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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

AMY SHERLOCK, et. al.

Plaintiffs,

vs.

GINA M. AUSTIN, et.al.

Defendants.

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

DECLARATION OF ANDREW FLORES IN SUPPORT OF EX PARTE APPLICATION FOR STAY OF ACTION

I, Andrew Flores, declare:

1. I am over the age of eighteen years and attorney of record for Amy Sherlock and her minor children, T.S. and S.S.

2. The facts set forth herein are true and correct as of my own personal knowledge or belief.

3. I submit this declaration in support of plaintiffs ex parte application for a stay of this action pending resolution of a pending appeal from the granting of defendant Gina Austin and her law firm's, the Austin Legal Group, motion to strike pursuant to Code of Civil Procedure Section 425.16 (the Anti-SLAPP statute).

4. On February 22, 2023, I provided notice to all parties of this application.

5. Attached hereto as Exhibit A is a true and correct copy of the stipulated judgment entered 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").

6. Attached hereto as Exhibit B is a true and correct copy of the stipulated judgment entered in *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-00004430-CU-MC-CTL.

7. Attached hereto as Exhibit C is a true and correct copy of the stipulated judgment entered in *City of San Diego v. Stonecrest Plaza, LLC*, Case No. 37-2014-00009664-CU-MC-CTL.

8. Attached hereto as Exhibit D is a true and correct copy of defendants Gina Austin and the Austin Legal Group's motion to strike Plaintiffs First Amended Complaint ("FAC") pursuant to Code of Civil Procedure Section 425.16 (the Anti-SLAPP statute) (the "Motion).

9. Attached hereto as Exhibit E is a true and correct copy of Plaintiffs opposition to the Motion.

10. Attached hereto as Exhibit F is a true and correct copy of ALG's Reply to Plaintiffs opposition to the Motion.

11. Attached hereto as Exhibit G is a true and correct copy of the order granting the Motion.

12. Attached hereto as Exhibit H is a true and correct copy of Plaintiffs' notice of appeal from the Court's order granting the Motion.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 22, 2023, at San Diego, California.

Andrew Flores

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. THE TREE CLUB COOPERATIVE, INC., a California corporation; JONAH McCLANAHAN, an individual; JOHN C. RAMISTELLA, an individual; JL 6th AVENUE PROPERTY, LLC, a California limited liability company; LAWRENCE E. GERACI, also known as LARRY GERACI, an individual; JEFFREY KACHA, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2014-00020897-CU-MC-CTL JUDGE: RONALD S. PRAGER STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6] IMAGED FILE

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

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

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

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

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

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

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6. The legal description of the PROPERTY is:

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

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

INJUNCTION

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

a. Keeping, maintaining, operating, or allowing the operation of an unpermitted marijuana dispensary, collective or cooperative at the PROPERTY, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code.

b. Defendants shall not be barred in the future from any legal and permitted use of the PROPERTY.

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

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

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

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

b. Proof 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.

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

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

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

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

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

MONETARY RELIEF

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

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

ENFORCEMENT OF JUDGMENT

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

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

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

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

RETENTION OF JURISDICTION

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

RECORDATION OF JUDGMENT

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

KNOWLEDGE AND ENTRY OF JUDGMENT

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

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

IT IS SO STIPULATED.

Dated: Oct. 21, 2014

JAN I. GOLDSMITH, City Attorney

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

Dated: 9/26, 2014

JL 6TH AVENUE PROPERTY, LLC

By
Member

Dated: 10-21-14, 2014

Lawrence E. Geraci aka Larry Geraci, an individual

Dated: 9/26, 2014

Jeffrey Kacha

Dated: 9/26, 2014

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

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ORDER

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

Dated: 10/27/14

JUDGE OF THE SUPERIOR COURT

RONALD S. PRAGER

EXHIBIT B

No Fee GC §6103

FILED
Clerk of the Superior Court
JUN 17 2015

FILED
Clerk of the Superior Court
JUN 17 2015
By: H. CHAVARIN, Deputy
'15 JUN 11 PM 1:37

