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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

AMY SHERLOCK, as guardian ad litem, etc., et al., Plaintiffs and Appellants, v. ABHAY SCHWEITZER et al., Defendants and Respondents.	D081839 (Super. Ct. No. 37-2021-00050889-CU-AT-CTL)

APPEAL from orders and a judgment of the Superior Court of San Diego County, James A. Mangione, Judge. Affirmed.

Law Office of Andrew Flores and Andrew Flores, in pro. per., and for Plaintiffs and Appellants.

Law Office of Veronica M. Aguilar and Veronica M. Aguilar for Defendant and Respondent Abhay Schweitzer.

Walsh McKean Furcolo and Laura E. Stewart for Defendant and Respondent Jessica McElfresh.

Ferris & Britton, Michael R. Weinstein, and Scott H. Toothacre for Defendants and Respondents Larry Geraci and Rebecca Berry.

Amy Sherlock, her minor children T.S. and S.S., and Andrew Flores[1] (collectively, Plaintiffs) brought a civil lawsuit against Larry Geraci, Rebecca Berry, Abhay Schweitzer, and Jessica McElfresh, among others, alleging a multi-faceted conspiracy to monopolize the cannabis dispensary market in San Diego. Specifically, they asserted that these individuals, along with several others, each acted unlawfully during the process of petitioning the City of San Diego or applying for a conditional use permit (CUP) for a cannabis dispensary.[2]

In response, Geraci and Berry brought a special motion to strike under Code of Civil Procedure section 425.16 (an anti-SLAPP motion),[3] Schweitzer filed his own anti-SLAPP motion, and McElfresh demurred to the first amended complaint (FAC). On December 2, 2022, the trial court entered minute orders granting both anti-SLAPP motions and sustaining McElfresh's demurrer without leave to amend.

In an appeal suffering from a significant number of procedural deficiencies, including that counsel failed to include himself and Sherlock's children in the notice of appeal, Sherlock appears to challenge the trial court's December 2, 2022 minute orders. However, Sherlock contends her

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1 Flores also represents Sherlock and her children in this action.

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

3 Code of Civil Procedure, section 425.16 is commonly referred to as the anti-SLAPP statute because a special motion thereunder seeks to strike a " '[s]trategic lawsuit against public participation,' " or SLAPP. (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 882, fn. 2.)

sole issue on appeal is that the "Strawman Practice"[4] she alleges is an illegal antitrust violation.

Even liberally construing both her notice of appeal and briefing, we conclude Sherlock has not met her burden on appeal. Accordingly, we affirm the orders on the anti-SLAPP motions and the judgment in favor of McElfresh.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Plaintiffs' Complaint*[5]

The FAC alleges a conspiracy to monopolize the cannabis market in the City and County of San Diego by 19 defendants in violation of the Cartwright

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[4] Sherlock defines the Strawman Practice as having occurred when "wealthy drug dealers" "hired attorneys, [a] political lobbyist, and other professionals to petition to acquire ownership of [cannabis] dispensaries in the name of third parties because they could not lawfully own dispensaries in their own name."

[5] The FAC was not included in the appellate record. However, Sherlock asks this court to take judicial notice of the FAC, as well as three additional documents: the judgment entered in *City of San Diego v. The Tree Club Cooperative, Inc., et al.* (Oct. 27, 2014), San Diego Superior Court case No. 37-2014-00020897-CU-MC-CTL (the Tree Club Judgment); the judgment entered in *City of San Diego v. CCSquared Wellness Cooperative, et. al.* (Jun. 17, 2015), San Diego Superior Court case No. 37-2015-00004430-CU-MC-CTL (the CCSquared Judgment); and a December 6, 2018 invoice from McElfresh Law, Inc. to Geraci for professional services. On our own motion, the record is augmented to include the FAC. (Cal. Rules of Court, rule 8.155(a)(1)(A).) We grant the requests for judicial notice of the existence of the Tree Club Judgment and the CCSquared Judgment (Cal. Rules of Court, rule 8.252(a)), but do not rely upon the facts contained therein, particularly because there is no evidence they were provided to the trial court below. The request is otherwise denied.

