IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

AMY SHERLOCK, an individual, Minors T.S. and S.S., Andrew Flores, an individual, Plaintiffs and Appellants, v. GINA AUSTIN, an individual, AUSTIN LEGAL GROUP, a Professional Corporation, Defendants and Respondents.	Court of Appeal Case No.: D081109 San Diego County Superior Court Case No.: 37-2021-0050889-CU-AT-CTL

Appeal from the Order by the Honorable James A. Mangione, Judge of the Superior Court of California, County of San Diego, Entered on February 25, 2022, Granting Defendant's/Respondent's Anti-SLAPP Motion.

APPELLANT'S REPLY BRIEF

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Table of Contents

REPLY 5
ARGUMENT 7
1. The Court should consider the evidence and arguments in the Opening Brief and this Reply that demonstrate ALG's legal services contracts with its clients are illegal contracts and its petitioning is criminal as a matter of law. 7
2. Per Gina Austin's own declaration and legal reasoning, her clients Geraci and Razuki were required to be disclosed as "responsible persons" and "owners" in the applications for cannabis permits and licenses to engage in commercial cannabis activity. 11
3. ALG's petitioning to State and local cannabis agencies violates Penal Code § 115. 13
4. The operation of nonprofit dispensaries for profit violates the Federal and California's controlled substances act. 15
5. ALG's Strawman Practice petitioning is sham petitioning that is a per se violation of the Cartwright Act and not protected activity. 18
6. ALG's legal services agreements with its clients are illegal contracts……..... 20
7. ALG's claim that the "shall deny" language in BPC §§ 19323

/26057 can be construed as “may deny” is frivolous. 20

8. ALG’s petitioning activity violates California’s Control of Profits of Organized Crime Act..... 22

9. At the first step of the anti-SLAPP analysis, Appellants did not need to provide evidence of ALG’s petitioning – “the question is what is pled - not what is proven.” 23

10. All other arguments in the Response fail because they are based on the Strawman Practice not being criminal and ALG being a coconspirator.. 25

CONCLUSION 26

TABLE OF AUTHORITIES

Federal Court Opinions

United States v. McIntosh,
(9th Cir. 2016) 833 F.3d 1163 18

United States v. Pisarski
(9th Cir. 2020) 965 F.3d 738 18

California State Opinions

Action Apartment Ass'n, Inc. v. City of Santa Monica
(2007) 41 Cal. 4th 1232 13

Asdourian v. Araj
(1985) 38 Cal. 3d 276 ..... 11, 12

Cal. Fed. Sav. & Loan Ass'n v. City of L.A.
(1995) 11 Cal. 4th 342 24

Central Valley Hospitalists v. Dignity Health
(2018) 19 Cal.App.5th 203 25

City Lincoln-Mercury Co. v. Lindsey
(1959) 52 Cal.2d 267 26

Hi-Top Steel Corp. v. Lehrer
(1994) 24 Cal. App. 4th 570 26

Hunter v. Superior Court of Riverside Cty.
(1939) 36 Cal. App. 2d 100 11

Lewis & Queen v. N. M. Ball Sons
(1957) 48 Cal. 2d 141 ..... 9, 12, 22

Marsh v. Anesthesia Servs. Med. Grp., Inc.
(2011) 200 Cal. App. 4th 480 ..... 20, 21

May v. Herron
(1954) 127 Cal.App.2d 707 9-10

Morey v. Paladini
(1922) 187 Cal. 727 ..... 10, 11

Navellier v. Sletten
(2002) 29 Cal.4th 82 25

People ex rel. Harris v. Aguayo
(2017) 11 Cal. App. 5th 1150 ..... 20, 21, 22

People v. Anderson

(2015) 232 Cal. App. 4th 1259 17

Qualified Patients Ass'n v. City of Anaheim
(2010) 187 Cal. App. 4th 734 ..... 19, 27

Rickley v. Goodfriend
(2013) 212 Cal. App. 4th 1136 27

Sec. Pac. Nat. Bank v. Lyon
(1980) 105 Cal. App. 3d Supp. 8 12

Union of Medical Marijuana Patients, Inc.v. City of San Diego
(2019) 7 Cal.5th 1171 21

Woodward Park Homeowners Ass'n, Inc. v. City of Fresno
(2007) 150 Cal. App. 4th 683 12-13

