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Plaintiff in Propria Persona
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

SUPERIOR COURT OF CALIFORNIA
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 LEGALGROUP, 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 BAIRD, 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.: 37-2021-0050889-CU-AT-CTL

MOTION TO VACATE VOID JUDGMENT

Hearing Date: May 31, 2024
Hearing Time: 9:00 AM
Judge: Mangione
Courtroom: 75

Related Cases:
37-2014-00009664
37-2014-0020897
37-2015-00004430
37-2017-00010073
37-2022-00000023

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INTRODUCTION

This case and motion are about a group of wealthy individuals, prominent cannabis attorneys and other professionals (the "Enterprise") that have conspired and succeeded in profiting from the illegal drug trafficking and sales of cannabis and creating a near monopoly in the cannabis market in the County and City of San Diego (the "Antitrust Conspiracy"). Principals of the Enterprise include Lawrence Geraci, Salam Razuki and Adam Knopf. Attorney Gina M. Austin of the Austin Legal Group ("ALG") is the de facto general counsel - the consigliere - of the Enterprise. The primary focus of this motion, and the irrefutable evidence of the existence of the Enterprise and the Antitrust Conspiracy, is the fact that Geraci, Razuki and Knopf have all been sanctioned by the City of San Diego for operating illegal dispensaries. Consequently, they are barred by law from owning any cannabis business until three years from the date of their last sanction.

To break the law and own cannabis businesses that they could not lawfully own, Geraci, Razuki, and Knopf hired Austin and her law firm, the Austin Legal Group (collectively, Austin), to forge documents to hide their sanctions and use third parties to apply for the necessary cannabis permits and licenses needed in the name of third parties/agents who did not disclose their agency with their respective principals (the "Strawman Practice"). Plaintiffs' position, and the threshold and dispositive argument in this case and motion, is that the Strawman Practice is on its face a criminal practice. It is fraud. Submitting documents falsely stating that one person is the owner of a license to sell drugs when in reality it is someone else is fraud upon the licensing agencies. Austin's agreements with all her clients to undertake the Strawman Practice are illegal contracts and any petitioning done in furtherance of profiting from illegal drug sales is sham petitioning that is not protected by the First Amendment.

For reasons which defy all logic, reason and common sense, over a dozen federal and state judges at the trial and appellate levels have continuously held or affirmed that Austin can petition licensing agencies and the courts in order for her clients to secretly own cannabis businesses and profit from the sale of cannabis in someone else's name via the Strawman Practice. Among other government organizations, the San Diego Police Department (SDPD), the San Diego City Attorney's Office, the Federal Bureau of Investigation (FBI), the California Department of Justice, the Federal Department of Justice, and Robert Sumner, the Chief Consultant of the California Business & Professions Committee,

all unequivocally state that Strawman Practice is a criminal practice. Sumner even said he did not believe Plaintiffs when they said that judges were enforcing the secret ownership of cannabis businesses.

Plaintiffs have over the course of years *begged* and *pleaded* with every law enforcement agency noted above and others to investigate Austin and the reason why so many judges have allegedly "missed" or failed to understand the core issue that without lawful authority selling cannabis is a criminal act. Every law enforcement and government agency contacted have stated that they do not have "jurisdiction" to contradict the orders, judgements and decisions holding or affirming that Austin can aid her clients in petitioning to own cannabis businesses via the Strawman Practice. All these agencies *presume* that some judge will finally realize that Austin's petitioning is sham petitioning and that her criminal enterprise will be stopped instead of being ratified and validated by the courts.

Amy Sherlock, her children T.S. and S.S. (the "Sherlock Family"), and Andrew Flores (collectively, "Plaintiffs") request that Judge James Mangione vacate his order granting Austin's anti-SLAPP motion (the "Order") holding that the Strawman Practice is not a criminal practice. Plaintiffs do so on the grounds that the Order is void for, *inter alia*, (i) granting relief the law declares shall not be granted – excess of jurisdiction – for enforcing illicit drug trafficking and sales in violation of federal, state and local laws as well as court orders; and (ii) being procured through a fraud on the court undertaken in furtherance of an attorney-client criminal conspiracy to profit from illicit drug trafficking and sales that included the murder and staged suicide of Michael Sherlock, the husband and father of the Sherlock Family, to steal two cannabis businesses from him.

MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

I. Material Federal, State and City of San Diego Cannabis Laws.

In 1970, (i) Congress enacted the Federal Controlled Substance Act (CSA), which gave the federal government jurisdiction over all drug crimes in the United States (*see* 21 U.S.C. §§ 801-971); (ii) California also passed the California Uniform Controlled Substances Act (CUCSA) that makes various acts involving marijuana a crime except as authorized by law (Health & Saf. Code, § 11000 et seq.); and (iii) Congress passed the Racketeer Influenced and Corrupt Organizations Act (RICO) that was designed to combat organized crime and corrupt activities within and across various industries. Congress described

RICO as "an act designed to prevent 'known mobsters' from infiltrating legitimate businesses."[1] RICO applies to drug crimes when organized criminal enterprises engage in a pattern of racketeering activity related to the production, distribution, or trafficking of illegal drugs. *The CSA, the CUCSA, and RICO make clear that there exists no legal concept, nor has it ever existed, whereby someone can sell cannabis without being known to the licensing government agency by doing such sales in someone else's name. Austin has deceived over a dozen federal and state judges into enforcing, ratifying and validating her criminal acts that would not be known to the judiciary or any licensing agency but-for her victims exercising their First Amendment right to petition for judicial redress.*

In 2011, the City of San Diego passed Ordinance No. 20043 (Ordinance 20043). (RJN Ex. 1.) Ordinance 20043 amended the San Diego Municipal Code (SDMC) to provide a regulatory scheme for the issuance of permits to Medical Marijuana Consumer Cooperatives (MMCC) for the cultivation and exchange of medical cannabis. (*Id*. at 7.) To qualify for a permit, parties were required to organize as a MMCC pursuant to the California Corporations Code and appoint a "responsible person" for the MMCC. (*Id.* at 9, 14.) The ordinance defined a "responsible person" broadly and included any party who was "responsible for the operation, management, direction, or policy of a medical marijuana consumer cooperative" and any person or employee "who is in apparent charge of the medical marijuana consumer cooperative." (*Id.* at 9.) Every responsible person had to submit their fingerprints for a background check, they were disqualified if they had been convicted of a felony crime or a crime of moral turpitude, and ensure that the MMCC operated on a "nonprofit basis." (*Id.* at 7, 9, 12, 14.)