We also note that Sherlock's brief did not include the required recitation of all significant facts, including the allegations in the FAC and

Act (Bus. & Prof. Code,[6] § 16720 et seq.). Relevant to this appeal,[7] it also alleges violation of California's Unfair Competition Law (§ 17200 et seq.) by the parties to the appeal as well as a claim for civil conspiracy. Flores individually asserts a declaratory relief cause of action against Geraci.

The "defining illegal act" of the alleged enterprise is the acquisition of CUPs for cannabis dispensaries through the use of applications by proxies, which do not disclose the true prospective owners of the CUP in order to avoid disclosure laws that allegedly would mandate denial of the applications. Further unlawful acts include "sham" litigation and the use of threats of violence against potential competitors and witnesses. The FAC focuses on the applications for and acquisition of CUPs related to four properties: (1) 1210 Olive Street, Ramona, CA 92065 (the Ramona property), (2) 8863 Balboa Avenue, Unit E, San Diego, California 92123 (the Balboa property), (3) 6220 Federal Blvd., San Diego, CA 92114 (the Federal property), and (4) 6859 Federal Blvd., Lemon Grove, CA 91945 (the Lemon Grove property).

Sherlock's husband, Michael, is alleged to have partnered with defendants Stephen Lake and Bradford Harcourt in 2013 to form a real estate and cannabis related investment partnership. Michael subsequently

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those supporting the judgment, in violation of California Rules of Court, rule 8.204(a)(2)(C). (See *In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1531.) Although Sherlock's one-sided recitation of the facts and incomplete description of the procedural history failed to afford us clarity as to what occurred in this case, we rely on the FAC to provide a brief summary of the salient allegations directed to the parties involved in this appeal.

6 Statutory references are to the Business and Professions Code unless otherwise specified.

7 We addressed a prior appeal in this case by unpublished opinion in *Sherlock v. Austin* (Sept. 18, 2023, D081109).

acquired CUPs for the Ramona and Balboa properties, and a holding company he formed with Harcourt purchased the Balboa property. In 2015, Michael passed away unexpectedly. After his death, Lake and Harcourt allegedly conspired to defraud Sherlock and her children of Michael's interests in the CUPs for the Ramona and Balboa properties and title to the Balboa property.

The allegations concerning Geraci primarily center on the Federal property. The FAC states that "when Flores became the equitable owner of the Federal Property, he began investigating Geraci and his agents and discovered the relationships between Geraci [and other defendants] via [attorney defendant Gina] Austin, who has represented all parties."[8] In 2016, Geraci purportedly identified the Federal property as a potential location for a cannabis dispensary and began negotiations with the property's owner, Darryl Cotton, to purchase it. Geraci hired Austin and Schweitzer, among others, to prepare, submit, and lobby a CUP application for the Federal property.

Cotton and Geraci ostensibly reached an oral agreement on November 2, 2016, for the sale of Cotton's property, and Geraci had Cotton execute a three-sentence document memorializing Cotton's receipt of $10,000 toward the total $50,000 nonrefundable deposit. The agreement was "subject to a single condition precedent, the approval of a CUP application with the City [of San Diego] at the Federal Property by Geraci." Geraci then promised his attorney, Austin, would reduce the agreement to writing.

The CUP application was filed in October 2016 in the name of Geraci's assistant, Berry (Berry CUP application), along with an Ownership

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8 At no point do Plaintiffs make clear in the FAC or otherwise how or when Flores allegedly became an "equitable owner" of the Federal property.

Disclosure Form executed by Cotton. Only the Berry CUP application is attached to the FAC. According to the FAC, Geraci's name was not disclosed anywhere on the Berry CUP application, and he could not lawfully own a cannabis license or CUP until at least June 18, 2018, because he had been sanctioned twice for unlicensed commercial cannabis activity.