Wyatt v. Union Mortgage Co.
(1979) 24 Cal.3d 773 27-28

United States Code

21 U.S.C. § 802 ..... 17, 28

21 U.S.C. § 812 ..... 17, 28

State Statutes

Business and Professions Code § 6128… 13

Business and Professions Code § 6306 16

Ca. Health & Safety Code § 11054 ..... 17, 28

Ca. Health & Safety Code § 11357 28

Ca. Health & Safety Code § 11359 28

Ca. Health & Safety Code § 11360 28

Ca. Health & Safety Code § 11366 28

Ca. Health & Safety Code § 11366.5 28

Cal. Penal Code § 186 ..... 24, 25

Civil Code § 1673 11

Code of Civ. Proc. § 998 16

Health & Safety Code § 11362.775 17

Penal Code § 115 ..... *passim*

REPLY

Plaintiffs/Appellants Andrew Flores, Amy Sherlock, and her minor children, T.S. and S.S. (the Sherlock Family), pled and demonstrate in their First Amended Complaint (FAC), opposition to ALG's anti-SLAPP motion, and in their Opening Brief that, among others, respondents Gina M. Austin, her law firm, the Austin Legal Group (collectively, "ALG"), and their clients, Lawrence Geraci and Salam Razuki, conspired to control/own medical nonprofit and recreational dispensaries to sell cannabis illegally. Further, to create a monopoly in the cannabis market in the County and City of San Diego (the "Antitrust Conspiracy").

In furtherance of the Antitrust Conspiracy they took unlawful action against, among others, Appellants to fraudulently deprive them of their ownership interests in cannabis code compliant real properties and cannabis permits and licenses via forged documents and sham petitioning.

The Response proves that ALG are knowingly engaging in criminal activity and their petitioning is not protected. As a matter of law and basic common sense, California law has required a party to be lawfully authorized to engage in the distribution, possession, and sale of cannabis. Engaging in commercial cannabis activity without legal authorization is illegal.

Under California's cannabis licensing statutes and regulations, no one

can "own" a medical dispensary and operate it for profit. Nor have an "ownership interest" in a cannabis entity and engage in commercial cannabis activity without applying, undergoing background checks, and being licensed by State and local cannabis licensing agencies. Nor can any attorney lawfully petition for its clients to acquire control or ownership of dispensaries by filing applications with State and local cannabis licensing agencies purposefully failing to comply with applicable disclosure laws as to who the owners are.

Without the legal immunity granted by strict compliance with California's cannabis licensing statutes and regulations, ALG and its clients' judicial and evidentiary admissions prove that since at least 2015 they have engaged in the distribution, possession and sale of a controlled substance in violation of, *inter alia*, the Federal Controlled Substance Act (CSA) and California's Uniform Controlled Substances Act (CUCSA). ALG and its coconspirators are the definition of a criminal organization, but-for the prohibition on enforcement of cannabis in federal courts pursuant to the CSA, Appellants would file Racketeering Influenced Corrupt Organizations Act (RICO) causes of action against ALG.

Neither the First Amendment, the anti-SLAPP statute, the litigation privilege, the doctrines of res judicata or finality of judgments, nor any other immunity/privilege immunize ALG's petitioning acts in furtherance of its

clients' object of engaging in the unlicensed distribution, possession and sales of a controlled substance for profit. Those are illegal sales that could only be accomplished by ALG's filing of fraudulent/sham petitions before State and local cannabis licensing agencies.

ALG, its clients, and coconspirators have, until now, been successful in having deceived over a dozen Federal and State judges at the trial and appellate level into enforcing and/or ratifying their criminal conduct. To Appellants' knowledge, ALG and its coconspirators have perpetrated the largest fraud upon the court in the history of the United States. At least in terms of the sheer number of judges deceived into enforcing and/or ratifying their conspiracy to engage in the illegal sale of a controlled substance in violation of, *inter alia*, the CSA and the CUCSA.

ARGUMENT

1. The Court should consider the evidence and arguments in the Opening Brief and this Reply that demonstrate ALG's legal services contracts with its clients are illegal contracts and its petitioning is criminal as a matter of law.

