ANDREW FLORES
California State Bar Number 272958
Law Office of Andrew Flores
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Plaintiff *In Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock and Minors T.S.
and S.S.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

vs.

GINA M. AUSTIN, an individual, AUSTIN LEGAL GROUP APC, a California Corporation; LAWRENCE (AKA LARRY) GERACI, an individual; TAX & FINANCIAL CENTER, INC., a California Corporation; REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; MICHAEL ROBERT WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; ELYSSA KULAS, an individual; FERRIS & BRITTON APC, a California Corporation; DAVID DEMIAN, an individual, ADAM C. WITT, an individual, RISHI S. BHATT, an individual, FINCH, THORTON, and BAIRD, a Limited Liability Partnership, JAMES D. CROSBY, an individual; ABHAY SCHWEITZER, an individual and dba

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

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFFS' EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON (1) MOTION TO VACATE ORDER OR, (2) ALTERNATIVELY, A STAY OF ACTION

VOLUME 3 OF 3

Complaint Filed: April 3, 2020

Judge: Hon. Jinsook Ohta

TECHNE; JAMES (AKA JIM) BARTELL, an individual; BARTELL & ASSOCIATES, a California Corporation; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; A-M INDUSTRIES, INC., a California Corporation; BRADFORD HARCOURT, an individual; ALAN CLAYBON, and individual; DOUGLAS A. PETTIT, an individual, JULIA DALZELL, an individual, MICHAEL TRAVIS PHELPS, an individual; THE CITY OF SAN DIEGO, a municipality; 2018FMO, LLC, a California Limited Liability Company; FIROUZEH TIRANDAZI, an individual; and DOES 1 through 50, inclusive,

Defendants.

Pursuant to Federal Rule of Civil Procedure 201(c)(2), Plaintiff's request that this Court take judicial notice of the following documents listed below and submitted herewith in support of their EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON (1) MOTION TO VACATE ORDER OR, (2) ALTERNATIVELY, A STAY OF ACTION.

RJN-21

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Federal Blvd. Application

2 messages

Darryl Cotton <indagrodarryl@gmail.com> Mon, May 15, 2017 at 3:12 PM
To: "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>

Hello Firouzeh,

Following-up on our conversation on Friday, I appreciate that you procedurally cannot accept the updated Ownership Disclosure Statement, reflecting Richard Martin, for the CUP application on the property.

I came across a similar case to my own, Engerbretsen v. City of San Diego (CUP Project # 370687), which I am assuming you are familiar with. Similar to him, I will be filing a request with the Court to ask the City to revise the application to reflect the true of owner of the property and the CUP application.

Reviewing the requirements, it seems that I need to provide evidence that I attempted to have the CUP application revised with the true owner and notice of my intent to ask the Court for help with the CUP application.

Please consider this the record of our conversation on Friday of my attempt to have the Ownership Disclosure Statement updated and my notice of my intent to seek the Court's help.

Thank you for your help.

Sincerely,

Darryl Cotton

RJN-22

MARA W. ELLIOTT, City Attorney
GEORGE F. SCHAEFER, Assistant City Attorney
M. TRAVIS PHELPS, Chief Deputy City Attorney
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Attorneys for Respondent/Defendant
CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DARRYL COTTON, an individual,

Petitioner/Plaintiff,

v.

CITY OF SAN DIEGO, a public entity; and DOES 1 through 25,

Respondents/Defendants,

REBECCA BERRY, an individual; LARRY GERACI, an individual; and ROES 1 through 25,

Real Parties in Interest.

Case No. 37-2017-00037675-CU-WM-CTL

RESPONDENT/DEFENDANT CITY OF SAN DIEGO'S ANSWER TO PETITIONER'S VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE

[CODE CIV. PROC. § 1085]

[IMAGED FILE]

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

Action Date: October 6, 2017
Trial Date: Not Set

Respondent/Defendant CITY OF SAN DIEGO (City) hereby answers the Verified Petition for Alternative Writ of Mandate (Writ) filed by Petitioner/Plaintiff DARRYL COTTON ("Cotton" or "Petitioner") as follows:

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INTRODUCTION

1. The allegations in Paragraph 1 of the Writ constitute Cotton's characterization of his lawsuit, a recitation of the relief Cotton requests, and/or legal conclusions to which no response is required.

2. The allegations in Paragraph 2 of the Writ constitute Cotton's characterization of his lawsuit and/or legal conclusions to which no response is required. To the extent a response is required, City denies all allegations contained therein and denies that Cotton is entitled to any relief.

JURISDICTION, VENUE, AND PARTIES

3. The allegations in Paragraph 3 of the Writ constitute legal conclusions to which no response is required.

4. The allegations in Paragraph 4 of the Writ constitute legal conclusions to which no response is required.

5. Answering Paragraph 5 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

6. The allegations in Paragraph 6 of the Writ constitute legal conclusions to which no response is required. However, to the extent a response may be deemed required, City admits it is a public entity, specifically a municipal corporation established pursuant to Article XI, Section 3, of the California Constitution. The City's corporate powers are established in Article I of the San Diego City Charter.

7. Answering Paragraph 7 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

8. Answering Paragraph 8 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

9. Answering Paragraph 9 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

10. The allegations in Paragraph 10 of the Writ constitute Cotton's characterization of his lawsuit and/or legal conclusions to which no response is required. To the extent a response is required, City denies all allegations contained therein.

11. Answering Paragraph 11 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

12. The allegations in Paragraph 12 of the Writ constitute Cotton's characterization of his lawsuit and/or legal conclusions to which no response is required. To the extent a response is required, City denies all allegations contained therein.

BACKGROUND

13. Answering Paragraph 13 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

14. Answering Paragraph 14 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

15. Answering Paragraph 15 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

16. Answering Paragraph 16 of the Writ, City responds as follows: Answering the first through fifth sentences, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein. Answering the sixth sentence, City admits that Exhibit 1 to the

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Writ is a true and correct copy of the Conditional Use Permit (CUP) application, including the Ownership Disclosure Statement.

17. Answering Paragraph 17 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

18. Answering Paragraph 18 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

19. Answering Paragraph 19 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

20. Answering Paragraph 20 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

21. Answering Paragraph 21 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

22. Answering Paragraph 22 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

23. Answering Paragraph 23 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

24. Answering Paragraph 24 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

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25. Answering Paragraph 25 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

26. Answering Paragraph 26 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

27. Answering Paragraph 27 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

28. Answering Paragraph 28 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

29. Answering Paragraph 29 of the Writ, City is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis denies each and every allegation contained therein.

30. City admits the allegations contained in the first Paragraph 30 of the Writ.

30(2). Answering the second Paragraph 30 of the Writ, City responds as follows: City admits it responded via email on September 29, 2017, and admits it did not remove Real Party in Interest Rebecca Berry from the Cotton Application and process it on behalf of Cotton. City informed Cotton's counsel that Cotton may submit his own application for a Conditional Use Permit (CUP) for a Medical Marijuana Consumer Cooperative at the 6176 Federal Boulevard property. City also admits that Exhibit 5 to the Writ is a true and correct copy of the September 29, 2017, email from Firouzeh Tirandazi, Development Project Manager in the City's Development Services Department.

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FIRST CAUSE OF ACTION

(Writ of Mandate – Against all respondents/defendants and all real parties in interest)

31. Answering Paragraph 31 of the Writ, City incorporates by reference each of its responses to Paragraph 1 through 30, inclusive, of the Writ as set forth above as if each of said responses were fully set forth herein.

32. Answering Paragraph 32 of the Writ, City responds as follows: The allegations in Paragraph 32 of the Writ constitute Cotton's characterization of his lawsuit and legal conclusions to which no response is required. However, to the extent a response may be deemed required, City admits it is a public entity, specifically a municipal corporation established pursuant to Article XI, Section 3, of the California Constitution. The California Constitution grants charter cities, such as the City, the power to make and enforce all ordinances and resolutions with respect to "municipal affairs." Cal. Const., art, XI, § 5(a). The City's corporate powers are established in Article I of the San Diego City Charter. However, the City is subject to state law on matters considered to be of "statewide concern." The City further admits that it is responsible for administering the CUP process according to the San Diego Municipal Code (SDMC). Except as specifically admitted hereinabove, City denies any and all remaining allegations contained therein.

33. The allegations in Paragraph 33 of the Writ constitute Cotton's characterization of his lawsuit and/or legal conclusions to which no response is required. To the extent a response is required, City denies any and all allegations contained therein.

34. The allegations in Paragraph 34 of the Writ constitute Cotton's characterization of his lawsuit and/or legal conclusions to which no response is required. To the extent a response is required, City denies any and all allegations contained therein.

Answering the Prayer, City denies that Petitioner Darryl Cotton is entitled to any relief in any form whatsoever.

AFFIRMATIVE DEFENSES

As separate, distinct, and affirmative defenses to Petitioner Darryl Cotton's Writ on file herein, City alleges as follows:

I

The facts alleged in the Writ, and each cause of action alleged therein, fail to state a cause of action against the City or its agents or employees.

II

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part by Petitioner's failure to exhaust his administrative remedies.

III

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part because the claims asserted therein are not ripe for review.

IV

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part because Petitioner has a plain, speedy, and adequate remedy available in the ordinary course of law.

V

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part because the City has no duty to perform the act Petitioner seeks to compel.

VI

No relief may be obtained by Petitioner under the Writ by reason of the doctrine of unclean hands.

VII

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part by the doctrine of laches.

VIII

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part by the applicable statute of limitations.

IX

Petitioner's Writ, and each cause of action alleged therein, is barred in whole or in part because Petitioner is estopped by his own conduct to claim the requested relief against City.

X

City presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional affirmative defenses available. City reserves the right to assert additional affirmative defenses in the event discovery or further analysis indicates that additional unknown or unstated affirmative defenses would be applicable. City will move to amend its answer, if necessary, to allege such separate and additional defenses after they have been ascertained or according to proof at trial.

WHEREFORE, Respondent and Defendant City of San Diego prays as follows:

1. That the Writ be denied and Petitioner takes nothing by way of his Writ;

2. That Petitioner be denied each and every demand and prayer for relief contained in his Writ;

3. That the Writ be dismissed in its entirety with prejudice, and judgment be entered in favor of the City;

4. That City be awarded all costs of suit incurred herein including reasonable attorneys' fees; and

5. That City be awarded such other and further relief as the Court may deem just and proper.

Dated: December 27, 2017

MARA W. ELLIOTT, City Attorney

By _____
M. Travis Phelps
Chief Deputy City Attorney

Attorneys for Respondent/Defendant
CITY OF SAN DIEGO

MARA W. ELLIOTT, City Attorney
GEORGE F. SCHAEFER, Assistant City Attorney,
M. TRAVIS PHELPS, Chief Deputy City Attorney
California State Bar No. 258246

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1200 Third Avenue, Suite 1100
San Diego, California 92101-4100
(619) 533-5800; fax (619) 533-5856

Attorneys for Respondent/Defendant
CITY OF SAN DIEGO

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

DECLARATION OF SERVICE

Case No. 37-2017-00037675-CU-WM-CTL
Case Name: *Cotton v. City of San Diego, et al.*
Judge: Hon. Joel R. Wohlfeil/Dept.: C-73
[IMAGED FILE]

I, the undersigned, declare that I am, and was at the time of service of the papers herein referred to, over the age of eighteen years and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned service occurred. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

I served the foregoing documents, in this action, described as:

- **RESPONDENT/DEFENDANT CITY OF SAN DIEGO'S ANSWER TO PETITIONER'S VERIFIED PETITION FOR ALTERNATIVE WRIT OF MANDATE**

on the following interested parties in this action:

Darryl Cotton 6176 Federal Blvd. San Diego, CA 92114 Tel: (619) 634-1561 **Petitioner in Pro Per**	Michael R. Weinstein, Esq. Scott H. Toothacre, Esq. FERRIS & BRITTON 501 West Broadway, Suite 1450 San Diego, CA 92101 Tel: (619) 233-3131 Fax: (619) 232-9316 mweinstein@ferrisbritton.com stoothacre@ferrisbritton.com **Attorneys for Real Parties in Interest *REBECCA BERRY, an individual and LARRY GERACI, an individual***

Gina M. Austin, Esq.
Austin Legal Group, APC
3990 Old Town Ave., Ste A-112
San Diego, CA 92110
Tel: (619) 924-9600
Fax: (619) 881-0045
gaustin@austinlegalgroup.com

Attorneys for Real Parties in Interest
REBECCA BERRY, an individual and
LARRY GERACI, an individual

[X] **(BY U.S. MAIL)** I served the individual(s) named by placing a true and correct copy of the documents in a sealed envelope and placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices. [CCP § 1013(a)]

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

[ ] **(BY FAX)** On December 27, 2017, I transmitted the above-described documents by facsimile machine to the fax number(s) set forth above or as stated on the attached service list. The transmission originated from facsimile phone number (619) 533-5856 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached hereto. [CCP § 1013(e); CRC Rule 2008]

[ ] **(BY E-MAIL)** I caused to be served by electronically mailing a true and correct copy through electronic mail system to the e-mail addressee(s) set forth above, or as stated on the attached service list per agreement in accordance with Code of Civil Procedure section 1010.6. [CCP § 1010.6]

[ ] **(BY ELECTRONIC SERVICE)** By submitting an electronic version of the document(s) to One Legal, LLC through the user interface at www.onelegal.com.

[ ] **(BY OVERNIGHT DELIVERY)** I served the individual(s) named by placing a true and correct copy of the documents in a sealed envelope(s) to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee(s) listed above, or as stated on the attached service list: [CCP § 1013]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **28th** day of **December 2017**, at San Diego, California.

Maria Cook
MARIA COOK

RJN-23

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 06/27/2019 TIME: 08:30:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Andrea Taylor
REPORTER/ERM: Not Requested
BAILIFF/COURT ATTENDANT: R. Camberos

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

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EVENT TYPE: Ex Parte

EVENT TYPE: Civil Jury Trial

APPEARANCES
Michael R Weinstein, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).
Jacob Austin, counsel, present for Defendant,Cross - Complainant,Appellant(s).
Andrew Flores, counsel appears on his own behalf.

Ex-parte application for request to intervene and stay case requested by Attorney Andrew Flores.

The Court finds Attorney Andrew Flores has not shown good cause to intervene and stay the case and the request is denied.

The Court advances the Trial call set for tomorrow at 8:30 a.m. with agreement of counsel.

Court and counsel discuss trial procedures.

Counsel agree to give a mini opening statement. The Court will pre-screen jurors for 4 weeks and will most likely order a panel of 50 prospective jurors.

Court directs counsel to email the Court clerk before close of business tomorrow a complete set of jury instructions in Word in the order to which they should be given along with a proposed verdict form.

The Court will hear motions in limine at 1:30 p.m. on July 1, 2019 and will have a Prospective jury panel ready to go for July 2, 2019.

Estimated length of trial: 8 days

Civil Jury Trial is continued pursuant to Court's motion to 07/01/2019 at 01:30PM before Judge Joel R. Wohlfeil.

Parties waive notice.

RJN-24

ANDREW FLORES (State Bar Number 272958)
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Plaintiff *in Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

SUPRIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

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

Plaintiffs,

vs.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; 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.

Case No.: 37-2021-0050889-CU-AT-CTL

FIRST AMENDED COMPLAINT FOR:

1. CONSPIRACY TO MONOPOLIZE IN VIOLATION OF THE CARTWRIGHT ACT (Bus. & Prof. Code § §§ 16720 *et seq*.);
2. CONVERSION;
3. CIVIL CONSPIRACY;
4. DECLARATORY RELIEF
5. UNFAIR COMPETITION AND UNLAWFUL BUSINESS PRACTICES (Bus. & Prof. Code § 17200 *et seq*.); AND
6. DECLARATORY RELIEF,
7. CIVIL CONSPIRACY.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Amy Sherlock, Minors T.S. and S.S., Christopher Williams, and Andrew Flores, upon information and belief, allege as follows:

INTRODUCTION

1. This case arises from the concerted effort of a small group of wealthy individuals and their agents (the "Enterprise") that have conspired to create an unlawful monopoly in the cannabis market (the "Antitrust Conspiracy") in the City and County of San Diego.

2. The Enterprise includes attorneys from multiple law firms that are used to create the appearance of competition and legitimacy, while in reality the attorneys conspire against some of their own non-Enterprise clients to ensure the acquisition of the limited number of cannabis conditional use permits ("CUPs")[1] available in the City and County go to principals of the Enterprise.

3. At least some of the principals of the Enterprise have a history of being sanctioned for unlicensed commercial cannabis operations (i.e., illegal black-market dispensaries). Consequently, as a matter of law, they cannot own a cannabis CUP for a period of three years from the date of their last sanction. However, these individuals are wealthy and are able to the hire attorneys, political lobbyists, and other professionals to navigate the heavily regulated cannabis licensing process and acquire CUPs illegally.

4. The defining illegal act of the Enterprise is the acquisition of CUPs for its principals through the use of proxies - who do not disclose the principals as the true owners of the CUP applied for and acquired - in order to avoid disclosure laws that would mandate their applications be denied because of the principals' prior sanctions (the "Proxy Practice").

5. The unlawful acts taken by the Enterprise in furtherance of the Antitrust Conspiracy include "sham" litigation[2] and acts and threats of violence against potential competitors and witnesses.

6. Plaintiffs had or would have had interests in CUPs issued in the City and County of San Diego but-for the illegal acts of the Enterprise that were taken in furtherance of the Antitrust Conspiracy.

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[1] "[A] conditional use permit grants an owner permission to devote a parcel to a use that the applicable zoning ordinance allows not as a matter of right but only upon issuance of the permit." *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1006.

[2] "Sham" litigation is defined as an action that is objectively baseless and brought not to accomplish the purported object of the litigation but to harass or impede a competitor. *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus.* (1993) 508 U.S. 49, 61.

7. This action focuses on the Enterprise's unlawful acts in acquiring four CUPs: (i) the Ramona CUP,[3] (ii) the Balboa CUP,[4] (iii) the Federal CUP,[5] and (iv) the Lemon Grove CUP.[6]

JURISDICTION AND VENUE

8. Defendants are subject to the jurisdiction of this Court by virtue of their business dealings and transactions in California and by having caused injuries within the City and County of San Diego.

9. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10. Plaintiff's claims for violations of Business & Professions Code § 16720 *et seq*., arise exclusively under the laws of the State of California, do not arise under federal law, are not preempted by federal law, and do not challenge conduct within any federal agency's exclusive domain.

10. Venue is proper in this county because the acts taken by defendants were taken within the County of San Diego and the CUPs at issue in this action were issued at real property within the County of San Diego.

PARTIES

11. Plaintiff AMY SHERLOCK, an individual, at all material times herein was residing and working in the County of San Diego, California.

12. Plaintiffs MINORS T.S. and S.S., progeny of Amy and Michael "Biker" Sherlock, are individuals, were, and at all material times herein, living and attending school in the County of San Diego, California.

13. Plaintiff ANDREW FLORES, an individual, at all material times herein was residing and working in the County of San Diego, California.

14. Defendant GINA M. AUSTIN, an individual, at all material times herein was residing and working in the County of San Diego, State of California.

15. Defendant AUSTIN LEGAL GROUP, A Professional Corporation, was at all material

[3] The "Ramona CUP" was issued at 1210 Olive Street, Ramona, CA 92065 (the "Ramona Property").
[4] The "Balboa CUP" was issued at 8863 Balboa Avenue, Unit E, San Diego, California 92123 (the "Balboa Property").
[5] The "Federal CUP" was issued at 6220 Federal Blvd., San Diego, CA 92114 (the "Federal Property").
[6] The "Lemon Grove CUP" was issued at 6859 Federal Blvd., Lemon Grove, CA 91945 (the "Lemon Grove Property").

times mentioned herein a Corporation under the laws of the State of California operating and conducting business in the County of San Diego, State of California.

16. Defendant LARRY GERACI an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

17. Defendant REBECCA BERRY an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

18. Defendant FINCH, THORTON, and BAIRD, a limited liability partnership, at all material times herein operated and conducted business in the County of San Diego, State of California.

19. Defendant ABHAY SCHWEITZER, an individual and dba TECHNE, an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

20. Defendant JIM BARTELL an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

21. Defendant NATALIE TRANG-MY NGUYEN an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

22. Defendant AARON MAGAGNA an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

23. Defendant JESSICA MCELFRESH an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

24. Defendant SALAM RAZUKI an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

25. Defendant NINUS MALAN an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

26. Defendant BRADFORD HARCOURT an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

27. Defendant LOGAN STELLMACHER an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

28. Defendant EULENTHIAS DUANE ALEXANDER, an individual, was at all material

times mentioned herein residing and working in the County of San Diego, State of California.

29. Defendant STEPHEN LAKE, an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

30. Defendant ALLIED SPECTRUM, INC., a corporation, under the laws of the State of California, was at all material times mentioned herein had its principal place of business and conducted business in the County of San Diego, State of California.

31. Defendant PRODIGIOUS COLLECTIVES, LLC, a limited liability company, under the laws of the State of California, was at all material times mentioned herein had its principal place of business and conducted business in the County of San Diego, State of California

32. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants Does 1 through 50, inclusive, are unknown to Plaintiffs who therefore sue said defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges that each of said fictitious Doe defendants is in some manner responsible for the acts and occurrences hereinafter set forth. Plaintiff will amend this Complaint to show their true names and capacities when the same are ascertained, as well as the manner in which each fictitious defendant is responsible for the damages sustained by Plaintiffs.

33. At all relevant times, each defendant was and is the agent of each of the remaining defendants and, in doing the acts alleged herein, was acting within the course and scope of such agency. Each defendant ratified and/or authorized the wrongful acts of each of the defendants.

34. Defendants, and each of them, are individually sued as participants and as aiders and abettors in the unlawful acts, plans, schemes, and transactions alleged in this Complaint. Defendants, and each of them, have participated as members of the conspiracy alleged herein, acted in furtherance of it, aided and assisted in carrying out its purposes, performed acts and made statements in furtherance of the conspiracy, and/or ratified the acts taken in furtherance of the conspiracy.

GENERAL ALLEGATIONS

I. MATERIAL STATE AND CITY LAWS REGARDING CANNABIS APPLICATION REQUIREMENTS.

35. At all material times related to this action, California's cannabis licensing statutes have required any party engaging in commercial cannabis activities to possess both a state license and a local

government permit, CUP or license.

36. At all material times related to this action, California Bus. & Prof. Code ("BPC") § 19323 *et seq*. or BPC § 26057 *et seq*. has mandated the denial of an application for a cannabis state license by an applicant who, *inter alia*, has been sanctioned for unlicensed commercial cannabis activities in the preceding three years; failed to provide required information in an application (including disclosure of all individuals with a direct ownership interest in the license being applied for); or failed to comply with local government requirements for the issuance of a permit, CUP or license for cannabis activities.

37. At all material times related to this action, in the City of San Diego, California, an application for a CUP has required the disclosure of all parties with an interest in the proposed property or CUP in the application.

II. THE PRINCIPALS AND AGENTS OF THE ENTERPRISE.

38. The known principals of the Enterprise are Geraci, Razuki, and Malan.

39. Lake and Harcourt, as further explained below, have numerous connections and relationships with principals and agents of the Enterprise. At this point, it is unclear if they are principals of the Enterprise or individual actors that have worked in concert with and/or ratified the Enterprise's acts in furtherance of their own goal of seeking to profit through unlawful actions in the cannabis industry.

40. Individuals that have acquired interests in CUPs and are members of the Enterprise, worked in concert with the Enterprise or ratified the Enterprise's unlawful actions include Harcourt, Razuki, Malan, Magagna, Alexander, and Schweitzer.

41. Individuals who are non-attorney agents of the Enterprise that have taken acts in furtherance of the Antitrust Conspiracy or who have ratified the acts of the Enterprise include Berry, Bartell, Alexander, Stellmacher, Miller and Schweitzer.

42. The law firms and attorneys that work for the Enterprise and that have taken acts in furtherance of the Antitrust Conspiracy include the Austin Legal Group; Ferris & Britton; Jessica McElfresh; Finch, Thornton & Baird; Matthew Shapiro; and Natalie Nguyen.

III. MATERIAL BACKGROUND

A. Geraci and Razuki have been sanctioned for unlicensed commercial cannabis activities.

43. Geraci has been sanctioned at least twice for unlicensed commercial cannabis activities.[7]

44. Geraci was last sanctioned on June 17, 2015 in the CCSquared Judgment.

45. As in effect on June 17, 2015, pursuant to BPC § 19323(a),(b)(7), Geraci could not lawfully own a cannabis license or CUP until at least June 18, 2018.

46. Razuki was sanctioned for unlicensed commercial cannabis activities on April 15, 2015.[8]

47. As in effect on Aril 15, 2015, pursuant to BPC § 19323(a),(b)(7), Razuki could not lawfully own a cannabis license or CUP until at least April 16, 2018.

B. Austin, Bartell and Schweitzer are experienced professionals in the cannabis industry who aid parties to prepare, apply and acquire CUPs.

48. Austin is an attorney who is "an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation." [9]

49. Austin has testified that she has worked on approximately twenty-five (25) cannabis CUP applications with the City, of which approximately twenty-three (23) were approved or successfully maintained.

50. Bartell, through his political lobbying firm, B&A, has testified that he has lobbied the City for approximately twenty (20) cannabis CUP applications of which nineteen (19) were approved.

51. Schweitzer has testified that he has worked on approximately thirty to forty (30-40) cannabis CUP applications with the City.

52. Collectively, Austin, Bartell and Schweitzer have worked on the majority of the CUPs issued by the City.

53. Austin, Bartell and/or Schweitzer aided Geraci, Razuki and Magagna apply, acquire and/or maintain ownership interests in CUPs without disclosing all parties with an ownership interest in

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[7] In (i) *City of San Diego v. The Tree Club Cooperative, et al*., San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL (the "Tree Club Judgment") and (ii) *City of San Diego v. CCSquared Wellness Cooperative, et. al.*, Case No. 37-2015-00004430-CU-MC-CTL (the "CCSquared Judgment" and, collectively with the Tree Club Judgement, the "Geraci Judgments").

[8] *City of San Diego v. Stonecrest Plaza, LLC*, Case No. 37-2014-00009664-CU-MC-CTL (the "Stonecrest Judgment").

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

the CUPs in violation of numerous State and City laws, including BPC §§ 19323, 26057, SDMC § 11.0401(b) and Penal Code § 115.

C. Jessica McElfresh is a cannabis attorney who has been arrested for conspiring with her clients to commit crimes and obstructing justice.

54. In May 2017, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime, Manufacturing of a Controlled Substance, and Obstruction of Justice for her efforts to conceal her client's alleged illegal manufacturing operations from government inspectors. (*People v. McElfresh*, San Diego Superior Court, No. CD272111.)

55. In July 2018, McElfresh entered into a Deferred Prosecution Agreement (the "DPA") that would allow her to plead guilty in twelve months as follows: "On April 28, 2015 [McElfresh] knowingly facilitated the use of a premises without a required permit, in violation of San Diego Municipal Code § 121.0302(a), to wit: an unpermitted marijuana manufacturing and distribution operation by Med West Distribution, LLC."

56. Pursuant to the DPA, for a period of 12 months, McElfresh was prohibited from violating any other laws (except for minor infractions) until July 23, 2019, or face resumption of all charges filed against her.

57. On October 18, 2019, McElfresh was interviewed and quoted in a San Diego Union-Tribune article that stated: "McElfresh said she advised her clients to comply with city orders to shut down, partly because operating without local permission could affect their ability to obtain state marijuana licenses in the future."[10]

58. McElfresh has represented Geraci, Razuki and Malan in various legal matters.

D. Razuki's employee states Razuki openly discussed the plan to create a monopoly and use violence in furtherance of the Antitrust Conspiracy.

59. As further described below, when Flores became the equitable owner of the Federal Property, he began investigating Geraci and his agents and discovered the relationships between Geraci, Magagna, Razuki, Malan and Dave Gash via Austin who has represented all parties.

60. As further described below, Razuki was arrested by the FBI for attempting to have Malan

[10] *See* David Garrick, Roughly Two Dozen San Diego Marijuana Cultivators Forced to Shut Down, SAN DIEGO UNION-TRIBUNE (October 18, 2019).

kidnapped to Mexico and murdered as a result of ongoing litigation between them disputing ownership of approximately $40,000,000 in cannabis assets.

61. During the course of Flores' investigation, he spoke with an investigative reporter who had interviewed an employee of Razuki after Razuki had been arrested by the FBI (the "Employee"). The investigative reporter provided Flores a copy of the interview with the Employee.

62. The Employee stated that he was present when Austin provided confidential information from her non-Enterprise clients regarding real properties that qualified for CUPs so that Razuki and his associates could take action to prevent the acquisition of those CUPs by Austin's non-Enterprise clients in furtherance of creating a monopoly.

63. The Employee also stated that Razuki and his associates use Mexican gangs to commit violent acts on their behalf to further their goals when disputes arise in the operations of their dispensaries.

IV. THE SHERLOCK PROPERTY

64. Michael "Biker" Sherlock was a husband, father, professional athlete, and an entrepreneur with interests in the cannabis sector.

65. Lake is Mr. Sherlock's brother-in-law.

66. Mr. Sherlock partnered with Lake and Harcourt no later than in or around April 2013 for real estate and cannabis related investments (the "Sherlock Partnership").

67. On or about January 8, 2015, Lake purchased the Ramona Property.

68. On or about January 16, 2015, Mr. Sherlock was granted the Ramona CUP.

69. On or about April 24, 2015, as part of the Sherlock Partnership, Mr. Sherlock and Harcourt formed Leading Edge Real Estate, LLC ("LERE") to be their holding company for real properties. Mr. Sherlock was the CEO of LERE. Mr. Sherlock and Harcourt were both managing members.

70. On or about June 18, 2015, LERE acquired the Balboa Property.

71. On or about July 29, 2015, the City granted Mr. Sherlock's application for the Balboa CUP to his holding entity, United Patients Consumer Cooperative ("United Patients") (hereinafter, collectively, Mr. Sherlock's interests in the Partnership Agreement, LERE, and the Balboa and Ramona

CUPs, the "Sherlock Property").

72. The homeowner's association of the Balboa Property initiated litigation to prevent the opening of the dispensary at the Balboa Property alleging the homeowners association rules prohibited marijuana operations (the "HOA Litigation"). The HOA Litigation was still ongoing in December 2017.

73. On December 3, 2015, Mr. Sherlock passed away, purportedly he committed suicide.

A. Lake and Harcourt defraud Mrs. Sherlock of her interest in the Sherlock Property.

74. In or around December 2015, after Mr. Sherlock passed away, Harcourt submitted documentation to the City to have the Balboa CUP transferred from Mr. Sherlock and his holding entity, United Holdings, to his holding entity, San Diego Patients Cooperative Corporation, Inc. ("SDPCC"), and himself.

75. The day after Mr. Sherlock's death, Lake spoke with investigative officers and stated that he had spent time with Mr. Sherlock the day prior to his passing and that they had discussed problems that Lake felt were "small issues."

76. Shortly after Mr. Sherlock's death, Lake told Mrs. Sherlock that Mr. Sherlock had never actually acquired interests in the Balboa CUP because of the HOA Litigation. Lake told Mrs. Sherlock that Lake, Harcourt and Mr. Sherlock had to "walk away" because it was too expensive to continue financing the HOA Litigation and the parties had decided to walk away from their investments.

77. At various points in time after Biker's death, Lake told Mrs. Sherlock that the facility operating under the Ramona CUP was not making any profits and that there were no distributions for the owners.

78. On or about December 21, 2015, three weeks after Mr. Sherlock's death, LERE was dissolved via a submission to the Secretary of State purportedly executed by Mr. Sherlock (the "Dissolution Form").

79. Subsequent to Mr. Sherlock passing away, public records reveal that Harcourt, Lake, Alexander and Renny Bowden acquired interests in the Ramona CUP.

80. Bowden is Lake's longtime friend and business partner.

81. In or around April 2016, Harcourt on behalf of LERE, executed a grant deed for the Balboa Property in favor of High Sierra Equity, LLC ("High Sierra"), which is owned by Lake.

82. In or around September 2016, Lake on behalf of High Sierra executed a grant deed in favor of Razuki Investments, LLC ("Razuki Investments"), which is wholly owned by Razuki.

83. In or around March 2017, Razuki on behalf Razuki Investments executed a grant deed in favor of San Diego United Holdings Group, LLC ("SD United"), which is wholly owned by Malan.

84. In January 2020, Mrs. Sherlock was introduced to attorney Flores who told her that he was working on case which may have ties to the Balboa CUP. He informed her that a form dissolving an entity LERE was supposedly executed by Biker and processed by the State three weeks after his death (the "Dissolution Form").

85. Mrs. Sherlock reviewed the Dissolution Form, but she did not recognize Biker's signature.

86. Mrs. Sherlock discussed the issue with her sister, Lake's wife, and told her that she intended to sue Harcourt and her sister told her that she should speak with Lake about it. Lake then contacted Mrs. Sherlock and asked to meet.

87. In early February 2020, Mrs. Sherlock met with Lake at a coffee shop, and she told him that she intended to sue Harcourt. At this time, Mrs. Sherlock only knew that the CUP had been transferred into Harcourt's name. Lake initially told Mrs. Sherlock nothing other than "we did it," in which he was referring to the transfer of the Balboa CUP permit. He implied that Mrs. Sherlock's family would shun her for taking legal action against a family member and that she did not have the financial resources to be successful. Lake said something to the effect of, "oh well sorry, nothing you can do about it."

88. On or around February 15, 2020, Flores received an expert handwriting report concluding that Mr. Sherlock's signature was likely forged on the Dissolution Form.

89. Flores provided Mrs. Sherlock the forensic handwriting expert report. Flores also informed Mrs. Sherlock that the Ramona CUP had been transferred at some point to Harcourt and Bowden after review of Sherriff certificates and other publicly available documents. Up until this time, Mrs. Sherlock thought she still had an ownership interest in the Ramona CUP but that it was not operating profitably.

90. On or around February 21, 2020, Flores, on behalf of Mrs. Sherlock, contacted Harcourt's

attorney, Allan Claybon of Messner Reeves, LLP, to inquire how it was that Harcourt obtained ownership interests in the Balboa and Ramona CUPs and Mrs. Sherlock's belief that Mr. Sherlock's signature was forged.

91. On that initial call, Claybon expressly stated to Flores that he appreciated Flores contacting him, that he understood the timing of the submission of the Dissolution Form was suspicious, and that he would contact Harcourt to provide an explanation.

92. Shortly thereafter, in early March 2020, Lake appeared at Mrs. Sherlock's house unannounced.

93. Between the early February of 2020 meeting with Lake and him appearing at Mrs. Sherlock's home, Mrs. Sherlock had learned a lot more about the situation including dissolution of LERE. that the signature did not appear to me to be Biker's, and the handwriting expert had concluded that it was more than likely forged.

94. When Mrs. Sherlock confronted Lake about it, he then said that he had seen Mr. Sherlock execute the Dissolution Form the day before he passed away and that he was in an extremely emotional state, severely depressed because he had to "sign away" the Balboa CUP, because of the allegedly expensive HOA Litigation, and that is why his signature on the Dissolution Form does not look like his normal signature. Lake said that this was the reason why Biker had committed suicide. Lake said that Biker had cost him a lot money and repeatedly attempted to convince Mrs. Sherlock to not sue Harcourt.

95. Mrs. Sherlock was shocked and outraged but kept calm and asked if she would be getting any proceeds related to the Balboa and Ramona CUPs as a result of Biker's investment of time and capital to acquire them. Lake responded that Biker's contributions were "worthless," that Mrs. Sherlock and her children were not entitled to anything, and that she should be content with the proceeds from Mr. Sherlock's life insurance policy.

96. Mrs. Sherlock was angry and responded that, among other things, it was impossible for Mr. Sherlock to have signed away millions of dollars of assets depriving her and his children of their value. As they argued Mrs. Sherlock kept insisting that she would take legal action and Lake became clearly emotionally intense and he admitted that he and Harcourt were responsible for the transfer of the Balboa CUP. Lake said he was the property owner of the Balboa Property and that he had conveyed the

CUP to Harcourt. Lake said he did it to "save" Mrs. Sherlock from the "headaches" of having to deal with the CUP. Mrs. Sherlock told him that she never gave permission for anyone to act on her behalf and that it was her right, duty and honor to settle Mrs. Sherlock's affairs and that she was angry that she was deprived of her rights. Lake then alleged that the Balboa CUP was "stolen" from Harcourt.

97. The conversation became an intense argument and Lake again implied that Mrs. Sherlock could not financially afford to take any legal action and that there was nothing she could do about what had taken place. Lake concluded the conversation by implying that if Mrs. Sherlock took any legal action it would result in her and her children being shunned by their family.

98. During this time, despite Claybon's initial representation that he would speak with Harcourt, over the course of weeks, Flores and Claybon exchanged numerous phone calls and emails in which Claybon repeatedly refused to explain how Harcourt acquired Mr. Sherlock's interest in the Balboa CUP.

99. However, Claybon did communicate that Harcourt allegedly saw Mr. Sherlock execute the Dissolution Form the day before he passed away and also Harcourt's affirmative defenses in anticipation of litigation: (i) the statute of limitations bars any fraud-based causes of action that Mrs. Sherlock may have and (ii) the statute of limitations was not tolled because Mrs. Sherlock did not "exercise reasonable diligence" because she did not check the State's records after Mr. Sherlock passed away. Attached hereto as Exhibit 2 is the email chain between Flores and Claybon and fully incorporated herein by this reference.

B. *Razuki I*: Razuki/Malan defraud Harcourt of his interest in the Balboa CUP.

100. On or around June 6, 2017, SDPCC and Harcourt filed a lawsuit against, *inter alia*, Razuki and Malan alleging they had successfully conspired to defraud them of the Balboa CUP ("*Razuki I*").[11] (References to Razuki and Malan include the entities through which they operate.)

101. The *Razuki I* complaint contains causes of action against Razuki and Malan for, *inter alia*, breach of an alleged oral joint venture agreement reached in or around August 2016.

102. Materially summarized, the *Razuki I* complaint alleges that: (i) Razuki/Malan and

[11] *San Diego Patients Cooperative Corporation, Inc. v. Razuki Investments, LLC*, San Diego Superior Court Case No. 37-2017-00020661-CU-CO-CTL.

Harcourt reached an oral joint venture agreement for the operating of the dispensary that operates with the Balboa CUP; (ii) the Balboa CUP was valued at least 6 million dollars; (iii) Razuki/Malan provided a $50,000 "good faith" payment while the parties were negotiating the joint venture agreement; (iv) Razuki/Malan then purchased the real property at which the Balboa CUP was issued; (v) Razuki/Malan then fraudulently represented themselves as the owner of the Balboa CUP to the City; (vi) the City transferred the Balboa CUP to entities owned by Razuki/Malan; and (vii) thereafter Razuki/Malan fraudulently represented that $800,000 was the value of the real property at which the Balboa CUP was issued, inclusive of the Balboa CUP.

C. *Razuki II*: Malan defrauds Razuki of his undisclosed interests in approximately $40,000,000 in cannabis assets, including the Balboa CUP.

104. On or about July 10, 2018, Razuki initiated a lawsuit against, among others, Malan alleging he has ownership interests in approximately $40,000,000 in cannabis assets, including the Balboa CUP held in Malan's name, from which Malan was unlawfully diverting money owed to him ("*Razuki II*").[12]

105. In *Razuki II*, both Razuki and Malan have admitted that they reached an oral agreement pursuant to which Razuki and Malan would be partners in cannabis related businesses. Their agreement provided for Razuki to provide the initial cash investment to purchase certain assets while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, Razuki would be entitled to seventy-five percent (75%) of the profits & losses of the assets and Malan would be entitled to twenty-five percent (25%) of said profits & losses.

106. Razuki provided a sworn declaration stating his agreement with Malan provided for Malan to hold title to the cannabis assets without disclosing Razuki's ownership interest because he had been sanctioned in the Stonecrest Judgment for unlicensed commercial cannabis activities.[13]

107. But-for the legal disputes between Razuki and Malan over ownership of the $40,000,000

[12] *Razuki v. Malan,* San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL.

[13] *Razuki II*, ROA 79 (Razuki Declaration) at 6:1-8 ("Because of [the Stonecrest Judgment], I was concerned with having my name on any title associated with a marijuana operation. This is why Malan would put his name on title for the LLCs related to our marijuana operations. I always assumed he would honor the oral agreement and [a] [s]ettlement [a]greement that would entitle me to 75% ownership of all the [p]artnership [a]ssets.").

in cannabis assets, it would not be public knowledge that Razuki and Malan had an agreement for Razuki to hold title to said assets and not disclose Razuki's ownership interest therein because of the Stonecrest Judgment, in violation of applicable State and City laws.

D. *Razuki III* and *Razuki IV*: Razuki attempts to have Malan kidnapped to Mexico and murdered to acquire the $44,000,000 in cannabis assets, is arrested by the FBI, and Malan sues Razuki for trying to have him murdered.

108. On or around November 15-16, 2018, the FBI arrested Razuki, Sylvia Gonzalez and Elizabeth Juarez for conspiring to kidnap and murder Malan because of *Razuki II* ("*Razuki III*").[14]

109. Razuki did not know that one of the individuals that he attempted to hire to murder Malan was an informant for the FBI.

110. On or about August 7, 2019, Malan filed suit against, among others, Razuki, Gonzales, and Juarez for, *inter alia*, (i) interference with the exercise of his civil rights to engage in civil litigation (i.e., *Razuki III*) and (ii) intentional infliction of emotional distress related to their conspiracy to have him kidnapped and murdered ("*Razuki IV*").[15]

E. Summary of *Razuki I-IV* and the transfers of ownership of the Balboa Property and the Balboa CUP.

111. Lake and Harcourt unlawfully converted Mr. Sherlock's interest in the Sherlock Property via at least one forged document. Harcourt has refused to explain how he lawfully acquired Mr. Sherlock's interests in the Balboa or Ramona CUPs. Harcourt was in turn allegedly defrauded of the Balboa CUP by Razuki and Malan and filed suit (i.e., *Razuki I*). Malan was then allegedly defrauding Razuki by not providing him his share of profits of his undisclosed interests in various cannabis assets, including the Balboa CUP, and Razuki filed suit (i.e., *Razuki II*). Razuki then tried to have Malan murdered by hiring a hitman who was an informant for the FBI and was arrested by the FBI (i.e., *Razuki III*). Malan then sued Razuki for causes of action arising from Razuki's attempt to have him murdered to prevent him from continuing with their litigation over the $40,000,000 in cannabis assets (i.e., *Razuki IV*).

112. In Razuki *II*, the Court appointed a receiver to manage the assets, which came to include

[14] *United States v. Salam Razuki*, No. 18MJ5915 (S.D. Cal. Nov. 19, 2018).
[15] *Malan v. Razuki, et. al.*, San Diego Superior Court, Case No. 37-2019-00041260-CU-PO-CTL.

the Court ordered sale of the Balboa Property and the Balboa CUP (the "Balboa Assets").

113. On April 5, 2021, Mrs. Sherlock filed a motion to intervene in *Razuki II* seeking to prevent the sale of the Balboa CUP, which was denied.

114. On May 26, 2021, the Court ordered the Balboa Assets sold to Prodigious Collective ("Prodigious").

115. Based on the grant deed recorded at the Balboa Property, the Sherlock Family believes the Balboa Property was transferred to Allied pursuant to the sale to Prodigious.

V. THE FEDERAL CUP

A. Cotton and Geraci enter into an agreement to apply for a CUP at the Federal Property.

116. Cotton is the owner-of-record of the Federal Property at which he operates 151 Farms.

117. Geraci has approximately 40 years of experience providing tax services and has been the owner-manager of Tax & Financial Center "T&F Center" since 2001. T&F Center provides sophisticated tax, financial and accounting services.

118. In mid-2016, Geraci identified the Federal Property and began negotiating with Cotton for the purchase of the Federal Property because he believed it would qualify for a CUP.

119. Austin, Bartell, and Schweitzer were hired by Geraci and responsible for preparing, submitting, and lobbying a CUP application with the City at the Federal Property that was submitted in the name of Geraci's assistant, Berry (the "Berry CUP Application").

120. On October 31, 2016, Geraci presented Cotton with an Ownership Disclosure Form, a required component of the City's CUP application.

121. Geraci told Cotton that he needed Cotton to execute the form to show to his agents that he had access to the Federal Property as part of his due diligence in determining whether the property qualified for a CUP.

122. On October 31, 2016, Geraci had the Berry CUP Application filed with the City, which included the Ownership Disclosure Form and a Form DS-3032 General Application (the "General Application" and attached hereto as Exhibit 3.

123. The Ownership Disclosure Statement required a list that "***must*** include the names and

addresses of all persons who have an interest in the property, ***recorded or otherwise***, and state the type of interest."

124. The Berry CUP Application falsely states that Berry is the owner of the CUP being applied for; Geraci is not disclosed anywhere in the Berry CUP Application.

125. The Berry CUP Application was filed without Cotton's knowledge or consent.

126. On November 2, 2016, Cotton and Geraci met at Geraci's office and entered into an oral joint venture agreement whereby Cotton would sell the Federal Property to Geraci (the "JVA").

127. The material terms of the JVA were that Cotton would receive (i) $800,000, (ii) a 10% equity stake in the CUP, (iii) the greater of $10,000 a month or 10% of the net profits of the contemplated dispensary; and (iv) a $50,000 non-refundable deposit in the event the CUP application at the Federal Property was not approved. Geraci also promised that his attorney, Austin, would promptly reduce the JVA to writing.

128. The JVA was subject to a single condition precedent, the approval of a CUP application with the City at the Federal Property by Geraci.

129. At their meeting at which the JVA was reached, Geraci had Cotton execute a three-sentence document to memorialize Cotton's receipt of $10,000 towards the total $50,000 non-refundable deposit (the "November Document") and attached hereto as Exhibit 4.

130. On November 2, 2016, after the parties reached the JVA and executed the November Document, the following email communications took place:

(i) At 3:11, Geraci emailed Cotton a copy of the November Document.

(ii) At 6:55 PM, Cotton replied as follows:

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

(the "Request for Confirmation.") Attached hereto as Exhibit 5.

(iii) At 9:13 PM, Geraci replied: "No no problem at all" (the "Confirmation Email"). Attached hereto as Exhibit 6 are these three email exchanges between Cotton and Geraci.

131. On November 3, 2016, Geraci and Cotton spoke over the phone.

132. Subsequently, for months, Cotton and Geraci communicated via email and texts regarding the JVA and issues regarding the approval of a CUP at the Federal Property.

B. Cotton negotiates with Williams to sell the Federal Property.

133. In or around January 2017, after Geraci had failed to reduce the JVA to writing, Cotton began to seek new partners to apply for the Federal CUP at the Federal Property in the event Geraci failed to reduce the JVA to writing.

134. Cotton informed Williams about Geraci's failure to reduce the JVA to writing.

135. In or around February 2017, Williams and Cotton reached the material terms of an agreement for the sale of the Federal Property, subject to the JVA being terminated with Geraci.

136. The material terms of the agreement were for William's 50% purchase of the Federal Property and a 50% ownership interest in the Federal CUP if approved at the Federal Property for $2,500,000.

137. On or around March 6, 2017, Williams spoke to Austin, his attorney, about his intent to enter into an agreement with Cotton.

138. Austin told Williams that he could not enter into an agreement with Cotton because Geraci already had a final, written agreement for the purchase of the Federal Property.

139. Williams, relying on Austin's representation, believed that Cotton had executed a final written agreement with Geraci and was acting in bad-faith attempting to breach his agreement with Geraci to get better terms than those he had negotiated with Geraci and did not enter into an agreement with Cotton.

C. Cotton terminates the JVA with Geraci for his failure to reduce the JVA to writing.

140. On March 7, 2017, Geraci emailed Cotton a revised draft of a purchase agreement for the purchase of the Federal Property and in the cover email he states: "… the 10k a month might be difficult to hit until the sixth month… can we do 5k, and on the seventh month start 10k?".

141. Geraci's request to lower the monthly payment of $10,000 to $5,000 reflects the parties had an existing agreement that included a term of monthly $10,000 payments to Cotton from which

Geraci was requesting an amendment, in accordance with the JVA.

142. On or around March 7, 2017, Cotton discovered the Berry CUP Application was submitted on October 31, 2016, prior to his agreement with Geraci on November 2, 2016, and that the Berry CUP Application failed to disclose Geraci or Cotton and their respective ownership interests per the JVA.

143. Thereafter, Cotton continued to demand that Geraci reduce their JVA to writing as Geraci had promised, which Geraci never did.

144. Cotton did not know that Geraci had previously been sanctioned for unlicensed commercial cannabis activities and could therefore not lawfully own a CUP in his name.

145. On March 21, 2017, after several requests for assurance that the JVA would be honored were ignored by Geraci, Cotton emailed Geraci, terminating the JVA for anticipatory breach and informed him that he would be entering into an agreement with a third party for the sale of the Federal Property.

146. Thereafter, that same day, Cotton entered into a written joint venture agreement with Martin for the sale of the Federal Property.

D. Geraci files *Cotton I* to interfere with the sale of the Federal Property and the acquisition of the Federal CUP by a non-Enterprise party.

147. On March 22, 2017, Geraci's attorneys from the law firm of Ferris & Britton served Cotton with *Cotton I* alleging the November Document was executed with the intent of being a final written contract for Geraci's purchase of the Federal Property. Ferris & Britton also served Cotton with a copy of a recorded lis pendens on the Federal Property (the "F&B Lis Pendens").

148. As a matter of law, *Cotton I* was filed without factual or legal probable cause because the November Document cannot be a lawful contract for at least two reasons: it lacks mutual assent and a lawful object.

E. McElfresh and FTB represent Cotton against Geraci in *Cotton I*, neither of whom disclose they have shared clients with Geraci and Austin, and take actions to sabotage Cotton's case.

149. On or around May 12, 2017, Cotton filed *pro se* a cross-complaint in *Cotton I* against Geraci and Berry with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent

misrepresentation, (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x) conspiracy, and (xi) declaratory and injunctive relief (the "*Cotton I XC*").

150. The basis of the *Cotton I XC* is that Cotton and Geraci reached the JVA and Geraci was seeking to prevent the sale to Martin by misrepresenting the November Document, a receipt, as a contract for the purchase of the Federal Property.

151. Cotton's cause of action for breach of oral contract materially stated as follows (emphasis added):

> ***The agreement reached on November 2nd, 2016 is a valid and binding oral agreement between Cotton and Geraci***.
>
> Geraci has breached the agreement by, among other actions described herein, alleging the written November [Document] is the final and entire agreement for the Property.

152. Cotton's cause of action against Geraci and Berry for conspiracy materially alleged as follows (emphasis added):

> Berry submitted the [Berry Application] in her name on behalf of Geraci because Geraci has been a named defendant in numerous lawsuits brought by the City of San Diego against him for the operation and management of unlicensed, unlawful and illegal marijuana dispensaries. **These lawsuits would ruin Geraci's ability to obtain a CUP himself**.

153. Subsequent to filing the *Cotton I XC*, Cotton acquired a litigation investor, Hurtado.

154. In or around April 2017, Hurtado consulted with attorney McElfresh to represent Cotton and she agreed to represent Cotton.

155. As Hurtado was acting as an agent of Cotton, an attorney-client relationship was established.[16]

156. On or around April 13, 2017, McElfresh emailed Hurtado that "upon further reflection"

[16] *See Miller v. Metzinger* (1979) 91 Cal.App.3d 31, 39-40 ("As our Supreme Court said in *Perkins v. West Coast Lumber Co.* (1900) 129 Cal. 427, 429 [62 P. 57]: 'When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established prima facie.' [….] In *Westinghouse Elec. Corp. v. Kerr-McGee Corp.* (7th Cir. 1978) 580 F.2d 1311, 1319, the court said: 'The fiduciary relationship existing between lawyer and client extends to preliminary consultation by a prospective client with a view to retention of the lawyer, although actual employment does not result.'").

that she did "not have the bandwidth" to represent Cotton and referred Hurtado to Demian of FTB.

157. Demian, a partner, and Adam Witt, an associate, of FTB were engaged and represented Cotton in *Cotton I*.

158. In engaging FTB, FTB was provided the communications between Geraci and Cotton.

159. FTB represented they knew that Martin, Hurtado and others had interests in the Federal Property and the Federal CUP and were third-party beneficiaries of FTB's services provided to Cotton.

160. On or around June 30, 2017, Demian and Witt substituted in as counsel for Cotton and filed an amended cross-complaint in *Cotton I* (the "*Cotton I FAXC*").

161. The *Cotton I FAXC* removed Cotton's allegations that it is unlawful for Geraci to own a CUP because he had been sanctioned for unlicensed commercial cannabis operations.

162. The *Cotton I FAXC* reduced and revised Cotton's causes of action from 11 to 7 as follows: (i) breach of contract; (ii) intentional misrepresentation; (iii) negligent misrepresentation; (iv) false promise; (v) intentional interference with prospective economic relations; (vi) negligent interference with prospective economic relations; and (vii) declaratory relief.

163. FTB's amendments from Cotton's *Cotton I CX* to their *Cotton I FAXC* were without factual or legal justification given the facts known to them.

164. The unjustified amendments include:

(i) Removing Cotton's cause of action for breach of an oral contract;

(ii) Removing Cotton's cause of action for fraud;

(iii) Removing Cotton's cause of action for conspiracy against Geraci and Berry; and

(iv) Removing Berry from all causes of action except the seventh for declaratory relief.

165. Demian represented to Cotton the amendments were just and proper and in Cotton's best interest.

166. Cotton relied on Demian's representations as Demian was his attorney who he believed was acting in his best interest.

167. Subsequent to FTB filing the *Cotton I XC*, FTB was informed that Martin is a high net worth individual who was prepared to hire independent counsel if he was named as a party in *Cotton I*.

168. On or about August 25, 2017, FTB filed a second amended cross-complaint for Cotton

(the "*Cotton I SAXC*"). This time, FTB removed the causes of action for intentional and negligent interference with prospective economic relations for the sale to Martin.

169. Martin was an indispensable party to the action as the purchaser of the Federal Property and was required to be named in *Cotton I*.

170. On or about November 3, 2017, Judge Wohlfeil held a hearing on Geraci's demurrer to Cotton's *Cotton I SAXC* at which Demian argued that Cotton had not reached a final agreement with Geraci, but rather that Geraci and Cotton had reached "an agreement to agree."

171. Demian's argument on behalf of Cotton contradicts Cotton's factual allegations in his *Cotton I XC* that the "agreement reached on November 2, 2016, is a valid and binding oral agreement," and fails to state a cause of action against Geraci because "an agreement to agree" in the future is not a lawful, enforceable agreement.[17]

172. In or around November 2017, at a meeting at FTB's office, Witt, while waiting for Demian, told Cotton that he had just overheard Demian talking with another partner at FTB and that FTB had shared clients with Geraci or Geraci's T&F Center.

173. Demian had never disclosed that Geraci or his company had shared clients with FTB.

174. In December 2017, during the course of his representation, Demian attempted to have Cotton execute a supporting declaration to argue in an *ex parte* application before the *Cotton I* court that Geraci was acting as Cotton's agent when Geraci had Berry submit the Berry Application to the City in her name without disclosing Geraci or Cotton's ownership interest.

175. Specifically, Demian wanted Cotton to admit that: "Cotton and Plaintiff/Cross-defendant Geraci reached an agreement regarding the sale of the Property in or around November 2016 ('November Agreement') which included, among other things, an agreement for **Geraci to pursue the [Federal] CUP *on* Cotton's behalf.**"

176. FTB has no factual or legal justification to have Cotton make this argument.

177. FTB's argument was contradicted by the pleadings submitted by Cotton and every

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

communication provided by Cotton to them.

178. Had Cotton executed the declaration and admitted that he, Cotton, and not Geraci, was the true applicant of the Berry CUP Application, Cotton's allegations of illegality against Geraci would fail to state a claim and Cotton would be the party strictly liable for violating State and City disclosure laws for using a proxy that failed to name him as the true and beneficial owner of the CUP applied for.[18]

179. On or around December 7, 2017, at a hearing before Judge Wohlfeil regarding the validity of the November Document being a contract, Demian failed to raise the Confirmation Email as evidence that the parties did not mutually assent to the November Document being a contract, or even raise the concept of mutual assent or illegality.

180. That same day, Cotton fired Demian or Demian quit because of Demian's failure to raise the issue of mutual assent before Judge Wohlfeil.

181. Later that day, when confronted by Cotton, Demian admitted he had failed to raise the issue of mutual assent or the Confirmation Email as evidence that Cotton and Geraci had not mutually assented to the November Document being a contract and stated it was because he had a "bad day."

182. At that point in time, Cotton did not know that McElfresh, who referred Hurtado to Demian, had shared clients with Austin and that she also worked for Razuki. Nor did Cotton understand the gravity of an attorney who fails to disclose conflicts of interests between clients.

F. Geraci and F&B collude to create and present fabricated evidence – the Disavowment Allegation - to the *Cotton I* court to overcome filing a lawsuit without probable cause because F&B relied on outdated case law.

183. From the filing of the *Cotton I* complaint in March 2017 until April 2018, Geraci's pleadings, motion practice and judicial and evidentiary admissions argued that the statute of frauds and the parol evidence rule barred admission of the Request for Confirmation, the Confirmation Email and other parol evidence as evidence that the parties did not mutually assent to the November Document being a purchase contract for the Federal Property.

184. For example, in Geraci's reply to his demurrer of the *Cotton I SACX*:

> Cotton alleges, based on extrinsic evidence, that the actual agreement between the parties contains material terms and conditions in addition to those in the [November Document]

[18] SDMC § 121.0311 (violations of the SDMC are strict liability offenses).

> as well as a term (a $50,000 deposit rather than the $10,000 deposit stated in the [November Document] that expressly conflicts with a term of the [November Document]. However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the written memorandum.

185. On April 4, 2018, Cotton, via a specially appearing attorney, filed a motion to expunge the F&B Lis Pendens (the "Lis Pendens Motion"). The Lis Pendens Motion argued for the first time in *Cotton I* that, pursuant to *Riverisland*,[19] Geraci could not use the parol evidence rule as a shield to bar parol evidence as proof that the parties executed the November Document as a receipt and that Geraci was fraudulently representing it as a contract.

186. The Lis Pendens Motion was a *de facto* motion for summary judgment as a finding that the November Document is not a contract as a matter of law for lacking mutual assent would have meant that the *Cotton I* complaint, premised on the allegation that the November Document is a contract, was filed without probable cause.

187. On April 9, 2018, Geraci executed a declaration in support of his opposition to the Lis Pendens Motion. Attached hereto as Exhibit 7 and fully incorporated herein by this reference.

188. In his declaration, Geraci alleged for the first time that (i) Geraci did not read the entire Request for Confirmation before sending the Confirmation Email; (ii) Geraci called Cotton on November 3, 2016 and told him that he did not intend to send the Confirmation Email; (iii) Cotton orally agreed that the Request for Confirmation was sent as an attempt to acquire a 10% equity position in the CUP that the parties had not bargained-for and Cotton stated "well, you don't get what you don't ask for"; and (iv) Cotton orally agreed he was not entitled to a 10% equity interest in the CUP that is established by his Request for Confirmation and Geraci's Confirmation Email (the "Disavowment Allegation").

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[19] On January 14, 2013, the California Supreme Court overruled a longstanding precedent regarding the fraud exception to the parol evidence rule. In the 1935 case, *Bank of America Etc. Assn. v. Pendergrass* ("*Pendergrass*") 4 Cal.2d 258, the California Supreme Court declared inadmissible evidence of promissory fraud—a promise made without the intent to perform—made prior to and inconsistent with the subsequent written agreement. The court's unanimous decision in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169, overruled *Pendergrass* and declared that the parol evidence rule does not bar evidence of promissory fraud that contradicts the terms of a writing. *Id.* at 1182 ("***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud***.") (quotation omitted, emphasis added); *see IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 ***("[U]nder Pendergrass, external evidence of promises inconsistent with the express terms of a written contract were not admissible, even to establish fraud***.") (emphasis added).