In 2014, the City of San Diego enacted Ordinance No. O-20356 (Ordinance 20356). (RJN Ex. 2.) "Ordinance [20356] amended a variety of [SDMC] sections to authorize the establishment, and regulate the siting and operation of, 'medical marijuana consumer cooperatives' (dispensaries), which were defined as 'a facility where marijuana is transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act.'" (*Union of Med. Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal. 5th 1171, 1181 ("*Union*").) "The

[1] Jed S. Rakoff & Howard W. Goldstein, RICO Civil and Criminal Law and Strategy, § 1.01, at 1-4 (2000 ed.) (quoting S. Rep. 91-617, at 76 (1969)).

primary provisions of [Ordinance 20356] amended several of the City's zoning regulations to cap the number of dispensaries and specify where in the City they could be located." (*Id*.) Ordinance 20356 "placed an upper limit of four dispensaries in any single city council district and required a dispensary to be located more than 1,000 feet from certain sensitive uses, such as parks and schools, and more than 100 feet from a residential zone." (*Id*.) "Regardless of location, [Ordinance 20356] required the grant of a conditional use permit for a dispensary's operation." (*Id*.) As the City of San Diego contains nine city council districts, there were a theoretical 36 dispensaries that could be permitted. (*Id*. at 1182.) However, giving regulatory requirements and other practical considerations, the City of San Diego concluded that the actual number of cannabis compliant real properties "is very likely to be ***significantly less***" than 30. (*Id.* (emphasis added).)

On October 9, 2015, the California Legislature enacted the Medical Marijuana Regulation and Safety Act (MMRSA) to establish a statewide regulatory system for medical marijuana businesses.[2] MMRSA required that anybody engaging in commercial cannabis activity ***first*** acquire a local license and then apply for a state license. (RJN Ex. 3 (SB 643) at § 8 adding BPC § 19320(a); *id*. at § 9 adding BPC § 19322(a) ("A ***person*** or entity shall not submit an application for a state license issued by the department pursuant to this chapter ***unless*** that person or entity has received a license, permit, or authorization by a local jurisdiction.") (emphasis added).)[3]

The California Legislature set forth the criteria pursuant to which an applicant would be

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[2] The Medical Marijuana Regulation and Safety Act was enacted through three bills, Senate Bill No. 643 (SB 643); Assembly Bill No. 266 (AB 266), and Assembly Bill No. 243 (AB 243), in the 2015–2016 legislative session. (RJN Ex. 3 (SB 643); Ex. 4 (AB 266); Ex. 5 (AB 243).)

[3] An "**applicant**" was defined to include: "(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." (AB 266 at § 4 (adding BPC § 19300.5(b).) A "**Person**" was defined to mean "an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number." (AB 266 at § 4 (adding BPC § 19300.5(aj).) A "**Licensee**" was defined to mean "a person issued a state license under this chapter to engage in commercial cannabis activity." (AB 266 at § 4 (adding BPC § 19300.5(ab).)

disqualified in BPC § 19323, which materially reads 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….
>
> (4) The applicant has failed to provide information required by the licensing authority….
>
> (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.

(*Id.* at § 10 adding BPC § 19323 (emphasis added).) THE WORD "**SHALL**" IN SUBSECTION (A) APPLIES TO AN "**APPLICANT**" AND THE WORD "**MAY**" IN SUBSECTION (B) APPLIES TO "**APPLICATION**." The licensing authority – now the Department of Cannabis Control (DCC) – is mandated by the Legislature to deny applications by applicants who violate the criteria set forth in BPC § 19323 titled "Denial of Application." (*See HNHPC, Inc. v. Dep't of Cannabis Control* (2023) 94 Cal. App. 5th 60, 70 ("'Shall is mandatory and 'may' is permissive.") (citing BPC § 26067(b).) Austin, her clients, and their attorneys have committed the largest fraud upon the court in the history of the United States of America by fooling judges into not understanding the difference between an *applicant* and an *application* and making them think that Legislature gave the DCC complete discretion to give licenses to whoever they wanted to.

II. How much is a cannabis compliant real property worth and how much does a licensed dispensary make?

The driver for all criminal activity and why Austin and numerous other attorneys and government officials have undertaken criminal activity is simple – greed. As the courts know better than Plaintiffs, selling drugs is unimaginably profitable. The only thing that this Court must be open to is the possibility that Austin and her clients and their army of top tier law firms are willing to commit crimes and lie to judges in order to make money. That they are capable of acting unethically for money.

On November 11, 2018, Austin testified before Judge Sturgeon as follows regarding the value of cannabis compliant real properties, which are not even licensed yet:

> MS. AUSTIN: I -- from an expert's opinion, I have to say that the sale of dispensaries in San Diego county are -- is not relevant to whether they're operating or not operating. If they were doing a lot of revenue, **at least a million a month**, there would be a premium on it. But the most recent dispensary that hasn't even opened up yet, doesn't -- hasn't finished its entitlement and hasn't built out, sold for **7 million**, Your Honor.

(RJN Ex. 6 at 737:9-17.)

In a related case, *Razuki v. Malan et al.*, Austin testified before Judge Eddie Sturgeon regarding how much in sales a dispensary can make over a weekend:

> The Court: Give me an idea?
> Ms. Austin: Hundred thousand dollars.
> The Court: Jeez. Seriously?
> Ms. Austin: Yes, your Honor.

(RJN Ex. 7 at 320:23-321:1.)

Plaintiffs emphatically request that this Court truly understand, comprehend and internalize that Austin's own representations to the courts establish the incredible sums of cash profits they generate. People conspire to and do murder and steal for significantly less than a **$7,000,000** permit that can generate over a **$1,000,000** a month in sales. With that much money criminals can and do buy corrupt attorneys and government officials in pay-to-play schemes to illegally acquire cannabis licenses to operate dispensaries and generate tens of millions in profits and as fronts for other criminal activities.

III. Lawrence Geraci, Rebeca Berry, Darryl Cotton and Andrew Flores.

Since February 1998, Darryl Cotton has been and is the owner of record of the real property located at 6176 Federal Blvd., San Diego, California (the "Federal Property"). (RJN Ex. 8 (Grant Deed).) The Federal Property is a cannabis compliant real property that qualifies for a dispensary. (*See* RJN Ex. 19 (transcript) at 90:14-91:6.) October 27, 2014, Geraci entered into a stipulated judgment with the City of San Diego in *City of San Diego v. The Tree Club Cooperative, et al.* (San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL (the "Tree Club Judgment")). (RJN Ex. 9.) On June 17, 2015, Geraci entered into a stipulated judgment with the City of San Diego 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")). (RJN Ex. 10.) In the Geraci Judgments, Geraci admitted he was maintaining three illegal dispensaries[4] in violation of the SDMC, ordered to pay monetary fines, and to not operate a dispensary without complying with the SDMC. (RJN Ex. 9 at 3:8-28; Ex. 10 at 2:25-3:16.) Geraci was a drug dealer who was only fined civilly because he alleged that he was operating a *nonprofit* dispensary. It was illegal at that point in time to operate a dispensary for-profit. (RJN Ex. 1 (Ordinance 20043) at 12-13 (adding SDMC § 42.1509 (titled "**Cooperatives-Not-for-Profit**").)

In approximately September of 2015, Geraci engaged Austin as part of his plan to identify and acquire cannabis compliant real properties to apply thereon to operate dispensaries. (RJN Ex. 11 (Declaration of Larry Geraci ("LG")) at ¶ 2.) In approximately mid-July 2016, Geraci learned about the Federal Property and contacted Cotton. (*Id.* at ¶¶ 3, 5.)