First, contrary to ALG's argument (Res. at 34), whenever a court is presented with evidence that a party seeks to enforce an "illegal contract or recover compensation for an illegal act, ***the court has both the power and duty to ascertain the true facts*** in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids." (*Lewis & Queen v. N. M. Ball Sons* (1957) 48 Cal. 2d 141, 147-48

(emphasis added)); *see May v. Herron* (1954) 127 Cal.App.2d 707, 710 ("The argument also ignores the well-established rule that 'even though the defendants in their pleadings do not allege the defense of illegality if the evidence shows the facts from which the illegality appears it becomes 'the ***duty*** of the court *sua sponte* to refuse to entertain the action.'" (quoting *Endicott v. Rosenthal* (1932) 216 13 Cal. 721, 728) (emphasis added).) Because the Court cannot enforce criminally illegal contracts or ratify or validate criminal activity, evidence or arguments of illegality can be presented at any time, even in a Reply brief on appeal, or on petition for review to the California Supreme Court. (*Morey v. Paladini* (1922) 187 Cal. 727 (cited with approval in *Lewis & Queen,* 48 Cal.2d 147-148).)

In *Morey*, the California Supreme Court reversed a judgment for damages for breach of contract in plaintiff's favor. (*Morey*, 187 Cal. at 740.)) The Court found the agreement violated both the Federal and State's antitrust laws. (*Id.* at 736.) Defendant had raised the issue of illegality in his reply "for the first time" in the Court of Appeal and plaintiff objected. (*Id.* at 733.) The Court said:

> … a void contract, a contract against public policy or against the mandate of the statute, may not be made the foundation of any action either in law or in equity…. ***as a general rule, cases will not be reversed upon points which the respondent has not had an opportunity to discuss, but in cases of this kind it matters not that no objection is made by either party. When the court discovers a fact which indicates that the contract is illegal and ought not to be enforced, it will, of its own motion,***

> ***instigate an inquiry in relation thereto***. In this case, however, appellant raised the objection as to the invalidity of the contract in his closing brief in the district court of appeal, and the point was discussed by both parties to the appeal in the petition and answer on application for hearing in this court.

(*Id*. at 734 (citations omitted, emphasis added).)

If a judgment is entered that enforces an illegal contract, the judgment is void to the extent that it enforces the illegal contract and can be vacated because the Courts act in excess of their jurisdiction when they enforce illegal contracts. (*Hunter v. Superior Court of Riverside Cty.* (1939) 36 Cal. App. 2d 100, 116 ("If a court grants relief, which under no circumstances it has any authority to grant, its judgment is *to that extent* void.") (emphasis in original).)

In *Hunter*, the Court of Appeal granted a writ of mandate to restrain the trial court from imprisoning or fining petitioner for contempt for violation of a stipulated judgment he had entered into and vacated the stipulated judgment. (*Hunter*, 36 Cal.App.2d at 110.) The Court found the stipulated judgment enforced an illegal contract that set "forth an intention of the parties to create a monopoly" and violated former Civil Code § 1673 (restraint of trade). (*Id.* at 115.)

While in some cases there are public policy considerations where justice would best be served by enforcing a technically illegal contract, none of those considerations come into play when a contract is "designed to further

a crime or obstruct justice." (*Asdourian v. Araj* (1985) 38 Cal. 3d 276, 293.) As the California Supreme Court stated in *Asdourian*, which this Court cited with approval in the *Razuki Decision*, such contracts are *malum in se* (evil in itself) and such illegality "***automatically*** renders an agreement void." (*Id.* (emphasis added).) Such judgments do not cease to become void even if affirmed on appeal or by a subsequent judgment. (*Sec. Pac. Nat. Bank v. Lyon* (1980) 105 Cal. App. 3d Supp. 8, 13.) The *justice* system cannot be the tool by which wealthy parties effectuate their *crimes*, ever. (*Id*.)

In sum, the foregoing authorities stand for a simple proposition: the courts act in excess of their jurisdiction when they enforce contracts in violation of statutes and cannot ratify, validate, or enforce activity that is criminally prohibited. Much less force the victims of crimes to pay the criminals who perpetrated the crimes the costs the criminals incurred in committing their crimes against them. (*Lewis & Queen,* 48 Cal. 2d at 147-48 (courts may not allow litigants to "recover compensation for an illegal act…").)

Second, setting aside the exception for illegality, Appellants concede the general rule is that arguments on appeal are generally limited to those raised at the trial court. However, "issues raised for the first time on appeal are often considered if they relate to questions of law only, especially where the public interest or public policy is involved." (*Woodward Park*

Homeowners Ass'n, Inc. v. City of Fresno (2007) 150 Cal. App. 4th 683, 713 (quotation omitted).) It is indisputable that ALG petitions for its clients to acquire control/ownership of cannabis permits/licenses in the name of third parties (i.e., ALG's Strawman Practice petitioning).