189. The sole evidence that Geraci provided of the Disavowment Allegation were his phone records reflecting that Geraci and Cotton spoke on November 3, 2016.

190. The *Cotton I* court denied the Lis Pendens Motion finding the November Document appeared to be a contract without addressing the parol evidence and the issue of mutual assent.

191. Subsequent to the hearing, Cotton emailed Weinstein accusing him of fabricating the Disavowment Allegation, to which Weinstein responded as follows:

> First, our view is that the statute of frauds bars the [Confirmation Email] because it is parol evidence that is being offered to explicitly contradict the terms of the [November Document]. Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016, resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10% equity position. Rather, Mr. Geraci's position is that there was never an oral agreement between them that Mr. Cotton would receive a 10% equity position. Even assuming for the sake of argument that the [Confirmation Email] is not barred by the parol evidence rule and admissible, the telephone call the next day is parol evidence that Mr. Geraci never agreed to a 10% equity position and, therefore, it is consistent with the [November Document] and not barred by the statute of frauds.

192. First, the statute of frauds does not apply to the JVA.[20]

193. Second, pursuant to *Riverisland*, parol evidence is not barred to prove fraud.

194. Third, under California law as explained in *Stewart v. Preston Pipeline Inc.*, even assuming that Geraci's allegation of mistakenly sending the Confirmation Email were true, Geraci may not avoid the legal impact of sending the Confirmation Email on the ground that he failed to read the Request for Confirmation before signing it.[21]

195. Thus, even setting aside the illegality of Geraci's sanctions, there is no factual or legal

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

[21] "It is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of its terms on the ground that he failed to read the instrument before signing it. [¶] Plaintiff has cited no California cases (and we are aware of none) that stand for the extreme proposition that a party who fails to read a contract but nonetheless objectively manifests his assent by signing it—absent fraud or knowledge by the other contracting party of the alleged mistake—may later rescind the agreement on the basis that he did not agree to its terms. To the contrary, California authorities demonstrate that a contracting party is not entitled to relief from his or her alleged unilateral mistake under such circumstances." *Stewart v. Preston Pipeline Inc.*, 134 Cal. App. 4th 1565, 1588-89 (citations and quotations omitted).

probable cause for the filing of *Cotton I*.

G. Austin attempts to avoid service of process to allege she is not aware of the Geraci Judgments.

196. On August 8, 2018, Cotton appealed from the order denying the Lis Pendens Motion seeking to expunge the F&B Lis Pendens, which referenced the Geraci Judgments and the illegality of Geraci's ownership of a CUP.

197. On August 27, 2018, Cotton's then counsel and paralegal served Austin personally and as counsel for Magagna. Attached hereto as Exhibit 8 are the proofs of service describing Austin's actions attempting to avoid service and fully incorporated by this reference.

198. During discovery, Geraci asserted the attorney-client privilege as to communications between him and Austin.

H. The *Cotton I* trial and the Motion for New Trial.

199. In the years leading up to the trial of *Cotton I*, Cotton took numerous actions to seek to prevent Geraci from being able to process the Berry CUP Application at the Federal Property.

200. Cotton's actions included preventing Geraci from accessing the Federal Property for actions required to process the Berry CUP Application.

201. Cotton took such actions because in order for Geraci to limit his liability for filing *Cotton I*, Geraci needed to make it impossible for Cotton or any other party to acquire a CUP at the Federal Property. Thus, Geraci's consequential damages once his illegal actions are exposed, would not include the value of a CUP issued at the Federal property and such would limit his liability by millions of dollars and also serve to prevent third parties from seeking to help Cotton finance his litigation against Geraci.

202. Austin, Berry, Bartell, and Schweizer testified on Geraci's behalf at the trial of *Cotton I*.

203. At the trial of *Cotton I*, Judge Wohlfeil found that the CUP application would have been approved at the Federal Property but-for what he believed to be Cotton's unlawful interference with the processing of the application with the City: "I think, that it's more probable than not that a CUP had been issued and the dispensary opened…"

204. At the *Cotton I* trial, Austin testified: (i) she was not aware of the Geraci Judgments; (ii) she does not know why, or cannot remember why, Geraci used Berry as an agent for the Berry CUP

Application; and (iii) when presented with the Ownership Disclosure Statement, Austin was asked: "after reading that, why [did] it seem unnecessary to list Mr. Geraci?" Austin responded: "I don't know that it - - it was unnecessary or necessary. We just didn't do it."

205. At the trial of *Cotton I*, Berry's testimony alleged that while Geraci was not disclosed because he was an Enrolled Agent for the IRS, she was not aware that the City's CUP application forms required Geraci to be disclosed because she did not read them. Specifically, Berry testified: "I simply signed this. It was filled out by our team and I signed it. Trusting Mr. Geraci and the team."

206. During trial, Cotton moved for a directed verdict arguing BPC § 20657 *et seq.* bars Geraci's ownership of a CUP, which was summarily denied.

207. The *Cotton I* judgment found, *inter alia*, that Geraci "is not barred by law pursuant to California Business and Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial of Application) from owning a Marijuana Outlet conditional use permit issued by the City of San Diego."

208. The $260,109.28 in damages awarded Geraci included legal fees for McElfresh's representation of Geraci in advancing the interests of the Berry CUP Application before the City.

209. After trial, Cotton filed a motion for new trial again arguing, *inter alia*, the illegality of the Proxy Practice, which Judge Wohlfeil denied finding the defense of illegality had been waived.

VI. THE MAGAGNA CUP APPLICATION WAS FILED TO PREVENT THE APPROVAL OF THE BERRY CUP APPLICATION AND LIMIT GERACI AND HIS COCONSPIRATORS LIABILITY ONCE THEIR UNLAWFUL ACTIONS WERE EXPOSED.

210. On or about March 14, 2018, Magagna submitted an application for a CUP at 6220 Federal Blvd. that is located within 1,000 feet of the Federal Property (the "Magagna CUP Application").

211. Prior to then, Williams had engaged Schweitzer on several CUP applications and was actively working with him on CUP applications at other real properties.

212. In or around November 2018, Schweitzer told Williams that the Magagna CUP Application would be approved and that he would have an ownership interest in the Federal CUP.

213. On or about October 18, 2018, the Magagna CUP Application was approved by the City.

214. Schweitzer is not listed as a party with an ownership interest in the Magagna CUP Application.

VII. DURING THE COURSE OF THE *COTTON I* LITIGATION, GERACI AND HIS AGENTS UNDERTOOK ACTS AND THREATS OF VIOLENCE AGAINST COTTON AND THIRD PARTIES SEEKING TO COERCE COTTON TO CEASE THE *COTTON I* LITIGATION.

A. Eulenthius Duane Alexander and Logan Stellmacher threaten Cotton on behalf of Geraci.

215. On or about February 3, 2018, Alexander and Stellmacher and a third-party went to the Federal Property purportedly to discuss business opportunities with Cotton.

216. However, when they arrived at the Federal Property, they only wanted to discuss the *Cotton I* litigation.

217. They made an offer to purchase the Federal Property stating they had reached an agreement with Geraci to take over the Berry CUP Application, offering to beat Martin's purchase price of $2,500,000, and promising Cotton a long-term job at the contemplated dispensary if Cotton could settle his litigation with Geraci.

218. Cotton declined, noting he was contractually unable to settle the litigation with Geraci in a manner that left Geraci the Federal Property because of his agreement with Martin.

219. Thereafter, Alexander and Stellmacher engaged in direct and indirect threats seeking to coerce Cotton to settle with Geraci.

220. Alexander made it a point to highlight that Geraci was a politically influential individual with the City and that the Berry CUP Application being approved was already a "done deal" for Geraci.

221. Stellmacher then directly threatened Cotton, stating that (i) Geraci's influence with the City extended to having the ability to have the San Diego Police Department raid the Federal Property and have Cotton arrested on fabricated charges and planted drugs and (ii) Geraci could have dangerous individuals visit the Federal Property implying they would cause bodily harm to Cotton.

222. Cotton refused the offer.

223. Thereafter, on numerous occasions, Stellmacher harassed Cotton.

224. On or about February 8, 2019, Stellmacher became aware that Cotton intended to file a federal lawsuit and describe Stellmacher's threats, and he went to the Federal Property and pleaded with Cotton to not name him as he had been arrested in Texas and was out on bail for illegally transporting cannabis.

B. Magagna attempts to bribe and threatens Young to prevent her from providing testimony against Geraci and his agents.

225. On or around October 2, 2017, Young visited the Federal Property and took a tour of 151 Farms. Young went to the Federal Property because she had heard about the property qualifying for a CUP and was looking for an investment opportunity.

226. Young was informed about the *Cotton I* litigation and was given a proposal to invest in the litigation as a means of acquiring an ownership interest in the Federal CUP.

227. Young had or did engage Bartell who worked on another CUP application at a different property.

228. Young spoke to her cannabis attorney, Shapiro, about the potential investment who told her that she should speak to Bartell.

229. Bartell told her not to invest in the *Cotton I* litigation because he "owned" the Berry CUP Application and he was getting it denied with the City because "everyone hates Darryl" (the "Bartell Statement").

230. Young did not invest in the *Cotton I* litigation.

231. Young was not aware that at the same time the Bartell Statement was made, Geraci was arguing before Judge Wohlfeil in *Cotton I* that Geraci was using his best efforts to have the Berry CUP Application approved, including through the political lobbying efforts of Bartell.

232. On or around May 27, 2018, Young met with Cotton and others to discuss a secured loan instead of litigation financing.

233. At the meeting, Young was informed by Cotton that he believed that Magagna was a co-conspirator of Geraci who was seeking to help Geraci mitigate his damages by having the Magagna CUP Application approved.

234. Young recognized Magagna and told Cotton that Shapiro was also Magagna's attorney and about the Bartell Statement.

235. However, Young stated her belief that Magagna was not a bad-faith actor and called him to speak about what was happening.

236. Young met with Magagna and explained Cotton's belief that he was a coconspirator of Geraci. To her surprise, Magagna did not deny the allegations, instead, he asked her to change her

statements and offered her a bribe for doing so. Young refused.

237. Despite her refusal, Magagna repeatedly requested that Young communicate with Cotton and tell him that she had "dreamed" the Bartell Statement.

238. Young continued to refuse and Magagna became increasingly physically and vocally aggressive with his demands until they parted, demanding Young not say anything about their conversation and to "keep him out of it."

C. Nguyen, Young's attorney, promises and fails to provide Young's testimony.

239. Nguyen and Austin both attended law school together at Thomas Jefferson School of Law in San Diego, California, and were both admitted to the California Bar in December 2006.

240. On January 1, 2019, Cotton subpoenaed Young to be deposed on January 18, 2019.

241. On January 16, 2019, Nguyen, representing Young, unilaterally cancelled the deposition of Young.

242. On January 21, 2019, Nguyen promised to provide Young's sworn testimony confirming, *inter alia*, the Bartell Statement and Magagna's attempts at bribing and threatening her.

243. On June 12, 2019, after having been put off for months by Nguyen, counsel for Cotton emailed Nguyen demanding she provide Young's promised testimony, to which Nguyen never responded.

244. On June 30, 2019, the day before the start of trial in *Cotton I*, Flores spoke with Young who said she had moved out of the City, could not be served, would not testify, and did not want anything to do with Cotton or *Cotton I*.

245. In January 2020, Flores spoke with Young and informed her that by failing to provide her promised testimony that he believed she was a coconspirator of Geraci and he intended to file suit against her.

246. Young broke down and said she had done nothing illegal and that it was Nguyen who had unilaterally decided not to provide her testimony after Young had already agreed to provide it.

247. Young stated that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro paid Young's legal fees to Nguyen, (iii) Nguyen – in an email – told her that it was OK to "ignore" their obligation to provide Young's testimony because "it was too late for Cotton to do anything about it."

248. Thereafter, Young, having learned that Cotton intended to sue her for her failure to provide her promised testimony, emailed Cotton the email from Nguyen stating it was "too late" for Cotton to do anything about subpoenaing her for trial at *Cotton I*. Attached hereto at Exhibit 9 is a true and correct copy of that email.

D. Gash offers Young a job in Palm Springs, CA that prevents Cotton from subpoenaing Young for trial.

249. The job that Young received that was the catalyst for her moving out of the City, and being unable to be located to be served again for trial, was as a manager at a dispensary called Southern California Organic Treatment (SCOT) in Palm Springs, CA.

250. Public records reveal that Austin has or is counsel for SCOT.

251. Dave Gash and James Yamashita are, respectively, the CEO and CFO of SCOT.

252. Public records reveal that Gash (i) was sanctioned for unlicensed cannabis activities along with Ramistella and Yamashita; and (ii) was the property manager at the Balboa Property at which the Balboa CUP was issued.

253. Ramistella was a co-defendant and sanctioned with Geraci in the TreeClub Judgement for unlicensed commercial cannabis activities.

254. Based on the relationships between the parties, Plaintiffs believe and allege that the job offer to Young by Gash was made and intended to prevent Cotton from being able to locate and subpoena Young to testify at the trial of *Cotton I.*

E. Shawn Miller threatens Hurtado to coerce him to have Cotton settle the *Cotton I* litigation.

255. "Following a jury trial, defendant Shawn Joseph Miller was found guilty on two counts of committing wire fraud, in violation of 18 U.S.C.§ 1343, two counts of money laundering, in violation of 18 U.S.C.§ 1957, and one count of witness tampering, in violation of 18 U.S.C.§ 1512(b)(3)." *U.S. v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008).

256. At a pretrial hearing, Miller's own attorney, fearing for his safety, requested that he be

relieved as counsel for Miller due to his violent nature.[22]

257. Subsequent to being released, Miller began working as a contract paralegal in the City.

258. In or around January 2018, Hurtado attempted to hire Miller as a contract paralegal for Cotton and his then counsel.

259. When Hurtado met Miller, he explained the *Cotton I* litigation and that Geraci was a "mafia like figure." Further that he was not a party to and did not want to be involved in the litigation because of the evidence of violence by Geraci and that he was concerned for the safety of his family, and he needed to do what was in their "best interest."

260. Thereafter, Miller stated that he knew Geraci.

261. Hurtado told him it would be a conflict of interest to hire Miller and requested Miller not inform Geraci about him. Miller agreed.

262. That same night, at approximately 10:00 p.m., Miller called Hurtado requesting that Hurtado use his influence with Cotton to persuade him to settle with Geraci because Geraci is really "not a bad guy" and that it would be in Hurtado's "best interest," which was a direct reference to their earlier conversation and Hurtado's concerns for the safety of his family.

263. The parties argued during which Hurtado accused Miller of threatening him on behalf of Geraci and hung up on Miller.

264. Thereafter, Miller repeatedly called, texted and harassed Hurtado under the guise of seeking to collect payment for work that he alleges he performed at Hurtado's request.

265. In *Cotton I,* Geraci responded to a special interrogatory as follows:

> **SPECIAL INTERROGATORY NO. 35:**
> Have YOU or YOUR AGENTS requested that Shawn Miller contact Joe Hurtado regarding any matter related to this litigation?
>
> **RESPONSE TO SPECIAL INTERROGATORY NO. 35**
> Not that I am aware. Moreover, I have never requested or authorized any person to do so.

266. Geraci's response allows for the possibility that if phone records and other evidence prove

[22] *Miller*, 531 F.3d 343 (Miller's attorney: "The Defendant and I just had a meeting, which deteriorated to a very violent nature…. I was hoping while he sat in jail he would come to his senses but obviously has not. He is hostile to me. I cannot under the ethical situation even sit at the same trial table with him. So I have all the evidence here that he needs. I can give it to him and let him represent himself.").

that Miller threatened and harassed Hurtado under the pretext of seeking to collect a debt, that Miller did so on behalf of Geraci but without Geraci's knowledge or consent.

VIII. AUSTIN INTERFERES WITH WILLIAMS ACQUISITION OF THE LEMON GROVE CUP AND WILLIAMS WITHDRAWS FROM THIS LAWSUIT AFTER BEING UNLAWFULLY CONTACTED BY AUSTIN.

267. Williams first retained Austin to be his attorney for cannabis related matters in or around February 2017.

268. In or around March 2017, Williams discussed with Austin his intent to purchase the Lemon Grove Property.

269. Austin represented to Williams that the Lemon Grove Property did not qualify for a CUP and that he should not purchase the Lemon Grove Property.

270. Subsequently, the Lemon Grove CUP was issued at the Lemon Grove Property.

271. The parties who acquired the Lemon Grove CUP at the Lemon Grove Property were represented by McElfresh.

272. Austin's representation to Williams that the Lemon Grove Property did not qualify for a CUP was false.

273. The original complaint in this action was filed on December 3, 2021.

274. On or around December 8, 2021, Austin contacted Williams despite knowing he was represented by counsel in violation of the Rules of Professional Responsibility.

275. Subsequently, Williams decided to withdraw from this suit.

IX. THE RELATED FEDERAL ACTIONS

276. There are two related actions in federal court by plaintiffs, one by Flores, Mrs. Sherlock, T.S., S.S. and, the second, by Cotton. Those actions are based on the Enterprise's unlawful actions violating plaintiffs Civil Rights related to the *Cotton I* action. Those actions sought to have, *inter alia*, the *Cotton I* judgment declared void due to, *inter alia*, the actions by Geraci and his agents that constitute a fraud on the Court. *See Kougasian v. TMSL, Inc.* (9th Cir. 2004) 359 F.3d 1136, 1141 ("It has long been the law that a plaintiff in federal court can seek to set aside a state court judgment obtained through extrinsic fraud.").

277. The actions do not seek to have the federal courts adjudicate the rights of plaintiffs to

personal or real property at issue in the state actions, the relief requested is limited to the violations of plaintiffs Civil Rights and seeking to have the *Cotton I* judgment declared void.

278. Motions to dismiss against Plaintiffs federal suit are pending. However, on October 22, 2021, the Federal Court issued its latest ruling in the Cotton matter finding that the *Rooker-Feldman* doctrine bars its review of the *Cotton I* judgment for illegality. (*See Cotton v. Bashant, et al.*, 18-CV-325 TWR (DEB), ECF No. 96 at 7:18-20 ("[Cotton's] claim is barred by the *Rooker-Feldman* doctrine.").

279. The necessity of having the *Cotton I* judgment declared void because of ALG's Proxy Practice must be addressed in State court.

ADDITIONAL FACTUAL ALLEGATIONS AND CAUSES OF ACTION

FIRST CAUSE OF ACTION – CONSPIRACY TO MONOPOLIZE IN VIOLATION OF THE CARTWRIGHT ACT (BUS. & PROF. CODE § 16700 *et seq.*)

(Plaintiffs v. Defendants)

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

281. "The purpose of the Cartwright Act is to protect and foster competition by preventing combinations and conspiracies which unreasonably restrain trade." *Morrison v. Viacom, Inc.*, 52 Cal. App. 4th 1514, 1524 (1997). The Cartwright Act prohibits trusts, which it defines as "combination[s] of capital, skill, or acts by two or more persons" for certain enumerated purposes, including "[t]o create or carry out restrictions in trade or commerce." BPC § 16720(a). A conspiracy to monopolize is within the Cartwright Act's definition of a trust as "a combination of capital, skill, or acts by two or more persons" to restrain trade. BPC § 16720. The California Supreme Court has emphasized that "agreements to establish or maintain a monopoly are restraints of trade made unlawful by the Cartwright Act." *In re Cipro Cases I & II*, 61 Cal. 4th 116, 148 (2015).

282. Defendants designed, implemented and/or ratified a combination and conspiracy with the specific intent to prevent competition and/or create a monopoly in the cannabis market in the City and County of San Diego in violation of the Cartwright Act.

283. Defendants committed overt acts and engaged in concerted action in furtherance of their

combination and conspiracy to restrain trade and monopolize, as described above, including but not limited to unlawfully applying for or acquiring CUPs through the use of proxies and/or forged documents, sham litigation,[23] and acts and threats of violence against competitors and/or parties who could threaten or expose their illegal actions in furtherance of the conspiracy.

284. As a direct and legal result of the unlawful actions of defendants, and each of them, Plaintiffs were injured in their business and/or property, all of which injuries have caused and continue to cause Plaintiffs' damage. Pursuant to BPC §16750(a), Plaintiffs are entitled to recover three (3) times the damages sustained by them, according to proof.

SECOND CAUSE OF ACTION– CONVERSION

(Mrs. Sherlock, T.S., and S.S. v. Lake, Harcourt, Prodigious and Allied)

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

286. The Sherlock Family had ownership interests in the Sherlock Property upon the death of Mr. Sherlock as his heirs.

287. After the death of Mr. Sherlock, Lake and Harcourt converted the Sherlock Property through documents that contained Mr. Sherlock's forged signature, including the Dissolution Form.

288. Conversion is a strict liability crime and holders of converted property, including bona fide purchasers, are liable for conversion and must return the property.

289. Prodigious and Allied, in which Malan holds an ownership interest, hold, respectively, the Balboa CUP and the Balboa Property, for which they are strictly liable.

290. The Sherlock Family is entitled to have their property returned to them.

THIRD CAUSE OF ACTION – CIVIL CONSPIRACY

(Mrs. Sherlock, T.S., and S.S. v. Lake and Harcourt)

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

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[23] The *Noerr-Pennington* doctrine and sham exception apply to the Cartwright Act. *See Blank v. Kirwan* (1985) 39 Cal. 3d 311, 320–322 (defendants' actions aimed at influencing city were protected from Cartwright Act claim by *Noerr-Pennington* doctrine); *Hi-Top Steel Corp. v. Lehrer*, 24 Cal. App. 4th 570, 579 (1994) ("we hold the sham exception to the *Noerr-Pennington* doctrine is applicable in California.").

292. Lake and Harcourt conspired to convert the Sherlock Family's interest in the Sherlock Property after the death of Mr. Sherlock through forged documents, including the Dissolution Form, as well as to conceal from them their causes of action to seek judicial redress for same.[24]

293. Shortly after Mr. Sherlock passed away, Lake knowingly and falsely represented to Mrs. Sherlock that Mr. Sherlock never acquired interests in the Balboa CUP.

294. Mrs. Sherlock trusted and relied on Lake's representations as he is her brother-in-law and was Mr. Sherlock's business partner.

295. Lake also falsely stated that he was the purchaser of the Balboa Property.

296. Mr. Sherlock's interest in the Balboa Property via his interest in LERE was converted by Harcourt when he transferred Balboa Property from LERE to Lake.

297. In or around March 2020, when Mrs. Sherlock confronted Lake with a handwriting expert report concluding that Mr. Sherlock's signature was forged on the Dissolution Form, Lake admitted to Mrs. Sherlock that he had converted the Mr. Sherlock's interest in the Balboa and Ramona CUPs after Mr. Sherlock's death.

298. As detailed above, Lake's reasoning for depriving the Sherlock Family of their interests in the CUPs included that Mr. Sherlock's contributions were "worthless," the Sherlock Family was not entitled to any compensation, and there was nothing Mrs. Sherlock could do about it because she lacked the financial resources to vindicate her rights.

299. Lake's statements to Mrs. Sherlock in or around February 2020, alleging Mr. Sherlock was in an extremely emotional state and executed the Dissolution Form, contradict his statements to investigative officers after the death of Mr. Sherlock in December 2015, were fabricated, and intended to cover-up his unlawful role in the sale of the Sherlock Property.

300. Harcourt's repeated refusal to explain how he purchased Mr. Sherlock's interests in the CUPs, but his communication of affirmative defenses in anticipation of litigation, evidence his knowing unlawful role in purchasing Mr. Sherlock's interests in the Balboa and Ramona CUPs.

301. In doing the things herein alleged, Lake and Harcourt acted purposefully with malice and oppression to deprive the Sherlock Family their rights to the Sherlock Property and prevent them from

[24] *See Ramey v. General Petroleum Corp.* (1959) 173 Cal. App. 2d 386, 403 (conspiracy to conceal and defeat plaintiff's common law action for damages).

seeking judicial redress for same. Lake and Harcourt's actions thereby warrant an assessment of punitive damages in an amount appropriate to punish them and deter others from engaging in similar misconduct pursuant to Civ. Code § 3294(c).

FOURTH CAUSE OF ACTION – DECLARATORY RELIEF

(Mrs. Sherlock, T.S., and S.S. v. Lake, Harcourt, Razuki, Malan, Prodigious and Allied)

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

303. The Sherlock Family dispute the claims of past and current ownership by Lake, Harcourt, Razuki, Malan, Prodigious and Allied to the Balboa Property and the Balboa CUP.

304. The Sherlock Family were unlawfully deprived of their interests in LERE (and thereby the Balboa Property) and the Balboa CUP.

305. The Balboa Property and the Balboa CUP were sold pursuant to a Court order based on the assumption that Lake/Harcourt had original lawful ownership of the assets and that they were lawfully acquired by Razuki/Malan.

306. As set forth above, Lake and Harcourt did not lawfully acquire Mr. Sherlock's ownership interests in LERE and the Balboa CUP. Further, Razuki and Malan's acquisition of the Balboa Property and the Balboa CUP pursuant to their illegal agreements also do not provide a lawful basis for their claims to the Balboa Property and the Balboa CUP.

307. Consequently, the Court ordered sale of the Balboa Property and the Balboa CUP is void as it is premised on the lawful ownership of the assets by Lake/Harcourt and Razuki/Malan.

308. The Sherlock Family desires a declaration that the transfers of Mr. Sherlock's interests in LERE and the Balboa CUP are void.

309. The Sherlock Family desires a declaration that the Oral and Partnership Agreements are illegal contracts are void and judicially unenforceable and, consequently, the Court ordered sale of the assets is void for unknowingly enforcing illegal contracts and converted property.

FIFTH CAUSE OF ACTION – UNFAIR COMPETITION LAW

(Cal. Bus. & Prof. Code § 17200 *ET SEQ.*)

(Plaintiffs v. Defendants)

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

311. The above-described acts and practices of Defendants and Does 1-100 in furtherance of the constitute unfair competition in that they are unlawful,[25] unfair,[26] and/or fraudulent business practices in violation of California's Unfair Competition Law ("UCL") codified at BPC § 17200 et seq.

312. As detailed above, the wrongful conduct of Defendants and Does 1 through 50, and each of them, as herein above alleged, seeking to prevent competition and ratification of acts seeking to prevent competition, in the cannabis market in the City and County of San Diego violate the Cartwright Act.

313. The filing of all documents with public offices effectuating the transfer of the Sherlock Property after the death of Mr. Sherlock are based on forged documents and violate Penal Code § 115.

314. ALG's Proxy Practice is illegal and violates numerous State and City laws, most notably, BPC §§ 19323 et seq. and 26057 et. seq.

315. The preparation, filing, and lobbying of CUP applications with the City by Malan, Berry, and Magagna, failing to disclose the ownership interests of, respectively, Razuki, Geraci, and Schweizer, violate BPC § 19323 et seq. and/or § 26057 et seq. and Penal Code § 115.

316. The filing and maintaining of the sham Cotton I action by Geraci, and F&B constitutes predatory and anticompetitive conduct that is unlawful and fraudulent.

317. Geraci and F&B's collusion to fabricate, present and testify as to the Disavowment Allegation, in response to Riverisland being raised in the Lis Pendens Motion, constitutes perjury (Pen. Code § 118) and subordination of perjury (Pen. Code § 127).

318. McElfresh's representation of Geraci in furtherance of the Berry CUP Application before

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[25] "The 'unlawful' practices prohibited by … section 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made. … As [the] Supreme Court put it, section 17200 'borrows' violations of other laws and treats them as unlawful practices independently actionable under section 17200 *et seq*." *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 880–881 (cleaned up).

[26] The definition of "unfair" includes "[k]nowingly filing or pursuing unmeritorious legal actions that are not factually or legally tenable, for the purpose of earning income, qualifies as an unfair business practice." *Golden State Seafood, Inc. v. Schloss*, 53 Cal. App. 5th 21, 40 (2020).

the City violated her fiduciary duties to Cotton as her former client,[27] the terms of her DPA as she knew Geraci could not lawfully own a CUP via the Berry CUP Application pursuant to BPC § 19323 et seq., and Penal Code § 115.

319. Nguyen's failure to provide Young's testimony violates her professional responsibilities as an officer of the court as well as Cal. Pen. Code § 136 (preventing a witness from testifying).

320. The threats of violence by Alexander and Stellmacher against Cotton as agents of Geraci seeking to prevent him from continuing with litigation against Geraci constitute obstruction of justice pursuant to Pen. Code § 182(a)(5).

321. The threats of violence and harassment by Miller against Hurtado as an agent of Geraci seeking to have him cease his support of Cotton's litigation against Geraci constitutes obstruction of justice pursuant to Pen. Code § 182(a)(5).

322. The attempted bribery and threats by Magagna against Young violate Cal. Pen. Code § 136.1(d) and § 182(a)(5).

323. Plaintiffs are entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits, such other monetary relief as the court deems just in light of the ill-gotten gains obtained by Defendants as a result of such business acts or practices, and an injunction prohibiting Defendants from engaging in the practices described herein.

SIXTH CAUSE OF ACTION – DECLARATORY RELIEF

(Flores v. Geraci)

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

325. Flores seeks to have the *Cotton I* judgment declared void for, *inter alia*, enforcing an illegal contract and being the product of a fraud on the court.

326. The Courts have "define[d] a judgment that is void for excess of jurisdiction to include a

[27] "Few precepts are more firmly entrenched than that the fiduciary relationship between attorney and client is of the very highest character and, even though terminated, forbids (1) any act which will injure the former client in matters involving such former representation or (2) use against the former client of any information acquired during such relationship." *Yorn v. Superior Court*, 90 Cal. App. 3d 669, 675 (1979) (citations omitted).

judgment that grants relief which the law declares shall not be granted."[28]

327. Geraci was sanctioned by the City in the CCSquared Judgment on June 17, 2015.

328. As in effect in October and November 2016 when the Berry CUP Application was submitted and the November Document executed, BPC § 19323(a),(b)(7) provided that a "licensing authority shall deny an application if the applicant has been sanctioned by a city for unlicensed commercial cannabis activities in the three years immediately preceding the date the application is filed with the licensing authority." BPC § 19323(a),(b)(7) (cleaned up; emphasis added).

329. The *Cotton I* judgment is therefore void because it grants relief to Geraci that the law declares shall not be granted.

330. Flores' causes of action asserted herein relating to their interests in the Federal Property and the Federal CUP are based on their contention that the November Document is not a lawful contract because it lacks mutual assent and a lawful object.

331. An actual controversy has arisen and now exists between Flores and Geraci in that Geraci contends the *Cotton I* judgment is not a void judgment.

332. A declaration finding the *Cotton I* judgment is void is necessary and appropriate at this time so that the rights, duties and obligations of these parties may be ascertained without reliance upon a void judgment that has no legal effect and cannot give rise to any rights in this action.

SEVENTH CAUSE OF ACTION – CIVIL CONSPIRACY

(Plaintiffs v. Defendants)

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

334. Defendants Lake and Harcourt unlawfully transferred the Sherlock Property from Mr. Sherlock thereby depriving the Sherlock Family of their interest in the Sherlock Property.

335. As set forth above, the remaining defendants took or ratified acts in furtherance of the Antitrust Conspiracy.

336. Irrespective of whether Lake and Harcourt are principals or agents of the Enterprise, all defendants are joint tortfeasors whose actions have damaged Plaintiffs.

[28] *311 S. Spring St. Co. v. Dep't of Gen. Servs.*, 178 Cal. App. 4th 1009, 1018 (2009).

337. In doing the things herein alleged, defendants have acted with malice, oppression, and fraud in conscious disregard of Plaintiffs' rights, thereby warranting an assessment of punitive damages in an amount appropriate to punish Defendants and deter others from engaging in similar misconduct.

PRAYER FOR RELIEF

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

1. Pursuant to Government Code § 12261, that the Court order the reinstatement of LERE.

2. For compensatory, general, consequential, and incidental damages and prejudgment interest in an amount to be proven at trial, as permitted by law.

3. An award of statutory damages, as permitted by law.

4. An award of punitive and exemplary damages, as permitted by law.

5. Reasonable attorneys' fees and costs, as permitted by law.

6. A declaration that ALG's Proxy Practice is an unlawful business practice.

7. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining ALG from continuing with the Proxy Practice.

8. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining the transfer of the Sherlock Property.

9. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining Magagna from selling and/or transferring interests in the Federal CUP pending resolution of this action.

10. Any other injunctive relief as required to effectuate the relief requested herein.

11. Any such other and further relief as the Court deems fair, equitable, and just.

Dated: December 22, 2021

Law Offices of Andrew Flores

By /s/ Andrew Flores

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

EXHIBIT 1

LLC-4/7 | **Certificate of Cancellation of a Limited Liability Company (LLC)**

To cancel the Articles of Organization of a California LLC, or the Certificate of Registration of a registered foreign LLC, you can fill out this form, and submit for filing.

- There is no filing fee, however, a non-refundable **$15** service fee must be included, if you **drop off** the completed form.
- To file this form, the status of your LLC must be active on the records of the California Secretary of State. To check the status of the LLC, go to kepler.sos.ca.gov.

Important! California LLCs only: This form must be filed after or together with a Certificate of Dissolution (Form LLC-3). However, if the vote to dissolve was made by all of the members and that fact is noted in Item 4 below, Form LLC-3 is not required.

Note: *Before submitting the completed form*, you should consult with a private attorney for advice about your specific business needs. It is recommended for proof of submittal that if this form is mailed, it be sent by Certified Mail with Return Receipt Requested.

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Secretary of State
State of California
DEC 21 2015 8PO

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This Space For Office Use Only

For questions about this form, go to *www.sos.ca.gov/business-programs/business-entities/filing-tips.*

① **LLC's Exact Name in CA** (on file with CA Secretary of State)
Leading Edge Real Estate, LLC

② **LLC File No.** (issued by CA Secretary of State)
201511910148

Tax Liability (The following statement should not be altered. For information about final tax returns, go to https://www.ftb.ca.gov or call the California Franchise Tax Board at (800) 852-5711 (from within the U.S.) or (916) 845-6500 (from outside the U.S.).)

③ All final returns required under the California Revenue and Taxation Code have been or will be filed with the California Franchise Tax Board.

Dissolution (California LLCs ONLY: Check the box if the vote to dissolve was made by the vote of all the members.)

④ ☉ The dissolution was made by the vote of all of the members.

Additional Information (If any, list any other information the persons filing this form determine to include.)

⑤ _____

_____

Cancellation (The following statement should not be altered.)

⑥ Upon the effective date of this Certificate of Cancellation, this LLC's Articles of Organization (CA LLCs) or Certificate of Registration (registered foreign LLCs) will be cancelled and its powers, rights and privileges will cease in California.

Read and sign below: For California LLCs: This form must be signed by a majority of the managers, unless the LLC has had no members for 90 consecutive days, in which case the form must be signed by the person(s) authorized to wind up the LLC's affairs. For registered foreign LLCs: This form must be signed by a person authorized to so do under the laws of the foreign jurisdiction. If the signing person is a trust or another entity, go to www.sos.ca.gov/business-programs/business-entities/filing-tips for more information. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are part of this document.

Sign here	*Print your name here*	*Your business title*
▶ Michael Sherlock	Michael Sherlock	Manager
▶	Bradford Harcourt	Manager

Sign here *Print your name here* *Your business title*

Make check/money order payable to: **Secretary of State**

To get a copy of the filed document, include a separate request and payment for copy fees when the document is submitted. Copy fees are $1 for the first page and $.50 for each additional page. For certified copies, there is an additional $5 certification fee, per copy.

By Mail	***Drop-Off***
Secretary of State Business Entities, P.O. Box 944228 Sacramento, CA 94244-2280	Secretary of State 1500 11th Street., 3rd Floor Sacramento, CA 95814

EXHIBIT 2

From: Andrew flores
To: Evan P. Schube
Subject: FW: Sherlock -Harcourt Leading Edge Real Estate
Date: Tuesday, March 23, 2021 2:32:00 PM
Attachments: image001.png
image003.png

Hello Evan,

Please see the email chain between myself and Mr. Claybon, Harcourts attorney. I will be forwarding you some other materials shortly.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego, CA 92101
P. (619) 356-1556
F. (619) 274-8053
andrew@floreslegal. com

From: Allan Claybon <aclaybon@messner.com>
Sent: Monday, March 9, 2020 1:41 PM
To: Andrew flores <andrew@floreslegal.pro>
Cc: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

SETTLEMENT COMMUNICATION PURSUANT TO FRE 408; CAL. EVID. CODE § 1152:

Mr. Flores,

I have had further discussion with my client. Without admitting any to any of the concerns that you have raised, he is hopeful an exchange of information would lead to a greater understanding of the related occurrences and will attempt to provide some further information. Please be specific as to what information you are seeking so that we can try to minimize any further back and forth.

To that end, it would not be productive for either side of this dispute to continue to issue threats or to be dismissive of each other's position. Escalation over email or on the phone will not advance either sides' causes.

With respect to your citation to Stevens, the case does not support any means for Ms. Sherlock to assert a claim against me, my firm or Mr. Harcourt for a violation of the Civil Rights Act ("CRA"). As stated previously, my firm did not represent Mr. Harcourt during the time period in which the alleged acts which allegedly deprived Ms. Sherlock of any property interest occurred. Regardless, the plaintiffs in Stevens were able to assert violations of the CRA as they were recognized as a protected political class. A violation of the CRA requires proof of "class-based, invidiously discriminatory animus." Ms. Sherlock has not faced discrimination based upon membership in a protected class. Therefore, she cannot assert claim for a violation under the CRA or any conspiracy to commit a violation of the CRA.

My client is willing to discuss the information requested after taking time to gather evidence. We can discuss soon when and how this can take place. Please let me know if you have questions.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, March 4, 2020 7:14 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Mrs. Sherlock demanded to know Mr. Harcourt's explanation for how he ended up owning 100% of the Balboa CUP after evidence was discovered that Mrs. Sherlock was unlawfully deprived of her interest in the Balboa CUP as Mr. Sherlock's heir (as fully described below). That demand is not unreasonable. It takes no effort for Mr. Harcourt to respond with a simple statement as to whether he purchased Mr. Sherlock's interest or Mr. Harcourt disavowed his interest in the Balboa CUP for some reason. Your feigned ignorance of the simplicity of this issue is apparent and your refusal to provide an explanation is unreasonable.

I am writing to make two points. First, as I noted, I went to the City and the documents that Mr. Harcourt references in his complaint pursuant to which the City transferred him sole ownership of the Balboa CUP are not in the City's file. Thus, your allegation that you "believe" the documents are "publicly accessible" has no factual basis. I have exercised due diligence and have not come across any such documents, if you know where they are publicly available, please let me know.

Second, as noted, your description of Mrs. Sherlock's demand based on the facts and arguments set forth below as "unreasonable" lacks probable cause. Even if Mr. Harcourt is not responsible for forging Mr. Harcourt's signature or engaged in unlawful conduct, that does not explain why he is refusing to provide a simple explanation given the facts. In my professional opinion, you have crossed the line from zealous advocacy of your client to being a co-conspirator of Mr. Harcourt seeking to defraud Mrs. Sherlock. *See Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) ("Though there appears to be no clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that the attorney may be held liable for damages if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably should have known, would violate the clearly established constitutional or statutory rights of another.") (citing *Buller v. Buechler*,706 F.2d 844, 852-853 (8th Cir. 1983).

Based on the language in *Stevens*, I will be forced to protect Mrs. Sherlock's rights by filing suit against your personally and your firm as co-conspirators of Mr. Harcourt. And we will let a Court determine which one of us is unreasonable in light of our positions described below. Please consider this notice of my intent to file suit and a TRO against, *inter alia*, Mr. Harcourt, you, and your firm for conspiring to defraud Mrs. Sherlock of her interest in the Balboa CUP.

If you have any case law that contradicts *Stevens* and which allows you to unilaterally ignore Mrs. Sherlock's demand, particularly as the core basis of this suit is the belief that Mr. Harcourt fabricated documents and your refusal is potentially allowing him time to fabricate additional evidence to legitimize the transfer, please provide it and I will reconsider my position in light of any such authority.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

THE LAW OFFICE OF ANDREW FLORES

From: Allan Claybon <aclaybon@messner.com>
Sent: Tuesday, March 3, 2020 4:42 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

While I am disappointed in such a statement, I will be brief since you do not want to "engage in more phone calls or emails back and forth." I have been forthright and cordial in our communications hoping to find a resolution between the sides. A resolution should still be possible, but your emails are not pointing us in a productive direction.

On behalf of Mr. Harcourt, we are declining to produce documents based upon your demands. These requests are unreasonable for a number of reasons, not the least of which is a 24-hour deadline to produce evidence *to your satisfaction* regarding events occurring in or around 2015. Furthermore, many of the documents that we believe you are seeking are publicly accessible. There is no compulsion by law for Mr. Harcourt to produce documents to you on demand.

As you do not want to "more phone calls or emails back and forth" we also decline to go point-by-point regarding the significant misstatements of law and facts that appear throughout your latest emails. We are in disagreement with most of what you have said and each allegation contained therein. Without seeing any formalized complaint or other pleading, we are still unsure of your exact claims.

This email is sent based upon your 3/3/20 deadline. I am open to further discussion if you choose to reach out. Thank you.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Monday, March 2, 2020 4:26 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Hello Mr. Claybon,

I spoke with Mrs. Sherlock today who reviewed Mr. Harcourt's complaint. Also, relatedly, I personally went to DSD and requested to view the file for the Balboa CUP before I even initially contacted you.

Mr. Harcourt's complaint alleges: "After Sherlock passed away in or around December 2015 HARCOURT submitted documentation to the City of San Diego in order to remove, Sherlock as the MMCC's responsible person, and HARCOURT then finalized the recording of the CUP with the City of San Diego und SDPCC." Nowhere in the City file for the Balboa CUP are there any documents that are described or that could be those referenced in Mr. Harcourt's complaint.

Please consider this a demand that you produce (i) the documents referenced in the Complaint and (ii) Mr. Harcourt's plain statement as to whether he is alleging he purchased Mr. Sherlock's interest or he is purporting that Mr. Sherlock disavowed any interest in the CUP for whatever reason (in anticipation of expensive litigation or otherwise).

Please note that Mrs. Sherlock never gave any authority to any party to negotiate on her behalf and any such alleged agency would have needed to be memorialized in writing to satisfy the statute of frauds. Please note that if you fail to produce those documents and/or Mr. Harcourt's explanation by 5:00 p.m. tomorrow, please consider this notice of our intent to file suit and an ex parte TRO seeking the court to order Mr. Harcourt to immediately set forth his purported reasons for how he ended up owning 100% of the Balboa CUP (before he is given more time to potentially fabricate additional evidence).

Lastly, so that there is no ambiguity between us, I have been cordial and civil in seeking to attempt to understand Mr. Harcourt's position. But, I find your description of my view of the facts as "speculation" and your description of me as being "jaded," for not taking Mr. Harcourt at his word, as unreasonable and personally offensive – we will let a judge determine whether the facts and positions taken by Mr. Harcourt below constitute probable cause. If you are correct, then feel free to bring a motion to dismiss and for Rule 11 sanctions for filing what you are de facto accusing me of – filing a frivolous lawsuit. As noted below, these communications are not privileged and will be used as an Exhibit in the complaint against Mr. Harcourt.

I stress the preceding because I do not have the time, or the desire, to engage in more phone calls or emails back and forth with you arguing over whether the facts below are speculation or probable cause. Please provide the requested facts by 5:00 tomorrow.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Friday, February 28, 2020 4:45 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

I am acknowledging receipt of your email. As it almost exclusively consists of your current allegations regarding this matter, I will just say that I disagree with your points but will await for your follow-up after consulting with Ms. Sherlock. Thank you and have a good weekend.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Thursday, February 27, 2020 7:36 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Thank you for your note. So that there is no confusion regarding our respective positions in our conversation today, please let me know if the following accurately summarizes our top three points of contention. Please respond if I have misunderstood or not accurately described our positions and I apologize ahead of time if I have. It was not purposeful.

First, setting other arguments aside, you believe that statute of limitations has tolled for a fraud cause of action. I rely on the following case language to argue that it has not: “It has long been established that the defendant's fraud in concealing a cause of action against him tolls the applicable statute of limitations, but only for that period during which the claim is

undiscovered by plaintiff or until such time as plaintiff, by the exercise of reasonable diligence, should have discovered it. Like the discovery rule, the rule of fraudulent concealment is an equitable principle designed to effect substantial justice between the parties; its rationale is that the culpable defendant should be estopped from profiting by his own wrong to the extent that it hindered an `otherwise diligent' plaintiff in discovering his cause of action." *Bernson v. Browning-Ferris Industries*, 7 Cal.4th 926, 931 (Cal. 1994) (quotations omitted). Mrs. Sherlock was not made aware of the forged signature until this month.

Which segues into your next, second, position, that the testimony of Mr. Harcourt and Mrs. Sherlock's brother-in-law establishes as a "fact" that Mr. Sherlock's signature was not forged. Thus there is no fraud. However, my position is that their testimony - that they allegedly saw Mr. Sherlock execute the form dissolving the LLC (and other documents) the day before his death - does not conclusively establish as a matter of law that Mr. Sherlock did in fact execute those documents and there is no fraud. As noted, I believe this is a non sequitur because it presupposes that Mr. Harcourt and Mrs. Sherlock's brother-in-law did not engage in fraud when that is the allegation to be determined. I believe it is self-evident that, *if there was fraud*, both Mr. Harcourt and Mrs. Sherlock's brother-in-law are currently benefiting from the fraud, which makes their testimony at the very least suspect and does not establish their alleged testimony as "facts" as you argue. (I realize you believe my position to be, as you described it, "jaded," but I hope you can appreciate that fraudulent self-serving testimony is a staple of my primary criminal defense practice and have seen such ignored by juries on many occasions, even to my clients' detriment.)

Given the evidence in opposition, I believe whether there was fraudulent action is a triable issue of fact. Specifically, because in opposition there is, *inter alia*, (i) the testimony of Mrs. Sherlock that Mr. Sherlock would "never" have signed away his interests in any CUPs without consideration as he had used their family savings to finance the acquisition of same; (ii) Mrs. Sherlock's testimony that she does not believe that it is Mr. Sherlock's signature; (iii) at least as of our conversation today, which took place after you spoke with Mr. Harcourt, there is no allegation or evidence of any documentation regarding any transfer of Mr. Sherlock's interests in the CUPs for any consideration; (iv) the handwriting expert who with a high degree of certitude provided his report that in his professional opinion the signature was forged; and (v) that though Mr. Sherlock allegedly signed various forms the day before he committed suicide, they were submitted to the state at different points in time and show different time stamps.

Third, and last, setting aside other arguments, you raised the position that Mrs. Sherlock failed to exercise reasonable diligence by not checking the state's public records. My position on this is that while Mrs. Sherlock knew that Mr. Sherlock had used their family's savings to pay for the application and processing of the CUPs, she did not know that it had been issued to Mr. Sherlock and Mr. Harcourt or that Mr. Sherlock allegedly agreed to disavow or transfer his interest in the CUP to Mr. Harcourt. Further, being practical, Mrs. Sherlock was a stay-at-home mother of two children who was faced with a horrible situation and was, and is, deeply financially challenged in the aftermath of her husband's passing away. This is not litigation hyperbole. Frankly, I am attempting to see things from your perspective, but I can't think of any line of reasoning or legal principle that would lead to the conclusion that Mrs. Sherlock's failure to review the state's public records means she failed to exercise "reasonable diligence" and therefore she has waived a fraud claim that, if true, has subjected her to severe emotional and financial distress.

Materially, Mrs. Sherlock's brother-in-law noted there was a lawsuit seeking to null the CUP, and Mr. Sherlock had no funds to finance an opposition to that lawsuit, thus he "signed away" the CUP. However, with my understanding of the cannabis CUP market, this by itself is not reasonable. As Mr. Harcourt himself alleges in his complaint against Mr. Razuki, the CUP by itself is worth $1,500,000. Thus, Mr. Sherlock could have sold his interest in the CUP for some amount to recoup some of his investment up to that point.

Lastly, though admittedly circumstantial, Mrs. Sherlock said that her brother-in-law

was literally crying yesterday while he was apologizing for not ever, in the preceding four plus years, informing her that he had allegedly seen Mr. Sherlock execute the form the day before his death. He also emphatically requested that she not pursue any litigation. I personally find this militates against taking Mrs. Sherlock's brother-in-law at his word and provides probable cause to believe that he *may* have engaged in some fraudulent conduct. Obviously, Mrs. Sherlock does not desire to have a family feud and does not want her brother-in-law involved in litigation and he will not be named in *her* suit.

Again, as discussed, I sincerely hope that we can reach resolution with Mr. Harcourt and Mrs. Sherlock, because, even assuming the evidence could lead a jury to find that Mr. Harcourt more-likely-than-not engaged in unlawful behavior, I am not after Mr. Harcourt. I met Mrs. Sherlock via a third-party that was also defrauded by James Bartell and the group of individuals he works with to defraud other parties of their cannabis CUPs (this is in addition to me as the successor-in-interest to an individual who was defrauded by Mr. Bartell and his group).

Lastly, I want to be completely forthright, I respect Mrs. Sherlock and will fulfill my fiduciary duties regarding *her* representation. However, I had already focused on Mr. Harcourt as a *possible* bad-faith actor that *potentially* worked in concert with Mr. Bartell's criminal organization to defraud his own partner, Mr. Sherlock. This is how they operate and Mr. Harcourt's situation is not the second or even third instance in which Mr. Bartell's group have facilitated an intra-partner dispute and then subsequently ended up owning the disputed CUP. In regards to Mr. Harcourt, if such can be proven to be probably true, such is evidence of my allegation that Mr. Bartell works for a group of individuals who have conspired and taken steps to create a monopoly in the cannabis market in the City of San Diego in violation of antitrust laws.

I am being straightforward about this because even if, for example, Mrs. Sherlock's brother-in-law and sister convince her to forgo any litigation, that does not automatically mean that I will not file suit against Mr. Harcourt. I could do so on the theory that the alleged fraudulent actions he took against Mr. Sherlock were in furtherance of the antitrust conspiracy; and that is even if he only took one unlawful action and thereafter had a falling out with his co-conspirators. *Mox, Inc. v. Woods*, 202 Cal. 675, 678 (1927) ("The advantage gained in charging a conspiracy is that the act of one during the conspiracy is the act of all if done in furtherance thereof, and thus defendants may be held liable who in fact committed no overt act whatsoever and gained no benefit therefrom."); *De Vries v. Brumback*, 53 Cal. 2d 643, 650 (1960) ("In tort 'the major significance of the conspiracy lies in the fact that it renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity.'") (quoting *Mox Inc.,* 202 Cal. at 677); *Roth v. Rhodes*, 25 Cal. App. 4th 530, 544 (1994) (joint and several liability rule of conspiracy applies to antitrust claims brought under Cartwright Act).

Please let me know if our conversation as described above is not accurate and, also, what Mr. Harcourt's explanation is for the alleged disavowment/transfer of the CUP from Mr. Sherlock.

With all this said, I have placed a call to Mrs. Sherlock so we can discuss what terms would be acceptable if she would like to put to rest any dispute with Mr. Harcourt. As soon as I speak with Mrs. Sherlock I will follow up with you.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556

F.(619) 274-8053

THE LAW OFFICE OF ANDREW FLORES

From: Allan Claybon <aclaybon@messner.com>
Sent: Thursday, February 27, 2020 3:04 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

Thank you for speaking with me by phone today. Per our conversation, please let me know the information your client seeks from my client at this time. We can continue our conversation after we discuss more specific items.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, February 26, 2020 11:09 AM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

I reached out to you in good faith with facts that provided probable cause to believe that your client may have been involved in illegal action. Materially, that Mr. Sherlock and Mr. Harcourt were granted a cannabis CUP via an LLC in mid-2015; Mr. Sherlock allegedly committed suicide on December 3, 2015; and then approximately three weeks later a form is submitted with the state dissolving the LLC that ultimately led to Mr. Harcourt being the sole owner of the CUP. However, Mrs. Sherlock is positive that Mr. Sherlock's signature was forged, a position supported by a

handwriting expert's analysis that I provided you. Those are facts. The inference that Mr. Harcourt may have taken unlawful action to deprive Mrs. Sherlock of her interest in the CUP is a reasonable one. During our phone call, you agreed that the circumstances are "certainly suspicious."

Had you touched base with your client and found out that there was a purchase agreement and proof of payment for a transfer of Mr. Sherlock's interest to Mr. Harcourt, that would have made sense and been credible. Instead, in your reply, your position changed and you describe the reasonable inferences as "speculation" and you allege that you do not see how they can support a claim. Your response evidences how you intend to manage this dispute; there is no need for a telephone call and we can let a court determine whether these facts constitute probable cause.

Please note that your reference to a phone call for "settlement" purposes does not make these emails privileged or confidential. I can and will use these emails to show that Mr. Harcourt was not able to provide any facts for how he ended up being the sole beneficiary of the cannabis CUP as a result of what appears to be a forged signature of Mr. Sherlock, as supported by the facts and evidence I have provided to you.

Please note that even if I do not file on behalf of Mrs. Sherlock., I may still file on my own behalf against Mr. Harcourt as a member of a conspiracy that has unlawfully deprived numerous individuals of cannabis CUPs, including through the use of unethical attorneys who file frivolous litigation. That Mr. Harcourt is now in litigation with Mr. Razuki/Mr. Malan is no different than the dispute between those two as well. Criminals fighting over ill-gotten gains.

Again, if you have any evidence other than self-serving oral testimony by individuals who benefit from the current status quo, please let me know by 5:00 p.m. tomorrow, Thursday, February 27, 2020.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Tuesday, February 25, 2020 5:33 PM

To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

Please let me know if we can schedule a telephone call tomorrow to discuss. Mr. Harcourt unequivocally denies each of the allegations against him. With all due respect, these theories and allegations are based upon speculation. I cannot see how any of them support an actionable claim against Mr. Harcourt. But I am willing to have a conversation to guide some understanding on these issues. Let me know of a time that you are available. Our conversation will be for settlement purposes only. Thank you.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Tuesday, February 25, 2020 1:38 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Apologies, pressed sent by accident, please see below for complete email.

Andrew Flores
Attorney at Law
7880 Broadway
Lemon Grove, CA 91945
P. (619) 356-1556
F.(619) 274-8053

From: Andrew flores

Sent: Tuesday, February 25, 2020 1:27 PM
To: aclaybon@messner.com
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

I am following up on my message I just left seeking to touch base on your client's reasons, if any, regarding the below. I have discovered additional evidence of bad faith – Mr. Jim Bartell (an influential political lobbyist in San Diego) who is involved in other fraudulent acts related to cannabis CUPs was also part of the Sherlock/Harcourt CUP process. As it stands now, there is evidence to support the argument that your client was working with, among others, Mr. Bartell and Mr. Razuki to defraud Mr. Sherlock of the CUP.

To be blunt, as matters stand, it appears that Mr. Harcourt, as the beneficiary, forged Mr. Sherlock's signature to acquire the CUP. Then, he in turn was defrauded by Mr. Razuki/Mr. Malan. Thereafter, there was a falling out between Mr. Harcourt and Mr. Razuki/Mr. Malan, exactly as there was a subsequent falling out between Mr. Malan and Mr. Razuki, with everyone fighting over the CUP but not addressing the fact that the CUPs were acquired unlawfully. First by Mr. Harcourt and then by Mr. Malan who admits that he had Mr. Razuki acquire the CUP but not disclose him as the true owner of the CUP – in direct violation of City and State laws. See San Diego Municipal Code section 11.0402 and Cal. Bus. and Pro. Code section 26057 *et seq.*

Alternatively, if your client got in over his head, it is doubtful he is aware of the criminal acts taken by the organization Mr. Bartell is part of, then our side would be willing to reach an agreement with Mr. Harcourt. Please let us know if such is the case and an option and we can discuss.

I realize that a few days is not a lot of time, on the other hand, if there is a reasonable, credible and legal reason that can explain how Mr. Harcourt ended up with the CUP as a result of a forged signature, your client should be able to readily explain such. With that said, if I do not hear from you by 5:00 p.m. on Thursday, February 27, 2020, I will assume your client has no evidence to explain the situation. I will proceed accordingly in seeking to protect Mrs. Sherlock's rights.

Andrew Flores
Attorney at Law
945 4th Ave, Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Andrew flores
Sent: Friday, February 21, 2020 12:10 PM
To: aclaybon@messner.com
Subject: Sherlock -Harcourt Leading Edge Real Estate

Hello Mr. Claybon,

Per our conversation this morning please find attached the Certificate of LLC Cancellation in question. I have also included the preliminary report by a forensic document examiner.

Lastly, as a professional courtesy, I want to highlight that I intend to file a lawsuit against no less than ten attorneys for conspiring with their clients to take unlawful actions in marijuana related transactions. I refuse to believe that every attorney in the San Diego area focused on the marijuana industry is willing to take unlawful actions, but as matters stand, it appears to be endemic to the practice. At least in the San Diego market. I am taking the time to explain this because I hope you will convince your client to provide the original certificate with Mr. Sherlock's signature. While the expert has highlighted that the signature is more likely than not someone other than Mr. Sherlock, the actual document could help him reach the opposite conclusion. Alternatively, if your client decides to not produce the original document, and cannot explain why Mr. Sherlock would leave your client the CUP and leave his wife and kids destitute after using their college funds to finance the acquisition of the CUP at the Balboa location, such would be probable cause to file suit on behalf of Mrs. Sherlock against your client.

That is the worst case scenario and something I want to avoid. I already have a big fight ahead of me against Razuki, Malan and numerous other bad faith actors, including attorneys. Alternatively, I hope that your client has evidence and a credible explanation for what appears to be a forged signature that left him with a valuable CUP. If such is the case, I can assure you that I have evidence and witnesses that will help your cause against Razuki and Malan that are part of my case.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA, 92101
P. (619) 356-1556
F.(619) 274-8053

EXHIBIT 3

Court's Ex. [redacted]

Case # [redacted]

Rec'd

Dept. [redacted] Clk.

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

THE CITY OF SAN DIEGO

General Application

FORM **DS-3032**
AUGUST 2013

Part I (Must be completed for all permits/approvals)

1. **Approval Type:** *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way; ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☑ Other: CUP

2. **Project Address/Location:** *Include Building or Suite No.*
6176 Federal Blvd.

Project Title:
Federal Blvd. MMCC

Project No.: *For City Use Only*
520606

Legal Description: *(Lot, Block, Subdivision Name & Map Number)*
TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO

Assessor's Parcel Number:
543-020-02

Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Project Description:
The project consists of the construction of a new MMCC facility

3. **Property Owner/Lessee Tenant Name:** *Check one* ☐ Owner ☑ Lessee or Tenant
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

4. **Permit Holder Name** - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.
Name:
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

5. **Licensed Design Professional** (if required): (check one) ☑ Architect ☐ Engineer License No.: C-19371
Name:
Michael R Morton AIA

Address:	City:	State:	Zip Code:	E-mail Address:
3956 30th Street	San Diego	CA	92104	

6. **Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) -**
a. Year constructed for all structures on project site: 1951
b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A
c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☑ Yes ☐ No
d. Does the project include any foundation repair, digging, trenching or other site work? ☑ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer Signature: [signature] (ink) Date: 10/28/2016

7. **Notice of Violation** - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☐ No ☐ Yes, copy attached

8. **Applicant Name:** *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☑ Other Person per M.C. Section 112.0102
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature: Rebecca Berry Date: Oct. 31 2016

EXHIBIT 4

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

personally appeared Darryl Cotton and Larry Geraci,
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.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 5

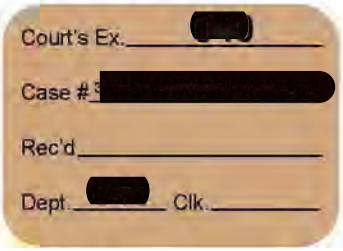
Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 3:11 PM



Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended

Cotton & Geraci Contract.pdf
71K

Exhibit B

(November 2nd Agreement)

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

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

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

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

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

State of California
County of San Diego)

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

personally appeared Darryl Cotton and Larry Geraci,
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.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 6

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcsd.net>
To: Darryl Cotton <darryl@inda-gro.com>

Wed, Nov 2, 2016 at 9:13 PM

Court's Ex. [redacted]
Case [redacted]
Rec'd
Dept. [redacted] Clk.