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. CCSQUARED WELLNESS COOPERATIVE, a California corporation; BRENT MESNICK, an individual; JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC; JEFFREY KACHA, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2015-00004430-CU-MC-CTL STIPULATION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6] IMAGED FILE

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

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2. The parties to this Stipulation are parties in two civil actions pending in the Superior Court of the State of California for the County of San Diego. It is the intention of the parties that the terms of this Stipulation constitute a global settlement of the following cases:

a. *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-00004430-CU-MC-CTL.

b. *City of San Diego v. LMJ 35th Street Property LP, et al.*, Case No. 37-2015-000000972.

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

4. The address where the Defendants were maintaining a marijuana dispensary business at all times relevant to this action is 3505 Fifth Avenue, San Diego, also identified as Assessor's Parcel Number 452-407-17-00 (PROPERTY). The PROPERTY is currently owned by JL INDIA STREET, LP, formerly known as JL INDIA STREET, LLC.

5. The legal description of the PROPERTY is:

> Lot 3 in block 45 of loma grande, in the city of San Diego, County of San Diego, State of California, according to Map thereof No. 692, filed in the Office of the County Recorder of San Diego County, November 23, 1891.

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

INJUNCTION

7. The provisions of this Stipulation are applicable to Defendants, their successors and assigns, agents, officers, employees, representatives, and tenants, and all persons, corporations or other entities acting by, through, under or on behalf of Defendants, and all persons acting in concert with or participating with Defendants with actual or constructive knowledge of this

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

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.

COMPLIANCE MEASURES

DEFENDANTS agree to do the following at the PROPERTY:

8. **Immediately** cease 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 pursuant to the California Health and Safety Code.

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

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

b. Proof 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.

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

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

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

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

MONETARY RELIEF

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

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

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

ENFORCEMENT OF JUDGMENT

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

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

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

RETENTION OF JURISDICTION

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

RECORDATION OF JUDGMENT

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

KNOWLEDGE AND ENTRY OF JUDGMENT

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

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

IT IS SO STIPULATED.

Dated: June 11, 2015

JAN I. GOLDSMITH, City Attorney

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

Dated: 6-10, 2015

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

By
Jeffrey Kacha, General Partner

Dated: 6-10, 2015

Jeffrey Kacha, an individual

Dated: 6-8, 2015

Lawrence E. Geraci, aka Larry Geraci, an individual

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Dated: 6/11/15, 2015

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

JUDGMENT

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

Dated: 6-17-15

JOHN S. MEYER
JUDGE OF THE SUPERIOR COURT

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF SAN DIEGO, a municipal corporation, Plaintiff, v. STONECREST PLAZA, LLC, a Limited Liability Company; SALAM RAZUKI, an individual; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2014-00009664 -CU-MC-CTL JUDGE: RONALD S. PRAGER STIPULATION FOR ENTRY OF FINAL JUDGMENT IN ITS ENTIRETY AND PERMANENT INJUNCTION; JUDGMENT THEREON [CCP § 664.6] IMAGED FILE

Plaintiff City of San Diego, a municipal corporation, appearing by and through its attorneys, Jan I. Goldsmith, City Attorney, and by Gabriela Brannan, Deputy City Attorney, and Defendants STONECREST PLAZA, LLC, a Limited Liability Company; and SALAM RAZUKI, an individual; appearing by and through their attorney, Richard Ostrow, enter into the following Stipulation for Entry of Final Judgment in full and final settlement of the above-captioned case without trial or adjudication of any issue of fact or law, and agree that a final judgment may be so entered:

1. This Stipulation for Entry of Final Judgment (Stipulation) is executed only between and among Plaintiff City of San Diego, a municipal corporation, and Defendants STONECREST

. . . . .

2. PLAZA, LLC, a Limited Liability Company, and SALAM RAZUKI, an individual, (DEFENDANTS) who are named parties in the above-entitled action.