In January 2017, after several months of communicating back and forth, Geraci had not reduced the agreement to writing, so Cotton sought to sell the Federal property to another buyer. Ultimately, Geraci filed suit against Cotton seeking to enforce the oral agreement (*Cotton I*). In response, Cotton filed a cross-complaint.

According to the FAC, the court in *Cotton I* concluded that the Berry CUP application would have been approved but for Cotton's unlawful interference with the processing of the application. The court also apparently denied Cotton's motion for a directed verdict, which had argued that section 26057 barred Geraci's ownership of a CUP, expressly stating in the final judgment that Geraci was not precluded by section 26057 from owning a cannabis CUP.

Meanwhile, the FAC makes allegations regarding McElfresh that relate to the Geraci and the *Cotton I* allegations. In particular, the FAC alleges that Cotton had obtained a litigation investor, "Hurtado," who consulted with McElfresh "[i]n or around April 2017" about representing Cotton. She allegedly agreed but, "[o]n or around April 13, 2017," emailed

Hurtado that "she did 'not have the bandwidth' " to represent Cotton.[9] Separately, the FAC also alleges McElfresh had represented Geraci "in various legal matters." It claims Geraci's damages award from *Cotton I* included legal fees for McElfresh's representation of Geraci in advancing the interests of the Berry CUP application before the City of San Diego, and that this representation violated her fiduciary duties to Cotton as her former client.

In October 2018, the City of San Diego approved a CUP application submitted by a defendant named Aaron Magagna for a property located within a 1,000 feet of the Federal property. Schweitzer is alleged to have an interest in that CUP but is not listed as a party with an ownership interest on the application. There is no indication in the FAC that the City of San Diego ever approved the Berry CUP application.

B. ***Motions to Strike and Demurrer***

Geraci and Berry filed an anti-SLAPP motion and also concurrently filed a demurrer and motion to strike certain portions of the FAC. Schweitzer separately filed his own anti-SLAPP motion. McElfresh

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9 Earlier in the FAC, Plaintiffs allege that McElfresh entered into a deferred prosecution agreement in July 2018 that "would allow her to plead guilty in twelve months as follows: 'On April 28, 2015 [McElfresh] knowingly facilitated the use of a premises without a required permit, in violation of San Diego Municipal Code § 121.0302(a), to wit: an unpermitted marijuana manufacturing and distribution operation by Med West Distribution, LLC.' " Pursuant to the agreement, she was prohibited from violating any other laws until July 23, 2019, or she would face resumption of all of the charges originally filed against her.

demurred to the FAC and also moved to strike Sherlock's punitive damages claim.

In its first minute order, the trial court granted Geraci and Berry's anti-SLAPP motion, finding that the conduct alleged in the FAC constituted protected petitioning and litigation activity. It also concluded Plaintiffs had not shown a probability of prevailing on the merits because they did not submit "any evidence, affidavits, declarations, or requests for judicial notice in support of [the] motion." The court then denied Geraci and Berry's motion to strike portions of the FAC and their demurrer as moot. By a second minute order, the court granted Schweitzer's anti-SLAPP motion, highlighting again Plaintiffs' failure to provide any evidence to demonstrate a likelihood of success on the merits. It then sustained McElfresh's demurrer without leave to amend, finding the FAC did not allege violations by McElfresh as to the first and seventh causes of action and that the FAC did not allege Plaintiffs suffered any injury from the actions by McElfresh described within the fifth cause of action. The court denied McElfresh's motion to strike as moot.

DISCUSSION

A. *Appealability*

In her notice of appeal, Sherlock appealed from a judgment or order dated December 2, 2022, pursuant to Code of Civil Procedure, section 904.1, subdivision (a)(2), but none of the trial court orders issued on December 2, 2022, constitute appealable orders after judgment pursuant to this section. Because she also failed to include the required statement of appealability in her opening brief, her briefing does not shed any light on the

orders appealed from or the legal grounds for the appeal.[10] Notwithstanding these shortcomings, however, we are required to liberally construe a notice of appeal, and "[t]he notice is sufficient if it identifies the particular judgment or order being appealed." (Cal. Rules of Court, rule 8.100(a)(2).)