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

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

Darryl Cotton, President

darryl@inda-gro.com
www.inda-gro.com
Ph: 877.452.2244
Cell: 619.954.4447
Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA. 92114
USA

[Quoted text hidden]

EXHIBIT 7

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

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

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

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

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

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

[IMAGED FILE]

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

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

I, Larry Geraci, declare:

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

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

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

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

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

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

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

6. In paragraph 5 of his supporting declaration, Darryl Cotton states:

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

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

agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement, Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

> **11/02/2016**
>
> **Agreement between Larry Geraci or assignee and Darryl Cotton:**
>
> **Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd., CA for a sum of $800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary.)**
>
> **Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.**
>
> **__/s/_____ Larry Geraci** **__/s/_____ Darryl Cotton**

I never agreed to pay Mr. Cotton a $50,000.00 non-refundable deposit. At the meeting, Mr. Cotton stated he would like a $50,000 non-refundable deposit. I said "no." Mr. Cotton then asked for a $10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement. After he signed the written agreement, I paid him the $10,000 cash as we had agreed. If I had agreed to pay Mr. Cotton a $50,000 deposit, it would have been a very simple thing to change "$10,000" to $50,000" in the agreement before we signed it.

I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never agreed to pay Mr. Cotton a minimum monthly equity distribution of $10,000. If I had agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution of $10,000, then it would have also been a simple thing to add a sentence or two to the agreement to say so.

What I did agree to was to pay Mr. Cotton a total purchase price of $800,000, with the balance of $790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the Property and the $10,000. So that is how the agreement was written.

7. In paragraph 6 of his supporting declaration, Darryl Cotton states:

> "At the November 2, 2016, meeting we reached the November Agreement, Geraci: (i) provided me with $10,000 in cash towards the NRD of $50,000, for which I executed a document to record my receipt thereof (the "Receipt"); (ii)

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

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

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

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

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

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

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

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

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

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

> Hi Larry,
>
> Thank you for meeting today. Since we examined the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Declaration of Abhay Schweitzer.

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

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

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

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

/ / /

/ / /

/ / /

/ / /

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

LARRY GERACI

EXHIBIT 8

APP-009

PROOF OF SERVICE (Court of Appeal)

☐ **Mail** ☒ **Personal Service**

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Larry Geraci v. Darryl Cotton, et al.

Court of Appeal Case Number: TBD

Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My ☐ residence ☒ business address is *(specify)*:
   1455 Frazee Road, Suite 500, San Diego, CA 92108
3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b)*:
   Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief; Exhibits Volumes 1, 2 and 3, and Request for Judicial Notice in Support of Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief

   a. ☐ **Mail.** I mailed a copy of the document identified above as follows:

      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

      (a) ☐ **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

      (b) ☐ **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

      (2) Date mailed:

      (3) The envelope was or envelopes were addressed as follows:

      (a) Person served:
      (i) Name:
      (ii) Address:

      (b) Person served:
      (i) Name:
      (ii) Address:

      (c) Person served:
      (i) Name:
      (ii) Address:

      ☐ Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Diego, California

Form Approved for Optional Use
Judicial Council of California
APP-009 [Rev. January 1, 2017]

Case Name: Larry Geraci v. Darryl Cotton, et al.	Court of Appeal Case Number: TBD
	Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

3. b. [x] **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name: Gina M. Austin, an individual

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(2) Person served:

(a) Name: Austin Legal Group, APC, a California corporation

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(3) Person served:

(a) Name: Gina M. Austin/Austin Legal Group, APC Attorneys for Aaron Magagna, an individual

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

[ ] Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page).*

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

Date: August 27, 2018

Jacob P. Austin
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

ATTACHMENT TO APP-009, ITEM 3b(3)

On Monday, August 27, 2018 at 4:37 p.m., I visited the office of attorney Gina Austin [SBN 246833] ("Mrs. Austin")/Austin Legal Group, APC to serve copies of the documents listed as ITEM 3 on page 1 on the individuals and entities listed in ITEM 3b(1)-(3).

When I arrived, the receptionist was not at the reception desk in the front office. Shortly thereafter, Mrs. Austin came from the back office to the reception desk to greet me. I told Mrs. Austin that I was there to serve documents – all of which were the correct copies of the Petition that had been personally served on her office the previous week.

Mrs. Austin responded that she wanted to look at copies of the Proofs of Service, and I told her that I was leaving copies for her and the Proofs of Service stated that I was serving her with three sets of the documents: one set on her as an individual, one set on her on behalf of her law firm Austin Legal Group, APC, and one set on her on behalf of her client Aaron Magagna.

Mrs. Austin then took two sets of the documents, told me she did not "want" the third set of documents, and then shoveled me out the door. After standing outside and thinking about the situation, I walked back into the office at 4:39 p.m. and told Mrs. Austin that, since I was there, I was going to leave the third set of documents with her anyway. She responded very emphatically, "I don't want this!" I shrugged and said that I was leaving the documents with her.

Mrs. Austin became very angry and approached me quickly as though she was going to physically shove me out the door and said, "You're not welcome here!" Barely restraining herself from physically shoving me, as she got within inches of me she forcefully opened the door into the hallway, she then snatched the third set of documents and threw them into the hallway repeating in a loud, angry tone, "I told you, I DO NOT WANT THIS!!!"

I did not argue or resist leaving, I left at that point. I was wildly surprised by the unexpected reaction, the anger exhibited towards me, and how my personal space was violated. As an attorney I was disappointed in her decorum and unprofessional demeanor.

EXHIBIT 9

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Testimony

Corina Young <corina.young@live.com> Wed, Oct 28, 2020 at 12:22 PM
To: Darryl Cotton <indagrodarryl@gmail.com>

Darryl,

I am not involved. Please do not include me in your lawsuit. Please do not post this email online.

A ached are emails from my a orney at the me.

Corina

2 attachments

Email #1.pdf
299K

Email 2.pdf
133K

Attachment Email 1

FW: Geraci v. Cotton [Deposition Subpoena - Corina Young]

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Tue 7/2/2019 12:01 PM
To: 'Corina Young' <corina.young@live.com>

1 attachments (10 KB)
190627.Tentative Rulings on Motions in Limine.pdf;

Good morning Corina,

I hope this email finds you well. I haven't heard back from you so I assume you are occupied with other importance.

As an update, below is the last email from Cotton's attorney. In light of the trial dates, I presumed he was bluffing so I just ignored him.

The court issued its ruling on the parties' Motions in Limine in the Geraci v. Cotton trial last week. If you are bored or curious, it is attached for your review. The Trial was supposed to start July 1 but it looks as if someone (likely Cotton's attorney) filed an appeal and so trial was taken off calendar. I'll keep you apprised of this but for the moment, there's nothing you really need to do.

Yours,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>
Sent: Wednesday, June 12, 2019 6:45 PM
To: Natalie T. Nguyen <natalie@nguyenlawcorp.com>
Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Ms. Nguyen,

Trial on the Geraci v. Cotton case in which your client, Corina Young, is a material witness is immediately impending and you have yet to deliver on any of the items we had previously agreed upon.

At this point in time it is too late to rely on you to uphold your promises without a proper demand. I need you to provide a declaration by end of week or I will have to file a motion for sanctions against you personally, and re-issue a subpoena.

Let me know by the end of the day Friday if you will provide the declaration requested or not so I can proceed accordingly.

Jacob

Law Office of Jacob Austin
P.O. Box 231189
San Diego, CA 92193 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

On Tue, May 28, 2019 at 10:20 AM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Ms. Young's original deposition was scheduled for Jan. 18th and we agreed to your request that she provide a declaration instead. It has been over 4 months and we have yet to receive anything. Please provide an update.
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
> *The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*
>
> On Fri, May 3, 2019 at 12:04 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Good morning Jake,
> >
> > Thanks for following up. Let me check and get back to you soon.
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > **NGUYEN LAW CORPORATION**
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, May 2, 2019 11:56 AM
> > **To:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Please give me an update, this is important to my client's case.
> >
> > Jacob
> > **Law Office of Jacob Austin**
> > P.O. Box 231189
> > San Diego, CA 92193 USA
> > Phone: (619) 357-6850
> > Facsimile: (888) 357-8501
> >
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On Tue, Apr 16, 2019 at 6:15 PM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Hello Natalie,
>
> As you recall we have been trying to work out an affidavit or a deposition for three months now, can you kindly give me an update on Ms. Young?
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
> *The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*
>
> On Thu, Mar 7, 2019 at 1:45 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Hi Jacob,
> >
> > Ms. Young is out of town on March 11 so she will not be able to attend the deposition as noticed. Our Objection to the Deposition Notice is attached.
> >
> > Despite her limited availability, we maintain the intention to provide you with a written statement as previously agreed. I hope to have it ready sometime next week.
> >
> > Best regards,
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > **NGUYEN LAW CORPORATION**
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, February 28, 2019 2:05 PM
> > **To:** natalie@nguyenlawcorp.com
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Hello,
> >
> > I haven't heard from you for awhile so just so you know my office is generating a subpoena for a deposition. We hope we do not need a deposition so if you can provide an affidavit that would be greatly appreciated. Also can we agree to accept electronic service from one another moving forward?
> >
> > Jacob
> >
> > On Mon, Jan 21, 2019 at 3:09 PM <natalie@nguyenlawcorp.com> wrote:
> >
> > > Hi Jacob,

I closely reviewed the Declaration of Joe Hurtado and the text message exchange attached thereto. I also discussed your proposal:

"Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

with Ms. Young and she's accepted the same. We will provide a sworn written testimony by Ms. Young as described above.

Best regards,

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Natalie T. Nguyen <natalie@nguyenlawcorp.com>
Sent: Thursday, January 17, 2019 5:23 PM
To: 'Jake Austin' <jpa@jacobaustinesq.com>
Subject: RE: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hi Jacob,

Thank you for taking the time to lay it all out for me. My grasp of this case is limited to the online register of action, the minute order to continue trial, and the deposition subpoena. However, I'm only representing a third-party witness so I see no reason to be embroiled in the case. Perhaps it's best this way.

I quickly scanned the attachment you sent, mostly the text message exchange. I gather there's some complicated history between the parties. In any event, I don't see an issue with a providing a sworn statement.

I intend to review your email and attachment more closely tomorrow and discuss your proposal with Mr. Young. I will reach back out to you after that.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 11440 West Bernardo Court, Suite 210 | San Diego, CA 92127
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>
Sent: Thursday, January 17, 2019 4:55 PM
To: natalie@nguyenlawcorp.com
Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hello Natalie,

This is an awkward situation, so I will be direct. Your client has repeatedly communicated that she is hostile to my client and will not provide her deposition to material matters that are crucial to my client. Thus, your unilateral decision to cancel the deposition because I did not respond with an alternative to her deposition is procedural improper and, in light of her long history of seeking to avoid being deposed, is suspect.

I can inform you that one of the parties on our side went through Stage III cancer and so we are aware of the challenges that dealing with cancer treatments takes on a patient and their loved ones. However, because of that, we also know that there will never be a "good" time in that context to be deposed.
I am not sure how deeply you are aware of the facts in this matter, so I will not assume you are purposefully being antagonistic and will not file a motion to compel your client's attendance and seek sanctions.

With that said, we understand your client is in a tough situation, which is what makes her testimony highly relevant and credible to our case. In your prior email you state that we can discuss "alternatives to her sitting for the deposition" and since it wasn't a request to reschedule, I have been racking my brain for an alternative to having her go through a deposition which I know could be tedious and stressful on its own. I also know that she may be hesitant to discuss certain subjects and may rely on the right against self-incrimination in some of her responses. I am not sure how familiar you are with the underlying case, but it is my belief that Ms. Young has not been involved in the acts that underline the causes of action and it is not my intention to name her in any lawsuit or anything to that effect.
To be specific, the facts which we hope to elicit from Ms.
Young have already been provided ***by*** her in her text messages with Mr. Hurtado. Attached hereto is a declaration from Mr. Hurtado that in turn has exhibits of text messages between him and Ms. Young regarding the subjects that we desire to depose Ms. Young on. The only additional facts we would want established, beyond those in her text messages, is a description of how long and how many interactions she has had with the parties at issue in this litigation and in the text messages.

What should be clear is that Ms. Young has known the parties associated with Mr. Geraci significantly longer and has established professional relationships with them, as opposed to the limited number of times she has met Mr. Cotton and Mr. Hurtado with whom she only had a couple of interactions with (setting aside her communications related to not wanting to be involved in this litigation to Mr. Hurtado).

Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

Please confirm if your client is willing to provide such sworn testimony. If not, please let me know if your client is available to be deposed any day next week between Wednesday through Friday.
Please note that the trial calendar requires us to file a motion for summary judgement on or before February 8, 2019. As you know, getting transcripts back and drafting an MSJ is time

consuming, so, unfortunately, we are not in a position to push back her deposition for any prolong period of time.
Thus, if you cannot agree to providing her sworn testimony as described above, or having her deposition taken sometime next week, in the interests of my client's case, I will be forced to file an ex-parte application seeking to compel her deposition.

Lastly, again, my apologies for this direct and confrontational email. However, given Ms. Young's repeated statements, the nearing MSJ deadline, and the actions by the attorneys for Mr. Geraci, which I have already gone on record of stating and believing to be tantamount to fraud, I hope you can appreciate that I am attempting to manage this situation for Ms. Young as best as possible. The bottom line is that Ms. Young's testimony provides damaging evidence against her own attorney and agents and I realize the uncomfortable position she is in.

I am open to alternatives and discussions, but Ms. Young's testimony is material and crucial. If you would like to discuss this issue further, I will make myself available to you.

Jacob

On Tue, Jan 15, 2019 at 1:05 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,
>
> I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?
>
> Best regards,
>
> Natalie
>
> Natalie T. Nguyen, Esq.
> **NGUYEN LAW CORPORATION**
> M: 2260 Avenida de la Playa | La Jolla, CA 92037
> T: 858-225-9208
> E: natalie@nguyenlawcorp.com

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

On Wed, Jan 16, 2019 at 3:39 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,

I did not receive a response from you. Please note that for the reasons set forth in my email below, Ms. Young is unable and will not attend the deposition you set for this Friday, January 18, 2019, at 10:00 am. Please kindly contact my office before setting another deposition date.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Sent: Tuesday, January 15, 2019 1:05 PM
To: JPA@jacobaustinesq.com
Subject: Geraci v. Cotton [Deposition Subpoena - Corina Young]
Importance: High

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

--

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

Attachment Email 2

Geraci v Cotton

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Mon 7/22/2019 11:24 AM
To: 'Corina Young' <corina.young@live.com>

1 attachments (80 KB)
Invoice_656_491294_g8e.pdf;

Hi Corina,

I hope this email finds you very well.

I just wanted to let you know that the trial in Geraci v Cotton went forward and was completed. Therefore, you don't have to worry about providing any declaration or testimony on this case. Attached is your final invoice; no payment is due from you and we will close our file.

It was a pleasure working with you. Good luck on all your future endeavors!

PS. The jury found in favor of Geraci.

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

RJN-25

Steven W. Blake, Esq., SBN 235502
Andrew E. Hall, Esq., SBN 257547
BLAKE LAW FIRM
533 2nd Street, Suite 250
Encinitas, CA 92024
Phone: (858) 232-1290
Email: steve@blakelawca.com
Email: andrew@blakelawca.com

Attorney for Defendant
STEPHEN LAKE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

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

Plaintiffs,

vs.

GINA M. AUSTIN, an individual; AUSTIN LEGALGROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; 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.

Case No. **37-2021-0050889-CU-AT-CTL**

NOTICE OF DEMURRER, DEMURRER, AND POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO COMPLAINT

Hearing Date: August 19, 2022
Hearing Time: 9:00 a.m.

Case Filed: December 3, 2021
Department: C-73
Judge: Hon. James Mangione
Trial Date: N/A

TO THE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 19, 2022 at 9:00 a.m., or as soon thereafter as this matter may be heard before the Honorable James A. Mangione in Department C-75 of the County of San Diego Superior Court, Central Division, located at 330 West Broadway, San Diego, CA 92101, Defendant STEPHEN LAKE ("Defendant" or "LAKE") will and hereby does demurrer to the First Amended Complaint ("FAC") of Plaintiffs AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S.) ("Plaintiff" or "SHERLOCK") and ANDREW FLORES ("FLORES") (SHERLOCK and FLORES shall hereinafter be collectively referred to as "Plaintiffs")[1] pursuant to *CCP* § 430.10 et seq. on the following grounds:

1. The First Cause of Action for Conspiracy to Monopolize in Violation of the Cartwright Act (Bus. & Prof. Code § 16700, *et seq.*) fails to state facts sufficient to constitute a cause of action. *Code Civ. Proc*. section 430.10(e).

2. The Second Cause of Action for Conversion fails to state facts sufficient to constitute a cause of action. *Code Civ. Proc*. section 430.10(e).

3. The Third Cause of Action for Civil Conspiracy fails to state facts sufficient to constitute a cause of action. *Code Civ. Proc*. section 430.10(e).

4. The Fourth Cause of Action for Declaratory Relief fails to state facts sufficient to constitute a cause of action. *Code Civ. Proc*. section 430.10(e).

5. The Fifth Cause of Action for Violation of the Unfair Competition Law pursuant to Cal. Bus. & Prof. Code § 17200 *et seq.* fails to state facts sufficient to constitute a cause of action. *Code Civ. Proc*. section 430.10(e).

6. The Seventh Cause of Action for Civil Conspiracy fails to state facts sufficient to constitute a cause of action. *Code Civ. Proc*. section 430.10(e).

This Demurrer is based upon this notice of motion and motion, the accompanying memorandum of points and authorities, declaration of Andrew E. Hall, Esq., all pleading and papers

[1] Though the FAC is styled as being brought on behalf of the Plaintiffs, the claim against LAKE seem to drive from claims by SHERLOCK and not FLORES.

on file in the above-captioned action, and any argument or evidence that may be presented to or considered by the Court prior to its ruling.

Dated: July 8, 2022

BLAKE LAW FIRM

By: _____

STEVEN W. BLAKE, ESQ.
ANDREW E. HALL, ESQ.
Attorneys for Defendant,
STEPHEN LAKE

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As the old adage goes, no good deed goes unpunished. SHERLOCK is the sister-in-law of LAKE. LAKE and SHERLOCK's late husband, Michael "Biker" Sherlock ("BIKER"), were long-time friends and companions. When BIKER began encountering financial troubles, LAKE provided financial assistance to BIKER to help him get back on his feet and to keep the entire SHERLOCK family in San Diego. After BIKER's untimely passing, the LAKE and SHERLOCK families were left to pick up the pieces and wrap up BIKER's affairs. It is here where the relationship between LAKE and SHERLOCK takes an unfortunate turn.

Whether through being fed bad facts or bad advice, or both, SHERLOCK has bought into wild and untenable conspiracy theories regarding LAKE and what SHERLOCK apparently believes is LAKE's role in monopolizing the San Diego cannabis market. Nothing could be further from the truth. In reality, LAKE was nothing more than a lender to BIKER and had no role, nor any interest in, becoming involved with the cannabis market.

Even taking the allegations in the FAC as true for the purposes of this demurrer, SHERLOCK cannot possibly maintain any of her claims against LAKE. The underpinning of each of SHERLOCK's causes of action against LAKE is his purported violation of the Cartwright Act. However, fatal to her claim under that Act is SHERLOCK's lack of standing to bring a claim nor, even if she had standing to bring a claim, is the cause of action sufficiently pled. SHERLOCK apparently agrees as she did nothing to address the legal issues raised by LAKE in his meet and confer on these blatant deficiencies. Without sufficiently stating a Cartwright Act violation, SHERLOCK cannot maintain her claims against LAKE relying on the same including causes of action for conspiracy, declaration relief, and unfair business practices. Moreover, SHERLOCK's conversion cause of action is flawed as it is premised on LAKE's alleged conversion of BIKER's property. The issue, however, is that BIKER never *owned* the property in question.

Even construing these largely inaccurate facts and allegations in a light most favorable to SHERLOCK, she cannot maintain a claim against LAKE, even through amendment. As such, LAKE requests the demurrer be sustained without leave to amend.

II. STATEMENT OF FACTS

LAKE and SHERLOCK's husband, BIKER, were long-time friends and companions, in addition to being brothers-in-law. LAKE viewed BIKER as family. BIKER's business, Dregs skateboards, was hit hard by the recession and he began experiencing financial issues. This created stress on BIKER on many levels – on him personally, on his relationship with his parents, and on his relationship with SHERLOCK. At the same time, LAKE observed BIKER becoming increasingly depressed and anxious. His prior abundance of confidence shrunk, he began having fainting spells and seizures, and became generally confused, all of which contributed to his inability to find meaningful employment. LAKE believed, however, that BIKER was an entrepreneur at heart and, more importantly, was his friend and brother, so LAKE encouraged BIKER to "think big" and to look for what the next big opportunity might be.

As such, LAKE, on multiple occasions, offered financial assistance to BIKER to fund various business ventures, including BIKER's foray into the San Diego medical marijuana market. Notably, and contrary to the allegations in the FAC, LAKE and BIKER were never "partners."

A. The Ramona Property

In July 2014, BIKER approached LAKE about a property he was looking at in Ramona – 1210 Olive Street, Ramona, CA 92065 ("Ramona Property"). At the time BIKER was unemployed and struggling to find a job, which created stress on BIKER personally and on his relationship with SHERLOCK. While LAKE initially balked at becoming involved in the Ramona Property, the foregoing coupled with the fact that BIKER was family eventually overrode his reservations. LAKE eventually purchased the Ramona Property, *as his sole and separate property*, on or about January 8, 2015. The Ramona Property remains to this day in LAKE's name and has not been transferred out of LAKE's name since he acquired ownership.

One of the reasons for LAKE's reconsideration of his purchase of the Ramona Property was due to the involvement of Renny Bowden ("Bowden"), who was part of a group also interested in the Ramona Property. Bowden and LAKE have a longstanding relationship and LAKE found Bowden's potential involvement as such an unlikely coincidence that it made LAKE feel more comfortable with his decision to move forward with the purchase. Because neither Bowden nor BIKER had the capital

to purchase the Ramona Property and the prior owner was not interested in leasing the property, BIKER and Bowden approached LAKE with the idea that LAKE would purchase the Ramona Property, build it out, and then lease the property back to them as part of a larger business they intended to pursue.

After closing, LAKE considered how to proceed as this was all new to him. His discomfort with the industry and lack of knowledge thereof fueled his decision to proceed as a landlord. At some point thereafter, Bowden sought and received the Conditional Use Permit ("CUP") for the Ramona Property, which was issued in the name of Bowden. BIKER never had an interest in the Ramona Property nor, to the best of LAKE's knowledge, did BIKER ever have an interest in the Ramona CUP.

B. The Balboa Property

Prior to April 24, 2015, David Chadwick ("Chadwick") formed Leading Edge Real Estate, LLC ("LERE"), for which he served as CEO. At some point unknown to LAKE, Chadwick, BIKER, BIKER's partner, Brad Harcourt ("Harcourt"), all partnered up to pursue the purchase of 8863 Balboa Avenue, Unit E, San Diego, CA 92123 ("Balboa Property"). On or about June 30, 2015, Chadwick resigned as CEO of LERE, at which point BIKER, on information and belief, was appointed as CEO.

Chadwick's resignation occurred after several events pertinent to this dispute. On June 9, 2015, LAKE made a $289,560.68 loan to BIKER as a two-week bridge loan. The loan was memorialized via a promissory note. The loan was to be used to purchase 8863 Balboa Avenue, Unit E, San Diego, CA 92123 ("Balboa Property"). Notably, LAKE and BIKER had a clear, direct conversation of the importance of the loan being paid back in a timely manner; BIKER agreed and pledged that if the loan were not timely paid back, the Balboa Property would be deeded to LAKE as payment with the intent that LAKE would sell the Balboa Property to recoup his investment. BIKER was adamant in pledging the Balboa Property as collateral for LAKE's loan.

There were immediate problems with the Balboa Property. One such problem had to do with the HOA at the premises, which had recently amended its governing documents to prohibit the operation of any marijuana dispensaries. On June 16, 2015, BIKER, Chadwick, and Harcourt received a legal opinion advising that any attempts to overturn this amendment would be very unlikely. Thus,

BIKER and the others were unable to legally use the Balboa Property for its intended use.

On September 9, 2015, the promissory note went into default. LAKE discussed the default with both BIKER and Harcourt and made it clear that they needed to make good on the terms of the note and security agreement. LAKE conveyed to both that he had no desire to be a part of the business and simply wanted the loan proceeds repaid. BIKER and Harcourt pledged to follow through as they agreed. Given these reassurances, LAKE allowed BIKER and HARCOURT more time to procure financing to pay off the LAKE bridge loan.

By October 26, 2015, BIKER and Harcourt still had not procured financing. LAKE, BIKER, and Harcourt all went to lunch to discuss solutions. Their primary solution was to transfer the Balboa Property over to LAKE's company, High Sierra Equity LLC ("High Sierra") in an effort to pay off the defaulted loan. After some thought, LAKE agreed to the proposal.

On December 2, 2015, LAKE gave BIKER a call to check in on him, which is something he did regularly during that time due to some changes that LAKE observed in BIKER's demeanor and behavior. After a few minutes on the call, LAKE realized that BIKER was having a tough morning and cancelled his meetings so he could be with BIKER. When LAKE arrived at the house, Harcourt was there with BIKER. The two were reviewing paperwork and signing documents. LAKE subsequently learned that one of the documents was the LERE cancellation. LAKE did not witness BIKER signing the cancellation but knows for certain that it was the intent of BIKER and Harcourt, in furtherance of the October 26 proposal, to cancel LERE and transfer the Balboa Property to High Sierra. On December 3, 2015, BIKER took his own life.

III. MEET AND CONFER

Counsel for SHERLOCK and LAKE have met and conferred to discuss the deficiencies outlined herein. Across eight pages, counsel for LAKE laid out the factual and legal deficiencies with the claims against LAKE in the FAC. In response, SHERLOCK submitted what amounts to a one-page letter merely regurgitating SHERLOCK's recount of the facts without addressing even an iota of the legal deficiencies outlined in LAKE's letter. Thus, LAKE had no alternative but to file this motion. *See Declaration of Andrew Hall ("Hall Dec")*.

///

IV. LEGAL STANDARD

A demurrer tests the sufficiency of the allegations contained within the complaint. (*Pacifica Homeowners' Assn. v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1151.) California Code of Civil Procedure section 430.10 states in pertinent part:

> The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30 to the pleading on any of or more of the following grounds:
> (e) The pleading does not state facts sufficient to constitute a cause of action.
> (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and intelligible.

Though the court must acknowledge the facts as pled, the contentions, conclusions, assumptions, and deductions of law or fact raised in the complaint should be disregarded. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Further, it is well settled law that the presumptions are always against the pleader, and all doubts are to be resolved against him/her, for it is to be presumed that he/she stated his case as favorably as possible. (*Curci v. Palo Verde Irrigation Dist.* (1945) 69 Cal.App.2d 583, 585.) As detailed below, even if the Court assumes the "facts" alleged in the Complaint are true, Plaintiff fails to state facts sufficient to constitute a cause of action for Negligence (Premises Liability).

"If a fact necessary to the pleader's cause of action is not alleged, it must be taken as having no existence." (*Ibid.*) The court may sustain a demurrer without leave to amend following repeated attempts if it concludes that the defect is caused by an absence of facts, rather than a lack of skill in stating them. (*Loeffler v. Wright* (1910) 13 Cal.App. 224, 232; *Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 616.) The burden is on the plaintiff to show in what manner she can amend her complaint, and how the amendment would change the legal effect of her pleading. (*Goodman v. Kennedy* (1976) 18 Cal 3d. 335.) Plaintiff has had two opportunities to adequately plead her case. It is apparent that the requisite facts to show causation simply do not exist. Accordingly, Defendants respectfully request that the demurrer be sustained without leave to amend.

V. LEGAL ARGUMENT

SHERLOCK asserts causes of action against LAKE for 1) Violation of the Cartwright Act, 2) Conversion, 3) Civil Conspiracy (apparently, two counts), 4) Declaratory Relief, and 5) Unfair

Competition. None of the claims can be maintained against LAKE and each are subject to demur.

A. SHERLOCK Fails To State A Viable Claim For Violation Of The Cartwright Act

SHERLOCK cannot maintain a cause of action against LAKE for violation of the Cartwright Act because 1) she lacks standing to assert the claim and 2) the claim is not sufficiently pled.

A plaintiff suing under the Cartwright Act must be within the "target area" of the antitrust violation to have standing; i.e., they must have suffered direct injury as a result of the anticompetitive conduct. *Cellular Plus, Inc. v. Sup. Ct. (U.S. West Cellular)* (1993) 14 Cal.App.4th 1224, 1232; *Vinci Waste Mgmt., Inc.* (1995) 36 Cal.App. 4th 1811, 1815. An "antitrust injury" is the "type of injury the antitrust laws were intended to prevent, and which flows from the invidious conduct which renders defendants' act unlawful." *Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 723. Courts interpreting the Cartwright Act's antitrust standing requirement have consistently followed the "market participant rule," requiring the plaintiff to "show an injury within the area of the economy that is endangered by a breakdown of competitive conditions." *In re Napster, Inc. Copyright Litig.* (N.D. Cal.2005) 354 F.Supp.2d 1113, 1125-26 (citing *MGM Studios, Inc. v. Grokster, Ltd.* (C.D.Cal. 2003) 269 F.Supp.2d 1213, 1224; *Kolling v. Dow Jones & Company, Inc.* (1982) 137 Cal.App.3d 709, 724. "Any person who is injured in his or her *business* or *property* by reason of anything forbidden or declared unlawful by this chapter…." *Bus & Prof Code* § 16750.

SHERLOCK lacks standing to bring a claim. First and foremost, SHERLOCK is not a "market participant". The FAC is unclear as to what "market" SHERLOCK claims to have participated it but assuming *arguendo* that she is referring to the medical marijuana industry, there is no showing of an injury in that area. Put simply, SHERLOCK, a private individual with no ties to the medical marijuana industry, is not within the "target area" of the alleged antitrust violation.

Standing issues aside, even if SHERLOCK were able to overcome this threshold issue, her cause of action is not sufficiently pled. To state a cause of action for conspiracy, a complaint must allege (1) the formation and operation of the conspiracy, (2) the wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts. *Chicago Title Ins. Co. v. Great Western Financial Corp*. (1968) 69 Cal.2d 305, 316. It is incumbent on the complaining party to allege and prove that the party's business or property has been injured by the very fact of the existence and

prosecution of the unlawful trust or combination; that is, to establish an actual injury attributable to something the statutory provisions were designed to prevent. *Kaiser Cement Corp. v. Fischbach and Moore, Inc.* (9th Cir. 1986) 793 F.2d 1100.

A high degree of particularity is required in the pleading of violations prescribed by the statutory provisions governing combinations in restraint of trade. *DeCambre v. Rady Children's Hospital-San Diego* (2015) 235 Cal.App.4th 1; *Motors, Inc. v. Times Mirror Co.* (1980) 102 Cal.App.3d 735, 742. The complaint must allege a purpose to restrain trade and a nexus to the injury traceable to actions in furtherance of that purpose. *Id*. "General allegations of the existence and purpose of the conspiracy are insufficient, and the appellants must allege specific overt acts in furtherance thereof." *Id* at p. 318. Plaintiff must allege certain facts in addition to the elements of an alleged unlawful act so that the defendant can understand the nature of the alleged wrong and so that discovery is not merely a blind fishing expedition for some unknown wrongful acts. *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26.

Other than owning the land that the CUPs flowed from, the FAC is utterly devoid of any facts tying LAKE to the alleged conspiracy. There are no allegations that LAKE was even involved in the medical marijuana industry – because he was not – let alone that he conspired with these other defendants to prevent competition within the industry. Nor is there any allegation or indication that SHERLOCK, herself, was engaged in the industry or was even contemplating entering the industry. SHERLOCK has also failed to adequately allege damage to business or property. Again, there is no allegation that SHERLOCK had a business within the cannabis industry.

Moreover, SHERLOCK cannot allege damage to property. As it relates to LAKE, the facts and pleadings clearly establish that *LAKE* purchased the Ramona Property, which he owns to this day, and that LERE purchased the Balboa Property. (*FAC* ¶¶ 67, 70). There are no allegations that BIKER ever had any interest in either property. In addition, the CUPs are not, and were not, the "property" of BIKER or SHERLOCK. A conditional use permit is a *property* right that runs with the *land*, *not* to the *individual permittee*. *Imperial v. McDougal* (1977) 19 Cal.3d 505; *Malibu Mountains Recreation v. Los Angeles* (1998) 67 Cal.App.4th 359, 368; *Anza Parking Corp. v. City of Burlingame*

(1987) 195 Cal.App.3d 855, 858. Without a showing of injury to business or property, SHERLOCK cannot maintain her first cause of action against LAKE.

B. LAKE's Demur To The Conversion Cause Of Action Should Be Sustained

SHERLOCK's conversion cause of action is similarly flawed as it is premised on the conversion of property by LAKE that SHERLOCK never owned. The "Sherlock Property" allegedly converted is defined to include BIKER's "interest in the Partnership Agreement, LERE, and the Balboa and Ramona CUPs." (*FAC* ¶ 71). "Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." *Lee v. Hanley* (2015) 61 Cal.4h 1225, 1240. To prove a cause of action for conversion, the plaintiff must show the defendant acted intentionally to wrongfully dispose of the property of another." *Duke v. Superior Court* (2017) 18 Cal.App.5th 490, 508. It is generally acknowledged that conversion is a tort that may be committed only with relation to personal property and not real property. *Munger v. Moore* (1970) 11 Cal.App.3d 1, 7.

As it relates to the Balboa Property and Ramona Property, neither can be the subject of a conversion cause of action as each is real property. That notwithstanding, there has been no showing of any interest held by BIKER in either property. LAKE purchased the property as his sole and separate property and currently owns the property as such; thus, it is unclear how LAKE could convert his own property. The Balboa Property was purchased by LERE, not BIKER, and was sold with SHERLOCK's consent in an effort to repay LAKE's loan. Similarly, SHERLOCK cannot maintain a claim for conversion of the CUPs. As referenced above, a conditional use permit is a *property* right that runs with the *land*, *not* to the *individual permittee*. *Imperial v. McDougal* (1977) 19 Cal.3d 505; *Malibu Mountains Recreation v. Los Angeles* (1998) 67 Cal.App.4th 359, 368; *Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal.App.3d 855, 858. In other words, both CUPs belonged to the *land*, not to BIKER or any other individual. Put another way, SHERLOCK has failed to meet the first prong of her conversion claim – her ownership or right to possession of any of the property allegedly converted.

As it relates to the alleged conversion of BIKER's interest in LERE, the FAC alleges that

LERE was formed by BIKER and Harcourt. (*FAC* § 69). Moreover, the FAC goes on to allege that LERE was later dissolved. (*FAC* § 78). There is no allegation that that LAKE ever had an interest in LERE, that he was responsible for the dissolution of LERE, or that he ever received any benefit from the dissolution of LERE. Likewise, it is unclear what SHERLOCK is referring to when she references the "Partnership Agreement" (*see FAC* ¶ 71). The term is not defined anywhere in the FAC and there is no specificity as to what this alleged partnership entailed.

C. SHERLOCK Fails To Maintain A Claim Against Lake For Either Count Of Conspiracy

SHERLOCK's Third and Seventh Causes of Action both allege a "civil conspiracy" against LAKE. Though not entirely clear, both causes of action are seemingly based on SHERLOCK's faulty conversion and Cartwright Act claims.

For there to be a conspiracy, there must be an unlawful agreement, an overt act committed in furtherance of the conspiracy, and damage from that act. *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503. Conspiracy is not itself a substantive basis for liability. *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189. Civil conspiracy is not an independent tort under California law. *Pavicich v. Santucci* (2000) 85 Cal.App.4th 382; *Everest Investors 8 v. Whitehall Real Estate Limited Partnership XI* (2002) 100 Cal.App.4th 1102. There is no separate tort of civil conspiracy, and there is no civil action for conspiracy to commit a recognized tort unless the wrongful act itself is committed and damage results therefrom. *Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75. When a plaintiff asserts the existence of a civil conspiracy among the defendants to commit the tortious acts, the source of any substantive liability arises out of an independent duty running to the plaintiff and its breach; tort liability cannot arise vicariously out participate in the conspiracy itself. *Ferris v. Gatke Corp* (2003) 107 Cal.App.4th 1211.

Here, there can be no conspiracy by LAKE to commit conversion since there was no conversion by LAKE. A conspiracy cause of action cannot survive on its own and without adequately pleading the existence of any underlying tort, i.e., conversion, SHERLOCK cannot maintain either of her conspiracy causes of action against LAKE.

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D. The FAC Fails To Sufficiently Allege Unfair Business Practices

Though SHERLOCK asserts a cause of action pursuant to § 17200 of the California Business and Professions Code ("UCL"), it is unclear how these allegations relate to LAKE. Indeed, LAKE is not specifically referenced anywhere in the cause of action. In construing the FAC in a light most favorable to SHERLOCK, LAKE will assume that the unfair competition relates to the Cartwright Act violations found in SHERLOCK's first cause of action.

California's unfair competition law permits civil recovery for "any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. *Cal. Bus. & Prof. Code* § 17200. A private person may assert a UCL claim only if she (1) has suffered injury in fact and (2) has lost money or property as a result of the unfair competition. *Hall v. Time, Inc.* (2008) 158 Cal.App.4th 847, 852. The second prong of this standing test "imposes a causation requirement. The phrase 'as a result of' in its plain and ordinary sense means 'caused by' and requires a showing of a causal connection or reliance on the alleged misrepresentation." *Id*.

As with her claims related to the alleged Cartwright Action violation, there is nothing in the FAC that gives any indication that SHERLOCK was a market participant, or even attempted to become a market participant, in the San Diego cannabis market. There is no ascertainable injury in fact nor has SHERLOCK lost money or property, as more fully discussed above, by way of the facts alleged in the FAC. Moreover, SHERLOCK's failure to plead a Cartwright Act violation bars her from asserting a UCL claim on the same grounds.

E. Declaratory Relief

As it relates to LAKE, SHERLOCK asserts a cause of action for declaratory relief seeking a judicial determination that the transfers of BIKER's interests in LERE and the Balboa CUP are void. For the reasons discussed above, BIKER did not have an interest in the Balboa CUP and there is nothing in the FAC that alleges that LAKE either had an interest in LERE or was otherwise involved in the dissolution of LERE. Thus, the cause of action is merely repetitive of SHERLOCK's other prior claims.

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VI. CONCLUSION

LAKE requests that its demurrer be sustained without leave to amend and that it be dismissed from the action.

Dated: July 8, 2022

BLAKE LAW FIRM

By: _____

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

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

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGALGROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; 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.

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

OPPOSITION TO DEFENDANT STEPHEN LAKE'S DEMURRER TO PLAINTIFFS' 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

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INTRODUCTION[1]

Defendant Stephen Lake's demurrer begins with the adage that "no good deed goes unpunished." (Dem. at 4:3.) To which plaintiffs Amy Sherlock, and minors T.S. and S.S. (the "Sherlock Family") respond: "There is a poet named Dante who wrote a poem called the Inferno. And he and another poet named Virgil in this book were walking down into hell. And at the lower--the lower you went into hell, the more serious the crimes, and those were the crimes which were done with a clear head, not with any emotion or any passion, but simply because ***somebody calculated how to make money out of evil***. ***That's exactly what you did***." (*United States v. Winters* (7th Cir. 1997) 117 F.3d 346, 348 (emphasis added).)

Lake and defendant Bradford Harcourt with clear heads calculated how to make money out of evil – by defrauding the Sherlock Family of two highly valuable businesses, two cannabis dispensaries, after the death of their husband and father, Michael "Biker" Sherlock.

Lake, married to Mrs. Sherlock's sister, and Harcourt were Mr. Sherlock's business partners. The Sherlock Family trusted them. But-for Mrs. Sherlock being contacted about a form filed with the State of California three weeks *after* Mr. Sherlock's death, she would have never learned that Lake and Harcourt lied and stole her and her children's inheritance. An inheritance that Mr. Sherlock acquired at great personal and financial cost over the course of years and which is worth in excess of ten million dollars. In his demurrer, Lake seeks to cover up the theft of the Sherlock Family's inheritance based on his despicable allegation that *implies* that less than 24 hours before Mr. Sherlock purportedly took his life, Mr. Sherlock executed contracts that signed away over ten million dollars of assets. Thereby leaving his family in financial distress, and he, Lake, stepped in to "pick up the pieces" and became the Sherlock Family's protector and savior. In other words, that Mr. Sherlock cared more about Lake and Harcourt than he did about the wellbeing and financial security of his own wife and children.

That Lake and Harcourt have and are acting with evil intent is made clear by the threshold issue pursuant to which the demurrer must be denied. The demurer must be denied because it is entirely premised on the unstated assumption that there exists a lawful contract between Mr. Sherlock and

[1] The Sherlock Family notes that all pleadings, motions, transcripts, and rulings in this and related cases, including the briefs for this motion, and the transcript and ruling when available, can be found at https://151farmers.org/2018/04/01/canna-greed-stay-awake-stay-aware-my-story/.

Harcourt. A contract pursuant to which Harcourt lawfully transferred the Balboa CUP,[2] the Ramona CUP,[3] and the Balboa Property (collectively, the "Sherlock Property") to himself and Lake. No such contract exists, is not even alleged to exist, will be forged if produced, and it is certainly not now before this Court. Lake's actual demurrer arguments, as demonstrated below, are without merit as they are directly contradicted by facts pled, facts subject to judicial notice, and applicable law.

MATERIAL FACTUAL AND PROCEDURAL BACKGROUND ALLEGED IN THE FAC AND FACTS SUBJECT TO JUDICIAL NOTICE

I. Real properties that qualify for dispensaries are extremely limited and incredibly valuable.

Although the City of San Diego has authorized the issuance of 36 CUPs for dispensaries, four per district, due to various regulatory requirements and available properties, "City planning staff concluded that the actual number of dispensaries to be created 'is very likely to be significantly less'" than 30. (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1182.) The dispensary operating at the Balboa Property under the Balboa CUP in the City is one these "less" than 30 dispensaries that can operate (the "Balboa Dispensary").

In October 2021, the County of San Diego adopted ordinance amendments to allow the five existing cannabis dispensaries in the unincorporated County to continue to operate, but prohibited the issuance of additional dispensaries. (Request for Judicial Notice (RJN) Ex. 1 (ordinance) at §§ 3, 5.) The dispensary operating at the Ramona Property pursuant to the Ramona CUP, listed in the ordinance, is among the five existing dispensaries in the unincorporated County (the "Ramona Dispensary"). (*Id.* at § 3.)

II. Material history of the acquisition and disposition of the Sherlock Property.

Mr. Sherlock was the sole and ultimate beneficial owner of the Balboa/Ramona CUPs. Mr. Sherlock shared ownership interests of the Balboa Property with Harcourt as it was owned by Leading Edge Real Estate, LLC (LERE), in which both Mr. Sherlock and Harcourt had membership interests. As alleged in the FAC and subject to judicial notice, subsequent to Mr. Sherlock's death on December 3, 2015, Harcourt transferred (1) the Balboa CUP to himself, (2) the Balboa Property to Lake, and (3) the

[2] The "Balboa CUP" was issued at 8863 Balboa Avenue, Unit E, San Diego, California 92123 (the "Balboa Property").

[3] The "Ramona CUP" was issued at 1210 Olive Street, Ramona, CA 92065 (the "Ramona Property").

Ramona CUP to Lake and Lake's friend, Renny Bowden.

(1) *The Balboa CUP*. On July 29, 2015, the Balboa CUP was recorded with the San Diego County Recorder's Office. (RJN Ex. 2.) It states: "This Conditional Use Permit No. 1296130 is granted by the Planning Commission of the City of San Diego to [LERE], Owner and United Patients Consumer Cooperative, Permittee." (*Id.* at 1.) Mr. Sherlock executed the CUP as the Managing Member of LERE and on behalf of United Patients as the Permittee. (*Id*. at 7.) After Mr. Sherlock passed away, Harcourt transferred the Balboa CUP to his own entity, San Diego Patients Cooperative Corporation (SDPCC), and himself. (FAC ¶ 74.) Harcourt judicially admits to this in his lawsuit against, among others, Salam Razuki and Ninus Malan in which he alleges they stole the Balboa CUP from him after he transferred it to himself ("*Razuki I*").[4]

(2) *The Balboa Property*. On June 18, 2015, LERE acquired the Balboa Property. (FAC ¶ 70; RJN Ex. 4. (grant deed).) In April 2016, Harcourt, on behalf of LERE, executed a grant deed for the Balboa Property in favor of High Sierra, LLC, owned by Lake. (FAC ¶ 81; RJN Ex. 5 (grant deed).) Lake then sold the Balboa Property to Razuki Investments, owned by Razuki. (FAC ¶ 82; RJN Ex. 6 (grant deed).)

(3) *The Ramona CUP*. In January 2015, Mr. Sherlock applied for the Ramona CUP on behalf of Olive Tree Patients Association ("Olive Tree") and Lake executed the application as the owner of the Ramona Property. (RJN Ex. 7 (application).) Mr. Sherlock was granted the Ramona CUP. (FAC ¶ 68; *see* RJN Ex. 8.) Less than two months after Mr. Sherlock's death, on February 2, 2016, Bowden applied for the Ramona CUP on behalf of Olive Tree. (RJN Ex. 9.) On May 24, 2017, the County of San Diego Sherriff's Office renewed the Ramona CUP and it was issued in the names of Olive Tree, Bowden *and* Lake. (RJN Ex.10.)

III. Material factual allegations in the FAC as to Lake and Harcourt.

The FAC alleges that Lake and Harcourt conspired to fraudulently steal the Sherlock Property from the Sherlock Family upon Mr. Sherlock's death through forged documents and misrepresentations

[4] RJN Ex. 3 (*San Diego Patients Cooperative Corporation, Inc. v. Razuki Investments, LLC*, San Diego Superior, Court Case No. 37-2017-00020661) (complaint) at ¶ 19 ("After Sherlock passed away in or around December 2015, HARCOURT submitted documentation to the City of San Diego in order to remove [Mr.] Sherlock as the MMCC's responsible person, and HARCOURT then finalized the recording of the CUP with the City of San Diego under SDPCC. Moreover, HARCOURT identified himself as the MMCC's responsible person.") (emphasis added).)

to the Sherlock Family and third parties. (*See* FAC ¶¶ 285-309.)

Mrs. Sherlock did not become aware of the fraudulent theft until plaintiff/attorney Andrew Flores contacted her in January 2020 about a dissolution form filed with the state that dissolved LERE (the "Dissolution Form"). (FAC ¶ 84, Ex. 1 (Dissolution Form).) The Dissolution Form was filed three weeks *after* Mr. Sherlock's death. (*Id.*) Flores informed Mrs. Sherlock that Harcourt had transferred the Balboa CUP to himself. (FAC ¶ 87.) Mrs. Sherlock then spoke with Lake and told him she intended to sue Harcourt and Lake then admitted that him and Harcourt were responsible for the transfer of the Balboa CUP to Harcourt. (*Id.*) Lake admitted "***we did it***" and told Mrs. Sherlock there is "***nothing you can do about it***." (*Id.* (emphasis added).)

Thereafter, in February 2020, an expert handwriting forensic expert concluded that the Dissolution Form was most likely forged. (FAC ¶ 88.) Mrs. Sherlock then confronted Lake with evidence that the Dissolution Form had been forged and her intent to use that evidence to sue Harcourt, Lake responded by alleging:

> he had seen Mr. Sherlock execute the Dissolution Form the day before he passed away and that he was in an extremely emotional state, severely depressed because he had to "sign away" the Balboa CUP, because of the allegedly expensive HOA Litigation, and that is why his signature on the Dissolution Form does not look like his normal signature. Lake said that this was the reason why Biker had committed suicide. ***Lake said that Biker had cost him a lot money and repeatedly attempted to convince Mrs. Sherlock to not sue Harcourt***. Mrs. Sherlock was shocked and outraged but kept calm and asked if she would be getting any proceeds related to the Balboa and Ramona CUPs as a result of Biker's investment of time and capital to acquire them. ***Lake responded that Biker's contributions were "worthless," that Mrs. Sherlock and her children were not entitled to anything, and that she should be content with the proceeds from Mr. Sherlock's life insurance policy***.

(FAC ¶¶ 94-95 (emphasis added).)

As to Harcourt, the FAC attaches as Exhibit 2 an email chain between attorney Flores and attorney Allan Claybon, counsel for Harcourt. (FAC, Ex. 2.) On February 21, 2020, Flores emailed Claybon after first speaking with him and provided Claybon the Dissolution Form, the report concluding it was mostly likely forged, and concluded: "I hope your client has evidence and a credible explanation for what appears to be a forged signature that left him with [the] valuable [Balboa] CUP." (*Id.* (February 21, 2020 email).) Claybon over the course of weeks specifically and repeatedly refused to provide the requested evidence. (*Id.*) Materially, the last email from Claybon concludes: "*My client is willing to*

discuss the information requested ***after taking time to gather evidence***." (*Id.* (March 9, 2020 email) (emphasis added).)

IV. The Cartwright Act claim: Attorney-defendant Gina Austin's Proxy Practice is illegal and a per se violation of the Cartwright Act.

California Business & Professions Code (BPC) § 20657, formerly § 19323, provides the criteria for the mandatory denial of an application for a cannabis license: "The licensing authority ***shall deny*** an application if the applicant has been sanctioned by a city for unauthorized commercial cannabis activities in the three years immediately preceding the date the application is filed with the department." (BPC § 26057(a), (b)(7) (emphasis added, cleaned up).)

Attorney-defendant Gina Austin and her law firm, the Austin Legal Group, represent parties, including defendants Lawrence Geraci and Salam Razuki, who have been sanctioned for unlicensed commercial cannabis activities (principals) in applying for CUPs/licenses through the use of proxies (agents) who do not disclose the principals as the true owners of the CUP applied for (the "Proxy Practice"). (FAC ¶¶ 4, 119, 283.)

The FAC sets forth a Cartwright Act cause of action against defendants for acts taken in furtherance of restraining trade and pursuing a "monopoly" in the cannabis market in the County and City of San Diego primarily through attorney Austin's Proxy Practice and sham litigation in furtherance thereof (the "Antitrust Conspiracy"). (FAC ¶¶ 280-284.) [5] As set forth in the FAC, there have been numerous lawsuits in the State and Federal courts arising from or based on contracts entered into pursuant to the Proxy Practice. (*See*, *gen.*, FAC.) Numerous parties have challenged the legality of the Proxy Practice. (*See*, *e.g.*, FAC ¶ 209.) The first judge to address the issue found the defense of illegality to the Proxy Practice had been waived mistakenly believing that the defense of illegality could be waived and thereby judicial decree turn an illegal contract that violated BPC §§ 19323/20657 into a lawful

[5] *See* FAC ¶¶ 61-63 ("During the course of Flores' investigation, he spoke with an investigative reporter who had interviewed an employee of Razuki after Razuki had been arrested by the FBI (the 'Employee'). The investigative reporter provided Flores a copy of the interview with the Employee. The Employee stated that he was present when Austin provided confidential information from her non-Enterprise clients regarding real properties that qualified for CUPs so that Razuki and his associates could take action to prevent the acquisition of those CUPs by Austin's non-Enterprise clients in furtherance of creating a ***monopoly***. The Employee also stated that Razuki and his associates use Mexican gangs to commit violent acts on their behalf to further their goals when disputes arise in the operations of their dispensaries.") (emphasis added).)

judicially enforceable contract. (FAC ¶ 209; *cf. Vierra v. Workers' Comp. Appeals Bd.* (2007) 154 Cal.App.4th 1142, 1148; *City Lincoln-Mercury Co. v. Lindsey* (1959) 52 Cal.2d 267, 274.)

Pending before this Court is Austin's anti-SLAPP motion in which she argues the Proxy Practice is not illegal and does not give rise to antitrust liability because:

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

(RJN Ex. 11 at 17-18 (emphasis added).)

The opposition to the anti-SLAPP motion argues that Austin's argument makes no sense for two reasons: First, how can the State issue a license to parties that are not disclosed in the applications? It is impossible; it is the perpetration of a fraud on a licensing agency. (RJN Ex. 12 (opposition) at 13:20-14:12).) Second, the Legislature's use of the word "shall deny" reflects an absolute prohibition to the issuance of licenses for parties sanctioned for operating illegal dispensaries like Razuki. (*Id.* at 14:13-15:15).) Austin's seven-page Reply ***did not*** address these two arguments in any manner whatsoever. (*See, gen.*, RJN Ex. 13.) Austin in substance argues she is an honorable attorney of the greatest integrity that is incapable of conspiring with her wealthy clients to commit a crime for money.

Plaintiffs respectfully note they will file a petition for a writ of mandate in Sacramento against the Department of Cannabis Control. Plaintiffs will seek to compel the Department of Cannabis Control to intervene in the numerous cases in the Federal and State courts in San Diego in which illegal contracts based on the Proxy Practice are being enforced and ratified wasting millions of tax payer dollars, to the great prejudice of the public and parties who have been harmed by Austin and her wealthy clients.

LEGAL STANDARD

The Court is well aware of the applicable standards for ruling on a demurrer: the demurrer admits the truth of all material facts pleaded, no matter how unlikely or improbable, the allegations must be accepted as true for the purpose of ruling on the demurrer. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The Courts "also consider matters which may be judicially noticed. Further, [the courts] give the

complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Ibid.*)

ARGUMENT

I. Lake's demurrer must be denied entirely because it rests *exclusively* on the false premise that there exists a lawful contract pursuant to which Mr. Sherlock agreed to have Harcourt sell and transfer Mr. Sherlock's real and personal property to himself and Lake.

"Every first-year law student knows that, to form a contract, one must have (1) an offer, (2) an acceptance, and (3) consideration."[6] (Civ. Code § 1550(4) ("It is essential to the existence of a contract that there should be…. consideration.").) ***WHERE IS THE CONTRACT?*** Neither Lake, Harcourt nor their *numerous* attorneys have alleged the existence of a contract pursuant to which Mr. Sherlock agreed to sell or transfer the Sherlock Property. However, Harcourt and Lake have already made clear their intent to produce and present to this Court a forged contract. Harcourt did so in his last email from his counsel requesting time to "gather evidence," after weeks of refusing to explain his ownership of the Balboa CUP, when he could have just attached it and sent it if it existed. (FAC Ex. 2.) And Lake's demurrer has already set the groundwork for presenting that forged contract by Harcourt by *implying* he saw Mr. Sherlock sign it less than 24 hours before he passed away: "[Mr. Sherlock and Harcourt] were reviewing paperwork and ***signing documents***." (Dem. at 7:16 (emphasis added).)

The *implied* contract by Lake does not exist and Harcourt himself has for over a year refused to allege it exists, much less provide it as requested. What Harcourt *did* do through his attorney is argue it is too late for the Sherlock Family to sue him for the fraudulent theft because too much time has passed (i.e., the statute of limitations). (FAC ¶¶ 98-99.) Is it even possible for a person to act anymore guilty? Any decent and moral person upon being asked by a widow as to how he acquired property that she believed to be her inheritance and that of her children would have provided *some* kind of explanation if innocent. Anything. Harcourt did not and his failure to do so is prima facie evidence of his guilt.

The Court must deny Lake's demurrer because the Court cannot judicially find, impliedly or directly, the existence of such a contract that is not alleged to exist and that is not before the Court.

II. The Sherlock Family states a cause of action for conversion of their personal property.

"Conversion is generally described as the wrongful exercise of dominion over the personal property of another. The basic elements of the tort are (1) the plaintiff's ownership or right to possession

[6] *Tritschler v. Haire* (E.D.Ky. June 1, 2009, Civil Action No. 5:07-437-JMH) 2009 U.S.Dist.LEXIS 45588, at *6, fn. 3.

of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1181 (quotation omitted) (*Regent*).)

"Conversion is a strict liability tort. The foundation of the action rests neither in the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack of knowledge, and motive are ordinarily immaterial." (*Id.*) "The rule of strict liability applies equally to purchasers of converted goods, or more generally to purchasers from sellers who lack the power to transfer ownership of the goods sold. That is, there is no general exception for bona fide purchasers." (*Id.*)

As material here and stated in plain simple words: (i) a party who sells the personal property of another without any authority is guilty of conversion (*Reynolds v. Lerman* (1956) 138 Cal.App.2d 586) and (ii) the party who purchases the stolen personal property, even in good faith and without knowledge of the theft by the seller, is *still* strictly liable and guilty of conversion as against the true owner because "a thief cannot pass title to stolen property." (*Regent,* 231 Cal. App. 4th at 1185 (quotation omitted).) When plaintiffs prove a claim for conversion, they have the *right* by law to the return of their stolen personal property and not just money damages against the thief who stole property. (*Bainbridge v. Stoner* (1940) 16 Cal.2d 423, 428-429.) It is the purchaser who was defrauded by the thief into stealing stolen property that must then seek damages against the thief. (*Ibid.*)

The case of *Holistic* is nearly factually identical and is controlling on the issue of conversion of the Sherlock Family's personal property, as summarized by the Court of Appeal:

> This case arises from an ownership dispute over a medical marijuana dispensary in Los Angeles. In essence, plaintiff Jamie Kersey claims defendant Christopher Stark transferred his ownership in Holistic Supplements, LLC (hereafter the LLC), to her in April 2015. Unbeknownst to Kersey and despite that alleged transfer, he later converted the LLC from a limited liability company to a corporation and then a mutual benefit corporation in his name called Holistic Supplements Inc. (the corporation) and changed the business address. In that process, he claimed rights to a business tax registration certificate (***BTRC***), ***a city-issued tax document that enabled the dispensary to operate***.
>
> Kersey and the LLC sued Stark and the corporation for conversion, unfair competition, and declaratory relief, among other claims. The case went to a jury trial, presenting the core factual dispute of whether Stark validly signed the April 2015 transfer documents or whether his signatures were forged. The jury ultimately decided only a single claim of

> conversion asserted by the LLC against the corporation, returning a defense verdict. The trial court removed the rest of the claims from the jury by granting nonsuit to defendants.
>
> On appeal, plaintiffs argue nonsuit was improper and the trial court committed prejudicial instructional error on the conversion claim decided by the jury. We agree on both points. We conclude: (1) ***nonsuit was erroneous on Kersey's individual claims because she has standing to sue for conversion of her personal property membership interest in the LLC***; (2) nonsuit was erroneous on claims against Stark in his individual capacity, since he can be held liable for personally participating in the tortious conduct of the corporation; (3) nonsuit was erroneous on plaintiffs' claims under the unfair competition law (Bus. & Prof. Code, § 17200 et seq.; the UCL) because we reject the only two grounds for nonsuit defendants raise on appeal; and (4) ***the BTRC is property subject to conversion, so the trial court prejudicially erred when it instructed the jury it was not***.

Holistic Supplements, LLC v. Stark (2021) 61 Cal.App.5th 530.

