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8 Plaintiff *in Propria Persona*
9 and Attorney for Plaintiffs
10 Amy Sherlock, Minors T.S.
11 and S.S.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

14 AMY SHERLOCK, an individual and on behalf of
15 her minor children, T.S. and S.S., ANDREW
16 FLORES, an individual;

17 Plaintiffs,

18 v.

19 GINA M. AUSTIN, an individual; AUSTIN
20 LEGALGROUP, a professional corporation,
21 LARRY GERACI, an individual, REBECCA
22 BERRY, an individual; JESSICA MCELFRISH, an
23 individual; SALAM RAZUKI, an individual;
24 NINUS MALAN, an individual; FINCH,
25 THORTON, AND BARID, a limited liability
26 partnership; ABHAY SCHWEITZER, an individual
27 and dba TECHNE; JAMES (AKA JIM) BARTELL,
28 an individual; NATALIE TRANG-MY NGUYEN,
an individual, AARON MAGAGNA, an individual;
BRADFORD HARCOURT, an individual; SHAWN
MILLER, an individual; LOGAN
STELLMACHER, an individual; EULENTHIAS
DUANE ALEXANDER, an individual; STEPHEN
LAKE, an individual, ALLIED SPECTRUM, INC.,
a California corporation, PRODIGIOUS
COLLECTIVES, LLC, a limited liability company,
and DOES 1 through 50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/08/2022 at 02:27:00 PM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

Case No. 37-2021-00050889-CU-AT-CTL

**PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
OPPOSITION TO DEFENDANT
STEPHEN LAKE'S DEMUERRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Date: August 19, 2022

Time: 9:00 a.m.

Dept: C-75

Judge: Hon. James A Mangione

Filed December 3, 2021

Trial: Not Set

Plaintiff's request that this Court take judicial notice of the following documents served and

submitted herewith in support of their *Opposition to Defendant Stephen Lake’s Demurrer to Plaintiffs’ First Amended Complaint*, pursuant to California Evidence Code § 452, *Matters Permitting Judicial Notice*.

RJN EX. NO.	DOCUMENT TITLE/DESCRIPTION
1.	San Diego County Ordinance, Attachment B, Meeting Date October 6, 2021
2.	Conditional Use Permit No. 1296130, July 29, 2015
3.	<i>San Diego Patients Cooperative Corporation, Inc. v. Razuki Investments, LLC</i> , San Diego Superior, Court Case No. 37-2017-00020661, ROA 1 (Complaint)
4.	Grant Deed Conveying Balboa to Leading Edge Real Estate, Dated June 18, 2015
5.	Grant Deed Conveying Balboa to High Sierra Equity, LLC, Dated April 20, 2016
6.	Grand Deed to Conveying Balboa to Razuki Investments, Dated October 18, 2016
7.	Application for San Diego Country Sheriff’s Department Medical Marijuana Collective Operations Certificate Dated January 13, 2016
8.	Author Unknown, “County Approves Building Permits for Two Medical Pot Shops Here”, Ramona Sentinel, July 6, 2015. (https://www.sandiegouniontribune.com/ramona-sentinel/sdrs-county-approves-building-permits-two-medical-pot-s-2015jul06-story.html)
9.	San Diego County Sheriff’s Department Medical Marijuana Collective Operations Certificate, February 2, 2016
10.	San Diego County Sheriff’s Department Medical Marijuana Collective Operations Certificate, May 24, 2017
11.	Defendants Gina M. Austin and Austin Legal Group’s Motion to Strike Plaintiffs’ First Amended Complaint Pursuant to Code of Civil Procedure Section 425.16 (Anti-SLAPP Statute)
12.	Plaintiff’s Opposition to Gina M. Austin and Austin Legal Group’s Special Motion to Strike Plaintiff’s First Amended Complaint, July 25, 2022.

RJN EX. NO.	DOCUMENT TITLE/DESCRIPTION
13.	Defendants Gina M. Austin and Austin Legal Group’s Reply to Plaintiff’s Opposition to Motion to Strike Plaintiffs’ First Amended Complaint Pursuant to Code of Civil Procedure Section 425.16 (Anti-SLAPP Statute) July 29, 2022.
14.	<i>Richmond Compassionate Care Collective v. 7 Stars Holistic Found.</i> , No. C16-01426 (Supr. Ct. of Cal., County of Contra Costa (2021)) Special Verdict Form September 23, 2021.

Dated: August 8, 2022

THE LAW OFFICE OF ANDREW FLORES

By /s/ Andrew Flores

Attorney for Plaintiffs
AMY SHERLOCK, T.S. S.S

EXHIBIT 1

**Attachment B – AN ORDINANCE
AMENDING THE SAN DIEGO ZONING
ORDINANCE RELATED TO DEFINITIONS,
MEDICAL MARIJUANA COLLECTIVE
FACILITIES, AND PROHIBITION OF
MARIJUANA FACILITIES – MEDICAL OR
NON-MEDICAL, AND ADDING SECTION
6861 RELATED TO NONCOMFORMING
CANNABIS FACILITIES (POD 21-001)
(CLEAN COPY)**

ORDINANCE NO. _____ (N.S.)

**AN ORDINANCE AMENDING THE SAN DIEGO COUNTY ZONING
ORDINANCE RELATED TO DEFINITIONS, MEDICAL MARIJUANA
COLLECTIVE FACILITIES, AND PROHIBITION OF MARIJUANA
FACILITIES – MEDICAL OR NON-MEDICAL, AND ADDING SECTION
6861 RELATED TO NONCONFORMING CANNABIS FACILITIES**

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that the Zoning Ordinance should be updated by amending, adding, or removing various sections regarding Definitions, Nonconforming Cannabis Facilities, Medical Marijuana Collective Facilities, and Prohibition of Marijuana Facilities – Medical or Non-Medical. The Board finds that these amendments are reasonable and necessary for the public health, safety, convenience, and welfare.

Section 2. Section 1110 DEFINITIONS is amended to read as follows:

SEC. 1110. DEFINITIONS

Cannabis Facility – Medical and Non-Medical: (a) Any store, office, business, building, property or other facility in or from which cannabis is sold, given, traded, supplied, bartered, consumed, raised, processed, stored, used, cultivated indoors or outdoors, possessed, or transported; (b) This definition shall not apply to personal cultivation of cannabis allowed under state law.

Section 3. Section 6861 NONCONFORMING CANNABIS FACILITIES of the Zoning Ordinance is added to read as follows:

SEC. 6861. NONCONFORMING CANNABIS FACILITIES

- a. Five Nonconforming Cannabis Facilities. Nonconforming Cannabis Facilities which were lawfully established before April 14, 2017, and documented by the Department include only facilities at the five following locations:

8157 Wing Ave, El Cajon, CA 92020 (APN 387-150-21-00)
736 Montecito Way, Ramona, CA 92065 (APN 281-521-13-00)
618 Pine St, Ramona, CA 92065 (APN 281-065-26-00)
1210 Olive St, Ramona, CA 92065 (APN 281-121-12-00)
8530 Nelson Way, Escondido, CA 92026 (APN 127-222-19-00)

- b. Cannabis Activities. A Nonconforming Cannabis Facility may engage in Medical Cannabis Collective, Commercial Cannabis Microbusiness, or Commercial Cannabis Retailer activities as those terms are defined in Chapter 25 of Division 1 of Title 2 of the San Diego Code of Regulatory Ordinances. A Nonconforming Cannabis Facility operating as a

Meeting Date: 10/06/21

Medical Cannabis Collective shall update its Operating Certificate before engaging in Commercial Cannabis Microbusiness or Commercial Cannabis Retailer activities.

- c. **Operation and Construction.** Each of the five Nonconforming Cannabis Facilities may do the following:
 1. **Continue Operation.** Continue operations beyond April 14, 2022.
 2. **Existing Facilities.**
 - i. **Repair, maintain, or alter existing structures.**
 - ii. **Add to one or more structures that were permitted before June 9, 2021, up to a cumulative total of 10,000 square feet in floor area.**
 3. **New Construction or Conversion of Small Structures.**
 - i. **Construct a structure that will not involve the use of significant amounts of hazardous substances and will not exceed 2,500 square feet in floor area.**
 - ii. **In urbanized areas, as is defined in Section 15387 of Title 14 of the California Code of Regulations, construct up to four commercial cannabis buildings that will not involve the use of significant amounts of hazardous substances and will not exceed a cumulative total of 10,000 square feet in floor area.**
- d. **Cumulative New Square Footage Limit.** A Nonconforming Cannabis Facility may not build more than a cumulative total of 10,000 square feet of new floor area, either by an addition to an existing facility, new construction or conversion of small structures, or a combination thereof.
- e. **Ministerial Building Permits.** Repair, maintenance, alteration, addition to an existing structure, or construction of a new structure in accordance with this section and used for cannabis purposes shall require approval of a ministerial building permit. Nothing within this Zoning Ordinance shall exempt Nonconforming Cannabis Facilities from the requirements of the Grading Ordinance.
- f. **Exemptions from Designators.** Repair, maintenance, alteration, an addition to an existing structure, or construction of a new structure in accordance with this section and used for cannabis purposes shall be exempt from B and S Special Area Designators.
- g. **Expansions Above Cumulative New Square Footage Limit.** A Nonconforming Cannabis Facility may build more than a cumulative total of 10,000 square feet of new floor area, either by an addition to an existing facility, new construction or conversion of small structures, or a combination thereof, upon approval of a Site Plan. Expansions above the cumulative new square footage limit shall not be exempt from any Special Area

Meeting Date: 10/06/21

Designators.

- h. No Visibility or Outdoor Use. Nonconforming Cannabis Facilities shall be designed, constructed, and operated such that no cannabis is visible from any location off the property on which a Nonconforming Cannabis Facility is located. All cannabis activities shall be enclosed within a building.
- i. Other Nonconforming Regulations. Nonconforming Cannabis Facilities are not subject to any other nonconforming regulations outlined in the Zoning Ordinance.
- j. Change to Conforming Use. A Nonconforming Cannabis Facility may change its use to a non-cannabis related conforming use. A Nonconforming Cannabis Facility shall transition to a conforming cannabis facility upon the County adopting regulations making cannabis activities a conforming use.

Section 4. Section 6935 MEDICAL MARIJUANA COLLECTIVE FACILITIES of the Zoning Ordinance shall be removed in its entirety:

Section 5. Section 6976 PROHIBITION OF MARIJUANA FACILITIES MEDICAL OR NON-MEDICAL of the Zoning Ordinance are amended to read as follows:

SEC. 6976. PROHIBITION OF CANNABIS FACILITIES – MEDICAL OR NON-MEDICAL

No person shall cause or permit the establishment of a Cannabis Facility for medical or non-medical purposes, meeting the definition "Cannabis Facility – Medical and Non-Medical" in Section 1110, which was not lawfully established before April 14, 2017. To the maximum extent allowed by state law this prohibition shall apply throughout all use regulations.

Section 6. Effective Date and Publication. This ordinance shall take effect and be in force thirty (30) days after its adoption. Fifteen days after the date of adoption of this ordinance, a summary shall be published once with the names of the members of the Board voting for and against it in a newspaper of general circulation published in County of San Diego.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

By: Justin Crumley, Senior Deputy County Counsel

EXHIBIT 2

13p
1c

DOC# 2015-0399133



Jul 29, 2015 10:11 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$51.00

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

PAGES: 13

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24004643

CONDITONAL USE PERMIT NO. 1296130
8863 BALBOA STE E MMCC - PROJECT NO. 368347
PLANNING COMMISSION

This Conditional Use Permit No. 1296130 is granted by the Planning Commission of the City of San Diego to LEADING EDGE REAL ESTATE, LLC, Owner and UNITED PATIENTS CONSUMER COOPERATIVE, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 2.51-acre site located at 8863 Balboa Avenue is in the IL-3-1 Zone, the Airport Influence Area (Miramar and Montgomery Field), Montgomery Field Safety Zone 2, 5, and 6, the 60-65 dB CNEL for Montgomery Field, and within the Kearny Mesa Community Plan Area. The project site is legally described as: Lot 9, Industrial Park No. 2, Map No. 4113, March 12, 1959.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Medical Marijuana Consumer Cooperative (MMCC) and subject to the City's land use regulations described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated July 9, 2015, on file in the Development Services Department.

The project shall include:

- a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 999 square-foot tenant space within an existing, 4,995 square-foot, one-story building on a 2.51-acre site;
- b. Existing landscaping (planting, irrigation and landscape related improvements);
- c. Existing off-street parking;

ORIGINAL

- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by July 9, 2018.
2. This Conditional Use Permit [CUP] and corresponding use of this MMCC shall expire on July 9, 2020.
3. In addition to the provisions of the law, the MMCC must comply with; Chapter 4, Article 2, Division 15 and Chapter 14, Article 1, Division 6 of the San Diego Municipal Code.
4. No construction, occupancy, or operation of any facility or improvement described herein shall commence, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department.
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
 - c. A MMCC Permit issued by the Development Services Department is approved for all responsible persons in accordance with SDMC, Section 42.1504.
5. While this Permit is in effect, the MMCC shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
6. This Permit is a covenant running with the MMCC and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
7. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

PLANNING/DESIGN REQUIREMENTS:

13. The use within the 999 square-foot tenant space shall be limited to the MMCC and any use permitted in the IL-3-1 zone.
14. Consultations by medical professionals shall not be a permitted accessory use at the MMCC.
15. Lighting shall be provided to illuminate the interior of the MMCC, facade, and the immediate surrounding area, including any accessory uses, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented so as to deflect light away from adjacent properties.
16. Security shall include operable cameras and a metal detector to the satisfaction of Development Services Department. This facility shall also include alarms and two armed security guards to the extent the possession of a firearm is not in conflict with 18 U.S.C. § 922(g) and 27 C.F.R § 478.11. Nothing herein shall be interpreted to require or allow a violation of federal firearms laws. The security guards shall be licensed by the State of California. One security guard must be on the premises 24 hours a day, seven days a week, the other must be present during business hours. The security guards should only be engaged in activities related to providing security for the facility, except on an incidental basis. The cameras shall have and use a recording device that maintains the records for a minimum of 30 days.
17. The Owner/Permittee shall install bullet resistant glass, plastic, or laminate shield at the reception area to protect employees.
18. The Owner/Permittee shall install bullet resistant armor panels or solid grouted masonry block walls, designed by a licensed professional, in adjoining walls with other tenants, reception area, and vault room (manager's office).
19. The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside of the MMCC in character size at least two inches in height.
20. The MMCC shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
21. The use of vending machines which allow access to medical marijuana except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this section and condition, a vending machine is any device which allows access to medical marijuana without a human intermediary.
22. The Owner/Permittee or operator shall maintain the MMCC, adjacent public sidewalks, and areas under the control of the owner or operator, free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris. Graffiti shall be removed within 24 hours.

23. Medical marijuana shall not be consumed anywhere within the 2.51-acre site.
24. The Owner/Permittee or operator shall post anti-loitering signs near all entrances of the MMCC.
25. All signs associated with this development shall be consistent with sign criteria established by City-wide sign regulations and shall further be restricted by this permit. Sign colors and typefaces are limited to two. Ground signs shall not be pole signs. A sign is required to be posted on the outside of the MMCC and shall only contain the name of the business.
26. Interior spaces exposed to exterior aircraft noise sources shall be attenuated to achieve an indoor noise level of 50 dB CNEL.

ENGINEERING REQUIREMENTS:

27. Prior to the issuance of any building permit, the Owner/Permittee shall assure by permit and bond the replacement of the two easterly driveways with City standard driveways on Balboa Avenue per Standard Drawings SDG-159, satisfactory to the City Engineer.

TRANSPORTATION REQUIREMENTS:

28. No fewer than 5 parking spaces (including 1 van accessible space) for the proposed 999 square-foot MMCC (with 99 existing surface parking spaces -including 4 accessible spaces on the entire 2.5 acre site) shall be maintained on the property at all times in the approximate locations shown on Exhibit "A". All on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the Development Services Department.
29. Prior to any building permit/tenant improvement for 8861 Balboa Avenue Suite #B, the applicant shall demonstrate that the converted portion of the warehouse space to 2-car parking garage at 8861 Balboa Suite #B is to be accessed accessible for minimum turning path for passenger car design vehicle to accommodate ingress/egress of two (2) side-by-side dimensionally acceptable interior garage parking spaces, one of which is to be assigned to this CUP for 8863 Balboa Avenue Suite #E as employee parking while the other to be assigned to 8861 Balboa Avenue Suite #B, which may in turn require its own building permit to convert a portion of Suite #B into a parking garage satisfactory to BDR - Structural Review staff. Improvements to the existing garage space that may be required include, but are not limited to, a wider garage door and improvements required for separation of the parking and warehouse uses in 8863 Balboa Avenue Suite #E, satisfactory to BDR - Structural Review staff.

POLICE DEPARTMENT RECOMMENDATION:

30. The San Diego Police Department recommends that a Crime Prevention Through Environmental Design (CPTED) review be requested by their department and implemented for the MMCC.

INFORMATION ONLY:


- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on July 9, 2015 and Resolution No. PC-4716.

Conditional Use Permit No.1296130/PTS No. 368347

Date of Approval: July 9, 2015

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT




Edith Gutierrez
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**


**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

LEADING EDGE REAL ESTATE, LLC
Owner

By 

Michael D. Sherlock
Managing Member

UNITED PATIENTS CONSUMER
COOPERATIVE
Permittee

By 

Michael D. Sherlock
Permittee

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of San Diego)
On July 27, 2015 before me, Vivian M. Gies, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared ~~~~~Edith Gutierrez~~~~~
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Vivian M. Gies
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document PTS 368347/8863 Balboa Ste.E MMCC/CUP #1296130

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

ORIGINAL

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of San Diego)

On July 23rd, 2015 before me, Christine Gasparyan, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Michael DeCarlo Sherlock
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Christine Gasparyan
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Conditional Use Permit #1296130 Document Date: _____
Number of Pages: 7 Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

ORIGINAL

PLANNING COMMISSION
RESOLUTION NO. PC-4716
CONDITONAL USE PERMIT NO. 1296130
8863 BALBOA STE E MMCC PROJECT NO. 368347

WHEREAS, LEADING EDGE REAL ESTATE, LLC, Owner and UNITED PATIENTS CONSUMER COOPERATIVE, Permittee, filed an application with the City of San Diego for a permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 999 square-foot tenant space within an existing, 4,995 square-foot building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1296130), on portions of a 2.51-acre site;

WHEREAS, the project site is located at 8863 Balboa Avenue is in the IL-3-1 Zone, the Airport Influence Area (Miramar and Montgomery Field), Montgomery Field Safety Zone 2, 5, and 6, the 60-65 dB CNEL for Montgomery Field, and within the Kearny Mesa Community Plan Area;

WHEREAS, the project site is legally described as Lot 9, Industrial Park No. 2, Map No. 4113, March 12, 1959;

WHEREAS, on April 22, 2015, the Hearing Officer of the City of San Diego approved Conditional Use Permit No. 1296130 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on March 25, 2015, Stephen Cline and Daniel Burakowski filed appeals of the Hearing Officer's decision;

WHEREAS, on July 9, 2015, the Planning Commission of the City of San Diego considered the appeal of Conditional Use Permit No. 1296130 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on November 20, 2014, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures); and the Environmental Determination was appealed to City Council, which heard and denied the appeal on March 3, 2015 pursuant to Resolution No. 309534;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated July 9, 2015.

FINDINGS:

Conditional Use Permit Approval – Section §126.0305

- 1. The proposed development will not adversely affect the applicable land use**

Plan.

The proposed project is a request for a Conditional Use Permit to operate in a 999 square-foot tenant space within an existing, 4,995 square-foot one-story building. The 2.51-acre site is located at 8863 Balboa Avenue in the IL-3-1 Zone, the Airport Influence Area (Miramar and Montgomery Field), Montgomery Field Safety Zone 2, 5, and 6, the 60-65 dB CNEL for Montgomery Field, and within the Kearny Mesa Community Plan area.

The site is designated Industrial in the Kearny Mesa Community Plan. The Industrial designation is intended for manufacturing, assembling, processing, warehousing or transporting goods or products. The Kearny Mesa Community Plan encourages continued development of Kearny Mesa as a regional employment center, containing a mix of industrial, office, retail and compatible housing land uses. The proposed MMCC was reviewed by MCAS Miramar and determined to be consistent with the Air Installation Compatible Use Zone (AICUZ) noise and safety compatibility guidelines.

The 2.51-acre site is zoned IL-3-1 and has eight detached buildings constructed in 1969. The proposed MMCC is located on the far southwest side of the lot. The existing uses on the site consist of vehicle sales and services, retail and commercial services (business services-offices). The existing uses are consistent with the Industrial designation of the community plan. The surrounding parcels are within the IL-2-1 Zone except from the south parcel which is Montgomery Field Airport and is unzoned. The proposed MMCC, classified as commercial services, is a compatible use for this location with a Conditional Use Permit and is consistent with the community plan, therefore will not adversely affect the applicable land use plan.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

The proposed 999 square-foot MMCC site located at 8863 Balboa Avenue is within an existing 4,995 square-foot building on a 2.51-acre site. The existing tenant space is currently being used for vehicle sales and services. The project proposes interior improvements that include a reception area, dispensary area, office, employee lounge and restroom. The tenant improvement building permit will require compliance with the California Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and all adopted referenced standards. Public improvements include the replacement of the two easterly driveways with City standard driveways on Balboa Avenue.

MMCCs are restricted to four per Council District, 36 city-wide, within commercial and industrial zones in order to minimize the impact on the City and residential neighborhoods. MMCCs require compliance with San Diego Municipal Code (SDMC) section 141.0614 which require a 1,000-foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The project requires compliance with the development conditions in effect for the subject property as described in Conditional Use Permit No. 1296130. The Conditional Use Permit is valid for five years, however may be revoked if the use violates the terms, conditions, lawful requirements, or provisions of the permit.

The referenced regulations and conditions have been determined as necessary to avoid adverse impact upon the health, safety and general welfare of persons patronizing, residing or working within the surrounding area and therefore, the proposed MMCC will not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The proposed 999 square-foot MMCC located at 8863 Balboa Avenue is within an existing 4,995 square-foot building. The 2.51-acre site is zoned IL-3-1 and has eight detached buildings totaling 39,674 square-feet constructed in 1969. The proposed MMCC is located on the far southwest side of the lot. The existing uses on the site consist of vehicle sales and services, retail and commercial services (business services-offices). The project proposes interior improvements that include a reception area, dispensary area, office, employee lounge and restroom. The tenant improvement building permit will require compliance with the California Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and all adopted referenced standards. Public improvements include the replacement of the two easterly driveways with City standard driveways on Balboa Avenue.

