth Circuit.

21 Phelps currently supervises the Office’s Land Use Litigation Unit, overseeing
22 a specialized team of litigators and staff that handle up to 90 active land use

23 3 See *People v. Razuki*, San Diego Superior Court, Case No. M227357CE; Kinsee
24 Morlan, *Problems at This Lincoln Park Strip Mall Keep Getting Worse Despite City*
25 *Intervention*, Voice of San Diego (Aug. 23, 2018)
26 [https://www.voiceofsandiego.org/topics/land-use/problems-at-this-lincoln-park-strip-](https://www.voiceofsandiego.org/topics/land-use/problems-at-this-lincoln-park-strip-mall-keep-getting-worse-despite-city-intervention/)

27 4 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-](https://www.voiceofsandiego.org/topics/news/san-diego-das-prosecution-of-pot-attorney-has-sent-chills-through-the-legal-community/)
[attorney-has-sent-chills-through-the-legal-community/](https://www.voiceofsandiego.org/topics/news/san-diego-das-prosecution-of-pot-attorney-has-sent-chills-through-the-legal-community/)

1 cases at any one time.

2 78. Phelps’ knows and understands the requirements with the City for cannabis
3 CUP applications.

4 II. MRS. SHERLOCK AND MINORS T.S. AND S.S.

5 **A. The Balboa CUP**

6 79. Michael “Biker” Sherlock was a husband, father, professional athlete, and
7 an entrepreneur with interests in various businesses, including in the cannabis sector.

8 80. Mr. Sherlock partnered with Bradford Harcourt who, unknown to Mr.
9 Sherlock, was a principal of the Enterprise.

10 81. The parties used the Dream Team to acquire interests in two cannabis
11 permits in 2015 (the “Balboa CUP” and the “Ramona CUP”).

12 82. Thereafter, Sherlock and Harcourt were faced with various litigation and
13 business-related expenses that required Sherlock to deplete his financial resources and
14 even use the college funds for his two sons, S.S. and T.S., to defend the significant
15 investments he made in securing the two CUPs.

16 83. Unfortunately, Mr. Sherlock passed away on December 3, 2015.

17 84. Thereafter, Harcourt became the sole owner of the Balboa CUP and held an
18 interest in the Ramona CUP.

19 85. The transfer of Mr. Sherlock’s interest in the cannabis CUPs were
20 accomplished via documents submitted to the Secretary of State weeks after his death.

21 86. Mr. Sherlock’s signatures on the documents were forged.

22 87. Subsequent to Harcourt acquiring the Balboa CUP, Razuki became the sole
23 owner of the Balboa CUP.

24 **B. The Razuki / Malan / Harcourt Lawsuits**

25 88. On June 6, 2017, San Diego Patients Cooperative Corporation, Inc.
26 (“SDPCC”) and Harcourt filed a lawsuit against, *inter alia*, Razuki and Malan alleging
27 they had successfully conspired to defraud them of the Balboa CUP.

28 89. The Harcourt complaint contains causes of action against Razuki and Malan

1 for, *inter alia*, breach of an oral joint venture agreement allegedly reached in or around
2 August 2016.

3 90. Among the material allegations in the Harcourt complaint are that (i) Razuki
4 and Harcourt reached an oral joint venture agreement that was to be reduced to writing;
5 (ii) Razuki provided a \$50,000 “good faith” payment while the parties were negotiating
6 the joint venture agreement; (iii) however, Razuki then purchased the real property at
7 which the Balboa CUP was issued and then fraudulently represented himself as the owner
8 of the Balboa CUP to the City; (iv) the City then transferred the Balboa CUP to Razuki;
9 and (v) and thereafter Razuki fraudulently represented that \$800,000 was the value of the
10 real property, inclusive of a cannabis CUP.

11 91. On July 10, 2018, Razuki initiated a civil lawsuit against Malan regarding
12 ownership of multiple real estate properties and marijuana businesses after they had a
13 falling out.

14 **C. Harcourt and Allan Claybon of Messner Reeves LLP**

15 92. In early 2020, Flores met with Mrs. Sherlock and showed her documents
16 reflecting that Mr. Sherlock had transferred his interests in the cannabis CUPs and that
17 those documents were submitted to the State at different points weeks after he had passed
18 away.

19 93. Mrs. Sherlock said the signature on the forms were not Mr. Sherlock’s.

20 94. On February 21, 2020, Flores first contacted Harcourt’s attorney, Allan
21 Claybon, and thereafter they spoke and emailed several times.

22 95. Flores argued it could appear that Harcourt forged Mr. Sherlock’s signature
23 to acquire his interest in the cannabis permit and thereby defrauded Mrs. Sherlock and her
24 family as Mr. Sherlock’s heirs.

25 96. Flores provided Claybon a copy of a handwriting experts’ report stating Mr.
26 Sherlock’s signature were more likely than not, forged.

27 97. Flores has had a single, simple question for Harcourt that he wished Claybon
28 would address: “how did Mr. Sherlock’s interest in the cannabis permit become

1 Harcourts?”

2 98. On their first call, Claybon was professional and agreed that the
3 “circumstances” were “suspicious” and that he “appreciated” Flores reaching out to him
4 to discuss before initiating litigation.

5 99. However, when they spoke next, Claybon contradicted himself and
6 described the facts provided by Flores as being baseless speculation.

7 100. As of the filing of this Complaint, Harcourt has not provided an answer to
8 the simple question posed.

9 101. However, without admitting guilt, Claybon communicated Harcourt’s
10 affirmative defenses in anticipation of this litigation.

11 102. Specifically: (i) the statute of limitations bars any fraud-based causes of
12 action that Mrs. Sherlock may have against Harcourt; (ii) the statute of limitations was
13 not tolled because Mrs. Sherlock did not “exercise reasonable diligence” because she did
14 not check the State’s records after Mr. Sherlock passed away; and (iii) Harcourt and a
15 third-party allege they saw Mr. Sherlock execute the forms pursuant to which he
16 transferred his interest in the cannabis CUPs the day before he passed away. Therefore,
17 per Claybon, these alleged facts conclusively established same and there is no probable
18 cause to allege Harcourt acted unlawfully (“Harcourt’s Affirmative Defenses”).

19 103. Claybon has directly accused Flores of being “jaded” for not believing
20 Harcourt’s self-serving allegation that he saw Mr. Sherlock execute the forms the day
21 before he passed away.

22 104. An alleged action that had never been disclosed to Mrs. Sherlock until Flores
23 contacted Claybon regarding the forged signatures.

24 105. Further, as the email correspondence between Flores and Claybon reflects,
25 Claybon in an articulate, sophisticated, and professional manner consistently pretends to
26 not understand the simplicity of the request made of Harcourt seeking an explanation of
27 how he acquired Mr. Sherlock’s interests in the permits.

28 106. Claybon’s purposeful obfuscation of a simple issue is a cover-up of his

1 client’s illegal actions. Attached hereto as Exhibit 1 are the last two emails sent by Flores
2 to Claybon regarding this issue reflecting Harcourt and Claybon’s bad faith.

3 III. THE COTTON I LITIGATION WAS A SHAM AND THE COTTON I JUDGMENT
4 ENFORCES AN ILLEGAL CONTRACT PROCURED THROUGH, INTER ALIA, A
5 FRAUD ON THE COURT

6 **A. The Geraci Illegal Marijuana Dispensaries and Judgments**

7 107. Geraci has been sued at least three times by the City for his involvement in
8 illegal marijuana dispensaries (the “Illegal Marijuana Dispensaries”).⁵

9 108. Geraci settled all three cases, collectively paying fines in the amount of
10 \$100,000 (the “Geraci Judgments”).

11 109. Geraci did not “coincidentally” lease three real properties to the Illegal
12 Marijuana Dispensaries; he was an operator and beneficial owner. In the *CCSquared*
13 Stipulated Judgment, Geraci judicially admitted that “[t]he address where the Defendants
14 were maintaining a marijuana dispensary business at all times relevant to this action is
15 3505 Fifth Ave, San Diego[.]”

16 **B. Negotiations for the Property and the November Document**

17 110. Per Geraci’s sworn declaration: “In approximately September of 2015, I
18 began lining up a team to assist in my efforts to develop and operate a [dispensary] in the
19 [City].” (Exhibit No. 2 (Geraci Decl.), ¶ 2.)

20 111. “I hired... design professional, Abhay Schweitzer of TECHNE[,] a public
21 affairs and public relations consultant with experience in the industry, Jim Bartell of
22 Bartell & Associates. In addition, I hired a land use attorney, Gina Austin of Austin Legal
23 Group.” (Id.)

24 112. “In approximately June 2016, [I was introduced to the Property] as a
25

26
27 ⁵ *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).

1 potential site for acquisition and development for use and operation as a [dispensary].”
2 (*Id.* at ¶ 3.)

3 113. “[I]n approximately mid-July 2016... I expressed my interest to Mr. Cotton
4 in acquiring his Property if our further investigation satisfied us that the Property might
5 meet the requirements for [a dispensary] site.” (*Id.*)

6 114. “On November 2, 2016, Mr. Cotton and I executed [the November
7 Document.]” (*Id.* at ¶ 5.)

8 115. “After we signed the [November Document], Mr. Cotton immediately began
9 attempts to renegotiate our deal for the purchase of the Property. This literally occurred
10 the evening of the day he signed the [November Document].” (*Id.* at ¶ 10.)

11 116. “On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an
12 email, which stated:

13 Hi Larry,

14
15 Thank you for meeting today. Since we [executed] the Purchase Agreement
16 in your office for the sale price of the property I just noticed the 10% equity
17 position in the dispensary was not language added into that document. I just
18 want to make sure that we're not missing that language in any final agreement
19 as it is a factored element in my decision to sell the property. ***I'll be fine if
you simply acknowledge that here in a reply.***

20 (The “Request for Confirmation”) (*Id.* at ¶ 10 (emphasis added).)

21 117. “I responded from my phone ‘No no problem at all.’” (The “Confirmation
22 Email”) (*Id.* (emphasis added).)

23 118. “The next day I read the entire email and I telephoned Mr. Cotton because
24 the total purchase price I agreed to pay for the subject property was \$800,000 and I had
25 never agreed to provide him a 10% equity position in the dispensary as part of my
26 purchase of the property.” (*Id.*)

27 119. “Mr. Cotton's response was to say something to the effect of ‘well, you don't
28 get what you don't ask for.’ He was not upset and he commented further to the effect that

1 things are ‘looking pretty good-we all should make some money here.’ And that was the
2 end of the discussion.” (The “Disavowment Allegation”). (*Id.*).

3 120. Geraci has no evidence other than his self-serving testimony that the
4 Disavowment Allegation took place. (See, gen., *Id.*)

5 **C. The Berry Fraud**

6 121. On October 31, 2016, Berry submitted the Berry application to the City. The
7 Berry Application included Form DS-318 (Ownership Disclosure Statement) and Form
8 DS-3032 (General Application). Attached hereto as Exhibit No. 3. (Ownership
9 Disclosure Statement) and Exhibit No. 4 (General Application).

10 122. In the General Application, Berry certified the following to be true:

11
12 I certify that I have read this application and state the above information is
13 correct, and that I am the property owner, authorized agent of the property
14 owner, or other person having a legal right, interest, or entitlement to the use
15 of the property that is the subject of this application (Municipal Code Section
16 112.0102). I understand that the applicant is responsible for knowing and
17 complying with the governing policies and regulations applicable to the
18 proposed development or permit.

19 (Exhibit 4.)

20 123. The Ownership Disclosure Statement required Berry to provide a list that:

21 ... **must** include the names and addresses of **all** persons who have an interest
22 in the property, **recorded or otherwise**, and state the type of interest (*e.g.*,
23 tenants who will benefit from the permit, **all** individuals who own the
24 property).

25 (Exhibit 3) (emphasis added).

26 124. Berry did not disclose Geraci in any capacity in the Berry Application as
27 required by the plain language of the Ownership Disclosure Statement. (*See id.*)

28 125. Berry testified at trial in *Cotton I* that the failure to disclose Geraci was
purposeful and purportedly because Geraci was an Enrolled Agent with the IRS.

D. Geraci’s Complaint and Cotton’s Answer

1 126. On March 21, 2017, Cotton terminated the JVA with Geraci after he had
2 discovered the Berry Fraud and Geraci failed to reduce the JVA to writing.

3 127. The next day, March 22, 2017, Weinstein emailed Cotton a copy of the
4 *Cotton I* complaint and the F&B Lis Pendens.

5 128. Geraci/F&B’s *Cotton I* complaint ignores the existence of, *inter alia*,
6 Geraci’s Confirmation Email.

7 129. On May 8, 2017, Cotton filed his *Cotton I* answer including an affirmative
8 defense for fraud.

9 **E. Cotton’s Pro Se Cross-complaint and F&B’s First Demurrer.**

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

16 131. Cotton’s cause of action for breach of oral contract materially stated as
17 follows (emphasis added):

18 ***The agreement reached on November 2nd, 2016 is a valid and binding oral***
19 ***agreement between Cotton and Geraci.***

20 Geraci has breached the agreement by, among other actions described herein,
21 alleging the written November [Document] is the final and entire agreement
22 for the Property.

23 132. Cotton’s cause of action against Geraci and Berry for conspiracy materially
24 alleged as follows (emphasis added):

25 Berry submitted the [Berry Application] in her name on behalf of Geraci
26 because Geraci has been a named defendant in numerous lawsuits brought by
27 the City of San Diego against him for the operation and management of
28 unlicensed, unlawful and illegal marijuana dispensaries. **These lawsuits**

1 **would ruin Geraci's ability to obtain a CUP himself [i.e., the Sanctions**
2 **Issue].**

3 Berry knew that she was filing a document with the City of San Diego that
4 contained false statements, specifically that she was a lessee of the Property
5 and owner of the [P]roperty [i.e., the Berry Fraud].