A. <u>The Sherlock Family has pled all the elements for a cause of action for conversion of their personal property: the Balboa/Ramona CUPs and their membership interests in LEER.</u>

First, the FAC alleges and judicial facts establish that Mr. Sherlock owned the CUPs and had membership interests in LERE. (FAC ¶¶ 68-71; RJN Exs. 2, 4, 7-8.) Lake does not dispute, nor can he, that upon the death of Mr. Sherlock without a will, all his property transferred to his wife and children as his heirs. (Prob. Code § 6400 ("Any part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in this part."); (*id*. § 6401 (intestate share of surviving spouse); *id.* § 6402 (intestate share of heirs other than surviving spouse).) Thus, the Sherlock Family meets the first element – their ownership interests in the CUPs and LERE.

Second, the FAC alleges that Lake conspired with Harcourt upon the death of Mr. Sherlock to fraudulently transfer the Sherlock Family's ownership interests in the CUPs and LERE to themselves or their entities through misrepresentations to the City of San Diego and forged documents, including the Dissolution Form that dissolved LERE. (FAC ¶¶ 291-300.) Harcourt's own complaint against Razuki is his judicial admission that he transferred the Balboa CUP to himself from Mr. Sherlock. (RJN Ex. 3 at ¶ 19.) Judicial facts establish that after Mr. Sherlock's death, Lake claimed ownership of the Balboa Property and the Ramona CUP. (RJN Exs. 5, 6, 9.) These allegations and judicially noticeable facts meet the second element - acts by Lake and Harcourt that constitute the willful interference, without any legal justification, with the Sherlock Family's personal property that deprived them of their use and possession.

Third, the Sherlock Family has suffered damages, which include the lost profits generated from

the operation of the Balboa and Ramona dispensaries, attorneys' fees and costs, as well as their ever-increasing extreme emotional distress caused by the theft of their inheritance that Mr. Sherlock obtained at great financial and personal cost. (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1150-1151 ("emotional distress damages are also recoverable by the victim of conversion").)

B. Lake's arguments that the Sherlock Family fails to state a cause of action for conversion are contradicted by the facts pled, judicially noticeable facts, and applicable law.

All of Lake's despicable, self-exculpating, self-aggrandizing, and evidentiarily contradicted or unsupported allegations describing himself as the savior and protector of the Sherlock Family in order to cover up his and Harcourt's theft of the Sherlock Property must be disregarded on demurrer. (*Blank*, 39 Cal.3d at 318.) However, to show the complete lack of merit of Lake's demurrer to the conversion claim, each of the six factual and legal arguments he sets forth in support thereof are addressed below:

First, Lake argues the conversion claim fails because "it is premised on the conversion of property by [Lake] that [Mr. Sherlock] never owned." (Dem. at 11:4-5.) As proven above, Mr. Sherlock had ownership interests in the Balboa/Ramona CUPs and LERE.

Second, Lake argues the Balboa Property as real property cannot be "the subject of a conversion cause of action." (*Id.* at 11:15-16.) The Sherlock Family agrees that Balboa Property is not subject to a conversion claim. However, Mr. Sherlock's membership interest in LERE, which was the owner of the Balboa Property, *is* subject to a conversion claim. (*Holistic*, 61 Cal.App.5th at 542 ("Kersey's membership interest in the LLC was personal property belonging to her as an individual. As personal property, Kersey's membership interest could be subject to individual claims based on theft of that interest.").) The Sherlock Family, like Kersey in *Holistic*, can sue for damages for the theft of their interests in LEER by Harcourt, which he used to transfer the Balboa Property to himself and Lake. (*Id.*)

Third, Lake's argument that "there has been no showing of any interest held by" Mr. Sherlock in the Balboa Property (Dem. at 11:16-17) is contradicted by Mr. Sherlock membership interest in LEER, which owned the Balboa Property.

Fourth, Lake argues the "Balboa Property was purchased by LERE, not [Mr. Sherlock], and was sold with [Mr. Sherlock's] consent in an effort to repay [Lake's] loan." (*Id.* at 11:19-20.) Lake's allegation of consent is contradicted by the FAC alleging he directly admitted he conspired with Harcourt and stole the Sherlock Property, including the Balboa Property. (*See*, *e.g.*, FAC ¶¶ 87, 94-97.)

Fifth, Lake argues a cause of a conversion cannot be maintained because a CUP "is a property right that runs with the land, not to the individual permittee." (*Id.* at 11:21-22.) Lake's claim is legally baseless: "A CUP creates a *property right* which may not be revoked without constitutional rights of due process. ***Additionally***, a CUP creates a right which runs with the land, not to the individual permittee." (*Malibu Mts. Rec. v. County of L.A.* (1998) 67 Cal.App.4th 359, 367-368 (emphasis added).) A CUP grants two rights, to the permittee and *additionally* to the land upon which it is granted. (*Id.*)

Sixth, Lake argues "there is no allegation that [Lake] ever had an interest in LERE, that he was responsible for the dissolution of LERE, or that he ever received any benefit from the dissolution of LERE." (Dem. at 12:3-4.) Lake's argument is contradicted by allegations in the FAC - he acquired the Balboa Property owned by LERE (FAC ¶ 81) - and basic logic. *If* Harcourt had not unlawfully dissolved LERE, *then* the Sherlock Family would have learned about the existence of LERE as his heirs and successors-in-interest to his membership interest in LERE via yearly State requirements for LLCs. *Then*, the Sherlock Family would have the right to demand an accounting from Harcourt of the disposition of the assets of LERE. *Then,* the accounting would have exposed and revealed Harcourt's liabilities for violations of his fiduciary duties and tortious acts of stealing/converting the Sherlock Property for himself and Lake. (*See Holistic*, 61 Cal.App.5th at 544 ("As the director and shareholder of the corporation, Stark could be held personally liable for participating in, directing, or authorizing tortious conduct."); *Classen v. Weller* (1983) 145 Cal.App.3d 27, 48 ("Corporate officers are liable for their tortious acts committed on behalf of the corporation. Antitrust violations are torts.") (citations omitted).)

III. The Sherlock Family states a claim for violations of the Cartwright Act.

The Cartwright Act prohibits two or more persons from combining to do certain specified anti-competitive acts including creating or carrying out restrictions on trade or commerce and preventing competition in the sale or purchase of any commodity. (BPC § 16720(a), (c).) "[A]greements to establish or maintain a monopoly are restraints of trade made unlawful by the Cartwright Act." (*In re Cipro Cases I & II (2015*) 61 Cal.4th 116, 148.) "Since the Cartwright Act and the federal Sherman Act share similar language and objectives, California courts often look to federal precedents under the Sherman Act for guidance." (*Fisherman's Wharf Bay Cruise Corp. v. Superior Court of San Francisco* (2003) 114 Cal.App.4th 309, 334.)

A. Cartwright Act Standing

To have standing, a plaintiff must show an "antitrust injury," which is defined as: "(1) unlawful conduct, (2) causing an injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and (4) that is of the type the antitrust laws were intended to prevent." (*Knevelbaard Dairies v. Kraft Foods, Inc.* (9th Cir. 2000) 232 F.3d 979, 987.)

Here, first, the FAC plainly alleges the unlawful conduct, the theft of the Sherlock Property by Lake and Harcourt. Second, the Sherlock Family has suffered injury as they have had their businesses and property stolen. Third, their injury flows "from that which makes the conduct unlawful," i.e., the illegal acquisition of cannabis businesses via theft and fraud. Fourth, it is the type of injury antitrust laws were intended to prevent. Illegal actions taken by market participants in a market with extremely limited competitors that restrain and prevent market competition. (*Id*. at 988 ("the central purpose of the antitrust laws, state and federal, is to preserve competition. It is competition… that these statutes recognize as vital to the public interest.").) The City has less than 30 CUPs available, and the unincorporated County only has 5, which have already been issued. The Sherlock Family has suffered an antitrust injury and has standing to bring a Cartwright Act claim.

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

California courts have classified certain activities as per se illegal, i.e., as being prohibited by the Cartwright Act without inquiry into market effects or procompetitive justifications. (*Marin County Bd. of Realtors, Inc. v. Palsson* (1976) 16 Cal.3d 920, 930-931 (*Marin*).) The rationale is that "there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." (*Id.*)

Here, the Proxy Practice is the acquisition of cannabis businesses by parties prohibited from owning cannabis businesses because they were sanctioned for illegal commercial cannabis activity (i.e., operating illegal black-market dispensaries). The illegal acquisition is acquired via fraudulent applications to State and City cannabis licensing agencies. The contracts that effectuate or are based on the Proxy Practice, including attorney Austin's agreements with her clients like Geraci and Razuki to represent them in litigation based on the Proxy Practice, are all illegal contracts because they directly

violate BPC §§ 19323/26057 and cannot be judicially enforced. (*Vierra v. Workers' Comp. Appeals Bd.* (2007) 154 Cal. App. 4th 1142, 1148 ("A contract that conflicts with an express provision of the law is illegal and the rights thereto cannot be judicially enforced.").)

The Proxy Practice and contracts based on them have a "pernicious effect on competition and lack of any redeeming virtue [and should be] conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." (*Marin*, 16 Cal.3d at 930-931.) It simply surreal that the Proxy Practice has been judicially ratified, condoned, and encouraged for over five years. It is a violation of the *Walker Process* doctrine and as clear a per se violation of the Cartwright Act as can possibly be imagined; drug dealers getting undisclosed ownership of legal dispensaries they can't own through attorneys petitioning to government agencies and the courts. (*Clipper Exxpress v. Rocky Mt. Motor Tariff Bureau* (9th Cir. 1982) 674 F.2d 1252, 1270 ("the *Walker Process* doctrine… provides antitrust liability for the commission of fraud on administrative agencies, for predatory ends."); *id.* at 1271 ("There is no first amendment protection for furnishing with predatory intent false information to an administrative or adjudicatory body.").)

C. Attorney Austin's defense to the Proxy Practice is ridiculous and she knows it, but-for her clients engaging in litigation, her role in helping them illegally acquire cannabis businesses would never be known by judges.

Austin and her attorneys argue the "shall deny" language the Legislature used in BPC §§ 19323/26057 means the Department of Cannabis has "complete discretion" to grant or deny applications. So, Austin is not committing a crime by petitioning for her sanctioned clients via the Proxy Practice.

"The fundamental task of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law." *People v. Cruz* (1996) 13 Cal.4th 764, 774-775 (quotation omitted). The Legislature's use of "***shall not***" in a statute has been held to reflect the Legislature's intent of "***absolutely prohibiting***" a contrary act. (*Paterra v. Hansen* (2021) 64 Cal.App.5th 507, 536.) "When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit." (*Bostock v. Clayton Cty.* (2020) 140 S.Ct. 1731, 1737.)

Here, the "***shall not***" language in BPC §§ 19323/26057 is clear and controlling, it is the law. Applicants like Geraci and Razuki are *absolutely prohibited* from owning a cannabis business via the

Proxy Practice. As a matter of law, the Proxy Practice is illegal. (*See Wilson v. Brawn of California, Inc.* (2005) 132 Cal.App.4th 549, 554 ("Questions of law, such as statutory interpretation or the application of a statutory standard to undisputed facts, are reviewed de novo.").)

D. Lake and Harcourt's theft by itself is a per se violation of the Cartwright Act.

In *Richmond*, plaintiff Richmond Compassionate Care Collective ("RCCC") acquired a CUP to operate a dispensary.[7] However, after RCCC determined the original location at which the CUP was issued was not suitable, RCCC failed to find another code-compliant property and its CUP became void pursuant to local ordinance for failure to open the dispensary. (*Id.* at 4.) RCCC then brought a Cartwright action suing defendants, the only three dispensaries operating in the local market and their agents, alleging they engaged in a group boycott when they "intentionally excluded RCCC from the market by locking up any available properties, or dissuading others from engaging in transactions with RCCC during the time frame RCCC was required to obtain a dispensary location per local ordinance." (*See id.* at 3:9-11.)

In defeating defendants' motion for summary judgment, plaintiff had to demonstrate the existence of a triable issue of fact on the elements of his claim of a group boycott. The Court stated the elements as follows: "To prove a group boycott, RCCC must show (1) that Defendants agreed to prevent RCCC from obtaining a location, (2) that RCCC was harmed; and (3) that Defendant's conduct was a substantial factor in causing RCCC's harm." (*Id.* at 9:3-4 (citing 2 CACI 3403).) The court denied defendants motion, and RCCC prevailed at trial proving defendants prevented him from acquiring a code-compliant property and was awarded $5,000,000 in damages, mandatorily trebled to $15,000,000 pursuant to BPC § 16750(a). (*See* RJN Ex. 14 (verdict form).)

Here, Lake and Harcourt, like defendant competitors in *Richmond*: (1) have prevented the Sherlock Family from obtaining the Balboa and Ramona Dispensaries by stealing the Sherlock Property pursuant to which they operate; (2) they have been harmed as, *inter alia*, they have been deprived of the profits generated by the dispensaries for years; and (3) but-for Lake and Harcourt's theft of the Sherlock Property, they would have ownership of and the profits from the dispensaries.

[7] *Richmond Compassionate Care Collective v. 7 Stars Holistic Found.*, No. C16-01426 (Supr. Ct. of Cal., County of Contra Costa (2021)) ("*Richmond Order*"). A true and correct copy of the *Richmond Order* is attached hereto as Exhibit 1.

E. Lake's argument that the Sherlock Family did not plead a Cartwright Act violation are without merit.

Lake does *not* dispute the Proxy Practice is illegal and an antitrust violation in his demurrer. (*See, gen.*, Dem.) Rather his demurer to the Cartwright Act claim is premised on the assumptions or arguments that the Sherlock Family lacks standing, they do not own the Sherlock Property, Lake did not convert the Sherlock Property, a CUP is not personal property, and "[o]ther than owning the land that the CUPs flowed from, the FAC is utterly devoid of any facts tying LAKE to the alleged conspiracy." (Dem. at 9:3-11:2.) With the exception of the last argument, the other arguments have been addressed above and are meritless. As to his last argument, it is a baseless claim by itself for at least three reasons:

First, as the FAC alleges and the Ramona CUP issued in his name subject to judicial notice proves, he did not just own land. (FAC ¶ 79; RJN Ex. 10.)

Second, Lake admits that he sold the Balboa Property to Razuki. In *Richmond*, the court denied defendants' motion for summary judgment as addressed above. But, it also denied defendants' request that defendant Parle be dismissed. (*Richmond Order* at 9.) The court denied the motion because plaintiffs presented a deed of trust executed by Parle on behalf of an LLC alleged to have been formed in order to own one of the properties that was alleged to have been improperly tied up. (*Id*. at 9-10.) The Court denied the motion explaining that "Ms. Parle's signature is an act. RCCC was prevented from obtaining 3219 Auto Plaza. Whether Ms. Parle's motive, in signing her name, was to participate in the conspiracy, is not a basis on which this Court will grant summary judgment." (*Id*.)

Here, the FAC alleges that Lake conspired with Harcourt to steal the Sherlock Property through forged documents and misrepresentation to third parties. Whether those acts were taken as independent torts or in furtherance of attorney Austin's antitrust conspiracy is an issue for a jury to decide that cannot be granted on a motion for summary judgment, much less a demurrer as is before this Court. (*Id.* (citing *Continental Ore Co. v. Union Carbide & Carbon Corp.* (1962) 370 U.S. 690, 697).)

Third, the joint and several liability rule of conspiracy law has been applied to Cartwright Act claims. (*Roth v. Rhodes* (1994) 25 Cal.App.4th 530, 544.) This applies to corporate officers, like Harcourt, for their tortious acts committed on behalf of the corporation, including antitrust violations. (*Classen*, 145 Cal.App.3d at 48.) Assuming that Lake and Harcourt were not participants of Austin's Antitrust Conspiracy they still committed fraud/conversion by stealing the Sherlock Property. But-for

their theft of the Balboa Property and CUP, they would not have ended up with Razuki/Malan. Lake and Harcourt are therefore liable as joint tortfeasors with Austin and her clients even if not as coconspirators.

IV. The FAC states causes of action for conspiracy, violation of the UCL, and declaratory relief.

Lake's arguments the Sherlock Family did not state causes of action for conspiracy, violations of the UCL, or for declaratory relief, are based on his assumptions and arguments that the Sherlock Family do not have ownership interests in the Sherlock Property, that Lake and Harcourt did not convert the Sherlock Property, and the Sherlock Family failed to state a cause of action for a violation of the Cartwright Act. (*See* Mot. at 12:24-25, 13:14-19, 13:21-26.) As demonstrated above, these arguments are meritless.

V. The Sherlock Family requests leave to amend the First Amended Complaint.

Defendants requested that the Court should sustain their Demurrer in its entirety without leave to amend. This severe request has no basis in law. Denial of leave to amend constitutes an abuse of discretion unless the complaint shows on its face it is incapable of amendment. (*Blank*, 39 Cal.3d at 318.) However, the Sherlock Family does request leave to amend the FAC to address any deficiencies the Court may find and to add a cause of action for a constructive trust as to the Balboa Property and breach of fiduciary duty claim against Harcourt by the Sherlock Family.

CONCLUSION

As proven, all of Lake's arguments in his demurrer are meritless. However, as threshold matter, the demurrer must be denied because it assumes the existence of a lawful contract pursuant to which Harcourt lawfully transferred the Sherlock Property to himself and Lake. That contract does not exist, is not even alleged to exist, is not now before the Court, and will be proven to be forged when presented to this Court. And there is no doubt that Harcourt and Lake have already forged that contract and other supporting documents. If they don't provide them, Lake and Harcourt will have literally not a scintilla of evidence to prove they did not steal the Sherlock Property after Mr. Sherlock's death, maliciously and despicably depriving a widow and her children of their inheritance.

DATED: August 8, 2022

THE LAW OFFICE OF ANDREW FLORES

By _____

ANDREW FLORES

Pro se plaintiff and attorney for AMY SHERLOCK and minors T.S. and S.S.

EXHIBIT 1

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RICHMOND COMPASSIONATE
CARE COLLECTIVE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

RICHMOND COMPASSIONATE CARE COLLECTIVE, a California Corporation, Plaintiff, v. RICHMOND PATIENT'S GROUP, a California mutual benefit corporation, HOLISTIC HEALING COLLECTIVE, INC., a California mutual benefit corporation, 7 STARS HOLISTIC FOUNDATINO, INC., a California mutual benefit corporation, WILLIAM KOZIOL, DARRIN PARLE, ALEXIS KOZIOL, REBECCA VASQUEZ, ZEAAD M. HANDOUSH, LISA HIRSCHHORN, ANTWON CLOIRD, CESAR ZEPEDA, and DOES 1-50, Defendants. AND RELATED CROSS-ACTION	CASE NO. C16-01426 **ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** Date: January 14, 2021 Time: 9:00 a.m. Dept.: 39 Judge: Hon. Edward G. Weil Date Action Filed: July 22, 2016 Trial Date: March 22, 2021

Defendants' Motion for Summary Judgment came regularly for hearing on January 14, 2021, in Department 39, the Honorable Edward Weil, Judge, presiding.

The Court's tentative ruling was not contested and no appearance was made by counsel for either party. The Court, having considered the pleadings and papers submitted by the parties, adopted the Tentative Ruling which became the Order of the Court. Attached hereto as **Exhibit 1** is the Court's Tentative Ruling.

IT IS HEREBY ORDERED THAT FOR GOOD CAUSE APPEARING:

Defendants' Motion for Summary Judgment is **DENIED**.

COMPLIES WITH CRC 3.1312

Dated: March 18, 2021

HON. EDWARD G. WEIL,
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

TENTATIVE RULING:

Before the Court is a Motion for Summary Judgment ("Motion"), filed by defendants Richmond Patient's Group ("RPG"), Holistic Healing Collective, Inc. ("HHC"), 7 Stars Holistic Foundation, Inc. ("7 Stars"), William Koziol, Darrin Parle, Alexis Parle (aka Alexis Koziol), Rebecca Vasquez, and Zeaad M. Handoush (collectively, "moving parties" or "Defendants"). The Motion is **denied**.

Plaintiff, Richmond Compassionate Care Collective ("Plaintiff" or "RCCC"), a California Nonprofit Mutual Benefit Corporation, brought this action against Defendants, alleging they violated the Cartwright Act through engaging in a conspiracy to restrain trade and monopolize the local medical marijuana market. Specifically, RCCC claims Defendants intentionally excluded RCCC from the market by locking up any available properties, or dissuading others from engaging in transactions with RCCC during the time frame RCCC was required to obtain a dispensary location per local ordinance. Because RCCC's evidence demonstrates that triable issues of fact exist, summary judgment is improper.

Background and Procedural History

Richmond's medical marijuana Ordinance No. 28-10 NS ("Ordinance"), adopted on September 21, 2010, permitted and regulated medical marijuana collectives. The Ordinance was amended on November 16, 2010 to permit marijuana collectives to operate in Regional Commercial (C-3) Zoning Districts at certain minimum distances from schools and other specified facilities. In order to operate a marijuana dispensary in compliance with the Ordinance, collectives were required to obtain approval for a location by city council. (SSUMF, No. 7 and response.) RPG, HHC and 7 STARS were and are the only three permitted dispensaries operating in Richmond since the Ordinance was passed.

In December 2011, Plaintiff was approved to establish a medical marijuana dispensary in Richmond, at 2920 Hilltop Mall Road. (SSUMF, No. 8 and response.)

In March 2012, the Ordinance was amended to allow collectives to transfer their permits to another location (including C-2 locations, if approved by the city council) and increasing the number of allowed collectives to six. (SSUMF, No. 9 and response.) For a transfer to a C-2 property to be authorized, city council had to find that (i) applicant considered locations within the Regional Commercial (C-3) Zoning District and found no conforming location that would serve the needs of its members; (ii) the proposed location within the General Commercial (C-2) Zoning District would complement the surrounding community while providing necessary services to its members; (iii) the location did not abut a residential use.

Around the same time the Ordinance was amended, RCCC decided not to open a dispensary at 2920 Hilltop Mall Road because of concerns regarding federal law enforcement, and it terminated its lease for that location. (SSUMF, No. 10 and response.)

RCCC intended on transferring its permit to a new location and continued a search it had already begun for a new location to open its collective. There was a very limited supply of conforming properties in Richmond. (SSUMF, No. 29 and response.) Richmond's strict zoning regulations, sensitive use criteria, and the fear of federal enforcement made finding any viable property in Richmond very difficult. (SSUMF, Nos. 12, and response.)

In early 2013, RCCC leased certain C-2 zoned property (425 S. 3rd St) and applied for a transfer of its permit, which was denied. (SSUMF, Nos. 13-14 and response.) Plaintiff contends it continued to search for property during the time it awaited this authorization. (SSUMF, No. 13 response.)

In December of 2014, the Ordinance was amended to reduce the number of dispensary permits from six to three. It was further amended to state that if a permitted dispensary (here, only RCCC) did not open within six months after issuance of the permit, the permit would expire and become void. This amendment went into effect in early January 2015, therefore, all four permitted dispensaries (the three defendants and RCCC) had to be operational by early July 2015.

In 2015, Plaintiff leased C-3 zoned property at 3190 Klose Way and applied to transfer its permit, but the request was denied on May 19. (SSUMF, Nos. 19-20 and response.) Plaintiff also pursued other properties, but was ultimately unable to obtain a location before its permit expired. On November 3, 2015, Plaintiff sought an extension of time to find a location and commence operations, but the city council did not approve the application. (SSUMF, No. 22 and response.)

RCCC sued Defendants, Lisa Hirschhorn, and others for activities including community organizing, interfering with RCCC's ability to obtain a permit, and efforts to influence city council. Those allegations were stricken from RCCC's complaint as being subject to the protection of California's anti-SLAPP statute and the *Noerr-Pennington* doctrine. Related rulings were appealed and affirmed on appeal. The current version of the complaint is the Third Amended Complaint, originally filed in August 2017.

The Third Amended Complaint alleges a single cause of action for violation of the Cartwright Act. RCCC alleges that the three dispensary defendants, along with their agents, conspired to prevent RCCC from obtaining a compliant property in Richmond for the purposes of opening its dispensary for business. They allegedly did this through jointly enlisting (and paying for) the services of certain agents, including Lisa Hirschhorn, by holding secret meetings where they discussed properties potentially available and ways to tie up any C-3 and C-2 conforming properties until RCCC's permit expired. They allegedly monitored websites for any conforming properties for sale in Richmond, approached landlords about risks they might face by engaging in business with RCCC, presented phony leases and letters of intent, and demanded non-compete clauses in their own leases, etc.

Motion and Opposition

Defendants move for summary judgment based on their assertion that no action by them caused harm to RCCC. Defendants argue specifically that (1) the legal cause of RCCC's

alleged injuries was governmental action; (2) damages are speculative since RCCC cannot prove city council would have approved a transfer of its permit to any particular location; (3) for various reasons, RCCC cannot prove it was deprived of any particular compliant property as a result of Defendants' acts; and (4) no evidence exists to show Alexis Parle acted to prevent RCCC from leasing or purchasing property.

In its Opposition, RCCC argues that causation is for the jury to decide, that Defendants' activities were a "group boycott" that is *per se* illegal (2 CACI 3403), and that Alexis Parle is a proper defendant because she participated in the locking up of at least one property, 3219 Auto Plaza, as a board member of the LLC formed to purchase that building. RCCC's brief focuses on several particular properties it claims Defendants tied up.

In support of its arguments, RCCC presents a declaration by counsel, Ronald D. Foreman, with 32 exhibits, including declarations (two by police officers, two by third party witnesses, and one by defendant Lisa Hirschhorn, signed in 2017), and deposition testimony (by RCCC's PMQ, John Valdez, defendant Lisa Hirschhorn, and defendant William Koziol.)

With their reply brief, Defendants submit over fifty pages of objections to RCCC's evidence, as well as two declarations—one from a forensic document examiner, and one from counsel, attaching additional excerpts from the deposition of Lisa Hirschhorn in which she repudiates the declaration from 2017.

Plaintiff responds with its own objections to the evidence on reply and a motion requesting to strike the forensic document examiner's declaration. As an alternative to striking the declaration, Plaintiff requests a continuance of the hearing on this Motion. In light of the rulings on Defendants' objections to Plaintiff's evidence, the Court **denies** Plaintiff's motion to strike and **denies** the request for a continuance. The handwritten notes at issue are not material to the disposition of this Motion.

Evidentiary Matters

Defendants' unopposed request for judicial notice is granted.

The Court rules on Defendants' objections to Plaintiff's evidence as follows. Any objections not specifically ruled on are not material to the disposition of the Motion. (See Code Civ. Proc., § 437c (q).)

Foreman Declaration

- ¶ 13, p. 3:7-10 – Sustained – Conclusory
- ¶ 15, p. 3:13-17 – Sustained - Secondary Evidence Rule
- ¶ 16, p. 3:18-21 – Sustained - Secondary Evidence Rule
- Exhibit 1 – Overruled
- Exhibit 2 – Sustained – Lack of Authentication / Foundation
- Exhibits 3-9 – Overruled
- Exhibit 10 – Overruled
- Exhibit 11 – Overruled

- Exhibit 12 – Overruled
- Exhibit 15 – Sustained – Lack of Authentication / Foundation
- Exhibit 17 – Overruled
- Exhibit 18 – Overruled
- Exhibit 19 – Overruled
- Exhibit 27 – Overruled
- Exhibit 29 – Overruled
- Exhibit 30 – Overruled

Foreman Declaration, Exhibit 20 (Declaration of Darron Price)

- Entire Declaration – Overruled
- ¶13, p. 3:13-17 – Overruled
- ¶16, p. 4:3-9 – Overruled

Foreman Declaration, Exhibit 21 (Declaration of Carlos Plazola)

- Entire Declaration – Overruled

Foreman Declaration, Exhibit 22 (Declaration of Erik Oliver)

- Entire Declaration – Overruled
- ¶ 8, p. 2:19-25 – Overruled
- ¶ 10, p. 3:3-7 – Sustained as to first sentence– Lack of Authentication / Foundation, otherwise overruled
- ¶ 11, p. 3:7-17 – Overruled
- ¶ 12, p. 3:17-21 – Overruled
- ¶ 13, p. 3:21-26 – Overruled
- ¶ 15, p. 4:1-9 – Overruled
- ¶ 17, p. 4:12-21 – Overruled

Foreman Declaration, Exhibit 23 (Declaration of Michael Rood)

- Entire Declaration – Overruled
- ¶ 6, pp. 2:26 –3:7 – Overruled
- ¶ 7, p. 3:8-12 – Overruled
- ¶ 10, p. 3:19-24 – Sustained – speculation as to the sentence beginning "As I later learned…" otherwise overruled
- ¶ 11, pp. 3:24– 4:3 – Overruled
- ¶ 12, p. 4:4-17 – Overruled
- ¶ 13, p. 4:17-21 – Overruled
- ¶ 19, p. 6:4-18 – Overruled

Foreman Declaration, Exhibit 24 (Declaration of Lisa Hirschhorn)

- Entire Declaration – Overruled.

Citing *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, Defendants argue that deposition testimony by Ms. Hirschhorn in November 2020 (after their summary judgment motion was filed) repudiates her 2017 declaration, eviscerating any issue of fact raised by that declaration. The *D'Amico* decision involved admissions made during discovery by the party opposing summary judgment, which that party later contradicted in an attempt to avoid summary judgment. The D'Amico holding should not be read too broadly or uncritically applied. (See *Price v. Wells Fargo Bank* (1989) 213 Cal.App.3d 465, 482 [overruled on other grounds]; *Turley v. Familian Corp*. (2017) 18 Cal.App.5th 969, 982 [*D'Amico* rule inapplicable to declaration where declaration precedes contrary deposition testimony, and therefore did not contradict any prior testimony].)

Ms. Hirschhorn, a defendant in this matter, made multiple admissions in a declaration written in plain terms. The recanting of her testimony and assertion that the declaration contained false information do, as Defendants point out, subject Ms. Hirschhorn to impeachment at trial, but do not bar the evidence as a matter of law. There is a heightened reliability to admissions partly *because* a party may later change their position. The standard on summary judgment is not whether evidence is credible, but rather whether the disputed facts are material. The Court is not permitted to weigh the evidence. What Ms. Hirschhorn will testify at trial is unknown. She may reverse her position again. Even if she does not, the existence of both the declaration and her repudiation present credibility issues more appropriately weighed by a trier of fact.

- ¶3, p. 2:10-12 –Overruled.
- ¶3, p. 2:12-15 – Overruled.
- ¶4, p. 2:16-22 – Overruled.
- ¶5, p. 3:7-10 – Overruled.
- ¶5, p. 3:9-13 – Overruled.
- ¶6, p. 3:15-28 – Overruled.
- ¶7, p. 4:8-15 – Overruled.
- ¶8, p. 4:20-22 – Overruled.
- ¶8, p. 4:21-26 – Overruled.
- ¶8, p. 5:2-4 – Overruled.
- ¶9, p. 5:9-11 – Overruled.
- ¶9, p. 5:10-13 – Overruled.
- ¶9, p. 5:13-17 – Overruled.
- ¶9, p. 5:16-18 – Overruled.
- ¶9, p. 5:18-24 – Overruled.
- ¶9, pp. 5:26 – 6:1 – Overruled.
- ¶9, p. 6:1-6 – Overruled.
- ¶9, p. 6:6-8 – Overruled.
- ¶9, p. 6:8-16 – Overruled.
- ¶10, p. 6:17-21 – Overruled.
- ¶11, p. 6:21-25 – Overruled.
- ¶12, pp. 6:27 – 7:2 – Overruled.
- ¶12, p. 7:2-11 – Overruled.

- ¶13, p. 7:12-19 – Overruled.
- ¶14, p. 7:20-22 – Overruled.
- ¶15, pp. 7:22 – 8:1 – Overruled.
- ¶16, p. 8:2-12 – Overruled.
- ¶17, p. 8:13-17 – Overruled.
- ¶18, p. 8:18-24 – Overruled.
- ¶19, pp. 8:25 – 9:2 – Overruled.
- ¶20, p. 9:5-8 – Overruled.

Standard

A motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (Code Civ. Proc., § 437c (c).)

"[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 85, hereinafter "*Aguilar*".) "A defendant moving for summary judgment has the initial burden of showing, with respect to each cause of action set forth in the complaint, the cause of action is without merit. A defendant meets that burden by showing one or more elements of the cause of action cannot be established, or there is a complete defense thereto." (*Leyva v. Garcia* (2018) 20 Cal.App.5th 1095, 1101.) A defendant moving for summary judgment may meet its burden by showing the plaintiff cannot reasonably obtain needed evidence. (*Levya* at p. 1102.) If defendant makes such a showing, the burden shifts to the plaintiff to produce evidence demonstrating the existence of a triable issue of material fact. " (*Leyva*, at p. 1101; see also *Aguilar,* 25 Cal.4th at pp. 850, 855; Code Civ. Proc., § 437c(o), (p).)

Declarations and other evidence offered in support of a motion for summary judgment are strictly construed, while declarations and evidence offered in opposition to the motion are liberally construed. (*D'Amico, supra,* 11 Cal.3d 1, 20; *Johnson v. American Standard* (2008) 43 Cal.4th 56, 64.) "All doubts as to the propriety of granting the motion—i.e., whether there is any triable issue of material fact—are to be resolved in favor of the party opposing the motion." (*Cohen v. Five Brooks Stable* (2008) 159 Cal.App.4th 1476, 1483.)

Discussion

Plaintiff alleges that defendants, as horizontal competitors, engaged in practices that are per se illegal under the Cartwright Act. The doctrine of per se illegality holds that some acts are prohibited by the antitrust laws regardless of any asserted justification or alleged reasonableness. (*Oakland-Alameda County Builders' Exchange v. F. P. Lathrop Constr. Co*. (1971) 4 Cal.3d 354, 361, citations omitted.) The doctrine was developed in response to the attempts of antitrust defendants to justify every restrictive combination on the ground that, in the light of all the economic facts and conditions, the particular practice assailed was reasonable. (*Ibid*.) These per se illegal practices, because of their pernicious effect on competition and lack of any redeeming virtue, are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for

their use. (*Id*. at 361.) Among the practices courts have deemed to be unlawful in and of themselves are price fixing, division of markets, group boycotts; and tying arrangements. (*Ibid*.)

To prove a group boycott, RCCC must show (1) that Defendants agreed to prevent RCCC from obtaining a location, (2) that RCCC was harmed; and (3) that Defendant's conduct was a substantial factor in causing RCCC's harm. (2 CACI 3403.)

(1) Agreement

Citing *Aguilar*, Defendants argue they did not prevent RCCC from obtaining certain individual properties, and that the evidence is at least as consistent with permissible competition as with unlawful conspiracy. This sort of "dismemberment" is not the standard by which a court reviews this Motion.

The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. (*In re Automobile Antitrust Cases I & II* (2016) 1 Cal.App.5th 127, 152, citations omitted.) As the court in *Aguilar* noted, antitrust plaintiffs "must often rely on inference rather than evidence since, usually, unlawful conspiracy is conceived in secrecy and lives its life in the shadows." (*Aguilar,* 25 Cal.4th at p. 857.)

In this case, however, no inference is necessary. Direct evidence exists that meetings occurred, and that the purpose of those meetings included limiting competition by preventing RCCC from obtaining a location. (See, e.g., SSUMF, No. 2 response, citing Foreman Decl., Ex. 24 - Hirschhorn Decl., ¶5 ["Our purpose was to take as many steps as necessary to prevent RCCC from buying or leasing any property in Richmond. We did not want RCCC to acquire or lease any property that was in Richmond ordinance from which RCCC could apply to the City for a dispensary permit."].) While perhaps not the basis of RCCC's claims, evidence exists that they also agreed to fix prices, divide the local cannabis market geographically amongst themselves, and split attorneys' and agent fees for their wrongdoing. (See Michael Rood Decl., Ex. 23 to Foreman Decl., ¶13 ["Rebecca Vasquez stated that the dispensary operators in Richmond, including herself, agreed to price their medical cannabis at the same prices in order to prevent competition amongst themselves."]; Lisa Hirschhorn Decl., Ex. 24 to Foreman Decl., ¶7 ["The goal was to geographically control the Richmond dispensary market as dispensaries would be located in north, central and south Richmond."]; *Id*. at ¶¶22-23.)

Lisa Hirschhorn's declaration is the most detailed direct evidence presented, but it is not the only evidence. The declaration is supported by those of Michael Rood, Erik Oliver, Darron Price, Carlos Plazola and William Koziol's deposition testimony. Even if Lisa Hirschhorn's declaration were the only evidence here, the Court may not weigh credibility on summary judgment as Defendants appear to be requesting in their request that the declaration be excluded or discredited. (See above *D'Amico* discussion).

Defendants also specifically argue the Motion should be granted as to Alexis Parle because, they contend, no evidence shows she took any action to prevent Plaintiff from leasing or purchasing any property in Richmond. RCCC responds that she is a board member of RPG and a managing member of Auto Plaza Investments, LLC, an entity formed in order to own one of the properties that is alleged to have been improperly tied up (3219 Auto Plaza). RCCC refers

to a deed of trust for this property apparently bearing Ms. Parle's signature. (SSUMF 133-134 and response.) Ms. Parle's signature is an act. RCCC was prevented from obtaining 3219 Auto Plaza. Whether Ms. Parle's motive, in signing her name, was to participate in the conspiracy, is not a basis on which this Court will grant summary judgment. (See Code Civ. Proc., § 437c (e).)

To the extent Defendants are asserting their motivation and purpose was proper and not to enter into prohibited agreements under the Cartwright Act, evidence exists to create triable issues of fact on this issue.

(2) Whether RCCC Was Harmed

Despite their reference to "speculative damages," Defendants' arguments rest on their contention that their acts were not the *cause* of RCCC's harm. It does not appear to be in dispute that RCCC's permit expired and RCCC was not able to find a suitable location in Richmond.

(3) Causation

Relying on *Blank v. Kirwan* (1985) 39 Cal. 3d 311, Defendants argue the legal cause of RCCC's injury was government action (federal regulations, local zoning, and city council decisions). *Blank* has been addressed in this case already with respect to the Defendants' anti-SLAPP motions.

The question addressed in *Blank* was "whether efforts to influence municipal action that are intended to and actually do produce anticompetitive effects are violative of the Cartwright Act when both private individuals and public officials participate." (*Id*. at p. 316.) There could be no liability for such a conspiracy because the defendants' conduct was protected under the *Noerr-Pennington* doctrine, while government officials are not subject to the Cartwright Act. Following the anti-SLAPP proceedings herein, the TAC no longer seeks to impose liability based on the sort of lobbying protected under the *Noerr-Pennington* doctrine. While evidence may exist related to Defendants' lobbying efforts, this is not the basis of liability alleged in the Third Amended Complaint. *Blank* does not stand for a universal rule that the existence of a government permitting process can insulate otherwise unlawful anti-competitive activities among competitors. Whether permits would have been granted is relevant, but only as a factual issue related to causation of damages.

At issue now are the alleged actions by Defendants to obstruct RCCC from obtaining any suitable location for its dispensary through their cumulative acts of tying up multiple available properties at key times. The anticompetitive activities here were separate from the petitioning activity stricken from RCCC's complaint.

While the court in *Blank* noted the broad discretion of city council as a reason that plaintiff there could not show they had an "expectancy" interest in a permit, the discussion there related to a demurrer to plaintiff's intentional interference with prospective economic advantage cause of action, not a Cartwright Act cause of action. (See *Blank*, 39 Cal.3d at p.330.) As such, the elements necessary to establish were unique to cases involving that tort. The discussion

regarding any expectancy interest was also secondary to the court's ruling that plaintiff lacked an "economic relationship" necessary to establishing intentional interference.

The factual chronology here provides further basis for limiting the application of *Blank*. Here, had RCCC been able to procure a conforming property, its efforts to obtain a permit would not necessarily have been futile. The city council *had already* granted RCCC a permit in the past. City council also *did* grant a permit for at least one of the properties Defendants allegedly locked up for anticompetitive purposes (4800 Bissell). Defendants point to RCCC's letter to city council stating it was unlikely to obtain a permit, but that letter was sent in September 2015, after many of the anticompetitive activities are alleged to have occurred.

In establishing proximate cause, the alleged antitrust violation need not be the sole or controlling cause, only a substantial factor in bringing about the injury. (*Saxer v. Philip Morris, Inc*. (1975) 54 Cal.App.3d 7, 23.) As noted by RCCC, causation is generally a question of fact for the jury. (See, e.g., *Continental Ore Co. v. Union Carbide & Carbon Corp.* (1962) 370 U.S. 690, 697 [where the antitrust "plaintiff proves a loss, and a violation by defendant of the antitrust laws of such a nature as to be likely to cause that type of loss, there are cases which say that the jury, as the trier of the facts, must be permitted to draw from this circumstantial evidence the inference that the necessary causal relation exists.") It is only appropriate to grant summary judgment on the issue of causation if "only one reasonable conclusion could be drawn" from the facts adduced. (See e.g., *Koepke v. Loo* (1993) 18 Cal.App.4th 1444, 1450.) Where no properties were available to RCCC to rent or buy, at least partially as a result of Defendants preemptively seeking out and removing those properties from the market, government action cannot be said to be the sole cause of harm as a matter of law.

Plaintiff's evidence is sufficient to create a triable issue of fact as to why it was unable to timely obtain a location.

Conclusion

The sort of admissions reflected in much of RCCC's evidence, including, but not limited to, Lisa Hirschhorn's declaration, creates a triable issue of fact as to the existence of the conspiracy. The causation element is for a jury to decide. Disputed facts include those tending to show Defendants acted in trust to prevent RCCC from acquiring a location. (See, *inter alia*, SSUMF, Nos. 2-3, 31, 36, 40-46, 48-59, and responses.)

RJN-27

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

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

Plaintiffs,

vs.

GINA M. AUSTIN, an individual; AUSTIN LEGALGROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC., a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, BARTELL & KWIATKOWSKI, LLC, a California limited liability company; and DOES 1 through 50, inclusive,

Defendants.

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

REPLY IN SUPPORT OF DEFENDANT STEPHEN LAKE'S DEMURRER TO COMPLAINT

Hearing Date: August 19, 2022
Hearing Time: 9:00 a.m.

Case Filed: December 3, 2021
Department: C-75
Judge: Hon. James Mangione
Trial Date: N/A

REPLY

I. INTRODUCTION

Plaintiff's meandering opposition fails to overcome the fatal flaw of the FAC as to the allegations against LAKE: even taking the allegations in the FAC as true for the purposes of this demurrer, SHERLOCK cannot possibly maintain any of her claims against *LAKE*. Plaintiff's opposition devotes substantial attention to claims against other defendants – such as Harcourt and Austin – and, at various points, appears to oppose Austin's anti-SLAPP motion rather than LAKE's demurrer. Even construing these largely inaccurate facts and allegations in a light most favorable to SHERLOCK, she cannot maintain a claim against LAKE, even through amendment. LAKE should not be required to expend further time and resources in combating SHERLOCK's baseless and frivolous claims. As such, LAKE requests the demurrer be sustained without leave to amend.

II. LEGAL ARGUMENT

A. SHERLOCK Fails To State A Viable Claim For Violation Of The Cartwright Act

SHERLOCK's opposition to LAKE's demur to the Cartwright Act cause of action is puzzling and does nothing to establish a violation by LAKE. For example, SHERLOCK spends nearly two pages arguing a Cartwright Act violation by *Gina Austin,* who is not a party to LAKE's demur. LAKE has no relationship with Austin or her law firm nor is there any allegation that LAKE did have a relationship with Austin or her law firm, which makes the inclusion of this argument all the more confounding. (*See, e.g., Opp*. pp 9-10). SHERLOCK later circles back on this argument claiming that *Austin's* proxy practice is a *per se* violation of the Cartwright Act. (*Opp*. 16:16). Again, whether or not this is true, there is no allegation in either the FAC or in SHERLOCK's opposition that *LAKE* was involved in this "Proxy Practice;" thus, even if SHERLOCK were accurate that said action results in a *per se* violation of the Cartwright Act, there is no indication that said violation would apply to *LAKE*.

Next, SHERLOCK inserts a strawman argument regarding a contract; specifically, that LAKE's demurrer "rests exclusively on the false premise that there exists a lawful contract." (*Opp*, 11:2-4). It is unclear where SHERLOCK is getting this argument or what bearing the argument has on SHERLOCK's failure to state a cause of action against LAKE. SHERLOCK then pivots to alleged

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wrongdoing by *another* defendant, Harcourt. (*Opp*. 11:17-22). Then, SHERLOCK SHERLOCK's strawman arguments and devotion of valuable opposition space against *other* defendants just further underscores her fundamentally flawed claims against *LAKE*.

Moreover, SHERLOCK fails to sufficiently address her lack of standing to bring a Cartwright Act violation. Again, as stated in LAKE's demurrer, SHERLOCK is not a "market participant". SHERLOCK, a private individual with no ties to the medical marijuana industry, is not within the "target area" of the alleged antitrust violation.

Standing issues aside, even if SHERLOCK were able to overcome this threshold issue, her cause of action is not sufficiently pled. To state a cause of action for conspiracy, a complaint must allege (1) the formation and operation of the conspiracy, (2) the wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts. *Chicago Title Ins. Co. v. Great Western Financial Corp*. (1968) 69 Cal.2d 305, 316. It is incumbent on the complaining party to allege and prove that the party's business or property has been injured by the very fact of the existence and prosecution of the unlawful trust or combination; that is, to establish an actual injury attributable to something the statutory provisions were designed to prevent. *Kaiser Cement Corp. v. Fischbach and Moore, Inc.* (9th Cir. 1986) 793 F.2d 1100. A high degree of particularity is required in the pleading of violations prescribed by the statutory provisions governing combinations in restraint of trade. *DeCambre v. Rady Children's Hospital-San Diego* (2015) 235 Cal.App.4th 1; *Motors, Inc. v. Times Mirror Co.* (1980) 102 Cal.App.3d 735, 742. Other than owning the land that the CUPs flowed from, the FAC is utterly devoid of any facts tying LAKE to the alleged conspiracy. This lack of factual specificity is again underscored by SHERLOCK's opposition, which devotes a substantial amount of time and attention to the alleged wrongful acts of other defendants while only making general and vague allegations of LAKE "stealing" property. There are no allegations that LAKE was even involved in the medical marijuana industry – because he was not – let alone that he conspired with these other defendants to prevent competition within the industry. Nor is there any allegation or indication that SHERLOCK, herself, was engaged in the industry or was even contemplating entering the industry. SHERLOCK has also failed to adequately allege damage to business or property. Again, there is no allegation that SHERLOCK had a business within the cannabis industry. The opposition

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fails to address this lack of factual specificity.

In addition, SHERLOCK fails to address her inability to establish that any of the property complaint of ever belong to her or, for that matter, BIKER. As it relates to LAKE, the facts and pleadings clearly establish that *LAKE* purchased the Ramona Property, which he owns to this day, and that LERE purchased the Balboa Property. (*FAC* ¶¶ 67, 70). This alone cuts against SHERLOCK's vague allegations of "theft" of the property – one cannot steal what lawfully belongs to them. There are no allegations that BIKER ever had any interest in either property. In addition, the CUPs are not, and were not, the "property" of BIKER or SHERLOCK. A conditional use permit is a *property* right that runs with the *land*, *not* to the *individual permittee*. *Imperial v. McDougal* (1977) 19 Cal.3d 505; *Malibu Mountains Recreation v. Los Angeles* (1998) 67 Cal.App.4th 359, 368; *Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal.App.3d 855, 858. SHERLOCK fails to address this glaring deficiency.

Finally, SHERLOCK fails to allege "a combination of capital, skill or acts by two or more persons" seeking to achieve an anticompetitive end under *Bus. & Prof. Code* § 16720. "Only separate entities pursuing separate economic interests can conspire within the proscription of the antitrust laws against price fixing combinations." *Copperweld Corp. v. Independence Tube Corp.* (1984) 467 U.S. 752, 769-771. Failure to adequately allege such concerted action by separate entities is subject to dismissal. *Id*. SHERLOCK makes no such allegation here; on the contrary, the FAC indicates the exact opposition – that the defendants acted as part of a singular ***"Enterprise"*** and that all defendants worked together to pursue a common interest of the singular Enterprise. As such, SHERLOCK cannot maintain a Cartwright Act violation – even through amendment – and the claim must be dismissed.

B. LAKE's Demur To The Conversion Cause Of Action Should Be Sustained

Similarly, SHERLOCK's opposition does little to salvage the conversion claim against LAKE. The "Sherlock Property" allegedly converted is defined to include BIKER's "interest in the Partnership Agreement, LERE, and the Balboa and Ramona CUPs." (*FAC* ¶ 71). SHERLOCK concedes that neither the Balboa Property and Ramona Property can be the subject of a conversion cause of action as each is real property. (*Opp*. 14:11-12). Moreover, as discussed in the context of the Cartwright claim, SHERLOCK cannot maintain a claim for conversion of the CUPs. As referenced

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above, a conditional use permit is a *property* right that runs with the *land*, *not* to the *individual permittee*. *Imperial v. McDougal* (1977) 19 Cal.3d 505; *Malibu Mountains Recreation v. Los Angeles* (1998) 67 Cal.App.4th 359, 368; *Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal.App.3d 855, 858. In other words, both CUPs belonged to the *land*, not to BIKER or any other individual. Put another way, SHERLOCK has failed to meet the first prong of her conversion claim – her ownership or right to possession of any of the property allegedly converted.

As it relates to the alleged conversion of BIKER's interest in LERE, the FAC alleges that LERE was formed by BIKER and Harcourt. (*FAC* § 69). Moreover, the FAC goes on to allege that LERE was later dissolved. (*FAC* § 78). There is no allegation that that LAKE ever had an interest in LERE, that he was responsible for the dissolution of LERE, or that he ever received any benefit from the dissolution of LERE. Likewise, it is unclear what SHERLOCK is referring to when she references the "Partnership Agreement" (*see FAC* ¶ 71). The term is not defined anywhere in the FAC and there is no specificity as to what this alleged partnership entailed.

C. SHERLOCK Fails To Maintain A Claim Against Lake For Either Count Of Conspiracy

SHERLOCK's Third and Seventh Causes of Action both allege a "civil conspiracy" against LAKE. Though not entirely clear, both causes of action are seemingly based on SHERLOCK's faulty conversion and Cartwright Act claims.

For there to be a conspiracy, there must be an unlawful agreement, an overt act committed in furtherance of the conspiracy, and damage from that act. *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503. Conspiracy is not itself a substantive basis for liability. *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189. Civil conspiracy is not an independent tort under California law. *Pavicich v. Santucci* (2000) 85 Cal.App.4th 382; *Everest Investors 8 v. Whitehall Real Estate Limited Partnership XI* (2002) 100 Cal.App.4th 1102. There is no separate tort of civil conspiracy, and there is no civil action for conspiracy to commit a recognized tort unless the wrongful act itself is committed and damage results therefrom. *Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566; *Mehrtash v. Mehrtash* (2001) 93 Cal.App.4th 75. When a plaintiff asserts the existence of a civil conspiracy among the defendants to commit the tortious acts, the source of any substantive liability arises out of an independent duty running to the plaintiff and its breach; tort

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liability cannot arise vicariously out participate in the conspiracy itself. *Ferris v. Gatke Corp* (2003) 107 Cal.App.4th 1211.

Here, there can be no conspiracy by LAKE to commit conversion since there was no conversion by LAKE. A conspiracy cause of action cannot survive on its own and without adequately pleading the existence of any underlying tort, i.e., conversion, SHERLOCK cannot maintain either of her conspiracy causes of action against LAKE.

D. The FAC Fails To Sufficiently Allege Unfair Business Practices

Though SHERLOCK asserts a cause of action pursuant to § 17200 of the California Business and Professions Code ("UCL"), it is unclear how these allegations relate to LAKE. Indeed, LAKE is not specifically referenced anywhere in the cause of action. In construing the FAC in a light most favorable to SHERLOCK, LAKE will assume that the unfair competition relates to the Cartwright Act violations found in SHERLOCK's first cause of action.

California's unfair competition law permits civil recovery for "any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. *Cal. Bus. & Prof. Code* § 17200. A private person may assert a UCL claim only if she (1) has suffered injury in fact and (2) has lost money or property as a result of the unfair competition. *Hall v. Time, Inc.* (2008) 158 Cal.App.4th 847, 852. The second prong of this standing test "imposes a causation requirement. The phrase 'as a result of' in its plain and ordinary sense means 'caused by' and requires a showing of a causal connection or reliance on the alleged misrepresentation." *Id*.

As with her claims related to the alleged Cartwright Action violation, there is nothing in the FAC that gives any indication that SHERLOCK was a market participant, or even attempted to become a market participant, in the San Diego cannabis market. There is no ascertainable injury in fact nor has SHERLOCK lost money or property, as more fully discussed above, by way of the facts alleged in the FAC. Moreover, SHERLOCK's failure to plead a Cartwright Act violation bars her from asserting a UCL claim on the same grounds.

E. Declaratory Relief

As it relates to LAKE, SHERLOCK asserts a cause of action for declaratory relief seeking a judicial determination that the transfers of BIKER's interests in LERE and the Balboa CUP are void.

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For the reasons discussed above, BIKER did not have an interest in the Balboa CUP and there is nothing in the FAC that alleges that LAKE either had an interest in LERE or was otherwise involved in the dissolution of LERE. Thus, the cause of action is merely repetitive of SHERLOCK's other prior claims.

F. Leave To Amend Should Be Denied

SHERLOCK's request for leave to amend should be denied. SHERLOCK has already amended her complaint once but has still failed to state a viable cause of action. Moreover, any attempt to amend the complaint would be futile as SHERLOCK would need to change facts in order to state a viable claim. Leave to amend should be denied and the complaint against LAKE should be smissed.

III. CONCLUSION

LAKE requests that its demurrer be sustained without leave to amend and that it be dismissed from the action.

Dated: August 15, 2022

BLAKE LAW FIRM

By: _____

STEVEN W. BLAKE, ESQ.
ANDREW E. HALL, ESQ.
Attorneys for Defendant,
STEPHEN LAKE

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RJN-28

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/19/2022 TIME: 09:00:00 AM DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione
CLERK: Richard Day
REPORTER/ERM: Not Reported
BAILIFF/COURT ATTENDANT: Adrian Cervantes

CASE NO: **37-2021-00050889-CU-AT-CTL** CASE INIT.DATE: 12/03/2021
CASE TITLE: **Sherlock vs Austin [EFILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

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EVENT TYPE: Demurrer / Motion to Strike

APPEARANCES
Andrew Flores, counsel, present for Plaintiff(s).
Amy Sherlock, Plaintiff is present.
Andrew Hall, counsel, present for Defendant(s) via remote audio conference.

The Court hears oral argument and MODIFIES the tentative ruling as follows:
Defendant Steven Lake's Demurrer to Plaintiffs' First Amended Complaint is overruled in part and sustained leave to amend in part.

Cartwright Act (First Cause of Action)
The Cartwright Act prohibits combinations in restraint of trade. (Bus. & Prof. Code, § 16720.) Under the act, "[a]ny person who is injured in his or her business or property by reason of anything forbidden or declared unlawful by this chapter, may sue therefor . . . ." (Bus. & Prof. Code, § 16750, subd. (a).) Antitrust standing is required under the Cartwright Act. (*See Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 723.) To establish such standing, a plaintiff must show: (1) the existence of an antitrust violation with resulting harm to the plaintiff; (2) an injury of a type which the antitrust laws were designed to redress; (3) a direct causal connection between the asserted injury and the alleged restraint of trade; (4) the absence of more direct victims so that the denial of standing would leave a significant antitrust violation unremedied; and (5) the lack of a potential for double recovery." (*Vinci v. Waste Management, Inc.* (1995) 36 Cal.App.4th 1811, 1814 (footnotes removed).)

Here, Plaintiffs have not shown that the injuries caused by Defendant-the alleged theft of Mr. Sherlock's interests in the Partnership Agreement, LERE, and the Balboa and Ramona CUPs ("the Sherlock Property")-constitute the type of antitrust injury required to establish standing. Furthermore, to the extent Plaintiffs are relying on the alleged "Proxy Practice" to establish the Cartwright Act violations, they have failed to demonstrate any connection between their injuries and the Proxy Practice, as the FAC alleges that Mr. Sherlock obtained the Ramona and Balboa CUPs legally, outside of any such practice. Finally, Plaintiffs have not alleged sufficient facts to establish Defendant's participation in the Proxy Practice.

Therefore, the demurrer on this cause of action is sustained with leave to amend.

Conversion (Second Cause of Action)
"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240 (alterations and quotation marks omitted).) Plaintiffs allege that Defendant and Harcourt worked together to illegally obtain ownership of the Sherlock Property, which Plaintiffs were entitled to under probate law after Mr. Sherlock's death. Specifically, Plaintiffs allege that Defendant and Harcourt falsified documents dissolving LERE and transferring Mr. Sherlock's interest in the CUPs. These are personal property rights, subject to a claim of conversion. (*See Malibu Mountains Recreation, Inc. v. County of Los Angeles* (1998) 67 Cal.App.4th 359, 367–368 ("A CUP creates a property right which may not be revoked without constitutional rights of due process."); *Holistic Supplements, L.L.C. v. Stark* (2021) 61 Cal.App.5th 530, 542 ("Kersey's membership interest in the LLC was personal property belonging to her as an individual.") (citing Corp. Code, § 17701.02(r)).) Plaintiffs have sufficiently pled that Defendant wrongfully dispossessed them of their personal property rights. Therefore, the demurrer on this cause of action is overruled.

Civil Conspiracy (Third and Seventh Causes of Action)
"The elements of an action for civil conspiracy are the formation and operation of the conspiracy and damage resulting to plaintiff from an act or acts done in furtherance of the common design." (*Richard B. LeVine, Inc. v. Higashi* (2005) 131 Cal.App.4th 566, 574 (quotation marks omitted).) "There is *no separate tort* of civil conspiracy, and there is *no civil action* for conspiracy to commit a recognized tort unless the *wrongful act* itself is committed and damage results therefrom." (*Id.* (quotation marks and alterations omitted).)

Here, the third cause of action appears to allege a civil conspiracy between Defendant and Harcourt to steal the Sherlock Property. As discussed above, the FAC alleges that Defendant and Harcourt worked together to illegally obtain ownership of the Sherlock Property through, among other things, submitting falsified documents. This is sufficient to allege a civil conspiracy claim between Defendant and Harcourt. Therefore, the demurrer to this cause of action is overruled.

However, the seventh cause of action appears to be either duplicative of the third cause of action or allege Defendant was a member of the conspiracy engaged in the "Proxy Practice." As discussed above, Plaintiffs' allegations fail to tie Defendant to the alleged Proxy Practice. Therefore, the seventh cause of action is either duplicative or fails to state a claim upon which relief can be granted. Regardless, the demurrer to this cause of action is sustained without leave to amend.

Declaratory Relief (Fourth Cause of Action)
Defendant demurs to this cause of action based on the claim that Mr. Sherlock "did not have an interest in the Balboa CUP" and that Defendant did not have "an interest in LERE" or participate in its dissolution. However, this argument is directly contradicted by facts pled in the FAC, which the Court must accept as true when ruling on a demurrer. Therefore, the demurrer to this cause of action is overruled.

Unfair Competition (5th Cause of Action)
"California's unfair competition law permits civil recovery for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising. Cal. Bus. & Prof. Code § 17200. A private person may assert a UCL claim only if she (1) has suffered injury in fact and (2) has lost money

or property as a result of the unfair competition." (*Golden State Seafood, Inc. v. Schloss* (2020) 53 Cal.App.5th 21, 39, *reh'g denied (Aug. 6, 2020), review denied (Oct. 28, 2020)* (citations and quotation marks omitted).) Here, Plaintiffs allege that "[t]he filing of all documents with public offices effectuating the transfer of the Sherlock Property after the death of Mr. Sherlock are based on forged documents and violate Penal Code § 115." (FAC ¶ 313.) This is sufficient to state a claim under Business and Professions Code section 17200. Therefore, the demurrer to this cause of action is overruled.

The minute order is the order of the Court.

Plaintiffs are directed to serve notice on all parties within five (5) court days.