2. Per Gina Austin's own declaration and legal reasoning, her clients Geraci and Razuki were required to be disclosed as "responsible persons" and "owners" in the applications for cannabis permits and licenses to engage in commercial cannabis activity.

The Response states that Appellants failed to prove that Geraci and Razuki were required to be disclosed because "[t]hey merely cite to Austin's declaration in another case, that was not before the trial judge, for their proposition that Geraci and Razuki were required to be disclosed as owners." (Res. at 22.)

There is no factual or legal justification for this deceitful claim.[1] Austin's declaration, as a cannabis "expert," argues that allowing a court appointed receiver to control the subject dispensary – the Sherlock Family's dispensary – would be a "violation of state law" because the then-called "Bureau of Cannabis Control ('BCC') requires all owners to submit detailed

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[1] "[T]he litigation privilege does not apply to the following crimes: … criminal prosecution under Business and Professions Code section 6128…" (*Action Apartment Ass'n, Inc. v. City of Santa Monica* (2007) 41 Cal. 4th 1232, 1246.) BPC § 6128 provides that, "Every attorney is guilty of a misdemeanor who either: [¶] (a) Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party."

information to the BCC as part of the licensing process." (RJN Ex. 2 at ¶ 14.) Austin's declaration goes on to quote and cite extensively California's cannabis licensing statues, regulations promulgated by the BCC, and the San Diego Municipal Code (SDMC) that demonstrate the court appointed receiver would be deemed an "owner" and "responsible person" under the cited authorities. (RJN Ex. 2 at ¶¶ 14-18.)

By Austin's own legal reasoning, if a court appointed receiver is required to be disclosed pursuant to state law, agency adopted regulations, and applicable SDMC provisions, because he meets the definition of an "owner," then how can neither Geraci nor Razuki be required to be disclosed when they would *actually* be the "responsible persons" and "owners"? Geraci was to be the sole owner of the CUP applied for by ALG for him in the name of his assistant Rebecca Berry "who was serving as the CUP applicant on his behalf." (AA 061.) Both Razuki and Malan admit they entered into an agreement for Malan to hold Razuki's 75% ownership interest in the cannabis assets they acquired pursuant to their agreement in his name. (RJN Ex. 1 (*Razuki Decision*) at *29.)

Austin's declaration and ALG's position that her declaration has no legal effect on this Appeal, and the determination as to whether their petitioning is or is not criminal, and whether they have perpetrated a massive fraud on the court by deceiving the Federal and State judiciaries, would lead

any reasonable person to understand that ALG knows its petitioning is illegal.

Put another way, if Austin was anything other than an attorney for a criminal organization that has used her position as an officer of the court to aid and abet her clients to profit immensely from illegal cannabis sales, she would state why the laws and arguments in her *own* declaration apply to a court appointed receiver but not to Geraci and Razuki. But she does not because she can't as there is no way to distort her detailed legally supported reasoning submitted under penalty of perjury. So, she seeks to pretend it means nothing when those words mean everything in this case and one day they will be figuratively used to hang her in front of a jury as testifies and attempts to argue she was just doing her job and is not a criminal.[2]

3. ALG's petitioning to State and local cannabis agencies violates Penal Code § 115.

There is no dispute that ALG has represented Geraci (AA 123) and

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[2] Appellants do not want to distract this court with requests for sanctions. But this position by ALG's counsel, that Austin's declaration means nothing to the question at hand regarding whether her petitioning is criminal begs the question, what are the bounds of ALG's counsel legal representation? Does zealous advocacy allow ALG's counsel to dismiss the law and arguments in its client's own declaration, as a cannabis "expert," that any reasonable attorney would research, vet, and find are controlling? Is such not a misrepresentation to this Court that makes ALG's counsel jointly liable with ALG as an after-the-fact accessory to ALG's criminal conspiracy? Is not sham petitioning exactly like ALG misrepresenting that Geraci and Razuki can own dispensaries?