6 Berry, at Geraci’s instruction or her own desire, submitted the [Berry
7 Application] as Geraci's agent, and thereby participated in Geraci’s scheme to
8 deprive Cotton of his Property and his ownership interest in the [District Four
9 CUP].

10 133. On June 16, 2017, F&B filed a demurrer to Cotton’s pro se cross-complaint
11 (the “First F&B Demurrer”).

12 134. In the First F&B Demurrer, as to Cotton’s cause of action for breach of an
13 oral contract, F&B argued (emphasis added):

14 The sixth cause of action for breach of oral contract does not state a cause of
15 action because: a) Cross-Complainant has failed to allege conduct which
16 would be an actual breach; b) **there cannot be an oral contract which**
17 **contradicts a written contract;** and c) the alleged oral contract for the
18 purchase and sale of the subject real property violates the Statute of Frauds.

19 135. F&B’s arguments are without any factual or legal justification: (a) filing suit
20 and fraudulently representing a receipt as a purchase contract is a breach of the JVA;⁶ (b)
21 evidence of an oral contract that contradicts a written contract is admissible pursuant to
22 *Riverisland*⁷; and (c) an oral joint venture agreement is not subject to the statute of frauds.⁸

23 ⁶ Plaintiff notes that although the Illegality Issue means the JVA was illegal when
24 formed, such does not insulate defendants from liability for their fraud. *Timberlake v.*
25 *Schwank*, 248 Cal.App.2d 708, 711 (“An action for damages for fraud inducing a person
26 to enter into a joint venture does not arise out of the joint venture; exists independently of
27 it; and lies even though there is no dissolution of or accounting in the joint venture.”).

28 ⁷ *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association*
29 (“*Riverisland*”) (2013) 55 Cal.4th 1169.

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

1 136. As to Cotton’s cause of action for conspiracy, F&B argued:

2
3 The tenth cause of action for civil conspiracy fails to state a cause of action
4 because there is no such cause of action in California. Rather, conspiracy is a
5 legal doctrine that imposes liability on persons who, although not actually
6 committing a tort themselves, share with the immediate tortfeasors a common
7 plan or design in its preparation. A conspiracy cannot be alleged as a tort
8 separate from the underlying wrong it is organized to achieve.

9 137. F&B’s argument is without justification because, *inter alia*, it assumes the
10 Berry Fraud is not illegal.

11 **F. Cotton’s First and Second Amended Cross-complaints prepared and**
12 **filed by FTB; and Geraci’s and Berry’s Answers.**

13 138. After *Cotton I* was filed, Joe Hurtado (Cotton’s litigation investor in *Cotton*
14 *I*), on behalf of Cotton, Richard Martin (Plaintiff Flores’ predecessor in interest), and
15 himself, met with McElfresh several times to discuss *Cotton I* and her representing Cotton
16 in *Cotton I* and Martin in a CUP application with the City on the Property.

17 139. McElfresh agreed that the November Document could not a purchase
18 contract as a matter of law because of the Confirmation Email.

19 140. On or around April 13, 2017, McElfresh – after having met, discussed and
20 charged for her time, in regard to *Cotton I* – emailed Hurtado that “upon further
21 reflection” she would not be able to represent Cotton in *Cotton I*. Further, she
22 recommended Demian of FTB, describing his success in the *Engebretsen v. City of San*
23 *Diego*, No. D068438, 2016 Cal. App. Unpub. LEXIS 8548 (Nov. 30, 2016) matter, and
24 one other attorney.

25 141. Notwithstanding her change of course, an attorney-client relationship had
26 already been established between McElfresh and each of Cotton, Hurtado and Martin.⁹

27 ⁹ *Miller v. Metzinger* (1979) 91 Cal.App.3d 31, 39-40 (“As our Supreme Court said
28 in *Perkins v. West Coast Lumber Co.* (1900) 129 Cal. 427, 429 [62 P. 57]: ‘When a party
seeking legal advice consults an attorney at law and secures that advice, the relation of
attorney and client is established prima facie.’ [...] In *Westinghouse Elec. Corp. v. Kerr-*

1 142. Further, McElfresh *did* agree to represent Martin in the CUP application with
2 the City.

3 143. Based on McElfresh’s recommendation, Hurtado reached out to FTB and
4 arranged for a meeting between F&B and Cotton.

5 144. Further, Hurtado arranged to finance Cotton’s representation with FTB if
6 FTB and Cotton came to terms.

7 145. On June 25, 2017, Cotton entered into an agreement with FTB for their
8 services in representing him in various legal matters related to the Property, including the
9 preparation and submission of a cannabis CUP application with the City.

10 146. On June 30, 2017, Demian and Witt of FTB substituted in as counsel for
11 Cotton and filed an amended cross-complaint in *Cotton I* (the “FAXC”).

12 147. The FAXC reduced and revised the causes of action from 11 to 7 as follows:
13 (i) breach of contract; (ii) intentional misrepresentation; (iii) negligent misrepresentation;
14 (iv) false promise; (v) intentional interference with prospective economic relations; (vi)
15 negligent interference with prospective economic relations; and (vii) declaratory relief.

16 148. FTB’s amendments from Cotton’s pro se Complaint to their FAXC were
17 without factual or legal justification. The unjustified amendments include:

- 18 (i) Dropping Cotton’s cause of action for breach of an oral contract;
- 19 (ii) Dropping Cotton’s cause of action for fraud;
- 20 (iii) Dropping Cotton’s cause of action for conspiracy against Geraci and Berry;
- 21 (iv) Dropping Berry from all causes of action except the seventh for declaratory
22 relief; and
- 23 (v) Amending Cotton’s factual allegation that the “agreement reached on
24

25
26

McGee Corp. (7th Cir. 1978) 580 F.2d 1311, 1319, the court said: ‘The fiduciary
27 relationship existing between lawyer and client extends to preliminary consultation by a
28 prospective client with a view to retention of the lawyer, although actual employment
does not result.’”).

1 November 2, 2016 is a valid and binding oral agreement,”¹⁰ to alleging the parties had
2 reached “an agreement to agree” in the future which is not an enforceable agreement.¹¹

3 149. On August 25, 2017, Judge Wohlfeil entered a minute order reflecting that
4 pursuant to the stipulation of F&B and FTB, no new parties could be named and all
5 unserved, non-appearing and fictitiously named parties were dismissed.

6 150. F&B and FTB’s failure to name Martin as an indispensable party as required
7 by law is without justification as FTB had disclosed the Martin Purchase Agreement to
8 F&B and both parties knew Martin was the equitable owner of the Property.¹²

9 151. 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.

12 152. The amendments from the FAXC to the SAXC are without factual or legal
13 justification.

14 153. On November 20, 2017, Geraci filed his Answer to the SAXC.

15
16 ¹⁰ “In *San Francisco Iron etc. Co. v. American Mill. etc. Co.* (1931) 115 Cal.App.
17 238, a joint venture was held to be consummated when the minds of the parties meet as
18 to the formation of the contract of joint venture. Also it was held that a joint venture could
19 exist without explication of all details.” *Franco W. Oil Co. v. Fariss*, 259 Cal. App. 2d
20 325, 345 (1968).

21 ¹¹ “It is Hornbook law that an agreement to make an agreement is nugatory, and that
22 this is true of material terms of any contract.” *Roberts v. Adams* (1958) 164 Cal. App. 2d
23 312, 314. “[N]either law nor equity provides a remedy for a breach of an agreement to
24 agree in the future.’ [Citation.]” *Id.* at 316.

25 ¹² *See, e.g., Cotton I*, ROA 115 (F&B opposition to Cotton December 7, 2017 ex parte
26 application for TRO) at 11 (“[I]f Cotton is granted his TRO or PI, then he has every
27 incentive as a co-applicant to torpedo the CUP approval process so that the condition
28 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
to the \$800,000 purchase price he will receive from Geraci). In other words, if Cotton is
granted his TRO and/or PI but Geraci prevails at trial, Geraci’s victory may be a pyrrhic
one as Cotton would have a \$1.2 million reason to destroy the CUP approval process in
order to free Cotton to close the more lucrative deal he has made with another buyer,
[Martin], for the purchase and sale of the Property.”) (Emphasis in original removed).

1 154. Geraci’s fifth affirmative defense in his *Cotton I* Answer states: “[Geraci]
2 currently has insufficient information upon which to form a belief as to the existence of
3 additional and as yet unstated affirmative defenses. [Geraci] reserves the right to assert
4 additional affirmative defenses in the event discovery discloses the existence of said
5 affirmative defenses.”

6 155. On September 9, 2017, Geraci filed a demurrer to Cotton’s SAXC (the
7 “Second F&B Demurrer”), which includes the following admission by F&B: “[Geraci]
8 alleges in his Complaint that the [November Document] contains all the material terms
9 and conditions of the agreement for the purchase and sale of the [Property] and is the
10 entire agreement enforceable between the parties.” *Cotton I*, ROA 53 at 8 (emphasis
11 added).

12 156. On November 3, 2017, Judge Wohlfeil held a hearing on Geraci’s demurrer
13 to the SAXC having issued a tentative ruling overruling Geraci’s demurer.

14 157. The hearing was a fraud on the court that can be described as a play put on
15 for Judge Wohlfeil by F&B and FTB seeking to have Cotton’s case dismissed before it
16 could proceed further.

17 158. Geraci’s demurrer relied on *Bezell v. Schrader* (1963) 59 Cal.2d 577 and
18 *Sterling v. Taylor* (2007) 40 Cal.4th 757, both of which were decided before *Riverisland*
19 in 2013. At the hearing, Weinstein drew Judge Wohlfeil’s attention to those “two
20 California Supreme Court cases” and argued materially as follows:

21 So those decisions clearly hold that under the statute of frauds, **extrinsic**
22 **evidence can’t be employed to prove an agreement at odds with the terms**
23 **of the memorandum.** Put another way, the oral agreement, in this case,
24 alleged oral agreement that Mr. Cotton is alleging of which the written
25 agreement is a memorandum, must be one whose terms are consistent with
26 the terms of the memorandum. So determining whether extrinsic evidence
27 provides the certainty required by the statutes, **[the] Court has to recognize**
28 **that extrinsic evidence cannot contradict the terms of the writing.**

 159. F&B’s is arguing the *Pendergrass* line of reasoning. *Bank of America etc.*
Assn. v. Pendergrass (1935) 4 Cal.2d 258.

1
2 160. Demian then appeared to oppose F&B, but in reality, he was informing Judge
3 Wohlfeil that he should dismiss the case because the parties had reached an unenforceable
4 agreement to agree. As argued by Demian:

5
6 [S]everal of the statements of Mr. Weinstein are interesting to me and they
7 point up that our case and our causes of action for breach of contract have
8 merit.... That November [Document] leads with this language: “Darryl
9 Cotton has agreed to sell the property located at,” et cetera. Darryl Cotton has
10 agreed. Darryl Cotton does not hereby agree pursuant to the terms of this
11 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.

12 Our case is based on the idea that this is a receipt. This is more a receipt than
13 an agreement. This document was signed because Mr. Geraci said, I'm going
14 to give you \$10,000. We need to at least put down that **we have this**
15 **agreement to agree** and have an exchange of this cash in a writing that
16 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.

17 *I know I firmly believe* this complaint states a cause of action that survives
18 the statute of frauds and the standard for general demurrer.... Where there is
19 **a written agreement to agree**, the cause of action can stand.... When you
20 have that **agreement to agree**, it's not necessarily an unhinged agreement to
21 agree. You **may** have agreement.

22 161. At no point has Cotton ever argued anything other than that he and Geraci
23 reached the JVA - “a valid and binding oral agreement.”

24 162. Demian’s argument contradicted his own client’s judicial admissions.

25 163. What Demian did was highlight to Judge Wohlfeil that he “firmly believed,”
26 not that he “knew,” that “a written agreement to agree” “may” be an agreement.

27 164. Despite the fact that FTB amended Cotton’s complaint to include language
28 that the parties had “agreed to agree,” Weinstein feigned ignorance that Demian could
even argue such a position at the hearing:

1 [Demian] is **now** saying they had an agreement to agree. If that’s the case,
2 then his case gets -- **the cause of action gets knocked out automatically.**
3 **There's no such thing as [an] agreement to agree.**

4 It's even in your quotation in the tentative ruling. You were distinguishing in
5 there between agreement to agree and actual agreement to negotiate in good
6 faith towards something. Those are different things. So I need to make that
7 point.

8 165. Weinstein is correct; Demian is wrong: “There’s no such thing as [an]
9 agreement to agree.”

10 166. Had Demian raised the Confirmation Email and argued what any first-year
11 law school student would know to argue, that to prove the existence of a contract requires
12 evidence of mutual assent, *Cotton I* would have been resolved in Cotton’s favor then and
13 there and this lawsuit would not be required.

14
15 **G. The Motion for Partial Adjudication**

16 167. On March 8, 2019, Cotton filed a motion for summary judgment or,
17 alternatively, summary adjudication (the “MSA”).

18 168. In the MSA, Cotton:

19 Move[d] for summary adjudication on two issues and the four causes of action
20 in Geraci’s Complaint. The first issue is a finding that the November Document
21 is not a fully integrated agreement for the sale of the Property. The second, that
22 Geraci’s newly raised affirmative defense – the Disavowment Allegation – is
23 barred as a matter of law []. Lastly, as to Geraci’s Complaint, it fails as each of
24 his four claims have an element requiring Geraci prove the November
Document is a valid fully integrated agreement for the sale of the Property.

25 169. At the hearing, in response to questions by specially appearing attorney Ellen
26 Plaskett – whose sole mandate was to have Judge Wohlfeil address the legal import of the
27 Confirmation Email to the November Document - Judge Wohlfeil responded: “... ***the***
28 ***Court cannot and will not adjudicate this case as a matter of law...***”

1 **H. The *Cotton I* Trial**

2 170. All of the parties that testified on Geraci’s behalf at trial were (i) Geraci, (ii)
3 Berry, (iii) Austin, (iv) Bartell, (v) Schweitzer, and (vi) Tirandazi.