MMCCs are allowed in the IL-3-1 zone with a Conditional Use Permit (CUP). The CUP requires MMCCs to comply with SDMC section 141.0614 which requires a 1,000-foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The proposed MMCC is consistent with the land use designation of Industrial. The proposed MMCC meets all development regulations, no deviations are requested, and the permit as conditioned assures compliance with all the development regulations of the San Diego Municipal Code. The proposed MMCC therefore complies with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location.

The proposed 999 square-foot MMCC located at 8863 Balboa Avenue is within an existing 4,995 square-foot building.

MMCCs, classified as commercial services, are allowed in the IL-3-1 zone with a Conditional Use Permit (CUP) and are consistent with the land use designation of Industrial use in the Kearny Mesa Community Plan. The CUP requires MMCCs to comply with SDMC section 141.0614 which requires a

1,000-foot separation, measured between property lines, from: public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCCs prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, security cameras, alarms and a security guard. The security guard must be licensed by the State of California and be present on the premises during business hours. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCCs must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The San Diego Municipal code limits MMCCs to commercial and industrial zones and the number of MMCCs to only four per Council District, 36 city-wide, in order to minimize the impact on the City and residential neighborhoods. The proposed MMCC is located on the far southwest side of a 2.51-acre site that is zoned IL-3-1 and has eight detached buildings. The existing uses on the site consist of vehicle sales and services, retail and commercial services (business services-offices). The proposed MMCC is a compatible use for this location with a Conditional Use Permit, is consistent with the community plan and the permit as conditioned assures compliance with all the development regulations of the San Diego Municipal Code, therefore the use is appropriate at the proposed location.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Conditional Use Permit No. 1296130 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Permit No. 1296130, a copy of which is attached hereto and made a part hereof.



Edith Gutierrez
Development Project Manager
Development Services

Adopted on: July 9, 2015

Job Order No. 24004643

EXHIBIT 3

1 MESSNER REEVES LLP
Nima Darouian, CA Bar No. 271367
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5
6 Attorneys for Plaintiffs
7 SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC., and
BRADFORD HARCOURT

8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11
12 SAN DIEGO PATIENTS COOPERATIVE) Case No. 37-2017-00020661-CU-CO-CTL
CORPORATION, INC., a California)
13 cooperative corporation, and BRADFORD) [Unlimited Jurisdiction]
HARCOURT, an individual,)

14) **COMPLAINT FOR DAMAGES FOR:**
15 Plaintiffs,)

16 v.)

17 RAZUKI INVESTMENTS, L.L.C., a) **1. BREACH OF JOINT VENTURE**
California limited liability company;) **AGREEMENT;**
18 BALBOA AVE COOPERATIVE, a) **2. BREACH OF LEASE AGREEMENT;**
California cooperative corporation;) **3. ANTICIPATORY BREACH OF ORAL**
19 AMERICAN LENDING AND HOLDINGS,) **CONTRACT;**
LLC, a California limited liability company;) **4. BREACH OF THE IMPLIED**
20 SAN DIEGO UNITED HOLDINGS GROUP,) **COVENANT OF GOOD FAITH AND**
LLC, a California limited liability company;) **FAIR DEALING;**
21 CALIFORNIA CANNABIS GROUP, a) **5. BREACH OF CONTRACT WITH**
nonprofit mutual benefit corporation; SALAM) **RESPECT TO A THIRD PARTY**
22 RAZUKI, an individual; NINUS MALAN, an) **BENEFICIARY;**
individual, KEITH HENDERSON, an) **6. PROMISORRY ESTOPPEL;**
23 individual, AND DOES 1-20, INCLUSIVE,) **7. FALSE PROMISE;**
24) **8. FRAUD;**
Defendants.) **9. INTENTIONAL INTERFERENCE WITH**
25) **CONTRACTUAL RELATIONS;**
26) **10. INTERFERENCE WITH PROSPECTIVE**
ECONOMIC ADVANTAGES;
27) **11. BREACH OF FIDUCIARY DUTY;**
28) **12. CIVIL CONSPIRACY;**
29) **13. DECLARATORY RELIEF; AND**
30) **14. INJUNCTIVE RELIEF**
31) **DEMAND FOR JURY TRIAL**

1 Plaintiffs SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC. and
2 BRADFORD HARCOURT (“Plaintiffs”) allege as follows:

3 **THE PARTIES**

4 1. Plaintiff SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC.
5 (“SDPCC”) is, and at all times relevant to this action was, a California cooperative corporation
6 organized and existing under the laws of the State of California, with its principal place of
7 business located in the County of San Diego.

8 2. Plaintiff BRADFORD HARCOURT (“HARCOURT”), an individual, was, and at
9 all times mentioned herein is, a resident of the County of San Diego, State of California.

10 3. Defendant RAZUKI INVESTMENTS, L.L.C., (“RAZUKI INVESTMENTS”) is,
11 and at all times relevant to this action was, a California limited liability company organized and
12 existing under the laws of the State of California, with its principal place of business located in
13 the County of San Diego.

14 4. Defendant BALBOA AVE COOPERATIVE, INC. (“BALBOA AVE”) is, and at
15 all times relevant to this action was, a California cooperative corporation organized and existing
16 under the laws of the State of California, with its principal place of business located in the County
17 of San Diego.

18 5. Defendant AMERICAN LENDING AND HOLDINGS, LLC (“AMERICAN
19 LENDING”) is, and at all times relevant to this action was, a California limited liability company
20 organized and existing under the laws of the State of California, with its principal place of
21 business located in the County of San Diego.

22 6. Defendant SAN DIEGO UNITED HOLDINGS GROUP, LLC (“SAN DIEGO
23 UNITED”) is, and at all times relevant to this action was, a California limited liability company
24 organized and existing under the laws of the State of California, with its principal place of
25 business located in the County of San Diego.

26 7. Defendant CALIFORNIA CANNABIS GROUP (“CALIFORNIA CANNABIS
27 GROUP”) is, and at all times relevant to this action was, a California nonprofit mutual benefit
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1 corporation organized and existing under the laws of the State of California, with its principal
2 place of business located in the County of San Diego.

3 8. Defendant SALAM RAZUKI (“RAZUKI”), an individual, was, and at all times
4 mentioned herein is, a resident of the County of San Diego, State of California.

5 9. Defendant NINUS MALAN (“MALAN”), an individual, was, and at all times
6 mentioned herein is, a resident of the County of San Diego, State of California.

7 10. Defendant KEITH HENDERSON (“HENDERSON”), an individual, was, and at
8 all times mentioned herein is, a resident of the County of San Diego, State of California.

9 11. Plaintiffs are informed and believe and based thereon allege that the fictitiously-
10 named Defendants sued herein as Does 1 through 20, and each of them, are in some manner
11 responsible or legally liable for the actions, events, transactions and circumstances alleged herein.
12 The true names and capacities of such fictitiously-named Defendants, whether individual,
13 corporate, associate or otherwise, are presently unknown to Plaintiffs, and Plaintiffs will seek
14 leave of Court to amend this Complaint to assert the true names and capacities of such
15 fictitiously-named Defendants when the same have been ascertained. For convenience, each
16 reference to a named Defendant herein shall also refer to Does 1 through 20. All Defendants,
17 including both the named Defendant and those referred to herein as Does 1 through 20, are
18 sometimes collectively referred to herein as “Defendants.”

19 12. Plaintiffs are informed and believe and based thereon allege that Defendants, and
20 each of them, were and are the agents, employees, partners, joint-venturers, co-conspirators,
21 owners, principals, and employers of the remaining Defendants, and each of them are, and at all
22 times herein mentioned were, acting within the course and scope of that agency, partnership,
23 employment, conspiracy, ownership or joint venture. Plaintiffs are further informed and believe
24 and based thereon allege that the acts and conduct herein alleged of each such Defendant were
25 known to, aided and abetted, authorized by and/or ratified by the other Defendants, and each of
26 them.

27 13. There exists, and at all times herein alleged, there existed, a unity of interest in
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1 ownership between certain Defendants and other certain Defendants such that any individuality
2 and separateness between the certain Defendants has ceased and these Defendants are the alter-
3 ego of the other certain Defendants and exerted control over those Defendants. Adherence to the
4 fiction of the separate existence of these certain Defendants as an entity distinct from other certain
5 Defendants will permit an abuse of the corporate privilege and would sanction fraud and promote
6 injustice.

7 **PERSONAL JURISDICTION AND VENUE**

8 14. Defendants, and each of them, are subject to the jurisdiction of the Courts of the
9 State of California by virtue of their business dealings and transactions in California.

10 15. Venue is proper in this action pursuant to California *Code of Civil Procedure*
11 Section 395.5 because San Diego County, California is the principal place of business of
12 Defendants and they regularly carry on and engage in business in San Diego County. Moreover,
13 the contracts at issue were negotiated and entered in San Diego County.

14 **ALTER EGO ALLEGATIONS**

15 16. Plaintiffs are informed and believe and thereon allege that Defendants RAZUKI
16 INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED,
17 CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5, and each of them, were
18 at all relevant times the alter egos of individual defendants RAZUKI, MALAN, and DOES 6
19 through 10 by reason of the following:

20 a. Plaintiffs are informed and believe and thereon allege that said individual
21 Defendants, at all times herein mentioned, dominated, influenced and controlled Defendants
22 RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED,
23 CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 and the officers thereof
24 as well as the business, property, and affairs of each said corporate entity.

25 b. Plaintiffs are informed and believe and thereon allege that at all times
26 herein mentioned, there existed and now exists a unity of interest and ownership between
27 individual defendants RAZUKI, MALAN, and DOES 6 through 10 and Defendants RAZUKI
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1 INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED,
2 CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5, such that the
3 individuality and separateness of said individual Defendants and each of the alter egos have
4 ceased.

5 c. Plaintiffs are informed and believe and thereon allege that, at all times
6 since the incorporation of each, RAZUKI INVESTMENT, BALBOA AVE, AMERICAN
7 LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES
8 1 through 5 has been and now is a mere shell and naked framework which said individual
9 Defendants used as a conduit for the conduct of their personal business, property and affairs.

10 d. Plaintiffs are informed and believe and thereon allege that, at all times
11 herein mentioned, each of RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING,
12 SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5
13 were created and continued pursuant to a fraudulent plan, scheme and device conceived and
14 operated by said individual Defendants, whereby the income, revenue and profits of each of
15 RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING, CALIFORNIA
16 CANNABIS GROUP and Defendants DOES 1 through 5 were diverted by said individual
17 Defendants to themselves.

18 e. Plaintiffs are informed and believe and thereon allege that, at all times
19 herein mentioned, each of RAZUKI INVESTMENT, BALBOA AVE, AMERICAN LENDING,
20 SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5
21 were organized by said individual Defendants as a device to avoid individual liability and for the
22 purpose of substituting financially irresponsible corporate entities in the place and instead of said
23 individual Defendants and, accordingly, each of RAZUKI INVESTMENT, BALBOA AVE,
24 AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and
25 Defendants DOES 1 through 5 were formed with capitalization totally inadequate for the business
26 in which said corporate entity was engaged.

27 f. Plaintiffs are informed and believe and thereon allege that each RAZUKI
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1 INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED,
2 CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 are insolvent.

3 g. By virtue of the foregoing, adherence to the fiction of the separate
4 corporate existence of each of RAZUKI INVESTMENT, BALBOA AVE, AMERICAN
5 LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES
6 1 through 5 would, under the circumstances, sanction a fraud and promote injustice in that
7 Plaintiff would be unable to recover upon any judgment in their favor.

8 h. Plaintiffs are informed and believe and thereon allege that, at all times
9 relevant hereto, the individual Defendants and RAZUKI INVESTMENT, BALBOA AVE,
10 AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and
11 Defendants DOES 1 through 5 acted for each other in connection with the conduct hereinafter
12 alleged and that each of them performed the acts complained of herein or breached the duties
13 herein complained of as agents of each other and each is therefore fully liable for the acts of the
14 other.

15 **BACKGROUND AND GENERAL ALLEGATIONS**

16 17. In or around April 2013, HARCOURT and his former business partner, Michael
17 Sherlock (“Sherlock”), initiated the process of obtaining a Conditional Use Permit (“CUP”) with
18 the City of San Diego to operate a Medical Marijuana Consumer Cooperative (“MMCC”) located
19 at 8863 Balboa Avenue, Unit E, San Diego, California 92123 (the “Property”).

20 18. In or around July 2015, the City of San Diego approved and granted CUP No.
21 1296130 in connection with the Property.

22 19. After Sherlock passed away in or around December 2015, HARCOURT submitted
23 documentation to the City of San Diego in order to remove Sherlock as the MMCC’s responsible
24 person, and HARCOURT then finalized the recording of the CUP with the City of San Diego
25 under SDPCC. Moreover, HARCOURT identified himself as the MMCC’s responsible person.

26 20. In or around March 2016, CUP No. 1296130 was recorded with the City of San
27 Diego.

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1 21. As a result of the nearly three (3) year process to obtain, secure, and record CUP
2 No. 1296130 with the City of San Diego, Plaintiffs incurred costs and expenses in the amount of
3 approximately \$575,000.00.

4 22. In or around March 2016, the real estate owner of the Property was High Sierra
5 Equity, LLC (“High Sierra”). In addition, a property located at 8861 Balboa Avenue, Unit B, San
6 Diego, California 92123 (“8861 Balboa”) provided the requisite parking for the Property, and was
7 owned by the Melograno Trust (“Melograno”). At all relevant times, High Sierra and Melograno
8 were in a business relationship with Plaintiff HARCOURT.

9 23. In or around summer 2016, High Sierra and Melograno sought out potential buyers
10 for the Property. Plaintiffs were included in, and directly involved with, the negotiations
11 concerning the sale of the Property because: (i) the City of San Diego issued Plaintiff SDPCC a
12 Medical Marijuana Consumer Cooperative Permit, HARCOURT was approved as the
13 Responsible Managing Officer/Responsible Person for SDPCC, and Plaintiffs were therefore
14 permitted by the City of San Diego to operate an MMCC on the Property; (ii) Plaintiffs’ CUP No.
15 1296130, which runs with the land, substantially increased the value of the Property, and (iii) the
16 ongoing business relationship between High Sierra/Melograno and Plaintiff HARCOURT.

17 24. In or around July 2016, real estate broker HENDERSON, brought an all cash offer
18 of \$1.8 million in connection with the purchase of the Property, 8861 Balboa, and SDPCC on
19 behalf of CALIFORNIA CANNABIS GROUP. On information and belief, Defendant MALAN
20 is a director of CALIFORNIA CANNABIS GROUP.

21 25. Pursuant to the initial terms of CALIFORNIA CANNABIS GROUP’s offer,
22 approximately \$750,000 of the \$1.8 million amount would be apportioned for the real estate, and
23 approximately \$1,050,000.00 of the \$1.8 million amount would be apportioned for SDPCC.
24 CALIFORNIA CANNABIS GROUP provided a proof of funds, as well as corporate documents,
25 to demonstrate that they could support this offer.

26 26. However, on information and belief, CALIFORNIA CANNABIS GROUP was
27 unable to perform and the proof of funds that was provided was not legitimate. Thus, in or
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1 around August 2016, HENDERSON, who at all relevant times, was acting on behalf of RAZUKI
2 and RAZUKI INVESTMENTS and served as an agent on behalf of his principals RAZUKI and
3 RAZUKI INVESTMENTS, made another offer to Plaintiffs in connection with the Property and
4 SDPCC on behalf of RAZUKI and RAZUKI INVESTMENTS. On information and belief,
5 Defendant MALAN is closely associated with RAZUKI and RAZUKI INVESTMENTS.

6 27. Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON proposed
7 that: (1) RAZUKI and RAZUKI INVESTMENTS would purchase both the Property and 8861
8 Balboa for \$375,000.000 each or a total of \$750,000.00; (2) in lieu of purchasing SDPCC for
9 \$1,050,000.00, RAZUKI and RAZUKI INVESTMENTS would permit SDPCC to continue to
10 operate an MMCC on the Property as a tenant upon RAZUKI and RAZUKI INVESTMENTS’
11 purchase of the Property; and (3) RAZUKI and HARCOURT would form a joint venture and/or
12 partnership, under which they would have a joint interest in a common business undertaking, an
13 understanding as to the sharing of profits and losses, and a right of joint control, in connection
14 with SDPCC, and that RAZUKI would pay \$50,000.00 as a show of good faith in moving
15 forward with the joint venture and/or partnership.

16 28. In connection with the joint venture and/or partnership, Defendants RAZUKI,
17 RAZUKI INVESTMENTS, and HENDERSON specifically proposed that HARCOURT and
18 RAZUKI would form a joint venture that would provide business services to SDPCC;
19 HARCOURT and RAZUKI would split equity 50/50 in the joint venture; RAZUKI’s contribution
20 would be based upon his capitalization of the company, while HARCOURT’s contribution would
21 be based upon services rendered; and that RAZUKI would bear the sole financial responsibility
22 for the plans, permits, tenant improvements, general contractor, and all legal expenses, inventory,
23 operating expenses, reserves, fees, and all other costs associated with the operation and
24 management of the MMCC located at the Property. The name for this company was later
25 tentatively called “San Diego Business Services Group, LLC.”

26 29. In or around August 2016, Plaintiffs accepted the offer made by Defendants
27 RAZUKI, RAZUKI INVESTMENTS, and HENDERSON, and various documents and drafts
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1 were prepared reflecting the parties' agreement. Furthermore, High Sierra/Melograno also
2 accepted Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSONS' offer in
3 connection with the Property and 8861 Balboa.

4 30. On or around August 18, 2016, Defendant RAZUKI INVESTMENTS executed a
5 commercial lease agreement (the "Lease") with Plaintiff SDPCC in connection with the Property.
6 Pursuant to the terms of the Lease: (i) RAZUKI INVESTMENTS served as the landlord, while
7 SDPCC served as the tenant; (ii) the Commencement Date was October 1, 2016, and the
8 expiration date of the Lease was October 1, 2020; and (iii) upon the expiration of the Lease;
9 SDPCC had the right to exercise a five (5) year option to extend.

10 31. On or around August 22, 2016, Defendant RAZUKI INVESTMENTS and High
11 Sierra entered into a Commercial Property Purchase Agreement in connection with the Property,
12 in which RAZUKI INVESTMENTS agreed to purchase the Property for an all cash offer of
13 \$375,000. In addition, the contracting parties to the Commercial Property Purchase Agreement
14 intended to confer a benefit to SDPCC. Specifically, as stated in Paragraph 6 of the agreement
15 under the "Other Terms" section: "This transaction is to close concurrently with both 8861
16 Balboa Ave Unit B, and San Diego Patients Consumer Cooperative MMC."

17 32. On or around August 24, 2016, an Escrow Agreement was entered into between
18 Defendant RAZUKI INVESTMENTS and High Sierra in connection with the Property.
19 Moreover, the contracting parties to the Escrow Agreement intended to confer a benefit to
20 SDPCC. Specifically, as stated in the "Instructions" section of the agreement, "escrow is
21 contingent upon the execution by both parties of the operating agreement and the promissory note
22 for and between San Diego Business Services Group, LLC and San Diego Patients Cooperative
23 Corporation, as set out in section 6 of the 'Agreement.'"

24 33. On or around August 31, 2016, Defendants RAZUKI and RAZUKI
25 INVESTMENTS, through their agent HENDERSON, prepared a written draft joint venture
26 agreement outlining the basic terms of the joint venture and/or partnership, and provided it to
27 HARCOURT.

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1 34. In or around September 30, 2016, Defendants RAZUKI and RAZUKI
2 INVESTMENTS made a payment of \$50,000.00 to HARCOURT as a show of good faith in
3 moving forward with the joint venture and/or partnership.

4 35. In or around late September 2016/early October 2016, Plaintiffs were concerned
5 regarding a potential looming dispute with the Homeowners Association (“HOA”) for the
6 Property. Plaintiffs were concerned that a dispute with the HOA could require Plaintiffs to
7 surrender the CUP or otherwise restrict Plaintiffs from operating an MMCC at the Property.
8 Furthering this concern was that the Property was located in a city district where only up to four
9 properties within the district may be used to operate an MMCC, and that, on information and
10 belief, RAZUKI and RAZUKI INVESTMENTS were associated with a separate property and/or
11 were in a position to profit from a separate property that was near the top of the “waiting list” in
12 case one of these four spots opened up. On information and belief, this separate property is
13 currently being occupied by CALIFORNIA CANNABIS GROUP.

14 36. Because it would independently benefit RAZUKI and RAZUKI INVESTMENTS
15 if Plaintiffs surrendered their CUP, RAZUKI and RAZUKI INVESTMENTS agreed to pay
16 HARCOURT in the amount of \$1,500,000.00 if Plaintiffs surrendered their CUP or otherwise
17 gave up one of the four spots within the district that may be used to operate an MMCC.

18 37. On or around October 13, 2016, a revised Memorandum of Understanding was
19 prepared that reflected the parties’ agreement that RAZUKI and RAZUKI INVESTMENTS
20 would compensate HARCOURT the sum of \$1,500,000.00 if the CUP were required to be
21 surrendered.

22 38. On or around October 17, 2016, escrow on the Property closed, and the deal
23 between RAKUZI INVESTMENTS and High Sierra was finalized. However, on information and
24 belief, Defendants HENDERSON, RAZUKI, and RAZUKI INVESTMENTS conspired together
25 to cause the release of the contingencies in the Commercial Property Purchase Agreement and
26 Escrow Agreement that conferred benefits to SDPCC, including but not limited to the agreement
27 that escrow was contingent upon the execution of the operating agreement and promissory note
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1 with SDPCC, without the approval of Plaintiffs.

2 39. On or around October 17, 2016, following the close of the aforementioned deal,
3 HENDERSON sent an email to Plaintiffs, which acknowledged that he knew there was “some
4 concern about the operating agreements not being executed.” However, HENDERSON further
5 represented that he had spoken with RAZUKI, and that RAZUKI was “excited about moving
6 forward as a team,” and that RAZUKI was available on October 18, 2016 “to sign the operating
7 agreements and align ourselves.”

8 40. Just minutes after HENDERSON sent his email on October 17, 2016, RAZUKI
9 replied all to HENDERSON’s email, and RAZUKI thanked everyone “for all the work that
10 everyone put to close this deal[.]” RAZUKI further stated that he was “very excited about what
11 happened today,” but also apologized for having a “very busy day.” RAZUKI concluded his
12 email by stating that he would be “available around 2 p.m.” the following day.

13 41. On or around October 18, 2016, the grant deed reflecting the transfer of the
14 Property to Defendant RAZUKI INVESTMENTS LLC was recorded with the San Diego County
15 Recorder. On information and belief, the Property has since been transferred to AMERICAN
16 LENDING and/or SAN DIEGO UNITED.