Malan (RJN Ex. 2). Nor any dispute ALG undertook the Strawman Practice petitioning and in the Geraci application Berry did not disclose that Geraci was actually the sole "owner" of the CUP applied for. (AA 0061, 0123.) Nor in the Razuki application that Malan did not disclose Razuki's then-not-disputed 75% ownership interest in the assets acquired in Malan's name. (*See*, *gen.*, Res.)

As set forth above, ALG was required to disclose Geraci and Razuki in their respective applications by law. Thus, all of ALG's arguments in opposition seeking to avoid criminal liability for filing false documents with State and local cannabis licensing agencies in violation of Penal Code § 115 are without any factual or legal justification.

In *Blumenthal v. Mahdavi*, plaintiff's attorney Yosef Peretz filed two forged Code of Civ. Proc. § 998 offers with the court and the court, *inter alia*, referred the filing of the two false documents to the San Francisco District Attorney for investigation of violation of Penal Code § 115; referred the filing of two false documents to the Office of Chief Trial Counsel of the State Bar of California for investigation of violation of Penal Code § 115 and Business and Professions Code § 6306; and issued an order imposing sanctions against attorney plaintiffs' counsel Peretz, and Sumy Kim, for their bad faith actions and tactics that the court found constituted a "fraud on the court." (*Blumenthal v. Mahdavi*, 2016 Cal. Super. LEXIS 13428, *1-2.)

Appellants request this Court refer this matter to the federal and state attorney general's office. Appellants are not going to be the parties that discover the full scope of ALG's illegal petitioning and her criminal organization's activity and hold them accountable. But-for Darryl Cotton refusing to be economically extorted by Geraci's sham real estate breach of contract lawsuit, *Cotton I*, and Razuki suing Malan, their secret, undisclosed ownership interests via ALG's petitioning would not be disclosed. How many other parties are engaging unlicensed commercial cannabis sales at this moment pursuant to ALG's Strawman Practice petitioning that ALG admits she undertakes?

4. The operation of nonprofit dispensaries for profit violates the Federal and California's controlled substances act.

The CSA and the CUCSA both classify cannabis as controlled substance. (*See* 21 U.S.C. § 812; Ca. Health & Safety Code § 11054.)

In 2003, the Legislature enacted the Medical Marijuana Program Act (MMPA). (Health & Safety Code § 11362.775.) One of the goals of the MMPA was to "protect collectives and cooperatives organized for the cultivation of marijuana for medical use." (*People v. Anderson* (2015) 232 Cal. App. 4th 1259, 1273.)

> To this end, the law includes [Health & Safety Code §] 11362.775, which provides a defense for collective or cooperative cultivation: 'Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who

> associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state ***criminal sanctions*** under Section 11357 [possession], 11358, 11359 [possession for sale], 11360 [unlawful transportation, importation, sale, or gift], 11366 [opening or maintain place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance], or 11570.

(*Id*. at 1274 (emphasis added).

> The defense the MMPA provides to patients who participate in collectively or cooperatively cultivating marijuana requires that a defendant show that members of the collective or cooperative: (1) are qualified patients who have been prescribed marijuana for medicinal purposes, (2) collectively associate to cultivate marijuana, and (3) ***are not engaged in a profit-making enterprise***.

(*Id*. at 529.)

In the Ninth Circuit, criminal defendants who are arrested for cannabis related charges but who are in compliance with the MMPA can seek to have their prosecutions enjoined. (*See United States v. McIntosh*, 833 F.3d 1163 (9th Cir. 2016).) They are generally known as a "*McIntosh* hearing." (*United States v. Pisarski* (9th Cir. 2020) 965 F.3d 738, 742.) To prevail in a *McIntosh* hearing, [defendants] must prove by a preponderance of the evidence that they have ***strictly*** complied with state medical marijuana laws." (*Id.* (emphasis added).) Which includes not operating a nonprofit for profit. (*Id.* at 744.)

Dispensaries were prohibited from operating for profit until

recreational cannabis was made lawful pursuant to the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA), that was passed and went into effect on November 9, 2016.

On November 2, 2016, Geraci confirmed in writing in an email to Cotton that he would provide Cotton a "10% equity position in the dispensary" as part of Cotton's compensation to sell the property to Geraci. (AA 72.) That application had been submitted on October 31, 2016 for medical nonprofit dispensary. (AA 0061 ("The project consists of the construction of a new MMCC facility.").) As described in this Court's *Razuki Decision*, the subject profit sharing agreement was entered into prior to the passage of AUMA. (*See* RJN Ex. 1 (*Razuki Decision*) at *58 ("the Settlement Agreement on its face does not concern the operations of a recreational marijuana business, which could arguably have been classified as illegal at the time the agreement was executed.").)