4 171. All these parties directly testified or provided supporting testimony for, *inter*
5 *alia*, the conclusion that Geraci is not barred by law from owning a CUP pursuant to the
6 Berry Application either due to the Sanctions Issue or the Berry Fraud.

7 172. Geraci cannot legally own a cannabis CUP pursuant to the Berry Application
8 because of, *inter alia*, the Sanctions Issue and the Berry Fraud (hereinafter, collectively,
9 the “Illegality Issue”).

10 173. City attorney Phelps attended the trial.

11 174. City attorney Phelps prepared Tirandazi for testifying.

12 175. City attorney Phelps knows or should know that (i) Tirandazi’s decision to
13 not cancel the Berry Application at Cotton’s request violates the SDMC (as set forth in
14 the Engebretsen decision) and (ii) that the filing of *Cotton I* was a sham.

15 176. Judge Wohlfeil prohibited Cotton and Hurtado from providing contradicting
16 testimony seeking to oppose Geraci’s evidence that the market value of the Property is
17 exponentially greater than \$800,000 inclusive of a cannabis CUP.

18 177. Austin falsely testified that, *inter alia*, (i) she did not speak with Hurtado
19 regarding the November Document on March 6, 2017 and (ii) that she did not confirm to
20 Hurtado the November Document is not a purchase contract.

21 178. Judge Wohlfeil prohibited Cotton and Hurtado from testifying about
22 Magagna’s attempts to bribe and threaten Corina Young, a material third-party witness to
23 the conspiracy.

24 179. Just prior to trial Judge Wohlfeil denied Flores’ motion to intervene as a
25 successor-in-interest to Richard Martin, who purchased the Property after Cotton
26 canceled the agreement with Geraci and, therefore, an indispensable party.

27 **I. The DQ Motion**

28 180. On January 25, 2018, Judge Wohlfeil stated from the bench that he does not

1 believe that Weinstein, Austin, or Demian are capable of acting unethically against Cotton
2 (Judge Wohlfeil’s “Fixed-Opinion” statement).

3 181. On August 2, 2018, at an ex parte hearing, Flores, making a special
4 appearance for Cotton’s then counsel, noted that Cotton was preparing a motion to
5 disqualify Judge Wohlfeil (the “DQ Motion”) and Judge Wohlfeil asked for “an offer of
6 proof.”

7 182. Flores responded by reminding him of his Fixed-Opinion statement on
8 January 25, 2018.

9 183. Judge Wohlfeil responded by saying that he “may” have made the Fixed-
10 Opinion statement because he has known Weinstein since “early on” in their careers when
11 they both started their practices (collectively with the Fixed-Opinion statement, the
12 “Extrajudicial Statements”).

13 184. On September 12, 2018, Cotton filed the DQ Motion.

14 185. The DQ Motion set forth, *inter alia*, the following facts and arguments: the
15 Extrajudicial Statements, the Illegality Issue, and violations of the SDMC and BPC §
16 26057.

17 186. Judge Wohlfeil denied the DQ Motion, but he did not deny he made the
18 Extrajudicial Statements (the “DQ Order”).

19 187. The DQ Order alleges that the basis of the Extrajudicial Statements was
20 formed during the course of the proceedings and, as such, cannot be the basis of
21 disqualification.

22 188. Judge Wohlfeil also denied the DQ Motion incorrectly stating that he was
23 not in chambers when the DQ Motion was served.

24 189. Flores personally called Judge Wohlfeil’s chambers and requested to speak
25 with Judge Wohlfeil’s law clerk. Flores spoke with a law clerk named Calvin, who stated
26 he was a temporary law clerk for Judge Wohlfeil, and who confirmed that Judge Wohlfeil
27 was in chambers.

28 190. Attached hereto as Exhibit 5 is a true and correct copy of Flores’ call log

1 showing he called Judge Wohlfeil’s chambers on September 12, 2018 at 3:48 p.m. for
2 approximately 5 minutes. The length of the call is because when Flores spoke with law
3 clerk Calvin, Flores requested that Calvin please go confirm Judge Wohlfeil was in fact
4 present and in chambers as required by code, which he did placing Flores on hold while
5 he confirmed same.

6 191. The DQ Motion is time stamped 4:22 p.m. and was personally served on law
7 clerk Calvin by Cotton’s then attorney.

8 **J. The Motion for New Trial**

9 192. After the trial of *Cotton I*, Cotton specially hired counsel from out of state to
10 file a motion for a new trial (the “MNT”).

11 193. Cotton’s specially appearing counsel filed the MNT based primarily on three
12 grounds: (i) even assuming the November Document were a contract, it is illegal and
13 cannot be enforced because of the Sanctions Issue and the Berry Fraud; (ii) the jury in
14 *Cotton I* applied a subjective standard to Geraci’s conduct and an objective standard to
15 Cotton’s conduct and (iii) Geraci, F&B and Austin used the attorney-client privilege as a
16 shield during discovery and a sword at trial, which prohibited Cotton from having a fair
17 and impartial trial.

18 194. The F&B opposition to the MNT is without any factual or legal justification.

19 195. At the MNT hearing, Judge Wohlfeil denied the MNT apparently believing
20 F&B’s opposition argument that Cotton had waived the defense of illegality because
21 Cotton had allegedly not previously raised the Sanctions Issue or the Berry Fraud.

22 196. The following exchange took place between Judge Wohlfeil and Cotton’s
23 counsel regarding the defense of illegality, as well as Toothacre’s closing comment:

24
25 Cotton’s Counsel: ... I’ll get to the illegality of the contract issue first. The
26 fact is it cuts to the heart of the motion that we filed and the biggest
27 issue. [...]

28 Judge Wohlfeil: So you are saying the contract is unenforceable?

1 Cotton’s Counsel: Yes.

2 Judge Wohlfeil: As a matter of law?

3
4 Cotton’s Counsel: Yes. [The] CUP was a condition precedent to the contract.

5 Judge Wohlfeil: [...] from the Court's perspective as a matter of law up to
6 this point, you have been asking me to adjudicate the contract in your
7 favor. Now you're asking the Court to adjudicate the contract as a matter
8 of law against the other side. Counsel, shouldn't this have been raised
at some earlier point in time?

9 Cotton’s Counsel: ... the illegality argument has been raised before and raised
10 in the context of reference to state law and Section [26057] of the
11 California business and professions code...

12 Judge Wohlfeil: **Even if you are correct, hasn’t that train come and gone?**
13 **The judgment has been entered. You are raising this for the first**
14 **time?**

15 Cotton’s Counsel: Your Honor, illegality of the contract can be raised any
16 time whether in the beginning or during the case or on appeal. [...]

17 Judge Wohlfeil: But at some point, doesn't your side waive the right to assert
18 this argument? At some point? [...] Anything else, counsel?

19 Cotton’s Counsel: The other thing I’d like to point out, section [11.0401] of
20 [the] San Diego Municipal Code specifically states that every applicant
21 [must furnish] true and complete information. And that’s obviously not
22 what happened here. I think it’s undisputed and the reasoning for the
23 failure to disclose, there is no exception to either the San Diego
Municipal [C]ode or [state law] [f]or failure to disclose.

24 Judge Wohlfeil: Thank you, very much.

25 Cotton’s Counsel: Thank you, Your Honor.

26
27 Judge Wohlfeil: I am not inclined to change the Court’s view. Did either one
28 of you need to be heard?

1 Toothacre: Just to make a record. One comment with respect to the illegality
2 argument. Obviously, we agree with the comments of the Court but the
3 failure to make these disclosures in the CUP, it doesn't make the
4 contract between Geraci and [C]otton unenforceable. It's one thing to
5 say that the contract or the form wasn't properly filled out, that doesn't
6 make the contract unenforceable. That's all we have for the record.

7 197. Judge Wohlfeil's comments are contradictory. If Cotton's counsel was
8 "correct" that the illegality had previously been raised, then how can that "train [have]
9 come and gone" for failure to raise?

10 198. Judge Wohlfeil did not address the other issues raised in the MNT and
11 summarily denied the MNT without providing any reasoning.

12 199. Judge Wohlfeil's position that Cotton did not raise the Sanctions Issue or the
13 Berry Fraud prior to the MNT is factually incorrect - it was repeatedly alleged in *Cotton*
14 *I* including in Cotton's pro se cross-complaint, as one of the main foci seeking Judge
15 Wohlfeil's disqualification in the DQ Motion,¹³ in opposition to a motion in limine by
16 F&B seeking to exclude the Geraci Judgements,¹⁴ it was the basis of a motion by Cotton
17 seeking leave to amend his answer to include an affirmative defense of antitrust laws
18 based on the Enterprise's Antitrust Conspiracy,¹⁵ and the subject of a motion for directed

19 _____
20 ¹³ *Cotton I*, ROA 292 at 33:11-13 ("Judge Wohlfeil has ratified [Geraci's] attempt to
21 pursue an interest in the Property and by extension the CUP even though [Geraci] cannot
22 legally own an interest in a Marijuana Outlet under state law.").

23 ¹⁴ *Cotton I*, ROA 581 (Cotton's opposition to F&B's motion in limine seeking to bar
24 the Geraci Judgments arguing they are not material and irrelevant) at 2:12-15 ("[I]t is
25 Cotton's contention that because of the various disclosure laws with not only the City for
26 the CUP but also with the State for final approval Mr. Geraci knew he would never be
27 able to meet this condition without utilizing a proxy to do so. Therefore, in this context
28 the fact that Mr. Geraci was sanctioned is relevant. Additionally, it is material that Mr.
Geraci never disclosed these facts to Cotton and it is his contention that this was part of
his scheme to deprive him of his property.").

¹⁵ *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.").

1 verdict by Cotton at trial.¹⁶

2 200. It is impossible to reconcile Judge Wohlfeil’s statements from the bench at
3 the MNT hearing with the record of *Cotton I*; especially as the record of the Illegality
4 Issue being raised prior to the MNT in *Cotton I* was described in Cotton’s Reply to the
5 MNT.

6 201. Judge Wohlfeil’s statements at the MNT hearing could lead a reasonable
7 person to believe that he did not read Cotton’s MNT and the Reply, and only read F&B’s
8 opposition to the MNT.

9 202. Contrary to Judge Wohlfeil’s ruling, as set forth in greater detail in the Reply
10 to the MNT, as a matter of law the defense of illegality cannot be waived. *City Lincoln-*
11 *Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959) (“A party to an illegal contract
12 cannot ratify it, cannot be estopped from relying on the illegality, and cannot waive his
13 right to urge that defense.”); see *Erhart v. BOFI Holding, Inc.*, No. 15-cv-02287-BAS-
14 NLS, at *12 (S.D. Cal. Feb. 14, 2017) (“No principle of law is better settled than that a
15 party to an illegal contract cannot come into a court of law and ask to have his illegal
16 objects carried out[.]”) (quoting *Lee On v. Long*, 37 Cal. 2d 499, 502 (1951)).

17
18 IV. COTTON II¹⁷

19 203. On October 6, 2017, FTB filed on behalf of Cotton a Verified Petition for
20 Alternative Writ of Mandate against the City - naming Geraci and Berry as real parties in
21 interest - demanding the City remove Berry from the Berry Application and recognize
22 Cotton as the sole applicant (“*Cotton II*”). Attached to the *Cotton II* petition were, *inter*
23 *alia*, the Request for Confirmation and the Confirmation Email in Exhibit 3. Attached
24 hereto as Exhibit 6.

25
26 ¹⁶ *Cotton I*, ROA 615 at 5:21-22 (“Despite Ms. Austin’s Testimony Mr. Geraci’s Prior
27 Sanctions, and His Intentional Failure to Disclose his Interest, Bar Him From Ownership
of [a] Marijuana [Outlet].”).

28 ¹⁷ *Cotton v City of San Diego*, San Diego Superior Court Case No 37-2017-00037675-
CU-WM-CTL.

1 204. Geraci and Berry filed verified answers that were also verified by Austin
2 who was their attorney of record for *Cotton II*.

3 205. Geraci, in his answer, judicially admits he sent the Confirmation Email.

4 206. Thus, Geraci, Berry, and Austin, as attorneys or real estate agents/brokers
5 knew that the Confirmation Email is evidence that the parties did not mutually assent to
6 the November Document being a fully integrated contract as alleged in Geraci’s *Cotton I*
7 complaint.

8 207. The City was represented by Phelps who argued the City was a third-party
9 to a private dispute.

10 208. Phelps knew that the City had a ministerial duty to ensure that CUP
11 applications were processed in accordance with the SDMC.

12 209. Phelps knew or should have known that Berry had no right to the use of the
13 Property because her alleged agency violates the statute of frauds and the equal dignity
14 rule.

15 210. Phelps knew or should have known that Geraci could not own a cannabis
16 CUP as a matter of law because of the Illegality Issues.

17 211. Judge Wohlfeil denying Cotton’s petition is void for, *inter alia*, enforcing an
18 illegal contract.

19 V. COTTON III¹⁸

20 212. On February 9, 2018, Cotton, proceeding pro se, filed a federal complaint
21 against Geraci, Berry, Austin, ALG, Weinstein, F&B, and the City alleging eighteen
22 causes of action under federal and state law as well as declaratory and injunctive relief
23 (“*Cotton III*”).

24 213. The *Cotton III* complaint is essentially the same as Cotton’s pro se cross
25 complaint in *Cotton I*.

26 214. At that point in time, Cotton was not aware that McElfresh (i) was also an
27

28 ¹⁸ *Cotton v. Geraci* (S.D. Cal. Feb. 28, 2018) Case No.: 18cv325-GPC(MDD)
 (“*Cotton V*”).

1 attorney for Geraci and Razuki, (ii) had shared clients with Austin, or (iii) that FTB, who
2 she referred Cotton to, had shared clients with Geraci.

3 215. The motions to dismiss the *Cotton III* complaint are sham defenses that
4 constitute a fraud on the court.

5 216. Any reasonable attorney would have concluded that *Cotton I* was a sham
6 action that failed to state a cause of action.