On October 31, 2016, Cotton executed Form DS-318 (Ownership Disclosure Statement) for a permit to operate a dispensary at the Federal Property that was signed by Geraci's employee, Rebecca Berry, "who was serving as the [conditional use permit ("CUP")] applicant on" Geraci's behalf (the "Berry Application"). (RJN Ex. 11 (LG) at ¶ 6.) In the Berry Application Berry certified under penalty of perjury that she is the tenant/lessee of the Federal Property, the owner of the Federal Property, the President of the entity that would acquire the permit applied for, and the financially responsible party for the costs associated with the Application. (RJN Ex. 12 (DS-318 (Ownership Disclosure Statement)); Ex. 13 (DS-3032 (General Application)); Ex. 14 (DS-190 (Affidavit for Medical Marijuana Consumer Cooperatives for Conditional Use Permit (CUP)); Ex.15 (DS-3242 (Deposit Account/Financially Resp0onsible Party).)

The Ownership Disclosure DS-318 Form required that Berry provide a list that "**must** include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state

[4] The CCSquared Judgment was a global settlement of two separate civil actions (Case No. 37-2015-500004430-CU-MC-CTL and Case No. 37-2015-7 000000972).

the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property.") (RJN Ex. 12 (emphasis added).) Nowhere in any of the forms submitted as part of the Berry Application did Berry disclose that she was acting as an agent for Geraci. (RJN Exs. 12-15.)

In March 2017, Geraci filed a lawsuit against Darryl Cotton ("Cotton I") alleging that the parties had executed a final written real estate contract on November 2, 2016 (the "November Document") for the sale of the Federal Property; that Cotton had breached the contract by terminating the alleged contract with Geraci and seeking to sell the Federal Property to a third party (Flores' predecessor-in-interest); and Geraci sought to have the Court force Cotton to sell the Federal Property to him (i.e., specific performance). (RJN Ex. 16 (Complaint in *Geraci v. Cotton*, Case No. 37-2017-00010073).)

On December 6, 2018, a cannabis dispensary permit was granted by the City of San Diego to Aaron Magagna at 6220 Federal Blvd., San Diego. (RJN Ex. 17 (Planning Commission Minutes for December 6, 2016, approving to uphold Hearing Officer's decision to approve Magagna cannabis permit.)) Because Magagna's permit was approved within 1,000 feet of Cotton's Federal Property, pursuant to Ordinance 20356 the Federal Property was disqualified from operating as a dispensary. (*Union*, 7 Cal. 5th at 1181.)

On July 9, 2019, during the trial of Cotton I, counsel for Geraci, Michael Weinstein of Ferris & Britton, argued that the Geraci Judgments do not bar Geraci's ownership of a dispensary on their face:

> THE COURT: You're talking about the two civil judgments against Mr. [Geraci]?
>
> WEINSTEIN: Yes. It started out as an argument about the civil judgments, which on their face, don't bar Mr. Geraci from operating a legally permitted…
>
> THE COURT: I tend to agree with you. I don't see any specific prohibition against Mr. Geraci from being able to obtain a permit.
>
> WEINSTEIN: Right. And the follow-on argument is that he's not eligible for a CUP because the Code sections that were cited, Section 26057, is permissive. And the argument is to say that it could somehow be a basis making him ineligible for a CUP. And I think that's an incorrect statement of the law.

(RJN Ex. 18 at 120:28-122:6.) Weinstein lied to and fooled Judge Wohlfeil. First, BPC § 19323 was in

effect on October 31, 2016, when the Berry Application was submitted, not BPC § 26057. (RJN Ex. 3 (SB 643 adding BPC § 19323).) Second, the Geraci Judgments order Geraci to comply with the SDMC, which in turn explicitly incorporate and requires compliance with California's cannabis laws that include BPC § 19323.

At the trial of Cotton I, Firouzeh Tirandazi, a Development Project Manager III at the City's Development Services Department ("DSD"), testified that Geraci was not disclosed in the Berry Application. (RJN Ex. 46 (transcript) at 111:20-112:5.) Tirandazi also testified that Geraci was not required to be disclosed in the Berry Application. (RJN at 47 (transcript) at 112:16-113:25.)

Austin, when confronted with the plain language of the Ownership Disclosure Statement requiring the disclosure of the Geraci as the alleged sole owner of the Property and the permit being applied for, testified that she does not know if Geraci was not required to be disclosed or why he was not disclosed: "**I don't know that it --- it was unnecessary or necessary. We just didn't do it**." (RJN Ex. 36 at 51:17-52:28 (emphasis added).)

Judgment in favor of Geraci was entered on the jury's finding that the November Document is a lawful, judicially enforceable contract. (RJN Ex. 20 (Judgment). The issue of the legality was fully briefed in a motion for new trial, which Judge Wohlfeil denied on the grounds that Austin's criminal sham petitioning had been waived for alleged failure to raise prior to the motion for new trial. (Ex. 21 (Motion for New Trial).); Ex. 22 (Opp. to Motion for New Trial).); Ex. 23 (Transcript from Motion for New Trial Hearing).); Ex. 24 (Order on Motion for New Trial).) Judge Wohlfeil erred. It was consistently, repeatedly, unceasingly raised over and over that the Strawman Practice is a criminal illegal practice - it was in the pleadings, and the basis of a motion to disqualify him as a biased judge - but he appeared to have forgotten the endless times it was raised by the time the motion for new trial was heard. (*See* RJN Ex. 23 at 3:22-24 (Judge Wohlfeil: "Even if you are correct, hasn't that train come and gone? The judgment has been entered. You are raising this for the first time.").)

However, as new evidence discovered demonstrates, in January 2017 in an email from Tirandazi to Austin it can be seen that Tirandazi and Austin were well aware of the SDMC disclosure requirements,

with Tirandazi citing Chapter 4, Article 2, Division 15 of the SDMC, in which she states: "Ninus Malan has passed background. Are there any other *responsible persons* affiliated with this MMCC? If so, they will also *need* to go through the background process." (Affidavit of Amy Sherlock ("AS"); Ex. F (Armorous Report) at 076.)[5] This email proves that Austin and Tirandazi knew in January 2017 that "responsible persons" needed to undergo background checks for MMCCs and they committed perjury and a fraud upon the court with their false testimony and sham denial of knowledge that a drug dealer could secretly own a dispensary in the name of his secretary. Geraci, his attorneys, Austin and a City employee, Tirandazi, including the district attorney who was there representing Tirandazi, conspired to and did collectively make a mockery of the trial before Judge Wohlfeil in which everyone there made judge Wohlfeil think that someone can secretly own and profit from cannabis in the name of his receptions applied for with false and fraudulent information.