James A. Mangione

Judge James A Mangione

RJN-29

The City of SAN DIEGO OpenDSD
Development Services Department

OpenDSD Approval Search Invoice Search Maps

Approval #1675894 - Special Permit

Application | Issuance 03/17/2016 | Inspection | Completion

Approval Information

Status	Issued
Issued	03/17/2016
Issued by	Gutierrez, Edith
Permit Holder	Amy Sherlock
Net Change DU	
Valuation	$0.00
Sq. Footage	
First Inspection	
Complete Date	
Scope	Background Checks

Job

Map	Google Map of 32.819931,-117.13762 Google Map of 32.819931,-117.13762
Address	8863 BALBOA AV
APN	369-150-13-23
BC Codes	

Project

Project ID	467963
Account	
Admin Hold	No
Project Name	8863 Balboa MMCC Permit
Project Contact	Gutierrez, Edith (619)446--5000 dsdprojectinfo@sandiego.gov
Project Scope	Backgrounds

Fees

Type	Category	Quantity	Type Unit	Status

There are no Fees associated with this approval

Exceptions
Inspections
Issues
Dependent Approvals
Dependent Packages

Data TimeStamp: 09/20/2022 13:18:32

RJN-30

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

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC., a California cooperative corporation, and BRADFORD HARCOURT, an individual,

Plaintiffs,

v.

RAZUKI INVESTMENTS, L.L.C., a California limited liability company; BALBOA AVE COOPERATIVE, a California cooperative corporation; AMERICAN LENDING AND HOLDINGS, LLC, a California limited liability company; SAN DIEGO UNITED HOLDINGS GROUP, LLC, a California limited liability company; CALIFORNIA CANNABIS GROUP, a nonprofit mutual benefit corporation; SALAM RAZUKI, an individual; NINUS MALAN, an individual, KEITH HENDERSON, an individual, AND DOES 1-20, INCLUSIVE,

Defendants.

Case No. 37-2017-00020661-CU-CO-CTL

[Unlimited Jurisdiction]

COMPLAINT FOR DAMAGES FOR:

1. **BREACH OF JOINT VENTURE AGREEMENT;**
2. **BREACH OF LEASE AGREEMENT;**
3. **ANTICIPATORY BREACH OF ORAL CONTRACT;**
4. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
5. **BREACH OF CONTRACT WITH RESPECT TO A THIRD PARTY BENEFICIARY;**
6. **PROMISORRY ESTOPPEL;**
7. **FALSE PROMISE;**
8. **FRAUD;**
9. **INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS;**
10. **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGES;**
11. **BREACH OF FIDUCIARY DUTY;**
12. **CIVIL CONSPIRACY;**
13. **DECLARATORY RELIEF; AND**
14. **INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Plaintiffs SAN DIEGO PATIENTS COOPERATIVE CORPORATION, INC. and BRADFORD HARCOURT ("Plaintiffs") allege as follows:

THE PARTIES

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

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

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

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

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

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

7. Defendant CALIFORNIA CANNABIS GROUP ("CALIFORNIA CANNABIS GROUP") is, and at all times relevant to this action was, a California nonprofit mutual benefit

corporation organized and existing under the laws of the State of California, with its principal place of business located in the County of San Diego.

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

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

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

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

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

13. There exists, and at all times herein alleged, there existed, a unity of interest in

ownership between certain Defendants and other certain Defendants such that any individuality and separateness between the certain Defendants has ceased and these Defendants are the alter-ego of the other certain Defendants and exerted control over those Defendants. Adherence to the fiction of the separate existence of these certain Defendants as an entity distinct from other certain Defendants will permit an abuse of the corporate privilege and would sanction fraud and promote injustice.

PERSONAL JURISDICTION AND VENUE

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

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

ALTER EGO ALLEGATIONS

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

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

b. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, there existed and now exists a unity of interest and ownership between individual defendants RAZUKI, MALAN, and DOES 6 through 10 and Defendants RAZUKI

INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5, such that the individuality and separateness of said individual Defendants and each of the alter egos have ceased.

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

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

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

f. Plaintiffs are informed and believe and thereon allege that each RAZUKI

INVESTMENT, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, CALIFORNIA CANNABIS GROUP and Defendants DOES 1 through 5 are insolvent.

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

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

BACKGROUND AND GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

26. However, on information and belief, CALIFORNIA CANNABIS GROUP was unable to perform and the proof of funds that was provided was not legitimate. Thus, in or

around August 2016, HENDERSON, who at all relevant times, was acting on behalf of RAZUKI and RAZUKI INVESTMENTS and served as an agent on behalf of his principals RAZUKI and RAZUKI INVESTMENTS, made another offer to Plaintiffs in connection with the Property and SDPCC on behalf of RAZUKI and RAZUKI INVESTMENTS. On information and belief, Defendant MALAN is closely associated with RAZUKI and RAZUKI INVESTMENTS.

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

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

29. In or around August 2016, Plaintiffs accepted the offer made by Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON, and various documents and drafts

were prepared reflecting the parties' agreement. Furthermore, High Sierra/Melograno also accepted Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSONS' offer in connection with the Property and 8861 Balboa.

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

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

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

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

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

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

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

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

38. On or around October 17, 2016, escrow on the Property closed, and the deal between RAKUZI INVESTMENTS and High Sierra was finalized. However, on information and belief, Defendants HENDERSON, RAZUKI, and RAZUKI INVESTMENTS conspired together to cause the release of the contingencies in the Commercial Property Purchase Agreement and Escrow Agreement that conferred benefits to SDPCC, including but not limited to the agreement that escrow was contingent upon the execution of the operating agreement and promissory note

with SDPCC, without the approval of Plaintiffs.

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

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

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

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

43. Moreover, despite the parties' agreements, as well as the various representations made by Defendants RAZUKI and RAZUKI INVESTMENTS, RAZUKI and RAZUKI

INVESTMENTS: (i) failed to comply with the terms of the Lease; (ii) failed to execute a joint venture and/or partnership agreement, operating agreement, and/or promissory note concerning the MMCC; (iii) falsely misrepresented to third parties that their $800,000.00 purchase of the Property included the rights to operate an MMCC on the Property; and (iv) interfered with Plaintiff SDPCC's rights concerning the Property and CUP.

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

FIRST CAUSE OF ACTION

BREACH OF JOINT VENTURE AGREEMENT

(Plaintiff HARCOURT Against Defendant RAZUKI)

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

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

47. At all relevant times, Plaintiff HARCOURT either had performed or was ready,

willing and able to perform all conditions, covenants and promises required of him in accordance with the terms of the joint venture agreement.

48. Defendant RAZUKI breached the joint venture agreement.

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

SECOND CAUSE OF ACTION

BREACH OF LEASE AGREEMENT

(Plaintiff SDPCC Against Defendant RAZUKI INVESTMENTS)

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

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

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

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

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

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THIRD CAUSE OF ACTION

ANTICIPATORY BREACH OF ORAL AGREEMENT

(Plaintiff HARCOURT Against Defendants RAZUKI and RAZUKI INVESTMENTS)

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

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

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

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

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

FOURTH CAUSE OF ACTION

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

(Plaintiffs Against Defendants RAZUKI and RAZUKI INVESTMENTS)

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

61. Under California law, there is implied in every contract a covenant by each party

not to do anything that will deprive the other parties thereto of the benefits of the contract. This covenant not only imposes upon each contracting party the duty to refrain from doing anything which would render performance of the contract impossible by any act of his own, but also the duty to do everything that the contract presupposes that he will do to accomplish its purpose.

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

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

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

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

FIFTH CAUSE OF ACTION

BREACH OF CONTRACT WITH RESPECT TO A THIRD PARTY BENEFICIARY

(Plaintiff SDPCC Against Defendants RAZUKI and RAZUKI INVESTMENTS)

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

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

68. Although Plaintiff SDPCC was not a party to either the August 22, 2016 Commercial Property Purchase Agreement or the August 24, 2016 Escrow Agreement, Plaintiff SDPCC was an intended beneficiary of both agreements, in that the agreements provided for, among other things, the execution of an operating agreement and promissory note between SDPCC and San Diego Business Services Group, LLC, in which San Diego Business Services Group LLC would provide business services to SDPCC.

69. Defendant RAZUKI INVESTMENTS breached these aforementioned agreements, and RAZUKI INVESTMENTS' breaches deprived SDPCC from receiving the benefit of entering into a contractual and business relationship with San Diego Business Services Group, LLC.

70. As a direct and proximate result of the material breaches of the terms of aforementioned agreements by RAZUKI INVESTMENTS, Plaintiff SDPCC has suffered, and continues to suffer, substantial monetary damages in an amount according to proof at time of trial.

SIXTH CAUSE OF ACTION

PROMISSORY ESTOPPEL

(Plaintiffs Against Defendants RAZUKI and RAZUKI INVESTMENTS)

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

72. Defendants RAZUKI and RAZUKI INVESTMENTS made a promise, which was clear and unambiguous in its terms.

73. Plaintiffs relied upon the promise made by Defendants RAZUKI and RAZUKI INVESTMENTS, and Plaintiffs' reliance was reasonable and foreseeable.

74. Plaintiffs were injured because of their reliance upon the promise made by Defendants RAZUKI and RAZUKI INVESTMENTS in an amount to be determined according to proof at Trial.

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SEVENTH CAUSE OF ACTION

FALSE PROMISE

(Plaintiffs Against Defendants RAZUKI and RAZUKI INVESTMENTS)

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

FRAUD

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

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

83. Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON represented to Plaintiffs that certain important facts were true – namely, that RAZUKI and RAZUKI INVESTMENTS would "move together as a team" with Plaintiffs, and that RAZUKI would sign the operating agreement between San Diego Business Services Group, LLC and SDPCC.

84. Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON, and each of them, knew that these representations were false when they made them and/or made these representations recklessly and without regard for the truth.

85. Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON intended that Plaintiff rely upon these representations, and Plaintiffs reasonably relied on these representations.

86. Plaintiffs were harmed, and Plaintiffs' reliance on Defendants RAZUKI, RAZUKI INVESTMENTS, and HENDERSON's representations were a substantial factor in causing them harm.

NINTH CAUSE OF ACTION

INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS

(Plaintiffs Against Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED)

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

88. There were oral agreements between Plaintiff HARCOURT and Defendant RAZUKI, as well as a written Lease between Plaintiff SDPCC and Defendant RAZUKI INVESTMENTS.

89. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED knew of these agreements.

90. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED intended to disrupt the performance of these contracts.

91. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED's conduct prevented performance, or made performance more expensive or difficult.

92. Plaintiffs were harmed, and Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, and SAN DIEGO UNITED's conduct was a substantial factor in

causing Plaintiffs' harm.

TENTH CAUSE OF ACTION

INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGES

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

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

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

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

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

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

98. Plaintiff SDPCC's relationships were disrupted.

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

ELEVENTH CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

(Plaintiff HARCOURT Against Defendant RAZUKI)

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

101. Plaintiff HARCOURT is informed and believes and based thereon alleges that, at all times material hereto, HARCOURT and RAZUKI were in a joint venture with each other, as

there was an undertaking by HARCOURT and RAZUKI to carry out a single business enterprise jointly for profit.

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

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

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

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

TWELFTH CAUSE OF ACTION

CIVIL CONSPIRACY

(Plaintiffs Against All Defendants)

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

107. Defendants HENDERSON, MALAN, BALBOA AVE, AMERICAN LENDING, SAN DIEGO UNITED, and CALIFORNIA CANNABIS GROUP were aware that RAZUKI and RAZUKI INVESTMENTS planned to engage in wrongful acts directed towards Plaintiff, including (i) causing Plaintiffs to rely upon various misrepresentations and false promises and (ii) breaching the oral and written agreements entered into with Plaintiffs, such that an MMCC would

operate at the Property without Plaintiffs' involvement.

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

THIRTEENTH CAUSE OF ACTION

DECLARATORY RELIEF

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

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

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

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

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

FOURTEENTH CAUSE OF ACTION

INJUNCTIVE RELIEF

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

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

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

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

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

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

118. As a result of the foregoing acts and conduct, Plaintiffs requests that the Court enter a preliminary injunction and, thereafter, a permanent injunction, enjoining Defendants RAZUKI, RAZUKI INVESTMENTS, MALAN, BALBOA AVE, SAN DIEGO UNITED and AMERICAN LENDING, 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.

PRAYER

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

AS TO THE FIRST CAUSE OF ACTION FOR BREACH OF JOINT VENTURE AGREEMENT

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

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

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

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

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

AS TO THE THIRD CAUSE OF ACTION FOR ANTICIPATORY BREACH OF ORAL CONTRACT

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

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

AS TO THE FOURTH CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

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

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

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

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

AS TO THE SIXTH CAUSE OF ACTION FOR PROMISSORY ESTOPPEL

1. For consequential and incidental damages and prejudgment interest according to proof at trial;

2. For costs of suit incurred herein; and

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

AS TO THE SEVENTH CAUSE OF ACTION FOR FALSE PROMISE

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 EIGHTH CAUSE OF ACTION FOR FRAUD

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 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

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

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

RJN-31

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

LARRY GERACI, an individual,

Plaintiff,

vs.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

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

Judge: The Honorable Joel R. Wohlfeil
Dept.: C-73

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR NEW TRIAL

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

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§141.0614

INTRODUCTION

Mr. Cotton seeks a new trial on three grounds. First, the alleged November 2, 2016 agreement is illegal and void because Larry Geraci's ("Mr. Geraci") failure to disclose his interest in both the Property[1] and the Conditional Use Permit ("CUP") violates local law and policies, as well as state law. More particularly, the San Diego Municipal Code (the "SDMC") requires those disclosures to be made. Further, Mr. Geraci entered into two stipulated judgments with the City of San Diego ("City") that mandated he complied with the City's CUP requirements, which he purposefully failed to do in his performance of the alleged November 2, 2016 agreement. For his claims against Mr. Cotton, Mr. Geraci asks this Court to assist him in violating the SDMC and the policy of AUMA, which the Court is prohibited from doing. As a result, the jury's finding that the alleged November 2, 2016 agreement is a valid contract is contrary to law.

Second, the jury applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's as it relates to the alleged November 2, 2016 agreement and subsequent acknowledgement e-mail. The jury found the parties entered into a contract on November 2, 2016 and discounted the acknowledgement e-mail based upon Mr. Geraci's testimony that he only replied to the first line of Mr. Cotton's e-mail. Mr. Geraci's objective conduct demonstrates that either (i) he agreed to a 10% interest that he later refused existed, or (ii) there was an agreement to agree. Had the jury applied an objective standard to the conduct of ***both parties***, it would not – nor could it – have reached the verdict it did. The judgment entered in accordance with the jury's verdict is contrary to law.[2]

Third, Mr. Geraci used the attorney-client privilege as a shield during discovery and a sword at trial, which prohibited Mr. Cotton from receiving a fair and impartial trial. During discovery, Mr. Cotton sought documents and communications by and between Mr. Geraci and Gina Austin ("Ms. Austin") relating to the drafting of various agreements related to the purchase of the Property. Mr. Geraci objected to the request and never produced communications related to the same based upon attorney-client privilege. At trial, however, Mr. Geraci waived the attorney-client privilege, for the first

[1] The term "Property" shall mean and refer to the real property located at 6176 Federal Boulevard, San Diego, California.

[2] The "agreement to agree" argument is a defense to the breach of contract claim made by Mr. Geraci. The argument should not, and cannot, be considered a judicial admission to the separate issue of Mr. Cotton's claim as to the oral joint venture agreement.

time, and both he and Ms. Austin testified as to their communications. Mr. Cotton was unable to cross-examine either witness with the relevant documents Mr. Geraci withheld during discovery on the ground of attorney-client privilege. The requested communications went to one of the central issues of the case – whether the alleged November 2, 2016 agreement was an agreement, or an agreement to agree. The use of the attorney-client privilege as a sword at trial was made even more improper given the content of the testimony by Mr. Geraci and Ms. Austin, both of whom accused Mr. Cotton of a crime – extortion. As a result, Mr. Cotton did not receive a fair and impartial trial.

ARGUMENT

A. STANDARD FOR MOTION FOR NEW TRIAL.

A verdict may be vacated, in whole or in part, and a new trial granted on all or part of the issues, when either the verdict is contrary to the law, there is an error in law at the trial, there is insufficient evidence to support the verdict, or an irregularity in the proceedings. Cal. Code Civ. Proc. § 657(6)-(7). A party may raise illegality of contract on a motion for new trial. *Lewis & Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141, 148 (citing *Pacific Wharf & Storage Co. v. Standard American Dredging Co.* (1920) 184 Cal. 21, 23-24)); *Gray v. Robinson* (1939) 33 Cal.App.2d 177, 182 (irregularity in the proceedings); *A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566 (litigant cannot claim privilege during discovery, then testify at trial as to the same matter); *see also Webber v. Webber* (1948) 33 Cal.2d 153, 164 (affidavit not required where motion for new trial "relies wholly upon facts appearing upon the face of the record"). On a motion for new trial, the Court sits as the 13th juror and is "vested with the plenary power – and burdened with a correlative duty – to independently evaluate the evidence." *Ryan v. Crown Castle NG Networks Inc.* (2016) 6 Cal.App.5th 775, 784.

B. RELEVANT BACKGROUND.

Mr. Geraci, an IRS Enrolled Agent, Has Two Judgments Prohibiting the Operation of a Marijuana Dispensary Unless He Complies With the SDMC

Mr. Geraci has been an enrolled agent with the IRS ("Enrolled Agent"), which "means he has a federal license that allows him to represent clients before the IRS," since 1999. (Reporter's Transcript of Trial ("RT") July 3, 2019 at 14:22-16:24; 56:25-57:11, the relevant excerpts of which are attached

hereto as **Exhibit A**.[3]) Prior to his involvement with the Property and during the time in which he was an Enrolled Agent, Mr. Geraci was involved in at least two illegal marijuana dispensaries (the "Illegal Marijuana Dispensaries"). (*See id.* (Mr. Geraci testifying that he has been an enrolled agent since 1999); Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon [CCP § 664.6] (the "Tree Club Judgment") and Stipulation for Entry of Final Judgment and Permanent Injunction; Judgment Thereon [CCP § 664.6] (the "CCSquared Judgment") (collectively referred to herein as "Geraci Judgments") true and correct copies of which are attached hereto as **Exhibits B and C**, respectively, and incorporated herein by this reference.)

Pursuant to the terms of the Geraci Judgments, Mr. Geraci could only operate or maintain a marijuana dispensary after providing written proof to the City that "any required permits or licenses to operate a marijuana dispensary, collective or cooperative have been obtained from the City of San Diego as required by the SDMC." (**Exhibit B** (Tree Club Judgment) at ¶¶ 10(b), 17 (emphasis added); Exhibit – (CCSquared Judgment) at¶ 9(b).) Unlike paragraphs 9 through 14, paragraph 10(b) in the Tree Club Judgment is not limited to the "PROPERTY." (*See id.*) Unlike paragraphs 8 and 10 in the CCSquared Judgment, paragraph 9 is not limited to the "PROPERTY." (**Exhibit C** (CCSquared Judgment).[4]) Additionally, Mr. Geraci was fined $25,000 in the Tree Club Judgment and $75,000 in the CCSquared Judgment. (**Exhibit B** (Tree Club Judgment) at ¶ 17; **Exhibit C** (CCSquared Judgment) at ¶ 15.)

State Marijuana Laws

In 2003, the State of California (the "State") enacted the Medical Marijuana Program Act (the "MMPA"), which established certain requirements for Medical Marijuana Consumer Cooperatives ("MMCC"). On October 9, 2015, the State passed the Medical Marijuana Public Safety and Environmental Protection Act, 2015 California Senate Bill No. 643, California 2015-2016 Regular Session (hereinafter cited to as "S.B. 643"). Pursuant to S.B. 643, an application must be denied if the applicant does not qualify for licensure. (S.B. 643 at § 10 (adding Cal. Bus. & Prof. Code § 19323(a), (b)(8).) An applicant does not qualify if he has been sanctioned by a city for unauthorized commercial

[3] For the convenience of the Court and to avoid a multiplicity of exhibits, true and correct copies of all relevant excerpts of testimony at trial on July 3, 2019 cited herein are contained in **Exhibit A**. Each excerpt of testimony is clearly identified by a slipsheet and bookmarked for this Court's ease or reference and expedient access.

[4] The CCSquared Judgment was a global settlement of two separate civil actions.

marijuana activity. (*Id.*) Although Section 12, which added § 19324, provides that an applicant shall not be denied a state license if the denial is based upon certain conditions, neither of the two conditions specified applies to § 19323(b)(8). (*Id.* at § 12.) In the Geraci Judgments, the City sanctioned Mr. Geraci for unauthorized commercial marijuana activity. (*See* **Exhibits B and C**.)

On November 8, 2016, the voters of California approved Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"). (Control, Regulate, and Tax Adult Use Of Marijuana Act, 2016 Cal. Legis. Serv. Prop. 64 (hereinafter cited as "Prop. 64").) The purpose and intent of AUMA was to: (i) strictly control the cultivation and sale of marijuana "through a system of state licensing, regulation, and enforcement; (ii) allow local governments to enforce state laws and regulations; and (iii) bring marijuana into a regulated and legitimate market to create a transparent and accountable system. (Prop. 64 at §§ 2, 3.) In order to create more legitimacy and transparency, among other things, AUMA requires the disclosure of all persons who have an interest in the license. (*Id.* at § 6.1 (adding §§ 26001(a) (providing broad definition of applicant), 26055(a) (licensing authorities may issue state licenses only to qualified applicants), and 26057 (prohibiting certain applicants from obtaining a license).)

Local Marijuana Laws

After the enactment of the MMPA, the City adopted Ordinance No. 20356 ("Ordinance 20356"). Pursuant to Ordinance 20356, a CUP is required to operate an MMCC. (*See id.* at § 126.0303(a); § 141.0614.) In February 2017, the City adopted Ordinance No. 20793, which requires a conditional use permit for a marijuana outlet. (Ordinance No. 20793) at p. 4 (§ 126.0303).) The approval of a CUP is governed by Process Three, which requires approval by a hearing officer and allows the hearing officer's decision to be appealed to the Planning Commission. SDMC § 112.0501 (providing overview of Process Three).

The City's CUP requirements mandate the disclosure of anyone who holds an interest in the relevant property or a CUP. (*See* **TE 30** (Ownership Disclosure Statement), a true and correct copy of which is attached hereto as **Exhibit D** and incorporated herein by this reference.) SDMC § 112.0102(b) (application shall be made on forms provided by city manager and accompanied by all the information required by the same); SDMC § 112.0102(c) (information requested on forms updated "to comply with

revisions to local, state, or federal law, regulation, or policy. As evidenced by the SDMC, there are at least two reasons for the information mandated by the application forms.

The first reason for the disclosure requirements is conflict of interest laws. (RT July 8, 2019 at 33:10-34:1, the relevant excerpts of which are attached hereto as **Exhibit E**;[5] *see also* SDMC § 27.3563 (prohibiting conflicts of interest).) The City's ethics ordinances (collectively, the "Ethics Ordinances") were adopted "to embrace clear and unequivocal standards of disclosure and transparency in government so as to avoid conflicts of interest." SDMC § 27.3501. The Ethics Ordinances require, among others, that a City official disclose his or her economic interests. *Id.* at § 27.3510. The Ethics Ordinances make it unlawful for any city official to make a municipal decision in which he or she knows, or has reason to know, that they have a disqualifying financial interest. *Id.* at § 27.3561; *see also id.* at §§ 27.3562-63. The Ethics Ordinance applies to hearing officers who make decisions on CUP applications. SDMC § 27.3503 (*see* definitions of "City Official" and "High Level Filer," the latter includes, by cross-reference to Govt. Code § 87200, hearing officers).

The second reason relates to the requirements for obtaining a license for a Marijuana Outlet ("MO"), which requires the applicant/responsible persons to undergo background checks after the issuance of a CUP. SDMC § 112.0102(c); *id.* at §§ 42.1502 (defining responsible persons), 42.1504 (requiring a permit to operate a marijuana outlet), and 42.1507 (requiring background check); (*see also* RT July 9, 2019 at 113:18-114:3 (Ms. Tirandazi, a City employee, testifying that background checks are required after the CUP process) the relevant excerpts of which are attached hereto as **Exhibit F**.[6])

Failure to Disclose Ownership Interest and Geraci Judgments

Mr. Geraci identified the Property and began talking with Mr. Cotton because the Property "may qualify for a dispensary." (**Exhibit A** at 59:18-19.) On October 31, 2016, Ms. Austin – a self-proclaimed expert in cannabis licensing – e-mailed Abhay Schweitzer instructing him to keep Mr. Cotton's name off the CUP application "unless necessary" because Mr. Cotton had "legal issues

[5] For the convenience of the Court and to avoid a multiplicity of exhibits, true and correct copies of all relevant excerpts of testimony at trial on July 8, 2019 cited herein are contained in **Exhibit E**. Each excerpt of testimony is clearly identified by a slipsheet and bookmarked for this Court's ease or reference and expedient access.

[6] For the convenience of the Court and to avoid a multiplicity of exhibits, true and correct copies of all relevant excerpts of testimony at trial on July 9, 2019 cited herein are contained in **Exhibit F**. Each excerpt of testimony is clearly identified by a slipsheet and bookmarked for this Court's ease or reference and expedient access.

with the City." (Trial Exhibit ("TE") 36, a true and correct copy of which is attached hereto as **Exhibit G** and incorporated herein by this reference; **Exhibit E** at 11:28-13:23) (Ms. Austin characterizing herself as a marijuana expert), *Id.* at 54:10-55:11.) On the same date, Mr. Geraci caused a Form DS-3032 General Application (the "CUP General Application") to be filed with the City. (*See* TE 34, a true and correct copy of which is attached hereto as **Exhibit H** and incorporated herein by this reference, at 34-001.) Rebecca Berry ("Ms. Berry") was identified as the "Lessee or Tenant" and the Permit Holder. (*Id.*) Mr. Geraci is not identified anywhere in the CUP General Application. (*See id.*) Section 7 of the CUP General Application requires the disclosure of, among other things, the Geraci Judgments (*id.* at § 7); however, they were not disclosed. (*See id.*)

On the same date, Ms. Berry executed and submitted the Ownership Disclosure Statement to the City. (*See* **Exhibit D**). As set forth in the Ownership Disclosure Statement, the list "must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of interest." (*Id.*) The Ownership Disclosure Statement also required the disclosure of "Other Financially Interested Persons." (*Id.*) The disclosure requirements are mandatory and do not include exceptions for Enrolled Agents. (*See id.*) Notwithstanding, Mr. Geraci is not identified in the Ownership Disclosure Statement. (*Id.*)

Both Mr. Geraci and Ms. Berry testified that the exclusion of Mr. Geraci was purposeful; he was not disclosed because he was as an Enrolled Agent. (**Exhibit A** at 193:19-194:5.) Mr. Geraci also claimed that the lack of disclosure was "for convenience of administration." (*See Plaintiff/Cross-Defendant Larry Geraci's Answers to Special Interrogatories, Set Two, Propounded by Defendant/Cross-Complainant Darryl Cotton* (hereinafter, the "Discovery Responses"), a true and correct copy of which is attached hereto as **Exhibit I** and incorporated herein by this reference, at 12:8-16.) However, Ms. Austin instructed the consultants to leave Mr. Cotton's name off the CUP application unless necessary because of Mr. Cotton's "legal issues with the City." Mr. Geraci also had "legal issues with the City" and he was not disclosed. (**Exhibit E** at 54:24-55:11.)

Mr. Geraci's Objective Manifestations

On November 2, 2016, Messrs. Geraci and Cotton executed the alleged November 2, 2016 agreement, which the jury determined constituted a contract. (TE 38, a true and correct copy of which

is attached hereto as **Exhibit J** and incorporated herein by this reference.) Shortly after receiving a copy of the alleged agreement, Mr. Cotton sent an e-mail stating the 10% equity position in the dispensary was not included in the document and requesting an acknowledgment that a provision regarding the same would be included in "any final agreement." (TE 42, a true and correct copy of which is attached hereto as **Exhibit K** and incorporated herein by this reference.) Mr. Geraci responded, "no problem at all." (*Id.*)

Mr. Geraci then caused certain draft agreements to be exchanged with Cotton. (*See* TE 59 and 62, true and correct copies of which are attached hereto as **Exhibits L and M**, respectively, and incorporated herein by this reference.) The draft agreements did not state they were amending a prior agreement for the purchase of the property, did not reference a prior agreement, and the "Date of Agreement" was "[t]he latest date of execution of the Seller or the Buyer, as indicated on the signature page." (*See e.g.*, **Exhibit** L at 059-003.) The draft agreements included terms that were not included in the November 2, 2016 document, and provide no indication or reference to the alleged November 2, 2016 agreement. (*See id.*) And none of the documents or communications produced by Mr. Geraci ever referenced extortion, which was never raised during the course of discovery.

Mr. Geraci Used the Attorney-Client Privilege as a Shield and a Sword

Mr. Cotton propounded discovery seeking, among other things, documents and communications by and between Mr. Geraci and Ms. Austin. (*See* **Exhibit I** (Discovery Responses) at 13:1-13, 14:8-23.) Mr. Geraci refused to produce any documents or communications based upon attorney-client privilege. (*See id.*) Mr. Geraci waived the attorney-client privilege for the first time and trial, and both he and Ms. Austin testified as to communications regarding the drafting of a purchase agreement and statements Mr. Geraci purportedly made that he was being extorted by Mr. Cotton. (**Exhibit E** at 41:10-26; *see also* **Exhibit A** at 129:22-28 (Mr. Geraci testifying as to the same statements).)[7] The testimony of Mr. Geraci and Ms. Austin was not previously disclosed due to the attorney-client privilege, but and it effectively accused Mr. Cotton of a crime. *See* Pen. Code, § 518 (defining extortion).

[7] "Extortion" is defined as the "…obtaining of property or other consideration from another, with his or her consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right." Cal. Pen. Code § 518. None of the evidence suggests any "wrongful use of force or fear" by Mr. Cotton. Multiple statements equating Mr. Cotton's conduct to extortion were inflammatory and prejudicial.

C. THE ALLEGED NOVEMBER 2, 2016 AGREEMENT WAS ILLEGAL.

The Court has a duty to, *sua sponte*, refuse to entertain an action that seeks to enforce an illegal contract. *May v. Herron*, (1954) 127 Cal.App.2d 707, 710-12 (internal citations and quotations omitted) (voiding contract where plaintiff sought to recover balance due on contract, which recovery would have allowed plaintiff to "benefit from his willful and deliberate flouting of a law designed to promote the general public welfare"). "Whether a contract is illegal … is a question of law to be determined from the circumstances of each particular case." *Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118 Cal. App. 4th 531, 540; *Bovard v. American Horse Enterprises, Inc.* (1988) 201 Cal.App.3d 832, 838. A contract is unlawful and unenforceable if it is contrary to, in pertinent part, (1) an express provision of law; or (2) the policy of express law. Cal. Civ. Code § 1667(1)-(3); *Kashani*, *supra*, at 541 (contract must have a lawful object to be enforceable). For purposes of illegality, the "law" includes statutes, local ordinances, and administrative regulations issues pursuant to the same. *Id.* at 542. "All contracts which have for their object, *directly or indirectly*, to exempt anyone from responsibility for his own … violation of law, whether willful or negligent, are against the policy of the law." Cal. Civ. Code § 1668 (emphasis added). A contract made for the purpose of furthering any matter prohibited by law, or to aid or assist any party in the violation of the law, is void. *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1109 (voiding a contract entered into for the purpose of avoiding state and federal income tax regulations). As summarized in *Yoo v. Jho* (2007) 147 Cal.App.4th 1249:

> No principle of law is better suited than that a party to an illegal contract cannot come into a court of law and ask to have his illegal objects to be carried out. The courts generally will not enforce an illegal bargain or lend their assistance to a party who seeks compensation for an illegal act.

Id. at 1255 (internal citations and quotations omitted); *see also Kashani*, *supra*, at 179; Cal. Civ. Code §§ 1550, 1608. "The test as to whether a demand connected with an illegal transaction is capable of being enforced is whether the claimant requires the aid of an illegal transaction to establish his case." *Brenner v. Haley* (1960) 185 Cal.App.2d 183, 287.

May is instructive. In *May*, the Newmans and May entered into a contract whereby May agreed to construct a home for the Newmans. *May*, *supra*, at 708. However, May could only perform under the contract by acquiring construction materials through the veteran's priority status under Federal

Priorities Regulation No. 33, which gave preference to veterans in obtaining construction materials. *Id.* The Newmans transferred title to their property to a veteran and May secured construction materials because of his veteran's status. *Id.* at 708-09. The Court of Appeals held that the contract between May and the Newmans, while valid on its face, was illegal because May knew the house was not intended for occupancy by a veteran and May's conduct in performing his obligations under the contract violated the federal regulation.

Mr. Geraci, like May, violated local laws in pursuit of his performance under the alleged November 2, 2016 agreement. On October 31, 2016, Mr. Geraci caused to be filed with the City a CUP application which failed to disclose his ownership interest in the Property, the CUP, or the Geraci Judgments, despite the City's requirement that each of the foregoing be disclosed. (*See* **Exhibit H** at 034-001 (§ 7 requires disclosure of Geraci Judgments), *id.* at 034-004 (requires disclosure of all persons with an interest in the Property and CUP); SDMC § 112.0102(b) (application shall be made on forms provided by city manager and shall be accompanied by all the information required by the same); SDMC § 112.0102(c) (information requested on forms updated "to comply with revisions to local, state, or federal law, regulation, or policy).

The non-disclosure was purposeful. (*See* **Exhibit I** – (Discovery Resp.) at 12:8-16.) Indeed, efforts were undertaken to exclude any reference to Mr. Cotton in the CUP application because of his "legal issues" with the City. There are no disclosure exceptions for Enrolled Agents, and neither the SDMC nor the Geraci Judgments allow Mr. Geraci to comply with some of the CUP requirements. Applying the test of illegal contracts, Mr. Geraci relied upon the General Application and Ownership Disclosure Statement to suggest that he complied with the terms of the alleged November 2, 2016 agreement. As a result, Mr. Geraci asks this Court to assist him in violating local laws, which the Court is prohibited from doing.

The alleged November 2, 2016 agreement also violates the policy of express law in the form of the CUP requirements and AUMA.[8] The policy of the SDMC is disclosure and transparency in

[8] Although AUMA was adopted days after the alleged November 2, 2016 agreement, pursuant to Ordinance No. O-20793, all MMCC applications in the City were replaced with the new retail sales category called an MO. Thus, the CUP application submitted by Ms. Berry on behalf of Mr. Geraci is subject to AUMA. Furthermore, the text of AUMA was circulated in July of 2016 so all of the requirements for potential successful applicants were already known to the public and attorneys specializing in cannabis laws and regulations prior to November 2, 2016.

government. Similarly, the policy of AUMA is to bring marijuana into a regulated and legitimate market to create a transparent and accountable system. Mr. Geraci's efforts, which were undertaken both before and after November 2, 2016, violated both policies. Neither of the policies provides any exceptions for Enrolled Agents, "convenience of administration," or those persons with "legal issues" – all of which Mr. Geraci has used to justify his purposeful non-disclosure.

D. THE JURY APPLIED AN OBJECTIVE STANDARD TO MR. COTTON, AND A SUBJECTIVE STANDARD TO MR. GERACI.

Mutual assent is determined under an objective standard applied to the outward manifestations, the surrounding circumstances, the nature and subject matter of the contract, and subsequent conduct of the parties; assent is not determined by unexpressed intentions or understandings. *Alexander v. Codemasters Group Limited* (2002) 104 Cal.App.4th 129, 141 (disapproved on other grounds in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 524); *People v. Shelton* (2006) 37 Cal.4th 759, 767 (internal citations and quotations omitted). Agreements to agree are unenforceable because there is no intent to be bound and the Court may not speculate upon what the parties will agree. *Bustamante v. Intuit, Inc.* (2009) 141 Cal.App.4th 199, 213-14 (internal citations and quotations omitted).

There was no dispute relating to the parties' objective manifestations. Shortly after receiving a copy of the alleged November 2, 2016 agreement, Mr. Cotton sent an e-mail stating the 10% equity position in the dispensary was not included in the document and requested an acknowledgment that the same would be included in "any final agreement." (*See* **Exhibit K**.) Mr. Geraci responded "no problem at all." (*Id.*) Mr. Geraci then had draft final agreements prepared and circulated. The draft agreements: (i) do not state they were amending a prior agreement; (ii) do not reference a prior agreement; (iii) state that the "Date of Agreement" was "[t]he latest date of execution of the Seller or the Buyer, as indicated on the signature page;" (iv) do not provide any indication that a prior agreement was reached between the parties; and (v) include terms not set forth in the alleged November 2, 2016 agreement. None of the drafts were signed and none of the documents produced by Mr. Geraci ever referenced extortion.

Only two conclusions could have been reached if the appropriate objective standard had been applied to both Mr. Cotton and Mr. Geraci. The first possible conclusion is that the alleged November 2, 2016 agreement included the 10% interest that Mr. Geraci subsequently refused to acknowledge. The

second possible conclusion is that the e-mail exchange subsequent to the alleged November 2, 2016 agreement demonstrated the parties agreed to agree. And, therefore, the alleged November 2, 2016 agreement was not enforceable.

Instead, the jury reached the conclusion that the alleged November 2, 2016 agreement was a contract. In order to do so, the jury must have applied Mr. Geraci's subjective standard. The jury must have believed Mr. Geraci's unexpressed intentions or understandings (*i.e.*, that he was only responding to the first line of Mr. Cotton's e-mail and the statements to his counsel that he was being extorted). According to Mr. Geraci's testimony, he called Cotton the following day to explain. But if the hours that passed between the November 2, 2016 agreement and Mr. Cotton's e-mail was too late for Mr. Cotton, the day that passed before Mr. Geraci's call was also too late to explain his subjective intent as to his response. Therefore, the jury's conclusion that the alleged November 2, 2016 agreement is a contract stands in direct contrast to the objective standard applied to Mr. Cotton's conduct. The jury cannot apply objective standards to Mr. Cotton and subjective standards to Mr. Geraci.

E. MR. GERACI USED THE ATTORNEY-CLIENT PRIVILEGE AS A SHIELD AND A SWORD, THEREBY VIOLATING MR. COTTON'S RIGHT TO A FAIR AND IMPARTIAL TRIAL.

"[A]n overt act of the trial court … or adverse party, violative of the right to a fair and impartial trail, amounting to misconduct, may be regarded as an irregularity." *Gray, supra,* 33 Cal.App.2d at 182; *see also Webber, supra,* 33 Cal.2d at 164 (affidavit not required where motion for new trial "relies wholly upon facts appearing upon the face of the record"). Litigation is not a game, and a litigant cannot claim privilege during discovery then testify at trial. *A&M Records, supra,* 75 Cal.App.3d at 566. As the *A&M* Court eloquently put it, "[a] litigant cannot be permitted to blow hot and cold in this manner." *Id.* At the February 8, 2019 hearing on Mr. Cotton's Motion to Compel Further Responses to Discovery to which Mr. Geraci asserted Attorney-Client Privilege, the Court acknowledged as much when it stated: "[T]here is a price to be paid; [Mr. Geraci] can't go back and reopen that area once [he has] narrowed the scope by asserting privilege." (*See* **Exhibit J** February 8, 2019 at 21:1-5. The Court subsequently entered an order prohibiting testimony on matters that Plaintiff asserted attorney-client privilege. Minute Order dated Feb. 8, 2019 (ROA 455) at p. 3 (prohibiting testimony on matters that Plaintiff

asserted privilege in discovery). Mr. Geraci has previously admitted that failure to disclose constitutes "substantial prejudice." *Plaintiff Larry Geraci's Memorandum of Points and Authorities in Opposition to Defendant Darryl Cotton's Motion to Expunge Lis Pendens* dated April 10, 2018 (ROA 179) at 4:7-8. (Mr. Geraci claimed that Cotton's "refusal to participate in discovery has substantially prejudiced Geraci and Berry in preparation of this case.").

Mr. Cotton propounded discovery seeking, among other things, documents and communications by and between Mr. Geraci and Ms. Austin related to the purchase of the Property. (*See* **Exhibit I** (Discovery Responses) at 13:1-13, 14:8-23.) No documents or communications were produced in connection with the request based upon attorney-client privilege. Then, at trial, Mr. Geraci waived privilege and he and Ms. Austin testified as to the very communications Mr. Cotton previously sought.

Mr. Geraci's use of the privilege as a shield and a sword violated Mr. Cotton's right to a fair and impartial trial. One of the central arguments Mr. Cotton presented was that the parties agreed to draft a final agreement. While Mr. Geraci's conduct was consistent with this argument, he and Ms. Austin testified at trial that Mr. Geraci's request for draft agreements was purportedly the result of extortion. The failure to disclose those documents constitutes, as Mr. Geraci previously admitted, substantial prejudicial to Mr. Cotton because it prevented Mr. Cotton from cross-examining Mr. Geraci and Ms. Austin on their inflammatory and prejudicial extortion allegations, as well as proving that the alleged November 2, 2016 agreement was an agreement to agree. Mr. Geraci cannot be permitted to "blow hot and cold."

CONCLUSION

For the reasons set forth herein, Mr. Cotton requests that the Court (i) find that the alleged November 2, 2016 agreement is illegal and void; or (ii) order a new trial and enable Mr. Cotton to conduct discovery related to the communications between Messrs. Geraci and Cotton.

DATED this 13th day of September, 2019.

TIFFANY & BOSCO, P.A.

By_____
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RJN-32

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

AND RELATED CROSS-ACTION

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

Judge: Hon. Joel R. Wohlfeil

PLAINTIFF/CROSS-DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT/CROSS-COMPLAINANT'S MOTION FOR NEW TRIAL

[IMAGED FILE]

DATE:	**October 25, 2019**
TIME:	**9:00 a.m.**
DEPT:	**C-73**
Filed:	March 21, 2017
Trial Date:	June 28, 2019
Notice of Entry of Judgment:	August 20, 2019

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff/Cross-Defendants submit this Memorandum of Points and Authorities in Opposition to Defendant/Cross-Complainant's Motion for New Trial.

I. INTRODUCTION/SUMMARY OF ARGUMENT

This case came to jury trial on July 1, 2019 and took place over the ensuing three-week period, consisting of 9 trial days. Mr. Cotton received a fair trial. The jury unanimously found in favor of Mr. Geraci and against Mr. Cotton on his causes of action for Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing and awarded damages to Mr. Geraci. (See Special Verdict Form, ROA #635.)[1] Cotton now requests this Court to set aside the verdict.[2]

As a threshold matter, Mr. Cotton's supporting documents were not timely filed and served. CCP § 569(a) provides that "Within 10 days of filing the notice, the moving party ***shall serve upon all other parties*** and file any brief ***and accompanying documents***, including affidavits in support of the motion. ...". Here, Mr. Cotton's Notice of Intent to Move for New Trial was served and filed on September 3, 2019. The ten-day period to file his brief and accompanying documents expired on September 13th. While Mr. Cotton timely filed his ***unsigned*** Memorandum of Points and Authorities just before midnight on September 13th, that filing did not include any accompanying documents. Instead, on Monday, September 16th, (3-days late) Mr. Cotton filed two documents entitled "Errata"

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[1] The jury also unanimously found in favor of Mr. Geraci and against Mr. Cotton on all of Mr. Cotton's claims set forth in his cross-complaint. (See Special Verdict Form, ROA# 636.) Mr. Cotton does not challenge the jury verdict nor seek a new trial in connection with his cross-claims; his memorandum of points and authorities in support of his new trial motion does not argue any grounds for a new trial on his cross-claims. Even if for the sake of argument Mr. Cotton intended to move for a new trial on those claims, that motion would fail for the same reason as his new trial motion fails as to the verdict against him on Mr. Geraci's claims.

[2] Mr. Cotton's counsel, Jacob Austin, did not raise an objection to the admission of any exhibits or the examination with regard to any exhibits. Attorney Austin only made two objections throughout the trial, neither of which have any impact on the pending motion. "In an appeal ... from a judgment after denial of a motion for new trial, the failure of ... counsel to object or except may be treated as a waiver of the error." (5 Witkin, Cal. Procedure (1983 pocket sup.) Attack on Judgment in Trial Court, § 119, p. 307; *Malkasian v. Irwin* (1964) 61 Cal. 2d at p. 747; see *Horn v. Atchison, T. & S.F.Ry. Co.* (1964) 61 Cal.2d 602, 610, cert. den. Sub nom.Atchison, *Topeka & Santa Fe Railway Co. v. Horn*, 380 U.S. 909 [13 L. Ed. 2d 796, 85 S. Ct. 892] ["'In the absence of a timely objection the offended party is deemed to have waived the claim of error through his participation in the atmosphere which produced the claim of prejudice.'" (*Sabella* v. Sothern Pac. Co. (1969) 70 Cal.2d at p. 319.)

which contained the accompanying documents in support of his motion.[3] Affidavits or declarations filed too late may be disregarded. (See *Morris v. Purity Sausage Co.* (1934) 1 Cal.App.2d 120; *Lewith v. Rehmke* (1935) 10 Cal.App.2d 97, 105; *Peterson v. Peterson* (1953) 121 Cal.App.2d 1, 9.)

As to the merits of his motion for new trial, Mr. Cotton's asserts three grounds:

First Mr. Cotton contends the November 2, 2016 agreement was illegal and void because Mr. Geraci failed to disclose his interest in both the Property and the Conditional Use Permit ("CUP"). Mr. Cotton erroneously contends the agreement violates local law and policies, as well as state law. The statutes upon which Mr. Cotton relies were not even in effect at the time the November 2, 2016 contract was entered.[4] Even if that is disregarded, the contract was otherwise legal as discussed *infra*.

Additionally, Mr. Cotton has waived the "illegality" argument for two reasons: (1) he never raised illegality as an affirmative defense; and (2) with regard to the "illegality" argument, Attorney Austin represented to the Court at the conclusion of evidence and in response to the Court's inquiries if there were any other exhibits Mr. Austin wished to admit into evidence: "I'm willing to not argue the matter if your Honor is inclined not to include it. We can just – forget about it." (Reporter's Transcript herein after referred to as "RT") (Plaintiff/Cross-Defendants Notice of Lodgment in Opposition to Motion for New Trial ("Plaintiff NOL") (RT, July 10, 2019, p. 69:15-72:26, Ex. 6 to Plaintiff NOL)

Even assuming the illegality argument has not been waived, the argument that the November 2, 2016 contract is illegal fails. Mr. Geraci's stipulated judgments with the City of San Diego, and the

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[3] Mr. Cotton's Errata claims that "[d]ue to a clerical error, an incomplete draft of the Memorandum of Points and Authorities in Support of the Motion for New Trial was uploaded for electronic filing and service instead of the true final copy and, as such, the table of Authorities in the draft was incomplete, the document was not executed and the exhibits referenced therein were not attached." The signature page for the Memorandum of Points & Authorities attached to the Errata is dated, ***September 15, 2019***, (2 days after the papers were filed and served) which belies Mr. Cotton's claim that the motion was complete, filed and served in a timely manner and that the failure to transmit the signature page and accompanying documents was a "clerical error. Indeed, it suggests Mr. Cotton's filing was untimely.

[4] In making his illegality argument, Mr. Cotton cites to B&P Code §§ 26000 (Effective June 27, 2017); 26055 (Effective July 2019); and 26057(a) (Effective January 1, 2019). The contract in question was entered November 2, 2016. The general rule that judicial decisions are given retroactive effect is basic in our legal tradition. In *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207, the California Supreme Court observed: "[t]he principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student." (*United States v. Security Industrial Bank* (1982) 459 U.S. 70, 79, 103 S.Ct. 407, 413, 74 L.Ed.2d 235.) The statutes cited by Mr. Cotton in support of his "illegality" argument were not in effect until after, sometimes years after, entering the contract in question.

use of an agent in application process for the CUP, do not render the contract illegal. Indeed, as set forth herein, several witnesses testified that it is common practice for an applicant on a CUP application for a medical marijuana dispensary to utilize an agent in that process.

Second, Mr. Cotton argues the verdict is against law because the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's conduct as related to the November 2, 2016 Agreement, the "confirmation email" and the "disavowment" allegation. To the contrary, there is no legal basis to conclude that the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton and a subjective standard to Mr. Geraci's conduct. That is simply Mr. Cotton's interpretation of the facts and evidence which he would like to substitute for the jury's unanimous verdict.

Third, Mr. Cotton contends that Mr. Geraci used the attorney-client privilege as a shield during discovery and as a sword during trial, which prohibited Mr. Cotton from receiving a fair and impartial trial.[5] Mr. Cotton has misrepresented the facts, circumstances and the Minute Order issued by the Court in connection with the attorney-client privilege issues during discovery and the waiver of those issues at trial. In spite of asserting the attorney-client privilege with regard to the documents drafted by Gina Austin's office, and contrary to Cotton's arguments herein, those documents were produced to Mr. Cotton during discovery. (Cross-Defendant Rebecca Berry's Responses to Request, For Production of Documents, Set One, Ex. 1 to Plaintiff NOL; and Plaintiff/Cross-Defendant Larry Geraci's Amended Responses to Special Interrogatories, Set Two, Ex. 2 to Plaintiff NOL) The documents were also listed on the Joint TRC Exhibit List and admitted into evidence at trial without objection. (Trial Exhibits 59, 62, Ex. 7 to Plaintiff NOL; RT July 3, 2019, 129:22-133:27, Ex. 3 to NOL; Joint Exhibit List, Ex. 10 to Plaintiff NOL) Mr. Cotton's counsel did not raise any evidentiary objections to the waiver of attorney-client privilege either with regard to the documentary evidence or the testimonial evidence. As such, Mr. Cotton's claim that he was unable to cross-examine either Mr. Geraci or Ms. Austin with the relevant documents (Cotton's P's & A's, p. 5:1-3) is without merit.

[5] This is a C.C.P. § 657(7) issue regarding evidentiary rulings, a ground *not* set forth in the Notice of Intent to Move for New Trial. (See *Treber v. Sup. Ct* (1968) 68 Ca.2d 128, 131; *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4th 1599, 1601-1605.) (Practice Guide: Civil Trials and Evidence, Post Trial Motions, (The Rutter Group 2010) ¶ 18:201.)]

Indeed, armed with those documents during discovery, Mr. Cotton never took the depositions of Mr. Geraci nor Attorney Gina Austin. And he in fact questioned the witnesses about those documents during trial. (RT July 8, 2019, p. 58:3-60:10, Ex. 4 to Plaintiff NOL)

Finally, as a matter of law, a new trial may only be granted when the verdict constitutes a miscarriage of justice. (Calif. Const., Art. VI, §13.) "If it clearly appears that the error could not have affected the result of the trial, the court is bound to deny the motion." [*Bristow v. Ferguson* (1981) 121 Cal.App.3d 823, 826; *Mosesian v. Pennwalt Corp.* (1987) 191 Cal.App.3d 851, 866-867, (disapproved on other grounds in *People v. Ault* (2004) 33 Cal.4th 1250, 1272.)] Mr. Cotton has not demonstrated the claimed errors likely affected the result of the trial.

II. STANDARDS FOR NEW TRIAL MOTION BASED ON C.C.P. § 657(6)

A. Cotton's New Trial Motion is Limited to the Statutory Ground that the Verdict was "Against Law" under C.C.P. § 657(6)

In his Notice of Intent to Move for New Trial dated September 13, 2019, Mr. Cotton gave notice that he was bring the motion pursuant to C.C.P. § 657(6) on the ground that "the verdict is against the law." (ROA#656.) Yet in his brief, he asserts that his motion for new trial is made on the grounds of "irregularity of proceedings" under C.C.P. § 657(1) and "against the law" under (C.C.P. § 657(7), *neither of which grounds were set forth in his Notice of Intention to Move for New Trial.* (Cotton P's&A's, p. 5:10-21) A notice of intention to move for a new trial is deemed to be a motion for new trial *on the grounds stated in the notice.* (C.C.P. §659.) It is well-established that a new trial order "can be granted only on a ground specified in the motion." (*Malkasian v. Irwin* (1964) 61 Cal.2d 738, 745; *De Felice v. Tabor* (1957) 149 Cal.App.2d 273, 274.)

Mr. Cotton also asserts that "the Court sits as the 13th juror and is "vested with the plenary power – and burdened with a correlative duty – to independently evaluate the evidence," (incorrectly citing to *Ryan v. Crown Castle NG Networks Inc.* (2016) 6 Cal.App.5th 775, 784, which concerned C.C.P. § 657(5), not § 657(6). Rather, the "against law" ground differs from the "insufficiency of the evidence" ground in that there is no weighing of evidence or determining credibility. The "against law" ground applies only when the evidence is without conflict in any material point and insufficient as a matter of law to support the verdict. (*McCown v. Spencer* (1970) 8 Cal.App.3d 216, 229.)

B. The Correct Standard for a New Trial Motion Based on the Statutory Ground that the Verdict is "Against Law"

The statutory ground under C.C.P. §657(6) that the verdict is "against law" is of very limited application. (*Tagney v. Hoy* (1968) 260 Cal.App.2d 372, citing *Kralyevich v.Magrini* (1959) 172 Cal.App.2d 784 ["A decision can be said to be 'against law' only: (1) where there is a failure to find on a material issue; (2) where the findings are irreconcilable; and (3) where the evidence is insufficient in law and without conflict in any material point.[6] C.C.P. § 657(6) is not a ground to have the court reconsider its rulings. The "against law" ground applies only when the evidence is without conflict in any material point and insufficient *as a matter of law* to support the verdict. (*McCown v. Spencer* (1970) 8 Cal.App.3d 216, 229; see *Fergus v. Songer* (2007) 150 Cal.App.4th 552, 567-569 [finding verdict was not "against law" because it was supported by substantial evidence]; *Marriage of Beilock* (1978) 81 Cal.App.3d 713, 728.) C.C.P. § 657(6) does not cover errors that fall within the other sections of C.C.P. § 657, such as § 657(7). (*O'Malley v. Carrick* (1922) 60 Cal.App. 48, 51)

III. ARGUMENT

A. MR. COTTON'S ILLEGALITY ARGUMENTS FAIL

1. Mr. Cotton Has Waived and Abandoned the "Illegality" Argument

Mr. Cotton failed to raise "illegality" as an affirmative defense in his Answer to Plaintiff's Complaint (ROA#17). Normally, affirmative defenses not raised in the answer to complaint or cross-complaint are waived. (E.g., *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 813.) As stated above, Mr. Cotton did not plead "illegality" as an affirmative defense; therefore, Mr. Cotton cites *Lewis Queen v. N.M. Ball Sons* (1957) 48 Cal.2d 141, 146-148), for the proposition that illegality can be raised "at any time." That is a correct statement of the law, however, that rule is not unqualified. Two California Supreme Court cases decided after *Lewis & Queen – Fomco, Inc. v. Joe Maggio, Inc.* (1961) 55 Cal.2d 162, and *Apra v. Aureguy* (1961) 55 Cal.2d 827 – both rejected post-

[6] Mr. Cotton did not set forth any failure by the court as to a finding on some material issue. Mr. Cotton also did not establish findings that are irreconcilable. Mr. Cotton further did not establish that the evidence is insufficient in law and without conflict on any material point. Other challenges as to the application of law in this case would be governed by C.C.P. § 657(7) not cited in Mr. Cotton's Notice of Intention to Move for New Trial and, therefore, are not reviewable herein. For these reasons alone, Mr. Cotton's arguments for a new trial should be rejected by this Court.

trial defenses of illegal contract because the illegality defense had not been raised in the trial court. (See *Fomco, supra,* 55 Cal.2d at p. 166; 55 Cal.2d at p. 831.) In fact, language in *Fomco* suggests that the high court actually rejected *Lewis & Queen's* dicta that the issue of illegal contract could be raised for the first time on appeal. (See *Chodosh v. Palm Beach Park Association* 2018 WL 6599824)

At trial the "illegality" issue appears to have first come up in response to questions being posed by Attorney Austin in his examination of witnesses. Attorney Weinstein argued Attorney Austin was asking questions of witnesses which implied it was illegal for Mr. Geraci to operate a legally permitted dispensary. Attorney Weinstein pointed out, and the Court agreed, that the two civil judgments on their face did not bar Mr. Geraci from operating a legally permitted dispensary. (RT, July 9, 2019, p. 120:20-121:24, Ex. 5 to Plaintiff NOL) Attorney Weinstein went on to argue that Business & Professions Code Section 26057 was *permissive* and not mandatory and that it dealt with state licenses, not a City CUP. The Court was troubled by the fact that Attorney Austin had not filed a trial brief addressing this issue, nor had Attorney Austin filed any memorandum of points and authorities on the issue. The Court concluded: "So for the time being, I'm tending to agree with the plaintiff's side without the defense having given me something I can look at and absorb." (RT, July 9, 2019, p. 120:20-123:6, Ex. 5 to Plaintiff NOL)

Later that day, Attorney Austin called Joe Hurtado to the stand. Joe Hurtado had a vested interest in the case as he was financing Mr. Cotton's litigation expenses and attorneys' fees. (RT July 9, 2019, p. 150:13-18, Ex. 5 to Plaintiff NOL) Attorney Austin improperly attempted to elicit expert testimony from Joe Hurtado, that it was his opinion that Mr. Geraci did not qualify for a CUP under the Business & Professions Code. (RT, July 9, 2019, 151:22-28, Ex. 5 to Plaintiff NOL) During Attorney Austin's examination of Mr. Hurtado, the Court initiated a side-bar at which Mr. Hurtado's proposed testimony was discussed. The Court permitted Mr. Hurtado to testify to hearsay conversations with Gina Austin and hearsay conversations with anyone else on Mr. Geraci's team. At the conclusion of Mr. Hurtado's testimony, and after excusing the jury, the Court permitted the parties to make a record of that side bar. (RT, July 9, 2019, p. 155:8-158:18, Ex. 5 to Plaintiff NOL) The Court expressed to Attorney Austin that to the extent Mr. Hurtado wanted to express legal opinions, he was not going to permit such testimony. In response, Attorney Austin admitted that "perhaps Mr.

Hurtado should have been designated as an expert...". (RT, July 9, 2019, p. 157:13-15, Ex. 5 to Plaintiff NOL) Mr. Hurtado was not designated as an expert witness and his opinion testimony was properly excluded.

The "illegality" issue was again raised on July 10, 2019, when Attorney Austin offered Trial Exhibit 281 into evidence, which was a copy of Business & Professions Code § 26051; and requested the Court take judicial notice of the two lawsuits in which Mr. Geraci was a named party. The Court sustained Attorney Weinstein's objections to Business & Professions Code § 26051 being admitted into evidence. As to the request for judicial notice of the two prior cases against Mr. Geraci, Attorney Weinstein raised an Evidence Code § 352 objection.

The Court stated:

> Putting aside whether the probative value is substantially outweighed by undue prejudice or any other of the 352 factors including but not limited to cumulativeness, as I read these judgments, Mr. Geraci is not barred from trying to obtain whatever permission he would need or anybody would need from operating a marijuana dispensary. And I thought that was your theory at one point.
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> And if that were your theory, I'm not seeing anything, well, inside the four corners of these judgments that prohibit Mr. Geraci from, for example, doing the deal that he had proposed to do with Mr. Cotton.

Attorney Austin replied to the Court: "I think there was a change in the law, which would – would change that. ***But I'm willing to not argue the matter if your Honor is inclined not to include it. We can just – forget about it.***" The Court then sustained the objections and declined to take judicial notice of Mr. Geraci's two prior judgments. (RT, July 10, 2019, p. 69:15-72:26, Ex. 6 to Plaintiff NOL) [trial court could properly deny a motion for new trial based on a waiver of the issue during trial. (*Miller v. National American Life Ins. Co.* (1976) 54 Cal.App.3d 331, 346; *Horn v. Atchison, T. & S.F.Ry. Co.*, (1964) 61 Cal.2d 602; *Sepulveda v. Ishimaru*, (1957) 149 Cal.App.2d 543, 547]

It is clear in the instant case, that Attorney Austin abandoned his "illegality" argument; i.e., Mr. Austin's statement to the Court: "I think there was a change in the law, which would – would change that. But I'm willing to not argue the matter if your Honor is inclined not to include it. We can just – forget about it." (RT, July 10, 2019, p. 72:10-13, Ex. 6 to Plaintiff NOL) Having waived this issue during the trial, Mr. Cotton is precluded from urging it as a ground for granting a new trial.