7 VI. COTTON IV¹⁹

8 217. On December 6, 2018, Cotton and Hurtado, through counsel filed a federal
9 complaint alleging various causes of action against inter alia, Geraci, Berry, F&B, ALG,
10 and a legal malpractice claim against FTB.

11 218. On March 8, 2019, Cotton filed the MSA in *Cotton I*.

12 219. On March 26, 2019, attorney James D. Crosby as attorney-of-record for
13 Geraci and Berry filed their answer to Cotton's *Cotton IV* complaint.

14 220. The answer admits that Geraci sent the Confirmation Email but does not set
15 forth affirmative defenses of fraud or mistake.

16 221. Flores was initially dumbfounded when he first read the answer Crosby filed
17 because the MSA was pending before Judge Wohlfeil seeking to have the court
18 specifically address the fact that the Disavowment Allegation is substantively an
19 affirmative defense of fraud and mistake.

20 222. The Answer filed by Crosby is a sham defense and committed a fraud on the
21 Court because it perpetuates the fraud on the court in the *Cotton I* action that the
22 Disavowment Allegation does not substantively constitute affirmative defenses that were
23 waived for not being raised in Geraci's *Cotton I* answer.

24 223. 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 ¹⁹ *Cotton v. Geraci* (S.D. Cal. May. 14, 2019) Case No.: 18cv2751-GPC(MDD)
("Cotton VI").

1 innocent third-parties and their families.

2 224. 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 \$500,000.²⁰ And,
6 given that Crosby was willing to represent Geraci/Berry and file a sham defense, Crosby
7 relies to a material degree on business from F&B.

8 225. F&B's use of Crosby as a proxy to commit a fraud on the Federal Court is
9 the Enterprise's defining modus operandi.

10 226. On May 14, 2019, Judge Curiel dismissed the *Cotton IV* complaint with
11 prejudice.

12 227. On March 26, 2019 in *Cotton & Hurtado v. Larry Geraci et al*, Case No.
13 318-cv-027510-GPC-MDD the law firm of PETTIT, KOHN, INGRASSIA LUTZ &
14 DOLIN PC, representing Defendants GINA M. AUSTIN AND AUSTIN LEGAL
15 GROUP, filed a Motion to Dismiss the complaint.

16 228. On May 3, 2019 in *Cotton & Hurtado v. Larry Geraci et al*, Case No. 318-
17 cv-027510-GPC-MDD the law firm of LEWIS BRISBOIS BISGAARD & SMITH LLP,
18 representing Defendants FINCH THORNTON & BAIRD. DAVID DEMIAN AND
19 ADAM WITT filed a Motion to Dismiss the complaint.

20 229. On May 3, 2019 in *Cotton & Hurtado v. Larry Geraci et al*, Case No. 318-
21 cv-027510-GPC-MDD the law firm of GORDON & REES SCULLY MANSHUKANI,
22 representing Defendants MICHAEL R. WEINSTEIN, SCOTT TOOTHACRE AND
23 FERRIS BRITTON APC, filed a Motion to Dismiss the complaint.

24 230. On May 5, 2020 in *Cotton v. Larry Geraci et al*, Case No. 318-cv-00325-
25 BAS-MDD the law firm of PETTIT KOHN INGRASSIA LUTZ & DOLIN, representing
26 Defendants GINA M. AUSTIN AND AUSTIN LEGAL GROUP M WITT, filed a Motion
27

28 ²⁰ See *Crosby v. Neuman*, San Diego Superior Court, Case No. 37-2010-00057331-
CU-CO-NC, ROA 140.

1 to Dismiss the complaint.

2 231. On June 26, 2020 in *Cotton v. Larry Geraci et al*, Case No. 318-cv-00325-
3 BAS-MDD the law firm of KJAR, McKENNA & STOCKALPER LLP, representing
4 Defendant MICHAEL WEINSTEIN, filed a Motion to Dismiss the complaint.

5 232. On June 30, 2020 in *Flores et al v. Gina M. Austin et al*, Case No. 320-cv-
6 00656-BAS-DEB the law firm of KJAR, McKENNA & STOCKALPER LLP,
7 representing Defendants MICHAEL WEINSTEIN, SCOTT H. TOOTHACRE, ELYSSA
8 KULAS, RACHEL PRENDERGRAST AND FERRIS & BRITTON, filed a Motion to
9 Dismiss the complaint.

10
11 VII. COTTON V

12 233. This suit is the fifth suit to be filed that alleges that Geraci and his
13 conspirators have committed a fraud on the court by filing and/or maintaining a lawsuit
14 that alleges that Geraci can lawfully own a cannabis CUP via the Berry Application.

15 234. To date, other than Judge Wohlfeil who found the defense of illegality had
16 been waived, over ten judges have failed to address the legality of Geraci’s ownership of
17 a cannabis CUP via the Berry Application. And, thus, the validity of the *Cotton I*
18 judgment.

19 235. Numerous parties who financed or lent money to Cotton and/or are victims
20 of the Enterprise are scared to vindicate their rights in a court of law because they believe
21 that the State and Federal judiciaries are motivated to cover-up the knowing or negligent
22 actions of the City and the judiciaries role in allowing the instant situation to develop.

23 236. On January 21, 2019, Nguyen promised to provide Young’s testimony
24 confirming, inter alia, Magagna’s attempts at bribing and threatening her.

25 237. Nguyen never provided Young’s testimony as promised.

26 238. The *Cotton I* trial was held without Young’s testimony regarding statements
27 made by Bartell reflecting he was acting in bad faith or Magagna’s attempts at bribing
28 and threatening her.

1 239. In or around June 2019, Young told Flores that he needed to be careful, as
2 he had become the equitable owner of the Property and would seek to vindicate his rights
3 in a court of law, because Austin and Magagna are dangerous.

4 240. In or around January 2020, Young told Flores that Nguyen had unilaterally
5 decided to not provide Young’s testimony before the *Cotton I* trial because it was too late
6 for Cotton to do anything about it.

7 VIII. COTTON’S PRO SE EMAILS TO ATTORNEYS

8 241. On December 24, 2019, Cotton sent an email to numerous parties including
9 the attorneys named herein after he realized that McElfresh had represented Geraci in
10 supposedly appealing the granting of the cannabis CUP at issue in *Cotton I* to Magagna.
11 Attached hereto as Exhibit 7 (exclusive of exhibits).

12 242. Cotton’s email outlines the conspiracy by Geraci as alleged herein, describes
13 McElfresh’s role, and demands that various attorneys abide by their affirmative ethical
14 duties to the judiciaries and expose Geraci’s conspiracy.

15 243. On May 29, 2020, Cotton sent a second email to a larger group outlining in
16 detail allegations of Geraci’s “sham” lawsuit as described herein. Attached hereto as
17 Exhibit 8 (exclusive of exhibits).

18 **ADDITIONAL SPECIFIC ALLEGATIONS AND CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION - § 1983**

20 (Flores against Judge Wohlfeil)

21 244. Plaintiffs reallege and incorporate herein by reference the allegations in the
22 preceding paragraphs.

23 245. “The Due Process Clause entitles a person to an impartial and disinterested
24 tribunal.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980). In addition, “justice must
25 satisfy the appearance of justice.” *Offutt v. United States*, 348 U.S. 11, 14 (1954); *Exxon*
26 *Corp. v. Heinze*, 32 F.3d 1399, 1403 (9th Cir. 1994) (“[T]he Constitution is concerned
27 not only with actual bias but also with ‘the appearance of justice.’”). “Bias exists where
28 a court has prejudged, or reasonably appears to have prejudged, an issue.” *Kenneally v.*

1 Lungren, 967 F.2d 329, 333 (9th Cir. 1992) (quotation and citation omitted).

2 **A. The Extrajudicial Statements**

3 246. The DQ Order alleges that the basis of the Extrajudicial Statements were
4 formed during the course of the proceedings and, as such, cannot be the basis of
5 disqualification. In support of this position, Judge Wohlfeil quotes *Liteky v. United States*
6 for the following proposition: “[O]pinions formed by the judge on the basis of facts
7 introduced or events occurring during current or prior proceedings are not grounds for a
8 recusal motion unless they display a similar degree of favoritism or antagonism.” 510 U.S.
9 540, 555.

10 247. However, *Liteky* describes “extrajudicial” as “clearly [meaning] a source
11 outside the judicial proceeding at hand-which would include as extrajudicial sources
12 earlier judicial proceedings conducted by the same judge (as are at issue here).” *Id.* at 545.

13 248. Thus, although *Liteky* is directly applicable and controlling his reliance is
14 inapposite and by itself *mandated* his recusal.

15 249. The Extrajudicial Statements directly reflect the reality of *Cotton I* - Judge
16 Wohlfeil had pre-judged that *Cotton I* has been filed with probable cause because he knew
17 the attorneys that filed and maintained *Cotton I*.

18 **B. Service of the DQ Motion**

19 250. Judge Wohlfeil alleges that Cotton did not serve the DQ Motion. Flores
20 provides herewith his cell phone record as evidence that he confirmed with Judge
21 Wohlfeil’s clerk that Judge Wohlfeil was in chambers minutes before the DQ Motion was
22 served.

23 251. A reasonable third party could believe that it appears that Judge Wohlfeil
24 falsely stated that he was not served with the DQ Motion, particularly when coupled with
25 his misrepresentation of the Extrajudicial Statements as not being extrajudicial.
26

27 **C. Refusal to adjudicate Questions of Law**

28 252. As explicitly stated at the MSA hearing, Judge Wohlfeil refused throughout

1 *Cotton I* to address various case-dispositive questions of law. While the refusal to address
2 questions of law by itself is not a basis to determine judicial bias, when coupled with the
3 Extrajudicial Statements issue above, it is.

4 253. For example, the Request for Confirmation cannot be interpreted in any
5 manner to be an attempt to “renegotiate” by Cotton or an “extortionate” scheme as alleged
6 by Geraci and F&B. *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
7 (“Contract interpretation is a question of law...”).

8 254. “When a dispute arises over the meaning of contract language under
9 California law, the first question that must be decided is ‘whether the language is
10 reasonably susceptible to the interpretation urged by the party. *If it is not, the case is*
11 *over.*” *Hindin/Owen/Engelke, Inc. v. Four Seasons Healthcare, Inc.*, 267 F. App'x 648,
12 649 (9th Cir. 2008) (quoting *Oceanside 84 v. Fid, Fed. Bank*, 56 Cal.App.4th 1441, 1448,
13 66 Cal.Rptr.2d 487 (Cal.Ct.App. 1997) (emphasis added)).

14 255. There is simply no justification for *Cotton I* to have ever been filed, much
15 less a judgment issued, based on Geraci’s allegation that the Request for Confirmation
16 can reasonably be read to be a “renegotiation” or “extortionate” tactic by Cotton.

17 256. Another dispositive issue, Geraci’s complaint fails as a matter of law because
18 Geraci admits, *inter alia*, that the “good faith” deposit referenced in the November
19 Document is actually non-refundable. Thus, the November Document cannot be a fully
20 integrated contract as alleged in Geraci’s complaint. *Founding Members v. Newport*
21 *Beach* (2003) 109 Cal. App. 4th 944, 954 (“Whether a contract is integrated is a question
22 of law when the evidence of integration is not in dispute.”); *Brandwein v. Butler*, 218 Cal.
23 App. 4th 1485, 1510 (Cal. Ct. App. 2013) (“The crucial threshold inquiry, therefore, and
24 one for the court to decide, is whether the parties’ intended their written agreement to be
25 fully integrated.”).

26 **D. The Waiver of the Defense of Illegality**

27 257. Judge Wohlfeil denied the MNT finding that the defense of illegality had
28 been waived for failure to raise prior to the MNT.

1 258. That is factually contradicted by the record of *Cotton I*.

2 259. Cotton alleged that Berry and Geraci conspired to illegally acquire a
3 cannabis CUP at the Property via the Berry Fraud in his pro se complaint before it was
4 illegally amended by FTB.

5 260. Further, as argued in the MNT, a “party to an illegal contract cannot ratify
6 it, cannot be estopped from relying on the illegality, and cannot waive his right to urge
7 that defense.” *City Lincoln-Mercury Co. v. Lindsey*, 52 Cal.2d 267, 274 (Cal. 1959).

8 **E. Denial of Flores’ motion to intervene as an indispensable party.**

9 261. Judge Wohlfeil’s denial of Flores’ motion to intervene in the *Cotton I* action
10 deprives Flores of his constitutional right to not be deprived of his property without due
11 process. *Truax v. Corrigan*, 257 U.S. 312, 332 (1921) (“The due process clause requires
12 that every man shall have the protection of his day in court.”).

13 262. Judge Wohlfeil’s ruling denying Flores’ motion to intervene in *Cotton I*
14 deprives Flores of his constitutional right to bring forth a claim to prove a “conspiracy
15 deprived [Flores] of [his] federally-protected due process right of access to the courts.”
16 *Bell*, 746 F.2d at 1261.

17 **SECOND CAUSE OF ACTION - § 1983**

18 (Plaintiffs against all Defendants, (except Judge Wohlfeil))

19 263. Plaintiffs reallege and incorporate herein by reference the allegations in the
20 preceding paragraphs.

21 264. Geraci and his agents conspired to defraud Cotton of the Property.

22 265. Geraci and his agents conspired to illegally acquire the cannabis CUP at the
23 Property.

24 266. When Cotton discovered the Berry Fraud, Geraci and his agents filed and/or
25 maintained *Cotton I*, *Cotton II*, *Cotton III* and *Cotton IV* on the false allegation that Geraci
26 could lawfully own a cannabis CUP via the Berry Application.

27 267. All submissions by all parties that supported or failed to inform the courts
28 that the November Document could not be a legal contract because it lacks mutual assent

1 and a lawful object are sham defenses that constitute a fraud on the court.

2 268. All reasonable attorneys would have checked the pleadings in the various
3 cases and also learned of the acts and threats of violence taken against, *inter alia*, Young.