3. The parties to this Stipulation are parties to a civil suit pending in the Superior Court of the State of California for the County of San Diego, entitled *City of San Diego, a municipal corporation v. STONECREST PLAZA, LLC, a Limited Liability Company; and SALAM RAZUKI, an individual; and DOES 1 through 50, inclusive*, Civil Case Number Case Number 37-2014-00009664-CU-MC-CTL.

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

5. The address where the DEFENDANTS are maintaining a marijuana dispensary business is 4284 Market Street, San Diego, California, 92102 (PROPERTY).

6. The PROPERTY is owned by "Stonecrest Plaza, LLC, a California Limited Liability Company," according to San Diego County Recorder's Trustee's Deed Upon Sale, Document No. 2014-0071939, recorded February 21, 2014. The PROPERTY is also identified as Assessor's Parcel Numbers 547-013-17-00 and 547-013-19-00.

7. The legal description of the PROPERTY is:

> LOTS 22-24 INCLUSIVE, BLOCK 12 OF MORRISON'S MARSCENE PARK, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1844, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 10, 1925.

8. DEFENDANT SALAM RAZUKI as managing member of STONECREST PLAZA, LLC, represents that STONECREST PLAZA, LLC, is the legal property owner of the PROPERTY and represents that he has legal authority to bind STONECREST PLAZA, LLC, to this Stipulation.

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

INJUNCTION

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

a. Keeping, maintaining, operating, or allowing the operation of any unpermitted use at the PROPERTY or at any other property or premises in the City of San Diego, including but not limited to, a marijuana dispensary, collective, or cooperative in violation of the San Diego Municipal Code; and,

b. Keeping or maintaining any violations of the San Diego Municipal Code at the PROPERTY or at any other property in the City of San Diego;

COMPLIANCE MEASURES

DEFENDANTS agree to do the following:

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

12. **If the marijuana dispensary that is operating at the PROPERTY, including but not limited to, United Wellness Center, does not agree to immediately voluntarily vacate the premises, then within 24 hours from the date of signing this Stipulation,** DEFENDANTS shall in good faith use all legal remedies available to evict the marijuana dispensary business, also

known United Wellness Center and Ryan Shamoun or the appropriate party responsible for the leasehold and operation of the marijuana dispensary, including but not limited to, prosecuting an unlawful detainer action.

13. **Within 24-hours from the date of signing this Stipulation,** remove all signage from the exterior of the premises advertising a marijuana dispensary, including but not limited to, signage advertising United Wellness Center.

14. **Within seven calendar days after the marijuana dispensary business vacates the PROPERTY,** ensure that all fixtures, items, and property associated with United Wellness Center and Ryan Shamoun are removed from the premises.

15. **Within seven calendar days after the marijuana dispensary business vacates the PROPERTY,** contact Senior Land Development Investigator Leslie Sennett with the Code Enforcement Division (CED) of the City's Development Services Department to schedule an inspection of the entire PROPERTY.

a. If during the inspection, CES determines the existence of other code violations at the PROPERTY, DEFENDANTS agree to correct these additional code violations and obtain all required inspections and approvals as required by CES.

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

MONETARY RELIEF

17. **Within 15 calendar days from the date of signing this Stipulation,** DEFENDANTS shall pay Plaintiff City of San Diego, for Development Services Department, Code Enforcement Section's **investigative costs, the amount of $890.03.** Payment shall be in the form of a certified check, payable to the "City of San Diego," and shall be in full satisfaction of all costs associated with the City's investigation of this action to date. The check shall be mailed or personally delivered to the Office of the City Attorney, 1200 Third Avenue, Suite 500, San Diego, CA 92101, Attention: Gabriela Brannan.

. . . . .