17 42. On information and belief, following the transfer of the Property, Defendants
18 RAZUKI and RAZUKI INVESTMENTS directed, authorized and/or ratified a representative
19 and/or agent to take the following actions without the knowledge or consent of Plaintiffs: (i)
20 contact the San Diego Development Services Department; (ii) falsely claim that the representative
21 and/or agent represented Defendants RAZUKI and RAZUKI INVESTMENTS and Plaintiff
22 SDPCC; and (iii) request that the cooperative identified on the city permit be changed to
23 BALBOA AVE and that the responsible person name be changed to NINUS MALAN. On
24 information and belief, the city permit was then modified to indicate that BALBOA AVE was
25 affiliated with the MMCC at the Property.

26 43. Moreover, despite the parties’ agreements, as well as the various representations
27 made by Defendants RAZUKI and RAZUKI INVESTMENTS, RAZUKI and RAZUKI
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1 INVESTMENTS: (i) failed to comply with the terms of the Lease; (ii) failed to execute a joint
2 venture and/or partnership agreement, operating agreement, and/or promissory note concerning
3 the MMCC; (iii) falsely misrepresented to third parties that their \$800,000.00 purchase of the
4 Property included the rights to operate an MMCC on the Property; and (iv) interfered with
5 Plaintiff SDPCC's rights concerning the Property and CUP.

6 44. On information and belief, in or around April 2017, Defendants RAZUKI,
7 RAZUKI INVESTMENTS, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN
8 DIEGO UNITED opened a medical marijuana dispensary at the Property, pursuant to the rights
9 granted by CUP No. 1296130, under the name BALBOA AVE. Furthermore, on information and
10 belief, in or around May 2017, a legal dispute arose between Defendants RAZUKI, RAZUKI
11 INVESTMENTS, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO
12 UNITED on the one hand, and the HOA on the other hand, concerning the Property, and this
13 dispute may result in the surrender of the CUP.

14 **FIRST CAUSE OF ACTION**

15 **BREACH OF JOINT VENTURE AGREEMENT**

16 **(Plaintiff HARCOURT Against Defendant RAZUKI)**

17 45. Plaintiffs incorporate by reference and re-allege each and every allegation
18 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

19 46. Plaintiff HARCOURT and Defendant RAZUKI entered into an oral joint venture
20 agreement in or around August 2016, in which Defendant RAZUKI agreed to form a joint venture
21 and/or partnership with HARCOURT. The parties further agreed that a be-formed-company
22 would provide business services to SDPCC, that RAZUKI's contribution would be based upon
23 his capitalization of the company, and that RAZUKI would bear the sole financial responsibility
24 for the plans, permits, tenant improvements, general contractor, and all legal expenses, inventory,
25 operating expenses, reserves, fees, and all other costs associated with the operation and
26 management of the MMCC located at the Property.

27 47. At all relevant times, Plaintiff HARCOURT either had performed or was ready,
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1 willing and able to perform all conditions, covenants and promises required of him in accordance
2 with the terms of the joint venture agreement.

3 48. Defendant RAZUKI breached the joint venture agreement.

4 49. As a direct and proximate result of the material breaches of the terms of the joint
5 venture agreement by RAZUKI, Plaintiff HARCOURT has suffered, and continue to suffer,
6 substantial monetary damages in an amount according to proof at time of trial.

7 **SECOND CAUSE OF ACTION**

8 **BREACH OF LEASE AGREEMENT**

9 **(Plaintiff SDPCC Against Defendant RAZUKI INVESTMENTS)**

10 50. Plaintiffs incorporate by reference and re-allege each and every allegation
11 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

12 51. Plaintiff SDPCC and Defendant RAZUKI INVESTMENTS entered into a written
13 Lease in or around August 18, 2016. Pursuant to the terms of the Lease, tenant SDPCC is entitled
14 to the exclusive and undisturbed enjoyment of the Property from October 1, 2016 to October 1,
15 2020, and SDPCC also has the option to extend the terms of the lease by five (5) years.

16 52. At all relevant times, Plaintiff SDPCC either had performed or was ready, willing
17 and able to perform all conditions, covenants and promises required of it in accordance with the
18 terms of the written lease agreement.

19 53. RAZUKI INVESTMENTS breached the Lease by denying Plaintiff SDPCC entry
20 to the Property and interfering with Plaintiff SDPCC's right to occupy the Property as a tenant.

21 54. As a direct and proximate result of the material breaches of the terms of the written
22 lease agreement by RAZUKI INVESTMENTS, Plaintiff SDPCC has suffered, and continues to
23 suffer, substantial monetary damages in an amount according to proof at time of trial.

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1 **THIRD CAUSE OF ACTION**

2 **ANTICIPATORY BREACH OF ORAL AGREEMENT**

3 **(Plaintiff HARCOURT Against Defendants RAZUKI and RAZUKI INVESTMENTS)**

4 55. Plaintiffs incorporate by reference and re-allege each and every allegation
5 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

6 56. Plaintiff HARCOURT and Defendant RAZUKI entered into an oral agreement in
7 or around September 2016. Pursuant to this agreement, RAZUKI and RAZUKI INVESTMENTS
8 agreed that in exchange for Plaintiffs having to give up one of the four spots within the district
9 that may be used to operate an MMCC, RAZUKI and RAZUKI INVESTMENTS would pay
10 HARCOURT in the amount of \$1,500,000.00.

11 57. At all relevant times, Plaintiffs either had performed or were ready, willing and
12 able to perform all conditions, covenants and promises required of him in accordance with the
13 terms of the oral agreement.

14 58. RAZUKI anticipatorily repudiated the oral agreement before performance was
15 required by clearly and positively indicating, by words and/or conduct, that RAZUKI would not
16 pay HARCOURT \$1,500,000.00 should CUP No. 1296130 be surrendered or Plaintiffs were
17 otherwise required to give up one of the four spots within the district that may be used to operate
18 an MMCC due to a dispute with the HOA.

19 59. As a direct and proximate result of the anticipatory breach of the terms of the oral
20 agreement by RAZUKI, Plaintiff HARCOURT has suffered, and continue to suffer, substantial
21 monetary damages in an amount according to proof at time of trial.

22 **FOURTH CAUSE OF ACTION**

23 **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

24 **(Plaintiffs Against Defendants RAZUKI and RAZUKI INVESTMENTS)**

25 60. Plaintiffs incorporate by reference and re-allege each and every allegation
26 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

27 61. Under California law, there is implied in every contract a covenant by each party
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1 not to do anything that will deprive the other parties thereto of the benefits of the contract. This
2 covenant not only imposes upon each contracting party the duty to refrain from doing anything
3 which would render performance of the contract impossible by any act of his own, but also the
4 duty to do everything that the contract presupposes that he will do to accomplish its purpose.

5 62. Defendants RAZUKI and RAZUKI INVESTMENTS were at all times bound by
6 such implied covenants of good faith and fair dealing.

7 63. Defendants RAZUKI and RAZUKI INVESTMENTS' conduct as alleged herein
8 has unfairly interfered with the rights of Plaintiffs to receive the benefits of the joint venture
9 agreement, the lease agreement, and the September 2016 oral agreement, and constitute a breach
10 of the implied covenant of Good Faith and Fair Dealing.

11 64. Moreover, Defendants RAZUKI and RAZUKI INVESTMENTS' conduct as
12 alleged herein, which injured Plaintiffs' right to receive the benefits of the agreements, was in bad
13 faith due to Defendants RAZUKI and RAZUKI INVESTMENTS' willful interference with and
14 failure to cooperate with Plaintiffs in the performance of the contracts.

15 65. As a direct and proximate result of Defendants RAZUKI and RAZUKI
16 INVESTMENTS' material breaches of the implied covenant of good faith and fair dealing
17 inherent in the joint venture agreement, the lease agreement, and the September 2016 oral
18 agreement, as alleged herein, Plaintiffs have suffered, and continue to suffer, substantial monetary
19 damages in an amount to be proven at time of trial.

20 **FIFTH CAUSE OF ACTION**

21 **BREACH OF CONTRACT WITH RESPECT TO A THIRD PARTY BENEFICIARY**

22 **(Plaintiff SDPCC Against Defendants RAZUKI and RAZUKI INVESTMENTS)**

23 66. Plaintiffs incorporate by reference and re-allege each and every allegation
24 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

25 67. Defendant RAZUKI INVESTMENTS on the one hand, and High Sierra on the
26 other hand, entered into a written Commercial Property Purchase Agreement on or around August
27 22, 2016, and also entered into a written Escrow Agreement on or August 24, 2016.

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1 **SEVENTH CAUSE OF ACTION**

2 **FALSE PROMISE**

3 **(Plaintiffs Against Defendants RAZUKI and RAZUKI INVESTMENTS)**

4 75. Plaintiffs incorporate by reference and re-allege each and every allegation
5 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

6 76. Defendants RAZUKI and RAZUKI INVESTMENTS made a promise to Plaintiffs,
7 and this promise was important to the transaction.

8 77. Defendants RAZUKI and RAZUKI INVESTMENTS did not intend to perform
9 this promise when they made it.

10 78. Defendants RAZUKI and RAZUKI INVESTMENTS intended that Plaintiffs rely
11 on this promise, and Plaintiffs reasonably relied on Defendants RAZUKI and RAZUKI
12 INVESTMENTS' promise.

13 79. Defendants RAZUKI and RAZUKI INVESTMENTS did not perform the
14 promised act.

15 80. Plaintiffs were harmed, and Plaintiffs' reliance on Defendants RAZUKI and
16 RAZUKI INVESTMENTS' promise was a substantial factor in causing Plaintiffs' harm.

17 81. Plaintiffs have been damaged in amount to be determined according to proof at
18 Trial.

19 **EIGHTH CAUSE OF ACTION**

20 **FRAUD**

21 **(Plaintiffs Against Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON)**

22 82. Plaintiffs incorporate by reference and re-allege each and every allegation
23 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

24 83. Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON represented
25 to Plaintiffs that certain important facts were true – namely, that RAZUKI and RAZUKI
26 INVESTMENTS would “move together as a team” with Plaintiffs, and that RAZUKI would sign
27 the operating agreement between San Diego Business Services Group, LLC and SDPCC.
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1 causing Plaintiffs' harm.

2 **TENTH CAUSE OF ACTION**

3 **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGES**

4 **(Plaintiff SDPCC Against Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN,**
5 **BALBOA AVE, HENDERSON, SAN DIEGO UNITED and AMERICAN LENDING)**

6 93. Plaintiffs incorporate by reference and re-allege each and every allegation
7 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

8 94. Plaintiff SDPCC and various medical marijuana patients, distributors, cultivators,
9 and/or manufacturers were in economic relationships that probably would have resulted in an
10 economic benefit to SDPCC.

11 95. Defendants, and each of them, knew of these relationships.

12 96. Defendants intended to disrupt these relationships, or in the alternative, knew or
13 should have known that these relationships would have been disrupted if they failed to act with
14 reasonable care.

15 97. Defendants, and each of them, engaged in wrongful conduct through, among other
16 things, fraud and interference with contractual relations.

17 98. Plaintiff SDPCC's relationships were disrupted.

18 99. Plaintiff SDPCC was harmed, and Defendants' wrongful conduct was a substantial
19 factor in causing Plaintiff SDPCC's harm.

20 **ELEVENTH CAUSE OF ACTION**

21 **BREACH OF FIDUCIARY DUTY**

22 **(Plaintiff HARCOURT Against Defendant RAZUKI)**

23 100. Plaintiffs incorporate by reference and re-allege each and every allegation
24 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

25 101. Plaintiff HARCOURT is informed and believes and based thereon alleges that, at
26 all times material hereto, HARCOURT and RAZUKI were in a joint venture with each other, as
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1 there was an undertaking by HARCOURT and RAZUKI to carry out a single business enterprise
2 jointly for profit.

3 102. Plaintiff HARCOURT is informed and believes and based thereon alleges that, at
4 all times material hereto, a fiduciary relationship existed between HARCOURT and RAZUKI
5 pursuant to which RAZUKI owed HARCOURT a fiduciary duty to act at all times honestly,
6 loyally, with the utmost good faith and in HARCOURT's best interests in that HARCOURT and
7 RAZUKI's relationship was founded on trust and confidence, and HARCOURT knowingly
8 undertook to act on behalf of and for the benefit of the joint venture between HARCOURT and
9 RAZUKI.

10 103. Plaintiff HARCOURT is informed and believes and based thereon alleges that
11 RAZUKI breached his fiduciary duty owed to HARCOURT.

12 104. As a direct and proximate result of these breaches, Plaintiff HARCOURT has been
13 damaged in amount to be determined according to proof at Trial.

14 105. RAZUKI acted with malice and with a conscious disregard for Plaintiff
15 HARCOURT's rights and interests in connection with the acts described herein. Plaintiff
16 HARCOURT is therefore entitled to an award of punitive damages to punish Defendant
17 RAZUKI's wrongful conduct and deter future conduct.

18 **TWELFTH CAUSE OF ACTION**

19 **CIVIL CONSPIRACY**

20 **(Plaintiffs Against All Defendants)**

21 106. Plaintiffs incorporate by reference and re-allege each and every allegation
22 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

23 107. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING,
24 SAN DIEGO UNITED, and CALIFORNIA CANNABIS GROUP were aware that RAZUKI and
25 RAZUKI INVESTMENTS planned to engage in wrongful acts directed towards Plaintiff,
26 including (i) causing Plaintiffs to rely upon various misrepresentations and false promises and (ii)
27 breaching the oral and written agreements entered into with Plaintiffs, such that an MMCC would
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1 operate at the Property without Plaintiffs' involvement.

2 108. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING,
3 SAN DIEGO UNITED, and CALIFORNIA CANNABIS GROUP agreed with RAZUKI and
4 RAZUKI INVESTMENTS, and intended that these aforementioned wrongful acts be committed.

5 **THIRTEENTH CAUSE OF ACTION**

6 **DECLARATORY RELIEF**

7 **(Plaintiff SDPCC Against Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN,**
8 **BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING)**

9 109. Plaintiffs incorporate by reference and re-allege each and every allegation
10 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

11 110. An actual dispute and controversy has arisen between Plaintiff SDPCC, on the one
12 hand, and Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN
13 DIEGO UNITED and AMERICAN LENDING, on the other, concerning their rights and duties
14 with respect to the Lease. Plaintiff SDPCC contends that it has the exclusive right to occupy and
15 enjoy the Property and operate an MMCC on the Property. Defendants RAZUKI, RAZUKI
16 INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN
17 LENDING claim that they have the right to enter and permanently occupy the Property for their
18 own benefit, and/or evict or otherwise restrict Plaintiff SDPCC from entering the Property and
19 operating an MMCC on the Property.

20 111. Plaintiffs seeks a declaration of its rights and duties and Defendants RAZUKI,
21 RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN
22 LENDING's rights and duties and specifically seeks a declaration that, Plaintiff SDPCC is
23 entitled to the exclusive use and benefit of the Property during the terms of the Lease.

24 112. A judicial declaration is necessary and appropriate at this time, and under the
25 circumstances, because if Plaintiffs are correct, Plaintiffs are entitled to all benefits and rights
26 arising out of the Lease. For these reasons, it is appropriate for this Court to declare the rights and
27 obligations of the parties with respect to the issues described above.

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1 **FOURTEENTH CAUSE OF ACTION**

2 **INJUNCTIVE RELIEF**

3 **(Plaintiffs Against Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA**
4 **AVE, SAN DIEGO UNITED and AMERICAN LENDING)**

5 113. Plaintiffs incorporate by reference and re-allege each and every allegation
6 contained in paragraphs 1 through 44 of this Complaint as though fully set forth herein.

7 114. Plaintiffs are informed and believe and thereon allege that the actions and conduct
8 of Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO
9 UNITED and AMERICAN LENDING, and each of them, as alleged herein, has caused, and
10 threatens to cause, irreparable harm and injury to Plaintiffs inasmuch as Defendants, and each of
11 them, continue to interfere with Plaintiff SDPCC's exclusive use and benefit of the Property
12 during the terms of the Lease by preventing Plaintiff SDPCC from entering and/or occupying the
13 Property, thereby preventing Plaintiff SDPCC from operating an MMCC on the Property.

14 115. The conduct of Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN,
15 BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING, and each of them, unless
16 enjoined and restrained by order of this Court, will cause great and irreparable injury to Plaintiff
17 SDPCC inasmuch as Defendants, and each of them, contend that they have the right to restrict
18 and/or deny Plaintiff SDPCC's access to the Property.

19 116. Plaintiff SDPCC has no adequate remedy at law for the injuries currently being
20 suffered and/or which will be suffered, as it is, or will be, virtually impossible for Plaintiff to
21 determine the precise amount of damages it will suffer if Defendants, and each of them, are not
22 enjoined or restrained from interfering with Plaintiff SDPCC's exclusive use and benefit of the
23 Property.

24 117. Plaintiffs also has no adequate remedy at law in that, without an injunction by the
25 Court, preventing Defendants, and each of them, from further interfering with Plaintiff SDPCC's
26 exclusive use and benefit of the Property, which includes operating an MMCC on the Property,
27 the injury to Plaintiffs will continue indefinitely causing future losses and damages.

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1 118. As a result of the foregoing acts and conduct, Plaintiffs requests that the Court
2 enter a preliminary injunction and, thereafter, a permanent injunction, enjoining Defendants
3 RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and
4 AMERICAN LENDING, and each of them, and their agents, servants, employees,
5 representatives, assigns, and all persons acting in concert with them, from directly or indirectly
6 interfering with Plaintiff SDPCC's exclusive use and benefit of the Property during the terms of
7 the Lease.

8 **PRAYER**

9 WHEREFORE, Plaintiffs SDPCC and HARCOURT pray for judgment against
10 Defendants, and each of them, as follows:

11 **AS TO THE FIRST CAUSE OF ACTION FOR BREACH OF JOINT VENTURE**

12 **AGREEMENT**

- 13 1. For consequential and incidental damages and prejudgment interest according to
14 proof at trial;
- 15 2. For costs of suit incurred herein; and
- 16 3. For such other and further relief as the Court deems just and proper.

17 **AS TO THE SECOND CAUSE OF ACTION FOR BREACH OF LEASE AGREEMENT**

- 18 1. For consequential and incidental damages and prejudgment interest according to
19 proof at trial;
- 20 2. For costs of suit incurred herein; and
- 21 3. For such other and further relief as the Court deems just and proper.

22 **AS TO THE THIRD CAUSE OF ACTION FOR ANTICIPATORY BREACH OF ORAL**

23 **CONTRACT**

- 24 1. For consequential and incidental damages and prejudgment interest according to
25 proof at trial;
- 26 2. For costs of suit incurred herein; and
- 27 3. For such other and further relief as the Court deems just and proper.
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1 **AS TO THE FOURTH CAUSE OF ACTION FOR BREACH OF THE IMPLIED**
2 **COVENANT OF GOOD FAITH AND FAIR DEALING**

- 3 1. For consequential and incidental damages and prejudgment interest according to
4 proof at trial;
- 5 2. For costs of suit incurred herein; and
- 6 3. For such other and further relief as the Court deems just and proper.

7 **AS TO THE FIFTH CAUSE OF ACTION FOR BREACH OF CONTRACT WITH**
8 **RESPECT TO A THIRD PARTY BENEFICIARY**

- 9 1. For consequential and incidental damages and prejudgment interest according to
10 proof at trial;
- 11 2. For costs of suit incurred herein; and
- 12 3. For such other and further relief as the Court deems just and proper.

13 **AS TO THE SIXTH CAUSE OF ACTION FOR PROMISSORY ESTOPPEL**

- 14 1. For consequential and incidental damages and prejudgment interest according to
15 proof at trial;
- 16 2. For costs of suit incurred herein; and
- 17 3. For such other and further relief as the Court deems just and proper.

18 **AS TO THE SEVENTH CAUSE OF ACTION FOR FALSE PROMISE**

- 19 1. For consequential and incidental damages and prejudgment interest according to
20 proof at trial;
- 21 2. For costs of suit incurred herein;
- 22 3. For punitive and exemplary damages; and
- 23 4. For such other and further relief as the Court deems just and proper.

24 **AS TO THE EIGHTH CAUSE OF ACTION FOR FRAUD**

- 25 1. For consequential and incidental damages and prejudgment interest according to
26 proof at trial;
- 27 2. For costs of suit incurred herein;
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- 3. For punitive and exemplary damages; and
- 4. For such other and further relief as the Court deems just and proper.

AS TO THE NINTH CAUSE OF ACTION FOR INTENTIONAL INTERFERENCE
WITH CONTRACTUAL RELATIONS

- 1. For consequential and incidental damages and prejudgment interest according to proof at trial;
- 2. For costs of suit incurred herein;
- 3. For punitive and exemplary damages; and
- 4. For such other and further relief as the Court deems just and proper.

AS TO THE TENTH CAUSE OF ACTION FOR INTERFERENCE WITH
PROSPECTIVE ECONOMIC RELATIONSHIP

- 1. For consequential and incidental damages and prejudgment interest according to proof at trial;
- 1. For costs of suit incurred herein;
- 2. For punitive and exemplary damages; and
- 3. For such other and further relief as the Court deems just and proper.

AS TO THE ELEVENTH CAUSE OF ACTION FOR BREACH OF
FIDUCIARY DUTY

- 2. For consequential and incidental damages and prejudgment interest according to proof at trial.
- 3. For punitive and exemplary damages;
- 4. For costs of suit incurred herein; and
- 5. For such other and further relief as the Court deems just and proper.

AS TO THE TWELFTH CAUSE OF ACTION FOR CIVIL CONSPIRACY

- 1. For consequential and incidental damages and prejudgment interest according to proof at trial.
- 2. For costs of suit incurred herein; and

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3. For such other and further relief as the Court deems just and proper.

AS TO THE THIRTEENTH CAUSE OF ACTION FOR DECLARATORY RELIEF

1. For a declaration of Plaintiffs' rights and duties and Defendants' rights and duties, and Plaintiffs specifically seeks a declaration that during the terms of the Lease, Plaintiff SDPCC is entitled to the exclusive use and benefit of the Property.

AS TO THE FOURTEENTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF


1. An injunction preliminary and then permanently enjoining Defendants, and each of them and their agents, servants, employees, representatives, assigns, and all persons acting in concert with them, from directly or indirectly interfering with Plaintiff SDPCC's exclusive use and benefit of the Property during the terms of the Lease.

AS TO ALL CAUSES OF ACTION

- 1. For interest as may be provided by law;
- 2. For costs of suit incurred herein, and
- 3. For such other and further relief as the Court deems just and proper.