4 269. Any reasonable attorney knowing that *Cotton I* is a sham would know that
5 there was a high probability that the allegations of violence against Young were likely to
6 be true.

7 270. These actions by Geraci, his agents, including his attorneys and Tirandazi
8 and Phelps are acts in furtherance of the Antitrust Conspiracy.

9 271. The Antitrust Conspiracy could not have been effectuated without the
10 knowing and critical complicity of Tirandazi and Phelps.

11 272. “It is clear that defendants who were engaged in purely private conduct may
12 be found liable under § 1983 if it is established that they have acted in concert with another
13 party against whom a valid claim can be stated.” *Briley v. California*, 564 F.2d 849, 858
14 (9th Cir. 1977).

15 273. “When executive action like a discrete permitting decision is at issue, only
16 egregious official conduct can be said to be arbitrary in the constitutional sense: it must
17 amount to an abuse of power lacking any reasonable justification in the service of a
18 legitimate governmental objective.” *Shanks v. Dressel*, 540 F.3d 1082, 1088 (9th Cir.
19 2008) (quotations and citations omitted).

20 274. Tirandazi was responsible for processing the Berry Application.
21 Tirandazi should have cancelled the Berry Application when Cotton demanded that the
22 Berry Application be transferred to him. *Engebretsen v. City of San Diego*, No. D068438,
23 2016 Cal. App. Unpub. LEXIS 8548 (Nov. 30, 2016) (emphasis added).

24 275. Berry never showed any legal right to the use of the Property.

25 276. Berry’s oral allegation that she was acting as an agent of Geraci when she
26 submitted the Berry Application violates the statute of frauds, the equal dignities rule,
27 State and City disclosure requirements, and the plain language of Ownership Disclosure
28

1 Statement. *See* Civ. Code § 1624(4); *id.* § 2309²¹; SDMC §11.0401(b) (“No person
2 willfully shall make a false statement or fail to report any material fact in any application
3 for City license, permit, certificate, employment or other City action under the provisions
4 of the [SDMC]”); SDMC § 121.0311 (“Violations of the Land Development Code shall
5 be treated as **strict liability** offenses regardless of intent.”) (Emphasis added).

6 277. Thus, every attorney named herein is liable for causing, permitting, aiding
7 or abetting the Enterprise’s Antitrust Conspiracy or failing to take affirmative action when
8 lawfully required to do so. SDMC § 11.0402 (“Whenever in [the SDMC] any act or
9 omission is made unlawful, it shall include causing, permitting, aiding or abetting such
10 act or omission.”).

11 278. “The purpose of the statute of frauds is to prevent fraud and perjury as to
12 extrajudicial agreements by requiring enforcement of the more reliable evidence of some
13 writing signed by the party to be charged.” *Kohn v. Jaymar-Ruby, Inc.* (1994) 23
14 Cal.App.4th 1530, 1534.

15 279. Phelps is an experienced land use attorney for the City.

16 280. Phelps knows that Geraci cannot own a cannabis CUP via the Berry
17 Application.

18 281. To this day, despite being served with various submissions in various legal
19 proceedings, submitting arguments and taking part in numerous cases, and being emailed
20 repeatedly by Cotton with evidence, Phelps has failed to inform the Courts that Geraci
21 cannot own a cannabis CUP via the Berry Application because of, *inter alia*, the Illegality
22 Issues.

23 282. Thus, the City is liable. *Trevino v. Gates*, 99 F.3d 911, 920 (9th Cir. 1996)

25 ²¹ *Martindell v. Bodrero*, 256 Cal.App.2d 56, 61 (Cal. Ct. App. 1967) (“It is well
26 established that parol evidence is not admissible to relieve from liability an agent who
27 signs personally without disclosing the name of the principal on the face of the
28 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 (“We have found municipal liability on the basis of ratification when the officials
2 involved adopted and expressly approved of the acts of others who caused the
3 constitutional violation.”).

4 283. Similarly, Phelps and every other attorney named here has violated their
5 affirmative duties to the Court to prevent a miscarriage of justice and, consequently, have
6 committed a fraud on the State and Federal Courts. *U.S. v. Shaffer Equipment Co.*, 11
7 F.3d 450, 457-58 (4th Cir. 1993) (“The [justice] system can provide no harbor for clever
8 devices to divert the search, mislead opposing counsel or the court, or cover up that which
9 is necessary for justice in the end. *It is without note, therefore, that we recognize that*
10 *the lawyer's duties to maintain the confidences of a client and advocate vigorously are*
11 *trumped ultimately by a duty to guard against the corruption that justice will be*
12 *dispensed on an act of deceit.”) (Emphasis added).*

13 **THIRD CAUSE OF ACTION – § 1985**

14 (Plaintiffs against all Defendants, except Judge Wohlfeil)

15 284. Plaintiffs reallege and incorporate herein by reference the allegations in the
16 preceding paragraphs.

17 285. “§ 1985... create[es] a cause of action based on a conspiracy which deprives
18 one of access to justice or equal protection of law.” *Bell*, 746 F.2d at 1233.

19 286. In order to establish a claim under the first part of § 1985(2), “the plaintiff
20 must show (1) a conspiracy between two or more persons, (2) to deter a witness by force,
21 intimidation or threat from attending court or testifying freely in any pending matter,
22 which (3) results in injury to the plaintiff.” *David v. U.S.*, 820 F.2d 1038, 1040 (9th Cir.
23 1987)

24 287. First, the filing and/or maintaining of various legal matters arguing that
25 Geraci can own a cannabis CUP via the Berry Application is evidence of the Antitrust
26 Conspiracy.

27 288. Second, in furtherance of the Antitrust Conspiracy, Magagna attempted to
28 bribe and then threatened Young to prevent her from providing testimony that would

1 establish the existence of the Enterprise and the Antitrust Conspiracy.

2 289. Nguyen’s unilateral decision to not provide Young’s testimony, as her
3 attorney, prevented Young from testifying freely and constitutes a fraud on the court. *Ty*
4 *Inc. v. Softbelly's, Inc.*, 517 F.3d 494, 498 (7th Cir. 2008) (“Trying improperly to influence
5 a witness is fraud on the court and on the opposing party...”).

6 290. Third, Plaintiffs are injured because Young’s testimony, if found by a jury
7 to be true, would evidence the Enterprise and the Antitrust Conspiracy that has deprived
8 Plaintiffs of their interest in cannabis CUPs.²²

9 291. The acts and threats of violence and witness intimidation against Young took
10 place while *Cotton III* was pending in Federal Court with a RICO cause of action.

11 292. Thus, those acts and threats of violence by Magagna and improper witness
12 intimidation by Nguyen are acts taken in both the State and Federal Courts.

13 **FOURTH CAUSE OF ACTION – § 1986**

14 (Plaintiffs against all Defendants, (excluding Judge Wohlfeil))

15 293. Plaintiffs reallege and incorporate herein by reference the allegations in the
16 preceding paragraphs.

17 294. “[§] 1986 predicates liability upon (1) knowledge that any of the
18 conspiratorial wrongs are about to be committed, (2) power to prevent or to aid in
19 preventing the commission of those wrongs, (3) neglect to do so, where (4) the wrongful
20 acts were committed, and (5) the wrongful acts could have been prevented by reasonable
21 diligence.” *Bell v. City of Milwaukee* (7th Cir. 1984) 746 F.2d 1205, 1233.

22 295. The named defendants to this cause of action knew that the Enterprise was
23 taking steps in furtherance of the Antitrust Conspiracy, which included the filing and
24 maintain of various legal actions alleging that Geraci could lawfully own a cannabis CUP
25 via the Berry Application, the acts and threats by Magagna, and the witness intimidation
26

27 ²² Plaintiffs note there are numerous other acts of violence taken or ratified by defendants,
28 but which have not been alleged herein to focus on the acts and threats of violence against
Young.

1 by Nguyen against Young.

2 296. The defendants named in this cause of action had the power to prevent the
3 unlawful actions described herein.

4 297. The defendants named in this cause of action failed to act.

5 298. The unlawful acts described herein were committed.

6 299. The unlawful acts described herein could have been prevented by reasonable
7 diligence, which for the most part under these facts would have been to simply tell the
8 truth to either the State or Federal Courts.

9 **FIFTH CAUSE OF ACTION – DECLARATORY RELIEF**

10 (Plaintiffs against Harcourt and Claybon)

11 300. Plaintiffs reallege and incorporate herein by reference the allegations in the
12 preceding paragraphs.

13 301. An actual controversy has arisen and now exists between Mrs. Sherlock and
14 minors T.S. and S.S., on one hand, and Harcourt and Claybon on the other.

15 302. Mrs. Sherlock claims that the facts alleged herein provide probable cause to
16 bring suit, in state court, against Harcourt and Claybon for taking actions in furtherance
17 of the Antitrust Conspiracy that defrauded Mrs. Sherlock and her minor children of their
18 interest in the Balboa CUP and the Ramona CUP that would have transferred to them
19 after Biker’s death.

20 303. Harcourt and Claybon have already communicated Harcourt’s Affirmative
21 Defenses disputing Mrs. Sherlock’s position.

22 304. An actual, present and justiciable controversy has therefore arisen and now
23 exists between the Plaintiffs and defendants named in this cause of action with regard to
24 the transfer of Mr. Sherlock’s interests in the Balboa CUP and the Ramona CUP to
25 Harcourt.

26 305. A judicial determination of this controversy is necessary and appropriate in
27 order for the parties to ascertain their rights, duties, and obligation regarding this dispute.

28 **SIXTH CAUSE OF ACTION – DECLARATORY RELIEF**

(Plaintiffs against all Defendants)

306. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

307. An actual controversy has arisen and now exists between Plaintiffs and the defendants named in this cause of action.

308. Plaintiffs claim that the judgments reached in *Cotton I*, *Cotton II* and *Cotton IV* are void for being the product of judicial bias and being procured by acts and/or omissions that constitute a fraud upon the court taken in furtherance of the Antitrust Conspiracy.

309. Plaintiffs are informed and believe, and therefore allege, that defendants dispute this position.

310. An actual, present and justiciable controversy has therefore arisen and now exists between Plaintiffs and Defendants named in this cause of action concerning the validity of the judgements in question and (i) their acts or failure to act that contributed to the procurement of those judgments and (ii) their knowledge that those judgments are void.

311. A judicial determination of this controversy is necessary and appropriate in order for the parties to ascertain their rights, duties, and obligation regarding this dispute.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court grant the following relief:

1. The judgments in *Cotton I*, *Cotton II*, and *Cotton IV* be declared void;
2. A declaration that Plaintiffs be allowed to join *Cotton I* as indispensable parties;²³
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;

²³ 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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- 5. A declaration that no ruling, order or judgment issued by Judge Wohlfeil may be used by defendants to justify any action in this matter 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; and
- 11. Reasonable attorneys’ fees and costs as allowed by law.

Dated: July 7, 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.

EXHIBIT 1

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 PRIVLIGED.

Mr. Claybon, the language in *Stevens* 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.

YOUR RESPONSE DISINGENJOYUSLY CONTINUES TO IGNORE THIS SIMPLE REQUEST WHILE PRETENDING THAT IT IS SOMEHOW DIFFICULT FOR MR. HARCOURT TO RESPONSE WITH A SIMPLE ANSWER: “I BOUGHT IT” OR “HE GAVE IT TO ME.”

Your 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 legitimize 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:

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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

EXHIBIT 2

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/10/2018 at 11:10:00 AM
Clerk of the Superior Court
By Katelin O'Keefe, 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
Fax: (619) 232-9316
5 mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com
6

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

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

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

**DECLARATION OF LARRY GERACI IN
OPPOSITION TO DEFENDANT DARRYL
COTTON'S MOTION TO EXPUNGE LIS
PENDENS**

[IMAGED FILE]

16 DARRYL COTTON, an individual,
17 Cross-Complainant,
18 v.
19 LARRY GERACI, an individual, REBECCA
20 BERRY, an individual, and DOES 1
THROUGH 10, INCLUSIVE,
21 Cross-Defendants.

Hearing Date: April 13, 2018
Hearing Time: 9:00 a.m.

Filed: March 21, 2017
Trial Date: May 11, 2018

22
23 I, Larry Geraci, declare:

24 1. I am an adult individual residing in the County of San Diego, State of California, and I
25 am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts
26 and if called as a witness could and would so testify.

27 2. In approximately September of 2015, I began lining up a team to assist in my efforts to
28 develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical

1 marijuana dispensary) in San Diego County. At the time, I had not yet identified a property for the
2 MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify
3 potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE.
4 I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of
5 Bartell & Associates. In addition, I hired a land use attorney, Gina Austin of Austin Legal Group.

6 3. The search to identify potential locations for the business took some time, as there are a
7 number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a
8 City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child
9 care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities,
10 or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be
11 proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta
12 identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San
13 Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a
14 potential site for acquisition and development for use and operation as a MMCC. And in
15 approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest
16 to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might
17 meet the requirements for an MMCC site.

18 4. For several months after the initial contact, my consultant, Jim Bartell, investigated
19 issues related to whether the location might meet the requirements for an MMCC site, including zoning
20 issues and issues related to meeting the required distances from certain types of facilities and residential
21 areas. For example, the City had plans for street widening in the area that potentially impacted the
22 ability of the Property to meet the required distances. Although none of these issues were resolved to a
23 certainty, I determined that I was still interested in acquiring the Property.

24 5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the
25 Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon
26 my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I
27 was willing to bear the substantial expense of applying for and obtaining CUP approval and understood
28 that if I did not obtain CUP approval then I would not close the purchase and I would lose my

1 investment. I was willing to pay a price for the Property based on what I anticipated it might be worth
2 if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale
3 conditional upon CUP approval because if the condition was satisfied he would be receiving a much
4 higher price than the Property would be worth in the absence of its approval for use as a medical
5 marijuana dispensary. We agreed on a down payment of \$10,000.00 and a purchase price of
6 \$800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement
7 for my purchase of the Property from him on the terms and conditions stated in the agreement
8 (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written
9 Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-
10 Defendant, Larry Geraci's Notice of Lodgment in Support of Opposition to Motion to Expunge Lis
11 Pendens (hereafter the "Geraci NOL"). I tendered the \$10,000 deposit to Mr. Cotton as acknowledged
12 in the Nov 2nd Written Agreement.

