

1 Douglas A. Pettit, Esq., SBN 160371
2 Annie F. Fraser, Esq., SBN 144662
3 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**
4 11622 El Camino Real, Suite 300
5 San Diego, CA 92130
6 Telephone: (858) 755-8500
7 Facsimile: (858) 755-8504
8 E-mail: dpettit@pettitkohn.com
9 afrazer@pettitkohn.com

10 Attorneys for Defendants
11 **GINA M. AUSTIN and AUSTIN LEGAL GROUP**

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

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

17 Plaintiffs,

18 v.

19 GINA M. AUSTIN, an individual; AUSTIN
20 LEGAL GROUP, a professional corporation,
21 LARRY GERACI, an individual, REBECCA
22 BERRY, an individual; JESSICA
23 MCELFRISH, an individual; SALAM
24 RAZUKI, an individual; NINUS MALAN,
25 an individual; FINCH, THORTON, AND
26 BARID, a limited liability partnership;
27 ABHAY SCHWEITZER, an individual and
28 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;
EULENTIAS 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 OPPOSITION
TO PLAINTIFFS' MOTION TO VACATE
VOID JUDGMENT**

Date: May 31, 2024

Time: 9:00 a.m.

Dept.: C-75

Judge: Hon. James A. Mangione

Filed: December 3, 2021

Trial: Not Set

1 I.

2 **INTRODUCTION**

3 Plaintiffs filed a Complaint against attorney Gina Austin and Austin Legal Group
4 (“Defendants”) based on their representation of clients in obtaining Conditional Use Permits.
5 Defendants filed an anti-SLAPP motion, which this Court granted, and which was affirmed on
6 appeal. Plaintiffs have therefore fully litigated the anti-SLAPP motion in this case. In spite of the
7 fact that Plaintiffs did not prevail, they filed this motion in an attempt to relitigate the motion,
8 making similar arguments that have previously been rejected. Based on principles of law of the
9 case, res judicata, and collateral estoppel, or issue preclusion, Plaintiffs’ motion should be
10 summarily denied.

11 II.

12 **RELEVANT PROCEDURAL HISTORY**

13 On December 3, 2021, Plaintiffs filed a Complaint alleging a vast conspiracy to create an
14 unlawful monopoly in the cannabis market in San Diego against 19 parties, including Defendants,
15 Gina Austin and Austin Legal Group, who represent clients in obtaining Conditional Use Permits
16 to operate cannabis facilities in the state and local level. (See ROA 1.) Defendants brought a
17 Special Motion to Strike the Complaint pursuant to Code of Civil Procedure section 425.16, the
18 anti-SLAPP statute. (ROA 45.) Plaintiffs argued, among other things, that Defendants’ conduct
19 was illegal, and was not protected by the statute. (See ROA 45.) This Court granted the motion
20 to strike the complaint against Defendants, rejecting Plaintiffs’ arguments. (ROA 98.)

21 Plaintiffs appealed this Court’s decision, again arguing that Defendants’ activity was
22 illegal as a matter of law. On September 18, 2023, the Court of Appeal affirmed this Court’s
23 decision. On November 29, 2023, Remittitur was issued and the opinion became final.
24 (See Exh. 1, Request for Judicial Notice.)

25 On May 8, 2024, Plaintiffs filed the instant Motion to Vacate Void Judgment (“Motion”),
26 again arguing that Defendants’ practice is illegal, and asking this Court to vacate its order
27 granting the anti-SLAPP Motion. (Motion, p. 6.)

28 ///

1 **III.**

2 **ARGUMENT**

3 **A. Plaintiffs Have Not Complied With Proper Notice or Motion Practice**
4 **Requirements**

5 As an initial matter, Plaintiffs’ motion is defective because they did not give proper
6 notice, and have filed a motion in excess of the allowed page limits. They filed and electronically
7 served their motion on May 9, 2024. Pursuant to Code of Civil Procedure section 1005,
8 subdivision (b), they are required to serve and file all moving and supporting papers 16 court days
9 prior to the hearing. The hearing is set for May 31, 2024. Therefore, they filed the motion 15
10 court days prior to the hearing.

11 Additionally, California Rules of Court, rule 3.1113, subdivision (d) provides that
12 memorandums in support of motions cannot exceed 15 pages. Yet, Plaintiffs’ motion is 25 pages.
13 Plaintiffs’ motion should therefore be rejected for failing to comply with the California Rules of
14 Court and Code of Civil Procedure regarding motion practice.

15 **B. Plaintiffs’ Motion Should be Summarily Dismissed Based on Law of the Case,**
16 **Res Judicata and Collateral Estoppel as Their anti-SLAPP Motion Has Been Fully Litigated**

17 Plaintiffs attempt to re-litigate their anti-SLAPP Motion, which has already been affirmed
18 on appeal, is to no avail. “Where an appellate court states in its opinion a principle of law
19 necessary to the decision, that principle becomes law of the case and must be adhered to in all
20 subsequent proceedings.” (*Sargon Enterprises, Inc. v. University of Southern California* (2013)
21 215 Cal.App.4th 1495, 1506.) Any such rule “is determinative of the rights of the same parties in
22 any subsequent retrial or appeal in the same case.” (*Morales v. 22nd Dist. Agricultural Assn.*
23 (2018) 25 Cal.App. 5th 85, 98-99, quoting *Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127.)