DATED: June 7, 2017

MESSNER REEVES LLP

By: 

NIMA DAROUIAN
Attorneys for Plaintiffs,
SAN DIEGO PATIENTS COOPERATIVE
CORPORATION, INC., and BRADFORD
HARCOURT

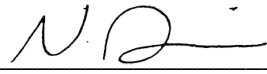
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DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all claims and matters which it is entitled to a trial by jury.

DATED: June 7, 2017

MESSNER REEVES LLP

By:  _____

NIMA DAROUIAN
Attorneys for Plaintiffs,
SAN DIEGO PATIENTS COOPERATIVE
CORPORATION, INC., and BRADFORD
HARCOURT

EXHIBIT 4

2222
TT

RECORDING REQUESTED BY:

Title 365

Mail Tax Statement To

AND WHEN RECORDED MAIL TO:

Leading Edge R. E. LLC
10455 Sorrento Valley Rd, #102
San Diego, CA 92121

DOC# 2015-0317928



Jun 18, 2015 03:59 PM

OFFICIAL RECORDS

Ernest J. Dronenburg, Jr.,

SAN DIEGO COUNTY RECORDER

FEES: \$331.50

PCOR: YES

PAGES: 2

THIS SPACE FOR RECORDER'S USE ONLY:

Title Order No.: 410-1507516-40

Escrow No.: 02-630583-VE

AP#: 369-150.13-23

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$313.50

[X] computed on full value of property conveyed, or

[] computed on full value less value of liens or encumbrances remaining at time of sale.

[] Unincorporated area [X] City of San Diego AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Maria Torres Sandoval, a Married Woman, as her sole and separate property

hereby GRANT(s) to:

Leading Edge Real Estate, LLC, a California Limited Liability Company

the real property in the City of San Diego, County of San Diego, State of California, described as:

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF

Also Known as: 8863 Balboa Avenue, Suite E, San Diego, CA 92123

Dated June 4, 2015

Maria Torres Sandoval

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

STATE OF CALIFORNIA

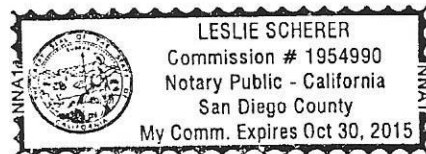
COUNTY OF San Diego

On June 4, 2015 before me, Leslie Scherer, Notary Public A Notary Public personally appeared Maria Torres Sandoval who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Leslie Scherer

(Seal)



MAIL TAX STATEMENTS TO PARTY SHOWN BELOW; IF NO PARTY SHOWN, MAIL AS SHOWN ABOVE:

EXHIBIT A
Legal Description

The land hereinafter referred to is situated in the City of San Diego, County of San Diego, State of CA, and is described as follows:

A Condominium Comprised of:

Parcel 1:

An undivided 1/46th interest in and to the Southwesterly 219.55 feet of the Northeasterly 413.55 feet of Lot 9 of the City of San Diego Industrial Park Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 4113, Filed in the Office of the County recorder of San Diego County, March 12, 1959.

Excepting therefrom all office units and industrial units as shown upon that certain Condominium Plan recorded July 31, 1981 as File/Page No. 81-242888 of official records.

Also excepting therefrom the exclusive right to use and possession of all those exclusive use areas designated as parking spaces as shown upon the Condominium Plan above referred to.

Parcel 2:

Unit No. 8863E as shown on the Condominium Plan referred to in Parcel 1 above.

Parcel 3:

The exclusive right to use and possession of those portions of said land described in Parcel 1 above, designated as Parking Space Nos. E-32 and E-31.

APN: 369-150-13-23

EXHIBIT 5

RECORDING REQUESTED BY:

When Recorded Mail Document and Tax Statements To: High Sierra Equity, LLC 7668 El Camino Real Ste 104-809 Carlsbad, CA 92009

DOC# 2016-0183639



Apr 20, 2016 11:04 AM OFFICIAL RECORDS Ernest J. Dronenburg, Jr., SAN DIEGO COUNTY RECORDER FEES: \$18.00 PCOR: YES PAGES: 2

APN: 369-150-13-23

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s)

- checkboxes for property value computation and location in San Diego. Includes handwritten "\$0.00 WHOLLY OWNED".

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Leading Edge Real Estate, LLC, a California Limited Liability Company

hereby GRANT(S) to High Sierra Equity, LLC

the following described real property: An undivided 1/46th interest in and to the Southwesterly 219.55 feet of the Northeasterly 413.55 feet of Lot 9, according to Map thereof No. 4113, filed March 12, 1959 and more fully described in Exhibit "A" attached hereto and made a part hereof. AKA: 8863 Balboa Ave Ste. E, San Diego, CA 92123

Dated: April 12, 2016 Leading Edge Real Estate, LLC, a California Limited Liability Company

By: [Signature] Authorized Signor, Bradford Harcourt

ACCOMMODATION ONLY THIS INSTRUMENT WAS FILED FOR RECORD BY TITLE365 COMPANY AS AN ACCOMMODATION ONLY. IT HAS NOT BEEN EXAMINED AS TO ITS EXECUTION, OR AS TO ITS EFFECTS UPON TITLE.

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

State of California County of San Diego On April 13, 2016 before me, Lauren Day McClelland, Notary Public, Bradford Harcourt who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. Witness my hand and official seal.

Signature [Signature] (Seal)



EXHIBIT A
Legal Description

The land hereinafter referred to is situated in the City of San Diego, County of San Diego, State of CA, and is described as follows:

A Condominium Comprised of:

Parcel 1:

An undivided 1/46th interest in and to the Southwesterly 219.55 feet of the Northeasterly 413.55 feet of Lot 9 of the City of San Diego Industrial Park Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 4113, Filed in the Office of the County recorder of San Diego County, March 12, 1959.

Excepting therefrom all office units and industrial units as shown upon that certain Condominium Plan recorded July 31, 1981 as File/Page No. 81-242888 of official records.

Also excepting therefrom the exclusive right to use and possession of all those exclusive use areas designated as parking spaces as shown upon the Condominium Plan above referred to.

Parcel 2:

Unit No. 8863E as shown on the Condominium Plan referred to in Parcel 1 above.

Parcel 3:

The exclusive right to use and possession of those portions of said land described in Parcel 1 above, designated as Parking Space Nos. E-32 and E-31.

APN: 369-150-13-23

EXHIBIT 6

RECORDING REQUESTED BY
TITLE 365

~~RECORDING REQUESTED BY~~

DOC# 2016-0559367



Oct 18, 2016 08:00 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$430.50
PCOR: YES

PAGES: 2

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

Name
Street Razuki Investments, LLC
Address 7977 Broadway Avenue
City Lemon Grove, CA 91954
State
Zip

RECORDERS USE ONLY

GRANT DEED

ORDER NO. 16015757-41
ESCROW NO. 145155S-CG

TAX PARCEL NO. 369-150-13-23

The undersigned grantor declares that the documentary transfer tax is \$412.50 and is X computed on the full value of the interest of the property conveyed, or is _____ computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale.

The land, tenements or realty is located in _____ unincorporated area X city San Diego and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

HIGH SIERRA EQUITY, LLC , A CALIFORNIA LIMITED LIABILITY COMPANY

hereby GRANT(S) to

RAZUKI INVESTMENTS, LLC , A CALIFORNIA LIMITED LIABILITY COMPANY

The following described real property in the City of San Diego, County of San Diego, State of California:

PARCEL 1: AN UNDIVIDED 1/46TH INTEREST IN AND TO THE SOUTHWESTERLY 219.55 FEET OF THE NORTHEASTERLY 413.55 FEET OF LOT 9 OF THE CITY OF SAN DIEGO INDUSTRIAL PARK UNIT NO.2. AS MORE COMPLETELY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Dated 09/19/2016

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

STATE OF CALIFORNIA,)
COUNTY OF San Diego)
On Sept. 19, 2016 before me,
Naomi Benavides Ramos, Notary Public
personally appeared STEVE LAKE

High Sierra Equity, LLC, a California Limited Liability Company

By: [Signature]
Steve Lake, Manager

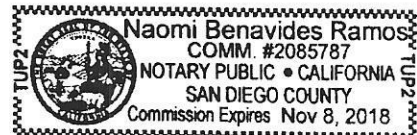
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

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

WITNESS my hand and official seal.

Signature Naomi Benavides Ramos, Notary Public

(Notary Seal)



MAIL TAX STATEMENTS TO PARTY SHOWN BELOW: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE.

Name

Street Address

City & State

EXHIBIT A
Legal Description

The land hereinafter referred to is situated in the City of San Diego, County of San Diego, State of CA, and is described as follows:

A Condominium Comprised of:

Parcel 1:

An undivided 1/46th interest in and to the Southwesterly 219.55 feet of the Northeasterly 413.55 feet of Lot 9 of the City of San Diego Industrial Park Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 4113, Filed in the Office of the County recorder of San Diego County, March 12, 1959.

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Parcel 3:

The exclusive right to use and possession of those portions of said land described in Parcel 1 above, designated as Parking Space Nos. E-32 and E-31.

APN: 369-150-13-23

EXHIBIT 7



San Diego County SHERIFF'S DEPARTMENT

LICENSE & REGISTRATION DIVISION - 9621 Ridgehaven Ct., P.O. Box 939062
San Diego, Ca 92193-9062

MMJ \$11,017.00
LIVESCAN \$49.00
LIVESCAN \$49.00
TOTAL \$11,115.00
CHECK \$11,115.00

MEDICAL MARIJUANA COLLECTIVE OPERATIONS CERTIFICATE

01 01/16/2015 10:18
45408

ANNUAL FEE: \$11,017.00

FILE # MMJ004

NOTE: APPLICANTS MUST OBTAIN ZONING APPROVAL BEFORE SUBMITTING APPLICATION TO SHERIFF. IF TENTATIVE IMPROVEMENTS TO BUILDING ARE REQUIRED TO ACCOMMODATE THE CULTIVATION AND/OR DISTRIBUTION OF MARIJUANA, YOU MUST ALSO SHOW PROOF THAT A BUILDING PERMIT HAS BEEN APPLIED FOR.

(Print Legibly or Type only)

PART I

Collective Facility Name: Olive Tree Patients Asso. Property Parcel Number 281-121-12-00

Sole Proprietor Partnership Corporation/Corp ID# 13857 (all participants must be members)

Operating Address: 1210 Olive St Ramona CA 92065
Number Street City State Zip

Mailing Address: 5666 La Jolla Blvd #15 La Jolla CA 92065
Number Street City State Zip

Phone # 619 851 5403 Email: BIKER SHERLOCK @ HOTMAIL . COM

Current number of qualified patients: 0 Current number of caregivers 0

Days & hours of operation: 8am-8pm Sun Mon Tue Wed Thur Fri Sat

Owner of the premises Stephen Luke Phone # (760) 535-1976 (858) 5181279
(Must have written consent from property owner or proof of ownership of property)

Number of responsible person(s) managing daily operations of Collective facility; 2
(A miscellaneous information background sheet must be completed for each responsible person, partner and corporate officer on form approved by the Sheriff - ULP 21.107)

PART II - PERMISSIBLE CULTIVATION:

With consideration for the risks posed by cultivation of a valuable crop with public health implications, please provide a detailed crop security plan providing adequate security to reasonably protect against unauthorized access to marijuana crop @ all stages of cultivation, harvesting, drying, processing, packaging and delivery.

Include an inspection and tracking system by Collective to reasonably ensure that all marijuana produced by collective is assessed, weighed, identified, priced and packaged. Marijuana ready for dispensing shall be kept behind a counter area not directly accessible to any member, between dispensing.

Will all cultivation of marijuana take place at the collective facility applying for operations certificate?
 Yes [] No (If no provide additional information regarding member sources cultivating marijuana)

Total number of off-site marijuana member sources who will cultivate marijuana for the collective 5-20

For other locations managed by collective members that will be utilized for cultivation, harvesting & packaging/labeling, please provide:

Name & Address for each member source: (Must have written consent from property owner or proof of ownership of property)

(For each member source, please provide signed Medical Marijuana Member Source agreement license form MM-2 as prescribed in §21.2505 (c)(8))

Marijuana packaging & labeling will require scale certification from Dept of Agriculture, Weights & Measures

PART III - SECURITY

Per§21.2504 (a) Complete Security Alarm Application (attached)

ASP # _____ (Security alarm permit number issued by the Sheriff - §36.5030(c))

Security Company contracted by Collective Facility (§21.505(k)) (BSIS Regulations for PPO License)

Security Company Name: Alpha Special Servia, Inc.
Address: 2260 Rutherford Rd, Ste III Carlsbad. PPO# 16907
Phone Number: 760 929-0812 CA 92008

APPLICANT ACKNOWLEDGEMENT:

I declare under penalty of perjury, that this application, including accompanying documents, is true, complete and correct to the best of my knowledge and belief. I understand that any false statements are grounds for denial of this application or loss of certification and that I may be subject to prosecution. I agree to have all required notices, unless otherwise specified, sent by U.S. mail to the address given on the application. I am aware that the application fee is non-refundable.

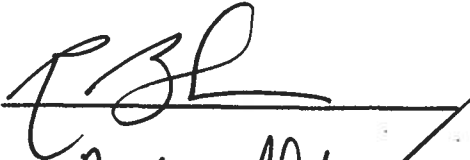
The right of reasonable inspection shall be a condition for issuance of a Medical Marijuana Collective Operations Certificate. If a certificate is issued, representatives of the Sheriff's Department shall have access to the business premises, during normal business hours, which may include entry into the non-public portion of the business. I am aware that the granting of a medical marijuana operations certificate does not relieve me from building, zoning, fire and other public safety regulations.

I understand as part of the application for a Medical Marijuana Collective Facility Certificate, myself and the owner of the real property listed agree to investigate, defend, indemnify and hold harmless the County, its deputies, employees and agents from any damage, liability, claims, demands, detriments, costs, charges and expense (including reasonable attorney's fees), and causes of action which the County may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of

persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with this application for a Medical Marijuana Collective Facility Certificate and arising from the negligent act or omission of applicant or owner, or their officers and employees.

I further agree to abide by and conform to all the conditions of the Medical Marijuana Collective Facility Certificate and all provisions of the San Diego County Code (SDCC) pertaining to the use, establishment and operation of a Medical Marijuana Collective Facility Certificate.

I also acknowledge the following: That no activities prohibited by State law will occur on or at the Collective Facility with the knowledge of the Responsible Person(s). The Collective Facility, the Collective and its members will comply with all provisions of this Chapter and State law pertaining to medical marijuana.

Applicant Signature: 

Date: 01-13-15

Application accepted by: 

Date: 01/13/15

EXHIBIT 8

ADVERTISEMENT

County approves building permits for two medical pot shops here

JULY 6, 2015 8:24 AM PT



Two applications for medical marijuana collectives in Ramona have been awarded building permits by the county and are under review by the San Diego County Sheriff's Department's licensing division.

Building permits have been issued to Michael Sherlock for 1210 Olive St. and to Dino Berardino for 618 Pine St., according to the county.

County ordinance requires that a collective may only operate in the unincorporated areas of San Diego County if a Medical Marijuana Collective Facility Operating Compliance Certificate has been issued by the sheriff's department.

Detective Mike Helms with the sheriff's license time depends on how quickly the applicants' build a collective facility.

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To obtain an operating certificate, applicants must have a sheriff department-licensed 24-hour centrally monitored alarm system, closed circuit television video monitoring, windows and glass with vandal-resistant glazing and shatter-resistant film, lighting and entrance/exit doors.

“While the applicants are working on their infrastructure requirements, the sheriff’s licensing division is conducting backgrounds on the applicants,” Helms said in an email.

Once the final building inspection is conducted, the licensing division will issue the operating certificate, he said. No dispensing or cultivating of marijuana can occur at the site until the certificate has been issued.

Medical marijuana collectives can only be on industrial-zoned parcels and must be at least 1,000 feet from schools, recreation centers, youth centers, churches, playground parks and residential zoning.

The county has identified approved zoning sites for the unincorporated areas.

Ramona and Lakeside have the most identified sites.

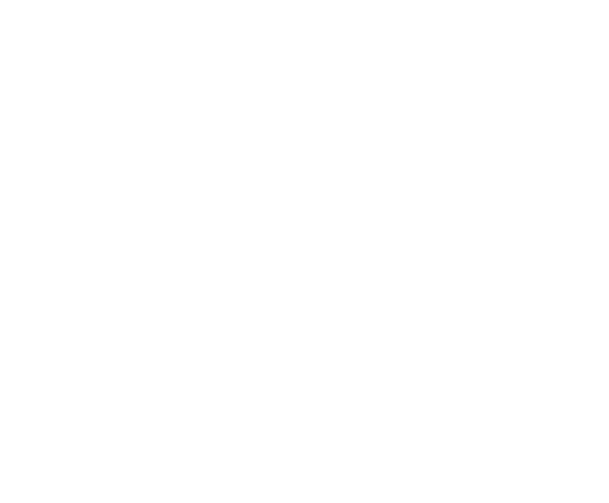
Show Comments

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April 27, 2021

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EXHIBIT 9



San Diego County SHERIFF'S DEPARTMENT

LICENSE & REGISTRATION DIVISION -9621 Ridgehaven Ct - P.O. Box 939062
San Diego, Ca 92193-9062

MEDICAL MARIJUANA COLLECTIVE OPERATIONS CERTIFICATE

ANNUAL FEE: \$11,017.00

FILE # _____

NOTE: APPLICANTS MUST OBTAIN ZONING APPROVAL BEFORE SUBMITTING APPLICATION TO SHERIFF. IF TENTATIVE IMPROVEMENTS TO BUILDING ARE REQUIRED TO ACCOMMODATE THE CULTIVATION AND/OR DISTRIBUTION OF MARIJUANA, YOU MUST ALSO SHOW PROOF THAT A BUILDING PERMIT HAS BEEN APPLIED FOR.

(Print Legibly or Type only)

PART I

Collective Facility Name: Olive Tree Patients Assn. Property Parcel Number 281-121-12-00

Sole Proprietor Partnership Corporation/Corp ID# 13857 (all participants must be members)

Operating Address: 1210 Olive St Ramona CA 92065
Number Street City State Zip

Mailing Address: 5666 La Jolla Blvd #15 La Jolla CA 92037
Number Street City State Zip

Phone # 619 ~~339~~ ~~9565~~ 987 8296 Email: rennybowden@gmail.com

Current number of qualified patients: 0 Current number of caregivers 0

Days & hours of operation: 8am-8pm 8-8 8-8 8-8 8-8 8-8 8-8
Sun Mon Tue Wed Thur Fri Sat

Owner of the premises Stephen Lake Phone # (858) 518-1278
(Must have written consent from property owner or proof of ownership of property)

Number of responsible person(s) managing daily operations of Collective facility: 1
(A miscellaneous information background sheet must be completed for each responsible person, partner and corporate officer on form approved by the Sheriff - ULP 21.107)

PART II -- PERMISSIBLE CULTIVATION:

With consideration for the risks posed by cultivation of a valuable crop with public health implications, please provide a detailed crop security plan providing adequate security to reasonably protect against unauthorized access to marijuana crop @ all stages of cultivation, harvesting, drying, processing, packaging and delivery.

Include an inspection and tracking system by Collective to reasonably ensure that all marijuana produced by collective is assessed, weighed, identified, priced and packaged. Marijuana ready for dispensing shall be kept behind a counter area not directly accessible to any member, between dispensing.

Will all cultivation of marijuana take place at the collective facility applying for operations certificate?

Yes [] No (If no provide additional information regarding member sources cultivating marijuana)

Total number of off-site marijuana member sources who will cultivate marijuana for the collective 5-20

For other locations managed by collective members that will be utilized for cultivation, harvesting & packaging/labeling, please provide:

Name & Address for each member source: (Must have written consent from property owner or proof of ownership of property)

(For each member source, please provide signed Medical Marijuana Member Source agreement license form MM-2 as prescribed in §21.2505 (c)(8))

Marijuana packaging & labeling will require scale certification from Dept of Agriculture, Weights & Measures

PART III - SECURITY

Per§21.2504 (a) Complete Security Alarm Application (attached)

ASP # _____ (Security alarm permit number issued by the Sheriff - §36.5030(c))

Security Company contracted by Collective Facility (§21.505(k)) (BSIS Regulations for PPO License)

Security Company Name: Alpha Special Service, Inc.
Address: 2260 Rutherford Rd, Ste 111 Carlsbad PPO# 16907
Phone Number: 760 929 0812 CA 92008

APPLICANT ACKNOWLEDGEMENT:

I declare under penalty of perjury, that this application, including accompanying documents, is true, complete and correct to the best of my knowledge and belief. I understand that any false statements are grounds for denial of this application or loss of certification and that I may be subject to prosecution. I agree to have all required notices, unless otherwise specified, sent by U.S. mail to the address given on the application. I am aware that the application fee is non-refundable.

The right of reasonable inspection shall be a condition for issuance of a Medical Marijuana Collective Operations Certificate. If a certificate is issued, representatives of the Sheriff's Department shall have access to the business premises, during normal business hours, which may include entry into the non-public portion of the business. I am aware that the granting of a medical marijuana operations certificate does not relieve me from building, zoning, fire and other public safety regulations.

I understand as part of the application for a Medical Marijuana Collective Facility Certificate, myself and the owner of the real property listed agree to investigate, defend, indemnify and hold harmless the County, its deputies, employees and agents from any damage, liability, claims, demands, detriments, costs, charges and expense (including reasonable attorney's fees), and causes of action which the County may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of

persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with this application for a Medical Marijuana Collective Facility Certificate and arising from the negligent act or omission of applicant or owner, or their officers and employees.

I further agree to abide by and conform to all the conditions of the Medical Marijuana Collective Facility Certificate and all provisions of the San Diego County Code (SDCC) pertaining to the use, establishment and operation of a Medical Marijuana Collective Facility Certificate.

I also acknowledge the following: That no activities prohibited by State law will occur on or at the Collective Facility with the knowledge of the Responsible Person(s). The Collective Facility, the Collective and its members will comply with all provisions of this Chapter and State law pertaining to medical marijuana.

Applicant Signature: 

Date: 2/2/16

Application accepted by: 

Date: 2/2/16

EXHIBIT 10



COUNTY OF SAN DIEGO SHERIFF'S DEPARTMENT



COPY

SHERIFF'S FILE #MM-0004

MEDICAL MARIJUANA COLLECTIVE OPERATIONS CERTIFICATE

THE BOARD OF SUPERVISORS of The County of San Diego, has prescribed in the San Diego County Code of Regulatory Ordinances, Title 2 , Division 1, Chapter 25 that it shall be unlawful for any person(s), firm or corporation to conduct, permit or assist in the conducting or permitting of any Medical Marijuana Collective Facility defined in 21.2502, in or upon any premises to which the public is admitted unless a certificate has been issued by the Sheriff.