13 6. In paragraph 5 of his supporting declaration, Darryl Cotton states:
14 "On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final
15 terms of the sale of the Property. At the meeting, we reached an oral agreement
16 on the material terms for the sale of the Property (the "November Agreement").
17 The November Agreement consisted of the following: If the CUP was approved,
18 then Geraci would, inter alia, provide me: (i) a total purchase price of \$800,000;
19 (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity
20 distribution of \$10,000. If the CUP was denied, I would keep an agreed upon
21 \$50,000 non-refundable deposit ("NRD") and the transaction would not close. In
22 other words, the issuance of a CUP at the Property was a condition precedent for
23 closing on the sale of the Property and, if the CUP was denied, I would keep my
24 Property and the \$50,000 NRD."

25 Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of
26 the sale of the Property and we reached an agreement on the final terms of the sale of the Property.
27 That agreement was not oral. We put our agreement in writing in a simple and straightforward written
28

1 promised to have his attorney, Gina Austin ("Austin"), *promptly* reduce the oral
2 November Agreement to written agreements for execution; and (iii) promised to
3 not submit the CUP to the City until he paid me the balance of the NRD."

4 I did pay Mr. Cotton the \$10,000 cash after we signed the Nov 2nd Written Agreement. As
5 stated above, I never agreed to a \$50,000 deposit and, if I had, it would have been a simple thing to
6 state that in our written agreement.

7 Mr. Cotton refers to the written agreement (i.e., the Nov 2nd Written Agreement) as a
8 "Receipt." Calling the Agreement a "Receipt" was never discussed. There would have been no need
9 for a written agreement before a notary simply to document my payment to him of \$10,000. In
10 addition, had the intention been merely to document a written "Receipt" for the \$10,000 payment, then
11 we could have identified on the document that it was a "Receipt" and there would have been no need
12 to put in all the material terms and conditions of the deal. Instead, the document is expressly called an
13 "Agreement" because that is what we intended.

14 I did not promise to have attorney Gina Austin reduce the oral agreement to written agreements
15 for execution. What we did discuss was that Mr. Cotton wanted to categorize or allocate the \$800,000.
16 At his request, I agreed to pay him for the property into two parts: \$400,000 as payment for the
17 property and \$400,000 as payment for the relocation of his business. As this would benefit him for tax
18 purposes but would not affect the total purchase price or any other terms and conditions of the
19 purchase, I stated a willingness to later amend the agreement in that way.

20 I did not promise to delay submitting the CUP to the City until I paid the alleged \$40,000
21 balance of the deposit. I agreed to pay a \$10,000 deposit only. Also, we had previously discussed the
22 long lead-time to obtain CUP approval and that we had already begun the application submittal
23 process as discussed in paragraph 8 below.

24 8. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the
25 CUP application and approval process and that his consent as property owner would be needed to
26 submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as
27 my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as
28

1 the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or
2 marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton
3 signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he
4 acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the
5 subject Property with the intent to record an encumbrance against the property. The Ownership
6 Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was
7 serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure
8 Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to
9 the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval
10 of a CUP would be a condition of the purchase and sale of the Property.

11 9. As noted above, I had already put together my team for the MMCC project. My design
12 professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of
13 the Project and the CUP application and approval process. Mr. Schweitzer was responsible for
14 coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property
15 and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San
16 Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration
17 (Declaration of Abhay Schweitzer in Support of Opposition to Motion to Expunge Lis Pendens) has
18 been submitted concurrently herewith and describes in greater detail the CUP Application submitted to
19 the City of San Diego, which submission included the Ownership Disclosure Statement signed by
20 Darryl Cotton and Rebecca Berry.

21 10. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr.
22 Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. This
23 literally occurred the evening of the day he signed the Nov 2nd Written Agreement.

24 On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated:

25 Hi Larry,
26 Thank you for meeting today. Since we examined the Purchase Agreement in
27 your office for the sale price of the property I just noticed the 10% equity position
28 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

1 element in my decision to sell the property. I'll be fine if you simply
2 acknowledge that here in a reply.

3 I receive my emails on my phone. It was after 9:00 p.m. in the evening that I glanced at my
4 phone and read the first sentence, "Thank you for meeting with me today." And I responded from my
5 phone "No no problem at all." I was responding to his thanking me for the meeting.

6 The next day I read the entire email and I telephoned Mr. Cotton because the total purchase
7 price I agreed to pay for the subject property was \$800,000 and I had never agreed to provide him a
8 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton
9 by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the
10 Call Detail from my firm's telephone provider showing those two telephone calls is attached as
11 Exhibit 3 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in
12 the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above
13 the \$800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect
14 of "well, you don't get what you don't ask for." He was not upset and he commented further to the
15 effect that things are "looking pretty good—we all should make some money here." And that was the
16 end of the discussion.

17 11. To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a
18 desire to participate in different ways in the *operation* of the future MMCC business at the Property.
19 Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding
20 the operation of such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary
21 discussions related to his desire to be involved in the *operation* of the business (not related to the
22 purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of
23 the net profits) in exchange for his providing various services to the business—but we never reached an
24 agreement as to those matters related to the operation of my future MMCC business. Those discussions
25 were not related to the purchase and sale of the Property, which we never agreed to amend or modify.

26 12. Beginning in or about mid-February 2017, and after the zoning issues had been resolved,
27 Mr. Cotton began making increasing demands for compensation in connection with the sale. We were
28 several months into the CUP application process which could potentially take many more months to

1 successfully complete (if it could be successfully completed and approval obtained) and I had already
 2 committed substantial resources to the project. I was very concerned that Mr. Cotton was going to
 3 interfere with the completion of that process to my detriment now that the zoning issues were resolved.
 4 I tried my best to discuss and work out with him some further compensation arrangement that was
 5 reasonable and avoid the risk he might try to “torpedo” the project and find another buyer. For
 6 example, on several successive occasions I had my attorney draft written agreements that contained
 7 terms that I that I believed I could live with and hoped would be sufficient to satisfy his demands for
 8 additional compensation, but Mr. Cotton would reject them as not satisfactory. Mr. Cotton continued
 9 to insist on, among other things, a 10% equity position, to which I was not willing to agree, as well as
 10 on minimum monthly distributions in amounts that I thought were unreasonable and to which I was
 11 unwilling to agree. Despite our back and forth communications during the period of approximately
 12 mid-February 2017 through approximately mid-March 2017, we were not able to re-negotiate terms for
 13 the purchase of the property to which we were both willing to agree. The Nov. 2nd Written Agreement
 14 was never amended or modified. Mr. Cotton emailed me that I was not living up to my agreement and
 15 I responded to him that he kept trying to change the deal. As a result, no re-negotiated written
 16 agreement regarding the purchase and sale of the property was ever signed by Mr. Cotton or me after
 17 we signed and agreed to the terms and conditions in the Nov 2d Written Agreement.

18 13. Ultimately, Mr. Cotton was extremely unhappy with my refusal to accede to his
 19 demands and the failure to reach agreement regarding his possible involvement with the *operation* of
 20 the business to be operated at the Property and my refusal to modify or amend the terms and conditions
 21 we agreed to in the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr.
 22 Cotton made clear that he had no intention of living up to and performing his obligations under the
 23 Agreement and affirmatively threatened to take action to halt the CUP application process.

24 14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr.
 25 Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of
 26 processing the CUP Application, regarding Mr. Cotton’s interest in withdrawing the CUP Application.
 27 That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to
 28

1 Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as
2 Exhibit 4 to the Geraci NOL.

3 15. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he
4 would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his
5 property and that “I will be entering into an agreement with a third party to sell my property and they
6 will be taking on the potential costs associated with any litigation arising from this failed agreement
7 with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 5
8 to the Geraci NOL.

9 16. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the
10 City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: “... the potential buyer,
11 Larry Gerasi [sic] (cc’ed herein), and I have failed to finalize the purchase of my property. As of today,
12 there are no third-parties that have any direct, indirect or contingent interests in my property. The
13 application currently pending on my property should be denied because the applicants have no legal
14 access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached
15 as Exhibit 6 to the Geraci NOL. Mr. Cotton’s email was false as we had a signed agreement for the
16 purchase and sale of the Property – the Nov 2nd Written Agreement.

17 17. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the
18 CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

19 18. Due to Mr. Cotton’s clearly stated intention to not perform his obligations under the
20 written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP
21 application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to
22 enforce the Nov 2nd Written Agreement.

23 19. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue
24 our CUP Application and approval of the CUP. Despite Mr. Cotton’s attempts to withdraw the CUP
25 application, we have completed the initial phase of the CUP process whereby the City deemed the CUP
26 application complete (although not yet approved) and determined it was located in an area with proper
27 zoning. We have not yet reached the stage of a formal City hearing and there has been no final
28 determination to approve the CUP. The current status of the CUP Application is set forth in the

1 Declaration of Abhay Schweitzer.

2 20. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m.
3 email (referenced in paragraph 15 above - see Exhibit 5 to the Geraci NOL) stating that he would be
4 “entering into an agreement with a third party to sell my property and they will be taking on the
5 potential costs associated with any litigation arising from this failed agreement with you. We have
6 learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had
7 been negotiating with other potential buyers of the Property to see if he could get a better deal than he
8 had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase
9 and sale agreement to sell the Property to another person, Richard John Martin II.

10 21. Although he entered into this alternate purchase agreement with Mr. Martin as early as
11 March 21, 2017, to our knowledge in the nine (9) months since, neither Mr. Cotton nor Mr. Martin or
12 other agent has submitted a separate CUP Application to the City for processing. During that time, we
13 continued to process our CUP Application at great effort and expense.

14 22. During approximately the last 17 months, I have incurred substantial expenses in excess
15 of \$150,000 in pursuing the MMCC project and the related CUP application.

16 23. Finally, Mr. Cotton has asserted from the outset of his lawsuit and, again, in paragraph
17 16 of his supporting declaration, that he did not discover until March 16, 2017, that I had submitted the
18 CUP Application back on October 31, 2016. That is a blatant lie. I kept Mr. Cotton apprised of the
19 status of the CUP application and the problems we were encountering (e.g., an initial zoning issue)
20 from the outset. Attached as Exhibit 7 is a true and correct copy of a text message Mr. Cotton sent me
21 on November 16, 2016, in which he asks me, “Did they accept the CUP application?” Mr. Cotton was
22 well aware at that time that we had already submitted the CUP application and were awaiting the City’s
23 completion of its initial review of the completeness of the application. Until the City deems the CUP
24 application complete it does not proceed to the next step—the review of the CUP application.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of April, 2018.

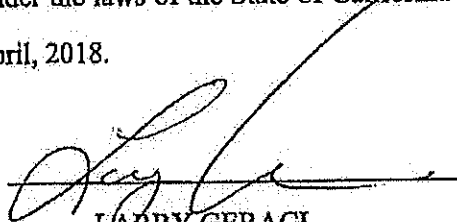
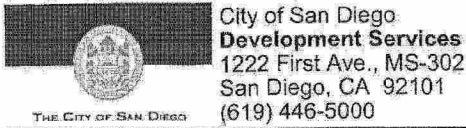

LARRY GERACI

EXHIBIT 3



Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: Neighborhood Use Permit Coastal Development Permit
 Neighborhood Development Permit Site Development Permit Planned Development Permit Conditional Use Permit
 Variance Tentative Map Vesting Tentative Map Map Waiver Land Use Plan Amendment Other _____

Project Title _____ **Project No. For City Use Only** _____

Federal Blvd. MMCC

Project Address:

6176 Federal Blvd., San Diego, CA 92114

Court's Ex. **030**
 Case # 37-2017-00010073-CU-BC-CTL
 Rec'd _____
 Dept. **C-73** Clk. _____

Part I - To be completed when property is held by Individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached Yes No


Name of Individual (type or print):
 Darryl Cotton
 Owner Tenant/Lessee Redevelopment Agency
 Street Address:
 6176 Federal Blvd
 City/State/Zip:
 San Diego Ca 92114
 Phone No: _____ Fax No: _____
 (619) 954-4447
 Signature: _____ Date: 10-31-2016

Name of Individual (type or print):
 Rebecca Berry
 Owner Tenant/Lessee Redevelopment Agency
 Street Address:
 5982 Gullstrand St
 City/State/Zip:
 San Diego / Ca / 92122
 Phone No: _____ Fax No: _____
 8589996882
 Signature: _____ Date: 10-31-2016

Name of Individual (type or print):
 Owner Tenant/Lessee Redevelopment Agency
 Street Address:
 City/State/Zip:
 Phone No: _____ Fax No: _____
 Signature: _____ Date: _____

Name of Individual (type or print):
 Owner Tenant/Lessee Redevelopment Agency
 Street Address:
 City/State/Zip:
 Phone No: _____ Fax No: _____
 Signature: _____ Date: _____

EXHIBIT 4

 THE CITY OF SAN DIEGO	City of San Diego Development Services 1222 First Ave., MS-302 San Diego, CA 92101 (619) 446-5000	FORM <h1 style="margin:0;">General Application</h1> DS-3032 AUGUST 2013
--	---	---