24 Here, Plaintiffs have already fully litigated whether Defendants’ conduct was protected
25 conduct under the anti-SLAPP statute, and this Court, and the Court of Appeal both rejected
26 Plaintiffs’ argument that the conduct was illegal. Plaintiffs cannot now have a second bite at the
27 apple, and argue the same issues. This Court is bound by the appellate court’s opinion that the
28 anti-SLAPP statute applies.

1 Plaintiffs’ motion is also barred by the principles of res judicata and claim preclusion.
2 “‘Res judicata’ describes the preclusive effect of a final judgment on the merits. Res judicata, or
3 claim preclusion, prevents relitigation of the same cause of action in a second suit between the
4 same parties or parties in privity with them. Collateral estoppel, or issue preclusion, ‘precludes
5 relitigation of issues argued and decided in prior proceedings.’” (*Mycogen Corp v. Monsanto Co.*
6 (2002) 28 Cal.4th 488, 896-897.) These doctrines promote judicial economy, and prohibit
7 piecemeal litigation, and “seeks to curtail multiple litigation causing vexation and expense to the
8 parties and wasted effort and expense in judicial administration.” (*Id.* at p. 897.)

9 Here, Plaintiffs’ motion has already been heard, reviewed and affirmed by the Court of
10 Appeal, and a final decision has been issued. Plaintiffs cannot now raise the same issues.

11 Plaintiffs do not address the preclusive effect of this Court’s prior ruling and the appeal,
12 except to claim that res judicata is inapplicable to void judgments. (Motion pp. 22-23, 29.)
13 Apparently, the basis for Plaintiffs’ argument that the judgment is void is because it was procured
14 through a fraud on the court, as Defendants’ practice is illegal. (Motion, p. 29.) Plaintiffs’
15 argument regarding the illegality has been fully litigated and rejected, in both the anti-SLAPP
16 motion and the appeal. Plaintiffs’ circular argument is to no avail.¹

17 **IV.**

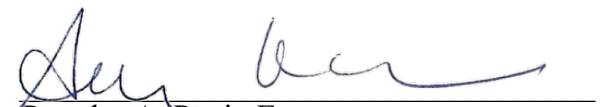
18 **CONCLUSION**

19 Defendants request that Plaintiffs’ Motion to Vacate this Court’s judgment on the anti-
20 SLAPP motion should be denied.

21 **PETTIT KOHN INGRASSIA LUTZ & DOLIN PC**

22
23 Dated: May 16, 2024

24 By:



25 Douglas A. Pettit, Esq.
26 Annie F. Fraser, Esq.
27 Attorneys for Defendants
28 **GINA M. AUSTIN and**
AUSTIN LEGAL GROUP

¹ Plaintiffs’ motion should clearly be dismissed because the issues have already been litigated, so Defendants are not responding on the merits. Should this Court desire Defendants to further brief the merits, Defendants request more time to do so. However, as noted, it has previously been fully briefed in the anti-SLAPP motion.

PROOF OF SERVICE
Amy Sherlock, et al. v. Gina M. Austin, et al.
San Diego Superior Court Case No. 37-2021-00050889-CU-AT-CTL

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 **May 16, 2024**, I caused to be served the following documents:

- **DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S OPPOSITION TO PLAINTIFFS' MOTION TO VACATE VOID JUDGMENT**

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))**
- BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c)-(d))**
- BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED (Code Civ. Proc. §§ 1013(a)-(b))**

BY ELECTRONIC SERVICE (Code Civ. Proc. § 1010.6 and Cal. Rules of Court, rule 2.251): I caused such document(s) to be electronically served on those parties listed below, at their respective electronic service address(es) listed below, from e-mail address lzamora@pettitkohn.com.

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.


<p>Andrew Flores, Esq. Law Office of Andrew Flores 427 C Street, Suite 220 San Diego, CA 92101 Tel: (619) 356-1556 Fax: (619) 274-8053 Email: Andrew@FloresLegal.Pro Plaintiff in <i>Propria Persona</i> and Attorney for Plaintiffs Amy Sherlock, Minors T.S. and S.S.</p>	<p>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</p>
<p>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 mweinstein@ferrisbritton.com dbarker@ferrisbritton.com Attorney for Defendants LARRY GERACI and REBECCA BERRY</p>	<p>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 andrew@blakelawca.com eservice@blakelawca.com Attorney for Defendant STEPHEN LAKE</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>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</p>	<p>Regan Furcolo, Esq. Laura Stewart, Esq. WALSH MCKEAN FURCOLO LLP 550 West C Street, Suite 950 San Diego, CA 92101 Tel: (619) 232-8486 Email: rfurcolo@wmflp.com lstewart@wmflp.com dtyson@wmflp.com Defendant JESSICA MCELFRISH</p>
<p>[Overnight Delivery] Abhay Schweitzer 2934 Lincoln Avenue San Diego, CA 92104 Tel: (313) 595-5814 Email: Defendant In Pro Per ABHAY SCHWEITZER dba TECHNE</p>	<p>Douglas Jaffe, Esq. 501 West Broadway, Suite 800 San Diego, CA 92101 Tel: (619) 400-4945 Email: Dougjaffelaw@gmail.com Defendant SALAM RAZUK</p>

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 **May 16, 2024**, at San Diego, California.



Luis Zamora