IV. Salam Razuki, Ninus Malan and Mr. Sherlock and the Sherlock Family.

On January 6, 2015, Razuki entered into a stipulated judgment with the City of San Diego in *City of San Diego v. Salam Razuki, et. al.* (Case No. 37-2014-00009664-*CU-MC-CTL*) (the "Razuki Judgment"). (RJN Ex. 25.) In the Razuki Judgment, Razuki admits to maintaining a dispensary in violation of the SDMC, ordered to pay fines and not to operate a dispensary without complying with the SDMC. (*Id.* at 5, 10(a)(b), 11 & 17.) However, Razuki wanted to continue to profit from the owning of cannabis businesses and entered into a partnership agreement with Malan. The partnership agreement was for Razuki to be entitled to 75% of the profits and Malan the balance of 25% and for Malan to hold all assets in his name because Razuki was concerned about the legal effect of the Razuki Judgment. (RJN Ex. 26 (Declaration of Salam Razuki (SR)) at ¶¶ 3-4); Ex. 27 (Salam Razuki v. Ninus Malan, No. D075028, 2021 Cal. App. Unpub. LEXIS 1168 (Feb. 24, 2021) (the "*Razuki Decision*")) at *8.)

On January 13, 2015, Mr. Sherlock had a dispensary permit approved by the City of Ramona at 1210 Olive Street, Ramona, CA 92065 (the "Ramona Property" and the "Ramona Permit.").) (RJN Ex. 28.) In June 2015, Mr. Sherlock was granted a permit to operate a dispensary at 8863 Balboa Avenue,

[5] The email between Tirandazi and Austin is included as Exhibit C to the Report by Trent James of Armorous which is Exhibit F to the supporting Affidavit of Amy Sherlock ("AS").

Unit E, San Diego, California 92123 (the "Balboa Property" and the "Balboa Permit" and, collectively with the Ramona Property and the Ramona Permit, the "Sherlock Property"). (RJN Ex. 29 (Public Comments, Minutes Item No. 8).) In December 2015, Mr. Sherlock passed away purportedly by suicide.[6]

As Judge Mangione has already held, upon Mr. Sherlock's death without a will, Mr. Sherlock's ownership of the Sherlock Property transferred to his surviving wife and two children. (RJN Ex. 30 at 2 (overruling demurrer to Plaintiffs' cause of action for conversion of their ownership rights to the Sherlock Property).) The number of entities and parties that have claimed ownership of the Sherlock Property after the death of Mr. Sherlock, via Austin and her clients shell companies are too numerous to set forth herein. For purposes of this motion, Plaintiffs provide the court the evidence of what transpired with the Balboa Permit, which as of the filing of this motion provides contradicting transfers of the Balboa and Ramona Permits:

First, Bradford Harcourt judicially admits that he went to the City of San Diego and transferred the Balboa Permit to himself upon the death of Mr. Sherlock (RJN Ex. 31 at ¶¶ 17-19.) Harcourt also alleges that thereafter, that Razuki and Malan, among others, defrauded him of the Balboa Permit by making false representations to the City and the City then transferred the Balboa Permit from Harcourt to Malan's name. (*Id*. at 10:17-11:5.) After that, Razuki sued Malan alleging that Malan had breached their agreement and was not paying him sums owed under their partnership agreement. (RJN Ex. 32 at 5:14-15-7:9; RJN Ex. 27 (*Razuki Decision*) at *66.) After that, Razuki attempted to have Malan kidnapped and murdered because of the lawsuit. (RJN Ex. 33 *(United States v. Razuki et al*; RJN Ex. 27 (Razuki Decision) at *66.)

Second, after Mrs. Sherlock discovered that certain documents had been forged with Mr. Sherlock's signature after his death, she confronted Lake who admitted that he and Harcourt were responsible for forging Mr. Sherlock's signature to transfer the Sherlock Property to themselves.[7]

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[6] The County of San Diego, Office of the Medical Examiner, Autopsy Report concluded that Mr. Sherlock passed away by suicide. The Autopsy Report is attached as Exhibit B to Exhibit F of the Affidavit of Amy Sherlock (page 20 of the Armorous Report and 103 of Mrs. Sherlock affidavit).

[7] On April 2, 2020, Mrs. Sherlock executed a declaration in a related matter in which she declares at paragraph 42 that "Lake admitted to me that the he was responsible for the transfer of [my husband's]

Third, a Freedom of Information Act (FOIA) request by Mrs. Sherlock revealed that the City of San Diego issued the Balboa Permit ***to*** Mrs. Sherlock after the death of Mr. Sherlock! Requests to the City that they provide the documentation of the application pursuant to which the Balboa Permit was transferred to her and then of the names were lost: "We don't have them, and we will not be able to provide them." (AS at Ex. Z.)

Fourth, another FOIA request to the Department of Cannabis Control by Austin, dated April 13, 2018, she attached the Balboa Permit issued to Mr. Sherlock and asked the DCC to confirm that the Balboa Permit only belongs to Balboa Treehouse (Ninus Malan). (RJN Ex. 34.) Materially, Austin falsely states that the Balboa Permit "is not tied to the specific licensee or property owner." (*Id*.) And that the "permit runs with the land and the name of the Licensee [i.e., Mr. Sherlock] is for reference purposes." (RJN Ex. 34.) This blatant lie has already been specifically found to be a false statement by Judge Mangione when asserted by Lake. (RJN Ex. 34.) It is fraud by omission; "the telling of a half-truth calculated to deceive is fraud." (*Pavicich v. Santucci* (2000) 85 Cal. App. 4th 382, 398.) This is fraud upon the court by an officer of the court and Austin's letter is prima facie evidence of her defrauding the Sherlock Family of the Balboa Permit that was in Mr. Sherlock's name and that she has also perpetrated a fraud successfully upon the City of San Diego as well as the DCC.

Fifth, on January 20, 2014, Duane Alexander called Flores and informed him that he had become aware of this litigation and reviewed Mrs. Sherlock's webpage (www.justice4amy.org). (Declaration of Andrew Flores ("AF") at ¶ 7.) Alexander stated that he was not involved with Mr. Sherlock's death and that he recognized that Mrs. Sherlock had an ownership interest and that "she is owed some money" from the dispensary operating pursuant to the Ramona CUP. (AF at ¶ 7.)

Alexander stated that he thought Mrs. Sherlock was aware of the transfer of the Ramona CUP to him and that he had evidence to provide to that effect because both Alexander and Mrs. Sherlock were allegedly clients of attorney William L. Miltner of Miltner & Menck, APC. (AF at ¶ 10.) Flores

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ownership interests in two cannabis dispensaries." This declaration is attached as Exhibit D to the Armorous Report that in turn is attached as Exhibit F to the supporting Affidavit of Mrs. Sherlock. The affidavit was used in support of a motion in federal court that ultimately was denied on the grounds that res judicata applies because the Sherlock Family was allegedly in privity with Cotton.

interrupted Alexander at that point and asked him to meet with his private investigator to provide that information. Flores arranged for a meeting between Alexander and EG & Associates. They subsequently met, and a report ("Alexander Report") was generated. (AF at ¶ 9.)