Pursuant to the San Diego County Code of Regulatory Ordinances,

OLIVE TREE PATIENTS ASSOCIATION (RENNY BOWDEN & BRADFORD HARCOURT)

is hereby issued an operations certificate under the name of OLIVE TREE PATIENTS ASSOCIATION

located at 1210 OLIVE STREET RAMONA, CA 92065 in the County of San Diego.

The term of this license is from May 24, 2017 to May 24, 2018 inclusive.

THIS LICENSE IS NOT TRANSFERABLE FROM PERSON TO PERSON OR FROM PLACE TO PLACE.

This permit does not excuse any owner or operator from complying with all applicable federal, state, county or local laws, ordinances or regulations. The owner or operator is required to determine if another permit or approval from any other agency or department is necessary. The County, by issuing this permit, does not relinquish its right to enforce any violation of law.

PER PDS: DISPENSING ONLY

This Operations Certificate does NOT exempt the collective facility, the collective or collective members from federal laws pertaining to marijuana.

SHERIFF, San Diego County

By

Date Issued

5/24/2017

EXHIBIT 11

1 Douglas A. Pettit, Esq., SBN 160371
Kayla R. Sealey, Esq., SBN 341956
2 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
11622 El Camino Real, Suite 300
3 San Diego, CA 92130
Telephone: (858) 755-8500
4 Facsimile: (858) 755-8504
E-mail: dpettit@pettitkohn.com
5 ksealey@pettitkohn.com

6 Attorneys for Defendants
GINA M. AUSTIN and
7 **AUSTIN LEGAL GROUP**

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 AMY SHERLOCK, an individual and on
12 behalf of her minor children, T.S. and S.S.,
ANDREW FLORES, an individual,

13 Plaintiffs,

14 v.

15 GINA M. AUSTIN, an individual; AUSTIN
16 LEGAL GROUP, a professional corporation,
LARRY GERACI, an individual, REBECCA
17 BERRY, an individual; JESSICA
MCELFRESH, an individual; SALAM
18 RAZUKI, an individual; NINUS MALAN,
an individual; FINCH, THORTON, AND
19 BARID, a limited liability partnership;
ABHAY SCHWEITZER, an individual and
20 dba TECHNE; JAMES (AKA JIM)
BARTELL, an individual; NATALIE
21 TRANG-MY NGUYEN, an individual,
AARON MAGAGNA, an individual;
22 BRADFORD HARCOURT, an individual;
SHAWN MILLER, an individual; LOGAN
23 STELLMACHER, an individual;
EULENTIAS DUANE ALEXANDER, an
24 individual; STEPHEN LAKE, an individual,
ALLIED SPECTRUM, INC. a California
25 corporation, PRODIGIOUS COLLECTIVES,
LLC, a limited liability company, and DOES
26 1 through 50, inclusive,

27 Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/16/2022 at 09:44:00 AM
Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

CASE NO.: 37-2021-00050889-CU-AT-CTL

**DEFENDANTS GINA M. AUSTIN AND
AUSTIN LEGAL GROUP'S NOTICE OF
MOTION AND SPECIAL MOTION TO
STRIKE PLAINTIFFS' FIRST AMENDED
COMPLAINT PURSUANT TO CODE OF
CIVIL PROCEDURE SECTION 425.16
(ANTI-SLAPP STATUTE)**

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **August 5, 2022, at 9 00 a.m.**, or as soon thereafter as the matter may be heard before the Honorable James A. Mangione in Department C-75 of the above-entitled court, Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, “Defendants”) will and hereby do move this Court for an order striking the First Amended Complaint (“FAC”) filed by Plaintiffs AMY SHERLOCK and ANDREW FLORES (collectively, “Plaintiffs”).

This Motion is made pursuant to Code of Civil Procedure section 425.16 and on the grounds that the causes of action asserted against Defendants in the FAC arise from constitutionally protected activity and Plaintiffs cannot establish a probability of prevailing on their claims. Plaintiffs’ claims are barred by Civil Code sections 47(b) and 1714.10. Further, Plaintiffs cannot establish the essential elements of their claims.


Pursuant to section 425.16(c)(1), Defendants also seek the attorneys’ fees and costs incurred in connection with this Motion.

Defendants’ Special Motion to Strike is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Gina M. Austin, the Declaration of Douglas A. Pettit, the Notice of Lodgment with supporting exhibits, the entire court file in this matter, and on such further evidence as will be presented at the hearing for this Motion.

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: June 16, 2022

By:



Douglas A. Pettit, Esq.
Kayla R. Sealey, Esq.
Attorneys for Defendants
**GINA M. AUSTIN and
AUSTIN LEGAL GROUP**

1 Douglas A. Pettit, Esq., SBN 160371
Kayla R. Sealey, Esq., SBN 341956
2 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
11622 El Camino Real, Suite 300
3 San Diego, CA 92130
Telephone: (858) 755-8500
4 Facsimile: (858) 755-8504
E-mail: dpettit@pettitkohn.com
5 ksealey@pettitkohn.com

6 Attorneys for Defendants
7 **GINA M. AUSTIN and**
AUSTIN LEGAL GROUP

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

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

13 Plaintiffs,

14 v.

15 GINA M. AUSTIN, an individual; AUSTIN
16 LEGAL GROUP, a professional
corporation, LARRY GERACI, an
17 individual, REBECCA BERRY, an
individual; JESSICA MCELFFRESH, an
18 individual; SALAM RAZUKI, an
individual; NINUS MALAN, an individual;
19 FINCH, THORTON, AND BARID, a
limited liability partnership; ABHAY
20 SCHWEITZER, an individual and dba
TECHNE; JAMES (AKA JIM) BARTELL,
21 an individual; NATALIE TRANG-MY
NGUYEN, an individual, AARON
22 MAGAGNA, an individual; BRADFORD
HARCOURT, an individual; SHAWN
23 MILLER, an individual; LOGAN
STELLMACHER, an individual;
24 EULENTIAS DUANE ALEXANDER, an
individual; STEPHEN LAKE, an
25 individual, ALLIED SPECTRUM, INC. a
California corporation, PRODIGIOUS
26 COLLECTIVES, LLC, a limited liability
company, and DOES 1 through 50,
27 inclusive,

28 Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

**DEFENDANTS GINA M. AUSTIN AND
AUSTIN LEGAL GROUP'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THEIR
MOTION TO STRIKE PLAINTIFFS'
FIRST AMENDED COMPLAINT
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 425.16 (ANTI-
SLAPP STATUTE)**

[IMAGED FILE]

Date: August 5, 2022
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Trial: Not Set

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1 Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, “Austin” or
2 “Defendants”), hereby submit the following Memorandum of Points and Authorities in support of
3 their Special Motion to Strike Plaintiffs AMY SHERLOCK, an individual and on behalf of her
4 minor children, T.S. and S.S., and ANDREW FLORES’ (collectively, “Plaintiffs”) First
5 Amended Complaint pursuant to Code of Civil Procedure section 425.16 (the “anti-SLAPP
6 statute”).

7 **I.**

8 **INTRODUCTION**

9 The claims in Plaintiffs’ First Amended Complaint (“FAC”) should be stricken pursuant
10 to California’s anti-SLAPP statute. The entire lawsuit, as it relates to Austin, is based on her
11 acting within the scope as an attorney, providing legal services to her clients and petitioning for
12 conditional use permits (“CUPs”)—all of which is absolutely privileged pursuant to Civil Code
13 section 47(b). Although the FAC attempts to characterize Austin’s actions as conspiratorial to
14 monopolize the cannabis market, the facts provided only show that Plaintiffs are suing Austin for
15 doing her job and representing her clients. This is a classic case for the application of the anti-
16 SLAPP statute.

17 Austin is an attorney who specializes in cannabis licensing and entitlement at the state and
18 local levels. Despite the fact that neither Plaintiff has a direct grievance against Austin, she has
19 been named as a defendant in this action. Plaintiff Amy Sherlock’s alleged damages stem from
20 allegations that other named defendants (not Austin) defrauded her and her children out of
21 property that was owned by her deceased husband. Likewise, Plaintiff Andrew Flores’ alleged
22 damages stem from the acts of other named defendants, not Austin. These contrived conspiracy
23 claims are without merit and are simply rehashed allegations that have already been made in three
24 separate complaints.¹

25 Notwithstanding its frivolous nature, Plaintiffs’ FAC is subject to the anti-SLAPP statute.
26 The claims asserted against Austin are explicitly grounded in petitioning activities undertaken by

27 _____
28 ¹ **Exhibit A:** *Geraci v. Cotton* Complaint; **Exhibit B:** *Geraci v. Cotton* Cross-Complaint; **Exhibit C:** *Cotton v. Geraci et al.* Complaint.

1 Austin on behalf of her clients. The causes of action for Conspiracy to Monopolize in Violation of
2 the Cartwright Act, Unfair Competition and Unlawful Business Practices, and Civil Conspiracy
3 fall within the anti-SLAPP statute as they arise directly from the protected activity of petitioning
4 an administrative agency. Further, Plaintiffs cannot meet their burden to establish a probability of
5 success on their claims because (1) the claims are barred by Civil Code section 1714.10, (2)
6 Austin’s petitioning activities are clearly and unambiguously protected by the litigation privilege,
7 and (3) Plaintiffs failed to establish and cannot establish the essential elements of their claims.

8 II.

9 STATEMENT OF RELEVANT FACTS

10 A. The Cotton Actions

11 Plaintiffs’ FAC conspicuously resembles the allegations made in the various Cotton
12 actions by asserting the same conspiracy theory based upon the same facts. The Cotton actions
13 arise out of an unsuccessful agreement for the purchase and sale of real property between Cotton
14 and defendant Larry Geraci (“Geraci”). Austin represented Geraci at the time and was involved to
15 the extent of drafting the parties’ purchase and sale agreement. (Austin Dec., ¶ 6.) Neither Plaintiff
16 was involved or had anything remotely to do with this deal.

17 On March 21, 2017, a complaint was filed in *Geraci v. Cotton*, Case No.: 37-2017-
18 00010073-CU-BC-CTL, for breach of contract claims. (Declaration of Douglas A. Pettit (“Pettit
19 Dec.”), Ex. A.) Austin did not represent Geraci in this action, she only testified at trial pursuant to
20 a subpoena. (Austin Dec., ¶ 7.)

21 On August 25, 2017, Cotton filed a cross-complaint in *Geraci v. Cotton* (Pettit Dec., Ex.
22 B) which named Austin as a defendant for representation of Geraci in drafting the purchase and
23 sale agreement. Following a jury trial, judgment was entered in favor of Geraci against Cotton on
24 both the complaint and the cross-complaint.

25 On February 9, 2018, Cotton filed a complaint in *Cotton v. Geraci, et al.*, Case No. 18-cv-
26 0325-GPC-MDD, asserting twenty (20) causes of action alleging the city was prejudice against
27 him, the state court judges were biased, and all defendants were united in a grand conspiracy.
28 (Pettit Dec., Ex. C.)

1 **B. Austin’s Involvement with the Ramona CUP**

2 The Ramona CUP was issued at 1210 Olive Street, Ramona, California 92065, to Michael
3 “Biker” Sherlock (“Mr. Sherlock”). (FAC, ¶¶ 2,68.) All of the allegations related to the Ramona
4 CUP are asserted by Plaintiff Sherlock against other defendants. (See FAC, ¶¶ 64-115.) Austin
5 was not involved with the acquisition of the Ramona CUP. (Declaration of Gina M. Austin
6 (“Austin Dec.”), ¶ 2.)

7 **C. Austin’s Involvement with the Balboa CUP**

8 The Balboa CUP was issued at 8863 Balboa Avenue, Unit E, San Diego, California
9 92123, to Mr. Sherlock’s holding entity, United Patients Consumer Cooperative. (FAC, ¶¶ 2, 71.)
10 All of the allegations related to the Balboa CUP are asserted by Plaintiff Sherlock against other
11 defendants. (See FAC, ¶¶ 64-115.) Austin was involved with the acquisition of the Balboa CUP to
12 the extent that she helped Evelyn Heidelberg, Mr. Sherlock’s attorney, with the initial application.
13 (Austin Dec., ¶ 3.)

14 **D. Austin’s Involvement with the Federal CUP**

15 The Federal CUP was issued at 6220 Federal Blvd., San Diego, California 92114, to
16 defendant Aaron Magagna. (FAC, ¶¶ 2, 213.) Austin was not involved with the acquisition of the
17 Federal CUP. (Austin Dec., ¶ 5.)

18 Prior to the Federal CUP being issued, Austin and others were hired by Geraci to apply for
19 a CUP at 6176 Federal Blvd., San Diego, California 92114 (the “Cotton Property”). (FAC, ¶ 119;
20 Austin Dec., ¶ 4.) Austin was involved in assisting with the preparation of the application, which
21 was abandoned after another CUP was issued within 1000 feet, i.e., the Federal CUP. (*Ibid.*)

22 **E. Austin’s Involvement with the Lemon Grove CUP**

23 The Lemon Grove CUP was issued at 6859 Federal Blvd., Lemon Grove, California
24 91945. (FAC, ¶ 2.) Austin was not involved with the acquisition of the Lemon Grove CUP and has
25 no recollection of conversations with anyone regarding whether the Lemon Grove Property
26 qualified for a CUP. (Austin Dec., ¶ 8.) Further, Plaintiffs have not alleged any interest in the
27 Lemon Grove CUP and are not asserting any related damages—the FAC is improperly asserting
28 rights of a third-party who is not a plaintiff. (See FAC, ¶¶ 267-275.)

1 III.

2 **LEGAL STANDARD**

3 Code of Civil Procedure section 425.16 (the “anti-SLAPP statute”) is a procedural remedy
4 designed “to dispose of lawsuits brought to chill the valid exercise of a party’s constitutional right
5 of petition or free speech.” (*Digerati Holdings, LLC v. Young Money Ent’t, LLC* (2011) 194
6 Cal.App.4th 873, 882-83.) The Legislature enacted the anti-SLAPP statute to control “a
7 disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional
8 rights of freedom of speech and petition for redress of grievances.” (Code Civ. Proc., § 425.16,
9 subd. (a).) The statute therefore “provides a procedure for weeding out, at an early stage,
10 *meritless* claims arising from protected activity.” (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384; See
11 also *Bel Air Internet v. Morales* (2018) 20 Cal.App.5th 924, 939.) In order to maximize protection
12 for petitioning activity, the statute is construed broadly. (Code Civ. Proc., § 425.16, subd. (a);
13 *Briggs v. Eden Council* (1999) 19 Cal.4th 1106, 1119-22.)

14 The anti-SLAPP analysis involves a two-pronged test. First, the Court must determine if
15 the moving party has made a threshold showing that the challenged claim arises out of activity
16 which is protected under the statute. (Code Civ. Proc., § 425.16, subd. (b)(1); See also *Jarrow*
17 *Formulas, Inc. v. Lamarche* (2003) 31 Cal.4th 728, 733.) The inquiry on the first prong focuses
18 only on whether the actions underlying the challenged claims fall under one of the categories of
19 protected activity described in section 425.16, subdivision (e). (*Malin v. Singer* (2013) 217
20 Cal.App.4th 1283, 1292.)

21 Second, if the movant establishes the challenged claims arise out of protected activity, the
22 burden then shifts to the respondent to demonstrate by “competent, admissible evidence” a
23 probability of success on the merits. (Code Civ. Proc., § 425.16, subd. (b)(1); See *Hailstone v.*
24 *Martinez* (2008) 169 Cal.App.4th 728, 736 [holding plaintiff cannot rely solely on his complaint
25 to meet his burden under the second prong].) If the respondent fails to meet this burden, the
26 claims must be stricken. (Code Civ. Proc., § 425.16, subd. (b) (1).)

27 In making its determination, the trial court is instructed to analyze the factual sufficiency
28 of a claim, “not make credibility determinations or compare the weight of the evidence.” (*Malin*

1 v. *Singer*, *supra*, 217 Cal.App.4th at 1293, citing *Soukup v. Law Offices of Herbert Hafif* (2006)
2 39 Cal.4th 260, 269, fn.3; See also *Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.)

3 IV.

4 **ARGUMENT**

5 **A. The First Prong of the Anti-SLAPP Statute is Satisfied Because Plaintiffs' Claims**
6 **Arise from Protected Activity**

7 **1. Petitioning an Administrative Agency for Conditional Use Permits is a**
8 **Protected Activity**

9 One form of protected activity under the anti-SLAPP statute is “any written or oral
10 statement or writing made before a legislative, executive, or judicial proceeding, or any other
11 official proceeding authorized by law.” (Code Civ. Proc., § 425.16, subd. (e)(1).) All of the
12 claims against Austin in Plaintiffs’ FAC are based on or related to proceedings she instituted
13 before the local zoning authority. Specifically, Plaintiffs’ claims are based on Austin’s acquisition
14 of CUPs on behalf of her clients.

15 “It is well established that the protection of the anti-SLAPP statute extends to lawyers and
16 law firms engaged in litigation-related activity.” (*Optional Capital, Inc. v. Akin Gump Strauss,*
17 *Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 113.) “In fact, courts have adopted a fairly
18 expansive view of what constitutes litigation-related activities within the scope of section
19 425.16.” (*Ibid*, internal quotations omitted.) Under the statute’s “plain language,” the filing of
20 such legal petitions and “*all* communicative acts performed by attorneys as part of their
21 representation of a client in a judicial proceeding or other petitioning context are per se protected
22 as petitioning activity by the anti-SLAPP statute.” (*Ibid*, italics in original; internal quotations
23 omitted.)

24 Austin’s filing of applications for conditional use permits on behalf of her clients and any
25 statements made in a proceeding before the local zoning authority fall under the anti-SLAPP
26 statute as petitioning activity because a local zoning authority proceeding is the proceeding of a
27 governmental administrative body. (*Briggs v. Eden Council for Hope & Opportunity,*

28 ///

1 *supra*, 19 Cal.4th at 1115 “[t]he constitutional right to petition . . . includes . . . seeking
2 administrative action”].)

3 **2. Plaintiffs’ Claims “Arise From” the Petitioning for Conditional Use Permits**

4 In determining whether a claim “arises from” protected conduct, the Court looks at the
5 “allegedly wrongful and injury-producing conduct that provides the foundation for the claims.”
6 (*Castleman v. Sagaser* (2013) 216 Cal.App.4th 481, 490-91.) “The anti-SLAPP statute’s
7 definitional focus is not the form of the plaintiff’s cause of action but, rather, the defendant’s
8 activity that gives rise to his or her asserted liability—and whether that activity constitutes
9 protected speech or petitioning.” (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92.) Plaintiffs cannot
10 avoid the anti-SLAPP application by disguising the pleading as a “garden variety” tort claim if
11 the basis of the alleged liability is predicated on protected speech or conduct.” (*Id.* At 90.)

12 Here, Plaintiffs’ inclusion of Defendants in the FAC arises out of protected activity.
13 Plaintiffs’ FAC explicitly states: “This action focuses on the Enterprise’s unlawful acts in
14 acquiring four CUPs . . .” (FAC, ¶ 7.) Specifically, Austin’s conduct of aiding her clients in the
15 acquisition of CUPs is the basis for the claims against Defendants. Plaintiffs’ causes of action for
16 conspiracy to monopolize in violation of the Cartwright Act, unfair competition and unlawful
17 business practices, and civil conspiracy are compromised solely of Austin’s petitioning activities
18 for CUPs on behalf of her clients. (FAC, ¶¶ 53, 119.)

19 Although the FAC alleges someone nonprotected activity in addition to the protected
20 activity, the anti-SLAPP statute still applies. For example, the FAC alleges that Austin “provided
21 confidential information from her non-Enterprise clients regarding real properties that qualified
22 for CUPs so that Razuki and his associates could take action to prevent the acquisition of those
23 CUPs by Austin’s non-Enterprise clients in furtherance of creating a monopoly.” (FAC, ¶ 62.)
24 Plaintiffs likewise allege that “Austin contacted Williams despite knowing he was represented by
25 counsel in violation of the Rules of Professional Responsibility.” (FAC, ¶ 274.) Even if these
26 allegations were true, the law is clear that mixed allegations of protected and nonprotected
27 activity do not remove the claims from the scope of the anti-SLAPP statute. “Where causes of
28 action allege both protected and unprotected activity, all the causes of action must be stricken.”

1 (*Trapp v. Naiman* (2013) 218 Cal.App.4th 113, 121; See also *Fox Searchlight Pictures, Inc. v.*
2 *Paladino* (2001) 89 Cal.App.4th 294, 308 [“a plaintiff cannot frustrate the purposes of the SLAPP
3 statute through a pleading tactic of combining allegations of protected and nonprotected
4 activity...”].) Simply put, if the harm primarily stems from protected activity, the entire claim is
5 subject to being stricken. (*Peregrine Funding, Inc.* (2005) 133 Cal.App.4th 658.)

6 Plaintiffs’ claims and alleged injuries resulted entirely from actions Austin took in
7 petitioning the local zoning authority, on behalf of her clients, for CUPs. While the FAC alleges
8 violations of the Rules of Professional Conduct, the only harm demonstrably connected to these
9 allegations are the petitions for and acquisitions of CUPs. Accordingly, Austin’s alleged conduct
10 of aiding her clients in the acquisition of CUPs, is central to the claims. Since the claims arise out
11 of protected activity (and Austin was named in retaliation for protected activity), Austin has met
12 its burden under the first prong of the anti-SLAPP analysis.

13 **B. The Second Prong of the Anti-SLAPP Statute is Also Satisfied Because Plaintiffs’**
14 **Cannot Establish a Probability of Prevailing on Their Claims**

15 Once the defendant establishes that the anti-SLAPP statute applies, the plaintiff must
16 demonstrate that his claims have merit based not on speculation or the mere allegations of the
17 pleadings, but with “competent and admissible evidence.” (*Tuchscher Dev. Enterprises, Inc. v.*
18 *San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1236.) Evidence that would not be
19 admissible at trial, such as an “averment on information and belief[,] ... cannot show a
20 probability of prevailing on the claim.” (*Ibid.*)

21 While the burden on the second prong belongs the plaintiff, in determining whether a
22 party has established a probability of prevailing on the merits of his or her claims, a court
23 considers not only the substantive merits of those claims, but also all defenses available to them.
24 (See *Traditional Cat Assn., Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 398.) A plaintiff must
25 present evidence to overcome any privilege or defense to the claim that has been raised in order to
26 demonstrate a “probability of success on the merits.” (See *Flatley v. Mauro, supra*, 39 Cal.4th at
27 323.)