18. DEFENDANTS shall pay Plaintiff City of San Diego, civil penalties in the amount of $25,000, pursuant to SDMC section 12.0202(b) in full satisfaction of all claims against DEFENDANTS arising from any of the past violations alleged by Plaintiff in this action. **$17,500 of these penalties is immediately suspended.** These suspended penalties shall only be imposed if DEFENDANTS fail to comply with the terms of this Stipulation. Plaintiff City of San Diego, agrees to notify DEFENDANTS in writing if imposition of the penalties will be sought by Plaintiff and on what basis. Civil penalties shall be paid in the form of certified check, payable to the "City of San Diego," and delivered to the Office of the City Attorney, Code Enforcement Unit, 1200 Third Avenue, Suite 700, San Diego, California 92101, Attention: Gabriela Brannan.

a. Payment of the $7,500 in civil penalties that are due and payable will be made in monthly installment payments of $1,500 each. The first payment of $1,500 will be paid by January 15, 2015, and then monthly payments of $1,500 will be made on or before the 15th of each month until paid in full.

ENFORCEMENT OF JUDGMENT

19. In the event of default by DEFENDANTS as to any amount due under this Final Judgment, the entire amount due shall be deemed immediately due and payable as penalties to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the enforcement of this Final Judgment. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid in full.

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

21. DEFENDANTS agree that any act, intentional or negligent, or any omission or failure by their contractors, successors, assigns, partners, members, agents, employees or representatives to comply with the requirements set forth in Paragraphs 10-18 above will be deemed to be the act, omission, or failure of DEFENDANTS and shall not constitute a defense to a failure to comply with any part of this Final Judgment. Further, should any dispute arise between any contractor,

successor, assign, partner, member, agent, employee or representative of DEFENDANTS for any reason, DEFENDANTS agree that such dispute shall not constitute a defense to any failure to comply with any part of this Final Judgment, nor justify a delay in executing its requirements.

RETENTION OF JURISDICTION

22. The Court will retain jurisdiction for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such order or directions that may be necessary or appropriate for the construction, operation or modification of the Final Judgment, or for the enforcement or compliance therewith.

KNOWLEDGE AND ENTRY OF JUDGMENT

23. By signing this Final Judgment, DEFENDANTS admit personal knowledge of the terms set forth herein. Service by mail shall constitute sufficient notice for all purposes.

24. The clerk is ordered to immediately enter this Final Judgment.

RECORDATION OF JUDGMENT

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

IT IS SO STIPULATED.

Dated: 12/29, 2014

JAN I. GOLDSMITH, City Attorney

By _____
Gabriela Brannan
Deputy City Attorney
Attorneys for Plaintiff

Dated: 12/23, 2014

_____
SALAM RAZUKI, an individual

Dated: 12/23, 2014

_____
STONECREST PLAZA, LLC, by SALAM RAZUKI, Managing Member of Stonecrest Plaza, LLC, a Limited Liability Company

Dated: 12/23, 2014

Richard Ostrow, Attorney for Defendants STONECREST PLAZA, LLC, and SALAM RAZUKI

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

Dated: JAN - 6 2015

JUDGE OF THE SUPERIOR COURT
RONALD S. PRAGER

City of San Diego v. Stonecrest Plaza, LLC, et al., Case No. 37-2014-00009664 -CU-MC-CTL

EXHIBIT D

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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: _____

Douglas A. Pettit, Esq.
Kayla R. Sealey, Esq.
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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
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Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

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.

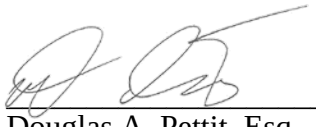
CONCLUSION

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.

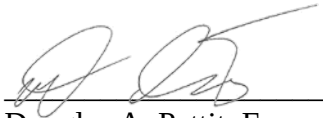
2. A true and correct copy of the Complaint filed in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL, filed March 21, 2017, in San Diego Superior Court is attached hereto as **Exhibit A**.

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.

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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.

/ / / / /

/ / / / /

FINCH, THORNTON & BAIRD, LLP
4747 Executive Drive - Suite 700
San Diego, CA 92121
(858) 737-3100

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

FINCH, THORNTON & BAIRD, LLP
4747 Executive Drive - Suite 700
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(858) 737-3100

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
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff *Pro Se*

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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

Douglas A. Pettit, Esq., SBN 160371
Kayla R. Sealey, Esq., SBN 341956
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ksealey@pettitkohn.com

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.