Here, the notice identifies a date on which the trial court issued three orders, so we look to each of these to determine if any provide a proper basis for the appeal. As noted in Sherlock's civil case information statement, Schweitzer's anti-SLAPP motion is appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(13). The same is true of the one filed by Geraci and Berry. The minute order sustaining McElfresh's demurrer is "not separately appealable, but is reviewable on appeal from the final judgment." (*Shepardson v. McLellan* (1963) 59 Cal.2d 83, 87; Code Civ. Proc., § 472c, subds. (a) & (c) [an order sustaining a demurrer without leave to amend is "open on appeal," meaning the aggrieved party "may claim the order as error in an appeal from the final judgment in the action"].) Because the trial court entered a judgment in favor of McElfresh on January 9, 2023, we construe Sherlock's notice of appeal as applying to the subsequently entered judgment of dismissal rather than the nonappealable order. (*Brown v. County of Los Angeles* (2014) 229 Cal.App.4th 320, 322; *Bame v. City of Del Mar* (2001) 86 Cal.App.4th 1346, 1353, fn. 5.)

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10 Our appellate rules mandate that the appellant's opening brief state, "the judgment or order appealed from" and "[s]tate that the judgment appealed from is final, or explain why the order appealed from is appealable." (Cal. Rules of Court, rule 8.204(a)(2)(A) & (B).) Although we decline to strike appellants' opening brief on this basis, Sherlock is advised that failure to fully comply with this rule would justify striking the appellant's opening brief, either on our own motion or upon motion of a party. (See *Lester v. Lennane* (2000) 84 Cal.App.4th 536, 557.)

B. *Omitted Parties*

Although the underlying case was filed on behalf of Sherlock, her two minor children, and Flores, Flores acknowledges that he failed to add himself and the minor children to the notice of appeal. He now requests that we liberally construe the notice and include them.

In support of his argument, Flores cites *Toal v. Tardif* (2009) 178 Cal.App.4th 1208. In *Toal,* the judgment challenged on appeal included a single award against a husband and wife. (*Id.* at p. 1216.) Although the wife was not identified as an appealing party on the notice of appeal, the reviewing court liberally construed the notice, "which d[id] identify a judgment subjecting a husband and wife to the same award" as an appeal from both parties, particularly given that no prejudice resulted from such a construction. (*Id.* at pp. 1216–1217.)

We agree that the same liberal construction is appropriate here. The orders granting the anti-SLAPP motions and the McElfresh judgment applied to Sherlock, her children, and Flores. Absent any discernable distinction as to the outcome between the four parties, it is reasonably clear they all had reason to appeal. Although Geraci and Berry rightly argue that Flores has not provided adequate excuse for these omissions, there is no indication Schweitzer, Geraci, Berry, or McElfresh were misled or would suffer prejudice. (*K.J. v. Los Angeles Unified School Dist.* (2020) 8 Cal.5th 875, 885 [liberally construing a notice of appeal from a sanctions order to include an omitted attorney where it was "reasonably clear that the attorney intended to join in the appeal, and the respondent was not misled or prejudiced by the omission"].) Thus, we conclude we have jurisdiction to decide the appeal

purportedly taken from the orders and judgment against Flores and the children in conjunction with the Sherlock appeal.[11]

C. *Merits of the Appeal*

Plaintiffs' only argument on appeal is that the Strawman Practice is an illegal antitrust violation. They contend this practice "is a per se violation of countless laws, including California's Cartwright Act," and that "even if [Plaintiffs] were not personally injured by defendants' criminal actions, deprived of their ownership of dispensaries via forged documents, they would still have standing to bring their antitrust claims as members of the public for violations of California's antitrust laws."[12]

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11 Accordingly, for the remainder of the opinion, we will refer to statements and arguments made in the briefing as having been asserted by "Plaintiffs."