"The MMPA bars individuals and any collective, cooperative, or other group from transforming medical marijuana projects authorized under the MMPA into for-profit enterprises." (*Qualified Patients Ass'n v. City of Anaheim* (2010) 187 Cal. App. 4th 734, 746 (citing and quoting Health & Safety Code § 11362.765(a) ("nothing in this section shall authorize … any individual or group to cultivate or distribute marijuana for profit") (emphasis added).) Here, Geraci's own writing proves that he intended to engage in

illegal for-profit sales of cannabis under an MMCA. And Razuki and Malan did engage in illegal sales – for many years. As they both admit their unlawful for-profit sales from medicinal nonprofit dispensaries, their respective agreements are illegal contracts and their conduct is not immunized under the MMPA and are violations of the CSA and CUCSA for, *inter alia*, distributing, possessing and selling a controlled substance.

5. ALG's Strawman Practice petitioning is sham petitioning that is a per se violation of the Cartwright Act and not protected activity.

"The *Noerr-Pennington* doctrine immunizes legitimate efforts to influence a branch of government from virtually all forms of civil liability." (*People ex rel. Harris v. Aguayo* (2017) 11 Cal. App. 5th 1150, 1160.) "Sham" petitioning is not immunized by the *Noerr-Pennington* doctrine. (*Id.* at 1161.) A sham petition is one that is (1) "objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits" and (2) "the litigant's subjective motivation must conceal an attempt to interfere directly with the business relationships of a competitor…" (*Id.* (cleaned up).)

"The Cartwright Act prohibits combinations in unreasonable restraint of trade." (*Marsh v. Anesthesia Servs. Med. Grp., Inc.* (2011) 200 Cal. App. 4th 480, 493.) "Certain restraints which lack redeeming virtue are conclusively presumed to be unreasonable and illegal, and constitute a per se illegal practice." (*Id.* (quotation omitted).) "Elaborate market analysis and

case-by-case evaluation are unnecessary in cases involving per se antitrust violations because the anticompetitive effects of the practice are presumed." (*Id.* at 494.) ALG's petitioning activity is on its face a per se violation of the Cartwright Act - the illegal acquisition and operation of the highly limited number of cannabis permits in the County and City of San Diego.[3]

Here, at the first step of the sham analysis, ALG's petitioning for its clients before State and local cannabis licensing agencies and the judiciaries in furtherance or defense of its clients alleged ownership rights allegedly acquired via the Strawman Practice are objectively baseless. It is a criminal in its acts (filing fraudulent applications with licensing agencies), object (engaging in unlicensed commercial cannabis activity), and "no reasonable litigant could realistically expect success on the merits" to lawfully engage in commercial cannabis activity with a licensed issued in the name of a third party. (*People ex rel. Harris,* 11 Cal. App. 5th at 1160.)

As to the second step, the Strawman Practice is a per se violation of the Cartwright Act and its anticompetitive effect is presumed by law. (*Marsh*, 200 Cal. App. 4th 493-494.) Although given the less than 30 licenses available, the market analysis would not be difficult to perform. (*See Union*

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[3] *See Union of Medical Marijuana Patients, Inc.v. City of San Diego* (2019) 7 Cal.5th 1171, 1180 (City of San Diego has "a practical maximum of 30 dispensaries" that can be licensed given regulatory requirements).

of Medical Marijuana Patients, Inc., 7 Cal.5th at 1180.)

Further, "[u]nlawful actions may not be subject to immunity under the *Noerr-Pennington* doctrine." (*People ex rel. Harris,* 11 Cal. App. 5th at 1160.) Violations of Penal Code § 115, "recording false documents [is] not protected petitioning activity under *Noerr-Pennington* and its progeny." (*Id.* at 1163.) As demonstrated above, ALG's legal services to petition for its clients require that it violate Penal Code § 115 and, thus, is not protected petitioning activity on this ground as well.