2. The Contract at Issue in This Case is Not Illegal.

Even if the statutes Mr. Cotton relies upon were in effect on November 2, 2016 when the contract was entered (which they were not) and there were no waiver of the "illegality" issue (which there was), the November 2, 2016 agreement remains a legal contract.

The stipulated judgments on their face permit Mr. Geraci to apply for a CUP. In Case Number 37-2014-00020897-CU-MC-CTL, paragraph 8a enjoins Mr. Geraci from "Keeping, maintaining, operating, or allowing the operation of an ***unpermitted marijuana dispensary*** …". (Italics, Bold Added.) Paragraph 8(b) specifically sates "***Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.***" (Italics, Bold Added.)

In Case Number 37-2015-00004430-CU-MC-CTL, Paragraph 7 prevents Defendant from "Keeping, maintaining, operating or allowing any commercial, retail, collective, cooperative or group establishment for the growth, storage, sale or distribution of marijuana, including, but not limited to, any marijuana dispensary, collective or cooperative organized anywhere in the City of San Diego ***without first obtaining a Conditional Use Permit pursuant to the San Diego Municipal Code.***" (Italics, bold added)

It was this language in the two stipulated judgments that led this Court to state: "I'm not seeing anything, well, inside the four corners of these judgments that prohibit Mr. Geraci from, for example, doing the deal that he had proposed to do with Mr. Cotton." To which, Attorney Austin stated "***We can just – forget about it.***" (RT, July 10, 2019, p. 69:8-15, Ex. 6 to Plaintiff NOL)

3. The B&P Code Does Not Bar Mr. Geraci From Applying for a CUP

Setting aside waiver and the fact that the two stipulated judgments, on their face, permit Mr. Geraci to obtain a CUP, there is no mandatory provision in the Business & Professions Code which would bar Mr. Geraci from lawfully obtaining a CUP.

Section 26057(b)(7) of the California Business & Professions Code provides that "[t]he licensing authority ***may*** deny the application for licensure or renewal of a **state license** if ... [t]he applicant, or any of its officers, directors or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date the

application is filed with the licensing authority." (Cal. Bus. & Prof. Code § 26057(b)(7) [*emphasis added*].) Section 26057 is part of a larger division known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act, which has the purpose and intent to "control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale" of commercial medicinal and adult-use cannabis. (Cal. Bus. & Prof. Code § 26000.) Under this division, a "license" refers to a "state license issued under this division, and includes both an A-license and an M-license, as well as a laboratory testing license." (Cal. Bus. & Prof. Code § 26001(y).)

In this case, the CUP is not a state license. Even if this statute were to apply to a CUP, the permissive nature of the authority would not *require* the denial of a CUP license because it is up to the discretion of the licensing authority to make such a decision based on the conditions provided in section 26057(b). (Cal. Bus. & Prof. Code § 26057(b).) In addition, attorney Gina Austin testified at trial the statute would not prevent Mr. Geraci from obtaining a CUP. (RT, July 8, 2019, p. 55:12-57:21, Ex. 4 to Plaintiff NOL)

4. It Is Common Practice For CUP Applicants To Use Agents During The Application Process.

Mr. Cotton argues that Mr. Geraci did not disclose his interest on the Ownership Disclosure Statement and that therefore Mr. Geraci is asking this Court to assist him in violating local laws, which the Court is prohibited from doing. (Cotton P's & A's, p. 12:16-23)

Rebecca Berry, the CUP applicant, signed the CUP forms as Mr. Geraci's agent. This was disclosed to Mr. Cotton from the outset. Prior to Mr. Cotton signing the Ownership Disclosure Statement he knew that Ms. Berry was going to be acting as Mr. Geraci's agent for purposes of the CUP. (RT, July 8, 2019, p. 99:15-19, Ex. 4 to Plaintiff NOL; and Trial Exhibit 30, Ex. 8 to Plaintiff NOL) In fact it was Mr. Cotton's belief that Ms. Berry had to sign the Ownership Disclosure Statement as a Tenant Lessee. (RT, July 8, 2019, pp. 101:26-102:7, Ex. 4 to Plaintiff NOL; and Trial Exhibit 30, Ex. 8 to Plaintiff NOL)

Abhay Schweitzer testified that there is no problem with that (Ms. Berry signing as an agent for Mr. Geraci) because, from the City's perspective, the City is only interested in having someone make the representation that they are the responsible party for paying for the permitting process. (RT,

July 8, 2019, p. 31:22-33:13, Ex. 4 to Plaintiff NOL) And as to the Ownership Disclosure statement, the City's Form is limited, only permitting three choices, none of which fit the circumstances in this case; thus attorney Gina Austin testified that there was no problem from her perspective with Ms. Berry checking tenant/lessee. (RT, July 8, 2019, p. 33:14-35:11, Ex. 4 to Plaintiff NOL) Mr. Schweitzer testified that it is not unusual for an agent to be listed as the owner on the form. (RT, July 9, 2019, p. 60:20-27, Ex. 5 to Plaintiff NOL)

During Mr. Austin's cross-examination of Firouzeh Tirandazi, a City Project Manager III (the highest classification of Project Managers at the City of San Diego), he tried to get her to testify that "anyone with an ownership or financial interest in a marijuana outlet is supposed to be disclosed to the City." Ms. Tirandazi testified that they (the City) are only looking for the property owner and the tenant/lessee. (RT, July 9, 2019, p. 112:23-28; Ex. 5 to Plaintiff NOL) Ms. Tirandazi was unfamiliar with the California Business & Professions Code vis-à-vis the CUP application process. (RT, July 9, 2019, p. 113:1-5, Ex. 5 to Plaintiff NOL)

B. MR. COTTON'S ARGUMENT THAT THE VERDICT IS AGAINST THE LAW BECAUSE THE JURY DISREGARDED THE JURY INSTRUCTIONS FAILS.

Mr. Cotton contends the verdict is contrary to law because, he argues, the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's conduct as related to the November 2, 2016 Agreement, the "confirmation email" and the "disavowment" allegation. To the contrary, there is no legal basis to conclude that the jury disregarded the jury instructions and applied an objective standard to Mr. Cotton and a subjective standard to Mr. Geraci's conduct. That is simply Mr. Cotton's interpretation of the facts and evidence which he would like to substitute for the jury's unanimous verdict.

If the jury has been instructed correctly and returns a verdict contrary to those instructions, the verdict is "against law." (See *Manufacturers' Finance Corp. v. Pacific Wholesale Radio* (1933) 130 Cal.App.239, 243.(A new trial motion based on the "against law" ground permits the moving party to raise new legal theories for the first time; i.e., the trial judge gets a second chance to reexamine the judgment for errors of law. (*Hoffman-Haag v. Transamerica Ins. Co.* (1991) 1 Cal.App.4th 10, 15.)

Mr. Cotton asks this Court to accept *his* interpretation of the evidence; disregard the jury's

evaluation and interpretation of the evidence; and grant him a new trial based upon *his* theory of what the evidence shows. Specifically, Mr. Cotton urges that there was no disputed evidence relating to the parties' objective manifestations regarding the contract formation. (Cotton P's&A's, p. 13:16-17.) This is yet another iteration of Mr. Cotton's mantra in numerous motions throughout the litigation that the "disavowment allegation" was case dispositive.

The unanimous verdict of a sophisticated jury militates strict adherence to the principle that courts "credit jurors with intelligence and common sense and presume they generally understand and follow instructions." (*People v. McKeinnon* (2011) 52 Cal.4th 610, 670 ["defendant manifestly fails to show a reasonable likelihood the jury misinterpreted and misapplied the limiting instruction"].) The Court's instructions to the jury, which, "absent some contrary indications in the record," must be presumed heeded by the jury. (*Cassim v. Allstate Ins. Co.* (2004)33 Cal.4th 780 at 803.)

The Court gave CACI Nos. 302 – Contract Formation Essential Factual Elements; 303 – Breach of Contract – Essential Factual Elements; and a host of other instructions regarding contract formation, interpretation and breach. Those instructions were correct statements of the applicable law. Mr. Cotton's counsel did not object to any of those instructions. Mr. Cotton has not overcome the presumption that the jury heeded the Court's instructions. He fails to show a reasonable likelihood the jury misinterpreted and misapplied the jury instructions related to contract formation.

In support of his argument, Mr. Cotton argues that Mr. Geraci had draft "final" agreements prepared and circulated by Attorney Gina Austin, and therefore, the argument goes, the November 2, 2016 Agreement could not have been the final agreement between the parties. This argument simply ignores the testimony of Larry Geraci that he felt he was being extorted by Mr. Cotton and did not want to lose all of the money he had invested in the project and therefore he instructed his attorney, Gina Austin to draft some agreements, attempting to negotiate some terms that Mr. Cotton might be happy with. Those draft agreements were prepared by Gina Austin's office and forwarded to Mr. Cotton. (Trial Exhibit 59, 62, Ex. 7 to Plaintiff NOL; RT July 3, 2019, 129:22-133:27, Ex. 4 to NOL) Mr. Cotton refused to accept those terms and no new agreement was reached. Mr. Geraci became fed-up and filed the instant lawsuit to protect his investment based on the November 2, 2016 written agreement the parties had entered into.

Mr. Cotton sets forth a number of factors which he claims support his interpretation of the evidence that the November 2, 2016 agreement was not the final agreement of the parties. (Cotton Ps &As, p. 13:16-25.) However, Mr. Cotton fails to acknowledge that each of the alleged factors he claims support his argument, are equally supportive of Mr. Geraci's and Attorney Gina Austin's testimony that Mr. Geraci felt he was being extorted by Mr. Cotton and requested Gina Austin to please draft new contracts so he would not lose his investment. (RT July 8, 2019, p. 41:10-26, Ex. 4 to Plaintiff NOL.) Consistent with their testimony, the November 2, 2016, written agreement was neither amended nor superseded by a new agreement.

C. MR. COTTON'S ARGUMENT THAT HE WAS DENIED A FAIR TRIAL AS THE RESULT OF ERRORS RELATING TO THE USE OF THE ATTORNEY-CLIENT PRIVILEGE DURING DISCOVERY AND AT TRIAL ALSO FAILS.

Mr. Cotton contends that Mr. Geraci used the attorney-client privilege as a shield during discovery and as a sword during trial, which prevented Mr. Cotton from receiving a fair and impartial trial. This is a C.C.P. § 657(7) issue regarding evidentiary rulings, a ground *not* set forth in Mr. Cotton's Notice of Intent to Move for New Trial. (See *Treber v. Sup. Ct* (1968) 68 Ca.2d 128, 131; *Hernandez v. County of Los Angeles* (2014) 226 Cal.App.4th 1599, 1601-1605.) (Practice Guide: Civil Trials and Evidence, Post Trial Motions, (The Rutter Group 2010) ¶ 18:201.)]

Preliminarily, under C.C.P. § 657(1), evidentiary rulings by which relevant evidence was erroneously excluded (or conversely, irrelevant evidence erroneously admitted) may be grounds for a new trial if prejudicial to the moving party's right to a fair trial. [Civil Trials and Evidence, Post Trial Motions, The Rutter Group 18:134.1] A motion for new trial on this ground *must* be made on affidavits. Mr. Cotton has failed to file any affidavits in support of his motion for new trial

Alternatively, erroneous evidentiary rulings (admitting or excluding evidence may be challenged under C.C.P. §657(7) as an "Error in law, occurring at the trial and excepted to by the party making the application." Mr. Cotton has *not* moved for a new trial based on either C.C.P. § 657(1) or C.C.P. §657(7). Instead, in his Notice of Intent to Move for New Trial (p. 2:8-11), Mr. Cotton has sought a new trial on the sole ground that the verdict is "against law" pursuant to C.C.P. § 657(6). A notice of intention to move for a new trial is deemed to be a motion for new trial *on the grounds stated*

in the notice. (C.C.P. §659.) Mr. Cotton cannot assert grounds for new trial not stated in the Notice.

As to the merits of the argument, Mr. Cotton has misrepresented the facts, circumstances and the Minute Order issued by the Court in connection with the attorney-client privilege issues during discovery and the waiver of those issues at trial.

Mr. Cotton claims there was a Court order prohibiting testimony on matters that Plaintiff asserted attorney-client privilege. (Mr. Cotton's P's & A's, p. 14:26-28) In support of this contention, Mr. Cotton Cites to the Court's Minute Order dated February 8, 2019 (ROA#455 at p. 3.) This misrepresents what that Court Order states. It actually states:

> Plaintiff's objections on the basis of privilege to REQUEST FOR PRODUCTION NO. 29 are SUSTAINED; however, the scope of the request appears to seek relevant documents. Given Plaintiff's election to assert the privilege and/or doctrine in discovery, the Court will ***HEAR*** on the scope of the testimony Plaintiff will be not be permitted to provide at trial on the subject of the DISAVOWMANET ALLEGATION."

Cleary, the Court said it would hear and determine the scope of the testimony allowed; it did not prohibit testimony as alleged by Mr. Cotton. Thereafter, Mr. Cotton's attorney drafted the Notice of Ruling which only prevents Rebecca Berry from testifying on the matter of the disavowment allegation. It does not bar any other witness from so testifying. (ROA# 455, p. 2.)

In addition, Mr. Cotton asserts that Mr. Geraci used the attorney-client privilege as a shield and a sword, thereby violating Mr. Cotton's right to a fair and impartial trial. This argument fails on many levels, and has otherwise been waived by Mr. Cotton's failure to object to either the documentary evidence or the testimonial evidence.[7] In fact, Mr. Cotton's attorney conducted substantial examination of witnesses on these very topics.

Mr. Cotton has waived this argument for the following reasons:

1. He never took the depositions of Mr. Geraci or Gina Austin for ascertain this information from them;

2. In response to Mr. Cotton's requests for the production of all documents relating to the purchase of the property drafted or revised by Gina Austin [RFPs Nos. 18, 19], Mr. Geraci objected on the grounds of attorney-client privilege; however, in response to RFP 19, he added that ***"Responding***

[7] "Failure to object to the reception of a matter into evidence constitutes an admission that it is competent evidence." (*People v. Close* (1957) 154 Cal.App.2d 545, 552; *People v. Wheeler* (1992) Cal.4th 284, 300.)

Party has produced previously all responsive documents drafted by Ms. Austin or persons employed in her law firm."

3. Indeed, all such responsive documents had been produced and were marked as Trial Exhibits 59 and 62 which were admitted at trial with Mr. Cotton's Attorney's representations that he had no objections to the admission of the documents. (RT July, 3, 2019, pp. 130:18-26; 132:2-7, Ex. 3 to Plaintiff NOL.) Mr. Cotton testified that he received Exhibit 59 on February 27, 2017, and Exhibit 62 on March 2, 2017. (RT July 8, 2019, pp. 137:1-138:6, Ex. 4 to Plaintiff NOL.) In fact Mr. Cotton responded to Mr. Geraci regarding those documents. (RT July 8, 2019, pp. 138:2-141:4, Ex. 4 to Plaintiff NOL; and Trial Exhibits 63 and 70, Ex. 9 to Plaintiff NOL)

4. Larry Geraci testified regarding these exhibits and the surrounding circumstances. Mr. Cotton's attorney noted he had no objection to the admission of those exhibits (RT July 3, 2019, pp. 130:18-26; 132:2-7, Ex. 3 to Plaintiff NOL) and he did not object to the testimony.

5. Attorney Gina Austin testified regarding these exhibits and the surrounding circumstances and Mr. Cotton's attorney made no objections. (RT July 8, 2019, p. 41:10-26, Ex. 4 to Plaintiff NOL)

6. Mr. Cotton's attorney cross-examined Gina Austin regarding the draft agreements drafted by Ms. Austin's office. (RT July 8, 2019, p. 58:3-60:10, Ex. 4 to Plaintiff NOL)

Having failed to make any objections whatsoever to any of the documentary and testimonial evidence of which he now complains, Mr. Cotton has waived any argument that the material should not have been admitted.

Mr. Cotton cites *A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 556 for the proposition that a litigant cannot claim privilege during discovery and then testify at trial. The *A&M Records* case is clearly distinguishable from the case at bar. In that case, a defendant accused of distributing pirated records failed to produce at his deposition documents requested by the plaintiff "and also refused to answer any questions of substance on the constitutional ground (5th Amendment) that his answers might tend to incriminate him." (*A&M Records, supra*, 75 Cal.App.3d at p. 654.) The trial court ordered the defendant to turn over the requested documents by a specified date before trial, or the defendant would be barred from introducing them at trial, and the court also precluded the

defendant "from testifying at trial respecting matters [and] questions ... he refused to answer at his deposition[.]" (*Id.* at p. 655.) The order limit[ed] the scope of [the defendant]'s testimony only, and not that of any other witness" at his company. (*Ibid.*)

First and foremost, this case does not involve a situation where a party claims the 5th Amendment privilege against self-incrimination and then waives it at trial, so the *A & M Records* case has no application to the case at bar. The Court held that a litigant cannot assert his constitutional privilege against self-incrimination in discovery and then waive the privilege and testify at trial. (*Ibid.*) By analogy, and without citation, Mr. Cotton seeks to extend this reasoning to the attorney-client privilege being asserted during discovery and then waived at trial. This argument is inapplicable to this case where the attorney-client documents were produced to Mr. Cotton; were responded to by Mr. Cotton; were offered and admitted at trial with no objection by Mr. Cotton; the witnesses (Larry Geraci and Gina Austin) testified without any objection being made; and where Mr. Cotton's own attorney conducted extensive examination of that witness with regard to the relevant communications between Ms. Austin and her client, Mr. Geraci. And Mr. Cotton himself was examined regarding these exhibits.

IV. CONCLUSION

This Court ensured that Mr. Cotton received a fair trial from a fair and impartial jury. The jury paid careful attention, sifted through the evidence, and carefully came to an appropriate verdict. For the above-stated reasons, the Court should deny Mr. Cotton's motion for a new trial. "There must be some point where litigation in the lower courts terminates" because otherwise "the proceedings after judgment would be interminable". (*Coombs v. Hibberd* (1872) 43 Cal. 452, 453.) It is time to end this litigation in the trial court and respect the jury's judgment.

FERRIS & BRITTON
A Professional Corporation

Dated: September 23, 2019

By: Michael R. Weinstein
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RJN-33

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

LARRY GERACI, an individual,

Plaintiff,

vs.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

vs.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

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

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

REPLY IN SUPPORT OF MOTION FOR NEW TRIAL

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

Hr'g Date: October 25, 2017
Time: 9:00 a.m.
Dept.: C-73

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In his *Memorandum of Points and Authorities in Support of Motion for New Trial* (the "Motion for New Trial"), Mr. Cotton demonstrated that: (1) Mr. Geraci failed to comply with the City's and the State's CUP requirements and, therefore, the alleged November 2, 2016 agreement is illegal; (2) the jury applied an objective standard to Mr. Cotton and a subjective standard to Mr. Geraci; and (3) Mr. Geraci used the attorney-client privilege as a shield during discovery and a sword at trial. In his *Opposition to Defendant/Cross-Complainant's Motion for New Trial* (the "Response"), Mr. Geraci attacks the merits of the arguments on three separate grounds.

First, the Response argues that the illegality argument was waived because it was not raised in the Answer. The argument fails because Mr. Cotton reserved the right to assert all affirmative defenses in paragraph 16 of his Answer, illegality cannot be waived, and the Court has a duty, *sua sponte*, to address the argument.

Second, the Response argues that the alleged November 2, 2016 agreement is not illegal because neither the Geraci Judgments[1] nor the California Business & Professions Code ("BPC") prohibit Mr. Geraci from obtaining a CUP. The Motion for New Trial demonstrated that: (i) the SDMC and the BPC required the disclosure of both Mr. Geraci's interest and the Geraci Judgments; (ii) Mr. Geraci filed the CUP application with the City on or about October 31, 2016; (iii) the General Application and Ownership Disclosure Statement failed to disclose the Geraci Judgments and Mr. Geraci's interest, respectively; and, as a result, (iv) the alleged November 2, 2016 agreement was illegal when it was entered into. The Response attempts to get around the non-disclosure issue by relying upon testimony from fact witnesses that it is "common practice" for CUP applicants to use agents during the application process. The Response does not identify any legal authority that suggests "common practice" is a defense to illegality.

Similarly, the Response also advanced several excuses as to why Mr. Geraci's interest was not disclosed. The excuses included: (i) Mr. Geraci's status as an enrolled agent; (ii) "convenience of administration;" and (iii) the City's forms only allowed Ms. Berry to sign as an owner, tenant, or "Redevelopment Agency." The Response does not provide any legal authority that the foregoing allows

[1] Defined terms have the same meaning given them in the Motion for New Trial unless otherwise defined herein; with the exception of "AUMA" and "Prop. 64," which refer to the same legislation and are referred to herein solely as AUMA.

Mr. Geraci to escape the disclosure requirements or policies of the SDMC or BPC. And the Ownership Disclosure Statement states that additional pages may be attached to disclose interests in the property and permit, while the General Application requires the applicant to check a box (yes or no) to disclose the Geraci Judgments. The arguments are legally and factually unsupported.

For the reasons set forth in the Motion for New Trial and below, the relief sought in the Motion for New Trial should be granted.

I. The Court should consider the attachments and the attorney-client privilege argument.

Mr. Geraci argues that the attachments to the Motion for New Trial should be disregarded. (Resp. at 6:10-7:3.) With the exception of motions "clearly without merit," judges "permit the moving party to file and serve a supporting memorandum beyond the ten-day time limit, particularly when the late filing will not prejudice the opposing party or adversely affect the judge's ability to decide the motion within the [75]-day time limit." Cal. Judges Benchbook Civ. Proc. After Trial § 2.76.[2] The attachments to the Motion for New Trial were part of the record, discovery, or in the public domain (*e.g.* City Ordinances). The exhibits were attached for convenience, the exhibits were part of the record or were legal authority, there is no prejudice to Mr. Geraci, and as a result they should be considered.

Mr. Geraci also argues that the Motion for New Trial must be limited to the "against law" grounds set forth in the *Notice of Intent to Move for New Trial* (the "Notice") and, as a result, the arguments related to the use of the attorney-client privilege as a sword and a shield should be excluded. (Resp. at 9:11-21; *id.* at pp. 17-19.) The attorney-client privilege argument should be considered because the argument and facts also relate to the jury's application of an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's conduct. (*See* Resp. at pp. 15-17.) Indeed, the Response argues that Mr. Cotton's objective/subjective argument "ignores the testimony of Larry Geraci that he felt he was being extorted" and "the alleged factors [Mr. Cotton] claims support his argument, are equally supportive of Mr. Geraci's and Attorney Gina Austin's testimony that Mr. Geraci felt he was being extorted." (Resp. at 16:20-24; 17:3-6.)

[2] CCP § 660 was amended in 2018, extending the time limit from 60 to 75 days.

II. Mr. Cotton did not waive the illegality argument.

In the Response, Mr. Geraci argues that Mr. Cotton waived the illegality argument. (Resp. at 10-12.) Mr. Geraci presents three arguments in support of the waiver argument. For his first argument, Mr. Geraci argues that Mr. Cotton "failed to raise 'illegality' as an affirmative defense in his Answer." (Resp. at 10:17-18.) Mr. Cotton expressly reserved the right to assert affirmative defenses in paragraph 16 of his Answer. (ROA # 17, ¶ 16.) Moreover, a party to an illegal contract cannot waive the right to assert the defense. *City Lincoln-Mercury Co. v. Lindsey* (1959) 52 Cal.2d 267, 273-74 (internal citations omitted); *Wells v. Comstock* (1956) 46 Cal.2d 528, 531-32 ("no person can be estopped from asserting the illegality of the transaction"). The argument also ignores the well-established rule that "even though the defendants in their pleadings do not allege the defense of illegality if the evidence shows the facts from which the illegality appears it becomes 'the duty of the court *sua sponte* to refuse to entertain the action.'" *May v. Herron* (1954) 127 Cal.App.2d 707, 710 (quoting *Endicott v. Rosenthal* (1932), 216 Cal. 721, 728).

For his second argument, Mr. Geraci argues that Mr. Cotton cannot raise illegality in the Motion for New Trial because *Fomco, Inc. v. Joe Maggio, Inc.* (1961) 55 Cal.2d 162 and *Apra v. Aureguy* (1961) 55 Cal.2d 827 "both rejected post-trial defenses of illegal contract because the illegality defense had not been raised in the trial court." (Resp. at 10:23-11:4.) In *Fomco*, the Court noted that "[t]he defense of illegality was not raised in the trial of the action, and no evidence was introduced on the subject." *Fomco*, 55 Cal.2d at 165. The Court then distinguished *Lewis & Queen* on the grounds that "the issue of illegality was first raised *during the trial* and not for the first time on a motion for new trial." *Id.* at 165 (emphasis in original). Similarly, in *Apra*, the Court relied upon *Fomco* in holding that "questions not raised in the trial court will not be considered on appeal." *Apra*, 55 Cal.2d at 831. Here, the Response acknowledges that the issue of illegality was raised several times during the trial and evidence of Mr. Geraci's failure to disclose his ownership interest was before the Court. (Resp. at pp. 11-12); *Homami v. Iranzadi* (1989) 211 Cal.App.3d 1104, 1112 ("Whether the evidence comes from one side

or the other, the disclosure is fatal to the case.") As a result, *Fomco* and *Apra* are distinguishable, *Lewis & Queen* is controlling, and Mr. Cotton can raise illegality in the Motion for New Trial.[3]

For his third argument, Mr. Geraci argues Mr. Cotton waived the illegality issue when Attorney Austin stated that he was willing not to argue an evidentiary objection made after a request to take judicial notice of the Geraci Judgments. (Resp. at 12:17-23.) In support of the argument, Mr. Geraci relies on *Miller v. National American Life Ins. Co.* (1976) 54 Cal.App.3d 331; *Horn v. Atchison, T. & S.F.Ry. Co.* (1964) 61 Cal.2d 602; and *Sepulveda v. Ishimaru* (1957) 149 Cal.App.2d 543. The reliance is misplaced. The language quoted in the Response relates to Attorney Austin's efforts to have the Court take judicial notice of the Geraci Judgments; the statements cannot be construed as a waiver of the illegality argument in its entirety.

Additionally, the Geraci Judgments, and testimony related thereto, was the subject of a motion in limine, which was "a sufficient manifestation of objection to protect the record." (*See* ROA 581.0; ROA 596); *Boston v. Penny Lane Centers, Inc.* (2012) 170 Cal.App.4th 936, 950; Cal Evid. Code § 353. Further, the illegality issue was also the subject of Mr. Cotton's motion for a directed verdict (ROA # 615 at 5:21-22 (arguing the Geraci Judgments prohibit Mr. Geraci from obtaining a CUP, or owing/operating a marijuana dispensary).) And, in any event, *Miller* held that while "waiver and estoppel normally preclude reversal on appeal from a judgment…[] they do not restrict the discretion of the trial judge to grant a new trial" and *City Lincoln-Mercury* held the illegality defense cannot be waived. *Miller*, 54 Cal.App.3d at 346; *City Lincoln-Mercury*, 52 Cal.2d at 273-74. Mr. Cotton has not waived the illegality argument.

III. The Response does not address the SDMC,[4] which requires the disclosure of Mr. Geraci's interest and the Geraci Judgments, or the underlying policy of transparency.

The Response does not dispute that: (i) the SDMC required the disclosure of Mr. Geraci's interest and the Geraci Judgments; (ii) the Geraci Judgments required Mr. Geraci to comply with the

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[3] Although Rule 8.115 of the Cal. Rules of Court restricts citation to unpublished decisions, the Response cites to *Chodosh v. Palm Beach Park Association* 2018 WL 6599824. In *Chodosh*, the issue of illegality "*was* raised at trial – even if obliquely as part of a shotgun blast of allegations of illegality…The issue having been raised at the trail level, its consideration at the appellate level comes within *Lewis & Queen* and outside the rule of *Fomco* and *Apra*." *Id.* at *6 (emphasis in original).

[4] The Motion for New Trial cited to SDMC §§ 112.0102(c), 42.1502, 42.1504, and 42.1507. (*See* Mot. for New Trial at 8:14-19.) Although the Motion for New Trial referenced the code provisions in the context of "marijuana outlets," the provisions were in effect since

requirements of the SDMC;[5] (iii) Mr. Geraci purposefully failed to disclose his interest; and (iv) the non-disclosure was made prior to (and after) the alleged November 2, 2016 agreement was entered into. (Mot. for New Tr. at 7:17-9:25, 12:7-23; *see gen.* Resp.) The Response also does not dispute that transparency is one of the underlying policies of the SDMC - as evidenced by, among other things, the Ownership Disclosure Statement and required background check. (Mot. for New Tr. at 12:24-13:5; *see gen.* Resp.) And, finally, the Response does not address, let alone distinguish, *May v. Herron* (1954) 127 Cal.App.2d 707. (Mot. for New Tr. at 11:1-13:5; *see gen.* Resp.)

Although the Response does not challenge the foregoing facts or law, the Response argues that the use of agents is "common practice" and, therefore, the alleged November 2, 2016 agreement is not illegal. (Resp. at 14:14-15:13.) There are several problems with the argument. First, the Response does not cite to any legal authority for the proposition that "common practice" makes an illegal contract legal. (*See id.*) None exists.

Second, the argument relies upon the testimony of *fact* witnesses. It is axiomatic that a fact witness cannot take the place of the Court to determine the illegality of a contract. It is the Court's duty to determine illegality. *See May, supra* at 710 (it is the Court's duty to determine illegality). Third, even if "common practice" did make an illegal contract legal, Mr. Schweitzer's testimony as a fact witness cannot be construed so broadly as to provide an opinion on what is "common practice" for all CUP applications across the City.[6]

Fourth, the Response reasserted the allegation that the non-disclosures were the result of a limitation of the City's forms. (Resp. at 15:1-4.)[7] The Ownership Disclosure Statement, however, requires the disclosure of all persons who have an interest in the Property/CUP and states: "Attach additional pages if needed." (Mot. for New Tr., Exhibit D (Ownership Disclosure Statement) at Part I.) And the General Application required the Geraci Judgments to be disclosed by checking one of two

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2011. With the adoption of ordinance No. O-20795 in April 2017, the term "medical marijuana consumer cooperatives" was replaced with "marijuana outlets."

[5] The Response acknowledges the Geraci Judgments require Mr. Geraci to obtain a CUP "***pursuant to the San Diego Municipal Code.***" (Resp. at 13:14) (emphasis in original).

[6] Mr. Schweitzer's testimony excluded the fact that the ownership disclosures are also required for the Hearing Officer. (July 8 Tr. at 33:19-34:1.)

[7] The Response also suggests that Ms. Tirandazi testified that the City is "only looking for the property owner and the tenant/lessee." (Resp. at 15:10-11.) The cited portion of the transcript suggests that she looked at the Ownership Disclosure Statement and stated that it was the property owner and a tenant/lessee that would have to be identified. The forms contradict the testimony.

boxes (yes or no) and instructed a copy of the same be attached. (*Id.* at Exhibit H.) The purported shortfalls of the City's forms do not exist or otherwise obviate the disclosure requirements.

Fifth, the argument ignores correspondence from Ms. Austin to Mr. Schweitzer instructing him to keep Mr. Cotton's name off the CUP application "unless necessary" because Mr. Cotton had "legal issues" with the City. (*Id.* at 8:22-9:3.) Sixth, the argument ignores the testimony from Mr. Geraci and Ms. Berry that Mr. Geraci's interest was not disclosed purposefully because of his status as an enrolled agent and administrative convenience. (*Id.* at 9:17-19.) Finally, the argument conflates the use of an agent to complete forms with the SDMC's requirements to disclose Mr. Geraci's interest and the Geraci Judgments. The two issues are separate and distinct, and the use of an agent to complete a form does not somehow change the disclosure requirements.

The purpose of the illegality rule "is not generally applied to secure justice between parties who have made an illegal contract, but from regard for a higher interest – that of the public, whose welfare demands that certain transactions be discouraged." *May, supra* at 712 (quoting *Takeuchi v. Schmuck* (1929) 206 Cal. 782, 786). The Court cannot give effect to the alleged November 2, 2016 agreement because to do so would condone Mr. Geraci, and others, to knowingly and purposefully circumvent the requirements of the SDMC.

IV. AUMA is applicable and its express policy and laws supports the conclusion that the alleged November 2, 2016 agreement is illegal.

As to AUMA's application, the provisions of AUMA were circulated to the public in July 2016, adopted by the voters on November 8, 2016, and became effective on November 9, 2016. With the adoption of AUMA, Mr. Geraci's CUP application, initially filed for a medical marijuana cooperative, was processed as an application for a marijuana outlet. (*See* Mot. for New Tr., Exhibit I (letter from City dated September 26, 2018 referencing CUP for "Marijuana Outlet").) Because AUMA's policies were known at the time of the alleged November 2, 2016 agreement and Mr. Geraci pursued a CUP for a marijuana outlet after AUMA became effective, AUMA's policies are applicable and consistent with the SDMC's policy of transparency and disclosure. *See Industrial Development & Land Co. v. Goldschmidt* (1922) 56 Cal.App. 507, 509 ("A contract in its inception must possess the essentials of having competent parties, a legal object, and a sufficient consideration. Lacking any one of these, no binding obligations

result; hence a contract which contemplates the doing of a thing which is unlawful at the time of the making thereof is void. For the same reason a contract which contemplates the doing of a thing, at first lawful but which afterward and during the running of the contract term becomes unlawful, is affected in the same way and ceases to be operative upon the taking effect of a prohibitory law."). AUMA is applicable.

The Response does not dispute that one of the express policies of AUMA was to bring marijuana "into a regulated and legitimate market [by creating] a transparent and accountable system." (Mot. for New Tr. at 7:5-15.) Further, AUMA sought to limit those persons involved in the marijuana industry by, among other things, prohibiting an applicant who has been sanctioned by a city for unauthorized commercial marijuana activities from obtaining a state license. *See* AUMA at §§ 3 (Purpose and Intent), 6 (adding § 26057(b)(7). In furtherance of that policy, AUMA states that the licensing authority shall deny an application if the applicant does not qualify and, by adding § 26057(b)(7), prohibited an applicant from obtaining a license if they have been sanctioned for unauthorized commercial marijuana activity. AUMA at § 6.1 (adding § 26057(a)-(b)). While pursuing a CUP for a MO, Mr. Geraci failed to disclose his interest and the Geraci Judgments – a direct conflict with AUMA's express policies.

The Response argues § 26057(b) does not bar Mr. Geraci from obtaining a state license because the statute is discretionary. (Resp. at 13-14.) The argument conflicts with two pillars of statutory construction. The interpretation would render meaningless §§ 26057(a) and 26059. *People v. Hudson* (2006) 38 Cal.4th 1002, 1010 (interpretations that render statutory terms meaningless are to be avoided) (internal citations omitted). Section 26057(a) mandates the denial of an application for a state license if the *applicant* does not qualify, while § 26059 prohibits the State from denying an applicant based solely on two grounds – none of which are applicable here. Mr. Geraci's interpretation renders §§ 26057(a) and 26059 meaningless.

The interpretation also applies the same meaning to two separate words. *In re Austin P.* (2004) 118 Cal.App.4th 1124, 1130 ("When different terms are used in parts of the same statutory scheme, they

are presumed to have different meanings."). The mandatory provisions of Section 26057(a) apply to the *applicant*[8] or premises, while the permissive provisions of 26057(b) apply to the *application*.

Here, it is undisputed that Ms. Berry was the named applicant on the CUP application, Ms. Berry was applying for the CUP solely as Mr. Geraci's agent, and Mr. Geraci was and always had been the party pursuing the operation of a marijuana dispensary at the Property. As the central purpose of the alleged November 2, 2016 agreement was Mr. Cotton's operation of a marijuana dispensary at the Property, and his interest was never disclosed, the alleged agreement violated applicable state law and policy and cannot be enforced. *Homami*, *supra* at 1109.

V. The jury failed to apply an objective standard to both parties, and the Response confirms as much.

In the Response, Mr. Geraci argues that the subjective/objective standard argument "is simply Mr. Cotton's interpretation of the facts" and then goes on to argue that Mr. Geraci "*felt* he was being extorted." (Resp. at 16:20-24, 17:3-6) (emphasis added.) The objective manifestations set forth in the November 2, 2016 e-mail correspondence, the actions of Mr. Geraci thereafter, and the content of the draft agreements are not in dispute. The issue before the Court is whether Mr. Geraci's subjective intent, beliefs, and feelings can be considered by the jury.

First, in explaining his November 2, 2016 e-mail confirming he would provide Mr. Cotton a 10% equity position in the contemplated marijuana dispensary, Mr. Geraci testified that he did not read the entirety of Mr. Cotton's e-mail. However, a party cannot claim he did not read an offer before accepting it. *See Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1587 (plaintiff's claim that he did not read the agreement before signing it did not raise a triable issue of mutual assent) (internal citations omitted).

Second, the Response argues that Mr. Geraci felt he was being extorted and that the facts supporting Mr. Cotton's argument are "equally supportive of Mr. Geraci's and [Ms.] Austin's testimony that Mr. Geraci *felt* he was being extorted by Mr. Cotton and requested [Ms.] Austin to please draft new contracts." (Resp. at 17:4-6) (emphasis added.) A person's undisclosed feelings is subjective and should

[8] The applicable term "applicant" was defined in § 26001(a)(1), which does not make the terms "applicant" and "application" synonymous.

have been disregarded been disregarded by the jury. *Stewart, supra* at 1587 (a party's subjective intent is irrelevant). Moreover, none of the documents or communications produced at trial reference or otherwise suggest extortion. Mr. Geraci's subjective and inflammatory feelings have no application to the issues.

It is worth noting here that, as it relates to Mr. Geraci using attorney-client privilege as a sword and a shield, the Response argues that *documents* were produced. (Resp. at 18:24-19:9) (emphasis added.)[9] The issue is not about the production of documents; it is the withholding of *communications* that were then used at trial to introduce evidence of Mr. Geraci's subjective and inflammatory feelings.

Third, the Response argues that Mr. Cotton waived the argument because he did not depose Ms. Austin and that, in any event, Mr. Cotton had the opportunity to cross examine Ms. Austin. (Resp. at 18:22-23, 19:16-17.) As to the former, Mr. Geraci claimed privilege during discovery so attempting to take Ms. Austin's deposition would have been a futile act, which the law does not require. *Cates v. Chiang* (2013) 213 Cal.App.4th 791. As to the latter, any attempt to cross-examine Ms. Austin at trial would have been pointless because no communications were disclosed and, therefore, there was no ability to impeach the testimony of either Mr. Geraci or Ms. Austin. Mr. Geraci asserted privilege during discovery then waived the privilege at trial - he cannot blow hot and cold. *A&M Records, Inc. v. Heilman* (1977) 75 Cal.App.3d 554, 566.[10]

If an objective standard was applied to both parties, based on the evidence admitted, the jury could have only reached one of two conclusions. The first conclusion is that the parties' agreement included at the very least the terms of the alleged November 2, 2016 agreement *and* the 10% interest that Mr. Geraci confirmed via e-mail. As Mr. Geraci failed and refused to recognize Mr. Cotton's 10% interest, he breached the same and cannot maintain his claim. The second conclusion the jury could

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[9] The Response argues that the Motion for New trial makes a misrepresentation to the Court regarding an order prohibiting testimony on matters that Plaintiff asserted attorney-client privilege. (*See* Mot. for New Trial at 14:23-15:1; Resp. at 18:5-12.). At the February 8, 2019 hearing, the Court stated unequivocally that Mr. Geraci "can't go back and reopen that area once [he has] narrowed the scope by asserting privilege." The subsequent order sustained the objection asserting privilege, but allowed some testimony on the relevant documents. The statement in the Motion for New Trial is not a misrepresentation particularly given the Court's statements at the hearing that there is a "price to be paid" for asserting privilege.

[10] Mr. Geraci attempts to distinguish *A&M Records* based upon the type of privilege asserted. (Resp. at 20:4-6.) There is no meaningful distinction between the use of the 5th Amendment or attorney-client privilege as a sword and a shield, and the Response does not cite to any case law to supporting the distinction. The "blow hot and cold" doctrine has a long and broad application when parties attempt to take inconsistent positions. *See e.g. McDaniels v. General Ins. Co. of America* (1934) 1 Cal.App.2d 454, 459-60. There is no suggestion or authority that the doctrine would not apply here.

have reached, based upon the November 2, 2016 e-mail correspondence and subsequent exchange of draft agreements, is that the parties had an agreement to agree – which is not enforceable. The jury found neither.

Instead, the jury applied a subjective standard to Mr. Geraci. Mr. Geraci defended his November 2, 2016 e-mail and subsequent exchange of draft agreements on two subjective grounds – his testimony that he did not read the entire e-mail and his feeling/belief that he was being extorted. This was improper and a new trial is warranted.

VI. CONCLUSION

The Motion for New Trial should be granted. The alleged November 2, 2016 agreement is illegal as it fails to comply with express provisions of the SDMC, as well as the policies of the SDMC and AUMA. Second, the jury applied an objective standard to Mr. Cotton's conduct and a subjective standard to Mr. Geraci's. Thus, for the reasons set forth in the Motion for New Trial and this Reply, the relief sought in the Motion for New Trial should be granted.

DATED this 30th day of September, 2019.

TIFFANY & BOSCO, P.A.

By: 

EVAN P. SCHUBE
Attorneys for Defendant/Cross-Complainant
Darryl Cotton

POS-050/EFS-050

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 28,849 NAME: Evan P. Schube, Esq. FIRM NAME: Tiffany & Bosco, P.A. STREET ADDRESS: 1455 Frazee Road, Suite 820 CITY: San Diego STATE: CA ZIP CODE: 92108 TELEPHONE NO.: (619) 501-3503 FAX NO.: E-MAIL ADDRESS: eps@tblaw.com ATTORNEY FOR (name): Defendant/Cross-Complainant Darryl Cotton	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Division - Civil	CASE NUMBER: 37-2017-00010073-CU-BC-CTL
PLAINTIFF/PETITIONER: LARRY GERACI DEFENDANT/RESPONDENT: DARRYL COTTON, et al.	JUDICIAL OFFICER: The Honorable Joel R. Wohlfeil
PROOF OF ELECTRONIC SERVICE	DEPARTMENT: C-73

1. I am at least 18 years old.
   a. My residence or business address is *(specify)*:
   1455 Frazee Road, Suite 820
   San Diego, CA 92108

   b. My electronic service address is *(specify)*:
   ybrinkman@tblaw.com

2. I electronically served the following documents *(exact titles)*:
   Reply in Support of Motion for New Trial

   ☐ The documents served are listed in an attachment. *(Form POS-050(D)/EFS-050(D) may be used for this purpose.)*

3. I electronically served the documents listed in 2 as follows:
   a. Name of person served: Michael R. Weinstein, Ferris & Britton, APC

   On behalf of *(name or names of parties represented, if person served is an attorney)*:
   Plaintiff/Cross-Defendant LARRY GERACI and Cross Defendant REBECCA BERRY

   b. Electronic service address of person served :
   mweinstein@ferrisbritton.com

   c. On *(date)*: September 30, 2019

   ☒ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. *(Form POS-050(P)/EFS-050(P) may be used for this purpose.)*

Date: September 30, 2019

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

Yvette Brinkman
(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

Form Approved for Optional Use
Judicial Council of California
POS-050/EFS-050 [Rev. February 1, 2017]

PROOF OF ELECTRONIC SERVICE
(Proof of Service/Electronic Filing and Service)

Cal. Rules of Court, rule 2.251
www.courts.ca.gov

POS-050(P)/EFS-050(P)

SHORT TITLE:	CASE NUMBER:
Larry Geraci v. Darryl Cotton	37-2017-00010073-CU-BC-CTL

ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)

(This attachment is for use with form POS-050/EFS-050.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

Name of Person Served *(If the person served is an attorney, the party or parties represented should also be stated.)*	Electronic Service Address	Date of Electronic Service
Jacob P. Austin, Esq., Atty for Darryl Cotton	jpa@jacobaustinesq.com	Date: 09/30/2019
		Date:
		Date:
		Date:
		Date:
		Date:
		Date:
		Date:
		Date:
		Date:
		Date:
		Date:

RJN-34

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT

DEPARTMENT 73 HONORABLE JOEL R. WOHLFEIL, JUDGE

LARRY GERACI, PLAINTIFF, VS. DARRYL COTTON, DEFENDANT.	CASE NO. 37-2017-00010073-CU-BC-CTL OCTOBER 25, 2019 FRIDAY, 9:00 AM MOTION FOR A NEW TRIAL EX PARTE HEARING

REPORTER'S CERTIFIED TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE PLAINTIFF:
MICHAEL R. WEINSTEIN, ESQ.
SCOTT H. TOOTHACRE, ESQ.
FERRIS & BUTTON, APC
501 BROADWAY
SUITE 1450
SAN DIEGO, CA 92101

FOR THE DEFENDANT:
EVAN P. SCHUBE, ESQ.
FOR: JACOB AUSTIN, ESQ.
PO BOX 231189
SAN DIEGO, CA 92193

REPORTED BY:
ELIZABETH CESENA, CSR 12266
PO BOX 131037, SD, CA 92170
LIZCEZ@GMAIL.COM

SAN DIEGO, CALIFORNIA, OCTOBER 25, 2019, FRIDAY, 9:00 AM

--000--

THE COURT: Item five, Geraci versus Cotton, case number 10073.

MR. WEINSTEIN: Good morning, Your Honor.

Michael Weinstein and Scott Toothacre on behalf of Mr. Geraci and Ms. Berry, who is not a part of this conference.

THE COURT: And Counsel?

MR. SCHUBE: Good morning, Your Honor.

Evan Schube on behalf of Mr. Cotton.

THE COURT: All right. Did I hear you two say that you were submitting?

MR. WEINSTEIN: Yeah. We are submitting, Your Honor, with time to respond.

THE COURT: All right. Counsel?

MR. SCHUBE: Thank you. I'll get to the illegality of the contract issue first. The fact is it cuts to the heart of the motion that we filed and the biggest issue.

A couple of items I wanted to raise with the Court, a couple of factual items I wanted to raise with the Court.

First one, on Exhibit H of our motion, is a leave to file the application to CUP Applications that were filed. In general application, which is Trial Exhibit 4200, it's states that "Notice of violation is required to be disclosed," and skip back to page four of the same Trial Exhibit, the Ownership Disclosure Statement, it also says,

"the name of any person of interest in the property must also be disclosed," and it states to potentially attach pages if needed.

THE COURT: So you are saying the contract is unenforceable?

MR. SCHUBE: Yes.

THE COURT: As a matter of law?

MR. SCHUBE: Yes. CUP was a condition precedent to the contract.

THE COURT: Counsel, up until this point in time, this case was filed in 017. Your side has been screaming at the Court and filed multiple writs asking me to adjudicate the contract as a matter of law in favor of your side.

Now you are asking me in, after an adverse finding, to adjudicate the law for the other side? You are doing a 180. Truly, you are doing a 180.

MR. SCHUBE: I came in on a limited scope. I don't have the background.

THE COURT: I do. They do. They have been sitting --

MR. SCHUBE: But my understanding was there were the motions that were made were based upon my clients understanding of what the agreement is which is not specifically related to the November 2, 2016 agreement that the jury found. Our motion is a bit more limited in that regard. I may be wrong. That's my understanding of the background of the case.

THE COURT: Again, from the Court's perspective as a matter of law up to this point. You have been asking me to adjudicate the contract in your favor. Now you're asking the Court to adjudicate the contract as a matter of law against the other side.

Counsel, shouldn't this have been raised at some earlier point in time?

MR. SCHUBE: Should it have, Your Honor? My personal opinion is that it should have been raised before but it was not and we are where we are and so hence, the reason why we're raising the issue now on a Motion for New Trial.

I think what has been referred to before, the illegality argument has been raised before and raised in the context of reference to State Law and Section 2640 of the California Business and Professions Code. I believe what was not conveyed to the Court was that these requirements for these forms, the specific provisions in the San Diego Municipal Code that require those disclosures and require applicant provide information.

The information was not provided. And --

THE COURT: Even if you are correct, hasn't that train come and gone? The judgment has been entered. You are raising this for the first time.

MR. SCHUBE: Your Honor, illegality of the contract can be raised any time whether in the beginning or during the case or on appeal.

THE COURT: So it's akin to a jurisdictional

challenge?

MR. SCHUBE: I don't know if it's akin to a jurisdictional challenge, but the issue can be raised.

THE COURT: But at some point, doesn't your side waive the right to assert this argument? At some point?

MR. SCHUBE: I am not suggesting we waived that. The Case Law I saw in the motion cited that there is a duty and the duty continues and so I am not aware if there is anything that suggests that we waived that argument.

THE COURT: Anything else, Counsel?

MR. SCHUBE: The other thing I'd like to point out, Section 11.0401 of San Diego Municipal Code specifically states that "every applicant prior be furnished true and complete information." And that's obviously not what happened here. I think it's undisputed and the reasoning for the failure to disclose, there is no exception to either the San Diego Municipal Code or failure to disclose.

THE COURT: Thank you, very much.

MR. SCHUBE: Thank you, Your Honor.

THE COURT: I am not inclined to change the Court's view. Did either one of you need to be heard?

MR. TOOTHACRE: Just to make a record. One comment with respect to the illegality argument. Obviously, we agree with the comments of the Court but the failure to make these disclosures in the CUP, it doesn't make the contract between Geraci and Cotton unenforceable. It's one thing to say that the contract or the form wasn't

properly filled out, that doesn't make the contract unenforceable. That's all we have for the record.

THE COURT: Counsel, the Court observed this case throughout the entirety, including at trial. Quite frankly, I thought your client did well on the witness stand. Truly.

But the jury categorically rejected your side's claim and I am persuaded everybody got a fair trial here. The Court confirms the tentative ruling as the order of the Court. I will direct Plaintiff's side to serve Notice of the Decision. Thank you very much.

MR. WEINSTEIN: Thank you, Your Honor.

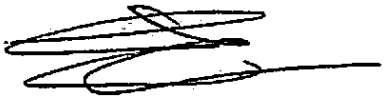
MR. TOOTHACRE: Thank you, Your Honor.

(END OF PROCEEDING AT 9:23 AM)

SAN DIEGO, CALIFORNIA)
) SS:
COUNTY OF SAN DIEGO)

I, ELIZABETH M. CESENA, CSR 12266, A COURT-APPROVED REPORTER OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO, DO HEREBY CERTIFY THAT I REPORTED IN SHORTHAND THE PROCEEDINGS, TO THE BEST OF MY ABILITY, IN THE ABOVE-ENTITLED CAUSE AND THAT THE FOREGOING TRANSCRIPT, NUMBERED FROM PAGES 1 TO 7, IS A FULL, TRUE AND CORRECT TRANSCRIPT OF PROCEEDINGS HELD ON OCTOBER 25, 2019.

SAN DIEGO, CALIFORNIA, DATED THIS 9TH DAY OF JUNE, 2020.



ELIZABETH M. CESENA, CSR 12266
CERTIFIED SHORTHAND REPORTER

RJN-35

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 10/25/2019 TIME: 09:00:00 AM DEPT: C-73

JUDICIAL OFFICER PRESIDING: Joel R. Wohlfeil
CLERK: Andrea Taylor
REPORTER/ERM: Elizabeth Cesena CSR# 12266
BAILIFF/COURT ATTENDANT: R. Camberos

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

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EVENT TYPE: Motion Hearing (Civil)
MOVING PARTY: Darryl Cotton
CAUSAL DOCUMENT/DATE FILED: Motion for New Trial, 09/13/2019

APPEARANCES
Michael R Weinstein, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).
Scott H Toothacre, counsel, present for Respondent on Appeal,Cross - Defendant,Cross - Complainant,Plaintiff(s).
Evan Schube, specially appearing for counsel Jacob Austin, present for Defendant,Cross - Complainant,Appellant(s).

The Court hears oral argument and the tentative ruling as follows:
The Motion (ROA # 672) of Defendant / Cross-Complainant DARRYL COTTON ("Cotton") for a new trial or a finding that the alleged November 2, 2016 agreement is illegal and void, is DENIED.

The evidentiary objections (ROA # 679) of Plaintiff / Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY, are OVERRULED.

Plaintiff to give notice of the Court's ruling.

RJN-36

Douglas A. Pettit, Esq., SBN 160371
Kayla R. Sealey, Esq., SBN 341956
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Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

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

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; 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.

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

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: _____

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Kayla R. Sealey, Esq.
Attorneys for Defendants
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AUSTIN LEGAL GROUP

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Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

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

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; 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.

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

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TABLE OF AUTHORITIES

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CASES

FEDERAL

STATUTES

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

I.

INTRODUCTION

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

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

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

[1] **Exhibit A**: *Geraci v. Cotton* Complaint; **Exhibit B**: *Geraci v. Cotton* Cross-Complaint; **Exhibit C**: *Cotton v. Geraci et al.* Complaint.

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

II.

STATEMENT OF RELEVANT FACTS

A. The Cotton Actions

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

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

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

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

B. Austin's Involvement with the Ramona CUP

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

C. Austin's Involvement with the Balboa CUP

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

D. Austin's Involvement with the Federal CUP

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

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

E. Austin's Involvement with the Lemon Grove CUP

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

III.

LEGAL STANDARD

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

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

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

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

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

IV.

ARGUMENT

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

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

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

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

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

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supra, 19 Cal.4th at 1115 ["[t]he constitutional right to petition . . . includes . . . seeking administrative action"].)

2. Plaintiffs' Claims "Arise From" the Petitioning for Conditional Use Permits

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

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

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

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

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

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

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

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

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1. Civil Code Section 1714.10 Bars Plaintiffs' Claims

Under Civil Code section 1714.10 (a),

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

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

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

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2. Plaintiffs' Claims are Barred by the Litigation Privilege

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

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

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

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

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

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

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

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

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

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

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

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

- Unlawfully applying for or acquiring CUPs through the use of proxies: Paragraph 119 of the FAC alleges that Austin, Bartell and Schweitzer were hired by Geraci to prepare and submit a CUP application in the name of Geraci's assistant, Berry (the "Berry CUP Application"). Other than this conclusory allegation, Plaintiffs have provided no evidence supporting it, as to Austin. (See FAC, Exh. 3, the Berry CUP Application [showing it was signed and submitted by Schweitzer].)
- Unlawfully applying for or acquiring CUPs through forged documents: This allegation has nothing to do with Austin as it relates to Plaintiff Sherlocks claims against defendants Lake and Harcourt. (See FAC, ¶¶ 64-99 and 285-301.)
- Sham litigation: This allegation is in regards to the action filed by Geraci against Cotton (Cotton I). (See FAC, ¶ 316.) Austin's only role in it was testifying. (See FAC, ¶¶ 202, 204.)
- Acts and threats of violence: There are no allegations in the FAC of threats or violence against Austin. (See FAC, ¶¶ 215-224 [alleging defendants Alexander and Stellmacher threated Cotton]; FAC, ¶¶ 225-238 [alleging defendant Magagna threatens Young].)

Thus, Plaintiffs' conspiracy to monopolize in violation of the Cartwright Act claim should be stricken.

4. The Unfair Competition and Unlawful Business Practices Claims Fails

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

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

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

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

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

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

5. Plaintiffs' Civil Conspiracy Claim is Legally Defective

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

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

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

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

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

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

V.

CONCLUSION

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

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

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: June 16, 2022

By: _____

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

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

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; 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.

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

DECLARATION OF GINA M. AUSTIN, ESQ. IN SUPPORT OF 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

I, Gina Austin, declare as follows:

1. I am a named defendant in the above-captioned case and am a partner and owner of the law firm Austin Legal Group ("ALG"), also a named defendant in this action. I am licensed to practice before the Courts of the State of California, and if called as a witness, I would and could competently testify to the following facts of my own personal knowledge.

2. ALG was not involved with the acquisition of the Ramona CUP.

3. ALG was involved with the acquisition of the Balboa CUP, to the extent of helping Evelyn Heidelberg, Michael Sherlock's attorney, with the initial application.

4. ALG was hired by Larry Geraci ("Geraci") to help acquire a CUP at 6176 Federal Blvd., San Diego, California 92114 (the "Cotton Property"). I assisted with the application, but it was abandoned after another CUP was issued within 1000 feet, i.e., the Federal CUP.

5. ALG was not involved with the acquisition of the Federal CUP.

6. ALG represented Geraci in drafting a finalized draft of Darryl Cotton ("Cotton") and Geraci's agreement for the purchase and sale of the Cotton Property.

7. ALG did not represent Geraci in *Cotton I*. I only testified at trial pursuant to a subpoena.

8. ALG was not involved with the acquisition of the Lemon Grove CUP, and I have no recollection of conversations with anyone regarding whether the property qualified for a CUP.

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

Executed this 16th day of June, 2022, at San Diego, California.

Gina Austin, Esq.

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GINA M. AUSTIN and
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

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

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; 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.

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

DECLARATION OF DOUGLAS A. PETTIT, ESQ. IN SUPPORT OF DEFENDANTS' 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

I, Douglas A. Pettit, declare as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the State of California and am a shareholder with the law firm of Pettit Kohn Ingrassia Lutz & Dolin PC, attorneys of record for Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP ("Defendants"), in the above-captioned case. I am familiar with the facts and proceedings of this case and if called as a witness, I could and would competently testify to the following facts of my own personal knowledge.

2. A true and correct copy of the Complaint filed in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL, filed March 21, 2017, in San Diego Superior Court is attached hereto as **Exhibit A**.

3. A true and correct copy of the Cross-Complaint filed in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL, filed August 25, 2017, in San Diego Superior Court is attached hereto as **Exhibit B.**

4. A true and correct copy of the Complaint filed in *Cotton v. Geraci, et al.*, Case No. 18-cv-0325-GPC-MDD, filed February 9, 2018, in the United States District Court, Southern District of California is attached hereto as **Exhibit C**.

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

Executed this 16th day of June, 2022, at San Diego, California.

Douglas A. Pettit, Esq.

Exhibit A

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Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual, Plaintiff, v. DARRYL COTTON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2017-00010073-CU-BC-CTL **PLAINTIFF'S COMPLAINT FOR:** **1. BREACH OF CONTRACT;** **2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;** **3. SPECIFIC PERFORMANCE; and** **4. DECLARATORY RELIEF.**

Plaintiff, LARRY GERACI, alleges as follows:

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

the PROPERTY to him by Defendant COTTON.

FIRST CAUSE OF ACTION

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

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

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

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

SECOND CAUSE OF ACTION

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

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

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

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

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

THIRD CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

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

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

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

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

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First and Second Causes of Action:

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

On the Third Cause of Action:

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

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

On the Fourth Cause of Action:

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

On all Causes of Action:

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

6. For costs of suit incurred herein; and

///

///

///

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

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

Exhibit B

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Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

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

SECOND AMENDED CROSS-COMPLAINT FOR:

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

[IMAGED FILE]

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

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

DARRYL COTTON, an individual,

Cross-Complainant

v.

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

Cross-Defendants.

/ / / / /

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

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

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

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

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

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

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

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

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GENERAL ALLEGATIONS

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

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

(a) Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;

(b) Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci lobbied with the City to have the zoning issue resolved first;

(c) Geraci, through his personal and professional relationships, was in a unique position to lobby and influence key City political figures to have the zoning issue favorably resolved and obtain approval of the CUP application once submitted; and

(d) Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area.

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

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

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

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

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

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

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

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

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

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

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

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

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

> Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)
>
> Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed not to enter into any other contacts on this property.