12 As an initial matter, we observe that Plaintiffs provide no authority for their assertion that they have standing to challenge antitrust violations without showing individual injury. This is likely because the law appears to state otherwise. The Cartwright Act only allows an individual to sue for violations if the person was "injured in his or her business or property" as a result. (§ 16750, subd. (a).) Indeed, "[t]he elements of a Cartwright Act claim are: the formation and operation of a combination or conspiracy in restraint of trade; wrongful acts done in furtherance of the combination; and resulting damage." (*Ben-E-Lect v. Anthem Blue Cross Life and Health Ins. Co.* (2020) 51 Cal.App.5th 867, 873.) In this case, the only damages the FAC alleges that impacted Sherlock and her children relate to the Balboa and Ramona properties, which are not tied to Geraci, Berry, Schweitzer, or McElfresh. And, although Flores alleges an undefined "equitable interest" in the Federal property, the FAC does not make clear when this arose or that he suffered injury as a result of Geraci, Berry, Schweitzer, or McElfresh's actions. Ultimately, Plaintiffs have not alleged any direct harm to them resulting from the supposedly misleading Berry CUP application for the Federal property. Absent some credible assertion of standing, it is not clear we could grant the relief Plaintiffs seek even if we agreed with their arguments,

1. *Anti-SLAPP Motions*

Resolution of an anti-SLAPP motion "involves two steps. 'First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" protected activity. [Citation.] If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.' " (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 819–820.) " '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.' " (*Id.* at p. 820.) We review an order granting or denying an anti-SLAPP motion de novo. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325 (*Flatley*).)

The trial court concluded that Schweitzer's alleged activities "constitute[d] petitioning 'before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law' under CCP [section] 425.16(e)(1)," and similarly concluded that Geraci and Berry's conduct, as alleged in the FAC, was protected petitioning and litigation activity. Plaintiffs do not challenge these conclusions on appeal. Rather,

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addressed *post*. However, because the trial court did not address this standing issue and it is not developed in the record, we do not decide the appeal on this basis.

they argue as a threshold issue that Schweitzer, Geraci, and Berry's conduct was illegal as a matter of law.[13]

As they explain more thoroughly in their opposition to Schweitzer's anti-SLAPP motion below, Plaintiffs contend petitioning activity is not protected by the anti-SLAPP statute when the activity itself is illegal. They cite to *Flatley*, in which our Supreme Court explained that, "where a defendant brings a motion to strike under section 425.16 based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action." (*Flatley*, *supra*, 39 Cal.4th at p. 320.) "[T]he question of whether the defendant's underlying conduct was illegal as a matter of law is

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13 In so doing, Plaintiffs do not identify the relevant legal framework for analyzing an anti-SLAPP motion, nor do they explain precisely how the trial court erred under the applicable standard of review. "[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment." (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608–609.) To demonstrate reversible error, Plaintiffs were required to identify the relevant standard of review and tailor their arguments to that standard. (See *Ewald v. Nationstar Mortgage, LLC* (2017) 13 Cal.App.5th 947, 948.)

preliminary, and unrelated to the second prong question of whether the plaintiff has demonstrated a probability of prevailing."[14] (*Ibid.*)

There is no evidence that Schweitzer, Geraci, or Berry has conceded their conduct was illegal. Thus, the only question on appeal of the anti-SLAPP orders is whether Plaintiffs conclusively established these parties' petitioning activity was illegal as a matter of law. We conclude they did not.

The overriding conspiracy alleged is that Schweitzer and Berry took steps to acquire a CUP on behalf of Geraci without disclosing Geraci's ownership interest in the CUP in violation of section 26057,[15] San Diego Municipal Code section 11.0401, subdivision (b), and Penal Code section 115.[16] But neither the cited legal authority, nor any evidence, conclusively establishes that these parties' actions were illegal as a matter of law. Section 26057 applies to applications for *state* cannabis licenses, not CUP applications filed with local municipalities. Plaintiffs acknowledge as much in paragraphs 35 and 36 of the FAC, stating "California's cannabis licensing statutes have required any party engaging in commercial cannabis activities to possess both a state license and a local government permit, CUP or license," and "[section] 26057 *et seq.* has mandated the denial of an

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14 Although Plaintiffs did not cite to *Flatley* in opposing Geraci and Berry's motion to strike, they asserted the same general claim, arguing the trial court "should deny Geraci and Berry's motion to strike in part because it presumes that they have not taken unlawful action in concert with the other defendants."