Absolutely shattering, and which should in every reasonable interpretation of the evidence alarm this Court to the fact that Austin and others are engaged in a criminal enterprise and using the courts to effectuate their crimes, is that among the documents provided by Alexander was a Consent and Waiver of Rights allegedly executed by Mrs. Sherlock. (AF at ¶¶ 9-10.) At no point did Mrs. Sherlock engage the law firm of Miltner & Menck, APC to help with legal matters relating to cannabis businesses. The very premise of this action is founded upon the undeniable fact that prior to being contacted by Cotton in 2019 – four years after the death of Mr. Sherlock – the Sherlock Family did not know that Lake and Harcourt had stolen the Sherlock Property from them and told them that Mr. Sherlock has never acquired the assets or lost them due to expenses and litigation. (AS at ¶ 5.)

Flores subsequently reached out to Miltner who took a decidedly evasive stance and refused to explain how they could lawfully represent Mrs. Sherlock without ever meeting or communicating with her in any fashion. (AF ¶ 12: Ex. B at 048-055.) A complaint with the State Bar of California against Miltner. (AF ¶ 12: Ex. B at 023-026.)

V. Mr. Sherlock was murdered, and it was staged as a suicide.

On December 2, 2015, Mr. Sherlock allegedly committed suicide. The Autopsy Report concluded as much based on the San Diego Police investigation, which primarily relied on statements made by Lake. Lake did not tell the police that Mr. Sherlock had allegedly just transferred to Lake and Harcourt two cannabis licenses worth $14,000,000, but instead told the police that Mr. Sherlock was "in a funk" and was upset about "little things." (AS at Ex. F @ 016.)

Subsequently, upon learning about Austin, Lake and Harcourt and their acts in transferring the Balboa Permit directly from Mr. Sherlock's name, Mrs. Sherlock began her own investigations, including by Scott G. Roder of the Evidence Room, who concluded that: "Based on our review of the physical evidence at this time regarding the death of Mr. Michael De Carlo 'Biker' Sherlock, the following evidence is 100% inconsistent with a self-inflicted GSW and suicide: [detailing nine items]." (AS at Ex.

X at 9.)

VI. Phillip Zamora

On March 17, 2023, Phillip Zamora executed an affidavit attesting that from January through April of 2017 he was the Director of Operations at the Balboa Dispensary. (Affidavit of Phillip Zamora ("PZ") at ¶ 7.) He was present at meetings with Austin, Razuki and Malan at which "Austin was both the business and legal strategist for the acquisition and development of their cannabis business." (PZ at ¶ 12.) Zamora was present when Austin and the parties made clear that the "goal of their enterprise was to create a monopoly in the cannabis market in the County and City of San Diego." (PZ at ¶ 14.) Further, that Austin was providing Razuki and Malan information from or about her other clients and projects that would benefit Razuki and Malan in their pursuit of acquiring those projects at the expense of her other clients. (PZ at ¶¶ 16-17.) Materially, Zamora was present when Austin explicitly stated that the goal of her activities was to create a "**monopoly**" in the cannabis market. (PZ at ¶¶ 14-15.)

VII. Tiffany Knopf

On November 6, 1996, Point Loma Patients Association (PLPA) was incorporated by Adam Knopf and Sergio Burga with their first storefront being located at 3045 Rosecrans Street, Suite 214, San Diego CA. 92110 (Affidavit of Tiffany Knopf ("TK") at ¶ 6.)

On April 24, 2014, Mrs. and Mr. Knopf recorded their Articles of Incorporation for Point Loma Patients Consumer Cooperative (PLPCC (later rebranded as Golden State Greens (GSG)). (TK at ¶ 12.) Mrs. and Mr. Knopf were the founding directors. (*Id.*) Mrs. and Mr. Knopf hired Austin to file and acquire a cannabis dispensary permit for PLPCC at 3452 Hancock Street, SD, CA 92110. (TK at ¶ 12.) Mrs. Knopf attests that Austin and Mr. Knopf told her that she could not be on the application because "there could only be one applicant and that applicant was Mr. Knopf." (TK at ¶ 15.)

On May 27, 2014, PLPA entered into a stipulated judgment with the City of San Diego in which PLPA admitted it was operating an illegal dispensary. (TK ¶ 18: Ex. G (the "Knopf Judgment".) Mr. Knopf was the President of PLPA and continued to be so through the year. (TK ¶ 8: *see* Ex. A at 020 (2014 PLPA 4th Quarter State Contribution Return and Report of Wages).) However, the individual who signed the stipulated judgment for PLPA was Heidi Rising and she did so appearing "as an individual, as

manager, and as vice president of [PLPA]." (*Id.*)

In a letter dated January 14, 2015, submitted by Austin to the Planning Commission of the City of San Diego, Austin argued that:

> It is important to clarify that Point Loma Patients Association, while similar in name, is NOT the Applicant. The Applicant is Point Loma Patients Cooperative a completely separate and distinct legal entity with no affiliation to Point Loma Patients Association.
>
> Further, Mr. Knopf has made no secret that he was affiliated with Point Loma Patients Association prior to the adoption of the current ordinance in April 2014. Prior to April 2014 the City of San Diego did not have an express ban on dispensaries and the zoning code was vague and ambiguous. Mr. Knopf, however, resigned from Point Loma Patients Association prior to the adoption of the current ordinance and is not operating a dispensary. As Mr. Knopf has no affiliation with Point Loma Patients Association, he has no ability to affect its operations or remove his information from its website.

(RJN Ex. 38 (letter from Austin to City of San Diego Planning Commission).)

However, as the evidence provided by Mrs. Knopf demonstrates, Mr. Knopf was always the owner of PLPA, and his alleged resignation was a backdated document between Austin and him so they cold avoid the consequences of him operating an illegal dispensary. (TK at Ex. P.) In Mr. Knopf's own words texted to Mrs. Knopf:

> 100% the same business we have argument emails back-and-forth with the city in 2015 telling them [Gina, Bartell?] it was illegal for us to have to change our name from Point Loma Patient association to point Loma patient consumer co-op.

In sum, Mr. Knopf has always operated illegal for-profit dispensaries and he acquired the GSG CUP by falsely telling Mrs. Knopf that she could not be named on the permit application and falsifying documents that Mr. Knopf was not the President of PLPA and doing so by falsely listing Snyder as President of what was then an illegal dispensary. Perhaps the Court would be persuaded by Mr. Knopf's own huge billboard on 2850 Garnet Avenue San Diego CA 92109 that states that GSG has been in business since 2009, contradicting Austin's representations to the Planning Committee (and numerous courts).

When Mrs. Knopf learned about this litigation, she contacted Mrs. Sherlock. (TK at ¶ 35.) She informed Mrs. Sherlock and provided documentation proving that Austin had worked for Mr. Sherlock

as part of a partnership between Mr. Sherlock and Mr. Knopf. (TK at ¶ 33.) This is notable, because Austin has continuously maintained to the courts that she was only "tangentially involved in the Balboa CUP, in helping [Mr. Sherlock's] attorney with the initial application." (RJN Ex. 41 (*Austin Decision*) at 14-15.) The billing statements by Austin to Full Circle, LLC, show that Austin was more than "tangentially" involved, and she lied to this Court, which would not have been discovered but-for Mrs. Knopf's evidence. (TK at ¶ 36; *id.* at ¶ 9: Ex. B (Full Circle, LLC Operating Agreement) at 022-025.) The Court should be outraged.