6. ALG's legal services agreements with its clients are illegal contracts.

The Response states that there "is no allegation in the current case that there was an illegal contract… so the cited authority [*Lewis & Queen v. N.M. Ball Sons,* (1957) 48 Cal.2d 141] is not pertinent here." (Res. at 34.) This is blatantly false. This entire case alleges an agreement among ALG and defendants to create a monopoly in the cannabis market in the County and City of San Diego – the Antitrust Conspiracy. (OB at 7.) The legal services agreements between ALG and its clients are Appellants prima facie evidence of an agreement among defendants to take acts in furtherance of the Antitrust Conspiracy. Why? Because ALG's legal services agreements are illegal and their effect are clear – the illegal acquisition of the limited number of cannabis permits in a highly regulated market.

7. ALG's claim that the "shall deny" language in BPC §§ 19323/26057 can be construed as "may deny" is frivolous.

First, Respondents misread and mispresent the statute. BPC § 19323(a), in effect when Geraci and Berry applied for a CUP, applies to "applicants." Subsection (b) applies to "applications." The term "applicant" was defined in BPC § 19300.5, which was added by SB 837. (Stats 2016 ch 32 § 8, effective June 27, 2016. Repealed Stats 2017 ch 27 § 2 (SB 94), effective June 27, 2017.)

Applicant was defined as:

> "Applicant," for purposes of Article 4 (commencing with Section 19320), includes the following:
>
> > (1) Owner or owners of the proposed premises, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the premises.
> >
> > (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 premises.
> >
> > (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.

SB 837 at § 8 (adding BPC § 19300.5.)

Thus, as in this case, Geraci and Razuki met the definitions of "owners" and were required to be disclosed, but their sanctions meant that their applications would be denied pursuant to the "shall" deny language of subsection (a) that applies to the criteria set forth in subsection (b).

Moreover, ALG argue that the prohibition of BPC § 19323 does not address illegal activity. Yet, as they have for years, ALG does not address how anyone can distribute and sale cannabis without being permitted/licensed.

Ultimately, this is a simple plain language issue: "When, as here, statutory language is clear and unambiguous there is no need for construction, and courts should not indulge in it." (*Cal. Fed. Sav. & Loan Ass'n v. City of L.A.* (1995) 11 Cal. 4th 342, 349.) The plain language of BPC § 19323 speaks for itself and contradicts ALG's professed understanding of the statute.

8. ALG's petitioning activity violates California's Control of Profits of Organized Crime Act.

> The Legislature hereby finds and declares that an effective means of punishing and deterring criminal activities of organized crime is through the forfeiture of profits acquired and accumulated as a result of such criminal activities. It is the intent of the Legislature that the "California Control of Profits of Organized Crime Act" be used by prosecutors to punish and deter only such activities.

Cal. Penal Code § 186.1.

The California Control of Profits of Organized Crime Act defines "organized crime" as including any "crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply ***illegal goods or services such as narcotics***…. or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of …

embezzlement…" (Pen. Code § 186.2(d) (emphasis added).)

As demonstrated above, ALG's petitioning activity is an illegal service that seeks and has supplied illegal cannabis for sale. ALG and their clients constitute an organization engaged in "organized crime." (*Id*.)

Only the Attorney General or the district attorney of a county can prosecute and seek the forfeiture of profits acquired pursuant to this statute. (*See* Penal Code § 186.2(c).) Appellants respectfully request that this Court refer this matter to the Attorney General for investigation. There are many more victims of ALG. It is beyond the scope of Appellants to hold ALG and its conspirators accountable as the procedural history of this action demonstrates.

9. At the first step of the anti-SLAPP analysis, Appellants did not need to provide evidence of ALG's petitioning – "the question is what is pled - not what is proven."

The threshold determination of whether Appellant's claims arise out of protected activity is not based on evidence, rather "'***[t]he question is what is pled—not what is proven***.'" (*Central Valley Hospitalists v. Dignity Health* (2018) 19 Cal.App.5th 203, 217 (emphasis added); *see Navellier v. Sletten* (2002) 29 Cal.4th 82, 94 ("'the threshold question of whether the [] statute [potentially] applies'" should not be confused "'with the question whether [an opposing plaintiff] has established a probability of success on the merits.'").)

In *Hi-Top Steel*, plaintiffs appealed from a judgement on the pleadings

in favor of defendants finding the *Noerr-Pennington* doctrine barred their claims of unfair competition. (*Hi-Top Steel Corp. v. Lehrer* (1994) 24 Cal. App. 4th 570, 579 (*Hi-Top Steel*).) The Court found that "plaintiffs have stated a cause of action under the sham exception" and reversed the judgment. (*Id.* at 583.)