15 Plaintiffs refer to section 19323 as the relevant section that was in effect when the Berry CUP application was submitted. This section was subsequently repealed and the relevant provisions moved to section 26057. (Sen. Bill. No. 94 (2017-2018 Reg. Sess.) (Stats. 2017, ch. 27, § 2).)

16 Notably, Plaintiffs make this argument despite acknowledging that 14 other federal and state judges have previously rejected it.

application for a cannabis *state* license by an applicant who, *inter alia*, has been sanctioned for unlicensed commercial cannabis activities in the preceding three years . . . ." (Italics added.) The Berry CUP application attached to the FAC was filed with the City of San Diego's Development Services Department, not the State of California. And as Plaintiffs acknowledge in the FAC, when the City of San Diego grants a CUP, it provides the applicant with permission to use land in a manner not otherwise allowed under applicable zoning law. The City does not issue a state cannabis license. Plaintiffs do not assert, nor does evidence in the record suggest, that Berry, Geraci, or Schweitzer ever filed an application for a state cannabis license with the California Department of Cannabis Control (the department). Thus, section 26057 does not even apply to these parties' actions.

Furthermore, even if it did apply, the statute on its face does not bar the application on the facts alleged. Plaintiffs argue the alleged conduct is illegal as a matter of law because section 26057 bars the department from issuing a license to someone who has previously engaged in unauthorized commercial cannabis activity. Because Geraci purportedly has been sanctioned twice for operating illegal cannabis dispensaries, Plaintiffs contend it was unlawful for Berry to apply for a CUP on Geraci's behalf, and for Schweitzer to petition in support of the CUP application, all without disclosing Geraci as an owner.

But section 26057 gives the department *discretion* to deny licensure. It does not mandate denial. Subdivision (a) of section 26057 states that the department "*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." (Italics added.) Subdivision (b), in turn, provides that "[t]he

department *may* deny the application for licensure or renewal of a state license if any of the following conditions apply" (italics added), and then lists nine conditions that may form a basis for the denial. Relevant here, subdivision (b)(7) allows for denial of a license if "[t]he applicant, or any of its officers, directors, or owners, has been sanctioned by the department, the Bureau of Cannabis Control, the Department of Food and Agriculture, or the State Department of Public Health or a city, county, or city and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date the application is filed with the department." (§ 26057, subd. (b)(7).)

Although Plaintiffs continue to read section 26057, subdivisions (a) and (b) together, the unambiguous language of the statute simply does not support such an interpretation. (See *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 83 [" 'If the statutory language is unambiguous, then its plain meaning controls' "].) Rather, if an applicant has been sanctioned as described in subdivision (b)(7), the department "may," but is not required to, deny the application. (§ 26057, subd. (b).) Moreover, nothing in the statute expressly prohibits such applicants from even applying for a license, as Plaintiffs suggest. Accordingly, section 26057 does not support Plaintiffs' conclusion that it was illegal for Berry, Geraci, and Schweitzer to petition and apply for a CUP.

The same is true of the other cited provisions. San Diego Municipal Code section 11.0401, subdivision (b) provides only that "[n]o person willfully shall make a false statement or fail to report any material fact in any application for City license, permit, certificate, employment or other City action under the provisions of the San Diego Municipal Code." But nowhere

have Plaintiffs conclusively established that Berry made false statements or failed to report any material facts.