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

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

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

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

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

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

> Geraci: "The sign off date they said it's going to be the 30th."
> Cotton: "This resolves the zoning issue?"
> Geraci: "Yes"
> Cotton: "Excellent"…
>
> Cotton: "How goes it?"
> Geraci: "We're waiting for confirmation today at about 4 o'clock"
>
> Cotton: "Whats new?"
>
> Cotton: "Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet."
> Geraci: "I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32. The defendants' refusal to acknowledge they have no interest in the Property and to step aside from the CUP application has diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to protect his interest in his Property.

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FIRST CAUSE OF ACTION

(Breach of Contract – Against Geraci and ROES 1 through 50)

33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above, as though set forth in full at this point.

34. Geraci and Cotton entered into an agreement to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting the terms for a purchase and sale of the Property and a side agreement for Cotton to obtain an equity position in the MMCC to operate at the Property. This agreement is comprised of (a) the November 2, 2016 document signed by Geraci and Cotton, and (b) the November 2, 2016 email exchange between Geraci and Cotton including other agreed-upon terms and the parties' agreement to negotiate and collaborate in good faith on final deal documents. True and correct copies of the agreement are attached hereto as Exhibits 1 and 2, respectively.

35. Cotton performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions of the contract between the parties or has been excused from performance.

36. Under the parties' contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable final purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

37. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

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SECOND CAUSE OF ACTION

(Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

38. Cotton realleges and incorporates by reference paragraphs 1 through 37, above, as though set forth in full at this point.

39. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants knew to be false or were made recklessly and without regard for their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

40. The intentional misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the $40,000 remainder of the $50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

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(c) On multiple occasions, Geraci represented to Cotton that a CUP application for the Property could not be submitted until after the zoning issue was resolved;

(d) On multiple occasions, Geraci represented to Cotton that Geraci had not yet filed a CUP application with respect to the Property when the CUP application had already been filed; and

(e) On multiple occasions, Geraci represented to Cotton that the preliminary work of preparing a CUP application was merely underway, when, in fact, the CUP application had already been filed.

41. Defendants, through their intentional misrepresentations and the actions taken in reliance upon such misrepresentations, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to protect his interest in his Property. As a further result of the intentional misrepresentations, Cotton has been deprived of the remaining $40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

42. The misrepresentations were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages under Civil Code section 3294.

THIRD CAUSE OF ACTION

(Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above, as though set forth in full at this point.

44. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants had no reasonable grounds for believing were true when the statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and

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proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

45. The negligent misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the $40,000 remainder of the $50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

(c) On multiple occasions, Geraci represented to Cotton that a CUP application for the Property could not be submitted until after the zoning issue was resolved;

(d) On multiple occasions, Geraci represented to Cotton that Geraci had not yet filed a CUP application with respect to the Property when the CUP application had already been filed; and

(e) On multiple occasions, Geraci represented to Cotton that the preliminary work of preparing a CUP application was merely underway, when, in fact, the CUP application had already been filed.

46. Defendants, through their negligent misrepresentations and the actions taken in reliance upon such misrepresentations, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and

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attorneys' fees to protect his interest in his Property. As a further result of the negligent misrepresentations, Cotton has been deprived of the remaining $40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

FOURTH CAUSE OF ACTION

(False Promise – Against Geraci and ROES 1 through 50)

47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above, as though set forth in full at this point.

48. On November 2, 2016, among other things, Geraci falsely promised the following to Cotton without any intent of fulfilling the promises:

(a) Geraci would pay Cotton the remaining $40,000 of the non-refundable deposit prior to filing a CUP application;

(b) Geraci would cause his attorney to promptly draft the final integrated agreements to document the agreed-upon deal between the parties;

(c) Geraci would pay Cotton the greater of $10,000 per month or 10% of the monthly profits for the MMCC at the Property if the CUP was granted; and

(d) Cotton would be a 10% owner of the MMCC business operating at Property if the CUP was granted.

49. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016 when he made them.

50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to rely on the false promises and execute the document signed by the parties at their November 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire agreement.

51. Cotton reasonably relied on Geraci's promises.

52. Geraci failed to perform the promises he made on November 2, 2016.

53. Defendants, through their false promises and the actions taken in reliance upon such false promises, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to

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protect his interest in his Property. As a further result of the false promises, Cotton has been deprived of the remaining $40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

54. The false promises were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages under Civil Code section 3294.

FIFTH CAUSE OF ACTION

(Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above, as though set forth in full at this point.

56. An actual controversy has arisen and now exists between Cotton and all defendants concerning their respective rights, liabilities, obligations and duties with respect to the Property and the CUP application for the Property filed on or around October 31, 2016.

57. A declaration of rights is necessary and appropriate at this time in order for the parties to ascertain their respective rights, liabilities, and obligations because no adequate remedy other than as prayed for exists by which the rights of the parties may be ascertained.

58. Accordingly, Cotton respectfully requests a judicial declaration of rights, liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole interest-holder in the CUP application for the Property submitted on or around October 31, 2016, (c) defendants have no interest in the CUP application for the Property submitted on or around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief as follows:

ON THE FIRST CAUSE OF ACTION:

1. For general, special, and consequential damages in an amount not yet fully ascertained and according to proof at trial, but at least $40,000; and

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE SECOND CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least $40,000;

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and

3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

ON THE THIRD CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least $40,000; and

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE FOURTH CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least $40,000;

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and

3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

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ON THE FIFTH CAUSE OF ACTION

1. For a judicial declaration that defendants have no right or interest whatsoever in the Property;

2. For a judicial declaration that Cotton is the sole interest-holder in the CUP application for the Property submitted on or around October 31, 2016, defendants have no right or interest in said CUP application, and that defendants are enjoined from further pursuing such CUP application for the Property; and

3. For a judicial order that the Lis Pendens filed by Geraci on the Property be released.

ON ALL CAUSES OF ACTION

1. For interest on all sums at the maximum legal rates from dates according to proof;

2. For costs of suit; and

3. For such other relief as the Court deems just.

DATED: August 25, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: _____
DAVID S. DEMIAN
ADAM C. WITT
Attorneys for Defendant and Cross-Complainant
Darryl Cotton

2403.004/3BQ6279.hkr

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Exhibit C

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

vs.

LARRY GERACI, an individual; REBECCA BERRY, an individual; GINA AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation; MICHAEL WEINSTEIN, an individual; SCOTT H. TOOTHACRE; an individual; FERRIS & BRITTON, a professional corporation; CITY OF SAN DIEGO, a public entity; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: '18CV0325 GPC MDD

Judge:
Dept.:

PLAINTIFF'S COMPLAINT FOR:

1. 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE
2. 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS
3. BREACH OF CONTRACT;
4. FALSE PROMISE;
5. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
6. BREACH OF FIDUCIARY DUTY;
7. FRAUD IN THE INDUCEMENT;
8. FRAUD / FRAUDULENT MISREPRESENTATION;
9. TRESPASS;
10. SLANDER OF TITLE;
11. FALSE DOCUMENTS LIABILITY;
12. UNJUST ENRICHMENT;
13. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
15. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
16. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
17. CONSPIRACY;
18. RICO;
19. DECLARATORY RELIEF; AND
20. INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL

Darryl Cotton
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San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

vs.

LARRY GERACI, an individual; REBECCA BERRY, an individual; GINA AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation; MICHAEL WEINSTEIN, an individual; SCOTT H. TOOTHACRE; an individual; FERRIS & BRITTON, a professional corporation; CITY OF SAN DIEGO, a public entity; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.:

Judge:
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PLAINTIFF'S COMPLAINT FOR:

1. 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE
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6. BREACH OF FIDUCIARY DUTY;
7. FRAUD IN THE INDUCEMENT;
8. FRAUD / FRAUDULENT MISREPRESENTATION;
9. TRESPASS;
10. SLANDER OF TITLE;
11. FALSE DOCUMENTS LIABILITY;
12. UNJUST ENRICHMENT;
13. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
15. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
16. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
17. CONSPIRACY;
18. RICO;
19. DECLARATORY RELIEF; AND
20. INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL

Plaintiff *Pro Se* Darryl Cotton ("Plaintiff," "Cotton" or "I") alleges upon information and belief as follows:

INTRODUCTION

1. The *origin* of this matter is a simpler-than-most real estate contract dispute regarding the sale of my property to defendant Larry Geraci ("Geraci").

2. My property qualifies to apply with the City of San Diego ("City") for a Conditional Use Permit ("CUP"). If the City issues the CUP, the value of the Property will immediately be worth at least **$16,000,000** because the CUP will allow the establishment of a Medical Marijuana Consumer Collective ("MMCC"). Under the regulatory scheme being effectuated by the State of California, an MMCC is a retail-for-profit marijuana store. Because the City is creating an incredibly small oligarchy by only issuing 36 MMCC retail licenses across the entire City, and will not issue any more for at least 10 years, the net present value of the Property, to an individual that has the capital and resources to build, develop and operate the MMCC, is at least **$100,000,000**.

3. However, the value of the Property is exponentially ***greater*** than $100,000,000 to organized, sophisticated and powerful criminals that are looking for legitimate businesses in the marijuana industry that they can use as fronts for their illegal operations.

4. Defendant Larry Geraci ("Geraci") is exactly such a criminal – he runs a criminal enterprise that has for years operated in the illegal marijuana industry. He operates publicly through a business providing tax and financial consulting services that he uses to invests his illegal gains and to provide money laundering services to other criminals who own illegal marijuana stores.

5. It is a matter of public record that Geraci is an Enrolled Agent with the I.R.S. and that he has been a named defendant in numerous lawsuits filed by the City against him for his owning/operating of numerous illegal marijuana dispensaries. As described below, he now operates

through employees and attorneys to hide his illicit operations. There is no way to ascertain exactly the breadth of his criminal enterprise given his use of private and legal proxies for his criminal activities.

6. In November of 2016, Geraci and I came to terms for the sale of my property to him, the terms of which included my having an ownership interest in the contemplated MMCC. However, I found out Geraci had induced me to enter into that agreement on fraudulent grounds and he breached the agreement in numerous ways.

7. Consequently, I terminated the agreement. After I terminated the agreement, Geraci, in concert with his office manager/employee Rebecca Berry ("Berry") and his counsel, Gina Austin ("Austin"), Michael Weinstein ("Weinstein") and Scott H. Toothacre ("Toothacre"), and their respective law firms, brought forth a meritless lawsuit in state court attempting to fraudulently deprive me of my property (the "Geraci Action").

8. After the Geraci Action was filed, I requested the City transfer the CUP application filed by Geraci on my property to me. The City refused. I then filed an action against the City seeking to have the City transfer the CUP application to me as Geraci had no legal basis to my property after our agreement was terminated (the "City Action;" and collectively with the Geraci Action, the "State Action.") Defendant attorneys named herein, and their respective law firms, are Geraci's counsel in the State Action (the "Attorney Defendants").

9. Throughout the course of the State Action, I have dealt with officials from the City of San Diego ("City") that have violated my constitutional rights in various ways. These actions, by themselves unlawful, have also had the effect of allowing, condoning, perpetuating and augmenting the irreparable harm done to me that was originally set in motion by Geraci, Berry and the Attorney Defendants.

10. I believe the City as an entity is prejudiced against me and has, and is, seeking to deprive me of my rights and property because of (i) my political activism for the legalization of

medical cannabis ("Political Activism") and/or (ii) as the result of political influence wielded by Geraci.

11. Irrespective of motivation and whether the City is in some manner connected to Geraci, which I believe to be true for the reasons explained below, but even I myself find hard to believe (I understand how crazy it sounds), it does not change the facts – the City has taken unlawful actions towards me.

12. For all intents and purposes, even assuming the City has not been unduly influenced by Geraci and his political lobbyists, the effect to me by the City's actions would be no different as if the City had actually purposefully conspired against me with Geraci to effectuate his unlawful scheme against me to fraudulently deprive me of my Property.

13. These officials and their unconstitutional actions include, but are not limited to:

a. A criminal prosecutor who induced me into entering into a misdemeanor plea agreement and did not tell me or my attorney representing me that as a consequence of entering that misdemeanor plea agreement I would be forfeiting my real property at issue here (which at that point in time was worth at least $3,000,000). That City attorney then used that misdemeanor plea agreement as the unreasonable basis of filing a lis pendens on my property, thereby unconstitutionally seizing my property, and filing a Forfeiture Action seeking to acquire my property. The City attorney initially requested $100,000 to cease its unfounded Forfeiture Action, but when my then-counsel produced evidence of my destitute financial status, the City agreed to only extort $25,000 from me (the short and long-term consequence of having to renegotiate the terms of my agreement with my financial backers to meet the January 2, 2018 deadline to pay this unconstitutional $25,000 obligation or lose the Property that is worth millions of dollars is the single most financially catastrophic event to happen in this litigation, other than Geraci's breach of our agreement and the actions he set in motion leading to this Federal Complaint.)

b. Officials at Development Services that were processing the CUP application submitted by Geraci violated my constitutional rights by denying me substantive and procedural due process by failing to provide notice about a material change in how they were processing my application; blatantly lying to me by telling me they could not accept a second CUP application on a property (which they later said I could after my then-counsel sent them a demand letter and noted there was no legal basis for their position and that he had personally filed a second CUP application on another property for another landlord in a similar situation to mine);

c. Civil attorneys for the City in the State Action that (a) violated their ethical duties by failing to inform the judges in the State Action about the Judge's mistakes/erroneous assumptions and/or working in concert with the State Court Judges and other City officials against me because of my Political Activism and (b) continuing to prosecute the State Action when they knew it was meritless, thereby maliciously putting more undue financial and emotional pressure on me by seeking money/fees and accusing me of having "unclean hands;" and

d. The State Court Judges presiding over the State Action whom I am forced to conclude, given that their Orders simply cannot be reconciled with the evidence and arguments made before them, are at the very least guilty of gross negligence by systemically denying me my constitutional rights by assuming that because I am a crazy pro se and that no pleading, evidence and oral argument I put forth over the course of months could actually contain enough legal and factual basis so as to warrant the relief I requested.

14. Alternatively, the state court judges have been grossly negligent towards me either because (i) they are unjustly dismissive of me because of my *pro se* and *blue-collar* status and simply did not review my pleadings and disregarded my arguments at the oral hearings (ii) or they are not impartial because, as one judge stated at the last hearing 2 weeks ago, he doubts my allegations of

ethical violations against counsel (including City attorneys) are true because he "knows them all well."

15. In the absence of additional information, I am forced to conclude that the state court judges, actually City officials, are acting in concert with other City Officials as part of an off-the-books illegal stratagem to deprive property owners of their properties via Forfeiture Actions if they are sympathetic to and/or share my Political Activism.

16. I am not the only individual who has had their property unconstitutionally seized as part of a Forfeiture Action that has been used by the City to extort significant financial gains from property owners that share my Political Activism. Should I prevail in the TRO, I may seek out other victims and bring forth a class action lawsuit against the City for their unconstitutional practice of seizing properties.

17. I pray ***this Federal Court*** will not be dismissive of me because of my *pro se* and blue-collar status and my Political Activism. I am painfully cognizant that from a *statistical standpoint*, given my pro se status and the allegations above, that I will be perceived immediately as an uneducated, legally-ignorant and conspiracy nut. I understand that. It is a reasonable assumption to make. I just pray that this Federal Court, before it finalizes its conclusion, that it genuinely reviews the evidence submitted with my TRO application because although from statistical standpoint I am probably a pro se conspiracy nut, there is the possibility that my case is that 1 in a 1,000,000 chance that there really is a conspiracy against me driven by the fact that the Property can be worth at least **$100,000,000** to sophisticated individuals, such as the defendants herein (excluding the City).

18. The truth is, I am a step away from literally losing my sanity, and I am aware of that. But I view this Federal Court as my last recourse to protect and vindicate my rights as a citizen of this great country and, if nothing else, that it may please explain to me its logic and evidence in issuing its orders – something the State Courts have never done.

19. I know how crazy all this sounds even as I write this now. But I would ask the Court to consider that I have owned this property since 1997 and have worked the better part of my life in building my business's and my future at this location. For me to lose this property and what it represents of my life's work is incredibly difficult to bear.

20. I have done everything in my power in the State Action, including selling off my future to finance the professional services of attorneys and representing myself pro se, but it has not availed me in the slightest. I have been before the State Judges over eight times and never once have they sought to explain, despite my repeated, specific and emotional pleas that they do so, why my case should not be immediately, summarily adjudicated my favor given undisputed evidence and facts in the record. (See Exhibit 1 (My opposition to a motion to compel my deposition filed in the State Action in which I described the totality of the circumstances to the state judge presiding, which was ignored.)

21. Thus, I am forced to conclude "that state courts [a]re being used to harass and injure individuals [such as myself], either because the state courts [a]re powerless to stop deprivations or [a]re in league with those who [a]re bent upon abrogation of federally protected rights." Mitchum v. Foster, 407 U.S. 225, 240, 92 S. Ct. 2151, 2161, 32 L. Ed. 2d 705 (1972).

22. I file this Complaint today before this Federal Court, pursuant to s 1983, because "[t]he very purpose of s 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect the people from unconstitutional action under color of state law, '*whether that action be executive, legislative, or* ***judicial***' Ex parte Virginia, 100 U.S., at 346, 25 L.Ed. 676." (*Id.*)

JURISDICTIONAL FACTS

23. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§§ 1331, 1343(3), 2283, and 18 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for all civil actions arising under the United States Constitution or the laws of the United States, as well as civil actions to redress deprivation under color of state law, of any right immunity or privilege secured by the United States Constitution. Further this court has subject matter jurisdiction pursuant to the Federal Racketeering Act, 18 U.S.C. section 1651, et seq. I also request this Court exercise its supplemental jurisdiction and adjudicate claims arising under the laws of the State of California pursuant to 28 U.S.C. § 1367(a).

24. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process of law. This action seeks injunctive and other extraordinary relief, monetary damages, and such other relief as this Court may find proper.

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

PARTIES

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

27. Cotton is, and at all times material to this action was, the sole record owner of the commercial real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").

28. Cotton is the President of Inda-Gro that he founded in 2010 which is a manufacturer of environmentally sustainable products, primarily horticulture lighting systems, that help enhance crop production while conserving energy and water resources and which operates from the Property.

29. Cotton is the President of 151 Farms, a not-for-profit organization he founded in 2015 that is focused on providing ecologically sustainable horticultural practices for the food and medical needs of urban communities which also operates from the Property.

30. Upon information and belief Defendant Larry Geraci ("Geraci") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

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

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

33. Upon information and belief, Austin Legal Group ("ALG") is, and at all times mentioned was, a company located within the County of San Diego, California.

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

35. Upon information and belief, Defendant Scott H. Toothacre ("Toothacre") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

36. Upon information and belief, Ferris & Britton ("F&B") is, and at all times mentioned was, a company located within the County of San Diego, California.

37. Defendant City of San Diego ("City") is, and at all times mentioned was, a public entity organized and existing under the laws of California.

38. Cotton does not know the true names and capacities of the defendants named DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES

1 through 10 are in some way responsible for the events described in this Complaint and are liable to Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the true names and capacities of these parties have been ascertained.

39. At all times mentioned, defendants Geraci, Berry, Austin, ALG (the "Original Defendants") were each an agent, principal, representative, alter ego and/or employee of the others and each was at all times acting within the course and scope of said agency, representation and/or employment and with the permission of the others.

40. As detailed below, Weinstein, Toothacre & F&B are attorneys representing Geraci and Berry and joined the Original Defendants in their malfeasance when they became aware that the Geraci Lawsuit was vexatious, continued prosecuting the Geraci Lawsuit and took unlawful actions beyond the scope of their legal representation (F&B, from here on out, collectively, with the Original Defendants, the "Private Defendants").

41. As detailed below, the City, through various representatives, each acting either with purposeful intent, in concert with and/or with negligence, condoned, allowed, perpetuated and augmented the irreparable and unlawful actions taken by the Private Defendants with their own unconstitutional actions.

FACTUAL ALLEGATIONS

THE ORIGIN OF THIS MATTER - MY PROPERTY

42. In or around August 2016, Geraci first contacted Cotton to purchase the property and set up an MMCC. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

43. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property and, in good faith, took various steps in

contemplation of finalizing their negotiations (including the execution of documents required for the CUP application). During these negotiations, Geraci represented to Cotton, among other things, that:

a. Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an Enrolled Agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;

b. Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci first lobbied with the City to have the zoning issue resolved (the "Critical Zoning Issue");

c. Geraci, through his personal, political and professional relationships, was in a unique position to lobby and influence key City political figures to have the Critical Zoning Issue favorably resolved and obtain approval of the CUP application once submitted;

d. Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area through his employee Berry and other agents; and

e. That through his Tax and Financial Center, Inc. company he knew how to "get around" the IRS regulations and minimize tax liability which is something he did for himself and other owners of cannabis dispensaries.

44. On November 2, 2016, Cotton and Geraci met and came to an oral agreement for the sale of Cotton's Property to Geraci (the "November Agreement").

45. The November Agreement had a condition precedent for closing, which was the successful issuance of a CUP by the City.

46. The November Agreement consisted of, among other things, Geraci promising to provide the following consideration: (i) a $50,000 non-refundable deposit for Cotton to keep if the

CUP was not issued, (ii) a total purchase price of $800,000 if the CUP was issued; and a 10% equity stake in the MMCC with a guarantee minimum monthly equity distribution of $10,000.

47. At the November 2, 2016 meeting, after the parties reached the November Agreement, Geraci (i) provided Cotton with $10,000 in cash to be applied towards the total non-refundable deposit of $50,000 and had Cotton execute a document to record his receipt of the $10,000 (the "Receipt") and (ii) promised to have his attorney, Gina Austin, speedily draft and provide final, written purchase agreements for the Property that memorialized all of the terms that made up the November Agreement.

48. The parties agreed to effectuate the November Agreement via two written agreements, one a "Purchase Agreement" for the sale of the Property and a second "Side Agreement" that contained, among other things, Cotton's equity percentage, terms for his continued operations of his Inda-Gro business and 151 Farms operations at the Property until the beginning of construction at the Property of the MMCC, and the guaranteed minimum monthly payments of $10,000 (collectively, the ("Final Agreement").

49. On that ***same*** day, November 2, 2016, after the parties met, reached the November Agreement and separated, the following email chain took place:

a. At 3:11 PM, Geraci emailed a scanned copy of the Receipt to Cotton.

b. At 6:55 PM, Cotton replied to Geraci stating the following:

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

c. At 9:13 PM, Geraci replied with the following:

> ***"No no problem at all"***

50. In other words, on the same day the Receipt was executed and I received it from Geraci, I realized it could be misconstrued and that it was missing material terms (e.g., my 10% equity stake). Because I was concerned, I emailed him specifically, so that he would confirm that the Receipt was *not* a final agreement and he confirmed it. That is why I refer to this email as the "***Confirmation Email.***"

51. Thereafter, over the course of almost five months, the parties exchanged numerous emails, texts and calls regarding the Critical Zoning Issue, the Final Agreements and comments to various drafts of the Final Agreement that were drafted by Gina Austin.

52. On March 7, 2017, Geraci emailed a draft Side Agreement. The cover email states:

> "Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month….can we do 5k, and on the seventh month start 10k?"

53. The attached draft of the Side Agreement to the March 7, 2017 email from Geraci provides, among other things, the following:

> a. "WHEREAS, the Seller and Buyer have entered into a Purchase Agreement[,] dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114[.]"
> b. Section 1.2: "Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business […] Buyer hereby guarantees a profits payment of not less than $5,000 per month for the first three months […] and $10,000 a month for each month thereafter[.]"
> c. Section 2.12, which provides for notices, requires a copy of all notices sent to Buyer to be sent to: "Austin Legal Group, APC, 3990 Old Town Ave, A-112, San Diego, CA 92110."

54. The draft was provided in a Word version and attached to the email from Geraci, the "Details" information of that Word document states that the "Authors" is "Gina Austin" and that the "Content created" was done on "3/6/2017 3:48 PM." (the "**Meta-Data Evidence**"; a true and correct copy of a screenshot of the Meta-Data Evidence is attached hereto as **Exhibit 2**).

55. I then found out that Geraci had been lying to me about the Critical Zoning Issue and had submitted a CUP application with the City BEFORE we even finalized the November Agreement.

56. Thus, Geraci breached the November Agreement by, *inter alia*, (i) filing the CUP application with the City without first paying Cotton the $40,000 balance of the non-refundable deposit; not paying Cotton the $40,000 balance; and (ii) failing to provide the Final Agreement as promised.

57. I gave Respondent Geraci numerous opportunities to live up to his end of the bargain. I was forced to, I had put off other investors and was relying on the $40,000 to make payroll and purchase materials for a new line of lights I was developing for my company Inda-Gro. I also, if I had to, would have sold part of my 10% equity stake in the MMCC once it was approved.

58. However, Geraci made it clear via his email communications that he was going to attempt to deprive me of the benefits of the bargain I bargained for when he refused to confirm via writing that he was going to honor the November Agreement and made a statement that he had his "attorneys working on it."

59. On March 21, 2017, after Geraci refused to confirm in writing that he was going to honor the November Agreement, I emailed him: "To be clear, as of now, you have no interest in my property, contingent or otherwise." Having anticipated his breach and being in desperate need of money, That same day, I entered into the Written Real Estate Purchase Agreement with a third-party. That deal was brokered by my Investor.

60. The next day, Weinstein emailed me a copy of the Geraci Lawsuit and filed a *Lis Pendens* on my Property. The Geraci Lawsuit is premised solely and exclusively on the allegation that the Receipt is the Final Agreement. As stated in Geraci's own words in a declaration submitted in State Action under penalty of perjury: "***On November 2, 2016, Mr. Cotton and I executed a***

written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement[.]"

61. Thus, putting aside an overwhelming amount of additional and undisputed evidence, Geraci's own written admission in the Confirmation Email explicitly confirming the Receipt is not the Final Purchase Agreements is completely damning and dispositive. It contradicts the only basis of his complaint in the State Action and merits summary adjudication in my favor on the Breach of Contract cause of action and related claims (hereinafter, the Breach of Contract cause of action premised on the preceding facts is referred to as the "Original Issue").

62. The only argument that has been put forth in the State Action that at first glance appears to have merit is Geraci's argument that the Confirmation Email should be prevented from having legal effect pursuant to the Statute of Frauds (SOF) and the Parol Evidence Rule (PER). That argument was the basis of Geraci's demurrer to my cross-complaint in the State Action, which the State Court denied.

63. Thus, the FACTS prove Geraci is lying and that his Complaint is meritless. And the LAW is on my side as it will not prevent the admission of the Confirmation Email. With neither the facts nor the law supporting Geraci's lawsuits, why have the state court judges allowed both legal actions to continue to my great and irreparable physical, emotional, psychological and financial detriment?

64. The Receipt is the SOLE and ONLY basis of Geraci's claim to the Property in the Civil Action and the CUP application in the City Action. Gina Austin is defending Geraci and Berry in the City Action which is premised on the alleged fact that the Receipt is the Final Agreement for my Property.

65. The Receipt was executed in November of 2016.

66. Geraci's motivation for his unlawful behavior here is deplorable, but it is understandable – Greed. What I cannot understand, nor can the attorneys I have spoken with about these matters, is how or what Austin was thinking when she decided to represent Geraci and Berry in the City Action and, on numerous occasions, work with Weinstein and Toothacre in the Geraci Action? The record was already clear by then, and unless she wants to perjure herself or allege that I somehow can get Google to falsify its records, there is evidence that is beyond dispute that she is LYING to the State Court perpetuating a meritless case based solely on one single argument she knows is false.

67. She is representing to the State Court that the Receipt is the final agreement for my property, but she drafted several versions of the purchase and the side agreement for my property as late as March of 2017? This appears to me to be criminal. And really, really dumb.

68. She is supposedly incredibly smart, she was just named as one of the Top Cannabis Attorneys in San Diego. This is actually the basis of the fear of my Investor, a former attorney himself, what kind of influence does Geraci have that he can force and coerce Austin to commit a crime, to be able to get F&B to bring forth a vexatious lawsuit and to continue to maliciously prosecute a case with no proabable cause? Why have the judges not addressed the evidence?

69. For me it is impossible to ascertain the full extent of Geraci's influence, but it is significant and scary. It is even enough to force a convict out on parole to risk going back to jail - on January 17, 2018 while attempting to find a paralegal to assist me with filing and proof reading my pleadings in the State Action, my investor, a former federal judicial law clerk, called several paralegals to see if they could help me on short notice because my pleadings were not professional. He invited a paralegal named Shawn Miller of SJBM Consulting over to his home to interview him and give him the background. After he gave a description of the case and the Complaint and my Cross-Complaint, Shawn stated that he knew Geraci and his business associates.

70. Because Shawn knew Geraci, my investor told him that matters would not work out and asked him not to mention him to Geraci and/or his associates. My investor specifically told Shawn that as a paralegal, he was ethically and professionally bound to NOT disclose the conversation and its contents.

71. Not even two hours later, at around 10:00 PM at night, Shawn called my investor and told him that it would be in his "best interest" for him to use his influence on me to get me to settle with Geraci. This was the last straw for my investor because he does not understand the actions taken by the City, the attorneys and the judges in this action. Being threatened at his home late at night by a convict out on parole who was clearly aware that by violating his ethical and professional duties he would risk going back to jail, reflected to him, that Geraci, putting aside my own belief that he is a thuggish drug-lord at the head of a criminal enterprise, was someone that had a great deal of influence over criminals and was someone he did not want anything to do with.

72. My investor has been a nervous wreck knowing that Geraci and his associates, including a former special forces green beret (discussed below) know where he lives.

73. With all these seemingly unrelated people and events all coming together to protect, intimidate for, push unfounded legal claims for, and do Geraci's bidding has been disturbing and created nothing but turmoil in my life. Even my family, friends, businessmen and investors are concerned that matters have escalated to a degree that Geraci, in seeking to cover-up everything that has transpired here, may take drastic actions against them.

SUMMARY OF MATERIAL FACTS REGARDING WEINSTEIN, TOOTHACRE AND F&B

74. Initially, given the simple nature of the Original Issue, believing that I would be able to represent myself *pro se* in the Geraci Lawsuit. This was a foolish assumption as it turned out. Without wealth, justice is difficult to access. I prepared and filed an Answer to the Geraci Lawsuit and filed a Cross-Complaint. My Answer and Cross-Complaint were submitted in one document and,

therefore, denied by the State Court for failing to comply with procedural requirements. Thus, I was forced to realize, notwithstanding the simplicity of the Original Issue, that I would be unable to efficiently represent myself in a legal proceeding and entered into an agreement with a third-party (the "Investor") to finance my representation in the Geraci Lawsuit. (The Investor is also the individual who brokered the Real Estate Written Purchase Agreement between Mr. Martin and myself.)

75. In exchange for my Investor financing the Geraci Litigation, I exchanged a portion of the proceeds that I would receive from the Real Estate Purchase Agreement.

76. Investor did research, interviewed and coordinated my retaining the services of Mr. David Damien of Finch, Thornton and Baird ("FTB"). Investor recommended FTB for me to interview and choose as counsel because Mr. Damien had previously worked on a very similar matter, representing a property owner against an investor with whom he had an agreement to develop an MMCC, but with which he had a falling out before the CUP was issued. Mr. Damien was able to prevail in that lawsuit, a Writ of Mandate action against the City, and have the City transfer the CUP application filed by and paid for by the investor in that matter to the property owner (see *Engerbretsen v. City of San Diego*, 37-2015-00017734-CU-WM-CTL.) Thus, he appeared to be a perfect fit to help represent me against Geraci.

77. Investor negotiated with Mr. Damien for FTB to fully represent me in various legal matters without limitation and to do so via a financing arrangement of $10,000 a month. However, Mr. Damien did not actually want to do work in excess of $10,000 a month. Consequently, he was not prepared for several hearings and proved grossly incompetent.[6]

78. Mr. Damien was professionally negligent on December 7, 2017 when he represented me before the state court judge on an application for a TRO. Summarily, he failed in oral argument to raise with the state court judge the Confirmation Email – the single most powerful and dispositive

piece of evidence in this case. After he was berated by my Investor right outside the courtroom for his negligence, he withdrew as my counsel before even speaking with me via email.

79. The State Court Judge's order denying my TRO states "The Court, after hearing oral argument and taking into consideration papers filed, denies the request for Temporary Restraining Order and provides counsel with a hearing for the Preliminary Injunction." Based on the facts above, and as can be confirmed with the opposition to the TRO motion filed herewith, there is no factual or legal basis for the Court's decision.

80. I then filed *pro se* a motion for reconsideration regarding the TRO motion in which I explicitly stated that Damien had been negligent by failing to raise the Confirmation Email with the state court judge. That motion was heard on December 12, 2017.

81. On December 12, 2017, five days after the denial of my TRO application. I showed up with family, friends, and supporters, confident that I would have "my day in court" and that the State Court judge would realize Damien's negligence and issue the TRO.

82. Instead, I was not even given the opportunity to speak a single word. Before I could say anything, the State Court judge told me he was denying my motion for reconsideration and left the bench.

83. The minute order states: "The Court denies without prejudice the ex parte application. Defendant is directed to go by way of noticed motion." If I am correct in assuming that, even putting aside additional evidence, the Confirmation Email by itself dispositively resolves the case in my favor, then what is the basis of the State Court decision to deny my motion for reconsideration if he had reviewed my motion and understood that Damien had been negligent by failing to raise the Confirmation Email? And why was I not allowed to speak a single word? And how does allowing me to file by way of "noticed motion" address the exigency that was the basis of my TRO? And how

does it address the professional negligence of my counsel at the TRO hearing on December 7, 2017? It does not.

84. ***December 12, 2017 is, and always will be, the worst day of my life***. I was in so much shock from the denial of my motion for reconsideration and the way in which it happened, that I suffered a Transient Ischemic Attack, a form of stroke. I had to go to the Emergency Room that day after the state court judge denied my motion without even letting me speak a single word.

85. The next day my financial investor told me he was going to cease funding my personal needs and the Geraci Litigation because he needed to "cut his losses." I went to his home uninvited. I again pleaded with him to continue his support and he refused. I could not control myself and I ended up physically assaulting him.

86. He was going to call the police and have me arrested. I will forever be grateful that he did not and instead called a medical doctor who found me to be a danger to myself and others. (See **exhibit** 1.)

87. After the denial of my TRO application, I made numerous calls to the California State Bar and their Ethic Hotline regarding Damien's negligence at the TRO Motion hearing. I was directed to various Ethics opinions regarding not just his actions, but those of the other attorneys who were present who, because of the situation violated their ethical duties by failing to let the State Court know that it was ruling on a motion when it had not taken into account the single most powerful piece of evidence – the Confirmation Email.

88. The most relevant items that I was pointed to are the following:

a. "[A]n attorney has a duty not only to tell the truth in the first place, but a duty to '*aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice*.' (51 Cal.App. at p. 271, italics added.)"

b. "A lawyer acts unethically where she assists in the commission of a fraud by implying facts and circumstances that are not true in a context likely to be misleading."[10]

89. When Weinstein first emailed me the complaint on March 22, 2017 from the state court action, I replied and noted the facts above, including the Confirmation Email. Thus, Weinstein knew from the very beginning that he was filing and prosecuting a vexatious lawsuit. Unless he wants to argue that he assumed the SOF and the PER would prevent the admission of the Confirmation Email AND he was not aware of the concept of promissory estoppel which would apply if the SOF and PER did apply in the first instance to prevent the admission of the Confirmation Email. (Or likely any of the other common law exceptions to the PER per the Rutter Guide such as fraud, formation defect, condition precedent, collateral agreement, ambiguity or subsequent agreements most of which would swallow up the rule thereby leaving him without a defense. Assuming of course that anyone was actually paying attention or being unduly influenced by Geraci via his political lobbyist. In fact, if I had the money I would hire a private investigator to see what ties Geraci has to my former attorneys at FTB that helped them forget basic fist year law school contract law concepts such as promissory estopel). In fact, an associate at FTB, when partner David Damien was not in the room, even let slip that some of Geraci's clients were also clients of their law firm, FTB. Should FTB not have to disclose that relationship as part of my representation because it could represent a conflict of interest? They never did, aside from the associate, Mr. Witt, who did so in small conversation when the partner Damien was not in the room.)

90. Even assuming the above is the case, that Weinstein was not aware of the concept of promissory estoppel, no later than when the State Court denied Geraci's demurrer based on the SOF and the PER, Weinstein knew that the case was at that point vexatious and yet he kept prosecuting it.

91. At the December 7, 2017 TRO hearing, Weinstein obviously knew that Damien was negligent in not raising, among the other arguments, the Confirmation Email in front of the State Court judge. I believe that given the language provided by the California State Bar, that he violated

his ethical obligations to the Court and, vicariously to me, by allowing the State Court judge to rule on the TRO motion without raising with him the fact that he was doing so without having taken into account material and dispositive evidence.

92. The obligations of an attorney must stop short of taking advantage of situations that lead to a miscarriage of justice, especially when he knows that I am facing severe financial and emotional distress. This appears to me to be an Abuse of Process, and this is in the best case scenario in which it is can be assumed that he is not vexatiously continuing to prosecute this case when he knows that there is no factual or legal basis for it.

93. I filed Notices of Appeal from the denial of my TRO application and Motion for Reconsideration. I hired counsel, Mr. Jacob Austin, a criminal defense attorney, who graciously agreed to help me on my appeals on a contingent basis (and with a guarantee of ultimately being paid by my investor if I did not prevail on my Appeal).

94. I was working on the draft of my Appeal, when Weinstein, on January 8, 2018, filed two motions to compel my deposition in the State Action and a large amount of discovery requests.

95. Against the advice of my counsel and my investor, I decided to take advantage of the opportunity to oppose the Motion to Compel and highlight to the judge the Confirmation Email and the actions by counsel as described above. I filed my Opposition and it is attached here as Exhibit 1.

96. The Motions to Compel were granted and the various requests I set forth in my opposition were denied.

97. The order issued by the judge granting the motion to compel and denying the relief I requested, is predicated on the erroneous belief that there is "disputed" evidence in the record. Up until that point in time I believed that the state court judge decision was due to Damien's negligence, I now believe that there are other nefarious factors at play and justice simply cannot be had in San Diego state court.

98. That same day, January 25, 2018, I emailed Weinstein specifically accusing him of violating his ethical obligations as he has an "affirmative duty" to inform the State Court judge about his erroneous assumption regarding the fact that the Confirmation Email was not disputed. He replied with a perfectly crafted legal response, by stating that he "had not made any misrepresentations to the courts about facts or the law," which is completely accurate. My accusation was that he was violating an affirmative duty to act, not that he had taken an act that was a misrepresentation.

SUMMARY OF ADDITIONAL MATERIAL FACTS REGARDING THE CITY

The City Prosecutor – Mark Skeels

99. In July of 2015, I leased a portion of my building to a tenant who managed a non-profit corporation, "Pure Meds," to run a cannabis dispensary based on his representations that he was fully compliant with the laws. I did not know then what I know now, that leasing my property to Pure Meds without the proper City permit would be unlawful.

100. Although Pure Meds operated from my building, it was completely segregated with separate entrances and addresses.

101. On April 6, 2016, the City shut down Pure Meds and brought charges against Pure Meds and myself almost exactly one year later. On April 5, 2017, realizing and acknowledging my error, I pled guilty to one misdemeanor charge of a Health and Safety Code section HS 11366.5 (a) violation.

102. My plea agreement states that "***Mr. Cotton retains all legal rights pursuant to prop 215.***" The judge asked me during the hearing why that language was added. I explained that I run 151 Farms at my Property and that I cultivate medical cannabis there in compliance with prop 215. Because I was giving up my 4th amendment rights in the plea agreement, I wanted to be sure that I

was protected for my cultivation at the Property pursuant to Proposition 215. In other words, my Plea Agreement and my discussion was predicated on my keeping my Property.

103. Immediately upon entering into the Plea Agreement, the City filed a Petition for Forfeiture of Property based on the Plea Agreement I entered into and filed a Lis Pendens putting yet another cloud on my title.

104. Deputy City Attorney Skeels did not explain to me, nor my counsel, that he intended to seek the forfeiture of my property or that it was even a possibility. In fact, he did the opposite, he made it seem as if he was giving me a sweetheart deal with a small fine and informal probation.

105. My criminal defense attorney who defended me in that action submitted a sworn declaration stating that he was not aware and was not made aware by Skeels that the forfeiture of my property was a possibility. Skeels did not care.

106. In other words, Skeels fraudulently induced me to enter into a plea agreement without telling me the consequences that he was actually planning to pursue. This appears to me to be a violation of my constitutional right to be made aware of the consequences to pleading guilty to a criminal charge. Based on representations of Skeels, I didn't fully understand the charges or the effects of admitting guilt. I would not have entered into a misdemeanor plea agreement if the consequence of that action was to forfeit my property for which at that point in time I was still going to receive in excess of $3,000,000. It is ludicrous to believe otherwise.

107. In fact, this unlawful seizure is, I believe, part of an unconditional strategy by Skeels and the City to deprive individuals of their property. This belief is bolstered by the fact that I have been told on numerous occasions by numerous criminal attorneys as I have explained these facts that it is incredibly rare for prosecutors to talk to defense counsel in the presence of the accused, much less directly communicate with a defendant.

108. Skeels told me he was giving me a "sweetheart" deal. I feel that if it wasn't a pressure tactic than it was essentially a "confidence game" and a complete sham designed to gain undeserved trust and pretend to be helpful while concealing his true intent of pursuing Asset Forfeiture. Under information and belief, I feel that this is just one example of what appears to be endemic, systemic maneuvering to confiscate the properties of as many defendants as possible.

109. This seemingly mild misdemeanor, my leasing out my property to third-parties over who I had no control, with its $239 fine, ended up in an unimaginable $25,000 extortion that also forced me to renegotiate with numerous parties to get it at a time when I was completely destitute because of this legal action brought forth by Geraci and his crew of criminals.

110. Once I hired FTB, Damien reached out to Skeels and according to Damien, even Skeels was not aware of the fact that there would be a forfeiture action. While that would be believable under some circumstances, the Petition for Forfeiture of Property & Lis Pendens were filed the next day so it is impossible to believe him.

111. Ultimately, facing numerous lawsuits and needing to prioritize my time and limited financing, I settled and agreed to pay the City $25,000. For the record, I am not here in this legal action seeking to have that Plea Agreement nullified. Per the Forfeiture Settlement Agreement that Skeels and Damien convinced me into entering, if I fight the Stipulation for Entry of Judgement, then I lose the Property. I am stating these series of events so that it can be taken into account with the other actions by the City via Development Services and the Officers of the Court that together make it clear that there is a pattern of discriminatory and unconstitutional behavior towards me by the City. Whether these actions are because of my Political Activism, Geraci's influence or a combination of both, will be proven through discovery and trial. (As a side note in regards to Skeels: I would hope that Judge Cano may take it upon herself to sanction Skeels for his manipulation of the Plea Agreement that she approved and which clearly did not contemplate the Forfeiture Action that he

brought under it as she and I had explicitly discussed the continuation of my cultivation practices on the Property, the basis of the Prop 215 language added into the Plea Agreement. Who knows how many more victims Skeels has extorted and how many orders by judges he has manipulated?)

The City's Development Services Department

112. On March 21, 2017, when I terminated my agreement with Geraci and sold the property to a third-party, I also emailed the Development Project Manager responsible for the CUP application on my Property. I stated:

> "the potential buyer, Larry Geraci (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property."

113. The City refused to cease processing the CUP application as the application was submitted by Geraci's employee, Berry.

114. However, on May 19, 2017, after numerous emails and calls with various individuals at Development Services, the Project Manager provided a letter addressed to Abhay Schweitzer, Geraci's architect who is in control of processing the CUP application with City, stating, in relevant part:

> "City staff has been informed that the project site has been sold. In order to continue the processing of your application, with your project resubmittal, ***please provide a new Grant Deed***, updated Ownership Disclosure Statement, and a change of Financial Responsible Party Form if the Financial Responsible Party has also changed."

115. Thus, as of May 19, 2017, I proceeded under the assumption that I was not at risk of losing the CUP process because the CUP process was on hold until, *inter alia*, I executed a Grant Deed. **If a CUP application is submitted and it is denied, then another CUP application cannot be resubmitted for a year on the same Property.**

116. Sometime after May 19, 2017, I contacted Development Services and requested that I be allowed to submit a second CUP application. Development Services denied my request and stated that they could not accept a second CUP application on the same property. This is a blatant lie. Damien had, in the Engerbretsen matter, submitted a second CUP application on behalf of his client with the City.

117. On September 22, 2017, my then-counsel Damien wrote to Development Services noting their refusal to accept a second CUP application and that such "refusal is not supported by any provision of the Municipal Code."

118. The City replied on September 29, 2017, by stating, inter alia, that I could submit a second CUP application, but then also stated the following:

> "As you've acknowledged in your letter, DSD is currently processing an application, submitted by Ms. Rebecca Berry [...] Please be advised that the City is only able to make a decision on one of these applications; the first project deemed ready for a decision by the Hearing Officer will be scheduled for a public hearing. Following any final decision on one of the CUP applications submitted [...], the CUP application still in process would be obsolete and would need to be withdrawn."

119. On October 30, 2017, through my then-counsel Damien, I filed a Motion for Writ of Mandate directing the City to transfer the CUP application to me. It was not until I reviewed the Declaration of Abhay Schweitzer in Support of Geraci's opposition to my Motion for a Writ of Mandate that I came to find out that the City had, in complete contradiction of the letter provided on May 19, 2017, continued to process the Geraci CUP application on MY Property without the executed Grant Deed.

120. The City never informed me of this or provided notice of any kind. Had I known, I would have taken alternative steps to secure my rights to the CUP process. Per Schweitzer's declaration, everything was going great and he anticipates the CUP being approved in March of 2018.

121. To summarize, first, DSD communicated that it would not process a CUP application on my Property without an executed grant deed by me. However, without any notice or knowledge and in complete contradiction of its own letter stating it required an executed Grant Deed, it continued to prosecute the Geraci CUP application.

122. Second, when I first reached out to DSD to submit a second CUP application, it blatantly lied by stating that they could not accept a second CUP application on the property when it had on other occasions for similarly situated individuals.

123. Third, not until my then-counsel sent a demand letter noting there was no legal basis for the City's refusal, did DSD allow me to submit a CUP application. But, the City created an unjust "horse-race" between myself and Geraci.

124. DSD has been processing the Geraci CUP application for over a year at that point, allowing me to submit a second CUP application on those terms is a **futile** task that would only have resulted in needless additional expense and actions and which, per the declaration of Schweitzer, was a fool's task as it is expected that the CUP will issue in March. This is simply a malicious ploy to get me to expend more money and resources when all these parties knew that I was fighting a meritless lawsuit and incredibly financially challenged.

City Civil Attorneys

125. For the same reasons explained above, the City attorney at the TRO Motion hearing should have informed the State Court judge about Damien's negligence and the Confirmation Email.

126. Further, the City through its attorney, filed its Answer to my application for a Writ of Mandate AFTER the TRO Motion hearing. At that point, the City knew that Damien had been negligent and the attorney for the City even communicated to Damien that he "should have won" based on the pleading papers.

127. Pursuant to the Answer filed, even though the City KNOWS that the case is meritless, it is seeking legal fees against me and it is accusing me, among other things, of being guilty of "unclean hands."

128. The City is accusing me of wrongdoing when it knows that I am not in the wrong. The only wrongs that the City could hold against me are the leasing of my Property to a non-profit that operated an unlicensed dispensary. I recognize I was wrong in not seeking out confirmation of the dispensary's legality and I pled guilty, for which I was extorted $25,000.

129. The only other potential reason is that the City, when taking into account all of the other unfounded and unconstitutional actions described herein, is that the City is systemically discriminating against me whenever it can because of my Political Activism and/or in connection Geraci as a result of his influence.

The State Court Judges

130. At the oral hearing held on January 25, 2018 on Geraci's motions to compel, the State Court judge started the hearing by stating that he does not believe that counsel against whom I made my allegations would engage in the actions I described. He specifically stated that he has known them all for a long period of time.

131. As I view it, he was telling me he has some form of relationship with attorneys and that he does not believe they would engage in unethical actions. OK, I understand that. I could just be a crazy pro per, but why did he not review the evidence submitted and make a judgment that takes that evidence into account? I literally begged him in my opposition, and for that matter, in my Motion for Reconsideration, that he please provide the reasoning for why the Confirmation Email does not dispositively address my breach of contract cause of action.

132. The Order he issued granting Weinstein's Motions to Compel and denying my requests in my Opposition states the following: "***Disputed*** evidence exists suggesting that Cotton was

not the only person who possess the right to use the subject property." THERE IS **NO** DISUPTED EVIDENCE. The only evidence in the record ever put forth by Geraci for his claim to my Property is his allegation that the Receipt is the final purchase agreement for my property, a lie which is blatantly exposed by his admission in the Confirmation Email. That, again, is NOT DISPUTED.

133. To clearly highlight this issue: The Confirmation Email was the subject of a demurrer that the State Court judge ruled on, it was objected to on SOF and PER grounds, not its authenticity that has never been challenged, disputed or denied since November 2, 2016!

134. I was preparing yet another Motion for Reconsideration regarding his order granting the Motions to Compel, exhausting my limited resources attempting to make all kinds of arguments when I came to a realization: even if he did turn around and issue some kind of order favorable to me, all the evidence proves that he is at best, grossly negligent, and, at worst, conspiring against me because of my Political Activism.

THE FILING OF THIS FEDERAL COMPLAINT – THREATHS

135. On **February 3, 2018**, two individuals visited me. (I am not naming them because one of the individuals is a former special forces operative for the US military and, for the reasons described below, an agent of Geraci.) These two individuals came to my Property and during the course of that conversation contradicted themselves by stating first that they had nothing to do with Geraci and that they would buy the Property/CUP and assured me a long term job.

136. When I told them that Mr. Martin was paying a total purchase price of $2,500,000, they told me they would pay significantly *more* than $2,500,000 and that it would also be beneficial for me as I would be able to "end" the litigation with Geraci.

137. I then explained to them that I was already contractually and legally obligated to pursue the litigation action against Geraci, prevail, and then transfer the Property and the CUP application to Mr. Martin.

138. They looked at each other and then contradicted themselves. They told me that Geraci was "powerful" and had "deep ties and influence" with the "City" and that it would not go well for me if I did not agree to settle the action with Geraci. These individuals are NOT simple, street level individuals. One of them is a high-net worth individual that recently sponsored a large art gala at San Diego State (the "Sponsor").

139. The other is a former special forces operative for the US Military (the "Operative"). The Operative told me that because of my Plea Agreement, Geraci could use his influence with the City to have the San Diego Police Department raid my Property at any time and have me arrested. I told him that all the cannabis on my Property was compliant with Proposition 215 and my rights to cultivate as I had specifically discussed with the judge who accepted the plea agreement. I showed it to them, I have a large photocopy of it on my wall at the Property, and it was clear they were expecting me to be more intimidated.

140. Yesterday, **February 8, 2018**, when I was wrapping up this Federal Complaint and all the required documents for the filing of my TRO submitted concurrently with herewith, I sent an email notice **ONLY** to counsel in the State Action (the "Federal Notice Email").

141. NO ONE ELSE KNEW THAT WAS PLANNING ON FILING IN FEDERAL COURT WITH THESE CAUSES OF ACTION YESTERDAY. NOT EVEN MY OWN FAMILY, FRIENDS, INVESTORS, SUPPORTERS, PARALEGALS AND COUNSEL.

142. I sent the Federal Notice Email at **3:01 PM**.

143. At **3:36 PM**, not even an hour later, the Operative called me and told me ***emphatically*** that he no longer has anything to do with the Sponsor, Geraci or anything related to me. He was

aware that I was immediately filing in Federal Court. He asked that I note name him or involve him in this Federal lawsuit. Because he is ex-special forces, I have no desire to do so. Should the Sponsor, Geraci, and whichever attorney informed him deny this allegation, then they can name him and be responsible for the consequences of doing so. I note I have the phone records to prove this and am creating copies that will be kept separately by third-parties.

144. How could Sponsor and Operative claim to not know Geraci? Why is Operative calling me to tell me that he has nothing to do with Geraci or the actions that have transpired here? I ONLY told counsel in the State Action. Clearly, Sponsor and Operative are working with Austin, Weinstein, Toothacre and Geraci and they were sent to coerce and/or intimidate me at the behest of Geraci in an attempt to force me to settle this lawsuit when they came to visit me on February 8, 2018.

CONCLUSION

145. I was researching the last Order by the state judge that denied my requested relief because, he decrees, that I have not Exhausted my Administrative Remedies. In the Rutter guide it states that: "The failure to pursue administrative remedies does not bar judicial relief where the administrative remedy is *inadequate*, or where it would be *futile to pursue* the remedy" and "administrative remedies also inadequate when irreparable harm would result by requiring exhaustion before seek judicial relief" [Rutter Guide 1:906.26.]

146. Additionally, it stated in that subsection that: "Generally, a plaintiff is not required to exhaust state administrative or judicial remedies before suing under federal civil rights statutes." [Rutter Guide 1:906.29]

147. This reference led to me researching Section 1983 claims that I already knew allowed federal action, but I was not aware could stop State Court actions while it adjudicated the Federal Questions. That Rutter Guide section has a link to Mitchum v. Foster.

148. The United States Supreme Court held in Mitchum v. Foster that Section 1983 claims in Federal Court are an exception to the Anti-Injunction Act that would allow a Federal Court to stay a state court action. In reaching this decision, the United States Supreme Court noted the following from the legislative debates leading to the passing of Section 1983:

> "Senator Osborn: 'If the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate[.]
>
> Representative Perry concluded: 'Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices…. (A)ll the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice.'"

In my case, among other things, the City attorney unreasonably seized my property, they "saw" and "heard" me speak with the judge regarding my right to retain my Prop 215 rights and my property, but they pretend that they do not; I have repeatedly and emphatically demeaned myself and begged the State Court judges in writing and at oral hearings to hear me regarding the Confirmation Email, but they do not "hear me;" all attorneys present at the TRO hearing on December 7, 2017 where obligated to aid the Court in avoiding error, but they "conceal the truth or falsify it." The City attorneys "skulk away" and pretend to not be involved by stating that this case is a "private dispute" between private actors.

149. It is futile to seek to protect and vindicate my rights in State Court. I have been repeatedly told by numerous attorneys that if I were to appeal the State Court orders that there would be severe backlash because judges take severe and personal offense when their judgment is challenged. And that it is especially true when it turns out that they were actually wrong as there is then a record of their "abuse of discretion" – "***Among the most dangerous things an injured party can do is to appeal to justice***." (*Id.*)

150. Thus, I find myself here and now today. I do not ask this Federal Court to believe me, I only ask that this Court please genuinely review the evidence submitted with my application submitted herewith for a TRO and the causes of action I bring forth in this Federal Complaint. If Geraci and/or the City is allowed to passively and/or actively sabotage the CUP application, I will have lost everything of value in my life completely unlawfully and unconstitutionally.

151. Please, I realize that this is a Federal Court and my Political Activism will not endear me to the Federal Judiciary as an entity, but I do not come before this Federal Court to enforce or argue rights related to my Political Activism, but rather for the protection and vindication of those rights that are granted to me by the Constitution of the United States of America.

FIRST CLAIM 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE (As against the City of San Diego)

152. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 135 as though fully set forth herein.

153. Defendant(s), acting under the color of state law, county ordinances, and penal codes, individually and in their official capacity, and in violation of 42 U.S.C. § 1983, have violated Plaintiff's right to be free from unreasonable search and seizure under the Fourth Amendment.

154. Well after my property was raided because the wrong-doings of my adjoining tenant (Pure Meds), it occurred upon the City that (although they declined to press charges shortly after the raid and waited the full statute of limitations under California Penal Code 364/365 days) I could easily be charged and set up for an Asset Forfeiture action, so they filed. Upon entering a plea following City Attorney Skeels' repeated assurances that the plea was a "sweetheart deal", and for the sake of expediency, I went ahead and pled guilty.

155. I thought the action was over at that time. I was wrong, the City used this transaction to further their suspicious utilization of Asset Forfeiture and almost immediately filed a Lis Pendens.

THAT is where the truly unreasonable seizure comes into play. This was essentially a retroactive punishment tacked on to the punishment that the City had already meted out.

156. Defendants (City Attorney's Office) violated Plaintiffs' right to procedural due process by issuing a Lis Pendens as a result of the plea without any prior notice and under false pretenses. Defendant City has violated Plaintiffs' right to be free from unreasonable search and seizure under the Fourth Amendment by conducting in such underhanded behavior.

157. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an amount according to proof at trial.

SECOND CLAIM FOR 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS (As against City)

158. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

159. Defendants, acting under the color of state law, county ordinances, regulations, customs and usage of regulations and authority, individually and in their official capacity, and in violation of 42 U.S.C. § 1983, have deprived Plaintiff of the rights, privileges or immunities secured by the Due Process Clause of the Fourteenth Amendment.

160. Defendant City, specifically Development Services, has violated Plaintiff's rights to substantive and procedural due process by the actions alleged above in regards to my Property and the associated CUP application pending on my Property.

161. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an amount according to proof at trial.

THIRD CLAIM FOR BREACH OF CONTRACT (Against Geraci, Berry, Austin, ALG and DOES 1 through 10)

162. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

163. Geraci and Cotton entered into an oral agreement regarding the sale of the Property and agreed to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting their agreement.

164. The November 2nd Agreement was meant to be the written instrument that solely memorialized the partial receipt of the non-refundable deposit.

165. Cotton upheld his end of the bargain, including by deciding to not sell his Property to another party while Geraci, among other matters, ostensibly prepared a CUP application for submission.

166. Under the parties' oral contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

167. Geraci breached the contract by, among other reasons, alleging the November 2nd Agreement is the final agreement between the parties for the purchase of the Property. Berry, as Geraci's agent is also liable. And Gina Austin and ALG were fully aware and apparently supportive of these actions based on the multiple drafts and revisions of what was to be the final purchase agreement.

168. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable, has suffered and continues to suffer damages because of Geraci's actions that constitute a breach of contract. This intentional, willful, malicious,

outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

FOURTH CAUSE OF ACTION FALSE PROMISE – (As Against Geraci, Berry and DOES 1 through 10)

169. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

170. On November 2, 2016, among other things, Geraci falsely promised the following to Cotton without any intent of fulfilling the promises.

171. Geraci would pay Cotton the remaining $40,000 of the non-refundable deposit prior to filing a CUP application;

172. Geraci would cause his attorney to promptly draft the final integrated agreements to document the agreed-upon deal between the parties;

173. Geraci would pay Cotton the greater of $10,000 per month or 10% of the monthly profits for the MMCC at the Property if the CUP was granted; and

174. Cotton would be a 10% owner of the MMCC business operating at Property if the CUP was granted.

175. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016 when he made them.

176. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to rely on the false promises and execute the document signed by the parties at their November 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire agreement.

177. Cotton reasonably relied on Geraci's promises.

178. Geraci failed to perform the promises he made on November 2, 2016.

179. As a result of the actions taken in reliance on Geraci's false promises, Geraci created a cloud on Cotton's title to the Property. As a further result of Geraci's false promises, Geraci has diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur significant unnecessary costs and attorneys' fees to protect his interest in his Property. As a further result of Geraci's false promises, Cotton has been deprived of the remaining $40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

180. Geraci's representations were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages under Civil Code section 3294.

FIFTH CLAIM OF BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (As against Geraci, Berry, Austin, ALG, the City of San Diego, and DOES 1 through 10)

181. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

182. Geraci breached the implied covenant of good faith and fair dealing when, among other actions described herein, he alleged that the November 2nd Agreement is the final purchase agreement between the parties for the Property.

183. As discussed above, Geraci, Berry, by and through counsel (Austin and ALG) and personally continued to negotiate terms of the initial agreement for months following the November 2 Agreement.