ALG's arguments regarding Appellants lack of evidence is without justification because Respondents do not argue that Appellants did not *plead* a cause of action under the sham exception. (*Id*.) Further, based on the facts that are in the record, it is clear that ALG undertakes the Strawman Practice petitioning. Such is clearly criminal and Appellants error, if error it was, based on counsel's good faith belief that as the anti-SLAPP motion did not dispute that ALG undertook the Strawman Practice petitioning, that Appellants did not need to prove that ALG did what they admitted they did by arguing it was protected petitioning activity.

Similarly, in regard to the issue of tax fraud and tax evasion, ALG argues that Appellants waived the argument and did not present evidence. (Res. at 25-26.) First, a "party to an illegal contract cannot ratify it, cannot be estopped from relying on the illegality, and cannot waive his right to urge that defense." *City Lincoln-Mercury Co. v. Lindsey* (1959) 52 Cal.2d 267, 274. Second, ALG would have the court assume that Appellants lack of proffered evidence that ALG and its clients are violating the Federal and

State tax laws means that they are not violating them. But, as a matter of law this must be the case. Geraci sought and Razuki did acquire dispensaries and his admitted agreements are to engage in for-profit sales through a nonprofit dispensary. But by definition this could not be lawfully done because the "MMPA bars individuals and any collective, cooperative, or other group from transforming medical marijuana projects authorized under the MMPA into for-profit enterprises." (*Qualified Patients Ass'n*, 187 Cal. App. 4th at 746.) Necessarily Geraci sought, and Razuki did, have to file fraudulent Federal and State tax returns.

10. All other arguments in the Response fail because they are based on the Strawman Practice not being criminal and ALG being a coconspirator.

When an attorney actively participates in conduct that goes way beyond the role of legal representative, that attorney may be liable for wrongdoing to the same extent as a layperson when violating a duty owed to another person and that liability may be based on a claim of civil conspiracy (*Rickley v. Goodfriend* (2013) 212 Cal. App. 4th 1136, 1153.)

ALG's Strawman Practice petitioning is active participation that makes ALG's jointly liable with Geraci and Razuki for all illegal sales and acts they have undertaking in engaging in unlicensed commercial cannabis sales through fronts. (*See Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 784 ("As long as two or more persons agree to perform a wrongful act,

the law places civil liability for the resulting damage on all of them, regardless of whether they actually commit the tort themselves.").

ALG is jointly liable with its clients for its illegal distribution and sales of cannabis in violation of the CSA and CUCSA. (*See*, *e.g.*, 21 U.S.C. §§ 802, 812; Ca. Health & Safety Code § 11054; *id.* § 11357 [possession]; *id.* § 11359 [possession for sale]; *id.* § 11360 [unlawful transportation, importation, sale, or gift]; *id.* § 11366 [opening or maintain place for trafficking in controlled substances]; *id.* § 11366.5 [providing place for manufacture or distribution of controlled substance].)

All other arguments made by ALG in its Response fail. They are all premised on the Strawman Practice being lawful and ALG not being jointly liable with her coconspirators for the illegal acts taken, including the acts and threats of violence against innocent people to prevent them from testifying and/or seeking judicial redress.

CONCLUSION

The bottom line is Austin's petitioning for Geraci and Razuki to engage in commercial cannabis activity without being licensed, and to do so for-profit, lawful? Obviously, no. On its face, the Response lacks any factual or legal justification, makes misrepresentations of facts and law, is frivolous, and seeks to continue to perpetuate the fraud on the court already committed on this Court when this Court issued its *Razuki Decision*. But-for ALG's

Strawman Practice petitioning, this Court would not have had two thieves fighting over their ill-gotten gains mispresenting the law while trying to steal from each other the lucrative cannabis businesses they stole from Appellants and others.

The Response warrants sanctions and the Court referring this matter to the Federal and State's attorney general's offices for criminal investigation and prosecution, as well as the Office of the Chief Trial Counsel of the State Bar of California for ALG's violations of, *inter alia*, Penal Code § 115.

Dated: March 10, 2023

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), the Attached Appellant's Opening Brief was produced using 13-point Times New Roman type style and contains 4**,714** words not including the table of contents and authorities, caption page, or this Certificate, as counted by the word processing program used to generate it.

Dated: March 6, 2023

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