Further, Mrs. Knopf attests that she was present at weekly meetings with Austin, Mr. Knopf and James Bartell (a famous and powerful political lobbyist in San Diego) when Mr. Knopf would make weekly payments "between $10,000 to $20,000 in cash" to Bartell as their political lobbyist that was used in part to "**bribe City of San Diego officials in pay-to-play agreements for preferable treatment in the issuance of cannabis permits**." (TK at ¶44(c) (emphasis added).)

Mrs. Knopf's affidavit provides additional documents and attestations by Austin and Mr. Knopf. (*See*, *gen.*, TF.)

VIII. The Complaint; the Anti-SLAPP Motion; and the Order.

On December 3, 2021, Plaintiffs filed the operative complaint alleging the existence of the Enterprise, the Antitrust Conspiracy, and that the Strawman Practice is a criminal act. (RJN Ex. 43.) On August 12, 2022, Judge Mangione issued the Order granting Austin's anti-SLAPP motion. (RJN Ex. 44.)

On September 11, 2023, the Court of Appeals held a hearing on Plaintiffs' appeal from the Order. Austin's attorneys are good at fooling judges. At the hearing, the Honorable Associate Justice Jose Castillo asked the all important question of Austin's soon-to-be-sued attorney, Annie F. Frasier, the following: "what is your understanding of why opposing counsel was raising the argument about the strawman? What is your understanding of that particular argument?" Plaintiffs' hearts leapt with joy at the question, finally, an impartial judge looking at the evidence and not the history of adjudication of the issue. Alas, Frasier did not even attempt to answer the question, instead, in what will one day be held to be fraud upon the court, Fraser responded by distracting the Justice Castillo with the following: "he alleges this is a grand conspiracy. There are 19 people charged, and he alleges that they engaged in a

conspiracy to have this practice to minimize or keep the number of marijuana applications in their own little group. But there's no evidence of that…Did that answer your question?" And Judge Castillo: "Yes. Thank you." The hearing was posted to YouTube by Cotton and can be found at: https://www.youtube.com/watch?v=2ldvJIwsAH4&t=885s.

Frasier's response is bold buts she flippantly says that they allege a grand conspiracy and use the fact that Austin, and her, Frasier, are perpetrating a fraud upon the court by misrepresenting facts and law, the Strawman Practice is a criminally illegal act. How the Court of Appeals found her answer to be responsive is still baffling to Plaintiffs – the act of secretly owning dispensaries is a prima facie antitrust violation. The California Legislature made this point emphatically and repeatedly in virtually every cannabis bill that has ever been passed.

On September 18, 2023, the Court of Appeals issued its decision affirming the grant of the anti-SLAPP motion but stating that they would probably agree that the Strawman Practice violates Penal Code § 115 if Plaintiffs had provided evidence that Austin did undertake the Strawman Practice. (RJN Ex. 45.)

IX. Other Material Facts.

On September 20, 2018, Austin filed a Verified Cross Complaint in which she states that, "Razuki was under a court order not to engage in any unlicensed marijuana businesses in San Diego." (RJN Ex. 42 (cross-complaint) at 38:5-9; RJN Ex. 25 (Razuki Judgment).) Austin is directly stating that the Razuki Judgment, substantively identical to the Geraci Judgments, means that her clients have to comply with the SDMC, which requires disclosing "responsible persons" and submitting fingerprints for background checks. (RJN Ex. 1 (Ordinance 20043).)

On July 30, 2018, in Austin submitted a declaration in *Razuki v. Malan,* Case No. 37-2018-00034229-CU-BC-CTL, arguing that a court appointed receiver needed to be disclosed per statutes passed by the California Legislature, regulations promulgated by the licensing agency, and the SDMC. (*See*, *gen.*, RJN Ex. 35 (citing Cal. Bus. Prof Code § 26001(al).) If a court appointed receiver needs to be disclosed, then why do the actual owners of the permits not have to be? The answer is Austin is talking out both sides of her mouth and lies as the situation requires to advance her criminal interests.

ARGUMENT

Plaintiffs argument is that Austin's legal services contracts with her clients to undertake the Strawman Practice for their acquisition and ownership of dispensaries via the Strawman Practice are criminally illegal. Thus the Order is void because the Court does not have the power, authority, jurisdiction, to enforce illicit drug trafficking in violation of the CSA, the CUCSA, RICO, the SDMC, California's cannabis laws, and the judgments issued by Judges [] in the Geraci Judgments, the Razuki Judgment, and the Knopf Judgment ordering them to comply with the SDMC to operate cannabis dispensaries. Simply stated, proving the Strawman Practice is criminally illegal means that Austin's petitioning is not protected by the First Amendment and the Court's Order is void as an excess of jurisdiction and being procured through a fraud on the court.

I. Legal Principles

Void Judgments and Orders. "Nullity of judgments results from a want of legally organized court or tribunal; want of jurisdiction over the subject-matter or the parties; or want of power to grant the relief contained in the judgment." (*Id.* at 112.) "A judgment absolutely void may be attacked anywhere, directly or collaterally whenever it presents itself, either by parties or strangers. It is simply a nullity and can be neither a basis nor evidence of any right whatever. A void judgment [or order] is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being **worthless** in itself; all proceedings founded upon it are equally worthless. It neither binds nor bars anyone." (*OC Interior Servs., LLC v. Nationstar Mortg., LLC* (Cal. Ct. App. 2017) 7 Cal.App.5th 1318, 1330 (*OC Interior*) (cleaned up, brackets in original, emphasis added); *see Renoir v. Redstar Corp.* (2004) 123 CA4th 1145, 1154 ("an order denying a motion to vacate void judgment is a void order and appealable") (citing *Carlson v. Eassa* (1997) 54 Cal.App.4th 684, 69); *Rochin v. Pat Johnson Mfg. Co.*, 67 Cal. App. 4th 1228, 1239, 79 Cal. Rptr. 2d 719, 725 (1998) ("An attack on a void judgment may also be direct, since a court has inherent power, apart from statute, to correct its records by vacating a judgment which is void on its face, for such a judgment is a nullity and may be ignored.").)

"The doctrine of res judicata is inapplicable to void judgments. Obviously, a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for lack

of jurisdiction of the subject matter or person, and perhaps for excess of jurisdiction, or where it is obtained by extrinsic fraud." (*311 S. Spring St. Co. v. Dep't of Gen. Servs.* (2009) 178 Cal. App. 4th 1009, 1015 (*Spring*) (cleaned up).) "And the affirmance of a judgment on appeal does not insulate it from a subsequent collateral attack on the ground that it is void." (*Id*.; *Security Pac. Nat. Bank v. Lyon* (1980) 105 Cal.App.3d Supp. 8, 13 ("affirmance of a void judgment or order is itself void."); *Hager v. Hager*, 199 Cal. App. 2d 259, 261 (1962) ("The affirmance of a void judgment upon appeal imparts no validity to the judgment, but is in itself void by reason of the nullity of the judgment appealed from."); *County of Ventura v. Tillett* (1982) 133 Cal.App.3d 105, 110 ("an order giving effect to a void judgment is also void and is subject to attack"); *Kenney v. Tanforan Park Shopping Ctr.*, Nos. G038323, G039372, 2008 Cal. App. Unpub. LEXIS 10048, at *36 (Dec. 15, 2008) ("A judgment giving effect to a void judgment is also void.").)