28 ///

1 **1. Civil Code Section 1714.10 Bars Plaintiffs’ Claims**

2 Under Civil Code section 1714.10 (a),

3 No cause of action against an attorney for a civil conspiracy with his or her
4 client arising from any attempt to contest or compromise a claim or dispute,
5 and which is based upon the attorney’s representation of the client, shall be
6 included in a complaint or other pleading unless the court enters an order
7 allowing the pleading that includes the claim for civil conspiracy to be filed
8 after the court determines that the party seeking to file the pleading has
9 established that there is a reasonable probability that the party will prevail in
10 the action.

11 (Civ. Code, § 1714.10, subd. (a).) The plaintiff must file a verified petition accompanied by
12 supporting affidavits stating the facts upon which the liability is based, after which the defendant
13 is entitled to submit opposing affidavits prior to the court making its determination. (*Ibid.*) Failure
14 to obtain a court order under section 1714.10 (a) is a defense to the action. (Civ. Code, § 1714.10,
15 subd. (b).)

16 Section 1714.10 applies to any claims against an attorney where the factual basis for the
17 conspiracy-based claim is so intertwined with the other causes of action that it is not severable.
18 (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 820-21.)
19 Here, Plaintiffs’ causes of action against Austin include i) Conspiracy to Monopolize in Violation
20 of the Cartwright Act (Bus. & Prof. Code, §§ 16720 *et seq.*); ii) Unfair Competition and Unlawful
21 Business Practices (Bus. & Prof. Code, §§ 17200 *et seq.*); and iii) Civil Conspiracy. Each cause of
22 action against Austin is based on allegations of a conspiracy with “the Enterprise” in which
23 Plaintiffs allege Austin unlawfully applied for or acquired CUPS for her clients (FAC, ¶¶ 4, 7.) All
24 of Plaintiffs’ claims are based entirely on Austin’s purported conspiracy with and representation
25 of her clients. (See, e.g., FAC at ¶¶ 42, 53, 59, and 119.) Yet, Plaintiffs did not obtain leave from
26 this Court to include Austin as a defendant before filing the FAC against her. Plaintiffs never filed
27 a “verified petition” or “supporting affidavits stating the facts upon which the liability is based”
28 as required. (Civ. Code, § 1714.10, subd. (a).) Thus, Plaintiffs failed to comply with section
29 1714.10, and their claims against Austin are barred. (Civ. Code, § 1714.10, subd. (b).)

///

///

1 **2. Plaintiffs’ Claims are Barred by the Litigation Privilege**

2 In addition to being barred by Civil Code section 1714.10, Plaintiffs’ claims are barred by
3 the litigation privilege. A plaintiff cannot establish a probability of prevailing if the litigation
4 privilege precludes liability on the claims. (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer &*
5 *Feld LLP, supra*, 18 Cal.App.5th at 115; See also, *Kashian v. Harriman* (2002) 98 Cal.App.4th
6 892, 926-27 [plaintiff cannot demonstrate a probability of prevailing where plaintiff’s defamation
7 action was barred by Civil Code section 47, subd. (b)].) It is well established under California
8 law, that the litigation privilege “is absolute in nature, applying ‘to all publications, irrespective of
9 their maliciousness.’” (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th
10 1232, 1241, quoting *Silberg v. Anderson* (1990) 50 Cal.3d 205, 216.) ‘The usual formulation is
11 that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings;
12 (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation;
13 and (4) that [has] some connection or logical relation to the action.’ (*Id.* at p. 212.) The privilege
14 “is not limited to statements made during a trial or other proceedings, but may extend to steps
15 taken prior thereto, or afterwards.” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.) The
16 privilege has been interpreted broadly and “any doubt as to whether the privilege applies is
17 resolved in favor of applying it.” (*Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529; *Home*
18 *Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17,13.)

19 Here, Plaintiffs’ claims are based entirely on communications protected by the litigation
20 privilege, i.e., petitioning the local zoning authority. Local zoning authority proceedings are the
21 type of proceedings to which the litigation privilege applies. The statements made during such
22 proceeding are covered by the litigation privilege as statements made as part of an “official
23 proceeding authorized by law” within the meaning of Civil Code section 47, subdivision (b)
24 because they were made in a quasi-judicial proceeding. (See *Lebbos v. State Bar* (1985) 165
25 Cal.App.3d 656, 667 [statements made in initiating and pursuing a State Bar administrative
26 proceeding were protected by the litigation privilege]; *Hagberg v. California Federal Bank*
27 (2004) 32 Cal.4th 350, 362 [“statements that are made in quasi-judicial proceedings . . . are
28 privileged to the same extent as statements made in the course of a judicial proceeding”].)

1 The litigation privilege is absolute. As such, Plaintiffs' claims against Austin are barred by
2 the litigation privilege.

3 **3. Plaintiffs' Conspiracy to Monopolize in Violation of the Cartwright Act**
4 **Claim Fails**

5 In *Quelimane v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47, the Supreme Court
6 described the required Cartwright Act allegations to maintain an action for combination in
7 restraint of trade as three-fold: "(1) the formation and operation of the conspiracy, (2) the
8 wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts"
9 (*ibid*), but subsequently indicated that an allegation or inference of purpose to restrain trade
10 should also be present. (See *Kunert v. Mission Financial Services Corp.* (2003) 110 Cal.App.4th
11 242, 262, n.15; See also *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th
12 700, 722 [agreement violates Cartwright Act only if "restraint of trade in the commodity is the
13 purpose of the agreement"].)

14 As a general proposition the California Supreme Court requires a "high degree of
15 particularity in the pleading of Cartwright Act violations." (*G.H.I.I. v. MTS, Inc.* (1983) 147
16 Cal.App.3d 256, 265.) Unlawful combinations must be alleged with specificity, and thus,
17 "general allegations of a conspiracy unaccompanied by a statement of the facts constituting the
18 conspiracy and explaining its objectives and impact in restraint of trade will not suffice." (*Ibid*;
19 See *Truta v. Avis Rent A Car System, Inc.* (1987) 193 Cal.App.3d 802 [conclusory allegations
20 insufficient].)

21 "[A] plaintiff cannot merely restate the elements of a Cartwright Act violation . . . the
22 plaintiff must allege in its complaint *certain facts* in addition to the elements of the alleged
23 unlawful act so that the defendant can understand the nature of the alleged wrong and discovery is
24 not merely a blind 'fishing expedition' for some unknown wrongful acts." (*Smith v. State Farm*
25 *Mutual Automobile Ins. Co., supra*, 93 Cal.App.4th at 722 (emphasis in original), quoting
26 *Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4th 1224, 1236.)

27 A Cartwright Act violation requires "a combination of capital, skill or acts by two or more
28 persons" that seeks to achieve an anticompetitive end. (Bus. & Prof. Code, § 16720.)

1 Consequently, “[o]nly separate entities pursuing separate economic interests can conspire within
2 the proscription of the antitrust laws against price fixing combinations.” (*Freeman v. San Diego*
3 *Assn. of Realtors* (1999) 77 Cal.App.4th 171, 189, citing *Copperweld Corp. v. Independence*
4 *Tube Corp.* (1984) 467 U.S. 752, 769–771 [legally distinct entities do not conspire if they
5 “pursue[] the common interests of the whole rather than interests separate from those of the
6 [group] itself...”].) A Cartwright Act complaint that does not adequately allege concerted action
7 by separate entities with separate and independent interests is subject to dismissal. (*Id.* at 52;
8 *Asahi Kasei Pharma Corp. v. CoTherix, Inc.* (2012) 204 Cal.App.4th 1.)

9 Plaintiffs’ FAC has failed to even come close to supporting a claim for violation of the
10 Cartwright Act. Plaintiffs’ only make general allegations of a conspiracy and have not offered a
11 single fact showing that the purpose of the agreement, between all 19 defendants, was a restraint
12 of trade in CUPs. This alone, is enough for Plaintiffs’ Cartwright Act claim to be stricken.

13 The FAC also fails to allege concerted action by separate entities with separate and
14 independent interests. Plaintiffs’ have alleged concerted action “of a small group of wealthy
15 individuals and their agents (the “Enterprise”) that have conspired to create an unlawful
16 monopoly in the cannabis market.” (FAC, ¶ 1.) Their whole argument is that everyone was
17 working together and pursuing the common interest of the enterprise. (See *Copperworld Corp. v.*
18 *Independence Tube Corp.*, *supra*, 467 U.S. at 769-771.) This too, by itself, is enough for the
19 Court to dismiss this claim.

20 By way of supporting facts, the FAC alleges: “Defendants committed overt acts and
21 engaged in concerted action in furtherance of their combination and conspiracy to restrain and
22 monopolize, as described above, including but not limited to unlawfully applying for or acquiring
23 CUPs through the use of proxies and/or forged documents, sham litigation, and acts and threats of
24 violence against competitors and/or parties who could threaten or expose their illegal actions in
25 furtherance of the conspiracy. (FAC, ¶ 283.) Although this allegation includes all the correct
26 buzzwords, it does nothing to help the already mentioned deficiencies. More importantly, it fails
27 to show any liability as to Austin and further supports the fact that she has been wrongly included
28 in this action:

- 1 • Unlawfully applying for or acquiring CUPs through the use of proxies: Paragraph 119 of
2 the FAC alleges that Austin, Bartell and Schweitzer were hired by Geraci to prepare and
3 submit a CUP application in the name of Geraci’s assistant, Berry (the “Berry CUP
4 Application”). Other than this conclusory allegation, Plaintiffs have provided no evidence
5 supporting it, as to Austin. (See FAC, Exh. 3, the Berry CUP Application [showing it was
6 signed and submitted by Schweitzer].)
- 7 • Unlawfully applying for or acquiring CUPs through forged documents: This allegation has
8 nothing to do with Austin as it relates to Plaintiff Sherlocks claims against defendants
9 Lake and Harcourt. (See FAC, ¶¶ 64-99 and 285-301.)
- 10 • Sham litigation: This allegation is in regards to the action filed by Geraci against Cotton
11 (Cotton I). (See FAC, ¶ 316.) Austin’s only role in it was testifying. (See FAC, ¶¶ 202,
12 204.)
- 13 • Acts and threats of violence: There are no allegations in the FAC of threats or violence
14 against Austin. (See FAC, ¶¶ 215-224 [alleging defendants Alexander and Stellmacher
15 threatened Cotton]; FAC, ¶¶ 225-238 [alleging defendant Magagna threatens Young].)
16 Thus, Plaintiffs’ conspiracy to monopolize in violation of the Cartwright Act claim should
17 be stricken.

18 **4. The Unfair Competition and Unlawful Business Practices Claims Fails**

19 The Unfair Business Practices Act shall include “any unlawful, unfair, or fraudulent
20 business act or practice.” (Bus. & Prof. Code, § 17200.) A plaintiff alleging unfair business
21 practices under these statutes must state with reasonable particularity the facts supporting the
22 statutory elements of the violation. (*Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th
23 612, 619.)

24 Plaintiffs allege that Austin’s “Proxy Practice is illegal and violates numerous State and
25 City laws, most notably, BPC §§ 19323 et seq. and 26057 et seq.” (FAC, ¶ 314.) Business and
26 Professions Code section 26057, formerly section 19323, states the licensing authority “shall
27 deny an application if either the applicant, or the premises for which a state license is applied, do
28 not qualify for licensure under this division.” (Bus. & Prof. Code, § 26057.) The statute goes on

1 to list specific conditions that *may* constitute grounds for denial of licensure or renewal. (*Ibid*,
2 emphasis added.)

3 Plaintiffs’ entire argument backing their “Proxy Practice” allegation rests on their asserted
4 fact that Geraci and Razuki were ineligible to own a cannabis license or CUP due to previously
5 being sanctioned for unlicensed commercial cannabis activities. What Plaintiffs’ do not mention
6 is that although this type of sanction could be grounds for denial, section 26057 allows the
7 licensing authority to decide based on all the circumstances. A plain reading of the statute shows
8 there is no one condition that constitutes an automatic, outright denial. The statute gives the
9 licensing authority complete discretion to weigh factors and decide what *may* constitute grounds
10 for denial.

11 Further, it is unclear as to how Austin could be implicated for violation of this statute as it
12 does not apply to her. Section 26057 appears to be guidelines for a licensing authority to follow
13 when reviewing applications for cannabis licenses and CUPs. Austin takes no part in reviewing,
14 approving or denying such applications.

15 Consequently, Plaintiffs have not properly alleged a claim for unfair business practices,
16 which requires Plaintiffs to state with reasonable particularity the facts supporting the statutory
17 elements of the violation. (See *Khoury v. Maly’s of California, Inc.*, *supra*, 14 Cal.App.4th at
18 619.) As it stands, Plaintiffs have not pled a statute, its elements, and any facts to support Austin’s
19 violation of said statute. Thus, Plaintiffs unfair competition and unlawful business practices claim
20 should be stricken.

21 **5. Plaintiffs’ Civil Conspiracy Claim is Legally Defective**

22 A complaint for civil conspiracy states a cause of action only when it alleges the
23 commission of a civil wrong that causes damage; although conspiracy may render additional
24 parties liable for the wrong or increase the damages for which any one conspirator is liable, the
25 conspiracy itself, no matter how atrocious, is not actionable without the wrong. (*Okun v. Superior*
26 *Court* (1981) 29 Cal.3d 442, 454.) The civil wrong must consist of acts that would give rise to a
27 cause of action independent of the conspiracy. (*Zumbrun v. Univ. of S. Cal.* (1972) 25 Cal.App.3d
28 1, 12; See also *Harrell v. 20th Century Ins. Co.* (9th Cir. 1991) 934 F.2d 203, 208 [civil

1 conspiracy claim failed because underlying cause of action for fraud was barred by the statute of
2 limitations].)

3 If a party is legally incapable of committing the underlying tort, that party cannot be liable
4 for conspiracy to commit the tort. (*1-800-Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568,
5 590 [party who owed no fiduciary duties to plaintiff found not liable for conspiracy to induce
6 breach of fiduciary duties owed by another]; See also *Chavers v. Gatke Corp.* (2003) Cal.App.4th
7 606, 614 [defendant not liable for conspiracy unless he owes plaintiff a duty that is independent
8 of conspiracy].) In addition, if the underlying tortious act was privileged, an allegation that the act
9 was committed as a part of a conspiracy will not revive an action that would otherwise be barred.
10 (*Nicholson v. McClatchy Newspaper* (1986) 177 Cal.App.3d 509, 521.)

11 First and foremost, Plaintiffs have not alleged facts sufficient to prove a conspiracy. There
12 are no facts proving that Austin created or was a participant in any common plan, scheme or
13 design. There are no facts proving that Austin agreed to be a part of a conspiracy or that her acts
14 were in furtherance of a conspiracy.

15 Additionally, even if Plaintiffs did properly plead a conspiracy (they did not), this claim
16 still fails. Plaintiffs cannot prevail on any of the underlying tort claims upon which the conspiracy
17 claim is based. Because a bare conspiracy is not actionable, Plaintiffs could only prevail on this
18 claim if they showed that they had a probability of prevailing on one or more of the torts upon
19 which the conspiracy claim is predicated. Their failure to show a probability of success on any of
20 the underlying tort claims therefore bars Plaintiffs' conspiracy claims as a matter of law.

21 Furthermore, as explained above, the litigation privilege applies. In other words, the acts
22 complained of by Plaintiffs were privileged. Therefore, Plaintiffs cannot try to revive an action
23 against Austin by alleging her acts were committed as part of a conspiracy. Thus, Plaintiffs civil
24 conspiracy claim fails.

25 V.

26 **CONCLUSION**

27 Plaintiffs' claims against Austin arise from her petitioning the local zoning authority, on
28 behalf of her clients. Because the claims all arise from protected petitioning activity, Defendants

1 establish the first prong of the anti-SLAPP analysis. On the second prong of the analysis,
2 Plaintiffs cannot meet their burden to show a likelihood of success on the merits. In addition,
3 Plaintiffs' claims are barred by Civil Code 1714.10 and the litigation privilege. Accordingly,
4 Austin respectfully requests the Court grant her special motion to strike Plaintiffs' FAC as to
5 Defendants Gina M. Austin and Austin Legal Group pursuant to Code of Civil Procedure section
6 425.16.

7 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

8
9 Dated: June 16, 2022

By: 

Douglas A. Pettit, Esq.
Kayla R. Sealey, Esq.
Attorneys for Defendants
**GINA M. AUSTIN and
AUSTIN LEGAL GROUP**

EXHIBIT 12

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6 and Attorney for Plaintiffs
7 Amy Sherlock, Minors T.S.
and S.S.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

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

12 Plaintiffs,)

13 vs.)

14 GINA M. AUSTIN, an individual;)
AUSTIN LEGAL GROUP APC, a California)
Corporation; GERACI, an individual;;)
15 REBECCA BERRY, an individual; JESSICA)
MCELFRESH, an individual; SALAM)
16 RAZUKI, an individual;)
NINUS MALAN, an individual;)
17 FINCH, THORTON, and BAIRD, a Limited)
Liability Partnership, JAMES D. CROSBY, an)
18 individual; ABHAY SCHWEITZER, an)
individual and dba TECHNE; JAMES (AKA)
19 JIM) BARTELL, a California Corporation;)
NATALIE TRANG-MY NGUYEN, an)
20 individual, AARON MAGAGNA, an individual;)
BRADFORD HARCOURT, an individual;)
21 EULENTIAS DUANE ALEXANDER, an)
individual; ALLIED SPECTRUM, INC, a)
22 California corporation, PRDIGIOUS)
COLLECTIVES, LLC a California Limited)
23 Liability Company; and DOES 1 through 50,)
inclusive,)

24 Defendants.)
25)
26)
27)
28)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/25/2022 at 04:38:00 PM
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By Regina Chanez, Deputy Clerk

Case No.: 37-2021-00050889-CU-AT-CTL

**PLAINTIFF'S OPPOSITION TO
GINA M. AUSTIN AND AUSTIN
LEGAL GROUP'S SPECIAL
MOTION TO STRIKE
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Date: August 5, 2022

Time: 9:00 a.m.

Dept: C-75

Judge: Hon. James A Mangione

Filed December 3, 2021

Trial: Not Set.

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1 **I. INTRODUCTION**

2 Defendant attorney Gina Austin’s business practice – the Proxy Practice – is illegal. The Proxy
3 Practice is not immunized by the litigation privilege or the *Noerr-Pennington* doctrine. Therefore,
4 attorney Austin’s motion to strike plaintiffs’ complaint pursuant to Code Civil Procedure § 425.16
5 (the “anti-SLAPP” statute) must be denied (the “Motion”).

6 **II. SUMMARY OF THE CASE AND MOTION**

7 Attorney Austin and her law firm have for years successfully carried out an illegal conspiracy
8 with their clients to illegally acquire ownership interests in cannabis businesses. The sole and
9 dispositive factor in making this determination is conclusively established by the “shall deny”
10 language set forth in California Business & Professions Code § 19323 and § 26057.¹

11 As set forth below, the Austin Legal Group’s interpretation of the statute contradicts its plain
12 language, the Legislative intent pursuant to which they were passed, and the Department of Cannabis
13 Control’s interpretation. The litigation filed or maintained by the Austin Legal Group based on the
14 Proxy Practice is in furtherance of the illegal conspiracy and is inherently anticompetitive. It prevents
15 lawful qualified applicants from acquiring ownership of cannabis businesses and prevents, like this
16 Motion, parties with rights to the businesses, and the CUPs/licenses pursuant to which they operate,
17 from vindicating their rights. It is therefore sham litigation and not immunized.

18 **III. MATERIAL FACTUAL AND PROCEDURAL BACKGROUND**

19 ***A. California’s cannabis public policy requires the disclosure of all owners of a cannabis***
20 ***business.***

21 On June 27, 2017, the Legislature enacted the Medicinal and Adult-Use Cannabis Regulation
22 and Safety Act (SB 94). (2017 Cal SB 94.) SB 94 § 1 materially provides as follows:

23 The Legislature finds and declares as follows:
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27 ¹ Terms not otherwise defined herein have the meaning set forth in the Complaint.

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(a) In November 1996, voters approved Proposition 215, which decriminalized the use of medicinal cannabis in California. Since the proposition was passed, most, if not all the regulation has been left to local governments.

(b) In 2015, California enacted three bills—Assembly Bill 243 (Wood, Chapter 688 of the Statutes of 2015); Assembly Bill 266 (Bonta, Chapter 689 of the Statutes of 2015); and Senate Bill 643 (McGuire, Chapter 719 of the Statutes of 2015)—that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery, and testing of medicinal cannabis in California. This regulatory scheme is known as the Medical Cannabis Regulation and Safety Act (MCRSA).

(c) In November 2016, voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). Under Proposition 64, adults 21 years of age or older may legally grow, possess, and use cannabis for nonmedicinal purposes, with certain restrictions. In addition, beginning on January 1, 2018, AUMA makes it legal to sell and distribute cannabis through a regulated business.

(d) Although California has chosen to legalize the cultivation, distribution, and use of cannabis, it remains an illegal Schedule I controlled substance under federal law. The intent of Proposition 64 and MCRSA was to ensure a comprehensive regulatory system that takes production and sales of cannabis away from an illegal market and curtails the illegal diversion of cannabis from California into other states or countries.

....

(f) In order to strictly control the cultivation, processing, manufacturing, distribution, testing, and sale of cannabis in a transparent manner that allows the state to fully implement and enforce a robust regulatory system, ***licensing authorities must know the identity of those individuals who have a significant financial interest in a licensee, or who can direct its operation.*** Without this knowledge, regulators would not know if an individual who controlled one licensee also had control over another. To ensure accountability and preserve the state’s ability to adequately enforce against all responsible parties the state must have access to key information.

(g) So that state entities can implement the voters’ intent to issue licenses beginning January 1, 2018, while avoiding duplicative costs and inevitable confusion among licensees, regulatory agencies, and the public and ensuring a regulatory structure that prevents access to minors, protects public safety, public health and the environment, as well as maintaining local control, it is necessary to provide for a single regulatory structure for both medicinal and adult-use cannabis and provide

1 for temporary licenses to those applicants that can show compliance with local
2 requirements.

3 (2017 Cal SB 94 at § 1.)

4 Pursuant to MCRSA and Proposition 64, the Legislature has mandated always that State
5 cannabis licensing agencies “issue state licenses *only* to qualified applicants.” (BPC §§ 19320(a)
6 (emphasis added), 26055(a) (“Licensing authorities may issue state licenses *only* to qualified
7 applicants.” (emphasis added).)

8 The keys statutes here are BPC § 19323 that applied pursuant to MCRSA and BPC § 26057
9 that applied pursuant to Proposition 64. Materially summarized, Proposition 64 created the licensing
10 scheme that set forth the criteria for cannabis licenses for *nonprofit* medical entities in BPC § 19323.
11 Proposition 64 created the licensing scheme that set forth the criteria for cannabis licenses for *for-*
12 *profit* recreational entities in BPC § 26057. SB 94 consolidated the nonprofit and for-profit medical
13 licensing scheme repealing MCRSA, including BPC § 19323, and making the criteria in BPC § 26057
14 applicable to all cannabis applications.