Part I (Must be completed for all permits/approvals)	1. Approval Type: <i>Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes</i> <input type="checkbox"/> Electrical/Plumbing/Mechanical <input type="checkbox"/> Sign <input type="checkbox"/> Structure <input type="checkbox"/> Grading <input type="checkbox"/> Public Right-of-Way; <input type="checkbox"/> Subdivision <input type="checkbox"/> Demolition/Removal <input type="checkbox"/> Development Approval <input type="checkbox"/> Vesting Tentative Map <input type="checkbox"/> Tentative Map <input type="checkbox"/> Map Waiver <input checked="" type="checkbox"/> Other: CUP
	2. Project Address/Location: <i>Include Building or Suite No.</i> 6176 Federal Blvd.
	Project Title: Federal Blvd, MMCC
	Project No.: <i>For City Use Only</i> 520606
	Legal Description: <i>(Lot, Block, Subdivision Name & Map Number)</i> TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO
	Assessor's Parcel Number: 543-020-02
	Existing Use: <input type="checkbox"/> House/Duplex <input type="checkbox"/> Condominium/Apartment/Townhouse <input checked="" type="checkbox"/> Commercial/Non-Residential <input type="checkbox"/> Vacant Land Proposed Use: <input type="checkbox"/> House/Duplex <input type="checkbox"/> Condominium/Apartment/Townhouse <input checked="" type="checkbox"/> Commercial/Non-Residential <input type="checkbox"/> Vacant Land
	Project Description: The project consists of the construction of a new MMCC facility
	3. Property Owner/Lessee Tenant Name: <i>Check one</i> <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Lessee or Tenant Telephone: Fax:
	Rebecca Berry
	Address: City: State: Zip Code: E-mail Address: 6982 Gullstrand Street San Diego CA 92122 becky@tfcfsd.net
	4. Permit Holder Name - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMG Section 113.0103.
	Name: Telephone: Fax: Rebecca Berry
	Address: City: State: Zip Code: E-mail Address: 5982 Gullstrand Street San Diego CA 92122 becky@tfcfsd.net
	5. Licensed Design Professional (if required): (check one) <input checked="" type="checkbox"/> Architect <input type="checkbox"/> Engineer License No.: C-19371 Name: Telephone: Fax: Michael R Morton AIA
	Address: City: State: Zip Code: E-mail Address: 3956 30th Street San Diego CA 92104
	6. Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) - a. Year constructed for all structures on project site: 1951 b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No d. Does the project include any foundation repair, digging, trenching or other site work? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.
	Print Name: Abhay Schweitzer Signature: <i>[Signature]</i> Date: 10/28/2016
	7. Notice of Violation - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? <input type="checkbox"/> No <input type="checkbox"/> Yes, copy attached
	8. Applicant Name: <i>Check one</i> <input type="checkbox"/> Property Owner <input type="checkbox"/> Authorized Agent of Property Owner <input checked="" type="checkbox"/> Other Person per M.G. Section 112.0102 Telephone: Fax:
	Rebecca Berry
	Address: City: State: Zip Code: E-mail Address: 5982 Gullstrand Street San Diego CA 92122 becky@tfcfsd.net
	Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.
	Signature: <i>[Signature]</i> Date: Oct 31 2016

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
 Upon request, this information is available in alternative formats for persons with disabilities.

DS-3032 (08-13)

F. Tirandazi
 EXHIBIT NO. 3
 3-14-19
 084
 L. Barrón, CSR

E3

EXHIBIT 5



(858) 254-9224 Mar 18
🔊 This is Lori. This is Ch... 01:59



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(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

EXHIBIT 6

EXHIBIT 7



Darryl Cotton <indagrodarryl@gmail.com>

(no subject)

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@sdcca.org, gbraun@sandiego.gov, Joe Hurtado <j.hurtado1@gmail.com>, pfinch@ftblaw.com, "Jason R. Thornton" <jthornton@ftblaw.com>, jbaird@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 his 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.

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
-  **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

EXHIBIT 8



Darryl Cotton <indagrodarryl@gmail.com>

Re:**Darryl Cotton** <indagrodarryl@gmail.com>

Fri, May 29, 2020 at 1:26 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 <johnnek@aol.com>, akohn@pettitkohn.com, Natalie Nguyen <natalie@nguyenlawcorp.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, biancaaimeemartinez@gmail.com, "Hoy, Cheri" <choy@sandiego.gov>, "Sokolowski, Michelle" <msokolowski@sandiego.gov>, ekulas@ferrisbritton.com, dbarker@ferrisbritton.com, jorge.delportillo@sdcda.org, gbrown@sandiego.gov, Joe Hurtado <j.hurtado1@gmail.com>, pfinch@ftblaw.com, "Jason R. Thornton" <jthornton@ftblaw.com>, jbaird@ftblaw.com, stoothacre@ferrisbritton.com, matthew@shapiro.legal, "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>, Cherlyn Cac <Ccac@sandiego.gov>, Abhay Schweitzer <abhay@techne-us.com>, jim@bartellassociates.com, jessica@mcelfreshlaw.com, Chris Williams <Chris@xmgmedia.com>, edeitz@grsm.com, tdupuy@gordonrees.com, dpettit@pettitkohn.com, jdalzell@pettitkohn.com, feldman@lbbbslaw.com, Tim.Vandenheuvel@doj.ca.gov, oomordia@sandiego.gov, jhemmerling@sandiego.gov, mskeels@sandiego.gov, cityattorney@sandiego.gov, jgsandiego@yahoo.com, ncarnahan@chulavistaca.gov, Cynthiam@vanstlaw.com, aclaybon@messner.com, arden@austinlegalgroup.com, Quintin Shammam <quintin@shammamlaw.com>, steve.cline@sdcountry.ca.gov, crosby@crosbyattorney.com, Robert Bryson II <rtbrysonlaw@gmail.com>, dharmim@dmehtalaw.com, elyssakulas@gmail.com, Ken Malbrough <kmalbrough@att.net>, Amy Sherlock <amyjoshlock@gmail.com>, Kym Kemp <mskymkemp@gmail.com>

All;

It may not be considered sound legal advice to communicate with the parties I'm in litigation with but I'm not an attorney and although I've requested court appointed counsel it has been denied. I don't have the means to hire an attorney so I will continue to take these matters on as a self-represented litigant until I've exhausted every avenue available to me in my attempts to find justice.

Today is my 60th birthday. This gives me time to reflect. It has now been 3.5 years when on November 2, 2016, I signed a 3 sentence document (**See Attachment 1**) with Larry Geraci that in my mind was meant to acknowledge receipt of a \$10K cash deposit he was giving me that day while I awaited what Geraci had promised would be a final written contract that his attorney, Gina Austin was in the process of preparing which would memorialize our discussions and our oral agreements for the sale of my property and the joint venture terms as it related to Geraci acquiring a City of San Diego Cannabis License and what was to be my interest in that joint venture.

Most everyone reading this email knows that within hours of my having signed that document, Geraci emails at 3:11 pm that signed and notarized document as an attachment which he titles "Cotton-Geraci Contract". Geraci describing that document as a "Contract" between us bothered me to the extent that I replied to his email that same day @ 6:55 pm to request that he acknowledge in a reply to my email that the document we signed earlier that day was not the final expression of our contract as I put it in my email; "in any final agreement" would contain but in the 11/02/16 document did not. His response to my email came back hours later when at 9:13 pm, he replied with "No no problem at all" (**See Attachment 2**). At that time and with his response, I had every reason to believe Geraci, being a busy guy, was working on having Gina Austin reduce the terms and conditions to written form as had been agreed to. This is the essence of the litigation as it pertains to Geraci and me.

The arrogance of what has occurred since then with the way the law and courts have been used as a sword to deny me of my rights is an unprecedented abuse of the power. It is my intention to see these abuses exposed. The majority of you receiving this email are attorneys and as officers of the court should be ashamed of yourself. You have knowingly conspired to deny the fact that there was NEVER mutual consent between Geraci and myself. The document I signed on 11/02/16 was NOT, as the March 21, 2017 Geraci lawsuit against me claims, a fully integrated contract with all the terms and conditions contained within and as I came to find out later, Geraci was, as a result of his past sanctions for operating unlicensed marijuana dispensaries, ineligible to own a cannabis license which makes ANY agreement we would have entered into illegal anyway!

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The Geraci lawsuit was a sham lawsuit that his counsel skillfully kept alive with an inept and corrupt judge who should not be on the bench. Judge Wohlfeil allowed this case to go on to trial and presented to a jury a question of law not of disputed facts. Clearly, with the relative legal simplicity of the matter being described, I cannot get justice at the state court level so it will be up to the federal courts to be the final adjudicator of the facts.

It's now been 5 months since my Christmas Eve email was sent to you all. With today's birthday email I am expanding the list of recipients to include other attorneys who had a relationship with this case and who also neglected to perform their duties to me and the courts. This correspondence is meant to provide you with an update as to what has been occurring since the Christmas email so that at some point in the future you will not be able claim you were unaware of these developments.

One of my previous attorney's in the Geraci v Cotton matter was Andrew Flores. While representing me, Flores became intimately familiar with my case and formed the opinion that Geraci and his attorneys engaged in filing a sham lawsuit that had no legal merit. Flores was so resolute in his belief that when the opportunity came to purchase my property so that he could pursue a cannabis license he did so. As the new owner of my property, Flores had a right to be heard during the state court matter but Judge Wohlfiel denied him that right stating that Flores did not have standing, Whatever. I'm not surprised by anything Judge Wohlfeil says since hes an imbecile. However, Flores did not let that ruling stop him from filing a complaint in federal court that in addition to mine, lays out in proper legal form, what he has suffered as a result of the Geraci litigation. I have attached a copy of the Flores complaint for your review (**See A achment 3**). What I lack as a Pro Se litigant, Flores and his co-plaintiffs have provided the courts with a less emotional rendering of what is at stake here. DO NOT LATER CLAIM YOU WERE NOT PROVIDED THE FACTS. THE FLORES COMPLAINT MAKE CITATIONS TO THE JUDICIAL AND EVIDENTIARY ADMISSIONS MADE BY GERACI AND HIS ATTORNEYS.

To Petit Kohn, I received your second attempt yesterday to see my federal case dismissed against your client Gina Austin. You have not integrity or ethics, you are literally crack whores that will do anything for money, including seeking to destroy my life. One way or another, I will make sure you are exposed. You are breaking the law to ruin my life. Whatever you are getting paid to defend Austin, a drug dealer, won't be worth what you will pay when Petit Kohn is exposed as an unethical firm.

In my First Amended Complaint (**See A achment 4**) it is now the second time Petit Kohn is seeking to dismiss my case but in doing so they completely ignore the fact that their client, Gina Austin lied on the stand and said it was not illegal for Geraci to submit an application for a cannabis license with the City under fraudulent pretenses and testify it is not illegal to do so. Which, along the same lines, leads me to another deplorable human being, Deputy City Attorney Michael Phelps, who will have to testify under oath as to why the City of San Diego had no obligation in enforcing its own cannabis regulations or even just basic SDMC requirements that CUP applications not be submitted with false information. How many innocent people's lives have these attorneys allowed to be destroyed in violation of the oath they took? Do you even remember that oath? Probably just words on a piece of paper like the rest of the unethical attorneys here.

To be clear, any attorney or firm that has made the conscience decision to break the law or protect their client who has broken the law, will be named as a defendant and if I have anything to say about it will be sanctioned and you will lose your law license. Nothing short of that will be justice.

Over the course of the last 5 months I have had conversations with the FBI and DOJ attorneys as it relates to both the Flores case and mine. There have been other local governments that have engaged in pay to play cannabis licensing schemes that are very similar in scope as to what my case represents. They are looking at both of our cases as it relates to criminal conduct that arises from Continuing Criminal Enterprises conduct that has become prevalent in the acquisition of these licenses with the latest case I can cite to having happened in Calexico, CA, (**See A achment 5**), whereby the mayor and a councilman have been brought up on bribery charges for doing the exact same thing that has happened to me in the processing of the Geraci CUP application and which I now have three years' worth of evidence, trial transcripts and depositions to support my claims. To be clear, I will willingly assist any agency (**See A achment 6**) in exposing the corruption that exists amongst lawyers, lobbyists and/or local and state government when it comes to how these licenses are illegally procured.

I really am astonished at how such a tiny little property like mine and a relatively simply business transaction has resulted in where we find ourselves today. Don't lay the blame on me for where we're at today. Blame Geraci and all those who were in on this fraud. I have absolutely no choice to defend my legal rights as failure is not an option as a failure would be leaving me with nothing to show after a lifetimes work. I am not, nor have I ever been, the source of your problems.

On Tue, Dec 24, 2019 at 2:29 PM Darryl Cotton <indagrodarryl@gmail.com> wrote:

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 his 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.

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 than 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


6 attachments

 **(1) The November Document.pdf**
366K

 **(2) Confirmation Email.pdf**
447K

 **(3) Flores v Austin et al .pdf**
2293K

 **(4) Cotton v Geraci et al First Amended Complaint.pdf**
1394K

 **(5) USA v Romero and Suarez-Soto.pdf**
258K

 **(6) USA v Razuki Witness List.pdf**
157K

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

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, MARCH 23, 2022

PAGES 1 THROUGH 22

APPEARANCES:

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

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

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

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

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

2 -000-

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

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

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

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

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

13 MR. EMDEE: GOOD MORNING, YOUR HONOR.

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

15 MS. DUKE: GOOD MORNING, YOUR HONOR.

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

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

21 YOUR HONOR, ARE YOU ABLE TO HEAR US?

22 (PAUSE IN PROCEEDINGS.)

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

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

3 THE COURT: OKAY. THANK YOU.

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

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

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

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

17 THE CLERK: YES, YOUR HONOR.

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

19 MR. FLORES, CAN YOU HEAR ME OKAY?

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

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

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

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

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

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

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

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

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

1 YOUR ARGUMENT TO THE COURT ON THAT ISSUE.

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

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

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

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

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

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

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

4 THE COURT: OKAY. THANK YOU.

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

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

10 (COURT REPORTER INTERRUPTION.)

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

13 MS. DUKE: THANK YOU, YOUR HONOR.

14 THE COURT: THANK YOU. TAKE CARE.

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

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

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

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

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

16 (COURT REPORTER INTERRUPTION.)

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

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

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

5 (COURT REPORTER INTERRUPTION.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 IS THIS BETTER, MR. FLORES?