The anti-SLAPP Statute. The anti-SLAPP statute provides a procedure for striking lawsuits that are brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. (Civ. Code. § 425.16.) "A two-step process is used for determining whether an action is a SLAPP. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity, that is, by demonstrating that the facts underlying the plaintiff's complaint fit one of the categories spelled out in section 425.16, subdivision (e). If the court finds that such a showing has been made, it must then determine the second step, whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Richmond Compassionate Care Collective v. 7 Stars Holistic Found., Inc.* (2019) 32 Cal. App. 5th 458, 466-67.) However, if "the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petitioning 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 v. Mauro* (2006) 39 Cal.4th 299, 320 (*Flatley*).)

Summary. As is clear from the legal authorities cited above, there is an overlap between void judgments and orders and the illegality exception to the anti-SLAPP statute. Stated in plain words, if a

criminal drug dealer is able to hire an attorney to successfully acquire judgments and orders whose object is illicit drug trafficking and sales via the filing of fraudulent documents with licensing agencies and sham petitioning, then any such judgments and orders are void and not protected by the First Amendment.

II. The Order is void for being rendered in excess of the Court's jurisdiction because all contracts based on or in furtherance of the Strawman Practice are criminally illegal, judicially unenforceable contracts.

The Law. Under California law, a contract must have a "lawful object." (Civ. Code § 1550(3).) Contracts without a lawful object are void and unenforceable. (*Id.* §§ 1596, 1598, 1608.) California Civil Code § 1667 elaborates that "unlawful" means: 1. Contrary to an express provision of law; 2. Contrary to the policy of express law, though not expressly prohibited; or, 3. Otherwise contrary to good morals." For purposes of determining what is illegal, 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.) A judgment that enforces an illegal contract is void to the extent it enforces that illegal contract. (*Hunter v. Superior Court of Riverside Cty.* (1939) 36 Cal. App. 2d 100, 112; id. at 116 ("If a court grants relief, which under no circumstances it has any authority to grant, its judgment is to that extent void.").)

"California's marijuana laws do not legalize medical or recreational marijuana." (Extrajudicial Involvement in Marijuana Enterprises, California Supreme Court Committee on Judicial Ethics Opinion (2017) Cal. Jud. Ethics Op. LEXIS 1 (the "CA SC Ethic Opinion") (citing *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 926).) "Instead, they decriminalize certain marijuana offenses under California law. Under federal law, the knowing or intentional manufacture, possession, and distribution of marijuana remains a federal crime." (*Id.*) "An attempt to violate or a conspiracy to commit a violation of the Controlled Substances Act is subject to the same penalties as the underlying offense." (*Id.* at 1 (citing 21 U.S.C. § 846) (emphasis added).) Leasing a real property knowing it is to be used for illicit drug sales is a criminal offense. (21 U.S.C. § 846.) "Any capital placed into a marijuana business not only puts an individual at risk of criminal prosecution, but such assets, investments, and profits are subject to forfeiture ([21 U.S.C.] §§ 853, 881) and any investment of marijuana profits further violates federal law ([21 U.S.C.] § 854)." (CA SC Ethics Opinion at 1.) "Similarly, financial transactions

that involve proceeds generated by marijuana can form the basis for federal prosecution under money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act of 1970." (*Id*. (citing 18 U.S.C. §§ 1956, 1957).)

Discussion. There is no dispute that Austin has been hired to undertake the Strawman Practice for, for purposes of this motion, at the very least Geraci. That Austin claims that she does not know why she did not disclose Geraci and undertook the Strawman Practice is not a legally cognizable defense nor it is even remotely credible. (RJN Ex. 36 at 51:17-52:28 (emphasis added).)

First, Ordinance 20043 and the Ownership Disclosure Statement made clear that every responsible party needed to submit their fingerprints for a background check; BPC § 19323 barred ownership of a dispensary by a party who had been sanctioned the way that Geraci was for operating three illegal dispensaries; and Judges Ronald S. Prager and John S. Meyer in the Geraci Judgments ordered Geraci to comply with the SDMC in any future cannabis operations.

Austin's petitioning for Geraci to own dispensaries in violation the State and local laws and court orders is a criminal practice that would not be before this and other courts but-for Darryl Cotton refusing to be extorted and her clients Razuki and Malan being criminals and trying to cheat and kill each other.

Second, BPC § 19323 pursuant to its plain language prohibited Geraci and any sanctioned individual from owning a dispensary. The Court and the Court of Appeals have erred on this threshold, case-dispositive statute. It is the why drug dealers hire Austin to undertake the Strawman Practice. The Court should realize that the only reason it thinks that anybody can secretly own and operate a dispensary is not based on evidence or the plain language of the statute. The California Legislature mandated the licensing agency deny applications from parties sanctioned. (BPC § 19323 ("shall deny"). In *HNHPC, Inc. v. Dep't of Cannabis Control* (2023) the Court of Appels held that a writ was warranted to mandate the Department of Cannabis Control design a database to flag irregularities in overseeing cannabis controls because the Legislature required, they do so pursuant to the word "shall." Similarly, here the Legislature used the word shall and the courts position that the word "shall" was used by the Legislature superfluously in subsection (a) and actually intended that the word "may" in subsection (b) apply has no legal basis.

Third, Penal Code § 115 states, "[e]very 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." There is no dispute that Austin filed the Berry Application containing false statements – that Berry is the owner, tenant/lessee, financial responsible party. (RJN Exs. 12-15 (forms submitted as part of the Berry Application).) In the *Austin Decision*, the Court said, "If Austin (or her law firm) had conceded that she submitted false documentation to the regulatory authorities or some evidence in the record conclusively established such conduct, we might agree with plaintiffs that Austin's alleged conduct fell outside the protection of section 425.16." (RJN Ex. 45 (*Austin Decision*) at *16.)

Here, Plaintiffs provide Austin's own testimony that she undertook the Strawman Practice and her allegation that she does know why she did not disclose Geraci is exactly what it appears to be – a bold face lie to get out of the consequences of being part of a criminal enterprise that undertakes sham petitioning with the goal of profiting from illicit drug trafficking. There is nothing she will not lie about.

Fourth, Berry may be the criminal mastermind for all Plaintiffs know. But what is certain is that she *executed* the Berry Application and thus aided and abetted Gina in her services to Geraci, her employer, in his goal to profit from the illegal sale of cannabis. Berry's failure to disclose Geraci violates both the SDMC and the BPC § 19323. (RJN Ex. 1Ordinance 20043, Ordinance 20356, BPC § 19323(a), (b)(4) ("The applicant has failed to provide information required by the licensing authority."). Consequently, Austin's petitioning that requires a violation of the BPC provisions is therefore also sham petitioning on this ground.

