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Superior Court of California,
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11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

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

15 Plaintiffs,

16 vs.

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

27 Defendants.

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

Judge: Hon. James A. Mangione

**DEFENDANT LARRY GERACI AND
REBECCA BERRY'S REPLY
MEMORANDUM IN SUPPORT OF
THEIR SPECIAL MOTION TO STRIKE
PLAINTIFFS' FIRST AMENDED
COMPLAINT PURSUANT TO CIVIL
PROCEDURE SECTION 425.16
(ANTI-SLAPP STATUTE)**

(Related to ROA #11, 195)

DATE: December 2, 2022
TIME: 9:00 am
DEPT: C-75

[IMAGED FILE]

Action Filed: December 3, 2021
Trial Date: Not Yet Set

REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
SPECIAL MOTION TO STRIKE

I. INTRODUCTION

Defendants, Larry Geraci and Rebecca Berry, filed three separate motions directed at Plaintiffs' First Amended Complaint, filed December 23, 2021:

- (1) A demurrer to the First, Fifth, Sixth and Seventh causes of action (the "Geraci/Berry Demurrer");
- (2) A motion to strike to strike certain portions of the complaint (the "Geraci/Berry Motion to Strike"), namely, the Fifth Cause of Action, paragraph 323, at page 37, lines 14-15, which states:

" ... full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits, such other monetary relief as the co mi deems just in light of the ill-gotten gains obtained by Defendants as a result of such business acts or practices, and ... "
- (3) A special motion to strike the complaint pursuant to Code of Civil Procedure section 425.16 (the "Geraci/Berry Anti-SLAPP Motion").

Plaintiffs have filed an "omnibus" opposition (ROA #195) that purports to oppose five separate motions in a single pleading, namely, the three Geraci/Berry motions but also the two separate motions to strike by co-defendants Abhay Schweitzer and Jessica McElfresh.

Defendants Geraci/Berry will attempt to parse out from this "omnibus" opposition the matters related to each of its three motions and reply to those opposition arguments in three separate Reply memorandums.

This Reply memorandum addresses motion (3), the Geraci/Berry Anti-SLAPP Motion.

II. REPLY ARGUMENT

Plaintiffs' Omnibus Opposition does not expressly mention the Geraci/Berry Anti-SLAPP motion. Instead, Plaintiffs cite to Paragraphs 1-6 of their complaint containing their broad allegations of an Antitrust Conspiracy and argue that the strawman practice that they allege is explicitly declared illegal by statute and regulation. (See Omnibus Opposition, page 3, line 15- page 4, line 18.) And then Plaintiffs allege Geraci was "sanctioned" in 2014 and 2015 by the City of San Diego for

1 unlicensed commercial cannabis activities. Putting aside the fact that the argument that this argument
2 was raised and rejected in the *Cotton I* action, the Omnibus Opposition fails to tie these allegations to
3 any of the issues raised by the Geraci/Berry Anti-SLAPP Motion. In this respect, the Omnibus
4 Opposition is incoherent and should be rejected.

5 A two-step process is used to resolve an anti-SLAPP motion. In the first step, the moving
6 defendant bears the burden to establish that the challenged claim arises from the defendant's protected
7 activity. (C.C.P. §425.16; *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th at 871, 884; *Baral v.*
8 *Schnitt* (2016) 1 Cal.5th 376, 396; and *Navallier v. Sletter* (2002) 29 Cal.4th. 82, 88-89.) If the
9 defendant carries its threshold burden, the burden then shifts to the plaintiff to demonstrate that its
10 claims have minimal merit. (*Wilson, supra*, 7 Cal.5th at 884.) "The court, without resolving evidentiary
11 conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be
12 sufficient to sustain a favorable judgment." (*Baral, supra*, 1 Cal.5th at 396.) If a plaintiff does not make
13 that showing, a court will strike the claim. (*Ibid.*; *Wilson, supra*, 7 Cal.5th at 884.) "Only a cause of
14 action that satisfies both prongs of the anti-SLAPP statute – i.e., that arises from protected speech or
15 petitioning and lacks even minimal merit – is a SLAPP, subject to being stricken under the statute."
16 (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 645.) "[A] plaintiff cannot simply rely on his or her
17 pleadings, even if verified. Rather, the plaintiff must adduce competent, admissible evidence."
18 (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 735. A defendant that prevails on an anti-SLAPP
19 motion to strike is generally entitled to recover attorney's fees and costs. (Code Civ. Proc., § 425.16,
20 subd. (c)(1).)

21 Step One. In their moving papers, Defendants Geraci/Berry have met their burden to establish
22 that the challenged claim arises from the defendant's protected activity. Plaintiffs make no attempt in
23 their opposition to argue that any of their claims do not arise from protected activity. Nor could they
24 legitimately make such an argument.

25 Step Two. In their opposition Plaintiffs *offer no evidence* to demonstrate that their claims have
26 minimal merit. Plaintiffs have made no evidentiary showing at all to satisfy this burden. Their
27 unverified First Amended Complaint is not an evidentiary showing – unlike a demurrer regarding
28 which the factual allegations but not legal conclusions are assumed true, step two requires Plaintiffs to

1 offer admissible evidence to sustain their burden. Plaintiffs have not done so. Their opposition
2 consists entirely of the *legal argument* that they make in their Omnibus opposition brief. And as to that
3 legal argument, Plaintiffs do not explain how that legal argument might satisfy its evidentiary burden to
4 show the minimal merit of their claims.

5 **III. CONCLUSION**

6 For the reasons stated in the moving papers and above, the Court should grant Geraci and
7 Berry’s special motion to strike the four causes of action variously asserted against them in the
8 operative First Amended Complaint filed December 23, 2021 (the “FAC,” ROA#11), namely: (1) the
9 First COA for Conspiracy to Monopolize in Violation of the Cartwright Act (the “Cartwright Act
10 Claim”); (2) the Fifth COA for Unfair Competition and Unlawful Business Practices (the “UCL
11 Claim”); (3) the Sixth COA for Declaratory Relief (the “Decl Relief Claim,” which is brought solely
12 by plaintiff Flores against defendant Geraci); and (4) the Seventh COA for civil conspiracy, which is
13 not a separate claim as a matter of law. Each of the claims asserted against defendants Geraci and
14 Berry are based upon protected activity, namely, allegations of wrongful conduct in connection with
15 seeking a conditional use permit (“CUP”) and in connection with litigation activity in prior lawsuits.
16 In addition, plaintiffs cannot establish the requisite minimal merit of their claims based on the alleged
17 protected activities because the litigation privilege set forth Cal. Civ. Code 47(b) and the *Noerr-*
18 *Pennington* doctrine bar the claims and plaintiffs cannot establish the elements of their claims.

19
20 Dated: November 21, 2022

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21
22
23 By: 

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Attorney for Defendants

LARRY GERACI and REBECCA BERRY