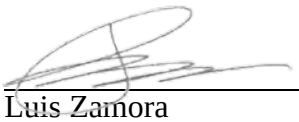
///

[ ] 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

EXHIBIT E

ANDREW FLORES, ESQ (SBN:272958)
LAW OFFICE OF ANDREW FLORES
427 C Street, Suite 220
San Diego CA, 92101
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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.

Table of Contents

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

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.

---

[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 <u>complete</u> <u>discretion</u> 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.

[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. <u>Plaintiffs are not barred by Civil Code § 1714.10.</u>

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,
LAW OFFICE OF ANDREW FLORES

ANDREW FLORES,ESQ
Plaintiff *in Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

EXHIBIT F

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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 <u>any</u> 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.

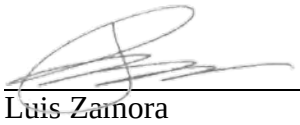
[ ] BY PERSONAL SERVICE: I caused the above-described document to be personally served on the parties listed on the service list below at their designated business addresses **pursuant to Code Civ. Proc. §1011**.

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

EXHIBIT G

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

EXHIBIT H

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 272958
NAME: Andrew Flores
FIRM NAME: Law Office of Andrew Flores
STREET ADDRESS: 427 C Street, Suite 220
CITY: San Diego STATE: CA ZIP CODE: 92101
TELEPHONE NO.: 619.356.1556 FAX NO.: 619.274.8053
E-MAIL ADDRESS: andrew@floreslegal.pro
ATTORNEY FOR (name): Amy Sherlock, minors T.S. and S.S., and Andrew Flores (pro se)

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/23/2022 at 11:18:00 AM
Clerk of the Superior Court
By Annie Yim,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 W Broadway
MAILING ADDRESS: 330 W Broadway
CITY AND ZIP CODE: San Diego 92101
BRANCH NAME: Hall of Justice

PLAINTIFF/PETITIONER: Amy Sherlock, minors T.S. and S.S., and Andrew Flores
DEFENDANT/RESPONDENT: Gina M. Austin and Austin Legal Group

[x] NOTICE OF APPEAL [ ] CROSS-APPEAL
(UNLIMITED CIVIL CASE)

CASE NUMBER:
37-2021-00050889-CU-AT-CTL

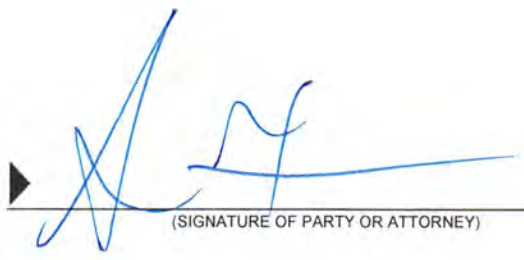
Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that (name): Amy Sherlock, minors T.S. and S.S., and Andrew Flores appeals from the following judgment or order in this case, which was entered on *(date)*: 8/12/2022
   - [ ] Judgment after jury trial
   - [ ] Judgment after court trial
   - [ ] Default judgment
   - [ ] Judgment after an order granting a summary judgment motion
   - [ ] Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
   - [ ] Judgment of dismissal after an order sustaining a demurrer
   - [ ] An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
   - [x] An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
   - [ ] Other *(describe and specify code section that authorizes this appeal)*:

2. For cross-appeals only:
   a. Date notice of appeal was filed in original appeal:
   b. Date superior court clerk mailed notice of original appeal:
   c. Court of Appeal case number *(if known)*:

Date: 8/16/2022

Andrew Flores
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-002 [Rev. January 1, 2017]

NOTICE OF APPEAL/CROSS-APPEAL (UNLIMITED CIVIL CASE)
(Appellate)

Cal. Rules of Court, rule 8.100
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