15 ***B. Definition of “applicant” and “owner” under MCRSA and Proposition 64***

16 An “applicant” for a State cannabis license under MCRSA was defined as:

- 17 (1) Owner or owners of a proposed facility, including all persons or entities having
18 ownership interest other than a security interest, lien, or encumbrance on
19 property that will be used by the facility.
- 20 (2) If the owner is an entity, “owner” includes within the entity each person
21 participating in the direction, control, or management of, or having a financial
22 interest in, the proposed facility.
- 23 (3) If the applicant is a publicly traded company, “owner” means the chief
24 executive officer or any person or entity with an aggregate ownership interest
25 of 5 percent or more.

1 BPC § 19300.5 (emphasis added).²

2 An “applicant” for a State cannabis license under AUMA was defined as:

3 (1) The owner or owners of a proposed licensee. “Owner” mean all persons having
4 (A) an aggregate ownership interest (other than a security interest, lien, or
5 encumbrance) of 20 percent or more in the licensee and (B) the power to direct
or cause to be directed, the management or control of the licensee.

6 (2) If the applicant is a publicly traded company, "owner" includes the chief
7 executive officer and any member of the board of directors and any person or
8 entity with an aggregate ownership interest in the company of 20 percent or
more. If the applicant is a nonprofit entity, "owner" means both the chief
executive officer and any member of the board of directors.

9 BPC § 26001(a).³

10 ***C. Criteria mandating the denial of an application for a State license under MCRSA and***
11 ***Proposition 64.***

12 MCRSA added § 19323 to the BPC that provided the criteria pursuant to which an application
13 must be denied, which materially provided as follows:

14 (a) The licensing authority ***shall deny*** an ***application*** if either the ***applicant*** or the
15 premises for which a state license is applied do not qualify for licensure under
this chapter.

16 (b) The licensing authority ***may deny*** the ***application*** for licensure or renewal of a
17 state license if any of the following conditions apply:

18 (1) Failure to comply with the provisions of this chapter or any rule or
19 regulation adopted pursuant to this chapter, including but not limited to, any
20 requirement imposed to protect natural resources, instream flow, and water
quality pursuant to subdivision (a) of Section 19332.

21 [....]

22 (3) The applicant has failed to provide information required by the licensing
23 authority.

24
25
26 ² BPC § 19300.5 added by Stats 2016 ch 32 § 8 (SB 837), effective June 27, 2016. Repealed Stats
2017 ch 27 § 2 (SB 94), effective June 27, 2017.

27 ³

1
2 [....]

3 (8) The applicant, or any of its officers, directors, or owners, has been
4 sanctioned by a licensing authority or a city, county, or city and county for
5 unlicensed commercial medical cannabis activities or has had a license revoked
under this chapter in the three years immediately preceding the date the
application is filed with the licensing authority.

6 Materially, BPC § 26057 was amended by SB 837, which deleted subsection (3) and
7 renumbered subsection (8) to subsection (7), effective June 27, 2016. (Stat 2016 ch 32 at § 27 (SB
8 837).)

9 AUMA added § 26057 to the BPC that provided the criteria pursuant to which an application
10 must be denied, which materially provides as follows:

11 (a) The licensing authority shall deny an application if either the applicant, or the
12 premises for which a state license is applied, do not qualify for licensure under this
division.

13 (b) The licensing authority *may deny* the *application* for licensure or renewal of a
14 state license if any of the following conditions apply.... (4) Failure to provide
15 information required by the licensing authority.... (7) The applicant... has been
16 sanctioned by... a city... for unauthorized commercial marijuana activities or
commercial medical cannabis activities... in the three years immediately preceding
the date the application is filed with the licensing authority...

17 (Proposition 64 at § 6.1.)

18 ***D. Regulations adopted by the Department of Cannabis Control pursuant to Proposition***
19 ***64 mandate that “owners” like Geraci and Razuki must be disclosed and applications***
20 ***must be denied if the owners have been sanctioned for unlicensed commercial***
cannabis activities.

21 Statutes are laws written and passed by the Legislature that apply to the whole State.
22 Regulations are rules created by a State agency that interpret statutes and make them more specific.
23 The Department of Cannabis Control created regulations that apply to cannabis businesses that
24 effectuate the cannabis statutes passed by the Legislature set forth in the Business & Professions
25 Code.

1 Pursuant to CCR § 5002(c)(20)(M), an applicant is required to disclose “a detailed description
2 of any administrative orders or civil judgments for... ***sanctions for unlicensed commercial cannabis***
3 ***activity by a licensing authority***... against the applicant or a business entity in which the applicant
4 was an owner or officer within the three years immediately preceding the date of the application.”
5 (Cal. Code Regs., tit. 16, § 5002(c)(20)(M) (emphasis added).)

6 Pursuant to CCR § 5032, “Licensees shall not conduct commercial cannabis activities on
7 behalf of, at the request of, or pursuant to a contract with any person who is not licensed under the
8 Act.” (Cal. Code Regs., tit. 16, § 5032(b).) This section makes clear that licensees like Malan and
9 Berry, had the Berry Application been approved, cannot conduct commercial cannabis activities
10 “pursuant to a contract with any person who is not licensed” like Geraci and Razuki. The Proxy
11 Practice directly and completely violates this regulation; it is illegal.

12 ***E. Lawrence Geraci and Salam Razuki’s sanctions for unlicensed commercial cannabis***
13 ***activities.***

14 On October 27, 2014, Geraci was sanctioned by the City of San Diego for unlicensed
15 commercial cannabis activities in *City of San Diego v. The Tree Club Cooperative, Inc. et al.* San
16 Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL (the “Tree Club Judgement”). (First
17 Amended Complaint (“FAC”) at ¶ 43, fn.7.)

18 On June 17, 2015, Geraci was sanctioned by the City of San Diego for unlicensed commercial
19 cannabis activities in *City of San Diego v. CCSquared Wellness Cooperative, et al.* Case No. 37-2015-
20 00004430-CU-MC-CTL (the “CCSquared Judgment and collectively with the Tree Club Judgment,
21 the “Geraci Judgments”). (FAC at ¶ 43, fn.7.)

22 On or about April 15, 2015, defendant Razuki was sanctioned for unlicensed commercial
23 cannabis activities in *City of San Diego v. Stonecrest Plaza, LLC* Case No. 37-2014-00009664-CU-
24 MC-CTL (the “Stonecrest Judgment”). (FAC at ¶ 46, fn. 8.)
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1 ***F. The Motion to Strike is entirely predicated on the false argument that BPC §§***
2 ***19323/26057 do not bar Geraci and Razuki’s ownership of cannabis businesses even***
3 ***though they were not disclosed in the applications and were sanctioned for unlicensed***
4 ***commercial cannabis activities.***⁴

5 The Motion is 20 pages long and attaches an additional 97 pages of exhibits. But the entire
6 validity of the Motion and this case is determined by whether BPC §§ 19323/26057 bar ownership of
7 cannabis businesses by Geraci and Razuki. The entirety of the Austin Legal Group’s argument that
8 the statutes do not is as follows:

9 Plaintiffs allege that Austin’s “Proxy Practice is illegal and violates numerous State
10 and City laws, most notably, BPC §§ 19323 et seq. and 26057 et seq.” (FAC, ¶
11 314.) Business and Professions Code section 26057, formerly section 19323, states
12 the licensing authority “shall deny an application if either the applicant, or the
13 premises for which a state license is applied, do not qualify for licensure under this
14 division.” (Bus. & Prof. Code, § 26057.) The statute goes on to list specific
15 conditions that may constitute grounds for denial of licensure or renewal. (Ibid,
16 emphasis added.)

17 Plaintiffs’ entire argument backing their “Proxy Practice” allegation rests on their
18 asserted fact that Geraci and Razuki were ineligible to own a cannabis license or
19 CUP due to previously being sanctioned for unlicensed commercial cannabis
20 activities. What Plaintiffs’ do not mention is that although this type of sanction
21 could be grounds for denial, section 26057 allows the licensing authority to decide
22 based on all the circumstances. A plain reading of the statute shows there is no one
23 condition that constitutes an automatic, outright denial. ***The statute gives the***
24 ***licensing authority complete discretion to weigh factors and decide what may***
25 ***constitute grounds for denial.***

26 Further, it is unclear as to how Austin could be implicated for violation of this
27 statute as it does not apply to her. Section 26057 appears to be guidelines for a
28 licensing authority to follow when reviewing applications for cannabis licenses and
29 CUPs. Austin takes no part in reviewing, approving or denying such applications.

(Motion at 17:24-18:14 (emphasis added).)

30 ⁴ Plaintiffs note that the Motion is full of false statements and misrepresentations to this Court.
31 However, as the Motion is based solely on the false argument that BPC §§ 19323/20657, Plaintiffs
32 do not dispute and confuse from the sole case/motion-dispositive issue.

1 Thus, Attorney Austin’s entire motion rests on the claim that the State’s cannabis licensing
2 agency has “complete discretion” to deny cannabis applications. That is blatantly false. And so is
3 Attorney Austin’s absurd, self-serving failure to understand that if she helps commit a fraud upon a
4 licensing agency by submitting fraudulent applications that she cannot be held liable because she is
5 not the decision maker as to whether those applications are denied or granted.

6 **IV. LEGAL STANDARD**

7 In *Flatley*, the California Supreme Court held that petitioning activity is not protected by the
8 anti-SLAPP statute if “the defendant concedes, or the evidence conclusively establishes, that the
9 assertedly protected speech or petition activity was illegal as a matter of law.” *Flatley v. Mauro* (2006)
10 39 Cal.4th 299, 317.

11 Whether the Proxy Practice violates BPC §§ 19323/26057 and constitutes illegal petitioning
12 is a question of law. *Wilson v. Brawn of California, Inc.* (2005) 132 Cal.App.4th 549, 554 (“Questions
13 of law, such as statutory interpretation or the application of a statutory standard to undisputed facts,
14 are reviewed de novo.”); see *Jackson v. Rogers & Wells* (1989) 210 Cal.App.3d 336, 349-350
15 (“Whether a contract is illegal or contrary to public policy is a question of law to be determined from
16 the circumstances of each particular case.”); *Ghirardo v. Antonioli* (1994) 8 Cal. 4th 791, 799 (“When
17 the decisive facts are undisputed, we are confronted with a question of law and are not bound by the
18 findings of the trial court.”); *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592,
19 603 (“On a pure question of law, trial courts have no discretion. They must, without choice, apply the
20 law correctly.”).)

21 For purposes of illegality, the “law” includes statutes, local ordinances, and administrative
22 regulations issued pursuant to the same. *Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118
23 Cal.App.4th 531, 542.

24 **V. ARGUMENT**

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1 licenses only to qualified applicants” - when they are not disclosed? (BPC §§ 19320(a), 26055(a).)
2 They can’t. It is impossible. As a matter of common sense and by the Austin Legal Group’s own
3 reasoning, the illegality of the Proxy Practice is clear – a regulated license can’t be lawfully issued to
4 a party that is not disclosed in the application to the agency charged with issuing the license.

5 On this ground alone the Court must find that the Austin Legal Group’s petitioning activity is
6 illegal – it is a direct factual admission of perpetrating a fraud upon the State and City licensing
7 agencies and defrauding qualified applicants of the limited number of licenses available. (See SB 94
8 at § 1(f) (“... *licensing authorities must know the identity of those individuals who have a*
9 *significant financial interest in a licensee, or who can direct its operation.*” (emphasis added); Penal
10 Code § 484(a) (“Every person... who shall knowingly and designedly, by any false or fraudulent
11 representation or pretense, defraud any other person of ... real or personal property... is guilty of
12 theft.”).)

13 Second, assuming that somehow the Department of Cannabis Control magically knew that
14 Geraci and Razuki were owners that were not disclosed in the applications for CUPs/licenses, their
15 applications must be denied because of their sanctions. The claim that the sanctions are not an absolute
16 bar is based on the purposeful misrepresentation of the “shall deny” and “may deny” language
17 contained in subsections (a) and (b) of BPC §§ 19323 and 26057. Subsection (a) has always applied
18 to “applicants” that are individual persons, subsection (b) has always applied to “applications” by
19 applicants that are entities. (See BPC §§ 19300.5 (defining owner to include entities), 260001(a)
20 (same).) This is made clear by the language in subsection (b) of both statutes that states: “The
21 applicant, or any of *its* officers, directors, or owners, has been sanctioned by a licensing authority...”

22 This is reasonable and in accord with the plain language of the statutes. For example, if an
23 applicant is an entity and one of the owners was a sanctioned party, but the sanctioned party only
24 owned 1% of the entity, the Department of Cannabis Control could decide that such an interest was
25 not material and could choose to grant the application.

1 This Court must give the “shall deny” language its plain meaning of being an absolute bar to
2 the issuance of licenses to disqualified applicants. *Cruz*, 13 Cal.4th at 774-775; *Paterra*, 64
3 Cal.App.5th at 536 (Legislature use of “shall not” reflects Legislature’s intent of “absolutely
4 prohibiting” contrary act). This Court cannot ignore the “shall deny” language and give the “may
5 deny” language the application that the Austin Legal Group claims, which would lead to an absurd
6 result – sanctioned parties can legally acquire ownership of cannabis businesses without being
7 disclosed to licensing agencies. *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247,
8 259 (courts cannot construe statutes in manner contrary to legislative intent that would lead to absurd
9 result and injustice).

10 As succinctly stated by the United States Supreme Court: “When the express terms of a statute
11 give us one answer and extratextual considerations suggest another, it’s no contest. ***Only the written***
12 ***word is the law, and all persons are entitled to its benefit.***” *Bostock v. Clayton Cty.* (2020)
13 ___ U.S. ___ [140 S.Ct. 1731, 1737] (emphasis added). The “shall deny” language is the law. It is
14 clear and controlling. Thus, “extratextual considerations” – in this case the procedural history of the
15 adjudication of the illegality of the Proxy Practice – are inconsequential.

16 **2. In construing the “shall deny” language of BPC §§ 19323/26057, the Court**
17 **should follow the interpretation of Department of Cannabis Control because**
18 **as the agency charged with its enforcement, its interpretation is entitled to**
great weight and must be followed unless clearly erroneous.

19 When an administrative agency is charged with enforcing a particular statute, its interpretation
20 of the statute will be accorded great respect by the courts and will be followed if not clearly erroneous.
21 *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 911. Any potential doubt regarding
22 the Department of Cannabis Control’s non-discretionary mandate to deny the applications by Geraci
23 and Razuki are removed by CCR § 5002 requiring the disclosure of the sanctions. (Cal. Code Regs.,
24 tit. 16, § 5002(c)(20)(M) (application for State license must include “a detailed description of any
25 administrative orders or civil judgments for... ***sanctions for unlicensed commercial cannabis***
26 ***activity by a licensing authority...***”) (emphasis added).

1 Also, CCR § 5032, which prohibits parties like Berry and Malan working on behalf of,
2 respectively, Geraci and Razuki because Geraci and Razuki are not qualified applicants. (Cal. Code
3 Regs., tit. 16, § 5032(b) (“Licensees shall not conduct commercial cannabis activities on behalf of, at
4 the request of, or pursuant to a contract with any person who is not licensed under the Act.”).

5 The Department of Cannabis Control’s interpretation of the statutes requiring the disclosure
6 of sanctions must be followed by this Court because it is not clearly erroneous. Therefore, even
7 assuming that Geraci and Razuki had not been sanctioned, the failure to provide a detailed list of the
8 required sanctions means the subject applications must be denied for (i) failing to provide required
9 information (i.e., their ownership interests) and (ii) because they cannot engage in commercial
10 cannabis activities pursuant to agreements with Berry/Malan. (BPC §§ 19323(a), (b) (3) (“The
11 applicant has failed to provide information required by the licensing authority.”); 26057(a), (b)(4)
12 (“Failure to provide information required by the licensing authority.”); (Cal. Code Regs., tit. 16, §
13 5032(b).).

14 **3. The Austin Legal Group’s claim is a direct factual admission of violating Penal**
15 **Code § 115**

16 “Penal Code section 115... makes it a felony to knowingly procure or offer any false or forged
17 instrument for filing in a public office.” *People ex rel. Harris v. Aguayo* (2017) 11 Cal.App.5th 1150,
18 1166.⁵ The Austin Legal Group directly admits that the subject applications by Geraci and Razuki
19 contained false statements – their agents’ false certifications that they had disclosed all parties with
20 an interest in the proposed properties and CUPs/licenses. Therefore, the Proxy Practice violates Penal
21 Code § 115.

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25 ⁵ Penal Code § 115(a) provides: “Every person who knowingly procures or offers any false or forged
26 instrument to be filed, registered, or recorded in any public office within this state, which instrument,
27 if genuine, might be filed, registered, or recorded under any law of this state or of the United States,
is guilty of a felony.”

1 actions may not be subject to immunity under the *Noerr-Pennington* doctrine.”); *id.* at 1163 (“[F]raud
2 ... and recording false documents, among other things, are not protected petitioning activity under
3 *Noerr-Pennington* and its progeny.”). No reasonable party, much less an attorney or judge, can
4 believe that Geraci and Razuki can lawfully acquire ownership interests in a regulated CUP/license
5 in violation of BPC §§ 19323/26057.

6 Second, all litigation based on the Proxy Practice interferes with the business relationship of
7 a competitor. Cannabis CUPs and licenses are highly regulated. Every illegally acquired CUP/license
8 defrauds a qualified applicant. Here, Plaintiffs had ownership rights to the subject CUPs acquired via
9 the Proxy Practice. That the Austin Legal Group continues to argue that their Proxy Practice is not
10 illegal simply demonstrates their *purposeful* and *continued* use of “the governmental process (as
11 opposed to the outcome of that process) as an anticompetitive weapon.” *PREI*, 508 U.S. at 60–61;
12 *California Motor*, 404 U.S. at 515 (“First Amendment rights may not be used as the means or the
13 pretext for achieving ‘substantive evils’ which the legislature has the power to control.”). The claims
14 made in the Motion are without any factual or legal justification and are taken in furtherance of the
15 attorney-client conspiracy between the Austin Legal Group and her clients and give rise to antitrust
16 liability. *Clipper Express*, 674 F.2d at 1270 (“There is no first amendment protection for furnishing
17 with predatory intent false information to an administrative or adjudicatory body.”); *id.* at 1272
18 (“*Walker Process* recognizes that fraudulently supplying information can result in monopolization,
19 and therefore violate the antitrust laws.”).

20 In *Hi-Top Steel*, the plaintiff brought claims of unfair competition and interference with
21 contract and prospective economic advantage based on the defendants’ challenge to the plaintiffs’
22 application for a city permit to install an automobile body shredder. *Hi-Top Steel*, 24 Cal. App. 4th at
23 572-573. The trial court dismissed these claims on the defendants’ motion for judgment on the
24 pleadings. The court of appeal reversed, concluding that the plaintiffs’ allegations were sufficient to
25 show that the “defendants undertook petitioning activity solely to delay or prevent plaintiffs’ entry
26 into the shredded automobile body market through use of ‘the governmental process—as opposed to

1 the outcome of that process—as an anticompetitive weapon.’ ” *Id.* at 582-583 (quoting *Omni*, 499 US
2 at 380).

3 The plaintiffs alleged that: (1) the defendants had prosecuted an appeal without regard for its
4 merits, (2) agreed to withdraw the appeal if the plaintiffs agreed not to compete with them in the
5 automobile body shredding business, (3) threatened to impose additional obstacles if the plaintiffs
6 would not agree, while (4) working toward installing their own shredder, indicating that their
7 professed environmental concerns were not genuine. *Id.* at 581-582. These facts, the court found,
8 were a sufficient basis to conclude that plaintiffs “were not concerned with stopping plaintiffs’
9 installation ... through governmental action but through the imposition of costs and burdens
10 associated with the governmental process,” and, therefore, to state a claim based on the sham
11 exception to *Noerr-Pennington*. *Id.* at 583.

12 Here, Judge Wohlfeil found that but-for Cotton’s alleged interference with the Berry
13 Application, a CUP would have issued at the Property. (Comp. at ¶ 203 (Judge Wohlfeil at trial: “I
14 think, that it’s more probable than not that a CUP had been issued and the dispensary opened...”).) In
15 other words, what prevented Cotton from acquiring a CUP at the Property – the interference – was
16 Geraci’s petitioning activity with the City of San Diego and the filing of *Cotton I* based on the illegal
17 Proxy Practice. The delay caused by the petitioning activity allowed Attorney Austin’s other client to
18 acquire a CUP within 1,000 feet of the Property, thereby disqualifying the Property for a CUP.

19 Based on *Hi-Top Steel*, and on the undisputed facts here and questions of law regarding
20 illegality, this Court must find that the Austin Legal Group’s petitioning activity was not to protect
21 lawful ownership rights in cannabis businesses through governmental action. Rather, to through the
22 imposition of costs and burdens associated with the governmental process to extort and make it
23 financially unfeasible for Plaintiffs to protect and vindicate their rights. Therefore, Plaintiffs state a
24 claim based on the sham exception to *Noerr-Pennington*. *Id.* at 583.

25 **1. Plaintiffs are not barred by Civil Code § 1714.10.**

1 The requirement under Section 1714.10 of the Civil Code that a plaintiff obtain an order
2 allowing a pleading that includes a claim against an attorney for civil conspiracy with his or her client
3 does not apply to a cause of action against an attorney if the attorney's acts go beyond the performance
4 of a professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance
5 of the attorney's financial gain. (Civ. Code § 1714.10(c).) Additionally, Civ. Code § 1714.10(a) bars
6 only actions against an attorney for conspiring with a client arising from "any attempt to contest or
7 compromise a claim or dispute." Here, Attorney Austin's representation of her client is for her
8 petitioning activity with City and State licensing agencies and litigation in furtherance thereof, not an
9 "attempt to contest or compromise a claim or dispute." Therefore, on its face, Civ. Code § 1714.10
10 does not apply to the Complaint.

11 Additionally, exceptions to the prefiling requirement apply here. "There are two statutory
12 exceptions to the prefiling requirement of section 1714.10(a). Section 1714.10, subdivision (c)
13 (hereafter section 1714.10(c)), provides that section 1714.10(a) does "not apply to a cause of action
14 against an attorney for a civil conspiracy with his or her client, where (1) the attorney has an
15 independent legal duty to the plaintiff, or (2) the attorney's acts go beyond the performance of a
16 professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance of
17 the attorney's financial gain." (*Central Concrete Supply Co., Inc. v. Bursak* (2010) 182 Cal.App.4th
18 1092, 1099.)