184. Additionally, the City of San Diego, specifically Development Services have not dealt with the CUP application fairly as discussed above. They have been paid application fees to process the CUP on my property. I am the sole deed holder and have at all times held exclusive possession of the Federal Blvd. property.

185. In dealing with San Diego, they have breached the implied covenant of good faith and fair dealing when among other actions, they have not kept me informed or allowed me to gain ownership of the CUP and have even went so far as to deny my rights to Due Process in failing to do so.

186. I have suffered and continue to suffer damages because of Geraci's actions, his attorneys actions and the City's Actions that constitute a breach of the implied covenant of good faith and fair dealing.

187. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

SIXTH CLAIM OF BREACH OF FIDUCIARY DUTY (As against Geraci and DOES 1 through 10)

188. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

189. Geraci stated he would honor the agreement reached on November 2nd, 2016, which included a 10% equity stake in the Business and a guaranteed monthly equity distribution of $10,000 a month.

190. Geraci stated he would pay the balance of the non-refundable deposit as soon as possible, but at the latest when the alleged critical zoning issue was resolved, which, in turn, he alleged was a necessary prerequisite for submission of the CUP application.

191. Geraci acknowledged that the November 2nd Agreement was not the final agreement for the purchase of the Property via email on November 2nd, 2016.00

Enrolled Agent – Fiduciary Duty

192. Geraci represented to Cotton that as an Enrolled Agent for the IRS he was an individual that could be trusted as he operated in a fiduciary capacity on a daily basis for many high-net worth individuals and businesses. Further, that as an Enrolled Agent he would be able to structure the tax filings of the medical marijuana dispensary and the owners, including Cotton, in such a way that the tax liability would be very limited and, consequently, would maximize Cotton's share of the profits.

193. Geraci, by representing himself to be an Enrolled Agent of the IRS that would, among other things, submit on behalf of Cotton tax filings with the IRS, created a fiduciary relationship between Cotton and himself.

Real Estate Broker – Fiduciary Duty

194. Geraci is a licensed real estate Broker.

195. Geraci took responsibility for the drafting of the Purchase Agreement for the Property stating he would have his attorney provide a draft and, further, that Cotton did not require his own counsel to revise the drafts of the real estate purchase contract.

196. Geraci induced Cotton into letting him effectuate the real estate transaction by claiming that Cotton could trust Geraci.

197. Breach of Fiduciary Duties

198. Cotton has violated his fiduciary duties by, among the other actions described herein, fraudulently inducing Cotton into executing the November 2nd Agreement and alleging it is the final agreement for the purchase of the Property.

199. Cotton has suffered and continues to suffer damages because of Geraci's actions that constitute a breach of his fiduciary duties.

200. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

SEVENTH CLAIM FOR FRAUD IN THE INDUCEMENT (As against Geraci, Berry, ALG, Austin and DOES 1 through 10)

201. Plaintiff incorporates by reference each and every allegation contained above as though fully set forth herein.

202. Geraci made promises to Cotton on November 2nd, 2016, promising to effectuate the agreement reached on that day, but he did so without any intention of performing or honoring his promises.

203. Geraci had no intent to perform the promises he made to Cotton on November 2nd, 2016 when he made them, as is clear from his actions described herein, that he represented he would be preparing a CUP application.

204. In fact, he had already deceived Cotton and submitted a CUP application PRIOR to November 2, 2016.

205. Geraci intended to deceive Cotton in order to, among things, execute the November 2nd Agreement.

206. Cotton reasonably relied on Geraci's promises and had no idea Geraci had already started the CUP application process.

207. Geraci failed to perform the promises he made on November 2nd, 2016, notably, his delivery of the balance of the non-refundable deposit and his promise to treat the November 2nd Agreement as a memorialization of the $10,000 received towards the non-refundable deposit and not the final legal agreement for the purchase of the Property.

208. Cotton has suffered and continues to suffer damages because he relied on Geraci's representations and promises.

209. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

EIGHTH CLAIM FOR FRAUD/FRAUDULENT MISREPRESENTATION (As against Geraci, Berry, Austin, ALG and DOES 1 through 10)

210. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

211. Each of the Defendants and their agents intentionally and/or negligently made representations of material fact(s) in discussions with Cotton. On November 2, 2016, Geraci represented to Cotton, among other things, that:

212. He would honor the agreement reached on November 2nd, 2016, which included a 10% equity stake in the Business and a guaranteed monthly equity distribution of $10,000 a month.

213. He would pay the balance of the non-refundable deposit as soon as possible, but at the latest when the alleged critical zoning issue was resolved, which, in turn, he alleged was a necessary prerequisite for submission of the CUP application.

214. He understood and confirmed the November 2nd Agreement was not the final agreement for the purchase of the Property.

215. That he, Geraci, as an Enrolled Agent by the IRS was someone who was held to a high degree of ethical standards and that he could be trusted to prepare and forward the final legal agreements, honestly effectuate the agreement that they had reached, including the corporate structure of the contemplated businesses so as to ultimately minimize Cotton's tax liability.

216. That the preparation of the CUP application would be very time consuming and take hundreds of thousands of dollars in lobbying efforts.

217. Geraci knew that these representations were false because, among other things, Geraci had already filed a CUP application with the City of San Diego prior to that day. At that point in time, all of his declarations regarding the issues that needed to be addressed, his trustworthiness and his intent to follow through with accurate final legal agreements were false. His subsequent communications via email, text messages and Final Agreement draft revisions make clear that he continued to represent to Cotton that the preliminary work of preparing the CUP application was underway, when, in fact, he was just stalling for time. Presumably, to get an acceptance or denial from the City and, assuming he got a denial, to be able to deprive Cotton of the $40,000 balance due on the non-refundable deposit.

218. Geraci intended for Cotton to rely on his representations and, consequently, not engage in efforts to sell his Property.

219. Cotton did not know that Geraci's representations were false.

220. Cotton relied on Geraci's representations.

221. Cotton's reliance on Geraci's representations were reasonable and justified.

222. As a result of Geraci's representations to Cotton, Cotton was induced into executing the November 2nd Agreement, giving Geraci the only basis of his Complaint and, consequently, among other unfavorable results, allowing Geraci to unlawfully create a cloud on title to his Property. Thus, Cotton has been forced to sell his Property at far from favorable terms.

223. Cotton has been damaged in an amount of no less than $2,000,000 from this Claim alone. Additional damages from potential future profit distributions and other damages will be proven at trial.

224. Geraci's representations were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property.

225. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

NINTH CLAIM FOR TRESPASS (As against Geraci, Berry, Toothacre, Weinstein, F&B and DOES 1 through 10)

226. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

227. The Property was owned by Cotton and is in his exclusive possession.

228. Geraci, or an agent acting on his behalf, illegally entered the subject property on or about March 27, 2017, and posted two NOTICES OF APPLICATION on the Property.

229. Geraci's attorney, Michael Weinstein, emailed Cotton on March 22, 2017 stating that Geraci or his agents would be placing the aforementioned Notices upon Cotton's property.

230. Geraci knew that he had fraudulently induced Cotton into executing the November 2nd Agreement and, consequently, he had no valid legal basis to trespass unto Cotton's Property.

231. Alternatively, setting aside the fraudulent inducement, on March 21, 2017, Cotton, having discovered Geraci's criminal scheme to deprive him of his Property, emailed Geraci stating that he no longer had any interests in the Property and should not trespass on his Property, yet he continued to do despite being warned not to.

232. Geraci's Notices of Application posted on his Property has caused and continues to damage Cotton because the discouragement of future businesses, partnerships and potential buyers it immediately caused to which Weinstein was a knowing party.

233. Cotton has no adequate remedy at law for the injuries currently being suffered in that it will be impossible for Cotton to determine the precise amount Cotton has suffered and continues to suffer damages because of Geraci's actions.

234. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

TENTH CLAIM FOR SLANDER OF TITLE (As against Geraci, Berry, Austin, ALG, F&B and the City of San Diego)

235. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

236. Geraci disparaged Cotton's exclusive valid title by and through the preparing, posting, publishing, and recording of the documents previously described herein, including, but not limited to, a Complaint in state court and Lis Pendens filed on the Property.

237. The City of San Diego separately also used/abused the Lis Pendens process to strong arm me and violate my 4th Amendment Rights against unreasonable seizure.

238. Defendants knew that such documents were improper in that at the time of the execution and delivery of the documents, Defendants had no right, title, or interest in the Property. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Cotton's legal title to the Property. By posting, publishing and recording documents, Defendants' disparagement of Cotton's legal title was made to the world at large.

239. As a direct and proximate result of all Defendants' conduct in publishing these documents, Cotton's title to the Property has been disparaged and slandered, and there is a cloud on Cotton's title, and Cotton has suffered and continues to suffer damages, including, but not limited to, lost future profits, in an amount to be proved at trial, but in an amount of no less than $2,000,000.

240. As a further and proximate result of Defendants' conduct, Cotton has incurred expenses in order to clear title to the Property. Moreover, these expenses are continuing, and Cotton will incur additional expenses for such purpose until the cloud on Cotton's title to the Property has

been removed. The amounts of future expenses are not ascertainable at this time but will be proven at trial.

241. The amount of such damages shall be proven at trial (expert witness testimony will likely be of critical importance).

ELEVENTH CLAIM FOR FALSE DOCUMENTS LIABILITY (As against Geraci, Berry, Austin, ALG, F&B and DOES 1 through 10)

242. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

243. Geraci filed a Complaint against Cotton and a Lis Pendens on the Property with a public office, respectively, this Court and the San Diego County Recorder's Office.

244. Geraci knew the Complaint and Lis Pendens, both solely and completely predicated upon his allegation that the November 2nd Agreement was the final agreement for the purchase of the Property, was false and unfounded when he filed them.

245. Geraci, his agents and counsel, all knew at the time of the filing he was committing a crime (in violation of California Penal Code Section 115 PC) and did so knowingly anyway.

246. Cotton has suffered and continues to suffer damages because of Geraci's actions.

247. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

TWELFTH CLAIM OF UNJUST ENRICHMENT (As against Geraci, Berry, and the City of San Diego)

248. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

249. Geraci represented to Cotton that executing the November 2nd Agreement was only to memorialize the $10,000 good-faith deposit towards the total $50,000 non-refundable deposit, but

Geraci now alleges that the November 2nd Agreement is the final agreement for the purchase of the Property.

250. Geraci himself confirmed via email that the November 2nd Agreement is not the final agreement.

251. Had Geraci described the effect of executing the November 2nd Agreement in the way that Geraci presently interprets it, then Cotton would never have signed the November 2nd Agreement.

252. Geraci will be unjustly enriched at the expense of Cotton if he is permitted to retain the interest in the Property that he now asserts under the November 2nd Agreement.

253. The City of San Diego was able trick me into entering deals that caused me to lose $25,000 to remove the Lis Pendens from the property.

254. Cotton has suffered and continues to suffer damages because of Geraci's actions.

255. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

THIRTEENTH CLAIM OF INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS – (As Against Geraci, Berry, Austin, F&B and DOES 1 through 10)

256. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

257. Cotton has an ongoing prospective business relationship with Mr. Martin and the City via by the then-filed CUP application that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the approval of the CUP application.

258. Further, specifically, Cotton has an ongoing prospective business relationship with Mr. Martin for the sale of the Property that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the sale of the Property.

259. Defendants knew of Cotton's ongoing and prospective business relationship with Mr. Martin and the City arising from and related to the CUP Application and defendants knew of Cotton's ongoing and prospective business relationship with the new buyer for the Property.

260. Defendants intentionally engaged in acts designed to interfere, and which have interfered and are likely to continue to interfere, with Cotton's relationship with the City, the CUP application, and the new buyer, including without limitation, their refusal to acknowledge they have no interest in the Property and/or the CUP application.

261. As a direct and proximate result of the defendants' conduct, Cotton has suffered and will continue to suffer damages in an amount not yet fully ascertainable and to be determined according to proof at trial.

262. The aforementioned conduct by defendants was despicable, willful, malicious, fraudulent, and oppressive conduct which subjected Cotton to cruel and unjust hardship in conscious disregard of Cotton's rights, so as to justify an award of exemplary and punitive damages in an amount to be determined according to proof at trial, including pursuant to Civil Code section 3294.

FOURTEENTH CLAIM OF NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS – (As Against Geraci, Berry, and DOES 1 through 10)

263. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

264. Cotton has an ongoing prospective business relationship with the City that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the approval of the CUP application. In addition, Cotton has an ongoing prospective business

relationship with the new buyer of the Property that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the sale of the Property.

265. Defendants knew or should have known of Cotton's ongoing and prospective business relationship with the City arising from and related to the CUP Application, and defendants knew or should have known of Cotton's ongoing and prospective business relationship with the new buyer for the Property.

266. Defendants failed to act with reasonable care when they engaged in acts designed to interfere, and which have interfered and are likely to continue to interfere, with Cotton's relationship with the City, the CUP application, and the new buyer, including without limitation, their refusal to acknowledge they have no interest in the Property and/or the CUP application.

267. As a direct and proximate result of the defendants' conduct, Cotton has suffered and will continue to suffer damages in an amount not yet fully ascertainable and to be determined according to proof at trial.

FIFTH CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (As against All Defendants)

268. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

269. Defendants, and each of them, engaged in outrageous conduct towards Plaintiff, with the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer severe emotional distress. Geraci has event sent convicts to intimidate, coerce and threaten my investors by telling him that it would be in his "best interest" to use his influence me to settle with Geraci.

270. All of the above-named defendants know that this is an unfounded lawsuit against me and the continued malicious attempts at depriving me of my rights, money and sanity can only be described as outrageous.

271. The defendants have acted for the purpose of causing me emotional distress so severe that it could be expected to adversely affect mental health and well-being.

272. The defendants' conduct is causing such distress, which includes, but is not limited to, chronic loss of sleep, paranoia, and other injuries to health and well-being. All of these injuries continue on a daily basis.

273. To the extent that said outrageous conduct was perpetrated by certain Defendants, the remaining Defendants adopted and ratified said conduct with a wanton and reckless disregard of the deleterious consequences. As a proximate result of said conduct, I have suffered and continue to suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as economic losses.

274. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice and in conscious disregard of Plaintiff's rights, entitling Plaintiff to recover punitive damages in amounts to be proven at trial.

SIXTHTEENTH CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(As against All Defendants)

275. Plaintiff realleges and incorporates by reference the allegations contained above as though fully set forth.

276. All Defendants, and each of them, knew or reasonably should have known that the conduct described herein would, and did, proximately result in physical and emotional distress to Plaintiff. Being as all of the above-named defendants know that this is an unfounded lawsuit against

me and the continued malicious attempts at depriving me of my rights, money and sanity can only be described as outrageous.

277. At all relevant times, all Defendants, and each of them, had the power, ability, authority, and duty to stop engaging in the conduct described herein and/or to intervene to prevent or prohibit said conduct.

278. Despite said knowledge, power, and duty, Defendants negligently failed to act so as to stop engaging in the conduct described herein and/or to prevent or prohibit such conduct or otherwise protect Plaintiff. Therefore, whether or not the defendants have acted for the express purpose of causing me this extreme emotional distress, they have caused it. And they should have known this would happen.

279. Further, they have been made aware and have been on notice. Weinstein of F&B, specifically. To the extent that said negligent conduct was perpetrated by certain Defendants, the remaining Defendants confirmed and ratified said conduct with the knowledge that Plaintiff's emotional and physical distress would thereby increase, and with a wanton and reckless disregard for the deleterious consequences to Plaintiff.

280. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and physical injuries, as well as economic losses, all to his damage in amounts to be proven at trial.

SEVENTEENTH CLAIM FOR CONSPIRACY (As against Geraci, Berry, Austin, ALG, Weinstein, the City of San Diego and DOES 1 through 10)

281. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

282. Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement on October 31st, 2016, alleging that the Ownership Disclosure Statement was necessary because the

parties did not have a final agreement in place at that time, thus, he needed it to show other professionals involved in the preparation of the CUP application and the lobbying efforts to prove that he, Geraci, had access to the Property.

283. As a sign of good-faith by Cotton as they had not reached a final agreement for the sale of the Property. Geraci wanted something in writing proving Cotton's support of the CUP application at his Property because he needed to immediately spend large amounts of cash to continue with the preparation of the CUP application and the lobbying efforts. However, Geraci promised that the Ownership Disclosure Statement would not under any circumstances actually be submitted to the City of San Diego. Further, that it was impossible to submit the CUP application as the critical zoning issue had been resolved with the city of San Diego.

284. The Ownership Disclosure Statement is also executed by Rebecca Berry and denotes Rebecca Berry is the "Tenant/Lessee" of the Property.

285. Geraci represented to Cotton that Rebecca Berry could be trusted and was one of his best employees who was familiar with the medical marijuana industry.

286. Cotton has never met or entered into any agreement with Rebecca Berry.

287. Rebecca Berry knew that she had not entered into a lease of any form with Cotton for the Property.

288. Upon information and belief, Rebecca Berry allowed the CUP application to be submitted in her name on behalf of Geraci because Geraci has been a named Cotton in numerous other lawsuits brought by the City of San Diego against him for the operation and management of unlicensed and unlawful marijuana dispensaries.[14]

289. Rebecca Berry knew that she was filing a document with the City of San Diego that contained a false statement, specifically that she was a lessee of the Property.

290. Rebecca Berry, at Geraci's instruction or her own desire, submitted the CUP application as Geraci's agent, thereby Geraci's scheme to deprive Cotton of his Property.

291. Gina Austin and ALG represented Berry and Geraci in the initial Writ motion involving the City of San Diego, additionally, Austin and ALG drafted the proposed Final Purchase Agreements and subsequent revisions well into March of 2017. Therefore these acts were in full knowledge that the November 2 Agreement (which this whole case is premised on) was NOT intended to be the full and final agreement. The egregiousness of not informing the court of these material facts and allowing this case to proceed so far is a slight to the Superior Court to which an officer of the court has a duty of honesty, integrity and candor. No other possible explanation comes to mind other than Austin and ALG have been knowingly working in concert together to defraud the court, and myself.

292. Inexplicably, no one working in The City Attorney's Office of the City of San Diego have raised their voices to assist me when they have received all the above information. They have seen my evidence, they have expressed surprise that I was not granted a TRO after reading my Motion for Reconsideration for the TRO. Yet, knowing this is an unfounded case San Diego is still permitting this injustice continue.

293. The San Diego Department of Services seemingly worked exclusively for Geraci and Berry and essentially blocked me from having any say as to the CUP for my property. They have continued to process the CUP application for Geraci and Berry when they know that Geraci and Berry have no legal right to my Property.

294. Then I was told to submit a new application which necessarily creates an inequitable race – all these facts can only be reconciled if one is to accept that 1) the city is prejudiced against me or; 2) Geraci has them in his pocket.

295. Not only that, this all follows the tyrannical practices of Deputy City Attorney Mark Skeels who tricked me and my young defense counsel into setting myself up for an Asset Forfeiture Action that ultimately resulted in a $25,000 extortion. Under the Fourth Amendment, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno,* 500 U.S. 248, 250, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). In light of the situation I was in, the unforeseen and extreme result must surely constitute an "unreasonable" seizure.

296. Further adding to my confusion, frustration and inability to gain any traction in protecting my own interests, the Honorable Judge Wohlfeil presiding over my case has not seemed interested in reading any of my prior submissions. He "knows [the attorneys opposing me] well" and I believe based on that he is biased against me now that I am pro se and a likely mark for everyone to be able to walk over and take advantage of with no repercussions. At best, Judge Wohlfiel probably hopes my case can be settled out of court relieving him of further responsibility (or culpability?) in regard to my case. At worst, Wohlfeil's seemingly purposeful negligence at this point is an intentional cover-up of the fact that he does not care about my case or he is actively helping Geraci.

297. Ultimately, whether it was done purposefully, working in concert with, and/or because of gross negligence, all the parties here, even if operating in their own "mini-conspiracies," have de facto operated in a one, large conspiracy by perpetuating and augmenting the unlawful actions and harm caused to Darryl.

298. Cotton has suffered and continues to suffer damages because of actions of all defendants such that it would be "a challenge to imagine a scenario in which that harassment would

not have been the product of a conspiracy." [*Geinosky v. City of Chicago* (7th Cir. 2012) 675 F3d 743, 749].

299. As a direct and proximate result of Defendants', their agents' and conspirators' concerted, intentional (and even negligent), willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages. unlawful conduct. Plaintiff has suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and physical injuries, as well as economic losses, all to his damage in amounts to be proven at trial.

EIGHTEENTH CLAIM FOR RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (As against All Defendants)

300. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

301. The elements of civil RICO are as fol-lows: (1) conduct, (2) of an enterprise, (3) through a pattern (4) of racketeering ac-tivity, (5) resulting in injury.

302. Geraci, as proven by public records of lawsuits filed by the City against him for the operating of illegal dispensaries, has run an enterprise of illegal marijuana dispensaries over the course of years. His enterprise if focused on marijuana dispensaries and related financial support services meant to unlawfully circumvent IRS tax liabilities. As discussed above, he uses employees, third-parties, attorneys and criminals to operate his criminal enterprise.

303. Geraci specifically told Cotton, when fraudulently inducing him to enter into the November Agreement, that as an Enrolled Agent for the IRS, he was uniquely positioned to "get around" paying IRS Code Section 280(e). At the time, it appeared to Cotton that Geraci was stating he had some form of unknown method to do so lawfully. In retrospect, it is apparent that he is

providing money laundering services for himself and others, using his Tax and Financial company as legitimate front for his behind the scenes unlawful activities.

304. Geraci runs his enterprise through his employees, such as Berry, who use their names on applications, such as the CUP application at issue here, to provide anonymity and for Geraci to stay off the radar of law enforcement agencies. For example, Geraci, and Berry, were required by law to state the names of all individuals who had an interest in the CUP when the CUP application was filed. Geraci's name is NOT on the CUP application. His office manager, Berry, is. Had this instant lawsuit not required him to fraudulently attempt to enforce the Receipt as the final agreement for the Property, there would be no record of his ownership in the CUP application.

305. Geraci is the lead perpetrator in the enterprise. It is Geraci that had his office manager, Berry submit the CUP application with material omissions (his name); having Gina Austin, his attorney, represent him in the State Actions although she knows she is violating her ethical (and potentially legal) obligations to the Court by representing Geraci under the false premise that the Receipt is the final agreement for the Property; Geraci is directing Weinstein, also his attorney, to continue to represent him when Weinstein knows that there is no factual or legal basis to continue prosecuting the State Action against me to my great detriment.

306. Mr. Geraci has told me that he has run many illegal marijuana dispensaries through his employee, Berry. I believe that he has invested the proceeds of the pattern of racketeering activity into the enterprise endeavors to continuously open more illegal dispensaries. Further, because he has evaded criminal prosecution and additionally managed to pull off this farce of a civil suit against me, I believe he has also used said monies to compensate Austin and Weinstein, and, de facto, their respective law firms, for the unethical and unlawful actions against me. How else can one explain why two, ostensibly intelligent attorneys who statistically speaking should be smarter than most would take the actions they have which are clearly unethical and unlawful.

307. The way in which the City has dealt with me in every avenue also points to the distinct possibility that Geraci's "influence" has in fact tainted the state legal process against me. I have been specifically told by Mr. Dwayne and his associate Mr. L that Geraci has deep connections to the City's politicians.

308. To my knowledge all defendants and Does above in some way shape or form have worked in conjunction with one another willfully, occasionally negligently, but at all times in association against me. Most certainly, Austin, ALG, Weinstein, Toothacre, Berry and F&B do Geraci's bidding and are complicit in all of his dishonest schemes.

309. As a direct and proximate result of the Defendants', their agents' and coconspirators' plot to participate in the conduct of the affairs of their conspiracy and wrongs, alleged herein, Plaintiff has been and is continuing to be injured in his property, person and business as set forth herein.

NINTEENTH CLAIM OF DECLARATORY RELIEF (As Against All Defendants)

310. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

311. An actual controversy has arisen and now exists between Cotton and all defendants concerning their respective rights, liabilities, obligations and duties based on the actions described herein.

312. A declaration of rights is necessary and appropriate at this time in order for the parties to ascertain their respective rights, liabilities, and obligations because no adequate remedy other than as prayed for exists by which the rights of the parties may be ascertained.

313. Accordingly, Cotton respectfully requests a judicial declaration of rights, liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration that (a) Cotton is the sole owner of the Property, (b) Cotton is the owner and sole interest-holder in the CUP

application for the Property submitted on or around October 31, 2016, (c) defendants have no right or interest in the Property or the CUP application for the Property submitted on or around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

INJUNCTIVE RELIEF (As Against All Defendants)

314. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

315. For the reasons argued above, Cotton respectfully requests that all defendants be immediately be notified and enjoined that their actions, even if under the color of effectuating professional legal services, the law or the authority of any governmental agency, cease violating Mr. Cotton's rights.

316. That the Geraci be ordered to continue to pay for the costs associated with getting approval of the CUP application and the development of the MMCC per his agreement with Cotton, and as he stated in his declaration in the state action.

317. That the City not be allowed to passively and/or affirmatively sabotage the CUP so as to limit its liability for its actions stated herein.

318. Such as other injunctive relief as is required based on the facts alleged above to protect and vindicate my rights.

//

//

PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That the Court order the Lis Pendens on the Property be released;

2. That the Court order, by way of declaratory relief, that there is no purchase agreement between the Geraci and that Cotton is the sole owner of the Property;

3. That the CUP application be transferred to me;

4. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than $5,000,000;

5. Punitive damages against all defendants;

6. Sanctions against counsel as this Court may find warranted based on the allegations above that will be proven to be true during the course of this litigation;

7. That this Court appoint Mr. Cotton counsel until such time as he has the financial wherewithal to pay for counsel himself; and

8. That other relief is awarded as the Court determines is in the interest of justice.

Dated: February 9, 2018.

Darryl Cotton,
Cotton and Cotton Pro Se

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Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

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

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; 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.

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

PROOF OF SERVICE

[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

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 **June 16, 2022**, I caused to be served the following documents:

1. **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)**

2. **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)**

3. **DECLARATION OF GINA M. AUSTIN, ESQ. IN SUPPORT OF MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**

4. **DECLARATION OF DOUGLAS A. PETTIT, ESQ. IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**

[ ] **BY FACSIMILE TRANSMISSION (Code Civ. Proc. §§ 1013(e)-(f)):** From fax number (858) 755-8504 to the fax numbers listed below. The facsimile machine I used complied with Cal. Rules of Court, rule 2.306 and no error was reported by the machine. I caused the machine to print a transmission record, a copy of which will be maintained with the document(s) in our office.

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

[X] **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 DELIVERY (Code Civ. Proc. § 1010.6 and Cal. Rules of Court, rule 2.251):** Based on an agreement between the parties to accept service by e-mail or electronic transmission, I caused such document(s) to be electronically served to those parties listed below from e-mail address lzamora@pettitkohn.com. The file transmission was reported as complete and a copy of the Service Receipt will be maintained with the original document(s) in our office.

[ ] **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**.

Andrew Flores, Esq.
Law Office of Andrew Flores
954 4th Avenue, Suite 412
San Diego, CA 92101
Tel: (619) 256-1556
Fax: (619) 274-8253
Email: Andrew@FloresLegal.Pro
Plaintiff in *Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

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 **June 16, 2022**, at San Diego, California.

Luis Zamora

RJN-37

ANDREW FLORES, ESQ (SBN:272958)
LAW OFFICE OF ANDREW FLORES
427 C Street, Suite 220
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Plaintiff *in Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

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

Plaintiffs,

vs.

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

Defendants.

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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TABLE OF AUTHORITIES

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I. INTRODUCTION

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

II. SUMMARY OF THE CASE AND MOTION

Attorney Austin and her law firm have for years successfully carried out an illegal conspiracy with their clients to illegally acquire ownership interests in cannabis businesses. The sole and dispositive factor in making this determination is conclusively established by the "shall deny" language set forth in California Business & Professions Code § 19323 and § 26057.[1]

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

III. MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

A. California's cannabis public policy requires the disclosure of all owners of a cannabis business.

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

The Legislature finds and declares as follows:

---

[1] Terms not otherwise defined herein have the meaning set forth in the Complaint.

(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

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

(2017 Cal SB 94 at § 1.)

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

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

B. Definition of "applicant" and "owner" under MCRSA and Proposition 64

An "applicant" for a State cannabis license under MCRSA was defined as:

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

BPC § 19300.5 (emphasis added).[2]

An "applicant" for a State cannabis license under AUMA was defined as:

> (1) The owner or owners of a proposed licensee. "Owner" mean all persons having (A) an aggregate ownership interest (other than a security interest, lien, or 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.
>
> (2) If the applicant is a publicly traded company, "owner" includes the chief executive officer and any member of the board of directors and any person or 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.

BPC § 26001(a).[3]

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

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

> (a) The licensing authority ***shall deny*** an ***application*** if either the ***applicant*** or the premises for which a state license is applied do not qualify for licensure under this chapter.
>
> (b) The licensing authority ***may deny*** the ***application*** for licensure or renewal of a state license if any of the following conditions apply:
>
> (1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.
>
> [….]
>
> (3) The applicant has failed to provide information required by the licensing authority.

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[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.

[3]

> [….]
>
> (8) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for 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.

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

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

> (a) The licensing authority shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division.
>
> (b) The licensing authority ***may deny*** the ***application*** for licensure or renewal of a state license if any of the following conditions apply…. (4) Failure to provide information required by the licensing authority…. (7) The applicant… has been 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...

(Proposition 64 at § 6.1.)

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

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

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

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

E. Lawrence Geraci and Salam Razuki's sanctions for unlicensed commercial cannabis activities.

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

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

On or about April 15, 2015, defendant Razuki was sanctioned for unlicensed commercial cannabis activities in *City of San Diego v. Stonecrest Plaza, LLC* Case No. 37-2014-00009664-CU-MC-CTL (the "*Stonecrest Judgment*"). (FAC at ¶ 46, fn. 8.)

F. The Motion to Strike is entirely predicated on the false argument that BPC §§ 19323/26057 do not bar Geraci and Razuki's ownership of cannabis businesses even though they were not disclosed in the applications and were sanctioned for unlicensed commercial cannabis activities.[4]

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

> Plaintiffs allege that Austin's "Proxy Practice is illegal and violates numerous State and City laws, most notably, BPC §§ 19323 et seq. and 26057 et seq." (FAC, ¶ 314.) Business and Professions Code section 26057, formerly section 19323, states the licensing authority "shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division." (Bus. & Prof. Code, § 26057.) The statute goes on to list specific conditions that may constitute grounds for denial of licensure or renewal. (Ibid, emphasis added.)
>
> Plaintiffs' entire argument backing their "Proxy Practice" allegation rests on their asserted fact that Geraci and Razuki were ineligible to own a cannabis license or CUP due to previously being sanctioned for unlicensed commercial cannabis activities. What Plaintiffs' do not mention is that although this type of sanction could be grounds for denial, section 26057 allows the licensing authority to decide based on all the circumstances. A plain reading of the statute shows there is no one condition that constitutes an automatic, outright denial. ***The statute gives the licensing authority complete discretion to weigh factors and decide what may constitute grounds for denial***.
>
> Further, it is unclear as to how Austin could be implicated for violation of this statute as it does not apply to her. Section 26057 appears to be guidelines for a licensing authority to follow when reviewing applications for cannabis licenses and CUPs. Austin takes no part in reviewing, approving or denying such applications.

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

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

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

IV. LEGAL STANDARD

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

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

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

V. ARGUMENT

A. The anti-SLAPP statute does not apply because ALG's Proxy Practice is illegal as a matter of law.

1. ***The plain language of the "shall deny" language of BPC §§ 19323/26057 bars the ownership by Geraci and Razuki of cannabis businesses because they were not disclosed in the applications and they were sanctioned for unlicensed commercial cannabis activities.***

"The fundamental task of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law." *People v. Cruz* (1996) 13 Cal.4th 764, 774-775 (*Cruz*) (quotation omitted). In determining legislative intent, the court turns first to the words themselves for the answer. *Id.* The words of a statute should be accorded their usual, ordinary, and commonsense meaning, keeping in mind the purpose for which the statute was adopted. *Bostock v. Clayton County* (2020) ___U.S.___, 140 S. Ct. 1731, 1738–1739.

In *Paterra*, the court found that the use of the words "***shall not***" in the subject statute requiring a hearing prior to entry of a default judgment reflected the Legislature's intent of "absolutely prohibiting" the entry of a default judgment without the required hearing. *Paterra v. Hansen* (2021) 64 Cal.App.5th 507, 536. Identically here, the Legislature's use of the words "***shall deny***" represent an absolute prohibition to the issuance of a license to an applicant that fails to qualify for a State license. The Legislature intended to create a regulatory system that prevented applicants sanctioned for illegal market from owning legal cannabis businesses. (*See* SB 94 at § 1 (d) ("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…").)

The Austin Legal Group's interpretation of BPC §§ 19323/26057 fails for two obvious reasons, the first one requires no legal education or knowledge, just basic common sense. First, even by the Austin Legal Group's own reasoning, the Department of Cannabis Control *must* apply the alleged permissive criteria in the statues to determine whether to approve or deny a license. But how is the Department of Cannabis Control supposed to apply the alleged permissive criteria to Geraci, Razuki and the Austin Legal Group's other clients - to meet the Legislative mandate that it issue "state

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

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

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

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

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

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

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

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

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

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

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

"Penal Code section 115… makes it a felony to knowingly procure or offer any false or forged instrument for filing in a public office." *People ex rel. Harris v. Aguayo* (2017) 11 Cal.App.5th 1150, 1166.[5] The Austin Legal Group directly admits that the subject applications by Geraci and Razuki contained false statements – their agents' false certifications that they had disclosed all parties with an interest in the proposed properties and CUPs/licenses. Therefore, the Proxy Practice violates Penal Code § 115.

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

B. *The* Noerr-Pennington *doctrine does not immunize attorneys from petitioning for illegal activity and Plaintiffs will prevail on their claims.*

"The *Noerr-Pennington* doctrine immunizes legitimate efforts to influence a branch of government from virtually all forms of civil liability." *People ex rel. Harris,* 11 Cal.App.5th 1150 at 1160. However, efforts to influence government that are merely a "sham" are not protected by the *Noerr-Pennington* doctrine and are subject to antitrust liability. *See California Transp. v. Trucking Unlimited* (1972) 404 U.S. 508, 512–513; *Hi-Top Steel Corp. v. Lehrer* (1994) 24 Cal. App. 4th 570, 575 (*Hi-Top Steel*). The sham exception encompasses situations in which persons use the governmental process, as opposed to the outcome of that process, as an anticompetitive weapon. *Columbia v. Omni Outdoor Adver.* (1991) 499 U.S. 365, 380 (*Omni*). The sham exception applies to California tort actions for intentional interference with economic relations. *Hi-Top Steel*, 24 Cal. App. 4th at 581-583; *see Clipper Exxpress v. Rocky Mt. Motor Tariff Bureau* (9th Cir. 1982) 674 F.2d 1252, 1271 ("**There is no first amendment protection for furnishing with predatory intent false information to an administrative or adjudicatory body**.") (emphasis added).

Litigation constitutes a "sham," thereby losing its immunity under the *Noerr-Pennington* doctrine, if (1) the lawsuit is objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits, and (2) the baseless lawsuit conceals an attempt to interfere directly with the business relationships of a competitor through the use of the governmental process (as opposed to the outcome of that process) as an anticompetitive weapon. *Professional Real Estate Investors v. Columbia Pictures Indus.* (1993) 508 U.S. 49, 60–61 (*PREI*); *see Clipper Exxpress*, 674 F.2d at 1270 ("the Walker Process doctrine… provides antitrust liability for the commission of fraud on administrative agencies, for predatory ends.").

Applying the two-factor test set forth in *PREI,* Austin's petitioning activity in furtherance of the Proxy Practice meets the definition of a sham. *PREI*, 508 U.S. 49, 60–61. First, all litigation based on vindicating or protecting alleged ownership rights by Geraci and Razuki in cannabis businesses is objectively baseless because it is illegal. *See People ex rel. Harris,* 11 Cal.App.5th at 1161 ("Unlawful

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. <u>The Proxy Practice is a per se violation of the Cartwright Act.</u>

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

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

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

3. The Proxy Practice violates the Unfair Competition Law.

"The UCL is a law enforcement tool designed to protect consumers and deter and punish wrongdoing." *People ex rel. Harris,* 11 Cal.App.5th at 1159. It prohibits "unfair competition" that is broadly defined to include any unlawful, unfair or fraudulent business act or practice. BPC § 17200. The "unlawful" practices prohibited by the UCL "are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made." *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 531-532; *id.* at 532 (holding "conditional use permits are part of local zoning laws…. a violation of a permit's conditions is also a violation of the zoning law, and is therefore unlawful.").

In *Golden State Seafood, Inc. v. Schloss*, plaintiff filed an action for malicious prosecution and a UCL claim against a defendant attorney and his client. *Golden State Seafood, Inc. v. Schloss* ("*Golden State*") (2020) 53 Cal.App.5th 21, 27. The complaint alleged attorney defendant filed a prior lawsuit against plaintiff on behalf of his client knowing he lacked probable cause to bring and maintain the action. *Id.* Defendant attorney appealed the trial court's denial of his anti-SLAPP motion and a motion for reconsideration of same. *Id.* The Court of Appeal affirmed the denials and in reaching its decision on the UCL claim, the Court held: "Knowingly filing or pursuing unmeritorious legal actions that are not factually or legally tenable, for the purpose of earning income, qualifies as an unfair business practice." *Id*. at 40.

Here, as in *Golden State,* Attorney Austin's paid-for services of petitioning based on the Proxy Practice for her clients is an unfair business practice. Attorney Austin, despite her feigned understanding of the plain language of BPC §§ 19323/26057, is knowingly filing and maintaining legal actions on the grounds that the Proxy Practice is not illegal. The Proxy Practice is indisputably illegal anticompetitive conduct and therefore unmeritorious. Consequently, Attorney Austin's petitioning activity is an unfair business practice, is not subject to an anti-SLAPP motion, is not immunized, and constitute violations of the UCL.

4. Plaintiffs' claims are not barred by the litigation privilege.

As demonstrated above, the Proxy Practice is illegal and all litigation based on it is sham litigation that is not immunized by the litigation privilege. *See PREI*, 508 U.S. at 60–61.

5. Because the Proxy Practice is illegal, Plaintiffs have a valid cause of action for conspiracy.

Attorney Austin's claim that Plaintiffs do not make out a cause of action for conspiracy fails because it is predicated on the false assumption that the Proxy Practice is not illegal. The Proxy Practice is illegal. The Austin Legal Group is therefore jointly liable with its clients and third-party joint-tortfeasors for all damages caused to Plaintiffs because of their illegal petitioning activity.

VI. ATTORNEY FEES AND COSTS

Pursuant to Civ. Cod. Proc. § 425.16(c)(1), "if a court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court ***shall*** award costs and reasonable attorney's fees to a plaintiff prevailing on the motion pursuant to Section 128.5." (Emphasis added.)

Plaintiff's ask that the court make a finding that the special motion to strike is in fact frivolous and award reasonable costs and attorney's fees to Plaintiffs. At least as to Mrs. Sherlock and her children.

VII. LEAVE TO AMEND

Plaintiffs request leave to amend deficiencies in their pleading. At the very least, Plaintiffs need to amend their claims to reflect that they did not have direct ownership interests in the Lemon Grove CUP. Former plaintiff Chris Williams had ownership interests in the Lemon Grove CUP, but Williams withdrew as a plaintiff after the filing of the original complaint in this action when he was called by Attorney Austin and he became fearful for the safety of his family.

VIII. CONCLUSION

The "shall deny" language of BPC §§ 19323/26057 is the law. The Austin's Legal Group's petitioning activity for Geraci, Razuki, and all their clients in furtherance of alleged ownership rights via applications that fail to disclose them to licensing agencies is illegal as a matter of law.

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

DATED: July 25, 2022

Respectfully submitted,
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

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

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an 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; 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.

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

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

I.

INTRODUCTION

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

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

II.

ARGUMENT

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

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

[1] Code of Civil Procedure section 446 requires that "[e]very pleading shall be subscribed by the party or his or her attorney." Code of Civil Procedure section 128.7 likewise requires that "[e]very pleading, petition, written notice of motion, or other similar paper shall be signed by at 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.

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

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

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

B. The Exception for Illegal Conduct Does Not Apply

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

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

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

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

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

1. *Flatley v. Mauro*

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

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

2. *Paul for Council v. Hanyecz*

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

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

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

///

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

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

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

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

D. Section 426.15 Makes No Provision for Amending the Complaint

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

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

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

III.

CONCLUSION

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

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

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)**

[X] **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))
[X] 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.

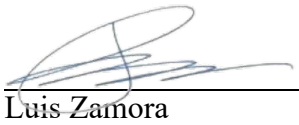
[ ] BY PERSONAL SERVICE: I caused the above-described document to be personally served on the parties listed on the service list below at their designated business addresses **pursuant to Code Civ. Proc. §1011**.

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 *Propria Persona*** **and Attorney for Plaintiffs** **Amy Sherlock, Minors T.S.** **and S.S.**	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**
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 mweirstein@ferrisbritton.com **Attorney for Defendants** **LARRY GERACI and REBECCA BERRY**	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**

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 *PRO SE***	

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

RJN-39

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/12/2022 TIME: 09:00:00 AM DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione
CLERK: Richard Day
REPORTER/ERM: Darla Kmety CSR# 12956
BAILIFF/COURT ATTENDANT: Dan Bumbar

CASE NO: **37-2021-00050889-CU-AT-CTL** CASE INIT.DATE: 12/03/2021
CASE TITLE: **Sherlock vs Austin [EFILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

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EVENT TYPE: SLAPP / SLAPPback Motion Hearing

APPEARANCES
Andrew Flores, counsel, present for Plaintiff(s) via remote video conference.
Matthew Smith, counsel, present for Defendant(s) via remote video conference.

The Court hears oral argument and CONFIRMS the tentative ruling as follows:Defendants Gina Austin and Austin Legal Group's Motion to Strike Plaintiffs' First Amended Complaint Pursuant to Code of Civil Procedure Section 425.16 is granted.

Pursuant to CCP § 425.16, the court must first determine whether the moving party has made a threshold showing that the challenged cause of action is one arising from protected activity, i.e., the act underlying petitioner's cause of action fits one of the categories delineated in CCP §425.16(e). (CCP §425.16 (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) Defendants bear the initial burden of establishing a prima facie showing that the Plaintiffs' cause of action *arises* from the Defendants' petition activity. (*Equilon Enterprises, L.L.C. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.) Here, Defendants allege that the conduct complained of by Plaintiffs falls within CCP § 425.16(e)(1), which protects "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law."

If the court finds that Defendants have satisfied the first prong, it must then determine whether the opposing party has demonstrated a probability of prevailing on the claim. (*Ibid*.) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning and lacks even minimal merit – is a SLAPP, subject to being stricken under the statute." (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 645.) "[A] plaintiff cannot simply rely on his or her pleadings, even if verified. Rather, the plaintiff must adduce competent, admissible evidence." (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 735.)

First Prong
Defendants have shown that the activities alleged in the FAC constitute petitioning "before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" under CCP §425.16(e)(1). Furthermore, Defendants' actions are not illegal as a matter of law. (*See Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1478 (illegality exception applies "only in '*rare cases* in which there is uncontroverted and uncontested evidence that establishes the crime as a matter of law.'").) Therefore, the first prong is satisfied.

Second prong
Plaintiffs have not submitted any evidence, affidavits, declarations, or requests for judicial notice in support of this motion. Therefore, they cannot show a probability of prevailing on the merits with "competent, admissible evidence." (*Hailstone*, 169 Cal.App.4th at 735.) The second prong of the analysis is not met.

The Court denies Plaintiffs' request to amend the FAC. (*See Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 676 ("There is no such thing as granting an anti-SLAPP motion with leave to amend.).)

If Defendants seek to recover attorney's fees, it must be filed as a separate motion.

The minute order is the order of the Court.

Defendants are directed to serve notice on all parties within five (5) court days.

James A. Mangione

Judge James A Mangione

RJN-40

From: Jim Bartell
To: Gonsalves, Ann; Ahmadi, Afsaneh
Cc: Mohajerani, Ehsan
Subject: Balboa MMCC (project # 550727)
Date: Monday, June 12, 2017 3:54:42 PM
Attachments: image001.jpg

Afsaneh,

Are you, Ann and Ehsan available this week to meet on the Balboa unit B parking issue.

Thank you.

Jim

Jim Bartell
President

5333 Mission Center Road, Suite 115
San Diego, California 92108
Phone (619) 704-0180 | Fax (619) 704-0185
Mobile (619) 787-0333

BartellAssociates.com

From:	Jeremy Wysocki
To:	salamrazuki@yahoo.com; ninusmalan@yahoo.com
Cc:	rennybowden@gmail.com; bradford@equitycapital.us; "michael hayford"; reokeith@gmail.com; Tirandazi, Firouzeh; Daly, Tim; Nima Darouian
Subject:	Conditional Use Permit No. 296130 and 8863 Balboa Ave.
Date:	Tuesday, March 07, 2017 2:15:33 PM
Attachments:	image002.jpg Demand Letter (8863 Balboa Ave.) (3-7-2017) (02253020xA9B4D).pdf

Good afternoon. My law firm is legal counsel to San Diego Patients Consumer Cooperative, Inc. Please see the attached letter regarding our Client's rights and interests in connection with Conditional Use Permit No. 1296130 and 8863 Balboa Ave., Unit E, San Diego, CA 92123. Let me know if you have any questions or comments. My contact information is listed below.

Jeremy S. Wysocki
Partner

Messner Reeves LLP
1430 Wynkoop Street | Suite 300
Denver CO 80202
303 623 1800 main | 303 405 4193 direct | 303 396 8200 cell
303 623 0552 fax
jwysocki@messner.com
messner.com

From: Austin, Gina
To: Tirandazi, Firouzeh
Subject: FW: Fwd: Balboa MMCC
Date: Thursday, January 19, 2017 3:58:43 PM
Attachments: medical marijuana permit - Balboa Ave.pdf

Here you go.

Gina

Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

From: Ninus Malan [mailto:ninusmalan@yahoo.com]
Sent: Thursday, January 19, 2017 3:40 PM
To: Austin, Gina
Cc: FTirandazi@sandiego.gov
Subject: Re: Fwd: Balboa MMCC

See attached. Thank you for everything.

Ninus Malan
American Lending and Holdings LLC
Razuki Investments LLC
Lemon Grove Plaza LP
7977 Broadway
Lemon Grove CA, 91945
Main(619)750-2024
Fax (619)869-7717
NinusMalan@Yahoo.com

you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by return e-mail, or by calling the sender at 619-750-2024. Thank You.

From: "Austin, Gina" <gaustin@austinlegalgroup.com>
To: Ninus Malan <ninusmalan@yahoo.com>
Sent: Wednesday, January 18, 2017 5:43 PM
Subject: Fwd: Balboa MMCC

Fyi. Call me with any questions

Sent from my T-Mobile 4G LTE Device

-------- Original message --------
From: "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>
Date: 1/18/17 2:22 PM (GMT-08:00)
To: "Austin, Gina" <gaustin@austinlegalgroup.com>
Subject: RE: Balboa MMCC

Good afternoon,

Ninus Malan has passed background. Are there any other responsible persons affiliated with this MMCC? If so, they will also need to go through the background process.

Please have Mr. Malan complete and sign the attached MMCC Permit required pursuant to Chapter 4, Article 2, Division 15 of the SDMC and email back for processing.

Thank you.

Firouzeh Tirandazi
Development Project Manager
City of San Diego
Development Services Department

(619)446-5325
sandiego.gov

Now: Pay Invoices and Deposits Online

-----Original Message-----
From: Austin, Gina [mailto:gaustin@austinlegalgroup.com]
Sent: Tuesday, January 10, 2017 3:36 PM
To: Tirandazi, Firouzeh <FTirandazi@sandiego.gov>
Subject: RE: Balboa MMCC

Good afternon,

I understand my client sent the stamped articles last week. Can you send the proper forms for him to get the background check?

Thanks
Gina

-----Original Message-----
From: Austin, Gina
Sent: Thursday, January 5, 2017 1:52 PM
To: Tirandazi, Firouzeh (FTirandazi@sandiego.gov)
Subject: Balboa MMCC

Good afternoon,

I have attached the articles of incorporation of the new collective that will be operating out of Balboa as well as the deed showing the new ownership.

Please forward the appropriate forms to me for the background check for Mr. Malan and we will get this moving quickly.

Gina

Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA

92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045 Confidentiality Notice This message is being sent on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

From: Tirandazi, Firouzeh
To: Austin, Gina
Subject: RE: Balboa MMCC
Date: Wednesday, January 18, 2017 2:22:00 PM
Attachments: 8863 Balboa Avenue (Balboa Ave Cooperative) - DS-191.pdf

---

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Thank you.

Firouzeh Tirandazi
Development Project Manager
City of San Diego
Development Services Department

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Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

From:	Ninus Malan
To:	Austin, Gina
Cc:	Tirandazi, Firouzeh
Subject:	Re: Fwd: Balboa MMCC
Date:	Thursday, January 19, 2017 3:40:15 PM
Attachments:	medical marijuana permit - Balboa Ave.pdf

See attached. Thank you for everything.

Ninus Malan
American Lending and Holdings LLC
Razuki Investments LLC
Lemon Grove Plaza LP
7977 Broadway
Lemon Grove CA, 91945
Main(619)750-2024
Fax (619)869-7717
NinusMalan@Yahoo.com

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Subject: Fwd: Balboa MMCC

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Sent from my T-Mobile 4G LTE Device

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Date: 1/18/17 2:22 PM (GMT-08:00)
To: "Austin, Gina" <gaustin@austinlegalgroup.com>
Subject: RE: Balboa MMCC

Good afternoon,

Ninus Malan has passed background. Are there any other responsible persons affiliated with this MMCC? If so, they will also need to go through the background process.

Please have Mr. Malan complete and sign the attached MMCC Permit required pursuant to Chapter 4, Article 2, Division 15 of the SDMC and email back for processing.

Thank you.

Firouzeh Tirandazi
Development Project Manager
City of San Diego
Development Services Department

(619)446-5325
sandiego.gov

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-----Original Message-----
From: Austin, Gina [mailto:gaustin@austinlegalgroup.com]
Sent: Tuesday, January 10, 2017 3:36 PM
To: Tirandazi, Firouzeh <FTirandazi@sandiego.gov>
Subject: RE: Balboa MMCC

Good afternon,

I understand my client sent the stamped articles last week. Can you send the proper forms for him to get the background check?

Thanks
Gina

-----Original Message-----
From: Austin, Gina
Sent: Thursday, January 5, 2017 1:52 PM
To: Tirandazi, Firouzeh (FTirandazi@sandiego.gov)
Subject: Balboa MMCC

Good afternoon,

I have attached the articles of incorporation of the new collective that will be operating out of Balboa as well as the deed showing the new ownership.

Please forward the appropriate forms to me for the background check for Mr. Malan and we will get this moving quickly.

Gina

Gina M. Austin
AUSTIN LEGAL GROUP, APC | 3990 Old Town Ave., Ste A112, San Diego, CA 92110 |
Ofc: 619-924-9600 | Cell 619-368-4800 | Fax 619-881-0045

From: Mohajerani, Ehsan
To: Abhay Schweitzer
Subject: RE: Project 550727 - Recheck appt
Date: Tuesday, July 11, 2017 8:24:00 AM
Attachments: image001.png

Good Morning Abhay,

I verified that, we have an appointment on Wednesday 12th @1:00 pm.

Thanks,

Ehsan Mohajerani, M.S.
City of San Diego
Development Services Department
1222 First Avenue, MS 401
San Diego, CA 92101
(619) 446-5068

From: Abhay Schweitzer [mailto:abhay@techne-us.com]
Sent: Monday, July 10, 2017 2:03 PM
To: Mohajerani, Ehsan <EMohajerani@sandiego.gov>
Cc: Ben Peterson <ben@techne-us.com>
Subject: Re: Project 550727 - Recheck appt

Good afternoon Ehsan,

Thanks for meeting with Ben this morning to review the project.

I have an appointment with you scheduled for Wednesday the 12th at 1:00pm. Ben told me however, when he met with you today, that you were under the impression that we have a scheduled appointment for tomorrow. The sooner the better for us. Can you please confirm which appointment(s) time(s) we have scheduled with you this week?

Thank you

A B H A Y S C H W E I T Z E R
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104
techne-us.com sustainablearchitect.org
o 619-940-5814 m 313-595-5814

On Wed, Jul 5, 2017 at 8:26 AM, Mohajerani, Ehsan <EMohajerani@sandiego.gov> wrote:

> Sounds good.
>
> Ehsan Mohajerani, M.S.
> City of San Diego
> Development Services Department
> 1222 First Avenue, MS 401
> San Diego, CA 92101
> (619) 446-5068
>
> Great news! The public can now check project staus, pay invoices and schedule inspections on-line through the City's **OpenDSD.** To get started click on one of the following links:
> Pay Invoices and Schedule Inspections and Check Project Status
>
> **From:** Abhay Schweitzer [mailto:abhay@techne-us.com]
> **Sent:** Wednesday, July 05, 2017 8:25 AM
> **To:** Mohajerani, Ehsan <EMohajerani@sandiego.gov>
> **Subject:** Re: Project 550727 - Recheck appt
>
> Hi Ehsan,
>
> We will be there on Monday around 8:00am.
>
> Thank you
>
> A B H A Y S C H W E I T Z E R
> **Assoc. AIA- Principal**
>
> 3956 30th Street. San Diego, CA 92104
> techne-us.com sustainablearchitect.org
> o 619-940-5814 m 313-595-5814

On Wed, Jul 5, 2017 at 8:24 AM, Mohajerani, Ehsan <EMohajerani@sandiego.gov> wrote:

> Good Morning Abhay,
> OK. Please ensure that structural engineer shows all the connection details and calculation (vertical and lateral) for adequacy of new lay out/framing (Stamp and signed is required on structural sheets and first sheet of calc)
> You may bring it over the counter on Monday (preferably early morning) so we can have a chance to review it prior to Wed 12th.
>
> Thank you,
>
> Ehsan Mohajerani, M.S.
> City of San Diego

Development Services Department
1222 First Avenue, MS 401
San Diego, CA 92101
(619) 446-5068

Great news! The public can now check project staus, pay invoices and schedule inspections on-line through the City's **OpenDSD.**
To get started click on one of the following links:
Pay Invoices and Schedule Inspections and Check Project Status

From: Abhay Schweitzer [mailto:abhay@techne-us.com]
Sent: Monday, July 03, 2017 12:40 PM
To: Mohajerani, Ehsan <EMohajerani@sandiego.gov>
Cc: Jim Bartell <jim@bartellassociates.com>
Subject: Project 550727 - Recheck appt

Good afternoon Ehsan,

As I mentioned to you last Friday when we saw each other, we have completed the structural engineering for the widening of the doorway for the suite at 8861 Balboa Ave. that we are converting into a parking garage. No seismic retrofit needed. The work includes widening the opening and providing a steel reinforcement to support the gravity load of the lintel. The existing piers work even with the reduction in their size where we are widening the opening.

We have also obtained sign-off from planning.

I have scheduled an appointment with you on Wednesday the 12th at 1:00pm through the appointment line, which was the earliest you had available, but we urgently need to obtain this building permit. Can you meet with us this week to review what is pending?

Thank you

A B H A Y S C H W E I T Z E R
Assoc. AIA- Principal

3956 30th Street. San Diego, CA 92104
techne-us.com sustainablearchitect.org
o 619-940-5814 m 313-595-5814

From: Church, Billy
To: "Jim Bartell"
Subject: RE: PTS# 550727
Date: Tuesday, June 27, 2017 7:31:47 AM
Attachments: image001.jpg

Okay. See you then.

Billy Church
Senior Planner
City of San Diego
Development Services Department

T (619) 446-5343
bchurch@sandiego.gov

From: Jim Bartell [mailto:jim@bartellassociates.com]
Sent: Tuesday, June 27, 2017 7:31 AM
To: Church, Billy <BChurch@sandiego.gov>
Cc: Howard, Karen <KHoward@sandiego.gov>
Subject: RE: PTS# 550727

OK, we will be there at 10:30.
Thank you.
Jim

From: Church, Billy [mailto:BChurch@sandiego.gov]
Sent: Tuesday, June 27, 2017 6:57 AM
To: 'Jim Bartell'
Cc: Howard, Karen
Subject: RE: PTS# 550727

Karen has a 10:00 recheck appointment, so it will be about 10:30 before we are available. Please check in on the 5th floor. Thanks.

Billy Church
Senior Planner
City of San Diego
Development Services Department

T (619) 446-5343
bchurch@sandiego.gov

From: Jim Bartell [mailto:jim@bartellassociates.com]
Sent: Monday, June 26, 2017 4:56 PM
To: Church, Billy <BChurch@sandiego.gov>
Subject: RE: PTS# 550727

Billy,

We can meet tomorrow (27th) at 10:00. Does that work for you and Karen?
Jim

From: Church, Billy [mailto:BChurch@sandiego.gov]
Sent: Monday, June 26, 2017 4:39 PM
To: 'Jim Bartell'
Subject: RE: PTS# 550727

Hi Jim,

I will be taking that week off. I could make myself available on June 27 and 28, or after July 10th.

Billy Church
Senior Planner
City of San Diego
Development Services Department

T (619) 446-5343
bchurch@sandiego.gov

From: Jim Bartell [mailto:jim@bartellassociates.com]
Sent: Monday, June 26, 2017 4:01 PM
To: Church, Billy <BChurch@sandiego.gov>
Subject: PTS# 550727

Hi Billy,
We need to schedule a meeting with you and Karen Howard re: an MMCC project at 8861 Balboa Avenue.
Are you available Monday, July 3?
Thank you.
Jim

Jim Bartell
President

5333 Mission Center Road, Suite 115
San Diego, California 92108
Phone (619) 704-0180 | Fax (619) 704-0185
Mobile (619) 787-0333

BartellAssociates.com

From: Ninus Malan
To: Austin, Gina
Cc: Tirandazi, Firouzeh
Subject: Re: Fwd: Balboa MMCC
Date: Friday, January 06, 2017 5:14:08 PM
Attachments: Balboa Ave Cooperative Articles.pdf

See attached Articles for Balboa Ave Cooperative. Please feel free to contact me with any questions.

Best regards,

Ninus Malan
American Lending and Holdings LLC
Razuki Investments LLC
Lemon Grove Plaza LP
7977 Broadway
Lemon Grove CA, 91945
Main(619)750-2024
Fax (619)869-7717
NinusMalan@Yahoo.com

From: "Austin, Gina" <gaustin@austinlegalgroup.com>
To: Ninus Malan <ninusmalan@yahoo.com>
Sent: Friday, January 6, 2017 3:54 PM
Subject: Fwd: Balboa MMCC

See below

Sent from my T-Mobile 4G LTE Device

-------- Original message --------
From: "Tirandazi, Firouzeh" <FTirandazi@sandiego.gov>
Date: 1/6/17 3:50 PM (GMT-08:00)
To: "Austin, Gina" <gaustin@austinlegalgroup.com>
Subject: RE: Balboa MMCC

Hi Gina,

Can you send me a copy of the official Articles of Incorporation, with State filing date and seal/stamp.

Thank you.

Firouzeh Tirandazi
Development Project Manager
City of San Diego
Development Services Department

(619)446-5325
sandiego.gov

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-----Original Message-----
From: Austin, Gina [mailto:gaustin@austinlegalgroup.com]
Sent: Thursday, January 05, 2017 1:52 PM
To: Tirandazi, Firouzeh <FTirandazi@sandiego.gov>
Subject: Balboa MMCC

Good afternoon,

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Please forward the appropriate forms to me for the background check for Mr. Malan and we will get this moving quickly.

Gina

Gina M. Austin
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