Fourth, California's Unfair Competition Law (UCL), provides that unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice. (BPC § 17200.) As the California Supreme Court has stated, "the Legislature intended this sweeping language to include anything that can properly be called a business practice and that at the same time is forbidden by law." *(Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1266 (cleaned up).) This code section thus "borrows violations from other laws by making them independently actionable as unfair competitive practices." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143.)

Under the UCL, "[k]nowingly 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." (*Golden State Seafood, Inc. v. Schloss* (2020) 53 Cal. App. 5th 21, 40 ("*Golden State*"); *see People v. Persolve, LLC* (2013) 218 Cal. App. 4th 1267, 1276 (litigation privilege cannot be used as a defense to defeat an unfair competition action, as such application would effectively render the protections afforded by that underlying statute meaningless).) Here, violations of Penal Code § 115, federal and state cannabis laws, the SDMC, and the Geraci Judgments and the Razuki Judgment requiring compliance with the SDMC, which requires their disclosure as owners who constitute "responsible persons," constitute violations of the UCL. In other simple words, there is no such thing as an attorney aiding their clients to profit from the secret illegal sale of drugs.

Fifth, California's "antitrust laws are designed to protect the public, as well as more immediate victims, from a restraint of trade or monopolistic practice which has an anticompetitive impact on the market." (*Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 724.) The Cartwright Act prohibits two or more persons from combining to do certain specified anti-competitive acts including creating or carrying out restrictions on trade or commerce and preventing competition in the sale or purchase of any commodity. (BPC §§ 16720(a), (c).) To prevail in an 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. Each of these three elements are met here: (i) and (ii), 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.) Obviously, the Strawman Practice – filing of fraudulent documents with the object of engaging in illicit drug trafficking and sales in violation of federal, state and local laws – is both a per se violation of antitrust laws and an illegal act.

As to damages, the "focus of the Cartwright Act is on the punishment of violators for the larger purpose of promoting free competition." (*Asahi*, 204 Cal.App.4th at 7 (cleaned up).) A party prevailing on a Cartwright violation is entitled to recover treble damages. (BPC § 16750(a).) Here, Austin knew that the Balboa Permit belonged to Mr. Sherlock and that he passed away. She has provided no documentations or evidence that she could lawfully transfer the Balboa Permit from Mr. Sherlock to Malan as reflected in her letter to the DCC. (RJN Ex. 34.)

Austin's response, already argued extensively before, is that that her petitioning is immunized by the *Noerr-Pennington* doctrine. (*People ex rel. Harris v. Aguayo* (2017) 11 Cal.App.5th 1150, 1160 ("*Noerr-Pennington* doctrine immunizes legitimate efforts to influence a branch of government from virtually all forms of civil liability.") However, there is an exception to such immunity for sham petitioning activity in California. (*Hi-Top Steel Corp. v. Lehrer* (1994) 24 Cal.App.4th 570, 579.) "***[R]ecording false documents, among other things, are not protected petitioning activity under Noerr-Pennington and its progeny.***" (*People ex rel. Harris v. Aguayo* (2017) 11 Cal. App. 5th 1150, 1163 (emphasis added).) As demonstrated, the Strawman Practice is the recording of false documents – petitioning government licensing agencies and the courts alleging that parties can secretly own and profit from nonprofit dispensaries. The Court should not ignore this.

In *Wheeler v. Appellate Div. of Superior Court* (2021) 72 Cal. App. 5th 824, 832, the court said: "MAUCRSA creates a state licensing process for cannabis businesses (Bus. & Prof. Code, § 26010 et seq.), including penalties for licensing violations (§§ 26030–26037). It imposes civil penalties for 'unlicensed commercial cannabis activity,' and provides that in addition to these civil penalties, '***criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this division***.' (§ 26038, subd. (c).)."

The goal of Austin's petitioning is for Geraci as an unlicensed person to engage in commercial cannabis activity. That is criminally illegal. (*Id.*) As set forth above, Austin's Strawman Practice violates numerous federal, state and local laws as well as the court orders issued by judges requiring that the parties comply with the SDMC. And per California law, the failure to comply means there is no immunity from federal prosecution and Austin and the Enterprise are liable under both federal and state law for illicit drug trafficking and sales. No judgment or order can grant relief in violation of the CSA.

III. The Order is void for being procured through a fraud on the courEx.t.

Again, the "doctrine of res judicata is inapplicable to void judgments. 'Obviously a judgment, though final and on the merits, has no binding force and is subject to collateral attack if it is wholly void for lack of jurisdiction of the subject matter or person, and perhaps for excess of jurisdiction, or where it is obtained by extrinsic fraud." (*Spring*, 178 Cal. App. 4th at 1015.)

Here, the entire course of conduct by Austin and her clients as demonstrated by the facts set forth above prove a criminal enterprise that is effectuated via the legal services of Austin. Just one example is the irrefutable fact that Geraci and his attorneys colluded to have Tirandazi, as a third-party City official, and Austin, as an allegedly moral and expert attorney in cannabis law, testify that it was not illegal for Geraci to apply for a permit in Berry's name via the Strawman Practice. (RJN Ex. 36 at 51:17-52:28 (emphasis added).)

Moreover, the attestations of Mrs. Knopf and her presence when money was given to Bartell for bribing City officials makes it clear that Tirandazi and Austin colluded with Geraci and his attorneys to deceive and fool Judge Wohlfeil into thinking secretly owning and operating dispensaries is lawful. But it is all part of a corrupt pay-to-play conspiracy by Austin and public servants in the City who will stop at nothing to prevent their criminal actions being exposed. How does the City of San Diego issue a permit to Mrs. Sherlock and Harcourt and Malan all directly from Mr. Sherlock's name? Who was Bartell paying at the City of San Diego? Why did Tirandazi commit perjury? Who had the authority to coerce and/or cover up her perjured testimony? And, which again, is directly contradicted by the email between Tirandazi and Austin and the need to undergo background checks for "responsible persons." Someone at the City of San Diego is on Austin's payroll and is willing to cover up a conspiracy that includes the murder of Mr. Sherlock.

CONCLUSION

Plaintiffs have a great deal of evidence to prove that Austin has taken many more criminal actions against many more victims, including some of her current clients who are scared to come forward because they think she is "too powerful" and has control of the City of San Diego and numerous judges on her payroll. This is a fact. Once the Strawman Practice is declared illegal, numerous of her clients will also

come forward to sue her for the other cannabis licenses that they now know she defrauded them of once they learned about what she did for Geraci, Razuki and Knopf.

Attorney Flores wants to be done with this case, but he is legally, ethically and morally obligated to continue representing the Sherlock Family. The Sherlock Family will never give up seeking to recover their property and holding the people who murdered Mr. Sherlock accountable. However, for now, because of the judicial history of adjudication in this matter and the extrajudicial considerations of this Court, Plaintiffs have simply emphasized the above – the Strawman Practice is and can only be a criminal practice whose sole goal is to profit from illegal cannabis sales.

DATED: May 9, 2024

Respectfully Submitted,

By: _____

Andrew Flores
Attorney for Plaintiffs'
Amy Sherlock, T.S., S.S.