19 Here, Attorney Austin lied to public agencies, the judiciaries, including this Court in the
20 Motion, committed perjury in the *Cotton I* trial, has masterminded a multiyear criminal conspiracy
21 successfully manipulating the San Diego State Courts to enforce illegal contracts, all for her financial
22 gain via purely criminal petitioning activity, in blatant violation of the law, all originating from the
23 Proxy Practice - submitting false documents to a cannabis licensing agencies to help drug dealers
24 acquire prohibited ownership of legal cannabis businesses. *Clipper Exxpres*, 674 F.2d at 1271 ("***There***
25 ***is no first amendment protection for furnishing with predatory intent false information to an***
26 ***administrative or adjudicatory body.***") (emphasis added).

1 Finally, if the Court finds that Plaintiffs have failed to plead sufficient facts to show an
2 exception to the prefiling requirement, Plaintiff's should be allowed to amend the complaint to include
3 such because (1) subdivision (a) states the absolute defense only apply where a prefiling order is
4 required, which as previously stated, is not required based on Attorney Austin's petitioning activity;
5 and no expressed provision of the statute precludes the court from granting leave to amend to include
6 such facts.

7 A complaint setting forth either exception specified in section 1714.10(c) need not
8 follow the petition requirements of section 1714.10(a). No express provision in section
9 1714.10(b) or any other subdivision of that statute precludes a trial court from granting
10 a plaintiff leave to amend to demonstrate a valid conspiracy claim against
11 an attorney by alleging either of the statutory exceptions. Further, nothing in the
12 legislative history of section 1714.10(b) suggests that the trial court lacks its normal
13 discretionary authority to grant leave to amend.

14 *Central Concrete Supply Co., Inc. v. Bursak* (2010) 182 Cal.App.4th 1092, 1100.

15 **2. The Proxy Practice is a per se violation of the Cartwright Act.**

16 To prevail in an antitrust action under the Cartwright Act, a plaintiff must prove the following:
17 (1) the formation and operation of the conspiracy; (2) illegal acts done pursuant thereto; and (3)
18 damage proximately caused by such acts. *Asahi Kasei Pharma Corp. v. CoTherix, Inc.* (2012) 204
19 Cal.App.4th 1, 8.

20 The doctrine of per se illegality holds that some acts are prohibited by the antitrust laws
21 regardless of any asserted justification or alleged reasonableness. *Oakland-Alameda County Builders'*
22 *Exchange v. F. P. Lathrop Constr. Co.* (1971) 4 Cal.3d 354, 361. These per se illegal practices,
23 because of their pernicious effect on competition and lack of any redeeming virtue, are conclusively
24 presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm
25 they have caused or the business excuse for their use. (*Id.* at 361.)

26 The Proxy Practice is a per se violation of antitrust laws. It is illegal and intended to deprive
27 competitors - qualified applicants - from acquiring ownership of cannabis businesses.

1 But-for (i) Cotton steadfastly and heroically refusing for years to not be extorted of the
2 Property via the pressures of litigation and adverse rulings and (ii) Razuki and Malan’s falling out
3 over ownership of their illegal multi-million dollar cannabis empire they built in the City of San
4 Diego, the Austin Legal Group would not be forced in this litigation to nonsensically attempt to argue
5 that the Proxy Practice is not illegal because somehow the Department of Cannabis Control magically
6 knows that Geraci and Razuki had interests in the applications and “shall deny” means “may deny.”
7

8 DATED: July 25, 2022

Respectfully submitted,
LAW OFFICE OF ANDREW FLORES

11 _____
12 ANDREW FLORES,ESQ
13 Plaintiff *in Propria Persona*
14 and Attorney for Plaintiffs
15 Amy Sherlock, Minors T.S.
16 and S.S.
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27

EXHIBIT 13

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12 Attorneys for Defendants
13 **GINA M. AUSTIN and**
14 **AUSTIN LEGAL GROUP**

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

17 AMY SHERLOCK, an individual and on
18 behalf of her minor children, T.S. and S.S.,
19 ANDREW FLORES, an individual,

20 Plaintiffs,

21 v.

22 GINA M. AUSTIN, an individual; AUSTIN
23 LEGAL GROUP, a professional
24 corporation, LARRY GERACI, an
25 individual, REBECCA BERRY, an
26 individual; JESSICA MCELFRISH, an
27 individual; SALAM RAZUKI, an
28 individual; NINUS MALAN, an individual;
FINCH, THORTON, AND BARID, a
limited liability partnership; ABHAY
SCHWEITZER, an individual and dba
TECHNE; JAMES (AKA JIM) BARTELL,
an individual; NATALIE TRANG-MY
NGUYEN, an individual, AARON
MAGAGNA, an individual; BRADFORD
HARCOURT, an individual; SHAWN
MILLER, an individual; LOGAN
STELLMACHER, an individual;
EULENTIAS DUANE ALEXANDER, an
individual; STEPHEN LAKE, an
individual, ALLIED SPECTRUM, INC. a
California corporation, PRODIGIOUS
COLLECTIVES, LLC, a limited liability
company, and DOES 1 through 50,
inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/29/2022 at 12:51:00 PM

Clerk of the Superior Court
By Adriana Ive Anzalone, Deputy Clerk

CASE NO.: 37-2021-00050889-CU-AT-CTL

**DEFENDANTS GINA M. AUSTIN AND
AUSTIN LEGAL GROUP'S REPLY TO
PLAINTIFFS' OPPOSITION TO MOTION
TO STRIKE PLAINTIFFS' FIRST
AMENDED COMPLAINT PURSUANT TO
CODE OF CIVIL PROCEDURE SECTION
425.16 (ANTI-SLAPP STATUTE)**

[IMAGED FILE]

Date: August 5, 2022

Time: 9:00 a.m.

Dept.: C-75

Judge: Hon. James A. Mangione

Filed: December 3, 2021

Trial: Not Set

1 Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, “Austin” or
2 “Defendants”), hereby submit the following reply to Plaintiffs AMY SHERLOCK, an individual
3 and on behalf of her minor children, T.S. and S.S., and ANDREW FLORES’ (collectively,
4 “Plaintiffs”) opposition to Defendants’ Special Motion to Strike Plaintiffs’ First Amended
5 Complaint pursuant to Code of Civil Procedure section 425.16 (the “anti-SLAPP statute”).

6 **I.**

7 **INTRODUCTION**

8 Defendants have satisfied their burden under the first prong of the anti-SLAPP statute—
9 Plaintiffs’ claims all arise out of Austin acting within her scope as an attorney and petitioning for
10 condition use permits (“CUPs”) on behalf of her clients. Such petitioning conduct is explicitly
11 protected by section 425.16. Accordingly, the burden shifts to Plaintiffs. In order to survive
12 Defendants’ special motion to strike, Plaintiffs were required to present admissible evidence
13 sufficient to establish a reasonable probability of success on each element of every claim.

14 Notwithstanding the fact that Plaintiffs served an unsigned opposition, which can and
15 should be disregarded on that basis alone,¹ Plaintiffs failed to meet their burden as to every claim
16 alleged against Defendants. Plaintiffs’ Opposition does not provide a single piece of evidence and
17 does not discuss a single element for any of their claims. Given Plaintiffs complete failure to
18 provide any evidence, Defendants’ anti-SLAPP motion must be granted.

19 **II.**

20 **ARGUMENT**

21 **A. Under The First Prong of the Anti-SLAPP Analysis, Austin has Established that**
22 **Plaintiffs’ Claims Arise from Activity Protected by the Anti-SLAPP Statute**

23 The protected activities described in subdivision (e)(1) of Code of Civil Procedure section
24

25 ¹ Code of Civil Procedure section 446 requires that “[e]very pleading shall be subscribed by the
26 party or his or her attorney.” Code of Civil Procedure section 128.7 likewise requires that
27 “[e]very pleading, petition, written notice of motion, or other similar paper shall be signed by at
28 least one attorney of record in the attorney’s individual name, or, if the party is not represented by
an attorney, shall be signed by the party.” The Section further provides that “[a]n unsigned
paper shall be stricken...” The opposition served by Plaintiffs was unsigned and, by Code,
should be stricken.

1 425.16 include statements or writings “made before a legislative, executive, or judicial
2 proceedings, or any other official proceeding authorized by law.” These protected activities
3 include petitioning administrative agencies. (*Briggs v. Eden Council for Hope & Opportunity*
4 (1999) 19 Cal.4th 1106, 1115 [“[t]he constitutional right to petition . . . includes . . . seeking
5 administrative action”].)

6 The core injury-producing conduct underlying Plaintiffs’ claims against Austin is her
7 efforts to assist her clients in the administrative process of seeking CUPs. As such, Plaintiffs’
8 claims are based on petitioning activity, namely, acting within her scope as an attorney and filing
9 applications with the local zoning authority on behalf of her clients. (Code Civ. Proc., § 425.16,
10 subd. (e)(1).) “A defendant's burden on the first prong is not an onerous one.” (*Optional Capital,*
11 *Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 112.) All that is
12 required is for Defendants to “identify allegations of protected activity.” (*Baral v. Schnitt* (2016)
13 1 Cal.5th 376, 396.) Defendants have clearly met this low bar.

14 Plaintiffs do not dispute that Austin engaged in petitioning activity on behalf of her
15 clients. Rather, Plaintiffs’ entire opposition is based on an incorrect and unsupported assertion
16 that Austin’s petitioning activities were “illegal.” As discussed below, Plaintiffs baseless assertion
17 of illegality is insufficient to survive anti-SLAPP scrutiny.

18 **B. The Exception for Illegal Conduct Does Not Apply**

19 Relying on *Flatley v. Mauro* (2006) 39 Cal. 4th 299, 324-328 (*Flatley*), Plaintiffs argue
20 that Austin’s petitioning activities are not protected under Code of Civil Procedure section 425.16
21 because they are “illegal as a matter of law.” [Opposition, Section A, 13-16]. First and foremost,
22 Plaintiffs mischaracterized the holding in *Flatley*. Secondly, Plaintiffs failed to present any
23 evidence, let alone sufficient evidence, to conclusively establish that Austin’s petitioning activity
24 was illegal as a matter of law.

25 Our Supreme Court has emphasized that section 425.16’s exception for illegal activity is
26 very narrow and applies only in cases where the illegality is undisputed. (*Zucchet v. Galardi*
27 (2014) 229 Cal.App.4th 1466, 1478.) Conduct that would otherwise come within the scope of the
28 anti-SLAPP statute does not lose its coverage simply because it is alleged to have been unlawful

1 or unethical. (*Flatley, supra*, 39 Cal.4th at p. 317.) The asserted protected activity loses protection
2 **only if** it is established through a defendant’s concession or by uncontroverted and conclusive
3 evidence that the conduct was illegal as a matter of law. (*Collier v. Harris* (2015) 240
4 Cal.App.4th 41, 55.) The mere fact the plaintiff alleges the defendant engaged in unlawful
5 conduct does not cause the conduct to lose its protection under the anti-SLAPP statute. (*Birkner v.*
6 *Lam* (2007) 156 Cal.App.4th 275, 285.) Conversely, in meeting the initial burden, the
7 defendant need not show as a matter of law that his or her conduct was legal. (*Soukup v. Law*
8 *Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 286.) Thus, if a plaintiff claims that the
9 defendant’s conduct is illegal and thus not protected activity, the plaintiff bears the burden of
10 conclusively proving the illegal conduct, with admissible evidence.

11 Here, Austin does not concede that she engaged in any unlawful activities. Nor is there
12 any uncontroverted evidence that her petitioning activities were unlawful as a matter of law.
13 Plaintiffs’ mere allegations that Austin engaged in unlawful activities is insufficient to render her
14 petitioning activity unlawful as a matter of law and outside the protection of Code of Civil
15 Procedure section 425.16.

16 **C. Rare Cases Where the Exception for Illegal Conduct Has Been Applied**

17 **1. *Flatley v. Mauro***

18 In contrast to Plaintiffs’ claims, *Flatley* involved claims based on activities that were
19 indisputably unlawful as a matter of law and therefore unprotected under the anti-SLAPP statute.
20 The plaintiff in *Flatley* sued an attorney for civil extortion and related causes of action based on
21 the attorney’s alleged criminal attempt to extort money from the plaintiff by threatening to
22 publicize the plaintiff’s alleged rape of the attorney’s client—unless the plaintiff paid the attorney
23 and his client a seven-figure settlement. (*Flatley, supra*, 39 Cal.4th at pp. 305-311.) In opposing
24 the attorney’s anti-SLAPP motion, the plaintiff adduced uncontroverted evidence that the attorney
25 had engaged in the alleged extortion attempt. (*Id.* at pp. 328-329 [“[the attorney] did not deny that
26 he sent the letter, nor did he contest the version of the telephone calls set forth in [the plaintiff’s
27 attorneys’] declarations”].) Based on the uncontroverted evidence that the attorney attempted
28 to extort money from the plaintiff, the court in *Flatley* concluded that the attorney made the

1 extortion attempt, which was “illegal as a matter of law,” and therefore not a protected form of
2 speech under Code of Civil Procedure section 425.16. (*Id.* at pp. 317-320.) The *Flatley* court
3 emphasized, however, that its conclusion that the defendant's conduct “constituted criminal
4 extortion as a matter of law [was] based on the specific and extreme circumstances of this case.”
5 (*Id.* at p. 332, fn. 16.)

6 **2. *Paul for Council v. Hanyecz***

7 As another example of unprotected illegal conduct, the *Flatley* court cited *Paul for*
8 *Council v. Hanyecz* (2001) 85 Cal.App.4th 1356 (*Paul*), disapproved on other grounds in *Equilon*
9 *Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5. In *Paul*, the complaint
10 alleged that the defendants interfered with the plaintiff's candidacy by making illegal campaign
11 contributions to an opponent. The defendants moved to dismiss under the anti-SLAPP
12 statute. (*Paul, supra*, at pp. 1361–1362.) However, the defendants’ own moving papers
13 effectively conceded that their laundered campaign contributions violated the law. Thus, the court
14 concluded as a matter of law that the defendant could not show that their money laundering
15 conduct was constitutionally protected even though it was undertaken in connection with making
16 political contributions. (*Id.* at p. 1365.) As in *Flatley*, the *Paul* court emphasized the narrow
17 circumstances in which a defendant's assertedly protected activity could be found to be illegal as
18 a matter of law:

19 In order to avoid any misunderstanding as to the basis for our
20 conclusions, we should make one further point. This case, as we have
21 emphasized, involves a factual context in which defendants have
22 effectively conceded the illegal nature of their election campaign
23 finance activities for which they claim constitutional protection.
24 Thus, there was *no dispute* on the point and we have concluded, as a
25 matter of law, that such activities are *not* a valid exercise of
26 constitutional rights as contemplated by section 425.16. However,
27 had there been a factual dispute as to the legality of defendants'
28 actions, then we could not so easily have disposed of defendants'
motion.

26 (*Paul, supra*, 85 Cal.App.4th at p. 1367, first italics added; accord, *Flatley, supra*, 39
27 Cal.4th at p. 317.)

28 ///

1 **D. Under the Second Prong of the Anti-SLAPP Analysis, Plaintiffs Have Not Even**
2 **Attempted to Establish a Probability of Prevailing on Their Claims**

3 To survive an anti-SLAPP motion, Plaintiffs must present admissible evidence on each
4 element of every claim. Plaintiffs make no meaningful attempt to address any of the elements of
5 their claims and more importantly, Plaintiffs' Opposition presents no evidence.

6 Section 425.16 is clear – once a moving defendant shows that the statute applies, the
7 burden shift to the plaintiff to demonstrate a probability of prevailing on their claims. (Code Civ.
8 Proc., § 425.16, subd. (b)(1).) If a “factual dispute exists about the legitimacy of the defendant’s
9 conduct, it cannot be resolved within the first step [of the anti-SLAPP analysis] but must be raised
10 by the plaintiff in connection with the plaintiff’s burden to show a probability of prevailing on the
11 merits.” (*Flatley, supra*, 39 Cal.4th at p. 316.) The showing required to establish conduct illegal
12 as matter of law is not the same showing as the plaintiff’s second prong showing of probability of
13 prevailing. (*Id.* at p. 320.)

14 Glaringly missing from Plaintiffs' Opposition is any discussion of the elements for their
15 asserted claims. There is likewise **no** evidence offered, thus making it impossible for Plaintiffs to
16 meet their burden under the second prong. Additionally, it appears Plaintiffs have conflated their
17 burden under the second prong with the burden required to establish conduct illegal as a matter of
18 law. Establishing conduct illegal as a matter of law (if applicable) is a complete and separate
19 burden in and of itself. This type of showing cannot stand in place of the burden required under
20 the second prong to show a probability of prevailing. Plaintiffs' failure to present any evidence
21 independently requires that Defendants' motion be granted.

22 **D. Section 426.15 Makes No Provision for Amending the Complaint**

23 Section 425.16 makes no provision for amending the complaint. (*Simmons v. Allstate Ins.*
24 *Co.* (2001) 92 Cal.App.4th 1068, 1073.) Decisional law makes it very clear that a plaintiff cannot
25 amend his or her complaint to try and escape an anti-SLAPP motion. (See *Contreras v. Dowling*
26 (2016) 5 Cal.App.5th 394, 411 [“[a] plaintiff ... may not seek to subvert or avoid a ruling on an
27 anti-SLAPP motion by amending the challenged complaint ... in response to the motion”];
28 accord, *ARP Pharmacy Services, Inc. v. Gallagher Bassett Services, Inc.* (2006) 138 Cal.App.4th

1 1307, 1323 [plaintiff cannot amend pleading to avoid pending anti-SLAPP motion]; *Navellier v.*
2 *Sletten* (2003) 106 Cal.App.4th 763, 772 [plaintiff cannot use an “eleventh-hour amendment” to
3 plead around anti-SLAPP motion]; see *Simmons, supra*, at p. 1073 [“we reject the notion that
4 such a right should be implied”].)

5 Plaintiffs have failed to show a reasonable probability of prevailing as to any of the causes
6 of action at issue. It would not only be futile to permit Plaintiffs to amend, but it would also
7 completely undermine the statute by providing a ready escape from section 425.16’s quick
8 dismissal remedy. (*Simmons, supra*, 92 Cal.App.4th at p. 1073.) Thus, the Court should deny
9 Plaintiffs’ improper request for leave to amend.

10 **III.**

11 **CONCLUSION**

12 As set forth above, and in the moving papers, Plaintiffs First Amended Complaint alleges
13 claims against Defendants based on petitioning activity. Such conduct is protected under section
14 425.16, which requires Plaintiffs to affirmatively demonstrate a probability of prevailing based on
15 admissible evidence. However, Plaintiffs Opposition provides no evidence and falls far from
16 meeting the burden imposed under the second prong of the anti-SLAPP statute. For these reasons,
17 Defendants’ special motion to strike must be granted.

18 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

19
20 Dated: July 29, 2022

By: 

Douglas A. Pettit, Esq.
Matthew C. Smith, Esq.
Kayla R. Sealey, Esq.
Attorneys for Defendants
**GINA M. AUSTIN and
AUSTIN LEGAL GROUP**

PROOF OF SERVICE
Amy Sherlock, et al. v. Gina M. Austin, et al.
San Diego Superior Court Case No. 37-2011-00051643-CU-PO-NC

I, the undersigned, declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of San Diego, California, and my business address is 11622 El Camino Real, Suite 300, San Diego, California 92130.

On **July 29, 2022**, I caused to be served the following documents:

- **DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP’S REPLY TO PLAINTIFFS’ OPPOSITION TO MOTION TO STRIKE PLAINTIFFS’ FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**

BY MAIL: By placing a copy thereof for delivery in a separate envelope addressed to each addressee, respectively, as follows:

- BY FIRST-CLASS MAIL (Code Civ. Proc. §§ 1013(a)-(b))**
- BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c)-(d))**
- BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED (Code Civ. Proc. §§ 1013(a)-(b))**

BY ELECTRONIC SERVICE (California Rule of Court 2.251): By submitting an electronic version of the document(s) via file transfer protocol (FTP) to OneLegal Online Court Services through the upload feature at www.onelegal.com.

BY PERSONAL SERVICE: I caused the above-described document to be personally served on the parties listed on the service list below at their designated business addresses pursuant to Code Civ. Proc. §1011.

<p>Andrew Flores, Esq. Law Office of Andrew Flores 427 C Street, Suite 210 San Diego, CA 92101 Tel: (619) 356-1556 Fax: (619) 274-8053 Email: Andrew@FloresLegal.Pro Plaintiff in <i>Propria Persona</i> and Attorney for Plaintiffs Amy Sherlock, Minors T.S. and S.S.</p>	<p>James D. Crosby, Esq. Attorney at Law 550 West C Street, Suite 620 San Diego, CA 92101 Tel: (619) 450-4149 Email: crosby@crosbyattorney.com Attorney for Defendants LARRY GERACI and REBECCA BERRY</p>
<p>Scott H. Toothacre, Esq. Michael R. Weinstein, Esq. FERRIS & BRITTON 501 West Broadway, Suite 1450 San Diego, CA 92101 Tel: (619) 233-3131 Email: stoothacre@ferrisbritton.com mweinstein@ferrisbritton.com Attorney for Defendants LARRY GERACI and REBECCA BERRY</p>	<p>Steven W. Blake, Esq. Andrew E. Hall, Esq. BLAKE LAW FIRM 533 2nd Street, Suite 250 Encinitas, CA 92024 Tel: (858) 232-1290 Email: steve@blakelawca.com Email: andrew@blakelawca.com Attorney for Defendant STEPHEN LAKE</p>

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Natalie T. Nguyen, Esq. NGUYEN LAW CORPORATION 2260 Avenida de la Playa La Jolla, CA 92037 Tel: (858) 757-8577 Email: natalie@nguyenlawcorp.com Defendant NATALIE TRANG-MY NGUYEN <i>PRO SE</i>	
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I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 29, 2022**, at San Diego, California.



Luis Zamora

EXHIBIT 14

original

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

ELECTRONICALLY

FILED

09/23/2021

**K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
A.Stewart, DEPUTY CLERK**

**RICHMOND COMPASSIONATE CARE COLLECTIVE,
Plaintiff(s),**

v

**WILLIAM KOZIOL, et al.,
Defendant(s).**

Special Verdict Form

Damages

If you answered yes to all three questions on any or all of the other three Special Verdict Forms, then answer question 1 below. If you did not answer yes to all three questions on any or all of the other three Special Verdict Forms, stop here, answer no further questions, and have the presiding juror sign and date this form.

We answer the question submitted to us as follows:

1. What are RCCC's damages? \$ 5,000,000

Signed: 
Presiding Juror

Dated: 9/23/21

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