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

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

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

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

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

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

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

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

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

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

18 (COURT REPORTER INTERRUPTION.)

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

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

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

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

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

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

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

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

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

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

1 WERE A PART OF THIS CONSPIRACY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 BE ABLE TO FIX THE UNDERLYING PROBLEM.

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

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

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

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

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

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

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

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

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

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

12 THE CLERK: YES, YOUR HONOR.

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

15 THE COURT: GREAT. THANK YOU.

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

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

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

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

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

1 I ALSO --

2 MR. FLORES: I --

3 THE COURT: CAN YOU HEAR ME?

4 MR. FLORES: I CAN.

5 THE COURT: OKAY. THANK YOU.

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

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

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

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

22 GO AHEAD, MR. EMDEE.

23 MR. EMDEE: THANK YOU, YOUR HONOR.

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

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

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

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

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

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

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

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

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

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

5 THE COURT: OKAY. THANK YOU.

6 MR. EMDEE: ALL RIGHT.

7 MR. FLORES: THANK YOU, YOUR HONOR.

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

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

11 -000-

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

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

20 DATED: JUNE 21, 2022, SAN DIEGO

21 S/ABIGAIL R. TORRES

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

1 ANDREW FLORES
2 California State Bar Number 272958
3 Law Office of Andrew Flores
4 427 C Street, Suite 220
5 San Diego, CA 92101
6 Telephone: 619.256.1556
7 Facsimile: 619.274.8253
8 Andrew@FloresLegal.Pro

9 Plaintiff *In Propria Persona*
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 AMY SHERLOCK, an individual, et. al.

16 Case No.: 20-CV-000656-JO-DEB

17 RESPONSE TO ORDER TO
18 SHOW CAUSE

19 vs.

20 Complaint Filed: April 3, 2020

21 Judge: Hon. Jinsook Ohta

22 GINA M. AUSTIN, an individual; et. al.

23 Defendants.

24 On October 19, 2022, the Court denied Plaintiffs ex parte application for an order
25 shortening time on a hearing to vacate this Court’s order issued on March 23, 2022 or,
26 alternatively, a stay of this action. (ECF No. 48.) The order that Plaintiffs sought to vacate
27 granted defendant F&B’s¹ motion to dismiss finding that F&B’s filing and prevailing in a

28 ¹ “F&B” means defendants Michael Weinstein, Scott H. Toothacre, Elyssa Kulas, Rachel M. Prendergast, and Ferris & Britton, APC.

1 state court action does not constitute sham petitioning. Plaintiff attorney Andrew Flores
2 argued that the subject state court judgment procured by F&B should not be given
3 preclusive effect and is void because, *inter alia*, it enforces an illegal contract procured
4 through a fraud on the court, was rendered by a judge disqualified to render the judgment
5 due to bias, and it is impossible for the Sherlock Family to be in privity with Darryl Cotton.

6 The Court's order denying the ex parte application required that Plaintiffs show
7 cause for why the case should not be dismissed for failure to file an amended complaint.
8 Plaintiff attorney Andrew Flores will be direct. As set forth in the ex parte application,
9 Flores believes that there is a judicial conspiracy to not address the facts that establish that
10 the subject state court judgments are void due to judicial bias and enforcing illegal
11 contracts. Flores failed to file an amended complaint because multiple federal judges
12 including this Court had already failed to find the subject state court judgments are void
13 and he believed they were telegraphing their intent that the state courts should find the
14 state court judgments void in order to not embarrass the state court judges. However, the
15 state courts did not vacate the judgments.

16 Flores does not know how to proceed before this Court when he believes it is biased
17 because it does not address the facts that establish its order granting F&B's motion to
18 dismiss is void for enforcing a void judgment for the reasons set forth in the application.
19 Attached hereto as Exhibit A is an email sent by Joe Hurtado to City Attorney Travis
20 Phelps on the day hereof communicating a demand that the City of San Diego intervene
21 in this and other related actions to state that F&B's petitioning activity – the ownership of
22 cannabis businesses by parties barred by law from owning cannabis businesses and who
23 apply via fraudulent applications to City and State agencies - is in fact illegal. That the
24 subject state court judgments are in fact void.

25 Flores will join Mr. Hurtado in filing a petition for writ of mandate against the
26 Department of Cannabis Control to aid this Court in understanding that F&B's petitioning
27 activity is in fact illegal. Flores will then seek to have all judgments and orders enforcing
28 such illegal activity declared void. However, Flores requests that this Court not punish

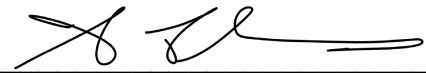
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Flores co-plaintiffs, Amy Sherlock and her minor children, T.S. and S.S. (the “Sherlock Family”). Flores legal conclusions are his professional opinion and if he is in fact incorrect then he has committed fraud and legal malpractice against the Sherlock Family.

Flores directly admits that he has committed fraud and legal malpractice against the Sherlock Family *if* the subject state court judgments are not void for the reasons set forth in the ex parte application. Thus, as this Court does not find the state court judgments are void, the Court should not punish the Sherlock Family and it should allow them leave to acquire alternate counsel so that they may file an amended complaint.

Date: November 9, 2022

Law Offices of Andrew Flores



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

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Flores et al.,
Plaintiffs,
v.
Austin et al.,
Defendants.

Case No.: 20cv656-JO-DEB
**ORDER DENYING EX PARTE
MOTION FOR
RECONSIDERATION AND
ORDERING PLAINTIFFS TO SHOW
CAUSE WHY CASE SHOULD NOT
BE DISMISSED FOR FAILURE TO
PROSECUTE**

20 On March 23, 2022, the Court granted motions to dismiss Defendants Judge Joel R.
21 Wohlfeil, Michael Weinstein, Scott H. Toothacre, Elyssa Kulas, Rachel M. Prendergast,
22 and Ferris & Britton, APC from this action with prejudice on grounds of judicial immunity
23 and *Noerr-Pennington* immunity. Dkt. 39 (“Dismissal Order”). The Court dismissed the
24 First Amended Complaint against the remaining defendants in this action without prejudice
25 for lack of standing and granted Plaintiffs leave to file an amended complaint by May 11,
26 2022. *Id.* Since the March 23, 2022 Dismissal Order, Plaintiffs have neither complied
27 with the Court’s order to file their amended complaint by the deadline nor requested an
28 extension of time to do so. On October 12, 2022, Plaintiffs filed an “Ex Parte Application

1 for Order Shortening Time on (1) Motion to Vacate Order or, Alternatively, (2) a Stay of
2 Action,” arguing that newly discovered evidence in the form of the City of San Diego
3 public records proves the conspiracy they allege. Dkt. 43. The Court construes this
4 application as a motion for reconsideration of its Dismissal Order pursuant to Federal Rule
5 of Civil Procedure 60 based on newly discovered evidence.

6 The Court denies Plaintiffs’ *ex parte* motion for reconsideration because they have
7 failed to demonstrate that newly discovered evidence would change the outcome of the
8 Court’s previous ruling.¹ Newly discovered evidence warrants relief under Federal Rule
9 of Civil Procedure 60(b)(2) if “(1) the moving party can show the evidence relied on in fact
10 constitutes ‘newly discovered evidence’ within the meaning of Rule 60(b); (2) the moving
11 party exercised due diligence to discover this evidence; and (3) the newly discovered
12 evidence must be of ‘such magnitude that production of it earlier would have been likely
13 to change the disposition of the case.’” *Feature Realty, Inc. v. City of Spokane*, 331 F.3d
14 1082, 1093 (9th Cir. 2003) (quoting *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.,*
15 *Inc.*, 833 F.2d 208, 211 (9th Cir. 1987)). Here, Plaintiffs argue that the newly discovered
16 records prove that the alleged conspiracy occurred:

17 Stated in plain words, the new evidence—records of the City of San Diego’s
18 Development Services Department (DSD)—provides conclusive proof that
19 defendants have conspired to illegally acquire ownership interests in cannabis
20 businesses. And in furtherance of that conspiracy, highly probably had a role
21 in the death of Michael Sherlock, the husband and father of the Sherlock
22 Family. Dkt. 43 at 2–3.

23 Because the Court’s Dismissal Order was not based on the lack of proof that the conspiracy
24 occurred, this new evidence would not change its order. The Court dismissed the judge
25 defendant because he was entitled to immunity for actions taken in exercising his judicial
26 duties. The Court dismissed the lawyer and law firm defendants because they too were
27 entitled to immunity for their actions during the course of litigation. Finally, the Court

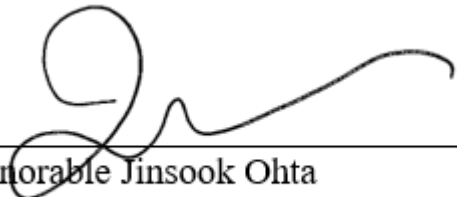
28 ¹ Plaintiffs have also failed to establish that mistake, fraud, or any other ground warrants reconsideration
of the Court’s previous ruling.

1 dismissed Plaintiffs’ complaint for lack of standing because they failed to plead how they
2 were injured by the conspiracy surrounding the property of his friend, Darryl Cotton. None
3 of the above decisions relied on the lack of evidence to prove the conspiracy so this newly
4 discovered evidence could not change the Court’s ruling. Accordingly, Plaintiffs’ motion
5 [Dkt. 43] is DENIED.

6 Moreover, because Plaintiffs have failed to file an amended complaint by the Court
7 ordered deadline, the Court ORDERS PLAINTIFFS TO SHOW CAUSE why the case
8 should not be dismissed for failure to prosecute. Plaintiffs may file a written response to
9 the Order to Show Cause on or before **November 9, 2022**. The Court sets the hearing on
10 the Order to Show Cause for **November 9, 2022, at 9:00 am**. Unless otherwise directed
11 by the Court, there shall be no oral argument and no personal appearances are necessary.
12 Failure to timely respond to this Order will result in dismissal of the action.

13 **IT IS SO ORDERED.**

14
15 Dated: October 19, 2022

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18 _____
19 Honorable Jinsook Ohta
20 United States District Judge
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Flores et al.,

Plaintiffs,

v.

Austin et al.,

Defendants.

Case No.: 20cv656-JO-DEB

**ORDER DISMISSING CASE FOR
FAILURE TO PROSECUTE**

On October 19, 2022, the Court ordered Plaintiffs to show cause why the case should not be dismissed for failure to prosecute on the grounds that Plaintiffs failed to file an amended complaint by the May 11, 2022 deadline. Dkt. 48 (Order to Show Cause). On November 9, 2022, Plaintiffs timely filed a response to the Order to Show Cause. Dkt. 49 (Response). Plaintiffs' Response stated that counsel failed to file an amended complaint because "multiple federal judges including this Court had already failed to find the subject state court judgments are void and he believed they were telegraphing their intent that the state courts should find the state court judgments void in order to not embarrass the state

1 court judges.” Response at 2. Plaintiffs do not ask for an extension of time to file an
2 amended complaint. *Id.*

3 Federal Rule of Civil Procedure 41(b) governs involuntary dismissal. “If the
4 plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may
5 move to dismiss the action or any claim against it.” Fed. R. Civ. P. 41(b). Before
6 dismissing under Rule 41(b), a district court must weigh five “essential factors”: “(1) the
7 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its
8 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition
9 of cases on their merits and (5) the availability of less drastic sanctions.” *Henderson v.*
10 *Duncan*, 779 F.2d 1421, 1423–24 (9th Cir. 1986). “A dismissal for lack of prosecution
11 must be supported by a showing of unreasonable delay,” which “creates a presumption of
12 injury to the defense.” *Id.* at 1423 (citations omitted).

13 Upon reviewing Plaintiffs’ Response to the Order to Show Cause and examining the
14 five “essential factors” set forth in *Henderson*, the Court finds that Plaintiffs’ case should
15 be dismissed for failure to prosecute. Plaintiffs have unreasonably delayed the filing of an
16 amended complaint after the First Amended Complaint was dismissed on March 23, 2022.
17 Despite being granted forty-nine days after the dismissal for the amendment, Plaintiffs
18 failed to meet the Court’s deadlines. To this day, almost nine months after the Court’s
19 order to amend the complaint, Plaintiffs still have not complied with the Court’s order nor
20 requested an extension of time to do so. Based on these facts, the Court finds that the
21 public’s interest in speedy litigation and the Court’s need to manage its docket weigh in
22 favor of dismissal. The Court also finds that prejudice to Defendants can be presumed
23 from the length of this delay. Moreover, by not requesting an extension, Plaintiffs have
24 requested no alternative sanction nor demonstrated a desire to prosecute this case. The
25 Court, therefore, finds that dismissal is the appropriate sanction in this case.

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Accordingly, the Court DISMISSES the case in its entirety with prejudice pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute. The Court DIRECTS the Clerk to enter a separate Clerk’s judgment in favor of Defendants and close the case.

IT IS SO ORDERED.

Dated: 12/9/22



Honorable Jinsook Ohta
United States District Judge

NAME AND ADDRESS OF ATTORNEY

Andrew Flores, SBN 272958
427 C Street, Suite 220
San Diego, CA 92101

PHONE: (619) 356-1556

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TRIAL JUDGE JINSOOK OHTA

COURT REPORTER

AMY JOE SHERLOCK

CIVIL NO. 3:20-cv-00656-JO-DEB

(Appellant/Appellee) Plaintiff

vs

GINA AUSTIN

NOTICE OF APPEAL (Civil)

(Appellant/Appellee) Defendant

Notice is hereby given that AMY JOE SHERLOCK

Plaintiff Defendant above named, hereby appeals to the United States Court

of Appeals for the: (check appropriate box)

Ninth Circuit Federal Circuit

from the: (check appropriate box)

Final Judgment Order (describe)

entered in this proceeding on the 9 day of December, 2022.

Transcripts required Yes No.

Date civil complaint filed: 4/3/20

Date: 1/5/23



Signature

**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

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

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

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

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)

		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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