The Berry CUP application lists Berry as a "Lessee or Tenant" in one section. In other words, the evidence does not support Plaintiffs' assertion that she falsely stated that she was an owner. Further down on the application, she checked a box indicating that she was an applicant "per M.C. Section 112.0102." San Diego Municipal Code section 112.0102, subdivision (a)(2) authorizes "[t]he property owner's authorized agent" to file a permit application, and the FAC acknowledges testimony from the *Cotton I* litigation that Geraci used Berry as his agent for the Berry CUP application.[17] Thus, Berry did not fail to disclose that she was acting as an agent. Additionally, as the FAC acknowledges, Geraci presented Cotton with an Ownership Disclosure Form to be filed with the Berry CUP application and Geraci did not at any time take ownership of the property from Cotton. As a result, Plaintiffs have not demonstrated that Geraci, Berry, or Schweitzer failed to disclose a "material fact" because no evidence in the record shows Geraci had an ownership interest in the property.[18] Likewise, Plaintiffs also have not conclusively established that any of these parties "knowingly procure[d] or offer[ed] any false or forged instrument to be filed,

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17 Plaintiffs also state in their opening brief that "[t]here is no dispute that Berry acted as [Geraci's] alleged agent in the application."

18 Notably, even if Geraci had an ownership interest at the time the application was filed, the Ownership Disclosure Statement (City of San Diego Development Services Form DS-318) does not support the consequences Plaintiffs advocate. Rather, the form states only that, "[f]ailure to provide accurate and current ownership information could result in a delay in the hearing process." (San Diego Development Services Form DS-318, Oct. 2017.)

registered, or recorded in any public office within this state." (Pen. Code, § 115, subd. (a).)

Accordingly, Plaintiffs fail to demonstrate that Schweitzer, Geraci, and Berry's petitioning activity is indisputably illegal and, therefore, not protected by the anti-SLAPP statute. Because they do not otherwise challenge the trial court's findings on prong one that these parties' conduct constituted protected petitioning activity, or its conclusion that Plaintiffs did not submit evidence showing a probability of prevailing on the merits at prong two, we affirm the trial court's anti-SLAPP orders.

2. *Demurrer*

Plaintiffs did not oppose McElfresh's demurrer in the trial court, and we could find their appeal forfeited on that basis alone. (See *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1192 [finding arguments forfeited that were not raised below in opposition to demurrer].) But even if we consider the arguments put forth in Plaintiffs' opening brief, we must affirm because they make only the same legal argument regarding the Strawman Practice that we have already rejected. In particular, there is no evidence that McElfresh violated San Diego Municipal Code section 11.0401, subdivision (b), or Penal Code section 115 because the FAC does not specifically allege that McElfresh filled out or filed the Berry CUP application. Like the others, she also did not apply for a state cannabis license.

Plaintiffs do not otherwise challenge on appeal the trial court's substantive conclusions as to the first, fifth, and seventh causes of action relating to McElfresh. It is the appellant's responsibility "to support claims of error with meaningful argument and citation to authority." (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52; Cal. Rules of Court,

rule 8.204(a)(1)(B).) "When legal argument with citation to authority is not furnished on a particular point, we may treat the point as forfeited and pass it without consideration." (*Allen,* at p. 52.) Because Plaintiffs do not assert any basis for error aside from the Strawman Practice argument, we need not further address their appeal of the judgment following the trial court's granting of McElfresh's demurrer. (See *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20 [deeming issue abandoned on appeal where the plaintiffs did not oppose that portion of the demurrer and submitted no argument on appeal].)

We also do not address whether the trial court abused its discretion in sustaining the demurrer without leave to amend because it is the plaintiff's burden to prove the defect could be cured by amendment (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162), and Plaintiffs have made no such argument in this case.

DISPOSITION

The December 2, 2022 anti-SLAPP orders and the January 9, 2023 judgment in favor of McElfresh are affirmed. Schweitzer, Geraci, Berry, and McElfresh are entitled to their costs on appeal.

DATO, J.

WE CONCUR:

O'ROURKE, Acting P. J.

KELETY, J.

BRANDON L. HENSON, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

04/29/2024

BRANDON L. HENSON, CLERK

By A. Galvez
Deputy Clerk